



A Member of AfroCentric Group

EssentialMED

Promotion of Access to Information (PAIA) Policy

EssentialMED

The Policy has been developed in line with the promotion of access to information act no 2 of 2000 and protection of personal information (act) of 2010

INTRODUCTION

EssentialMED is committed to transparency and accountability and thus supports giving access to information only to the principal policyholder who needs this information but does this within the principle that the staff and EssentialMED have rights to protection and privacy. Thus the decisions about giving access to any information will always consider the rights of those affected by this access. EssentialMED has specific procedures for giving access to information about the policy holder and these are circulated annually (Guidelines on how to deal with enquiries about policy holders, COMPANY POLICY NO 08/13: ESSENTIAL GROUP). Requests for access to information about policy holders should be referred to the Client Services Department. These procedures should always be the first resource consulted if the policy holders are asked for information. This document attempts to provide some of the “position statements” that will assist the client in dealing with other queries. It is of some concern that members of EssentialMED may feel that The Promotion of Access to Information Act (no 2 of 2000) has superseded other policy at EssentialMED – it has not.

As this is a complex piece of legislation and the decisions made in terms of the legislation have potentially far reaching and serious implications, EssentialMED’s policy is outlined below to assist those who receive requests for information. In some of its activities the work of EssentialMED resembles that of a private body and in others that of a public body and this complicates decision making and compliance with the legislation. For example, where access to the records of EssentialMED in its private capacity is requested the requester must show that the information is required for the exercise or protection of a right Section 50(1).

The Promotion of Access to Information Act no 2 of 2000 (hereafter referred to as the Act) was published in the Gazette (No 20852) of 3 February 2000. The whole Act has been in effect since February 2002 and it gives effect to the Constitutional right of access to information envisaged in section 32 of the Constitution of South Africa.

In order to ensure that EssentialMED protects the interests of the policy holder and EssentialMED it is generally safer to refer the request for access to information to the Legal Adviser or the Registrar. These parties will consider the request and the motivation for the request and will then either be able to advise you to release or deny the request. When making such a referral it is helpful if the client makes their recommendation or comment on the request to assist the above to make a considered decision. Clearly, if the information is intended to be in the public domain (such as marketing material) or is covered by a policy document the policy holder already has in their possession it is possible to make a decision in terms of that policy. The decision whether or not to grant a request must be taken within 30 days – clearly it is more service oriented to make a decision as quickly as possible.

There are, however conditions under which EssentialMED is enabled by the Act not to give access to information and these are listed beneath a brief outline of what the Act is trying to achieve.

PURPOSE OF THE ACT

The Act aims to promote disclosure and not secrecy while protecting people's privacy, confidential commercial information, and ensuring effective, efficient and good governance (Section 9).

GENERAL PRINCIPLES

EssentialMED intends to comply with section 5 of the Promotion of Administrative Justice Act (2000) that stipulates that reasons should be given for decisions. Section 25(3) of the Access to Information Act also makes it mandatory to give reasons for decisions not to grant access to information. Some general exclusion (as catered for in the Act) will be applied except if the information is in the public domain already or if consent has been gained from the person about whom the information is being held (Section 36.2 of Access to Information Act). Access to information requests may be refused if the request is "manifestly frivolous or vexatious or the work involved in processing the request would substantially and unreasonably divert [our] resources" (Section 45).

Applicants for information have the right to appeal against a decision to not give them access (Section 39.3b (IV)).

SITUATIONS UNDER WHICH ESSENTIALMED DOES NOT HAVE TO GIVE ACCESS AND EXAMPLES OF HOW THIS APPLIES AT ESSENTIALMED

- Protection of privacy (Section 34.1) – It is not necessary to give access to personal information (like policy holders records or names and addresses) if this constitutes a violation of privacy (unreasonable disclosure of personal information).
- Protection of commercial or research information (Section 36.1, 42.1, 43.1) – EssentialMED will not disclose information that will undermine scientific (research) or commercial activities whether these are carried out in the institution’s function as either a private or public body.
- Protection of confidential information covered by an agreement (Section 37.1) – EssentialMED will not disclose information if there is an agreement with the person about whom the information is held that it will not do so.
- Protection of safety of individuals and property (Section 38) – EssentialMED will not disclose information if the disclosure of the information could in any way constitute a risk to the safety of an individual or property.
- Protection of existing processes and proceedings (Section 39.1 and 40) – EssentialMED will not disclose information if any other process or proceedings or application has already started in terms of any other act – in other words, this act cannot be used to undermine any already initiated legal or administrative process.
- Defence, security and international relations (Section 41.1) – Access to information that could influence any of the above will be refused unless it is already more than 5 years old.
- Proceedings of committees (Section 44.1) – EssentialMED are not obliged to give access to the proceedings of committees that make decisions or express opinions.

Note: EssentialMED is not obliged to give access to information in the form requested if doing so would interfere unreasonably with effective administration; be detrimental to the preservation of the record or if it would amount to an infringement of copyright not owned by the State or EssentialMED

RESPONSIBILITY

The CEO is the company’s Information Officer who has delegated responsibility to the CIO as the COMPANIES Information Officer (Section 1 and 17) and the responsibility for making decisions about requests for access will rest with them. They may from time to time constitute a committee of experts to consider requests

The role of the Information Officer and the Deputy is spelled out in the Act. In addition EssentialMED will annually publish a manual as required in terms of the Act (Section 14). The responsibility for updating the manual rests with EssentialMED Records Manager.

EssentialMED, through the Compliance Department, will submit an annual report to the Human Rights Commission (Section 32) listing:

1. Requests for access received.
2. Requests for access granted in full.
3. Requests granted as a mandatory disclosure in public interest.
4. Requests for access refused in full or partially.
5. Times each provision of this Act was relied on to refuse access.

6. Internal appeals.
7. Applications to court.
8. Any other matter prescribed in regulations.

All Administrative, and Support Services and who have access to general and personal information are also responsible for ensuring the implementation of this policy and for protecting the rights of those about whom they hold information.

SCOPE

The Act (and thus EssentialMED policy on access to information) applies to all records that are being held by EssentialMED. Record means any recorded information regardless of form or medium in the possession or under the control of EssentialMED whether or not it was created by EssentialMED (Section 1). This applies to all EssentialMED records whether they came into existence before or after the Act (Section 3).

PROCEDURES FOR PEOPLE RECEIVING REQUESTS

If the request for information is not dealt with in terms of existing procedures or policy or the most senior member of the administrative staff available is in any doubt about giving access to the information the policy holder should refer the person to the Legal Adviser by requesting the person to complete the form attached as Annexure A. This must be sent to the Information Officer by ordinary post, fax or e-mail by the requester (Section 18). It is not intended that every person who wants access to information should have to complete the form – if the request is within your normal area of responsibility or is not unusual then you should continue to give (or refuse) access as you have previously done.

8. RETENTION AND DISPOSAL OF RECORDS

EssentialMED creates, collects and maintains information for the purpose of admission, registration, and other activities directly related to the health of the policy holder in connection with the transaction of any other EssentialMED Affairs. Such Information is recorded in the administration systems, documents, e-mails, papers or by any other medium by which information can be stored, such as graphic, electronic and mechanical means.

EssentialMED records are the property of EssentialMED and as such may not be destroyed (including records stored electronically) without permission from the Information Officer who will establish retention rules in consultation with the Central Control Centre General Manager.

Section 90 (Offences) of the Promotion of Access to Information Act stipulates that damaging, destroying, concealing or falsifying a record is an offence with penalties of up to two years imprisonment.