



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Reference: PAIA 180509
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Ms Nicole Loser
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Dear Ms Loser

REQUEST FOR ACCESS TO INFORMATION RELATING TO REGULATIONS 5 & 7 OF THE NATIONAL GREENHOUSE GAS EMISSION REPORTING REGULATIONS, 2017 AND REGULATIONS 4(1), 3(2) AND 5(1) OF THE NATIONAL POLLUTION PREVENTION PLAN REGULATIONS, IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000) ("PAIA")

1. I refer to your request for access to records in terms of the Promotion of Access to Information Act, 2000 (Act No.2 of 2000) ("PAIA") dated 11 February 2019, for which payment was made on 11 February 2019.
2. In your request the following records were requested:
 - (1) *The database or list of data providers registered in terms of Regulation 5 of the National Greenhouse Gas Emission Reporting Regulations;*
 - (2) *The latest reports submitted in terms of Regulation 7(1) of the greenhouse gas reporting regulations by the following entities:*
 - *Eskom Holdings SOC Ltd*
 - *Sasol Ltd*
 - *ArcelorMittal South Africa Ltd*
 - *Exxaro Resources Ltd*
 - *Glencore*
 - *African rainbow minerals ltd*
 - *Anglo American Plc*
 - *Anglo Operations Ltd*
 - *South 32 Ltd*
 - *Seriti Resources Holdings Pty Ltd*
 - *Petmin Ltd*

- Mbuyelo Coal Pty Ltd
 - Kuyasa Mining Pty Ltd
 - Sappi Ltd
 - PPC Ltd
 - Gold Fields Ltd.
- (3) *The database of or list of persons that have submitted pollution prevention plans under regulation 4(1) of the national pollution prevention plan regulations, GN 712 of 2017 ("PPP Regulations);*
- (4) *The pollution prevention plans submitted for the period up to 31 December 2020 in terms of regulations 3(2) of the PPP Regulations, the following companies:*
- Eskom Holdings SOC Ltd
 - Sasol Ltd
 - ArcelorMittal South Africa Ltd
 - Exxaro Resources Ltd
 - Glencore
 - African rainbow minerals ltd
 - Anglo American Plc
 - Anglo Operations Ltd
 - South 32 Ltd
 - Seriti Resources Holdings Pty Ltd
 - Petmin Ltd
 - Mbuyelo Coal Pty Ltd
 - Kuyasa Mining Pty Ltd
 - Sappi Ltd
 - PPC Ltd
 - Gold Fields Ltd;
- (5) *The latest annual progress reports submitted by the entities listed in paragraph 3 in terms of regulation 5(1) of the PPP Regulations."*

3. Section 36 of PAIA deals with the mandatory protection of commercial information of Third Parties and it states that:-

- "(1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if the record contains-*
- (a) Trade secrets of a third party;*
 - (b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause to the commercial or financial interests of that third party; or*
 - (c) information supplied in confidence by a third party the disclosure of which could reasonably be expected-*
 - (i) to put that third party at a disadvantage in contractual or other negotiations; or*
 - (ii) to prejudice that third party in commercial competition.*
- (2) A record may not be refused in terms of subsection (1) insofar as it consists of information-*
- (a) already publicly available;*
 - (d) about a third party who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned; or*

- (c) *about the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.*
- (3) *For the purposes of subsection (2) (c), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation."*

4. Section 28 of PAIA deals with severability and it reads:-

- "(1) If a request for access is made to a record of a public body containing information which may or must be refused in terms of any provision of Chapter 4 of this Part, every part of the record which-*
- (a) does not contain; and*
 - (b) can reasonably be severed from any part that contains, any such information must, despite any other provision of this Act, be disclosed.*
- (2) If a request for access to-*
- (a) a part of a record is granted; and*
 - (b) the other part of the record is refused, as contemplated in subsection (1), the provisions of section 25 (2), apply to paragraph (a) of this section and the provisions of section 25 (3) to paragraph (b) of this section."*

5. After careful consideration of the representations received from Third Parties in terms of section 48 of PAIA, the Department has decided to release the following documents requested:

- 5.1 A list of data providers registered in terms of Regulation 5 of the National Greenhouse Gas Emission Reporting Regulations, 2017;
- 5.2 The latest reports submitted in terms of Regulation 7(1) of the National Greenhouse Gas Emission Reporting Regulations, 2017 by the entities listed *ad* paragraph 2 *supra*. Kindly note that these documents will be released in redacted format in accordance with the provisions of section 28 and section 36 of PAIA;
- 5.3 A list of persons that have submitted pollution prevention plans under regulation 4(1) of the National Pollution Prevention Plan Regulations, 2017; and
- 5.4 The pollution prevention plans submitted for the period up to 31 December 2020 in terms of regulations 3(2) of the National Pollution Prevention Plan Regulations, 2017 for the entities listed *ad* paragraph 2 *supra*. Kindly note that these documents will be released in redacted format in accordance with the provisions of section 28 and section 36 of PAIA.

6. You will be provided with the documentation as set out *ad* paragraph 5, in accordance with the provisions of section 49(3)(c) of PAIA.

7. The access fee for the records requested is hereby waived. The documents will be sent to you in electronic format, as per your request.

8. Section 24 of PAIA states:-

"Deferral of access

- (1) *If the information officer of a public body decides to grant a request for access to a record, but that record-*

- (a) *is to be published within 90 days after the receipt or transfer of the request or such further period as is reasonably necessary for printing and translating the record for the purpose of publishing it;*
 - (b) *is required by law to be published but is yet to be published; or*
 - (b) *has been prepared for submission to any legislature or a particular person but is yet to be submitted, the information officer may defer giving access to the record for a reasonable period.*
- (2) *If access to a record is deferred in terms of subsection (1), the information officer must notify the requester concerned-*
- (a) *that the requester may, within 30 days after that notice is given, make representations to the information officer why the record is required before such publication or submission; and*
 - (b) *if the likely period for which access is to be deferred.*
- (3) *If a requester makes representations in terms of subsection (2) (a), the information officer must, after due consideration of those representations, grant the request for access only if there are reasonable grounds for believing that the requester will suffer substantial prejudice if access to the record is deferred for the likely period referred to in subsection (2) (b)."*
9. The Department received the first annual progress reports from certain of the Third Parties listed *ad* paragraph 2 *supra*, as recently as 31 March 2019. The Minister of Environmental Affairs has not had the opportunity to consider the content of the annual progress reports. In terms of section 24 of PAIA the request for latest annual progress reports submitted in terms of regulation 5(1) of the National Pollution Prevention Plan Regulations, 2017 by the entities listed *ad* paragraph 2 is deferred for a period of 90 (ninety) days.
10. The Department did not receive pollution prevention plans, or progress reports in terms of the National Pollution Prevention Plan Regulations, 2017 as requested from the following companies / entities:
- 10.1 Anglo American Plc;
 - 10.2 Petmin Ltd;
 - 10.3 Mbuyelo Coal Pty Ltd;
 - 10.4 Kuyasa Mining Pty Ltd;
 - 10.5 Gold Fields Ltd;
 - 10.6 Seriti Resources Holdings Pty Ltd;
 - 10.7 Glencore;
 - 10.8 Exxaro Resources Ltd;
 - 10.9 PPC Ltd; and
 - 10.10 South 32 (Samancor Manganese Pty Ltd).
11. The Department did not receive reports in terms of Regulation 7(1) of the National Greenhouse Gas Emission Reporting Regulations, 2017 as requested from the following entities / companies:
- 11.1 Petmin Ltd;
 - 11.2 Mbuyelo Coal Pty Ltd; and
 - 11.3 Kuyasa Mining Pty Ltd.
12. Section 23(1) of PAIA states that:
- (1) *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 public body's possession but cannot be found; or*
(ii) *does not exist, the information officer of a public body must, by way of an affidavit or affirmation, notify the requester that it is not possible to give access to that record."*

13. An affidavit in terms of section 23(1)(b)(ii) of PAIA is attached for your information.
14. Should you wish to appeal this decision you are referred to sections 74 and 75 of PAIA which allows you to lodge an internal appeal in the prescribed form to the Information Officer of the Department within sixty (60) days. The subject and reasons for the internal appeal must be clearly indicated.

Yours sincerely



**DEPUTY INFORMATION OFFICER:
DEPUTY DIRECTOR-GENERAL CLIMATE CHANGE, AIR QUALITY AND SUSTAINABLE
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DATE: 06 APRIL 2019**