

Accessing Our Company Information

TONGAAT HULETT SUGAR MILLS &
ESTATES LIMITED

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Preamble

¹Act 2 of 2000



The Promotion of Access to Information Act¹ came into operation on 23 November 2001. Section 51 of this Act requires that a private body compile a manual giving information to the public regarding the procedure to be followed in requesting information from the private body when any rights of the individual need to be exercised or protected.

We, as a company, have compiled this manual – not only to comply with the provisions of the Act, but also to foster a culture of transparency and accountability in our environment and to ensure that the people of South Africa have effective access to information to enable them to more fully exercise and protect their rights.

Inside these pages you will be able to view the categories of information that this company possesses. You will also be shown the correct procedure to follow should you require access to any of this information.

Details of the Private Body

Full Name of Company Tongaat Hulett Sugar Mills & Estates Limited

(Registration No. 1926/001467/06)

Registered Address Amanzimnyama Hill Road
Tongaat
KwaZulu-Natal

Postal Address Private Bag 3
Glenashley
4022

Telephone Number 032 439 4300

Fax Number 032 439 4392

Website Address www.huletts.co.za

Information Officer Details Sean Louis Slabbert
Amanzimnyama Hill Road
Tongaat
KwaZulu-Natal

Explanation of Guide

Section 10 of the Act requires the Human Rights Commission to publish a guide containing information reasonably required by a person wishing to exercise or protect any right in terms of this Act.

The guide will contain the following information :-

- ✓ The objects of the Act
- ✓ Particulars of the Information Officer of every public body
- ✓ Particulars of every private body as are practicable
- ✓ The manner and form of a request for access to information held by a body
- ✓ Assistance available from both information officers and the Human Rights Commission in terms of this Act
- ✓ All remedies in law regarding acts, omissions, rights and duties including how to lodge an internal appeal and a Court application
- ✓ Schedules of fees to be paid in relation to requests for access to information
- ✓ Regulations made in terms of this Act.

Copies of this guide will be available as soon as the guide is published.

Information Available in terms of This Act

CATEGORIES OF INFORMATION

This company holds the following categories of information:-

1. Legal

- 1.1 Governance
- 1.2 Capitalization
- 1.3 Budget and capital expenditures
- 1.4 Properties and equipment
- 1.5 Material agreements
- 1.6 Litigation, claims and fines
- 1.7 Human resources, management, employees and benefits
- 1.8 Tax matters
- 1.9 Environmental matters
- 1.10 Technology and information systems
- 1.11 Opinions and other legal advice pertaining to the commercial transactions of this company.

2. Patent Questions

- 2.1 Patents, patent applications and inventions
- 2.2 Agreements pertaining to intellectual property rights
- 2.3 Agreements affecting intellectual property assets
- 2.4 Opinions and other legal advice pertaining to intellectual property
- 2.5 Litigation and other disputes involving intellectual property
- 2.6 Freedom to make, use and sell products and services
- 2.7 Record-Keeping practices
- 2.8 Compliance with export control policy and licenses
- 2.9 Trade secrets and protection of proprietary information
- 2.10 Special concerns and divestitures
- 2.11 Acquisition, joint venture and divestiture agreements
- 2.12 IP accounting / audit issues

- 2.13 Opinions and other legal advice pertaining to the commercial transactions of this company.

3. Trademark Questions

- 3.1 Trademark rights
- 3.2 Trade name / division name issues
- 3.3 Trademarks
- 3.4 Opinions and other legal advice pertaining to the commercial transactions of this company.

4. Copyrights

- 4.1 Copyrights
- 4.2 Opinions and other legal advice pertaining to the commercial transactions of this company.

5. Financial And Accounting Records

- 5.1 Assets
- 5.2 Liabilities
- 5.3 Financials
- 5.4 Documents, audits and agreements
- 5.5 Internal controls
- 5.6 Accounting information systems

6. Manufacturing / Operations

- 6.1 Suppliers
- 6.2 Materials
- 6.3 Operations
- 6.4 Capacity
- 6.5 Facilities / locations
- 6.6 Leases
- 6.7 Properties
- 6.8 Utilities
- 6.9 Machinery, equipment, vehicles
- 6.10 Personal property at each facility
- 6.11 Obsolescence
- 6.12 Depreciation rates and accumulated reserves
- 6.13 Expansion problems
- 6.14 Government and private projects

7. Transportation

- 7.1 Transportation access
- 7.2 Local regulatory issues, restrictions and permits
- 7.3 Transportation system delivery plan
- 7.4 Transportation, warehouse and storage contracts

8. Sales And Marketing

- 8.1 Products
- 8.2 Markets
- 8.3 Customers
- 8.4 Brochures, newsletters and advertising material
- 8.5 Sales
- 8.6 Public relations policies and procedures
- 8.7 Domestic and export orders

9. Information Technology / M I S Systems

- 9.1 Hardware
- 9.2 Operating systems
- 9.3 Telephone exchange equipment
- 9.4 Telephone lines, leased lines and data lines
- 9.5 LAN installations
- 9.6 Software packages
- 9.7 Disaster recovery
- 9.8 Internal systems support and programming / development
- 9.9 Capacity and utilisation of current systems
- 9.10 Development or investment plans
- 9.11 Agreements
- 9.12 Licenses
- 9.13 Audits

10. Insurance

- 10.1 General liability
- 10.2 Automobile liability
- 10.3 Workman's compensation
- 10.4 Property insurance
- 10.5 Coverages, limits and insurers
- 10.6 Exposures not addressed
- 10.7 Liabilities taken by purchasers

11. Tax

- 11.1 Benefits
- 11.2 Local
- 11.3 Payroll
- 11.4 Audit

12. EH&S / Regulatory Compliance

- 12.1 Safety
- 12.2 Industrial hygiene
- 12.3 Employee and public health
- 12.4 Process safety / process risk
- 12.5 Emergency response
- 12.6 Environmental
- 12.7 Aqueous discharges
- 12.8 Solid wastes
- 12.9 Air emissions
- 12.10 Memberships

13. Designs

PROCEDURE FOR REQUESTING ACCESS TO THE ABOVE INFORMATION

A person is required to complete a request form which is available from our Information Officer. There is a prescribed fee for requesting and accessing information (Regulation 5 of the Regulations under this Act, as published in Government Notice No. 223 dated 9 March 2001). Details of these fees are available on request.

Information Available in terms of Other Legislation

1. Section 31(2) of the National Environmental Management Act (Act 107 of 1998):
“Subject to subsection (3), the Minister may make regulations regarding access by members of the public to privately held information relating to the implementation of this Act and any other law concerned with the protection of the environment and may to this end prescribe the manner in which such information must be kept: Provided that such regulations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.”
2. Sections of the Companies Act (Act 61 of 1973), more specifically sections 15A, 50, 67, 113, 130, 140A, 148, 171, 206, 207, 215(4), 234, 237, 240, 255, 257, 258, 286, 294, 295, 296, 297, 302, 304, 312, 360, 393. Details of these sections are available on request.

Information Automatically Available

The following categories of records are automatically available for available for inspection, purchase or photocopying. In other words, you other words, you do not need to request this information in terms of the in terms of the Act.

Request forms for these categories of information are also available from the information officer.

NONE

General

Introduction

The Promotion of Access to Information Act, 2000, came into operation on 9 March 2001.

The Act allows individuals to obtain information or records held by a public institution (such as a Government department or municipality), or a private body which carries on any trade, business or profession. Accordingly it enables members of the public and competitors to information held by companies.

All private bodies within six months of 23 November 2001 must compile a manual, which must be updated on a regular basis, setting out the procedures to be followed so as to facilitate a request by a member of the public for access to the records of a private body.

In the case of a company, the obligation to establish the manual is placed with the Chief Executive Officer or any person duly authorised by the Chief Executive Officer.

The manual must stipulate how a request for information must be submitted, the fees which are to be charged for producing information and generally the procedures to be followed.

The head of a private body is obliged to refuse access to certain categories of information. This relates particularly to information held by a private body and which is owned by a third party.

In regard to information owned by the private body, the private body may refuse a request for the information if such information contains trade secrets or the disclosure of the information would cause harm to the commercial or financial interests of the body.

Certain categories of information have to be disclosed.

Where the head of a private body receives a request for information and such information relates to a third party, the private body must advise the third party before making the disclosure.

Where the head of a private body refuses access to information the aggrieved applicant may apply, within thirty days, to a Court.

Regulations have been published in the Government Gazette setting out the fees which a private body may charge for providing information.

General Right of Access

A member of the public is entitled to access to any record of a private body if such record is required for the exercise or protection of any rights.

The reference to “rights” is likely to be construed as a reference to a right contained in the Bill of Rights to the Constitution.

South Africa’s Constitution is unique in that it applies not only vertically, that is as between individuals and the State, but also horizontally, that is between individuals. The horizontal application of the Bill does not apply in all circumstances and is an area of constitutional law which is being developed. The Promotion of Access to Information Act however specifically states in its preamble that:

“Section 8 of the Constitution provides for the horizontal application of the rights in the Bill of Rights to juristic persons to the extent required by the nature of the rights and the nature of those juristic persons.”

It follows that whether in fact a particular record “is required for the exercise or protection of any right of any individual” will depend in each case on the circumstances of the matter. Companies should therefore adopt internal procedures whereby they seek legal advice where there is any doubt as to an entitlement to the record.

Section 52 of the Act states that the head of a private body may on a voluntary basis submit to the Minister a description of categories of records that are automatically available without a request having to be made. In these circumstances the Minister must on a periodic basis publish a description so submitted. This could, for example, include all statutory licences or permissions which a private body may hold.

The Manual

Within six months of 23 November 2001 a private body must compile a manual setting out the company’s contact details, a guide that has to be followed, if applicable, the categories of records which are available without a formal request having to be made, the location of such records and the procedures to be followed and the contact person in regard to making a formal request. The manual must be made available when requested.

Manner of Access

The form of request will be on a prescribed form. The company is entitled to recover fees for providing the records. For example, for every photocopy of an A4 size page, the fee is 60 cents, for a copy of a stiffy disk the fee is R5.00, and for a compact disc it is R40.00.

The request fee payable by every requester is R35.00.

Procedures exist for the head of the private body to sign an Affidavit should the document not be found. If a request is refused reasons for the request must be submitted. The head of the private body must make his decision/provide the documentation within 30 days. If the head of the private body does not provide the information within 30 days or formally refuse access then he is deemed to have refused access.

Special procedures are in place in regard to providing information as to the health records of an individual and for counselling should the records be of the requester and the head of the private body is of the view that the disclosure of the records may cause serious harm to his or her physical or mental health.

Grounds for Refusal of Access to Records

Subject to certain exceptions, the head of a private body is obliged to refuse a request for access to a record if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

Furthermore the head of a private body must refuse a request for access to a record of the body if the record contains trade secrets of a third party, financial, commercial, scientific or technical information of a third party which would cause financial harm to that third party or information supplied in confidence by a third party and the disclosure of the information is expected to place that party at a disadvantage. This restriction however does not apply if the information relates to product or environmental testing and the disclosure would reveal a serious public safety or environmental risk.

If the disclosure of information would constitute an action for a breach of a duty of confidence owed to a third party in terms of an agreement, it must be refused. Information which is privileged from production in legal proceedings may not be disclosed as well as information which prejudices or impairs security of property, transport or computer or communication systems.

The head of a private body may refuse a request for access to a record of the body if the record contains trade secrets of the private body, financial, commercial, scientific or technical information, the disclosure of which would be likely to cause harm to the commercial or financial interests of the body or information, the disclosure of which would reasonably be expected to put the private body at a disadvantage in contractual or other negotiations or to prejudice the body in commercial competition.

Again a record may not be refused insofar as it consists of information about the results of any product or environmental testing or other investigations supplied by, carried out by or on behalf of the private body and its disclosure would reveal the public safety or environmental risk.

There is mandatory protection of research information of a third body and optional protection of research information of the private body.

Notwithstanding all of the above the head of a private body must grant a request for access to a record if the disclosure:

- (a) would reveal evidence of a substantial contravention of or failure to comply with the law; or
- (b) the disclosure would reveal evidence of imminent and serious public safety or environmental risk; and
- (c) the public interests in the disclosure of the record far outweigh the harm contemplated in the provision in question.

Application to Court

Any court hearing an application following the refusal of a request for information is entitled to examine any record of a private body to which the Act applies, and no such record may be withheld from the Court on any grounds.

The Court may receive representations ex parte, conduct hearings in camera and prohibit publication of such information in relation to the proceedings as the Court determines.

Proceedings are civil proceedings and not criminal proceedings. The Court on hearing the application may grant any order which it considers to be just and equitable including orders for compensation or costs.

Criminal Offences

Any person with intent to deny a right of access, destroys, damages or alters a record, conceals a record, or falsifies a record commits an offence and is liable on conviction to a fine or imprisonment not exceeding 2 years.