The case for transparency in the Climate Change Bill

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AmaBhungane is an independent, non-profit newsroom dedicated to producing world-class investigative journalism.

Our goal is to ensure that transparency and access to information is baked into the Climate Change Bill.
Lots of information, lots of discretion:

23(4)(b) The [greenhouse gas emissions] thresholds... must be based on the availability of feasible mitigation technology.

Discretion without transparency is a recipe for abuse.
PAIA and POPIA

Access to information

31. Information provided to the Minister or the Department in terms of this Act must be made available by the Minister subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).
PAIA is insufficient, POPIA a roadblock

- Requests are ignored, responses delayed
- Mandatory protection of third-party commercial information
- Refusals need to be challenged in court
- Information is provided one-to-one not one-to-many
- POPIA has a chilling effect on PAIA
- POPIA applies to juristic persons, i.e. companies
A Climate Change request under PAIA

several years later...
32. (1) Everyone has the right of access to—

(a) any information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any rights.
Proactive Disclosure

Principle 29 of the Declaration by the African Commission for Human and Peoples’ Rights:

Public bodies and relevant private bodies shall be required, even in the absence of a specific request, to proactively publish information of public interest.
Includes:

- Directives
- Correspondence with UPL
- Compliance reports from UPL
- Presentations to the JOC
- Scientific reports
- Toxicology results
- Inventory of pesticides in warehouse

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Proactive Disclosure

Information provided to any organ of state, including but not limited to the Minister, the Department, MECs, metropolitan municipalities, and district municipalities in terms of this Act must be made accessible to the public –

Within 10 days of receipt of such information by publication through proactive disclosure mechanisms without any requirement for request.
Climate change is an issue like no other ... There is little to no margin of error: if South Africa fails to achieve appropriate greenhouse gas emissions goals timeously, the lives of all South Africans, living and yet to be born, will be placed in jeopardy.
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31. Access to information

31. (1) Information provided to any organ of state, including but not limited to the Minister, the Department, MECs, metropolitan municipalities, and district municipalities in terms of this Act must be made accessible to the public —

(a) Within 10 days of receipt of such information by publication through proactive disclosure mechanisms without any requirement for request, including but not limited to

(i) in electronic format contained in publicly accessible online databases,
(ii) in electronic format contained on information storage media such as portable data drives accessible at the offices of the organ of state, and
(iii) inspection and/or copying of physically printed records accessible at the offices of the organ of state, where the production of such physically printed records is practically feasible having regard to cost and storage thereof; and

(b) by the organ of state subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

(2) If provided in electronic format, such information must be provided in a file type that is readable, replicable and transferable.

(3) The organ of state may charge a nominal fee determined by the Minister for providing information as described in section 31(1)(ii) above as well as copying of records as described in section 31(1)(iii).