

**ECHELON PRIVATE CLIENT SOLUTIONS (PTY) LTD
“ECHELON”**

**PROMOTION OF ACCESS TO INFORMATION ACT
ACT NO. 2 OF 2000**

MANUAL

Promotion of Access to Information Act No. 2 of 2000

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1. Introduction

Section 32 of the Constitution of the Republic of South Africa, No. 108 of 1996 (“the Constitution”) provides:

- (1) Everyone has the right of access to –*
 - (a) any information held by the state; and*
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.*
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.*

The Promotion of Access to Information Act, No.2 of 2000 (“the Act”), was enacted on 3 February 2002 to give effect to section 32 of the constitution, that is giving effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights.

Where a request is made in terms of this Act, the private or public body to whom the request is made is obliged to release the information, except where the Act expressly provides that the information must not be released.

The Act sets out the requisite procedural issues attached to such request.

The Act came into effect on 9 March 2001 with the exception of sections 10, 14, 16 and 51 that were brought into operation on 15 February 2002.

2. Who May Request Information in terms of the Act

Any person, who requires information for the exercise or protection of any rights, may request information from a private body. Section 50 of the Act states that:

- (1) A requester must be given access to any record of a private body if –*
 - (a) that record is required for the exercise or protection of any rights;*
 - (b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and*
 - (c) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.*

3. Procedures for Obtaining Access

3.1 Contact Details

Any person who wishes to request any information from “Echelon” with the aim of protecting or exercising a right may contact the information officer whose contact details are as follows:

The Compliance Officer
Echelon Private Client Solutions (Pty) Ltd
Private Box 10
Sunclare Building,
Claremont
7708

Street address:

4th Floor
Sunclare Building
Claremont
7708

Phone number: (021) 657 1100 (T)
Fax number: (021) 683 5441 (F)
E-mail address: darrel@echelonpci.co.za

3.2 Prescribed Access Form

In terms of section 53, a request for access to a record of “Echelon” must be made in the prescribed form to “Echelon” at the address, fax number or electronic mail address given above. The form requires the requestor to provide the following information:

- *sufficient information to enable the information officer to identify the requestor;*
- *sufficient information to enable the information officer to identify the record(s) requested;*
- *the form of access required;*
- *the requestor’s postal address or fax number;*
- *identification of the right sought to be exercised or protected;*
- *an explanation on why the record is required to exercise or protect that right;*
- *the manner in which the requestor wishes to be informed of the decision on the request, if in a manner in addition to written notification; and*
- *if the request is made on behalf of a person, the submission of proof of the capacity in which the requestor makes the request, to the satisfaction of the information officer.*

Refer to **Annexure A** to this manual for the format of the prescribed form.

Requestors please note that all of the information as listed above should be provided, failing which the process will be delayed while “Echelon” requests such additional information. The prescribed time periods will not commence until all pertinent information has been furnished to “Echelon” by the requestor.

3.3 Prescribed Fees

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

• **Request fee:** *This is a non-refundable administration fee paid by all requestors, with the exclusion of personal requestors. (Refer to paragraph 3.3.2 below for the definition of personal requestor) It is paid before the request is considered.*

• **Access fee:** *This is paid by all requestors only when access is granted. This fee is intended to reimburse the private body for the costs involved in searching for a record and preparing it for delivery to the requestor.*

*“Echelon” may withhold a record until the request fee and the deposit (if applicable) have been paid. Refer to **Annexure B** below for a list of applicable fees.*

3.3.1 Requestor other than Personal Requestor

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

If in the information officer's opinion the search for a record, or preparation of the record for disclosure will require more than the prescribed hours, the information officer may require the requestor to pay a deposit, not being more than one third of the access fee that would be payable if the request is granted. If the request is declined, the deposit must be repaid to the requestor.

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

3.3.2 Personal Requestor

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

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

4. Human Rights Commission Guideline

In terms of section 10 of the Act, the Human Rights Commission must compile a guide by 14 August 2003. This guide is intended to assist users in the interpretation of the Act. The guide will contain a description of the aims of the Act, the contact details of the information officers of all the public bodies, particulars of the public bodies, the manner of access to the records of those public bodies and the remedies available in law regarding a breach of any of the provisions of the Act.

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

Private Bag 2700

Houghton

2041

Tel: 011 484 8300

Fax 011 484 1360

Web-site: www.sahrc.org.za

5. Categories of records

5.1 Human Resources Division

Records found in this division contain information of employees that include the following:

- *any personal records provided to "Echelon" by the employee/personnel*
- *any records a third party has provided to "Echelon" about its personnel*
- *conditions of employment and other personnel-related contractual and legal records*
- *internal evaluation records*
- *other internal records and correspondence related to the particular employee*

5.2 Client-related records

Clients include both juristic and natural entities that receive a service from “Echelon”. This information includes:

- *any records a client has provided to a third party acting for and on behalf of “Echelon”,*
- *any records a third party has provided to “Echelon”; and*
- *records generated by or within “Echelon” pertaining to the client, including transactional records*

5.3 Echelon records

This category of records relates, but is not limited to, the following information:

- *Financial records*
- *Operational records*
- *Databases*
- *Information technology*
- *Marketing records*
- *Internal correspondence*
- *Product records*
- *Statutory records*
- *Internal policies and procedures*
- *Treasury related records*
- *Securities and equities*
- *Records held by officials of “Echelon”*

Each request will be evaluated on its own merits. If any record falls within any of the categories of exemptions, then such a request will be refused.

5.4 Other Parties

“Echelon” may possess records pertaining to other parties, including without limitation, contractors, suppliers, subsidiary/holding/sister companies, joint venture companies, service providers. Alternatively, such other parties may possess records that can be said to belong to “Echelon”.

The following records fall under this category:

- *Personnel, client or “Echelon” records which are held by another party as opposed to being held by “Echelon”; and*
- *Records held by “Echelon” pertaining to other parties, including without limitation financial records, correspondence, contractual records, records provided by the other party, and records third parties have provided about the contractors / suppliers.*

5.5 Records available in terms of other legislation

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

- *Basic Conditions of Employment Act (Act No. 75 of 1997)*
- *Compensation for Occupational Injuries & Diseases Act (Act No. 130 of 1993)*
- *Employment Equity Act (Act No. 55 of 1998)*

- *Labour Relations Act (Act No. 66 of 1995)*
- *Occupational Health and Safety Act (Act No. 85 of 1993)*
- *Promotion of Equality and Prevention of Unfair Discrimination Act (Act No. 4 of 2000)*
- *Skills Development Act (Act No. 97 of 1998)*
- *Skills Development Levies Act (Act No. 9 of 1999)*
- *South African Qualifications Authority act (58 of 1995)*

In terms of the above legislation, information relating to personnel may be requested.

- *Companies Act (Act No. 61 of 1973)*
- *Short-term Insurance Act (Act No. 53 of 1998)*
- *Financial Markets Control Act (55 of 1989)*
- *Financial Services Board Act (97 of 1990)*

Records relating to company reporting and Company related records as far as is allowed in terms of these Acts may be requested.

- *Income Tax Act (Act No. 58 of 1962 as amended)*
- *VAT act (89 of 1991)*
- *Records relating to tax, employees and the company may be requested in terms of the above Acts.*

The Information officer will take into consideration section 8 of the manual to decide on whether or not access to any of the information stated above should be given to the requester.

6. Decision-making process

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

6.2 Section 56 provides that the information officer must within 30 days of receipt of a correctly completed request, notify the requestor of the decision as to whether or not to grant the request.

If the request is:

- granted: the notification must state the applicable access fee required to be paid, together with the procedure to be followed should the requestor wish to apply to court against such fee, and the form in which access will be given.
- declined: the notification must include adequate reasons for the decision, together with the relevant provisions of the Act relied upon, and provide the procedure to be followed should the requestor wish to apply to court against the decision.

6.3 The information officer may extend the period of 30 days by a further period not exceeding 30 days if:

- the request is for a large number of records or requires a search through a large number of records;

- the request requires a search for records located in a different office of Echelon Private Client Solutions (Pty) Limited not situated in the same city;
- consultation between divisions of “Echelon”, or with another private body is required; or
- the requestor consents to the extension.

The requestor must be notified within the initial 30-day period in writing of the extension, together with reasons, and the procedure involved should the requestor wish to apply to court against the extension.

The information officer’s failure to respond to the requestor within the 30-day period constitutes a deemed refusal of the request.

6.4 Section 59 provides that the information officer may sever a record and grant access only to that portion which the law does not prohibit access to. If access is granted, access must be given in the form that is reasonably required by the requestor, or if the requestor has not identified a preference, in a form reasonably determined by the information officer.

7. Third Parties

If the request is for a record pertaining to a third party, the information officer must take all reasonable steps to inform that third party of the request. This must be done within 21 days of receipt of the request. The manner in which this is done must be in the fastest means reasonably possible, but if orally, the information officer must thereafter give the third party a written confirmation of the notification. The third party may within 21 days thereafter either make representation to “Echelon” as to why the request should be refused, alternatively grant written consent to the disclosure of the record. The third party must be advised of the decision taken by the information officer on whether to grant or decline the request, and must also be advised of his/her/its right to appeal against the decision by way of application to court within 30 days after the notice.

8. Grounds for Refusal of a Request

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

8.1 Section 63 of the Act prohibits the unreasonable disclosure of the personal information of natural-person third parties to requestors. This includes the personal information of deceased persons. However Section 63(2) does provide exceptions to this.

8.2 Section 64 states that a request must be refused if it relates to records containing third party information pertaining to:

- *trade secrets;*
- *financial, commercial, scientific or technical information where disclosure would*
- *be likely to cause harm to the commercial or financial interests of that third party; or*
- *information, supplied in confidence by the third party, the disclosure of which could reasonably be expected to put the third party at a disadvantage in contractual or other negotiations, or prejudice the third party in commercial competition.*

The information must, however, be released if it pertains to the results of product or environmental testing, the disclosure of which would reveal a serious public safety or environmental risk.

8.3 Section 65 prohibits disclosure of information if such disclosure would constitute a breach of any duty of confidentiality owed to a third party in terms of an agreement.

8.4 In terms of section 66, "Echelon" must refuse a request for access to a record of the body if disclosure could reasonably be expected to:

- *endanger the life or physical safety of an individual;*
- *prejudice or impair the security of a building, structure or system, including but not limited to a computer or communication system, means of transport or any other property*
- *"Echelon" may also refuse a request for access to information that would prejudice methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme or safety of the public.*

8.5 Section 67 mandates the refusal of a request if the record is privileged from production in legal proceedings, unless the person entitled to the privilege has waived the privilege.

8.6 Section 68 pertains to records containing information about "Echelon" itself and unlike the other provisions pertaining to decline of a request, is not mandatory, but rather discretionary. "Echelon" may refuse access to a record if the record:

- *contains trade secrets of "Echelon"*
- *contains financial, commercial, scientific or technical information, the disclosure of which would be likely to cause harm to the commercial or financial interests of "Echelon"*
- *contains information which, if disclosed, could reasonably be expected to put "Echelon" at a disadvantage in contractual or other negotiations, or prejudice "Echelon" in commercial competition; or consists of a computer program owned by "Echelon"*

Notwithstanding the above, the information must be released if it pertains to the results of product or environmental testing, the disclosure of which would reveal a serious public safety or environmental risk.

8.7 Section 69 prohibits the disclosure of information about research where disclosure is likely to expose the third party, the person conducting the research on behalf of the third party, or the subject matter of the research to serious disadvantage.

Disclosure is discretionary if such research pertains to "Echelon" itself.

Notwithstanding any of the above-mentioned provisions, section 70 provides that a record must be disclosed if its disclosure would:

- *reveal evidence of a substantial contravention of or failure to comply with the law, imminent and serious public safety or environmental risk; and*
- *if the public interest in the disclosure clearly outweighs the harm.*

9. Rights of Appeal

A requestor that is dissatisfied with the information officer's refusal to grant access to any information may, within 30 days of notification of the decision, apply to court for relief. Likewise, a third party dissatisfied with the information officer's decision to grant a request may, within 30 days of notification of the decision, apply to court for relief.

It should be noted that notwithstanding any provision in this Act, the court may examine the record(s) in question. No record may be withheld from the court on any grounds. The court may not, however, disclose the contents of the record(s).

The court is empowered to grant any order that is just and equitable, including:

- *confirming, amending or setting aside the information officer's decision requiring the information officer to take any action, or refrain from taking any action as identified by the court within a specified period;*
- *granting an interdict, interim or special relief, declaratory order or compensation; or*
- *an order as to costs.*

ANNEXURE A

FORM C

REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

(Section 53(1) of the Promotion of Access to Information Act, 2000(Act No. 2 of 2000))
[Regulation 10]

A. Particulars of private body

The Head:

B. Particulars of person requesting access to the record

Full names and surname:

Identity number:

Postal Address:

Fax number: _____

Telephone: _____

E-mail address: _____

Capacity in which request is made on behalf of another person:

(a) The particulars of the person who requests access to the record must be given below.

(b) The address and/or fax number in the Republic to which the information is to be sent must be given.

(c) Proof of the capacity in which the request is made, if applicable, must be attached

C. Particulars of person on whose behalf request is made

Full names and surname:

Identity Number _____

D. Particulars of record

1. Description of record or relevant part of the record:

2. Reference number, if available:

3. Any further particulars of record:

E. Fees

This section must be completed **ONLY** if a request for information is made on behalf of another person.

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.

(b) If the provided space is inadequate, please continue on a separate folio and attach it to this form.

The requester must sign all additional folios.

(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.

(b) You will be notified of the amount required to be paid as the request fee.

(c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.

(d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from fees

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability:

Form in which record is required:

NOTES:

- (a) Compliance with your request in specified form may depend on the form in which the record is available.
- (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
- (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

Please tick the required format:

1. If the record is in written or printed form:

- Copy of record
- Inspection of record

2. If record consists of visual images

(Includes photographs, slides, video recordings, computer-generated images, etc)

- View images
- Copy of the images
- Transcription of images

3. If record consists of recorded words or information which can be reproduced in sound:

- Listen to the soundtrack
- Transcription of soundtrack

4. If record is held on computer or in an electronic or machine-readable form:

- Printed copy of record
- Printed copy of information derived from the record
- Copy in computer readable form (Stiffy or compact disc)

If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?

G. Particulars of right to be exercised or protected

If the provided space is inadequate, please continue on a separate folio and attach it to this form.

The requester must sign all the additional folios.

1. Indicate which right is to be exercised or protected: _____

2. Explain why the record requested is required for the exercise or protection of the right:

ANNEXURE B

FEES IN RESPECT OF PRIVATE BODIES

1. The fee for a copy of the manual as contemplated in regulation 9(2)(c) is R1.10 for every photocopy of an A4-size page or part thereof.

2. The fees for reproduction referred to in regulation 11(1) are as follows:

(a) For every photocopy of an A4-size page or part thereof R1.10

(b) For every printed copy of an A4-size page or part thereof held on a computer or in machine readable form 75c

(c) For a copy in a computer-readable form on –

(i) Stiffy disc R7.50

(ii) Compact disc R70.00

(d)

(i) For a transcription of visual images, for an A4-size page or part thereof R40.00

(ii) For a copy of visual images R60.00

(e)

(i) For a transcription of an audio record, for an A4-size page or part thereof R20.00

(ii) For a copy of an audio record R30.00

3. The request fee payable by a requester, other than a personal requester, referred to in regulation 11(2) is R50.00

4. The access fees payable by a requester referred to in regulation 11(3) are as follows:

(a) For every photocopy of an A4-size page or part thereof R1.10

(b) For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine readable form 75c

(c) For a copy in a computer-readable form on –

(i) Stiffy disc R7.50

(ii) Compact disc R70.00

(d)

(i) For a transcription of visual images, for an A4-size page or part thereof R40.00

(ii) For a copy of visual images R60.00

(e)

(i) For a transcription of an audio record, for an A4-size page or part thereof R20.00

(ii) For a copy of an audio record R30.00

(f) To search for and prepare the record for disclosure, R30.00 for each hour or part of an hour reasonably required for such search and preparation.

5. For purposes of section 54(2) of the Act, the following applies:

(a) Six hours as the hours to be exceeded before a deposit is payable; and

(b) one third of the access fee is payable as a deposit by the requester.

6. The actual postage is payable when a copy of a record must be posted to requester.