

Access to Information – Mining Context

Getting access to certain information can be an important step in challenging mining operations on your land.

The main piece of legislation dealing with access to information is the Promotion of Access to Information Act. It holds different requirements for public and private bodies. Examples of public bodies are government departments, branches of government and state-owned institutions. Examples of private bodies are individuals and companies.

For public bodies, like the Department of Mineral Resources, a person requesting access to information does not have to provide reasons for requesting access to information to be successful.

However, the Department may refuse to provide information, such as if it would unreasonably infringe the privacy of a third party. The person requesting access can then raise an exception to the Department's ground of refusal. For example, they could say that accessing the information would reveal serious environmental risk or contravention of the law.

There are a number of records for which the Department of Mineral Resources cannot refuse access for any reason, including Mining Rights, Social and Labour Plans, Mining Works Programmes, Environmental Management Programmes and Environmental Authorisations. A person requesting access to information from a mining company or other private body has to show that the information is required for them to exercise or protect any rights. This makes it harder to request information for private bodies. When requesting information from public bodies, one does not have to allege that the information will be used to protect any rights. Examples of rights that local communities can raise are environmental rights, land rights and cultural rights.

Further, private bodies can refuse access for the same reasons stated above: to protect the reasonable privacy or commercial interests of third parties. Private bodies may also refuse access to their information in order to protect their own trade secrets, contractual negotiations, commercial competition and other commercial interests. However, a private body cannot use such reasons for denying access if the disclosure of the requested information would show evidence of illegality, safety risk or environmental danger. The public interest in the disclosure must outweigh the harm to the private party resulting from that exposure. If a private body refuses access, then the person requesting access cannot appeal internally, as is the case with public bodies. The person requesting access has to go to court to force the private party to grant access.