

Mr. Timothy Lloyd
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Centre for Environmental Rights
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Date:

Enquiries:
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REF: ENV20-L099
PAIA tracking number 0087 Man

Dear Mr. Lloyd

CENTRE FOR ENVIRONMENTAL RIGHTS/ ESKOM HOLDINGS SOC LIMITED: APPLICATION FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 – KENDAL COMPLIANCE NOTICE (ESKOM REF 0087 MAN)

In response to your application dated 3 February 2020 (your ref CER-2020-ESK-0002) regarding the above-mentioned matter, Eskom's response is as follows:

1. Eskom has reviewed your request and will provide access to existing records as stipulated in Table 1 attached to this letter.
2. Furthermore, an affidavit is attached as Appendix 1 for the records that do not exist or did not exist at the lodging of the request on 3 February 2020.
3. It is our intention to provide access to these documentation electronically. Please liaise with the Environmental Deputy Information Officer to finalise the logistics in this regard.


I trust that you find the above in order.



For any queries, please contact: McCourBA@eskom.co.za


Yours sincerely

Eddie Laubscher
INFORMATION OFFICER (DELEGATE)
Date:



TABLE 1: Records to be released to the Centre for Environmental Rights (CER)


No.	Record	No. of records	Partially / Fully granted	Applicable PAIA section applied (in case of partial refusal / redacting)	PAIA clause explained	Record, Comments and / or explanations
1	1. Description of record or relevant part of the record: A. In an official media statement from the Department of Environment, Forestry and Fisheries (the "Department"), dated 21 December 2019, titled "Environment, Forestry and Fisheries on [sic] compliance notice issued to Kendal [sic] Power Station management" ("the Media Statement"), it was reported that the Green Scorpions had issued a compliance notice to the management of Eskom's Kendal power station requiring a maintenance plan to be submitted by 12 January 2020. We understand from subsequent communication with Eskom representatives, which has also been confirmed in the media, that it had applied to vary the compliance notice and that it had obtained an extension from the Department to submit the maintenance plan by 31 January 2020.					
I.	A copy of the compliance notice issued by the Green Scorpions, in terms of section 31L of the National Environmental Management Act, 1998, to Eskom management at Kendal power station on or about 21 December 2019.	1	Full Access	Not Applicable	Not Applicable	Record: DEFF compliance notice to Kendal dated 10 December 2019. Access granted.  App1 Kendal S31L Compliance Notice_Es DEFF has indicated that it considers a final compliance notice as falling within the ambit of a decision in terms of the Promotion of Access to Information Act (PAJA) and as such, access must be provided. Details of notice are also common public knowledge having been reported in the press.
II.	A copy of the maintenance plan which should have been submitted by Eskom management at Kendal power station by the extended deadline of 31 January 2020.	0	Not Granted	23 (1)(b)(ii)	Records that cannot be found or do not exist (1) If- (b) there are reasonable grounds for believing that the record- (ii) does not exist, the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.	Record: Records do not exist – Eskom has not submitted the maintenance plan to DEFF yet given suspension of the decision by the Minister and given that work is still underway to prepare the review of the plan. Comments and / or explanations:

No.	Record	No. of records	Partially / Fully granted	Applicable PAIA section applied (in case of partial refusal / redacting)	PAIA clause explained	Record, Comments and / or explanations
						<p>Access refused for records, which do not exist. Affidavit – Appendix 1</p>  <p>20200317 App 1 Affirmation that recor</p>
III.	(a) Objections to the compliance notice lodged by Eskom management at Kendal power station and	2	<p>Not granted (a) Eskom objection not granted (b) Dept response access granted (c) Ministers decision to suspend access granted</p>	<p>44(1)(a) (i)(ii) (b)(i)(ii)</p>	<p>Submissions were made to the Minister and she is still evaluating. Rejected in terms of PAIA s44 (1) (a) and s44 (1) (b) (i) Reason for rejection - Subject to subsections (3) and (4), the information officer of a public body may refuse a request for access to a record of the body - (a) if the records contains - (i) an opinion, advice, report or recommendation obtained or prepared; or (ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or (b) if - (i) the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid - (aa) communication of an opinion, advice , report or recommendation; or (bb) conduct of a consultation, discussion or deliberation; or (ii) the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.</p>	<p>(a) Record: Eskom grounds for variation and suspension letter dated 2 January 2020. Access refused.</p> <p>Comments and / or explanations: Section 44(1)(a)(ii) is cited in DEFF letter, record on ongoing consultation to make a decision.</p> <p>b) Record: DEFF response to Eskom Kendal variation dated 7 January 2020.</p>  <p>Variation Approval _Eskom Kendal Power</p> <p>Access granted decision to vary compliance notice falls with the ambits of a decision in terms of the Promotion of Access to Information Act (PAJA) and as such access must be provided.</p> <p>c) Record:</p>

No.	Record	No. of records	Partially / Fully granted	Applicable PAIA section applied (in case of partial refusal / redacting)	PAIA clause explained	Record, Comments and / or explanations
						<p>Minister decision to suspend compliance notice falls with the ambits of a decision in terms of the Promotion of Access to Information Act (PAJA) and as such access must be provided. Access granted.</p>  <p>kendal minister response jan 20.pdf</p>
IV.	All other correspondence exchanged between Eskom management and the Department in relation to this compliance monitoring and enforcement action; including but not limited to the following:	0	Not granted	44(1)(a)(ii) and 44(b)(i)	<p>Reject in terms of PAIA s44 (1) and s44(b)(i) Reason for rejection - Subject to subsections (3) and (4), the information officer of a public body may refuse a request for access to a record of the body - (a) if the records contains - (i) an opinion, advice, report or recommendation obtained or prepared; or (ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or (b) if - (i) the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid - (aa) communication of an opinion, advice , report or recommendation; or (bb) conduct of a consultation, discussion or deliberation; or (ii) the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.</p>	<p>Record: as mentioned elsewhere Access refused</p> <p>Comments and / or explanations: Records contain an account of a consultation, discussion or deliberation that has occurred and is ongoing.</p>
IV. a.	Eskom's application to vary the compliance notice;	1	Not granted	44(1)(a)(ii) and 44(b)(i)	<p>Reject in terms of PAIA s44 (1) and 44(b) (i) Reason for rejection - Subject to subsections (3) and (4), the information officer of a public body may refuse a request for access to a record of the body – (a) if the records contains – (i) an opinion, advice, report or recommendation obtained or prepared; or (ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting</p>	<p>Record: Eskom grounds for variation and suspension letter dated 2 January 2020 referred to above. Access refused.</p> <p>Comments and / or explanations: The record is an account of a consultation, discussion or deliberation that has occurred and is ongoing.</p>

No.	Record	No. of records	Partially / Fully granted	Applicable PAIA section applied (in case of partial refusal / redacting)	PAIA clause explained	Record, Comments and / or explanations
					to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or (b) if – (i) the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid – (aa) communication of an opinion, advice , report or recommendation; or (bb) conduct of a consultation, discussion or deliberation; or (ii) the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.	
IV. b.	b. the Department's response to this application;	1	Access granted	Not applicable	Not applicable .	<p>Record: DEFF response to Eskom Kendal variation dated 7 January 2020.Access granted.</p> <p>Comments and / or explanations: Record constitutes decision in terms of the Promotion of Access to Information Act (PAJA) and as such, access must be provided.</p> <p>Existence of extension are also common public knowledge.</p>
IV. c.	c. any representations made by Eskom purporting to show good cause for an extension of time to submit the maintenance plan; and	01	Not granted	44(1)(a) (i)(ii) (b)(i)(ii)	Reject in terms of PAIA s44 (1) and s44 1 (b) (i) Reason for rejection - Subject to subsections (3) and (4), the information officer of a public body may refuse a request for access to a record of the body - (a) if the records contains - (i) an opinion, advice, report or recommendation obtained or prepared; or (ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or (b) if -	<p>Record: Eskom grounds for variation and suspension letter dated 2 January 2020 referred to above. Access refused.</p> <p>Comments and / or explanations: Records are an account of a consultation, discussion or deliberation that has occurred and is ongoing.</p>

No.	Record	No. of records	Partially / Fully granted	Applicable PAIA section applied (in case of partial refusal / redacting)	PAIA clause explained	Record, Comments and / or explanations
					(i) the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid - (aa) communication of an opinion, advice , report or recommendation; or (bb) conduct of a consultation, discussion or deliberation; or (ii) the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.	
IV. d.	d. the Department's response to this request for an extension of time.	1	Access Granted	Not Applicable	Not Applicable	<p>Record: DEFF response to Eskom Kendal variation dated 7 January 2020.</p> <p> Kendal extensions from minister jan 20. f</p> <p>Comments and / or explanations Record constitutes decision in terms of the Promotion of Access to Information Act (PAJA) and as such, access must be provided.</p> <p>Existence of extension is also common public knowledge.</p>
V	A copy of Eskom's 18-month maintenance plan for its power generation fleet in line with the manufacturer guidelines.	1	Access granted	Not Applicable	Not Applicable	<p>Record: Station outage list dated 18 February 2020 as developed based on outage and maintenance philosophy shared by</p> <p> 18 Months Outage List 18 Feb 2020.pdf GCEO with Board.</p>
VI	Copies of the latest decommissioning schedule, related assessments and plans for each of Eskom's coal-fired power stations.	0	Access denied – record does not exist	55 (1) b (ii)	Records that cannot be found or do not exist as in this case are covered under PAIA s 55 where provision for an affidavit confirming that records do not exist is permitted.	<p>Record: Affidavit is attached as Appendix 1 indicating no assessment or plans exist but providing updated general</p>

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						decommission schedule attached.  20200317 App 1 Affirmation that recor