CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

OFFICE OF THE SPEAKER

Alderman Felicity Purchase
Speaker City of Cape Town

T: +27 21 400 1285 **F**: 0862028105
E: speaker.speaker@capetown.gov.za

XXXXXXXXXXXXXXXXXXXXXXXXXXX (Appellants/ Requesters)
xxxxxxxxxx@xxxxxxxxxx

Dear XXXXXXXXXXXXXXXXXXXX

DECISION ON INTERNAL APPEAL BY XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXX AGAINST REFUSAL OF A REQUEST FOR ACCESS TO RECORDS RELATING TO ERF 3138, PINELANDS HOCKEY CLUB

Notice is hereby given of my decision in the above internal appeal.

1.0 Introduction

1.1 In deciding this appeal, due regard was had to –

1.1.1 the particulars stated in the Notice of Internal Appeal of 13 August 2026;

1.2.1 the reasons submitted by the Deputy Information Officer in the decision appealed against of 15 June 2026;

2.0 Preliminary observations

2.1 The Appellants state that the request fee has been paid. It is noted that the request fee is payable by all requesters.

2.2 The Appellants state that the timing of the refusal notice reinforces their belief that the request was refused without due consideration of the nature of the four different categories of records requested and valid reasons for refusal.

The timing of the refusal is regulated by the Promotion of Access to Information Act, 2000 (PAIA) in relation to the time when the request was lodged.

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3.0 The request, the decision on the request and the appeal

3.1 The request received on 1 June 2026 was for the following records:

> *I) COPY Of every comment, objection and/or alternative proposal received by the City in response to the notices dated 2 March, 17 March and 10 April regarding the application by the Pinelands Hockey Club to lease portion of Erf 3138 Pinelands.*
>
> 2) *Copy of the application by Pinelands Hockey Club to lease portion of Erf 3138 Pinelands.*
>
> 3) *A draft of lease agreement that the City proposes to enter into with the Pinelands Hockey Club in respect of portion of Erf 3138.*
>
> 4) *Minutes of every meeting held by the City of Cape Town at which:*
> a) *The aforesaid proposed lease was discussed; and/or*
> *The proposal by the Pinelands Hockey Club to build an astroturf on portion of Erf 3138 was discussed.*

3.2 The Deputy Information Officer refused access based on section 44 of the Promotion of Access to Information Act 2000.

3.3 The grounds of appeal are detailed in an annexure to the Notice of Internal Appeal.

4.0 Evaluation of the appeal

4.1 Section 11(1) of PAIA provides as follows:

> *11.* ***Right of access to records of public bodies****.*
>
> *(1) A requester must be given access to a record of a public body if—*
>
> *(a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and*
>
> *(b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.*

In principle, the norm is that access to the records of public bodies should be granted, but an exception is made where grounds of refusal exist.

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4.2 This principle as enunciated in the case of *Transnet Ltd and Another v SA Metal Machinery Co (Pty) Ltd* 2006 (4) BCLR 473 (SCA) is that an organ of state is obliged to conduct its operations transparently and accountably, and that once a Requester has complied with the procedural requirements for access and overcome the grounds for refusal in PAIA, he or she must be given access.

4.3 The Deputy Information Officer relied on section 44 of PAIA as a ground of refusal.

5.0 Section 44(1) of PAIA

5.1 Section 44(1) confers on an information officer a discretion to refuse access to a record in the circumstances listed in that section. The section states –

> ***44. Operations of public bodies***
>
> *(1) Subject to subsections (3) and (4), the information officer of a public body may refuse a request for access to a record of the body—*
>
> *(a) if the record contains—*
>
> *(i) an opinion, advice, report or recommendation obtained or prepared; or*
>
> *(ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting,*
>
> *for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or*
>
> *(b) if—*
>
> *(i) the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid—*

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(aa) communication of an opinion, advice, report or recommendation; or

(bb) conduct of a consultation, discussion or deliberation; or

(ii) the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.

Subsections (3) and (4) are not relevant to this appeal.

5.2 The Appellants aver that the Deputy Information Officer refused the request without due consideration of the four different categories of documents requested.

This submission is not accepted. All the documents are concerned with the possible lease to the Pinelands Hockey Club. In this context, it is not out of place to approach the request from the perspective of section 44.

Furthermore the request was submitted while the application was still being processed. Some records did not exist at the time of the request which could have been refused in terms of section 23 of PAIA, but as the process is dynamic, depending on the direction taken in processing the application, the record could subsequently come into existence,

5.3 With regard to item 1 the Appellants argue that the documents requested do not fit the description of any of the documents/records/information listed in subsections 44(1) and (2).

They submit that the records requested in item 1 do not constitute an opinion, advice, report or recommendation for the purposes listed, or an account of consultation, deliberation or discussion for the purposes listed in section 44(1)(a).

I disagree. In my view the comments, objections or alternative proposals received by the City are records which contain opinion, advice, report or recommendation obtained or prepared for the purpose of assisting to take a decision in the exercise of a power or performance of a duty conferred or imposed by law, as provided for in section 44(1)(a).

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In addition, in my view the disclosure of the records could reasonably be expected to frustrate the deliberative process in the City of Cape Town by inhibiting the candid communication of an opinion, advice, report or recommendation on the part of both the persons submitting the comments and City officials involved in processing the matter for decision by the Council. as provided for in section 44(1)(b).

Section 44 is discretionary and I would exercise my discretion to avoid premature disclosure in the same way as the Deputy Information Officer.

Section 34 of PAIA may also find application. …

5.4 The Appellants claim that the public participation process has lacked transparency and interested and affected parties have not been furnished with adequate information to meaningfully engage with the City on the matter,

My sole function is to determine the appeal in accordance with PAIA. I do not prescribe to City officials what information is to be given in a public participation process, or when information may be released to the public, or released to interested and affected parties. I make no comment on the criticism of the public participation process made by the Appellants.

5.5 The Appellants made similar submissions regarding the applicability of section 44 to the records in item 2,

In my view the record contains representations on behalf of the Pinelands Hockey Club which are opinion, advice, report or recommendation prepared for the purpose of assisting to take a decision in the exercise of a power or performance of a duty conferred or imposed by law, as provided for in section 44(1)(a).

In addition, in my view the disclosure of the record requested in item 2 could reasonably be expected to frustrate the deliberative process in the City of Cape Town by inhibiting the candid communication of an opinion, advice, report or recommendation on the part of representatives of the club and City officials. as provided for in section 44(1)(b).

I would again exercise my discretion to refuse access to the premature disclosure of this record.

The Appellants say that the applicant and the ward councillor for Pinelands have made contradictory public statements regarding the reason/s why the applicant is applying to lease a portion of land that is

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substantially bigger than what is required for an astroturf. I make no comment on this statement and do not consider that it alters my view of the record in item 2.

5.6 The Appellants make similar submissions regarding the applicability of section 44 to the records in item 3.

I am advised that at the time of the request this record did not exist, although in the course of time it would be drafted if the process indicated that a lease should be entered into.

At the time of the request this record did not exist and I have not been provided with any record for perusal in the appeal. Access is refused on the grounds of section 23 of PAIA.

The fact that the Appellants are adjoining owners of the land concerned, and interested and affected parties, who have been asked to comment on a proposed lease, is a matter to be taken up with those seeking comment rather than in a PAIA appeal.

5.7 In regard to record 4, the Appellants say that this is the only item which could possibly be refused on the basis of section 44, and that even though the information could be refused this does not mean that it should be refused if the City has nothing to hide, and if it were a City that conducted itself in an open and transparent manner.

I have not been provided with any records relating to request 4 for perusal in the appeal.

This is not a matter of the City having anything to hide. This is a PAIA appeal to be determined in accordance with PAIA.

The lease and related processes should be fair to all the interested parties involved and allow for orderly processing and decisionmaking without an interested party being given records not available to other interested parties.

5.8 Where I have been provided with records in the appeal, I concur with the decision of the Deputy Information Officer to refuse the request on the basis of section 44 of PAIA.

Where records do not exist, access is refused on the ground of section 23 of PAIA.

In the result, access is refused to the records,

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5.9 I am informed that the public participation process has been concluded and that once all submissions have been assessed, they will be incorporated into a report to Council for consideration and determination of the lease application.

The relevant Council report, which will include all supporting documentation considered during the decision-making process, including submissions received during the public participation process, will be publicly available.

Interested and affected parties will therefore have access to the information on which the decision is based when the matter is submitted for consideration.

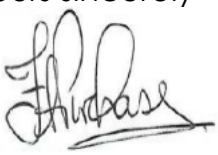
6.0 Appeal decision

6.1 Having considered the appeal submissions and representations, and for the reasons set out above, the appeal is dismissed and the decision of the Deputy Information Officer is confirmed.

6.2 This appeal decision does not preclude the relevant officials in the City administration from releasing further information to affected and interested parties or to the public.

6.3 In accordance with section 77(5)(c) of PAIA, the Appellants are informed that an application may be lodged with a court against the decision on internal appeal within 180 days.

Yours sincerely



ALDERMAN FELICITY PURCHASE
SPEAKER: CITY OF CAPE TOWN
RELEVANT AUTHORITY IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT
DATE: 11/09/2026

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Making progress possible. Together.