

COMPLIANCE WITH FREEDOM OF INFORMATION LEGISLATION BY PUBLIC BODIES  
IN SOUTH AFRICA

by

ITUMELENG MARCIA MAMAGASE NKWE

Student number: 55717888

submitted in fulfilment of the requirements for the degree of

MASTER OF INFORMATION SCIENCE

at the

UNIVERSITY OF SOUTH AFRICA

SUPERVISOR: PROFESSOR M NGOEPE

## **ABSTRACT**

In South Africa, freedom of information (FOI) or the right of access to information (ATI) is entrenched in section 32 of the Constitution. Section 32 guarantees every citizen the right of access to any information held by the state or held by any other person that is to be used for the protection or exercise of any right. The Promotion of Access to Information Act (PAIA) is the law that gives effect to section 32 of the Constitution. Regardless of a remarkable trend towards the adoption of FOI laws globally, international trends have shown this does not automatically translate into fulfilment of people's right to information, as access to information by citizens remains a challenging factor. This study utilised mixed method research through the explanatory sequential design to assess compliance with FOI legislation by public bodies in South Africa with the view to ensure transparency, accountability and good governance. In this regard, the study first conducted a quantitative study by analysing the reports of the South African Human Rights Commission from the reporting years 2006/07 to 2016/07 to assess compliance with sections 14, 17 and 32 of the PAIA. The compliance trends were identified and thereafter a qualitative study was conducted to answer the question why the situation was the way it was. In this regard, interviews were conducted with a purposively chosen sample from complying and non-complying public bodies. The targeted participants were records managers, deputy information officers or officials responsible for PAIA in each chosen public body. The mixing strategy for the current study was at the data analysis, presentation and reporting level. Key results suggest that over the years, there were problems in the implementation of the FOI legislation in South Africa and its use was limited. Where implementation has taken place, it has been partial and inconsistent. The responsibility for implementation of FOI legislation in most public bodies is assigned to legal departments that do not have knowledge of what records are created, where and how they are kept. With regard to compliance, in terms of the degree of comparison, the situation was better in national departments, worse in provincial departments (with full compliance from the Free State, Limpopo, Western Cape and, to some extent, KwaZulu-Natal) and worst in municipalities. The study recommends the establishment of an information governance unit to implement FOI in public bodies. This unit will also be responsible for other information functions such as records management and information technology. Failure to assign

responsibility to a relevant unit would perpetuate the non-compliance with FOI legislation in South Africa. As a result, accountability, transparency and good governance preached by the public sector to advance democracy in South Africa would be a mirage. A model for the implementation of PAIA within a public body is suggested.

**Key words:** freedom of information, access to information, records, accountability, transparency, good governance, public bodies, Promotion of Access to Information Act, South Africa

## **ACKNOWLEDGEMENT**

It was my supervisor, Prof Mpho Ngoepe, whom when I embarked on this study, reminded me that every journey has its destination as it is not a journey to ‘Mandeland’. I never thought I would reach the final destination of the journey for masters’ studies, but each time I felt like quitting, I remembered what he said “the road to academia is very lonely, when it gets hard, always remember why you started”. I would therefore like to thank Prof Mpho Ngoepe for providing the rules of the road and guiding me in this journey to ensure that I reach the desired destination. Ka nnete montshepetša bošego ke mo leboga bo sele. Even if I walk through the valley of the shadow of death, I shall fear no evil as the Lord will send angels to protect and guide me. My cup overflows.

Sincere gratitude goes to the colleagues of the Department of information Science who were part of the research classes of 2018 and 2019. Dr Jan Maluleka’s words of encouragement always reminding me to not give up and to draw strength from all the challenges I encountered. To my ‘skeem saam’, fellow students such as Kabelo ‘Number Number’ Chuma, Mahlatse Shekgola, Jackie Kau, Noko Ngoepe and Phila Sibiyi, I drew a lot of inspiration from you all the times, our WhatsApp conversations kept me motivated when it got tough. I am grateful to Mr Makutla Mojapelo for providing me with the reports for the South African Human Rights Commission, as well as Prof Samuel Mojapelo who believed in me so much and always reminding me to “develop a thick skin”.

I also salute the participants of this study. The information they provided were valuable. I thank the University of South Africa for funding this study. The support of the Department of information Science in a form of research retreats and workshops, the input from the retreats went a long way in shaping the direction of this research.

How can I forget the cheerleaders in the form of my family, my parents (Phashe Monama and Martha Monama) and my siblings (Kadibetso Monama, Nerisha Monama and Lebogang Monama). My loving husband Kgomotso Nkwe’s unwavering support and for always having my back during the most challenging times of this research, my little sister Nerisha

Manama's assistance in our household when I worked until late to complete this study. Finally, may Modimo-Badimo (God-Gods) bless all those who helped in making sure that this study is completed.

## **DEDICATION**

This dissertation is dedicated to my son, Khumo Tshimolong Nkwe (the beginning of my wealth).

## DECLARATION

Name: Itumeleng Marcia Mamagase Nkwe

Student number: 55717888

Degree: Master of Information Science

### *Compliance with freedom of information legislation by public bodies in South Africa*

I declare that the above dissertation is my work and that all the sources that I have used or quoted have been indicated and acknowledged using complete references.

I further declare that I submitted the dissertation to originality checking software and that it falls within the accepted requirements for originality.

I further declare that I have not previously submitted this work, or part of it, for examination at Unisa for another qualification or at any other higher education institution.



SIGNATURE

28 February 2020

DATE

## TABLE OF CONTENTS

<b>ABSTRACT</b> .....	<b>i</b>
<b>ACKNOWLEDGEMENT</b> .....	<b>iii</b>
<b>DEDICATION</b> .....	<b>v</b>
<b>DECLARATION</b> .....	<b>vi</b>
<b>TABLE OF CONTENTS</b> .....	<b>vii</b>
<b>LIST OF ANNEXURES</b> .....	<b>x</b>
<b>LIST OF TABLES</b> .....	<b>xi</b>
<b>LIST OF FIGURES</b> .....	<b>xii</b>
<b>LIST OF ACRONYMS</b> .....	<b>xiii</b>
<b>CHAPTER ONE</b> .....	<b>1</b>
<b>INTRODUCTION: SETTING THE SCENE</b> .....	<b>1</b>
1.1 Introduction and background to the study .....	1
1.1.1 Brief background of access to information.....	3
1.1.2 Access to information in South Africa.....	6
1.1.3 Conceptual framework of the study.....	11
1.2 Problem statement.....	13
1.3 Purpose and objectives of the study.....	15
1.4 Justification and originality of the study.....	15
1.5 Scope and delimitations .....	16
1.6 Definition of key terms .....	17
1.6.1 Access to information .....	17
1.6.2 Freedom of information .....	18
1.6.3 Public bodies .....	18
1.6.4 Transparency .....	18
1.6.5 Accountability.....	18
1.6.6 Good governance .....	19
1.7 Literature review .....	20
1.8 Research methodology.....	20



1.9 Ethical consideration.....	21
<b>1.10 Structure of the dissertation .....</b>	<b>22</b>
1.11 Summary .....	23
<b>CHAPTER TWO .....</b>	<b>24</b>
<b>LITERATURE REVIEW: COMPLIANCE WITH FREEDOM OF INFORMATION LEGISLATION.....</b>	<b>24</b>
2.1 Introduction.....	24
2.2 Responsibilities of implementing access to information .....	25
2.3 Publication and availability of records .....	27
2.4 Processes to access information.....	32
2.5 Transparency, accountability and good governance through FOI .....	34
2.6 Recommendations for implementation of FOI laws.....	38
2.7 Summary .....	39
<b>CHAPTER THREE .....</b>	<b>40</b>
<b>RESEARCH METHODOLOGY .....</b>	<b>40</b>
3.1 Introduction.....	40
3.2 Philosophical paradigm.....	42
3.2.1 Positivism.....	43
3.2.2 Interpretivist.....	44
3.2.3 Pragmatic .....	44
3.4 Research approach .....	44
3.5 Research design .....	47
3.6 Population and sampling.....	49
3.7 Data collection tools .....	51
3.7.1 Document and content analysis .....	52
3.7.2 Interviews.....	52
3.9 Data validity and trustworthiness.....	53
3.10 Evaluation of research methodology .....	53
3.11 Summary .....	54
<b>CHAPTER FOUR.....</b>	<b>55</b>
<b>DATA ANALYSIS, PRESENTATION, INTERPRETATION AND DISCUSSIONS</b>	<b>55</b>

4.1 Introduction.....	55
4.2 Data analysis, presentation and interpretation .....	55
4.2.1 Responsibilities for access to information .....	56
4.2.2 Publication and availability of records .....	59
4.2.3 Process to facilitate access .....	74
4.2.4 Implications of access to information for transparency, accountability and good governance .....	74
4.2.5 Recommendations for compliance with FOI .....	75
4.3 Discussions .....	76
4.4 Summary .....	79
<b>CHAPTER FIVE .....</b>	<b>80</b>
<b>SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS .....</b>	<b>80</b>
5.1 Introduction.....	80
5.2 Summary of findings.....	80
5.3 Conclusion of research objectives .....	81
5.4 Recommendations.....	83
5.5 Final conclusion .....	85
<b>References .....</b>	<b>86</b>

**LIST OF ANNEXURES**

Annexure A: Principles on freedom of information legislation..... 94  
Annexure B: List of African countries that have enacted FOI (Adu 2018)..... 95  
Annexure C: Ethical clearance..... 96  
Annexure D: Interview guide.....99  
Annexure E: Sample letter for delegation of responsibilities with regard to PAIA.....106  
Annexure F: Data from provincial departments on sections 14 and 32.....108

## **LIST OF TABLES**

Table 3.1: Sample from municipalities (N=271) .....	51
Table 4.1: Report in terms of Section 32 of PAIA .....	60
Table 4.2: Section 32 reports- national departments .....	61
Table 4.3: Section 32 reports- provincial departments .....	62
Table 4.4: Section 32 reports-municipalities .....	63
Table 4.5: Reference to file plan in PAIA manual.....	69

## LIST OF FIGURES

Figure 2.1: Screenshot of Eskom's PAIA page.....	38
Figure 3.1: Research methodology road map .....	41
Figure 4.1: Screenshot of the website of the Department of Arts and Culture.....	64
Figure 4.2: Availability of manual per province.....	65
Figure 4.3: Translation of PAIA manuals into at least three official language .....	67
Figure 4.4: Screenshot of the website of Mpumalanga Department of Culture, Sport and Recreation .....	68
Figure 4.5: List of broad categories of records in the manual .....	69
Figure 4.6: Screenshot of the website of the City of Matlosana.....	72
Figure 4.7: Screenshot of the website of Dr Ruth Segomotsi Mompati District Municipality .....	72
Figure 4.8: Screenshot of the website of the Greater Taung Local Municipality.....	73
Figure 5.1: A model for implementation of PAIA in a public body.....	84

## **LIST OF ACRONYMS**

ATI	Access to Information
ANC	African National Congress
AU	African Union
BU	Business Unit
COGTA	Cooperate Governance and Traditional Affairs
DG	Director General
DIO	Deputy Information Officer
FOI	Freedom of Information
HOD	Head of Department
IG	Information Governance
IGO	Intergovernmental Organisations
MEC	Member of Executive Council
ODAC	Open Democracy Advice Centre
PAIA	Promotion of Access to Information Act No.2 of 2000
PGWC	Provincial Government of the Western Cape
RTI	Right to information
SAHA	South African History Archives
SAHRC	South African Human Rights Commission
UNDHR	Universal Declaration of Human Rights
USA	United States of America

## CHAPTER ONE

### INTRODUCTION: SETTING THE SCENE

#### 1.1 Introduction and background to the study

Information access, as has been referred to by different names such as ‘freedom of information (FOI)’, ‘access to information’ (ATI), ‘right to information’ (RTI), ‘open records’ or ‘sunshine laws’, is one of the pillars of openness in a democratic society (Lemieux 2015). The FOI is based on the notion that government should be transparent and citizens have a right of access to information held by the state in order to promote an open society and participatory democracy (Arko-Cobbah & Olivier 2016). As Mazikana (1999:74) argues, public access to information is the lifeblood of any meaningful democratic participation. Without the right of access to information, the affirmation and, “more concretely, the realisation of all other fundamental rights and freedoms are compromised” (Ngoepe 2008). Sebina (2004) observes that promulgation of FOI by governments is an assurance to the public that it is transparent and accountable. Indeed, FOI is enacted by governments to facilitate free flow of official information to the public. This flow is meant to keep the public informed of government activities and processes. It is presented as a measure of government’s commitment to account to the people who brought it into power (Sebina 2004).

Globally, there is pressure for governments to demonstrate accountability, transparency and good governance. As a result, most government organisations in advanced democracies are subject to FOI laws, also known as ATI laws, that permit public access to records in the organisation’s custody or under their control (Kozak 2015). In this regard, government information through the records is looked upon as a pillar to ensure accountability, transparency and good governance (Svärd 2016). As Dominy (2017) writes, access to information is essential for ensuring long-term accountability and “the learning of lessons from past events and past errors as it has been the case with South Africa”. The FOI is enshrined in Article 19 of the Universal Declaration of Human Rights (UNDHR) (UN 1948) and the International Covenant on Civil and Political Rights (ICCPR). It is a component of the broader right to freedom of expression. Other fundamental

human rights naturally flow freely from this very basic right. Therefore, it can be regarded as a multi-dimensional human right that is critical to other human rights, especially the realisation of socio-economic rights (SERs) (Arko-Cobbah & Olivier 2016). For FOI to be realised, countries are required to enact the laws in this regard. Therefore, FOI comprises laws that ensure access to records and information held by public institutions (Katuu 2011).

All FOI pieces of legislation are supposed to be constructed in line with the *Public's Right to Know – Principles on Freedom of Information legislation* (See annexure A for the list of FOI principles). These principles form part of Article 19 of the international standards series by the United Nations. The purpose of the principles is to set out standards for national and international regimes, which give effect to the right to FOI. They are designed primarily for national legislation on FOI or access to official information but are equally applicable to information held by intergovernmental organisations (IGOs) such as the United Nations and the European Union (Article 19 1999). Laws that provide mechanisms for accessing information enable civil society organisations and citizens to play an active role in society and, in particular, to counter-balance the financial and political muscle of big businesses and the state by accessing data held by the state and private institutions. Conversely, the withholding of information restricts the space for civil society to exercise the rights of its constituents and creates a breeding ground for social exclusion, dissent and, ultimately, conflict (Salgado 2013).

Since the beginning of the 21<sup>st</sup> century, FOI legislation has moved from being a legislative “luxury” enjoyed by a few advanced democracies to becoming an accepted part of the global democratic landscape (Hazell & Worthy 2010). As a result, many countries such as Canada, United Kingdom, Sweden, Uganda, Kenya, Zimbabwe and South Africa, to mention just a few, have enacted freedom of information legislation (Onyanha & Ngoepe 2011). Indeed, from India to Brazil and from Mexico to China, states in varying degrees of development, size and political persuasion have embraced openness and FOI legislation (Hazell & Worthy 2010). South Africa was the first African country to enact FOI legislation. Since then, there has been aggressive and sustained agitation by civil society groups for FOI legislation in other African countries. While some countries in the region willingly adopted FOI laws, others enacted the law as a result of pressure from civil society groups. Sebina (2006) notes that despite the differences in the



nomenclature, the underlying conception and purpose of the concept of FOI has remained the same.

Most government entities in these countries are subject to FOI laws that permit public and, in some countries, private access to records in the organisation's custody or under their control (Kozak 2015). However, as Adu (2018) would attest, in Africa, these pieces of legislation are not without problems. For example, despite the availability of FOI laws in 20 African countries (refer to annexure B for the list of African countries that have enacted FOI legislation), implementation is still a challenge as some countries use the laws as a way to continue the practice of secrecy and corruption, while other countries grant mute refusals to requesters (Adu 2018). Adu (2013) observes that failure to implement the FOI law effectively also remains a great concern in the African region. The challenges are made more daunting by a plethora of factors, key of which is the poor record-keeping (Dominy 2017) and poor records maintenance culture within the public service of many African states (Sebina 2006). For instance, regulations to support the implementation of the Ugandan law were only passed in 2011, six years after the passage of the right to information (RTI) legislation in 2005. In Ethiopia, regulations to support the 2008 RTI law are yet to be finalised. In South Africa, despite the existence of the right to information for over a decade, recent Archival Platform (2015) research indicates that forty per cent of requests for information go unanswered by public authorities. It is against this background that this study sought to assess compliance with FOI legislation by public bodies in South Africa with a view to ensuring transparency, accountability and good governance.

### **1.1.1 Brief background of access to information**

Access to information has been practised unconsciously since time immemorial. In ancient times, access to information was limited to the aristocracy and clergy. FOI was first conceived over 250 years ago in Sweden and today is recognised as a central aspect of democracies. It is provided for in a number of human rights instruments internationally, for example, United Nations, regionally and in national constitutions globally. It was only during the enlightenment period (1685-1815) that access to records was extended to historical scholars (Ngoepe 2008). According to Ackerman and Sandoval-Ballesteros (2006), Sweden set the trend by passing the first FOI legislation in 1766

and it was titled the Freedom-of-Press and the Right-of-Access to Public Records Act (Katuu 2011). This Swedish law embedded a right to information for the general public in the Swedish constitution and granted specific rights to information to the press. It was only after the French Revolution (1789-1799) that countries started to adopt archival and freedom of information legislation. FOI laws help to shine the light on how governments are run. The impact of the Watergate complex crisis in the United States of America (USA) during the mid-1970 affords a good example of how FOI played a pivotal role in exposing the corrupt administration of the then government. The scandal resulted in a constitutional crisis that led to the USA supreme court ruling that the then President, Richard Nixon release records of the oval office to investigators (Robin 1974).

Early FOI laws in the second half of the 20th century were introduced by some European nations and the United States (US), but the focus was more on access to records rather than on broader information. In this regard, the passage of the Swedish law was followed by a “Finnish law in 1951 after a long hiatus, followed by a law in the United States in 1966 and laws in Denmark and Norway in 1970, France and the Netherlands in 1978, Australia and New Zealand in 1982, and Canada in 1983” (Lemieux & Trapnell 2016). Among developing countries, Colombia was the first to pass an FOI law, in 1985. The next wave of laws to be passed outside of the developed world was in eastern Europe. For example, eastern European countries like Hungary began to implement more rigorous versions of access to information laws, extending the scope of the laws across arms of government and shortening the period for compliance with information requests (Lemieux & Trapnell 2016). Latin American and Caribbean nations followed, and South Africa was the first mover in Africa to enact FOI law at the turn of the century. While several of the African Union’s (AU) 54 member states have laws pending for access to information, only 20 have enacted such laws as reflected in annexure B. The pace of enactment of FOI laws has been remarkable, with the number of national laws increasing from 19 mostly Western democracies in 1995 to over 100 laws in all regions of the world by 2018 (Adu 2018). Sebina (2006) notes that despite the differences in the nomenclature, the underlying conception and purpose of the concept has remained the same.

Despite the rapid pace of enactment of FOI laws, there are widespread problems with implementation in many of these countries, such as requests being ignored (Adu 2018) or records not being properly managed (Dominy 2017). In other countries, the law itself is not as far-reaching as might be desired by civil society. Yet other countries use the term ‘access to information’ somewhat euphemistically. For example, Zimbabwe’s law is a tool for media censorship that denies media agencies the right of accessing information (Salgado 2013). Rwanda, the most recent country in Africa to have adopted an access to information law in March 2013, allows broad exemptions from the legislation (Adu 2018). It also limits the permission to access information from private bodies to those that perform a public function (Salgado 2013). Hence, Adu (2018) laments that the right to information has contributed little if anything to improve the fledgling democracies in Africa. Indeed, throughout the African continent, governments are reluctant to share information on defence, security and foreign policy, and tend to over-classify records.

As alluded to by Dominy (2017), the challenges of implementing FOI are made more daunting by a plethora of factors, key of which is the poor record-keeping, record organisation and record maintenance culture within the public service of many African states. The poor implementation of FOI legislation in Africa is attributed to corruption, human rights abuses, restrictive media, absence of media pluralism, denial of access to information, and lack of transparency and accountability (Adu 2018). For example, since the passage of the FOI Act in Liberia, some public servants have deliberately denied journalists access to information. Reports obtained from four African countries that have signed FOI laws (Angola, Uganda, Nigeria South Africa and Zimbabwe) are sources of worry with regard to the implementation FOI laws (Adu 2018). It is pertinent to remark that while adopting FOI laws, each country has set out a different access modality (which is beyond the scope of this study).

Where failures outweigh successful attempts to access information, Roberts (2006) identifies one of the following three reasons as the cause: lack of independent oversight which is an envisaged problem in Botswana (Sebina 2006), weak civil society groups or media to make effective use of the laws, and lack of political will. Svärd (2016) argues that it is not enough to enact FOI laws without putting in place a well-functioning information infrastructure to facilitate access and use of government information. The author identifies information management infrastructure, lack of

political will, education and skills, and awareness by the public as factors delaying the implementation of various FOI legislation in South Africa.

It is widely assumed that adoption of the FOI legislation warrants access to reliable public information and that information can be made available if required. However, literature about the poor state of compliance with the FOI legislation provisions in South Africa and elsewhere justifies the need to assess compliance of public bodies with this legislation and the implications to open government. For example, scholars such as Darch and Underwood (2005), Makhura and Ngoepe (2006), Wood (2011), and Dominy (2017) paint a gloomy picture with regard to compliance with the enacted FOI legislation in South Africa. In their study, Darch and Underwood (2005) revealed that compliance with the requirements of the South African FOI legislation was very poor, with no data from the national government to report on. Six years later, Wood (2011) also reported on an alarming scene with regard to compliance with section 14 of the FOI law in South Africa, as there was an extremely low level of compliance by public bodies with regard to the compilation of manuals as required by the legislation. Unfortunately, the existence of FOI laws does not necessarily guarantee access to information sought by citizens. This is a function not only of blanket exemptions that may dilute the impact of legislation, resulting in poor and inconsistent implementation of laws (Salgado 2013). Some African countries with FOI laws such as Zimbabwe and Uganda, to mention just two, are perceived to be among the world's most non-transparent nations, underscoring the fact that enabling access to information is ultimately a question of political will, alongside the integration of democratic processes into state functions (Svärd 2016). It is evident that this necessitates an ongoing analysis of the state of compliance with the requirements of the FOI legislation in South Africa as an essential component of managing the change process.

### **1.1.2 Access to information in South Africa**

The Constitution of the Republic of South Africa was signed into law by former president Nelson Mandela on 10 December 1996. Chapter Two of the Constitution contains the Bill of Rights which arguably holds the greatest impact on life in South Africa as nation. It provides for a number of freedoms and security of a person, including: equality; assembly, demonstration, picket and

petition; privacy; life; slavery, servitude and forced labour; cultural, religious and linguistic communities; freedom of expression; freedom of trade, occupation and profession; access to courts; labour relations; housing; freedom of religion, belief and opinion; freedom of movement and residence; arrested, detained and accused persons; environment; health care, food, water and social security; political rights; education; access to information (which is the focus of this study); property; children; freedom of association; citizenship; language and culture and just administrative action. This Bill of Rights remains the cornerstone of democracy in South Africa as it enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. The current study focused on the right of access to information only. Access to information in South Africa is indeed a constitutional right as it is reflected in the Bill of Rights. It has been regulated by the South African Human Rights Commission (SAHRC) until 2015 (Mojapelo & Ngoepe 2017). The office of the Information Regulator has been established to be responsible for access to information and protection of personal information as of 2016. However, at the time of conducting this study, the SAHRC was still in control of the access to information. It was only after the passing of the privacy legislation that the administration and oversight of the FOI legislation was transferred to the Office of the Information Regulator. However, it should be noted that at the time of conducting this study, the Information Regulator was still relying on the SAHRC and the Department of Justice to regulate FOI legislation, due to a lack of resources in this newly established office. The Office of the Information Regulator advertised senior executive positions for access to information, protection of personal information, as well as the chief executive officer of the organisation in late 2018. It is worth mentioning that the positions had not been filled at the time of writing this dissertation.

In South Africa, the right of access to information is entrenched in section 32 of the Constitution of the Republic of South Africa. Section 32 guarantees every citizen the right of access to any information held by the state or held by any other person that is to be used for the protection or exercise of any right (Republic of South Africa 1996). The Promotion of Access to Information Act (PAIA) is the law that gives effect to section 32 of the Constitution. Therefore, it (PAIA) is the FOI legislation in South Africa. It is worth noting that the provisions of the Act are based on the principles of article 19 of the international standards series by the United Nations (See annexure A for the principles). PAIA is part of the global drive towards freedom of information. This Act

was approved by Parliament on 2 February 2000, and came into effect on 9 March 2001 (Mojapelo 2017). With the enactment of this legislation, the government committed the South Africans to a new culture of transparency and accountability (Van Wyk 2016). The purpose of the Act is to promote transparency, accountability and good governance in the public bodies by empowering and educating the citizens to:

- understand and exercise their rights
- understand the functions and operations of public bodies
- effectively scrutinise and participate in decision-making by public bodies that affects their rights.

In other words, FOI in South Africa was passed to ensure the accessibility of information that people require in order to exercise or protect any right. FOI can be exercised through access to public records. However, it is worth noting that both public and private bodies are required to manage records properly in order to provide access to information in terms of FOI legislation in South Africa. Harris (2002) contends that PAIA is a unique legislation among the world's family of freedom-of-information legislation as it also applies to the private bodies. Public bodies, especially municipalities, provincial and national departments, should make public sector information available to support citizens' rights, effective service delivery, anticorruption measures and to enhance investor confidence (Lemieux 2015). This in turn will foster transparent, accountable, efficient, responsive and effective governance. In terms of the Act, any person can demand records from public and private bodies without showing a reason. Public and private bodies currently have 30 days to respond (reduced from 60 days before March 2003 and 90 days before March 2002) to the request. If a member of the public or any person requires access to records, such person should complete Form A, pay the request fee of R35.00 and submit the form to the information officer by hand, fax, e-mail or post. The process is standard to all organisations. Once that has been done, the relevant organisation has 30 days in terms of section 25 to grant or refuse access or, also in terms of section 20, transfer the request to the body with a record within 14 days and notify the requester. Van Wyk (2016) reports the significant low level of compliance with PAIA by public bodies.

Despite the fact that FOI laws allow for a legal mechanism to access records, they also include limited exceptions to withhold information contained in records, and sometimes even entire records, from disclosure. Even though access under FOI is defined as a legal right, there are provisions where government organisations can, or must, withhold records or information (Kozak 2015). In this regard, public bodies should be able to refuse frivolous or vexatious requests. Public bodies should not have to provide individuals with information that is contained in a publication, but in such cases, the body should direct the applicant to the published source. The law is required to provide for strict time limits for the processing of requests and require that any refusals be accompanied by substantive written reasons. If access is not granted, the requester can appeal through an internal appeal mechanism, which is referred to as a relevant authority. In the case of national departments, the relevant authority is the minister, in a provincial department it is the member of the executive council (MEC) and in a municipality it is the mayor. All individual requests for information from public bodies should be met unless the public body can show that the information falls within the scope of the limited regime of exceptions. A refusal to disclose information is not justified unless the public authority can show that the information meets a strict three-part test as follows:

- The information must relate to a legitimate aim listed in the law
- Disclosure must threaten to cause substantial harm to that aim
- The harm to the aim must be greater than the public interest in having the information

Sections 33 to 45 of PAIA provide grounds for refusal of access to information, which is divided into two categories, the first of which is mandatory grounds where access must be refused. An example of mandatory grounds for refusal is if the requested records can affect a third party, or the security of an organisation, individual or the country. In that regard, access must be refused. The second ground for refusal is discretionary grounds where access can be refused, but it must not be refused. In this regard, the information officer should use his or her own discretion. Another major government consideration that governs access to records is protection-of-privacy legislation. Unlike FOI laws, which apply predominantly to government organisations, jurisdictions that have adopted privacy laws have made these laws applicable to both governmental and non-governmental organisations. These laws tend to rely on an individual's consent and reasonable actions taken given particular circumstances governing how personal information should be

managed and accessed. An example includes Canada's Personal Information Protection and Electronic Documents Act (PIPEDA) and South Africa's Protection of Personal Information (POPI Act).

To comply with the Act, basic obligations for public bodies include the following:

- Section 14 manual. Organisations are required to compile a manual to serve as both an index of records held by public bodies and as a guide for requesters. The manual describes the procedure to be followed when requesting records. The act requires that the manual must be translated into at least three official South African languages and published on the websites of public bodies.
- Section 17 propagates for the designation of deputy information officers, preferably the records managers as one of those deputy information officers.
- Section 32 requires public bodies to compile reports on the number of requests received and the outcomes thereof. The reports are to be submitted to the South African Human Rights Commission (Commission) with the number of requests received and how they were dealt with.

It should be noted that PAIA provides access to information by focusing on records rather than information (Harris 2002; Dominy 2017). Actually, it was supposed to be named Promotion of Access to Records instead of Promotion of Access to Information. The definition of records in PAIA is identical to the definition used by the National Archives of Archives of South Africa (NARSSA) Act, which was passed four years earlier (1996). As Van Wyk (2016) rightly observes, the “downside of granting access through records is that failure to create or manage records stifles the exercise of the right of access to information”. Indeed, this is a reality in South Africa as highlighted over years by civil society organisations such as the South African History Archives (SAHA), Archival Platform and Access to Information Network. Many times, access is denied and the reasons provided is that records do not exist or could not be retrieved.

Like South Africa's Constitution, 'PAIA has been widely lauded both at home and abroad' (Ngoepe 2008). It is, by international legislative standards, a 'fairly radical law', or as one archivist called it, 'the golden standard' (Harris 2002). Despite its progressive and expansive content, there



are several aspects of PAIA that present serious barriers to the full realisation of the right of access to information (Ngoepe 2008). Since 2002, the Act has been tested on several occasions by the Open Democracy Advisory Centre (ODAC). For example, in 2005, ODAC published results of a monitoring survey carried out over a period of six months during which 140 requests were submitted to 18 public bodies by seven requestors from different spheres of civil society (Ngoepe 2008). In this test, only 13% of the submitted requests for information resulted in the information being provided within the 30-day time limit as stipulated in the Act, while 63% of the requests were ignored. This necessitates a need to assess compliance with FOI legislation in South Africa and its implications for transparency, accountability and good governance.

### **1.1.3 Conceptual framework of the study**

Research conducted without theories is poor and lacks a sound foundation. According to Ngulube (2020a), such research has limited usefulness. Scholars such as Mosweu and Mosweu (2020), Kim and Jeong (2006), Ngulube (2005), and Pettigrew and McKechnie (2001) lament of the lack of theoretical research in library and information science (LIS). The authors bemoan the limited application of theory and the failure of LIS research to address the practical problems of the profession. Ukwoma and Ngulube (2019), for example, reveal that many theses and dissertations in LIS from Nigeria and South Africa were devoid of theory. In their study, Ukwoma and Ngulube (2019) found that some of the studies even used concepts of theory, theoretical framework, and conceptual framework interchangeably. This may partly be explained by a lack of awareness of the role of theory in the research process and the fact that many LIS researchers are concerned with LIS practice and applied practitioner-oriented research, rather than developing and applying theory (Ngulube 2020a). However, the use and understanding of theory can make LIS research interesting, relevant, insightful and rigorous, hence the current study used a conceptual framework.

A conceptual framework is a researcher's map of matters to be investigated. It also provides a scope of the most important variables to be studied or specifies what information should be collected and analysed. Ngulube (2020b) illustrates five ways of formulating a conceptual framework of a study: (i) putting together various concepts from different theories, (ii) aspects of a theory, (iii) incorporating aspects of a theory or theories, concepts from the literature, personal

experiences, knowledge of the context and models, (iv) integrating all the concepts from more than one theory, and (v) combining concepts from the extant literature. The conceptual framework for the current study falls in the sixth category that Ngulube (2020b) omitted and would call using legislation, standards, corporate governance codes, policies or principles to investigate a phenomenon. This study therefore assessed compliance with selected provisions of the PAIA by public bodies in South Africa. A similar study carried by Khumalo, Bhebhe and Mosweu (2016) used the Model Law on Access to Information for Africa to investigate the implementation of freedom of information in Botswana, South Africa and Zimbabwe.

### **1.1.3.1 Provisions of the Promotion of Access to Information Act**

As indicated earlier, there has been an explosion in the adoption of FOI legislation across the globe. The motivation for establishing a transparency regime can never be attributed to a single factor because it varies from country to country (Ebrahim 2010). Neuman and Calland (2007) suggest that, in some instances, it may be a response to an inherent need or civil society demand while, in other instances, it may have been due to a desire for government efficacy or as a means of building trust and creating new political spaces, and in yet other instances, it may simply be the result of the need to satisfy a condition for international debt relief. Therefore, different FOI laws and policies around the world vary considerably in terms of content and approach. As a result, there are certain principles that are globally accepted as a necessity for any FOI legislation. The most prominent principles have been captured by the international human rights organisation (Article 19 1999). The Promotion of Access to Information Act (Act No 2 of 2000), which is based on these Article 19 principles, was used to construct a conceptual framework of this study. In this regard, the provisions of the PAIA were used to phrase the objectives of the study in order to assess compliance. The provisions used included voluntary disclosure obligation for access to information, process to facilitate access and the implications of access to accountability, transparency and good governance. The study assessed compliance with sections 14, 15, 16, 17 and 32 of the PAIA. These sections address the following themes:

- Section 14 – manual on functions of, and index of records held by, a public body
- Section 15 – voluntary disclosure and automatic availability of certain records
- Section 16 – information in telephone directory

- Section 17 – designation of deputy information officers, and delegation
- Section 32 – reports to Human Rights Commission.

## **1.2 Problem statement**

Regardless of a remarkable trend towards the adoption of FOI laws globally, international trends have shown this does not automatically translate into fulfilment of people's right to information, as access to information by citizens remains a challenging factor (UNESCO 2016). Unfortunately, in many countries, overwhelming evidence suggests that effective implementation of the laws continues to present serious challenges and that full realisation of the anticipated benefits associated with access to information remains elusive. In South Africa, for example, despite constitutional and other legislative imperatives, the enforcement of the right of access to information in South Africa has been acrimonious and adversarial (Mojapelo 2017). Almost two decades after enacting the PAIA, South Africa's implementation record of the FOI legislation by public bodies is still patchy. Over the years, there were problems with the implementation of the FOI legislation in South African public bodies and its use was limited. Where implementation has taken place, it has been partial and inconsistent. PAIA requests to public bodies have been met with limited success and have often been ignored (Mojapelo & Ngoepe 2017). South African public bodies withhold information without a reason (mute refusal) given to the requesters. Scholars such as Kisson (2010), Peekhaus (2011), Lemieux (2016), Mojapelo (2017), and Mojapelo and Ngoepe (2017) highlight problems with regard to compliance with the enacted FOI legislation in South Africa (PAIA). For example, despite section 14 of PAIA requiring information officers of all public bodies to compile manuals and have it available in at least three official languages in South Africa, most public bodies, especially municipalities, do not have these manuals. Kisson (2010) reports a very low level of 5% being compliant with the requirement of the Act. This is a worrying factor because 10 years had passed since South Africa's FOI inception by the time this was reported. Peekhaus (2011) attributes the of implementation problems to a combination of a lack of dedicated resources and widespread poor records management practices. Management of records enables government to operate in a transparent fashion and be able to

account to the public who brought it to power (Sebina 2004). Pertinent to this is the Westgate crisis, without proper records management there wouldn't have been investigation and prosecution (Fleckner 1991). According to Kennedy (2017), records management allows for a smooth hand-over, yet most institutions do not exercise proper records management. One of the major concerns for Kennedy (2017) in South Africa with regard to PAIA was that computer records such as tweets and Facebook posts, are generally not regarded as records, which they are. She also highlighted the importance of reviewing certain lifecycles of records such as the time required to lapse before a record is destroyed after having been archived. It was necessary to identify which information to record, how to categorise and most importantly how to store such information for easy access and security.

Lemieux (2015) cites a lack of capacity in Africa as a contributing factor to non-compliance with FOI laws. Mojapelo (2017) also purports inadequate internal controls for access to information, confusion regarding placement and responsibilities of FOI as contributing factors. One of the critical challenges of the implementation of PAIA has been the non-compliance of public bodies with the requirements of this Act. According to the SAHRC (2007), the reasons for the failure to comply with the requirements of the Act vary and include the following:

- Lack of awareness by public bodies about their duties in terms of the Act
- Public bodies not taking their obligations in terms of PAIA seriously
- Poor information management systems (no records management policies and file plans) in public bodies
- Failure to delegate information officers' powers within the public bodies
- Inability to identify the unit or division to be responsible for administering PAIA

Roberts (2006) identifies prerequisites for compliance as training of information officers as they are primary agents for implementation, political will, public awareness, proper records management and funding. Public bodies have the greatest responsibility to ensure the effective implementation of the FOI legislation. As Ngoepe (2008) would attest, "without knowledgeable and well-trained personnel throughout the public sector, who understand both the content and processes of the FOI legislation, the 'promise' of realising the right of access to information for ordinary South Africans will be a mirage".

### **1.3 Purpose and objectives of the study**

The purpose of this study was to assess compliance with the FOI legislation in South Africa by public bodies with a view to ensure transparency, accountability and good governance in South African public bodies. The specific objectives of the study were to:

- determine the responsibility for access to information within public bodies in South Africa
- analyse compliance of public bodies in South Africa with voluntary disclosure obligation for access to information
- establish the processes to facilitate access to information in public bodies in South Africa
- explain the implications of access to information for transparency, accountability and good governance in the public bodies in South Africa
- make recommendations for compliance with access to information legislation by the public bodies in South Africa.

### **1.4 Justification and originality of the study**

Creswell (2014) identifies at least three kinds of problems that stimulate social research as policy, social and problems intrinsic to developing the discipline of study. Issues related to social and professional contribution are usually cast in the language of abstract intellectual discourse. The first (policy), however, deals with what is wrong with the community, the society, or the world. This implies that the significance of the study mostly focused on how the study would add to scholarly research and literature in the field, how it would help improve practice and why it can improve policy (Creswell 2014). The importance of conducting the current study can never be overemphasised, especially given the challenges facing African countries with regard to openness and the implementation of FOI legislation (Adu 2018). This study illuminated the level of compliance with FOI legislation and why the situation is as it is. This was addressed by utilising an explanatory mixed method research design by first identifying trends of FOI compliance and thereafter using qualitative data to explain the trends. It is hoped that if the recommendations of this study are implemented, they will help in terms of FOI legislation compliance by public bodies. This in turn helped to ensure accountability, transparency and good governance as citizens will be able to participate in decision-making in the public arena. Although the context of the study is

South Africa, other African states could empathise with the results of this study as they are also struggling to implement FOI laws (Adu 2018). The current study is original in line with the arguments of Ngulube (2020) that originality is ensured when the researcher uses a different methodology from others. The current study used the mixed methods approach with explanatory design. Furthermore, it covered all three the spheres of government in South Africa, further referred to as the governmental bodies (national departments, provincial departments and municipalities).

### **1.5 Scope and delimitations**

Although FOI legislation in South Africa is applicable to both the private and public sector, the focus of this study was only on the public bodies, that is, national government departments, provincial government departments and municipalities. Although parastatals are part of the public bodies, they were excluded from the study, as, like the private sector, there were no reports that covered their reporting to the SAHRC in terms of section 32 reports. In terms of the annual report obtained from the SAHRC analysed in this study, there was limited reporting information for parastatals and the private sector. Furthermore, the study covered the period from 2006/07 to 2016/17. The earlier period of the implementation of FOI legislation in South Africa was not covered as public bodies were not yet ready then (Makhura & Ngoepe 2006). In the reports, the focus was only on national departments, provincial departments and municipalities. The study covered provisions of PAIA from section 14 to section 46 as they are applied to public bodies. Sections that are applicable to private bodies were excluded. The themes that were covered included disclosure, obligations to publish, promotion of open government and processes to facilitate access. These provisions of the Act informed the objectives of the study, as well as literature review and data collection. Equally beyond the scope of the study were other rights that reflect in the Bill of Rights. Only section 32 of the Constitution of the Republic of South Africa, which deals with access to information, was covered.

## **1.6 Definition of key terms**

This section identifies and defines key concepts that have been used in this study. The key terms identified include access to information, freedom of information, public bodies, transparency, accountability and good governance.

### **1.6.1 Access to information**

This key word consists of two terms, that is, access and information. Access refers to the right or opportunity to use records. It concerns whether an individual has permission or privilege to view or use a record or group of records. Information refers to any recorded information regardless of form or medium in the possession or under the control of the public body. This definition from PAIA is similar to the one provided by the NARSSA Act. It actually refers to a ‘record’, not necessarily to ‘information’. Access to information legislation comprises laws that guarantee access to records and data held by public institutions (Kaka 2016). They also establish a “right-to know” legal process through which requests may be made for government-held information, to be received freely or at minimal cost, barring standard exceptions.

Therefore, access to information is the notion that the public can obtain information in the possession of the state in order to be informed about the activities of the state. A record’s value is realised through its use. In order to use a record, it must be accessible. A record’s accessibility changes through its lifecycle and is influenced by how it is used, organisational policies around access, and applicable laws governing access and disclosure. In terms of PAIA, access to records is recognised in two forms. Firstly, access can be obtained by a way of a formal request either in terms of PAIA or any other legislation providing for access and which is less restrictive than and not inconsistent with PAIA. Secondly, access can be gained automatically through voluntary disclosure where public bodies published their records that are available without requests. PAIA is therefore a mechanism for accessing and granting access to recorded information, whether in terms of a request or proactively (Van Wyk 2016).

### **1.6.2 Freedom of information**

Adu (2013) defines FOI as the legal right of access to government information given to the public. According to Sebina (2004), FOI refers to the legal right of access to government information given to the public. It creates an environment where government information flows freely to the public, but with some level of exemptions. Sebina (2004) views FOI as a step towards providing the public with a guarantee that the government is transparent in its operations and accountable for all its activities.

### **1.6.3 Public bodies**

PAIA defines a public body as any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or any other functionary or institution when exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or exercising a public power or performing a public function in terms of any legislation. For the purpose of this study, the terms ‘public bodies’ refers to national government departments, provincial government departments and municipalities.

### **1.6.4 Transparency**

According to Florini (2007:5), transparency refers to the “degree to which information is made available to outsiders that enables them to have informed voices in decisions and/or to assess the decisions made by insiders”. In the context of this study, outsiders are classified as information seekers while the insiders are the public servants. According to Ngoepe (2012), the concept of transparency hinges on the availability of information to members of the public, as well as on being open about how the institutions are governed and decisions are made. In this regard, it will be easy for an outsider to be able to make a meaningful analysis of an organisation’s actions.

### **1.6.5 Accountability**

Accountability is defined as “procedures requiring officials and those who seek to influence them to follow established rules defining acceptable processes and outcomes and to demonstrate that they have followed those procedures” (Johnston 2006). Accountability is commonly understood



as a quality possessed by a physical or juridical person, whereby they are willing or required to furnish an explanation to provide an account of their actions (Kozak 2015). In other words, it is the requirement to give an account of how a responsibility that has been conferred upon or delegated to some person or institution has been carried out or fulfilled by that person or institution (Ngoepe 2012). This is especially important in the public sector so that the resources are not misused. The concept of accountability is linked to the use of records to explain past actions, where the physical persons involved cannot themselves provide the required or needed account.

### **1.6.6 Good governance**

Accountability and transparency are the two key indicators of good governance. Therefore, good governance goes wider and hinges on the cardinal value of fairness and transparency. It should be possible to consult the public, as the major stakeholders of government, before decisions are made. They also require accountability for the resources entrusted to the government. This can be realised through access to information held by the government in the context of FOI. The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) (2009) identifies eight major attributes of good governance as follows:

- Participatory – Participation by both men and women is a cornerstone of good governance.
- Consensus – Good governance requires mediation of the different interests in society to reach broad consensus in society on what is in the interest of the whole community and how this can be achieved.
- Accountable – The importance of accountability to governance does not only refer to government, but to also to the private sector and civil society organisations.
- Transparent – Transparency means that decisions are taken and their enforcement done in a manner that follows rules and regulations.
- Responsive – Good governance requires that institutions and processes try to serve all stakeholders within a reasonable time frame.
- Effective and efficient – The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.
- Equitable and inclusive – A society's wellbeing depends on ensuring that all of its members are socially included in socio-economic development.

- Follow the rule of law – Good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities.

## **1.7 Literature review**

A literature review involves identification of the relevant previous studies on which the proposed research builds. It helps to determine how much and exactly what has already been written about the research area in order to avoid reinventing the wheel. Perhaps the importance of literature review is best summarised by Leedy and Ormrod (2010:66) when stating that:

Those who conduct research belong to a community of scholars, each of whom has journeyed into the unknown to bring back an insight. What they have recorded of their journeys and findings will make it easier for you to explore the unknown: to help you also discover an insight.

The literature for this study is reviewed under the following themes which were informed by the objectives of the study: responsibilities of access to information, compliance with voluntary disclosure obligation, processes to access information, implications of ATI to transparency, accountability and good governance, as well as recommendations for implementation of ATI laws (see Chapter Two for comprehensive literature review). Key prerequisites that may contribute to the successful FOI implementation regime as identified by Roberts (2000) in countries such as Australia, Canada, New Zealand and United States of America include training, political support, records management, funding, public awareness and monitoring of the legislation.

## **1.8 Research methodology**

Leedy and Ormrod (2005:1) define research methodology as “a systematic process of collecting, analysing, and interpreting data in order to increase our understanding of the phenomenon about which we are interested or concerned”. In line with this definition, the phenomenon studied in the current study is ‘information accesses. This study utilised mixed methods research (MMR) through the explanatory sequential design to assess compliance with FOI legislation by public bodies in South Africa. In this regard, the researcher first conducted a quantitative study by analysing the

reports of the SAHRC from the reporting year 2006/07 to 2016/17 to assess compliance with sections 14, 17 and 32 of PAIA, as well as to check the responsibility of FOI implementation in public bodies. The compliance trends were identified and then the qualitative study was conducted to answer the question why the situation was in that way. In this regard, interviews were conducted with a purposively chosen sample from complying and non-complying public bodies. The targeted participants were records managers and deputy information officers in each chosen public body. The mixing strategy for the current study was at the data analysis and reporting level. Quantitative data were captured in and analysed through an Excel spreadsheet. The results were presented in tables and graphs. Qualitative data were analysed thematically and used to substantiate quantitative data. Triangulation of data collection instruments proved useful, as it enabled the researcher to collect reliable data through document analysis, content analysis (websites) and interviews. Similar studies carried elsewhere such as the study by Ngoepe (2012), used MMR with explanatory sequential design to investigate the development of a framework to embed records management into the auditing process. In his study, Ngoepe (2012) conducted an informetric analysis of audit reports of the Auditor-General of South Africa (AGSA) to identify records management issues relating to audit findings and thereafter conducted a survey in governmental bodies. This study followed a similar path by first analysing the annual reports of the SAHRC from 2006/07 to 2016/17. The compliance issues identified lead to a survey of purposively selected governmental bodies, that is, national government departments, provincial government departments and municipalities. For a comprehensive discussion on research methodology, the reader is referred to Chapter Three of this dissertation.

### **1.9 Ethical consideration**

In social science research, the researcher faces ethical issues that surface during data collection, analysis and dissemination of research reports (Creswell 2006:174). The researcher conducted the study in an ethically responsible manner, seeking informed consent to undertake the research from the sampled population, in which information gathered will be treated with confidentiality and respect. Thus, the protection of human subjects or participants in this study was imperative. The University of South Africa's (UNISA) research ethics policy (2017) with regard to data collection on research was consulted and followed. Paragraph four of the UNISA ethics policy obliges the

researcher to respect the participant's rights to privacy, anonymity and confidentiality when conducting research. Therefore, the researcher adhered to the policy in terms of privacy, anonymity and confidentiality of the participants when conducting research for this study. In this study, each participant was informed of who is conducting the research and that participation is voluntary. The right to privacy of the participants was protected by guaranteeing anonymity and confidentiality. Most often, the researcher can identify each individual's response. In this study, the researcher ensured confidentiality by not identifying the participants. To avoid plagiarism, all sources used in the study were acknowledged. Furthermore, the dissertation was submitted into Turnitin to detect similarity index (see annexure D for the Turnitin digital acknowledgement receipt). Finally, the researcher applied for ethical clearance from the University of South Africa before data could be collected (see Annexure C).

### **1.10 Structure of the dissertation**

This dissertation is structured in five chapters as follows:

- Chapter One covered an introduction to the study, background to access to information, the problem statement, the purpose and objectives of the study, a description of the research methodology, the justification of the study, scope and delimitation, as well as definition of key terms.
- Chapter Two reviews literature regarding access to information. The themes of literature will emanate from the provisions of FOI legislation in South Africa.
- In Chapter Three, the research methodology is described in detail. Here, the methods are explained in detail with regard to the study. This will help the reader to know exactly what data have been collected, from where and how it was collected to allow a reasonable replication of the study.
- Chapter Four analyses and presents the results as per the objectives of the study. The chapter provides the content analysis of the SAHRC annual reports (2006/07 to 2016/17)

in relation to section 14 manuals and 32 reports. Results of data collected via interviews are also analysed and presented. Furthermore, the chapter provides a discussion of the findings that offer a broad interpretation of the results.

- Chapter Five serves as a synthesis, a summary of each chapter, including a summary of the results, as well as conclusions with reference to the problem postulation and purpose of the study, proving they have been addressed. Finally, recommendations for the future research are provided.

### **1.11 Summary**

This chapter provided the introduction and background of this study covering access to information world-wide and in South Africa, as well as FOI legislation in South Africa, which is PAIA. The problem statement, purpose and research objectives of the study, research questions, justification of the study, scope and delimitations, definitions of key terms, literature review, research methodology and ethical considerations were highlighted. The next chapter deliberates on literature review as guided by the objectives of the study.

**CHAPTER TWO**  
**LITERATURE REVIEW: COMPLIANCE WITH FREEDOM OF INFORMATION**  
**LEGISLATION**

**2.1 Introduction**

The preceding chapter set the scene by providing the introduction and background of the study, problem statement, purpose and objectives of the study, significance of the study, the research approach adopted and the definition of concepts. The introduction and background of the study provide a clear picture of the importance of access to information as a key to all government activities. In this chapter, the focus will be on the review of the existing body of knowledge relating to this research project. Bryman (2012:98) asserts that the importance of literature review for any study is a way of assessing the significance of that research, and how it fits into the narrative about the literature constructed when writing the literature review chapter. Reading and understanding literature in line with one's research topic helps to formulate research problems, tie up the problem, findings of a study and as well as linking your study to a specific body of research and theoretical understandings about a topic of interest (Leedy & Ormrod 2015:70). The review of literature accomplishes several purposes, for example, it shares with the reader the results of other studies that are closely related to the one being undertaken. This is a way of relating a study to the larger, ongoing dialogue in the literature, filling in gaps and extending prior studies. Therefore, it can be argued that literature review provides a useful backdrop for the problem or issue that has led to the need for a study, such as who has been writing about it, who has studied it, and who has indicated the importance of studying the issue.

The purpose of literature review in this study is to bring the researcher up to speed with the previously conducted research on freedom of information across the globe, as well as to focus on literature relating to compliance with freedom of information legislation by public bodies in South Africa. The focus of the literature review will be centred on the themes emanating from the objectives of the study. In this regard, the following themes are covered: responsibility for access to information, voluntary disclosure, processes to facilitate access to information, implications for transparency, accountability and good governance, as well as recommendations from other studies.

## **2.2 Responsibilities of implementing access to information**

Access to information can be implemented if the responsibilities are assigned to the right people. As Lowry (in Smith 2014) observes, it is important to delineate who is responsible for managing the various types of records, as well as access in terms of FOI legislation. In South Africa, the governance of records management and FOI is different, although having a common goal, which is to promote access to information (Makhura & Ngoepe 2006). Generally, public bodies are required to designate an individual who is responsible for processing such requests and for ensuring compliance with the law. Public bodies should also be required to assist applicants whose requests relate to published information, or are unclear, excessively broad or otherwise in need of reformulation. In terms of the PAIA, the ultimate responsibility of implementing South Africa's FOI in public bodies lies with the information officers. The information officer in national and provincial departments is the director general, who is the head of the department, while in municipalities it is the municipal manager (Makhura & Ngoepe 2006). On the other hand, the National Archives and Records Service of South Africa Act (No. 43 of 1996) requires the heads of public bodies to designate an official as the records manager responsible for the management of records throughout its entire life cycle. This includes access to information. However, as Ngoepe (2016) would attest, in most instances, the records managers are not involved in the implementation of FOI in South Africa. This is the area of uncertainty relating to the delegated powers of public officials from specific departments in enforcing provisions of the FOI legislation.

The PAIA requires the information officer to designate or delegate a deputy information officer in writing to handle access to information requests. However, the information officer remains in direct control and direction of the duties of the deputy information officer of the particular public body. Despite this provision, responsibility for PAIA implementation is not clearly communicated in government departments, and it is even worse in municipalities. Ngoepe (2016) notes that in South Africa, records managers are not designated as deputy information officers and this creates confusion in terms of proper implementation of the PAIA. Furthermore, this leads to information requests not being met timeously and records being destroyed without authorisation. Ngoepe and Van der Walt (2009) note that the responsibility of PAIA implementation in most public bodies lies with legal services units. For example, in their study, Ngoepe and Van der Walt (2009) reveal

that governmental bodies in South Africa could not successfully implement the PAIA because it was unclear who was responsible, that is, whether it was the records management division or the legal services division. This is always the case even with electronic records, as it is also not clear as to who is responsible between the ICT division and the records management division. Most of the time in governmental bodies in South Africa, other divisions take over as records management units take a back seat. For example, financial records are managed by Finance, employee records by Human Resources, and digital records by IT (Ngoepe 2012). This is also confirmed in a recent study by Mojapelo (2017) who highlights that, in most instances, the delegation of authority about the implementation of FOI in South Africa is assigned to legal advisors within legal units. This is so despite the PAIA recommending that records managers should also be involved in access to information. As a result, there is no internal relationship or partnership amongst information management stakeholders in most government departments. Directorates within government departments work in silos, resulting in duplication of services or work not being done at all as one directorate perceives it to be the responsibility of the other. As Ngoepe (2016) would attest, records managers in South Africa tend to operate behind the scenes with regard to functions that affect their activities, for example, in digital records management, while they let information technology (IT) professionals take charge, as well as in PAIA implementation as legal advisors take charge. As a result, this leads to poor implementation of the PAIA as there are often miscommunications between the legal services unit and the records management unit as to who should take the lead in implementing the PAIA in the departments.

In a study by Ngoepe and Van der Walt (2010) it was established that at the Department of Cooperative Governance and Traditional Affairs (COGTA), the respondents were not sure whether it was the records management unit or the legal services directorate that was responsible for implementing the Act. However, the subjects of the study were of the opinion that the records management unit should implement the PAIA, while the legal services unit should monitor the implementation. Others felt that the two units should work together, as their responsibilities had not been clearly communicated. However, despite this uncertainty, in 2006, the COGTA was ranked third by the SAHRC and the Open Democracy Advice Centre among national government departments that implemented the PAIA properly (Ngoepe 2008). This shows that the placement of access to information function within governmental bodies is a contested terrain between the



legal section and the records management section. Mullon and Ngoepe (2019) are of the view that all the functions dealing with information should be grouped under the information governance unit. However, such units have not yet been established in the South African public sector. Perhaps, Mullon and Ngoepe (2019) based their opinions on the model they suggested of information governance at a national level that can be cascaded to organisational level. Ideally, the existence of such a unit will go a long way in grouping information management functions that are often fragmented and operate in silos in most governmental bodies.

On the other hand, Peekhaus (2011) views failure to appoint full-time staff dedicated to handle access to information requests as one of the contributing factors that impedes full implementation of the FOI legislation in South Africa. As a result, the PAIA is viewed by some deputy information officers as a nuisance due to the additional responsibilities it places on them. One cannot help but wonder if such statements from the public official responsible for access to information might be the cause for the mute refusals for access to information alluded to by Dick (2005). To enable proper implementation of the PAIA in public bodies, it is important that responsibilities are assigned and training offered to delegated staff members. Ngoepe (2009) contends that government departments that have received requests in terms of the PAIA were unable to deal successfully with such requests due to a number of reasons, such as difficulty in retrieving records; responsibility not clear with regard to who should provide the information; not knowing where to find the information; and obtaining information from regional offices, and these prolong the process. In one instance, a record was created in order for a department to deal with the request successfully (Ngoepe 2009).

### **2.3 Publication and availability of records**

Several FOI enactments encourage public bodies to publish information voluntarily without waiting for a request to disclose. This is done mainly through websites (which many municipalities in South Africa do not have). Currie and Klaaren (2002) describe the dominant objective of the PAIA as disclosure and not secrecy and argue for it (PAIA) to be interpreted in a manner which best promotes this objective. According to Article 19 of the UNDHR, FOI implies not only that public bodies accede to requests for information, but also that they widely publish and disseminate

documents of significant public interest, subject only to reasonable limits based on resources and capacity. As such, the principles therefore prescribe for all FOI laws to be formulated with such obligations for the governments. The maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances. This principle encapsulates the basic rationale underlying the very concept of freedom of information and ideally it should be provided for in the Constitution to make it clear that access to official information is a basic right. The overriding goal of legislation should be to implement maximum disclosure in practice. In this regard, public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. In South Africa, sections 14 to 16 of the PAIA address the issues of publication and availability of records by public bodies. To facilitate the identification of records, all public bodies subject to the PAIA are required to publish a manual that should act both as an index of records held by public bodies and as a guide for requesters in terms of section 14. The public body concerned decides which information to publish. Ideally, according to Ngoepe (2008), such information should be reflected in the file plan. This is so because the file plan is an inventory of all records in an organisation as it reflects the activities of such an organisation. If such information is published, members of the public would know what records are held in the public bodies. It is essential to inform the public of their rights and to promote a culture of openness within the government through FOI. As a result, this will lead to a transparent and accountable government. However, as indicated by Adu (2018), experience in many African countries shows that a recalcitrant civil service can undermine even the most progressive legislation such as FOI. Kennedy (2017) also emphasises that granting the public access to information on the operations of governmental bodies relies not only on proper records management, but also on proper record making, such as the taking down of minutes during meetings to ensure that the proceedings are recorded accurately.

The study by Ngoepe (2009) concludes by arguing that effective decision-making, service delivery and access to government information can be greatly facilitated by the development, implementation and maintenance of functional records classification systems in government departments. Kennedy (2017) points out that while FOI relies heavily on records management, most people in the FOI field are not aware of the intricacies of records management. Giving the

example of governmental bodies, she said granting the public access to information on the operations of these bodies relies on proper record management from creation to disposal. This may be compounded by the fact that in South Africa, the regulatory role for management of records in governmental bodies lies with the National Archives and Records Service of South Africa (NARSSA) through the NARSSA Act. For example, the NARSSA is mandated to determine records classification systems that governmental bodies use to manage records. This classification system is the tool that is used for retrieval of records that may be required in terms of FOI legislation. If governmental bodies comply with the provision of classification systems in the NARSSA Act, it might ensure ease of access to records. Most government bodies are not being held accountable, and this compromises FOI which cannot be guaranteed if information is inaccurate, irretrievable, or lacking in integrity. According to Kennedy (2007), records management allows for a smooth hand- over, yet most institutions do not exercise it properly. Even digital records such as tweets and Facebook posts are generally not regarded as records.

FOI legislation cannot be implemented if public bodies do not know what information they hold and where it is kept (Lowry 2014). It is only through proper records management that this can be alleviated. It is therefore vital to know what information is held throughout the organisation. This can be possible through the file plan that reflects the activities of an organisation. Although records classification systems can differ across organisations, they typically: describe the kinds of items the organisation acknowledges to be records, describe what broader category of records the items belong to, indicate where records are stored, and describe retention periods for records (Ngoepe 2009). The records classification systems can therefore come in handy when records are required in terms of FOI legislation. This will ensure quick and easy retrieval. If records are not managed according to a classification system that complies with archivally determined principles and there is difficulty in locating information, the Promotion of Access to Information Act will be a dead letter. The constitutional rights it seeks to uphold will therefore not be guaranteed. Proper implementation of a NARSSA-approved file plan makes government programmes and service delivery more efficient, supports transparency, collaboration across organisations, and informed decision-making in government operations, and preserves historically valuable information (Dominy 2017). Therefore, it can be concluded that effective decision-making, service delivery and access to government information can be greatly facilitated by the development,

implementation and maintenance of records classification systems in government departments (Ngoepe 2009).

Such information is supposed to be published on the public bodies' websites. Section 15 further requires information officers of public bodies to submit to the minister a description of records categories of the public body that are automatically available without a person having to request access in terms of the PAIA. This is supposed to be done annually and the description should indicate how the public can access the records. The minister will then publish the information provided by the information officers of the relevant public bodies and the cost will be the responsibility of that public body. The information must be updated and submitted to the minister annually. Section 16 requires publication of the contact details of the director general of the national department: postal and street address, phone and fax number and, if available, electronic mail address of every public body in every telephone directory issued for use by the public.

Non-compliance with the prescripts of the PAIA is considered an offense in terms of section 90, and anyone guilty of section 90(a)(b)(c) is liable to a fine or to imprisonment for a period not exceeding two years. Wood (2011) asserts that South Africa's FOI law as uniquely determined to ensure compliance because of the provision of criminal liability for non-compliance. However, despite the attempts to make the requirements robust, compliance with the manual compilation remains a problem for public bodies. Kisson (2010) reveals a low compliance level of 5% with the compilation of section 14 manuals. Prior to that, the SAHRC (2009) had also reported on the low level of compliance with PAIA's prescripts in terms of section 14 and highlighted a lack of awareness as the cause of the high level of non-compliance. This is one of the major weaknesses that have surrounded the implementation of PAIA, that is, the assumption that public and private officials would somehow, automatically, be aware of, and educated about, the PAIA. Indeed, there are no provisions contained in the PAIA for specific awareness raising and educational programmes directed towards either public or private officials. It appears the public is deprived of this right of access to information by the public bodies who have consistently disobeyed the Act's provisions. The requirements of the Article 19 principles and the PAIA with regard to the obligation to publish will only be realised if public bodies have proper records management systems in place.

Records management systems include classification systems that reflect the records in an organisation (Shepherd & Stevenson 2010). The National Archives and Records Services of South Africa Act 43 of 1996 requires all public bodies to develop records classification system. Its purpose is, among others, to provide for the proper management and care of the records of governmental bodies. According to section 13(2)(b)(i) of the NARSSA Act, the national archivist is responsible for determining the records classification systems to be applied by government bodies. Ngoepe and Van der Walt (2010) elaborate that a records classification system (file plan) provides a means of knowing what records exist and where they are kept in an organisation and it also facilitates easy access to records. Mojapelo and Ngoepe (2017) note that public bodies continue to function without approved policies, procedures and classification systems, which will be a major hindrance to disclosure. These classification systems contain the inventory of records held by public bodies. However, studies by Katuu (2011), Ngoepe (2012; 2016) and Marutha (2017) reveal a lack of skills in designing classifications systems that can aid access to information. One of the key principles of FOI legislation is proactive disclosure. This is possible if institutions have proper records management systems in place, which include classification systems that reflect the records in an organisation (Shepherd & Stevenson 2010). The file plans can be added as annexures to the access to information manual. Without file plans, public bodies might find it increasingly difficult to respond to requests in terms of the PAIA, as they would be struggling to sift through an ever-increasing mountain of records that are unclassified. As a result, as Ngoepe (2012) would attest, the retrieval of a particular record to meet the obligations of success to information would be akin to “searching for the elusive needle in a haystack or a blind man searching for a black cat in darkness”.

One of the major weaknesses that have surrounded the implementation of PAIA is the assumption that public and private officials would somehow, automatically, be aware of, and educated about, the PAIA (Dominy 2017). Indeed, there are no provisions contained in the PAIA for specific awareness raising and educational programmes directed towards either public or private officials. The only provision made in the PAIA is for the SAHRC ‘to encourage public and private bodies to participate in the development and conduct of programmes that the SAHRC is directed to undertake amongst the general public – section 83(2)(b). This role is explained by Mojapelo (2017) that the SAHRC organises a national information officers’ forum, in partnership with the now

defunct Open Democracy Advice Centre, to celebrate the-right-to-know day. The forum is attended by champions and experts in the information community and some of those in attendance are records practitioners in the public sector. In September 2005, the Open Democracy Advice Centre (ODAC), through partnership with the SAHRC, announced the launch of South Africa's first openness and responsiveness awards known as the Golden Key Awards. Through this award, ODAC and the SAHRC recognise government departments, deputy information officers (DIO), private institutions, journalists and members of the public that have done exemplary work in promoting openness, transparency and accountability in the public and private sector through usage of, and compliance with, the PAIA (Ngoepe 2008). The Golden Key Awards made by the SAHRC are seen as a positive step in the right direction to propel records management into new heights.

#### **2.4 Processes to access information**

A process for deciding upon requests for information is required to be specified at three different levels, that is, within the public body, appeals to an independent administrative body, and appeals to the courts. Where necessary, provision should be made to ensure full access to information for certain groups, for example those who cannot read or write, those who do not speak the language of the record, or those who suffer from disabilities such as blindness.

All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information. In terms of the PAIA, any person can demand records from public and private bodies without showing a reason. Public and private bodies currently have 30 days to respond (reduced from 60 days before March 2003 and 90 days before March 2002) to the request. In terms of the Act, if a member of the public or any person requires access to records, such person should complete Form A, pay the request fee of R35.00 and submit the form to the information officer by hand, fax, e-mail or post. The process is standard to all organisations. Once this has been done, the relevant organisation has 30 days in terms of section 25 to grant or refuse access or in terms of section 20 to transfer the request to the body with a record within 14 days and notify the requester. The PAIA reflects the prescripts of the principles 5 and 6 which serve as guiding lenses for this study. The principle of processes to facilitate access (principle 5) is premised

on the notion that in order for an access regime to be effective, “requests for information should be processed rapidly and fairly and an independent review of any refusals should be available” (Article 19 1999). In terms of the principle of costs (principle 6), Article 19 (1999) recommends low costs to gain access to information because information seekers may be deterred and that may defeat the purpose of freedom of information laws, which is to promote open access to government information. However, access to information is dependent on the availability of records in the public bodies. For this fundamental right to come into effect or to be exercised, records need to be made available to the requesters within a reasonable time, as the Act requires (Mojapelo & Ngoepe 2017). Ngoepe (2008) highlights the importance of proper care and management of records, because without it, the sustainability of first-hand information will be greatly jeopardised and, as a result, obstruct the main purpose of the PAIA. Proper records management therefore remains the cornerstone of access to information services in government because it facilitates easier access to the information. According to Ngoepe and Van der Walt (2009), government departments were unable to grant access due to the following reasons:

- Lack of guidelines about requests in terms of the PAIA
- Poor record-keeping systems
- Miscommunications between the legal services unit and the records management unit as to whom should take the lead in terms of implementing the PAIA in the departments (placement)
- Legal services failing to advise in time on whether access to records could be granted
- In one instance, a file plan was requested in terms of the PAIA, but the department did not have an approved file plan and thus contravened section 13(2)(b)(i) of the NARSSA Act (file plan)

All the FOI procedures must cover the monitoring and tracking of requests for information from the public. This, according to Lowry (2014:150-151), is important for various reasons such as “consistency in disclosure decisions, handling of complaints and appeals, production of management information, the ability to redirect the requests, reduce duplication of efforts, reporting and staff time in handling applications”. A central point is recommended in each governmental body where requests can be directed and the tracking system managed. This study

suggests that such central point can be records management. Access to the tracking system can be directed to those who answer information access requests.

As Dominy (2017) observes, one of the areas of potential confusion between the NARSSA Act and the PAIA centres on the time periods prescribed for the automatic release of information. The NARSSA Act provides that only archival information that is more than 20 years old should be made automatically available to the public but provides the national archivist with the power to identify records that might be made available sooner (with consideration for protection of privacy). The access provisions of the PAIA provide for no such time limitation on access to information. These issues have been discussed as early as the 1990s, even before the enactment of the two pieces of legislation (Dominy 1991).

## **2.5 Transparency, accountability and good governance through FOI**

FOI is significant for transparency, accountability and good governance (Lowry 2014). This is also the case with the South African FOI, as one of its objectives is the promotion of transparency, accountability and good governance. For example, Dominy (2017) writes that access to information is essential for ensuring long-term accountability and the learning of lessons from past events and past errors. Despite the constitutional and administrative importance of open access to archives, the sector is largely ignored in South African government policy formulation, although in-depth information and extensive recommendations are available on the subject, beginning with recommendations made by the Truth and Reconciliation Commission in 1998. In some countries, it is part of the government's constitutional reform agenda. It provides an opportunity to find out what publicly funded bodies do and how they do it. FOI has been linked to improved accountability, better service delivery, and greater investor confidence. According to Lemieux (2015), FOI legislation aims to improve the efficiency of the government and increase the transparency of its functioning by regularly and reliably providing government documents to the public, educating the public on the significance of transparent government, and facilitating appropriate and relevant use of information in people's lives. Even partial implementation of an FOI law can lead to positive actions in some contexts. For example, in Pakistan, where a relatively weak law has been implemented, its existence has led to greater transparency through the posting



of individuals' tax information online (Lemieux 2015). Informing the public of their rights and promoting a culture of openness within government are essential if the goals of FOI legislation are to be realised. Indeed, experience in various countries shows that a recalcitrant civil service can undermine even the most progressive legislation (Lemieux 2015). Promotional activities are, therefore, an essential component of a FOI regime. This is an area where the particular activities will vary from country to country, depending on factors such as the way the civil service is organised, key constraints to the free disclosure of information, literacy levels and the degree of awareness of the general public. The law should require that adequate resources and attention are devoted to the question of promoting the goals of the legislation.

The purpose of South Africa's FOI is to promote transparency, accountability and effective governance by empowering and educating the public to understand and exercise their rights, to understand the functions and operation of public bodies, and to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights. The core business of the government is to protect the public good through mechanism such as efficient and effective governance, protection of rights, demonstration of accountability and transparency in its activities and of its public offices (Mutula & Wamukoya 2009). It is for that reason that the principle of open meetings (principle 7) commands all FOI to include the public in the meetings of the governing bodies. However, in the context of South Africa, Ebrahim (2010) cautions that the first draft of the PAIA did contain this so called "sunshine provision" allowing access to public meetings; the provision was ultimately removed from the final Act. Transparency and accountability of public bodies exist to serve the public through good governance in South Africa. It is for that reason that Matangira and Lowry (2013) stress good records management as the backbone of a transparent and accountable government.

Sebina (2006) further attests that without a substantial and comprehensive records management in place, the FOI legislation would not be worth the paper that it is written on. Edward and McLeod (2004) assert the provisions of FOI to be existing to compel public bodies to manage their records well and be voluntarily transparent with the information they possess. This is an obligation in terms of principles 1 and 2 of the Article 19 principles, as well as chapter 2 of the PAIA in the case of South African's FOI legislation. Ngoepe (2012) posits that transparency, accountability and good

governance have long been established as the basic principles of governing organisations, particularly public institutions. These principles hinge on the availability of information to members of the public, as well as on being open about how the institutions are governed and decisions are made. FOI has been linked to improved accountability, transparency, good governance, better service delivery and greater investor confidence. Svärd (2016) advocates that transparency and accountability can only be achieved through access to information, because information does not have any power if people cannot access it and make use of it. Therefore, it can be prominently argued that without access to information, there can be no transparency and without transparency, there can be no accountability and without transparency and accountability, there is no democracy.

Edward and McLeod (2004) note the need and importance of prioritising records management in response of all FOI laws because properly managed records will assist in providing access to information promptly to requesters. Like any other institution, where records management is concerned, governments are expected to be ready to handle queries received in any recordable format from any source and be equipped to respond to requests promptly. Mutula and Wamukoya (2009) augment that sound management of records management of the information contained in records and any other information systems in public bodies is the prerequisite of good governance. As a result, one may agree for FOI legislation to be viewed as a tool that reiterates the importance of a well-kept record system for the benefit of the government and the general public. It can therefore be construed that FOI and a sound records management system are linked, because records have a unique character that imposes a responsibility on public servants who preserve and manage them. Kirkwood (2002) postulates that FOI necessitates effective and participative democratic society in which the government is both transparent and accountable to its citizens. Without full information, citizens cannot know about government policies and participate in decision-making. FOI legislations are premised on the notion that effective records management enables public servants to enforce the wider government agenda to increase openness, transparency, trust and accountability in the public sector (Mutula & Wamukoya 2009). For effective access to government-held information, FOI legislation imposes significant duties and responsibilities on public servants to give access to information.

In many countries, overwhelming evidence suggests that the effective implementation of the FOI laws continues to present serious challenges and that full realisation of the anticipated benefits associated with access to information remains elusive (Roberts 2006). However, in reviewing progress with the implementation of FOI legislation, Lemieux and Trapnell (2016) reveal that “in India, Mexico, the United Kingdom, and the United States are considered robust but still facing challenges”. For example, India has a vibrant civil society that engages with the FOI system regularly and at all levels and sectors of implementation, while Mexico is considered a model FOI system because of its independent and well-funded information commission, which succeeds in enforcing disclosure obligations on public bodies using a variety of methods (Lemieux & Trapnell 2016). However, on the other side of the spectrum are new and struggling FOI systems, where implementation is either slow in taking hold or has suffered setbacks. For example, Jordan is identified as still in the early phases of implementing FOI within the public sector and many agencies have yet to develop forms or procedures for requesting access, while Uganda faces general challenges with levels of staff capacity and resources within the civil service (Lemieux & Trapnell 2016). While South Africa has an active human rights commission that conducts regular evaluations and training of public servants, it lacks enforcement authority and faces the challenge of low capacity within the civil service (Mojapelo 2017). This is compounded by the transfer of the function from the human rights commission to the newly established Information Regulator which does not have the capacity and resources at the moment (Mojapelo & Ngoepe 2017). Although it has always remained a requirement for effective and efficient records management in public bodies for the purposes of transparency, accountability and good governance, the inception of FOI laws assists in reinforcing the requirements for public bodies to be more robust with their records management (Edward & McLeod 2004).

Effective access to information management and exploitation of official government information are the means through which the government demonstrates accountability and transparency in the use of public resources to expose corruption and fraud, protect the citizens’ rights and improve service delivery. In September 2005, ODAC, through partnership with the South African Human Rights Commission, announced the launch of South Africa’s first openness and responsiveness awards known as the Golden Key Awards. Figure 2.1 is a screenshot of Eskom’s PAIA section as the best practice model for implementing the PAIA by Eskom which won the Golden Key Award

in 2008, 2009, 2013 and 2015. Through this award, ODAC and the SAHRC recognise government departments, deputy information officers, private institutions, journalists and members of the public that have done exemplary work in promoting openness, transparency and accountability in the public and private sectors through the use of, and compliance with, the PAIA. Therefore, managing the government information that is contained in records will assist in enhancing the freedom of access to information, democracy and integrity of a government for the public.

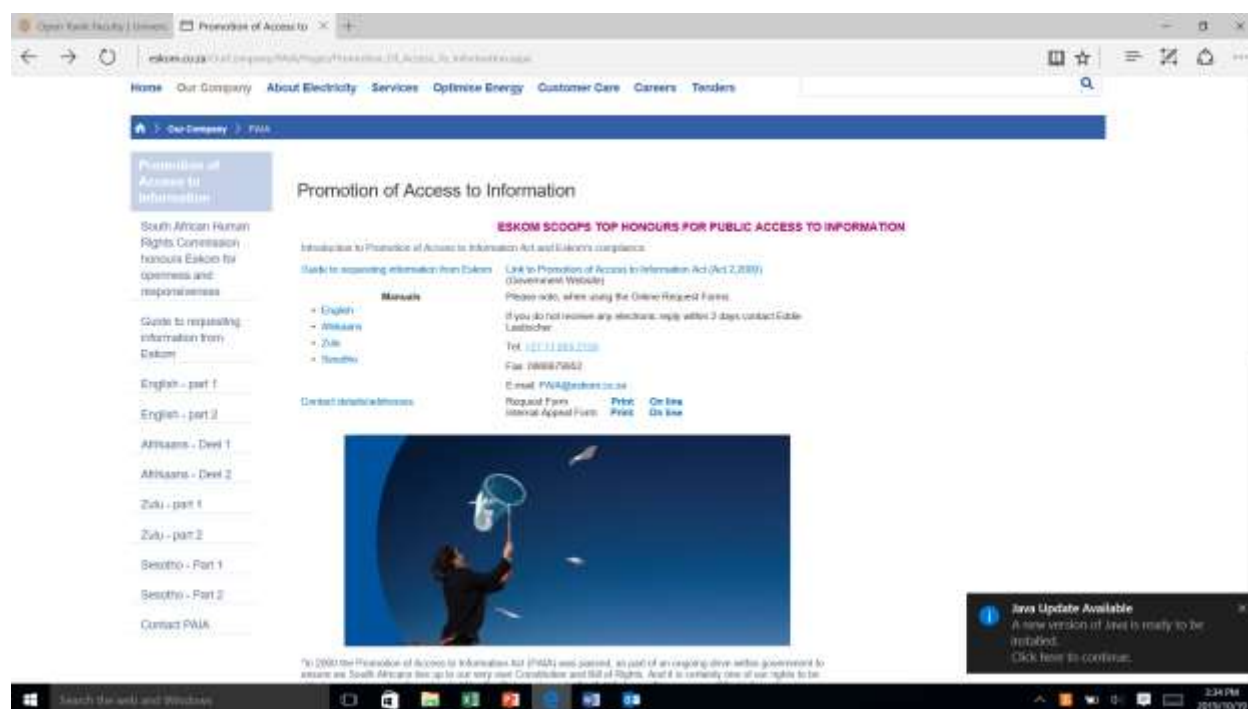


Figure 2.1: Screenshot of Eskom's PAIA page

## 2.6 Recommendations for implementation of FOI laws

A number of researchers provided recommendations for the implementation of FOI laws. These recommendations centre around assigning of responsibilities or development of units to be responsible for FOI implementation (Roberts 2006; Ngoepe 2016), records management units' involvement in FOI (Lemieux 2015; Ngoepe & Van der Walt 2010), advocacy and awareness (Lemieux & Trapnell 2016), training of information officers (Roberts 2006), involvement of other stakeholders (Mojapelo 2017), naming and shaming of non-compliant public bodies (Ngoepe 2012), and political support and monitoring of FOI legislation (Lemieux & Trapnell 2016). A new innovative trend that the Indian government used is one that enables information requesters to

receive automated updates on the status of their appeals/requests by sending a text message from a cellphone to a free toll-free number (Klaaren 2010). This can be done if there is a unit responsible for FOI implementation within the public body. In their study, Mullon and Ngoepe (2019) recommend the establishment of a single entity for information governance at a country level where the information regulator may be assigned a broader scope, as opposed to the current narrow scope of FOI.

## **2.7 Summary**

It is clear from the literature review that, together, the Constitution and the PAIA provide an excellent map and rules of the road for South African democracy. Therefore, it is important that public bodies should commit themselves to the effective implementation and maintenance of access to information. This chapter established that records management plays an important role in promoting accountability, transparency and good governance. South African public bodies are responsible for promoting accountability, transparency and good governance. It is therefore important for public bodies to take charge of the role of promoting better and sound records management in the public sector in South Africa. It is clear from literature that freedom of information as an idea and culture has not yet taken root in the country. This chapter has reviewed literature using themes from the objectives of the study. The themes included responsibilities of ATI, compliance with voluntary disclosure obligation, processes to access information, implications of ATI to transparency, accountability and good governance, as well as recommendations for implementation of ATI laws. It is clear from this chapter that compliance with FOI legislation is an opportunity to better coordinate the flow of information into and out of the organisation. It is therefore not seen as merely a legal compliance issue, but rather an opportunity to deal with information management in a holistic and integrated manner. The next chapter presents the research methodology employed to conduct the study.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

The previous chapter reviewed literature related to this study on compliance with FOI legislation, the importance of FOI in ensuring accountability, transparency and good governance. The review of literature was guided by the objectives of the study which emanated from the international principles of access to information legislation. Various authors argued various points that compounds non-compliance, while others highlighted the implications of non-compliance. Section 1.8 in Chapter One briefly outlined methodological approach. This chapter expands on the discussion of the methodological underpinnings that guided the study. The chapter also discusses philosophical paradigms that guided the study, and the research approach, research methods, as well as data collection instruments that were used to conduct this study are discussed in detail. The chapter further discusses issues relating to target population, sampling, data quality, ethical considerations and data analysis.

Research is a systematic process of collecting, analysing, and interpreting information to increase understanding of a phenomenon about which one is interested or concerned about (Leedy & Ormrod 2015:20). Research methodology then plays an integral part in a study because it provides a background for the discussions about methods and the relationship between methods and theories (Alasuutari, Bickman & Brannen 2008:82). Pickard (2007:xvi) refers to research methodology as a perspective that the researcher wishes to take in answering the questions they have. An example would be examining the use of a service by users of that service; whereby the questions asked to the users entail “how many”, “how often” or “when”. This would be a quantitative angle. A different angle would approach with the questions that entail the “why”, “how” or “what are the benefits of the service”, which would then be a qualitative angle. Figure 3.1 narrates the roadmap of the research methodology that was undertaken for this study.

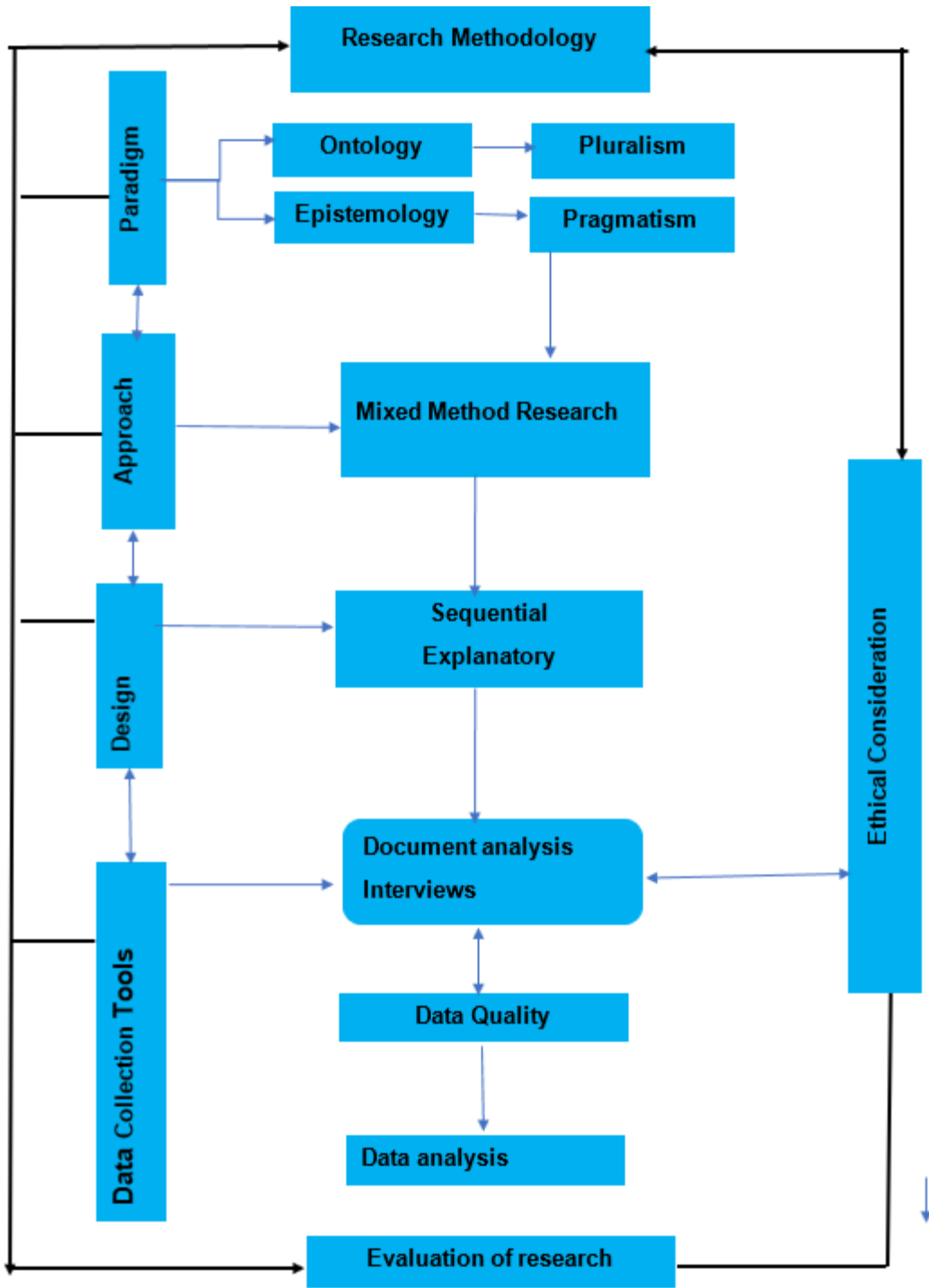


Figure 3.1: Research methodology roadmap (Research 2018)

### 3.2 Philosophical paradigm

This section focuses on philosophical paradigms behind the approaches and methods of enquiry used to execute this study. Creswell (2014:46) alludes to the existence of three important components in the definition of a research, which can be denoted as an intersection of a philosophy, research approaches and specific designs that the study or research project seeks to follow. It is for that reason that researchers should be curious to know and understand the intersection of the philosophical assumptions into the research approach. Different authors define a research paradigm differently, but they all allude to the same thing. Neuman (2014:85) refers to paradigms as orientations or sweeping ways to see and think about the social world. They further provide assumptions, concepts, and forms of explanation for different things. Similarly, Bryman (2012:630) defines a paradigm as a cluster of beliefs and dictates scientists in a discipline regarding what should be studied, how research should be done and how the results should be interpreted. Creswell (2014:34) further propagates the reality of philosophical paradigms as a “worldview”, defining worldview as a general philosophical orientation about the world and the nature of research that a researcher brings to a study. Worldviews arise based on discipline orientations, the researcher’s advisors’/mentors’ inclinations, and past research experiences. The types of beliefs held by individual researchers based on these factors will often lead to embracing either a qualitative, quantitative, or mixed methods approach in their research.

Bryman (2012:20) posits that characterising the nature of the link between theory and research is never a straightforward answer. Several issues come to play, an example would be the question of which theory the researcher will employ; the other matter would be whether data are collected to test or to build theories. Theory is important to social research because it provides scenery and rationale for the research that is being conducted. According to Kumar (2011:93), a researcher’s philosophical orientation may stem from one of the several paradigms and approaches in research: positivist, interpretive, phenomenology, action or participatory, feminist, qualitative, quantitative- and the academic discipline in which you have been trained.

Sarantakos (2013:28) suggests that social science research is guided by three basic factors, namely ontology (*nature of reality*), epistemology (*the philosophy of how the reality can be known*) and



methodology (*the practice of how to know that reality*). Pickard (2007) outlines three questions that help to define research paradigm: the ontological question, the epistemological question and the methodological question. Pickard (2007) defines paradigm as the entire constellation of beliefs, values and techniques shared by members of a given scientific community where they provide a concrete puzzle solution or example of how to solve scientific problems. A paradigm is therefore composed of an ontology, epistemology and a methodology. An ontology informs methodologies of what research is supposed to investigate, epistemology informs methodologies of the nature of knowledge or where knowledge is to be sought, while methodologies prepare ways to be employed by the researcher and to further instruct researchers as to what the focus of the enquiry should be and how knowledge should be recognised and extracted (Sarantakos 2013:29).

Philosophical ideas remain a largely hidden component in research, but their role in influencing the practice of research needs to be identified to assist in explaining why a certain research approach was chosen (Creswell 2014). A paradigm does not imply methodology; it simply refers to how an individual's views of the world dictates the nature of the research they choose to engage with. Various research paradigms exist, and they are identified below.

### **3.2.1 Positivism**

According to Mackenzie and Knipe (2006), positivism may be applied to the social world on the assumption that “the social world can be studied in the same way as the natural world, that there is a method for studying the social world that is value free, and that explanations of a causal nature can be provided”. Positivist research is most commonly aligned with quantitative methods of data collection and analysis. Individuals embracing the positivism position both recognise and support validity, look for quantitative equivalence of it, and actively employ procedures for establishing validity using specific protocols (Creswell & Miller 2000). In other words, positivism is associated with quantitative study.

### **3.2.2 Interpretivist**

According to Mackenzie and Knipe (2006), the interpretivist approach to research has the intention to understand “the world of human experience”, suggesting that “reality is socially constructed”. Researchers of this world view tend to rely upon the “participants’ views of the situation being studied” (Creswell 2003:8) and recognise the impact on the research of their own background and experiences.

### **3.2.3 Pragmatic**

Another world view comes from the pragmatists. Pragmatism is mainly concerned with the applications of what works to resolve problems (Creswell 2014). According to Morgan (2007), pragmatism is not committed to any one system of philosophy and reality, it draws liberally from both the post-positivists and the interpretivists when engaging in research projects. As a philosophical underpinning for mixed methods studies, pragmatics focus on the research problem in social science research and its use of pluralistic approaches to derive knowledge about the problem (Creswell 2014). This study was guided by the pragmatic paradigm and therefore drew from both the positivist and the interpretivist worldview to resolve the problem.

### **3.4 Research approach**

Research approach refers to plans and procedures for research that outline the steps from a broad assumption to detailed methods of data collection, analysis and interpretation (Creswell 2014). Methodology scholars identify research approaches as quantitative, qualitative and mixed methods research. De Vos, Delpont, Fouché and Strydom (2011:64) define the quantitative research approach as an enquiry into a social or human problem, based on testing a theory composed of variables, measured with numbers and analysed with statistical procedure to determine whether the predictive generalisation of the theory is true. Bryman (2012:35) refers to the quantitative approach as the strategy that emphasises quantification in the collection and analysis of data and that entails a deductive approach to the relationship between theory and research, in which emphasis is placed on the testing of theories. Qualitative research, in contrast, refers to a research strategy that usually emphasises words rather than quantification in the collection and analysis of data (Bryman 2012:35). Creswell and Miller (2000) are of the view that the reality in the qualitative

approach is socially constructed and it is what participants perceive it to be. This approach suggests the importance of checking how accurately participants' realities have been represented in the final account. Researchers who employ this approach seek to actively involve participants in assessing whether qualitative research would seem to have a monopoly of the ability to study meaning. Its proponents essentially claim that it is only through qualitative research that the world can be studied through the eyes of people who are studied, and their ontological positions. As discussed under philosophical paradigm section, social science research is guided by three basic factors, namely ontology (nature of reality), epistemology (nature of knowledge) and mixed methods research. Therefore, each of the first two of these approaches (qualitative and quantitative) has been linked to one of the metatheoretical traditions or philosophical paradigms. In terms of the philosophical paradigm, the quantitative approach is linked to the positivist epistemology and its ontology is realism while the qualitative approach is linked to the interpretivist epistemology and its ontology is constructivism (Mangan, Lalwani & Gardner 2004:565).

The third approach is identified by most scholars as mixed method research (MMR), in which researchers combine elements of both the qualitative and quantitative research approaches for breadth and depth of understanding and corroboration (Creswell 2006; Flick 2014:36). MMR is regarded by some scholars as a third methodological movement that advocates methodological diversity which involves the utilisation of quantitative and qualitative approaches within a single study (Ngulube & Ngulube 2015). In essence, 'qualitative data provide a detailed understanding of a problem while quantitative data provide a more general understanding of a problem' (Creswell & Plano Clark 2018). Although a majority of researchers' consideration when deciding on methodology is to ascertain which approach will best answer the research question, many renowned scholars are advocating and using mixed methods because of the value and advantages that they offer (Ngulube & Ngulube 2015). Creswell and Clark (2018) highlights the following advantages of MMR:

- Provides a way to harness the strengths that offset the weaknesses of both quantitative and qualitative research.
- It provides more evidence for studying a research problem than either quantitative or qualitative alone since researchers can use all the data collection tools rather than being restricted to specific tools associated with qualitative or quantitative research.

- It encourages the use of multiple worldviews or paradigms, rather than typically associating a certain paradigm with qualitative or quantitative research.
- It is practical in the sense that researchers get to use both numbers and words, by combining inductive and deductive logic through abductive thinking.

In MMR, the researcher bases the enquiry on the assumption that collecting diverse types of data best provides a more complete understanding of research problem than either quantitative or qualitative data alone. This study adopted the MMR approach to assess compliance with the FOI legislation by public bodies in South Africa. MMR enabled the researcher to identify the trends and compliance through the quantitative approach and thereafter explained the findings using the qualitative approach. MMR is linked to the pragmatism epistemology and its ontology is pluralism (Creswell 2006). Ngulube (2020b) points out that “when claiming to use mixed methods research, the key is to give a rationale or justification for why mixed methods research is more appropriate than qualitative or quantitative methodologies in addressing the phenomenon under study and the research problem. Problems suited for mixed methods include those in which a single data source does not give sufficient answers.” A reason for the current study falls in what Creswell and Plano Clark (2018) call a need to explain quantitative results.

As the researcher recognised that quantitative data alone would not provide a full picture of non-compliance or compliance, qualitative data were necessary to augment and answer why the situation was the way it was. This is so because all the compliance and none compliance elements of the public bodies would be identified from the reports, but there would not be any explanation of why the situation was the way it was. Furthermore, qualitative study would not solve the research problem as the researcher would not have identified trends, issues and patterns relating to FOI within public bodies. As a result, quantitative data informed qualitative data collection. This study began with a quantitative analysis of reports and then, in the second phase, focused on qualitative open-ended interviews to collect detailed views from the participants to help explain the initial qualitative data. Data were then mixed at analysis, presentation and interpretation levels.

### 3.5 Research design

Researchers do not only select a research approach (qualitative, quantitative or MMR) based on their ontological and epistemological underpinnings. They must further find a suitable design or type of the study to be followed within the chosen approach (Creswell 2014). Research design is ineluctably rooted in epistemological and ontological commitments (Bryman 2012:629). With the chosen research approach for this study being MMR, the research design choice is discussed in this section.

There are several designs articulated in the literature when it comes to MMR. Creswell & Plano Clark (2018) list them as exploratory, explanatory, embedded, convergent and transformative and briefly outlined them as follows:

- Exploratory: Data are collected sequentially, starting with qualitative data (this phase may be used to develop data collection tools), followed by a quantitative study (collect quantitative data in a typical survey). Participants for the two phases are different. Challenges for this design reside in focusing in the appropriate qualitative findings to use and sample selection for both phases of research.
- Explanatory: Sequential and quantitative data are collected first, and qualitative data are then collected to explain the quantitative findings (followed up with interviews to help explain, for instance, any deviations from the norm, significant or non-significant results). It is also known as sequential triangulation and the iteration design (Ngulube 2020a). Surprisingly, quantitative results may necessitate an explanation by using qualitative methods. The qualitative phase follows from the quantitative results. The identical and nested relationship sampling described in the next sections is recommended for the explanatory mixed methods research design (Ngulube 2020b).
- Embedded: This is a concurrent nested design where data are collected during one phase, whereby one methodology guides the study, while the other methodology is embedded in

the study to provide a supporting role. A secondary question might need different types of data. This may involve experimental trials.

- **Convergent:** Sometimes called concurrent triangulation design or convergent parallel design. Data are collected concurrently. Complementary qualitative and quantitative data are collected in order to have a deeper understanding of the phenomenon and for validation (convergence and divergence) and corroboration.
- **Transformative:** Addresses matters related to social justice, marginalisation, and underrepresentation in social spaces. Data are collected within a transformative framework that guides the research (e.g. feminist theory, class theory, disability theory, racial theory, Ubuntu theory, and Batho Pele theory). The data in this form of study could be converged or it could be ordered sequentially with one building on the other.

This study utilised sequential explanatory design. The purpose of the explanatory approach is to use qualitative results from a qualitative phase of a study to explain initial quantitative findings from the quantitative strand of a study. In this regard, the study first analysed the reports of the SAHRC from the reporting year 2006/07 to 2016/17 to assess compliance with sections 14, 17 and 32 of the PAIA. The data were in a quantitative mode and revealed what the situation was; thereafter, the qualitative approach helped to answer the question why the situation was the way it was. In this regard, interviews were conducted with purposively selected samples. The targeted public bodies were selected from the complying and non-complying ones as identified through the quantitative data from the reports. From the purposively sampled public bodies, the targeted participants were records managers, deputy information officers and legal administrators. The results of the quantitative study guided the qualitative study. The problem, which is investigated by using the explanatory approach, should be quantitatively oriented, the important variables should be known and the researcher should have resources, including time, to conduct the research in two phases (Ngulube 2020b). While the explanatory approach is relatively straightforward, the challenges in using it include the extended time required for completion, that the qualitative phase cannot be fully specified in advance, the need to identify the quantitative results to follow up on and specify the sample that can best provide the explanation.

The mixing strategy for the study was at the data analysis, interpretation and reporting level. Quantitative data were captured and analysed through an Excel spreadsheet. The results were presented in tables, figures and graphs. Qualitative data were used to substantiate quantitative data through narratives and verbatim quotes. Triangulation of data collection instruments proved to be useful, as it enabled the researcher to collect reliable data through document analysis and interviews. Similar studies conducted elsewhere, for example by Ngoepe (2012), used MMR with explanatory sequential design to investigate the development of a framework to embed records management into the auditing process. In his study, Ngoepe (2012) conducted an informetric analysis of audit reports of the Auditor-General of South Africa to identify records management issues relating to audit findings, and thereafter he conducted a survey in governmental bodies. Similarly, Maluleka (2014) followed the same approach to conduct a study on “research collaborations in library and information science schools in South Africa”. Maluleka (2014) employed bibliometrics to identify the trends of research collaborations with a follow-up undertaken through a survey to explain the factors influencing research collaborations. The current study followed a similar path, although it used document analysis rather than informetric analysis as used by Ngoepe (2012) and Maluleka (2014). First, this study analysed the annual reports of the SAHRC from 2006/07 to 2016/07 to identify the trends. The websites of public bodies were also visited to analyse the manuals. This was followed by interviews with purposively selected participants from complying and non-complying public bodies.

### **3.6 Population and sampling**

Creswell (2014) defines a population for a study as that group (usually of people) about whom the researcher wants to draw inference. However, the population of a study may also refer to a set of objects, whether animate or inanimate, which are the focus of research and about which the researcher wants to determine some characteristics, as was the case in the current study. The population of this study consisted of SAHRC annual reports that covered the period from the 2006/07 to 2016/17 reporting years to solicit quantitative data. The reason for the choice of reports from 2006/07 was that when the researcher requested all the PAIA reports starting from 2001 when the Act was enacted, only reports starting from 2006/07 were provided. This was so because annual reports of the SAHRC from 2001/02 had not yet recorded the implementation of the PAIA as it

was still in its infancy. The actual implementation from governmental bodies started from 2006 (Makhura & Ngoepe 2006), hence Dominy (2005) laments of poor implementation in the early days of the PAIA. Once the reports were analysed quantitatively, identified none compliance issues lead to interviews of purposively selected public bodies, that is, national departments, provincial departments, municipalities and statutory bodies. The purposive selection of the sample for interviews was guided by the results of the quantitative study. In this regard, the researcher identified national and provincial departments responsible for arts and culture (where the regulatory function of records management falls), Home Affairs and COGTA (which assists the municipalities, the coalface of service delivery).

Dominy (2017) argues for a better or more appropriate positioning of national and provincial archives in alternative state structures in the national and provincial spheres than is currently the case. This will in turn properly fulfil its mandate and ensure that government offices keep records correctly and thereby comply with and support the constitutional right to open access to information within the law. There is no other state institution with the potential to provide the much-needed guidance to the institutions of government, particularly at a time when record-keeping technology is changing so drastically (Dominy 2017). Three national departments (Arts & Culture, Home Affairs and COGTA) and two provincial departments from each province (arts & culture and COGTA) were chosen. In terms of municipalities, Table 3.1 provides details of municipalities selected in this study. The websites of these public bodies were visited and the PAIA manuals were analysed. This was followed by telephonic interviews and in some instances face-to-face interviews with participants. Other participants requested that the interview schedule be e-mailed.



Table 3.1: Sample from municipalities (N=271)

<b>Province</b>	<b>Total number of municipalities</b>	<b>Number of chosen municipalities for interviews</b>
Eastern Cape	43	4
Free State	24	3
Gauteng	12	2
KwaZulu-Natal	58	5
Limpopo	29	3
Mpumalanga	20	2
North West	23	2
Northern Cape	32	3
Western Cape	30	3
<b>Total</b>	<b>271</b>	<b>27</b>

### 3.7 Data collection tools

According to Creswell (2014:239), data collection steps include setting the borders for the study, collecting information through unstructured or semi-structured observations and interviews, documents, and visual materials, as well as establishing the protocol for recording information. Leedy and Ormrod (2015:94) opine that in the passivist perspective, there is always a certain absolute truth awaiting to be discovered. They further label primary data as the layer closest to the truth and secondary data as the other layer consisting of secondary data which are not derived from truth itself but from the primary data. This study used both primary and secondary data. The secondary data consisted of published studies, articles, texts and other unpublished dissertations dealing with FOI. Regarding primary data, two instruments were employed, namely document analysis (SAHRC reports) and interviews. In research, the use of various methods to collect the same data for corroboration or triangulation is highly commendable. The ensuing sections discussed the data collection techniques utilised in this study.

### **3.7.1 Document and content analysis**

Quantitative data for this study were collected through document analysis. Bryman (2012) describes document analysis as an approach to the analysis of documents and text that seeks to quantify in terms of predetermined categories in a systematic and replicable manner. Neuman (2014:45) refers to document analysis as a technique for examining the content or information and symbols contained in written documents or other communication media (e.g. photographs, movies, song lyrics, advertisements). When a researcher conducts a content analysis, they identify a body of material to analyse and then create a system for recording specific aspects of its content. Document analysis lets us discover and document-specific features in the content of a large amount of material that might otherwise go unnoticed. Document analysis is unobtrusive, as its focus is on the products of human activity (reports, books, articles, web pages and so on), not on humans themselves. This means that there is no need to control for the experimenter, interactional investigator or other similar effects arising from the influences of researchers and human subjects on each other (Beck & Manuel 2008:167). Furthermore, document data sources pre-exist in the study, and they are usually readily accessible as was the case with the current study such as data that have been generated for purposes other than those for which the researcher is using them (Singleton & Straits 2010:11). Available data research often avoids reactive measurement error because the data are used without the knowledge or participation of those who produced it (Singleton & Straits 2010:403). Prominent among such data sources would be written records, letters, diaries and reports. In the present study, the annual reports of the SAHRC from 2006/07 to 2016/17 were analysed. Some of the reports that are not available online were provided to the researcher by the SAHRC library. PAIA manuals on public bodies websites were also analysed. All these factors make document analysis one of the more straightforward ways to get started in research.

### **3.7.2 Interviews**

Qualitative data that were used to substantiate quantitative data in this study were collected through interviews. An interview is a commonly used method of collecting information from people (Kumar 2011:144). According to Burns (1997:329), ‘an interview is a verbal interchange, often face to face, although the telephone may be used, in which an interviewer tries to elicit information,

beliefs or opinions from another person'. Interviews can be formulated in different ways, some are structured, and some are unstructured (flexible). In structured interviews the researcher asks certain questions and nothing more. In unstructured interviews, there searcher may follow the standard questions with one or more individually tailored questions to get clarification or probe a person's reasoning (Leedy & Ormrod 2015:160). In this study, unstructured interviews were used. The study employed both telephonic and face-to-face interviews. The targeted participants were deputy information officers, records managers and legal advisors who have been designated responsibilities for the implementation of FOI in public bodies. In a study, face-to-face interviews hold the advantage of enabling a researcher to build a good relationship with potential participants and therefore gain their cooperation, such interviews yield the highest response rates (Leedy and & 2015:160). A challenge, however, is that this type of interview may be time consuming and expensive if the participants are scattered all over on country or continent. Telephone interviews are less time consuming and less expensive, and all the participants can be accessed only if they have access to a telephone. It is for that reason that the study utilised both face-to-face and telephone interviews to minimise the weakness in the data collected.

### **3.9 Data validity and trustworthiness**

To ensure reliability, validity and trustworthiness of data, the study first conducted a quantitative study to identify the trends in compliance and thereafter a qualitative study to explain the situation. A triangulation of data collection tools, that is, document analysis and interviews was used. Furthermore, the interview schedule was pilot tested to ensure that errors were rectified before data could be collected.

### **3.10 Evaluation of research methodology**

It is a crucial task to evaluate the procedures involved in conducting the study to outline the strengths and weakness of the study. The study used a mixed method approach with an explanatory design. Data collection tools for the study were document analysis and interviews. The combination of interviews and document analysis proved to be useful in obtaining data. The data obtained through the reports of the SAHRC were compared to the data obtained through interviews. As Ngulube (2020b) rightly cautions, time and resource constraints should be considered before adopting a mixed methods research approach. Collecting and analysing both

qualitative and quantitative data need time, sufficient resources and expertise. The collection and analysis of data for this study were not without challenges. Some of the challenges included different reporting style in the reports of the SAHRC. In some years, the total number of public bodies was stated, the compliant and non-compliant numbers were also stipulated for better understanding. In some years, however, only compliant and non-compliant public bodies would be reported, and thus presented a challenge to the researcher in analysing the data. Another challenge was that over the years, the public bodies were merged, changed their names or reduced depending on the government of the day.

Further challenges were slow and low responses of the interview participants. As a result, some participants opted for the interview schedule to be e-mailed while others opted for telephonic interviews. However, there were those who were interviewed face to face. Other participants, especially in municipalities, had no idea what the PAIA was. In this regard, the researcher would ask for the records management division or the registry. Furthermore, in some public bodies, a letter of permission to conduct the study had to be requested. As there were many public bodies, this delayed the researcher in conducting the interviews in some public bodies. Public bodies' websites proved to have problems with regard to internet connection or maintenance because some web pages were not accessible. The researcher had to keep trying the websites on different occasions to ensure that the websites were only down due to internet connectivity or whether they were permanently down. Those that did not open on three different days and weeks were deemed to be malfunctioning and screenshots were captured as reflected in Chapter Four.

### **3.11 Summary**

This chapter discussed the research methodology and design used to conduct this study. The philosophical underpinnings, and the approach of the study were discussed. The choice of data collection instruments which was motivated by the problem at hand was explained. The population was clearly defined, and the sampling strategy used was clearly explained. The chapter also looked at issues of data quality, and how data analysis and presentation were done. In Chapter Four, a discussion of data interpretation and findings is presented. Chapter Four focuses on the presentation of results obtained from document analysis of the SAHRC reports and interviews with the participants.

## **CHAPTER FOUR**

### **DATA ANALYSIS, PRESENTATION, INTERPRETATION AND DISCUSSIONS**

#### **4.1 Introduction**

The previous chapter discussed the research methodology adopted in this study. The reasons for choice of methodology were provided. This chapter analyses and presents the data, provides the interpretation, as well as the discussions of the findings. As Ngulube (2005) observes, data analysis, interpretation and discussions are a key aspect of any research as one would be able to draw conclusions and make generalisations of findings to a problem statement. An interpretation of results means that the researcher draws inferences from the results for the research questions and the larger meaning of the results. It is only through interpretations that the researcher can expose relations and processes that underlie the findings. In this regard, through interpretation the researcher assigns significance or coherent meaning to the results. For the purpose of this study, data were analysed, interpreted and discussed as per the objectives of the study. The objectives of the study were:

- Determine the responsibility for access to information within public bodies in South Africa.
- Analyse compliance of public bodies in South Africa with voluntary disclosure obligation for access to information.
- Establish the processes to facilitate access to information in public bodies in South Africa.
- Explain the implications of access to information for transparency, accountability and good governance in the public bodies in South Africa.
- Make recommendations for compliance with access to information legislation by the public bodies in South Africa.

#### **4.2 Data analysis, presentation and interpretation**

Quantitative data for this study were collected through document analysis of the SAHRC reports (2006/07 – 2016/17), as well as analysis of PAIA manuals and websites of all the public bodies. Issues relating to none compliance with the requirements of PAIA were identified from quantitative data and helped to phrase questions for qualitative data. In this regard, public bodies were purposively chosen to establish which were complying and non-complying by stratifying

them according to national departments, provincial departments and municipalities in each province. From each chosen public body, either the information officer or records manager, legal adviser or a person designated responsibilities of PAIA was interviewed. Quantitative data were analysed through a Microsoft Excel spreadsheet which helped to generate graphs and figures. Qualitative data were analysed thematically using themes from objectives to explain all the none compliance elements identified in a quantitative study. Data are analysed and presented as per the objectives of the study.

#### **4.2.1 Responsibilities for access to information**

FOI laws normally provide for the appointment of information officers who will see to it that requests for information are processed and that requesters are provided with the information requested (Sebina 2006). This is also the case with the PAIA as it provides for the appointment of information officers. Section 75 further highlights that an internal appeal must be made through the information officer to the “designated authority” which, in the case of national departments, is the minister, for provincial departments it is the member of executive council and for the municipality it is the mayor. In Botswana, Sebina (2006) notes that the Draft FOI Bill has no provisions for information officers and an internal review body within every public authority who would be responsible for receiving requests for information and reviewing decisions to withhold information. Without information officers, access to information and timely provision of information is not guaranteed. Section 1 of the PAIA also has a clause on the designation of the information officer of a public entity and according to section 17, each public body has to appoint sufficient deputy information officers to make its records as accessible as possible. Every public body is required by the FOI legislation to have an information officer (usually the head of the institution) to render the public body as accessible as reasonably possible for requesters of its records. An information officer is defined in section 1 of the PAIA as CEO, municipal manager or head of department. The information officer can delegate the responsibilities to the deputy information officers in terms of section 17(1) to assist the information officer.

To address the objective that sought to determine the responsibilities for access to information, the researcher first analysed the PAIA manuals of public bodies. However, many public bodies, especially municipalities and provincial government departments did not have websites where the

manuals are published. As a result, it was difficult to access their manuals. Governmental bodies with PAIA manuals clearly show that the responsibility of PAIA implementation in national government departments is delegated to deputy directors general. For example, the PAIA manual of the Department of Home Affairs listed the deputy directors general as the information officers. This was also the case with the manual of the Department of Cooperative Governance and Traditional Affairs (COGTA). Furthermore, at COGTA, the senior manager: Information and Records Management (also referred to as the DIO: IRM) is responsible for the implementation of the PAIA and ensuring that processes are followed accurately. The roles and responsibilities involved in the process were clearly communicated in the manuals found on the websites. The same cannot be said about other public bodies especially at municipality level as there were either no manuals on the websites or the websites did not open at all.

Records managers are excluded from the PAIA implementation, as one participant from the interviews indicated that “records managers are appointed at a lower level and the responsibility is seen as too much for a low-level staff member.” It should be noted that there was only one public body that has delegated a records management official as deputy information officer, except for the 12 provincial government departments in the Limpopo province where directors for records management were involved in the PAIA implementation. As a result, various provincial departments in Limpopo won Golden Key Awards bestowed by the SAHRC and the Open Democracy Advice Centre from 2007 to 2011.

In terms of the positioning of PAIA units within the structure in most cases, the responsibilities were assigned to legal services. The reason cited by one participant is that “PAIA is seen as legislative issue and needed competency of a legal person to implement.” In public bodies such as COGTA, the responsibilities are clearly spelt out. For example, it is stated in the PAIA manual of COGTA that the Directorate: Information and Records Management (IRM) is responsible for the administration and implementation of PAIA in the department, while the Directorate: Due Diligence and Contract Management is responsible for providing legal advice on PAIA responses. COGTA published the SOP for PAIA implementation. In COGTA, responsibilities have been clearly mapped and communicated, that is,

- The DIO receives requests and acknowledges receipt; the request is then routed to relevant branches; the DIO prepares a response if the request is readily available information and monitors compliance in terms of timelines outlined in the PAIA. The DIO submits responses to requesters.
- Legal – provides legal advice on PAIA requests.
- DDGs – route requests to relevant line functions and inform offices of DDGs DIO (IRM) on which line function is dealing with the request.
- Line functions – compile responses and prepare submissions for approval by the DIO. The responses have to be routed via offices of DDGs. The DIO gives notice to the third party if the requested information involves the third party.
- IO – approves responses before submission to the requestors.

It is worth mentioning that many of the operational aspects of the DIO's role could be delegated by the DIOs to others within their working environment as it is shown from COGTA's procedures. These include:

- Strategic decision-making regarding information access in the BU.
- Apply grounds for refusal (draw up notification of refusal to access to records giving reasons as required by the Act).
- Apply deferral conditions (draw up notification of deferral as required by the Act).
- Refer request to and liaise with Legal Services BU when necessary, for instance, for all refusals (for them to check against the grounds for refusal before the refusal notification is sent to the requester), for interpretation of the Act, for help with severing of records.
- If grounds for refusal apply to only parts of the record(s):
  - decide if record will still make sense if this information is removed/severed from the record(s); and if it will
  - sever (remove) the "sensitive" information from the record(s)
- Submission of statistics to the information officer every year regarding: (i) the number of requests received for the financial year; (ii) how the requests were handled, for instance, whether access was granted or refused; (iii) reasons for refusing access; and (iv) number of requests transferred to other BUs or organisations.



- Receive, analyse and process requests, including finding information, responding to requesters and tracking the requests throughout the process.
- Monitor the timeframes of requests and ensure delivery of the appropriate responses to the requesters.
- Ensure that the organisational PAIA manual is updated regularly.
- Keep a record of all original requests as well as any notifications and responses (including any records given access to).
- Foster compliance with the provisions of the Act within the organisation.
- Submit section 32 report annually to the SAHRC.

It is worth noting that one of the municipality participants in the North West province mentioned that there was no DIO delegated to be responsible to oversee the process of access to information requests. As a result, the municipality does not report to the SAHRC in accordance with section 32. Another participant clearly stated that the information officer prepares and submits reports annually as required in terms of section 32.

#### **4.2.2 Publication and availability of records**

In terms of the PAIA, as guided by principle 2 of the Article 19 principles, the public bodies should, as a minimum, be under an obligation to publish the following categories of information: operational information about how the public body functions, including costs, objectives, audited accounts, standards, achievements and so on, particularly where the body provides direct services to the public; information on any requests, complaints or other direct actions which members of the public may take in relation to the public body; guidance on processes by which members of the public may provide input into major policy or legislative proposals; the types of information which the body holds and the form in which this information is held; and the content of any decision or policy affecting the public, along with reasons for the decision and background material of importance in framing the decision. Following this requirement, the SAHRC reports for the period from 2006/07 to 2016/17 were analysed to assess compliance of public bodies in South Africa with voluntary disclosure obligation for access to information, as well as submission of section 32 reports. It should be noted that during this period, the total number of national

government departments, provincial government departments, as well as municipalities fluctuated due to general elections in 2009 and 2014 in South Africa.

#### 4.2.2.1 Section 32 reports

Public bodies are required in terms of section 32 of PAIA to annually (reporting period 1 April to 31 March) prepare a report on certain statistics relating to the PAIA and submit to the SAHRC (now Information Regulator) outlining the number of requests made and how they were dealt with. Table 4.1 is an example of a template for the reporting in terms of section 32 of PAIA.

Table 4.1: Report in terms of section 32 of PAIA

<u>Reporting period: 1 April 2019 to 31 March 2020</u>	<b>Total</b>
a) Number of PAIA requests received	0
b) Number of requests granted in full	0
c) Number of requests granted despite there being a ground refusal, but granted in the public interest	0
d) Number of requests refused in full or refused partially	0
e) Number of times a provision of PAIA was relied on the refuse a request in full/ partially	0
f) Number of instances where the 30-day period to deal with a request was extended	0
g) Number of internal appeals lodged with the relevant authority	0
h) Number of cases where requests were granted as a result of an internal appeal	0
i) Number of internal appeals lodged on account of a deemed refusal	0
j) Number of applications to court as a result of the relevant authority failing to give notice of its decision	0
k) Number of requests withdrawn by the requester	0
Any comments on problems encountered in the administration of PAIA	N/A

With regard to the actual reporting in terms of section 32, table 4.2 reflects reporting by national departments, while table 4.3 reflects reporting by provincial departments and table 4.4 reflects reporting by the municipalities from 2006/07 to 2016/17. It is worth noting that municipalities and

provincial departments were not separated per province. As reflected in Table 4.2, compliance by national government departments was higher throughout the period under study with over 50%, and the highest being 86% in 2011/12.

Table 4.2:Section 32 reports-national departments

Year	Compliance	Non-compliance	Total
2006/07	18 (64%)	10 (36%)	(28) 100%
2007/08	22 (79%)	6 (21%)	(28) 100%
2008/09	22 (79%)	6 (21%)	(28) 100%
2009/10	18 (51%)	17 (49%)	(35) 100%
2010/11	18 (51%)	17 (49%)	(35) 100%
2011/12	30 (86%)	5 (86%)	(35) 100%
2012/13	28 (80%)	7 (80%)	(35) 100%
2013/14	26 (74%)	9 (74%)	(35) 100%
2014/15	30 (86%)	5 (86%)	(35) 100%
2015/16	29 (83%)	6 (83%)	(35) 100%
2016/17	30 (70%)	13 (70%)	(43) 100%

The provincial departments for respective provinces were not separated. However, comprehensive data for specific provincial departments are presented in Annexure F. As reflected in Table 4.3, compliance by provincial departments was lower in the early days and got better in 2010/11 when it climbed to 56%. Since then, it went as high as 90% in 2014/15.

Table 4.3: Section 32 reports-provincial departments

<b>Year</b>	<b>% of compliance</b>	<b>% of non-compliance</b>	<b>Total</b>
2006/07	14 (12%)	100 (88%)	114 (100%)
2007/08	13 (12%)	100 (88%)	113 (100%)
2008/09	33 (29%)	81 (71%)	100%
2009/10	22 (21%)	82 (79%)	100%
2010/11	56 (48%)	60 (52%)	100%
2011/12	63 (55%)	51 (45%)	100%
2012/13	69 (61%)	45 (39%)	100%
2013/14	56 (49%)	58 (51%)	100%
2014/15	90 (79%)	24 (21%)	100%
2015/16	86 (75%)	28 (25%)	100%
2016/17	63 (55%)	51 (45%)	100%

With regard to municipalities, as reflected in Table 4.4, compliance only exceeded 50% twice, that is, first in 2011/12 with 69% compliance and later in 2014/15 with 51% compliance.

Table 4.4: Section 32 reports-municipalities

<b>Year</b>	<b>Compliance</b>	<b>Non-Compliance</b>	<b>Total</b>
<b>2006/7</b>	11 (4%)	272 (96%)	(283) 100%
<b>2007/8</b>	48 (17%)	235 (83%)	(283) 100%
<b>2008/9</b>	33 (12%)	250 (88%)	(283) 100%
<b>2009/10</b>	25 (9%)	258 (91%)	(283) 100%
<b>2010/11</b>	20 (7%)	263 (93%)	(283) 100%
<b>2011/12</b>	69 (24%)	214 (76%)	(283) 100%
<b>2012/13</b>	37 (13%)	246 (87%)	(283) 100%
<b>2013/14</b>	25 (9%)	258 (91%)	(283) 100%
<b>2014/15</b>	51 (18%)	227 (82%)	(278) 100%
<b>2015/16</b>	48 (17%)	230 (83%)	(278) 100%
<b>2016/17</b>	30 (11%)	248 (89%)	(278) 100%

#### **4.2.2.2 Section 14 manuals**

To facilitate the identification of records, all public bodies are required to publish a manual in to act both as an index of records held by public bodies and as a guide for requesters. The manual describes the procedure to be followed when requesting records. Furthermore, it lists records that are available without using the PAIA to request them. The NARSSA-approved file plan is used as an index by the requester to see what records are in the custody of public bodies (Dominy 2017). Therefore, one can argue that successful implementation of the PAIA solely depends on compliance with the National Archives of South Africa Act (Act No. 43 of 1996). It is required that the manual be in at least three South African languages and published on the website of a public body. To answer this part of the objective, selected websites of purposively chosen (complying and non-complying) public bodies were visited to see if they have manuals translated into three languages and also make reference to file plan that is approved by the NARSSA.

#### 4.2.2.2.1 National departments

Three national departments were selected in order to collect qualitative data with DIOs to clarify issues identified in quantitative study. For each public body that was chosen for interviews, the website of such an entity was visited to first check the manual and then interview the DIO. As reflected in the screenshot in Figure 4.1, the website of the Department of Arts and Culture (DAC) was not functional. This is the department that should be leading by example as the function of records management in public bodies is regulated by the NARSSA, which is a chief directorate within the department. It should be noted that while the NARSSA is merely a chief directorate, during the interviews it appeared that it (NARSSA) is fully complying with the requirements of the PAIA while the parent body is not.

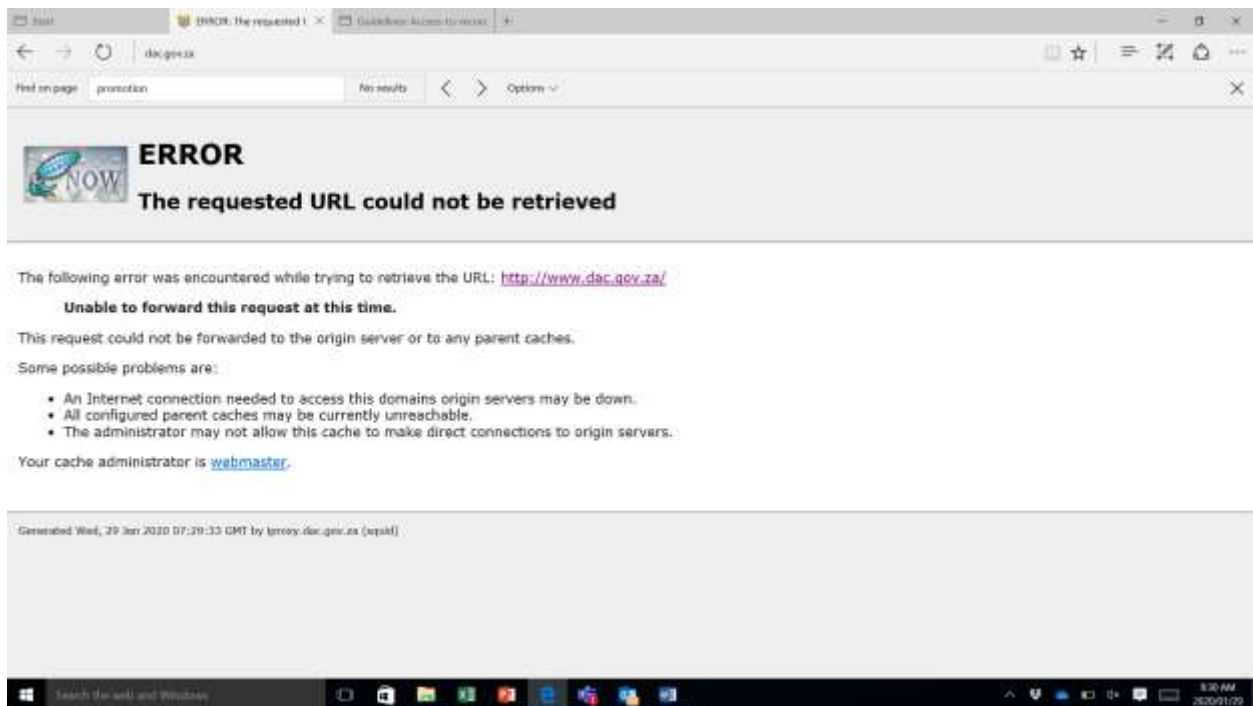


Figure 4.1: Screenshot of the website of the Department of Arts and Culture

On the other hand, COGTA had mapped the PAIA processes and assigned the responsibilities to the director of records management. Furthermore, COGTA has the manual in nine languages and the records manager is the coordinator. The Department of Home Affairs also had the PAIA

manual translated into three languages and published on the website. All the DDGs in this department were designated as the DIOs.

#### 4.2.2.2.2 Provincial departments

From each province, the departments that are responsible for arts and culture, as well as those responsible for cooperative governance were targeted. Figure 4.2 provides the overall compliance in terms of availability of manuals by provincial departments. Provincial departments in the Free State and the Western Cape were 100% complying with the availability of manuals with Limpopo on 82%. No manual could be traced for any Gauteng provincial department.

With regard to translation of manuals into at least three official languages, compliance is reflected in figure 4.3, with the Free State and the Western Cape complying.

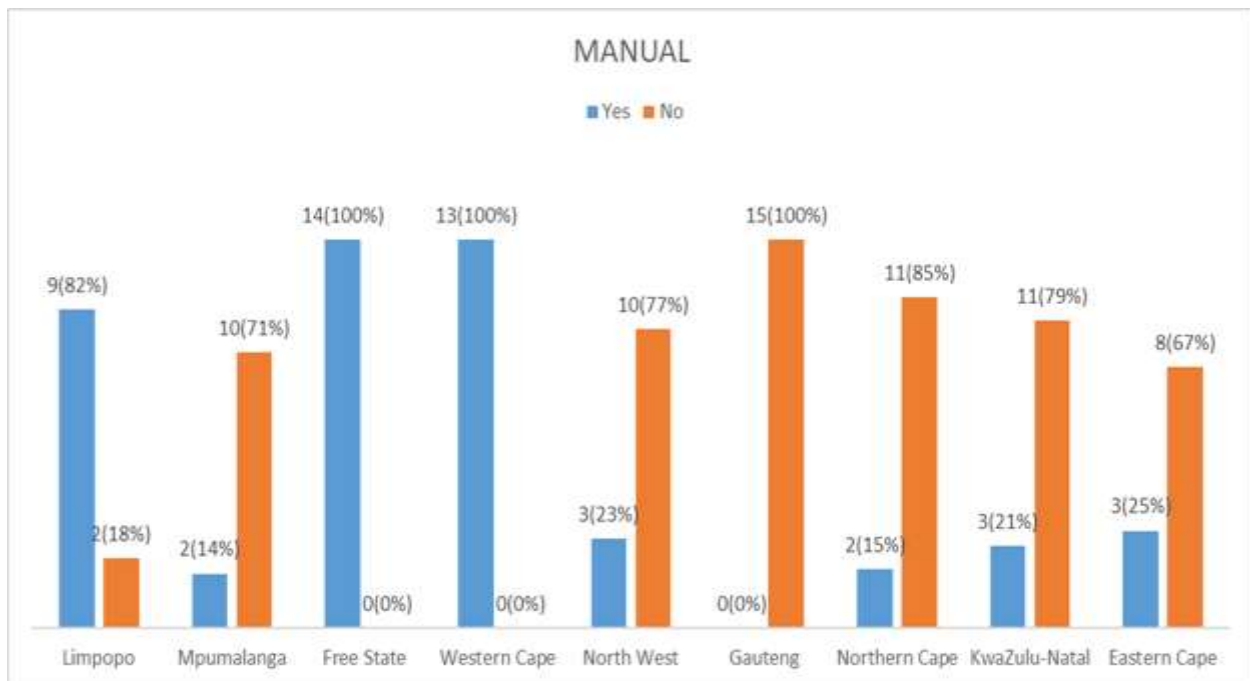


Figure 4.2: Availability of manuals per province

When looking at specific provinces, in the Eastern Cape, the arts and culture published the manual on the link <http://www.ecsrac.gov.za/Pages/default.aspx> in isiXhosa, Sesotho, Afrikaans and

English. It was interesting to note that the manual was also translated into Sesotho. The explanation by the interviewee in the Eastern Cape indicated that it is because in some parts of the Eastern Cape such as Matatiele, Sesotho is one of the spoken languages. It was noted that the department erroneously identified the head of department as the DIO. In their manual, only broad categories of records were identified as available to the public. There was also no file plan linked to the manual. Furthermore, the Department of Sport, Recreation, Arts and Culture in the Eastern Cape had not yet published a notice in terms of section 15(2) of the Act. While the arts and culture department was striving to comply, the situation was different from the provincial department of COGTA in the Eastern Cape. The website of the department only listed a records management policy with no PAIA manual. The situation was worse in Gauteng as neither of the departments had a PAIA manual on their website. The interview data indicated that the participants did not even know that they have a manual as one kept on referring to the actual Act as the manual and emphasising that it is only in English and no other language. The participant was said to be from the records management division within that department and was one of the responsible people to provide access to requested information.

The situation in KwaZulu-Natal (KZN) reflected 21% compliance with publishing PAIA manuals on their websites. Limpopo province fared well in terms of the manual publication on the website with 82% compliance. Furthermore, although there was no reference to the file plan, a broader category of records was listed in the PAIA manual. Of interest is that in Limpopo, the manuals for all provincial departments are listed in the provincial government website. These should be also listed on their own website and standardised at provincial level.



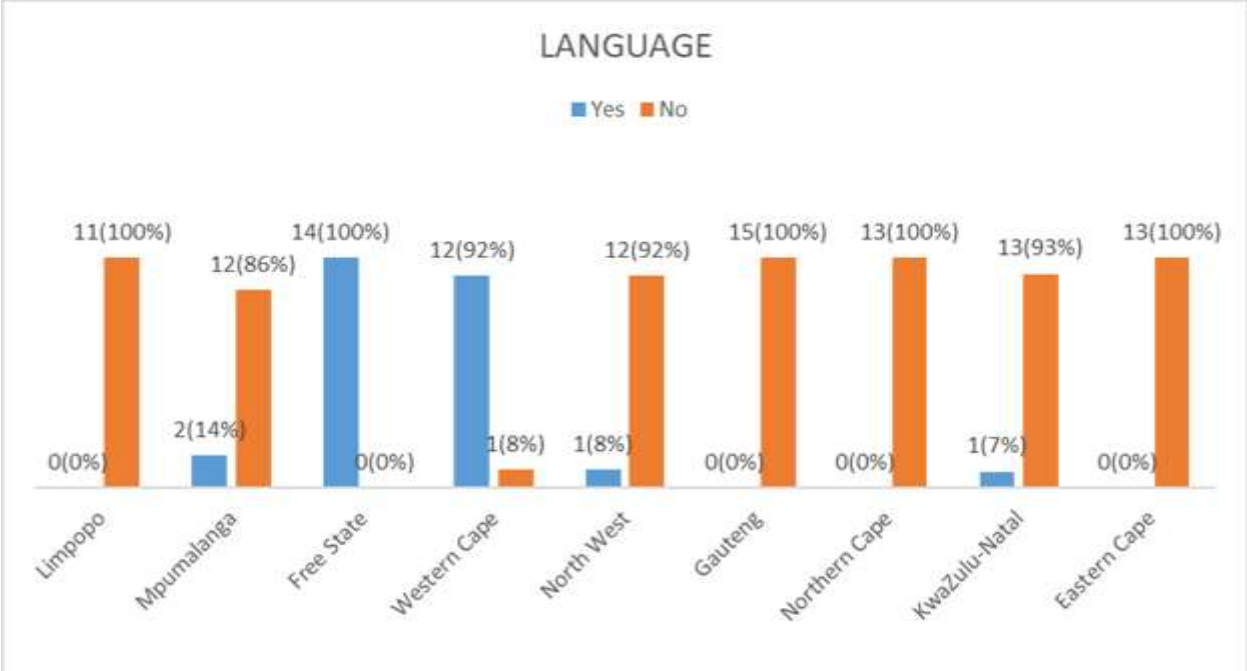


Figure 4.3: Translation of PAIA manuals into at least three official languages

While the COGTA in the Mpumalanga province has published the PAIA manual in isiNdebele, isiSwati and English with Legal Service and Corporate Service responsible for implementation of the PAIA, the same cannot be said about the provincial arts and culture department. As reflected in the screenshot in Figure 4.4, the link to the departmental website was unavailable. As a result, nothing could be retrieved. With COGTA, the broad categories of records were published but these were not linked to the file plan. Limpopo published all the manuals in English only, while in KZN the Department of arts and culture was the only department translated the manual into English, Afrikaans and isiZulu, which are the languages spoken in the province.

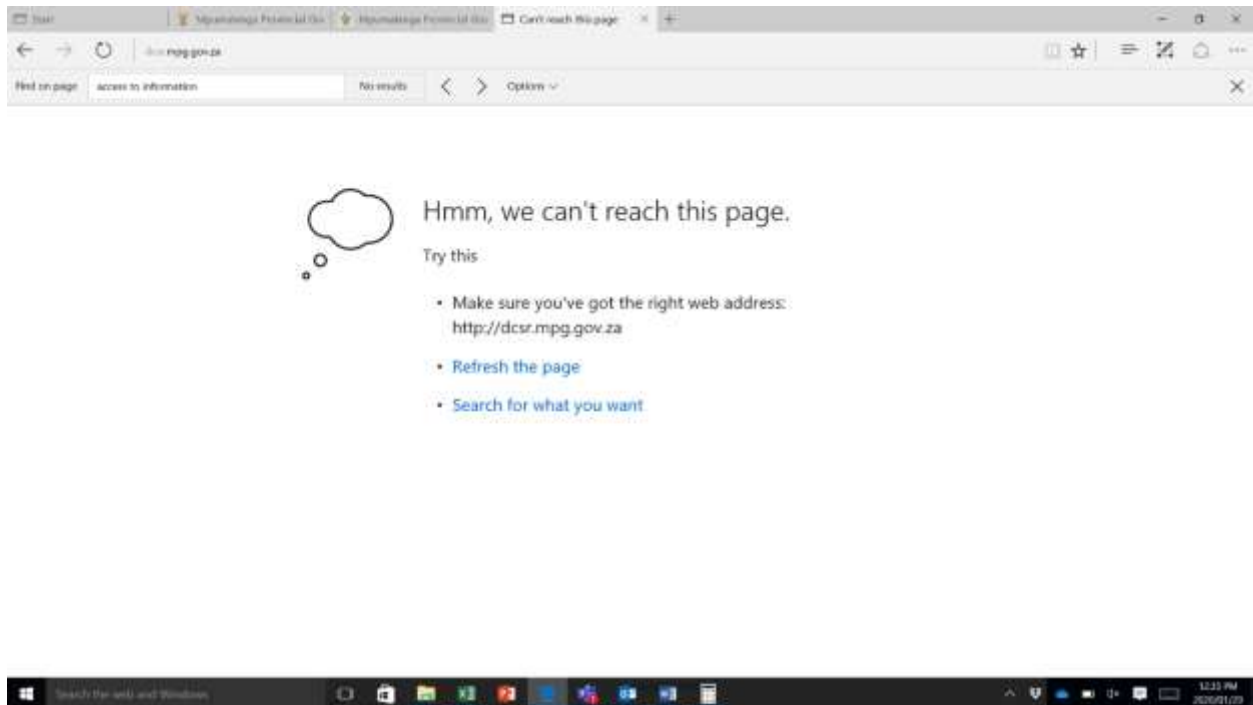


Figure 4.4: Screenshot of the website of the Mpumalanga Department of Culture, Sport and Recreation

The Northern Cape developed one manual for the whole province. It should be noted that one size does not fit all. Like Limpopo, the Western Cape has also listed all the PAIA manuals on the link <https://www.westerncape.gov.za/documents/guides/A> in English, Afrikaans and Xhosa. Furthermore, broad categories of records were published with legal services responsible for implementation.

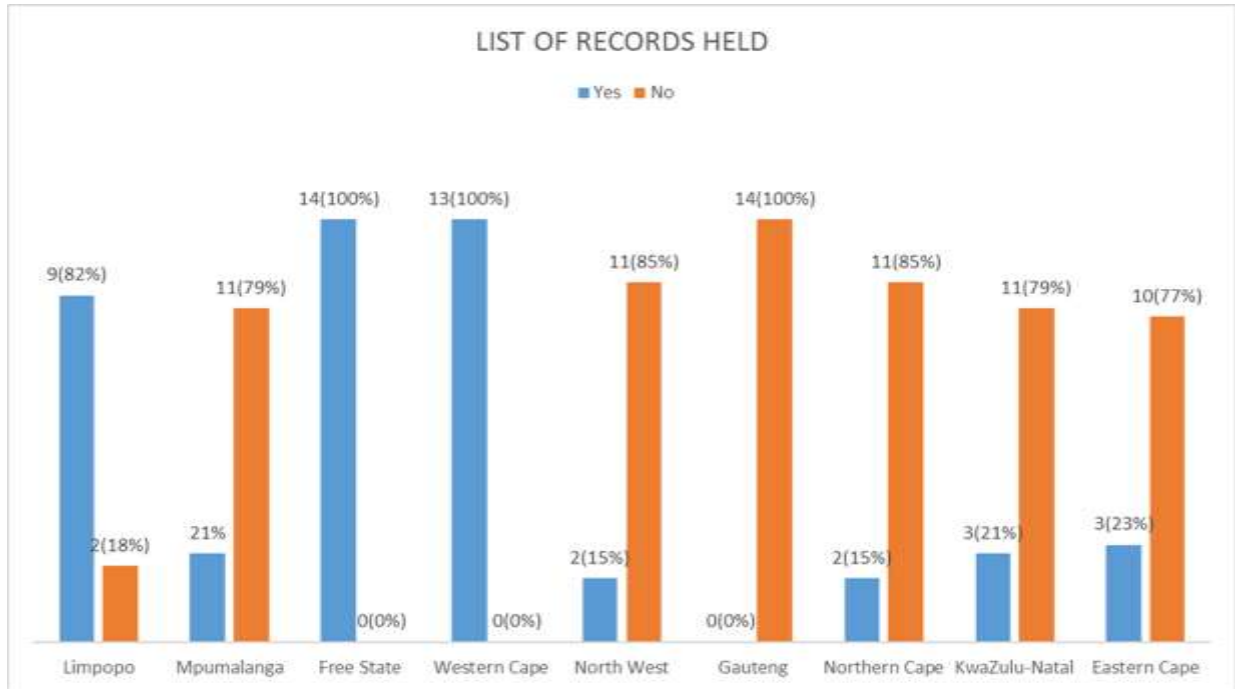


Figure 4.5: List of broad categories of records in manuals

It was only in the Northern Cape on one occasion that a reference to the file plan was made in the PAIA manual.

Table 4.5: Reference to file plan in PAIA manual

FILE PLAN USED				
Departments	Yes	Count	No	Count
1. Limpopo	0	0%	11	100%
2. Mpumalanga	0	0%	14	100%
3. Free-State	0	0%	14	100%
4. Western Cape	0	0%	13	100%
5. North West	0	0%	13	100%
6. Gauteng	0	0%	15	100%
7. Northern Cape	1	8%	12	92%
8. KwaZulu-Natal	0	0%	14	100%
9. Eastern Cape	0	0%	13	100%

#### ***4.2.2.2.3 Municipalities***

In the Eastern Cape, four municipalities were chosen, which were, Great Kei Municipality, Emalahleni Municipality, Mandela Metro and OR Tambo District Municipality. The Great Kei Municipality has a link for access to information, but it does not contain any information. When interviewing the records official, she was able to send a PAIA manual which clearly outlines the processes. The manual also makes reference to the file plan, but it was not published on the website and was not translated into three languages. At Emalahleni, there was no manual or direction regarding implementation. However, the participant indicated availability of such manual, but failed to supply it. The Nelson Mandela Metropolitan Municipality had a link to freedom of information that does not lead to anywhere. In OR Tambo Municipality, there was no mention of the PAIA. Interviews with a person responsible for PAIA in Great Kei indicates that in 2009/10, a consultant was contracted to develop records management toolkits, including the PAIA manual, file plan and records management policy. Of interest is that such a PAIA manual was shown to the researcher, but it is not published on the website. The manual even makes reference to the file plan which was developed at the same time. All these documents were never implemented. This is tantamount to a parable in the gospel of Mathew 5:15, Luke 11:33 and Mark 4:21 of someone who light a lamp and put it under a basket, instead of setting it on a lampstand to give light to everyone in the house.

In the Free State, three municipalities – Mohokare Municipality, City of Mangaung and Thabo Mofutsanyana District Municipality – were chosen from the possible 24. The Mohokare Municipality via the link <http://www.mohokare.gov.za> only listed records available but there was no PAIA manual. Surprisingly, the City of Mangaung in the link <http://www.mangaung.co.za> indicates in the manual that the application in terms of the PAIA should provide sufficient information to enable the information officer to identify the records requested (including a description of the record, a reference number and any further particulars on the record). However, there was no reference to the file plan for members of the public to see which records exist in the municipality. The Thabo Mofutsanyane Municipality did not have information relating to the PAIA.

In Gauteng, two municipalities were targeted, that is, City of Johannesburg and Mogale City out of a possible 12. The City of Johannesburg had a PAIA manual translated into four official languages: Afrikaans, Zulu, Sotho and English. Of interest was the inclusion of the NARSSA-approved file plan in the PAIA manual by the City of Johannesburg. However, the same cannot be said about Mogale City, as it had not published any information about the PAIA.

KwaZulu-Natal had 58 municipalities and four were targeted, that is, City of Ethekwini, Ilembe, Msunduzi and Zululand. Of the chosen municipalities, only Msunduzi and Ilembe listed details of the information office. In Limpopo, three municipalities were targeted, that is Tzaneen, Sekhukhune District and Polokwane out of a possible 29. Only Polokwane had a PAIA manual and had listed a broader category of records. In Mpumalanga, two municipalities were chosen, that is, Mkhonto Local Municipality – with no mention of the PAIA or access to information – and the Steve Tshwete Local Municipality, also with no mention of the PAIA or access to information. However, contact information of the information officer (only) are provided on the government website, with no mention of the DIO.

In Northwest, the Bojanala Platinum District Municipality had contact information of the information officer, but no mention of PAIA/access to information. The other municipality, the Matlosana Local Municipality's website link, <http://www.matlosana.local.gov.za>, was not opening (see error message in figure 4.7). However, contact details of the information officer were provided on the government website.

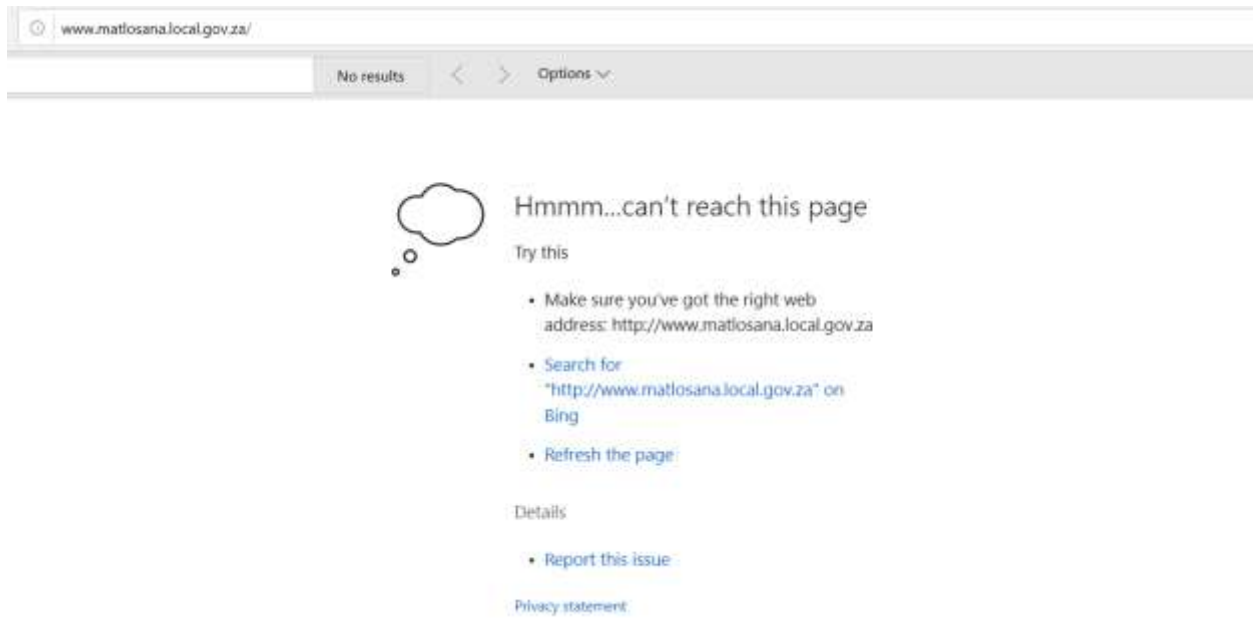


Figure 4.6: Screenshot of the website of the City of Matlosana

The website of the Dr Ruth Segomotsi Mompati District Municipality as reflected in figure 4.8 was not functioning.

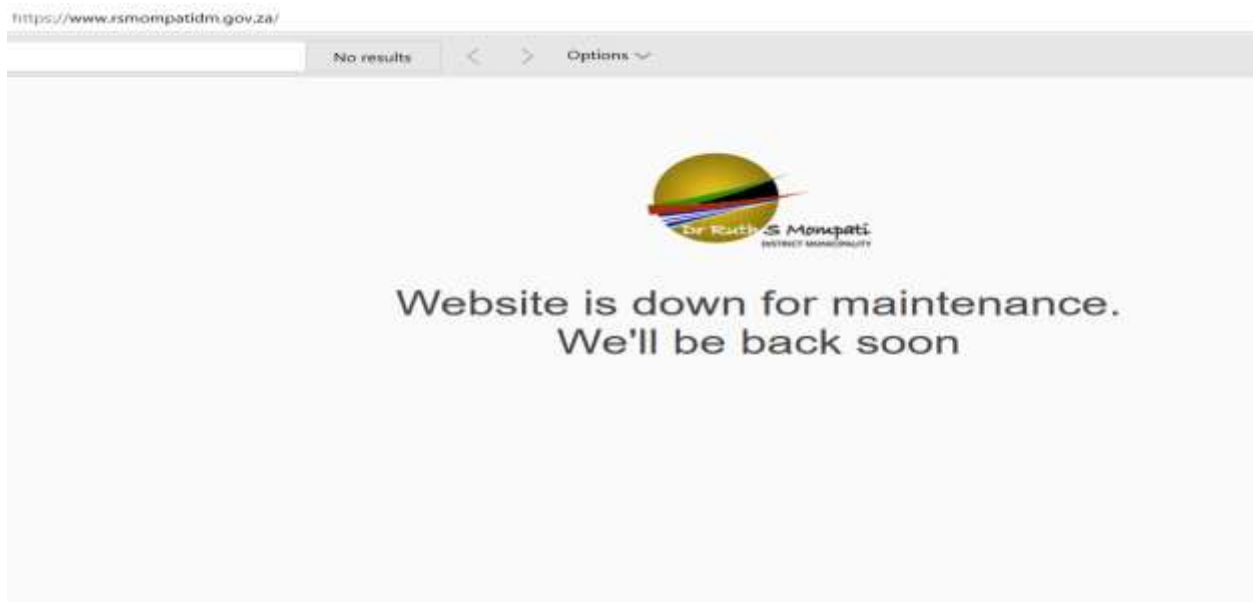


Figure 4.7: Screenshot of the website of Dr Ruth Segomotsi Mompati District Municipality

Four municipalities were chosen in the Northern Cape, that is, Dikgatlong Local Municipality, Kgatelopele Local Municipality, Magareng Local Municipality and Greater Taung Local Municipality. Although all four these municipalities had published contact details of the information officers, there were no PAIA manuals on the websites (see figure 4.9 for the details of the Greater Taung Local Municipality).

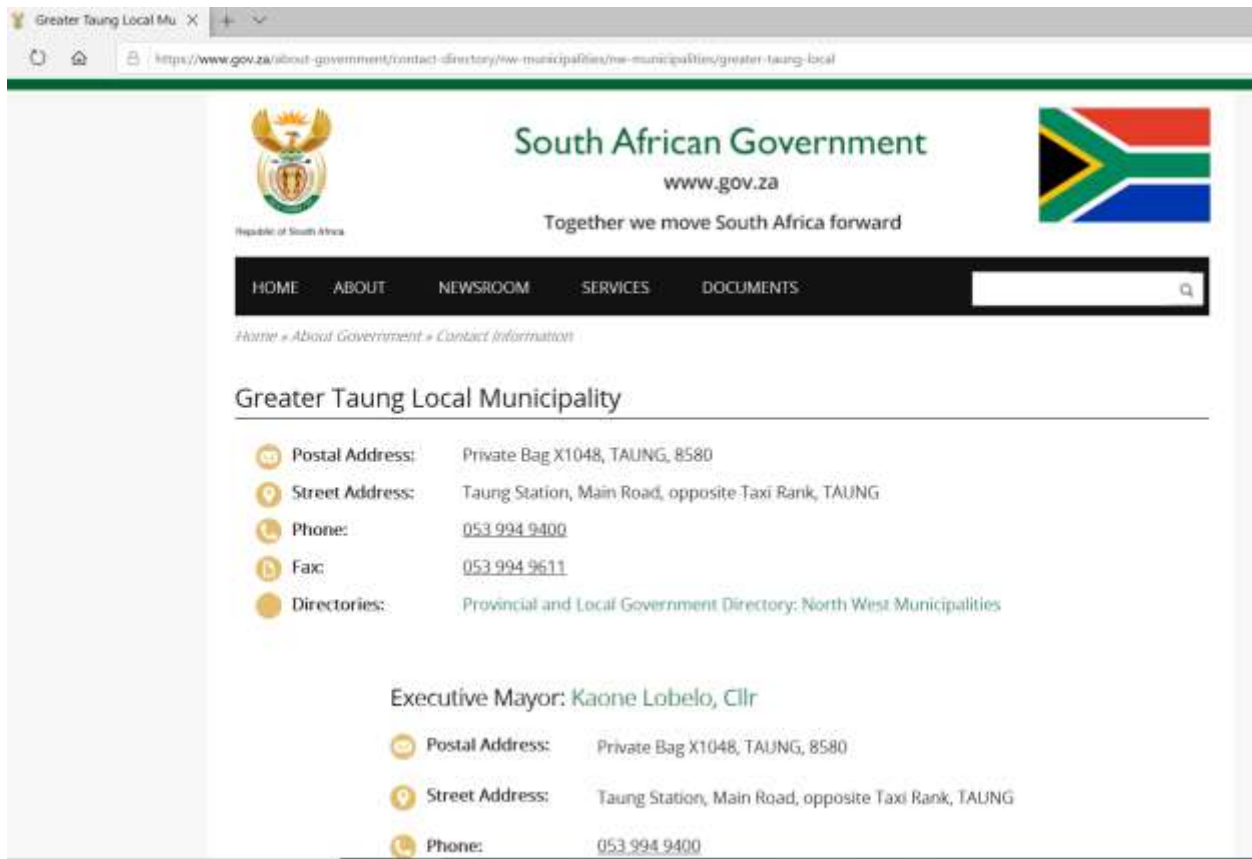


Figure 4.8: Screenshot of the website of the Greater Taung Local Municipality

In the Western Cape, three municipalities were chosen, that is, Witzenberg Local Municipality with no mention of the PAIA, but contact details of information officer provided; George Local Municipality with the PAIA manual available in English only, And the information officer being listed as the municipal manager, while the records manager is indicated as the DIO; and the City of Cape Town Metropolitan Municipality (city) which had a PAIA manual available in English only. There was also a list of automatic disclosure of records available. The DIO is appointed with the job title: manager: access to information unit. The website of the city also indicates that the

city was awarded a golden key award by the SAHRC and Open Democracy Advice Centre for best practice in the implementation of the PAIA.

#### **4.2.3 Process to facilitate access**

As Ngoepe (2008) would attest, access to government information can be greatly facilitated by the development, implementation and maintenance of functional records classification systems in public bodies. As indicated, public bodies with PAIA manuals only listed broad categories of records without linking this to the file plan. A study by Ngoepe and Van der Walt (2010) also found similar results and mentioned the following as a problem for poor PAIA implementation:

- Lack of guidelines with regard to requests in terms of the PAIA
- Poor record-keeping systems
- Miscommunications between the legal services unit and the records management unit as to whom should take the lead in terms of implementing the PAIA in governmental bodies
- Legal services failing to advise in time on whether access to records could be granted
- In one instance, a file plan was requested in terms of the PAIA but the department did not have an approved file plan and thus contravened section 13 (2) (b) (i) of the NARSSA Act

Many manuals just provide the generic requirements for processing of PAIA requests. The participants from the Gauteng province did not seem to understand the question of incorporating a classification system (file plan) into the PAIA manual. In response to the file plan question, the participants referred the researcher to the prescripts of the NARSSA Act, but did not understand that in listing the automatically available records in their department, a file plan must be followed. One other participant mentioned that a file plan was incorporated into the actual Act only because that is what they use, not a manual.

#### **4.2.4 Implications of access to information for transparency, accountability and good governance**

FOI is significant for transparency, accountability and good governance (Lowry 2014). Open access to information is an essential tool for combating inefficiency in the machinery of the state and for the assertion of human rights. Access to archives is essential for ensuring long-term



accountability and the learning of lessons from past events and past errors. FOI law aims at improving the efficiency of the government and increasing the transparency of its functioning by:

- regularly and reliably providing government documents to the public
- educating the public on the significance of transparent government
- facilitating appropriate and relevant use of information in people's lives.

In some countries, it is part of the government's constitutional reform agenda. It provides an opportunity to find out what publicly funded bodies do and how they do it. FOI has been linked to improved accountability, better service delivery, and greater investor confidence.

Informing the public of their rights and promoting a culture of openness within government are essential if the goals of FOI legislation are to be realised. Implications of the PAIA to accountability, transparency and good governance as identified by the participants include the following:

- Citizens will not know the agenda of government.
- The PAIA can be utilised as the vehicle to ensure accountability and transparency.
- Access to information will enable the public to understand functions and decision-making processes.
- All information which cannot be protected in terms of section 12 grounds for PAIA are released when requested by members of public.
- In terms of an employee in a public body, upon challenging decisions that affect them, staff use the PAIA to request documents if they are denied access.

#### **4.2.5 Recommendations for compliance with FOI**

Scholars made a number of recommendations that can facilitate compliance with FOI. For example, Adu (2013) calls for the establishment of a central executive agency designated to oversee the implementation and functioning of the law and says that ministers should have no business in the review of applications and the compilation of a list of publicly accessible

information. For information to be provided, there must be independent bodies set to ensure that governments do not rob citizens of this right and that citizens do not abuse this right. This indicates the need to have independent bodies looking into information access issues. Zimbabwe and South Africa have created commissions in the form of the Zimbabwean Media Information Commission and the SAHRC (Khumalo et al 2016). The Botswana Draft FOI Bill has no provisions for the establishment of any independent and autonomous oversight body specialising in transparency and access to information to resolve disputes under the legislation (Sebina 2006). Dominy (2017) is of the view that the NARSSA should be moved to the newly established Information Regulator in order for the organisation to receive the recognition it deserves. This view is supported by Mullan and Ngoepe (2019) who went a step further to recommend that information governance should be mapped at the national level and then be cascaded down to organisational level. In this way, the Information Regulator would ideally be responsible for all information management functions, including access to information and records management at national level. At organisational level, each public body would have an information management unit that is also responsible for the PAIA. One participant recommended that training be provided to municipalities, in particular on the functions of the PAIA, because compliance remains poor. Senior management buy-in was also another recommendation by the participants. It was further recommended that training should be provided to the Department of Education in terms of the public schools to ensure compliance with access to information requests.

### **4.3 Discussions**

From the data presented, it is clear that responsibilities at the national level is assigned mostly to the deputy directors general. In almost all public bodies, PAIA implementation is seen as the responsibility of legal sections. It was only on one occasion where the records manager was assigned the responsibility of deputy information officer. One wonders why other pieces of legislation are not implemented by legal services as the researcher is of the view that the PAIA should be the responsibility of the records management unit which has an idea of what records exist in the organisation, where they are kept and how they are kept.

Indeed, in many public bodies, records managers were not designated as deputy information officers, which created confusion in terms of the proper implementation of the PAIA. To these

officials to whom PAIA responsibilities are assigned, these functions are just an add on and performed at on an ad hoc basis, hence the PAIA is just for compliance purposes. As a result, the purpose of the PAIA which is to “promote transparency, accountability and good governance in the public bodies by empowering and educating the citizens to understand and exercise their rights; understand the functions and operations of public bodies; and effectively scrutinise and participate in decision-making by public bodies that affects their rights” is not fulfilled, as public bodies only tick boxes. The study has established that the PAIA in public bodies is managed by the legal departments, while in others, it is either IT or to a lesser extent, records management departments. According to Mullon and Ngoepe (2019), this may be due to the absence of a national framework to guide the implementation at the organisational level. Dominy (2017) suggests that the Information Regulator should also be assigned the mandate of records management to ensure that the organisation manages information holistically. It would seem that public officials are not aware of their responsibilities with regard to PAIA implementation as it is not clearly communicated.

It is clear that one of the major weaknesses that have surrounded the implementation of the PAIA is the assumption that public officials would somehow, automatically, be aware of, and educated about, the PAIA. Indeed, there are no provisions contained in the PAIA for specific awareness raising and educational programmes directed towards either public or private officials. The only provision made in the PAIA is for the SAHRC ‘to encourage public and private bodies to participate in the development and conduct of programmes’ that SAHRC is directed to undertake among the general public (section 83(2)(b)). Therefore, it should come as little surprise that 20 years later, the state of awareness and education around the PAIA is the greatest responsibility for human resource development to ensure the effective implementation of the PAIA. These issues have been raised by practitioners and scholars such as Dominy (2005) and McKinley (2003) in the early days of PAIA implementation. Dominy (2005) is of the view that while PAIA specifies the procedures to be followed when the public requires access to state information, it does not dovetail with the archival legislation. This Act governs how to manage the records from which the PAIA-requested information must be derived. Joint action in developing information access policies and record-keeping policies across government would have been invaluable, but there is a lack of political direction and legislative cohesion, as can still be seen in the Department of Arts and Culture’s revised White Paper on archives (Dominy 2017). Twenty years later, the statuesque still

remains the same. Without knowledgeable and well-trained personnel throughout government departments, who understand both the content and processes of PAIA, the 'promise' of realising the right of access to information for ordinary South Africans will be stillborn. A critical synopsis of the state of human resource development within government since the operationalisation of the PAIA reveals, for the most part, a public sector that remains wholly unprepared, under-equipped and under-resourced.

National archival legislation and provincial legislation, where applicable, requires all departments to have the file plans approved by the NARSSA or by provincial archives. The PAIA also requires all public bodies to have access to information manuals which serve to guide citizens on how to access records in the various departments. When this was first implemented, the NARSSA advised government offices with approved file plans that such plans should form part of their PAIA manuals (Dominy 2017). Although this was endorsed by the SAHRC, it has not been widely implemented within government, answering that access to information requests is time-consuming, labour intensive and assessing what can be released and what should be withheld requires experience and skills (Dominy 2017). Only one public body had linked its PAIA manual to the file plan. It is clear that public bodies do not know the importance of a file plan to the implementation of the PAIA. If records managers were assigned the responsibilities of PAIA implementation, they would have made sure the file plan is embedded in the manual or reference to the file plan is made in the manual.

While national government departments had a compliance rate of over 50% in all the years with the highest of 86% 2011/12, the compliance rate of the provinces has been fluctuating over the years, being low in the first years and increasing from 2011/12 to more than 50%. Data from the reports clearly show a high compliance rate from three provinces, that is, Limpopo, Free State and Western Cape. Department of arts and culture KZN also showed compliance with regard to PAIA manuals in three or more languages.

However, compliance by the municipalities has been very low, reaching more than 50% only twice during a ten-year period in 2011/12 and 2014/15. The PAIA is not seen as a priority at municipality level. This manifested itself during the interviews as the researcher was sent from pillar to post

when looking for the person responsible for the PAIA. Most of the people who answered the call would start asking what PAIA is.

It would seem that a lack of punitive actions also contributed to low compliance rate. For example, in terms of the PAIA, an information officer who fail to compile a section 14 manual is liable upon conviction, to a fine or two years' imprisonment. This researcher has not read or found any information indicating that an information officer was arrested or fined for non-compliance with PAIA, yet many municipalities are not complying. This may also be attributed as one of the reasons why the PAIA is not taken seriously by public bodies, yet it is a tenant of democracy. It is a tool to ensure that public bodies are transparent and accountable to the electorate and to ensure that they manage their affairs in an open manner. This would in turn strengthen the democracy.

#### **4.4 Summary**

This chapter presented and analysed data collected through SAHRC reports, public bodies' websites and interview responses from participants who formed part of the population of the study. The SAHRC reports covered PAIA's section 32 reporting requirements from all public bodies. Public bodies' websites were searched to establish whether a manual exists and whether it meets the prescripts of sections 14, 15, 16 and 17. The findings were presented according to the objectives that informed the study. The following chapter will provide a summary of findings, conclusions and recommendations of this study.

## CHAPTER FIVE

### SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 Introduction

The previous chapter analysed and presented the data, and provided the interpretation, as well as the discussions of the findings. This chapter summarises the findings and provides the conclusions of the study and recommendations. The chapter is necessary for the purpose of concluding, restating the findings of the study and to draw the implications of the findings for the research objectives at hand. It can therefore be said that a conclusion looks backward for refining in short precisely what has been accomplished in each phase of the research activity (Kalusopa 2011:263). As Leedy and Ormrod (2010:296) would attest, in the conclusion, all loose threads are gathered together as, in the end, research must come full circle to its starting point. In this chapter, findings, conclusions and recommendations are presented based on the information obtained from literature review, as well as document analysis and interviews.

#### 5.2 Summary of findings

The findings of this study suggest that the responsibility of PAIA implementation in public bodies in South Africa is assigned to legal services on an ad hoc basis. Officials from these sections do not have an idea of how records are kept in order to fulfil PAIA requests. As a result, file plans that are propagated by the NARSSA are not reflected in the PAIA manuals. It has also been established that records management practitioners are excluded from PAIA implementation. One of the most overlooked but most crucial elements in the effective implementation of the PAIA is the management of records. Without proper classification systems, records are haphazardly mined for information needed by the new officials then dumped back (Dominy 2017).

While compliance is high in national government departments with regard to submission of section 32 reports and publication of manuals on the websites, the same cannot be said about provincial departments and municipalities. However, compliance was high for provincial departments in three provinces, that is, Limpopo, Free State and Western Cape, with KZN trying hard, especially regarding manuals in three or more languages. It should be stated that most public bodies,

including at national level, had the PAIA manual in only one language. Furthermore, many public bodies have not mapped PAIA processes. As a result, it was not easy for a member of the public to find help when requesting information. This is compounded by the fact that members of the public also do not know their rights in terms of section 32 of the Constitution of the Republic of South Africa.

From the study it can be argued that the implementation of FOI is central to the achievement of transparency, accountability and good governance. The study established that the PAIA is a mechanism for access to information, whether in terms of a request or proactively. The access depends on the creation and accessibility of records or proper record-keeping. However, it should be noted that records management is the responsibility of another legislation, that is, the National Archives and Records Services of South Africa Act.

### **5.3 Conclusion of research objectives**

It is clear from the study that having FOI legislation does not necessarily translate into information being readily and willingly made accessible. Indeed, as shown through PAIA, what may be highlighted in FOI legislation may be different from what is happening on the ground. Having the perfect FOI legislation as is the case with PAIA, which is lauded abroad, amounts to nothing if citizens do not make use of it. For example, the Regional Conference on Freedom of Information in Africa (2010) notes that South Africa's citizens simply do not seem to be making significant use of their right to know. South Africans' usage of the PAIA remains low and limited mainly to civil society organisations. A number of factors may contribute to the low usage of the PAIA. There is a need for information officers as stipulated in the PAIA to facilitate the process. However, the SAHRC (2009) has noted that rather than create positions designed to deal exclusively with access to information requests, most government departments at national, provincial and municipal levels tend to assign PAIA duties to their respective personnel on an ad hoc basis in addition to main job responsibilities.

In most public bodies, dedicated staff are needed to see to it that there are proper finding aids to facilitate access. However, the lack of dedicated resources and widespread poor records management practices have combined to hinder the development of manuals by the majority of

public bodies as there is a low level of compliance. Lack of implementation capacity in municipalities is clearly a serious problem. Officials who are responsible for PAIA implementation in most governmental bodies have been assigned additional responsibilities. Some are even not aware of the Act with no experience or expertise in records management. As Harris (2007) would question, what value is the right of access to records, when records are not created or managed properly in public bodies.

To facilitate the identification of records, all public bodies are required to publish a manual in terms of section 14, to act both as an index of records held by public bodies and as a guide for requesters. As discussed, the manual describes the procedure to be followed when requesting records. Furthermore, it lists records that are available without using the PAIA to request them. The NARSSA-approved file plan is used as an index by the requester to see what records are in the custody of public bodies. Therefore, one can argue that successful implementation of the PAIA solely depends on compliance with the National Archives of South Africa Act (Act No. 43 of 1996), even though most manuals that have been analysed, do not make reference to the file plan. These manuals must be in at least three South African languages, even though it was not the case in the findings of this study. Mostly, public bodies compiled categories of records that are readily available without being requested in terms of the PAIA and included it in the section 14 manuals.

It is clear that if records are not managed according to a classification system that complies with archivally determined principles, there would be difficulty in locating information, leading to the PAIA being a dead epistle. The constitutional rights it seeks to uphold will therefore not be guaranteed. Partial implementation of an RTI law can lead to positive actions in some contexts. For example, in Pakistan, where a relatively weak law has been implemented, its existence has led to greater transparency through posting of individuals' tax information online (Leimeux 2015).

One of the most overlooked but most crucial elements in the effective implementation of the PAIA is the management of records. The results clearly indicate that while FOI relies heavily on records management, most people who are responsible for its implementation are not aware of the intricacies of records management. FOI legislation cannot be implemented if public bodies do not know what information they hold, and where it is kept (Lowry 2014). It is only through proper



records management that this can be alleviated. It is therefore vital to know what information is held throughout the organisation. This can be possible through the file plan that reflects the activities of an organisation.

#### **5.4 Recommendations**

Access to information can be implemented if the responsibilities are assigned to the right people. It is essential that government departments should implement and maintain proper records classification systems to manage records from their point of creation to their ultimate disposal. A culture of good record-keeping across government should also be inculcated. PAIA responsibilities should be clearly defined and assigned in the public bodies. Once the responsibilities are assigned, these people should be trained in access to information. Clearly defined arrangements for exemptions and closure decisions which are subject to appeal should be set. Under the Act, a record should be available for access as soon as it is received or transmitted by a public body, unless the law restricts it.

All the FOI procedures must cover the monitoring and tracking of requests for information from the public. This, according to Lowry (2014:150-151), is important for various reasons such as “consistency in disclosure decisions, handling of complaints and appeals, production of management information, the ability to redirect the requests (In SA with regarding to transfer for 14 days), reduce duplication of efforts, reporting and staff time in handling applications”. A central point is recommended in each public body where requests can be directed and tracking systems managed. This study suggests that such central point can be information governance which includes functions such as records management, information management, information technology and others. Access to the tracking system can be directed to those who answer information access requests.

This study proposes a model for implementation of PAIA in a public body (see figure 6.1). As reflected in figure 6.1, responsibilities of overall implementation of the PAIA in a public body should be assigned formally through a letter to a records manager (see annexure E for a sample of such a letter). The overall responsibility will then sit in the unit for information governance. This unit will be responsible for policies and manuals and will oversee compliance with the PAIA by

the public body. Heads of other portfolios will be responsible for the PAIA within their units, using policies designed by the information governance. The information governance would then report annually to the Information Regulator with regard to the PAIA and the NARSSA Act with regard to records management. Ideally, as Mullon and Ngoepe (2019) and Dominy (2017) would attest, the regulatory role of records management would best be placed under the newly established Information Regulator as compared to the NARSSA, which currently does not have effective teeth to bite or is less recognised by the state.

The information governance unit would then have a duty to raise awareness within the public body through training by the deputy information officer and to some extent, the Information Regulator. In this regard, training manuals and brochures summarising policies and manuals can be developed. PAIA activities within a public body would then be audited annually to ensure compliance. Finally, the Information Regulator should sanction punitive action to non-complying public bodies.

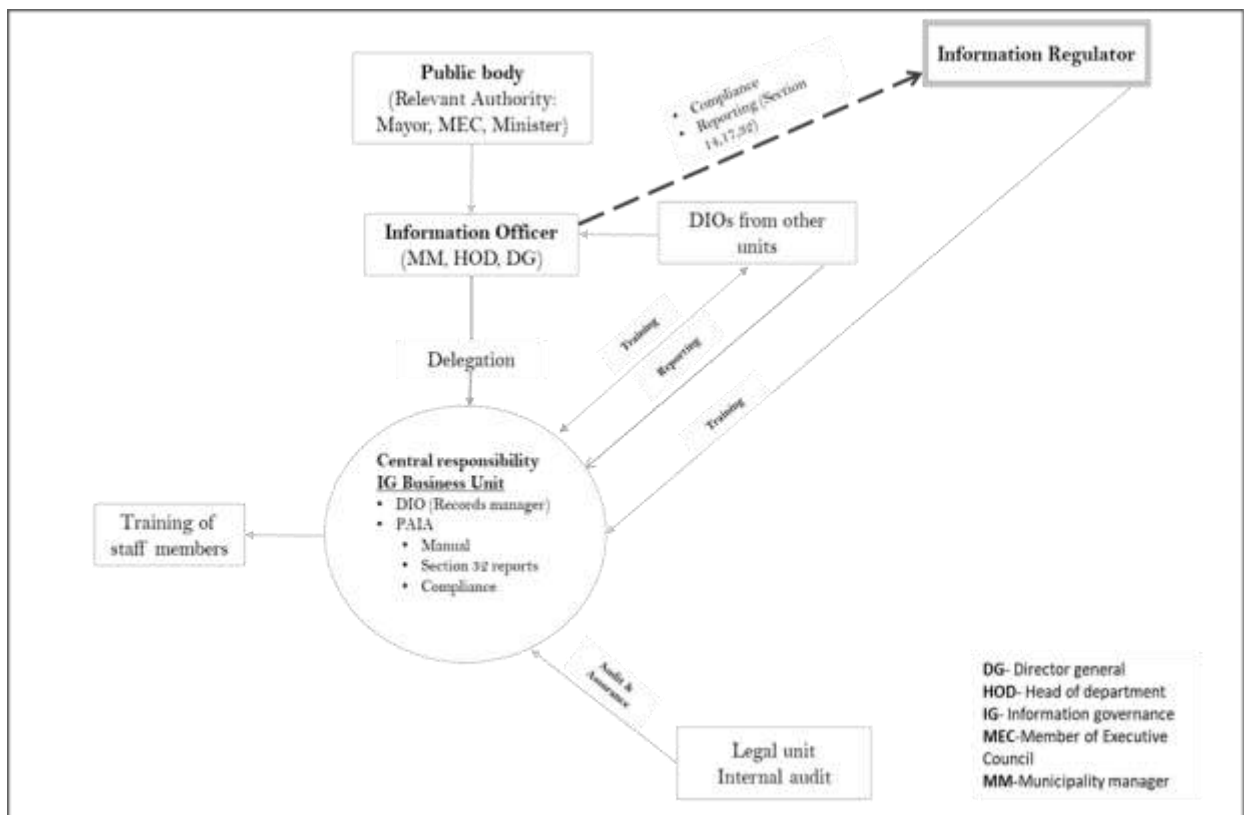


Figure 5.1: A model for implementation of PAIA in a public body (Research 2020)

## **5.5 Final conclusion**

It is clear that a public sector that remains wholly unprepared, under-equipped and under-resourced would not be able to implement FOI legislation. As a result, this will have negative implications on accountability, transparency and good governance. From the study, it is fair to say that only once FOI laws have been effectively implemented can public bodies truly achieve their full promise as citizens will have access to and participate in decisions made by the government. In many countries, including South Africa, as highlighted in this study, unfortunately, overwhelming evidence suggests that effective implementation of the laws continues to present serious challenges and that full realisation of the anticipated benefits associated with access to information remain elusive.

It is clear that South Africa has a long way to go in terms of PAIA implementation. It has been 20 years since the Act was enacted but public bodies are not complying with basic requirements. As it has been seen, few public bodies have implemented section 14 of the PAIA, let alone submitted section 32 reports to the oversight mechanism; which was previously the SAHRC and is now the Information Regulator. Similar to what Ngoepe (2012) found in his study in relation to records management and auditing, using the degree of comparison, the situation is better in national departments in terms of compliance, worse in provincial departments and worst in municipalities. Dominy (2017) states it differently, the national government struggles for resources, but the provinces struggle even more and the municipalities, which are at the coalface of service delivery, struggle the most as local government in South Africa is in a profound crisis, and municipal record-keeping is equally bad. This will not in any way assist with the implementation of the PAIA. Finally, it is concluded that failure to assign responsibility to a relevant unit would perpetuate the non-compliance with FOI legislation in South Africa. As a result, accountability, transparency and good governance preached by the public sector to advance democracy in South Africa would be a mirage. With the Protection of Personal Information Act (No. 4 of 2013), known as POPIA, it remains to be seen how access to information and right of privacy could be balanced. Therefore, a further study on balancing access to information and right of privacy is recommended.

## References

- Ackerman, J.M. & Sandoval-Ballesteros, I.E. 2006. The global explosion of freedom of information laws. *Admin. L. Rev.* 58: 85.
- Adu, KK. 2013. Ghana's Right to Information Bill: an opportunity for the implementation of digital preservation infrastructure. *Journal of Emerging Trends in Computing and Information Sciences* 10(4): 795-799.
- Adu, KK. 2018. The paradox of the right of information law in Africa. *Government Information Quartely* 1-14. In Press.
- Alasuutari, P, Bickman, L & Brannen, J. 2008. *The sage handbook of social research methods*, London: Sage.
- Archival Platform. 2015. State of archives: an analysis of South Africa's national archival system. Available at: [www.archivalplatform.org/news/entry/executive\\_summary/](http://www.archivalplatform.org/news/entry/executive_summary/) (accessed 4 April 2019).
- Apfelroth, J. 2006. The open government act: a proposed bill to ensure the efficient implementation of the freedom of information act. *Admin. L. Rev* 58: 219.
- Arko-Cobbah, A. & Olivier, C.D. 2016. South Africa's access to information legislation and socio-economic rights: civil society and meaningful engagement as drivers, *Mousaion* 34(1): 149-172.
- Asogwa, BE., Ezema, IJ. 2017. Freedom of access to government information in Africa: trends, status and challenges. *Records Management Journal* 27(3): 318-338.  
<https://doi.org/10.1108/RMJ-08-2015-0029>
- Beck, S.E. & Manuel, K. 2008. *Practical research methods for librarians and information professionals*. New York: Neal-Schuman Publishers.
- Bryman, A. 2012. *Social research methods*. New York: Oxford University Press.
- Currie, I. & Klaaren, J. 2002. The Promotion of Access to Information Act Commentary. *Siber Ink: Claremont*.
- Creswell, J.W. 2014. *Research design: Qualitative, Quantitative and Mixed Methods Approaches*. Thousand Oaks: Sage publications.
- Creswell, J.W. & Miller, D.L. 2000. Determining validity in qualitative inquiry. *Theory into practice* 39(3):124-130.

- Creswell, J.W. 2006. *Qualitative inquiry and research design: choosing among five Approaches*. Thousand Oaks: Sage publications.
- Creswell, J.W. & Plano Clark, V.L. 2011. *Designing and conducting mixed methods research* Thousand Oaks, CA: Sage.
- Darch, C. & Underwood, P.G. 2005. Freedom of information legislation, state compliance and the discourse of knowledge: The South African experience. *The International Information & Library Review* 37:77–86.
- De Vos, A.S., Delpont, C.S.L., Fouché, C.B. and Strydom, H. 2011. *Research at grass roots: A primer for the social science and human professions*. Pretoria: Van Schaik Publishers.
- Dick, A.L. 2005. Power is information: South Africa's Promotion of Access to Information Act in context. *Mousaion* 23(1): 1-18.
- Dominy, G. 1991. Access to State Archives improves: where to now? *South African Historical Journal* 25(1): 354-355, <https://doi.org/10.1080/02582479108671961>
- Dominy, G. 2005. We must remember our past so that we do not repeat it’’: archiving and accessing the records of South Africa’s truth and reconciliation commission. *Comma* 1:1–7.
- Dominy, G. 2013. Overcoming the apartheid legacy: the special case of the Freedom Charter. *Archival Science* 13: 195–205. DOI 10.1007/s10502-012-9182-5
- Dominy, G. 2017. The effects of an administrative and policy vacuum on access to archives in South Africa. *Archival Science* 17(1): 393-408. DOI: 10.1007/s10502-017-9282-3
- Ebrahim, F. 2010. The promotion of access to information act- a blunt sword in the fight for freedom of information? MAs Dissertation, University of the Western Cape, Cape Town.
- Edward, S & McLeod, J. 2004. Is the Freedom of Information Act driving records management in further education colleges? *Records Management Journal* (14) 1:40-50.
- Fleckner, J.1991. “Dear Mary Jane”: Some Reflections on Being an Archivist. *The American Archivist*, 54(1): 8-13.
- Flick, U. 2014. *An introduction to qualitative research*. London. Sage Publications Limited.
- Florini, A. 2007. *The Right to Know: transparency for an open world*. Columbia University Press. Available at: <https://cup.columbia.edu/book/the-right-to-know/9780231141581> (accessed 20 September 2018).

- Harris, V. 2002. The archival sliver: power, memory, and archives in South Africa. *Archival Science* 2(1-2): 63-86.
- Harris, V. 2007. Using the Promotion of Access to Information Act (PAIA): the case of the South African History Archive. In V. Harris (ed). *Archives and justice: a South African perspective* Chicago: American Society of Archivists, pp. 337-350.
- Hazell, R. & Worthy, B. 2010. Assessing the performance of freedom of information. *Government Information Quarterly* 27: 352–359.
- Johnston, M. 2006. *Good governance: rule of law, transparency, and accountability*. New York: United Nations Public Administration Network. Available at: [https://www.researchgate.net/publication/267974525\\_Good\\_Governance\\_Rule\\_of\\_Law\\_Transparency\\_and\\_Accountability/citations](https://www.researchgate.net/publication/267974525_Good_Governance_Rule_of_Law_Transparency_and_Accountability/citations) (accessed 19 September 2018).
- Kaka, J.C. 2016. Implementation of Promotion of Access to Information Act at the Department of Sport, Arts and Culture in Limpopo province. MA Dissertation, University of Limpopo, Turfloop.
- Kalusopa, T. 2011. Developing an e-records readiness framework for labour organisations in Botswana. PhD Thesis. Pretoria, University of South Africa.
- Katuu, S. 2011. Freedom of information legislation: implementation in Africa. Available at: [https://www.researchgate.net/profile/Shadrack\\_Katuu/publication/322301296\\_Freedom\\_of\\_Information\\_in\\_Africa/links/5a5231b7aca2725638c5f3cb/Freedom-of-Information-in-Africa.pdf](https://www.researchgate.net/profile/Shadrack_Katuu/publication/322301296_Freedom_of_Information_in_Africa/links/5a5231b7aca2725638c5f3cb/Freedom-of-Information-in-Africa.pdf) (accessed 20 September 2018).
- Katuu, S.A. 2015. Managing records in South African public health care institutions: a critical analysis. PhD Thesis, University of South Africa, Pretoria.
- Kennedy, C. 2017. International best practice on access to information and record management. In *Experts Meeting on ATI & Elections and ATI & Record-keeping*, Centre for Human Rights, Pretoria, 24-27 May.
- Khumalo, N.B., Bhebhe, S. & Mosweu, O. 2016. A comparative study of freedom of information legislation in Botswana, South Africa and Zimbabwe. *Mousaion* 34 (4): 108-131.
- Kim, S.J. & Jeong, D.Y. 2006. An analysis of the development and use of theory in library and information science research articles. *Library & Information Science Research* 28(4): 548–562.

- Kirkwood, C. 2002. The promotion of access to information act (PAIA) and the national archives of South Africa act. *ESARBICA Journal* 21, 2–16.
- Kisson, C. 2010. *Ten years of access to information in South Africa: some challenges to the effective implementation of PAIA*. Cape Town: Open Democracy Advice Centre.
- Klaaren, J. 2010. Promotion of access to information through the courts: case law and important developments in PAIA Litigation. Available at: <http://www.saflii.org/za/cases/ZAGPPHC/2014/240.html> (accessed 16 August 2018).
- Kothari, C.R. 2004. *Research methodology: methods and techniques*. New Delhi: New Age International (P) Limited Publishe
- Kozak, G. 2015. Access/Accessibility. In L Duranti & PC Franks (Eds). *Encyclopedia of archival science*. Lanham: Rowman & Littlefield, 1-3.
- Kumar, R. 2011. *Research methodology: a step by step guide for beginners*. California: SAGE Publications Ltd Thousand Oaks.
- Leedy, P.D. & Ormrod, J.E. 2010. *Practical research: planning and design*. 9th ed. Boston: Pearson Education International.
- Lemieux, V. 2015. *Digital dividends: one step forward, two steps backward: does e-government make governments in developing countries more transparent and accountable?* New York: World Bank.
- Lemieux, V.L. & Trapnell, S.E. 2016. *Public Access to Information for Development: A guide to the effective implementation of right to information laws*. New York: World Bank.
- Lowry, J. 2014. Opening government: open data and access to information. In Lowry, J and Wamukoya, J (eds). *Integrity in government through records management: essays in honour of Anne Thurston* Ashgate: Farnham, 161 – 172.
- Mackenzie, N. & Knipe, S. 2006. Research dilemmas: Paradigms, methods and methodology. *Issues in Educational Research* 16(2): 193
- Makhura, M. & Ngoepe, M. 2006. Assessing the extent of compliance with regard to National Archives and Records Service of South Africa Act and Promotion of Access to Information Act: implications for good governance and accountability. *ESARBICA Journal* 25: 128-138.
- Maluleka, J.R. 2014. Research Collaboration in Library and Information Science Schools in South Africa, MINF dissertation. University of South Africa, Pretoria.

- Mangan, L.C. & Gardner, B. 2004. Combining quantitative and qualitative methodologies in logistics research. *International Journal of Physical Distribution & Logistics Management* 34 (7): 565-578.
- Marutha, N.S. 2016. A framework to embed medical records management into the healthcare service delivery in Limpopo Province of South Africa. PhD Thesis, University of South Africa, Pretoria.
- Matangira, M. & Lowry, J. 2013. Government records management and access to information: reflections on the 2013 Integrity Action Summer School. *Journal of the South African Society of Archivists* 46:1-4
- Mazikana, P. 1999. Access to records: conditions and constraints, in V Harris (ed). *Proceedings of the XVth General Biennial Conference of the Eastern and Southern African Regional Branch of the International Council on Archives*, Zanzibar, 26-30 July 1999, Pretoria: ESARBICA, pp. 74-81.
- Mendel, T. 1999. The public's right to know: principles on freedom of information legislation, Article 19. Available at:  
<https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>  
 (accessed 10 May 2018).
- McKinley, DT. The State of Access to Information in South Africa. Centre for Study of Violence and Reconciliation, July 2003. Available at:  
<http://www.csvr.org.za/papers/papmckin.htm> (accessed 26 June 2019).
- Mojapelo, M.G. 2017. Contribution of selected chapter nine institutions to records management in the public sector in South Africa. MINF Dissertation, University of South Africa, Pretoria.
- Mojapelo, M. & Ngoepe, M. 2017. The role of the South African Human Rights Commission to records management in the public sector in South Africa. *Journal of the South African Society of Archivists* 50: 28-55.
- Morgan, D.L. 2007. Paradigms lost and pragmatism regained: methodological implications of combining qualitative and quantitative methods. *Journal of Mixed Methods Research* 1(1): 48-76.
- Mosweu, T & Mosweu, O. 2020. Research methodologies used in library and information studies masters' degree dissertations at the University of Botswana. In P Ngulube(ed). A



- handbook of research on connecting Research Methods for Information Science Research*. Hershey, PA. IGI Global, pp.101-124.
- Mullon, P & Ngoepe, M. 2019. An integrated framework to elevate information governance to a national level in South Africa. *Records Management Journal* 29 (1/2): 103-116
- Mutula, S. & Wamokoya, JM. 2009. Public sector information management in East and Southern Africa: Implications for FOI, democracy and integrity in government. *International Journal of Information Management* 29: 333–341
- Neuman, L. & Calland, R. 2007. Making the access to information law work: The challenges of implementation. In A. Florini (Ed.). *The Right to Know*. United States of America: Columbia University Press, 1-29.
- Neuman, L. 2014. *Social Research Methods: Qualitative and Quantitative Approaches*. Pearson Education Limited.
- Ngoepe, M. 2016. Records management models in the public sector in South Africa: is there a flicker of light at the end of the dark tunnel? *Information Development* 32(3): 338-353.
- Ngoepe, M.S. 2012. Fostering a framework to embed the records management function into the auditing process in the South African public sector. PhD Thesis, University of South Africa, Pretoria.
- Ngoepe, M. 2009. Organising records public records to achieve service delivery: the role of the national archives and records service of South Africa's functional subject file plan in government departments. *ESARBICA* 28:52-77.
- Ngoepe, M.S. 2008. An exploration of records management trends in the South African public sector: a case study of the department of provincial and local government. MINF Dissertation, University of South Africa, Pretoria.
- Ngoepe, M. & Van Der Walt, T. 2009. An exploration of records management trends in the South African public sector. *Mousaion* 27(1): 116-136.
- Ngoepe, M. & Van der Walt, T. 2010. A framework for a records management programme: lessons from the Department of Cooperative Governance and Traditional Affairs in South Africa. *Mousaion* 28(2): 83-107.
- Ngulube, P. 2020a. The movement of mixed methods research and the role of information science professionals. In P Ngulube(ed). *A handbook of research on connecting Research Methods for Information Science Research*. Hershey, PA. IGI Global, pp. 425-

455.

- Ngulube, P. 2020b. Theory and Theorising in Information Science Scholarship. In P Ngulube(ed). *A handbook of research on connecting Research Methods for Information Science Research*. Hershey, PA. IGI Global, pp. 18-39.
- Ngulube, P. & Ngulube, B. 2015. Mixed methods research in the South African Journal of economic and management Sciences: An investigation of trends in the literature. *South African Journal of Economic and Management Sciences* 18(1):1-13.
- Ngulube, P. (2005). Research procedures used by Master of Information Studies students at the University of Natal in the period 1982–2002 with special reference to their sampling techniques and survey response rates: A methodological discourse. *The International information & library review* 37(2): 127-143.
- Onyancha, O.B. & Ngoepe, M. 2011. The protection of Information Bill and access to information in South Africa: an informetric study of the media coverage. *ESARBICA Journal* 30: 211-237.
- Peekhaus, W. 2011. Biowatch South Africa and the challenges in enforcing its constitutional right to access to information. *Government Information Quarterly* 28(4): 542-552.
- Pettigrew, K.E. & McKechnie, L. 2001. The use of theory in information science research. *Journal of the American society for information science and technology*, 52(1):62-73.
- Pickard, A.J. 2013. *Research methods in information*. London: Facet publishing.
- Republic of South Africa. 1996. *Constitution of the Republic of South Africa*. Government Printers, Pretoria.
- Republic of South Africa. 1996. *National Archives and Records Services of South Africa Act, No 43 of 1996*. Government Printers, Pretoria.
- Republic of South Africa. 2000. The Promotion of Access to Information Act, No 2 of 2000.
- Roberts, B. 2000. Prerequisites for the successful implementation of the Promotion of Access to Information Act 2 of 2000. *Journal of Public Administration* 41(2.1): 231-240.
- Roberts, B. 2006. Scope of the Promotion of Access to Information Act 2 of 2000: a comparative perspective. *Politeia* 25(2): 117-131.
- Robinson, J.P. 1974. Public opinion during the Watergate crisis. *Communication Research* 1(4): 391-405.
- Salgado, I. 2013. Data and democracy: Africa's access to information laws: Africa-wide-

- monitoring economies. *Africa Conflict Monthly Monitor* June: 16-19.
- Sarantakos, S. 2013. *Social research*. 4th ed. Palgrave Macmillan.
- Sebina, P.M. 2006. Freedom of information and records management—a learning curve for Botswana. PhD Thesis, University College London, London.
- Sebina, P. 2004. Freedom of information, records management and good governance: any symbolic relationships? *ESARBICA Journal*, 23:60-67.
- Shepherd, E. & Stevenson, A. 2010. Information governance, records management, and freedom of information: a study of local government authorities in England. *Government Information Quarterly* 27(4): 337-345.
- Singleton, R.A. & Straits, B.C. 2010. *Approaches to social research*. 5<sup>th</sup> ed. New York: Oxford University Press.
- Smith, K. 2014. The importance of records in the right to information. In Lowry, J and Wamukoya, J (eds). *Integrity in government through records management: essays in honour of Anne Thurston* Ashgate: Farnham, 149-160.
- Svärd, P. 2018. Has the Freedom of Information Act enhanced transparency and the free flow of information in Liberia? *Information Development* 34(1): 20-30.
- Ukwoma, SC. & Ngulube, P. 2019. Obstacles to the Utilization of Institutional Repositories by Academics in Higher Education in Nigeria. *Webology* 16(1): 138-150
- Van Wyk, T. 2016. ‘Don’t blame the librarian if no one has written the book’: my vote counts and the information required to exercise the franchise. Available at: <http://www1.saflii.org/za/journals/CCR/2018/18.pdf> (Accessed 1 October 2019).
- Wood, LA. 2011. More than just details: buttressing the right of access to information with information manuals. *South African Journal on Human Rights* 27(3): 558-565.

## **ANNEXURE A: PRINCIPLES ON FREEDOM OF INFORMATION LEGISLATION**

These principles set out standards for national and international regimes which give effect to the right to freedom of information. They are designed primarily for national legislation on freedom of information or access to official information but are equally applicable to information held by inter-governmental bodies such as the United Nations and the European Union. These principles are based on international and regional law and standards, evolving state practice (as reflected, *inter alia*, in national laws and judgments of national courts) and the general principles of law recognised by the community of nations. They are the product of a long process of study, analysis and consultation overseen by Article 19, drawing on extensive experience and work with partner organisations in many countries around the world.

**Principle 1: Maximum disclosure**

**Principle 2: Obligation to publish**

**Principle 3: Promotion of open government**

**Principle 4: Limited scope of exceptions**

**Principle 5: Processes to facilitate access**

**Principle 6: Costs**

**Principle 7: Open meetings**

**Principle 8: Disclosure takes precedence**

**Principle 9: Protection for whistle-blowers**

**ANNEXURE B: LIST OF AFRICAN COUNTRIES THAT HAVE ENACTED FOI (ADU 2018)**

<b>African countries FOI Legislation</b>	<b>Year enacted</b>
1. Angola	2002, 2006
2. Burkina Faso	2015
3. Ethiopia	2008
4. Ivory Coast	2013
5. Kenya	2016
6. Liberia	2010
7. Mozambique	2015
8. Niger	2011
9. Nigeria	2011
10. Guinea Conakry	2010
11. Rwanda	2013
12. Sierra Leone	2013
13. South Africa	2000
14. South Sudan	2013
15. Sudan	2015
16. Togo	2016
17. Tunisia	2011
18. Tanzania	2016
19. Uganda	2005
20. Zimbabwe	2007

## ANNEXURE C: ETHICAL CLEARANCE



### DEPARTMENT OF INFORMATION SCIENCE ETHICS REVIEW COMMITTEE

16 April 2019

Dear Ms Marcia Nkwe

**Decision:**

**Ethics Approval from 16 April  
2019 to 16 April 2024**

DIS Registration #: Rec-160419

References #: 2019-DIS-0013

Name: M Nkwe

Student #: 55717888

---

Researcher(s): Ms M Nkwe

[55717888@mylife.unisa.ac.za](mailto:55717888@mylife.unisa.ac.za)  
012 429 6703

Supervisor(s): Prof M Ngoepe

[ngoepms@unisa.ac.za](mailto:ngoepms@unisa.ac.za)  
012 429 6792

**Compliance with Freedom of Information legislation by public bodies in  
South Africa.**

Qualifications: Masters Study

---



University of South Africa  
Pretter Street, Muckleneuk Ridge, City of Tshwane  
PO Box 392 UNISA 0003 South Africa  
Telephone: +27 12 429 3111 Facsimile: +27 12 429 4150  
[www.unisa.ac.za](http://www.unisa.ac.za)

Thank you for the application for research ethics clearance by the Unisa Department of Information Science Research Ethics Committee for the above-mentioned research. Ethics approval is granted for five years.

The **low risk application** was reviewed and expedited by the Department of Information Science Research Ethics Committee on 16 April 2019 in compliance with the Unisa Policy on Research Ethics and the Standards Operating Procedure on Research Ethics Risk Assessment. The proposed research may now commence with the provisions that:

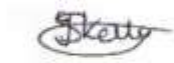
1. The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy of Research Ethics.
2. Any adverse circumstances arising in the undertaking of the research project that is relevant to the ethicality of the study should be communicated in writing to the Department of Information Science Ethics Review Committee.
3. The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.
4. Any changes that can affect the study-related risks for the research participants, particularly in terms of assurances made with regards the protection of participants' privacy and the confidentiality of the data should be reported to the Committee in writing, accompanied by a progress report.
5. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the field of study. Adherence to the following South African legislation is important, if applicable: Protection of Personal Information Act, no. 4 of 2013; Children's Act no. 38 of 2005 and the National Health Act, no. 61 of 2003.
6. Only de-identified research data may be used for secondary research purposes in future on condition that the research objectives are similar to those of the original research. Secondary use of identifiable human research data requires additional ethics clearance.
7. No field work activities may continue after the expiry date of **16 April 2024**. Submission of a completed research ethics progress report will constitute an application for renewal of Ethics Research Committee approval.

*Note:*

*The reference number **2019-DIS-0013** should be clearly indicated on all forms of communication with the intended research participants, as well as the Committee.*



Yours sincerely



Dr Isabel Schellnack-Kelly  
Department of Information Science: Ethics Committee



University of South Africa  
Pretter Street, Muckleneuk Ridge, City of Tshwane  
PO Box 392 UNISA 0003 South Africa  
Telephone: +27 12 429 3111 Facsimile: +27 12 429 4150  
[www.unisa.ac.za](http://www.unisa.ac.za)



## ANNEXURE D: INTERVIEW GUIDE

Instructions for completing the interview schedule

Mark (X) the option relevant to you

Use spaces provided to write your answers to the questions

If the questionnaire is filled by more than one person, please indicate both positions in Question 2.

### A: BACKGROUND INFORMATION

1. In which province is your organisation?

National government	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
Northern Cape	
North West	
Western Cape	

2. Which of the following reflect your organisation?

National government department	
Provincial government department	
Municipality	
Other, specify	

3. What is your position/affiliation within the organisation?

Legal Advisor	
Records Manager	
Chief Information Officer	
Other, specify	

O1: RESPONSIBILITIES OF ACCESS TO INFORMATION

4. In which directorate/business unit is access to information function located in your organisation?

5. In your opinion, do you think it is properly located and why?

6. What position is responsible for PAIA implementation in your organisation?

7. Who has been assigned as the deputy information officer?

8. Do you think the responsibility has been assigned to the correct position and why?

9. How many people are responsible for PAIA activities within your organisation?

10. What is the PAIA implementation model in your organisation?

O2: VOLUNTARY DISCLOSURE OBLIGATIONS

11. What system do you have in place to ensure voluntary disclosure of information?

12. How do you educate members of the public about information available in your organisation?

13. How are members of the public made aware of information that is available in your organisation?

14. What policies and procedures do you have with regards to access to information?

15. In which official languages have your PAIA manual being translated into?

16. How is the records classification system (file plan) incorporated in the PAIA manual?

17. Which records are freely available in your organisation?

18. How do you report to the SAHRC or Information Regulator with regard to PAIA?

19. Which provision of the Act is your organisation struggling to comply with?

O3: PROCESSES TO ACCESS INFORMATION

20. What is the process of accessing information in your organisation?

21. Where do members of the public access information within your organisation?

22. How much do you charge members of the public for accessing information?

23. On average, how many request of access to information do you receive per year?

24. Have you ever denied a member of the public access to information and what was the reason?

25. Have you ever exceeded the time limit of processing the access request and what was the reason?

26. Are records available when they are requested, if no why?

27. Have you ever been taken to court on denying access to information?

28. If yes in 27, what was the outcome of the court?

O4: TRANSPARENCY, ACCOUNTABILITY AND GOOD GOVERNANCE

29. How does access to information ensure accountability in your organisation?

30. How does access to information ensure transparency in your organisation?

31. How does access to information ensure good governance in your organisation?

**O5: RECOMMENDATIONS**

32. What recommendations can you make with regard to implementation of PAIA?

33. Any additional information?

Thank you for your time in completing the schedule.

**ANNEXURE E: SAMPLE LETTER FOR DELEGATION OF RESPONSIBILITIES  
WITH REGARD TO PAIA**

<b>To</b>	
<b>From</b>	
<b>Reference no</b>	
<b>Date</b>	
<b>Subject</b>	

Dear colleagues,

1. You are hereby notified that you have been formally designated as the deputy information officer in terms of section 17 (1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
2. As the deputy information officer, you will be responsible for implementing all aspects of PAIA in your section. Further, in my capacity as the Information Officer, I hereby delegate to you, powers, duties and authorities as set out hereunder:
  - Strategic decision-making regarding information access in your unit;
  - Communicate PAIA within your unit;
  - Receiving, analysing and processing PAIA requests in your unit;
  - The authority to apply conditions stated in the Act such as grounds for refusal, deferrals, and extensions;
  - Monitor timeframes of requests and ensure delivery of appropriate responses to the requesters;
  - Assist the information officer in compiling and submitting section 14 manual to the South African Human Rights Commission (SAHRC);
  - Assist the information officer in compiling and submitting section 15 notices to the Minister of Justice;
  - In conjunction with IKM BU, collate required statistical information for the annual reporting (section 32 reports) required by the South African Human Rights Commission;
  - Liaise with Legal Advisors in the event of a refusal of access to information and inform the Information Officer; and
  - Foster compliance with provisions of the Act within your BU.



3. Kindly be advised that additional powers and functions may be prescribed to you from time to time in terms of section 17 (3) of PAIA.

Regards,

**ANNEXURE F: DATA FROM PROVINCIAL DEPARTMENTS ON SECTIONS 14 AND 32**

**Eastern Cape**

<b>Name of department</b>	<b>Manual available</b>	<b>Languages</b>	<b>List of records held</b>	<b>File Plan used</b>
1. Eastern Cape Provincial Government	No			
2. Department of Cooperative Governance and Traditional Affairs	website not opening			
3. Department of Economic Development, Environmental Affairs and Tourism	website not opening			
4. Department of Education	website not opening			
5. Department of Health	yes	1	yes	no
6. Department of Human Settlements	No			
7. Department of Roads and Public Works	yes	1	yes	no
8. Department of Rural Development and Agrarian Reform	website not opening			
9. Department of Safety and Liaison	website not opening	1		no
10. Department of Social Development	yes	1	No	
11. Department of Sport, Recreation, Arts and Culture	website not opening			
1. Department of Transport	website not opening			
2. Eastern Cape Provincial Treasury	website not opening			

**Free State**

Name of department	Manual available	Languages	List of records held	File Plan used
1. Free State Provincial Government	Yes	3	Yes	No
2. Department of the Premier	Yes	3	Yes	No
3. Department of Agriculture and Rural Development	Yes	3	Yes	No
4. Department of Cooperative Governance and Traditional Affairs	Yes	3	Yes	No
5. Department of Economic Development, Small Business Development, Tourism and Environmental Affairs	Yes	3	Yes	No
6. Department of Education	Yes	3	Yes	No
7. Department of Health	Yes	3	Yes	No
8. Department of Human Settlements	Yes	3	Yes	No
9. Department of Police, Roads and Transport	Yes	3	Yes	No
10. Department of Public Works and Infrastructure	Yes	3	Yes	No
11. Department of Social Development	Yes	3	Yes	No
12. Department of Sports, Arts, Culture and Recreation	Yes	3	Yes	No
13. Free State Provincial Treasury	Yes	3	Yes	No
14. Free State Provincial Legislature	Yes	3	Yes	No

**Gauteng**

Name of department	Manual available	Languages	List of records held	File Plan used
1. Gauteng Provincial Government	No			
2. Department of Agriculture and Rural Development	No			
3. Department of Cooperative Governance and Traditional Affairs	No			
4. Department of Community Safety	No			
5. Department of Economic Development	No			
6. Department of Education	No			
7. Department of Health	No			
8. Department of Human Settlements	No			
9. Department of Infrastructure Development	No			
10. Department of Roads and Transport	No			
11. Department of Social Development	No			
12. Department of Sport, Arts, Culture and Recreation	No			
13. Gauteng Provincial Treasury	No			
14. Gauteng Provincial Legislature	No			
15. eGovernment	No			

KwaZulu-Natal

Name of department	Manual available	Languages	List of records held	File Plan used
1. KwaZulu-Natal Provincial Government	No			
2. Provincial Legislature	No			
3. Office of the Premier	No			
4. Department of Agriculture and Rural Development	website not opening			
5. Department of Arts and Culture	Yes	4	Yes	No
6. Department of Community Safety and Liaison	No			
7. Department of Cooperative Governance and Traditional Affairs	Yes	1	Yes	No
8. Department of Economic Development, Tourism and Environmental Affairs	website not opening			
9. Department of Education	No			
10. Department of Health	No			
11. Department of Human Settlements	Yes	1	Yes	No
12. Department of Public Works	No			
13. Department of Social Development	website not opening			
14. Department of Sport and Recreation	No			

Limpopo

Name of department	Manual available	Languages	List of records held	File Plan used
1. Department of Agriculture	Yes	1	Yes	No
2. Department of Cooperative Governance, Human Settlements and Traditional Affairs	Website not opening			
3. Department of Economic Development, Environment and Tourism	yes	1	Yes	No
4. Department of Education	yes	1	Yes	No
5. Department of Public Works, Roads and Infrastructure	yes	1	Yes	No
6. Department of Social Development	yes	1	Yes	No
7. Department of Sport, Arts and Culture	yes	1	Yes	No
8. Provincial Treasury	yes	1	Yes	No
9. Department of Safety, Security and Liaison	Yes	1	Yes	No
10. Department of Transport	Yes	1	Yes	No
11. Department of Health	No website			

### Mpumalanga

Name of department	Manual available	Languages	List of records held	File Plan used
1. Mpumalanga Provincial Government	No			
2. Office of the Premier	Website not opening	3	yes	No
3. Department of Agriculture, Rural Development, Land and Environmental Affairs	Website not opening			
4. Department of Community Safety, Security and Liaison	Website not opening			
5. Department of Cooperative Governance and Traditional Affairs	Website not opening			
6. Department of Culture, Sport and Recreation	Website not opening			
7. Department of Economic Development and Tourism	No			
8. Department of Education	No			
9. Department of Health	No			
10. Department of Human Settlements	No			
11. Department of Public Works, Roads and Transport	yes	3	yes	no
12. Department of Social Development	Website not opening			
13. Mpumalanga Provincial Legislature	Website not opening			
14. Mpumalanga Provincial Treasury	Yes	1	yes	no

### North West

Name of department	Manual available	Languages	List of records held	File Plan used
1. North West Provincial Government	No			
2. Office of the Premier	No			
3. Department of Community Safety and Transport Management	No			
4. Department of Culture, Arts and Traditional Affairs	No			
5. Department of Education and Sport Development	Yes	3	No	
6. Department of Finance, Economy and Enterprise Development	Yes	1	Yes	No
7. Department of Health	No			
8. Department of Local Government and Human Settlements	Yes	1	Yes	No
9. Department of Public Works and Roads	No			
10. Department of Rural, Environment and Agricultural Development	No			
11. Department of Social Development	No			
12. Department of Tourism	No			
13. North West Provincial Legislature	No			

### Northern Cape

Name of department	Manual available	Languages	List of records held	File Plan used
1. Northern Cape Provincial Government	Yes	1	Yes	No
2. Office of the Premier	No (Just the actual Act)			
3. Department of Agriculture, Land Reform and Rural Development	No			
4. Department of Cooperative Governance, Human Settlements and Traditional Affairs	No website			
5. Department of Education	No (just the actual)			
6. Department of Environmental Affairs and Nature Conservation	No Website			
7. Department of Finance, Economic Development and Tourism	Yes	1	Yes	Yes
8. Department of Health	No			
9. Department of Roads and Public Works	No manual, just the request form			
10. Department of Social Development	No website			
11. Department of Sport, Arts & Culture	No website			
12. Department of Transport, Safety and Liaison	No website			
13. Northern Cape Provincial Legislature	No			

### Western Cape

Name of department	Manual available	Languages	List of records held	File Plan used
1. Western Cape Provincial Legislature	Yes	1	Yes	No
2. Department of Agriculture	Yes	3	Yes	No
3. Department of Community Safety	Yes	3	Yes	No
4. Department of Cultural Affairs and Sport	Yes	3	Yes	No
5. Department of Economic Development and Tourism	Yes	3	Yes	No
6. Department of Education	Yes	3	Yes	No
7. Department of Environmental Affairs and Development Planning	Yes	3	Yes	No
8. Department of Health	Yes	3	Yes	No
9. Department of Human Settlements	Yes	3	Yes	No
10. Department of Local Government	Yes	3	Yes	No
11. Department of Social Development	Yes	3	Yes	No
12. Department of Transport and Public Works	Yes	3	Yes	No
13. Department of the Premier	Yes	3	Yes	No