

DMR remains a PAIA compliancy “outlier” – Centre for Environmental Rights

Encouraging trend to release information emerging, but DMR disclosure rate ‘disappointing’



CHRISTINE REDDELL The Department of Mineral Resources rate of actual release of requested documents was a “disappointing” 12.5%
22nd January 2016

By: [Ilan Solomons](#)

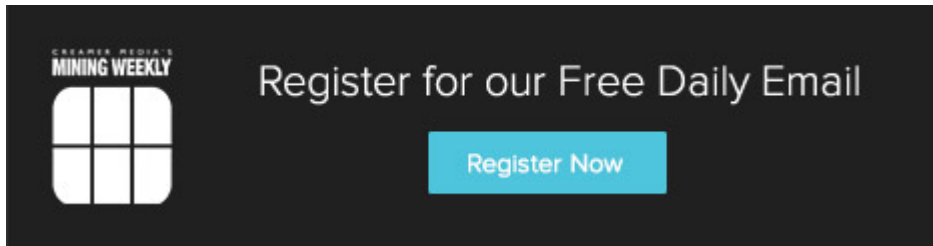
Creamer Media Staff Writer

Font size: [-](#)[+](#)

The Department of Mineral [Resources](#) (DMR) continues to be a poor implementer of the Promotion of Access to Information Act (PAIA), says [Cape Town](#)-based nonprofit organisation and [law clinic](#) the Centre for [Environmental](#) Rights (CER) attorney [Christine Reddell](#).

She explains that, over the past five-and-a-half years, the CER has submitted about 300 requests for [environmental](#) records held by government and companies using the PAIA and recorded the results. In November, it released its fifth associated report, entitled ‘Signs of Hope 2015’, on access to [environmental](#) information.

Advertisement



“Access to information is essential for the exercise of the right to an [environment](#) not harmful to [health](#) or wellbeing. Without access to – at the very least – [environmental](#) licences and compliance data, citizens and communities cannot exercise their [environmental](#) rights,” Reddell asserts.

She says that, while the PAIA remains poorly implemented, the CER has witnessed a slow but encouraging trend towards greater reactive disclosure by government authorities and private companies, owing to the increased awareness of the obligations imposed by the PAIA, and improved investment in capacity to manage PAIA requests.

However, the report states that the DMR remains an “outlier” in this trend. It notes that, in 2015, the department’s rate of actual release of requested documents was a “disappointing” 12.5%.

“Considering the exceptionally high level of [environmental](#) degradation caused by the [mining](#) industry, the DMR’s performance in this regard remains unacceptable,” Reddell declares.

She says deemed refusals (where the DMR fails to respond) appear to be on the rise again, with no response to five out of the eight PAIA requests submitted to the DMR in 2015, and no response to one of the two requests submitted in 2014 (the other was refused).

Previously, deemed refusals had come down from 44.4% in the 2010/11 period to 14.3% in 2013.

The report notes that the one internal appeal submitted by the CER to the Mineral [Resources](#) Minister in 2015 under the PAIA has also been met with no response.

“The majority of our internal appeals under the PAIA submitted to the DMR in the 2013/14 period also remain unanswered,” Reddell adds.

She says that, of the three requests in 2015 that were not ignored, two were granted and one was partially granted and partially refused.

Reddell highlights that the CER has received the information from only one request granted, and continues to follow up in respect of the other grant and partial grant.

She comments that this outstanding information is housed by the Mpumalanga regional office of the DMR, which appears to have been “paralysed” by an office relocation.

An official at the Mpumalanga regional office told a CER attorney that all files were in sealed boxes at the new premises, while the regional office staff were still at the old premises, awaiting instructions to move to the new premises.

“This had been the situation for four months (end May to September 2015). Towards the end of October 2015, we received correspondence suggesting that this situation had changed, but, as at the date of publication of this report, we still await the receipt of the outstanding information.

“We have been unable to engage with the relevant officials telephonically, and our recent follow-up emails have also gone unanswered,” states Reddell.

Further, she points out that the South African Human Rights Commission’s (SAHRC’s) yearly ‘2013/14 PAIA’ report indicates that the DMR submitted its required report on the PAIA to the SAHRC within the requisite period.

According to the DMR, it received a total of 686 PAIA requests in the 2013/14 cycle (compared with 510 in the 2012/13 cycle). Of the 686, only 71 were refused in full (compared with 325 out of the 510 in the 2012/13 cycle).

Reddell says that 509 out of the 686 were apparently granted in full (compared with 152 out of the 510 in the 2012/13 cycle). The DMR reports that there were no instances where an extension of time in terms of Section 26(1) of PAIA was required.

She adds that, according to the DMR, only six internal appeals were received, no documents were granted as a result of these appeals (one of which remained pending), and only one application to court against the DMR was instituted.

“There are serious discrepancies between our own records and the figures provided to the SAHRC by the DMR,” Reddell highlights.

She notes that, for example, the CER submitted 12 internal appeals to the DMR during the 2013/14 period. However, the DMR reports that only six were submitted in total for the 2013/14 period.

Reddell says that, while it may be correct that the DMR does not often request extensions of time, the reason for this is not that requests are being processed within the 30-day time period prescribed by PAIA, but rather that “they are simply being ignored altogether”.

“The DMR’s seemingly high number of requests ‘granted in full’ is also at odds with the CER’s experience. The DMR continues to ‘grant’ access to documents requested without an understanding of whether or not the documents actually exist or can be found,” she alleges.

Reddell further states that access to documents housed in a regional office are “granted” by the national office, after which the requester will be told to follow up with the regional department for the “production of the records”.

She says that actually receiving the documents then becomes another challenge, as this can take months, or never happen at all.

“Much of the DMR’s failure to [comply with the] PAIA could be remedied by a more strategic approach to proactive disclosure of records that should in any event be in the public domain.

“The CER and many other civil society and community organisations have long called for the DMR to make all records evidencing rights granted, as well as [environmental](#) management programmes and social and labour plans authorised by the DMR, available in a public online register,” Reddell concludes.

[Mining Weekly](#) contacted the DMR to seek its response to the CER’s report findings, but no comments were forthcoming from the department at the time of going to print.



Edited by: Martin Zhuwakinyu

Creamer Media Senior Deputy Editor

[EMAIL THIS ARTICLE](#)