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Editors Note

The Coordinating Committee of the National Information Officers Forum takes pleasure in the second edition of PAIA Infoshare, its newsletter directed at sharing access to information related news, events and stimulating discussion.

This edition provides a snapshot of the National Information Officers Forum and of the prestigious Golden Key Awards held in September on the International Right to Know Day. Mukelani Dimba summarizes the PAIA Golden Key Award booklets succinctly for the newsletter. Deputy information officers and institutions committed to increasing the responsiveness, transparency and implementation of PAIA are among the categories of recipients who are provided with the accolade of the Golden Key during the ceremonies.

The write up by Nokwanda Molefe on interventions for Community Development Workers will provide insight on interventions aimed at raising awareness on PAIA. Internationally too, efforts are underway to

convene the International Information Officers Forum. This annual event will be celebrated in Norway in September this year.

The South African Human Rights Commission is also enthusiastic about using the platform provided by the news letter to share information with members of the information community. To this end some commonly recurring issues on PAIA are raised and responded to in a new frequently asked questions section. Readers are urged to submit their frequently asked questions to the editor for the next issue.

In keeping with our mandate to provide practical models to secure enhanced implementation of PAIA within both public and private organizations the Coordinating Committee members have provided practical case examples of PAIA implementation within some of their organizations. These models provided provided by Mpho Ngoepe of the Office of the Auditor General of South Africa; provide insightful benchmarks

and remain a useful resource in driving implementation in other institutions. The article on the Protection of Personal Information Bill by Chantal Kisoon, provides a broad overview of legislation which is being considered by Parliament.

The development of this legislation has taken a long time and its implications for both the public and private sector are enormous. The broad discussion provided here on the bill comes at an opportune time, providing those in the information community with a snapshot to the implications it will have for information management in their organizations. March and April remain the critical months with regard to formal compliance with PAIA.

The SAHRC will be monitoring Section 32 submissions by public bodies closely for their report on compliance to National Parliament. The section 32 template is attached to this newsletter! The Coordinating Committee urges all public bodies to submit their reports with some urgency. We look forward to your submissions in the next issue. Please send your articles and discussion points to the editor: ckisoon @sahrc.org.za

The International Information Officers Forum

This year marks the 6th International Conference for Information Commissioners. The conference will be held in Oslo from the 27-30 September 2009.

Strengthening co-operation with and the enforcement of access to information legislation around the world is the core objective of the conference. The conference is said to provide a platform for information commissioners and information practitioners around the world to share their experiences, and to discuss challenges around access to information. Furthermore the conference will provide attendants with the latest developments on other legislation that may impact on access to information.

In light of the above the conference will focus on the following key issue:

- Challenges and opportunities in the face of new information technology
- Access to environmental information
- Public officials' attitudes towards access to information
- The Financial Crisis– FIOs Role

The conference will host participants from around the world to commemorate international right to

know day and to strengthen and uphold the values of transparency and accountability.

The Protection of Information Bill and the South African Human Rights Commission—Chantal Kisoona

Our legislators have been driven by international pressure to quickly develop data protection legislation governing personal information. One of the key pressures imposed by blocks like the European Union is that it will have difficulty sharing information of its individuals during the World Cup processes, because South Africa is currently a 'data haven' due to the inadequacy of its data protection mechanisms. This means that without regulations governing the protection of personal data, the personal information of EU members can be made vulnerable to any abuser of the information in the world.

South Africa is not the only country striving to finalize legislation on personal data protection; at least 3 former French colonies have already recently done so to promote trade relations with the European Union. Our common law privacy and delictual protections are proving ineffective as a means of protecting information. This is increasingly evident in the pace of the landscape of information generation, protection needs and technological advance. The proposed draft for the protection of personal information, although far from finalized recognizes the need to ensure that citizens and consumers can be confident that their information is being used responsibly without threats to their dignity and safety etc.

This means that individual X who has informed a hotel group that he likes his meals hot, has a preference for sea views, insists on the first floor close to a fire escape and wishes to read the Sunday Independent, can be confident that the information will not be passed on for sale to information hunters paid by fundamentalists who have a price on X's head! The new bill is formulated on principles that speak to the lawful and fair means of obtaining personal information, maintenance and security, accuracy, openness in processing, accessibility to the information owner and is destroyed timeously. Many of these principles simply speak to good business practice.

The bill will be legislation with broad generic principles

and will apply to both the private and public sector actors. It will therefore be complemented by sector/industry specific codes of conduct and regulation for specific application. Interestingly the bill also carries a provision for an independent Information Protection Regulator.

It has been suggested by drafters that this regulator could for instance be based at the South African Human Rights Commission. This recommendation echoes calls and recommendations by the Commission and other stakeholders for a similar Information Commissioner as an independent intermediary in respect of the Promotion of Access to Information Act. A number of information related legislation will fall within the purview of such an office, amongst these are PAIA; the Electronic Communications and Transactions Act, the National Credit Act, the Consumer Protection Bill; The National and Provincial Archiving legislation, The Protection of Information Bill and the Protection of Personal Information Bill and critically; the current MISS standards used by the public sector to classify records in its custody; to cite but a few examples.

The calls for an Information Commissioner are fast becoming pressure that Parliament and the Department of Justice cannot unduly avoid much longer. It has become increasingly evident that such an intermediary is an indispensable resource in the face of complex information related technological advance. Similar provisions were also seen in the much publicized and debated Protection of Information bill recently before the Justice Portfolio Committee. The passage of the latter was delayed for want of further consideration on a number of issues, one of them being the office of an Information Commissioner.

The impending 2010 World Cup will certainly catalyse increased activity from legislators. It will be interesting to see whether this activity will hasten the creation of the long awaited Office of an Information Commissioner within the Commission before the World Cup, or whether it will continue facing the lethargic response it has been met with since 2004.

Government institutions setting high standards—by Mukelani Dimba

Institutions that have monitored the implementation of the Promotion of Access to Information Act (PAIA) have over the years have noted that PAIA is not being implemented as it should. Parliament's *ad hoc* committee on the review of state institutions supporting democracy also reflected on the fact that PAIA is honoured in breach rather than in proper implementation. Despite evidence of continued non-compliance with it must be noted that studies conducted by the South African Human Rights Commission (SAHRC) and the Open Democracy Advice Centre (ODAC) have revealed stellar examples of best practice across the entire spectrum of the public service. In 2008 Access to Information Index compiled by ODAC the following institutions were recognized as trendsetters in terms of PAIA compliance:

DOD and SAPS

Leading the pack has always been the South African Police Service (SAPS), the Department of Defense (DOD) and ESKOM. These public institutions have consistently been top performers in terms of implementation of PAIA. The DOD is a previous winner of the SAHRC-ODAC Golden Key Award for Best Institution (2006) and ranked first for a South African institution in terms of the OSJI-ODAC monitoring study on Freedom of Information monitoring.

The SAPS's National DIO on the other hand has won the SAHRC-ODAC Golden Key Award for Best Deputy Information Officer (DIO) of the

Year for three years consecutively since the inception of the Golden Key Awards in 2006.

The DOD and SAPS present an unusual case study because both these institutions have consistently set high standards for PAIA compliance and implementation, despite the fact that ordinarily these are two institutions which would have been expected to be less than keen on the Act as result of their safety and security mandate which tends, at times, to be incorrectly seen as not supportive of openness and transparency. Other institutions should be encouraged to learn from the SAPS and DOD, especially the SAPS's procedural guidelines for dealing with requests and the DOD's organization of internal structures for handling requests for information and appeals thereafter.

The Limpopo Provincial Government

The province of Limpopo continues to provide good examples of implementation of PAIA. In ODAC's 2007 Access to Information Index – used as the basis for the SAHRC-ODAC Golden Key Awards - the Limpopo Department of Health and Social Development received special recognition for their work in PAIA implementation and compliance by a provincial department. In 2008 the Department of Public Works in Limpopo received the same accolade. The department is only one of a few provincial or local government institutions which has followed the example of the DOD in setting up an internal task team comprising of senior departmental officials

who decide on requests and appeals and monitors compliance with PAIA on behalf of the Department's Information Officer and the Member of the Executive Council responsible for the department.

The province has also distinguished itself for developing what is a *de facto* Provincial Deputy Information Officers' Forum. A structure currently exists where all Deputy Information Officers in the province gather to exchange insights on and experiences of dealing and complying with PAIA and related legislation for records management. This is a highly commendable development and other provinces are encouraged to consider similar activities because the exemplary performance of the provinces' departments is testament to the efficacy of such a formation.

The City of Johannesburg

In terms of the 2008 Access to Information Index metropolitan municipal councils are by far the best performing category, with the City of Johannesburg distinguishing itself as the Best Institution with a record score of 85%!

The sterling work done by the Joburg Metro in setting up mechanisms for receiving, processing and monitoring requests for information sets a high standard for PAIA compliance. The IT system that has been developed by the Metro evidences the extent to which the Metro has invested resources in implementing PAIA. The City of Johannesburg was the winner of the Golden Key Award for Best Institution during the 2008

"As housing delivery has advanced, the question of how to ensure fairness between individuals, especially in cities, has become more pressing....and we have not seen a concerted effort to explain to these communities how housing is in fact dealt with."

Continued from page 4

The Theewaterskloof Local Municipality

In 2008 the Theewaterskloof Local Municipality made an impressive debut entry into the Access to Information Index. It scored an impressive rank of sixth place overall and second place – after Joburg Metro – among local government structures. This performance is commendable considering the fact that this is a small rural local municipality falling within the Overberg District Municipality in the Western Cape. The performance of the Theewaterskloof Local Municipality proves that even with limited resources an institution can still perform admirably in terms of compliance with and implementation of PAIA.

ESKOM

ESKOM has again demonstrated exemplary performance in implementation of PAIA and their Deputy Information Officer (DIO) has previously been recognized as the Best DIO (2007). In the 2008 Access to Information Index ESKOM scored 77% which was the second highest score since the inception of the Access to Information Index in 2006. The solid performance by ESKOM is a result of careful investment of both financial and human resources towards the implementation of PAIA. The IT system custom-made for PAIA compliance within ESKOM, together with the IT system installed within the City of Johannesburg, remain the best examples establishing systems for processing PAIA requests.

The findings of the 2008 Access to Information Index show that that is some improvement in the status of PAIA implementation. There are number of factors for this but key factors include:

The extensive training drive and PAIA-related seminars by the PAIA Program

of the South African Human Rights Commission (SAHRC) in the last year (2007); Awareness, among the DIO community, that their conduct is being monitored by the ODAC and the SAHRC through the Access to Information Index and the Awards project;

Awareness by the DIO community that their performance can be rewarded through the Golden Key Awards; and Benchmarking of best practice through the DIO Forum.

In order to strengthen efforts aimed at improving compliance with PAIA, all stakeholders must be encouraged to tap into the skills and experiences of the 2008 such as the City of Johannesburg, ESKOM, the Department of Defense, South African Police Service, Theewaterskloof Local Municipality and the entire Limpopo provincial administration.

THE AUDITOR GENERAL OF SOUTH AFRICA DID IT, YOU CAN ALSO “DID IT”

‘Sharing Best Practise on the Implementation of PAIA’

To most people in South Africa, English is neither our first nor second language, hence one of the former Bantustan leaders once said, “If Bophuthatswana did it, we can also did it.” This statement even though grammatically wrong can be used as the basis for sharing best practices with regard to the implementation of the Promotion of Access to Information Act (PAIA).

It is against this backdrop that I share with you the development with regard to the PAIA in the office of the Auditor-General of South Africa (AGSA). For the purpose of this article, the acronym AGSA refers to an institution and Auditor-General (AG) refers to the person. This is in line with the usage of terminology within the organisation (AGSA).

On Friday 28 September 2007, international Right-to-Know day, the AGSA was recognised by the Open Democracy Advice Centre (ODAC) and the South African Human Rights Commission (SAHRC) out of 59 public institutions (including chapter nine institutions) for the award of public institution that has strived to implement the PAIA through the crafting of enabling policies and organisational procedures. This recognition has helped to elevate the standing of the AGSA amongst the auditees, as well as the Information and Knowledge Management (IKM) Business Unit (BU) within the organisation.

How then did the AGSA “did it”?

The AGSA has embraced the opportunity to incorporate the PAIA’s requirements into its internal policies and procedures not only for compliance purposes, but also as an opportunity to encourage openness within the organisation. To assist the AGSA with compliance, a process for handling requests within the organisation has been put in place.

To kick-start this process, the AGSA identified its duties and obligations with regard to the PAIA, which included amongst others, the compilation of the section 14 manuals in three official languages; designation of deputy information officers (section 17), submission of section 32 reports to the



The Auditor-General, Mr Terence Nombembe accepting the Golden Key Award trophy and certificate from Mpho Ngoepe with a smile. On accepting the award, the AG said, “***I wish to thank all those who worked hard to make it possible for our organisation to be recognised with this award. To all the AGSA employees, not only those charged to work with the PAIA: our greatest efforts should now focus on implementation and understanding that the PAIA is much more than merely responding to requests for information by citizens; it is to ensure proper service delivery, transparency and accountability to the SA citizens.***”

SAHRC, etc. As a result, all heads of business units were designated by the Deputy Auditor-General as deputy information officers. Their responsibilities were clearly stipulated in their appointment letters and includes the following:

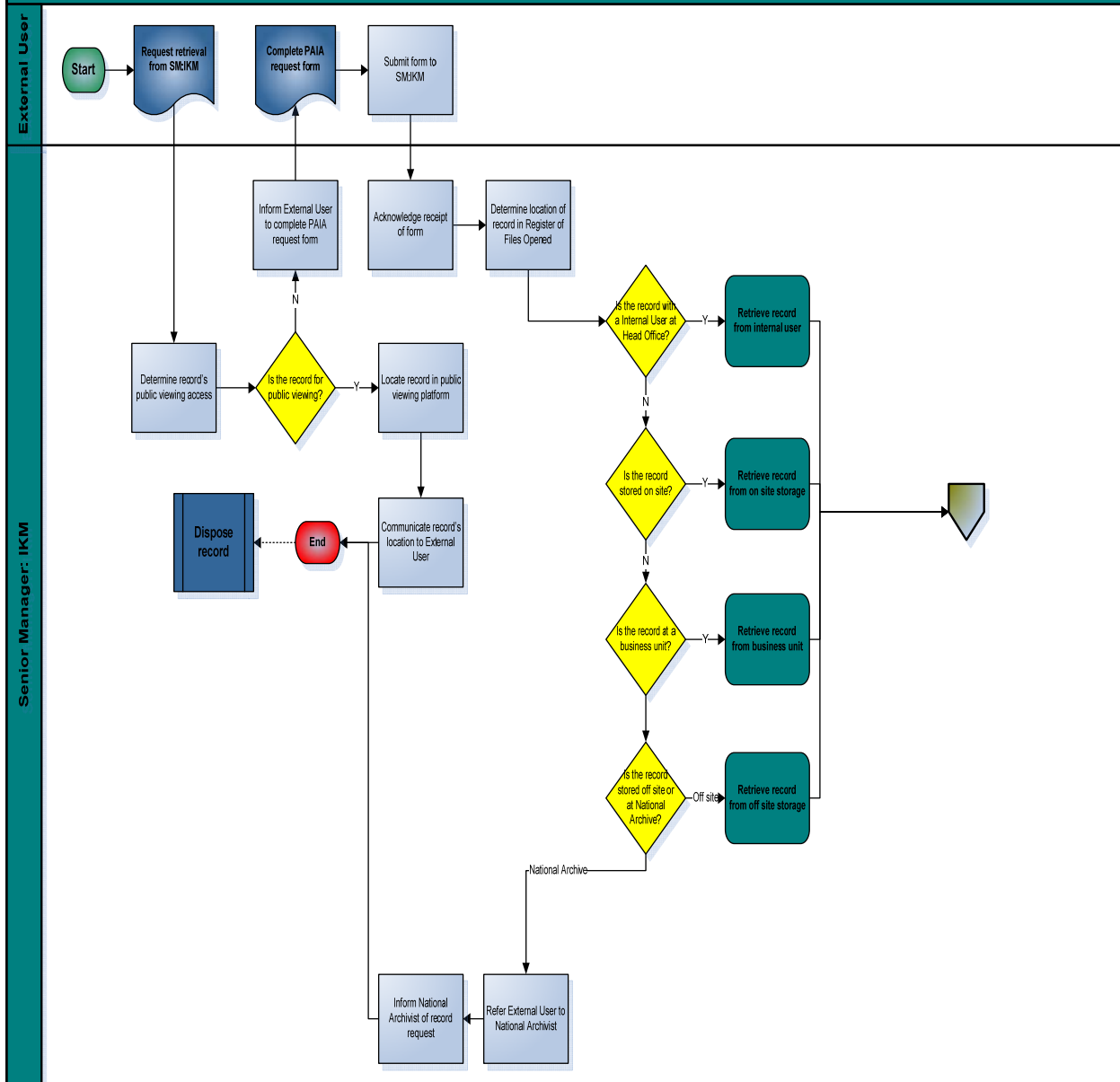
- Receiving and responding to PAIA requests in their respective business units;
- Assisting the Information Officer in compiling and submitting the s14 manual;
- assisting the information officer in the compilation and submission of section 15 notices to the Minister of Justice; and
- Assisting the information officer in compiling and submitting s32 reports to the SAHRC

The deputy information officers also serve as dynamic links between their respective business units and the IKM Unit with regard to the PAIA activities in the AGSA. However, the overall responsibility of overseeing PAIA implementation within the AGSA lies with the Information and Knowledge Management Unit.

The legal service unit plays an advisory role by keeping the IKM Unit updated about developments in the legal and statutory environment that may impact on the PAIA practices of the AGSA as well as monitoring compliance.

A section 14 manual, explaining the PAIA process was also made available on the AGSA website www.agsa.co.za in English, Sepedi and Afrikaans. The translation of the manual in Zulu is underway. The AGSA takes pride in submitting its section 32 report to the SAHRC well within the mandatory timeframes for submission. A process for handling requests within the AGSA has been put in place and is summarised below.

1.5.4a: Retrieve record for external user – Level 3



Promotion of the PAIA activities within the AGSA is done through articles in the internal newsletter, as well as through the provision of training and development of information material like brochures. The result of all the above measures and processes the AGSA did it in 2007 we would be pleased if you could also “did it” this year!

onfident that the information will not be passed on for sale to information

PAIA Interventions for Community Development Workers—by Nokwanda Molefe

The South African Human Rights Commission (Commission) is mandated both by the Constitution of the Republic of South Africa Act 108 of 1996 and the Promotion of Access to Information Act 2 of 2000 (PAIA) to promote, protect and monitor the right to access to information. In execution of this mandate the Commission has engaged in a number of awareness raising interventions and monitoring initiatives to promote and monitor the right to access information. The Commission's monitoring activities have revealed that South African's at community level are not aware of the right to access to information and of PAIA, have little or no knowledge of what the right means for the ordinary man on the street, and how it can be applied to everyday life as a vehicle to access socio economic rights and services offered by government.

In March 2009 the Commission hosted a workshop for Community Development Workers (CDW's) on PAIA. The workshop was aimed at equipping CDWs with the necessary skills to carry out their tasks and to facilitate effective communication between communities and local authorities. CDW's at provincial government were identified as a critical resource in facilitating the process of taking PAIA to communities. Knowledge and skills imparted on CDWs would be used by the CDW's to assist communities exercise their right to access information, and to interact more effectively with local authorities.

The workshop was informed by

a lack of awareness on PAIA both at government level and community level. Monitoring interventions undertaken by the Commission have revealed persistent trends in the public sector that contribute to the lack of awareness on PAIA. Government's failure to proactively engage with PAIA and lack of knowledge of PAIA has created a barrier in filtering any knowledge to communities. The absence of information sharing mechanisms between government authorities and constituencies is a major contributor to a lack of communication between communities and local authorities, service delivery protests and inability of community members to participate actively in processes and decisions that affect their lives.

Concerted efforts have been made by the Commission to educate officials on PAIA and to assist government institutions in developing systems and processes that will facilitate active information sharing between local authorities and community members. The Commission has made a number of recommendations to institutions audited by it on community orientated programs for adoption to accelerate the sharing of information and awareness on PAIA. These include the incorporation of PAIA in public participation meetings, Imbizo's, Integrated Development Programs and information desks at Customer Care Centers and Regional Offices.

These interventions are aimed at combating challenges posed by lack of information. The CDW intervention is one that the Commission intends to host throughout the country in col-

laboration with the Open Democracy Advice Centre (ODAC), to accelerate awareness and use of the right at community level and to enhance the work of CDW's in their respective communities.

Interventions which strategically target facilitative structures like CDW's are instrumental in enhancing delivery within multiple levels of government. They represent useful models through which the constitutional covenant underpinning democratic process can be translated.

"Interventions which strategically target facilitative structures like CDW's are instrumental in enhancing delivery within multiple levels of government. they represent useful models through which the constitutional covenant underpinning democratic process can be translated"

FREQUENTLY ASKED QUESTIONS

Q: What is the Promotion of Access to Information Act (PAIA)?

A: PAIA is national legislation enacted to give life or effect to the right to access information enshrined in section 32 of the Constitution of the Republic of South Africa Act 108 of 1996. PAIA was enacted to uproot the culture of secrecy that was infiltrated by the apartheid government. The Act promotes transparency, accountability and informed public participation and respect for human rights.

Q: Is my organization exempted from PAIA?

A: PAIA applies to the records of all public and private bodies; therefore all public and private bodies must realize the right to access information. There are however, certain categories of private bodies that are exempt from complying with certain compliance requirements provided for by the Act.

Q: How can my organization comply with PAIA?

A: Organizations can comply with PAIA by facilitating proactive information sharing, promoting responsiveness and transparency, and by embracing the values of the Constitution, objectives of PAIA and Batho Pele principles. In addition to embracing these values organizations must comply with mandatory reporting requirements in terms of section 32 of PAIA, compiling a manual as prescribed by section 14, making request forms and the manual

available at office points and their website.

Q: Who is responsible for PAIA implementation in the organization?

A: At national and provincial level it is the Director General and at local level it is the municipal manager. In other public bodies or organs of state (e.g. chapter nine institutions) it is the executive officer of the institution. The Information Officer can make a written delegation and appoint a Deputy Information Officer to administer PAIA requests and be responsible for the daily running of PAIA within an organization.

Q: How can the SAHRC assist a member of the public in making a request for information?

A: The SAHRC provides training for the general public on PAIA and assists members of the public lodge requests for information. The SAHRC can also provide a mediatory function where the matter is contentious and the parties agree to mediation

Q: Is an employee of a public body a requester in terms of PAIA?

A: No, in terms of PAIA a public official cannot request information using PAIA from the institution that he or she is employed to request for information using PAIA. Note the definition of requestor in terms of PAIA be

Requestor: "in relation to a public body, means

any person (other than a public body, or an official thereof) making a request for access to a record of that public body; or

a person acting on behalf of the person referred in subparagraph (i)"



NOTICES & UPCOMING EVENTS

EVENTS:

SEMINAR NAVIGATING CYBER LAW

DATE: : 6 AUGUST 2009

VENUE: SAHRC HEAD OFFICE PARKTOWN

RECORDS MANAGEMENT CONFERENCE & AWARDS

DATE: 8-10 SEPTEMBER 2009

VENUE: NORTH WEST PROVINCE, SUN CITY HOTEL

INFORMATION OFFICERS FORUM & GOLDEN KEY AWARDS

DATE: 28 SEPTEMBER 2009

VENUE: TBC

NOTICES:

- The SAHRC recently launched its farming report, copies of the report are available on www.sahrc.org.za or at the SAHRC offices
- Submission of articles and material for the next issue to be made to ckisoon@sahrc.org.za or nmolefe@sahrc.org.za. Please note that the editorial committee reserves the right to make the final decision on articles and material to be published on PAiA Infosahre.



Many thanks to the contributors and SAHRC Secretariat

Please note that all submissions for publication in the newsletter should be sent electronically to Ckisoon@sahrc.org.za.

Please also note that the editorial committee reserves the right to select specific submissions for publication.