

Promotion of Access to Information Act Manual

FinMark Trust (Registration Number ITrust 4167/02) (hereinafter referred to as 'the Trust').

This manual has been prepared in terms of Section 14 of the Promotion of Access to Information Act 2 of 2000 ('the Act').

1. Preamble

The Promotion of Access to Information Act, 2000 (PAIA) came into operation on 9 March 2001. PAIA seeks, among other things, to give effect to the Constitutional right of access to any information held by the State or by any other person where such information is required for the exercise or protection of any right and gives natural and juristic persons the right of access to records held by either a private or public body, subject to certain limitations, to enable them to exercise or protect their rights. Where a request is made in terms of PAIA to a private body, that private body must disclose the information if the requester can show that the record is required for the exercise or protection of any rights, and provided that no grounds of refusal contained in PAIA are applicable. PAIA sets out the requisite procedural issues attached to information requests.

Section 51 of PAIA obliges private bodies to compile a manual to enable a person to obtain access to information held by such a private body and stipulates the minimum requirements that the manual has to comply with.

This manual constitutes the FinMark Trust PAIA manual. This manual is compiled in accordance with section 51 of PAIA as amended by the Protection of Personal Information Act, 2013 ("POPIA"), which gives effect to everyone's Constitutional right to privacy. POPIA promotes the protection of personal information processed by public and private bodies, including certain conditions to establish minimum requirements for the processing of personal information. POPIA amends certain provisions of PAIA, balancing the need for access to information against the need to ensure the protection of personal information by providing for the establishment of an Information Regulator to exercise certain powers and perform certain duties and functions in terms of POPIA and PAIA, providing for the issuing of codes of conduct and providing for the rights of persons regarding unsolicited electronic communications and automated decision making to regulate the flow of personal information and to provide for matters concerned therewith.

This PAIA manual also includes information on the submission of objections to the processing of personal information and requests to delete or destroy personal information or records thereof in terms of POPIA.

2. Details of the Private Body (Section 51(1) (A) of the Act)

The Trust is a private body, as defined in the Act, and this information manual ("manual") contains the information specified in section 51(1) of the Act which applies to such a private body.

Name of Trust:	FinMark Trust
Postal Address:	P.O. Box 61674, Marshalltown, 2107, South Africa
Street Address:	Block B West, First Floor, Central Park, 400 16th Rd, Randjespark, Midrand, 1685, Johannesburg, South Africa
Information Officer:	Grant Robertson
Telephone No:	0675949291
Email:	info@finmark.org.za
Website:	www.finmark.org.za

A requester is invited to contact the Information Officer should he or she require any assistance concerning the use or content of this manual.

3. Objectives of This Manual

This manual aims to assist potential requesters in requesting access to information (documents or records) from the Trust, as contemplated under the Act.

The manual may be amended from time to time and as soon as any amendments have been affected the latest version of the manual will be published and distributed in accordance with the Act.

The objectives of this manual are:

- to provide a list of all records held by the legal entity;
- to set out the requirements regarding who may request information in terms of PAIA as well as the grounds on which a request may be denied;
- to define the manner and form in which a request for information must be submitted; and
- to comply with the additional requirements imposed by POPIA.

4. Entry Point for Requests

PAIA provides that a person may only request information if the information is required for the exercise or protection of a legitimate right.

Information will therefore not be furnished unless a person provides sufficient particulars to enable FinMark Trust to identify the right that the requester is seeking to protect as well as an explanation as to why the requested information is required for the exercise or protection of that right. The exercise of an individual's rights is subject to justifiable limitations, including the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance. PAIA and the request procedure contained in this manual may not be used for access to a record for criminal or civil proceedings, nor should information be requested after the commencement of such proceedings.

The Information Officer has been delegated with the task of receiving and co-ordinating all requests for access to records in terms of PAIA, to ensure proper compliance with PAIA and POPIA.

5. Description of Guide Referred to in Section 10: Section 51(1)(B)

This manual has been compiled in terms of Section 10 of the Act by the South African Human Rights Commission (SAHRC). It contains information required by a person wishing to exercise any right, contemplated by the Act. It is available in all the official languages, and it is currently available for inspection at the offices of SAHRC.

6. Records Held in Terms of Applicable Legislation (Section 51(1)(D))

The Trust is required by law to keep certain records. These records are kept in terms of different Acts of Parliament. The Trust holds records in terms of the Acts of Parliament as set out in Annexure "A" hereto.

Note: The inclusion of any subject or category of records should not be taken as an indication that records falling within those subjects and/or categories will be made available under the Act. Certain grounds of refusal as set out in the Act may apply to a request for such records.

7. Records Held as a Matter of Standard Practice (Section 51(1))

The Trust keeps certain records in the conduct of its day-to-day business and as a matter of standard practice. The Trust holds the records as set out in Annexure "B" hereto.

Note: The inclusion of any subject or category of records should not be taken as an indication that records falling within those subjects and/or categories will be made available under the Act. In particular, certain grounds of refusal as set out in the Act may apply to a request for such records.

8. Records Automatically Available Without Having to Make a Request using the Prescribed Form

Information that is obtainable via the FinMark Trust website about FinMark Trust is automatically available and need not be formally requested in terms of this manual.

The following categories of records are automatically available for inspection, purchase or photocopying:

- brochures
- press releases
- publication; and
- various other marketing and promotional material.

9. Making a Request in Terms of the Act

9.1. Request procedure

9.1.1. Complete Form "C" (attached to this manual as Annexure "C")

9.1.2. Submit the completed Form C to the Information Officer at the physical, postal or email address listed above.

- 9.1.3. Any request for access to a record in terms of PAIA must substantially correspond with Form 2 of Annexure A to Government Notice No. R.757 dated 27 August 2021 promulgated under the PAIA Regulations and should be specific in terms of the record requested. Please refer to Annexure C.
- 9.1.4. A request for access to information which does not comply with the formalities as prescribed by PAIA will be returned to you.
- 9.1.5. POPIA provides that a data subject may, upon proof of identity, request FinMark Trust to confirm, free of charge, all the information it holds about the data subject and may request access to such information, including information about the identity of third parties who have or have had access to such information.
- 9.1.6. POPIA also provides that where the data subject is required to pay a fee for services provided to him/her, FinMark Trust must provide the data subject with a written estimate of the payable amount before providing the service and may require that the data subject pays a deposit for all or part of the fee.
- 9.1.7. Grounds for refusal of the data subject's request are set out in PAIA and are discussed below.
- 9.1.8. POPIA provides that a data subject may object, at any time, to the processing of personal information by FinMark Trust, on reasonable grounds relating to his/her particular situation, unless legislation provides for such processing. The data subject must complete the prescribed form attached hereto as Annexure E and submit it to the Information Officer at the postal or physical address, facsimile number or electronic mail address set out above.
- 9.1.9. A data subject may also request FinMark Trust to correct or delete personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or destroy or delete a record of personal information about the data subject that FinMark Trust is no longer authorised to retain records in terms of POPIA's retention and restriction of records provisions.
- 9.1.10. A data subject that wishes to request a correction or deletion of personal information or the destruction or deletion of a record of personal information must submit a request to the Information Officer at the postal or physical address, facsimile number or electronic mail address set out above on the form attached hereto as Annexure F.

9.2. Proof of identity

Proof of identity is required to authenticate your identity and the request. You will, in addition to this prescribed form, be required to submit acceptable proof of identity such as a certified copy of your identity document or other legal forms of identity.

10. Payment of Prescribed Fees

Section 54 of PAIA entitles FinMark Trust to levy a charge or request a fee to enable it to recover the cost of processing a request and providing access to records. The fees that may be charged are set out in Annexure B of Government Notice No. R.757 dated 27 August 2021 promulgated under the PAIA Regulations. Please refer to Annexure D.

When a decision to grant a request has been taken, the record will not be disclosed until the necessary fees have been paid in full.

- A request fee of R140.00 (One Hundred and Forty Rand) (excluding VAT) is payable on submission of the completed Form C unless the requester is seeking access to a record about themselves. A requester may make an application to court to be exempted from paying such a fee.
- Fees may also be levied for the reproduction of the record.

- In addition, to search for and prepare the record for disclosure, R30.00 (excluding VAT) may be charged for each hour or part of an hour reasonably required for such search and preparation of the record.
- In addition, the Trust can request in a formal notice a deposit, not more than one-third of the fee, if they believe a request will take more than 6 (six) hours.

10.1. Timeless for consideration of a request for access

- 1.1.1. the record you have requested exists, and allowing access to it does not affect a third party, your request will be processed within 30 (thirty) days.
- 1.1.2. This period may be extended once for a further 30 (thirty) days if:
 - 1.1.2.1. the request is for a large number of records or requires a search through a large number of records, and compliance with the original period would unreasonably interfere with the activities of the Trust;
 - 1.1.2.2. the request requires a search for records in, or collection thereof from, an office or premises not situated at Block B West, First Floor, Central Park, 400 16th Rd, Randjespark, Midrand, 1685, Johannesburg, South Africa and this search cannot reasonably be completed within the original 30 (thirty) days;
 - 1.1.2.3. consultation with another private body is necessary or desirable to decide upon the request, and this consultation cannot reasonably be completed within the original period;
 - 1.1.2.4. more than one of the circumstances contemplated above exist in respect of the request, making compliance with the original period not reasonably possible; or you, as the requester, consent in writing to such extension.

Please note that the Trust is registered under the Value-Added Tax Act 89 of 1991 as a vendor, and accordingly, value-added tax (VAT) shall be added to all fees prescribed.

10.2. Grounds for refusal

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

- the protection of personal information of a third person (who is a natural person) from unreasonable disclosure;
- the protection of commercial information of a third party (for example trade secrets; financial, commercial, scientific or technical information that may harm the commercial or financial interests of a third party);
- if disclosure would result in the breach of a duty of confidence owed to a third party;
- if disclosure would jeopardise the safety of an individual or prejudice or impair certain property rights of a third person;
- if the record was produced during legal proceedings unless legal privilege has been waived in respect of the record;
- if the record contains any trade secrets, financial or sensitive information or any information that would put the Trust at a disadvantage in negotiations or prejudice it in commercial competition; and/or
- if the record contains any information about research being carried out, or about to be carried out, on behalf of a third party or by the Trust.

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

If your request does affect a third party then the Trust will first need to inform the third party within 21 (twenty-one) days of the Trust receiving your request (i.e. if the record you request affects any third party in

any way, that third party will have to be informed that you are requesting access to the above record. The third party then has 21 (twenty-one) days to make representations and/or submissions regarding the granting of access to the record).

10.3. The Information Officer's decision

Once the Information Officer has heard all the submissions, he will decide whether access to the record will be granted. If the Information Officer determines that access to the record will be granted, you must then be granted access to the record within 30 (thirty) days of being informed of the decision.

11. The Requester's Recourse

If the Information Officer decides to grant you access to the particular record, such access must be granted within 30 (thirty) days of being informed of the decision.

There is no internal appeal procedure that may be followed after a request to access information has been refused. The decision made by the Information Officer is final. If you are not satisfied with the outcome of the request, you are entitled to apply to a court of competent jurisdiction to take the matter further.

Where a third party is affected by the request for access and the Information Officer has decided to grant you access to the record, the third party has 30 (thirty) days in which to appeal the decision in a court of competent jurisdiction. If no appeal has been lodged by the third party within 30 (thirty) days, you must be granted access to the record.

12. Forms

The prescribed forms as per the Information Regulator's compliance notice in terms of section 83(3)(d) of the Promotion of Access to Information Act, 2000 have been amended and the links for these forms are below.

- [Request for Access to Record](#)
- [Outcome of Request and Fees Payable](#)

These forms are also available in annexure C and D of this manual.

13. Availability of This Manual

Copies of this manual are available for inspection, free of charge, at the offices of FinMark Trust and at www.finmark.org.za.

Annexure “A” — Records Available in Terms of Legislation

Records are kept in terms of legislation applicable to the Trust, which includes but is not limited to, the following legislation:

- Basic Conditions of Employment 75 of 1997;
- Companies Act 71 of 2008;
- Compensation for Occupational Injuries and Health Diseases Act 130 of 1993;
- Consumer Protection Act 68 of 2008;
- Electronic Communications & Transactions Act 25 of 2002;
- Employment Equity Act 55 of 1998;
- Income Tax Act 58 of 1962;
- Labour Relations Act 66 of 1995;
- Occupational Health and Safety Act 85 of 1993;
- Promotion of Access to Information Act 2 of 2000;
- Protection of Personal Information Act 4 of 2013;
- Skills Development Act 97 of 1997;
- Skills Development Levies Act 9 of 1999;
- Unemployment Insurance Act 63 of 2001; and
- Value Added Tax Act 89 of 1991

Annexure “B” — Records Held by The Trust

FinMark Trust maintains records on the categories and subject matters listed below. Please note that recording a category or subject matter in this manual does not imply that a request for access to such records would be honoured. All requests for access will be evaluated on a case-by-case basis following the provisions of PAIA.

Please note further that many of the records held by FinMark Trust are those of third parties, such as funders, clients, stakeholders and employees, and FinMark Trust takes the protection of third-party confidential information very seriously. Where FinMark Trust acts as a professional advisor to clients, many of the records held are confidential and others are the property of the client and not of FinMark Trust.

For further information on the grounds of refusal of access to a record please see paragraph 10 above. Requests for access to these records will be considered very carefully. Please ensure that requests for such records are carefully motivated.

Companies Act Records

- Documents of incorporation;
- Trust deed;
- Minutes of board of directors meetings;
- Records relating to the appointment of directors/ auditor/ secretary/ public officer and other officers; and
- Share register and other statutory registers.

Firm documents and Legal Records

- Operational records;
- Domain name registration;
- Computer software;
- Insurance policies;
- Client files; and
- Asset registers.

Client Records

- Client information; and
- Client account information.

Supplier and Services Records

- Agreements with suppliers and service providers; and
- Records generated by or within the Trust, about suppliers including transactional records.

Communication

- Internal and external correspondence and memorandums.

Financial and Accounting Records

- Accounting and tax (including VAT, PAYE and similar) records;
- Banking records;
- Invoices;
- Documents issued to employees for income tax purposes;
- Records of payments made to SARS on behalf of employees;
- All other statutory compliances;
- VAT;
- Skills development levies;
- UIF; and

- Workmen's compensation.
- Personnel documents and records
- Employment contracts;
- Employment equity plan (if applicable);
- Disciplinary records;
- Salary records;
- SETA records;
- Leave records; and
- Training records.

Annexure "C" — 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 7]

NOTE:

1. Proof of identity must be attached by the requester.
2. If requests are made on behalf of another person, proof of such authorisation, must be attached to this form.

TO: The Information Officer

(Address)

E-mail address:

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Fax number:

--

Mark with an "X"

Request is made in my own name

Request is made on behalf of another person.

PERSONAL INFORMATION			
Full Names			
Identity Number			
Capacity in which request is made <i>(when made on behalf of another person)</i>			
Postal Address			
Street Address			
E-mail Address			
Contact Numbers	Tel. (B):		Facsimile:
	Cellular:		
Full names of person on whose behalf request is made <i>(if applicable)</i> :			
Identity Number			
Postal Address			
Street Address			

E-mail Address			
Contact Numbers	Tel. (B)		Facsimile
	Cellular		
PARTICULARS OF RECORD REQUESTED			
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. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed).			
Description of record or relevant part of the record:			
Reference number, if available			
Any further particulars of record			
TYPE OF RECORD (Mark the applicable box with an "X")			
Record is in written or printed form			
Record comprises virtual images (this includes photographs, slides, video recordings, computer-generated images, sketches, etc)			
Record consists of recorded words or information which can be reproduced in sound			
Record is held on a computer or in an electronic, or machine-readable form			

FORM OF ACCESS <i>(Mark the applicable box with an "X")</i>	
Printed copy of record <i>(including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)</i>	
Written or printed transcription of virtual images <i>(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)</i>	
Transcription of soundtrack <i>(written or printed document)</i>	
Copy of record on flash drive <i>(including virtual images and soundtracks)</i>	
Copy of record on compact disc drive <i>(including virtual images and soundtracks)</i>	
Copy of record saved on cloud storage server	
MANNER OF ACCESS <i>(Mark the applicable box with an "X")</i>	
Personal inspection of record at registered address of public/private body <i>(including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)</i>	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format <i>(including transcriptions)</i>	
E-mail of information <i>(including soundtracks if possible)</i>	
Cloud share/file transfer	
Preferred language <i>(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available)</i>	

PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED	
<i>If the provided space is inadequate, please continue on a separate page and attach it to this Form. The requester must sign all the additional pages.</i>	
Indicate which right is to be exercised or protected	
Explain why the record requested is required for the exercise or protection of the aforementioned right:	

FEES	
<p>a) <i>A request fee must be paid before the request will be considered.</i></p> <p>b) <i>You will be notified of the amount of the access fee to be paid.</i></p> <p>c) <i>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.</i></p> <p>d) <i>If you qualify for exemption of the payment of any fee, please state the reason for exemption</i></p>	
Reason	

You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication <i>(Please specify)</i>

Signed at _____ this _____ day of _____ 20 _____

Signature of requester/person on whose behalf the request is made

FOR OFFICIAL USE

<i>Reference number:</i>	
<i>Request received by: (State rank, name and surname of Information Officer)</i>	
<i>Date received:</i>	
<i>Access fees:</i>	
<i>Deposit (if any):</i>	

Signature of Information Officer

Annexure “D” — Prescribed Fees in Respect of Requests for Information

For documents about categories of records that will automatically be made available to any person requesting access thereto, the only charge that may be levied for obtaining such records will be a fee for the reproduction of the record in question.

Reproduction Fees

- For every photocopy of an A4-size page or part thereof R1.10
- For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form R0.75
- For a copy in a computer-readable form on:
 - Stiffy disc R7.50
 - Compact disc R70.00
- A transcription of visual images, for an A4-size page or part thereof R40.00
- For a copy of visual images R60.00
- A transcription of an audio record, for an A4-size page or part thereof R24.00
- For a copy of an audio record R40.00.

Request Fees

Where a requester submits a request for access to information held by the Trust on a person other than the requester himself/herself, a request fee in the amount of R50.00 is payable up-front before the Trust will further process the request received.

Access fees

An access fee is payable in all instances where a request for access to information is granted, except in those instances where payment of an access fee is specially excluded in terms of the Act or an exclusion is determined by the Minister in terms of Section 54 (8). The applicable access fees which will be payable are:

- For every photocopy of an A4-size page or part thereof R1.10
- For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form R0.75
- For a copy in a computer-readable form on:
 - Stiffy disc R7.50
 - Compact disc R70.00
- A transcription of visual images, for an A4-size page or part thereof R40.00
- For a copy of visual images R60.00
- A transcription of an audio record, for an A4-size page or part thereof R20.00
- For a copy of an audio record R30.00
- To search for a record that must be disclosed R30.00 (per hour or part of an hour reasonably required for such search).
- Where a copy of a record needs to be posted the actual postal fee is payable.

Deposits

Where the Trust receives a request for access to information held on a person other than the requester himself/herself and the Information Officer upon receipt of the request assesses that the preparation of the required record of disclosure will take more than 6 (six) hours, a deposit is payable by the requester. The amount of the deposit is equal to $\frac{1}{3}$ (one-third) of the amount of the applicable access fee.

Note: In terms of Regulation 8, Value Added Tax (VAT) must be added to all fees prescribed in terms of the Regulations.

Annexure E — Objections

Objection to the processing of personal information in terms of Section 11(3) of the Protection of Personal Information Act, 2013 (Act no. 4 of 2013) regulations relating to the protection of personal information, 2018.

[Regulation 2]

Requests can be submitted either via post or e-mail: info@finmark.org.za and should be addressed to the Information Officer.

Note:

1. Affidavits or other documentary evidence as applicable in support of the objection may be attached.
2. If the space provided in this form is inadequate, submit information as an Annexure to this form and sign each page.
3. Complete as is applicable.

A Details of Data Subject

Name(s) and surname/registered name of data subject	
Unique Identifier/Identity Number:	
Residential, postal or business address:	
Code (:	
Contact number(s)	
Fax number/E-mail address:	

B Details of Responsible Party

Name(s) and surname/registered name of responsible party:	
Residential, postal or business address:	
Code ()	
Contact number(s):	
Fax number/E-mail address:	

C Reasons for Objection

(Please provide detailed reasons for the objection)

Signed at this day of 20__

Signature of Data Subject/Designated Person.

Annexure F — Correction or Deletion

Request for correction or deletion of personal information or destroying or deletion of record of personal information in terms of Section 24(1) of the Protection of Personal Information Act, 2013 (Act no. 4 of 2013) regulations relating to the protection of personal information, 2018.

[Regulation 3]

Note:

1. Affidavits or other documentary evidence as applicable in support of the request may be attached.
2. If the space provided in this form is inadequate, submit information as an Annexure to this form and sign each page.
3. Complete as is applicable.

Mark with an "X"

Request for:

___ Correction or deletion of the personal information about the data subject which is in possession or under the control of the responsible party.

___ Destroying or deletion of a record of personal information about the data subject which is in possession or under the control of the responsible party and who is no longer authorised to retain the record of information.

A Details of Data Subject

Name(s) and surname/registered name of data subject:	
Unique Identifier/ Identity Number	
Residential, postal or business address:	
Code	
Contact number(s):	
Fax number/E-mail address:	

B Details of Responsible Party

Name(s) and surname/Registered name of responsible party:	
Residential, postal or business address:	
Code	
Contact number(s):	
Fax number/E-mail address:	

C Information to be corrected/deleted/destroyed/destroyed

D Reasons for correction or deletion of the personal information about the data subject in terms of Section 24(1)(A) which is in possession or under the control of the responsible party;

And/or

Reasons for destruction or deletion of a record of personal information about the data subject in terms of Section 24(1)(B) which the responsible party is no longer authorised to retain.

(Please provide detailed reasons for the request)

Disclaimer:

The contents of this document should only be used for and by FinMark Trust and may not be distributed unlawfully. Older versions are not deemed official. Only the latest version is acceptable.