

Transparency triumphs as Concourt rules sections of PAIA, Tax Admin Act unconstitutional

The Constitutional Court yesterday, 30 May 2023, ruled that certain sections of the Promotion of Access to Information Act, as well as parts of the the Tax Administration Act are unconstitutional, in so far as they prevent access to tax records by a person other than the taxpayer.



David Mblina – [123RF.com](https://www.123RF.com)

This is the judgment handed down in the matter of *Arena Holdings (Pty) Ltd and Other v Sars and Others*. The ruling confirms the declaration made by the North Gauteng High Court (Pretoria) that sections 35 and 46 of the Promotion of Access to Information Act 2 of 2000 (PAIA) as well as sections 67 and 69 of the Tax Administration Act 28 of 2011 (TAA) are constitutionally invalid.

This follows the PAIA request by Arena Holdings and Amabungane Centre for Investigative Journalism to Sars to access the former-President Jacob Zuma's tax records which were refused in March 2019. Sars refused access to the records on the basis that he is entitled to confidentiality as per sections 34 (1) and 35 (1) of PAIA as well as section 69 (1) of TTA.

The Information Regulator of South Africa has a constitutional mandate to promote and protect the right of access to information, and the right to privacy as it pertains to the protection of personal information. The Regulator recognises the importance of one's right to privacy, however, this right must be balanced against other rights, in particular the right of access to information.



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The Regulator was cited as one of the respondents in this case and made submissions to the Constitutional Court that while

section 35 of PAIA prohibits tax records from ever being released, this section must be read in the context of the right to transparency.

The Court has suspended the specific sections for a period of 24 months from the date of the order to enable Parliament to address the constitutional invalidity found to exist.

“This order will ensure that section 46 of PAIA is amended to include tax records in the category of records which must be disclosed if such disclosure would reveal evidence of a contravention of, or failure to comply with the law and the disclosure is in the public interest,” said chairperson of Regulator, Adv. Pansy Tlakula.

The Regulator believes the judgment will go a long way in promoting transparency by public bodies and public officials and will strengthen the constitutional right of access to information.

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