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## GOVERNMENT NOTICES

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### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 965

9 October 2009

#### PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 RULES OF PROCEDURE FOR APPLICATION TO COURT IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

The Rules Board for Courts of Law has under section 79 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), made the rules in the schedule.

#### SCHEDULE

##### Definitions

1. In these rules -

- (a) any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned; and
- (b) any word or expression to which a meaning has been assigned in the rules governing the procedures of the court in which an application in terms of these rules is brought, shall bear the meaning so assigned, and unless the context otherwise indicates -

**“Act”** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

**“clerk of the court”** means a clerk and assistant clerk of the court appointed under section 13 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

**“decision”** means a decision in respect of which an application in terms of section 78 of the Act is brought;

**“deliver”** means serve copies on all parties and file the original with the registrar or

clerk of the court as the case might be; and

**“registrar”** means a registrar and assistant registrar appointed under section 34 of the Supreme Court Act, 1959 (Act No. 59 of 1959) or a registrar appointed under any law not yet repealed by a competent authority and in force, immediately before the commencement of the Constitution of the Republic of South Africa, 1996, in any area which forms part of the national territory.

### **Procedure in an application to court in terms of the Act**

2. (1) The procedure prescribed in these rules must be followed in all applications contemplated in section 78 of the Act.  
  
(2) Unless as otherwise provided for in these rules, the rules governing the procedures in the court to which an application in terms of these rules is brought shall apply with appropriate changes, unless otherwise directed by the court.

### **Applications**

3. (1) An application contemplated in section 78 of the Act must be brought on notice of motion that must correspond substantially in accordance with the form set out in the Annexure to these rules, addressed to the information officer or the head of a private body, as the case may be.  
  
(2) The notice of motion must:
  - (a) set out an address within eight kilometres of the court to which the application is brought, where the applicant will accept notice and service of all process;
  - (b) call upon the respondent –
    - (i) to give notice, within 15 days after receipt of the application, of his or her intention to oppose the application, which notice shall also contain an address within eight kilometres of the court to which the application is brought where notice and service of documents will be accepted; and
    - (ii) to file any answering affidavit within 15 days after service

- of the notice of intention to oppose the application; and
- (c) inform the respondent that –
    - (i) if no notice to oppose the application is delivered in terms of subrule (2)(b)(i); or
    - (ii) if notice of intention to oppose has been delivered but no answering affidavit is delivered in terms of subrule (2)(b)(ii), the matter will be placed on the roll for hearing without further notice.
  - (3) The notice of motion referred to in sub-rule (1) must be supported by an affidavit and be accompanied by true copies of all documents upon which the applicant intends to rely.
  - (4) The affidavit referred to in subrule (3) must:
    - (a) set out the facts and circumstances upon which the application is based;
    - (b) state whether the internal appeal procedure contemplated in section 74 of the Act has been exhausted and if so, provide particulars of the manner in which and date upon which the internal appeal procedure was exhausted and if not, the reasons for failing to exhaust such procedure; and
    - (c) explain the relevance of each document upon which the applicant intends to rely.
  - (5) The information officer or head of a private body, as the case may be, must:
    - (a) immediately after receipt of the application, notify, in writing, all other persons affected, of the application and attach a copy of the application to such notice; and
    - (b) within 15 days after receipt of the application –
      - (i) file with the clerk of the court or the registrar, as the case may be, two true copies of the request and the notification sent to the requester in terms of section 25(1)(b) of the Act;
      - (ii) notify the applicant in writing that the requirements of

subparagraph (i) have been complied with; and

(iii) serve on the applicant a true copy of the reasons, if they have not yet been provided.

(6) The applicant may, if the information officer or head of a private body as the case may be, fails to comply with the provisions of subrule (4), request the clerk of the court or the registrar as the case may be, in writing, to place the application before the court for an order in terms of section 82(b) of the Act.

### **Representations**

4. (1) Representations contemplated in section 80(3)(a) of the Act must be -

(a) made under oath in writing, and supported by documentary proof, where applicable; and

(b) filed with the clerk of the court or the registrar as the case may be, at least five days before the date of the hearing of the application.

(2) The court receiving the representations referred to in subrule (1) shall take the steps that it may deem appropriate to bring the representations to the attention of the parties to the application.

### **Court fees**

5. Any application in terms of these rules shall be subject to the payment of the court fees applicable in the court in which the application is brought, unless waived by the court at its discretion on such grounds as it deems appropriate.

### **Short title**

6. These rules may be called the Promotion of Access to Information Rules.

### **Commencement**

7. These rules come into operation on **16 November 2009**.

**ANNEXURE TO THE PROMOTION OF ACCESS TO INFORMATION RULES****PROMOTION OF ACCESS TO INFORMATION RULES****NOTICE OF MOTION**

IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT No. 2 OF 2000

IN THE .....COURT

HELD AT .....

CASE NO. \_\_\_\_\_

In the matter between:

Applicant \_\_\_\_\_ (Full name)

and

Respondent \_\_\_\_\_ (Full name)

**TAKE NOTICE THAT** \_\_\_\_\_

(the applicant)

intends to apply for the following order:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_and that the accompanying affidavit of \_\_\_\_\_ and  
the documents referred to in rule 3(3)(a) will be used in support thereof.**TAKE NOTICE** further that the applicant has appointed \_\_\_\_\_(provide an address within eight kilometres of the court at which the applicant will  
accept notice and service of all process in these proceedings).

**Notice:**

- (i) Notice of intention to oppose this application must be given within 15 days after receipt hereof and must contain an address within eight kilometres of the court to which the application is brought, where notice and service of documents will be accepted.
- (ii) Answering affidavits, if any, must be filed within 15 days after service of the notice of intention to oppose the application.
- (iii) In default of your complying with rule 3(5) of the Promotion of Access to Information Rules, the applicant may request the clerk of the court or the registrar as the case may be, to place the application before the Court for an order in terms of section 82(b) of the Act.
- (iv) In default of your delivering a notice of intention to oppose, the matter will without further notice, be placed on the roll for hearing after the expiry of the period mentioned in paragraph (i) above, on a date fixed by the clerk of the court or the registrar as the case may be.

SIGNED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
**Applicant/Applicant's legal representative**

**Address** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To: (1) Respondent: \_\_\_\_\_

(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) The Clerk of the Court or the Registrar of abovementioned court  
\_\_\_\_\_