



PAIA AND POPIA MANUAL

VERSION 3

PREPARED IN TERMS OF SECTION 14 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000) TO ADDRESS REQUIREMENTS OF THE PROTECTION OF PERSONAL INFORMATION ACT, 2013 (POPIA)

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Designation	Knowledge Manager	HOD:IRM	Acting Executive Manager	Chief Executive Officer
Division / Department/ Unit	Information Resources Management	Information Resources Management	Corporate Services	CEO's Office
Signature	<i>PNkosi</i>	<i>TJamba</i>	<i>Fiona Harrison</i>	Pp Lufuno Nematswerani
Date	30 May 2023	31 May 2023	02 June 2023	05/06/2023

Related Policies and ProceduresRecords Management PolicyRetention Schedule and Disposal Authority for Records ManagementNERSA Security PolicyICT Data Protection PolicyUser Account Management PolicyEnd User Usage PolicyNERSA Language Policy**RACI Matrix**

	Responsible	Accountable	Consulted	Informed
CEO		X		
EM: COS	X			
SNR: RSU	X			
HOD: IRM	X			
Knowledge Manager	X			
Line Managers				

AMENDMENT HISTORY

Effective from	Amended By	Reviewed By	Recommended By	Approved By
2016	Ms P Nkosi	Ms T Jamba	Adv. N Sithole	Mr C Forlee
2023	Ms P Nkosi	Ms T Jamba	Ms F Harrison	Adv. N Sithole

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(i) PREAMBLE

Legal basis and background for the Manual

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

The right of access to information is contained in section 33 of the Constitution of the Republic of South Africa, 1996 ('the Constitution'), which provides as follows:

- (1) *Everyone has a 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.*

PROMOTION OF ACCESS TO INFORMATION ACT, 2000

As stated above, the Constitution provides that national legislation must be enacted to give effect to the right of access to information.

The national legislation that has been enacted to give effect to this right is the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (PAIA or 'the Act').

PAIA, however, recognises that such a right of access to information is subject to justifiable limitations and seeks to balance the requester's constitutional right to information against the information officer's right to refuse access to information on any of the grounds mentioned in part 2, chapter 4 of PAIA. Such limitations are acknowledged in **PAIA** and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) (**POPIA**), as they specify circumstances under which there would be limited or restricted access to the information held by the State.

Section 14(1) of the Promotion of Access to Information Act¹ provides that within six months after the commencement of this section or the coming into existence of a public body, the information officer of the public body concerned must compile the manual in at least three (3) official languages. The manual must contain, among others, the structure and functions of the public body as well as

¹ 2 of 2002.

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the index of records held by the public body. Section 14(2) of the Act² further provides that a public body must, if necessary, update and publish its manual at intervals of not more than one year. Lastly, section 14(3) provides that each manual must be made as prescribed by section 14(1) of the Act.³

(ii) GLOSSARY AND DEFINITIONS

TERMINOLOGY	DESCRIPTION
Data subject	The person to whom personal information relates
Document	Any note or writing, whether produced by hand or by printing or typewriting or any other similar process in either tangible or electronic format. Any copy, plan, sketch or photographic or other representation of any place or article
Guide	The guide on how to use PAIA by any person who wishes to exercise any right contemplated in PAIA and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), as contemplated in section 10 of PAIA
Information officer	NERSA CEO
Information regulator	The information regulator established in terms of section 39 of the Protection of Personal Information Act of 2013
Personal Information	Information relating to an identifiable, living, natural person, including: <ul style="list-style-type: none"> - race, gender, sex, pregnancy, marital status, national or ethnic origin, colour, sexual orientation, age, physical or mental health, disability, religion, belief, culture, language and birth of a person - education, medical, financial, criminal or employment history - any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person - biometric information of a person

² *Promotion of Access to Information Act 2 of 2002.*

³ Section 14(3) and 14(1) of the *Promotion of Access to Information Act 2 of 2002.*

TERMINOLOGY	DESCRIPTION
	<ul style="list-style-type: none"> - the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person - correspondence sent by the person that is implicitly or explicitly of a private or confidential nature
Personal requester	The person requesting access to a record containing personal information about the requester
Public body	Requests information in the public interest
Record	<p>A record is evidence of a business transaction (created or received) in its final manifestation, having been created initially as a document, as foreseen in the National Record Archives Act of 1996.</p> <p><u>A business transaction might:</u></p> <ul style="list-style-type: none"> • include documenting actions • events • conversations or other transactions where they provide evidence of recommendations or decisions (correspondence, minutes of meetings) • records of conversations and telephone calls • faxes • emails • other communications
Records management	A process of ensuring the proper creation, maintenance, use and disposal of records throughout their life cycle to achieve efficient, transparent and accountable governance.
Request	A request for access to a record of NERSA
Requester	Any person (other than a public body contemplated in paragraph (a) or (b)(i) of the definition of 'public body' in PAIA, or an official thereof) making a request for access to a record of NERSA and includes any person acting on behalf of that person or requester
Retention periods	The length of legally required time that records will be retained in archival custody before destruction

TERMINOLOGY	DESCRIPTION
Retrieval of records	Refers to how records are accessed and their availability for access when they are required
Scanning of records	Conversion of hardcopy records to an electronic format (PDF) to ensure that the record remains authentic, reliable and useable for the entire retention period thereof. Conversion is a process of changing records from one format to another
Tanzwana system	A Microsoft web-based (SharePoint) platform used for collaborations and the management of electronic documents and records
Third-party requester	A person requesting information about another person

ABBREVIATIONS

Abbreviation	Description
CEO	Chief Executive Officer
DIO	Deputy Information Officer
ER	Energy Regulator
HOD	Head of Department
ICT	Information and Communication Technology
IO	Information Officer
IR	Information Regulator
IRM	Information Resources Management
ISO	International Organization for Standardization
LAS	Legal Advisory Services
MISS	Minimum Information Security Standard
NERSA	National Energy Regulator of South Africa
PAIA	Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
POPIA	Protection of Personal Information Act, 2013 (Act No. 4 of 2013)
RMC	Records Management Centre
SAHRC	South African Human Rights Commission

(iii) PURPOSE OF THE MANUAL

In order to promote effective governance of public bodies, it is necessary to ensure that everyone is empowered and educated to understand their rights in terms of the Act.

The manual is intended to foster a culture of transparency and accountability by giving effect to the right to information required to exercise or protect any right and to actively promote a society in which the people of the Republic of South Africa have effective access to information to enable them to exercise and protect their rights fully.

This manual envisages providing a broad yet comprehensive guide that will enable the person requesting access to information ('the Requestor') to obtain the records that they are entitled to in a quick, easy and accessible manner taking into account the vision and mission statements of NERSA, which are the following:

NERSA's Vision

To be a recognised world-class leader in energy regulation

NERSA's Mission

To regulate the energy industry in accordance with government laws and policies, standards and international best practices in support of sustainable and orderly development

Section 9(b)(i) of the Act,⁴ however, recognises that such a right of access to information cannot be unlimited and should be subject to justifiable limitations, including but not limited to, the limitations aimed at the reasonable protection of:

- privacy;
- commercial confidentiality;
- effective, efficient and good governance.

⁴ *Promotion of Access to Information Act 2 of 2002.*

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CHAPTER 1

1. STRUCTURE

1.1 STRUCTURE OF NERSA

The National Energy Regulator of South Africa (NERSA) is the regulatory authority of the Republic of South Africa's energy industry. NERSA is a statutory body established in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) ('the National Energy Regulator Act').

NERSA's mandate is to regulate the electricity, piped-gas and the petroleum pipeline industries in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) ('the Electricity Regulation Act'), Gas Act, 2001 (Act No. 48 of 2001) ('the Gas Act') and the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) ('the Petroleum Pipelines Act').

The structure of NERSA has seven divisions, of which three are regulatory and four are supportive. The divisions are managed by Executive Managers and the departments within these divisions are managed by Heads of Department. There are specialised units within the structure that are managed by Senior Managers.

The three regulatory industries are as follows:

- Electricity Regulation Division consisting of the following departments:
 - Electricity Licensing, Compliance and Dispute Resolution
 - Electricity Pricing and Tariffs
 - Electricity Infrastructure Planning.
- Piped-Gas Regulation Division consisting of the following departments:
 - Gas Licensing, Compliance and Dispute Resolution
 - Gas Pricing and Tariff
 - Gas Competition and Market Analysis.
- Petroleum Pipelines Regulation Division consisting of the following departments:
 - Petroleum Pipelines Licensing, Compliance and Dispute Resolution
 - Petroleum Pipelines Tariffs.

The support divisions are as follows:

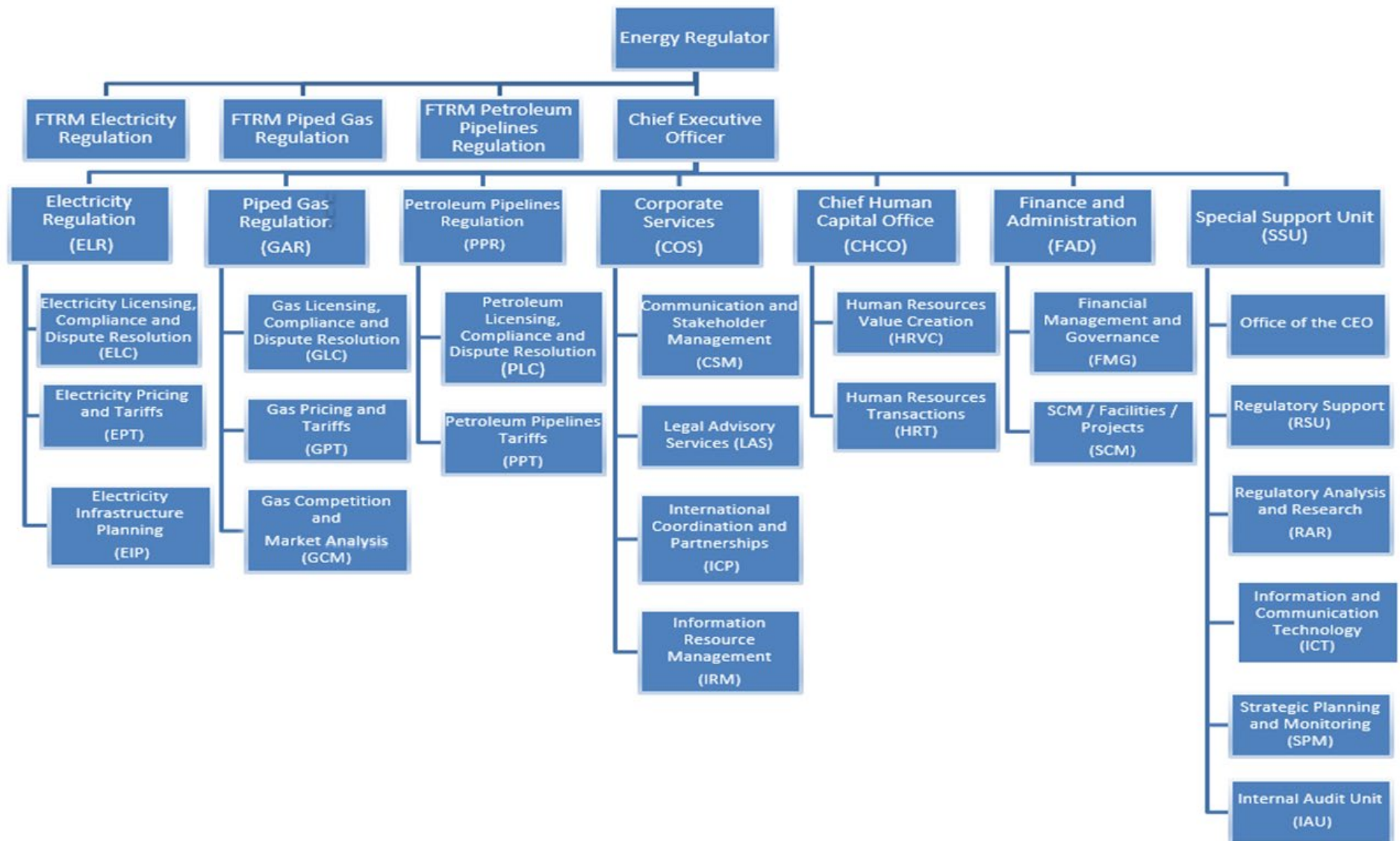
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- Corporate Services Division consisting of the following departments:
 - Communication and Stakeholder Management
 - Legal Advisory Services
 - International Coordination and Partnerships
 - Information Resource Management.
- Human Resources Division consisting of the following:
 - Human Resources Value Creation
 - Human Resource Transactions.
- Finance and Administration Division consisting of the following:
 - Financial Management and Governance
 - SCM/Facilities/Projects.
- Special Support Units consisting of the following:
 - Office of the CEO
 - Regulator Support,
 - Regulatory Analysis and Research
 - Information and Communication Technology
 - Strategic Planning and Monitoring
 - Internal Audit Unit.

A full organogram of the structure is on the next page.

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1.2 SCHEMATIC DIAGRAM OF THE STRUCTURE (ORGANOGRAM OF NERSA)



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1.3 INSTITUTIONAL STRUCTURE

1.3.1 The Regulator Members

In terms of section 5 of the Energy Regulator Act, the Minister of Energy appoints nine Regulator Members.

1.3.1.1 Of the nine Regulator Members:

- four are Full-Time Regulator Members (FTRMs) and hold office for a period of five years; and
- five are Part-Time Regulator Members (PTRMs) and hold office for a period of four years.

1.3.1.2 The Chairperson and Deputy Chairperson are Part-Time Regulator Members.

1.3.1.3 The Full-Time Regulator Members are:

- the Chief Executive Officer; and
- three Members primarily responsible for electricity, piped-gas and petroleum pipelines regulation, respectively.

1.3.2 Regulatory Subcommittees

With reference to section 8(10) of the National Energy Regulator Act,⁵ the Energy Regulator may establish subcommittees of its members to perform designated functions. Regulatory Subcommittees are open to the public, except where confidential matters are to be considered. The subcommittees are as follows:

1.3.2.1 Electricity Subcommittee (ELS)

- Six members (all four FTRMs and two PTRMs)
- Chaired by the FTRM for Electricity Regulation
- Monthly meetings

1.3.2.2 Piped-Gas Subcommittee (PGS)

- Six members (all four FTRMs and two PTRMs)
- Chaired by the FTRM for Piped-Gas Regulation
- Monthly meetings

1.3.2.3 Petroleum Pipelines Subcommittee (PPS)

- Six members (all four FTRMs and two PTRMs)

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- Chaired by the FTRM for Petroleum Pipelines Regulation
- Monthly meetings

1.3.3 Cross-Cutting Subcommittees

1.3.3.1 Regulator Executive Committee (REC)

- Four members – all four FTRMs
- Chaired by the CEO
- Meetings held twice a month
- Committee considers regulatory activities, as delegated by the Energy Regulator in the Delegation Matrix, and operational matters

1.3.4 Governance Committees – not open to the public:

1.3.4.1 Human Resource and Remuneration Committee (HRRC)

- Five members – two FTRMs, two PTRMs and one External Member
- Chaired by a Part-Time Regulator Member
- Meets quarterly

1.3.4.2 Finance Committee (FIC)

- Five members – two FTRMs, two PTRMs and one External Member
- Chaired by a Part-Time Regulator Member
- Meets quarterly

1.3.4.3 Audit and Risk Committee (ARC)

- Six members – two PTRMs, two External Members and two invitees
- Chaired by a Part-Time Regulator Member or an External Member
- Chairperson of the Energy Regulator and the CEO are invitees
- Meets quarterly

1.3.4.4 Information and Technology Governance Committee (ITGC)

- Five members – two FTRMs, one PTRM and two External Members
- Chaired by a Part-Time Regulator Member
- Meets quarterly

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1.4 FUNCTIONS AND SERVICES OF NERSA

1.4.1 CONSTITUTIONAL MANDATE

1.4.1.1 The National Energy Regulator of South Africa is listed as a public entity in terms of schedule 3A of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

1.4.1.2 In conducting its business NERSA is governed by the Constitution of South Africa, specifically the Bill of Rights.

1.4.1.3 NERSA's responsibility is carried out through licensing, setting or approving prices and tariffs, compliance monitoring and enforcement, and dispute resolution in the electricity, piped-gas and petroleum pipelines industries. It facilitates, through its regulatory functions, the construction of power stations, pipelines and storage facilities to ensure continued access to energy and security of supply in the country. NERSA's commitment to the protection of the environment and the growth of cleaner, more resource-efficient production of energy is built into its regulatory functions.

1.5 LEGISLATIVE AND POLICY MANDATES

1.5.1 Relevant Legislation

1.5.1.1 NERSA is the regulatory authority established in terms of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) with the mandate to 'undertake the functions of the National Electricity Regulator as set out in the Electricity Regulation Act, 2006 (Act No. 4 of 2006), undertake the functions of the Gas Regulator as set out in the Gas Act, 2001 (Act No. 48 of 2001), undertake the functions of the Petroleum Pipelines Regulatory Authority as set out in the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) and to perform such other functions as may be assigned to it by or under these Acts'.

1.5.1.2 NERSA's mandate is anchored in the following four primary Acts:

- The National Energy Regulator Act, 2004 (Act No. 40 of 2004)
- The Electricity Regulation Act, 2006 (Act No. 4 of 2006) (ERA)
- The Gas Act, 2001 (Act No. 48 of 2001)
- The Petroleum Pipelines Act, 2003 (Act No. 60 of 2003).

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1.5.1.3 The regulatory functions of NERSA, as contained in the legislation relevant for the regulation of the energy industry, are summarised as follows:

- Issuing licenses with conditions
- Setting and/or approving tariffs and prices
- Monitoring and enforcing compliance with license conditions
- Dispute resolution, including mediation, arbitration and the handling of complaints
- Gathering, storing and disseminating industry information
- Setting of rules, guidelines and codes for the regulation of the three industries
- Determining conditions of supply and applicable standards
- Consulting with government departments and other bodies with regard to industry development and regarding any matter contemplated in the three industry Acts
- Expropriating land as necessary to meet the objectives of the relevant legislation
- Registration of import and production facilities
- Performing any activity incidental to the execution of its duties.

1.5.1.4 Each industry-specific Act from which NERSA derives its mandate has certain objectives that should be achieved if NERSA carries out its functions as defined in these Acts.

- a) The objects of the Electricity Regulation Act, as stipulated in section 2, are to:
- achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in South Africa;
 - ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic;
 - facilitate investment in the electricity supply industry;
 - facilitate universal access to electricity;
 - promote the use of diverse energy sources and energy efficiency;
 - promote competitiveness and customer and end user choice; and

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- facilitate a fair balance between the interests of customers and end users, licensees, investors in the electricity supply industry and the public.
- b) The objects of the Gas Act, as stipulated in section 2, are to:
- promote the efficient, effective, sustainable and orderly development and operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities and the provision of efficient, effective and sustainable gas transmission, storage, distribution, liquefaction, re-gasification and trading services;
 - facilitate investment in the gas industry;
 - ensure the safe, efficient, economic and environmentally responsible transmission, distribution, storage, liquefaction and re-gasification of gas;
 - promote companies in the gas industry that are owned or controlled by historically disadvantaged South Africans by means of licence conditions so as to enable them to become competitive;
 - ensure that gas transmission, storage, distribution, trading, liquefaction and re-gasification services are provided on an equitable basis and that the interests and needs of all parties concerned are taken into consideration;
 - promote skills development among employees in the gas industry;
 - promote employment equity in the gas industry;
 - promote the development of competitive markets for gas and gas services;
 - facilitate gas trade between the Republic and other countries; and
 - promote access to gas in an affordable and safe manner.
- c) The objects of the Petroleum Pipelines Act, as stipulated in section 2, are to:
- promote competition in the construction and operation of petroleum pipelines, loading facilities and storage facilities;
 - promote the efficient, effective, sustainable and orderly development, operation and use of petroleum pipelines, loading facilities and storage facilities;
 - ensure the safe, efficient, economic and environmentally responsible transport, loading and storage of petroleum;
 - promote equitable access to petroleum pipelines, loading facilities and storage facilities;
 - facilitate investment in the petroleum pipeline industry;

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- provide for the security of petroleum pipelines and related infrastructure;
 - promote companies in the petroleum pipeline industry that are owned or controlled by historically disadvantaged South Africans, by means of licence conditions to enable them to become competitive;
 - promote the development of competitive markets for petroleum products;
 - promote access to affordable petroleum products; and
 - ensure an appropriate supply of petroleum to meet market requirements.
- d) The object of the National Energy Regulator Act, as stipulated in section 1, is to establish a National Energy Regulator for the regulation of the electricity, piped-gas and petroleum pipelines industries.

1.5.1.5 The Electricity Regulation Act, the Gas Act and the Petroleum Pipelines Act give the Minister of Mineral Resources and Energy ('the Minister') the power to make Regulations in terms of which NERSA must discharge its mandate.

- a) The Minister has published the following Electricity Industry Regulations:
- The Electricity Regulations for Expropriation on behalf of a licensee
 - The Electricity Regulations for compulsory norms and standard for reticulation services
 - The Electricity Regulations on deviation from set or approved tariffs
 - The Revised New Generation Regulations were issued on 4 May 2011.
- b) The Minister published the Piped-Gas Industry Regulations on 20 April 2007, which deal with, amongst others:
- third-party access to transmission and storage facilities;
 - expropriation procedures and timelines;
 - mechanisms to promote historically disadvantaged South Africans;
 - mediation and arbitration procedures; and
 - price regulation principles and procedures.
- c) The Minister published the Petroleum Pipelines Industry Regulations on 4 April 2008. The Regulations deal with, amongst others:
- third-party access to storage facilities;

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- setting of tariffs for petroleum pipelines and approval of tariffs for petroleum loading and storage facilities;
- expropriation procedures and timelines;
- mechanisms to promote historically disadvantaged South Africans; and
- mediation and arbitration procedures.

1.5.1.6 NERSA derives its revenue by, among others, imposing prescribed levies on the regulated industries following a prescribed transparent procedure. In this regard, the following Acts govern the imposition of such levies:

- The Gas Regulator Levies Act, 2002 (Act No. 75 of 2002);
- The Petroleum Pipelines Levies Act, 2004 (Act No. 28 of 2004); and
- The Electricity Act, 1987 (Act No. 41 of 1987), section 5B.

1.5.1.7 Apart from the afore-mentioned industry-specific legislation that anchors NERSA's mandate and the imposition of levies, the following facilitating and foundational legislative prescripts are also applicable to NERSA's business:

- The Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA), which specifies the accounting of NERSA as a Section 3A Public Entity
- The Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (PAIA), which determines the way NERSA must treat access to information
- The Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA), which determines just administrative action of NERSA
- The Protection of Personal Information, 2013 (Act No. 4 of 2013), which determines the way NERSA must treat personal information
- All other applicable laws of the Republic of South Africa.

1.5.2 RELEVANT POLICIES

NERSA's mandate is further derived from published government policies and regulations developed by the Minister in terms of the Electricity Regulation Act, Gas Act and Petroleum Pipelines Act. As outlined in these legislative prescripts, NERSA must make decisions that are consistent with published government policy. Accordingly, the relevant applicable policies are as follows:

- White Paper on Energy Policy for South Africa of 1998
- Electricity Pricing Policy (EPP) of the South African Electricity Supply Industry

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- Free Basic Electricity Policy
- White Paper on Renewable Energy Policy for South Africa of 2003
- Energy Security Master Plan: Liquid Fuels published by the Department of Energy in 1998 and 2007
- National Development Plan
- Industrial Policy Action Plan (IPAP)
- Integrated Resource Plan (IRP) 2019.

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CHAPTER 2

2 CONTACT DETAILS OF INFORMATION OFFICERS

1. Information Officer

Chief Executive Officer of the National Energy Regulator of South Africa (NERSA)

Tel: +27 12 401 4620

2. Deputy Information Officer

Knowledge Manager of the National Energy Regulator of South Africa (NERSA)

Email: paia@nersa.org.za

Tel: +27 12 401 4600/4723

3. Physical Address

Kulawula House
526 Madiba Street
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CHAPTER 3

GUIDE ON HOW TO USE THE MANUAL

The Information Regulator has, in terms of section 10(1) of PAIA, as amended, updated the PAIA Guide, as initially compiled by the South African Human Rights Commission (SAHRC). The purpose of the Guide is to provide information that is needed by any person who wishes to exercise any right contemplated in PAIA and POPIA whereas the purpose of the Manual is to assist an individual who wishes to obtain access to information that is held by NERSA in an efficient and effective manner. The guide on how to use the PAIA is available from the office of the Information Regulator.

Any queries related thereto must be directed to:

The Information Regulator (South Africa)
PO Box 31533
Braamfontein
Johannesburg
2017

Tel No: +27 10 023 5207

Email: infoereg@justice.gov.za

Website: www.infoeregulator.org.za

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CHAPTER 4

4. ACCESS TO RECORDS

The following step must be considered before submitting a request

Step 1: Does the Information requested exist in the form of a record?

- Please note that PAIA only applies to records that exist at the time of receiving the request.
- PAIA does not compel anyone to create a record that is not yet in existence when the request is made. For instance, PAIA cannot be used to obtain reasons for a decision taken by NERSA if such reasons have not been recorded.
- If unsure whether the record exists, please indicate that to NERSA in the relevant request form.
- In the case of records already with the National Archives of South Africa, the records will be made available in compliance with the laws applicable to the perusal of such information:
 - Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
 - Protection of Personal Information Act, 2013 (Act No. 84 of 1982)
 - National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996).

4.1 Voluntary Disclosure

Information on the following subjects is available without a formal request, as prescribed in PAIA:⁶

- 4.1.1 NERSA's publications and annual reports
- 4.1.2 General information pertaining to NERSA and information regarding the services rendered
- 4.1.3 Information available on NERSA's website at www.nersa.org.za, which includes:
 - 4.1.3.1 legislation pertaining to NERSA;
 - 4.1.3.2 decisions made by the Energy Regulator;

⁶ Section 15 of the *Promotion of Access to Information Act 2 of 2000*.

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4.1.3.3 reasons for the decisions made by the Energy Regulator; and

4.1.3.4 documentation on available tenders and bid documentation.

Note: Notwithstanding the above, an appointment to view documentation will still have to be made with the information officer or their deputy, although a formal application need not be submitted.

4.2 Information to be formally requested

NERSA holds information pertaining to the following subjects, which must be formally requested in terms of the Act.⁷ Inclusion of any subject or category should not be taken as an indication that records falling within those subjects and/or categories will be made available under the Act.⁸ In particular, certain grounds of refusal, as set out in the Act, may apply to a request for such records. Amongst others, records deemed confidential on the part of a third party will necessitate permission from the third party concerned, in addition to normal requirements, before NERSA can consider access.

The following are the categories of information for which a formal request must be made to NERSA.

4.2.1 Finance and Administration

4.2.1.1 Minutes of the meetings of the Energy Regulator (non-confidential parts)

4.2.1.2 Minutes of meetings of subcommittees

4.2.1.3 Minutes of staff meetings and/or management meetings

4.2.1.4 Accounting records, books and documents

4.2.1.5 Interim and annual financial records

4.2.1.6 Details of auditors

4.2.1.7 External auditors' reports

4.2.1.8 Service Level Agreements

4.2.1.9 Agreements of Lease with tenants and concessionaires

4.2.1.10 Supply Chain Management Policy

4.2.1.11 Bid Evaluation Committee minutes and scoring

⁷ Promotion of Access to Information Act 2 of 2000.

⁸ Promotion of Access to Information Act 2 of 2000.

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4.2.1.12 Bid Adjudication minutes

4.2.1.13 Bid documents

4.2.1.14 Employee payslips

4.2.2 Human Resources

4.2.2.1 Organisational structure

4.2.2.2 Employment Equity Plan

4.2.2.3 Human Resources Policy

4.2.2.4 Agreements with trade unions

4.2.2.5 Disciplinary records and documentation pertaining to disciplinary proceedings

4.2.2.6 Personal files of employees

4.2.3 Other Documentation

4.2.3.1 Licences and general conditions

4.2.3.2 Reasons for decisions of the Energy Regulator (non-confidential parts)

4.2.3.3 Other documents related to/supporting the licence applications

4.2.3.4 Tariffs and related documents

4.3 Request Procedure

4.3.1 The Requester must comply with the following before consideration will be given to their request for information:

4.3.1.1 The Requester must comply with all the procedural requirements in the Act relating to the request for access to the record.

4.3.1.2 The Requester must ensure that access to that record is not refused on any ground of refusal mentioned in the Act.⁹

4.3.1.3 The Requester must use **Form A**, attached in **Schedule 2** to this manual, to request information.

4.3.2 Once a complete request is received, a decision shall be taken within the prescribed period of 30 calendar days. However, this period may be extended for a further period of 30 days by the Deputy Information Officer in certain circumstances.

⁹ Promotion of Access to Information Act 2 of 2000.

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- 4.3.3 If access is granted to records of NERSA, the requester will be notified and required to pay the prescribed access fees, as set out in **Schedule 1**, before access is granted.
- 4.3.4 If the Requestor asks for access in a particular form, then the Requester should obtain access in the manner that has been requested, unless doing so would interfere unreasonably with the running of the business of NERSA or damage the record or infringe on the right of a third party. If, for practical reasons, access cannot be given in the required form, but can be given in an alternate manner, then the fee will be calculated according to the manner originally requested.¹⁰
- 4.3.5 Unless the request is made by a personal requester or a person claiming an exemption, the request fee of R100.00 must be paid into the bank account of NERSA and proof thereof must be submitted to the Deputy Information Officer. To claim a fee exemption granted by the Minister in terms of section 22(8) of PAIA, Part E of Form A should be completed.
- 4.3.6 If in addition to a written reply to their request for the record, the Requester wants to be informed of the decision in any other way, this must be indicated.¹¹
- 4.3.7 If a Requester is requesting the information on behalf of somebody else, the capacity in which the request is being made should be indicated.¹²
- 4.3.8 If a Requester is unable to read or write, or has a disability, the request for the record can be made orally. The information officer must then fill in the form on behalf of such a Requestor and provide them with a copy.¹³

4.4 Remedies available to Requestors on refusal by NERSA to provide information

The Act makes provision for internal and external appeal procedures should NERSA refuse to provide information to the Requestor.

(i) Internal Appeal

Any aggrieved Requester may fill in **Form B**, attached as **Schedule 3** to this manual, and internally appeal the decision made by the Information Officer to the

¹⁰ Section 29 (3) and (4) of the *Promotion of Access to Information Act 2 of 2000*. A

¹¹ Section 18 (2) (e) of the *Promotion of Access to Information Act 2 of 2000*.

¹² Section 18 (2) (f) of the *Promotion of Access to Information Act 2 of 2000*.

¹³ Section 18 (3) of the *Promotion of Access to Information Act 2 of 2000*.

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Energy Regulator. The outcome of the appeal will be made known to the Requester within a reasonable time.

(ii) External Appeal

A Requestor that is dissatisfied with the outcome of the internal appeal and refusal to disclose information may, within 30 calendar days of notification of the decision, apply to the High Court for relief.

Likewise, a third party who is dissatisfied with the Information Officer's decision to grant a request for information may, within 30 days of knowledge of their grievance, apply to the High Court for relief.

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CHAPTER 5

5. SERVICES AVAILABLE

5.1 NATURE OF SERVICES

NERSA renders the following services in terms of its legislative mandate:

5.1.1 Electricity

- 5.1.1.1 Issuing licences for generation, transmission, distribution, trading; and imports and exports
- 5.1.1.2 Issuing licences for traders
- 5.1.1.3 Setting of tariffs
- 5.1.1.4 Development of tariff methodologies
- 5.1.1.5 Evaluation and approval of tariff applications from licensees
- 5.1.1.6 Development of pricing frameworks
- 5.1.1.7 Planning for the country's future electricity demand
- 5.1.1.8 Promoting alternative electricity generation
- 5.1.1.9 Promoting demand side management and energy efficiency
- 5.1.1.10 Designing of the regulatory framework for the introduction of Regional Electricity Distributor Networks
- 5.1.1.11 Mediation between generators, transmitters, distributors, customers or end users
- 5.1.1.12 Undertaking investigations into the activities of licensees
- 5.1.1.13 Performing any other act incidental thereto.

5.1.2 Petroleum Pipelines

- 5.1.2.1 Issuing licences for the construction and operation of petroleum pipelines facilities
- 5.1.2.2 Gathering information on petroleum pipelines and storage and loading facilities
- 5.1.2.3 Ensuring orderly development and security of supply of the petroleum pipelines industry
- 5.1.2.4 Monitoring compliance with the Petroleum Pipelines Act and regulations
- 5.1.2.5 Enforcing third-party access to petroleum facilities

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- 5.1.2.6 Development of tariff methodologies for the petroleum pipelines and the storage and loading facilities
- 5.1.2.7 Evaluating and setting tariffs for petroleum pipelines and approving tariffs for petroleum storage facilities and loading facilities
- 5.1.2.8 Collecting certain data on industry.

5.1.3 Piped-Gas

- 5.1.3.1 Issuing licences for the construction, conversion and operation of piped-gas facilities, and trading in gas
- 5.1.3.2 Gathering information on all piped-gas activities for adequate planning and security of supply
- 5.1.3.3 Monitoring and approving piped-gas tariffs for storage and transmission
- 5.1.3.4 Enforcing third-party access policies
- 5.1.3.5 Metering of gas entering South Africa.

5.2 HOW TO GAIN ACCESS TO THESE SERVICES?

NERSA is committed to providing services in accordance with its mission statement, which reads as follows:

To regulate the energy industry in accordance with government laws and policies, standards and international best practices in support of sustainable and orderly development.

- 5.2.1 The services can be accessed by a potential licensee (for the purpose of obtaining a licence for any of the activities regulated by NERSA), any other member of the public and stakeholders by:
 - 5.2.1.1 filling in an application for any of the activities regulated by NERSA;
 - 5.2.1.2 taking part in public hearings and submitting comments when such notice is made; and
 - 5.2.1.3 lodging a complaint and requesting mediation from NERSA.
- 5.2.2 More information on NERSA and the services available can be accessed by:
 - 5.2.2.1 visiting the NERSA website at www.nersa.org.za;
 - 5.2.2.2 visiting NERSA's physical address at Kulawula House, 526 Madiba Street, Arcadia, Pretoria; or

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5.2.2.3 calling the NERSA Contact Centre at +27 12 401 4600.

5.2.3 COMPLAINTS TO THE INFORMATION REGULATOR

5.2.3.1 A requester or third party may only submit a complaint to the Information Regulator in accordance with chapter 1A of PAIA after that requester or third party has exhausted the internal appeal procedure against a decision of the Information Officer.

5.2.3.2 A complaint to the Information Regulator must be made in writing, and a complaint form must be completed, either manually or online. A complaint form can be downloaded from the Information Regulator's website at www.inforegulator.org.za.

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CHAPTER 6

6. ARRANGEMENT FOR ALLOWING FOR PUBLIC PARTICIPATION IN DISCHARGING THE MANDATE OF NERSA

The National Energy Regulator Act makes provision for public participation by stating that every decision of the Energy Regulator must be in writing and, more importantly, the decision must be taken using a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Energy Regulator.¹⁴

In compliance with the above provision, NERSA uses two processes in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000) (PAJA). These processes are:

- (i) public hearings; and
- (ii) notice and comment procedure.

6.1 Public Hearings

In matters and licence applications that affect the public, NERSA holds public hearings. NERSA places an advert of the public hearing specifying the date, time and venue for the public hearing and also appeals that any person desiring to make oral representation at the public hearing indicate this to the Chairperson of the Subcommittee holding the public hearing. The rules for public hearings are available at NERSA offices on request.

6.2 Notice and Comment Procedure

Where NERSA is of the opinion that an application adversely affects the rights of the public, notice will be given to the applicant, and members of the public will then be requested to forward their comments to the Energy Regulator. If the Energy Regulator is of the opinion that, based on the comments received, a public hearing should be held for oral evidence to be heard, this procedure will then be converted to that of a public hearing, and due process will be followed.

¹⁴ S 10 (1)(d) of Act 40 of 2004.

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CHAPTER 7

7. INFORMATION CONCERNING THE PROTECTION OF PERSONAL INFORMATION AS CONTEMPLATED IN SECTION 14(1)(C) OF PAIA

7.1 NERSA processes personal information of the data subjects identified in paragraph 4.2 for the following purposes:

Data Subjects	Categories of Personal Information
Employees and applicants for employment	<ul style="list-style-type: none"> - Identity number and names, marital status for criminal checks and pension administration - Qualifications verifications and audits - Credit information and payment history - Verification of employees doing business with the State. - General matters relating to employees (general benefits, pension, medical aid, disciplinary action, leave management, performance management, training, security clearance - Previous employer references - Personal bank account information - Any other reasonably required information relating to the employment or possible employment relationship
Bidders, vendors, suppliers and service providers	<ul style="list-style-type: none"> - Identity and/or company information and directors' information - Names of contact persons - Physical and postal address; contact details (contact number(s), fax number, email address) - Registration number; financial, commercial - Scientific or technical information - Trade secrets, banking and financial information - Information about products or services - Information related to tax status and broad-based black economic empowerment status - Verifying information and performing reference and other prescribed checks - Complying with the organisation's regulatory and other obligations

Data Subjects	Categories of Personal Information
	<ul style="list-style-type: none"> - Supplier invoices - Other information not specified but reasonably required to be processed for business operations
Persons making application in terms of the PAIA, POPIA	<ul style="list-style-type: none"> - Identity and/or company information and directors' information, shareholders - Names of contact persons - Physical and postal addresses, contact details (contact number, fax number, email address) - Registration number, financial, commercial and tax information - Scientific or technical information and trade secrets - Banking and financial information, information about products or services - Broad-based black economic empowerment and charter information - Other information not specified but reasonably required to be processed in terms of energy-related legislation

7.2 Recipients or categories of recipients to whom the personal information may also be supplied

NERSA may also supply the personal information of data subjects to:

- (a) any person entitled to access it in terms of legislation;
- (b) any regulatory authority or tribunal, in respect of any matter or part thereof, that falls under their jurisdiction;
- (c) law enforcement agencies, such as the National Prosecuting Authority;
- (d) the South African Police Service, for criminal investigation; and
- (e) the courts, in respect of any matter taken on judicial review.

7.3 Information Security Measures

NERSA shall put in place security protocols to safeguard personal information from being accessed unlawfully, and the following mechanisms will be implemented:

- Correct classification of information is captured, as employee data shall be classified as 'personal information' or 'special personal information'.

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- Security protocols to guard against unauthorised access to information by implementing computer and network security measures, such as passwords, implementing firewalls, install antivirus protection, ensuring data protection through data encryption and redaction of personal information, securing laptops and computers through passwords or biometrics and securing the Virtual Private Network (VPN).
- Protocols on notifying employees or other persons when their personal information is compromised or when there is a privacy breach will be institutionalised.
- Stricter security protocols are adopted to restrict third-party access to the office environment, computer network, system, application software, data or another resource.
- In the event of a data breach, both the data subject and Information Regulator must be notified as soon as there are reasonable grounds to believe that an unauthorised party has unlawfully accessed or acquired personal information.

7.4 **Transborder flow of Personal Information**

POPIA provides that personal information may only be transferred out of the Republic of South Africa if:

- the recipient country can offer such data an ‘adequate level’ of protection;
- the recipient country has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available;
- the recipient country is in a jurisdiction that is subject to a law that provides substantially the same or similar level of protection to a data subject as in POPIA. The third party who is the recipient of the information is subject to a law, binding corporate rules or a binding agreement, which provides an adequate level of protection; or
- the data subject consents to the transfer of their personal information.

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CHAPTER 8

8. MISCELLANEOUS

- 8.1 This manual will be available:
- 8.1.1 on the NERSA website (www.nersa.org.za);
 - 8.1.2 at the office of the Human Rights Commission;
 - 8.1.3 at the NERSA offices; and
 - 8.1.4 at every place of legal deposit as defined in section 6 of the Legal Deposit Act, 1997 (Act No. 54 of 1997) ('the Legal Deposit Act').

These places in terms of the Legal Deposit Act¹⁵ are:

- a) the City Library Services, Bloemfontein;
 - b) the Library of Parliament, Cape Town;
 - c) the Natal Society Library, Pietermaritzburg;
 - d) the South African Library, Cape Town;
 - e) the State Library, Pretoria;
 - f) the National Film, Video and Sound Archives, Pretoria (certain categories);
and
 - g) any other library or institution prescribed by the Minister.
- 8.2 This manual will be updated after three (3) years, and an amended version will be delivered to the office of the Information Regulator.
- 8.3 This manual will be available in four (4) of the official languages spoken in South Africa to ensure optimum accessibility, namely:
- English
 - Afrikaans
 - Sesotho
 - IsiZulu.

¹⁵ 54 of 1997.

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SCHEDULES

- 1. PRESCRIBED FEES**
- 2. PRESCRIBED FORM FOR ACCESS TO RECORDS [FORM A]**
- 3. INTERNAL APPEAL FORM [FORM B]**

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SCHEDULE 1

FEES IN RESPECT OF PUBLIC BODIES

The schedule of fees applicable to requests for access is set out below.

Number	Fee Description	Rand (R)
1.	Request fee payable by every requester, other than personal requesters	R100.00
2.	Photocopy of A4-size page	R1.50 per page or part thereof
3.	Printed copy of A4-size page	R1.50 per page or part thereof
4.	For a copy in a computer-readable form on: (i) flash drive (to be provided by requestor) (ii) compact disc (CD) If provided by requestor If provided to the requestor	R40.00 R40.00 R60.00
5.	For a transcription of visual images per A4-size page	Service to be outsourced. Will depend on quotation from a service provider
6.	Copy of visual images	R60.00
7.	Transcription of an audio record, per A4-size page	R24.00
8.	Copy of an audio record on: (i) flash drive (to be provided by requestor) (ii) compact disc - If provided by requestor - If provided to the requestor	R40.00 R40.00 R60.00

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9.	To search for and prepare the record for disclosure for each hour or part of an hour, excluding the first hour, reasonably required for such search and preparation. Shall not exceed a total cost of	R100.00 R300.00
10.	Deposit: If search exceeds 6 hours	One third of amount per request Calculated in terms of items 2 to 8
11.	Postage, email or any other electronic transfer	Actual expense, if any

Method of payment

NERSA will accept payment by means of the following methods:

- Direct deposits
- Electronic fund transfers.

Banking details

Account name: National Energy Regulator of South Africa

Bank name: Standard Bank

Account number: 011228547

Branch code: 010845

Type of Account: Business Current Account

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SCHEDULE 2

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(Section 18(1) of the Promotion of Access to Information Act, 2000 [Act No. 2 of 2000])

(Regulation 6)

FOR DEPARTMENTAL USE

Reference number:

Request received by:

(Name and surname of Information Officer/Deputy Information Officer)

on _____ (date) at _____ (place)

Request fee (if any): R _____

Deposit (if any): R _____

Access fee: R _____

Signature of Information Officer/Deputy Information Officer

A Particulars of public body

The Information Officer/Deputy Information Officer:

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B Particulars of person requesting access to the record

- (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.*

Full names and surname: _____

Identity number: _____

Postal address: _____

Fax number: _____

Telephone number: _____

Email address: _____

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

C. Particulars of person on whose behalf request is made

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

Full names and surname: _____

Identity number: _____

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D. Particulars of record

- (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 the additional folios.

1 Description of record or relevant part of the record:

2 Reference number, if available: _____

3 Any further particulars of record:

E. Fees

- (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 payment of 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 below, state your disability and indicate in which form the record is required.

Disability:	Form in which record is required:
-------------	-----------------------------------

<p>Mark the appropriate box with an X.</p> <p>NOTES:</p> <p>(a) Compliance with your request for access in the specified form may depend on the form in which the record is available.</p> <p>(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.</p> <p>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</p>			
<p>1. If the record is in written or printed form:</p>			
<input type="checkbox"/>	copy of record*	<input type="checkbox"/>	inspection of record
<p>2. If record consists of visual images: (This includes photographs, slides, video recordings, computer-generated images and sketches):</p>			
<input type="checkbox"/>	view the images	<input type="checkbox"/>	transcription of the images*
<p>3. If record consists of recorded words or information that can be reproduced in sound:</p>			
<input type="checkbox"/>	listen to the soundtrack (audio cassette)	<input type="checkbox"/>	transcription of soundtrack* (written or printed document)
<p>4. If record is held on computer or in an electronic or machine-readable form:</p>			
<input type="checkbox"/>	printed copy of record	<input type="checkbox"/>	printed copy of information derived from the record*
<input type="checkbox"/>		<input type="checkbox"/>	copy in computer readable form* (stiffy or compact disc)
<p>*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.</p>			<p>YES</p>
			<p>NO</p>
<p>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.</p>			
<p>In which language would you prefer the record?</p>			

G. Notice of decision regarding request for access

You will be notified whether your request has been approved/denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

Signed at _____ on this _____ day of _____ 20_____.

SIGNATURE OF REQUESTER/PERSON FOR WHOM THE REQUEST IS MADE

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SCHEDULE 3

FORM B

NOTICE OF INTERNAL APPEAL

(Section 75 of the Promotion of Access to Information Act, 2000 [Act No. 2 of 2000])

(Regulation 8)

REFERENCE NO.: _____

A. Particulars of public body

The Information Officer/Deputy Information Officer

B. Particulars of Requester/third party lodging the internal appeal

(a) *The particulars of the person lodging the internal appeal must be given below.*

(b) *Proof of the capacity in which the appeal is lodged, if applicable, must be attached.*

(c) *If the appellant is a third party and not the person who originally requested the information, the particulars of the Requester must be given below.*

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Full name _____

Identity no. _____

Postal address _____

Fax no. _____

Telephone no. _____

Email address _____

Capacity in which an internal appeal on behalf of another person is being lodged:

C. Particulars of Requester (complete this section ONLY if you are requesting as a third party, i.e. on behalf of Requester)

Full name _____

Identity no. _____

D. The decision against which the internal appeal is lodged

	<i>Mark the decision against which the internal appeal is lodged with an X in the appropriate box</i>
	<i>Refusal of request to access</i>
	<i>Decision regarding fees prescribed in terms of section 22 of the Act</i>
	<i>Decision regarding the extension of the period within which a request must be dealt with in terms of section 26(1)</i>
	<i>Decision in terms of section 29(3) of the Act to refuse access in the form requested by the Requester</i>
	<i>Decision to grant request for access</i>

E. Grounds for appeal

F. Notice of decision of appeal

You will be notified in writing of the decision on your internal appeal. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

State the manner _____

Particulars of manner _____

Signed at _____ on this _____ day of _____ 20_____

Signature of Appellant _____

FOR INTERNAL USE

OFFICIAL RECORD OF INTERNAL APPEAL

REFERENCE NO.: _____

Name of Information Officer/Deputy Information Officer: _____

Appeal received on: _____ by _____

Reason for appeal stated: Yes ____ No ____ (mark with a tick)

Document	Version	File Plan Number	Security Classification	Department	Tanzwana Number	Date issued	
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OUTCOME OF APPEAL

Decision of the Energy Regulator:

Date decision taken:

Date: _____

Signature: _____

Document	Version	File Plan Number	Security Classification	Department	Tanzwana Number	Date issued	
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