

BIODIVERSITY INFORMATION POLICY FRAMEWORK

Policy Series

Principles & Guidelines

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1. DEFINITIONS

- 1.1 “**Access fee**” means a fee prescribed for the purposes of reproduction and preparation for time reasonably required in excess of the hours prescribed to search for and to prepare the record for disclosure;
- 1.2 “**Biodiversity Act**” means the National Environmental Management: Biodiversity Act 10 of 2004;
- 1.3 “**Biological diversity**” or “**biodiversity**” means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between the species, and of ecosystems;
- 1.4 “**Data**” means primary species occurrence data, legacy data, observational and multimedia records and includes without limitation, photographs, images, recordings, specimens, monographs and other documents;
- 1.5 “**Data Owner**” means any organisations or individuals that own Data comprising biodiversity information;
- 1.6 “**Data Sharing Agreement**” means any agreement regulating biodiversity information supplied by a third party to SANBI;
- 1.7 “**Data User**” means any organisations or individuals that collect specimens as part of their mandate, through research with national funding or the collector of museum specimen;
- 1.8 “**Minister**” means the national Minister of Environmental Affairs & Tourism;
- 1.9 “**NEMA**” means the National Environmental Management Act 107 of 1998;
- 1.10 “**PAIA**” means the Promotion of Access to Information Act 2 of 2000;
- 1.11 “**Public body**” means any department of the state or administration in any sphere of government;
- 1.12 “**Record**” means any recorded information, regardless of form or medium, in the possession or under the control of SANBI established in terms of section 10 of the Act; and whether or not it was created by SANBI;
- 1.13 “**SANBI**” means the South African National Biodiversity Institute established in terms of section 10 of the Act;
- 1.14 “**Requester**” means any person making a request for access to a record of SANBI;
- 1.15 “**The Constitution**” means the Constitution of the Republic of South Africa, 1996;
- 1.16 “**The information officer**” is the Chief Executive Officer of SANBI or an official to whom powers have been delegated in terms of PAIA.

The term *public body* is defined in section 1 of PAIA as including “*any... functionary or institution when ... exercising a public power or performing a public function in terms of any legislation*”. SANBI is a juristic person established in terms of the Biodiversity Act that exercises public power and performs a public function. Accordingly, SANBI falls within the ambit of the definition of ‘public body’ in PAIA.

PART I: Introduction

2. BACKGROUND

- 2.1 Biological diversity is crucial to South Africa's economic growth and development, as well as the ongoing provision and protection of ecosystem services, which directly affect our quality of life. Human well-being, poverty reduction and sustainable development are all dependent upon the sustainable conservation and management of biodiversity. In this regard, it is essential that we know what the status of our biodiversity is, and for this we require access to biodiversity information.
- 2.2 The Republic of South Africa is a democratic state founded upon the values of human dignity, equality, the advancement of human rights, the rule of law and accountable, responsive and transparent governance. These values are enshrined in the Bill of Rights in the Constitution. In order to give effect to these values, the Constitution provides for the right of access to information held by the state and any information held by another person that is required for the protection of any rights.
- 2.3 South Africa is a State Party to the Convention on Biological Diversity¹ (CBD) which recognises both the intrinsic value and importance of biological diversity in protecting the environment for the benefit of present and future generations. South Africa recognises the significant threat posed by the loss or reduction of biological diversity and is committed to implementing measures to conserve South Africa's biological resources and to attain the objectives of the CBD. In particular, South Africa is conscious of the following needs:
- to promote technical and scientific cooperation regarding the conservation and sustainable use of biodiversity; and
 - to facilitate access to biodiversity information and the exchange of information on biodiversity in order to achieve the above objective.
- 2.4 Access to biodiversity information also enhances the environmental right enshrined in section 24 of the Constitution of the Republic of South Africa by ensuring that informed decisions are made about the environment. The sharing of information can lead to new research and innovation for effective biodiversity management and conservation as well as improved human livelihood. It is widely acknowledged that impediments to information access represent the most significant obstacle to informed policy decisions and a general appreciation of the value of biodiversity information.
- 2.5 The effective management of and access to biodiversity information underpins research, decision-making, policy advice and monitoring of the conservation of biodiversity and the effectiveness of conservation measures. The challenge is to manage access to biodiversity information in a manner that ensures an appropriate balance is struck between (1) using biodiversity information for the

¹ United Nations Convention on Biological Diversity, Nairobi, 22 June 1992.

advancement of science and (2) the inappropriate use of biodiversity information that results or might result in the over-exploitation and, ultimately, the destruction of the biological resources to which the information relates.

PART II: Purpose of this Policy Framework

3. INTRODUCTION

3.1 The South African National Biodiversity Institute (SANBI) was established in terms of the National Environmental Management: Biodiversity Act.² SANBI is tasked with assisting in achieving the objectives of the Biodiversity Act. In addition to giving effect to international agreements such as the CBD, the objectives of the Biodiversity Act include the following:

- to provide for the management and conservation of biological diversity within South Africa;
- to provide for the use of indigenous biological resources in a sustainable manner; and
- to provide for the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources.

3.2 SANBI is mandated in terms of the Biodiversity Act to manage a wide variety of information about South Africa's biodiversity. This includes collecting, generating, processing, coordinating and disseminating information about biodiversity and the sustainable use of South Africa's biological resources. SANBI is also required to establish and maintain databases of such information.

3.3 The mission of SANBI is to promote the sustainable use, conservation, appreciation and enjoyment of the exceptionally rich biodiversity of South Africa, for the benefit of all people. The specific functions of SANBI are set out in section 11 of the Biodiversity Act.

3.4 SANBI is a knowledge-based organisation. On the one hand, information regarding South Africa's biodiversity is generated by SANBI as the primary source of such information through research, policy and mainstreaming work³. On the other hand, SANBI acts either as a repository and/or a conduit for the collation, storage and dissemination of biodiversity information prepared or generated by a third party and which is protected by a third party agreement (for example, a Data Sharing Agreement). In certain instances the information is protected by virtue of intellectual property rights (IPRs) vesting in another party (for example, research material protected in terms of copyright law). Although much of this information can be disseminated easily, certain data sets contain sensitive or protected information and must be regulated by controlled access as a means to protect our biological heritage, third party information or IPRs.

3.5 At present no overarching policy framework exists to guide or inform SANBI's critical role and function in the management of biodiversity information. The

² Act 10 of 2004.

³ Mainstreaming is used to refer to the incorporation of biodiversity priorities in the policies, decisions and actions of sectors or organisations whose core business is not biodiversity conservation.

implication of the absence of corporate guidelines on biodiversity information management is that SANBI does not apply consistent norms and standards when deciding on the following:

- what data sets constitute sensitive data or protected information;
 - the circumstances in which disseminating sensitive data or protected information should be controlled and access to such information is restricted;
 - when a fee should be charged for accessing or reproducing biodiversity information; and
 - the circumstances in which IPRs must be protected.
- 3.6 The *Biodiversity Information Policy Framework* is aimed at providing the key principles and guidelines applicable to SANBI's biodiversity information management functions. The purpose is to facilitate open access to biodiversity information whilst protecting sensitive information and IPRs and generally managing information in compliance with the requirements of the Promotion of Access to Information Act⁴ ("PAIA"). By encapsulating the norms and standards applicable to biodiversity information management in a policy framework, the intention is that this will allow the various divisions within SANBI to develop discrete policies on core areas, within the framework of the principles and guidelines articulated in this document.
- 3.7 A comprehensive policy framework will ensure that SANBI complies with applicable international legal instruments and national legislation whilst ensuring that sensitive data is protected and the integrity of IPRs is maintained whilst SANBI delivers on its core function of managing, controlling, collating and disseminating biodiversity information.
- 3.8 By enabling the sharing of biodiversity information, SANBI aims to support national, provincial and local government policy and land use planning decision-making processes and thus contribute to the broader developmental objectives, particularly sustainable development throughout South Africa. In doing so, SANBI aims to ensure that decision-makers, including the scientific community, government's natural resources managers and policy makers, are properly informed and that policy decisions and research are based on the most accurate data.

⁴ Act 2 of 2000.

PART III: What is biodiversity information?

4. INTRODUCTION

- 4.1 In order to determine the nature and scope of SANBI's obligation to manage and control 'biodiversity information' in accordance with the applicable legal and institutional framework, the point of departure is to have regard to SANBI's mandate contemplated in the Biodiversity Act (see Part IV of this Policy Framework).
- 4.2 As a precursor to outlining SANBI's mandate in terms of the Biodiversity Act and the applicable legal and institutional framework, it is critical to understand the nature and scope of the term 'biodiversity information' as utilised in this document.

5. THE BIODIVERSITY ACT

- 5.1 The Biodiversity Act does not define what constitutes biodiversity information. Nor does the Act prescribe how access to biodiversity information must be facilitated, managed or controlled by SANBI. Most directly relevant to SANBI's information management function is the requirement in section 11 of the Biodiversity Act that SANBI "must collect, generate, process, coordinate and disseminate information about biodiversity and the sustainable use of indigenous biological resources, and establish and maintain databases in this regard". The principal information management function of SANBI contemplated in the Biodiversity Act relates to collecting, curating, establishing and maintaining databases of information about *biodiversity* and the sustainable use of *indigenous biological resources*.
- 5.2 Research regarding South Africa's biodiversity forms an integral component of SANBI's mandate. In this regard, the Biodiversity Act specifically provides that the Minister must promote research by SANBI on the sustainable use, protection and conservation of indigenous biological resources. The Biodiversity Act contemplates that such research may include the collection and analysis of information about:
 - 5.2.1 the conservation status of the various components of biodiversity;
 - 5.2.2 the negative and positive trends affecting the conservation status of various components of biodiversity; and
 - 5.2.3 the threatening processes or activities likely to impact on biodiversity conservation.
- 5.3 Of central importance to SANBI's mandate provided for in the Biodiversity Act are the definitions of biodiversity and indigenous biological resources.
- 5.4 The terms 'biological diversity' or 'biodiversity' are defined in the Biodiversity Act as meaning "*the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems.*"

5.5 The term 'indigenous biological resource' is also defined in the Biodiversity Act. The Act provides for two different meanings of the term 'indigenous biological resource'. When used in relation to bioprospecting, the term 'indigenous biological resource' means the following:

5.5.1 Any indigenous biological resources consisting of:

5.5.1.1 Any living or dead animal, plant or other organism of an indigenous species;

5.5.1.2 any derivative of such animal, plant or other organism; or

5.5.1.3 any genetic material of such animal, plant or other organism,

whether gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species cultivated, bred or kept in captivity or cultivated or altered in any way by means of biotechnology.

5.5.2 Any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species or of any animals, plants or other organisms referred to in paragraph 5.5.1; and

5.5.3 Any exotic animals, plants or other organisms, whether gathered from the wild or accessed from any other source which, through the use of biotechnology, have been altered with any genetic material or chemical compound found in any indigenous species or any animals, plants or other organisms referred to in paragraph 5.5.1 and 5.5.2.

NOTE: The term 'indigenous biological resource', when used in relation to bioprospecting, does not include:

(i) genetic material of human origin;

(ii) any exotic animals, plants or other organisms, other than exotic animals, plants or other organisms referred to in 5.5.3 above; and

(iii) indigenous biological resources listed in terms of the International Treaty on Plant Genetic Resources for Food and Agriculture.

5.6 When used in relation to any other matter and not in relation to bioprospecting, the term 'indigenous biological resource' refers to any resource consisting of:

5.6.1 Any living or dead animal, plant or other organism of an indigenous specie;

5.6.2 Any derivative of such animal, plant or other organism; or

5.6.3 Any genetic material of such animal, plant or other organism.

6. THE NATURE AND SCOPE OF BIODIVERSITY INFORMATION

6.1 Defining the ambit of the term 'biodiversity information' with a degree of precision presents several practical difficulties. Notwithstanding the diverse forms and formats of biodiversity information, it is important to attempt to

define the scope and extent of the term for the purposes of the *Biodiversity Information Policy Framework*. This will assist SANBI in discharging its mandate to facilitate access to biodiversity information in accordance with the applicable legal and institutional framework.

6.2 For the purposes of this Biodiversity Information Policy Framework it is critical to note that the term 'biodiversity information' is extensive and incorporates a diverse array of information regarding South Africa's biological diversity. Such information is available in various forms and is held not only by SANBI but also by various institutions or individuals.

6.3 Information regarding biodiversity incorporates a vast array of information on biological resources. The resources encompassed within this include information on the following:

- Species of flora and fauna (including their distributions, occurrence and ecology)
- Indigenous and alien species
- Organisms
- Terrestrial, marine and freshwater aquatic ecosystems
- Ecological communities
- Genes
- Genomes
- Habitats
- Ecological processes
- Genetic material.

6.4 Not only is the subject matter of biodiversity information potentially extensive and diverse, but the range of forms that biodiversity information can take is similarly wide-ranging. Biodiversity information may be held in a variety of forms including the following:

- Audio files
- Data on biological specimens
- Databases (including spatial or numeric data)
- E-mails
- Electronic databases
- Publications (including pamphlets, information booklets, brochures, journal articles, research papers)
- Maps and attendant documentation
- Metadata
- Natural history museum collections
- Observational data
- Scientific literature and collections
- Shapefiles
- Species-occurrence records
- Visual images (including satellite images)
- Videos
- The Internet and the World Wide Web.

PART IV: SANBI's mandate regarding the management and dissemination of biodiversity information

7. INTRODUCTION

- 7.1 SANBI's predecessor was the National Botanical Institute (NBI), which was mandated to conserve and study South Africa's flora. The Biodiversity Act expanded the mandate, roles and responsibilities of SANBI, in terms of which SANBI is now responsible for all forms of South Africa's biodiversity, and builds on the internationally respected programmes in conservation, research, education and visitor services developed historically by the NBI and its predecessors. In terms of financial governance, SANBI is listed as a Public Entity under the Public Finance Management Act⁵.
- 7.2 SANBI currently administers nine National Botanical Gardens, research centres, various environmental education programmes and field research throughout South Africa. Its core business areas include the following:
- 7.2.1 Developing and maintaining National Botanical Gardens.
 - 7.2.2 Climate change research and bio-adaptation.
 - 7.2.3 Implementing, coordinating and facilitating biodiversity conservation actions through bioregional programmes.
 - 7.2.4 Conducting research and providing biodiversity information services.
 - 7.2.5 Providing policy advice on matters relating to biodiversity
 - 7.2.6 Monitoring the status and trends of biodiversity and reporting to the Minister thereon
 - 7.2.7 Empowering communities through environmental education and outreach greening programmes.
- 7.3 The specific aspects of SANBI's mandate which have a direct bearing on the generation, collation, processing and dissemination of biodiversity information include the following:
- 7.3.1 SANBI must monitor the status of South Africa's biodiversity as well as the status of all threatened, protected or invasive species listed in terms of the Biodiversity Act. Such information must be reported to the Minister on a regular basis.
 - 7.3.2 SANBI must monitor the impacts of GMOs that have been released into the environment, and report such information to the Minister.

⁵ Act 1 of 1999.

- 7.3.3 SANBI's role as an advisory and consultative body on matters relating to biodiversity.
- 7.3.4 SANBI's role in managing, controlling and maintaining national botanical gardens, herbaria and collections of animals (both living and dead).
- 7.3.5 SANBI's role in coordinating and implementing programmes for:
- the rehabilitation of ecosystems;
 - the prevention, control or eradication of invasive species listed in the Biodiversity Act; and
 - the conservation and sustainable use of indigenous biological resources.
- 7.4 As indicated above, one of SANBI's core business areas is conducting research and providing biodiversity information services. SANBI is therefore required to facilitate access to biodiversity information, in accordance with its prescribed functions in terms of the Biodiversity Act and thus must act as a custodian of our biological heritage, ensuring that biodiversity information is effectively managed.
- 7.5 In the international context, SANBI has a responsibility in terms of the CBD, to provide data and information for the effective implementation of the UN's programmes.⁶
- 7.6 By giving effect to the principle of free and open access to biodiversity information, SANBI is ensuring that the information is distributed and people from both developed and developing countries can benefit thereby. The advantages of open access to biodiversity information include the following:
- 7.6.1 fostering new research;
- 7.6.2 the creation of new data sets from existing multiple sources;
- 7.6.3 reinforcing open scientific enquiries;
- 7.6.4 encouraging diversity of analysis;
- 7.6.5 discovering inaccuracies in data sets and improving the quality of biodiversity information; and
- 7.6.6 The possibility of testing new or alternative hypotheses arises.⁷
- 7.7 SANBI is appropriately placed to play a leading role in the dissemination of biodiversity information for government, civil society and the general public, and aims to be the preferred national resource for knowledge and information biodiversity and its status and trends in South Africa, by proactively addressing

⁶ CBD COP Decision VIII/II, paragraph 3 states that: *Parties and other governments, as appropriate, to provide free and open access to all present and future public – good research, assessments, maps and databases on biodiversity in accordance with national and international legislation.*

⁷ <http://www.gbif.org>

the need for relevant, easily accessible and understandable data and information on biodiversity.

- 7.8 SANBI therefore manages South Africa's biodiversity information as a strategic resource, and has several key objectives, including improved information dissemination to biodiversity and non-biodiversity sectors. Furthermore, the Integrated Biodiversity Information System aims to centralise SANBI's biodiversity information databases and provide users, including the public, with web based access to such resources.
- 7.9 Currently, the following biodiversity databases are accessible on the internet:⁸
- 7.9.1 Plants of South Africa website contains South Africa's floristic information.⁹
- 7.9.2 SANBI's Integrated Biodiversity Information System provides access to all available data owned by SANBI and shared by its partners.
- 7.9.3 Biodiversity Geographical Information Systems provides internet access to spatial biodiversity planning information and includes a web-based system that assists environmental practitioners in the assessment of the potential impacts of a proposed development or land use change.¹⁰
- 7.9.4 Species Status Database provides unrestricted access to basic information regarding species on the internet.¹¹
- 7.9.5 South African Biodiversity Information Facility provides access to specimen data from within SANBI and partner organisations.¹²
- 7.9.6 Jack Skead's Gazetteer which is an invaluable source of synonymy of place names and type-localities of all birds and mammals up to 1970.¹³

⁸ This list is not intended to be comprehensive, but merely an example of the datasets currently in SANBI's control, which are accessible on the internet to the public.

⁹ <http://www.plantzafrica.com> and <http://www.sanbi.org/frames/posafam.htm>

¹⁰ <http://www.bgis.sanbi.org/index.asp?screenwidth=1024>

¹¹ <http://www.speciesstatus.sanbi.org/>

¹² <http://www.sabif.ac.za>

¹³ <http://skead.sanbi.org>

PART V: Why control access to information?

8. INTRODUCTION

- 8.1 Given its mandate in terms of the Biodiversity Act, SANBI must balance the imperative of open access against the protection afforded to certain categories of biodiversity information.
- 8.2 Protection against the unrestricted dissemination of biodiversity information might be required in the following circumstances:
 - 8.2.1 Where the biodiversity information falls within the categories of information regulated in terms of PAIA.
 - 8.2.2 Where IPRs vest in the subject matter of the biodiversity information.
 - 8.2.3 Where the use of or access to biodiversity information is restricted in terms of a third party agreement.
 - 8.2.4 Where the biodiversity information contains information about biological resources or biodiversity which, if disseminated, would prejudice or might harm environmentally ecosystems or sensitive species.

IMPORTANT: The use or dissemination of biodiversity information might be prohibited or restricted by virtue of it falling within one or more of the categories of information set out below. In giving effect to the imperative of open access, it must be borne in mind at all times that providing access to a record containing biodiversity information (or a portion of that record) might be unlawful and/or otherwise restricted.

9. INFORMATION REGULATED IN TERMS OF PAIA

- 9.1 PAIA applies to requests for records of private bodies and public bodies. The term “record” is cast widely in PAIA and refers to any recorded information in the possession of SANBI, regardless of the form or medium of that information and whether or not it was created by SANBI. It is important to note that the term biodiversity information is potentially broader than the term ‘record’ used in PAIA as not all biodiversity information will necessarily constitute recorded information.
- 9.2 A request for access to records must be granted by SANBI in circumstances where the requester complies with the procedural requirements set out in PAIA and access is not refused legitimately in terms of one of the *grounds of refusal* contemplated in PAIA (see Part VII of this Policy Framework).

10. INFORMATION WHICH IS PROTECTED BY INTELLECTUAL PROPERTY RIGHTS

- 10.1 IPRs refer to the rights a person may have in certain property or products they have created as a result of their intellectual activity (such as research results and records). IPRs typically give rise to exclusive privileges over such

products, and therefore contain implications for the reproduction, use or dissemination of biodiversity information. See Part VIII of this Policy Framework and SANBI's *Intellectual Property Rights Policy*.

11. PRIVATE OR CONFIDENTIAL INFORMATION RELATING TO A THIRD PARTY

11.1 There is a potential conflict between free and open access to biodiversity information held by SANBI and a third party individual's rights to privacy or confidentiality. In addition, information that was generated or collected by a third party entity or individual may be the subject of an agreement with that third party in terms of which the dissemination of the information is regulated. See Part IX of this Policy Framework.

12. INFORMATION CONTAINING DATA ABOUT SENSITIVE OR THREATENED SPECIES

12.1 Biodiversity information might include data pertaining to rare or threatened species, habitats or ecosystems which are vulnerable. If such data is made publicly accessible it may lead to environmental harm due to over-collecting, damage, disturbance or commercial exploitation of the species in question. See Part X of this Policy Framework and SANBI's Policy on *Digital Access to Sensitive Taxon Data*.

PART VI: Circumstances in which biodiversity information should be made freely available

13. INTRODUCTION

- 13.1 This section of the *Biodiversity Information Policy Framework* describes both (1) the information in SANBI's possession that is currently freely available and (2) identifies in general terms the categories of information that should, as a general rule, be made freely available.
- 13.2 The categories of information that can be made freely available does not override SANBI's obligation to restrict access to information in circumstances where access must be refused in the following circumstances: (1) in terms of PAIA; (2) by virtue of IPRs vesting in that information; (3) where the record contains private or confidential third party information; or (4) the information contains ecologically sensitive data.

14. GENERAL PRINCIPLES

- 14.1 Biodiversity information that is not protected by virtue of it falling within the categories of protected information identified in Part V of this Policy Framework should as a general rule be made automatically available by SANBI.
- 14.2 SANBI will, on an annual basis, identify and publish on its website the categories of biodiversity information that are freely available. This refers to the categories of records that are automatically available from SANBI and in respect of which the person seeking access to such information does not have to comply with PAIA.
- 14.3 SANBI shall not charge a fee for granting access to records within the categories of biodiversity information that are freely available. In certain circumstances, however, SANBI may charge the prescribed fee in PAIA for the reproduction of a record within these categories. This must be determined on a case by case basis.

15. CATEGORIES OF INFORMATION AUTOMATICALLY AVAILABLE FROM SANBI

- 15.1 SANBI has several categories of information that are freely available in both electronic and published format. Browsing SANBI's website can assist requesters in locating information and the types of available publications. The following information is freely available:

	Category of information	Location
1.	Annual reports & General information about SANBI	http://www.sanbi.org
2.	Publications	http://www.sanbi.org
3.	Information on biodiversity	http://www.sanbi.org

16. WHERE THE INFORMATION REQUESTED FROM SANBI IS ALREADY AVAILABLE IN THE PUBLIC DOMAIN

- 16.1 There is much information about biodiversity that is already publicly available. SANBI publishes both popular and scientific material on the plants of southern Africa and related topics and maps. In addition to books, SANBI publishes several series e.g. *Bothalia*, Flowering Plants of Africa, Flora of southern Africa and *Strelitzia*.
- 16.2 Certain biodiversity information is freely available over the Internet. For example, the Protea Atlas Project (<http://protea.worldonline.co.za/default.htm>) contains a wide variety of information regarding the geographic location of Proteas throughout southern Africa. In addition, the South African Biodiversity Information Facility (<http://www.sabif.ac.za/>) is intended to serve as a gateway to open and free scientific biodiversity information on the Internet.
- 16.3 In addition to the Internet certain publications such as pamphlets and brochures containing biodiversity information are made freely available by SANBI.

17. WHERE THE INFORMATION REQUESTED FROM SANBI IS IN RESPECT OF A THIRD PARTY WHO HAS CONSENTED TO THE DISCLOSURE

- 17.1 There are two components to this category. Firstly the information must relate to a third party (e.g. research information undertaken by a scientist with no employment or contractual relationship with SANBI or information produced by another public body). Secondly, the third party in question must have provided their consent in writing to the disclosure of the information. In such circumstances, third party information may be made freely available.

18. WHERE THE INFORMATION REQUESTED CAME INTO EXISTENCE MORE THAN 20 YEARS BEFORE THE REQUEST FOR ACCESS WAS LODGED

- 18.1 Information that came into existence more than 20 years before the request was made for such information should be made freely available. For example, a significant proportion of herbarium data and records relating to specimens came into existence more than 20 years ago. Such information should, as a general rule, be made freely available unless there are defensible grounds for restricting access to such records in one or more of the circumstances considered in Part VII of this Policy Framework.

PART VII: The Promotion of Access to Information Act

19. INTRODUCTION

- 19.1 The Constitution also provides for the enactment of national legislation in order to give effect to this right. PAIA is the legislation that was enacted to give effect to the constitutional right of access to information. PAIA not only regulates access to information held by a public body (which includes SANBI), but also to information held by private bodies.
- 19.2 In addition to giving effect to the constitutional right of access to information, the following are the objectives of PAIA:
- 19.2.1 to ensure that the State promotes a human rights culture and social justice;
 - 19.2.2 to encourage openness and to establish voluntary and mandatory mechanisms or procedures which give effect to the right of access to information in a speedy, inexpensive and effortless manner;
 - 19.2.3 to promote transparency, accountability and effective governance of all public and private bodies, to understand the functions and openness of public bodies; and
 - 19.2.4 to empower persons to participate in decision-making by public bodies where persons rights are affected.

20. ACCESS TO RECORDS

- 20.1 PAIA provides that a requester has a right of access to a record held by SANBI. A requester must be given access to a record subject to the proviso that (1) the requester must comply with all the procedural requirements prescribed in PAIA relating to a request for access; and (2) access to that record is not legitimately refused by SANBI in terms of any ground for refusal contemplated in Chapter 4 of Part 2 of PAIA.
- 20.2 PAIA applies to all records held by SANBI regardless of when the record came into existence. The term "record" is widely defined in PAIA and includes any recorded information in the possession of SANBI (for example, this would include letters, faxes, reports, minutes, memoranda, notes, audio tapes, video tapes, e-mails, permits, etc.). A request for access to a record of a public body includes a request for access to a record containing personal information about the requester.
- 20.3 Records in the possession or under the control of SANBI include the following:
- 20.3.1 a record in the possession or under the control of an employee of SANBI in his or her capacity as such; and

- 20.3.2 a record in the possession or under the control of an independent contractor engaged by SANBI in their capacity as such.
- 20.4 PAIA cannot be used by a requester to oblige SANBI to create or compile specific information or a data set. In addition, SANBI is not obliged to order information in a particular manner in order to accommodate a request for access to a record. The request for access to a record contemplated in PAIA relates only to information that already exists in a recorded form.
- 20.5 The right of access to a record of SANBI is not affected by either the reasons the requester gives for requesting access; or SANBI's belief as to what the requester's reasons are for requesting access. In other words, any request for access to information received in terms of PAIA and which complies with the prescribed requirements in that Act must be dealt with in an objective manner without regard to the reasons for such a request or what SANBI believes the requester's reasons or motives are for making such a request.
- 20.6 The procedural requirements stipulated in PAIA regarding requests for access to records are relatively straightforward. A request must be made by completing the prescribed request form which must be submitted to the information officer of SANBI. SANBI must respond to the request within 30 days. The institutional arrangements and procedural requirements applicable to access to information requests in terms of PAIA are set out in Part XII of this Policy Framework.

21. LIMITATIONS ON THE RIGHT OF ACCESS TO INFORMATION

- 21.1 Whilst PAIA gives effect to the constitutional right of access to information, this is not an absolute right, as PAIA balances the right to information against the right to refuse access to information, if granting the information would cause harm in certain defined circumstances. One of the main objectives of PAIA is to facilitate access to records whilst setting justifiable limitations on the right of access to information for the protection of privacy, commercial information, confidential information and good governance. The limitations on the constitutional right of access to information are contained in the so-called *grounds of refusal* in Chapter 4 of Part 2 of PAIA.
- 21.2 The grounds of refusal include the following:
- The protection of privacy of third party who is natural person
 - The protection of certain records of SARS
 - The protection of commercial or confidential information of third party
 - The protection of safety of individuals, and protection of property
 - The protection of records privileged from production in legal proceedings
 - Defence, security and international relations
 - The economic interests and financial welfare of the Republic

- Commercial activities and operations of public bodies
 - The protection of research information
 - Frivolous or vexatious requests
 - Requests that would divert the resources of SANBI
- 21.3 Access to a record should be refused by SANBI only where it is clearly justified in the circumstances. In areas of doubt the tendency must be towards favouring the facilitation of access to the record, rather than denying access. Where the categories of information in Part V of this Policy Framework dictate that aspects or portions of a record contain information that must not be released by SANBI, then access must be denied regardless of the imperative of facilitating open access to biodiversity information. Where a record contains both sensitive and non-sensitive data, access to that record may be granted if the part containing protected information can reasonably be severed from the record.

22. CIRCUMSTANCES IN WHICH SANBI IS OBLIGED TO REFUSE A REQUEST OR CIRCUMSTANCES IN WHICH SANBI CAN EXERCISE DISCRETION IN GRANTING ACCESS TO BIODIVERSITY INFORMATION.

- 22.1 In the following circumstances SANBI is obliged to refuse a request for access to records in terms of PAIA:
- If disclosure would involve unreasonable disclosure of personal information about a third party (including a deceased individual).
 - If the record contains commercial information of a third party including trade secrets (excluding where the information is already publicly available).
 - If the disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.
 - If the record contains information about research being or to be carried out by or on behalf of a third party and the disclosure would be likely to expose the third party, a person that is or will be carrying out the research on behalf of the third party, or the subject matter of the research, to serious damage
 - If disclosure could reasonably be expected to endanger the life or physical safety of an individual.
 - If access to that record is prohibited in terms of section 60(14) of the Criminal Procedure Act 51 of 1977.
 - If the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

22.2 In the following circumstances SANBI *may* refuse a request for access to a record:

- If the record consists of information supplied in confidence by a third party and the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source (and if it is in the public interest that similar information, or information from that same source, should continue to be supplied).
- If the record contains trade secrets of the State or SANBI.
- If the record contains financial, commercial, scientific or technical information, other than trade secrets, the disclosure of which would be likely to cause harm to commercial or financial interests of the State or SANBI.
- If the record contains information, the disclosure of which could reasonably be expected to put SANBI at a disadvantage in contractual or other negotiations or to prejudice SANBI in commercial competition.
- If the record is a computer programme (as defined in the Copyright Act), owned by the State or a public body, except insofar as it is required to give access to a record to which access is granted in terms of PAIA.
- If the record contains information about research being or to be carried out by or on behalf of SANBI, the disclosure of which would be likely to expose SANBI or a person that is or will be carrying out the research on behalf of SANBI or the subject matter of the research to serious disadvantage.
- If the record was produced for the purpose of assisting SANBI to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law.
- If the disclosure of the record could reasonably be expected to jeopardise the effectiveness of a testing, examining or auditing procedure or method used by SANBI.
- The record contains evaluative material, whether or not the person who supplied it is identified in the record, and the disclosure of material would breach an express or implied promise which was made by the person who supplied the material and to the effect that the material or the identity of the person who supplied it, or both, would be held in confidence.
- If disclosure would be likely to prejudice or impair the security of a building, structure or system, including a computer or communication system or security of a means of transport.
- If disclosure would interfere with the administration of justice including the prosecution of alleged offenders.
- If disclosure could reasonably be expected to cause prejudice to national security or to the Republic of South Africa's obligation in terms of international law.

- If the disclosure would be likely to materially jeopardise the economic interests or financial welfare of South Africa or the ability of the government to manage the economy of South Africa effectively in the best interests of the Republic.
- If the request is manifestly frivolous or vexatious or the work involved in processing the request would substantially and unreasonably divert the resources of SANBI.

22.3 The majority of circumstances where SANBI must or may refuse to disclose biodiversity information relate to records involving IPRs (either vesting in SANBI or another institution or individual) and/or third party information. These categories are therefore dealt with in more detail in Parts VIII and IX of this Policy Framework.

23. MANDATORY DISCLOSURE OF INFORMATION IN THE PUBLIC INTEREST

23.1 Notwithstanding the grounds for refusal listed above, PAIA expressly provides for the mandatory disclosure of certain information in circumstances where this will be in the public interest. SANBI must grant a request for access to a record containing biodiversity information if the disclosure thereof would reveal evidence of:

- 23.1.1 a substantial contravention of, or failure to comply with the law; or
- 23.1.2 an imminent and serious public safety or environmental risk; and
- 23.1.3 the public interest in the disclosure of the record, outweighs the harm contemplated under the ground for refusal.

23.2 The public interest exception to the grounds of refusal in PAIA applies where two conditions are satisfied. Firstly, the disclosure of the record must reveal either evidence of unlawful conduct or a risk to the environment or the public that is both imminent and serious. Secondly, the public interest in the disclosure of a record that reveals evidence of unlawful conduct or an imminent and serious public safety or environmental risk must outweigh the harm contemplated by refusing access to that record.

23.3 Where the information requested contains the results of any product or environmental testing (for example a field trial carried out by SANBI in connection with the release of GMOs into the environment) or other investigation carried out by or on behalf of a third party or SANBI, and the disclosure of such information would reveal a serious public safety or environmental risk, such information must be disclosed.

The phrase *public safety or environmental risk* refers to harm or risk to the environment or the public associated with the following: (1) a product or service which is available to the public; (2) a substance released into the environment, including, but not limited to, the workplace; (3) a substance intended for human or animal consumption; (4) a means of public transport; or (5) an installation or manufacturing process or substance which is used in that installation or process.

PART VIII: Intellectual Property Rights and Biodiversity Information

24. INTRODUCTION

- 24.1 Intellectual property rights are exclusive rights that the laws of a particular country confer upon inventors, authors and other intellectual property owners. These rights accrue as a result of a person's intellectual effort, hence the term "intellectual property". Once created, intellectual property is an asset belonging to the intellectual property right owner. Ordinarily, the person whose effort creates intellectual property becomes the owner of the intellectual property concerned. However, this is not so where a person is the employ of another in which case the employer is the owner of intellectual property if it is created within the course and scope of the employment.
- 24.2 The law of each country determines who owns intellectual property rights where intellectual property is created. The essence of the right is that the owner has exclusive rights over the exploitation of the intellectual property for a limited number of years. The exclusive rights include rights to issue licences to others in order to exploit the intellectual property. In South Africa, intellectual property rights include copyrights, rights associated with registered trademarks, those associated with registered patents, and plant breeder's rights.
- 24.3 Biodiversity information created by or under the control of SANBI is SANBI's intellectual property. SANBI must have controls regulating or restricting access to such information in order to protect its rights and/or interests. In doing so SANBI must also comply with PAIA.
- 24.4 Other information which comes into the possession and/or control of SANBI may be subject to intellectual property rights of others. Establishing controls regulating or restricting access to information subject to intellectual property rights might be required by virtue of an agreement entered into between SANBI and a third party (for example, in terms of a Data Sharing Agreement). In other instances such information might be protected in terms of PAIA.
- 24.5 The purpose of this section of the Policy Framework is to establish the general principles and guidelines to be applied by SANBI as well as the factors to be considered in relation to the management, control and dissemination of information subject to intellectual property rights.

25. INFORMATION SUBJECT SANBI'S INTELLECTUAL PROPERTY RIGHTS

Copyrights

- 25.1 In the context of SANBI's day-to-day operations, the main intellectual property rights that are of importance are: copyrights, patents and plant breeders' rights. These are the rights that this section of the Framework Policy deals with.

- 25.2 A copyright is an exclusive right given by law for a term of years to an author, designer, etc. for his or her original work. The Copyright Act protects certain classes or categories of original works, including literature, photographs, computer programmes etc. Copyright affords the owner or author thereof exclusive rights to perform certain specified acts in respect of their work, and thus prevent the unauthorised use of that work by a third party.
- 25.3 Copyright comes into being automatically and no registration of the work is required. In the case of SANBI, copyright vests upon it where it is created: (1) by SANBI's employees acting within the course and scope of their employment; and (2) under SANBI's control or direction.
- 25.4 In the case of SANBI, copyright includes research findings, articles, photographs and computer programmes. In order to protect its intellectual property, apply the following guidelines:
- SANBI must clarify the issue of ownership of copyrights in any work or project under its control or direction (through, for example, employment contracts);
 - Where SANBI's employees are involved in a project involving individuals and/or organisations not under the control or direction of SANBI (i.e. third parties), SANBI must clarify the issue of ownership of copyrights in a written contract with any of the involved individuals and/or organisations prior to commencement of the work or project concerned;
 - Where possible, SANBI must avoid the creation of joint copyrights by entering into prior written contracts or agreements with any individuals and/or organisations involved in the production of biodiversity information;
 - Where information is posted on SANBI's website or any other website, SANBI must prohibit the use of information for commercial purposes and/or any other purposes that may harm SANBI's interests including SANBI's interest in biodiversity conservation and the sustainable use of biological resources;
 - The acknowledgement and recognition of SANBI's intellectual property must be a standard condition for the release of any information subject to SANBI's copyright; and
 - SANBI must ensure that the intellectual property rights of third parties is acknowledged and respected whenever SANBI acts as a conduit for disseminating and/or providing access to biodiversity information which is the subject of the intellectual property rights of a third party.
- 25.5 Where SANBI receives a request for access to biodiversity information that is subject to SANBI's copyright, that fact alone does not constitute a valid justification for refusing to grant access to the information. This is because providing access to that information does not transfer SANBI's copyright to the requester. However, SANBI may refuse to grant access to such information where granting access may harm SANBI's commercial or financial interests. These include where granting access may compromise the ability of SANBI to exploit its intellectual property for financial gain.

Patents

- 25.6 A patent is a set of exclusive rights granted by the Registrar of Trademarks and Patents to a person or persons, usually with regard to an invention, for a fixed period of time. In South Africa, the lifespan of a patent may range from fifteen to twenty years.
- 25.7 There are certain exceptions as to what may be registered as a patent. The following are of potentially relevant to SANBI:
- creations that are covered by the Copyright Act;
 - scientific theories and mathematical methods and formulae;
 - the presentation of information (e.g. a database); and
 - plant and animal varieties and biological breeding methods.

Plant varieties can be protected by means of patents or by placing reliance upon the Convention of the International Union for the Protection of New Varieties of Plants, as well as the Plant Breeders' Rights Act.

- 25.8 In light of the exceptions as to what may be registered as a patent, the majority of SANBI's information resources would not be able to be patented. However, SANBI must take certain measures in order to protect its rights and interests if it does create intellectual property that is patentable. These include:
- Clarifying in employment contracts that any inventions created within the course and scope of their employment belongs to SANBI; and
 - Clarifying the ownership of patents where SANBI's employees work with third parties or where SANBI hires contractors to do work for SANBI.

Plant breeders' rights

25.9 Plant breeders' rights are an exception to the general rule that plant and animal variety is not patentable. The purpose of the Plant Breeders' Rights Act is to provide for a system in terms of which plant breeders' rights relating to varieties of certain kinds of plants may be granted and registered. The Plant Breeders' Rights Act applies to every variety of any prescribed kind of plant if that variety is new, distinct, uniform and stable.

25.10 In terms of the Plant Breeders' Act a "breeder" means:

- The person who bred, or discovered and developed, the variety;
- The employer of the person referred to in the above bullet point, if that person is an employee whose duties are such that the variety was bred, or discovered and developed in the performance of such duties; or
- The successor-in-title of the person referred to in the first bullet point or the employer referred to in the second bullet point.

25.11 The essence of the right is the right to produce or reproduce, condition for the purpose of propagation, sale or another form of marketing, exporting, importing, stocking of propagating material for the relevant variety or harvested material, including plants. The right is granted to the breeder or to the employer where the “breeder” is in the employ of someone else. In the case of SANBI, such rights belong to SANBI.

25.12 In order to protect its rights and interests the following guidelines are applicable:

- SANBI must undertake an audit of all varieties bred, or discovered and developed, by its employees within the course and scope of their employment;
- SANBI must ensure that it registers plant breeders’ rights in respect of all varieties bred, or discovered and developed, by its employees within the course and scope of their employment; and
- Clarify the issue of plant breeders’ rights, prior to commencement of any relevant work or projects, where its employees work with other individuals and/or organisations not subject to its control.

25.13 A request for access to information in terms of PAIA may be refused where the disclosure may harm the financial or commercial interests of SANBI. Such information may include records setting out the details of the plant breeders’ right. See the *Biodiversity Information Policy Framework* in this regard.

26. INTELLECTUAL PROPERTY RIGHTS IN BIODIVERSITY INFORMATION PROVIDED TO SANBI BY THIRD PARTIES

26.1 SANBI recognises that biodiversity information which it collects is very often the work of independent authors (i.e. third parties). While such authors may not be against the dissemination of such information for the benefit of legitimate use and/or research or in the public interest, they may not want such information to be the source of commercial exploitation.

26.2 SANBI also recognises that in certain circumstances, authors of intellectual property may not want their biodiversity information to be subject to free and open access.

26.3 SANBI must apply the following guidelines when dealing with information which is subject to intellectual property rights of third parties:

- SANBI must ensure that the intellectual property rights of third parties are recognised and acknowledged when the information is used by SANBI and/or made available to Data Users;
- SANBI must identify intellectual property rights applicable to biodiversity information in its possession and/or control;
- When third party biodiversity information is provided to SANBI, SANBI must secure the consent of the Data Provider in whom the intellectual property right vests in order to allow SANBI to produce, store, reproduce,

and/or distribute the information for the purpose for which the information was provided;

- When making biodiversity information available, SANBI must communicate to Data Users that such information remains the intellectual property of its owners and may not be used for commercial purposes or purposes which may harm the biodiversity to which the information relates;
- SANBI must maintain adequate descriptions of datasets and document access issues.

26.4 All requests for access to information lodged with SANBI where such information is subject to the intellectual property rights of third parties must be dealt with as third party information in the manner indicated below.

PART IX: Protection of Third Party information

27. INTRODUCTION

- 27.1 The biodiversity information in SANBI's possession or control might contain personal information about a third party and/or records prepared or generated by a third party. Notwithstanding the imperative of encouraging open access to biodiversity information, it is critical that appropriate mechanisms and controls be established for identifying and protecting other people's information (i.e. third party information), where this is required.
- 27.2 Establishing controls regulating or restricting access to third party information might be required by virtue of an agreement entered into between SANBI and a third party (for example, in terms of a Data Sharing Agreement). In other instances the third party information might be protected in terms of PAIA. The purpose of this section of the Policy Framework is to establish the general principles and guidelines to be applied by SANBI as well as the factors to be considered in relation to the management, control and dissemination of third party information.

Third party information refers to information prepared or generated by contractors, institutions, collectors, data providers and data owners who have made information available for use by SANBI or conducted research on behalf of SANBI. The term *third party information* also includes personal information about a third party who is a natural person.

28. PERSONAL INFORMATION OF A THIRD PARTY

- 28.1 SANBI is committed to protecting the privacy of third parties. It can sometimes occur that records containing biodiversity information include personal information of a third party. The disclosure of personal or private information about a third party is expressly prohibited in terms of PAIA in certain circumstances. The prohibition extends to the personal information of a deceased individual but does not apply to information about an individual who has been dead for more than 20 years.
- 28.2 In order for personal information to be protected in terms of PAIA it must be about an identifiable individual and the disclosure of such information would be unreasonable. The first requirement relates to the fact that the third party must be individually identifiable. A third party will be individually identifiable where the identity of the person is or may be readily ascertained from the record or directly associated with the information contained in the record. Such information would include personally identifiable information such as a name, home or work address, telephone number, e-mail address and other contact information.
- 28.3 Information from which a person is readily identifiable must be distinguished from information from which a person may or might potentially be identified. The latter provides no direct individually identifiable link with the person in question but contemplates that someone might be able to determine his or her

identity by piecing together various bits of information about that person. Information from which a person is not readily identifiable should not, as a general rule, fall to be protected from disclosure.

28.4 It is suggested that disclosure of personal information about a third party would not be unreasonable in the following circumstances:

- Where the individual concerned has consented to the disclosure in writing.
- Where the information is already in the public domain.
- Where the information was given to SANBI by the individual to whom it relates and that, beforehand, the individual was informed in writing by or on behalf of SANBI that the information belongs to a class of information that would or might be made available to the public.

IMPORTANT: If disclosure of information about a third party individual could reasonably be expected to endanger the life or physical safety of that individual then SANBI must refuse a request for access to that record. For example, whether a record contains personal details of a scientist and it is reasonable foreseeable that releasing such information might endanger the life or safety of the scientist due to threats made public by an animal rights activist in connection with that scientist's field of work.

28.5 The scope of what is considered to be personal information of a third party includes, but is not necessarily limited to, the following:

- Information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual.
- Information relating to the education or the medical, criminal or employment history of the individual.
- Information relating to financial transactions in which the individual has been involved.
- Any identifying number, symbol or other particular assigned to the individual.
- The address, fingerprints or blood type of the individual.
- The personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual.
- Correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence.
- The views or opinions of another individual about the individual.

- The views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual.
 - The name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual.
 - SANBI must determine whether it is possible to comply with the request without revealing information about an identifiable individual. This will include a consideration of whether the record may be deleted and/or edited in order to remove or separate personal information from the requested information. SANBI must be cautious not to release records from which it is reasonably foreseeable that the requester may be able to identify the third party individual from the information contained in the record.
- 28.6 If a request for access to biodiversity information contains personal information of a third party and SANBI is unable to comply with the request without disclosing that personal information, then SANBI must not grant access to that record unless:
- The individual concerned has consented to the disclosure in writing.
 - The information in question is already in the publicly available.
 - The information was given to SANBI by the individual to whom it relates and that, beforehand, the individual was informed in writing by or on behalf of SANBI that the information will or might be made available to the public.

29. COMMERCIAL INFORMATION OF A THIRD PARTY

- 29.1 The disclosure of records containing commercial information of third parties is generally prohibited in terms of PAIA and may only be disclosed in certain prescribed circumstances.

Commercial information of a third party refers to the following: (1) trade secrets of a third party; (2) any financial, commercial, scientific or technical information (excluding trade secrets) which, if disclosed, might harm the commercial or financial interests of a third party; and (3) confidential information which, if disclosed, might disadvantage or prejudice a third party in contractual or other negotiations or in commercial competition.

- 29.2 SANBI must determine whether it is possible to comply with a request for access to biodiversity information containing commercial information of a third party without revealing such information. This will include a consideration of whether the record may be edited in order to remove or separate the commercial information from the requested information.
- 29.3 If a request for access to biodiversity information contains commercial information of a third party and SANBI is unable to comply with the request without disclosing that information, then SANBI must not grant access to that information unless:

- The third party concerned has consented to the disclosure in writing.
- The information in question is already in the publicly available.

IMPORTANT: Where commercial information contains the results of any product or environmental testing or other investigation supplied by a third party or the result of any such testing or investigation carried out by or on behalf of a third party, and the disclosure of such information would reveal a serious public safety or environmental risk, then SANBI may not refuse access to that information.

29.4 It will be important for SANBI to identify which categories of biodiversity information in its possession or control include or potentially include commercial information of third parties and to devise appropriate procedures for regulating the control, management and dissemination of such information.

30. CONFIDENTIAL INFORMATION OF A THIRD PARTY

30.1 In certain circumstances a duty of confidence is owed by SANBI to a third party (either in terms of an agreement or otherwise).

30.2 Where the duty of confidentiality arises as a result of an agreement between SANBI and the third party and the disclosure of information would constitute a breach of the duty owed by SANBI in terms of that agreement then SANBI must refuse a request for access to that information. However, SANBI must not refuse the request for access to confidential information of that third party where:

- The third party concerned has consented to the disclosure in writing.
- The information in question is already in the publicly available.

30.3 In addition to the above, SANBI should refuse a request for access to a record containing information supplied in confidence by a third party where:

- the disclosure of which could reasonably be expected to prejudice the supply of information in the future; and
- if it is in the public interest that such information should continue to be supplied.

30.4 It will be important for SANBI to identify criteria for determining the circumstances in which a future supply of third party information might be prejudiced and the categories of biodiversity information that this will or potentially would affect. SANBI will also need to devise appropriate procedures for regulating the control, management and dissemination of such information.

31. RESEARCH INFORMATION OF A THIRD PARTY

31.1 A significant amount of the biodiversity information in the possession and/or control of SANBI relates to research results and records produced by or on behalf of various third party institutions or individuals. There might be several

compelling reasons for safeguarding third party research information from free and open access. These include the following:

- Where the results or records of the research might be the subject of IPRs,
 - Where the research information contains information about biological resources or biological diversity which, if disseminated, would prejudice or might harm environmentally sensitive or threatened species.
 - Where access to the information might need to be restricted to protect researchers and scientists from the harm or potential harm associated with losing or being deprived of the opportunity to publish the result of their research and the associated benefits of publication.
- 31.2 Where a record contains information about research being or to be carried out by or on behalf of a third party and the disclosure of such information would be likely to expose the third party, a person that is or will be carrying out the research on behalf of the third party, or the subject matter of the research, to serious damage then SANBI must refuse access to that record.

PART X: Protection of data relating to sensitive taxa

32. INTRODUCTION

- 32.1 SANBI recognises the imperative that open access to biodiversity information is in the public interest. As a general principle, biodiversity information in the possession or control of SANBI should be made freely available to stakeholders and Data Users who or which want to use such information in the public or environmental interest.
- 32.2 SANBI also recognises that in certain circumstances the principle of open access to biodiversity information could have a significant adverse impact on certain biological resources that are vulnerable or sensitive to exploitation.
- 32.3 Sensitive data refers to biodiversity information which contains information about biological resources or biological diversity which, if disseminated, would prejudice or might harm environmentally sensitive biological resources.
- 32.4 The principal purpose of developing a Policy is to prescribe the norms and standards applicable to management, use and control of biodiversity information that will guide the practical management of environmentally sensitive information.
- 32.5 SANBI has prepared a Policy on *Digital Access to Sensitive Taxon Data*, which lays down the principles and general guidelines applicable to the management, control, dissemination of ecologically sensitive data, including the different levels of controls to be applied by SANBI in restricting access to sensitive data.

PART XI: Principles for Data Quality Management and Control

33. INTRODUCTION

33.1 In the context of this Policy Framework, the term “data quality” refers to the fitness for use or potential use of any data in SANBI’s possession and/or control and this essentially relates to the data’s ability to satisfy the needs of the Data User with respect to the purpose for which the Data User intends to use the data. In order for data to be fit for use it must be accessible, accurate, complete, consistent with other sources, relevant, and be easily interpreted.

34. PRINCIPLES FOR DATA QUALITY MANAGEMENT

34.1 SANBI possesses a vast array of biodiversity information from a range of diverse sources. SANBI cannot be held responsible for the accuracy and reliability of the data provided by third parties, as well as the suitability thereof for any particular purpose. In this regard, it is essential that SANBI’s information management systems established in terms of this Policy Framework ensure that Data Users acknowledge that the validity of the data in any SANBI affiliated databases cannot be assured.

34.2 Before making biodiversity information freely available SANBI should delete any part of a record which contains sensitive or protected information (which includes information falling within the set out in Part V of this Policy Framework). In the case of information supplied to SANBI by a third party, SANBI must ensure that the Data Provider stipulates which information contains ecologically sensitive data.

34.3 The Data Owner and/or Data Provider are primarily responsible for the quality of their data and must make reasonable efforts to ensure that the data they provide are accurate. SANBI will be responsible for the long term management of such information including maintenance of and improvements to the data.

34.4 All data and/or datasets should be accompanied by good quality metadata, which will enable Data Users to use such information without referring to the origins of the data.

34.5 It might be appropriate in certain circumstances for SANBI to request Data Owners and/or Data Provider to provide an assessment of the quality of the data and/or the dataset as a whole with regards to the data source, processing, validation and collection records.

34.6 Any data requested by a Data User must be fit for the purpose (i.e. fit for the purpose for which they intend utilising it. SANBI should strive to ensure that quality control measures are being used by Data Owners and/or Data Providers, third parties and employees of SANBI. In this regard, SANBI may undertake checks to validate the data and identify any errors. These checks may include the assessment of data by experts within the specific field (i.e. peer review).

- 34.7 Where errors in datasets are identified, changes to the existing information should be saved separately, so that both the old (original data) and the new (corrected data) are saved within the database.
- 34.8 As a general rule, in fulfilling its information management function, SANBI must strive to ensure the following data management principles are adhered to:
- Suitable quality control procedures are established and implemented.
 - Good documentation procedures and metadata procedures are established and implemented.
 - Data and data quality are accurately documented.
 - Routine validation checks are carried out on the data.
 - Errors in datasets are identified and documented, including the type of error and the instances of occurrence.
 - Data entry procedures are maintained and updated to ensure that recurring errors are eliminated.
 - The original data and updated data are saved and stored separately to allow for comparisons.

IMPORTANT: This *Biodiversity Information Policy Framework* must be read together with the following core SANBI Policies:

- ***Intellectual Property Rights Policy***
- ***Digital Access to Sensitive Taxon Data Policy***

PART XII: Institutional arrangements regarding access to information in terms of PAIA

35. INTRODUCTION

35.1 The purpose of this part of the Policy Framework is to describe in more detail the institutional arrangements and procedures applicable to requests for access to records received by SANBI from requester in terms of PAIA.

IMPORTANT: This section is intended to serve as a general guideline only and it is critical that SANBI's Information Officer ensures that the requirements of PAIA and the Regulations promulgated in terms of PAIA are complied with in every respect.

36. MANNER OF REQUEST

36.1 A request for access to a record in terms of PAIA must be made by submitting the prescribed form to the information officer of SANBI at his/her address or fax number or electronic mail address.

36.2 In the request form the requester is required to provide the following information:

36.2.1 Sufficient particulars to enable an employee of SANBI to identify the record, including the reference number, if that is known to the requester;

36.2.2 Sufficient particulars to enable an employee of SANBI to identify the requester;

36.2.3 The form of access or nature of the record which should be provided;

36.2.4 The preferred language in which the record should be provided;

36.2.5 The postal address or fax number of the requester in the Republic of South Africa;

36.2.6 The manner in which the requester would like to be informed about the decision on the request;

36.2.7 If the request is made on behalf of another person, to submit proof of the capacity in which the requester is making the request; and

36.2.8 Requesters who cannot read or write can make oral requests to the information officer of SANBI who must fill in the request form for the requester.

37. FEES APPLICABLE TO REQUESTS

37.1 The information officer to whom the request for access is made must request the requester to pay to SANBI the prescribed request fees.

- 37.2 In terms of PAIA, a requester for information may be required to pay a request fee as well as an access fee in respect of requests for information made to public bodies. Regulation 7 of the Regulations to PAIA¹⁴ prescribes the fees payable by every person who has requested information from a public body. The fee payable in respect of access to information requests in terms of PAIA is currently R35.00.

A list of the fees prescribed in terms of PAIA and the Regulations promulgated in terms of PAIA in respect of requests for access to information can be obtained from SANBI's Biodiversity Information Management Directorate.

38. DUTY TO ASSIST REQUESTERS

- 38.1 When a requester informs the information officer of SANBI that he or she wishes to make a request for access to a record, the information officer must render such reasonable assistance, free of charge, as is necessary, to enable the requester to complete the prescribed form.
- 38.2 Where the request for access does not comply with the provisions of PAIA, the information officer may not refuse the request because of such non-compliance, unless the information officer has notified the requester in writing of the intention to refuse the request and further, that the information officer or other employee will provide assistance to the requester in order to ensure that the request is made in such a form, that would remove the ground for refusal.
- 38.3 Where reasonably possible, the information officer must also furnish the requester with any other information held by SANBI which is relevant to the request, and would assist the making of the request.
- 38.4 The information officer must afford the requester a reasonable opportunity either to confirm or alter the request, so that the request complies with the formalities of the form of requests.
- 38.5 If after the information officer receives a request for access, it becomes apparent that the request should have been made to another public body, the information officer must render such necessary assistance so as to enable the person to make the request to the information officer of the appropriate public body.
- 38.6 Where a request for access is made to the information officer and the record is in the possession of another public body, the information officer must within 14 days after the request is received, transfer the request to the information officer of the relevant public body. The information officer must notify the requester of this in writing.
- 38.7 PAIA also provides for the situation where an individual is unable to make a request for access to a record in accordance with the prescribed requirements because of illiteracy or a disability, may make that request orally to SANBI. PAIA obliges the information officer of SANBI to reduce the oral request to writing in the form prescribed by PAIA and to provide a copy thereof to the requester.

¹⁴ Published under GN R187 in *Government Gazette* 23199 of 15 February 2002, as amended.

39. RECORDS THAT CANNOT BE FOUND OR RECORDS THAT DO NOT EXIST

- 39.1 If all reasonable steps have been taken to find a record requested and there are reasonable grounds for believing that the record is in SANBI's possession but cannot be found or does not exist, the information officer must notify the requester that it is not possible to give access to that record.
- 39.2 The notification to the requester must be by way of an affidavit or affirmation and must give a full account of all steps taken to find the record in question or to determine whether the record exists, including all communications with every person who conducted the search on behalf of the information officer.

40. DEFERRAL OF ACCESS

- 40.1 If the information officer decides to grant a request for access to a record, but the record:
- 40.1.1 is to be published within 90 days after 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;
 - 40.1.2 is required by law but is yet to be published; or
 - 40.1.3 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.
- 40.2 If access to a record is deferred, the information officer must notify the requester that they may, within 30 days of such notice, make representations to the information officer as to why the record is required before such publication or submission, and the likely period for which access is to be deferred.

41. DECISION ON REQUEST AND NOTICE THEREOF

- 41.1 The information officer must, as soon as reasonably possible, but in any event within 30 days, after the request is received:
- 41.1.1 Decide in accordance with whether or not to grant the request; and
 - 41.1.2 Notify the requester of the decision and, if the requester stated that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.
- 41.2 If the request for access is granted, the requester must be given notice stating the access fee, if any, which must be paid upon access, and the form in which access will be given. The notice must also state that the requester may lodge an application with a court, against the access fee or the form of access granted and must indicate the procedure for lodging such application.

- 41.3 If the request for access is refused, the notice must state adequate reasons for the refusal, including the provisions of PAIA relied upon. The notice must also state that the requester may lodge an application with a court, against the refusal of the request and must indicate the procedure and the period, for lodging the application.

42. EXTENSION OF PERIOD TO DEAL WITH REQUESTS

- 42.1 The information officer to whom a request for access has been made or transferred, may extend the period of 30 days (within which a decision must be made on request), once for a further period of not more than 30 days, if:
- 42.1.1 The request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of SANBI;
 - 42.1.2 It requires a search for records in, or collection thereof from, a SANBI office not situated in the same town or city as the office of the information officer that cannot reasonably be completed within the original period;
 - 42.1.3 Consultation among divisions of SANBI or with another public body is necessary or desirable to decide upon the request that cannot reasonably be completed within the original period;
 - 42.1.4 More than one of the circumstances contemplated in the abovementioned paragraphs exist, making compliance with the original period not reasonably possible; or
 - 42.1.5 The requester consents in writing to such extension.
- 42.2 If a period is extended, the information officer must notify the requester of the decision as soon as reasonably possible, in any event within 30 days, after the request is received or transferred.
- 42.2.1 The notice must state the period of the extension, provide adequate reasons for such extension and inform the requester that they may lodge an application with a court against the extension, and must indicate the procedure for lodging such application.

43. DEEMED REFUSAL OF REQUEST

- 43.1 If an information officer fails to give the decision on a request for access to the requester concerned within the period of 30 days, the information officer is regarded as having refused the request.

44. SEVERABILITY

- 44.1 If a request for access is made in respect of a record containing information which may or must be refused in terms of PAIA, every part of the record which does not contain and can reasonably be severed from any part that contains such information must be disclosed.

45. LANGUAGE OF ACCESS

- 45.1 A requester whose request for access to a record in SANBI has been granted must be given access in the language that the requester prefers if the record exists in that language or, if it does not exist in that language or the requester has no preference or has not indicated a preference, be given access in any language in which the record exists.

46. FORM OF ACCESS

- 46.1 If a request for access has been granted and the requester has paid the access fee, where applicable, the requester must be given access in the applicable form, as requested, and in the language preferred.
- 46.2 The forms of access to a record in respect of which a request may be granted, are the following:
- 46.2.1 By supplying a copy of the written record or printed form or by making arrangements for the inspection thereof;
 - 46.2.2 By making arrangements to view or to be supplied with copies or transcriptions of visual images or printed transcriptions of those images;
 - 46.2.3 By making arrangements to hear a record in which words or information are recorded in such a manner that they are capable of being reproduced in the form of sound or by supplying a transcript thereof;
 - 46.2.4 By providing a printed copy of the record or information derived from the record, which is held on computer, or in electronic or machine readable form;
 - 46.2.5 By supplying a copy of the record that is available or capable of being made available in computer readable form;
 - 46.2.6 By supplying a copy of the record.
- 46.3 If a requester has requested access in a particular form, access must be given in that form unless to do so would –
- 46.3.1 Interfere unreasonably with the effective administration of SANBI;
 - 46.3.2 Be detrimental to the preservation of the record; or
 - 46.3.3 Amount to an infringement of the IPRs of a third party.
- 46.4 If, for one of the reasons above, access in the requested form is refused but access is given in another form, the fee charged may not exceed the fee that would have been charged if the requester had been granted access in the form requested.
- 46.5 If a requester with a disability is prevented by that disability from reading, viewing or listening to the record in the form in which it is held by SANBI, the information officer must, if that requester so requests, take reasonable steps to

make the record available in a form in which it is capable of being, read, viewed or heard by the requester.

- 46.5.1 The requester may not be required to pay an access fee which is more than the fee which he or she would have been required to pay but for the disability.
- 46.6 If a record is made available to the requester, the requester may make copies of or transcribe the record using the requester's equipment, unless to do so would –
 - 46.6.1 Interfere unreasonably with the effective administration of SANBI;
 - 46.6.2 Be detrimental to the preservation of the record; or
 - 46.6.3 Amount to an infringement of the IPRs of a third party.
- 46.7 If the supply to a requester of a copy of the record is required, the copy must, if so requested, be supplied by posting it to him or her.
- 46.8 If an application to a court is lodged against the granting of a request for access to a record, access to the record may be given only when the decision to grant the request has been confirmed.

Effective date of this Policy Framework:
