

FORM C

REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

(Section 53 (1) of the Promotion of Access to Information Act 2000 (Act No. 2 of 2000))

[Regulation 10]

A. Particulars of private body

The Head
MTN (PTY) LTD
Legal and Regulatory Department
Information office/ Legal representative
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MTN (PTY) LTD - Innovation Centre 216 - 14th Avenue Fairland Roodepoort
2195
0119123000

A. Particulars of person requesting access to the record

- (a) The particulars of the person who requests access to the record must be recorded below.
(b) Furnish an address and/or fax number in the Republic to which information must be sent.
(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: Murray Hunter
Identity number:
Postal address: Office 107, Community House, 41 Salt River Road,
Cape Town, 7925
Fax number: n/a
Telephone number: 0214471000
E-mail address: murray@r2k.org.za

Capacity in which request is made, when made on behalf of another person:

B. Particulars of person on whose behalf request is made

This section must be completed only if a request for information is made on behalf of another person.

Full names and surname: Kenneth Khaya Xintolo
Identity number: †

(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1. Description of record or relevant part of the record:

Copies of any records or part of records, including internal reports or minutes which detail:

1. The total number of requests, directions or warrants received by the network provider in terms of section 205 of the Criminal Procedures Act for each financial or calendar year for 2015, 2016 and 2017, for communication-related information, also known as "call records" or metadata;

2. The total number of such requests, directions or warrants with which the network provider complied for each financial or calendar year for 2015, 2016 and 2017;

3. The total number of applicable phone numbers to which such requests, directions or warrants pertained, for each financial or calendar year for 2015, 2016 and 2017

2. Reference number, if available:

N/A

3. Any further particulars of record:

This request pertains to aggregate statistics in relation to s205 of the CPA. This request does not pertain to any person's personal information. The request also does not pertain to any interception direction in terms of the Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA) or any information that falls under s42 of RICA.

This request should also be considered in terms of s46 of PAIA ("Public interest"). Globally and nationally, there is unprecedented interest and debate in the role of the private sector in facilitating the interception of communications and communication-related information. This has been the subject of many media and research reports, and even findings made by the UN Human Rights Committee regarding the interception of communications and the right to privacy in South Africa (CRC/C/OPSC/ZAF/CO/1).

The transfer of communications-related information from network providers to law enforcement agencies in terms of s205 of the CPA has been highlighted in an investigative report on dailymaverick.co.za ("Big Brother is watching your phone call records", 10 May 2017) which speculates that these procedures are used many thousands of times per year, in many instances without notification of any user. It is also widely reported that a former law enforcement member currently faces charges in a Special Commercial Crimes Court, for allegedly abusing s205 procedures in order to acquire the communication-related information of various individuals fraudulently. It is therefore greatly in the public interest for the public to understand how often the network provider participates in such a process, to inform a meaningful public debate about the impact of this practice on the constitutional right to privacy.

E. Fees

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.

- (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record
- (d) If you qualify for exemption of the payment of any fee, please state the reason thereof.

Reason for exemption from payment of fees:

N/A

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: _____ Form in which record is required _____

Mark the appropriate box with an "X".

NOTES:

- (a) Your indication as to the required form of access depends on the form in which the record is available.
- (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
- (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form-

X	Copy of record*		Inspection of record
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2. If record consists of visual images-

(this includes photographs, slides, video recordings, computer-generated images, sketches, etc).

	view the images		copy of the images*		transcription of the images*
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3. If record consists of recorded words or information which can be reproduced in sound-

	Listen to the soundtrack (audio cassette)		transcription of soundtrack* (written or printed document)
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4. If record is held on computer or in an electronic or machine – readable form-

	Printed copy of record*		Printed copy of derived from the record*	X	copy in computer readable form* (stiffy or compact disc)
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* If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? YES NO

A postal fee is payable.

X

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

In which language would you prefer the record? English

G. Particulars of right to be exercised or protected

*If the space provided is inadequate, please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Indicate which right is to be exercised or protected:

- Privacy
- Freedom of Expression
- Freedom of Association
- Political Rights

2. Explain why the record requested is required for the exercise or protection of the aforementioned right:

The Preamble of PAIA takes note of, prior to 1994, "a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations". This request is necessitated by a lack of transparency over the role of private bodies in facilitating the interception of communications in South Africa, whether lawful or unlawful. This lack of transparency makes it impossible for individual customers, or rights advocates, to identify or challenge abuses of power and human rights violations in respect of the interception of communications.

I make this request both as a concerned customer of the network provider, and as an active participant of the Right2Know Campaign (R2K). R2K is a proven advocate for the right to privacy, and the other rights associated with secure communications, having engaged widely in research, advocacy, and public awareness to protect these rights. In *Company Secretary of Arcelormittal South Africa v Vaal Environmental Justice Alliance* (VEJA), the Supreme Court of Appeal found that there should be a "common sense" approach to public participation and collaboration, and that VEJA was entitled as an advocate for environmental justice to access records related to environmental compliance. Similarly, R2K as an advocate for the right to privacy needs access to this information in order to effectively advocate for the protection of the right.

Privacy

The requested records would disclose how often a service provider discloses its customers' sensitive personal information to law enforcement agencies. Such disclosures form a part of a broader set of interception procedures that are part of a vital ongoing public debate about the appropriate protections for the right to private communications and communication-related information under current law and practice - these records are crucial to furthering that public debate. The records are also crucial to every citizen's individual right to make informed decisions about protecting or waiving their privacy when using communicating electronically.

Freedom of Expression, Freedom of Association and Political Rights

It is axiomatic that the risk of surveillance - of another party gaining covert access to one's sensitive information - has a chilling effect on freedom of expression and related political and civil freedoms. The requested records contain vital, albeit incomplete, information needed for any person to take an informed assessment of the risk of surveillance.

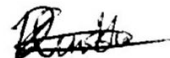
H. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

By Email

Signed at Cape Town this 18th day of May 2017



SIGNATURE OF
REQUESTER / PERSON ON
WHOSE BEHALF REQUEST
IS MADE

M Hunter 