

7. REQUESTING REASONS

When, how and where – the guide to finding out why

The ability to request reasons is the first and most **significant recourse** that a citizen has in terms of the AJA. This section will help you learn how to request reasons and assess whether you have been given appropriate reasons.

1. Why are reasons important?

The main reason for the AJA making it compulsory to provide reasons (at least when these are requested) is to make sure that decisions by the administration are **fair and to make the decision-making process open and transparent**. Providing reasons makes sure that members of the public can see that:

- The person who took the decision concentrated on the **correct issues** and did not take irrelevant issues into account; and
- The **decision was taken in a fair way** and not because the decision maker was influenced or bribed to make the decision in a particular way.

The next reason for this obligation, is the **positive effect that it will have on how decisions are made**. If an administrator knows that they will have to give reasons for their decisions, they are more likely to make a good decision, and make it fairly.

The third reason is so that people will **know the case against them** if they wish to take it further and have to argue the merits of the case, either on appeal to a higher level within the administration, or on review by a court.

2. Who can request reasons?

Anyone whose rights have been adversely affected by a decision can request written reasons.



BY THE END OF THIS SECTION

You will:

- Understand who may request reasons;
- Know the deadlines for requesting reasons;
- Draft a letter to request reasons;
- Be able to recognise valid or acceptable reasons;
- Know what to do when you have not been provided with adequate reasons.

However, Section 5(1) of the AJA (which deals with who can request reasons) only gives this right to a person ‘who has not been given reasons for the action’. So, if you have already been given reasons for a decision when receiving the second notice, you have no right to make a request for further reasons. This is to encourage administrators to give reasons without waiting to be requested to do so.



RECEIVING REASONS

The request for reasons must be made within 90 days of the administrative action. The administrator has 90 days to provide reasons.



REGULATIONS ON FAIR ADMINISTRATIVE PROCEDURES

These Regulations deal with the formalities that a person requesting reasons must follow. Generally, requests must be in writing and sent by post, fax or email, or delivered by hand. They must also say what decision the person is asking about and must provide their address and contact telephone and fax numbers.

However, when an administrator receives a verbal request from someone who cannot write or needs any other assistance, they must help that person to make their request in writing.

An administrator must acknowledge receipt. If they decide not to give reasons, they must still write to the person and tell them why they are refusing to give reasons for their decision.

3. When should reasons be given?

According to the AJA, the request for reasons must be made **within 90 days** of the date on which the person became aware (or should have become aware) of the administrative action. However, it is good administrative practice for administrators to still provide written reasons if the request is made late (that is, after 90 days of the date on which the person should have become aware of the decision).

Once an administrator receives a request for reasons, they must then give adequate reasons, **in writing**, within 90 days of receiving the request.

EXAMPLE

Mr. Zondi, Ms Peacock and Mrs. Zungu all foster abandoned children from Edendale Hospital in Pietermaritzburg after an appeal from Thandanani child-care association.

They go together to apply for child-support grants on 14 May 2002, and are given slips of paper that say their applications should be processed within 90 days.

The administrator decides to turn all three applications down because all of them are doctors and earn too much to qualify for a child-support grant. She sends letters to all of them on 2 August 2002.

On 9 August, Mrs. Zungu receives a letter, but the other two letters get lost in the post.

How long does Mrs. Zungu have to request reasons? She has 90 days from the date she became aware of the decision – i.e. until 9 November.

On 14 September, Ms Peacock remembers about her application and phones the department to check why she hasn't received notice. They inform her of the decision, and promise to send a copy of the letter. How long does she have to request reasons? Until 14 December, because this is 90 days from the time she became aware of the decision against her.

Mr. Zondi, on the other hand, is way too busy with sick patients and his new child to remember about his grant. On 30 November he bumps into Ms Peacock in the passage at the hospital and she reminds him. He phones the department and hears the bad news. How long does he have to request reasons? Not 90 days from 30 November, because he could reasonably have been expected to know about the decision from the same time as Ms Peacock – and so the same deadline will apply as in her case.

4. What are adequate written reasons?

The AJA says the reasons an administrator provides must be 'adequate'. This means they must provide a **satisfactory explanation** of why a decision was taken. This does not mean that the reasons have to convince the person that the decision was correct. Instead, the reasons must have enough detail to explain why the administrative action was taken. It is not enough for the relevant sections of the empowering provisions to just be repeated in their reply.

If you have raised specific questions, these should be answered as far as possible.

The reasons should be written in a **language that the requester can understand** – a person can, in fact, demand reasons in their own language. An administrator should also not use technical terms unless they know the person will understand them.

5. Structure of reasons

Often the reasons that are provided may be very simple and short. For example, there may be no cost order necessary or the decision itself may have been quite simple. The more difficult and complex a decision is, the greater the need for more detailed reasons to be supplied. In all cases though, the following minimum requirements should be met:

- A **clear decision must be set out**, which should also include the particulars of the person who took the decision;
- **Adequate reasons for the decision** must be given; and
- The administrator must provide information on any **legal remedies** available.

a. The letter

The letter from the administrator should have the following elements:

i. Address block

- The administrator's address;
- The date of the letter;
- The file reference number;

ii. The problem

It should **re-state the purpose of the application** or the action they are planning to take and say why they are writing (for example, "I am writing in connection with your application for a disability grant"). This will indicate that the administrator understood the nature of the proceedings.

iii. The decision

This is where the administrator states exactly what final decision has been taken without yet giving reasons for the decision:

1. The **main decision** should be stated in one sentence only. The purpose of this sentence is for the recipient to get a clear and simple answer to the question: "Did I succeed in my application?" or "What does the department want from me?"

2. The letter should state all **subordinate decisions**. Subordinate decisions can only be made if the empowering provision allows it. Subordinate decisions include:
 - a. **Conditions** attached to the main decision.
 - b. **Time limits** attached to the main decision.
 - c. **Exceptions** attached to the main decision.
 - d. **Exemptions** to the main decision.

EXAMPLES

- **Subordinate decisions.** A disciplinary inquiry will, if the person is found guilty, usually have a main decision (that the person is guilty) and a subordinate decision (the sentence to be imposed).
- **Conditions attached to the main decision.** A person applies for a building permit. The permit is awarded (the main decision) but has a condition attached – for example, that there must be at least a certain number of fire escapes provided.
- **Time limits.** A building permit may be issued with a time limit that building must start before a particular date or the permit will lapse automatically.
- **Exceptions.** A decision may state that all cattle in an area must be treated for foot and mouth diseases, except those that were treated in the previous six months.
- **Exemptions.** A school governing body may decide to increase school fees for the following year, but may decide that certain learners (such as those that cannot afford the increase) are exempted (excluded) from this decision.

3. The letter should state if a **cost order** is to be made. It should state the amount to be paid, who must pay it, and by what date the amount should be paid. If an assessment has to be issued before the amount can be paid, it should be attached as an enclosure.

- iv. Reasons for the decision (and any subordinate decisions)**
1. For the main decision, the administrator must:
 - a. **Explain why they have authority to make this particular decision** (in simple cases, where there is no dispute about authority, it may not be necessary to elaborate on this requirement).
 - b. State the facts of the matter. Two sets of facts are important:
 - i. The **history** of the matter:
 - In some cases, the administrator may have given other people a chance to comment or make representations before taking their decision. If this is the case, they must say who they informed and what their responses were.
 - If an administrator initiated the matter, they must say why their department decided to start an investigation. They must set out who was informed of the investigation and what their responses were.
 - ii. List all the **facts on which the decision is based**.
 - c. Give the **reference of the empowering provision** – that is, say what provision covers decisions on these types of facts.
 - d. State the **purpose of the empowering provision**. The letter must list the conditions that must be met before an administrator may exercise the powers in the empowering provision. If they relies on a court’s interpretation of the section, they must give the reference of the case and explain what impact this decision has had on the section.
 - e. **Apply the law** to the facts listed.
 - f. If the administrator has a **discretion**, they must:
 - i. State that they are using a discretionary power;
 - ii. Say what the scope of the discretion is;
 - iii. Say which alternative they chose, and
 - iv. Say why it was chosen.
 - g. If the provision is **mandatory**, the administrator must say that it is mandatory (and that they have no choice).

EXAMPLE

Ms Ntini is found guilty in a disciplinary inquiry into her taking sick leave when she was in fact not sick. In terms of the rules governing disciplinary inquiries in her department, the board hearing the inquiry may decide to:

- Dismiss her;
- Refuse her an increase for a period of two years; or
- Issue her with a written warning.

The board must now deal with each of these options and clearly state why they chose the one they chose. For example, they could state:

“In deciding an appropriate punishment, we were faced with three options:

- To dismiss you;
- To refuse you an increase for a period of two years; or
- To issue you with a written warning.

Since you have already had three written warnings, we did not regard this as an option. Since you have repeatedly taken sick leave when you were not sick, despite three written warnings, we also did not believe that it would be appropriate to refuse you an increase. Instead, given your behaviour and your failure to comply with previous written warnings, we believe the only correct option is to dismiss you. As a result, we have decided to dismiss you from employment”.

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2. The administrator should then repeat this process for each of the subordinate decisions and any cost order.

v. Advice on legal remedies

1. If there is an **internal appeal** available, the administrator should:
 - a. Give the contact details of the person responsible for the internal appeal (including their name, physical address, email address, fax number and telephone number);

- b. Set out the **period of time** that you have to lodge the appeal or the date by which it must be lodged; and
 - c. Explain any **prescribed or special forms** that must be used for the internal appeal. Copies of these forms should be attached as an enclosure.
2. If there is no internal appeal available, the administrator should:
 - a. Say **which court has jurisdiction** to hear a review; and
 - b. State the **time limit** within which the review has to be lodged.

6. What if no reasons are given?

Refusing to give written reasons can land an administrator in trouble. In fact, to prevent prejudice to people who have applied for reasons and who have not been given them in time, the AJA:

- Has a presumption in Section 5 (4) that allows a court hearing the matter to presume that an administrator took their decision without proper reasons; and
- Allows a court (in terms of Section 6) to force the administrator to give reasons.

7. What if reasons cannot be given?

In some cases it might be impossible for an administrator to give reasons. For example, the person who took the decision may have died or left the department with no forwarding address, or the file may have been destroyed in a fire.

In such cases, it will obviously be impossible for a court to force them to give reasons. Instead, the AJA allows a court to hear evidence to help it to decide whether or not the decision should stand.

8. A role for NGOs

This is an area where NGOs have a major role to play in assisting people with their rights. Many government departments have not yet implemented the AJA properly, and will be unaware of the legal obligation to provide reasons for their actions.

You can assist member of the public in the following ways:

- Even if procedure has not been followed, and a decision was made by the administrator without consulting the person, you can **request reasons** for the decision.
- If reasons have not been supplied in the second notice, **assist the person to write a letter requesting reasons** for the decision; or write a letter on their behalf.
- If the second notice does not tell you who to write to, phone the administrator and **find out who the letter should go to**.
- When reasons have been given, help the person to **assess whether they are adequate reasons** (do they explain fully why and how the decision was taken), and if not, to write again for better reasons.
- When adequate reasons have been received, help your client to **assess whether they have a case or not** – is there any point in taking the matter further.

You can also **assist the administration** to follow proper procedure and comply with the requirements of the AJA by informing them about their legal obligations, and putting pressure on them to meet them.

EXERCISE 5 – REQUESTING REASONS

Mrs. Dube goes to her local welfare office on 15 September 2001 to follow up on her application for a disability grant – made at the same office on 1 April 2001. The official is friendly to her, but tells her that the grant has not yet been processed and she should return in three months.

Mrs. Dube is out of work, and is living off the kindness and support of friends and family, who themselves are not very well off. She is desperate to get the grant, but does not understand why she is having these problems, or what she can do about them.

She comes for assistance to the Hope Centre advice office in Hillbrow, and you deal with her case. Assist Mrs. Dube to write a letter requesting reasons from the Department of Social Development. You can write your letter on the opposite page.

On the following page you will find the response that comes from the Department. What is wrong with this letter? Circle the problem areas on the letter, and rewrite a better letter of reasons on the facing page.

This is the reply that comes from the Department on the 14th of December.

Department of Social Development
Private Bag X 61
Johannesburg
0001
Tel.: 011/3227558

1 December 2001
Reference: 12345/01
CERTIFIED MAIL

Mrs. Dube
PO Box 123
Diepkloof, 0123
ID. Number:

Dear Mrs. Dube,

RE: Your application dated 20/09/2001

You have applied for a disability grant.

Decision:

Your application has been rejected.

Reasons:

In your application you said you were disabled because you have to use a wheelchair. The letter you sent us from the District Surgeon seems to support this.

However, we are not convinced. I personally know someone who uses a wheelchair. His name is Johannes Smit. Whenever I call him disabled, he gets very cross with me. He says he is not disabled, but just "differently abled".

The Act does not allow for disability grants to be paid to people who are differently abled. That is why it is called a disability grant – it is for people who are "disabled".

Anyway, there are far too many people in Johannesburg applying for these grants. As you know, the value of the Rand has fallen a lot recently and I have read in the newspapers that the government is running out of money. The government has to pay for people with Aids now as well, and this is making it very difficult for us.

As I said earlier, I receive many applications for disability grants. A lot of the people who apply are not even disabled. Many pretend to be just to get the money. A lot actually lie to the District Surgeons. I was once told that a District Surgeon filled in a form for someone on crutches and, when she was on her way home, she saw this person walking perfectly alright. Actually, I am sick of these people. They make my life very difficult and make us have to pay extra taxes all the time. I wish they would all get jobs. I had to miss my leave last year because I was so busy processing all of the applications I received.

Based on these facts and the relevant legal provisions your application had to be rejected.

Advice regarding legal remedies:

There is a process by which you can appeal if you think my decision is wrong (although your chances are very slim that I will change my mind). You can call me if you want to know more about this. My telephone number is in the book. Please do not call until mid January though, because I will be on leave.

Sincerely



A Brook
DIRECTOR GENERAL, DEPARTMENT OF SOCIAL DEVELOPMENT
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