

THE ANIMAL LAW REFORM

Legal Research Consultant of Animal Law Reform South Africa

By email: outreach@animallawreform.org

17 FEBRUARY 2023

Dear Sir,

PAIA REQUEST FOR INFORMATION

1. Reply to correspondence

1.1 We refer to the above matter read together with :

- our reply to your request dated 9 December 2022; and
- your latest response sent by way of email dated 13 February 2023.

1.2 Your latest response being the 13 February 2023 email, has been considered, which points are addressed in the table in paragraph 4 below.

1.3 Before our response in paragraph 4 below is tabled, we must however place the below mentioned facts on record:

PAIA PROVISIONS

1.3.1 Right to request

Section 50 of PAIA, allows any person, to ask a private body, for certain records, information or documents (records) which they require for the exercise or protection of any rights; provided that they comply with the procedural requirements under PAIA relating to a request for access to that record; and access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of PAIA.

1.3.2 Rights to refuse

A private body has to right to refuse any request for a record, in accordance and in consequence of those rights or provisions set out under the following sections of PAIA:

- s63 mandatory protection of privacy of third party who is natural person;
- s64 mandatory protection of commercial information of third party;
- s65 mandatory protection of certain confidential information of third party;
- s66 mandatory protection of safety of individuals, and protection of property;
- s67 mandatory protection of records privileged from production in legal proceedings;
- s68 commercial information of private body; and
- s69 mandatory protection of research information of third party, and protection of research information of private body.

1.3.3 **Public interest**

Notwithstanding the abovementioned sections and related provisions, section 70 of PAIA states that “the head of a private body must grant a request for access to a record of the body contemplated in section 63 (1), 64 (1), 65, 66 (a) or (b), 67, 68 (1) or 69 (1) or (2)” if the disclosure of the record would reveal evidence of - a substantial contravention of, or failure to comply with, the law; or imminent and serious public safety or environmental risk; and the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question”.

1.3.4 Following our reading and understanding of section 70 - the rights available to a private body set out under sections:

- 63 mandatory protection of privacy of third party who is natural person;
- 64 mandatory protection of commercial information of third party;
- 65 mandatory protection of certain confidential information of third party;
- 66 mandatory protection of safety of individuals, and protection of property;
- 67 mandatory protection of records privileged from production in legal proceedings;
- 68 commercial information of private body; and
- 69 mandatory protection of research information of third party, and protection of research information of private body,

will only be negated, and more specifically the provisions and related rights under section 63 (1), 64 (1), 65, 66 (a) or (b), 67, 68 (1) or 69 (1) or (2),

if-

- a) the disclosure of the record would reveal evidence of a substantial contravention of, or failure to comply with, the law; or
- b) imminent and serious public safety or environmental risk; **and**
- c) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

1.3.5 Following this, we are of the view that your NPO, the requester may only rely on the provisions of section 70, if the disclosure of the requested records reveals evidence of a substantial contravention of, or failure to comply with the law; or any imminent and serious public safety or environmental risk; **and** the public interest in the disclosure of the record clearly outweighs the harm which AFGRI the discloser would suffer should it disclose these records.

1.3.6 Therefore, you must bear in mind and take into account, the qualifications which first have to be met, and shown, before your NPO may rely on the public interest requirement set out under section 70 of PAIA.

1.3.7 We are in this regard of the view that you have not established a right to any of our records, because you have not shown that our records including our commercial records:

- a) reveal evidence of a substantial contravention of, or failure to comply with the law; or
- b) reveal any imminent and serious public safety or environmental risk; **and**
- c) that there is a public interest in the disclosure of the records which clearly outweigh the harm which we would suffer should we disclose these records.

1.3.8 Rather, we are of the view that your request is a wide broad attempt to seek out a range of information which you may or may not rely on in support of your Project, which we believe, whilst honorable, is at this stage open ended, vague and ambiguous and which has been sent out to a range of persons who you have identified as being in the agricultural sector.

1.3.9 This in our view is with respect nothing short of a simple fishing expedition, where you have adopted the view – “lets cast out net wide and see what we can catch”.

1.3.10 Furthermore, we are of the view that in light of the Project being at an initial stage, your NPO has failed to establish the required public interest.

1.3.11 **Unable to find the requested records**

Public interest and rights to refuse and disclose aside, section 55 of PAIA states that

if:

(a) all reasonable steps have been taken to find a record requested; and

(b) there are reasonable grounds for believing that the record-

(i) is in the private body's possession but cannot be found; or

(ii) does not exist,

the head of a private body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

1.3.12 In this regard the affidavit or affirmation must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the head.

1.3.13 We are quite happy to provide you with the relevant affidavits – please advise if these are required and we will attend to the necessary.

2. APPROACH BY AFGRI

2.1 Notwithstanding the above-mentioned provisions of PAIA, all of which in our view are in our favour, please note that we have not attempted to hide behind these sections, in order to enforce our rights, which we are allowed in law to do.

2.2 Rather, and instead, we have embraced the matter, in good faith and in a transparent and open manner, which has entailed making all the necessary enquiries as to whether the records which you so nobly require are in in our possession.

2.3 These efforts have been detailed in our reply sent to you in December 2022, which advice included an explanation as to why such records were not available, this as mentioned already, all done in good faith and in a transparent manner.

2.4 Whilst we respect the noble objectives of your NPO which (i) focuses on animal law; (ii) the intersection between animal wellbeing, human rights and social justice; and (iii) which concerns itself with the animal protection movement in South Africa and which is (iv) made up of animal activists dedicated to the protection of animals, we are once again, of the view that AFGRI is unable to assist with regards to the provision of information which you require in order to pursue your latest project, which is aimed at:

- understanding the regulatory and policy regime governing chicken welfare in South Africa, and
- promoting more transparent practices, enhanced animal welfare, and more ambitious cage-free commitments by South African retailers, restaurants, and major brands.

2.5 In this regard, in your request, you advised that one of the Project's outputs will

be a:

- 2.5.1 "Public report setting out, among other things, the chicken welfare practices of key role players in the poultry sector, including major South African retailers, restaurants, and brands; and ranking the performance and commitments of selected companies", and
- 2.5.2 all this with the view to protection the environmental, as provided for in section 24 of the Constitution; and more particularly, to enhance animal welfare for chickens.
- 2.5.3 You furthermore advised that the information and records detailed under the PAIA request have been requested in the public interest and will enable the requestor to enhance transparency and accountability, especially in relation to chicken welfare in South Africa, including when bred, raised, and subsequently slaughtered and sold into the consumer market.
- 2.5.4 This "public interest" we must advise has been set out in a vague and wide manner and is not in our view a sufficient explanation of "public interest".

3. **REPLY TO REQUEST**

- 3.1 **In response to your PAIA request, a detailed response was provided which in essence advised that** AFGRI, and its respective subsidiaries and / or divisions does not breed, slaughter or sell for consumption animal or poultry products and that it is not involved in the farming, slaughtering or sale of poultry or livestock. Neither for that matter is AFGRI, as alleged by yourself, is it a key player in the South African egg supply chain.
- 3.2 AFGRI instead supports the Agricultural sector in a more generic sense by providing those who participate in this industry with certain agricultural products and services, including:

- fuel and oil supplies, farming tools and implements, fertilizers, pest control products, seeds, animal feeds, veterinary products and work clothing;
- the handling and storing of grains and oil seeds;
- providing advice and solutions to those who operate grain mills, animal feed mills and who are involved in the oil crushing businesses throughout Africa;
- the provision of financial services and lines of credit to farmers and others who operate in the financial sector;
- the manufacture and supply of a wide variety of animal feed products which are dispatched from the AFGRI mills and depots, which products are of superior quality, and which are made from food safety compliant ingredients, manufactured with care and based on innovative technology, research and processes ensuring that animals receive optimal nutrition.

3.3 Following the above, we must reiterate that whilst AFGRI and its divisions and subsidiaries do operate in the agricultural sector, AFGRI, and / or its various divisions and subsidiaries, are not directly or indirectly involved in the poultry business or egg supply chain.

4. DETAILED REPLY TO YOUR EMAIL DATED 13 FEBRUARY 2023.

Our reply to your email is set out in the table below.

4.1 <i>We have taken legal advice.</i>	Noted. As did we.
4.2 <i>In relation to AFGRI's refusal to provide access to information, we wish to place the following on record, and give AFGRI a further opportunity to be transparent and accountable in the interests of the welfare of chickens in South Africa.</i>	AFGRI has not refused to provide the requested information - AFGRI instead has consulted its various departments and business units with a view to finding out if any documents which may assist are available.

	Our response has indicated that no such documentation exists.
4.3 <i>We note your allegation that "AFGRI, and its respective subsidiaries and /or divisions does not breed, slaughter, or sell for consumption animal or poultry products. It therefore is not involved in the farming, slaughtering or sale of poultry or livestock".</i>	<p>This is correct.</p> <p>AFGRI sold its poultry business in 2014.</p> <p>All related company records followed the sale and were provide to the purchaser. Remaining records as per our records management procedures and archiving and retention rules have subsequently been destroyed or are no longer available.</p> <p>We are prepared to prepare an affidavit attesting this- please advise if this is required.</p>
4.4 <i>You further allege that "AFGRI instead supports the agricultural sector by providing those who participate in this industry with certain agricultural products and services, which are provided on a retail and wholesale basis". Given that AFGRI is responsible for supplying "the agricultural community with fuel and oil supplies, farming tools and implements, fertilizers, pest control products, seeds, animal feeds, veterinary products, and work clothing" we find it troubling that you do not view yourselves as forming part of the egg</i>	<p>As previously stated- these services are general services – which concern mainstream agricultural activities.</p> <p>Despite diligent search- we advise that AFGRI does not hold records that directly pertain to or house details which apply to or concern the egg supply chain or the chicken business.</p> <p>If you can be more specific in terms of what you are exactly requiring this would assist</p>

<i>supply chain. These supplies are integral to the egg supply chain.</i>	and allow us to reapply our efforts and redirect our search in such direction.
<i>4.5 AFGRI is thus a key role player in the South African egg supply chain.</i>	Please can you give us a factual explanation as to how you have arrived at this conclusion.
<i>4.6 Given that our project relates, among other matters, to advancing cage free commitments and the betterment of chicken welfare more generally, the records requested from one of the primary equipment and feed suppliers in the country are indeed necessary for our project and place AFGRI as involved in the industry. The requested records will, among other things, enable the pursuit of corporate accountability and transparency across the egg supply chain in South Africa.</i>	<p>Firstly- please substantiate how this effort is in the public interest.</p> <p>Secondly, please note that we do not have records that concern or house any details that relate to your topic:</p> <p>"Advancing cage free commitments and the betterment of chicken welfare more generally"</p> <p>notwithstanding that you consider AFGRI to be a "primary equipment and feed supplier?"</p> <p>This has already been indicated in our reply.</p>
<i>4.7 We note your purported refusal to provide the records requested at paragraph 6.5.2 of our PAIA request on the grounds of s 68 of PAIA.</i> <p><i>The courts have confirmed, however, that it is not sufficient to refuse access to records merely by quoting a provision in</i></p>	<p>Please advise how you are able to rely on the provisions of section 70- the provisions of s 68 may only be overridden if you can show that:</p> <p>a) the disclosure of the record would reveal evidence of a substantial contravention of, or failure to</p>

<p><i>PAIA. This is because the purpose of PAIA is to promote transparency and access, and PAIA is to be interpreted in this light. It is thus necessary for you to indicate and fully justify the basis upon which you allege that s 68 is applicable. We hereby afford AFGRI the opportunity to do so, alternatively to revisit its stance on transparency and provide access. In light of s 70 of PAIA, the duty on AFGRI to justify its reliance on the grounds set out in s 68 is particularly important given that the public interest in food safety and animal welfare, in our view, outweighs any alleged commercial or financial harm on the part of AFGRI. Further this duty is important given that disclosure could reveal substantial contravention of, or failure to comply with, the law.</i></p>	<p>comply with, the law; or</p> <p>b) imminent and serious public safety or environmental risk; and</p> <p>c) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.</p> <p>In the absence of your NPO being able to show this, we remain convinced that we are able to rely on s 68 based on the fact that these records house information proprietary to AGFRI, and that if released, could result in commercial harm.</p>
<p><i>4.8 Should you fail to provide access, alternatively a proper justification for your reliance on s 68 of PAIA, we reserve our rights to exhaust the legal remedies available to us, including but not limited to, approaching the Information Regulator to lodge a complaint in respect of AFGRI, and/or approach the courts.</i></p>	<p>You are most welcome to approach the Information Regulator, or alternatively the courts- this is your right as per PAIA.</p> <p>We do not view this as a threat and will provide the same information and detail as we have provided to your association should we be invited to present our case at this forum.</p> <p>For the avoidance of doubt, our rights in law are similarly reserved.</p>

<p>4.9 We also request that you revisit your refusal to provide access to the records requested in paragraph 6.6 of our PAIA request on the basis that there are “no records available”.</p> <p>For the reasons set out above, AFGRI undoubtedly has records in its possession related to the supply of feed and equipment in the egg supply chain. Moreover, to the extent that AFGRI seeks to refuse access on the basis that the information does not exist, it is required by s 55 of PAIA to produce an affidavit noting the steps taken to locate the information.</p> <p>4.10 No such affidavit has been provided. We hereby request that access, alternatively the requisite affidavit, be provided.</p>	<p>Your request under para 6.6 was the following:</p> <p>(i) Asset Register and Stock:</p> <p>(ii) Any and all records relating to AFGRI assets and stocks which may be used in respect of the egg supply chain or breeding or farming of livestock or poultry”.</p> <p>In response we advised that there are no records, this being in light of the fact that AFGRI does not hold assets or stock in respect of the egg industry or in respect of the breeding or farming of livestock or poultry – mainly and rationally because it does not carry out these activities.</p> <p>Please advise if an affidavit setting this out is required.</p>
<p>4.11 We wish to remind AFGRI of the Supreme Court of Appeal’s remark that:</p> <p>“Corporations operating within our borders, whether local or international, must be left in no doubt that in relation to the environment...there is no room for secrecy and that constitutional values will be enforced.”</p>	<p>This is noted. Kindly articulate the relevance of this in the context of your legal advice which you have obtained and the factual matrix of your request and your response.</p>
<p>4.12 Kindly respond to this correspondence by no later than 20</p>	<p>Please take this letter as our response.</p>

February 2023 given that we are currently preparing our public report in which we will rank AFGRI relative to its transparency and stance on animal welfare and environmental sustainability, among other matters.

The ranking will be informed by your response to this correspondence, as well as the previous correspondence and records provided.

Kindly confirm receipt of this email.

