



BIODIVERSITY INFORMATION POLICY FRAMEWORK

Policy Series

DIGITAL ACCESS TO SENSITIVE TAXON DATA

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1. INTRODUCTION

- 1.1. SANBI recognises the imperative that open access to biodiversity information is in the public interest. As a general principle, biodiversity information in the possession or control of SANBI should be made freely available to stakeholders and Data Users who or which want to use such information in the public or environmental interest.

- 1.2. SANBI also recognises that in certain circumstances the principle of open access to biodiversity information could have a significant adverse impact on certain biological resources that are vulnerable or sensitive to exploitation. Sensitive data refers to biodiversity information which contains information about biological resources or biological diversity which, if disseminated, would prejudice or might harm environmentally sensitive biological resources.

- 1.3. The principal purpose of this Policy is to prescribe the norms and standards applicable to management, use and control of biodiversity information that will guide the practical management of environmentally sensitive information.

IMPORTANT: This Policy regulates the information management and control of *access to digital data pertaining to sensitive taxa* only. Records containing *data from sensitive taxa* may need to be protected against dissemination for a range of reasons unrelated to the sensitivity of the biological resource in question. This Policy must be read together with SANBI's *Biodiversity Information Policy Framework: Principles & Guidelines* for the general rules applicable to the management, use and sharing of biodiversity information as well as the other policies forming part of SANBI's *Biodiversity Information Management Policy Series*.

2. BACKGROUND

- 2.1. SANBI is mandated in terms of the National Environmental Management: Biodiversity Act¹ (the “Biodiversity Act”) to manage a wide variety of information about South Africa’s biodiversity. This includes collecting, generating, processing, coordinating and disseminating information about biodiversity and the sustainable use of South Africa’s biological resources. In fulfilling its mandate, SANBI is obliged to establish and maintain databases of biodiversity information, and aims to be the preferred source of such information.
- 2.2. To this end, SANBI has prepared a *Biodiversity Information Management Policy Framework: Principles & Guidelines* which provides the overarching framework and operating principles for managing biodiversity information.
- 2.3. As part of its governance structures regarding the management, use and control of biodiversity information, SANBI is intending to integrate existing databases of biodiversity information (e.g. SARCA, SABCA, SANSA) and to facilitate the access to these databases via a single portal which is tailored to the needs of biodiversity information users. In order to achieve this goal, SANBI has established partnerships with Data Owners and Data Providers.
- 2.4. In accordance with performing its functions in terms of the Biodiversity Act, SANBI aims to make biodiversity data freely available, wherever possible, to researchers, organisations and institutions that have a legitimate interest in biodiversity information.
- 2.5. This Policy sets out the main factors that need to be taken into account and to provide guidance when considering whether or not to disseminate biodiversity information which contains information relating to sensitive taxa.

¹ Act 10 of 2004.

PURPOSE OF THIS POLICY

2.6. The purpose of this Policy is as follows:

- i) To facilitate the availability and use of information about South Africa’s biological diversity for administrative decision-making, education and research purposes.
- ii) To safeguard threatened Red List and NEMBA protected taxa that are vulnerable or potentially vulnerable to collecting, over-exploitation, commercial and/or medicinal use by striking an appropriate balance between the imperative of open access to biodiversity information and protecting the integrity of sensitive taxa.
- iii) To establish the general principles applicable to the management, control, dissemination of data relating to sensitive taxa, including the different levels of controls to be applied by SANBI in restricting access to data *sensitive taxa*.
- iv) To establish the criteria and procedures to be applied by SANBI in determining the sensitivity of data relating to sensitive taxa.

3. DEFINITION OF SENSITIVE DATA

3.1. In the context of this Policy, the term “sensitive data” refers to any information about sensitive taxa that could result in over-collecting, over-exploitation, and unsustainable commercial and/or medicinal use, or the extinction or potential extinction of the taxa.

3.2. Sensitive data includes the following:

- i) Data on population sizes or numbers of a sensitive taxon or its populations that might influence the rarity value or commercial value of the taxon;
- ii) Data about the habitat and ecosystem of a sensitive taxon that may allow the locality of the taxon to be inferred;

- iii) Geo-referenced data about a sensitive taxon (including precise locational data, descriptions of locations and/or localities and point locality co-ordinates) that may allow a population to be located;
- iv) Records of specimens in collections or observation records (including the name of the collector, the collector specimen number, taxon identity, the locality description, co-ordinates more precise than a quarter-degree-square, population size, date of collection, collector of the specimen/s, and any habitat information associated with the specimen/s.), that with analysis may allow a population to be located. The record may refer to a single specimen, or a sample, which includes several or many specimens with identical collecting details. All specimen/observation records for a sensitive taxon, no matter when collected, would be equally restricted.

4. DEFINITION OF SENSITIVE TAXA

- 4.1. The term sensitive taxa refers to threatened Red List and NEMBA protected taxa that are vulnerable or potentially vulnerable to over-exploitation from unsustainable collecting, and/or commercial use and that may allow an increase in the risk of commercial, local or global extinction of the taxon
- 4.2. Not all data pertaining to taxa in the abovementioned categories of a sensitive taxon shall automatically be considered to be sensitive data. Data regarding sensitive taxa will only constitute sensitive data where the dissemination of such information could result in harm or the possibility of harm to the taxon in question through, over-collecting, over-exploitation, and unsustainable commercial and/or medicinal use.
- 4.3. The categories of sensitive taxa contemplated in this Policy include:
 - i) Any taxon listed by SANBI's Threatened Species Programme (TSP) as:

- a. Falling into one of the following categories on the latest IUCN South African Red List Assessment:
 - i. Extinct
 - ii. Extinct in the wild
 - iii. Critically Endangered
 - iv. Endangered
 - v. Vulnerable and having and having only one described locality of occurrence
- ii) Any threatened or protected taxon listed in terms of the Biodiversity Act.
- iii) All taxa within a genus having no less than 25% of its taxa in i) and/or ii) threatened through over-collecting, over-exploitation, and unsustainable commercial and/or medicinal use.

5. CRITERIA FOR DETERMINING THE ENVIRONMENTAL SENSITIVITY OF DATA REGARDING SENSITIVE TAXA

- 5.1. Where SANBI generates biodiversity information that contains sensitive data, SANBI shall specify that the data is sensitive, the nature and degree of the sensitivity, and the level of access control required.
- 5.2. Where data is generated by a third party and is deemed to be sensitive data by the Data Owner and/or the Data Provider, they are required upon provision of the data to SANBI to specify which of the data are sensitive, the nature and degree of the sensitivity, and the level of access control required, within the categories of control used by SANBI.
- 5.3. SANBI shall on an annual basis publish a list of sensitive taxa, known as the *Published list of sensitive taxa*.

6. PRINCIPLES FOR THE MANAGEMENT, CONTROL AND DISSEMINATION OF SENSITIVE DATA

- 6.1. The following general principles apply to the management, control and dissemination of sensitive data.
- 6.2. Wherever possible, biodiversity information collected by SANBI or using SANBI resources should be made available via the SANBI portal at no cost to the user, with as few restrictions as possible, on a non-discriminatory basis.
- 6.3. A fee can be levied in respect of providing access to commercial users of sensitive data in the manner described in the *Biodiversity Information Management Policy Framework: Principles and Guidelines*.
- 6.4. Where the biodiversity information requested contains a mix of ecologically sensitive data and non-sensitive data, reasonable efforts should be taken by the data provider to ensure that the sensitive data is separated or deleted from the record in question and the non-sensitive data is released.
- 6.5. Access to sensitive data should be provided to the following categories of Data Users in the circumstances described below:
 - i) Any department or administration in the national or provincial sphere of government or any municipality in the local sphere of government when taking a decision or exercising any function in terms of any statutory provision concerning the protection or management of the environment (including functions or decision-making processes relating to biodiversity conservation or management, natural resource documentation or management).
 - ii) Any private individual or entity in connection with consulting services being undertaken by that individual or entity for any department or administration in the national or provincial spheres of government or any municipality regarding taking a decision or exercising any function in terms of any statutory provision concerning the protection or management of the environment.

iii) Any private individual, entity or institution (including universities, research organisations and other organisations) who or which requires access to such information for the purposes of undertaking bona fide scientific research and which person has been vetted by SANBI.

6.6. Access to sensitive data by all other categories of Data Users must be determined by SANBI, the Data Provider and/or the Data Owner on a request-by-request basis.

6.7. SANBI can determine the nature of access and the time extent, if applicable, to which it would allow access to sensitive data.

6.8. Recipients of sensitive data must sign a non-disclosure agreement.

6.9. A request for access to sensitive data shall be refused by SANBI if the request is manifestly frivolous or vexatious.

6.10. A request for access to *sensitive data* may be refused by SANBI if the work involved in processing the request would substantially and unreasonably divert SANBI's resources.

6.11. A request for access to sensitive data must be granted by SANBI if the disclosure of the record would reveal evidence of:

i) a substantial contravention of, or failure to comply with, the law; or

ii) an imminent and serious public safety or environmental risk;

and the public interest in the disclosure of the record clearly outweighs the harm contemplated.

6.12. In the case of biodiversity information that contains confidential or commercial information of a third party, SANBI shall release such data only in accordance with the requirements stipulated in the *Biodiversity Information Management Policy*

Framework: Principles and Guidelines and only after receiving the consent to do so in writing from the Data Owner or Data Provider in question.

- 6.13. Information supplied by SANBI, in any format, through any media, may not be sold in whole or in part. The information may be used for purposes such as to inform an opinion, recommendation, interpretation, conclusion or policy as a derivative product and/or service. SANBI will not be held liable for the use of the information in any process, product or service. The use of the information is subject to the conditions as set out in the *Intellectual Property Rights Policy*.
- 6.14. Notwithstanding any other indication to the contrary in this Policy, SANBI is obliged to grant access to a record containing ecologically sensitive data in certain circumstances prescribed in PAIA. Regard must be had to SANBI's *Biodiversity Information Management Policy Framework: Principles & Guidelines* in this regard

7. PROCEDURE FOR GRANTING ACCESS TO SENSITIVE DATA

- 7.1. Requests for access to sensitive data will be considered on a case-by-case basis.
- 7.2. Records containing data of sensitive taxa must be marked as such in SANBI's database. Sensitive data will be flagged so that only the coarse locality data associated with them will appear.
- 7.3. Where SANBI identifies that the data requested contains sensitive data, the bona fides of the data requester must be established as well as the purpose for which the request has been made.
- 7.4. The accounting officer must identify the Data Owner to determine whether the information is SANBI-generated or not, as non-SANBI generated data may have conditions placed on it as stipulated by the Data Owner in the Data Sharing Agreement between SANBI and the Data Owner and might be otherwise protected by law.

- 7.5. Where the data belongs to a third party, SANBI's databases shall be filtered according to the specifications as outlined in an agreement between SANBI and the Data Owner where such agreement regulates the information in question.
- 7.6. Where such agreement regulates the information in question, requests for non-SANBI generated sensitive data (e.g. fine-scale locality data for threatened taxa) will be referred back to the Data Owner, who must establish the bona fides of the requester and decide whether or not to grant the requisite permission or consent for the release of the information by SANBI (including such detail as at what level or resolution should access be granted) should such datasets not be covered by any existing agreement.
- 7.7. The data will be provided at the appropriate level for the sensitivity of the data in accordance with the criteria set out in this Policy and subject to the requirement that access to any records containing sensitive data must be approved by SANBI's Biodiversity Information Management Committee in a manner to be determined by SANBI in accordance with this Policy.

Professionally sensitive data

- 7.8. Professionally sensitive data refers to all data (including, but not restricted to data relating to sensitive taxa) provided to SANBI by any source that will be publishing the data and that has not authorised its release by SANBI until the publication of the data has occurred or permission from the source has been granted.
- 7.9. SANBI shall not release such data without permission from the source unless a mutually acceptable time limit for release has elapsed, as determined in the Intellectual Property Rights Policy of this Biodiversity Information Policy Framework.
- 7.10. The Data Provider must make explicit on providing the data to SANBI that the data are categorised as professionally sensitive data in terms of this Policy, and the time frame for such categorisation of the data.

8. ACKNOWLEDGEMENT OF DATA OWNERS

- 8.1. SANBI must ensure that Data Owners are adequately acknowledged and that such attribution be maintained in any subsequent use of the data. Data Users must be required to cite the author and source of the material in the same manner that they would cite and acknowledge material from any printed work. Members of the public who were involved in data collection should also be acknowledged.

9. DATA SHARING RIGHTS

- 9.1. Data sharing rights to be for limited time periods, and to be renewed on a regular basis. Data Owners that place conditions on their datasets are required to provide a release period, after which the datasets will be made available. Data Owners may request to be notified when their data is extracted by a Data User. The execution of this request is subject to resource availability.

10. GENERALISATION OF DATA

- 10.1. The data shall be made available by SANBI at only two resolutions, at a fine-scale level constrained by the resolution at which it was collected, and at a generalised level of a quarter-degree-square.
- 10.2. Where there is disagreement between the opinion of the data provider and SANBI as to whether a record or dataset should be regarded as sensitive, SANBI shall retain the right not to curate, publish or disseminate the record or dataset until a resolution has been made.

Effective date of this policy:

DEFINITIONS

"Data"	means primary taxon occurrence data, legacy data, observational and multimedia records in digital format and includes without limitation, photographs, images, recordings, specimens, monographs and other documents in SANBI's possession or control;
"Data Owner"	means organisations or individuals that own Data;
"Data Portal"	means any SANBI controlled website through which the Data may accessed with the internet;
"Data Provider"	means the organisations or individuals that provide Data to SANBI;
"Data Users"	means any person accessing the Data through the Data Portal and making use thereof;
"Ecologically Sensitive Data"	refers to any information about sensitive taxa that could be used to identify localities or population size of the taxon that may allow an increase in the risk of commercial, local or global extinction of the taxon;
"PAIA"	means the Promotion of Access to Information Act 2 of 2000;
"SANBI"	means the South African National Biodiversity Institute;
"Sensitive Taxon"	means any threatened or rare Red List or NEMBA protected taxon that is vulnerable or potentially vulnerable to over-exploitation from unsustainable collecting, and/or commercial use, that may allow an increase in the risk of commercial, local or global extinction of the taxon.

“Taxa”

Singular taxon: means a kind of animal, plant or other organism that does not normally interbreed with individuals of another kind, and includes any species, sub-species, cultivar, variety, geographic race, strain, hybrid or geographically separate population.