

**THREE APPLICATIONS TO COURT
AGAINST LEGAL AID SOUTH AFRICA
TO COMPEL ITS COMPLIANCE WITH
THE PROMOTION OF ACCESS TO
INFORMATION ACT**

Brink v Bambiso

Brink v Vedalankar

Brink v Msweli

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Note

For the highest possible print resolution and optimal legibility, this document comprises final-draft PDFs before signature.

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

Case No: 257/14

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

HOPE BAMBISO N.O.

DEPUTY INFORMATION OFFICER,

EASTERN CAPE REGION,

LEGAL AID SOUTH AFRICA

Respondent

NOTICE OF MOTION

TAKE NOTICE that the applicant intends applying to this court for orders in the following terms:

1. Declaring the respondent's refusal on 6 November 2013 to allow the applicant access to the records enumerated in his request made under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), dated 1 October 2013 and delivered to him on 7 October 2013, to have been in contravention of section 11 of PAIA, unlawful, and a violation of the applicant's fundamental right to information guaranteed by section 32 of the Constitution.
2. Setting aside the respondent's decision to refuse the applicant access to the records he requested.

FIRST APPLICATION (1/3)



3. Directing the respondent to deliver to the applicant copies of the said records within thirty court days of the date of this order; alternatively, in the case of any record not so delivered, to furnish the applicant with an affidavit containing all the information prescribed by section 23(2) of PAIA, including (a) the results of computer hard-drive searches for electronic copies of such records conducted by one or more of Legal Aid South Africa's expert Information Technology staff, detailing by whom and the manner in which such searches were conducted; and (b) the responses by the following Legal Aid South Africa officers to the respondent's enquiries about retrieving from them the records he has been ordered to surrender to the applicant: National Operations Executive Brian Nair; Corporate Services Executive Thembile Mtati; Eastern Cape Regional Human Resources Manager Thenjiwe Magazi; Port Elizabeth Justice Centre Executive Lynette Franklin; Mthatha Justice Centre Executive Fuzile Ngxukumeshe; Free State and North West Regional Operations Executive Zanele Msweli; Mahikeng Justice Centre Executive Mothusi Khumalo; and Mahikeng Senior Litigator Nzame Skibi.
4. Granting the applicant leave to approach this court again on the same papers, supplemented as needs be, for an order for further and better compliance with any of the above orders; and/or for the attachment of Legal Aid South Africa's staff computers and business computer servers by the sheriff and their search by a suitably qualified, independent computer Information Technology expert appointed by this court for electronic copies of the requested records; and/or in the event that the respondent wilfully or grossly negligently fails to comply with this order, committing him for contempt for such period as this court deems meet.

5. Directing the Clerk of Court, after the final disposal of this application, to refer a complete set of all papers filed, together with a copy of this court's judgment(s) – extra copies of which the applicant must make and provide for this purpose – to the Minister of Justice and Constitutional Development; to the Chairperson of the Portfolio Committee on Justice and Constitutional Development in the National Assembly; to the Chairperson of the South African Human Rights Commission; and to the Public Protector.
6. Directing the respondent to pay the applicant's costs.

TAKE NOTICE FURTHER that the affidavit of Anthony Robin Brink and the documents referred to in rule 3(3)(a) of the Rules of Procedure for Application to Court in Terms of the Promotion of Access to Information Act 2 of 2000, annexed hereto, will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed The Flat, 1 Boast Street, Eshowe, KwaZulu-Natal, as the address at which he will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that:

- (i) Notice of intention to oppose this application must be given within 15 days after receipt hereof and must contain an address within eight kilometres of the court to which the application is brought, where notice and service of documents will be accepted.
- (ii) Answering affidavits, if any, must be filed within 15 days after service of the notice of intention to oppose the application.

(iii) In default of your complying with rule 3(5) of the Promotion of Access to Information Rules, the applicant may request the registrar to place the application before the court for an order in terms of section 82(b) of the Act.

(iv) In default of your delivering a notice of intention to oppose, the matter will, without further notice, be placed on the roll for hearing after the expiry of the period mentioned in paragraph (i) above, on a date fixed by the clerk of court.

Signed at Eshowe on this 28th day of April 2014.

Applicant

Anthony Robin Brink
The Flat, 1 Boast Street
Eshowe
KwaZulu-Natal
Tel: 035 474 0145
Cell: 083 779 4174
Fax: 086 672 0776
Email: arbrink@iafrica.com

TO:

The Clerk of Court
Magistrates Court
Eshowe
KwaZulu-Natal

AND TO:

Hope Bambiso
Deputy Information Officer and
Regional Operations Executive
Eastern Cape Region
Legal Aid South Africa
Eastern Cape Regional Office
5 Mangold Street
Newtown Park
Port Elizabeth
Eastern Cape

AND BY POST TO:

South African Human Rights Commission chairperson Lawrence Mushwana
And at Legal Aid South Africa to:
Chief Executive Officer Vidhu Vedalankar
National Operations Executive Brian Nair
Corporate Services Executive Thembile Mtati
Board Secretary Lesleigh Timothy
Eastern Cape Regional Human Resources Manager Thenjiwe Magazi
Port Elizabeth Justice Centre Executive Lynette Franklin
Mthatha Justice Centre Executive Fuzile Ngxukumeshe
Free State and North West Regional Operations Executive Zanele Msweli
Mahikeng Justice Centre Executive Mothusi Khumalo
Mahikeng Senior Litigator Nzame Skibi.

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

Case No:

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

HOPE BAMBISO N.O.

DEPUTY INFORMATION OFFICER,

EASTERN CAPE REGION,

LEGAL AID SOUTH AFRICA

Respondent

FOUNDING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I am an adult male advocate of the High Court of South Africa, ordinarily resident at The Flat, 1 Boast Street, Eshowe, KwaZulu-Natal, and I am the applicant herein.
2. The respondent is Hope Bambiso, an adult male attorney of the High Court of South Africa, cited in his capacity as duly delegated deputy information officer for the Eastern Cape operational region of Legal Aid South Africa ('LASA'), a 'public body' envisaged by section 1 of the Promotion of Access to Information Act, Act 2 of 2000 ('PAIA' or 'the Act'), being an 'institution ... performing a public function in terms of any legislation' namely the Legal Aid Act 22 of 1969. He is LASA's Regional Operations Executive for the Eastern Cape, and his

business address is Legal Aid South Africa, Eastern Cape Regional Office,
5 Mangold Street, Newtown Park, Port Elizabeth, Eastern Cape.

3. This is an application brought under Chapter 2 of the Act, ‘APPLICATIONS TO COURT (ss 78-82)’, for the grant of orders set out in the notice of motion under this court’s powers vested in it by section 82.
4. In support of the special orders I seek under this court’s jurisdiction ‘to grant any order that is just and equitable’ (per section 82), several profoundly aggravating features of this case will be set out at the end.
5. By Notice No. 585 published in the Government Gazette on 14 May 2004, the Minister of Justice and Constitutional Development has ‘designate[d] all magistrates courts ... as courts to hear any application in terms of the Promotion of Access to Information Act, 2000, within whose area of jurisdiction [inter alia] the requester ... is ... ordinarily resident.’
6. Under the Minister’s said blanket designation, this court has been designated under sections 1 and 91A of the Act and has jurisdiction to try this application; and being ordinarily resident in this court’s area of jurisdiction, I’m entitled to sue out of this court for the relief I claim.
7. On 7 October 2013 I delivered to the respondent by registered post a request under PAIA for access to several specified records. My request, dated 1 October 2013, complied with the requirements of section 18 of the Act and was accompanied by a cheque to cover the request fee prescribed by section 22. I annex a copy of my request marked ‘A’.
8. On 6 November 2013 the respondent refused my entire request. I annex a copy of his letter notifying this marked ‘B’.

9. Notwithstanding his name, business address and signature on his letter refusing my request, it's evident from several indications, set out among the facts in aggravation at the end of this affidavit, that the respondent didn't write it, and that the decision to refuse my request was taken in LASA's national office in Braamfontein, Johannesburg. That is, the respondent abdicated his constitutional and statutory obligations and responsibilities delegated to him by Chief Executive Officer and information officer Vidhu Vedalankar under section 17 of PAIA, and referred my PAIA request to LASA's national office for disposal, where his line management superior, but not his superior as deputy information officer, National Operations Executive and deputy information officer in the national office Brian Nair is based, and whose conduct in relation to the abortion of the Mthatha Senior Litigator appointment in mid-2010, for several radically different reasons he gave me and different authorities at various times (canvassed below), is the subject of my PAIA request addressed to the respondent.

10. The indications, mentioned at the end, that the respondent's letter refusing my PAIA request was drawn by Nair or, on his instructions, by Corporate Legal Manager Solly Sekgota and/or Corporate Services Executive Thembile Mtati, both of whom are also based together with Nair in LASA's Johannesburg head office, and both of whom managed LASA's (Nair's) defence in the litigation mentioned below, has substantial implications for the manner in which I've presented this application. Since all three of them have in their possession or ready access to all the many documents from which I quote and to which I refer in this affidavit, I've not annexed copies. This includes the transcript of the trial record. In the event that the respondent disputes (i) any allegation I make with reference to a particular document, (ii) any quotation I extract from a document, or (iii) the content or purport of any document I refer to, I'll put the document(s)

up with my reply. This approach will limit the otherwise tremendous potential volume of the papers in this application.

11. Anticipated by paragraphs 3 and 4 of his letter, in which he quotes sections 7(1) and 45 of the Act, the respondent's grounds for refusing my request are stated in his final paragraph, namely that 'all the request relates to legal proceedings before court' and 'all your request falls within the prescripts of section 7(1) read with section 45 of the Act.'

12. For reasons I'll set out herein, these grounds are factually and legally irrelevant, and the respondent's refusal of my request was accordingly illegal and violated my fundamental right to information guaranteed by section 32 of the Constitution.

13. Section 11(1) in Part 2 of the Act prescribes:

11(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.

14. The respondent raises no issue over my due compliance with all procedural requirements of the Act, per section 11(1)(a).

15. Apropos of section 11(1)(b), Chapter 4 in Part 2 of the Act contemplates the following grounds for refusing a request for public body records, and none other:

34. Mandatory protection of privacy of third party who is natural person

35. Mandatory protection of certain records of South African Revenue Service
36. Mandatory protection of commercial information of third party
37. Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party
38. Mandatory protection of safety of individuals, and protection of property
39. Mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings
40. Mandatory protection of records privileged from production in legal proceedings
41. Defence, security and international relations of Republic
42. Economic interests and financial welfare of Republic and commercial activities of public bodies
43. Mandatory protection of research information of third party, and protection of research information of public body
44. Operations of public bodies
45. Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources

16. Besides his vague allusion to section 45 (addressed immediately below), the respondent doesn't justify his refusal of my request on any of the grounds permitted by and contained in sections 34–45 of the Act. Instead, in refusing my request, he invokes 'the prescripts of section 7(1)'.

17. Since the respondent doesn't even allege, much less make the case that my request for records is 'manifestly frivolous or vexatious', per the language of section 45(a), or that responding to them would 'unreasonably divert' LASA's

‘resources’ as a ‘public body’, per section 45(b), my request for access to LASA’s records is not and cannot be hit by section 45. Furthermore, from his incantation of section 7(1), the respondent seems to think that I requested the documents for the purpose of presenting them in pending litigation (about which more below) – which, if so, would hardly qualify as a ‘manifestly frivolous or vexatious’ purpose and/or unreasonably diverting LASA’s resources. This, then, puts section 45 out of contention in this matter.

18. Quoted by the respondent in paragraph 2 of his letter, section 7(1) of PAIA provides:

7(1) This Act does not apply to a record of a public body or a private body if –

- (a) that record is requested for the purpose of criminal or civil proceedings;
- (b) so requested after the commencement of such criminal or civil proceedings, as the case may be; and
- (c) the production of or access to that record for the purpose referred to in paragraph (a) is provided for in any other law.

19. Contrary to the respondent’s defective understanding of the Act, section 7(1) doesn’t afford the information officer of a public body a justification for refusing a record request, more especially because section 7(2) of the Act, which the respondent didn’t quote in his letter, allows that:

(2) Any record obtained in a manner that contravenes subsection (1) is not admissible as evidence in the criminal or civil proceedings referred to in that subsection unless the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice.

20. That is, section 7(2) provides that such records obtained via PAIA in the course of litigation will be admissible as evidence if ‘the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice’ – which is to say, records so obtained are not absolutely excluded.

21. Section 11(3) stipulates:

11(3) A requester’s right of access contemplated in subsection (1) is, subject to this Act, not affected by –

- (a) any reasons the requester gives for requesting access; or
- (b) the information officer’s belief as to what the requester’s reasons are for requesting access.

22. I didn’t give any reasons for requesting access to the documents I sought, so section 11(3)(a) has no application in this matter.

23. In ‘noting that all the request relates to legal proceedings before court’ and on that basis proceeding to ‘refuse all the requests for records for information or records’, the respondent appears to have surmised that my reason for requesting the records was to adduce them in ‘legal proceedings before court’, and in so concluding he contravened section 11(3)(b) of the Act.

24. If I’m mistaken about this, and the respondent doesn’t believe I requested the records for ‘legal proceedings before court’, and doesn’t have any idea why I requested the records, and refused them only because in some vague manner my ‘request relates to legal proceedings before court’, such reason given by the respondent for refusing my request is indefensible and unlawful on its own terms, not being a ground contemplated in Chapter 4 of Part 2 of the Act.

25. My reason for making my request is immaterial under section 11(3), but anyway the respondent's apparent deduction about it is flat wrong. Not directly mentioned by the respondent in his letter (he refers to a case number in the Durban Labour Court only), but by way of background information for this court, I record that I've an unfair discrimination action pending against LASA under the Employment Equity Act 55 of 1998, arising from Nair's silent abortion on prohibited grounds of my appointment to LASA's most senior professional post in KwaZulu-Natal, its Senior Litigator post at its Pietermaritzburg Justice Centre, following my recommendation for the post on 23 November 2009 by a duly constituted selection panel of LASA's top lawyers in the region and his receipt by email three days later of their unanimous recommendation of me. The trial is over, heads of argument have been filed, and the case has been set down for oral argument on 28 May 2014.

26. As said, my purpose is not material to the decision of my record request nor is it material to the determination of this application, but I record anyway that I'm collecting documentary evidence:

- for the criminal prosecution of Nair for his numerous perjuries, some contradicting each other, committed both on affidavit before the trial and in court, and for his subornation of perjury by other LASA executives in false affidavits they made in the matter;
- for Nair's prosecution by the Public Service Commission on multiple capital charges of extraordinary misconduct as a public servant, too many to enumerate completely here, but some mentioned below, disclosed (i) in his correspondence with me in which he lied about why he'd aborted my appointment, fraudulently concealed material information that would have

blown his story, and illegally refused my PAIA requests in 2010 and 2011 before I instituted action in the Labour Court, with the corrupt object of suppressing material documents exposing his lies; (ii) in his false PAIA section 23 affidavit in April 2011; (iii) in his false reports to the Minister and to Parliament in March and June 2011 lying about why the post in question wasn't filled, also falsely disputing my complaint about his repeated, persistent illegal refusals to comply with my said PAIA requests; (iv) in his false report to LASA's non-executive Board of Directors in November 2011 alleging entirely different reasons for not filling the said post; (v) in his false reports for 2010/11 and 2011/12 (drawn on information he provided or confirmed) to the South African Human Rights Commission under section 32 of PAIA, repeatedly alleging due compliance with PAIA so as to mislead Parliament in turn in the SAHRC's section 84 reports, incidentally alleging a novel false reason to the SAHRC for not finalising my appointment (in many cases, Nair ghost-wrote the above-mentioned documents, admitted by him at trial in some cases, in others denied but plainly untruthfully); and (vi) in his false pleading and interlocutory affidavits in the litigation and in his evidence in court at trial, now transcribed;

- for the institution of ministerial and parliamentary enquiries into Nair's multiple false statements made to them in 'Confidential' reports that he drew for Board chairperson Dunstan Mlambo JP to sign and submit in March and June 2011 to mislead the Minister and the chairperson of the Portfolio Committee on Justice and Constitutional Development and to pervert their independent enquiries into my complaints that LASA executive management (Nair) (a) had unfairly discriminated against me under cover of a manifestly untruthful budgetary explanation (first advanced by him, under persistent

mounting pressure by me to account, eleven months after my successful interview, writing in Vedalankar's name), and then (b) had repeatedly illegally refused to comply with my PAIA requests directed at gathering documents I required to refute his fake budgetary alibi at trial (most of them surrendered much later in the course of the litigation, but only in response to my several repeated applications for judicial intervention and compulsion); and,

- for the institution of civil proceedings against Nair under section 83 in Chapter 10 of the Public Finance Management Act 1 of 1999 governing 'Financial Misconduct', and under the 'General Note' of LASA's Approval Framework, for the recovery from him personally of LASA's vast financial damages to which it's currently exposed in my case, now running into several million rands (this massive contingent liability was concealed from the Minister and from Parliament by omission in LASA's current annual report; only some relatively minor contingencies in other pending litigation were reported), occasioned by his gross misconduct in violating my constitutionally entrenched rights by unfairly discriminating against me and then trying to cover this up with silence, then stonewalling, then, eventually, one radically contradictory story after another told different audiences, bargaining unsuccessfully that I'd never find out about them (critically relevant documents in this regard were concealed from me, and it was only fortuitously that I sourced copies), and by suppressing documents giving the lie to his stories; and then running his hopeless, contradictory stories to trial over nine days (during which he invented new stories, retracted another, and revived yet another which he'd previously retracted on affidavit*), with senior and junior counsel on brief, at enormous fruitless and wasted cost to

LASA. (*Nair's several different stories about why he didn't finalise my appointment are mentioned below. If my reports of Nair's stories are disputed or it's requested, I'll particularise them in reply, with supporting documents.)

27. I mention my intentions here not to justify and support this application but to underscore the enormity and extraordinary gravity of this application in its broader context. In prosecuting my claim in the Labour Court to vindicate my fundamental right to equality violated by Nair and feebly camouflaged by him very much later, under heavy pressure to explain, by various changing radically inconsistent cover-stories, I've found a high level of institutional corruption within LASA at national management level – and a failure of oversight by the Board making it possible – with a wholesale contempt exhibited by Nair for the Constitution, for the law, and for the truth, also for the Minister, Parliament, the Labour Court, the Board, and me, all whom he's repeatedly lied to, and active collusion or passive turning of a blind eye to his grave misconduct by other national management executives; and I record my adamant resolve that, as long as it might take, he and those LASA officers who decided to join with and make common purpose with him as he was violating my constitutional rights and then brazenly lying about it afterwards to me and then to the highest authorities, as I incrementally escalated my complaints to them about this, will be brought to book and held to account for it.

28. Besides his irrelevant, incompetent and unlawful reliance on section 7(1) and his passing reference to section 45 to refuse my record requests, the respondent also refers elliptically in paragraphs 5–9 of his letter to (a) records I'd persistently been trying to disgorge from LASA via document discovery procedure in the Labour Court right up to the eve of trial; (b) LASA's various

responses to my demands for these records; and (c) my recorded attitude to these responses.

29. It's relevant to mention here that in his affidavit made in support of an application to quash my subpoenas on the first day of trial (it was dismissed), LASA's lead in-house attorney Mtati confirmed that 'Nair ... authored letters, affidavits and provided [LASA's] legal representatives with instructions in this matter' – such as his instructions to try avoiding my subpoena of him, forcing him into court to be examined by me on the record, on oath, before a judge; and in his evidence, Nair himself admitted that he'd given instructions on the contents of LASA's pleadings and affidavits. Crucially, this includes Mtati's sworn responses to my ongoing demands for specified document discovery. In March 2011 Nair had got himself deputised as information officer on the very correct factual basis that 'I am the person who is familiar with the facts. ... I am in the best position to respond to a number of requests raised by Mr Anthony Brink' – albeit for a grossly improper purpose, namely to be 'in the best position' to control and censor the flow of documentary information out of LASA that he appreciated would end his career.

30. It's relevant to mention also that Mtati was promoted from Eastern Cape ROE in Port Elizabeth to CSE in the national office in Johannesburg, where Nair is based, with effect from 1 July 2010, eight months after Nair had halted my appointment in late November 2009, for any number of different chaotically clashing reasons he'd give much later. It follows that Mtati had no direct knowledge of the facts of my case to plead and depose to himself – other than what happened in the cancellation of Mahikeng Senior Litigator Nzame Skibi's transfer and appointment to the Mthatha Senior Litigator post that's the subject of my PAIA request before court in this application. Accordingly, in this

affidavit I'll treat as having originated from Nair all allegations made during the litigation in (a) the pleadings, including written or minuted responses to my pre-trial conference agendas, and (b) the interlocutory affidavits that Mtati subscribed in a legal representative capacity. That is, notwithstanding Mtati's name signature below all these, the allegations were Nair's not Mtati's.

31. Concerning the records that I originally demanded for the purposes of the litigation, and then demanded again after the trial, this time under PAIA (for a different purpose, but immaterial under section 11(3)), it's obviously wholly irrelevant that 'This information was requested' but not produced before the trial of my claim.
32. Equally irrelevant are LASA's (Nair's) various shifting, changing, ultimate responses to my persistent, repeated demands for the discovery of the documents I required for trial, and my final decision not to pursue them at the second pre-trial conference at court in June 2013, convened at my request by court to exact the remaining documents I needed, just weeks away from trial in July 2013 and stuck with insufficient remaining time to compel their discovery. (Mentioned below, my last-ditch attempt to obtain a critical record from Nair with a subpoena duces tecum failed.) These demands, Nair's responses via Mtati, and my reactions are referenced but not actually quoted in the respondent's letter. Since I anticipate that the respondent will otherwise almost certainly repeat Nair's various dishonest evasions in the discovery affidavit to avoid surrendering the outstanding documents in question, my purpose in reciting and addressing these reasons herein is to pre-emptively refute them and ultimately shorten this case.

33. Nothing in PAIA allows an information officer or deputy information officer to refuse a request for access to a record on the ground that it's previously been sought under different legal machinery for accessing it but not provided at the time by a different officer employed by the public body for whatever reason alleged.
34. I'll now address the individual records I requested, all illegally refused by the respondent in contravention of PAIA and in violation of my fundamental right to information guaranteed by section 32 of the Constitution. I've italicized my PAIA requests for clearer identification.
35. As said, all the records I requested concern Nair's cancellation off the record (it's common cause) of Skibi's appointment and transfer to the Mthatha Senior Litigator post, after he'd been recommended for appointment by a selection panel of senior LASA officers in the Eastern Cape in May 2010. Nair forged and uttered several totally different explanations for why this happened, to me, to the Board, to the Minister and to Parliament, and to court – with completely different stories told by him to court in the papers and then in the witness stand. These will be canvassed below.
36. Item 1: '*The minutes of all Eastern Cape regional management committee meetings held in 2010.*' In paragraph 5 of his letter, the respondent alludes to my request before the trial of my claim for excerpts of 'all Eastern Cape regional management meetings in 2009, 2010 and 2011 at which the subject of (a) Senior Litigators, and/or (b) funding problems were raised' and to Mtati's sworn response in his discovery affidavit, drawn on Nair's instructions, that 'No such record exists', which is to say that these matters were never discussed on the record at any Eastern Cape regional management meeting in those three years.

This sworn fact sufficed for my purposes as a potent admission in the litigation, so I didn't press my demand for the documents before the trial. Under PAIA, however, I've now requested, differently: 'The minutes of all Eastern Cape regional management committee meetings held in 2010.' These records must exist; PAIA requires the respondent to surrender them; he's unlawfully refused to do so; and I seek this court's order directing him to comply with his constitutional obligation to afford me access to them.

37. Item 2: *'Apropos of the aborted Mthatha Senior Litigator recruitment, the selection panel's recommendation of Mahikeng Senior Litigator Adv Nzame Skibi for appointment to the said post ("the post") on 24 May 2010, signed by all members of the panel, namely Port Elizabeth Justice Centre Executive Lynette Franklin; Eastern Cape Regional Human Resources Manager Thenjiwe Magazi; and then Eastern Cape Regional Operations Executive Thembile Mtati. (Any "personal information" within the meaning of sections 1 and 34 of the Promotion of Access to Information Act 2 of 2000 may be blacked out.)'* This is dealt with in paragraph 6 of the respondent's letter. I first sought a copy of this highly material record (reason discussed below) three-and-a-half years ago in my agenda for the first pre-trial conference in my Labour Court action, held on 26 October 2011 shortly after the close of the original pleadings: 'The Eastern Cape regional professional selection panel's Motivation form recording its choice of the shortlisted candidate for the Mthatha Senior Litigator post.' Mtati (by now promoted to CSE) responded on Nair's instructions that it was 'not available.' Naturally I didn't accept this ridiculous brush-off, and insisted on its production in an application to compel its discovery, among other documents, launched in January 2012. Item 35(a) of annexure G to my founding affidavit, listing the outstanding documents that I required for trial was: 'The Eastern

Cape regional professional selection panel's Motivation form recording its recommendation of Nzame Skibi for the Mthatha Senior Litigator post.' (Skibi had been identified to me as the recommended candidate at the October 2011 pre-trial conference.) In annexure TM16 of his answering affidavit, drawn on Nair's instructions, Mtati now responded absolutely: 'No such record exists' and repeated this allegation in his subsequently filed revision of the annexure after I attacked the inadequacy of the original in my replying affidavit.

38. Since the selection panel obviously wouldn't have recommended Skibi for the Mthatha Senior Litigator post off the record, this evasion under oath – 'No such record exists' – was clearly untrue. So in my agenda for the first pre-trial conference at court* in January 2013, I pressed for a copy of Skibi's recommendation again. (*By order of court at my request my application to compel discovery had been converted into this conference.)

39. At the conference LASA agreed to file a discovery affidavit concerning this key document and others I needed for trial, then reneged on its minuted undertaking, falsely claiming to have agreed something else, and nonchalantly announced its refusal to make discovery on oath as agreed and minuted. Under pressure of an application I brought for the convening of a second pre-trial conference before a judge to remedy this, a belated discovery affidavit was filed in March 2013, with some documents annexed to it. Part 1 stated: 'The motivation is attached, DOC 35(a)'. This document supplied me, which I annex hereto marked 'C', was not the Skibi recommendation I'd demanded, merely an unsigned draft. Then, concerning the selfsame document, Nair alleged again through Mtati, on oath, in Part 2: 'No such record exists.'

40. Consistent with LASA's (Nair's) persistently mala fide dealing with my demands for records (recounted below) and with the respondent's illegal blanket refusal of my entire PAIA request that's the subject of this application, it's relevant to mention that the reluctantly delivered discovery affidavit was evasive, inadequate and defective on numerous scores, and to resolve this I had to press for the second conference to proceed under judicial supervision. Following the further conference held at court in June 2013, a second discovery affidavit was filed and further documents were supplied, and more after that when I pressed for them just days before trial – after Sekgota had falsely alleged to the presiding judge on the record in open court when the conference was called: 'Legal Aid South Africa has fully discovered in this matter.' As this court will appreciate from this, in the tug-of-war over material documents demanded by me in my pursuit of the truth, but determinedly withheld by LASA's managers to this day, anything goes, even in court, even from officers of court in LASA's employ.
41. There are several clear indications that Nair's claim, via Mtati's discovery affidavit – 'No such record exists' – was a lie to conceal the record of the Eastern Cape selection panel's recommendation of Skibi, and Nair's approval of it, both from me and from court with the intention of defeating the ends of justice. (Fortunately, even without this important document, the abundant other evidence I presented at trial, and more emerged during my cross-examination of Nair, was ample, I believe, to carry my case.)
42. Nair's corrupt motive for suppressing this important record was plain: It wouldn't have looked good for his story told me, the Minister, Parliament, and the Labour Court in the pleadings and interlocutory affidavits – but not the Board, to which he told two completely different stories (recited below) – that

he'd simultaneously frozen all Senior Litigator recruitments at Pietermaritzburg, Durban, and Mthatha, after three suitable candidates had been selected and recommended, for want of sufficient budget to fill the posts (as said, and described below, he changed his story at trial), had the court seen that following his receipt from the Eastern Cape selection panel of its signed motivation for Skibi's appointment in late May or June 2010, following a brisk recruitment process ordered on 24 March 2010 by Nair and his Legal Services Technical Committee ('LSTC'), of which he's chairperson, for 'Immediate' execution, Nair had signed his approval of Skibi's appointment – while the KwaZulu-Natal selection panel's recommendation of me back in November 2009 had been rotting for six months, unapproved and unsigned by him, in the proverbial bottom drawer in his office.

43. It's certain that Nair did indeed sign his approval of Skibi's appointment and transfer on receiving the recommendation: First, he had no reason not to: there was never at any stage any question of freezing recruitment to critical vacant Senior Litigator posts for any reason, and LASA's records show this. Second, he and his LSTC had just created the post at then Eastern Cape ROE Mtati's pressing motivation for it – saying how badly it was needed in view of the vast distances Port Elizabeth-based Senior Litigator Lilla Crouse had to travel to service the Eastern Cape's four high courts – and had ordered the recruitment of a lawyer for the post as an 'Immediate' priority. Third, Skibi was 'ready to start' and the Mthatha Justice Centre was waiting for him to do so when his transfer was abruptly cancelled (by Nair, off the record) – so a senior attorney there told me, which report I contemporaneously relayed to the Board. Skibi himself told me much the same thing (also contemporaneously recorded; see below). And fourth, Nair himself claimed to me in his letter of 3 August 2010 that the

‘process to finalise the appointments for all vacant Senior Litigator posts were put on hold due to various reasons’, implying that he had the selection panel’s signed recommendation of Skibi for his approval; the recruitment had moved beyond the selection and recommendation stage in the Eastern Cape to the approval and appointment stage in Nair’s office.

44. Nair’s lie, via Mtati, that ‘No such record exists’ of the signed motivation for Skibi’s transfer and appointment as Senior Litigator at Mthatha was brightly exposed and refuted by Nair’s response, via Mtati, to my demand in the same pre-trial conference agenda for the ‘Email/letter from the Eastern Cape RHRM, ROE, or other officer, to Nair, covering the said Motivation recommending Skibi, and proof of post if a letter was sent by post’. On Nair’s instructions, Mtati alleged on oath: ‘No such record exists. The documents were in [LASA’s] possession and have been lost in transit between Mthatha and Johannesburg.’
45. In telling this glib, unnecessarily fulsome lie through Mtati before the trial – ‘No such record exists. The documents were in [LASA’s] possession and have been lost in transit between Mthatha and Johannesburg’ – Nair made a fatal misstep, because this spectacular own-goal-scoring lie told on oath implicitly confirmed that the selection panel’s recommendation of Skibi for the Mthatha Senior Litigator post had been signed and forwarded to him for his approval of Skibi’s appointment and transfer: Obviously then ROE Mtati or RHRM Magazi wouldn’t have sent the motivation for Skibi’s appointment to Nair in Johannesburg unsigned by him or her and the other members of the selection panel, because as delegated executing authority under LASA’s Approval Framework, Nair couldn’t have signed his approval of Skibi’s appointment on an unsigned draft motivation.

46. During my cross-examination of him at trial, Nair elaborated his lying excuse for not bringing the signed recommendation of Skibi to court, which I'd demanded he bring with him to court under subpoena and a follow-up letter a few days before trial, by alleging that the selection panel never signed it after selecting him, which is to say didn't record its decision to recommend him.
47. There's another clear indication that Nair lied in alleging, through Mtati, that the covering letter or email for the Skibi motivation was 'lost in transit between Mthatha and Johannesburg'. It wouldn't and couldn't have been transmitted from Mthatha to Johannesburg, because the Mthatha Justice Centre had no involvement in the selection and recommendation process, and all three members of the selection panel were based in Port Elizabeth – ROE Mtati and RHRM Magazi at the regional office, and Port Elizabeth Justice Centre Executive Lynnette Franklin at the Port Elizabeth Justice Centre – so it must have been sent to Nair in Johannesburg from Port Elizabeth, and not from Mthatha.
48. If part of Nair's story about this, told under oath in an affidavit made by Mtati on his instructions, is manifestly untrue, plainly no store can be set by the rest of it – which is anyway clearly untruthful on its face:
49. By 'lost in transit', Nair implied via Mtati that the covering letter for the selection panel's recommendation of Skibi (and by implication the recommendation itself) was lost by the postal service somewhere in the mailing system. This is because an internal email can't get 'lost in transit', even if mis-addressed, because (a) the sender will have a record of such email and its attachment in his or her 'Sent' email folder, and (b) this email record will further be archived as a business record on LASA's computer server. So if the covering

letter (and the recommendation it covered) was emailed, as is probable, there will certainly be a record of the documents, and they will be available for production. Likewise an unsuccessful telefax transmission will be apparent from the failed transmission report (in which event the covering letter and recommendation would have been telefaxed to Nair again). If a hard copy was telefaxed, even unsuccessfully, it will exist in the sender's office; if telefaxed directly from the sender's computer using a faxmail programme, even unsuccessfully, the electronic document in Word or PDF that was telefaxed (or attempted) will exist on his or her computer hard drive, and in either case it can be produced at this court's command.

50. At all events, it's much more likely that the letter covering Skibi's recommendation (and the recommendation itself) was sent to Nair as an attachment to a covering email – like the recommendation of me was – and not through the post, especially considering that Nair and his LSTC had directed that a Senior Litigator for Mthatha be recruited post-haste, and the recruitment process was indeed conducted very briskly, with advertising the following month in April and interviews and the selection and recommendation of a suitable candidate, Skibi, the month after that in May.

51. Nonetheless, if the covering letter for Skibi's recommendation (and naturally the recommendation itself) was sent by slow surface mail, and not by email (or telefax) as one would have expected, it would have been sent by registered post, and not just dropped into a post box with the risk that this important record concerning LASA's top professional post in the region might be lost without a trace. So if it was indeed posted, a further record of this will exist in the form of a registered post slip. The tracking number on it will reveal whether the document was indeed delivered, or 'lost in transit' before Nair received it, as he

alleged in Mtati's affidavit sworn to a commissioner of oaths, to court, and to me to be the perfect truth.

52. But even if it's strangely alleged that the only original copy of the covering letter (for Skibi's recommendation, sent with it) was just dropped into the post box unregistered and was then 'lost in transit' by mail sorters in the post office or by a postman, the electronic original of the covering letter from which it was printed will exist in Microsoft Word or PDF on Magazi's, Mtati's, or the respondent's computer. (Presumably the respondent (or Nair) will not be improvising the fresh excuse in his answering affidavit that the covering letter for the Skibi recommendation which allegedly got 'lost in transit' was typed out on an old-fashioned Remington typewriter and that no carbon-copy was made and filed.) So even if a hard copy of the covering letter was sent by ordinary post but was 'lost in transit', an electronic copy will exist and will be available for production on command by this court.

53. Bearing on the credibility of the 'lost in transit' story concerning this important record, precisely the same casual perjury was committed to avoid discovering the 'Email/letter to Skibi notifying him that LASA had subsequently decided not to fill the Mthatha post and that his hoped for transfer from Mahikeng was off', which record I'd demanded before trial. Again Nair alleged via Mtati's discovery affidavit: 'No such record exists. The documents were in [LASA's] possession and have been lost in transit between Mthatha and Johannesburg.'

54. Contradicting this lie to me and to court told under oath, Skibi informed me he'd been emailed to notify him that the post had been frozen. That's to say, this communication to him wasn't 'lost in transit', because he received it, so 'such record' certainly 'exists'. As said, I'd learned of Skibi's identity as the candidate

recommended for the Mthatha Senior Litigator post at the first pre-trial conference on 26 October 2011; and after tracing him to the Mahikeng Justice Centre by running a Google search on his name when I got home, I telephoned him at his office two days later. Following our conversation, I made an immediate report of what he'd told me to my accountant Christopher Rawlins, who was assisting me interrogate LASA's financial and other records to test and refute the phoney budgetary justification fed me, and now pleaded, for the abortion of my appointment. My email to Rawlins contemporaneously recording Skibi's information to me is annexed hereto marked 'C'. (At my request he dug it out and forwarded it to me for this application as I don't have ready access to my old email stored off my computer). My second approach to Skibi hit a wall when he surprisingly clammed up, and told me stiffly that he was content where he was, that he had no interest in pursuing his transfer, and that he was not prepared to confirm what he'd previously told me – by which I understood him to mean that I shouldn't think of looking to him as a possible friendly witness in my intended Labour Court case.

55. On LASA's (Nair's) own version, only Skibi was sent a letter (which allegedly never arrived because it was 'lost in transit') cancelling the recruitment for the Mthatha Senior Litigator post, not the other shortlisted and interviewed candidates. Again the story loudly backfires: Skibi wouldn't have been singled out to tell him this (a) had Nair not approved his appointment and (b) had Skibi not been told this, which is why he'd been 'ready to start' when emailed to allege that the Mthatha post had been frozen. (Nair repeatedly confirmed on affidavit and again in court that no record exists to vouch that the senior Litigator posts were ever frozen; and in court he abandoned this story insofar as

Mthatha was concerned – the Mthatha post was never frozen he said – and told a completely different new one, mentioned below.)

56. This is another sharp indication that (a) the Eastern Cape selection panel recommended Skibi for the Mthatha Senior Litigator post, and (b) Nair approved the selection panel's signed recommendation sent to and received by him, and that this approval was conveyed to Skibi, hence he was 'ready to start' and had to be put off when my letter to Vedalankar in July 2010 came in, pressing for my appointment, and was passed to Nair to deal with, and in a rapidly tightening noose Nair tried escaping it by stopping Skibi's appointment and transfer to Mthatha to create a cover-story that all Senior Litigator posts had been frozen on account of budgetary insufficiency, which story was alleged, pleaded, and sworn to all the way to court, until Nair's big day in the witness stand when he decided to drop this story and tell another completely different one, recited below.

57. The easy claim – 'No such record exists. The documents were in [LASA's] possession and have been lost in transit between Mthatha and Johannesburg' – to avoid discovering the notification of Skibi that his transfer had been cancelled (which Skibi confirmed to me he'd received), so as to conceal it from me and from the trial court, among other suppressed documents, in a criminal bid to defeat the ends of justice, was transparently perjurious on several further scores:

58. According to LASA's response, informed by Nair, to my agenda for the first pre-trial conference in October 2011, 'The instruction ['to abort the successful candidate's appointment to the Mthatha Senior Litigator post']*] was given verbally and all the affected Regional Operations Executives had to send letters of regrets [sic] to the candidates.' (*My words from my conference agenda in square-bracket parentheses; LASA was responding.) This is to say, Nair ordered

the ROE for the Eastern Cape in Port Elizabeth (then Mtati, or the respondent, or a temporary acting stand-in), off the record, to write to Skibi at the Mahikeng Justice Centre, where he was Senior Litigator (and still is). So the communication would have been between Port Elizabeth and Mahikeng, not Mthatha and Johannesburg, as falsely alleged by Nair through Mtati deposing about this in the discovery affidavit made under oath on pain of imprisonment for perjury.

59. Even if, as Nair alleged via Mtati, the communication to Skibi was ‘lost in transit’ (and Skibi himself contradicts this), a record of the email or the letter in Microsoft Word or PDF will be stored both on the author/sender’s computer and on LASA’s server on which all its business records are archived, so this record is available and could have been produced for trial. (I didn’t request it in my PAIA request before this court.) Nair’s allegation through Mtati, ‘No such record exists’, was an obvious feeble lie.

60. Concerning the credibility of Nair’s claim that he didn’t receive the covering letter (and, implicitly, Skibi’s recommendation that it covered) because it was ‘lost in transit’, it’s relevant to inform this court about a related denial Nair proffered at trial about not being apprised of the KwaZulu-Natal selection panel’s recommendation of me (so he couldn’t have unfairly discriminated against me because he didn’t know who I was). At trial Nair told the brand-new story – featuring nowhere in any of LASA’s several pleadings and interlocutory affidavits, all essaying into the merits of the case and all drawn on his instructions – that on receiving the recommendation of me for the Pietermaritzburg Senior Litigator post and my CV from KZN ROE Vela Mdaka by way of email attachments on 26 November 2009, he didn’t open and read them – not until the end of the following year, 2010, or maybe early the year

after that, 2011. And that's when he learned exactly who I was. Besides its ludicrous innate implausibility, Nair's new story in court contradicted his different story in LASA's (his) original response (drawn on his instructions) to my original statement of claim, in which he'd claimed to have learned who I was very much earlier. (If disputed or requested, I'll more fully specify Nair's contradictory lies in my reply, with supporting documents.)

61. I mention this to illustrate how Nair lied freely both in court and before trial to avoid complying with my demands for specified documents directed at interrogating and exposing his various other different lies told to me, to the Board, to the Minister and to Parliament, and to the Labour Court in the pleadings and interlocutory affidavits about why he aborted my recruitment to the Pietermaritzburg Senior Litigator post; froze the promotion of LASA's Durban High Court Unit Manager Bongani Mngadi to the Durban Senior Litigator post (simultaneously recruited for), and much later, after I'd approached Vedalankar and pressed for the finalisation of my appointment, cancelled the transfer of Mahikeng Senior Litigator Nzame Skibi to Mthatha, all off the record, all in obstruction of the Board's Strategic Plan 2009–12, inter alia to appoint Senior Litigators, drawn in accordance with the Treasury Regulations inter alia to justify its budget and presented to the Minister and to Parliament* – in most cases ghost-writing for the signatories. Nair's phenomenal, rampant mendacity has implications for the particular manner in which this court's order should be framed, and I'll deal with this below.

62. (*On 9 October 2012, in its Annual Performance Report 2011–12 presented to the Portfolio Committee, LASA pertinently stated in its 'Report on Completion of Strategic Plan 2009–2012': 'Senior Litigators employed are working on complex matters and matters in higher courts'. Vedalankar alleged likewise in

her CEO Report in LASA's Annual Report 2011/12 presented to the Portfolio Committee on the same day: 'Senior Litigators employed are working on complex matters in the higher courts.' Again in her discussion of 'the completion of our three-year Strategic Plan period 2009–12', 'To a large extent we were able to make the strategic shift that we mapped for the 2009–12 Strategic Plan (SP) period as indicated below. ... We employed Senior Litigators who are working on complex matters and matters in higher courts.' It was not alleged to the Minister and to Parliament, as had been alleged to me and to the Labour Court in the pleadings and interlocutory affidavits that LASA (Nair) had indefinitely and practically permanently frozen three of LASA's nine top-echelon, critical Senior Litigator posts by reason of insufficient budget to fill the posts. (As said, Nair told the Board completely different stories, and even more completely different stories in court.) Concealed from the Minister and Parliament were Nair's decisions here, taken wholly off the record, and without the approval of the LSTC, of the Management Executive Committee, and of the Board, as required by the LSTC Terms of Reference and the Approval Framework for such deviations from executive management's Business Plan based on the Board's Strategic Plan for implementation by Nair and other executive management. Which is to say on his own showing Nair acted ultra vires and unlawfully – quite aside from his illegal, grossly unethical motives for doing so.)

63. In evaluating the credibility of Nair's claim, via Mtati, that 'No such record exists' of the Eastern Cape 'selection panel's recommendation of Mahikeng Senior Litigator Adv Nzame Skibi for appointment to the [Mthatha Senior Litigator post] on 24 May 2010, signed by all members of the panel', as I requested, it's relevant to consider that Nair gave radically different and

contradictory explanations about why Skibi wasn't appointed. That is, even on his own version Nair lied one way or the other. In fact, all of his three different stories were lies.

64. In his letter to me of 3 August 2010, Nair claimed that 'the recruitment process to finalize the appointments for all vacant Senior Litigator posts were [sic] put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of any of these posts', implicitly including Mthatha – and ghost-writing for Vedalankar, Nair was explicit about this in her (his) letter to me of 18 October 2010: 'anticipated funding for the 2010/11 financial year did not materialise ... In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen. ... Therefore the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.' And again in her (Nair's) letter to me of 28 January 2011: 'I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints.'

65. Consistently with this story, Nair alleged unequivocally in LASA's (Nair's) original response to my original statement of claim in September 2011: 'it cannot be suggested that the Mthatha, Pietermaritzburg and Durban Senior Litigator posts were not or could not be affected by this urgent need for savings. ... the recruitment of a Mthatha Senior Litigator also was affected by the lack of funding and was not proceeded with.'

66. The amended response alleged precisely consistently that LASA 'had a valid reason for not proceeding with the recruitment of the Senior Litigator posts, namely that it experienced budgetary shortfalls in respect of the 2009-2010

financial years. In the face of these budgetary shortfalls it would have been ill-advised to go ahead with the recruitment of Senior Litigators.’ Consequently LASA ‘decided to terminate the recruitment of Senior Litigator positions in Pietermaritzburg, Durban and Mthatha.’ (As said, Nair has repeatedly confirmed that no record exists of this alleged decision.) LASA’s ‘budgetary constraints arose because prior to the finalisation of the recruitment process in respect of the Senior Litigator posts the respondent did not receive all the [‘OSD (occupation specific dispensation)’] funds it was entitled to from the DoJ & CD’ in keeping with the Department’s ‘financial undertaking’ to provide them. ‘In the face of these budgetary shortfalls it would have been ill-advised to go ahead with the recruitment of Senior Litigators. ... the Respondent had to engage in cost cutting measures so as to mitigate the embarrassing financial situation it found itself in and that included aborting the recruitment of Senior Litigators.’

67. LASA’s answer to my October 2011 pre-trial conference agenda alleged very specifically: ‘The prevailing financial uncertainties caused the Respondent not to proceed with all the recruitment processes it had already commenced with including for the Senior Litigator positions. This is the reason Mr Brian Nair (“Mr Nair”) did not proceed to sign the Regional Panel’s recommendation for the second round of the interviews’ after receiving the recommendation of me by email on 26 November 2009. (Contrary to Nair’s lies about this, there was no financial uncertainty prevailing at that time, and he admitted so at trial; nor were ‘all the recruitment processes it had already commenced with’ frozen, as Nair falsely alleged. Quite the contrary, recruitment continued in the October to December 2009 and January to March 2010 operating quarters of 2009/10, and massively boomed in the first quarter of 2010/11, April to June 2010, with legal staff recruited spiking at an increase of 2.3%, and total staff recruitment

increasing by 3.5%, greater than the increase of 3.1% for the whole of 2009/10. And contrary to Nair's lie about this, conceded at trial, it's common cause on the pleadings in the litigation that the financial uncertainty only arose several months later on 10 March 2010 with the delayed transfer of LASA's OSD phase 1 allocation, but which anyway made no difference whatsoever to LASA's massive new post creation and recruitment drives – not until 30 July 2010 when the Board authorised a temporary freeze on recruitment to some non-critical lower criminal court public defender posts, at Nair's and other national management executives' recommendation on the 15th (per Nair to COO Makokoane, Vedalankar, HRE Clark and CFO Hlabatau) and on the 16th (per Makokoane and the management executive committee to the Board). The financial uncertainty was resolved two months later by early October and recruitment to those posts then resumed, with overall legal recruitment in the October to December third financial quarter then peaking for the year at an increase of 2.5%. Nair deceitfully concealed all this information from me in the letter he wrote me in Vedalankar's name on the 18th. (If any of this is disputed, I'll provide fine particulars in my reply, with supporting documents.)

68. To the Board, however, Nair told two completely different stories totally unrelated to budgetary considerations. On 26 November 2011, exactly two years after Nair received the selection panel's recommendation of me, and as Mtati was reporting to the Board that I had now sued – rebutting in my very detailed statement of claim the logistical and budgetary justifications variously advanced to me, to the Minister, and to Parliament for not finalising my appointment – Nair submitted a 'Report to Board' in which he alleged quite differently that 'Six Senior Litigators were filled [sic] during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since

decided not to fill the remaining positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.’ There were no legitimate recruitment challenges; no record exists to vouch that the incumbent Senior Litigators were underperforming – to the contrary all classes of lawyer were reported again and again in LASA’s reports to be performing well; and an audit of Senior Litigator performance, which Nair pretended was to be conducted immediately so as to sugar his lies to the Board, has never been done. No record exists to vouch that a decision to audit the professional performance of the incumbent Senior Litigators was ever taken. This was Nair lying to the Board, concocting an alternate new cover-story for not finalising my and the other Senior Litigator appointments after I’d interrogated and refuted his lying budgetary justification in my 100-page statement of claim filed a few months earlier.

69. On 13 February 2012, two-and-a-half months after Nair alleged to the Board that ‘recruitment challenges’ and uncertainty as to whether the incumbent Senior Litigators were performing satisfactorily as his reason for not filling the vacant Senior Litigator posts, he reverted, via Mtati on affidavit, to his budgetary story for not (i) appointing me to the Pietermaritzburg Senior Litigator post, (ii) promoting Mngadi at Durban, and, (iii) some months later, transferring Skibi to Mthatha: ‘Put simply, the defence is that the recruitment process was not proceeded with because of budgetary constraints. That has [been] pleaded in the statement of defence and it has been repeated above. ... The Respondent still asserts that the reasons it stated regarding budgetary uncertainties it faced during late 2009 to mid 2010 [sic: 10 March to early October 2010] remain valid and are the only basis upon which it took the decisions it took in relation to the abortion of the Applicant’s and other applicants’ applications for positions.’

70. But in the witness stand in mid-2013, Nair changed his story once again. The reason Skibi wasn't transferred had nothing to do with any budgetary consideration, he testified – radically contradicting his previous story in his correspondence, in his PAIA affidavit confirming it on oath supported by confirmatory affidavits by Vedalankar and Clark, in his reports to the Minister and to Parliament, and in the pleadings and affidavits before court all drawn on his instructions. Now Nair claimed, under oath, on pain of imprisonment for perjury, that after he and his LSTC had unanimously resolved on 24 March 2010 to abolish the redundant, unnecessary long-vacant Kimberley Senior Litigator post and transfer its budget to the newly-created Mthatha Senior Litigator post, and the budget had been transferred, and the post had been advertised in April, and Skibi had been recommended for it in May, and he'd supported the appointment, Vedalankar disappointed him with the news in early July that she did not approve the LSTC's recommendation that the Kimberly post be abolished and that its budget be transferred to Mthatha. She was 'not happy' about this, Nair testified, under oath, and even though he'd tried to persuade her – and he tried repeatedly, he said – he'd been unable to change her mind and make her 'happy' about this, so the Mthatha Senior Litigator recruitment was aborted and the budget for the post transferred back from Mthatha to Kimberley again. He said he knew of no LSTC record of Vedalankar's refusal to approve the LSTC's resolution; and indeed, before trial, Nair positively alleged, via Mtati, that besides on 24 March 2010, when he and his LSTC resolved to transfer the Kimberley Senior Litigator post to Mthatha, there's no LSTC minute in 2010 recording any discussion of Senior Litigators at all, let alone any record that the Mthatha Senior Litigator recruitment had been aborted because Vedalankar was 'not happy' about the transfer of the budget from Kimberley, where it wasn't needed, to Mthatha, where it was, and very much according to

Mtati's pressing motivation for it, and so refused to approve the LSTC's unanimous resolution about this, and vetoed it, thus torpedoing the Mthatha Senior Litigator recruitment and Skibi's transfer and appointment. Which is to say on Nair's brand new version in court – diametrically contradicting his previous story in two letters to me confirmed by him and by Vedalankar and Clark* on affidavit, his reports to the Minister and Parliament, the pleadings and affidavits drawn on his instructions, and also contradicting his different stories told the Board – the decision to cancel Skibi's transfer and appointment to the Mthatha Senior Litigator post was taken by Vedalankar, not him. (*In lieu of appearing to testify, Clark filed an affidavit during trial, which contradicted her earlier one confirming his section 23 PAIA affidavit.)

71. Further bearing on the credibility of Nair's claims, via Mtati, that documents I've requested don't exist, at trial Nair repeatedly tried weaselling out of responsibility for documents he drew or whose contents he informed:

- (a) After initially disputing that he wrote his 'Confidential ... Report ... Re: Adv Anthony Brink' for the Minister and Parliament during my cross-examination on his instructions by LASA's counsel, Nair finally admitted in his testimony the incontrovertible evidence of it: 'Briann' in the 'Author' properties of a PDF version of the report, finally emailed to me by Mtati a month before trial, after a nearly two-year wait for it, during which I repeatedly demanded it.
- (b) Nair admitted his habitual use of the distinctive stylistic fingerprint lead-in phrase, 'Noting that' in his writing, and twice in his address to an international Legal Aid conference in the month before trial, which phrase featured three times in Vedalankar's October 2010 letter to me; but he denied

having ghost-written it, which is to say, according to this denial, that the signatory Vedalankar (i) was the actual author of the lies it contained about the abortion of my appointment for budgetary reasons – Skibi’s too; and (ii) had herself refused my entire 51-item PAIA request on completely bogus factual and legal grounds, fraudulently misquoting a reported judgement claimed to support her refusal – and not Nair writing in her name. Nair also denied ghost-writing Vedalankar’s January 2011 letter to me, again illegally refusing my PAIA requests and reiterating the lying budgetary justification, which is to say again, according to Nair in court, that Vedalankar was directly responsible for this lying illegality, not him.

- (c) Nair denied having ghost-written or instructed Mtati and Sekgota on the contents of LASA’s false section 32 reports to the SAHRC for inclusion in its section 84 report to the National Assembly on public body compliance with PAIA, including yet another new different false story to the SAHRC for not finalising my appointment (‘the decision to freeze the post due to change in business needs-budget’; in truth and in fact, it’s common cause that since it was created the post has always been and remains fully budgeted, and it’s admitted in the pleadings that the budget has never been transferred to any other cost centre); and when pressed during my cross-examination of him, claimed that COO Makokoane was also a deputy information officer, so he must have been responsible for the false section 32 reports to the SAHRC for the misinformation and deception of the National Assembly in turn. In truth and in fact, Makokoane has not been delegated as a deputy information officer at LASA, and had no involvement in either (a) the abortion of my appointment (on LASA’s own pleaded version, ‘the COO was deliberately left out of the decision to abort the vacant posts’), and (b) the illegal refusal

of my PAIA requests, so he wouldn't have had any hand in the preparation of the false section 32 reports to conceal Nair's repeated, persistent illegal refusals to comply with my PAIA requests directed at exposing his lying budgetary pretext advanced to me for aborting my appointment. Trying to escape culpability for deceiving the SAHRC about this, and Parliament in turn, Nair recklessly concocted his story in court that Makokoane must have been responsible for the false contents of the two section 32 reports in question, to put the blame on him. But contradicting Nair's lie in court about having no hand in the false section 32 reports to conceal his refusals of my PAIA requests, Sekgota confirmed in his response on 21 February 2013 to the SAHRC's PAIA compliance questionnaire about how LASA 'record[s] information required for your section 32 report in a financial year' and 'ensure[s] the accuracy of the information recorded in your section 32 reports' that he as 'Corporate Legal Manager consolidates all the requests received in any financial year, prepare[s] a report, and ask[s] all designated information officers at regions to confirm the correctness of the report, then forward[s] to SAHRC after consultations with CSE.' It follows that as deputy information officer in the national office Nair 'confirm[ed] the correctness of the report' that Sekgota drew for 2010/11 and again for 2011/12 concerning his (Nair's) handling of my three PAIA requests in those years – both of which reports were false. (Mentioned below, the SAHRC reported its dissatisfaction with LASA's section 32 reporting to the National Assembly.)

72. I mention all this to illustrate that Nair lies freely without blinking, to any authority, even under oath, so any excuse given by him, by LASA's in-house attorneys acting on his instructions, or by any of his line subordinates at LASA

for not producing the outstanding documents I've demanded needs to be treated with the utmost caution and scepticism, and will not be secure, even if given under oath, without the fullest possible corroboration.

73. Item 3: *'The regret letters/emails sent to the unsuccessful candidates eliminated by the selection panel after their interviews.'* This is dealt with in paragraph 7 of the respondent's letter, in which he refers, without actually quoting it, to Nair's response, via Mtati, to my demand for copies of these communications in my January 2013 pre-trial conference agenda: 'No such record exists.' If indeed no record exists to vouch that these unsuccessful shortlisted and interviewed candidates were told they'd not been recommended by the Eastern Cape selection panel – which is to say the ROE failed to comply with Nair's instruction given 'verbally' and off the record 'to send letters of regrets [sic] to the candidates' and failed further to comply with section 1.5.1 of the Recruitment code prescribed by LASA's Board requiring that unsuccessful candidates be informed – section 23 of PAIA requires the respondent to certify this on oath, subject to the penalties for perjury and for contravening section 90 of the Act, governing such 'Offences' as concealing duly requested documents and prescribing heavy criminal penalties for doing so.

74. Concerning records requested and not supplied but not refused, Section 23 of the Act provides (I quote material portions):

23. Records that cannot be found or do not exist

(1) If –

- (a) all reasonable steps have been taken to find a record requested; and
- (b) there are reasonable grounds for believing that the record –
 - (i) is in the public body's possession but cannot be found; or

(ii) does not exist,
the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

75. Item 4: *‘If the recommendation of Adv Skibi was scanned and emailed as an attachment to the LASA national office for approval, the covering email; if sent to the national office for approval via the postal service, the covering letter and proof of registered post.’* In paragraph 8 of his letter the respondent responds to this request by referring me, without actually quoting it, to Nair’s allegation made through Mtati in his first discovery affidavit: ‘No such record exists. The documents were in [LASA’s] possession and have been lost in transit between Mthatha and Johannesburg.’ These naked lies have been refuted above, and I seek this court’s interdict that the respondent finally surrender this document to me, or, should he neglect to do so as ordered, that he be committed to prison for contempt of court for as long as this court deems meet, to enable him to meditate awhile on the consequences of (i) violating my fundamental rights entrenched in the Constitution, and the values of transparency and accountability in our democracy that it enshrines, (ii) breaking the law enacted to give effect to those rights and values, while pretending to apply it, and (iii) disobeying an order of court directing him to purge his default in this regard.

76. Item 5: *‘All other communications between the national office and the Eastern Cape regional office and/or the Mthatha Justice Centre concerning the recommendation of Adv Skibi for transfer and appointment to the post.’* In paragraph 9 of his letter, the respondent avoids addressing this wide, catch-all request of mine by referring, without actually quoting it, to my narrow, specific document discovery demand in my January 2013 pre-trial conference agenda, namely for (a) the recommendation of Skibi, (b) the recommendation’s covering letter to Nair, and (c) the subsequent communication to Skibi telling him the recruitment and his transfer had been cancelled, and by referring further to Nair’s allegation via Mtati’s discovery affidavit that besides the unsigned motivation, ‘No such record exists. The documents were in [LASA’s] possession and have been lost in transit between Mthatha and Johannesburg.’ The respondent’s evasion in his paragraph 9 doesn’t meet his obligations under PAIA, which requires him to produce the records generally identified in this request item, or certify that no such records exist on oath in compliance with section 23, and to provide also the further information required by the section.

77. Item 6: *‘All communications between the national office and the Eastern Cape regional office and/or the Mthatha Justice Centre concerning the approval of Adv Skibi’s appointment and transfer to the post; the cancellation of Adv Skibi’s appointment and transfer to the post; and, the reason for the cancellation of the recruitment to the post.’* If the respondent persists in his claim made in paragraph 10 of his letter that none of the records enumerated in item 6 of my request exist, which is to say there’s no record whatsoever of any communication between LASA’s national office and the Eastern Cape regional office and/or the Mthatha Justice Centre concerning (i) Nair’s approval of Skibi for appointment and transfer to the Mthatha Senior Litigator post, following his

selection and recommendation for it by the Eastern Cape selection panel on 24 May 2010; (ii) Nair's cancellation of Skibi's appointment and transfer to the post; and (iii) Nair's reason for cancelling the Mthatha Senior Litigator recruitment right after he and his LSTC had urgently mandated it (totally different reasons were advanced to me, to the Board, to the Minister, to Parliament, and to court, with totally different stories told court before trial in the papers and then at trial), section 23 requires the respondent to repeat this claim under oath and to supply the further information stipulated by the section.

78. Item 7: *'Besides the above-specified records, all communications between the Eastern Cape regional office and/or the Mthatha Justice Centre and the Free State and North West regional office, and/or the Mahikeng Justice Centre, and/or Mahikeng Senior Litigator Adv Nzame Skibi concerning the Mthatha Senior Litigator post.'* The respondent's unsworn response in paragraph 11 of his letter, 'To the extent that we have searched, no other information exists relating to your request', doesn't meet the requirements of section 23. If indeed no records exist of any of the said communications, the respondent is required to certify this on oath, and to provide also the further information prescribed by the section.

79. As said, contrary to the respondent's apparent faulty supposition that my PAIA request was intended to gather documents for the proof of my claim in the Labour Court (in which I've already closed my case), it was in fact to collect further documentary evidence for the purpose of instituting criminal, civil and disciplinary proceedings against Nair, and possibly other LASA officers, the extent of whose involvement in Nair's deliberate, repeated violation of my fundamental rights and the cover-up that followed remains to be determined at the enquiries to follow judgment in my labour case.

80. As mentioned at the beginning of this affidavit, there are several profoundly aggravating features of this matter. In its handling of my PAIA requests over the years, and again in this one, LASA has demonstrated itself to be an intractable recidivist PAIA delinquent, for which Nair has been directly, actively responsible. To put it in brute terms, Nair has conducted himself like an habitual criminal of the lowest cunning, outrageously abusing his high managerial position and later his special delegation as deputy information officer in the national office to block my PAIA requests and withhold records tending to expose his egregious misfeasance as National Operations Officer in unfairly discriminating against me in violation of my fundamental right to equality in the democratic era, and then, very much later when the pressure was on, persistently lying about it, only, forgetting what lies he'd told and telling different lies to me, to the Board, to the Minister and to Parliament, and to court, with different conflicting lies he told inside court from those he told before court in the pleadings and affidavits drawn on his instructions.

81. Concerning Nair's persistent, repeated illegal refusals (two in Vedalankar's name, one in his own) to comply with my three PAIA requests in 2010 and 2011, the SAHRC agreed on 29 June 2011: 'A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer of LASA is made in your memorandum', i.e. my second memorandum to the SAHRC in April 2011, again appealing for its intervention in Nair's persistent illegal refusal to give up the records I'd duly requested.

82. Nair has covered up his persistent, repeated illegal refusals of my PAIA requests with false reporting to the SAHRC, to the Minister and to Parliament:

- (a) To pervert separate, independent ministerial and parliamentary enquiries into my complaint that LASA had violated my fundamental rights, including my right to information, Nair falsely alleged, inter alia, in secret ‘Confidential’ reports he drew ‘Re: Adv Anthony Brink’ for the Minister on 9 March 2011, and ‘updated’ for the chairperson of the Portfolio Committee on 22 June 2011, both signed and submitted by Board chairperson Mlambo JP:
- ‘we have complied with the provisions of PAIA’
 - ‘many of his requests do not relate to his complaint regarding non appointment’
 - ‘We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint’
 - ‘We have responded to all Adv Brink’s requests for information in terms of PAIA within the timeframe stipulated in the Act’.

All these allegations Nair made to the Minister and to Parliament, in Mlambo JP’s name, were lies. The last allegation was made in the ‘updated’ report to the chairperson of the Portfolio Committee in June 2011, not to the Minister in March. In court, Nair denied having added this lying sentence, and ascribed it to either Vedalankar or to Mlambo JP – falsely, obviously, because in April 2011 he’d just dealt with my PAIA requests again, now in his own name as freshly delegated deputy information officer in the national office, having previously dealt with and refused my PAIA requests in Vedalankar’s name. Neither Vedalankar nor Mlambo JP had any cause to alter and amplify Nair’s report to the Minister before submitting it to Parliament, whereas, having just disposed of my PAIA requests in April, Nair was eager to allege he’d ‘responded to all Adv Brink’s requests for

information in terms of PAIA within the timeframe stipulated in the Act'. In truth and in fact, only my third PAIA request was dealt with timeously under section 25(1), but more importantly, none of my three requests were 'responded to ... in terms of PAIA', and duly requested records were refused.

- (b) To conceal from Parliament his repeated deliberate illegal failure to comply with my PAIA requests and his violation of my fundamental right to information in his scheming to avoid exposure for his lie that he'd aborted my appointment for want of sufficient budget to fill the post that I'd been selected and recommended for, Nair repeatedly drew or approved false reports to the SAHRC under section 32 of the Act for 2010/11 and 2011/12, in which he twice failed to report the number of documents I requested that he'd refused and which sections and the number of times each provision of PAIA had been relied on to justify his refusals, as required by the section, and twice reported LASA as PAIA compliant, thereby misleading Parliament and intentionally frustrating its oversight function over public body compliance with PAIA. In both cases, as is his habitual modus operandi when telling lies in print, Nair used other LASA officers, Mtati and Sekgota, to sign the false section 32 reports he'd drawn or approved. Having no delegated authority under the Act, neither of them was legally competent to sign the reports.

83. Arising directly from my repeated complaints to the SAHRC about LASA's (Nair's) repeated, persistent refusal to comply with PAIA,* the SAHRC held a special PAIA training course for LASA's national office legal staff on 6 October 2011, at which it delivered a remedial lesson to them inter alia on 'the need to ensure that clients who are wishing to litigate on the basis of PAIA are

responded to on the same basis as other applicants’ (per the SAHRC’s report afterwards) – i.e. ‘clients’ like me: I’d made plain my then future intentions to sue LASA in the Labour Court – that is on the correct operation of section 7. (*LASA Legal Development Executive Patrick Hundermark received an email on 12 August 2011 reporting SAHRC PAIA Unit director Chantal Kisoon’s advice that ‘in light of the Brink matter she suggests that we open it [the PAIA training course] up to members who will normally respond to PAIA queries’. LASA put up this email with its response on 6 November 2013 to my different, evenly dated PAIA request delivered to information officer Vedalankar.)

84. Bearing on the credibility of Nair’s several excuses, advanced variously by him via Vedalankar, and via Mtati and now the respondent, for not surrendering the records I’ve duly demanded, Nair denied at trial that he knew anything about this PAIA training workshop. I tested this improbable claim after trial with a PAIA request delivered to Vedalankar, and, as expected, among the records I flushed out with it I found proof that that Nair had lied to court about this. On 26 August 2011 under the subject heading ‘Training in Promotion of Access to Information Act 2 of 2000’, attorney Upkaar Mungar in LASA’s Legal Development and Special Projects department emailed Nair to brief him on the fact that ‘The South African Human Rights Commission is planning a training programme for Legal Aid SA’ and asking him to ‘indicate the names of staff who you would like to attend the training and who deal with PAIA matters’. The rest of Mungar’s one-and-a-half page email to Nair detailed the intended training PAIA training ‘Draft Programme’, some ‘Reading Materials’ on PAIA, and the several expected take-home ‘Outcomes’ for attendees, which, in sum, were practical PAIA literacy. In falsely denying any knowledge of the SAHRC’s PAIA training workshop for LASA’s national office staff, held specially ‘in light of the

Brink matter’, namely my complaints that LASA (Nair) had repeatedly failed to comply with my PAIA requests, and had concealed this with false reporting to the SAHRC for the misinformation of the National Assembly in turn, Nair perjured himself.

85. In its report after the training workshop, the SAHRC recorded:

- LASA’s admission that it ‘had previously been misapplying the provisions of PAIA’ to my requests – only mine had been refused – and that it had ‘undertaken to review decisions which may not have had justification under PAIA and to create guidelines within the organisation to ensure misapplication does not recur’; and,
- ‘The mandatory obligation for all government organizations to compile a report in terms of section 32 of PAIA was discussed. LASA compliance history was flagged with participants and most responded to the reporting of LASA as non-compliant to Parliament with concern’.

86. In breach of its agreement with the SAHRC to do so, LASA took no steps ‘to create guidelines within the organisation to ensure misapplication does not recur’ and ‘to review decisions which may not have had justification under PAIA’, as formally ‘undertaken’ to the SAHRC – such as Nair’s illegal decision to block my access to the records of ‘All email communications between Judge Mlambo and Vedalankar concerning Brink’s petition to Judge Mlambo and the Board of Directors on 30 November 2010,’ as I’d duly requested in March 2011, on the completely idle basis that ‘it is not relevant because it is after you were informed that we are not proceeding to fill the Senior Litigator position’ * – as if relevance to anything is a prerequisite for access under PAIA to public body records. (*In his section 23 affidavit made in April 2011, in his answer via Mtati

to my agenda for the first pre-trial conference in October 2011, and again in his evidence in court in mid-2013, Nair repeatedly confirmed that no record whatsoever exists of this alleged decision not to fill the Pietermaritzburg (or any other) Senior Litigator post.)

87. Quite the contrary, on 25 October 2011, a couple of weeks after the respondent's minuted undertaking to the SAHRC to review its repeated, persistent unlawful refusals of my PAIA requests, which is to say its repeated violation of my fundamental right to information, LASA (Nair) justified its (his) absolute refusal to discover any of the 37 documents I'd requested for trial by falsely alleging to court in LASA's answer to my agenda for the pre-trial conference the following day: 'Documents numbered 8; 9; 12; 16; 17; 25 and 26 is the same as that which the Applicant has lodged a complaint with the Public Protector[*] and which information was lawfully refused in terms of the Promotion of Access to Information Act, 2000 ("PAIA"), a decision which the SAHRC has not reversed or queried.' And, 'The Respondent contends that the Applicant's requests in terms of the Promotion of Access to Information Act, 2000 ("PAIA") were answered completely and lawfully and those documents that were refused were refused in terms of the law.' (*I'd also appealed to the Public Protector, to no avail.) These lies echoed the lies told court earlier in LASA's (Nair's) original response to my original statement of claim that it 'has responded fully to the Applicant's PAIA requests [and] complied with PAIA in granting and withholding or refusing to grant access to certain information.'

88. In its Annual Report for 2011/12, the SAHRC reported LASA to the National Assembly as a PAIA defaulter in its section 84 report. Concerning the failure of public 'institutions' to comply with their PAIA compliance reporting obligations, the SAHRC cited 'A case in point ... where a complainant brought to the

attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year.' I was 'the complainant', as the SAHRC's Kisoon confirmed in her email on 12 July 2011 to the Open Democracy Advice Centre, copied to LASA's Hundermark, in which she mentioned its 'reporting of the Brink saga (you may be familiar with it – Patrick [Hundermark] is) to Parliament'. (LASA put up this email with its response to my different, evenly dated PAIA request delivered to information officer Vedalankar.)

89. For some reason best known to itself, the SAHRC didn't report to the National Assembly LASA's substantive failure to comply with the Act in repeatedly refusing my PAIA requests on grounds that the SAHRC itself agreed were 'unlawful', thus failing to inform the National Assembly about this.

90. The SAHRC's section 84 report continued: 'The Commission engaged with LASA and remains concerned about the accuracy of section 32 reporting by LASA.' Invited by the SAHRC to submit a correct and truthful section 32 report for 2011/12, after I'd complained that the original was false, LASA (per Mtati) declined to do so, and the SAHRC proceeded to report LASA's false section 32 information to the National Assembly in its section 84 report, knowing it was false, thus misinforming it.

91. The SAHRC report assured the National Assembly that 'The Commission intends auditing LASA fully in the course of the 2012/13 financial year.' (In full knowledge of LASA's repeated illegal refusals of my PAIA requests, SAHRC CEO Kayum Ahmed strangely rebuked my plea in November 2011 that the SAHRC audit LASA for PAIA compliance – also my complaint that the SAHRC

had failed to report, as the Act required it to report, my complaint to the Public Protector, of which I'd informed it, that LASA was illegally refusing to comply with the Act.) But instead of 'fully ... auditing' LASA, as it formally undertook to the National Assembly to do, the SAHRC merely sent LASA a shallow standard-form audit questionnaire on its compliance with PAIA to self-report, unsupervised, on trust, identical to that sent a dozen other randomly selected unsuspected bodies – and justifying this to me, when I queried it, on the amazing basis that it expected a 'candid opinion' from LASA about its compliance with PAIA, so SAHRC PAIA Unit director Fola Adeleke told me, well knowing from my persistent complaints that Nair was acting mala fide in suppressing documents and concealing this with false section 32 reporting to the SAHRC, so as to conceal it from the National Assembly in turn, and LASA accordingly couldn't be trusted to answer honestly.

92. The SAHRC then accepted, without question, LASA's false 'candid opinion' in its response to its questions:

Q: 'Is your institution compliant with PAIA, provide details of institution's compliance obligations.'

A: 'Yes, Legal Aid South Africa has developed a Manual which sets out process and procedures for the management of requests for information by interested parties.'

Q: 'Has your institution complied with section 32 of PAIA, provide reports submitted for the past three years'.

A: 'Yes, please find the previous reports attached hereto.'

93. Had the SAHRC ‘fully ... audited’ LASA’s performance of its substantive compliance and reporting obligations under PAIA, as it undertook to the to National Assembly do, instead of contenting itself with LASA’s predictably false replies to its useless questions, it would have uncovered and reported the full extent of LASA’s (Nair’s) failure to comply with the Act and its (his) corrupt reasons for its (his) non-compliance, namely to cover up its (Nair’s) violation of my fundamental right to equality under cover of a lying budgetary pretext, advanced to me, under pressure, eleven months later.
94. Consequently, in the SAHRC’s next section 84 report to the National Assembly there was nothing more about LASA’s serial PAIA delinquency, no report to the National Assembly that LASA was a deliberate, persistent PAIA defaulter corruptly motivated to cover-up a major fundamental rights violation. Hence LASA’s (Nair’s and/or Sekgota’s and/or Mtati’s) unchecked persistence in continuing to refuse my duly lodged requests under PAIA for access to LASA’s records – thereby demonstrating its (his) contempt for my fundamental right to information, with a well-founded, confident sense of impunity, knowing the SAHRC is looking the other way and won’t tell Parliament about it, as section 84 requires of it, in accordance with section 181(5) of the Constitution.
95. In his evidence, Nair also denied any knowledge about the SAHRC’s audit of LASA for PAIA compliance, arising from my complaints. I tested this improbable claim after trial with a PAIA request delivered to Vedalankar, and again, as expected, among the records I flushed out with it I found proof that that Nair had lied to court about this. On 14 January 2013 the SAHRC emailed the PAIA audit questionnaire to Nair’s PA with explicit instructions inter alia, ‘This email is to be placed before Mr Thembile Mtati and Mr Brian Nair (their

respective PAs are cited in the email) as well.’ (the words in parentheses appear in the original)

96. In falsely denying any knowledge of the SAHRC’s PAIA audit ‘in light of the Brink matter’, namely my complaints that LASA (Nair) had repeatedly failed to comply with my PAIA requests, and had concealed this with false reporting to the SAHRC for the misinformation of the National Assembly in turn, Nair perjured himself again. Such is the personal and professional integrity of LASA’s national office deputy information officer.

97. At LASA’s presentation of its Annual Report 2011/12 to the Portfolio Committee on 9 October 2012, Committee chairperson Luwellyn Landers MP queried the SAHRC’s PAIA section 84 report with Vedalankar and Nair – as did Committee member John Jeffery MP (now Deputy Minister), voicing the Committee’s consternation with the ‘report ... that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA’ – as the Parliamentary Monitoring Group’s transcription of the record of the presentation records it. Responding by parroting the false information Nair had given her about this, ‘Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgment about this.’ In fact, Vedalankar and Nair hadn’t even read the SAHRC’s section 84 PAIA report concerning LASA’s non-compliance with the Act when at Nair’s instance Vedalankar sought to discredit it as ‘untrue’ – as the PMG minute reveals: ‘The Chairperson [of the Portfolio Committee] told the [LASA] delegation that they would arrange for Legal Aid to view the PAIA report.’ Nothing in the SAHRC’s PAIA report was ‘untrue’, and I was not ‘in court’ when I made my three PAIA requests on 30 August and 15 December 2010 and

9 March 2011: I subsequently referred my dispute with LASA to the CCMA for conciliation on 29 March 2011 and to the Labour Court on 20 July 2011. (Even had I been in court when I brought my PAIA applications in 2010 and 2011, section 7(2) of PAIA vests a trial court with a discretion whether to admit a document obtained via PAIA after the commencement of civil or criminal proceedings.) Nor was any ‘official judgment about this’ alleged issue pending, as Vedalankar falsely alleged to the Portfolio Committee (not even an unofficial one). This glittering, impressive-sounding claim originating from Nair was pure invention, as usual.

98. The respondent’s national office legal staff, including Sekgota, had been specifically tutored at the SAHRC’s PAIA training workshop the previous year on ‘the need to ensure that clients who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants’, that is on the actual purport of section 7 and not Nair’s legally illiterate interpretation of it conveyed by Vedalankar to the Portfolio Committee. According to the training workshop attendance register, however, information officer Vedalankar (a former town planner) and deputy information officer Nair (a former schoolmaster), neither of whom are legally qualified, bunked the special lesson on PAIA arranged and held for them by the SAHRC to indoctrinate them in this elementary legal principle. Hence Nair’s dismally ignorant, false claims via Vedalankar to the Portfolio Committee that the SAHRC’s section 84 ‘PAIA report ... was untrue. Legally one could not use PAIA when one was in court’. According to the unsigned entry next to his name on the attendance register, Mtati also skipped the SAHRC’s lesson. This explains his email correspondence with the SAHRC about LASA’s false section 32 report for 2011/12, for the

second year running, in which LASA's top attorney supposed to manage LASA's compliance with PAIA persisted in arguing the same ignorant legal junk.

99. Despite LASA's admissions to the SAHRC (presumably by Sekgota who attended the workshop and who tells me he's been involved in my case from the start) that it had not applied the Act correctly to my PAIA requests (no other requests had been refused and contested), Nair persisted in falsely alleging to court via Mtati in an interlocutory affidavit made on 16 January 2013 that LASA had duly complied with my PAIA requests, and that its repeated and persistent refusals to surrender documents duly requested by me under the Act were lawful and justified. Nair directly accorded himself with these lies told court under oath on his instructions by putting up a confirmatory affidavit.

100. The manifold indications that Nair abused his managerial seniority over the respondent and usurped his delegated function and obligations as deputy information officer for the Eastern Cape, so as to suppress the documents incriminating him that I requested, are as follows:

101. The respondent was not present at trial and had no involvement in my labour case, so he had no knowledge of his own as to whether 'all the request relates to legal proceedings before court' or not, as alleged in his letter.

102. Unlike Nair, who testified at trial in possession of a full set of trial documents that I provided on the first day (Sekgota had neglected to assemble trial bundles in accordance with the indexes I'd duly delivered, and the bundles he brought to trial were an incomplete shambles), the respondent is not himself privy to the documents to which his letter refers, namely (i) my agenda for the January 2013 pre-trial conference enumerating the outstanding documents I required, (ii) the January conference minute, (iii) LASA's discovery affidavit eventually filed in

March 2013, (iv) my agenda for the June 2013 pre-trial conference, and (v) the June conference minute. The respondent's letter refers to specific paragraphs in these documents – documents he'd not had sight of.

103. In addition to the PAIA request that's the subject of this application, I sent two others on the same day to LASA CEO and information officer Vedalankar (already mentioned herein), and to Free State and North West ROE and regional deputy information officer Zanele Msweli. All three of my requests were unlawfully refused on identical factually and legally incompetent grounds, namely with reference to sections 7(1) and 45 of PAIA. The different office particulars in the letterheads aside, all three refusals are addressed to me in identical form and the subject headings all contain the same typographical error, 'Act 2 of 200' instead of 2000. (My name and the date of my request have been added to the heading of Msweli's letter.) Besides the different dates on which my requests were delivered, the first paragraphs are identical. The refusal of my PAIA request addressed to Vedalankar is also prefaced with precisely the same ostensibly high-sounding boiler-plate avowing LASA's intention to comply with PAIA, even as it immediately proceeds to contravene it and suppress the records Nair appreciates will further expose him in the coming criminal, civil and disciplinary tribunals mentioned above: 'Whilst Legal Aid South Africa has every intention to ensure compliance with the prescripts of the Act it is however important to set out the following facts which will set the tone of my reply to your request.' The Preamble to the Act and sections 7(1) and 45 of PAIA are then 'set out', not any 'facts'.

104. These several coincidences demonstrate that the same person refused all three of my requests and typed these refusals up on the same computer. They speak to a coordinated, centralised decision by Nair as deputy information officer in

LASA's national office to obstruct and refuse all my PAIA requests on the same unlawful basis, in so doing grossly abusing his power as National Operations Executive to suppress documentary evidence of his unconstitutional, illegal, and unethical conduct in unfairly discriminating against me and then, as I pressed for my appointment, engineering an increasingly elaborate cover-up in which he successively trampled on the rights of two other innocent parties, Mngadi and later on Skibi, unlawfully obstructing the implementation of the Board's Strategic Plan to employ Senior Litigators as he did so, and lying contradictorily and inconsistently, to me, to the Minister and to Parliament, to the Board, to the SAHRC, and to the trial judge, to whom he told radically different lies before and in court.

105. As ever, Nair manoeuvred behind the scenes in this project, and in the case of my PAIA request addressed to information officer Vedalankar, got Mtati to sign the rejection of my request – ultra vires, incompetently and unlawfully, since PAIA affords Mtati no power to deal with and dispose of PAIA requests. This is notwithstanding that he (Nair) had fixed himself a special delegation as deputy information officer under section 17(3) to deal with my third PAIA request in March 2011 and, after I'd complained to the Board and to the SAHRC, to deal again with my first and second PAIA requests in August and December 2010 all addressed to Vedalankar which he'd refused in Vedalankar's name, twice in the case of my August request, and before the launch of my action in July, so as to prevent the release to me of documents I'd requested and needed for the proof of my claim, which, if upheld, he appreciated would be the end of his career at LASA. (Vedalankar's appointment of Nair as deputy information officer in the national officer to block my record requests testing his cover-story to camouflage his violation of my fundamental right to equality and threatening to

expose it makes an abject mockery of section 17 to ‘render the public body as accessible as reasonably possible for requesters of its records’ – the only permissible, legitimate purpose for appointing a deputy information officer; to rub it in, the quoted language features twice in the section.)

106. Other indications that Nair abused his managerial seniority over the respondent and usurped his delegated function and obligations as deputy information officer for the Eastern Cape, so as to suppress the documents incriminating him that I requested, are as follows:

107. Nair has a history of telling his lies in others’ names – as in the case of Vedalankar’s letters to me in October 2010 and January 2011, and Mlambo JP’s reports to the Minister and to Parliament in March and June 2011. Again and most recently, in the case of my evenly dated PAIA request addressed to Vedalankar, Nair got Mtati to incompetently sign his (Nair’s) illegal refusal of most of my request – either drawn by him or on his instructions, being, as he stated in April 2011, ‘the person who is familiar with the facts’ and therefore ‘in the best position to respond to a number of requests raised by Mr Anthony Brink’.

108. The respondent’s letter has the gauche, tinny, half-educated, faux legal prose style of the legal manqué that characterises all Nair’s writing; his customary syntactical incoherence and feeble internal logic; and his distinctive tell-tale, high-sounding turns of phrase, such as ‘noting that’ as a preamble to some or other assertion (at trial he owned this regular favourite of his), and prefacing his letters with this or that dull legal homily to ‘set the tone’ of his letter (also used in his January 2011 letter to me, written in Vedalankar’s name) before

proceeding to immediately violate the constitutional values and principles he declaims.

109. Under section 74(2)(b) of the Act, no internal appeal lies against the refusal of a request for access to the records of a public body such as LASA. This leaves me no other remedy but to apply to court for the relief I seek in the notice of motion to vindicate and enforce my fundamental right to information guaranteed by section 32 of the Constitution that the respondent has violated.

110. I record here that my first two petitions to the Board in 2010 and 2011 appealing for its intervention in Vedalankar's (in fact Nair's) illegal refusals to comply with my PAIA requests in those years were brusquely rebuffed by Board chairperson Mlambo JP, and the rest were ignored.

111. To compound this, Vedalankar, the very subject of my first petition to the Board (before I realised it was Nair acting against me, writing in her name), ghost-wrote Mlambo JP's first letter on her office computer while he was abroad, cursorily dismissing it, presumably after consulting Nair, the actual author of her letter to me of 19 October 2010 illegally refusing my first PAIA request and telling me lies about the Pietermaritzburg, Durban, and Mthatha Senior Litigator posts having been frozen together for lack of budget to fill them (unsupported and contradicted by the records I later flushed out; abandoned by Nair in court as regards Mthatha; and contradicted by the completely different stories Nair told the Board about why the posts weren't filled). When I pointed out the evidence of Vedalankar's authorship of Mlambo JP's letter that I'd found, namely 'VidhuV' appearing in the PDF 'Author' properties, it was frankly admitted in the pleadings that Vedalankar had written the letter and pasted a scanned image of Mlambo JP's signature into it, claiming this was with

his ‘knowledge and consent’. I naturally concluded from this deplorable episode that it’s useless entreating the Board to carry out its supervision function over LASA management and to see to it that its officers respect the Constitution and comply with PAIA and other laws of the country, and comply further with LASA’s Approval Framework, Recruitment code, and code of Ethics and Conduct. Plainly, corporate governance of LASA has broken down. There’s no ‘arms-length relationship’ between the chairperson of the Board and executive management, as required by the King III principles of corporate governance, to which LASA claims in its annual reports it subscribes.

112. My subsequent approaches to the SAHRC and then the Public Protector to enlist their assistance in exercising and enforcing my fundamental right to information proved equally fruitless:

113. Notwithstanding its statutory function prescribed by section 83(3)(c) to ‘if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act’, my repeated pressing appeals to the SAHRC for assistance in exercising and enforcing my fundamental right to information by accessing records I needed to vindicate my fundamental right to equality were finally answered with the excuses that (a) it lacked the resources to assist me – even as I asked very little of it, merely its agreement or otherwise with my comprehensive memoranda addressed to it refuting, with reference to the Act and to reported case precedent, the unlawful grounds advanced by LASA (Nair) for refusing my PAIA requests; and (b) that my subsequent formal complaint that LASA had repeatedly violated my fundamental right to information by illegally refusing to comply with my PAIA requests was headed for court – this wasn’t true: my unfair discrimination complaint was, and it was precisely for the purposes of that intended litigation that I sorely needed the SAHRC’s support in

extracting from LASA the documentary evidence it was illegally suppressing.

I then approached the Public Protector for assistance, but got no joy there either.

114. Consequently, as preliminary alternatives to approaching this court for relief in this matter, I haven't wasted my time again looking to the Board and to the said Chapter 9 constitutional institutions responsible for overseeing compliance with PAIA; and as entitled by the Act, I've approached this court directly for the relief I need.

115. Section 78(2) of PAIA, as amended by section 28(a) of the Promotion of Access to Information Amendment Act 42 of 2013, enacted on 22 January 2014, affords an applicant 180 days within which to bring an application such as this.

116. Any question over the retrospectivity of this new provision and its applicability to this application is rendered moot by the ruling of the Constitutional Court in *Brümmer v Minister of Social Development and Others* (CCT 25109) [2009] ZACC 21; 2009 (6) SA 323 (CC); 2009 (11) BCLR 1075 (CC) (13 August 2009) striking down the original 30-day period previously stipulated by section 78(2) as unreasonably insufficient and substituting it with a provisional period of 180 days pending amendment by Parliament.

117. I've duly brought this application within 180 days of the respondent's refusal of my PAIA request, and in the form prescribed by the Promotion of Access to Information Rules, R. 965, published in the Government Gazette No 32622 on 9 October 2009.

118. The Portfolio Committee has repeatedly expressed its concern about public body disregard for PAIA, given the paramount importance of the Act to counter the 'secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations' characteristic of

‘the system of government in South Africa before 27 April 1994’, and to ‘foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information ... to enable [‘the people of South Africa’] to more fully exercise and protect all their rights’, as the Preamble to the Act puts it – as well as its impatience with the SAHRC’s claims not to have the resources to assist record requesters enforce the Act where their fundamental right of access to public information has been violated, and has even offered further funding to meet this limp excuse for not performing this important statutory function.

119. Having regard to the SAHRC’s demonstrated past dereliction of its statutory responsibility to effectively monitor and ensure that LASA complies with PAIA and that it truthfully and accurately reports to it on this under section 32, and via it to the National Assembly under section 84, it would be futile in this matter to expect the SAHRC to attend properly to LASA’s continuing recent repeated, persistent illegal refusal to comply with the Act.
120. Given that, despite (a) special remedial training in the application of PAIA by the SAHRC, (b) being reported by the SAHRC to Parliament as non-compliant, and specifically named and shamed for this in the SAHRC’s report, and (c) being ‘flagged’ by the SAHRC for PAIA non-compliance and consequently subject to a PAIA audit, LASA persists in illegally refusing me access to duly requested records in violation of my fundamental right to information, this festering, corrupt and lawless rot in LASA requires the attention of the Public Protector, for a comprehensive investigation of LASA’s handling of my PAIA requests since 2010, and the real reasons they were refused, followed by a report of her findings to the Minister and to Parliament on this habitually delinquent public body’s ongoing recalcitrance complying with the law.

121. For their information, and so that they might be afforded the opportunity to file affidavits responding to any matter raised in this affidavit affecting them, and most importantly so that they might assist this court in determining this application on as full a ventilation of the truth as possible, by filing affidavits on any point in issue in the background factual countryside within their knowledge, I will furnish copies of this application, after it's been issued, to:

- SAHRC chairperson Adv Lawrence Mushwana: he'll be concerned about the dereliction of his PAIA Unit in my matter to date, facilitating LASA's continuing disregard for PAIA and its persistent, repeated violation of my fundamental right to information since September 2010, and his staff responsible for this may want to respond;
- Acting Board Secretary Lesleigh Timothy: I'll ask her to bring this application to Board attention and will report to court whether she does so or not (her predecessor disregarded my similar requests) ;
- LASA CEO and information officer Vidhu Vedalankar: she'll be concerned to learn that in his evidence Nair (i) blamed her for the lying letters he wrote me in her name in October 2010 and January 2011, in which he fed me his budgetary cover-story for illegally aborting my appointment to the Pietermaritzburg Senior Litigator post, in which letters he persistently and repeatedly illegally refused my PAIA requests meticulously interrogating and threatening to expose his lies about this; (ii) blamed her or Mlambo JP for piling on new lies in the report he admitted he wrote for Mlambo JP to sign and submit to the Minister in March 2011 before it was 'updated' for Parliament in June 2011; and (iii) blamed her for the abortion of Skibi's appointment and transfer to the Mthatha Senior Litigator post by allegedly vetoing of the record the unanimous minuted resolution of the LTSC to

transfer the redundant Senior Litigator budget from Kimberly to Mthatha and to create a new such post there, where Mtati demonstrated it was badly needed; and she may want to respond to Nair's allegations about these things – also to the facts that (i) she allowed Nair to tell me lies in two letters to me in October 2010 and January 2011 bearing her name and signature, about the reason he aborted my appointment, in which letters he illegally refused my first two PAIA requests in August and December 2010; (ii) she ghost-wrote Mlambo JP's letter on her own office computer in his absence while he was abroad, cursorily dismissing my first petition to the Board protesting the illegal abortion of my recruitment and illegal refusal to surrender records clearly threatening to expose the budgetary cover-story that had been concocted and fed me for this; and (iii) she made an affidavit in April 2011 in which she corroborated and accorded herself with Nair's lies in the letters he wrote me in her name about the reason my appointment was aborted;

- NOE and national deputy information officer Brian Nair: he's at the centre of the entire matter, and he may wish to respond to the facts I've stated in this affidavit;
- CSE Thembile Mtati: as former ROE for the Eastern Cape at the material time, who recommended Skibi for the Mthatha Senior Litigator post, and had pressed for the creation of the post a couple of months earlier, he's well placed to tell this court the truth about the selection panel's signature and submission of the Skibi motivation and Nair's approval of it;
- COO Jerry Makokoane: he'll be concerned to learn that in Nair's bid to slither out of his responsibility for the false section 32 reports to the SAHRC for 2010/11 and 2011/12 to conceal and cover up his persistent, repeated illegal refusal to comply with my PAIA requests, and to keep this from both the SAHRC and from Parliament, Nair falsely implicated him by lying in court

that he (Makokoane) is also a national deputy information officer, so must have instructed Sekgota and Mtati to draw and sign the false section 32 reports;

- LDE Patrick Hundermark: email correspondence I've seen shows that he (i) involved himself in the handling of my first PAIA request in August 2010 when I complained to the SAHRC in September 2010 that Vedalankar had just ignored it (a mute refusal, after which it was twice expressly refused illegally in October 2010 and January 2011); and (ii) was involved in the arrangement of the PAIA workshop, and he may have been consulted in the handling and refusal of the instant request;
- HRE Amanda Clark: it's not material to this application, but as I mentioned she made conflicting written statements under oath before and during trial, and may want to respond – also to the fact that she made an affidavit in April 2011 in which she corroborated and accorded herself with Nair's lies told me in the letters he wrote in Vedalankar's name about the reason my appointment was aborted;
- Eastern Cape RHRM Thenjiwe Magazi: she's well placed to confirm to this court that she signed the Skibi motivation along with the other panel members, and that the motivation was forwarded to and approved by Nair;
- Port Elizabeth JCE Lynette Franklin: ditto;
- Eastern Cape Senior Litigator Lilla Crouse at the Port Elizabeth Justice Centre: she'll have an interest in Nair's cancellation of Skibi's appointment a couple of months after Nair and his LSTC unanimously accepted Mtati's pressing motivation for the creation of the Mthatha post to relieve her professional over-load;
- Mthatha Justice Centre Executive Fuzile Ngxukumeshe: I suspect I might have spoken to him at the Mthatha Justice Centre (I neglected to note the

- surname) about the sudden, unexpected cancellation of Skibi's transfer; and if so he'll be well placed to confirm that Nair had approved Skibi's appointment, which is why the Mthatha Justice Centre was waiting for his transfer there when Nair abruptly cancelled the recruitment off the record;
- Free State and North West Regional Operations Executive Zanele Msweli: she may be au fait with the circumstances in which Nair cancelled Skibi's transfer, and may well be placed to confirm that Nair had approved Skibi's appointment and transfer to Mthatha before he cancelled it in late July or August 2010 after I pressed Vedalankar at the end of July for the finalisation of my appointment at Pietermaritzburg and she emailed Nair, calling him in to discuss what to do about it;
 - Mahikeng Justice Centre Executive Mothusi Khumalo: ditto;
 - Free State and North West Senior Litigator Nzame Skibi at the Mahikeng Justice Centre: since Skibi was 'ready to start' (per the Mthatha Justice Centre to me) when told the Mthatha post had been 'frozen' (per Skibi to me) – and Nair made the same claim to me in October 2010, which he (also Vedalankar and Clark) confirmed on oath in April 2011, only to reverse himself in court and testify (truthfully at last) under oath that the Mthatha post had never been 'frozen' – he may be placed to usefully respond to Nair's allegation that no record exists that he was selected and recommended (Skibi told me it was divulged to him that he'd been recommended), because, according to Nair, the selection panel never signed the draft motivation and never forwarded it to him (Nair) for approval;

and I'll file with the Clerk of Court proof of delivery of a copy of these papers to all of them before the hearing of this application.

122. In the extraordinarily aggravated situation, I claim the grant of the orders set out in my notice of motion. It's in the form prescribed by the Promotion of Access to Information Rules, No. R. 965, promulgated in the Government Gazette, No 32622, on 9 October 2009. And if the respondent elects to oppose this application, section 81(3)(a) of PAIA provides, 'The burden of establishing that ... the refusal of a request for access ... complies with the provisions of this Act rests on the party claiming it so complies', in casu on the respondent.

Dated at Eshowe this 28th day of April 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on this 28th day of April 2012 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he solemnly affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

FORM A**REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY**

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 2]**FOR DEPARTMENTAL USE**

Reference number:

Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).

Request fee (if any): R

Deposit (if any): R

Access fee: R

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

Deputy Information Officer Hope Bambiso

Legal Aid South Africa

Eastern Cape Regional Office

5 Mangold Street, Newtown Park, Port Elizabeth, 6001

P O Box 63799, Greenacres, Port Elizabeth, 6056

B. 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 : **Anthony Robin Brink**

Identity number : **590225 5116 081**

Postal address : **25 Baker Road, Prestbury, Pietermaritzburg 3201**

Fax number : **086 672 0776**

Telephone number : **033 344 2420**

E-mail address : **arbrink@iafrica.com**

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

N/A

C. 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 : **N/A**

Identity number : **N/A**

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.

*(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:
2. Reference number, if available:
3. Any further particulars of record:

See annexure

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 therefor.

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: N/A	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

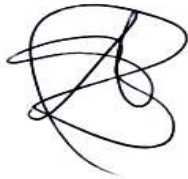
2. If record consists of visual images -					
(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)					
	view the images	X	copy of the images*		transcription of the images*
3. If record consists of recorded words or information which can be reproduced in sound -					
	listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)		
4. If record is held on computer or in an electronic or machine-readable form -					
	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form* (on compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? A postal fee is payable.					YES
<i>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.</i>					
In which language would you prefer the record? English					

G. 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 Pietermaritzburg on this 1st day of October 2013



SIGNATURE OF REQUESTER

ANNEXURE: RECORDS REQUIRED

1. The minutes of all Eastern Cape regional management committee meetings held in 2010.
2. Apropos of the aborted Mthatha Senior Litigator recruitment, the selection panel's recommendation of Mahikeng Senior Litigator Adv Nzame Skibi for appointment to the said post ('the post') on 24 May 2010, signed by all members of the panel, namely Port Elizabeth Justice Centre Executive Lynette Franklin; Eastern Cape Regional Human Resources Manager Thenjiwe Magazi; and then Eastern Cape Regional Operations Executive Thembile Mtati. (Any 'personal information' within the meaning of sections 1 and 34 of the Promotion of Access to Information Act 2 of 2000 may be blacked out.)
3. The regret letters/emails sent to the unsuccessful candidates eliminated by the selection panel after their interviews.
4. If the recommendation of Adv Skibi was scanned and emailed as an attachment to the LASA national office for approval, the covering email; if sent to the national office for approval via the postal service, the covering letter and proof of registered post.
5. All other communications between the national office and the Eastern Cape regional office and/or the Mthatha Justice Centre concerning the recommendation of Adv Skibi for transfer and appointment to the post.
6. All communications between the national office and the Eastern Cape regional office and/or the Mthatha Justice Centre concerning
 - the approval of Adv Skibi's appointment and transfer to the post;
 - the cancellation of Adv Skibi's appointment and transfer to the post; and,
 - the reason for the cancellation of the recruitment to the post.
7. Besides the above-specified records, all communications between the Eastern Cape regional office and/or the Mthatha Justice Centre and the Free State and North West regional office, and/or the Mahikeng Justice Centre, and/or Mahikeng Senior Litigator Adv Nzame Skibi concerning the Mthatha Senior Litigator post.

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

90 Offences

(1) A person who with intent to deny a right of access in terms of this Act-

- (a) destroys, damages or alters a record;
- (b) conceals a record; or
- (c) falsifies a record or makes a false record,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

23 Records that cannot be found or do not exist

(1) If-

- (a) all reasonable steps have been taken to find a record requested; and
- (b) there are reasonable grounds for believing that the record-
 - (i) is in the public body's possession but cannot be found; or
 - (ii) does not exist,

the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

25 Decision on request and notice thereof

(1) Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part apply, the information officer to whom the request is made or transferred, must, as soon as reasonably possible, but in any event within 30 days, after the request is received-

- (a) decide in accordance with this Act whether to grant the request; and
- (b) notify the requester of the decision and, if the requester stated, as contemplated in section 18 (2) (e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

INTERPRETATION ACT 33 OF 1957

4 Reckoning of number of days

When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.



Legal Aid
South Africa

B

Date: 06 November 2013

Anthony Robin Brink

25 Baker Road

Prestbury

Pietermaritzburg

3201

Fax: 086 672 0776

Email: arbrink@iafrica.com

Eastern Cape Regional Office

5 Mangold Street
Newton Park
Port Elizabeth
6001

P O Box 63799
Greenacres
Port Elizabeth
6057

Docex 131
Tel: 041 363 8863
Fax 041 363 1216

www.legal-aid.co.za

**REQUEST FOR ACCESS TO RECORDS IN TERMS OF SECTION 18(1) OF
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000**

Dear Mr. Brink

We acknowledge receipt of your request for access to record in terms of section 18(1) of the Promotion of Access to Information Act 2 of 2000, dated 1 October 2013 and which was received by our office on 7 October 2013.

Whilst Legal Aid South Africa has every intention to ensure compliance with the prescripts of the Act, it is however important to set out the following facts which will set the tone of my reply to your request.

Promotion of Access to Information Act 2 of 2000

1. The purpose and the object of the Act is to give effect to the constitutional right to access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith;

Your voice. For justice.

2. The second part of the preamble to the Act, further express that the right to any information held by a public or private body may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution.
3. Section 7(1) states that this Act does not apply to a record of a public body or a private body if-
 - (a) that record is requested for the purpose of criminal or civil proceedings;
 - (b) so requested after the commencement of such criminal proceedings or civil proceeding, as the case may be, and
 - (c) the production of or access to that record for the purpose referred to in paragraph(a) is provided for in any other law;
4. Section 45 states that the information officer of a public body may refuse a request for access to a record of the body if-
 - (a) the request is manifestly frivolous or vexatious; or
 - (b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

Reply to the request for access to the records or information

5. Item 1. This information was requested as document 43 under paragraph 35 of the requester's proposed pre- trial agenda of the 25 January 2013 under case number LCD529/11 at Durban Labour Court and accordingly responded to. See **Part 2** of the discovery of documents in terms of rule 35(3) of the rules of Court in respect of the pre-trial minutes of 25 January 2013 filed on 14 March 2013 which forms part of the bundle titled *"Applicant's agenda pre-trial*

conference at Court, 7 June 2013". See further paragraph 6 of the pre-trial minutes of the 7 June 2013.

6. Item 2. This information was requested as document 35 under paragraph 29 (a) to (c) of the requester's proposed pre- trial agenda of the 25 January 2013 under case number LCD529/11 at Durban Labour Court and accordingly responded to. See documents 9 and 35(a) attached to the discovery of documents in terms of rule 35(3) of the rules of Court in respect of the pre-trial minutes of 25 January 2013 filed on 14 March 2013 which forms part of the bundle titled **"Applicant's agenda pre-trial conference at Court, 7 June 2013"**. See further paragraph 4 of the pre-trial minutes of the 7 June 2013.
7. Item 3. This information was requested as document 36 under paragraph 30 of the requester proposed pre- trial agenda of the 25 January 2013 and was accordingly responded to the effect that no such record exists. See the discovery affidavit of documents in terms of rule 35(3) of the rules of Court in respect of the pre-trial minutes of 25 January 2013 filed on 14 March 2013 which forms part of the bundle titled **"Applicant's agenda pre-trial conference at Court, 7 June 2013"**.
8. Item 4. This information was requested as document 35 under paragraph 29(c) of the requester proposed pre- trial agenda of the 25 January 2013 and was accordingly responded to. See **Part 2** of the discovery affidavit filed on 14 March 2013 which forms part of the bundle titled **"Applicant's agenda pre-trial conference at Court, 7 June 2013"**.
9. Item 5. This information was requested as document 35 under paragraph 29 of the requester proposed pre- trial agenda of the 25 January 2013 and was accordingly responded to. See further at page 40 of the discovery affidavit filed on 14 March 2013 which forms part of

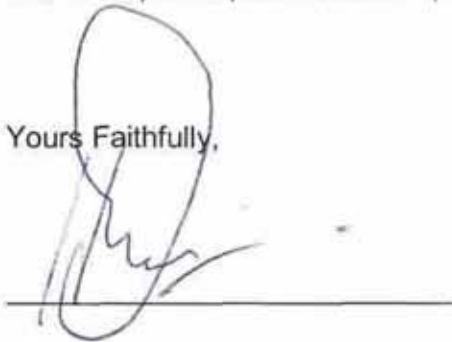
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the record of the bundle titled *“Applicant’s agenda pre-trial conference at Court, 7 June 2013”*.

10. Item 6. No such record exists as no approval were made for Skibi's appointment but the unsigned recommendation that forms part of the record which has already been provided and forming part of the record as document 35(a) attached to the discovery affidavit filed on the 14 March 2013.
11. Item 7. To the extent that we have searched, no other information exists relating to your request.

Having regard to all the above legal provisions, and noting that all the request relates to legal proceedings before court, I hereby refuse all the requests for information or records as set out in the application as all your request falls within the prescripts of section 7(1) read with section 45 of the Act.

Yours Faithfully,



Hope Bambiso

Designated Deputy Information Officer

Eastern Cape Regional Office

Legal Aid South Africa

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From: Chris Rawlins [cfmrawlins@telkomsa.net]
Sent: 03 April 2014 08:06 PM
To: Anthony Brink
Subject: Fw: Skibi

----- Original Message -----

From: Anthony Brink
To: 'Chris Rawlins'
Sent: Friday, October 28, 2011 3:23 PM
Subject: Skibi

We spoke.
Nice guy.
He was already appointed SL Mafikeng and wanted a transfer.
Kokstad man (per Facebook) and Mthatha down the road.
He was interviewed by Mtati and others for the Mthatha gig.
It was informally conveyed to him that he'd been selected and recommended.
Then he got an email telling him the Mthatha post had been frozen.

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.1834 / Virus Database: 2092/4579 - Release Date: 10/27/11

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

Case No: 258/14

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

VIDHU VEDALANKAR N.O.
INFORMATION OFFICER,
LEGAL AID SOUTH AFRICA

Respondent

NOTICE OF MOTION

TAKE NOTICE that the applicant intends applying to this court for orders in the following terms:

1. Declaring the respondent's referral of the applicant's request for access to records made to her under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), dated 1 October 2013 and delivered to her on 7 October 2013, for disposal by Legal Aid South Africa Corporate Services Executive Thembile Mtati ('Mtati'), instead of by the respondent herself, or by a duly delegated deputy information officer, to have been non-compliant with the said Act, and that Mtati's disposal of the applicant's request on 7 November 2013 to have been ultra vires, incompetent, and unlawful.
2. Declaring Mtati's refusal of the applicant's requests for access to records to have been an unlawful contravention of section 11 of PAIA, and to have

SECOND APPLICATION (2/3)



unlawful, and to have violated the applicant's fundamental right to information guaranteed by section 32 of the Constitution.

3. Setting aside Mtati's refusal of the applicant's request for access to the records he listed.
4. Declaring Mtati's affidavit purportedly made under section 23 of the Act to have been non-compliant with the said section, and a nullity.
5. Directing the respondent to deliver to the applicant copies of the refused records, including the additional record requested in the applicant's letter to the respondent of 17 October 2013, within thirty court days of the date of this order; alternatively, in the case of any record not so delivered, to furnish the applicant with an affidavit deposed to herself (or by a duly delegated deputy information officer) containing all the information prescribed by section 23(2) of PAIA, including (a) the results of computer hard-drive searches for electronic copies of such records conducted by one or more of Legal Aid South Africa's expert Information Technology staff, detailing by whom and the manner in which such searches were conducted; and (b) the responses by Legal Aid South Africa officers Mtati, National Operations Executive Brian Nair, and Corporate Legal Manager Solly Sekgota to the respondent's enquiries about retrieving from them the records she has been ordered to deliver to the applicant.
6. Declaring Brian Nair, deputy information officer in the national office of Legal Aid South Africa, disqualified from dealing with the applicant's records request and from carrying out the order set out in paragraph 5 above on the respondent's behalf, save to the extent of complying with the respondent's (or some other duly delegated deputy information officer's)

demands to surrender to her (or him) requested records in his possession or under his control.

7. Directing the respondent to publish this court's judgment, as well as its judgements in the immediately preceding and succeeding similar applications to compel against the Eastern Cape- and the Free State and North West deputy information officers, on its internet website for a period of one year
8. Granting the applicant leave to approach this court again on the same papers, supplemented as needs be, for an order for further and better compliance with the order set out in paragraph 5 above; and/or for the attachment of Legal Aid South Africa's staff computers and business computer servers by the sheriff and their search by a suitably qualified, independent computer Information Technology expert appointed by this court for electronic copies of the requested records; and/or in the event that the respondent wilfully or grossly negligently fails to comply with this order, committing her for contempt for such period as this court deems meet.
9. Directing the Clerk of Court, after the final disposal of this application, to refer a complete set of all papers filed, together with a copy of this court's judgment(s) – extra copies of which the applicant is to make and provide for this purpose – to the Minister of Justice and Constitutional Development; to the Chairperson of the Portfolio Committee on Justice and Constitutional Development in the National Assembly; to the Chairperson of the South African Human Rights Commission; and to the Public Protector.
10. Directing the respondent to pay the applicant's costs.

TAKE NOTICE FURTHER that the affidavit of Anthony Robin Brink and the documents referred to in rule 3(3)(a) of the Rules of Procedure for Application to Court in Terms of the Promotion of Access to Information Act 2 of 2000, annexed hereto, will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed The Flat, 1 Boast Street, Eshowe, KwaZulu-Natal, as the address at which he will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that:

(i) Notice of intention to oppose this application must be given within 15 days after receipt hereof and must contain an address within eight kilometres of the court to which the application is brought, where notice and service of documents will be accepted.

(ii) Answering affidavits, if any, must be filed within 15 days after service of the notice of intention to oppose the application.

(iii) In default of your complying with rule 3(5) of the Promotion of Access to Information Rules, the applicant may request the registrar to place the application before the court for an order in terms of section 82(b) of the Act.

(iv) In default of your delivering a notice of intention to oppose, the matter will, without further notice, be placed on the roll for hearing after the expiry of the period mentioned in paragraph (i) above, on a date fixed by the clerk of court.

Signed at Eshowe on this 28th day of April 2014.

Applicant

Anthony Robin Brink
The Flat, 1 Boast Street
Eshowe
KwaZulu-Natal
Tel: 035 474 0145
Cell: 083 779 4174
Fax: 086 672 0776
Email: arbrink@iafrica.com

TO:
The Clerk of Court
Magistrates Court
Eshowe
KwaZulu-Natal

AND TO:
Vidhu Vedalankar
Information Officer and
Chief Executive Officer
Legal Aid South Africa
29 De Beer Street
Braamfontein, Johannesburg
Gauteng

AND BY POST TO:
South African Human Rights Commission chairperson Lawrence Mushwana
And at Legal Aid South Africa to:
Corporate Services Executive Thembile Mtati

National Operations Executive Brian Nair

Board Secretary Lesleigh Timothy

Eastern Cape Regional Human Resources Manager Thenjiwe Magazi

Port Elizabeth Justice Centre Executive Lynette Franklin

Mthatha Justice Centre Executive Fuzile Ngxukumeshe

Free State and North West Regional Operations Executive Zanele Msweli

Mahikeng Justice Centre Executive Mothusi Khumalo

Senior Litigators: Nzame Skibi at Mahikeng, Pieter Nel at Bloemfontein, Herman Alberts at Pretoria, Mornay Calitz at Cape Town, William Karam at Johannesburg, and Elizabeth Crouse at Port Elizabeth.

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

Case No:

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

VIDHU VEDALANKAR N.O.

INFORMATION OFFICER,

LEGAL AID SOUTH AFRICA

Respondent

FOUNDING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I am an adult male advocate of the High Court of South Africa, ordinarily resident at The Flat, 1 Boast Street, Eshowe, KwaZulu-Natal, and I am the applicant herein.
2. The respondent is Vidhu Vedalankar, an adult female cited in her capacity as information officer of Legal Aid South Africa ('LASA'), a 'public body' envisaged by section 1 of the Promotion of Access to Information Act, Act 2 of 2000 ('PAIA' or 'the Act'), being an 'institution ... performing a public function in terms of any legislation' namely the Legal Aid Act 22 of 1969. She is LASA's Chief Executive Officer, and her business address is Legal Aid South Africa, 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

3. This is an application brought under Chapter 2 of the Act, ‘APPLICATIONS TO COURT (ss 78-82)’, for the grant of orders set out in the notice of motion under this court’s powers vested in it by section 82.
4. In support of the special orders I seek under this court’s jurisdiction ‘to grant any order that is just and equitable’ (per section 82), several profoundly aggravating features of this case will be set out herein.
5. By Notice No. 585 published in the Government Gazette on 14 May 2004, the Minister of Justice and Constitutional Development has ‘designate[d] all magistrates courts ... as courts to hear any application in terms of the Promotion of Access to Information Act, 2000, within whose area of jurisdiction [inter alia] the requester ... is ... ordinarily resident.’
6. Under the Minister’s said blanket designation, this court has been designated under sections 1 and 91A of the Act and has jurisdiction to try this application; and being ordinarily resident in this court’s area of jurisdiction, I’m entitled to sue out of this court for the relief I claim.
7. On 8 October 2013 I delivered to the respondent by registered post a request under PAIA for access to 41 specified records. My request, dated 1 October 2013, complied with the requirements of section 18 of the Act and was accompanied by a cheque to cover the request fee prescribed by section 22. I annex copy of my request marked ‘A’.
8. By letter attached to a covering email to the respondent on 17 October 2013, I requested access to a further record that I’d omitted from my original request on the 1st. This letter to the respondent, my covering email to her, which I copied to LASA Corporate Services Executive and lead in-house attorney Thembile Mtati, and Mtati’s ‘Read’ email receipt, are annexed as a bundle marked ‘B’. (The

respondent strangely elected not to acknowledge her receipt of my letter, by not clicking on 'Yes' at the automatic prompt I'd set for her to send me a 'Read' receipt on receiving my emailed letter to her.)

9. By letter dated 6 November 2013, Mtati refused most of the records I'd requested. I annex a copy of his letter marked 'C'. To limit the papers, I've not annexed the records he supplied with it, for the reason that those of my record requests met by the provision of these records are not in contention in this application.

10. A record certainly missing from the PAIA audit records I requested is Corporate Legal Manager Solly Sekgota's covering email to the SAHRC to which he attached his answer to its PAIA Audit Questionnaire and his covering letter. This appears from the latter: 'Please find the original reply to the PAIA Questionnaire forwarded to you by email.' This outstanding record must be surrendered.

11. Although he's LASA's lead in-house attorney, introduced by Board chairperson Dunstan Mlambo JP to the Portfolio Committee on Justice and Constitutional Development on 8 May 2012 as 'our Corporate [Services] Executive, he protects us in terms of people who want to sue us' (I'd sued LASA for unfair discrimination the year before and again in January 2012 to compel its discovery of documents it was withholding that I needed for trial; and Mtati was tasked with protecting LASA in terms of 'people like the Applicant' being the 'type of person he is' by signing all pleadings and interlocutory affidavits containing this contemptuous language in LASA's opposition of my action and interlocutory applications), Mtati holds no written delegation as a deputy information officer appointed by Vedalankar under section 17.

12. Consequently, he acted ultra vires, incompetently and unlawfully both in dealing with my request and in refusing me access to the records I requested the respondent to provide me – aside from the factual and legal irrelevance of his justification for his refusal, violating my fundamental right to information guaranteed by section 32 of the Constitution, dealt with presently.

13. Accompanying Mtati's letter was a perfunctory affidavit he made, purportedly under section 23 of the Act, in regard to allegedly non-existent records. Besides the fact that Mtati made this affidavit ultra vires, incompetently and unlawfully, in that only the respondent as information officer, or a deputy information officer whom she's duly delegated in writing, may depose to such an affidavit under section 23, which is to say she can't offload onto an attorney the grave responsibility the section imposes on her, Mtati's affidavit doesn't provide the specific detailed information prescribed by section 23 in respect of each record I requested, not refused, but not supplied.

14. In paragraph 5.1 of his letter, Mtati states: 'Items 1 to 10 of [the] Annexure to your request is hereby refused in terms of the provisions of section 45 of the Act. The information or requests requested relates to the civil proceedings already before the Court.' In his paragraph 5.12, a further thirteen of my record requests – items 28 to 31 and 33 to 41 – were likewise refused for the same copied and pasted reason. His letter did not address my request for the 42nd record that I'd specified in my letter of 17 October; and under section 27 of the Act, a record request not answered within the 30-calendar-day timeframe prescribed by section 25(1) is deemed to have been refused.

15. Mtati does not allege, much less does he demonstrate, how and why my requests for access to the twenty-three public records he expressly denied me fall

foul of section 45, which, quoted in paragraph 4 of his letter, allows the refusal of ‘Manifestly frivolous or vexatious requests, or [those giving rise to a] substantial and unreasonable diversion of resources’ (per the heading of the section).

16. Any suggestion from Mtati’s vague invocation of section 45 against me that my record requests are idle or needlessly oppressive for these reasons is immediately dispelled by his next logically incoherent sentence: ‘The information or requests requested relates to the civil proceedings already before the Court.’

17. To Mtati’s mind, then, my requests aren’t frivolous, for there can be no more serious purpose for requesting records than to gather documentary evidence to place before a judge in a litigated dispute for him to consider and weigh when determining who’s telling the truth and who’s telling lies at the risk of being jailed for perjury. For the same reason, however much time and effort it takes an information officer to find and deliver such records for this heavy purpose, it can never be too much. (This is why in litigation the excuse that it’s too much trouble to make full and proper document discovery won’t ever do.)

18. Mtati’s legally irrelevant statement that my PAIA request ‘relates to the civil proceedings already before the Court’ suggests he’s surmised that I requested the records to adduce as evidence in my said pending claim against LASA in the Durban Labour Court under case number LC D529/11, tried over nine days between 23 July and 2 August 2013; and this reading of his apparent conclusion about my purpose is fortified by his selective quotation from section 7 of PAIA, which ordinarily precludes the admission in civil or criminal proceedings of records obtained via PAIA after their commencement. Subsection 2, however, which Mtati didn’t quote, and left out of his letter, perhaps thinking this wouldn’t be noticed, allows the admission of such records if ‘the exclusion of such record

by the court in question would, in its opinion, be detrimental to the interests of justice.’

19. In apparently surmising my purpose in making my records request, Mtati, imagining he was entitled to act on the respondent’s behalf without a delegation as deputy information officer, contravened section 11(3) of the Act, which holds ‘the information officer’s belief as to what the requester’s reasons are for requesting access’ immaterial in deciding a PAIA request.

20. Mtati’s seeming belief as to my reason for requesting the records is anyway incorrect. As said, the trial is over; heads of argument have been filed and the matter has been set down for oral argument on 28 May 2014. Although under section 11(3)(a) the purpose of my request is irrelevant to the respondent’s decision of it, and equally to the determination of this application by this court, I record that I’m gathering further documents for the institution of criminal, disciplinary, and civil proceedings against LASA National Operations Executive Brian Nair on the fullest possible evidence. I detail this background information in my immediately preceding application in this court against Eastern Cape deputy information officer Hope Bambiso, a copy of which I’ll provide the respondent, Mtati, Nair, and other LASA officers before the hearing of this application, with proof of delivery filed with the Clerk of Court.

21. Besides the legal irrelevance of Mtati’s justification for refusing most of the records specified in my PAIA request on the basis that it ‘relates to the civil proceedings already before the Court’, it bears mentioning that he relies inconsistently on this vacuous excuse to avoid surrendering copies of the records I duly requested, because some of the records he supplied ‘relate’ very pertinently ‘to the civil proceedings already before the Court’ and they illustrate, with two

further bright instances, that in the witness stand Nair demonstrated himself to be a compulsive liar:

22. During my cross-examination of Nair at trial, he told the judge, under oath to tell the truth and under penalty of perjury, that as deputy information officer in the national office he knew nothing of (i) the SAHRC's special PAIA training workshop held for LASA's national office legal staff on 6 October 2011 and (ii) the SAHRC's subsequent audit of LASA for compliance with PAIA, both arising out of my repeated complaints to the SAHRC that LASA (Nair) had (i) persistently, repeatedly illegally refused to surrender records that I'd duly requested under PAIA in 2010 and 2011 and (ii) falsely reported to the SAHRC under section 32 for 2010/11 and for 2011/12 to conceal this from the SAHRC, and from the National Assembly in turn in the SAHRC's section 84 report on public body compliance with PAIA.

23. It's not a matter of any dispute that both of these interventions by the SAHRC were occasioned directly by my repeated said complaints. Emails which Mtati provided me with his response to my PAIA request vouch it.

24. After the trial I tested Nair's strikingly improbable claims in court, his denials on oath that he had any knowledge of the SAHRC's PAIA training workshop for LASA and its subsequent PAIA audit of LASA, by requesting LASA's records about these things in my PAIA request before court; and as anticipated, email records flushed out of LASA revealed that Nair's denials were false, and that he'd lied to the trial judge, under oath, on both scores:

25. On 26 August 2011 deputy information officer Nair was briefed by LASA attorney Upkaar Mungar about the SAHRC's intention to hold a special PAIA training workshop for LASA. In a comprehensive, one-and-a-half page email to

Nair under the pointed subject heading ‘Training in Promotion of Access to Information Act 2 of 2000’, Mungar informed him: ‘The South African Human Rights Commission is planning a training programme for Legal Aid SA’ and asked him to ‘indicate the names of staff who you would like to attend the training and who deal with PAIA matters’. Mungar detailed the ‘Draft Programme’ for the PAIA training workshop, some ‘Reading Materials’ on the Act, and the intended ‘Outcomes’ for attendees, which, in a nut, were their future ability to properly handle PAIA requests. In short, Nair knew all about it, and he brazenly lied to court, under oath, when denying it.

26. It’s relevant to the special orders I seek to mention that at the workshop held on 6 October 2011, LASA admitted to the SAHRC (per the latter’s report afterwards; the respondent has a copy), that it ‘had previously been misapplying the provisions of PAIA’ – to my requests; only mine had been refused – and had ‘undertaken to review decisions which may not have had justification under PAIA and to create guidelines within the organisation to ensure misapplication does not recur.’ (In breach of its undertakings to the SAHRC, LASA didn’t do either of these things.) ‘The presentation provided a detailed contextual background of the legislation, emphasizing the need to break the culture of secrecy which shrouds the public service in general. Commencing with the status of PAIA as a fundamental right [sic], its status was reiterated and emphasized at different points of the training.’

27. According to the attendance register, however, the respondent and national office deputy information officer Nair didn’t attend the special remedial lesson arranged and held for them by the SAHRC to repair the ‘lack of application based knowledge’ among LASA’s legal staff he SAHRC observed at the workshop and to help them overcome their ‘challenges complying with PAIA’, since they

confessed they felt ‘overwhelmed by the requirements of the legislation’ (per the report). Mtati didn’t attend either. The respondent, Nair, and Mtati all missed the lesson on ‘the status of PAIA as a fundamental right [sic]’ a matter ‘reiterated and emphasized at different points of the training’ and ‘the need to break the culture of secrecy which shrouds the public service in general’ and LASA in particular, especially around its repeated and persistent fundamental rights violations.

28. In its PAIA section 84 report included in its 2011/12 report for the Minister and the National Assembly, the SAHRC reported LASA as a PAIA defaulter.

Concerning the failure of such public ‘institutions’ as LASA to comply with their PAIA compliance reporting obligations, the SAHRC singled LASA out by citing ‘A case in point ... where a complainant brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA’s 2010/11 section 32 report despite the fact that the requests were made in that financial year. ... The Commission intends auditing LASA fully in the course of the 2012/13 financial year.’

29. When on 9 October 2012 the respondent and Nair appeared together before the Portfolio Committee to present LASA’s annual report, Committee chairperson Luwellyn Landers MP queried SAHRC’s negative section 84 report with them, as did Committee member John Jeffery MP (now Deputy Minister), who voiced the Committee’s consternation about the ‘report ... that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA’ (per the Parliamentary Monitoring Group’s transcription of the record of the presentation). ‘The Chairperson [of the Portfolio Committee] told the [LASA] delegation that they would arrange for Legal Aid to view the PAIA report.’

30. After viewing the SAHRC's PAIA report of LASA to the National Assembly as a PAIA defaulter, Nair knew full well of the SAHRC's intentions of 'auditing LASA fully in the course of the 2012/13 financial year.'
31. And saw them realised. Among the records of the PAIA audit flushed out by my record request was an email from the SAHRC to Nair's PA on 14 January 2013: 'Please find attached a PAIA Audit Questionnaire and Letter for the Information Officer's consideration. The email to be placed before Mr Thembile Mtati and Mr Brian Nair (their respective PAs are cited in the email) as well.' (the words in parenthesis appear in the original)
32. As I'd anticipated, the record of this email turned up by my PAIA request confirms that Nair perjured himself in court in falsely denying his knowledge of the SAHRC's PAIA audit of LASA.
33. It's apparent from my record requests and their contextual notes that nearly all of them directly or indirectly concern Nair's misconduct and false statements in his correspondence with me, reports to the Board, reports to the Minister and to Parliament, and to the Durban Labour Court in his pleadings, interlocutory affidavits, and oral testimony in my above-mentioned unfair discrimination claim. Consequently, Nair's conflict of interest arising from this, and his demonstrated mendacity concerning his false denials of any knowledge of the SAHRC's PAIA workshop and audit, disqualify him from any dealing with this matter as deputy information officer in the national office; and unless the respondent specially delegates another deputy information officer in the national office to do so, she'll need to answer this application and respond to this court's order made pursuant to it herself. (Even another deputy information officer whom she may appoint (in writing) to avoid the work herself of carrying out this court's order to comply

with the Act in dealing with my record requests will remain under her ‘direction and control’ under section 17(2), and his delegation will not be absolute, in contradistinction to delegated power in general, inasmuch as the section reserves to her the power to take control of the handling of a record request by a deputy information officer as and when she sees fit. That is, the respondent will finally be accountable to this court for how this court’s order is responded to. In sum, the buck stops with her.

34. What gravely aggravates Mtati’s refusal of records duly requested in this matter is that LASA continues to violate my fundamental right to information guaranteed by section 32 of the Constitution by illegally withholding records from me in contravention of the Act, and furthermore in breach of its undertaking given the SAHRC ‘to create guidelines within the organisation to ensure misapplication does not recur’ in the handling of PAIA requests, particularly since (per the SAHRC’s report after the workshop) ‘misinterpretation and misapplication was identified as being high risk to LASA’ – exemplified by LASA’s persistent, repeated illegal refusal to permit me access to its records since my first PAIA request in August 2010.

35. In breach of its undertakings given at the PAIA training workshop that it would henceforth commence complying with PAIA, and in breach again of its assurance given the SAHRC in its response on 21 February 2013 to the Audit Questionnaire that it was now doing so (Q: ‘Is your institution compliant with PAIA, provide details of institution’s compliance obligations’; A: ‘Yes, Legal Aid South Africa has developed a Manual which sets out process and procedures for the management of requests for information by interested parties’), LASA persists in refusing to comply with the Act, in a continuing pattern of lawless, unconstitutional conduct, contemptuous of my fundamental right to information,

commencing in 2010 and 2011, with its grotesque, deliberate ‘misinterpretation and misapplication’ of PAIA in the latest instance before court, under a deplorably disingenuous and meretricious display of formal legality in perversely quoting irrelevant bits of the Act, all in a calculated, corrupt bid to hamper my collection of further documents for Nair’s public prosecution on the fullest available documentary evidence. (Like when President Richard Nixon refused to hand over his Oval Office tapes, advancing an utterly specious argument in the Supreme Court that he was above the law and enjoyed the privilege of an absolute monarch in the matter, knowing the tapes would sink him by proving his central involvement in conspiring to cover up the Watergate burglary by his ‘plumbers’, which, when disgorged from him by court order, they did.)

36. Inasmuch as Nair alleged to court in LASA’s (his) original response in September 2011 to my original statement of claim in my labour case, and again in his ‘Report to Board’ in November 2011, that LASA’s incumbent Senior Litigators are under-performing and that he urgently needs to be ‘reassured’ (his word) that they’re professionally up to scratch by having their work audited (see notes to items 1–8 of my PAIA request), I’ll provide each of them copies of this application for their confirmation to this court either that they’ve been suspected of being not worth their money and told so, or that Nair was telling lies about them to the Board in the Labour Court (telling different lies before and during trial), wantonly aspersing their professional acumen in concocting a brand new excuse to be given the Board for not finalising my appointment and not implementing its Strategic Plan to employ Senior Litigators, to replace his previous logistical and budgetary excuses advanced to me, to the Minister and to Parliament, after I’d dismantled and refuted them in my 100-page statement of claim in July (which new excuse, as said, he dropped and changed during trial).

Their confirmation either way will bear on this court's determination of my claim for an order declaring Nair disqualified from dealing with my records request and from carrying out this court's order that the respondent comply with it, on the basis that in addition to his conflict of interest, nothing he ever says, even on oath, can be trusted.

37. LASA's unreconstructed, shockingly cavalier attitude to its constitutional obligations under PAIA is plainly spelt out in an interlocutory affidavit Mtati made on Nair's instructions in January 2013, expressly supported by him (Nair) in a confirmatory affidavit, in which my three duly filed PAIA requests in 2010 and 2011 in the exercise of my fundamental right to information guaranteed by section 32 of the Constitution, and my appeals to the Board and to the SAHRC to intervene when they were illegally refused, were disparaged as 'his tirade', 'a tirade of demands [which] never stopped', 'a tirade of letters to Legal Aid SA demanding access to certain information under the Promotion of Access to Information Act'. (Apparently the angry expectation was that I should quit my very searching probing and enquiring, and merely accept Nair's lies about the reason he aborted my appointment to LASA's top professional post in KwaZulu-Natal.)

38. This was subsequent to the SAHRC's special PAIA training workshop for LASA in October 2011 at which 'the status of PAIA as a fundamental right [sic] ... was reiterated and emphasized at different points of the training'.

39. Consequently, unless checked by this court, it's likely that LASA, and particularly Nair, and Mtati acting on his instructions, will continue displaying the same contemptuous attitude toward the constitutional right to information of other persons seeking access to its records with a view to investigating and bringing to

light and to book other acts of unconstitutional, illegal, and grossly unethical conduct by Nair and possibly other persons employed to manage LASA's business, including the provision of expert litigation services to the country's indigent people by Senior Litigators engaged for the purpose at seats of the High Court.

40. In the extraordinarily aggravated situation, I claim the orders set out in my notice of motion.

Dated at Eshowe this 28th day of April 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on this 28th day of April 2012 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he solemnly affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

FORM A**REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY**

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 2]**FOR DEPARTMENTAL USE**

Reference number:

Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).

Request fee (if any): R

Deposit (if any): R

Access fee: R

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Information Officer: Vidhu Vedalankar

Legal Aid South Africa

Private Bag X76

Braamfontein 2017

Johannesburg

B. 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 : **Anthony Robin Brink**

Identity number : **590225 5116 081**

Postal address : **25 Baker Road, Prestbury, Pietermaritzburg 3201**

Fax number : **086 672 0776**

Telephone number : **033 344 2420**

E-mail address : **arbrink@iafrica.com**

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

N/A

C. 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 : **N/A**

Identity number : **N/A**

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.

*(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:
2. Reference number, if available:
3. Any further particulars of record:

See annexure

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 therefor.

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: N/A		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

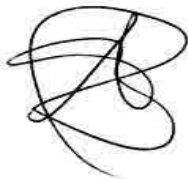
2. If record consists of visual images -					
(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)					
	view the images	X	copy of the images*		transcription of the images*
3. If record consists of recorded words or information which can be reproduced in sound -					
	listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)		
4. If record is held on computer or in an electronic or machine-readable form -					
	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form* (on compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? A postal fee is payable.					YES
<i>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.</i>					
In which language would you prefer the record? English					

G. 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 Pietermaritzburg on this 1st day of October 2013

A handwritten signature in black ink, consisting of several overlapping loops and a diagonal stroke, positioned above the text 'SIGNATURE OF REQUESTER'.

SIGNATURE OF REQUESTER

ANNEXURE: RECORDS REQUIRED¹

1. All and any records vouching the sworn allegation made on affidavit to the Durban Labour Court ('court') on Legal Aid South Africa National Operations Officer Brian Nair's instructions² in the matter of Anthony Robin Brink ('Brink') v Legal Aid South Africa ('LASA'), Case No. LC D529/11, that 'many of the senior litigators have failed to live up to the required expectations as they, despite many years in practice, lacked the required Court experience.'³

Contradicting this allegation by Nair to court, all oral and written reports since 2009 made to the Minister of Justice and Constitutional Development (LASA's 'Executive Authority')⁴ and to the Portfolio Committee in the National Assembly (which exercises 'oversight'⁵ over LASA) have consistently assured the Minister and Parliament that LASA's lawyers are performing well. These numerous reports are extensively quoted in Brink's heads of argument.⁶ In court, Nair retracted his false allegation made to court before the trial, on oath, in which he wantonly disparaged the professional competence of LASA's Senior Litigators; see below.

2. All and any records vouching the allegation made to court in the pleadings on Nair's instructions that 'most of the senior practitioners who were recruited without having undergone a second interview were lacking experience in vital areas like High Court litigation skills'.⁷

¹ All documents referenced herein may be accessed at the online case document archive in Brink v LASA, LC D529/11, an unfair discrimination claim tried in the Durban Labour Court over nine days from 23 July to 2 August 2013: www.tig.org.za/LASA username: lasa password: LASA2010. The records requester's (Brink's) purpose in requiring the records specified herein is immaterial under section 11 (3) of PAIA; nonetheless, it will be apparent from his heads of argument, accessible at the said case archive, summarising and analysing the evidence in the case and arguing the conclusions and relief it supports, particularly the special orders sought in concluding paragraph 282 for the referral of a transcript of the proceedings to the Director of Public Prosecutions: South Gauteng for the investigation of perjury and suborning perjury charges against LASA NOE Nair, and to the Public Service Commission for enquiries into whether he is a fit and proper person to hold any position of trust and responsibility in the public service and why LASA's total financial damage in the case should not be recovered from him personally under the General Note of LASA's Approval Framework. The notes in the indented paragraphs below many of the enumerated record requests are for the information of the said authorities, to whom both this request and the response it elicits will be referred to support their said criminal and administrative investigations of Nair's conduct in the matter.

² Application to quash the applicant's subpoenas, Corporate Services Executive Thembele Mtati's supporting affidavit, page 4, paragraph 20. Nair confirmed under cross-examination that he instructed Mtati on the contents of the pleadings and affidavits that he (Mtati) signed in the case.

³ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 107, paragraph 81.12; Nair's confirmatory affidavit, pages 122–3.

⁴ Bundle, pages 428, 447, and 452; and bundle addendum, pages 1058 and 1060.

⁵ Bundle, page 426, third last line; and bundle addendum, page 895, 'Discussion', first paragraph.

⁶ Brink's heads of argument, pages 68–70, paragraphs 214–15.

⁷ Pleadings bundle, original response, page 143, paragraph 8.

Contradicting this allegation made to court before trial on his instructions, Nair testified on oath at trial that *all* Senior Litigators underwent a second interview. The same contradictory allegation is made on Nair's instructions in the pleadings.⁸ As said, in court Nair retracted his slur on LASA's Senior Litigators ('lacking experience in vital areas like High Court litigation skills') and told a different story under oath, contradicted by his statements to the Board (see below).

3. All and any records vouching the allegation made to court on affidavit on Nair's instructions, and supported by Nair on affidavit,⁹ that LASA had 'conducted a quality assurance in respect of the existing senior litigators and it was out of concern from the results of such exercise that the concerns around these officials were noted.'¹⁰ More particularly, the documents required are the record of the decision allegedly taken to 'conduct a quality assurance' audit of LASA's Senior Litigators' professional performance; the record of the audit; and the record where 'concerns around' their performance were 'noted'.
4. All and any records identifying which of the 'many of the senior litigators',¹¹ namely Pieter Nel at Bloemfontein; Herman Alberts at Pretoria; Mornay Calitz at Cape Town; William Karam at Johannesburg; Nzame Skibi at Mahikeng; and Elizabeth Crouse at Port Elizabeth¹² (described by Nair to the Board as 'some of our most senior and experienced lawyers'),¹³ 'have failed to live up to the required expectations as they, despite many years in practice, lacked the required Court experience'¹⁴ and are 'lacking experience in vital areas like High Court litigation skills'.¹⁵
5. All and any communications between LASA executive management and the said allegedly inexperienced and unskilled Senior Litigators concerning their alleged inadequate professional ability to do their jobs properly, as alleged by Nair in the pleadings and interlocutory affidavits before trial for the true information of court.

⁸ Pleadings bundle, original response, page 143, paragraph 10.

⁹ Application to subpoena Mlambo JP, Nair's confirmatory affidavit, pages 122–3.

¹⁰ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 81, paragraph 10.

¹¹ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 107, paragraph 81.12; Nair's confirmatory affidavit, pages 122–3.

¹² Pre-trial conference bundle, reply to the applicant's pre-trial issues, page 102. The reply drawn on NOE Brian Nair's instructions: Application to quash the applicant's subpoenas, supporting affidavit, page 4, paragraph 20; and Nair admitted in court that he instructed Mtati on the contents of the pleadings and affidavits he (Mtati) signed in the matter.

¹³ Bundle addendum, page 870, paragraph 4.

¹⁴ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 107, paragraph 81.12; Nair's confirmatory affidavit, pages 122–3.

¹⁵ Pleadings bundle, original response, page 143, paragraph 8.

6. All and any records vouching Nair's allegation to the Board in his 'Report to Board' of 26 November 2011¹⁶ under the heading 'Quality reviews of senior litigators' that 'It has therefore been agreed that a national quality review panel will be established that will include a few senior legal executives, as well as someone external to the organization, possibly a retired Judge, who would conduct these reviews. The terms of reference for these review panels will include: • an examination of the type of cases handled to determine if it complies with our requirements • an examination of the level of preparedness for their cases • a review of the appropriateness of the legal strategy adopted in their cases • a determination of whether the most appropriate outcome of the case was achieved. The review panel will be established during the third quarter of this financial year [i.e. by the end of December 2011]. All senior litigators will be reviewed by this panel before the end of this financial year¹⁷ [i.e. before 31 March 2012]. More particularly, the record required is of the decision, which Nair alleged to the Board had been 'agreed', that 'a national quality review panel will be established' to audit the performance of LASA's allegedly underperforming Senior Litigators.
7. All and any records vouching that LASA is concerned about the type of work Senior Litigators are performing, as differently alleged by Nair under oath in the witness stand at trial.

Under cross-examination, Nair radically changed his story which he had previously told the Board in his 'Report to Board' of 26 November 2011¹⁸ and court in the pleadings and interlocutory affidavits drawn on his instructions, and confirmed by him on oath, and claimed that there was no question over with the Senior Litigators' professional performance and service delivery, but with the type of work they do. In court, Nair alleged that Senior Litigators are appointed mainly to argue criminal appeals (for which reason he contended Brink was unsuitably over-qualified as an experienced civil lawyer). His false evidence in court about this is contradicted by his truthful claim to the Board in his 'Report to Board' in November 2011 that Senior Litigators, 'our most senior and experienced lawyers',¹⁹ are appointed to handle 'very complex matters ... in specialist and higher courts such as the SCA and CC',²⁰ 'impact litigation matters' and 'High profile matters which could negatively affect our reputation if not handled properly.' This accords with the advertised job description, stipulating that the professional function of Senior Litigators is 'to render legal services, primarily litigation services in complex criminal and civil matters ... specialised, complex or impact litigation matters ...

¹⁶ Bundle addendum, pages 869–70. At trial, Nair admitted having written it.

¹⁷ Bundle addendum, page 870, paragraph 4.

¹⁸ Bundle addendum, pages 869–70.

¹⁹ Ibid.

²⁰ Bundle addendum, page 869.

Provide written legal opinions ... Assist with in-house training ... mentoring and coaching to legal staff'²¹ – consistent with the purpose originally advanced to the Board for which the post was created: to employ 'professional staff that are senior enough to take on ... cases of a highly complex nature ... build up such capacity at each province linked to a high court unit. Such senior litigators would be able to undertake more complex work as well as support and mentor our other High Court staff',²² and summarised in LASA's amended response to Brink's amended statement of claim: 'to create a pool of specialist professionals whose role would be to attend to complex matters at various courts'.²³ A public statement on 5 March 2012 stated consistently again: 'In very complex matters [involving 'the rights of women and children'], our Senior Litigators provide support and advice to practitioners that need it.'²⁴ The whole thrust of the Strategic Plan 2009–12 was to scale up LASA's civil legal services delivery capacity; this is canvassed, with references, in Brink's heads of argument.²⁵

8. All and any records vouching that as at 11 March 2013,²⁶ 'The ['national quality review'] panel [for Senior Litigators] has not been constituted and terms of reference are still under consideration.'²⁷ More particularly, records are required vouching that the 'terms of reference are still under consideration'.

In truth and in fact, Nair fully stated the alleged 'terms of reference' in his 'Report to Board' of 26 November 2011.²⁸ More to the point, Nair's dissimulation to the Board and to court that the professional ability of LASA's Senior Litigators is deficient was revealed as false by his retraction of this allegation in court, and his replacement of this lie with another, namely that he is concerned about the type of work they do – then proceeding to contradict himself, the pleadings, and the record regarding the type of work they should be doing.

9. The record of the decision, which Nair alleged in his November 2011 'Report to Board' had been taken, that 'We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is [sic] being achieved by the current incumbents'.²⁹

²¹ Bundle, pages 43 and 45.

²² Bundle addendum, pages 990–1, paragraph 2.7.

²³ Pleadings bundle, amended response, page 20, paragraph 2.2.

²⁴ Bundle addendum, pages 825–6.

²⁵ Brink's heads of argument, pages 28–30, paragraphs 84–5.

²⁶ Bundle addendum, page 986.

²⁷ Bundle addendum, page 988, 'Other new documents required', items 48–50.

²⁸ Bundle addendum, page 870, paragraph 4.

²⁹ Bundle addendum, page 869.

10. All and any records identifying the ‘recruitment challenges’³⁰ alleged by Nair in his November 2011 ‘Report to Board’ to have prevented the promotion of Durban High Court Unit Manager Bongani Mngadi to the Durban Senior Litigator post for which he was recommended on 23 November 2009.³¹

Contradicting this allegation to the Board, and featuring nowhere in the pleadings and several affidavits in the matter, all essaying into the alleged budgetary reason for the abortion of the substantially completed Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, Nair informed the Portfolio Committee on 11 October 2010 that ‘LASA had no problems with regards to recruiting lawyers³² ... There was a good trend for quality monitoring and the practitioners were performing well within target range.’³³

11. All and any communications by letter or email between the South African Human Rights Commission (‘SAHRC’) and LASA concerning the arrangement of the SAHRC’s PAIA training workshop for LASA’s national office staff held at the SAHRC Training Centre³⁴ in Braamfontein on 6 October 2011.³⁵

As the SAHRC explained it in its subsequent report on the workshop, ‘The rationale for the training rested on ... the Commission’s monitoring of LASA institutional compliance with PAIA [arising from ‘Brink’s repeated complaints³⁶ about LASA’s persistent illegal refusal³⁷ to surrender duly requested records]³⁸ and the need to ensure that clients [i.e. records requestors, such as Brink collecting evidence in August³⁹ and December 2010⁴⁰ and March 2011⁴¹ for the proof of his contemplated unfair discrimination claim] who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants’.⁴² In court, Nair denied, under oath, that he was aware that the SAHRC held this special PAIA training workshop held for LASA’s national office staff. Nair’s denial, under oath, is being independently verified with the SAHRC.

³⁰ Ibid.

³¹ Bundle, pages 244–8.

³² Bundle addendum, page 963.

³³ Bundle addendum, pages 961–2.

³⁴ Bundle addendum, page 922.

³⁵ Bundle addendum, pages 915–21.

³⁶ Bundle, pages 315ff; 353ff; 395ff; and 401ff.

³⁷ Bundle, pages 101ff; 210ff; and 363ff.

³⁸ Bundle, pages 49ff; 174ff; and 344ff. See also Brink’s First and Second Memoranda to SAHRC regarding LASA’s refusals to comply with PAIA: pages 315ff and 401ff.

³⁹ Bundle, pages 49–69.

⁴⁰ Bundle, pages 174–85.

⁴¹ Bundle addendum, pages 344–52.

⁴² Bundle addendum, page 915.

12. All and any communications by letter or email to or from Nair about the SAHRC's PAIA training workshop.
13. The SAHRC's letter or email covering its 'LASA Workshop Report | 2011',⁴³ (not the report itself, which Brink has already obtained from the SAHRC).
14. All and any communications by letter or email to or from Nair about the SAHRC's PAIA workshop report.
15. LASA's acknowledgement of receipt of the SAHRC's PAIA workshop report.
16. All and any communications, memoranda, minutes, reports, recommendations and the like – including to the Board – following LASA's receipt of the SAHRC's PAIA training workshop report noting LASA's 'challenges [in] complying with PAIA';⁴⁴ its 'lack of application based knowledge';⁴⁵ 'the fact that they had previously been misapplying the provisions of PAIA';⁴⁶ that this 'misinterpretation and misapplication was identified as high risk to LASA';⁴⁷ 'LASA compliance history was flagged with participants and most reacted to the reporting of LASA as non-compliant to Parliament with concern';⁴⁸ 'Most participants were a little overwhelmed by the requirements of the legislation';⁴⁹ 'personnel from the Legal Department were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA and to create guidelines within the organisation to ensure misapplication does not recur';⁵⁰ and 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation'.⁵¹
17. All and any records vouching that LASA proceeded to 'review decisions which may not have had justification in terms of PAIA', as 'undertaken' to the SAHRC.

LASA's section 32 reports for 2010/11 and 2011/12 show that unlike Brink's, other PAIA requests were fully complied with, none refused.⁵² On 26 October 2011, three weeks after this minuted undertaking given the SAHRC, LASA, on Nair's instructions, again refused to surrender records Brink had duly requested under PAIA and had requested again after the close of pleadings in the litigation, alleging to court that they were 'lawfully refused in terms of the Promotion of Access to Information

⁴³ Bundle addendum, pages 915–21.

⁴⁴ Bundle addendum, page 916.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Bundle addendum, page 919.

⁴⁹ Ibid.

⁵⁰ Bundle addendum, page 920.

⁵¹ Ibid.

⁵² Bundle addendum, pages 679 and 867.

Act⁵³ ... the Applicant's requests in terms of the Promotion of Access to Information Act, 2000 ("PAIA") were answered completely and lawfully and those documents that were refused were refused in terms of the law.⁵⁴ Yet again on 16 January 2013, in breach of LASA's minuted undertaking to the SAHRC to 'review decisions which may not have had justification in terms of PAIA', LASA claimed to court on affidavit on Nair's instructions that 'the Applicant's unending demands [i.e. Brink's 'tirade of letters to Legal Aid SA demanding access to certain information under the Promotion of Access to Information Act']⁵⁵ were validly refused by Legal Aid SA and some were, after internal reviews of its decision, allowed to the Applicant.'⁵⁶ Nair supported these sworn allegations, made on his instructions, with a confirmatory affidavit of his own.⁵⁷ In truth and in fact, contrary to the lies told court in LASA's affidavits before court about this, there were no 'internal reviews of its decision' to withhold⁵⁸ ('unlawful[ly]',⁵⁹ the SAHRC agreed, and LASA admitted)⁶⁰ the outstanding records enumerated in Brink's Second Memorandum to the SAHRC in April 2011,⁶¹ and LASA continued withholding them. Many, but not all, were eventually disgorged in the litigation, only through persistent appeals to court for relief: an application to compel discovery,⁶² converted at Brink's request into a pre-trial conference at court,⁶³ followed by another when LASA refused, then, retracting its refusal, failed to make discovery as undertaken at the first conference.⁶⁴

18. All and any records vouching that LASA proceeded 'to create guidelines within the organisation to ensure misapplication does not recur', as 'undertaken' to the SAHRC.

As said, in breach of its undertaking to the SAHRC, LASA, instructed by Nair, persisted in withholding records originally requested by Brink under PAIA and repeatedly alleged to court that it had complied with Brink's PAIA requests, contradicting its admission at the SAHRC's PAIA training workshop that it 'had previously been misapplying the provisions of PAIA'⁶⁵ (in refusing Brink's record

⁵³ Pre-trial conference bundle, page 65, paragraph 87.3.

⁵⁴ Pre-trial conference bundle, page 66, paragraph 87.8.

⁵⁵ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 87, paragraph 27.

⁵⁶ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 87, paragraph 30.

⁵⁷ Application to subpoena Mlambo JP, Nair's confirmatory affidavit, pages 122–3.

⁵⁸ Bundle, pages 401–14.

⁵⁹ Bundle, page 499, paragraph 2.

⁶⁰ Bundle addendum, page 916, penultimate paragraph.

⁶¹ Bundle, pages 401–14.

⁶² Application to compel, volumes 1 and 3.

⁶³ Agenda for January 2013 pre-trial conference at court.

⁶⁴ Agenda for June 2013 pre-trial conference at court.

⁶⁵ Bundle addendum, page 916.

requests) and that this ‘misinterpretation and misapplication was identified as high risk to LASA’.⁶⁶

19. All and any records vouching that ‘a clear budget dedicated to PAIA compliance and implementation’, the ‘need’ for which ‘LASA ... identified’⁶⁷ to the SAHRC, was discussed by any competent committee at LASA after the PAIA training workshop and proposed to the Board for approval.
20. All and any email between Nair and Mtati and/or Sekgota over the period 20–24 August 2012 in the matter of the ‘Amendment of LASA Section 32 Report’ for 2011/12 demanded by SAHRC PAIA Unit director Fola Adeleke on 20 August 2012:

‘As per our earlier conversation, please find attached the scanned PAIA request from Brink to LASA and LASA’s response to the request. Please report it in your s 32 report and send back to me as a matter of urgency.’ (Which demand for an amended, accurate section 32 report to the SAHRC for the accurate, truthful information of the National Assembly LASA refused on 22 August 2012.) And again, per the SAHRC, on 22 August 2012: ‘We note with concern however that reference is made in your email to a number of requests from Adv. Brink. This does not reflect in either of your reports to the Commission [for 2010/11⁶⁸ or 2011/12].⁶⁹ We note further that the requester’s reason for requesting particular information is being deduced. It should be noted that PAIA is quite clear that requests made to public bodies do not have to be supported or justified by a reason for the request. Similarly, requests made prior to notification of litigation should not have to be supported by a reason or purpose for the stipulated information. We remain concerned therefore about the accuracy of your section 32 report and need to advise that we intend auditing the veracity shortly. Notice of the audit will be issued in due course.’⁷⁰

21. All and any communications between the SAHRC and LASA by letter or email concerning the SAHRC’s decision to subject LASA to a full audit for PAIA compliance, announced by the SAHRC to the National Assembly in October 2012 in its section 84 PAIA report for 2011/12, in which it reported LASA’s failure to comply with its PAIA reporting obligations to the SAHRC:

⁶⁶ Ibid.

⁶⁷ Bundle, page 920.

⁶⁸ Bundle, pages 678–9.

⁶⁹ Bundle, pages 866–7.

⁷⁰ Both emails on 20 and 22 August 2012 from SAHRC PAIA Unit director Fola Adeleke to Mtati – subsequent to the special lesson the SAHRC had given LASA’s officers about the irrelevance, under section 11 (3), of a PAIA records requestor’s reasons for a records request, quoted above.

‘A case in point [was] where a complainant [Brink] brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA’s 2010/11 section 32 report despite the fact that the requests were made in that financial year. ... The Commission engaged with LASA and remains concerned about the accuracy of section 32 reporting by LASA⁷¹ ... The Commission intends auditing LASA fully in the course of the 2012/13 financial year.’⁷² In court, LASA’s national deputy information officer Nair⁷³ claimed under oath not to have known that the SAHRC had audited LASA for compliance with PAIA. According to SAHRC PAIA Unit director Fola Adeleke, per email to Brink on 18 January 2013: ‘I confirm the LASA audit is currently underway and the officers who received the audit questionnaire this week did not include Mr Mtati.’

22. The SAHRC’s PAIA audit questionnaire sent LASA in mid-January 2013.

As said, Nair denied in court, under oath, that he knew LASA had been subjected to a full audit for PAIA compliance by the SAHRC arising from his and information officer Vidhu Vedalankar’s persistent illegal refusal to surrender records duly requested by Brink and its repeated false reporting to the SAHRC under section 32 to conceal this. The veracity of Nair’s denial, under oath, is being independently verified with the SAHRC.

23. Emails or letters from the SAHRC covering the PAIA audit questionnaire sent to LASA, showing ‘the officers who received the audit questionnaire’ (per Adeleke to Brink, quoted above).

24. LASA’s officers’ response(s) to the SAHRC’s PAIA audit questionnaire, and covering letter(s) or email(s) to the SAHRC.

25. The SAHRC’s acknowledgment of receipt of LASA’s officer’s response(s) to its PAIA audit questionnaire.

26. All and any correspondence with the Minister and/or the Portfolio Committee on Justice and Constitutional Development concerning the SAHRC’s section 84 PAIA report for 2011/12 to the National Assembly, in which the SAHRC reported LASA as non-compliant⁷⁴ – which matter was raised with Vedalankar at LASA’s presentation of its annual and other reports on 9 October 2012⁷⁵ by Portfolio Committee chairperson Hon Landers⁷⁶ and member Hon Jeffery⁷⁷ (now Deputy Minister), to which she responded,

⁷¹ Bundle addendum, page 927, fourth paragraph.

⁷² Bundle addendum, page 928, second paragraph.

⁷³ Bundle, page 387.

⁷⁴ Bundle addendum, pages 927–8.

⁷⁵ Bundle addendum, page 894.

⁷⁶ Bundle addendum, page 896, ‘The Chairperson said ...’.

before reading the SAHRC's section 84 report, that it was 'untrue'⁷⁸ because 'Legally one could not use PAIA when one was in court',⁷⁹ whereupon 'The Chairperson [of the Portfolio Committee] told the delegation that they would arrange for Legal Aid to view the PAIA report.'⁸⁰

The very 'rationale' of the PAIA training workshop was precisely to educate LASA's legally 'challenge[d]' national office staff in the elementary principle that requesters seeking records with a view to litigating to vindicate their violated rights and 'who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants'.⁸¹ According to the attendance register, Vedalankar and Nair bunked the special lesson the SAHRC specially delivered for them as information officer and national deputy information officer.⁸² Hence Vedalankar's false and legally clueless statement (emanating from Nair; see below) to the Portfolio Committee right after the special remedial lesson the SAHRC had given LASA about the irrelevance under section 11 (3) of a PAIA records requestor's reasons for a records request, including for the purpose of gathering documentary evidence to vindicate his violated fundamental rights by way of intended litigation. The source of this false and legally clueless statement to the Portfolio Committee was Nair: he instructed LASA's counsel to persist with it ignorantly at trial. (Brink was not 'in court' when he made his three illegally refused PAIA requests.)

27. All and any correspondence exchanged between LASA and the SAHRC concerning the SAHRC's PAIA section 84 report for 2011/12, which reported LASA to the National Assembly as a PAIA delinquent.⁸³
28. Records identifying what posts were frozen as at 30 November 2009;⁸⁴ as at 31 March 2010;⁸⁵ and as at 30 June 2010.⁸⁶ (The recruitment/vacancy/budget statistics for these months, supplied to Brink, all claim 'Excluding frozen positions'.)
29. The instruction to alter the recruitment/vacancy/budget statistics as at 30 June 2010 before furnishing them to Brink on 5 July 2013.

The PDF file name given to the said statistics before supplying them is: 'Recruitment as at 30 June 2010 with frozen removed'.⁸⁷

⁷⁷ Bundle addendum, page 895, 'Mr J Jeffery...'.
⁷⁸ Bundle addendum, page 896, sixth paragraph.

⁷⁹ Ibid.
⁸⁰ Bundle addendum, page 895.

⁸¹ Bundle addendum, page 915.
⁸² Ibid.

⁸³ Bundle addendum, pages 925–30.
⁸⁴ Bundle addendum, pages 1027–9.

⁸⁵ Bundle addendum, pages 1030–33.
⁸⁶ Bundle addendum, pages 1065–9.

30. The instruction to alter the recruitment/vacancy/budget statistics after 30 June 2010, to reflect that the Eastern Cape has only one budgeted, filled Senior Litigator post.⁸⁸

By June 2010 LASA's recruitment statistics had been duly updated in compliance with the Legal Services Technical Committee's ('LSTC') minuted instruction to then Legal Services Delivery Officer Bee-Mari Schoeman on 24 March 2010 'to update recruitment reports as well as facilitate the transfer of the budget. ... Due Date ... Immediate'.⁸⁹ Whereas the March 2010 statistics show one Senior Litigator post budgeted, one filled, and no vacancies,⁹⁰ the June 2010 statistics correctly show two Senior Litigator posts budgeted, one filled, and one vacant.⁹¹ The December 2010 statistics again show one budgeted, filled Senior Litigator post.

31. The record of Chief Operations Officer Jerry Makokoane's delegation as a national deputy information officer.

At trial Nair denied, under oath, that as deputy information officer he authored LASA's section 32 report for 2011/12,⁹² and alleged, under oath, that Makokoane had also been appointed as a national deputy information officer, so he must have written this false section 32 report to the SAHRC. Significantly, however, Makokoane never handled any of Brink's PAIA requests; and the report was signed by Corporate Legal Manager Solly Sekgota on 8 April 2011,⁹³ the same day that Nair signed his responses and section 23 affidavits in respect of Brink's first, second and third PAIA requests.⁹⁴ And in one of these affidavits, Nair identifies himself: 'I am the [singular] Deputy Information Officer duly delegated by the Information Officer in terms of section 17 of the Promotion of Access to Information Act 2 of 2000.'⁹⁵ Vedalankar appointed Nair 'the Deputy Information Officer for Legal Aid South Africa' – singular – on 1 March 2011.⁹⁶ (All Regional Operations Executives are deputy information officers for their regions.)

32. Nair's email to Corporate Legal Manager Solly Sekgota covering the PAIA section 32 report for 2011/12 that he drew for him to sign and submit to the SAHRC.⁹⁷

⁸⁷ Bundle addendum, page 1071.

⁸⁸ Bundle addendum, page 1070.

⁸⁹ Bundle addendum, page 709.

⁹⁰ Bundle, addendum, page 1031.

⁹¹ Bundle, addendum, page 1066.

⁹² Bundle, addendum, page 679.

⁹³ Bundle, addendum, page 678.

⁹⁴ Bundle, pages 363–86.

⁹⁵ Bundle, page 363.

⁹⁶ Bundle, page 387.

⁹⁷ Bundle addendum, pages

Sekgota had no authority to sign a PAIA section 32 report to the SAHRC. The point of making him sign it appears to have been an attempt to evade accountability for its false contents.

33. The record of counsel's advice⁹⁸ allegedly given information officer Vedalankar, supporting her refusal on 18 October 2010⁹⁹ to surrender records duly requested by Brink in August and December 2010, with which refusals she persisted on 28 January 2011,¹⁰⁰ even rejecting Brink's compulsory request fee.¹⁰¹

Brink requested a total of 69 specified records in his first two requests of August and December 2010 to test the truth of Nair's and Vedalankar's allegations to him about the circumstances in which his recruitment to the Pietermaritzburg Senior Litigator post had been aborted. After her first blanket refusal on 18 October 2010, Vedalankar put up seven records on 28 January 2011, besides five Brink already had, 'To demonstrate'¹⁰² her allegation – later repeated by her,¹⁰³ Nair¹⁰⁴ and HRE Clark¹⁰⁵ under oath on affidavit on 8 April 2011 – that budgetary insufficiency prevented Brink's appointment, and that for this reason the Durban and Mthatha Senior Litigator recruitments were also aborted and the three posts were frozen.¹⁰⁶ In court, also under oath, Nair told a different story and claimed that the Mthatha Senior Litigator post was never frozen, that the abortion of the Mthatha Senior Litigator recruitment had nothing to do with any budgetary consideration, and that it took place earlier than the abortion of the Pietermaritzburg and Durban Senior Litigator recruitments. Contradicting all prior allegations consistently made in correspondence, pleadings and affidavits, Nair alleged in court that the reason the Mthatha Senior Litigator recruitment was cancelled was because in early July 2010 Vedalankar refused to approve the LSTC's resolution on 24 March 2010 to abolish the Kimberley Senior Litigator post, create a new Senior Litigator post at Mthatha and transfer the budget, because she 'was not in support' and was 'not happy' with it, and no matter how often he tried persuading her to agree, and he tried repeatedly, he just could not make her 'happy' – even though the Kimberley Justice Centre had volunteered that it had no need for its vacant Senior Litigator post and had suggested that it be transferred to another centre more in need of it;¹⁰⁷ the

⁹⁸ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 102, paragraph 75.2.

⁹⁹ Bundle, pages 101–4.

¹⁰⁰ Bundle, pages 210–24.

¹⁰¹ Bundle addendum, page 1041.

¹⁰² Bundle, pages 213–16.

¹⁰³ Bundle addendum, pages 390–1.

¹⁰⁴ Bundle addendum, pages 380–1, paragraph 13.

¹⁰⁵ Bundle addendum, pages 392–3.

¹⁰⁶ Bundle, page 103, paragraph 6.7; and page 104, paragraph 7.3; and page 212, paragraph 7.

¹⁰⁷ Bundle addendum, pages 736–7.

Eastern Cape had strongly motivated for the creation of a Senior Litigator post at Mthatha where it was pressingly needed to cover the vast stated distances between the four High Courts of the Eastern Cape;¹⁰⁸ and the LSTC, chaired by Nair,¹⁰⁹ including COO Makokoane and Legal Development Executive Patrick Hundermark,¹¹⁰ had unanimously resolved to abolish the 'redundant'¹¹¹ Kimberley Senior Litigator post, to create one at Mthatha, and to transfer the budget.¹¹² The result of Vedalankar's refusal to approve the transfer of the post, Nair testified, under oath, was that the Mthatha Senior Litigator recruitment process had to be aborted and the budget returned to Kimberley (where the Kimberley Justice Centre said it was not needed).¹¹³ He said he was unaware of any record of Vedalankar's refusal to approve the LSTC resolution resulting in the abortion of the recruitment for the Mthatha Senior Litigator post, for which Mahikeng Senior Litigator Adv Nzame Skibi had been selected and recommended for appointment¹¹⁴ and 'lateral transfer'¹¹⁵ to it.

34. The record of Vedalankar's approval of the LSTC's resolution to abolish the Kimberley Senior Litigator post, create a new Senior Litigator post at Mthatha, and transfer the budget, before the Mthatha Senior Litigator post was advertised in April 2010¹¹⁶ and Adv Nzame Skibi was recommended for appointment to it on 24 May.¹¹⁷

Note 17 of the Approval Framework stipulates that 'It is the responsibility of the line function Executive to ensure that such [post] is provided for in the budget and MTEF and that a vacancy exists in respect of the post concerned. HRE to confirm budget and vacancy ... with regard to a JC/region/dept.'¹¹⁸ The post therefore could not have been advertised and recruited for if had Nair and Clark not confirmed that it existed as an approved vacant budgeted post.

35. The record of Vedalankar's refusal to approve the abolition of the 'redundant'¹¹⁹ Kimberley Senior Litigator post, the creation of the pressingly needed Mthatha Senior Litigator post, and the transfer of the budget.

¹⁰⁸ Bundle addendum, pages 738–40.

¹⁰⁹ Bundle addendum, page 767, section 2.3; and page 708.

¹¹⁰ Bundle addendum, page 708

¹¹¹ Bundle addendum, page 738, paragraph 1.

¹¹² Bundle addendum, page 709, paragraph 4.1.7.

¹¹³ Bundle, page 736, 'Background'.

¹¹⁴ Bundle addendum, pages 994–7.

¹¹⁵ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 104, paragraph 99.5.

¹¹⁶ Bundle, page 46.

¹¹⁷ Bundle addendum, pages 994–7.

¹¹⁸ Bundle addendum, page 1040.

¹¹⁹ Bundle addendum, page 738, paragraph 1.

This was Nair’s new allegation in court, radically contradicting and changing the three-simultaneously-frozen-Senior-Litigator-posts story, previously alleged in correspondence with Brink, in affidavits and in the pleadings, including the in the amended response setting out LASA’s defence version for trial – a new story told nowhere in any of the said documents.

36. All communications between Mlambo JP and Vedalankar and Nair regarding Brink’s first petition to the Board on 30 November 2010¹²⁰ protesting Vedalankar’s illegal blanket refusal¹²¹ of his August 2010 request for 51 specified records under section 11 (1) of PAIA or sworn certification under section 23 that they did not exist, and the manifestly irregular abortion of his recruitment in light of the surge in recruitment and new post creation in the first quarter April to June 2010, and the advertisement in April for a Senior Litigator for Mthatha, while his recruitment remained silently unfinalised¹²² – the dismissive response¹²³ to which was written on Vedalankar’s own computer (‘VidhuV’)¹²⁴ with Mlambo JP’s signature image pasted in with his ‘knowledge and consent’¹²⁵ according to Mtati instructed by Nair.
37. The email from Vedalankar to Mlambo JP in December 2010 covering the letter she drew on her computer for him, with his signature image pasted in, to send to Brink dismissing his fundamental rights violation complaints, which letter Mlambo JP emailed to Brink on 30 December 2010.
38. The Minister’s demand for an explanation following Brink’s third petition to the Board on 25 February 2011, copied to the Minister and to Parliament, about Vedalankar’s persistent, repeated illegal refusal to surrender records duly requested under PAIA and the plainly irregular abortion of his recruitment to the Pietermaritzburg Senior Litigator post on the evidence then known to him.
39. Mlambo JP’s letter or email to the Minister covering the ‘Confidential ... report ... Re: Adv Anthony Brink’¹²⁶ on 9 March 2011 that Nair wrote.¹²⁷
40. Nair’s covering email to Vedalankar to which he attached the letter he drew for her to send Brink on 18 October 2010,¹²⁸ refusing his entire 51-item PAIA request of August 2010 on the basis of a false statement of legal principles claimed applicable and a fake

¹²⁰ Bundle, pages 109–65.

¹²¹ Bundle, pages 113–19, paragraphs 17–43.

¹²² Bundle, page 119ff, paragraphs 44ff.

¹²³ Bundle, page 186.

¹²⁴ Bundle, page 187.

¹²⁵ Pre-trial conference bundle, answer to agenda, page 61, paragraph 69.2.

¹²⁶ Bundle addendum, pages

¹²⁷ Bundle addendum, page 1015. In court, Nair admitted having written it, having left his electronic fingerprints on it in the ‘Author’ properties folder: ‘Briann’.

¹²⁸ Bundle, pages 101–4.

quotation from a reported judgment claimed to support them putting words in the judge's mouth exactly the opposite of what her reported judgment states,¹²⁹ and alleging that the 'Durban, Pietermaritzburg and Mthatha'¹³⁰ Senior Litigator posts had been 'frozen ... In July 2010' on account of budgetary insufficiency.¹³¹

Under penalty of perjury, Vedalankar, Nair and Clark all confirmed this story on affidavit on 8 April 2011.¹³² In court, however, Nair changed this story and alleged that the Mthatha Senior Litigator post was not frozen; instead, despite his repeated attempts to persuade her, Vedalankar had refused to approve the abolition of the unwanted Kimberley Senior Litigator post, the creation of a new sorely needed Senior Litigator post at Mthatha and the transfer of the budget. Notwithstanding the repeated use in Vedalankar's October 2010 letter of Nair's characteristic (he admitted in court) sentence lead-in, 'Noting [etc]', Nair denied in court, under oath, that he drafted the letter for Vedalankar, thus implicitly blaming and inculpating her for telling Brink the lies it contained, some of which lies Nair retracted in court. (In evidence, Brink recorded that he was satisfied that Nair had ghost-written Vedalankar's letters to him, and that for this reason he held Vedalankar clear of responsibility for them. Likewise, for the same reason, he held Mlambo JP clear for the false reports Nair wrote for him to sign and submit to the Minister¹³³ and to the chairperson of the Portfolio Committee¹³⁴ to pervert¹³⁵ their independent enquiries launched into Brink's fundamental rights violation complaints. Nair's authorship¹³⁶ of these false reports to the Minister and to Parliament that he gave Mlambo JP to sign and submit was discovered by Brink only a month before trial.)¹³⁷

41. Nair's covering email to Vedalankar to which he attached the letter he drew for Vedalankar to send Brink on 28 January 2011,¹³⁸ refusing his second PAIA request on 15 December 2010, refusing his August 2010 request again, and reiterating the budgetary justification advanced in October 2010 for the abortion of the applicant's recruitment.¹³⁹

¹²⁹ Bundle, pages 113–19, paragraphs 17–43.

¹³⁰ Bundle, page 104, paragraph 7.3.

¹³¹ Bundle, page 101, paragraph 6.7.

¹³² Bundle, pages 380–1, paragraph 13; pages 390–1; and 392–3.

¹³³ Bundle addendum, pages 1012 – 4.

¹³⁴ Bundle, pages 505–7.

¹³⁵ Bundle, page 502.

¹³⁶ Bundle addendum, page 1015.

¹³⁷ Bundle addendum, 1019, paragraph 8.1; page 1017: date of conference: 7 June 2013. As he undertook to do, Mtati duly emailed Brink a PDF of the 'Confidential ... Report ... Re: Adv Anthony Brink' to the Minister a couple of days later.

¹³⁸ Bundle, pages 210–24.

¹³⁹ Bundle, page 223, paragraph 39.

In court, Nair also denied, under oath, that he drafted this January 2011 letter for Vedalankar, thus implicitly blaming and inculpating her for telling Brink the lies it contained, some of which lies Nair retracted in court.

NOTE WELL:

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

90 Offences

(1) A person who with intent to deny a right of access in terms of this Act-
 (a) destroys, damages or alters a record;
 (b) conceals a record; or
 (c) falsifies a record or makes a false record,
 commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

23 Records that cannot be found or do not exist

(1) If-
 (a) all reasonable steps have been taken to find a record requested; and
 (b) there are reasonable grounds for believing that the record-
 (i) is in the public body's possession but cannot be found; or
 (ii) does not exist,
 the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.
 (2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

25 Decision on request and notice thereof

(1) Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part apply, the information officer to whom the request is made or transferred, must, as soon as reasonably possible, but in any event within 30 days, after the request is received-
 (a) decide in accordance with this Act whether to grant the request; and
 (b) notify the requester of the decision and, if the requester stated, as contemplated in section 18
 (2) (e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

INTERPRETATION ACT 33 OF 1957

4 Reckoning of number of days

When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.

Contradicting this allegation made to court before trial on his instructions, Nair testified on oath at trial that *all* Senior Litigators underwent a second interview. The same contradictory allegation is made on Nair's instructions in the pleadings.⁸ As said, in court Nair retracted his slur on LASA's Senior Litigators ('lacking experience in vital areas like High Court litigation skills') and told a different story under oath, contradicted by his statements to the Board (see below).

3. All and any records vouching the allegation made to court on affidavit on Nair's instructions, and supported by Nair on affidavit,⁹ that LASA had 'conducted a quality assurance in respect of the existing senior litigators and it was out of concern from the results of such exercise that the concerns around these officials were noted.'¹⁰ More particularly, the documents required are the record of the decision allegedly taken to 'conduct a quality assurance' audit of LASA's Senior Litigators' professional performance; the record of the audit; and the record where 'concerns around' their performance were 'noted'.
4. All and any records identifying which of the 'many of the senior litigators',¹¹ namely Pieter Nel at Bloemfontein; Herman Alberts at Pretoria; Mornay Calitz at Cape Town; William Karam at Johannesburg; Nzame Skibi at Mahikeng; and Elizabeth Crouse at Port Elizabeth¹² (described by Nair to the Board as 'some of our most senior and experienced lawyers'),¹³ 'have failed to live up to the required expectations as they, despite many years in practice, lacked the required Court experience'¹⁴ and are 'lacking experience in vital areas like High Court litigation skills'.¹⁵
5. All and any communications between LASA executive management and the said allegedly inexperienced and unskilled Senior Litigators concerning their alleged inadequate professional ability to do their jobs properly, as alleged by Nair in the pleadings and interlocutory affidavits before trial for the true information of court.

⁸ Pleadings bundle, original response, page 143, paragraph 10.

⁹ Application to subpoena Mlambo JP, Nair's confirmatory affidavit, pages 122–3.

¹⁰ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 81, paragraph 10.

¹¹ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 107, paragraph 81.12; Nair's confirmatory affidavit, pages 122–3.

¹² Pre-trial conference bundle, reply to the applicant's pre-trial issues, page 102. The reply drawn on NOE Brian Nair's instructions: Application to quash the applicant's subpoenas, supporting affidavit, page 4, paragraph 20; and Nair admitted in court that he instructed Mtati on the contents of the pleadings and affidavits he (Mtati) signed in the matter.

¹³ Bundle addendum, page 870, paragraph 4.

¹⁴ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 107, paragraph 81.12; Nair's confirmatory affidavit, pages 122–3.

¹⁵ Pleadings bundle, original response, page 143, paragraph 8.

6. All and any records vouching Nair's allegation to the Board in his 'Report to Board' of 26 November 2011¹⁶ under the heading 'Quality reviews of senior litigators' that 'It has therefore been agreed that a national quality review panel will be established that will include a few senior legal executives, as well as someone external to the organization, possibly a retired Judge, who would conduct these reviews. The terms of reference for these review panels will include: • an examination of the type of cases handled to determine if it complies with our requirements • an examination of the level of preparedness for their cases • a review of the appropriateness of the legal strategy adopted in their cases • a determination of whether the most appropriate outcome of the case was achieved. The review panel will be established during the third quarter of this financial year [i.e. by the end of December 2011]. All senior litigators will be reviewed by this panel before the end of this financial year¹⁷ [i.e. before 31 March 2012]. More particularly, the record required is of the decision, which Nair alleged to the Board had been 'agreed', that 'a national quality review panel will be established' to audit the performance of LASA's allegedly underperforming Senior Litigators.
7. All and any records vouching that LASA is concerned about the type of work Senior Litigators are performing, as differently alleged by Nair under oath in the witness stand at trial.

Under cross-examination, Nair radically changed his story which he had previously told the Board in his 'Report to Board' of 26 November 2011¹⁸ and court in the pleadings and interlocutory affidavits drawn on his instructions, and confirmed by him on oath, and claimed that there was no question over with the Senior Litigators' professional performance and service delivery, but with the type of work they do. In court, Nair alleged that Senior Litigators are appointed mainly to argue criminal appeals (for which reason he contended Brink was unsuitably over-qualified as an experienced civil lawyer). His false evidence in court about this is contradicted by his truthful claim to the Board in his 'Report to Board' in November 2011 that Senior Litigators, 'our most senior and experienced lawyers',¹⁹ are appointed to handle 'very complex matters ... in specialist and higher courts such as the SCA and CC',²⁰ 'impact litigation matters' and 'High profile matters which could negatively affect our reputation if not handled properly.' This accords with the advertised job description, stipulating that the professional function of Senior Litigators is 'to render legal services, primarily litigation services in complex criminal and civil matters ... specialised, complex or impact litigation matters ...

¹⁶ Bundle addendum, pages 869–70. At trial, Nair admitted having written it.

¹⁷ Bundle addendum, page 870, paragraph 4.

¹⁸ Bundle addendum, pages 869–70.

¹⁹ Ibid.

²⁰ Bundle addendum, page 869.

Provide written legal opinions ... Assist with in-house training ... mentoring and coaching to legal staff'²¹ – consistent with the purpose originally advanced to the Board for which the post was created: to employ 'professional staff that are senior enough to take on ... cases of a highly complex nature ... build up such capacity at each province linked to a high court unit. Such senior litigators would be able to undertake more complex work as well as support and mentor our other High Court staff',²² and summarised in LASA's amended response to Brink's amended statement of claim: 'to create a pool of specialist professionals whose role would be to attend to complex matters at various courts'.²³ A public statement on 5 March 2012 stated consistently again: 'In very complex matters [involving 'the rights of women and children'], our Senior Litigators provide support and advice to practitioners that need it.'²⁴ The whole thrust of the Strategic Plan 2009–12 was to scale up LASA's civil legal services delivery capacity; this is canvassed, with references, in Brink's heads of argument.²⁵

8. All and any records vouching that as at 11 March 2013,²⁶ 'The ['national quality review'] panel [for Senior Litigators] has not been constituted and terms of reference are still under consideration.'²⁷ More particularly, records are required vouching that the 'terms of reference are still under consideration'.

In truth and in fact, Nair fully stated the alleged 'terms of reference' in his 'Report to Board' of 26 November 2011.²⁸ More to the point, Nair's dissimulation to the Board and to court that the professional ability of LASA's Senior Litigators is deficient was revealed as false by his retraction of this allegation in court, and his replacement of this lie with another, namely that he is concerned about the type of work they do – then proceeding to contradict himself, the pleadings, and the record regarding the type of work they should be doing.

9. The record of the decision, which Nair alleged in his November 2011 'Report to Board' had been taken, that 'We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is [sic] being achieved by the current incumbents'.²⁹

²¹ Bundle, pages 43 and 45.

²² Bundle addendum, pages 990–1, paragraph 2.7.

²³ Pleadings bundle, amended response, page 20, paragraph 2.2.

²⁴ Bundle addendum, pages 825–6.

²⁵ Brink's heads of argument, pages 28–30, paragraphs 84–5.

²⁶ Bundle addendum, page 986.

²⁷ Bundle addendum, page 988, 'Other new documents required', items 48–50.

²⁸ Bundle addendum, page 870, paragraph 4.

²⁹ Bundle addendum, page 869.

10. All and any records identifying the ‘recruitment challenges’³⁰ alleged by Nair in his November 2011 ‘Report to Board’ to have prevented the promotion of Durban High Court Unit Manager Bongani Mngadi to the Durban Senior Litigator post for which he was recommended on 23 November 2009.³¹

Contradicting this allegation to the Board, and featuring nowhere in the pleadings and several affidavits in the matter, all essaying into the alleged budgetary reason for the abortion of the substantially completed Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, Nair informed the Portfolio Committee on 11 October 2010 that ‘LASA had no problems with regards to recruiting lawyers³² ... There was a good trend for quality monitoring and the practitioners were performing well within target range.’³³

11. All and any communications by letter or email between the South African Human Rights Commission (‘SAHRC’) and LASA concerning the arrangement of the SAHRC’s PAIA training workshop for LASA’s national office staff held at the SAHRC Training Centre³⁴ in Braamfontein on 6 October 2011.³⁵

As the SAHRC explained it in its subsequent report on the workshop, ‘The rationale for the training rested on ... the Commission’s monitoring of LASA institutional compliance with PAIA [arising from ‘Brink’s repeated complaints³⁶ about LASA’s persistent illegal refusal³⁷ to surrender duly requested records]³⁸ and the need to ensure that clients [i.e. records requestors, such as Brink collecting evidence in August³⁹ and December 2010⁴⁰ and March 2011⁴¹ for the proof of his contemplated unfair discrimination claim] who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants’.⁴² In court, Nair denied, under oath, that he was aware that the SAHRC held this special PAIA training workshop for LASA’s national office staff. Nair’s denial, under oath, is being independently verified with the SAHRC.

³⁰ Ibid.

³¹ Bundle, pages 244–8.

³² Bundle addendum, page 963.

³³ Bundle addendum, pages 961–2.

³⁴ Bundle addendum, page 922.

³⁵ Bundle addendum, pages 915–21.

³⁶ Bundle, pages 315ff; 353ff; 395ff; and 401ff.

³⁷ Bundle, pages 101ff; 210ff; and 363ff.

³⁸ Bundle, pages 49ff; 174ff; and 344ff. See also Brink’s First and Second Memoranda to SAHRC regarding LASA’s refusals to comply with PAIA: pages 315ff and 401ff.

³⁹ Bundle, pages 49–69.

⁴⁰ Bundle, pages 174–85.

⁴¹ Bundle addendum, pages 344–52.

⁴² Bundle addendum, page 915.

12. All and any communications by letter or email to or from Nair about the SAHRC's PAIA training workshop.
13. The SAHRC's letter or email covering its 'LASA Workshop Report | 2011',⁴³ (not the report itself, which Brink has already obtained from the SAHRC).
14. All and any communications by letter or email to or from Nair about the SAHRC's PAIA workshop report.
15. LASA's acknowledgement of receipt of the SAHRC's PAIA workshop report.
16. All and any communications, memoranda, minutes, reports, recommendations and the like – including to the Board – following LASA's receipt of the SAHRC's PAIA training workshop report noting LASA's 'challenges [in] complying with PAIA';⁴⁴ its 'lack of application based knowledge';⁴⁵ 'the fact that they had previously been misapplying the provisions of PAIA';⁴⁶ that this 'misinterpretation and misapplication was identified as high risk to LASA';⁴⁷ 'LASA compliance history was flagged with participants and most reacted to the reporting of LASA as non-compliant to Parliament with concern';⁴⁸ 'Most participants were a little overwhelmed by the requirements of the legislation';⁴⁹ 'personnel from the Legal Department were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA and to create guidelines within the organisation to ensure misapplication does not recur';⁵⁰ and 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation'.⁵¹
17. All and any records vouching that LASA proceeded to 'review decisions which may not have had justification in terms of PAIA', as 'undertaken' to the SAHRC.

LASA's section 32 reports for 2010/11 and 2011/12 show that unlike Brink's, other PAIA requests were fully complied with, none refused.⁵² On 26 October 2011, three weeks after this minuted undertaking given the SAHRC, LASA, on Nair's instructions, again refused to surrender records Brink had duly requested under PAIA and had requested again after the close of pleadings in the litigation, alleging to court that they were 'lawfully refused in terms of the Promotion of Access to Information

⁴³ Bundle addendum, pages 915–21.

⁴⁴ Bundle addendum, page 916.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Bundle addendum, page 919.

⁴⁹ Ibid.

⁵⁰ Bundle addendum, page 920.

⁵¹ Ibid.

⁵² Bundle addendum, pages 679 and 867.

Act⁵³ ... the Applicant's requests in terms of the Promotion of Access to Information Act, 2000 ("PAIA") were answered completely and lawfully and those documents that were refused were refused in terms of the law.⁵⁴ Yet again on 16 January 2013, in breach of LASA's minuted undertaking to the SAHRC to 'review decisions which may not have had justification in terms of PAIA', LASA claimed to court on affidavit on Nair's instructions that 'the Applicant's unending demands [i.e. Brink's 'tirade of letters to Legal Aid SA demanding access to certain information under the Promotion of Access to Information Act']⁵⁵ were validly refused by Legal Aid SA and some were, after internal reviews of its decision, allowed to the Applicant.'⁵⁶ Nair supported these sworn allegations, made on his instructions, with a confirmatory affidavit of his own.⁵⁷ In truth and in fact, contrary to the lies told court in LASA's affidavits about this, there were no 'internal reviews of its decision' to withhold⁵⁸ ('unlawful[ly]',⁵⁹ the SAHRC agreed, and LASA admitted)⁶⁰ the outstanding records enumerated in Brink's Second Memorandum to the SAHRC in April 2011,⁶¹ and LASA continued withholding them. Many, but not all, were eventually disgorged in the litigation, only through persistent appeals to court for relief: an application to compel discovery,⁶² converted at Brink's request into a pre-trial conference at court,⁶³ followed by another when LASA refused, then, retracting its refusal, failed to make discovery as undertaken at the first conference.⁶⁴

18. All and any records vouching that LASA proceeded 'to create guidelines within the organisation to ensure misapplication does not recur', as 'undertaken' to the SAHRC.

As said, in breach of its undertaking to the SAHRC, LASA, instructed by Nair, persisted in withholding records originally requested by Brink under PAIA and repeatedly alleged to court that it had complied with Brink's PAIA requests, contradicting its admission at the SAHRC's PAIA training workshop that it 'had previously been misapplying the provisions of PAIA'⁶⁵ (in refusing Brink's record

⁵³ Pre-trial conference bundle, page 65, paragraph 87.3.

⁵⁴ Pre-trial conference bundle, page 66, paragraph 87.8.

⁵⁵ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 87, paragraph 27.

⁵⁶ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 87, paragraph 30.

⁵⁷ Application to subpoena Mlambo JP, Nair's confirmatory affidavit, pages 122–3.

⁵⁸ Bundle, pages 401–14.

⁵⁹ Bundle, page 499, paragraph 2.

⁶⁰ Bundle addendum, page 916, penultimate paragraph.

⁶¹ Bundle, pages 401–14.

⁶² Application to compel, volumes 1 and 3.

⁶³ Agenda for January 2013 pre-trial conference at court.

⁶⁴ Agenda for June 2013 pre-trial conference at court.

⁶⁵ Bundle addendum, page 916.

requests) and that this ‘misinterpretation and misapplication was identified as high risk to LASA’.⁶⁶

19. All and any records vouching that ‘a clear budget dedicated to PAIA compliance and implementation’, the ‘need’ for which ‘LASA ... identified’⁶⁷ to the SAHRC, was discussed by any competent committee at LASA after the PAIA training workshop and proposed to the Board for approval.
20. All and any email between Nair and Mtati and/or Sekgota over the period 20–24 August 2012 in the matter of the ‘Amendment of LASA Section 32 Report’ for 2011/12 demanded by SAHRC PAIA Unit director Fola Adeleke on 20 August 2012:

‘As per our earlier conversation, please find attached the scanned PAIA request from Brink to LASA and LASA’s response to the request. Please report it in your s 32 report and send back to me as a matter of urgency.’ (Which demand for an amended, accurate section 32 report to the SAHRC for the accurate, truthful information of the National Assembly LASA refused on 22 August 2012.) And again, per the SAHRC, on 22 August 2012: ‘We note with concern however that reference is made in your email to a number of requests from Adv. Brink. This does not reflect in either of your reports to the Commission [for 2010/11⁶⁸ or 2011/12].⁶⁹ We note further that the requester’s reason for requesting particular information is being deduced. It should be noted that PAIA is quite clear that requests made to public bodies do not have to be supported or justified by a reason for the request. Similarly, requests made prior to notification of litigation should not have to be supported by a reason or purpose for the stipulated information. We remain concerned therefore about the accuracy of your section 32 report and need to advise that we intend auditing the veracity shortly. Notice of the audit will be issued in due course.’⁷⁰

21. All and any communications between the SAHRC and LASA by letter or email concerning the SAHRC’s decision to subject LASA to a full audit for PAIA compliance, announced by the SAHRC to the National Assembly in October 2012 in its section 84 PAIA report for 2011/12, in which it reported LASA’s failure to comply with its PAIA reporting obligations to the SAHRC:

⁶⁶ Ibid.

⁶⁷ Bundle, page 920.

⁶⁸ Bundle, pages 678–9.

⁶⁹ Bundle, pages 866–7.

⁷⁰ Both emails on 20 and 22 August 2012 from SAHRC PAIA Unit director Fola Adeleke to Mtati – subsequent to the special lesson the SAHRC had given LASA’s officers about the irrelevance, under section 11 (3), of a PAIA records requestor’s reasons for a records request, quoted above.

‘A case in point [was] where a complainant [Brink] brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA’s 2010/11 section 32 report despite the fact that the requests were made in that financial year. ... The Commission engaged with LASA and remains concerned about the accuracy of section 32 reporting by LASA⁷¹ ... The Commission intends auditing LASA fully in the course of the 2012/13 financial year.’⁷² In court, LASA’s national deputy information officer Nair⁷³ claimed under oath not to have known that the SAHRC had audited LASA for compliance with PAIA. According to SAHRC PAIA Unit director Fola Adeleke, per email to Brink on 18 January 2013: ‘I confirm the LASA audit is currently underway and the officers who received the audit questionnaire this week did not include Mr Mtati.’

22. The SAHRC’s PAIA audit questionnaire sent LASA in mid-January 2013.

As said, Nair denied in court, under oath, that he knew LASA had been subjected to a full audit for PAIA compliance by the SAHRC arising from his and information officer Vidhu Vedalankar’s persistent illegal refusal to surrender records duly requested by Brink and its repeated false reporting to the SAHRC under section 32 to conceal this. The veracity of Nair’s denial, under oath, is being independently verified with the SAHRC.

23. Emails or letters from the SAHRC covering the PAIA audit questionnaire sent to LASA, showing ‘the officers who received the audit questionnaire’ (per Adeleke to Brink, quoted above).

24. LASA’s officers’ response(s) to the SAHRC’s PAIA audit questionnaire, and covering letter(s) or email(s) to the SAHRC.

25. The SAHRC’s acknowledgment of receipt of LASA’s officer’s response(s) to its PAIA audit questionnaire.

26. All and any correspondence with the Minister and/or the Portfolio Committee on Justice and Constitutional Development concerning the SAHRC’s section 84 PAIA report for 2011/12 to the National Assembly, in which the SAHRC reported LASA as non-compliant⁷⁴ – which matter was raised with Vedalankar at LASA’s presentation of its annual and other reports on 9 October 2012⁷⁵ by Portfolio Committee chairperson Hon Landers⁷⁶ and member Hon Jeffery⁷⁷ (now Deputy Minister), to which she responded,

⁷¹ Bundle addendum, page 927, fourth paragraph.

⁷² Bundle addendum, page 928, second paragraph.

⁷³ Bundle, page 387.

⁷⁴ Bundle addendum, pages 927–8.

⁷⁵ Bundle addendum, page 894.

⁷⁶ Bundle addendum, page 896, ‘The Chairperson said ...’.

before reading the SAHRC's section 84 report, that it was 'untrue'⁷⁸ because 'Legally one could not use PAIA when one was in court',⁷⁹ whereupon 'The Chairperson [of the Portfolio Committee] told the delegation that they would arrange for Legal Aid to view the PAIA report.'⁸⁰

The very 'rationale' of the PAIA training workshop was precisely to educate LASA's legally 'challenge[d]' national office staff in the elementary principle that requesters seeking records with a view to litigating to vindicate their violated rights and 'who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants'.⁸¹ According to the attendance register, Vedalankar and Nair bunked the special lesson the SAHRC specially delivered for them as information officer and national deputy information officer.⁸² Hence Vedalankar's false and legally clueless statement (emanating from Nair; see below) to the Portfolio Committee right after the special remedial lesson the SAHRC had given LASA about the irrelevance under section 11 (3) of a PAIA records requestor's reasons for a records request, including for the purpose of gathering documentary evidence to vindicate his violated fundamental rights by way of intended litigation. The source of this false and legally clueless statement to the Portfolio Committee was Nair: he instructed LASA's counsel to persist with it ignorantly at trial. (Brink was not 'in court' when he made his three illegally refused PAIA requests.)

27. All and any correspondence exchanged between LASA and the SAHRC concerning the SAHRC's PAIA section 84 report for 2011/12, which reported LASA to the National Assembly as a PAIA delinquent.⁸³
28. Records identifying what posts were frozen as at 30 November 2009;⁸⁴ as at 31 March 2010;⁸⁵ and as at 30 June 2010.⁸⁶ (The recruitment/vacancy/budget statistics for these months, supplied to Brink, all claim 'Excluding frozen positions'.)
29. The instruction to alter the recruitment/vacancy/budget statistics as at 30 June 2010 before furnishing them to Brink on 5 July 2013.

The PDF file name given to the said statistics before supplying them is: 'Recruitment as at 30 June 2010 with frozen removed'.⁸⁷

⁷⁷ Bundle addendum, page 895, 'Mr J Jeffery...'.
⁷⁸ Bundle addendum, page 896, sixth paragraph.
⁷⁹ Ibid.
⁸⁰ Bundle addendum, page 895.
⁸¹ Bundle addendum, page 915.
⁸² Ibid.
⁸³ Bundle addendum, pages 925–30.
⁸⁴ Bundle addendum, pages 1027–9.
⁸⁵ Bundle addendum, pages 1030–33.
⁸⁶ Bundle addendum, pages 1065–9.

30. The instruction to alter the recruitment/vacancy/budget statistics after 30 June 2010, to reflect that the Eastern Cape has only one budgeted, filled Senior Litigator post.⁸⁸

By June 2010 LASA's recruitment statistics had been duly updated in compliance with the Legal Services Technical Committee's ('LSTC') minuted instruction to then Legal Services Delivery Officer Bee-Mari Schoeman on 24 March 2010 'to update recruitment reports as well as facilitate the transfer of the budget. ... Due Date ... Immediate'.⁸⁹ Whereas the March 2010 statistics show one Senior Litigator post budgeted, one filled, and no vacancies,⁹⁰ the June 2010 statistics correctly show two Senior Litigator posts budgeted, one filled, and one vacant.⁹¹ The December 2010 statistics again show one budgeted, filled Senior Litigator post.

31. The record of Chief Operations Officer Jerry Makokoane's delegation as a national deputy information officer.

At trial Nair denied, under oath, that as deputy information officer he authored LASA's section 32 report for 2011/12,⁹² and alleged, under oath, that Makokoane had also been appointed as a national deputy information officer, so he must have written this false section 32 report to the SAHRC. Significantly, however, Makokoane never handled any of Brink's PAIA requests; and the report was signed by Corporate Legal Manager Solly Sekgota on 8 April 2011,⁹³ the same day that Nair signed his responses and section 23 affidavits in respect of Brink's first, second and third PAIA requests.⁹⁴ And in one of these affidavits, Nair identifies himself: 'I am the [singular] Deputy Information Officer duly delegated by the Information Officer in terms of section 17 of the Promotion of Access to Information Act 2 of 2000.'⁹⁵ Vedalankar appointed Nair 'the Deputy Information Officer for Legal Aid South Africa' – singular – on 1 March 2011.⁹⁶ (All Regional Operations Executives are deputy information officers for their regions.)

32. Nair's email to Corporate Legal Manager Solly Sekgota covering the PAIA section 32 report for 2011/12 that he drew for him to sign and submit to the SAHRC.⁹⁷

⁸⁷ Bundle addendum, page 1071.

⁸⁸ Bundle addendum, page 1070.

⁸⁹ Bundle addendum, page 709.

⁹⁰ Bundle, addendum, page 1031.

⁹¹ Bundle, addendum, page 1066.

⁹² Bundle, addendum, page 679.

⁹³ Bundle, addendum, page 678.

⁹⁴ Bundle, pages 363–86.

⁹⁵ Bundle, page 363.

⁹⁶ Bundle, page 387.

⁹⁷ Bundle addendum, pages

Sekgota had no authority to sign a PAIA section 32 report to the SAHRC. The point of making him sign it appears to have been an attempt to evade accountability for its false contents.

33. The record of counsel's advice⁹⁸ allegedly given information officer Vedalankar, supporting her refusal on 18 October 2010⁹⁹ to surrender records duly requested by Brink in August and December 2010, with which refusals she persisted on 28 January 2011,¹⁰⁰ even rejecting Brink's compulsory request fee.¹⁰¹

Brink requested a total of 69 specified records in his first two requests of August and December 2010 to test the truth of Nair's and Vedalankar's allegations to him about the circumstances in which his recruitment to the Pietermaritzburg Senior Litigator post had been aborted. After her first blanket refusal on 18 October 2010, Vedalankar put up seven records on 28 January 2011, besides five Brink already had, 'To demonstrate'¹⁰² her allegation – later repeated by her,¹⁰³ Nair¹⁰⁴ and HRE Clark¹⁰⁵ under oath on affidavit on 8 April 2011 – that budgetary insufficiency prevented Brink's appointment, and that for this reason the Durban and Mthatha Senior Litigator recruitments were also aborted and the three posts were frozen.¹⁰⁶ In court, also under oath, Nair told a different story and claimed that the Mthatha Senior Litigator post was never frozen, that the abortion of the Mthatha Senior Litigator recruitment had nothing to do with any budgetary consideration, and that it took place earlier than the abortion of the Pietermaritzburg and Durban Senior Litigator recruitments. Contradicting all prior allegations consistently made in correspondence, pleadings and affidavits, Nair alleged in court that the reason the Mthatha Senior Litigator recruitment was cancelled was because in early July 2010 Vedalankar refused to approve the LSTC's resolution on 24 March 2010 to abolish the Kimberley Senior Litigator post, create a new Senior Litigator post at Mthatha and transfer the budget, because she 'was not in support' and was 'not happy' with it, and no matter how often he tried persuading her to agree, and he tried repeatedly, he just could not make her 'happy' – even though the Kimberley Justice Centre had volunteered that it had no need for its vacant Senior Litigator post and had suggested that it be transferred to another centre more in need of it;¹⁰⁷ the

⁹⁸ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 102, paragraph 75.2.

⁹⁹ Bundle, pages 101–4.

¹⁰⁰ Bundle, pages 210–24.

¹⁰¹ Bundle addendum, page 1041.

¹⁰² Bundle, pages 213–16.

¹⁰³ Bundle addendum, pages 390–1.

¹⁰⁴ Bundle addendum, pages 380–1, paragraph 13.

¹⁰⁵ Bundle addendum, pages 392–3.

¹⁰⁶ Bundle, page 103, paragraph 6.7; and page 104, paragraph 7.3; and page 212, paragraph 7.

¹⁰⁷ Bundle addendum, pages 736–7.

Eastern Cape had strongly motivated for the creation of a Senior Litigator post at Mthatha where it was pressingly needed to cover the vast stated distances between the four High Courts of the Eastern Cape;¹⁰⁸ and the LSTC, chaired by Nair,¹⁰⁹ including COO Makokoane and Legal Development Executive Patrick Hundermark,¹¹⁰ had unanimously resolved to abolish the 'redundant'¹¹¹ Kimberley Senior Litigator post, to create one at Mthatha, and to transfer the budget.¹¹² The result of Vedalankar's refusal to approve the transfer of the post, Nair testified, under oath, was that the Mthatha Senior Litigator recruitment process had to be aborted and the budget returned to Kimberley (where the Kimberley Justice Centre said it was not needed).¹¹³ He said he was unaware of any record of Vedalankar's refusal to approve the LSTC resolution resulting in the abortion of the recruitment for the Mthatha Senior Litigator post, for which Mahikeng Senior Litigator Adv Nzame Skibi had been selected and recommended for appointment¹¹⁴ and 'lateral transfer'¹¹⁵ to it.

34. The record of Vedalankar's approval of the LSTC's resolution to abolish the Kimberley Senior Litigator post, create a new Senior Litigator post at Mthatha, and transfer the budget, before the Mthatha Senior Litigator post was advertised in April 2010¹¹⁶ and Adv Nzame Skibi was recommended for appointment to it on 24 May.¹¹⁷

Note 17 of the Approval Framework stipulates that 'It is the responsibility of the line function Executive to ensure that such [post] is provided for in the budget and MTEF and that a vacancy exists in respect of the post concerned. HRE to confirm budget and vacancy ... with regard to a JC/region/dept.'¹¹⁸ The post therefore could not have been advertised and recruited for if had Nair and Clark not confirmed that it existed as an approved vacant budgeted post.

35. The record of Vedalankar's refusal to approve the abolition of the 'redundant'¹¹⁹ Kimberley Senior Litigator post, the creation of the pressingly needed Mthatha Senior Litigator post, and the transfer of the budget.

¹⁰⁸ Bundle addendum, pages 738–40.

¹⁰⁹ Bundle addendum, page 767, section 2.3; and page 708.

¹¹⁰ Bundle addendum, page 708

¹¹¹ Bundle addendum, page 738, paragraph 1.

¹¹² Bundle addendum, page 709, paragraph 4.1.7.

¹¹³ Bundle, page 736, 'Background'.

¹¹⁴ Bundle addendum, pages 994–7.

¹¹⁵ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 104, paragraph 99.5.

¹¹⁶ Bundle, page 46.

¹¹⁷ Bundle addendum, pages 994–7.

¹¹⁸ Bundle addendum, page 1040.

¹¹⁹ Bundle addendum, page 738, paragraph 1.

This was Nair's new allegation in court, radically contradicting and changing the three-simultaneously-frozen-Senior-Litigator-posts story, previously alleged in correspondence with Brink, in affidavits and in the pleadings, including the in the amended response setting out LASA's defence version for trial – a new story told nowhere in any of the said documents.

36. All communications between Mlambo JP and Vedalankar and Nair regarding Brink's first petition to the Board on 30 November 2010¹²⁰ protesting Vedalankar's illegal blanket refusal¹²¹ of his August 2010 request for 51 specified records under section 11 (1) of PAIA or sworn certification under section 23 that they did not exist, and the manifestly irregular abortion of his recruitment in light of the surge in recruitment and new post creation in the first quarter April to June 2010, and the advertisement in April for a Senior Litigator for Mthatha, while his recruitment remained silently unfinalised¹²² – the dismissive response¹²³ to which was written on Vedalankar's own computer ('VidhuV')¹²⁴ with Mlambo JP's signature image pasted in with his 'knowledge and consent'¹²⁵ according to Mtati instructed by Nair.
37. The email from Vedalankar to Mlambo JP in December 2010 covering the letter she drew on her computer for him, with his signature image pasted in, to send to Brink dismissing his fundamental rights violation complaints, which letter Mlambo JP emailed to Brink on 30 December 2010.
38. The Minister's demand for an explanation following Brink's third petition to the Board on 25 February 2011, copied to the Minister and to Parliament, about Vedalankar's persistent, repeated illegal refusal to surrender records duly requested under PAIA and the plainly irregular abortion of his recruitment to the Pietermaritzburg Senior Litigator post on the evidence then known to him.
39. Mlambo JP's letter or email to the Minister covering the 'Confidential ... report ... Re: Adv Anthony Brink'¹²⁶ on 9 March 2011 that Nair wrote.¹²⁷
40. Nair's covering email to Vedalankar to which he attached the letter he drew for her to send Brink on 18 October 2010,¹²⁸ refusing his entire 51-item PAIA request of August 2010 on the basis of a false statement of legal principles claimed applicable and a fake

¹²⁰ Bundle, pages 109–65.

¹²¹ Bundle, pages 113–19, paragraphs 17–43.

¹²² Bundle, page 119ff, paragraphs 44ff.

¹²³ Bundle, page 186.

¹²⁴ Bundle, page 187.

¹²⁵ Pre-trial conference bundle, answer to agenda, page 61, paragraph 69.2.

¹²⁶ Bundle addendum, pages

¹²⁷ Bundle addendum, page 1015. In court, Nair admitted having written it, having left his electronic fingerprints on it in the 'Author' properties folder: 'Briann'.

¹²⁸ Bundle, pages 101–4.

quotation from a reported judgment claimed to support them, putting words in the judge's mouth exactly the opposite of what her reported judgment states,¹²⁹ and alleging that the 'Durban, Pietermaritzburg and Mthatha'¹³⁰ Senior Litigator posts had been 'frozen ... In July 2010' on account of budgetary insufficiency.¹³¹

Under penalty of perjury, Vedalankar, Nair and Clark all confirmed this story on affidavit on 8 April 2011.¹³² In court, however, Nair changed this story and alleged that the Mthatha Senior Litigator post was not frozen; instead, despite his repeated attempts to persuade her, Vedalankar had refused to approve the abolition of the unwanted Kimberley Senior Litigator post, the creation of a new sorely needed Senior Litigator post at Mthatha and the transfer of the budget. Notwithstanding the repeated use in Vedalankar's October 2010 letter of Nair's characteristic (he admitted in court) sentence lead-in, 'Noting [etc]', Nair denied in court, under oath, that he drafted the letter for Vedalankar, thus implicitly blaming and inculpating her for telling Brink the lies it contained, some of which lies Nair retracted in court. (In evidence, Brink recorded that he was satisfied that Nair had ghost-written Vedalankar's letters to him, and that for this reason he held Vedalankar clear of responsibility for them. Likewise, for the same reason, he held Mlambo JP clear for the false reports Nair wrote for him to sign and submit to the Minister¹³³ and to the chairperson of the Portfolio Committee¹³⁴ to pervert¹³⁵ their independent enquiries launched into Brink's fundamental rights violation complaints. Nair's authorship¹³⁶ of these false reports to the Minister and to Parliament that he gave Mlambo JP to sign and submit was discovered by Brink only a month before trial.)¹³⁷

41. Nair's covering email to Vedalankar to which he attached the letter he drew for Vedalankar to send Brink on 28 January 2011,¹³⁸ refusing his second PAIA request on 15 December 2010, refusing his August 2010 request again, and reiterating the budgetary justification advanced in October 2010 for the abortion of Brink's recruitment.¹³⁹

¹²⁹ Bundle, pages 113–19, paragraphs 17–43.

¹³⁰ Bundle, page 104, paragraph 7.3.

¹³¹ Bundle, page 101, paragraph 6.7.

¹³² Bundle, pages 380–1, paragraph 13; pages 390–1; and 392–3.

¹³³ Bundle addendum, pages 1012 – 4.

¹³⁴ Bundle, pages 505–7.

¹³⁵ Bundle, page 502.

¹³⁶ Bundle addendum, page 1015.

¹³⁷ Bundle addendum, 1019, paragraph 8.1; page 1017: date of conference: 7 June 2013. As he undertook to do, Mtati duly emailed Brink a PDF of the 'Confidential ... Report ... Re: Adv Anthony Brink' to the Minister a couple of days later.

¹³⁸ Bundle, pages 210–24.

¹³⁹ Bundle, page 223, paragraph 39.

In court, Nair also denied, under oath, that he drafted this January 2011 letter for Vedalankar, thus implicitly blaming and inculpating her for telling Brink the lies it contained, some of which lies Nair retracted in court.

NOTE WELL:

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

90 Offences

(1) A person who with intent to deny a right of access in terms of this Act-

- (a) destroys, damages or alters a record;
- (b) conceals a record; or
- (c) falsifies a record or makes a false record,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

23 Records that cannot be found or do not exist

(1) If-

- (a) all reasonable steps have been taken to find a record requested; and
- (b) there are reasonable grounds for believing that the record-
 - (i) is in the public body's possession but cannot be found; or
 - (ii) does not exist,

the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

25 Decision on request and notice thereof

(1) Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part apply, the information officer to whom the request is made or transferred, must, as soon as reasonably possible, but in any event within 30 days, after the request is received-

- (a) decide in accordance with this Act whether to grant the request; and
- (b) notify the requester of the decision and, if the requester stated, as contemplated in section 18 (2) (e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

INTERPRETATION ACT 33 OF 1957

4 Reckoning of number of days

When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.

25 Baker Road
Prestbury
Pietermaritzburg
17 October 2013

Information officer and CEO Vidhu Vedalankar
Legal Aid South Africa
29 De Beer Street
Braamfontein

Per email: VidhuV@legal-aid.co.za

Dear Ms Vedalankar

PAIA REQUEST
ADDITIONAL RECORD REQUIRED

I refer to my pending request of the 1st instant under the Promotion of Access to Information Act 2 of 2000 ('PAIA') for 41 specified records delivered to your national office on the 9th, according to the Post Office tracking system, and currently under your consideration.

There is a further record I require, namely:

42. The spreadsheet attached to Nair's email to Makokoane on 15 July 2010 under the 'Subject' heading 'Budget cuts – Reduction in Criminal Court Coverage – July 2010.xlsx'.

Kindly email me this spreadsheet along with the other documents I've requested and your PAIA section 23 affidavit.

Yours sincerely



ADV ANTHONY BRINK
Fax: 086 672 0776
Email: arbrink@iafrica.com

Cc: CSE Thembile Mtati: ThembileM@legal-aid.co.za

From: Anthony Brink [arbrink@iafrica.com]
Sent: 17 October 2013 01:51 PM
To: 'Vidhu Vedalankar'
Cc: 'Thembile Mtati'
Subject: PAIA request: additional record required
Attachments: Vedalankar_17_Oct_13.pdf

Importance: High

Vidhu Vedalankar
Information officer and CEO
Legal Aid South Africa

Dear Ms Vedalankar

I refer to my currently pending PAIA request delivered to your national office a week ago, and annex a request for an additional record.

Yours sincerely

Anthony Brink

Cc: CSE Thembile Mtati

From: Thembile Mtati [ThembileM@legal-aid.co.za]
To: Anthony Brink
Sent: 17 October 2013 02:22 PM
Subject: Read: PAIA request: additional record required

Your message

To: Thembile Mtati
Subject: PAIA request: additional record required
Sent: Thursday, October 17, 2013 1:51:29 PM (UTC+02:00) Harare, Pretoria

was read on Thursday, October 17, 2013 2:21:40 PM (UTC+02:00) Harare, Pretoria.

This email is considered a business record and is therefore property of Legal Aid South Africa. This email, and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication represents the originator's personal views and opinions, which do not necessarily reflect those of Legal Aid South Africa. If you are not the original recipient or the person responsible for delivering the email to the intended recipient, be advised that you have this email in error, and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you received this email in error, please immediately notify postmaster@legal-aid.co.za

Thank You.



Legal Aid
South Africa

C

Date: 06 November 2013

Anthony Robin Brink

25 Baker Road

Prestbury

Pietermaritzburg

3201

Fax: 086 672 0776

Email: arbrink@iafrica.com

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

**REQUEST FOR ACCESS TO RECORDS IN TERMS OF SECTION 18(1) OF
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 200**

Dear Mr. Brink

We acknowledge receipt of your request for access to record in terms of section 18(1) of the Promotion of Access to Information Act 2 of 2000, dated 1 October 2013 and which was received by our office on 8 October 2013.

Whilst Legal Aid South Africa has every intention to ensure compliance with the prescripts of the Act, it is however important to set out the following facts which will set the tone of my reply to your request.

Promotion of Access to Information Act 2 of 200

1. The purpose and the object of the Act is to give effect to the constitutional right to access to any information held by the State and any information that is held by

another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith;

2. The second part of the preamble to the Act, further express that the right to any information held by a public or private body may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution¹.
3. Section 7(1) states that this Act does not² apply to a record of a public body or a private body if-
 - (a) that record is requested for the purpose of criminal or civil proceedings;
 - (b) so requested after the commencement of such criminal proceedings or civil proceeding, as the case may be, and
 - (c) the production of or access to that record for the purpose referred to in paragraph(a) is provided for in any other law;
4. Section 45 states that the information officer of a public body may refuse a request for access to a record of the body if-
 - (a) the request is manifestly frivolous or vexatious; or
 - (b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

Reply to the request for access to the records or information

5. I do not intend to reply to each and every averments made by you, and more specifically to your interpretations, conclusions and comments. I however wish to place on record that such interpretations, conclusions and comments should be construed as denied. I therefore reply as follows:

¹ My underlining

² My underlining

- 5.1 Items 1 to 10 of Annexure to your request is hereby re refused in terms of the provisions of section 45 of the Act. The information or records requested relates to the civil proceedings already before Court.
- 5.2 Item 11. The records are hereby attached marked **"SAHRC Workshops Records"**;
- 5.3 Item 12. There are no communications between Mr. Nair and SAHRC and therefore no such records exist. I further attached an affidavit in compliance with section 23 of the Act.
- 5.4 Item 13. See records attached as marked **"SAHRC Workshops Records"** above
- 5.5. Item 14. There are no communications between Mr. Nair and SAHRC and therefore no such record exists. I further attach the affidavit in compliance with section 23 of the Act.
- 5.6. Items 15. See the records attached marked **"SAHRC Workshop Records"** above.
- 5.7. Items 16 to 20. Please find all the communications between Legal Aid South Africa and SAHRC to section 32 report marked **"Section 32 Report Communications"**. Please further note that Mr. Nair had never given any instructions relating to the section 32 report.
- 5.8 Item 21. Please find the communications relating to audit for PAIA compliance attached as **"Communications on Audit Compliance"**
- 5.9. Items 22 to 25. Please find the audit compliance questionnaire and the reply thereof, marked **"Compliance Audit and Reply"** respectively;
- 5.10. Item 26. There were no communication with the Minister and/or the Portfolio Committee on Justice and Constitutional Development concerning the SAHRC's section 84 report and therefore no such record

exists. Please further see the provision confirming the non-existence of the record in terms of section 23 of the Act;

5.11. Item 27. See the records set out in paragraph 5.7 above;

5.12. Items 28, 29,30, 31, 33, 34,35, 36,37,,38,39,40,and 41 of your request is hereby refused in terms of the provisions of section 7 and section 45 of the Act. The information or records requested relates to the civil proceedings already before Court;

5.13. Item 32. There was no communication between Mr. Nair and Mr. Sekgota with regard to the report nor did Mr. Nair draft the report. Therefore no such record exists. I have further addressed this statement in my affidavit attached hereto in compliance with section 23 of the Act.

Yours Faithfully,



Mr. Thembile Mtati

Legal Aid South Africa

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

Case No:

259/14

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

ZANELE MSWELI N.O.

DEPUTY INFORMATION OFFICER,

FREE STATE AND NORTH WEST REGION,

LEGAL AID SOUTH AFRICA

Respondent

NOTICE OF MOTION

TAKE NOTICE that the applicant intends applying to this court for orders in the following terms:

1. Declaring the respondent's refusal on 18 November 2013 to allow the applicant access to the records enumerated in his request made under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), dated 1 October 2013 and delivered to her on 13 November 2013, to have been in contravention of section 11 of PAIA, unlawful, and a violation of the applicant's fundamental right to information guaranteed by section 32 of the Constitution.
2. Setting aside the respondent's decision to refuse the applicant access to the records he requested.

THIRD APPLICATION (3/3)

The Court Manager
Private Bag X507
2014 -04- 29
Eshowe, 3815
Eshowe Magistrate Office

3. Directing the respondent to deliver to the applicant copies of the said records within thirty court days of the date of this order; alternatively, in the case of any record not so delivered, to furnish the applicant with an affidavit containing all the information prescribed by section 23(2) of PAIA, including (a) the results of computer hard-drive searches for electronic copies of such records conducted by one or more of Legal Aid South Africa's expert Information Technology staff, detailing by whom and the manner in which such searches were conducted; and (b) the responses by the following Legal Aid South Africa officers to the respondent's enquiries about retrieving from them the records to be delivered: National Operations Executive Brian Nair; Corporate Services Executive Thembile Mtati; Eastern Cape Regional Human Resources Manager Thenjiwe Magazi; Port Elizabeth Justice Centre Executive Lynette Franklin; Mthatha Justice Centre Executive Fuzile Ngxukumeshe; Free State and North West Regional Operations Executive Zanele Msweli; Mahikeng Justice Centre Executive Mothusi Khumalo; and Mahikeng Senior Litigator Nzame Skibi.
4. Granting the applicant leave to approach this court again on the same papers, supplemented as needs be, for an order for further and better compliance with any of the above orders; and/or for the attachment of Legal Aid South Africa's staff computers and business computer servers by the sheriff and their search by a suitably qualified, independent computer Information Technology expert appointed by this court for electronic copies of the requested records; and/or in the event of the respondent wilfully or grossly negligently failing to comply with this order, committing her for contempt for such period as this court deems meet.

5. Directing the Clerk of Court, after the final disposal of this application, to refer a complete set of all papers filed, together with a copy of this court's judgment(s) – extra copies of which the applicant is to make and provide for this purpose – to the Minister of Justice and Constitutional Development; to the Chairperson of the Portfolio Committee on Justice and Constitutional Development in the National Assembly; to the Chairperson of the South African Human Rights Commission; and to the Public Protector.
6. Directing the respondent to pay the applicant's costs.

TAKE NOTICE FURTHER that the affidavit of Anthony Robin Brink and the documents referred to in rule 3(3)(a) of the Rules of Procedure for Application to Court in Terms of the Promotion of Access to Information Act 2 of 2000, annexed hereto, will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed The Flat, 1 Boast Street, Eshowe, KwaZulu-Natal, as the address at which he will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that:

- (i) Notice of intention to oppose this application must be given within 15 days after receipt hereof and must contain an address within eight kilometres of the court to which the application is brought, where notice and service of documents will be accepted.
- (ii) Answering affidavits, if any, must be filed within 15 days after service of the notice of intention to oppose the application.

(iii) In default of your complying with rule 3(5) of the Promotion of Access to Information Rules, the applicant may request the registrar to place the application before the court for an order in terms of section 82(b) of the Act.

(iv) In default of your delivering a notice of intention to oppose, the matter will, without further notice, be placed on the roll for hearing after the expiry of the period mentioned in paragraph (i) above, on a date fixed by the clerk of court.

Signed at Eshowe on this 28th day of April 2014.

Applicant

Anthony Robin Brink
The Flat, 1 Boast Street
Eshowe
KwaZulu-Natal
Tel: 035 4740145
Cell: 083 779 4174
Fax: 086 672 0776
Email: arbrink@iafrica.com

TO:

The Clerk of Court
Magistrates Court
Eshowe
KwaZulu-Natal

AND TO:

Zanele Msweli
Deputy Information Officer and
Regional Operations Executive
Free State and North West Region,
Legal Aid South Africa
Free State and North West Regional Office
196 Nelson Mandela Drive
PHG Building
Bloemfontein
Free State

AND BY POST TO:

South African Human Rights Commission chairperson Lawrence Mushwana
And at Legal Aid South Africa to:
Chief Executive Officer Vidhu Vedalankar
National Operations Executive Brian Nair
Corporate Services Executive Thembile Mtati
Board Secretary Lesleigh Timothy
Eastern Cape Regional Human Resources Manager Thenjiwe Magazi
Port Elizabeth Justice Centre Executive Lynette Franklin
Mthatha Justice Centre Executive Fuzile Ngxukumeshe
Free State and North West Regional Operations Executive Zanele Msweli
Mahikeng Justice Centre Executive Mothusi Khumalo
Mahikeng Senior Litigator Nzame Skibi.

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

Case No:

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

ZANELE MSWELI N.O.

DEPUTY INFORMATION OFFICER,

FREE STATE AND NORTH WEST REGION,

LEGAL AID SOUTH AFRICA

Respondent

FOUNDING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I am an adult male advocate of the High Court of South Africa, ordinarily resident at The Flat, 1 Boast Street, Eshowe, KwaZulu-Natal, and I am the applicant herein.
2. The respondent is Zanele Msweli, an adult female attorney of the High Court of South Africa, cited in her capacity as duly delegated deputy information officer for the Free State and North West operational region of Legal Aid South Africa ('LASA'), a 'public body' envisaged by section 1 of the Promotion of Access to Information Act, Act 2 of 2000 ('PAIA' or 'the Act'), being an 'institution ... performing a public function in terms of any legislation' namely the Legal Aid Act 22 of 1969. She is LASA's Regional Operations Executive for the Free State

and North West, and her business address is Legal Aid South Africa, Free State and North West Regional Office, 196 Nelson Mandela Drive, PHG Building, Bloemfontein.

3. This is an application brought under Chapter 2 of the Act, ‘APPLICATIONS TO COURT (ss 78-82)’, for the grant of orders set out in the notice of motion under this court’s powers vested in it by section 82.
4. In support of the special orders I seek under this court’s jurisdiction ‘to grant any order that is just and equitable’ (per section 82), several profoundly aggravating features of this case will be set out herein.
5. By Notice No. 585 published in the Government Gazette on 14 May 2004, the Minister of Justice and Constitutional Development has ‘designate[d] all magistrates courts ... as courts to hear any application in terms of the Promotion of Access to Information Act, 2000, within whose area of jurisdiction [inter alia] the requester ... is ... ordinarily resident.’
6. Under the Minister’s said blanket designation, this court has been designated under sections 1 and 91A of the Act and has jurisdiction to try this application; and being ordinarily resident in this court’s area of jurisdiction, I’m entitled to sue out of this court for the relief I claim.
7. On 13 November 2013 I delivered to the respondent by registered post a request under PAIA for access to several specified records. My request, dated 1 October 2013, complied with the requirements of section 18 of the Act and was accompanied by a cheque to cover the request fee prescribed by section 22. I annex a copy of my request marked ‘A’.

8. On 18 November 2013 the respondent refused my entire request for the double-barrelled reason that ‘all the information requested relates to the legal proceedings currently before court under case D529/12 [sic: 2011] at the Durban Labour Court and is accordingly refused in terms of section 7(1) of the Promotion of Access to Information Act 2 of 2000. We note further that your requests are manifestly frivolous or vexatious and fall squarely within the ambit of the provisions of section 45 of the aforesaid Act.’ A copy of her letter stating this is annexed marked ‘B’.
9. The respondent’s refusal of my PAIA request on these factually and legally irrelevant grounds was illegal and violated my fundamental right to information guaranteed by section 32 of the Constitution. I’ll address this presently.
10. Notwithstanding her name, business address and signature on her letter refusing my request, it’s evident from several indications, set out among the facts in aggravation canvassed below, that the respondent didn’t write it, and that the decision to refuse my request was taken in LASA’s national office in Braamfontein, Johannesburg. That is, the respondent abdicated her constitutional and statutory obligations and responsibilities delegated to her by Chief Executive Officer and information officer Vidhu Vedalankar under section 17 of PAIA, and referred my PAIA request to LASA’s national office for disposal, where her line management superior, but not her superior as deputy information officer, National Operations Executive and deputy information officer in the national office Brian Nair is based, and whose conduct in relation to the abortion of the Mthatha Senior Litigator appointment in mid-2010, for several radically different reasons he gave me and different authorities at various times (canvassed below), is the subject of my PAIA request addressed to the respondent.

11. Indeed the records I requested incidentally ‘relate’ to the said pending claim, an unfair discrimination action I brought against LASA (the trial is over, heads of argument have been exchanged, and the matter has been set down for argument), but this no lawful ground for refusing my request.
12. The only grounds permitted by the Act for refusing a request for access to public body records are those set out in Chapter 4 in Part 2 of the Act, and the fact that a record requested in some manner ‘relates’ to a claim ‘currently before court’ is not one of them.
13. Ordinarily a record obtained via PAIA after the commencement of civil proceedings is inadmissible in those proceedings under section 7(1), but section 7(2) gives the trial court the discretion to admit it. Section 7 in Chapter 2 in Part 1 of the Act does not afford the information officer or a deputy information officer of a public body a ground for refusing a PAIA request.
14. How and why my ‘requests are manifestly frivolous or vexatious and fall squarely within the ambit of the provisions of section 45 of the aforesaid Act’, as alleged, the respondent doesn’t say, perhaps because she can’t, since she seems to believe they’re for the very serious purpose of adducing as evidence in my pending case.
15. The respondent doesn’t substantiate her denigration of my PAIA request as a waste of time. Nor can she, because it’s clear from a perusal of my request that I’m conducting a thorough investigation, with reference to LASA’s business records, of the circumstances in which Mahikeng Senior Litigator Nzame Skibi’s appointment and transfer to the Mthatha Senior Litigator post was cancelled in mid-2010, and there is nothing ‘manifestly frivolous or vexatious’ about that.

16. I do appreciate, however, that it's exceedingly vexing for Nair and those national management executives who colluded with him in covering up his illegal abortion of my appointment to the Pietermaritzburg Senior Litigator post in November 2009, after I'd been recommended for it by a selection panel of LASA's top lawyers in the region, to be reminded by my PAIA request that section 32 of the Constitution, and PAIA giving effect to it exist (per the Preamble of the latter) to 'foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information ... to enable ['the people of South Africa'] to more fully exercise and protect all their rights', including the fundamental right to equality and equal employment opportunity, and to counter the 'secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations' characteristic of 'the system of government in South Africa before 27 April 1994', which is to say characteristic of the way the apartheid regime did things; and vexing further to learn that I'm adamantly determined that he and those LASA executives who later colluded with him in the cover-up be taken to law and held to account for their conduct in this regard. This, however, does not render my PAIA request 'vexatious' within the meaning of section 45.

17. Using PAIA, as is my Constitutional right to do so in the post-apartheid era, I'm investigating the circumstances in which Skibi's appointment and transfer were cancelled, because Nair told many different stories about why this happened, finally amazing me during the trial of my claim in mid-2013 with a yet another brand-new story cooked up, now passing the blame to Vedalankar, and flying in the face of all those other already internally contradictory stories he'd variously told me, the Minister, Parliament, the Board, and court in the papers before trial, including under oath:

18. The first story, insufficient budget to fill the post was (i) alleged to me in October 2011 and January 2011 in letters Nair wrote in Vedalankar's name, which both he, Vedalankar, and Human Resource Executive Amanda Clark all later solemnly swore to a commissioner of oaths in April 2011 to be the complete and perfect truth; (ii) alleged to the Minister of Justice and Constitutional Development in March 2011 and to Parliament in June 2011 in his 'Confidential ... Report ... Re: Adv Anthony Brink' which Nair admitted he drew for LASA chairperson Dunstan Mlambo JP to sign and submit, to put down and pervert independent ministerial and parliamentary enquiries into my complaints to the Board, copied to these highest authorities, that LASA national management had unfairly discriminated against me in aborting my appointment, under cover – many months later when I was pressing Vedalankar to finalise it and was then demanding material records regarding Nair's allegation to me in August 2010 that it had been decided not to fill the post – of an already clearly untruthful insufficient-budget justification given me, and claimed to have equally and simultaneously affected and prevented Skibi's appointment and transfer to the Mthatha Senior Litigator post; and (iii) alleged on Nair's instructions in all pleadings (i.e. allegations to court) and interlocutory affidavits (i.e. allegations to court under oath) LASA filed in my unfair discrimination referral to the Durban Labour Court in which I sought my retrospective instatement to the post, magnificent damages, and other relief.

19. The second story was told by Nair to LASA's Board in his 'Report to Board' in November 2011: 'Six Senior Litigators were filled [sic] during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since decided not to fill the remaining positions until we are

reassured that our objectives determined for this position is being achieved by the current incumbents.’

20. The third novel story told by Nair in the witness stand at the trial of my claim, figuring nowhere in any of his correspondence, reports, pleadings and affidavits, was that shortly after he and the Legal Services Technical Committee that he chairs had unanimously resolved on 24 March 2010 to abolish the long vacant and redundant Kimberley Senior Litigator post (reportedly no need for such envisaged top-end services) and to transfer its budget to the newly-created Mthatha Senior Litigator post, where it was sorely needed according to then Eastern Cape Regional Operations Executive Thembile Mtati’s pressing motivation for it, and the budget had been transferred, and the post had been advertised in April, and Skibi had been recommended for it in May, and he’d supported Skibi’s appointment, Vedalankar disappointed him in early July with the news that she didn’t approve his and the LSTC’s unanimous recommendation that the Kimberly post be abolished and that its budget be transferred to Mthatha. She was ‘not happy’ about this, Nair testified, under oath, and even though he’d tried to persuade her – and he tried persuading her repeatedly, he said – he’d been unable to change her mind and make her ‘happy’ about this, so the Mthatha Senior Litigator recruitment was therefore aborted and the budget for the post transferred back from Mthatha to Kimberley. (He said he knew of no record of Vedalankar’s (alleged) veto of his and the LSTC’s decision in this regard.) Telling this third brand new story in court, Nair emphasized that the cancellation of Skibi’s appointment and transfer had nothing to do with any budgetary consideration.

21. According to this new story of his told for the first time in court (radically contradicting his earlier story repeatedly told to me including under oath, to the

Minister, to Parliament, and to court in the papers including under oath, and completely at odds with his other different story told the Board), the cancellation of Skibi's appointment and transfer was quite unconnected to the abortion of my appointment, and took place for a completely different reason.

22. On Nair's new version in court, therefore, contradicting the respondent's reason for blocking my access to the public records which I'm endeavouring to obtain in the exercise of my fundamental right to see them, 'all the information', i.e. the documents I want to see concerning the abortion of Skibi's appointment, in no way 'relates to the legal proceedings' in the Durban Labour Court about the true reason my appointment was aborted, because in court Nair testified (radically contradicting all his earlier stories recalled above), that the abortion of the Pietermaritzburg and Mthatha Senior Litigator appointments had nothing whatsoever to do with each other.

23. But whatever: whether the records I've requested relate to my pending case or not is of no legal interest to the decision of my PAIA request for them, and the respondent (actually Nair and the national office attorneys) unlawfully misdirected herself in refusing my request on this ground.

24. Under section 11(3) of the Act, my interest and purpose in seeking the records enumerated in my PAIA request – that is, my actual purpose if stated, or the respondent's belief as to what it is, if not – are irrelevant to her decision of my request.

25. In contravention of the section, however, the respondent appears to have refused my request believing that I want to use the documents to further establish that Nair perjured himself profusely and prolifically (i) before the institution of my action, (ii) afterwards in the pleadings and interlocutory affidavits, and (iii) at

the trial of my claim in the Labour Court, the better to help me win it by showing in light of the new documents that Nair is an abject liar, that nothing he ever says can be trusted, and that the whole of his evidence should be rejected accordingly. If she believes this about my purpose in requesting the documents, she's wrong. Although my purpose is irrelevant under section 11(3) of PAIA, I record that I require the documents for the institution of criminal, disciplinary, and civil proceedings against Nair and possibly other national management executives who later colluded with him in covering up the true reason he aborted my appointment. I detail all this in my supporting affidavit in my similar, evenly-dated application against Eastern Cape deputy information officer Hope Bambiso, a copy of which I'll provide the respondent for her possible interest and information, with proof that I've done so lodged with the Clerk of Court before this application is heard.

26. The indications that Nair abused his managerial seniority over the respondent and usurped her delegated function and obligations as deputy information officer for the Eastern Cape, so as to suppress the documents incriminating him that I requested, are the following:

27. The respondent was not present at trial and had no involvement in my labour case at any stage, so she has no knowledge of her own as to whether 'all the information requested relates to the legal proceedings currently before court under case D529/12 [sic: 2011] at the Durban Labour Court', as alleged in her letter.

28. In addition to the PAIA request that's the subject of this application, I sent two others on the same day, to Vedalankar in the national office and, as mentioned, to Eastern Cape deputy information officer Bambiso. All three of my requests were

unlawfully refused on the same factually and legally incompetent grounds, namely with reference to sections 7(1) and to 45 of the Act. The different office particulars in the letterheads aside, all three refusals are addressed to me in identical form and the subject headings all contain the same typographical error, 'Act 2 of 200' instead of 2000. (My name and the date of my request have been added to the heading of the respondent's letter.) Besides the different dates on which my requests were delivered, the first paragraphs of all three letters are identical.

29. These several coincidences demonstrate that the same person refused all three of my requests and typed these refusals up on the same computer. They speak to a coordinated, centralised decision by Nair as deputy information officer in LASA's national office to obstruct and refuse all my PAIA requests on the same unlawful basis, in so doing grossly abusing his power as National Operations Executive to suppress documentary evidence of his unconstitutional, illegal, and unethical conduct in unfairly discriminating against me, and then, as I pressed for my appointment, engineering an increasingly elaborate cover-up in which he successively trampled on the rights of two other innocent parties, Durban High Court Unit Manager Bongani Mngadi (his promotion to the simultaneously recruited-for Durban post was frozen until I'd concluded from the calculated silence after my interview that I'd not been successful and had walked away; this much surprisingly frankly emerged during the cross-examination of me) and later on Skibi, thereby unlawfully obstructing the implementation of the Board's Strategic Plan, presented to the Minister and to the National Assembly, to employ Senior Litigators, and contradictorily and inconsistently lying about it afterwards, to me, to the Minister and to the National Assembly, to the Board, to the SAHRC,

and to the trial judge, to whom he told radically different lies before trial in the papers and then in court.

30. Despite special remedial training by the SAHRC on 6 October 2011 in how PAIA works and the importance of the Act to give effect to the fundamental right to information; despite being disgracefully reported to the National Assembly as non-compliant in the SAHRC's section 84 report for 2011/12, and despite being subjected to a audit for PAIA compliance by the SAHRC in early 2013 – all directly on account of LASA's persistent, repeated illegal refusal to permit me access to its records in 2010 and 2011, and false reporting afterwards under section 32 to conceal this for two years in a row – LASA continues to illegally refuse me access to its records and thereby violate my fundamental right to information.

31. In the situation, among the orders I seek, I claim an order referring both this application and this court's judgment to the Public Protector for a comprehensive investigation of LASA's handling of my several PAIA requests since 2010, and the real reasons they were refused, followed by a likely report of her findings to the Minister and to the National Assembly on LASA's incorrigible, habitual PAIA delinquency and persistent recalcitrance in respecting the Constitution and complying with the law.

Dated at Eshowe this 28th day of April 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on this 28th day of April 2012 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he solemnly affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

FORM A**REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY**

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 2]**FOR DEPARTMENTAL USE**

Reference number:

Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).

Request fee (if any): R

Deposit (if any): R

Access fee: R

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

Deputy Information Officer Zanele Msweli

Legal Aid South Africa

Free State & North West Regional Office

**196 Nelson Mandela Drive, PHG Building/AKA Old Mutual Building,
Bloemfontein, 9301**

P O Box 6861, Bloemfontein, 9301

B. 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 : **Anthony Robin Brink**

Identity number : **590225 5116 081**

Postal address : **25 Baker Road, Prestbury, Pietermaritzburg 3201**

Fax number : **086 672 0776**

Telephone number : **033 344 2420**

E-mail address : **arbrink@iafrica.com**

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

N/A

C. 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 : **N/A**

Identity number : **N/A**

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.

*(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:
2. Reference number, if available:
3. Any further particulars of record:

See annexure

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 therefor.

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: N/A		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

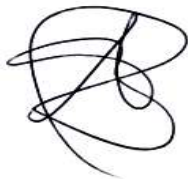
2. If record consists of visual images -					
(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)					
	view the images	X	copy of the images*		transcription of the images*
3. If record consists of recorded words or information which can be reproduced in sound -					
	listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)		
4. If record is held on computer or in an electronic or machine-readable form -					
	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form* (on compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? A postal fee is payable.					YES
<i>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.</i>					
In which language would you prefer the record? English					

G. 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 Pietermaritzburg on this 1st day of October 2013

A handwritten signature in black ink, consisting of several overlapping loops and a final horizontal stroke.

SIGNATURE OF REQUESTER

ANNEXURE: RECORDS REQUIRED

Any 'personal information' within the meaning of sections 1 and 34 of the Promotion of Access to Information Act 2 of 2000 may be blacked out from the records requested.

1. The minutes of all Free State and North West regional management committee meetings held between April and September 2010.
2. All and any communications between:
 - the Free State and North West regional office, and/or
 - the Mahikeng Justice Centre, and/or
 - Mahikeng Senior Litigator Adv Nzame Skibi, and
 - the LASA national office, and/or
 - the Eastern Cape regional office, and/or
 - the Mthatha Justice Centre

concerning Adv Skibi's:

 - 2.1 application,
 - 2.2 short-listing,
 - 2.3 interview,
 - 2.4 selection, and,
 - 2.5 approval

for the Mthatha Senior Litigator post, and,

 - 2.6 the subsequent cancellation of the recruitment and of Adv Skibi's transfer and appointment to the said post, and the reasons given therefor.
3. All and any communications between:
 - the Free State and North West regional office, and/or
 - the Mahikeng Justice Centre, and
 - the LASA national office

concerning the replacement of Adv Skibi at Mahikeng with another Senior Litigator, and/or the intended advertisement of the post being vacated by Adv Skibi, and/or any decision not to seek a replacement to fill the Mahikeng Senior Litigator post that Adv Skibi was to vacate on being transferred to the equivalent post at Mthatha before the cancellation of the recruitment.

4. All and any communications between Adv Skibi and:

- the Free State and North West regional office, and/or
- the Mahikeng Justice Centre, and/or
- the LASA national office

concerning his relocation to Mthatha, before the cancellation of his recruitment to the Mthatha Senior Litigator post.

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

90 Offences

(1) A person who with intent to deny a right of access in terms of this Act-

(a) destroys, damages or alters a record;

(b) conceals a record; or

(c) falsifies a record or makes a false record,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

23 Records that cannot be found or do not exist

(1) If-

(a) all reasonable steps have been taken to find a record requested; and

(b) there are reasonable grounds for believing that the record-

(i) is in the public body's possession but cannot be found; or

(ii) does not exist,

the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

25 Decision on request and notice thereof

(1) Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part apply, the information officer to whom the request is made or transferred, must, as soon as reasonably possible, but in any event within 30 days, after the request is received-

(a) decide in accordance with this Act whether to grant the request; and

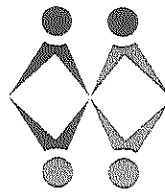
(b) notify the requester of the decision and, if the requester stated, as contemplated in section 18 (2)

(e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

INTERPRETATION ACT 33 OF 1957

4 Reckoning of number of days

When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.



Date: 18 November 2013

Anthony Robin Brink

25 Baker Road

Prestbury

Pietermaritzburg

3201

Fax: 086 672 0776

Email: arbrink@iafrica.com

196 Nelson Mandela Drive

PHG Building

Bloemfontein 9301

P.O. Box 6816

Bloemfontein 9301

Tel: 051 412 8040

Fax: 051 447 3754

www.legal-aid.co.za

**REQUEST FOR ACCESS TO RECORDS IN TERMS OF SECTION 18(1) OF
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000: ANTHONY
BRINK DATED 1 OCTOBER 2103**

Dear Mr. Brink

We acknowledge receipt of your request for access to record in terms of section 18(1) of the Promotion of Access to Information Act 2 of 2000, dated 1 October 2013 and which was received by our office on 13th on November 2013.

Legal Aid South Africa do not intend to respond to each and every request made as we note that all the information requested relates to the legal proceedings currently before court under case D529/12 at Durban Labour Court and is accordingly refused in terms of section 7(1) of the Promotion of Access to Information Act 2 of 2000.

We note further that your requests are manifestly frivolous or vexatious and fall squarely within the ambit of the provisions of section 45 of the aforesaid Act.

Yours Faithfully,



Zanele Msweli

Designated Deputy Information Officer

Free State and North West Regional Office

Legal Aid South Africa

IN THE MAGISTRATES COURT FOR THE DISCTRICT OF ESHOWE

Case No. 257/14

In the matter between:-

ANTHONY ROBIN BRINK

Applicant

and

HOPE BAMBISO N.O.**DEPUTY INFORMATION OFFICER,****EASTERN CAPE REGION,****LEGAL AID SOUTH AFRICA**

Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

HOPE BAMBISO,

do hereby make oath and state that,

1. I am an adult male Regional Operations Executive and a Designated Deputy Information Officer for the Regional Office of Eastern Cape in Legal Aid of South Africa ("Legal Aid SA") with my regional address at 5 Mangold Street, Newtown Park, Port Elizabeth. My principal address is Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg.
2. The facts deposed to herein are within my own personal knowledge unless the context indicates otherwise, and are to the best of my belief both true and correct.
3. Where I make submissions of law, I do so on the basis of legal advice I received from my legal representatives which advice I accept as correct.
4. Where I rely on evidence submitted by a third party, I shall annex such a person's confirmatory affidavit.
5. I have perused the Applicant's affidavit founding his application purportedly in terms of Chapter 2 of the Promotion of Access to Information Act, 2 of 2000 ("PAIA" and/or "the Act") which reads as follows:

"CHAPTER 2

APPLICATIONS TO COURT (ss 78-82)

78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75 (2);

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1-

(i) to refuse a request for access; or

(ii) taken in terms of section 22, 26 (1) or 29 (3); or

(d) aggrieved by a decision of the head of a private body-

(i) to refuse a request for access; or

(ii) taken in terms of section 54, 57 (1) or 60, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

(3) A third party-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1 to grant a request for access: or

(c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

6. I disagree with the Applicant's course of action herein and I shall return to this provision of the Act, its effect, interpretation and implementation, in due course.

7. I wish to give a brief legal framework within which Legal Aid SA operates. Although I am aware that Legal Aid SA, as an institution, is not cited as the Respondent herein but I am cited as the Respondent albeit in my nominated capacity, the framework I provide herein will be crucial for my answer herein below.

BRIEF LEGAL FRAMEWORK

8. The Board of Legal Aid SA is established by section 2 of the Legal Aid Act, Act 22 of 1969 which Act has been amended previously (hereinafter “the Act”). Legal Aid SA is a statutory body which exists in order to give effect to rights enshrined in the Constitution of the Republic of South Africa Act, Act 108 of 1996 (“the Constitution”).
9. The Act recognises Legal Aid SA as an autonomous body, accountable to Parliament under the Minister of Justice and Correctional Services watch and guidance.
10. The Act enjoins Legal Aid SA to provide legal aid to the indigent people as provided for by sections 25, 35(2)(c), (3)(g) of the Constitution and any other right which, in the discretion of the Board, may be worthy of legal representation.
11. The Act also empowers the Board, amongst others, to do all such things and perform all such functions as may be necessary for all and incidental to the attainment of the objects of the Board.
12. Those objects appear in section 3 which provides that “[T]he objects of the board shall be to render or make available legal aid to indigent persons and to provide legal representation at State expense as contemplated in the Constitution...”
13. Section 3A which deals with Legal Aid Guide (hereinafter “the Guide”) states that:

“(1)(a) Subject to the provisions of this act and in order to attain its objects and to exercise its powers referred to in section 3(d) and (dA), the board shall, in consultation with the Minister, include particulars of the scheme under which legal aid is rendered or made available and the procedure for its administration in a guide called the Legal Aid Guide.”
14. Around 1996, and in terms of section 3A of the Legal Aid Act, No. 22 of 1969 (as amended), Legal Aid SA together with Parliament released its first edition of the Legal Aid Guide after Parliament had held a number of sessions to ratify the Guide and ensure that the Guide is compliant with the law.

15. Again in 2012, Legal Aid SA, with both houses of Parliament, effected amendments to the Guide and replaced the 2009 version of the Guide with the 2012. This version still is the applicable version to date.
16. I submit therefore that the Guide is a statutory instrument binding on all South African including presiding officers.
17. The Guide serves to explain to all how legal aid is granted and managed in a fair and transparent manner.
18. Chapter 1 of the Guide provides a repeat of the mandate imposed on it by the Constitution which I referred to hereinabove and the powers referred to above.
19. What is important for my purposes herein is Clause 1.3 of the Guide which provides as follows:

“1.3. Place of business and legal service address

The National Office of Legal Aid SA is Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, South Africa.

The National Office of Legal Aid SA is its principal place of business and its domicilium citandi et executandi. This means that this is the address for the service of all legal proceedings relating to legal process involving Legal Aid SA.”

20. Regard being had to the above provision, there is only one address at which any person seeking to sue Legal Aid SA or its employees arising out of processes involving Legal Aid SA, must serve his or her legal process. The said address is the one provided for in the Guide *i.e.* its *domicilium* address. The rest, when perusing the Guide, are merely satellite offices and regional offices with no separate legal personality to sue or be sued.
21. Thus, in order to institute these proceedings that the Applicant sought to institute against me in so far as I represent Legal Aid SA or for any act or failure to perform any act regarding Legal Aid SA's obligations, the Applicant ought to have launched

his application where my principal address is i.e. Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, and not at my regional address.

22. The above conclusion will be critical, I submit, when regards is had to the submission I intend to make herein below regarding the jurisdiction of the above honourable Court.

23. I now deal with brief factual background to this matter before I could deal with all the paragraphs that form part of this application.

BRIEF FACTUAL BACKGROUND

24. On or about 1 October 2013, I received a request for access to certain information from the Applicant and which request appear on the Applicant's founding affidavit as annexure A.

25. As I was never involved in the matter and issues raised in the request, I then consulted with our Regional Human Resources Executive Ms Thenjiwe Magazi as most of the information sought relates to an employment issue that I am not familiar with.

26. Ms Magazi gave me information the substance of which was that I should also contact Mr Thembile Mtati or Solly Sekgota of Legal Aid SA Head Office in Johannesburg relating to the documents sought by the Applicant.

27. I then spoke to Mr. Solly Sekgota who provided me with information upon which I then prepared the answer which I gave to the Applicant and annexed to his application as annexure B.

28. The substance of the answer that I gave to the Applicant was that I declined to grant him access to most of the documents he sought therein fundamentally on two bases namely:

- 28.1. First, the information/documents he required was a subject matter of a similar request he made to the Head Office during about 25 January 2013 before he instituted an action against Legal Aid SA and some of its senior officers in the Labour Court, Durban under case number D529/11 which action is still pending before Cele J (“the action”). I annex hereto his entire request for the information he sought from the Head Office in Johannesburg as mark same as **HB1**.
- 28.2. Mr. Sekgota informed me that Legal Aid SA Head Office answered the Applicant fully and comprehensively and where any information was refused to him, same was done in accordance with the provisions of the law. I annex the answers which were provided to the Applicant in respect of the information he sought and mark same **HB2**.
- 28.3. Some of the information provided to the Applicant was in terms of the uniform rules of Court or such like mechanisms i.e. discovery processes.
- 28.4. Secondly, Mr Sekgota informed me that the Applicant instituted the action allegedly seeking all sorts of relief including that the Court order the Head Office to employ him to a position of a Senior Litigator based in Pietermaritzburg.
- 28.5. I submit that this action in so far as jurisdiction of the Durban Labour Court is concerned made sense as Legal Aid SA has offices therein and the post in issue was within the jurisdiction of the said Labour Court.
- 28.6. Furthermore, I am made to understand that the above action is still pending in the Labour Court. No judgment has been handed down. I will revert back to the effect of this information to the Applicant’s request.
29. I now wish to deal with the relevant provisions of the Act which stand out from this application. I do so herein below.

RELEVANT LEGAL PROVISIONS AND PRINCIPLES

30. In my response to the Applicant, I commenced by stating that as an organisation Legal Aid SA is bound by the values enshrined in the Constitution and which values amongst others underpins the right of an individual to access to information held by the State and/or its organs.

31. Having said that I stated that the information that he sought cannot be provided to him on the basis of sections 7 and 45 of the Act.

32. Section 7 of the Act provides as follows:

“7 Act not applying to records required for criminal or civil proceedings after commencement of proceedings

(1) This Act does not apply to a record of a public body or a private body if-

- (a) that record is requested for the purpose of criminal or civil proceedings;*
- (b) so requested after the commencement of such criminal or civil proceedings, as the case may be; and*
- (c) the production of or access to that record for the purpose referred to in paragraph (a) is provided for in any other law.*

(2) Any record obtained in a manner that contravenes subsection (1) is not admissible as evidence in the criminal or civil proceedings referred to in that subsection unless the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice.”

33. It is palpable that the Applicant himself sought this information to pursue either civil or criminal proceedings against the Head Office people and had in any event and in the past sought the same information therefrom.

34. I submit that even if I was wrong in thinking that the Applicant required the said information for litigation purposes, I am vindicated by his confirmation of my reasons to refuse his application because it is apparent from his affidavit that he intends to criminally prosecute Mr Brian Nair who sits as National Operations Executive in Johannesburg.

35. Accordingly, I submit that I was entitled to refuse the said request when I did.

36. I stated, as a second reason for refusing with information, that section 45 prohibited access to information where the application is manifestly vexatious frivolous. It reads thus:

“45 Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources

The information officer of a public body may refuse a request for access to a record of the body if-

(a) the request is manifestly frivolous or vexatious; or

(b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.”

37. I am advised that the Applicant has vowed to institute actions and applications against the Legal Aid SA for many years to come. He says so himself in his application *in casu*.

38. As matters stand, the Applicant has for unknown reasons also launched similar applications as this one and out of this Court against other Designated Deputy Information Officer of North West/ Free State and Legal Aid SA's CEO. Their case numbers are 258/14 and 259/14 respectively.

39. From the perusal of the founding papers, it is not difficult to see that the Applicant has an intense hatred and desire to exact revenge against Mr Nair for allegedly aborting a position that he had applied for.

40. It is thus easy to conclude that the Applicant seek all this information to arm himself for purposes of pursuing his cases against members of Legal Aid SA.
41. The use of vulgar and defamatory language in his affidavit is astonishing to say the least and demonstrates conclusively to me that the application, which he had made previously and was answered is now being resuscitated with me, in respect of issues that are currently before Court, is manifestly vexatious and frivolous.
42. For me to even respond to the said application has had the effect of diverting resources and time away from executing my mandate to Legal Aid SA. It is on this basis and on totality of the facts before me that I refused the Applicant's request for access to information on the basis I did.
43. Furthermore, the Applicant has, not followed the prescripts of the very same Act that he wished to rely on for relief he currently seeks.
44. Specifically, I submit that the Applicant has failed to exhaust the internal remedies provided for in the Act in that he has not, as yet, lodged an appeal against my decision to refuse his request for access to information.
45. The relevant provisions dealing with internal appeals provide as follows:

"PART 4

APPEALS AGAINST DECISIONS (ss 74-82)

CHAPTER I

INTERNAL APPEALS AGAINST DECISIONS OF INFORMATION OFFICERS OF CERTAIN PUBLIC BODIES (ss 74-77)

74 Right of internal appeal to relevant authority

- (1) *A requester may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of 'public body' in section 1-*

- (a) *to refuse a request for access; or*
 - (b) *taken in terms of section 22, 26(1) or 29(3), in relation to that requester with the relevant authority.*
- (2) *A third party may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of 'public body' in section 1 to grant a request for access.*

75 Manner of internal appeal, and appeal fees

(1) An internal appeal-

(a) must be lodged in the prescribed form-

(i) within 60 days;

(ii) if notice to a third party is required by section 49(1) (b), within 30 days after notice is given to the appellant of the decision appealed against or, if notice to the appellant is not required, after the decision was taken;

(b) must be delivered or sent to the information officer of the public body concerned at his or her address, fax number or electronic mail address;

(c) must identify the subject of the internal appeal and state the reasons for the internal appeal and may include any other relevant information known to the appellant:

(d) if, in addition to a written reply, the appellant wishes to be informed of the decision on the internal appeal in any other manner, must state that manner and provide the necessary particulars to be so informed;

(e) if applicable, must be accompanied by the prescribed appeal fee referred to in subsection (3): and

(f) must specify a postal address or fax number.

(2) (a) If an internal appeal is lodged after the expiry of the period referred to in subsection (1) (a), the relevant authority must, upon good cause shown, allow the late lodging of the internal appeal.

(b) If that relevant authority disallows the late lodging of the internal appeal, he or she must give notice of that decision to the person that lodged the internal appeal.

(3) (a) A requester lodging an internal appeal against the refusal of his or her request for access must pay the prescribed appeal fee (if any).

(b) If the prescribed appeal fee is payable in respect of an internal appeal, the decision on the internal appeal may be deferred until the fee is paid.

(4) As soon as reasonably possible, but in any event within 10 working days after receipt of an internal appeal in accordance with subsection (1), the information officer of the public body concerned must submit to the relevant authority-

(a) the internal appeal together with his or her reasons for the decision concerned; and .

(b) if the internal appeal is against the refusal or granting of a request for access, the name, postal address, phone and fax number and electronic mail address, whichever is available, of any third party that must be notified in terms of section 47(1) of the request.”

46. It appears clear to me that the Applicant ought to have proceeded in terms of section 74(1)(a), read with the time frame contained in section 75(1)(a)(i) or (ii).

47. I so submit because the Applicant, despite his conclusion that no right of appeal lies in his case, I am not sure on what basis does he so conclude because in page 60 of paragraph 109, Applicant contends that:

“109. Under section 74(2)(b) of the Act, no right of internal appeal lies against the refusal of a request for access to the records of a public body such as Legal Aid SA. This leaves me no other remedy but to apply to court for the relief I seek in the notice of motion to vindicate and enforce my fundamental right to information guaranteed by section 32 of the Constitution that the respondent has violated.”

48. The Applicant could not have been more wrong in his analysis of the above section of the Act.

49. From the above perusal of my quoted Chapter I dealing with the internal appeals, it is clear that there is no section 74(2) **“(b)”** in the PAIA Act.

50. Secondly, the scheme of the Act is framed in such a manner that it provides for a process of an internal appeal to a requester or even a third party who has been refused with access to information. Accordingly, it is wrong for the Applicant to firstly misquote a section of the Act knowing that the above Court may rely thereon but to also do so without reading its provisions fully. His conduct is tantamount to misleading the Court to rely on a non-existing section.

51. The Applicant, as the matters stand, has had a right to appeal my decision to refuse his request for access to information and such right had lapsed. I declined his application on 6 November 2013 (as per annexure B to his founding papers).

52. The Applicant ought to have lodged his appeal 60 days after my decision in terms of sections 74 and 75 which would have lapsed on 6 February 2014.

53. The Applicant has not done so and now wishes this Court to usurp the function of the Legislature by seeking to have this Court act as if it is an appeal body contemplated in the Act and dealing with his application as an appeal, a process which ought to have been made in accordance with the provisions of sections 74 and 75 of this Act.

54. I am advised that this cannot be.

55. Accordingly, this case falls to be dismissed and if needs be the Applicant be ordered to submit to the internal remedies as provided for in the above Chapter I.

56. The provision of section 74(2) provides for a third party's right to appeal. I submit that the Applicant is not a third party but a requester as defined in the Act.

57. Section 1 of the Act defines a “**requester**”. in relation to-

(a) a public body, means-

(i) any person (other than a public body contemplated in paragraph (a) or (b) (i) of the definition of 'public body', or an official thereof) making a request for access to a record of that public body; or

(ii) a person acting on behalf of the person referred to in subparagraph (i);

(b) a private body, means-

(i) any person including but not limited to, a public body or an official thereof, making a request for access to a record of that private body; or

(ii) a person acting on behalf of the person contemplated in subparagraph (i);”

58. Consequently, Applicant cannot escape the provisions of Chapter I of the Act.

59. I further submit that even the application he brought to this Court is ill-founded for lack of jurisdictional fact i.e. no internal appeal has been lodged.

60. The sections regulating the applications to Court reads as follows:

“CHAPTER 2

APPLICATIONS TO COURT (ss 78-82)

78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 **after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.**

(2) A requester-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75 (2);

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of ‘public body’ in section 1-

(i) to refuse a request for access; or

(ii) taken in terms of section 22, 26 (1) or 29 (3); or

(d) aggrieved by a decision of the head of a private body-

(i) to refuse a request for access; or

(ii) taken in terms of section 54, 57 (I) or 60, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

(3) A third party-

- (a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;
- (b) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section I to grant a request for access: or
- (c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82."

61. I have underlined and bolded the most important qualification of the above section to highlight to this Court that the Applicant can never competently launch this application before he had exhausted the internal remedies provided for in the Act.

62. This failure, I am advised, is fatal to his case. It falls to be dismissed with costs.

63. Furthermore, it is noteworthy that the Applicant demonstrates, by his own factual background to a deep-seated dispute of fact that arise between what he said, wrote and what either myself, Judge President D Mlambo, Ms Vedalankar, Mr Brian Nair, Patrick Hundermark, Mr Adv Nzame Skibi, Solly Sekgota, Ms Thenjiwe Magazi, may have said, wrote and done on the other hand.

64. What is abundantly clear is that bulk of what was said by all these people is still pending before the Labour Court. Cele J is still to pronounce, after having heard evidence from some of these people, whether or not the Applicant's accusations are founded.
65. I am advised that the hearing of the said action took two weeks and has generated over 6000 pages in record, pleadings and various annexures.
66. This Court has not had sight of those documents and/or the transcript of those proceedings and yet it is expected to decide this application in a manner that may indeed differ with the Higher Court in Durban.
67. This I am advised would immediately violate the precedence rule and create an unnecessary confusion.
68. It is on this basis that this application ought to fail as the Applicant himself has disclosed that an action he instituted at Durban dealing with factual issues he raised herein is pending before a Higher Court.
69. The Application must also fail because of the substantial amount of dispute of facts that exist on this application and indeed the action at Durban. It is by no stretch of imagination, not possible to resolve this application without referring same to oral evidence and hear all those people who have been accused of all sorts of defamatory and insulting deeds.
70. It is only fair that those people be afforded an opportunity to defend themselves and to do so through the presentation of oral evidence.
71. The Applicant was aware before he launched this Application that there would be massive dispute of facts which could not be satisfactorily resolved merely in the papers filed of record. Yet, he proceeded regardless and launched this factually convoluted application. It is apparent that this is not a straight forward application as it involves a substantial involvement of third parties not cited herein.

72. It is on this basis that such applications fail and are dismissed for failure to proceed by way of action when same is clearly warranted.

73. I pray that this application be dismissed for the same reason as above. It is too convoluted and disputed that it cannot be meaningfully heard merely on the papers filed of record.

74. The Act supports my contention in that section 81 dealing with evidence in these types of proceedings still is in terms of the rules of law. It states that:

“81 Proceedings are civil

(1) For the purposes of this Chapter proceedings on application in terms of section 78 are civil proceedings.

(2) The rules of evidence applicable in civil proceedings apply to proceedings on application in terms of section 78.”

75. I am advised that reference to the word application cannot be limited to motion proceedings especially where adherence to that interpretation would defeat the purpose of civil proceedings and its regulation of presentation and securing of evidence before Court.

76. The word “application” must, with respect, be read to include “action” proceedings where same is called for.

77. The Applicant’s choice of proceedings falls foul to the trite laws of pleadings, conduct of hearings, and execution of actions in terms of South African law.

78. I have dealt with background infused with legal framework of the Act herein. I now wish to turn to the specifics of this application.

79. I intend to raise a number of preliminary objections before I deal with the merits of the application in the Applicant's founding affidavit.

PRELIMINARY OBJECTION 1 – LACK OF JURISDICTIONAL FACT

80. In this regard, I wish to bring the following to the Court's attention:

80.1.1. Chapter 2 of the Act dealing with "*APPLICATIONS TO COURT* (ss 78-82)" provides that:

"78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body; ...

(b) ...

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1-

(i) to refuse a request for access; or ...

(d) ...

(ii) taken in terms of section 54, 57 (l) or 60, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82." [Emphasis mine]

- 80.2. Applicant contends that an Amendment to the Act has extended the time within which he ought to have approached this Court for relief in terms of section 82 from 30 to 180 days.
- 80.3. Applicant then submits that he has complied with the provision of the Act as amended.
- 80.4. The Applicant however, cannot demonstrate that he has indeed complied with the Act as amended. In fact, he submits when regard is to be had with the provisions for internal appeal against my decision, there is no provision for appeal against my decision.
- 80.5. I am not certain as to how does the Applicant arrive at such a conclusion. As far as I know, my seniors including the CEO and/or the Board are the people to whom an appeal against my decision lies.
- 80.6. The provisions of the said section 28(a) of the Judicial Matters Amendment Act, substitute the days within which to lodge an application to Court in terms of section 82 from 30 days to 180 days.
- 80.7. In this case, the Applicant filed his request for information form on 1 October 2013. I replied thereto on 6 November 2013.
- 80.8. The Applicant has not exhausted his internal remedies and as such he could not have complied with the provision of the Act as amended by the above Amendment Act.
- 80.9. I submit that the Amendment referred to above does not apply to the Applicant at all until he has satisfied the internal remedies clause of the Act.

81. Accordingly, I strongly submit that the Applicant has failed to comply with the Act and has not demonstrated any compliance with the Act regarding internal remedies.

82. Consequently, this application falls to be dismissed with costs.

PRELIMINARY OBJECTION 2 – LACK OF JURISDICTION OF THIS COURT

83. I submit that this Court has no jurisdiction to adjudicate on this application.

84. I say so for the simple reason that the Court does not have jurisdiction over me by virtue of the location where I as the respondent reside, and secondly, where the decision in issue herein was taken.

85. The Applicant, I noted, relies on a general designation of all regional and district magistrates' courts as "courts", in terms of section 1 of the definition of "court" in the Act, with authority to adjudicate over these types of applications.

86. I wish to demonstrate herein that the Applicant has misconstrued the very same authority he seek to rely on.

87. I am advised and accept as correct that the common law principles on jurisdiction to found an action cannot be overturned by a Government Notice whose contents do not even go as further as where the Applicant seeks the Notice to go.

88. In fact, the said Notice No. 585 of Government Gazette of 14 May 2004, states that:

"I Penuel Mpapa Maduna, Minister of Justice and Constitutional Development
 – (a)

(b) hereby under paragraph (b)(ii) of the definition of “court” in section 1 of the Promotion of Access to Information Act, Act 2000 (Act No. 2 of 2000), designate all magistrates’ courts established for any district or regional division or places appointed within any district or regional division as places of the holding of a court in terms of section 2 of the Magistrates Court Act, 1944 (Act No. 32 of 1994), as courts to hear any application in terms of the Promotion of Access to Information Act, 2000, within whose area of jurisdiction –

- (i) the decision of the information officer or relevant authority of the public body or the head of a private body has been taken:*
- (ii) the public body or private body concerned has its principal place of administration or business; or*
- (iii) the requester or third party concerned is domiciled or ordinarily resident.”*

89. I am advised that the above Government Notice cannot and did not seek to oust the common law principles of jurisdiction. In its own letters, the said Notice does no more than to designate all magistrates’ courts as PAIA Courts.

90. However, most importantly, the Notice still re-affirms the common law grounds of jurisdiction being (i) the place where the decision in issue was taken, and (ii) where the residence of the respondent is.

91. In many instances, the place where the transaction was entered into also founds jurisdiction and so is where the respondent’s assets are based.

92. I am advised that the common law jurisdiction jurisprudence emphasis to another well-known common law principle of **actor sequitur forum rei viz.** that the suitor shall seek the respondent and sue him at his background.

93. As a former Magistrate of some 20 years' experience, an advocate of over 20 years, aspirant Senior Litigator in Legal Aid SA, and presently an Acting Magistrate in this very same Court, the Applicant ought to have known this basic principle of our law of jurisdiction.
94. I wish to submit that in fact, the Applicant knows of this rule because previously when he had concluded that the Head Office staff 'unlawfully' refused him access to documents he required, threatened an application in terms of the Act.
95. The difference is that with the said threat, Applicant took same further and even prepared a draft application which he annexed to one of his request for access to information. Because the Head Office is based in Braamfontein, Applicant threatened to issue his application out of the Gauteng Local Division. I annex hereto a copy of the said application to demonstrate my point, and mark same as **HB3**.
96. The recent conduct of launching this application out of this Court was deliberate and intended to disadvantage me.
97. I submit that these principles of law have escaped him and they did so in an embarrassingly fashion given the superiority complex that he has and the insults that he hurls at me, and Legal Aid SA officials with a sense of pride and impunity.
98. I submit that his contention in re jurisdiction can never work in the manner that he contends *i.e.* that because is 'resides' in Eshowe and therefore he is entitled to bring his application in Eshowe.
99. I am advised that in any event, the Applicant is not an ordinary resident in Eshowe. He lives within the Court's jurisdiction on a temporary basis as he has accepted temporary work thereat.
100. Furthermore, I submit that that the underlying principle of jurisdiction is "effective order". Effectiveness of the order means that the Court in which the Respondent lives or is should be able to enforce its order with ease.

101. I am advised that the term “effective order” is often stated as “*A lawful power to decide something in a case or to adjudicate upon a case, and to give effective judgment, that is, to have the power to compel the person condemned to make satisfaction.*”¹
102. The Applicant’s reliance on paragraph (iii) of the Notice is completely misguided. That provision can only found jurisdiction in the requester’s favour only in the event that the requester is also a respondent or defendant in an action or application brought, for example, by an information officer or a third party. It cannot found jurisdiction to launch an application.
103. The Applicant lost it, with respect, and I am firm on this point.
104. I submit that the law remains as it is and the Applicant ought to institute these proceedings in an appropriate forum.
105. The above honourable Court, and as a matter of common law, will have no authority over me and will have no power to compel me to comply with anything coming therefrom. The court will be subjected to *extra territorium ius dicenti impune non paretur*.²
106. I submit that a Magistrate’s Court in Port Elizabeth, Eastern Cape (if Johannesburg is found not to be applicable – which I deny), is the appropriate forum to institute any proceedings against me primarily because of paragraphs (i) and (ii) of the same Notice above.
107. The Eastern Cape Magistrates’ Court may be more suitable and effective to compel me into compliance. Notwithstanding the above, I still maintain that the Gauteng Local Division is the appropriate Court to determine this matter.

¹ Per Viljoen JA in a 1987 Appeal Division case.

² “One administering jurisdiction beyond his territory may with impunity be disobeyed.”

108. I submit strongly so, with respect, that this application falls to be dismissed with costs.

PRELIMINARY OBJECTION 3 – MATERIAL DISPUTE OF FACTS

109. I have alluded hereinabove, to this fundamental violation of the rules of this Court and of the common law.

110. The Applicant foresaw the potential of material dispute of facts arising from this application and yet he forced ahead nonetheless.

111. The above Court is indirectly requested, by the Applicant, to make character findings against a number of numerous important people mentioned in this application without hearing them.

112. The Court is also hamstrung in this regard because the full picture of the dispute underlying this application in terms of records, transcript and pleadings are not before Court. I am advised that there are over 6000 pages that this Court ought to read in order to understand and contextualise this dispute. It is in any event pending in the Labour Court.

113. The Court is thus placed in a trap to rule differently from the Labour Court, a Court of higher standing as compared to this Court.

114. I submit that in view of the above possibilities, this application is bad in law and ought to be dismissed with costs.

PRELIMINARY OBJECTION 4 – *SUB JUDICE*

115. The Applicant himself alluded to the fact that the underlying dispute he has with Legal Aid SA is pending before Court.

116. This fact was confirmed by Mr Sekgota.

117. Accordingly, much of the Applicant's averments are a repeat of issues dealt with in the action before Cele J and upon which the learned Judge is still to pronounce.

118. The Applicant seeks this Court to make findings, of fact, character and of law on a matter that is before another Court which process may create confusion as decisions may differ.

119. I am therefore advised, which advice I accept as correct that the common law principle of sub judice is applicable herein.

120. It is thus appropriate that this application be dismissed for the above reason only.

PRELIMINARY OBJECTION 5 – EXHAUSTING OF INTERNAL REMEDIES

121. I have referred above and in details to the Applicant's failure to comply with the jurisdictional facts before launching this application. I wish to incorporate the said averments herein as if specifically pleaded.

122. I have even demonstrated how the Act, itself also confirm the position I adopt herein that there must be compliance with the internal remedies before an Applicant could approach a Court of law.

123. Failing the above compliance with the Act, I submit this application falls to be dismissed and I so pray.

124. Alternatively, the Court is requested to refer the Applicant back to the provisions of the Act and to compel him to comply with its provisions before he approaches a Court of law.

PRELIMINARY OBJECTION 6 – WAIVER TO APPROACH A COURT

125. I wish to submit that most of the information that the Applicant seek has already been sought early last year and the Applicant, instead then, of launching this application, waived his right to do so and elected to proceed with his action against Legal Aid SA in Durban.
126. I submit that the Applicant knew of the Legal Aid SA's position as early as 25 January 2013 or shortly thereafter what the answer was in respect to the information he sought.
127. Instead, the Applicant did nothing about his right to approach Court to enforce the right he alleges I violated.
128. I deny this and submit that the Applicant must be held to an election he made.
129. The Applicant has not offered the Court good cause to demonstrate why he only now seeks to approach the Court for the same information he sought and was answered in January 2013.
130. I submit that this Court would be perfectly to dismiss this application on the basis of an undue delay which he has not even begun to explain.
131. I so pray.
132. Tied to this of course, is the extreme abuse of Court process that the Applicant seeks same thing over different Courts and using numerous applications for apparent no reason at all.
133. The Court should mark its disapproval and mulct the Applicant with punitive cost order.

134. I so pray.

PRELIMINARY OBJECTION 7 – PERCEPTION OF BIAS

135. I am unable to understand why the Applicant chose to bring this application out of the above Court.

136. I am advised by Mr Sekgota that during the last appearance in the Durban Labour Court, Applicant disclosed that he has accepted a temporary acting position in this Court.

137. I am able to surmise that the Applicant only seeks to obtain an unfair advantage over me and/or the Respondent by having this matter being adjudicated by his colleagues and who could possibly find it difficult to rule against him over me a person based in a different province.

138. This conduct, not only demonstrate a sheer abuse of power, resources and Court's processes but it also, and on all objective facts, give off a sign or perception of bias.

139. I submit that bias is a very nebulous concept which does not have to physically manifest itself but can also be sensed by a lay person who has all the facts with him.

140. In this case:

140.1. I stated that the Applicant is in a committed long term fight with Legal Aid SA and has public so vowed.

140.2. The issue of jurisdiction mentioned above is so obvious to any trained lawyer that it is odd that the Applicant preferred this matter to be decided in his own turf by one of his colleagues;

- 140.3. It is unlikely that I, as the Respondent, would receive fair hearing in this Court given the fact that as between me and the Applicant, I am a foreigner of the Court.
141. I am advised that even the slightest perception of bias is sufficient to have this matter removed from the roll of this Court and be referred to a Court with jurisdiction, as it were and in the event that the Applicant does not wish to follow the Respondent as he is required by the law to do, I submit that the neutral territory would not be this Court.
142. I submit that this Court should remove this matter from its roll on the basis of a real apprehension that I harbour of unfair hearing against me.
143. I am advised that there is a legal parlance that is universally accepted when coming to the rule against bias viz. **“justice must not only be done but must also seem to be done”**.
144. In *casu*, I am afraid I do not carry that sense of confidence that justice will be seen to be done. I submit any other reasonable person may also feel as I do.
145. I now wish to address the application itself. I must preface my approach with the correct view the Applicant hold of me, i.e. that I did not attend the action in Durban and have generally not much of an idea except what Mr Sekgota advised me.
146. Accordingly, I shall deal with what falls within my own personal knowledge. Where I do not address a particular paragraph, I should not be taken to have admitted same. Instead I should be taken to have placed same in issue.
147. **AD NOTICE OF MOTION PRAYERS 1 – 2.**
- 147.1. I deny the correctness of the contents of this paragraph.

147.2. I have demonstrated a legal basis upon which I have exercised my discretion to refuse the Applicant's request for access to information. I must submit that his right is not unlimited and I have thus demonstrated compliance with both the Act and section 36 of the Constitution.

148. AD NOTICE OF MOTION PRAYER 3.

148.1. I deny the correctness of the contents of this paragraph.

148.2. The Court is not competent to grant the above prayer and I submit for reasons set out above. It also is so convoluted and incoherent that it cannot, in any event, be granted at all.

148.3. I am advised that all people who are mentioned in this order are not before Court. They have not been cited as parties to any of the three applications brought by the Applicant.

148.4. Accordingly, this Court will have no competence and authority to rule over them.

148.5. I am advised that it is another rule of law, which the Applicant appears to have missed, that a Court would not readily grant an order against a person whom it has not heard.

148.6. The Applicant has elected to sue me in this matter. I am the person to respond hereto and any order would thus be directed at me.

149. AD NOTICE OF MOTION PRAYER 4.

149.1. I deny the correctness of the contents of this paragraph.

149.2. I submit that for the same reasons as the above prayer, this Court is not competent to grant this order.

149.3. The Applicant seeks herein attachment of computers, without specifying whose computers he seeks to attach. Again, where he has not cited owners of those computers for them to respond and defend their positions, this Court is unable to grant him the said relief.

149.4. I submit that the said order is vague and falls to be rejected and dismissed.

150. AD NOTICE OF MOTION PRAYER 5.

150.1. I deny the correctness of the contents of this paragraph.

150.2. I submit that this Court has no business in expending its resources for distributing to make copies of all these documents and post them to all the people identified in the above prayer. No reason is furnished as to why those people should be favoured with all the documents of this application in any event, once filed, become public record.

151. AD NOTICE OF MOTION PRAYER 6.

151.1. I deny the correctness of the contents of this paragraph.

151.2. I submit that the Applicant should be ordered to pay the costs of this application. The tone, language of his application, the unnecessary mistakes of law that beset this application, and the application itself all warrant a punitive costs order.

152. AD PARAGRAPH 1.

152.1. I deny the correctness of the contents of this paragraph.

152.2. I submit that the Applicant is an ordinary resident of Pietermaritzburg and only lives in Eshowe by virtue of an acting position he had taken thereat.

152.3. I further submit that the Applicant has no assets attaching to his name at Eshowe.

153. AD PARAGRAPH 2.

153.1. I admit the correctness of the contents of this paragraph.

154. AD PARAGRAPH 3.

154.1. I note the contents of this paragraph.

155. AD PARAGRAPH 4.

155.1. I deny the correctness of the contents of this paragraph.

155.2. Applicant is not entitled to any order in this matter. I have already set out sufficient reasons for this Court to dismiss the Applicant's claim herein.

156. AD PARAGRAPHS 5 – 6.

156.1. I deny the correctness of the contents of these paragraphs.

156.2. I have dealt with the effect of Government Notice No. 585 of Government Gazette 14 of 2014. I request that my submissions hereinabove also be incorporated herein as if specifically pleaded.

156.3. Full argument will be presented in respect of these sections of the Act.

157. AD PARAGRAPH 7.

157.1. I note the contents of this paragraph.

158. **AD PARAGRAPH 8.**

158.1. I admit the correctness of the contents of this paragraph.

159. **AD PARAGRAPH 9.**

159.1. I deny the correctness of the contents of this paragraph.

159.2. The Applicant is engaged in speculation. And feeding his speculation is his apparent deep-seated hatred for Mr Nair who has had nothing to do with my response to the Applicant's request for access to information.

159.3. As matters stand, I directed queries to Mr Sekgota who sits at National Office in Johannesburg and he provided me with information and important dates that formed part of my response to the Applicant.

159.4. Save as aforesaid, I have no knowledge of the balance of this paragraph.

160. **AD PARAGRAPH 10.**

160.1. I have no knowledge of the issues contained in this paragraph. Accordingly, I cannot either admit or deny same.

161. **AD PARAGRAPHS 11 – 13.**

161.1. I deny the correctness of the contents of these paragraphs.

161.2. I submit that all objective facts considered, afforded me with reasons to lawfully refuse this application and as the Applicant himself avers in his affidavit he confirms what was, objectively, also evident to me.

162. **AD PARAGRAPHS 14 – 15.**

162.1. I deny the correctness of the contents of these paragraphs.

162.2. I have also set out the provisions of the sections that grounded my refusal to accede to the Applicant's request. I submit that that there are many other sections that entitles the holder of information to refuse access thereto.

163. AD PARAGRAPH 16.

163.1. I deny the correctness of the contents of this paragraph.

163.2. In my analysis of the facts and application hereof, only sections 7(1) and 45 of the Act bore relevance to this application. I submit that it is not necessary to recite all the sections merely for the sake of doing so.

164. AD PARAGRAPH 17.

164.1. I deny the correctness of the contents of this paragraph.

164.2. I submit that the two sections I relied on complement each other. The Applicant stated herein that there is an action pending in the Labour Court. I was also informed of the same fact including the fact that many of the information he now sought from me, he previously sought from the Head Office.

164.3. Applicant further disclosed in this application his reason for collecting all this information. He thus falls squarely within section 7 of the Act.

164.4. It is thus apparent to me that to entertain an application that was previously entertained by Head Office, would unnecessarily direct valuable resources away from the main focus of my office.

165. AD PARAGRAPHS 18 – 25.

165.1. I deny the correctness of the contents of these paragraphs.

165.2. In my understanding of the facts forming part of this case, the action in Durban is still *sub judice*. The documents he seeks were demanded before the institution thereof and when he failed to access them, he never launched an application of this nature.

165.3. Now, years after his request, Applicant seeks the same information. However, in this case, the case in Durban is still pending.

165.4. It is apparent, that the Legislature intended that in cases such as this, the Applicant should invoke other mechanisms of securing documents or information. Not the PAIA mechanism.

165.5. I submit that section 7(2) is prospective in its application and applicable in a case that has not been launched. In this case, we are dealing with an action that has already commenced and is pending.

165.6. The fact that heads of argument have been filed of record does not mean that the said action has been completed.

165.7. Accordingly, I was entitled to rely on section 7(1) alone and in relation to the already commenced action.

166. AD PARAGRAPH 26.

166.1. I note the contents of this paragraph. I have nothing to comment on herein as I have no personal knowledge of the facts deposed to herein by the Applicant.

167. AD PARAGRAPH 27.

167.1. I note the Applicant's resolve in this regard.

167.2. Save as aforesaid, I am unable to admit or deny of the facts submitted herein. I have no knowledge of the facts deposed to herein.

168. AD PARAGRAPH 28.

168.1. I deny the correctness of the contents of this paragraph.

168.2. I submit that my reliance on section 7(1) of the Act was not unlawful, irrelevant nor incompetent.

169. AD PARAGRAPHS 29 – 32.

169.1. I deny the correctness of the contents of these paragraphs.

169.2. I submit that the fact that the information he sought before trial and was refused is material because, had he insisted with his request therefor, he could and should have approached a Court for the said information to be disclosed to him.

169.3. It is an abuse that the Applicant intends for as long as he lives to seek information with a view to collect evidence for this or that litigation.

169.4. Save for what I submitted hereinabove, I have no personal knowledge of the balance of the above paragraphs.

169.5. However, Mr Sekgota informed me that all the submissions made against senior members of Legal Aid SA at the head office are denied have been challenged and a decision thereupon is being awaited.

170. AD PARAGRAPH 34.

170.1. I deny the correctness of the contents of this paragraph.

170.2. I submit that if the said refusal was illegal, the Applicant ought to have exercised the rights of appeal he had in terms of the Act. He has failed to do so and now seek to use this Court as an appeal structure not contemplated by the Court.

170.3. I refer the Court to my above contentions and preliminary point in this regard.

171. AD PARAGRAPH 35.

171.1. I have no personal knowledge of the facts deposed to herein, accordingly, I cannot admit or deny same.

171.2. However, Mr Sekgota informed me that all the submissions made against senior members of Legal Aid SA at the head office are denied have been challenged and a decision thereupon is being awaited.

172. AD PARAGRAPHS 36 – 38.

172.1. I deny the correctness of the contents of these paragraphs.

172.2. The information sought herein is exactly the same as the one responded to previously by Legal Aid SA.

173. AD PARAGRAPHS 39 – 44.

173.1. I have no personal knowledge of the issues raised herein. I thus cannot admit nor confirm any of the contents thereof.

173.2. I however submit that evidence relating to adv. Nzame Skibi's say-so in so far as same comes from the Applicant constitutes hearsay evidence.

174. AD PARAGRAPH 45.

174.1. I deny the correctness of the contents of this paragraph.

174.2. I note that the time frames referred to herein were before I occupied the position I am presently occupying.

174.3. Alternatively, I have not been directly approached until recently by the Applicant seeking information he now seeks. This would also explain my lack of personal knowledge of the issues he raises herein regarding the recruitment or otherwise of Mr Skibi.

174.4. Accordingly, I have nothing to add to the averments herein.

174.5. I am also advised these are issues before Cele J presently and his decision thereon is still being awaited.

175. AD PARAGRAPHS 46 – 47.

175.1. I deny the correctness of the contents of these paragraphs.

175.2. I have no knowledge of the facts alleged herein.

175.3. However, Mr Sekgota informed me that all the submissions made against senior members of Legal Aid SA at the head office are denied have been challenged and a decision thereupon is being awaited.

176. AD PARAGRAPHS 48 – 58.

176.1. I deny the correctness of the contents of these paragraphs.

176.2. I have no personal knowledge of the facts deposed to herein. I am unable to assist the Court.

176.3. I was not even the Eastern Cape ROE and/or the deputy information officer by then.

177. AD PARAGRAPH 59.

177.1. I deny the correctness of the contents of this paragraph.

177.2. I cannot admit nor confirm the averments made hereinabove.

178. AD PARAGRAPHS 60 – 72.

178.1. I deny the correctness of the contents of these paragraphs.

178.2. The Applicant has made submissions on a large number of issues which have absolutely nothing to do with me. Furthermore and in any event, all these are issues that are pending before Cele J in the Durban Labour Court.

178.3. I have no personal knowledge of these facts and I wonder why the Applicant included all these facts in this application against me.

178.4. The only reason that the Applicant has included all these facts herein is simply to paint a very bad picture against Legal Aid SA and its Head Office Officials and to do so freely without citing them or making them part of this application so that they can defend themselves and challenge these submissions.

178.5. At the hearing of this application, I am going to ask for the striking off of all the paragraphs that have absolutely nothing to do with me. They are scandalous, irrelevant and constitute a gross abuse of Court's process, and his power as a magistrate in this Court.

178.6. In any event, Mr Sekgota informed me that all the submissions made against senior members of Legal Aid SA at the head office are denied have been challenged and a decision thereupon is being awaited.

179. **AD PARAGRAPH 73.**

179.1. I deny the correctness of the contents of this paragraph.

179.2. I have demonstrated that this information was sought and responded to in detail.

179.3. Applicant was even furnished discovery affidavit to deal with this request.

180. **AD PARAGRAPH 75.**

180.1. I deny the correctness of the contents of this paragraph. In addition to having no personal knowledge about most of the facts deposed herein, I deny that the Applicant is entitled to an order he proposes herein.

180.2. I deny specifically that the Applicant could mid-stream seek an order not contained in his notice of motion. It is not competent to do so and or for the Court to grant such an order.

180.3. I submit that such a request ought to fail.

181. **AD PARAGRAPH 76.**

181.1. I deny the correctness of the contents of this paragraph.

181.2. Applicant sought this information and was indeed answered by me with reference to documents previously referred to him.

182. **AD PARAGRAPH 77.**

182.1. I deny the correctness of the contents of this paragraph.

182.2. From my enquiry from Mr Sekgota, it appears to me that the answer I gave to the Applicant is the correct one and I hereby repeat same *in casu*.

183. AD PARAGRAPH 78.

183.1. I deny the correctness of the contents of this paragraph.

183.2. I am responsible for the Port Elizabeth, Eastern Cape Region and I am advised by Mr Sekgota that a file that was to be delivered to Legal Aid SA Head Office in re the position of senior litigator position for Mthatha was lost in transit. I believe Ms Magazi informed Mr Sekgota telephonically sometime last year.

183.3. Our legal advisor informs me, and correctly so that since the Applicant has elected to sue only me in this application, I could not have been able to comment on all communications from other regions like Free State and Northwest, and/or Mahikeng Justice Centre.

183.4. The Applicant was informed of the lost file and he still does not believe the explanation given to him. I am unable to take this issue any further.

184. AD PARAGRAPH 79.

184.1. I deny the correctness of the contents of this paragraph.

184.2. From the Applicant's submissions herein, it turns out I was correct that he requires this information to institute proceedings when he can use other mechanisms provided for by the law.

185. AD PARAGRAPHS 80 – 100.

185.1. I deny the correctness of the contents of these paragraphs.

185.2. I personally have no knowledge of what the Applicant is deposing to herein. I am not aware of the issues he ascribes to Legal Aid SA's CEO Ms Vedalankar and NOE Mr Nair, Mrrs Thembile Mtati and Solly Sekgota and cannot comment thereon.

185.3. I am at a loss as to why have the Applicant put all these substantial amount of facts (twenty paragraphs in total) in this application – all of which have nothing to do with me. He has unnecessarily taken my time off from my work to answer to all these issues.

185.4. I am still of the view that these issues do not belong in this application and they should be struck out as they are scandalous. The senior members of LASA mentioned herein are not before Court to answer for themselves.

185.5. Applicant must be punished with costs. This is gross misconduct and abuse of the process of the highest order.

186. AD PARAGRAPHS 101 – 102.

186.1. Save to admit that I was not at the Applicant's trial and do not involved in his labour case, I deny the correctness of the contents of these paragraphs.

186.2. I have stated that few telephone calls to Mr Sekgota and Ms Magazi, provided me with information I required to answer the Applicant in the manner I did.

187. AD PARAGRAPHS 103 – 105.

187.1. I deny the correctness of the contents of these paragraphs.

187.2. I refer to my answer above at paragraph 167 and incorporate same herein as if specifically pleaded.

188. AD PARAGRAPH 106.

188.1. I deny the correctness of the contents of this paragraph.

188.2. I refer to my paragraph 187 above and incorporate same herein as if specifically pleaded.

189. AD PARAGRAPH 107.

189.1. I deny the correctness of the contents of this paragraph.

189.2. I have nothing to say to this paragraph as it pertains to Mr Nair and matters before the Labour Court.

189.3. Mr Sekgota informed me that all the submissions made against senior members of Legal Aid SA at the head office are denied have been challenged and a decision thereupon is being awaited.

190. AD PARAGRAPH 108.

190.1. I deny the correctness of the contents of this paragraph.

190.2. I note the arrogance and superiority complex demonstrated herein by Applicant.

191. AD PARAGRAPH 109.

191.1. I deny the correctness of the contents of this paragraph.

191.2. As far as I am able to peruse the law, the Act provides thus:

“CHAPTER 2

APPLICATIONS TO COURT (ss 78-82)

78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75 (2);

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of ‘public body’ in section 1-

(i) to refuse a request for access; or

(ii) taken in terms of section 22, 26 (1) or 29 (3); or ...”

191.3. As stated herein above, the Applicant is disingenuous by baldly suggesting that there is no internal appeal lies against a decision of a public body such as Legal Aid SA.

191.4. It is even noteworthy that he does not state his reason for coming to this surprising conclusion. It must just be dismissed as non-sense.

191.5. The CEO is the head of the organisation and also the Information Officer. She is the person who ought to consider appeals against decisions for refusal of access to information by a deputy information officer.

192. AD PARAGRAPHS 110 – 114.

192.1. I deny the correctness of the contents of these paragraphs.

192.2. Yet again, the Applicant deposed to things that I have no knowledge of. I am thus unable to assist this Court.

192.3. It is noteworthy that the Applicant deliberately failed and/or refused to comply with the provisions relating to internal remedies simply because he did not want to 'waste his time looking to the Board and to the Chapter 9 institutions for assistance.' He decided to, instead, come to this Court directly when the Act requires him to **first** lodge an internal appeal and demonstrate that he had done so and still has not been assisted.

192.4. It is on this basis that I submit this application falls to be dismissed with costs for lack of compliance with the internal appeal procedures set out in terms of the Act.

193. **AD PARAGRAPH 115.**

193.1. I deny the correctness of the contents of this paragraph.

193.2. In this regard, I wish to bring the following to the Court's attention:

193.2.1. Chapter 2 of the Act dealing with "APPLICATIONS TO COURT (ss 78-82)" provides that:

"78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester-

(e) *that has been unsuccessful in an internal appeal to the relevant authority of a public body; ...*

(f) ...

(g) *aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1-*

(ii) *to refuse a request for access; or ...*

(h) ...

(ii) *taken in terms of section 54, 57 (l) or 60, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.*” **[Emphasis mine]**

193.3. The Amendment that Applicant refers to came into operation in 2014.

193.4. The provisions of the said section 28(a) of the Judicial Matters Amendment Act, Act 42 of 2013 substitute the days within which to lodge an application to Court in terms of section 82 from 30 days to 180 days and after an internal appeal had failed.

193.5. The Applicant filed his request for information form on 1 October 2013. I replied thereto on 6 November 2013. Accordingly, the Applicant had sufficient opportunity to bring his appeal and thereafter to launch this application.

193.6. However, Applicant failed to do so.

193.7. Accordingly, the Applicant is precluded from launching this application.

194. **AD PARAGRAPHS 116 – 117.**

194.1. I deny the correctness of the contents of these paragraphs.

194.2. I have taken advise on the case of Bummer v Minister of Social Development and Others 2009 (6) SA 323 (CC).

194.3. In this case, the Constitutional Court considered the time bar that any person faced when seeking to access courts in order to vindicate his/her rights and in particular, where one has to bring an application to the Court in terms of section 78(2) of the Act.

194.4. The Constitutional Court held that the 30 day period within which to bring an application in terms of section 81 of the Act through section 78 thereof was grossly insufficient as to warrant its declaration of invalidity. The Court replaced the said 30 days with 180 days period and ordered that this new period will apply prospectively until a new Legislation is enacted.

194.5. However, the Constitutional Court at paragraph [77] recognises that *“[T]he period of 180 days must be calculated from the date when the requester receives notification of the decision on internal appeal.”* [Emphasis mine]

194.6. I thus still contend that the launching of this application must, of necessity be preceded by an internal appeal. This is a jurisdictional fact that the Applicant cannot overcome.

194.7. My above preliminary objection bears relevance herein.

195. **AD PARAGRAPH 118.**

195.1. I note the contents of this paragraph.

196. **AD PARAGRAPH 119.**

196.1. I deny the correctness of the contents of this paragraph.

196.2. I submit that the Applicant should not have relied on his previous experience with the Head Office but ought to have demonstrated that also with regard to my refusal, he appeals to the SAHRC. He had no basis to assume that the Human Rights Commission would not assist him.

197. AD PARAGRAPH 120.

197.1. I deny the correctness of the contents of this paragraph.

197.2. As far as I know, Legal Aid SA would not illegally or unlawfully deny anyone access to justice. It is after all, the main objective and foundation of our organisation.

197.3. I am unable to comment on the alleged dereliction of duties by the SAHRC.

198. AD PARAGRAPHS 121 – 122.

198.1. I deny the correctness of the contents of these paragraphs.

198.2. I am at a loss as to why has the Applicant referred this application to all these people from whom he expects an answer and yet he failed, alternatively neglected to cite them in his application.

198.3. I question the value of their answers herein as they are not parties herein and are not formally before Court.

198.4. It is apparent to me that Applicant seeks to abuse, one more time, the process of this Court and to later claim that he had afforded them an opportunity to file their answers in these proceedings and they have failed to do so.

198.5. This is an illogical step and deserves censure by Court.

CONCLUSION

199. I submit that the Applicant has not made out a case for the relief he seeks.

200. I submit one or more of my preliminary objections holds true and this application falls to be dismissed.

201. I submit that the conduct by the Applicant as set out more specifically in my preliminary objections deserves punitive cost orders.

202. Legal Aid SA and I cannot be dragged into litigation that has no merit, that is scandalous, vexatious and in flagrant disregard of the law and processes of Court.

203. I annex hereto the confirmatory affidavit of Mr Brian Nair, Thembile Mtati, Solly Sekgota and Ms Thenjiwe Magazi which I mark as **HB4**, **HB5**, **HB6** and **HB7**.

WHEREFORE it may please the court to dismiss the application with punitive costs.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at on this the August 2014. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

received a regret letter' and 'the two other candidates received regret letters.'²¹ Not the three other candidates.

If contrary to what Nair told me on oath, and contrary to what the SAHRC was also told, 'Mgcamu [sic: Ngcamu] was informed by post', which is to say all four interviewed candidates for the Pietermaritzburg and Durban Senior Litigator post received regret letters, and not three, a copy of the regret letter sent to Ngcamu will exist and proof of post, and I require them.

29. Ad document 35. Concerning the Mthatha Senior Litigator recruitment:

- (a) The Eastern Cape regional professional selection panel's Motivation recording its recommendation of Nzame Skibi for the Mthatha Senior Litigator post;**
- (b) Email/letter from the Eastern Cape RHRM, ROE, or other officer, to Nair, covering the said Motivation recommending Skibi, and proof of post, if a letter was sent by post;**
- (c) Email/letter to Skibi notifying him that LASA had subsequently decided not to fill the Mthatha post and that his hoped-for transfer from Mahikeng was off.**

If in each case 'No such record exists', is it intended to allege that Mahikeng Senior Litigator Nzame Skibi was interviewed, selected and recommended for (internal transfer to) the Mthatha Senior Litigator post off the record, so that no record exists of his interview, selection and recommendation for the post? Or were no interviews held before Skibi was selected?

And is it intended to allege that, contrary to his information to me on the telephone on 28 October 2011 that he received an email informing him that the Mthatha Senior Litigator recruitment had been cancelled, Skibi received no such email and that he was notified off the record that the recruitment process/his appointment²² and transfer had been cancelled?

30. Ad document 36. The 'regret letters'/emails sent to the unsuccessful shortlisted candidates interviewed for the Mthatha Senior Litigator post, informing them that their applications had been unsuccessful.

If 'No such record exists', is it intended to allege that in contravention of section 1.5.1 of the Policies and Procedures on Recruitment²³ no regret letters were sent to the unsuccessful shortlisted applicants for the Mthatha Senior Litigator post?

²¹ Document bundle addendum, page 868.

²² According to the Mthatha Justice Centre, he 'was ready to start'.

²³ Document bundle addendum, page 718.

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT DURBAN

Case No: D529/11

In the matter between

ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

**DISCOVERY OF DOCUMENTS IN TERMS OF RULE 35(3) OF THE RULES OF
COURT IN RE THE PRE-TRIAL MINUTES OF 25 JANUARY 2013**

I, the undersigned,

THEMBILE VUYO MTATI

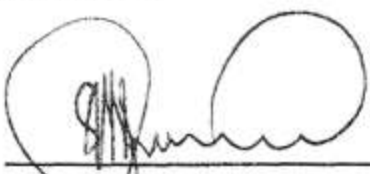
do hereby state under oath that:

1. I am an adult practicing attorney employed as a Corporate Service Executive by the Respondent and I am duly authorised to depose to this affidavit.
2. The facts stated herein are within my personal knowledge, unless stated otherwise, and are to the best of my belief both true and correct.
3. In compliance with paragraph 4 of the parties' Pre-trial minutes held at Durban on 25 January 2013 and following the Applicant's Proposed Pre-Trial Agenda dated 25 January 2013, I wish to submit as follows:

- 3.1 That I have in my possession or under my control the documents requested by the applicant, which I herewith discover and furnish to the Applicant as required ^{by} him in his proposed pre-trial agenda, set out in **Part 1** of the attached schedule.
- 3.2 That I do not have and never had in my possession documents set out in **Part 2** of the attached schedule.
- 3.3 That in **Part 3**, I object to provide/discover all the identified records in terms of Uniform Rule of High Court 35(2) (b) on the basis that same are irrelevant to the Applicant's case.
- 3.4 That in **Part 4**, I further object to commenting or answering all paragraphs identified therein containing questions, interrogatories, remarks, observations, queries, or requests for further particularity, and/or requests for information.


DEPONENT

THUS SWORN AND SIGNED BEFORE ME AT BRAAMFONTEIN ON THIS THE 11TH DAY OF MARCH 2013. THE DEPENDENT HAVING ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION, AND THAT HE HAS NO OBJECTION IN TAKING THE PRESCRIBED OATH AND WHICH HE CONSIDERS TO BE BINDING ON HIS CONSCIENCE.


COMMISSIONER OF OATH

FULL NAMES : SIMON HLUNGWANE
DESIGNATION : LT COLONEL
ADDRESS : 16 EMPIRE ROAD, PARKTOWN



PART 1

Document Number	Paragraph	
1	22	A clear original PDF Approval Framework is attached, DOC1
3	23	(i)The first page from which LA4 is excerpted is attached, including the full record showing the dates. All reports of Board are reports of the Chief Executive Officer irrespective of the originator. DOC 3
9	26	The covering email of Mdaka to Brian is attached, DOC 9
35	29(a)	The motivation is attached, DOC 35(a)
38	31	No written minute by selection panel but the document attached shows the note made by Brijlal noting the reply to the applicant's answer to the Justice Centre of his choice, DOC 38
Other new documents required		
43		Notification of the Board that Brink's claim for reinstatement to the post is defended, See an extract minutes of 26 November 2011 item 9.5.1 attached as DOC 43
46		Extract minutes of the Board on 26 November 2011 under 9.4.6 is attached DOC 46

PART 2

Document Number	Paragraph	
3(vi)	23	No such written record exists.
5	24	No posts were cut and therefore no such records exist.
6	25	No such records exist and even if such records existed, they would be in possession of third party, namely Department of Justice.
11	27	The instructions were done telephonically, and therefore no written record exists
12	28	No such record exists
35(b)	29	No such record exists. The documents were in the Respondent's possession and have been lost in transit between Mthatha and Johannesburg.
35(c)	29	No such record exists. The documents were in the Respondent's possession and have been lost in transit between Mthatha and Johannesburg.

Handwritten signature and initials, possibly 'Sitt'.

36	30	No such record exists
39	32	No such record exists
41	33	No such record exists
42	34(a)	No such record exists
42	34(b)	No such record exists
43	35(a)	No such record exists
43	35(b)	No such record exists
58	37	No such record exists
59	38	No such record exists
60	39	No such record exists
61	40	No such record exists. If they exists they would be in possession of third party, namely the Minister and/or the Department of Justice
62	41	No such written record exists
Other new documents required		
44		No such written record exists
47		No such written record exists
48-50		No such record exists. The panel has not been constituted and terms of reference are still under consideration.

PART 3

<i>Document Required</i>
36
53 to 57

PART 4

53 to 57

Case No:

In the matter between;

ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

NOTICE OF MOTION

TAKE NOTICE that the applicant intends applying for an order in the following terms:

1. That the respondent be ordered to make available to the applicant, by no later than twenty court days from the date of this order, copies of the records identified in the annexure hereto marked 'Annexure to Order'; alternatively, in the event that any such record does not exist, that the respondent's information officer confirm this to the applicant on affidavit.

That in the event that any such record once existed but has since been physically destroyed, or in the case of computer records has been deleted from the respondent's data storage server, the respondent be ordered to state in the aforesaid affidavit, particulars of such destruction or deletion.

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namely the record in question, the date it was destroyed or deleted, and the reason why it was destroyed or deleted.

3. That the respondent be ordered to pay the costs of suit.

TAKE NOTICE FURTHER that the affidavit of ANTHONY ROBIN BRINK and the documents referred to in rule 3(3)(a) annexed hereto will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed

as the address at which he will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that:

- (i) Notice of intention to oppose this application must be given within 15 days after receipt hereof and must contain an address within eight kilometres of the court to which the application is brought, where notice and service of documents will be accepted.
- (ii) Answering affidavits, if any, must be filed within 15 days after service of the notice of intention to oppose the application.
- (iii) In default of your complying with rule 3(5) of the Promotion of Access to Information Rules, the applicant may request the registrar to place the application before the court for an order in terms of section 82(b) of the Act.
- (iv) In default of your delivering a notice of intention to oppose, the registrar will, without further notice, be placed on the roll for hearing affidavits.

expiry of the period mentioned in paragraph (i) above, on a date fixed by the registrar.

Signed at Johannesburg on this day of March 2011.

Applicant's Attorneys

TO:

Ms Vidhu Vedalankar,
Chief Executive Officer and Information Officer
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

AND TO:

The Registrar
South Gauteng High Court
Johannesburg

IN THE SOUTH GAUTENG HIGH COURT (JOHANNESBURG)

Case No:

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

FOUNDING AFFIDAVIT

I, Anthony Robin Brink, solemnly affirm:

1. I am an adult male, 52, an advocate of the High Court of South Africa, resident at 25 Baker Road, Prestbury, Pietermaritzburg, KwaZulu-Natal, and I am the applicant herein.
2. The respondent is Legal Aid South Africa ('LASA'), a statutory body established by the Legal Aid Act 22 of 1969, whose registered office and principle place of business is at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

INTRODUCTION

3. This is an application for an order compelling LASA to comply with its obligations under section 11 of the Promotion of Access to Information Act,

Act 2 of 2000 ('PAIA' or 'the Act'), by affording me access to certain of its records that I've requested, alternatively by confirming on affidavit that such records don't exist.

4. This application is preliminary to an extraordinarily important test case in post-apartheid South African constitutional jurisprudence. At its core are our rights in the democratic era to liberty of conscience, thought, belief and opinion; to research and communicate information and ideas; to campaign for a cause – all explicitly guaranteed by the Bill of Rights in Chapter 2 of the Constitution of South Africa, 1996 – and to participate in public policy formulation, as encouraged by section 195(1)(c) in Chapter 10.

5. And our rights to equality and not to be discriminated against for exercising these basic civil liberties. Especially not by a public body whose 'Terms of Reference' on its website declaim: 'The Constitution of South Africa, Act 108 of 1996, provides the overall legal framework from which Legal Aid South Africa derives its mandate. Chapter Two, the Bill of Rights, outlines the right to equality (Section 9) ...'

BACKGROUND

6. Annexed to this affidavit is an indexed and paginated Document Bundle including the two record requests I made to LASA's information officer, CEO Ms Vidhu Vedalankar ('Vedalankar'), with her responses, and the correspondence preceding this application.

7. My cause of action for a mandatory interdict directing LASA to comply with the Act is founded on a simple and narrow set of facts, to be set out presently. The background dispute concerning my fundamental complaint that LASA has illegally discriminated against me in violation of my fundamental constitutional rights is a matter for determination by another

court, following viva voce evidence and cross-examination of all those subpoenaed members of the Management Executive Committee and Board of Directors who've involved themselves and colluded in the matter, to establish their credibility as witnesses, and the veracity or mendacity of their evidence, as the case may be; and it's consequently neither necessary nor relevant in the instant application for LASA to answer and debate the case made out in my correspondence in this regard. This is for another day.

8. The political context in which the illegal discrimination of which I complain has taken place is sketched in a letter I wrote on 12 October 2010 to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa in Cape Town (Bundle, pages 93–99); in the Addendum to my first letter to Vedalankar on 12 July 2010 (Bundle, pages 11–17); in my Personal and Political History (Bundle, pages 88–92); and in my CV (Bundle, pages 75–77 and 80–82).

9. The immediate factual background to this application is recorded in my first letter to Vedalankar on 12 July 2010 and in my successive appeals thereafter to Chief Operations Officer Jerry Makokoane on 1 September, and to Chairperson Judge Dunstan Mlambo and the Board of Directors on 30 November and 24 January 2011. (Bundle, pages 1–9; 21–39; 109–167; and 197–206).

10. In brief, it's common cause that I was shortlisted, interviewed, selected and recommended by a professional selection panel in late 2009 for appointment as Senior Litigator, Pietermaritzburg; and that Vedalankar (with, she claims, another executive manager) thereafter aborted my recruitment (by 'freezing' the post, she says). Vedalankar alleges her reason for doing so was financial. It will be my case at trial that my recruitment was aborted on account of

political (or as a much less likely possibility, racial) prejudice and that it had nothing to do with money, as the available records show quite clearly.

11. It's further common cause that no business record whatsoever exists of Vedalankar's decision/agreement to abort my recruitment, or 'freeze' the post as she puts it, nor of any proposal to do so by the National Operations Officer, nor of any consultation about it with the Human Resources Executive – all required by the particular clause of the 'Approval Framework' that Vedalankar herself claims to apply.

12. My purposes in putting up the correspondence included in the Bundle are various. It will enable this court to make sense of the various records I've identified with reference to written allegations made to me by various management executives – which allegations I wish to test. It contains detailed analyses and debunks of the successive, changing reasons Vedalankar has advanced for refusing my records requests. And it will show the steps I've taken in my persistent but unsuccessful attempts to achieve a resolution with LASA short of recourse to law.

13. I regret that the Bundle is voluminous, and I say this alive to Rule 4(c) of the Promotion of Access to Information Rules requiring an explanation of the relevance of each document on which I rely, but in her correspondence with me Vedalankar has conflated her separate, independent roles as CEO and information officer; and instead of confining herself to dealing with my records requests she has repeatedly entered into a contention of the merits of my underlying illegal discrimination complaint and set out to persuade me that her financial alibi defence to it is true rather than a pack of easily demonstrable lies. My responses have necessarily included not only my critical analyses of her reasons for refusing my records requests with

reference to the facts and the law, but also my examination and refutation of her allegations concerning the reason she aborted my recruitment.

14. As section 11(3) of the Act provides, however, the merits or otherwise of my illegal discrimination complaint and my surmises and purposes animating my requests for records are quite immaterial to my constitutional right of access to them, and are irrelevant to the determination of this application.

APPLICABLE PROVISIONS OF THE ACT

15. Section 11(1) of the Act stipulates that '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.'

16. It's a commonplace that LASA is a 'public body' in terms of the 'Definitions' in section 1 of the Act, in that it's an 'institution ... performing a public function in terms of any legislation' namely the Legal Aid Act; that section 11 of the Act governs requests for records made to LASA as a public body; and that Vedalankar, as LASA's Chief Executive Officer, is its information officer in terms of the 'Definitions': "information officer" ... means the chief executive officer ... in the case of any other public body' such as LASA.

HISTORY OF PAIA REQUESTS

17. I sent my first request for records to Vedalankar by registered post on 23 August 2010, and it was delivered on the 30th. (Bundle, pages 49–69)

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18. My request conformed to the procedural requirements stipulated by section 18 of the Act, inasmuch as it comprised a duly completed and signed Form A document, with a ten-page annexure identifying and listing the 51 records I sought, or confirmation on affidavit that they don't exist. (Bundle, pages 53–69) In my covering letter I asked to be informed of LASA's various charges for handling my request, which, for reasons stated therein and despite my best efforts, I'd been unable to ascertain at the time. (Bundle, pages 49, 50 and 52) Vedalankar didn't revert to me with this information.

19. Vedalankar initially ignored my records request, and I was constrained to engage the offices of the South African Human Rights Commission ('SAHRC') to assist me. Acting under section 83(3)(c) of the Act – 'The Human Rights Commission may ... if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act' – the head of the PAIA Unit, attorney Chantal Kisoon, ably negotiated an undertaking to deal with my request. (Bundle, page 113, paragraphs 17–19)

20. On 18 October 2010 Vedalankar refused the whole of my request on the grounds that it 'goes beyond your individual circumstances and extends to information on third parties' and is 'not relevant to any rights you may have in law'. (Bundle, pages 102–103, paragraph 5; and page 108, paragraph 8)

21. On the facts and in law Vedalankar's stated reasons were manifestly spurious; and indeed in her second letter to me in January 2011 (discussed below) she implicitly abandoned them.

22. In terms of section 74(2)(b) of the Act, no internal appeal lies against the refusal of a request for access to the records of a public body such as LASA. In a bid to avert litigation to enforce my rights, however, I tried prevailing on LASA's Board of Directors to intervene. In a 59-page letter to Chairperson Judge Dunstan Mlambo and the Board of Directors (those

several members whose email addresses I'd been able to find), emailed on 30 November 2010, I reported Vedalankar's refusal to comply with the Act; refuted the false reason she alleged for aborting my recruitment by dint of an extensive interrogation and analysis of the available facts; and appealed for an amicable resolution all round. (Bundle, pages 109–167)

23. Citing reported judgments on the operation of the Act, I demonstrated the vacancy and irrelevance of Vedalankar's given reasons for refusing my records request, and pointed out that she'd justified her refusal with a false statement of applicable law and even a false quotation from a reported judgment purporting to support it (the judge held precisely to the contrary of what Vedalankar alleged he did). (Bundle, pages 114–9, paragraphs 20–43)

24. On 15 December 2010 I emailed Vedalankar a second, supplementary request for records in the prescribed form, specifying 18 records in a test of her allegations in her October letter concerning the reason she alleged for aborting my recruitment. (Bundle, pages 167–180) On the same day I posted her a cheque for R35 to cover the request fee prescribed by section 22(1) of the Act. (LASA's PAIA manual indicating this fee was published on its website subsequent to filing my first records request, and only after I'd raised the irregularity with the SAHRC.)

25. On 30 December 2010, without consulting the Board, and knowing full well (it now emerges) that Vedalankar had lied to me in alleging that the post I'd been recommended for had been 'frozen' in July 2010, Judge Mlambo perfunctorily dismissed my petition in a single line – 'I could find no unfairness or arbitrariness against you as you allege or at all' – without addressing my complaint that Vedalankar had unlawfully denied my right of access to records on utterly spurious grounds. (Bundle, page 186 – his emailed letter is wrongly dated.)

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HB3'

26. In short, in full knowledge of the true facts – 'I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal' – Judge Mlambo accorded himself with Vedalankar's position.

27. Who actually wrote Judge Mlambo's letter is doubtful: according to its PDF properties file, Vedalankar did ('Vidhu V'), on 15 December, two weeks before he sent it. (Bundle, page 187) And while he was still over in the US, according to his secretary's information to me on the phone.

28. My petition to Judge Mlambo and the Board having failed, on 10 January 2011 I sought the assistance of the SAHRC once again. (Bundle, pages 192–3) Attorney Moipone Bokaba, who's sharing the SAHRC's management and monitoring of the case with attorney Kisoona, took the matter up for me and wrote to Vedalankar about it. (Bundle, page ...)

29. Following a second appeal to Judge Mlambo and the Board on 24 January 2011, in which I again raised Vedalankar's failure to comply with the Act, Judge Mlambo responded a few hours later: 'I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view.' (Bundle, pages 197–208; and 209)

30. Allowing for the year-end office break, Vedalankar responded to my second records request on 28 January 2011. (Bundle, pages 210–224)

31. As in her October letter, Vedalankar again confused her distinct functions as CEO and information officer; and instead of simply addressing and answering my records requests, began by repeating and insisting on her financial 'explanation' for aborting my recruitment that she'd given me in October.

32. To make her case, Vedalankar put up twelve records marked V1–12, which she claimed to sustain her allegations. (Bundle, pages 225–58) Indeed, her intention in furnishing the records she provided was explicitly stated in her entries in a two-column table in her letter, one identifying each record under 'NATURE OF DOCUMENT' and the other notifying the 'AIM OF THE DOCUMENT', commencing in every case: 'To demonstrate [etc]' – all in purported support of her claims. (Bundle, pages 213–6)

33. Five of these records I had already: V1, the Approval Framework was annexed to Vedalankar's October letter. (Bundle, pages 105–7) V8 is a transcription of an audio recording I'd myself made and attached to my second records request in December. (Bundle, page 184) V9 was the letter KZN Regional Operations Executive Vela Mdaka sent to me in August, and was attached to Vedalankar's October letter. (Bundle, pages 20 and 108) V11 was the scanned copy I'd myself made of the advertisement for the position for which I'd applied and been selected, and had included in the Bundle. (Bundle, page 45) And V12 is my email exchange with Human Resources Executive Amanda Clark in April 2010. (Bundle, pages 256–8)

34. None of the records furnished by Vedalankar for her purposes were in response to my 63 specified records requests in two lots in August and December respectively.

35. Four of the records Vedalankar produced happened to meet some of my requests sufficiently for my purposes, namely V3–5, and 7.

36. For the rest, Vedalankar refused all my record requests, in some cases by neglecting to address them, in which event section 27 of the Act deemed them refused. (Bundle, pages 210–58)

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37. Although she'd already refused my August requests in October, Vedalankar decided to have another go at them in January, apparently appreciating from my letter to Judge Mlambo and the Board in November (which she said she'd read) that the reasons she'd given in October were indeed indefensible.

38. Unlike in October when Vedalankar had refused all my requests for a couple of blanket reasons, this time in January she answered and refused each of my August requests individually, and justified her persistent refusal to grant me access to the records I sought with new reasons. Those of my December requests that she dealt with were likewise refused individually for one reason or another.

39. Concerning the many records I'd identified on the basis of claims made to me by LISA executive managers over time, and which I'd suspected weren't supported by any documentary record as they ought to have been had they been true, Vedalankar confirmed my suspicion by suggesting that the decision taken to abort my recruitment, or 'freeze' my post, was 'verbal' and wholly off the record. (Bundle, page 221, paragraph 29)

40. In alleging that her decision to 'freeze' the post for which I was recommended for appointment was taken in accordance with 'the Approval Framework' and the 'authority' which 'derives from' it, Vedalankar implied that (a) her decision duly originated as a proposal by the National Operations Executive; (b) that he duly consulted the Human Resources Executive about it, and (c) that Vedalankar duly agreed with the proposal – in terms of the said Approval Framework.

41. For which records would certainly exist if the decision to abort my recruitment or 'freeze' my post was legitimately taken – for as Cachalia JA pointed up during the debate in the recent PAIA case of The President of

RSA v M & G Media (570/10) [2010] ZASCA 177: 'Surely', Cachalia told Moerane, 'there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop ... In the absence of any paper trail must we just accept that [Chikane and Fowler] are people of standing and they will never mislead, just like [then United States secretary of state] Colin Powell never misled the security council [over Saddam Hussein's possession of weapons of mass destruction]' (ellipses, interpolations, and missing punctuation in the original *Mail & Guardian* report on 26 November 2010) (Bundle, page 161, paragraph 243)

42. In other words, the mere ipse dixit of public servants regarding their alleged administrative actions won't do in court – especially, in my case, considered against a history of telling me lies, and in the light of records recently surfaced that contradict these lies. (Bundle, pages 262–309)

43. Not only has Vedalankar repeatedly contravened the Act in unlawfully refusing my requests and not answering others, she has further failed to comply with the Act in not confirming on affidavit the non-existence of specified records, where applicable, as section 23 requires of her.

44. Vedalankar's negative attitude to my to my constitutional right to access to LISA's records in terms of section 32(1) in the Bill of Rights and to the Act giving effect to this right would seem to be epitomised by her further unlawful return of my mandatory and non-refundable request fee. (Bundle, page 224, paragraph 44)

45. On 17 February 2011 I appealed yet again to the PAIA Unit of the SAHRC to intervene and mediate in Vedalankar's ongoing refusal to comply with the Act. In my letter I performed a close analysis of her January letter and the new reasons it contained for refusing my records requests and I

debunked each and every faux legal excuse she adduced for doing so.
(Bundle, pages 262–309)

46. Since Vedalankar had abused the occasion to argue her case as CEO that she'd aborted my recruitment because LASA was tight on funds and that my illegal discrimination complaint against her was 'unfounded; wrong and outright defamatory', also 'baseless and misguided', I comprehensively taxed her claims in this regard too, with reference, *inter alia*, to the very records she'd put up flatly contradicting them.

47. Since the Board of Directors had shown no interest in my problems, not even in LASA's legal exposure as a consequence of Vedalankar's extraordinarily serious misconduct, I copied my letter to the SAHRC to the next level of oversight, accountability and responsibility: the Minister of Justice and Constitutional Development, the Deputy Minister, and the Parliamentary Portfolio Committee, along with the Board of Directors, the Management Executive Committee, the KwaZulu-Natal regional professional selection panel which had shortlisted, interviewed, chosen and recommended me for appointment to the advertised Pietermaritzburg Senior Litigator post, and to two other interested parties.

48. On [...] responded: '[...] I' (Bundle, page ...)

49. On [...] attorney [...] of the SAHRC's PALA Unit reported to me that notwithstanding her endeavours to instruct Vedalankar in the operation of the Act and to obtain her cooperation and compliance with it, she remained obdurate in unlawfully refusing my requests. (Bundle, page ...)

50. With submission, I've pursued all possible avenues open to me to achieve Vedalankar's compliance with my requests for records, and I've no alternative remedy but to humbly seek relief from this honourable court.

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APPLICATION TO COURT IN TIME

51. It's trite that the 30-day time limit imposed by section 78 (2) of the Act for applications to compel compliance with the Act has been set aside as unconstitutional short by the Constitutional Court and substituted with a provisional time limit of 180 days. (*Brümmer v Minister of Social Development and Others* (CCT 25/09) [2009] ZACC 21; 2009 (6) SA 323 (CC); 2009 (11) BCLR 1075 (CC) (13 August 2009))

52. I've launched this application within 180 days of Vedalankar's refusal on 18 October 2010 of my first records request and her repeated refusal on different grounds upon reconsideration of it on 28 January 2011 along with her refusal of part of my second request, the rest of it going unanswered and deemed refused under Section 27 of the Act.

PRAYER

53. In the situation, I respectfully claim an order in the terms set out in the notice of motion.

Dated at Pietermaritzburg this day of February 2011.

ANTHONY ROBIN BRINK

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HB3'

Case No. 257/14

ROBIN BRINK

Applicant

ISO N.O.

FORMATION OFFICER,

Respondent

CAPE REGION,

SOUTH AFRICA

CONFIRMATORY AFFIDAVIT

igned

BRIAN NAIR

ake oath and state as follows:-

1.

an adult male person employed as the National Operations Executive by Legal
outh Africa at Legal Aid House, 29 De Beer Street, Braamfontein,
resburg and I am duly authorised to depose to this affidavit.

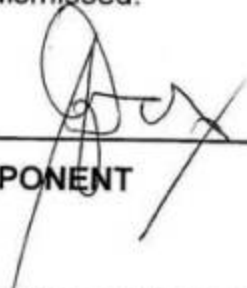
The facts stated herein are within my personal knowledge and are to the best of my belief true and correct.

236
'HB4'

2.

I have read the Answering Affidavit of Hope Bambiso and I confirm that the contents herein, in as far as it relates to me, are both true and correct.

I herein submit that the Applicant has not made out a case for the granting of the relief he seeks and further that his application falls to be dismissed.



DEPONENT

BORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS THE 6th
August 2014. THE DEPONENT HAVING ACKNOWLEDGED TO ME
KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HE
OBJECTION TO THE TAKING OF THE PRESCRIBED OATH AND HE
IS THE AFFIDAVIT BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS

WITNESSES :

DEPONENT :

:

Simon Mngane
Practising Attorney (RSA)
COMMISSIONER OF OATHS
1st Floor Washington Centre
23 Jordaan Street, Johannesburg
Tel: (011) 233 1231 Fax: (011) 336 8832

236

MAS

Case No. 257/14

BY ROBIN BRINK

Applicant

IBISO N.O.

INFORMATION OFFICER,

Respondent

CAPE REGION,

SOUTH AFRICA

CONFIRMATORY AFFIDAVIT

signed

THEMBILE MTATI

make oath and state as follows:-

1.

I am an adult male person employed as the Corporate Services Executive by Legal
South Africa at Legal Aid House, 29 De Beer Street, Braamfontein,
Johannesburg and I am duly authorised to depose to this affidavit.

the facts stated herein are within my personal knowledge and are to the best of my belief true and correct.

238
'HB5'

2.

I have read the Answering Affidavit of Hope Bambiso and I confirm that the contents herein, in as far as it relates to me, are both true and correct.

I herein submit that the Applicant has not made out a case for the granting of the relief he seeks and further that his application falls to be dismissed.


DEPONENT

FORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS THE 6th
August 2014. THE DEPONENT HAVING ACKNOWLEDGED TO ME
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COMMISSIONER OF OATHS

ES :

ON :

OU :

Cation Mogane
Practising Attorney (RSA)
COMMISSIONER OF OATHS
101-102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

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"HB

Case No. 257/14

MR ROBIN BRINK

Applicant

MR BISO N.O.

INFORMATION OFFICER,

Respondent

CAPE REGION,

SOUTH AFRICA

CONFIRMATORY AFFIDAVIT

signed

SOLLY SEKGOTA

make oath and state as follows:-

1.

an adult male person employed as the Corporate Legal Manager by Legal Aid
Africa at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg
am duly authorised to depose to this affidavit.

The facts stated herein are within my personal knowledge and are to the best of my belief true and correct.

2.

I have read the Answering Affidavit of Hope Bambiso and I confirm that the contents herein, in as far as it relates to me, are both true and correct.

I herein submit that the Applicant has not made out a case for the granting of the relief he seeks and further that his application falls to be dismissed.


DEPONENT

FORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS THE 6th
August 2014. THE DEPONENT HAVING ACKNOWLEDGED TO ME
KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HE
OBJECTION TO THE TAKING OF THE PRESCRIBED OATH AND HE
IS THE AFFIDAVIT BINDING ON HIS CONSCIENCE.

COMMISSIONER OF OATHS

ES : NGOMOTSO BUSISIWE MOKOENA
ON : COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
7TH FLOOR BRAAMFONTEIN CENTRE
23 JORISSEN STREET
TELEPHONE (011) 403 2765

Case No. 257/14

MY ROBIN BRINK

Applicant

BISO N.O.

INFORMATION OFFICER,

Respondent

CAPE REGION,

SOUTH AFRICA

CONFIRMATORY AFFIDAVIT

igned

THENJIWE MAGAZI

ake oath and state as follows:-

1.

an adult female person employed as the Human Resources Manager for the
Cape Region by Legal Aid South Africa at 5 Mangold Street, Newtown
Port Elizabeth and I am duly authorised to depose to this affidavit.

The facts stated herein are within my personal knowledge and are to the best of my belief true and correct. HB7'

2.

I have read the Answering Affidavit of Hope Bambiso and I confirm that the content herein, in as far as it relates to me, are both true and correct.

I herein submit that the Applicant has not made out a case for the granting of the relief he seeks and further that his application falls to be dismissed.



DEPONENT

FORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS THE 8
August 2014. THE DEPONENT HAVING ACKNOWLEDGED TO ME
KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, SHE
OBJECTION TO THE TAKING OF THE PRESCRIBED OATH AND SHE
THE AFFIDAVIT BINDING ON HIS CONSCIENCE.

COMMISSIONER OF OATHS

HAYLEY SMITH
PRACTISING ATTORNEY
COMMISSIONER OF OATHS
100 Cape Road, Mill Park, Port Elizabeth
PO Box 14441, Sidwell, 6061
Tel: 041 484 2709 Fax: 041 373 0297
Email : lawprac@fantic.net

IN THE MAGISTRATES COURT FOR THE DISCTRICT OF ESHOWE

Case No. 258/14

In the matter between:-

ANTHONY ROBIN BRINK

Applicant

and

VIDHU VEDALANKAR N.O.**INFORMATION OFFICER****LEGAL AID SOUTH AFRICA**

Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

THEMBILE VUYO MTATI,

do hereby make oath and state that,

1. I am an adult male Corporate Services Executive and a Deputy Information Officer on behalf of Legal Aid of South Africa (“Legal Aid SA”) with my principal address at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg.
2. The facts deposed to herein are within my own personal knowledge unless the context indicates otherwise, and are to the best of my belief both true and correct.
3. Where I make submissions of law, I do so on the basis of legal advice I received from my legal representatives which advice I accept as correct.
4. Where I rely on evidence submitted by a third party, I shall annex such a person’s confirmatory affidavit.
5. I, having been directly involved in the events and processes leading up to this application, submit that I am in the best position to answer this application and have been so authorised by the Respondent herein to depose to this affidavit. I shall annex her confirmatory affidavit herein.

6. In particular, I generally deal with all the requests in Legal Aid SA and therefore I am in a position to deal with this application more so that I am the person, for the reasons that will follow herein below, who has refused the Applicant with access to some of the information he seeks.
7. I can also confirm that, despite this application being against Ms Vidhu Vedalankar the Legal Aid SA the CEO, she has not read the Applicant's request and has not made any decision therein. The simple reason therefor is that she, being the Information Officer, she ordinarily would be a person who must deal with appeals relating to my refusal to grant access to information applications.
8. I have perused the Applicant's affidavit founding his application purportedly in terms of Chapter 2 of the Promotion of Access to Information Act, 2 of 2000 ("PAIA" and/or "the Act") which reads as follows:

"CHAPTER 2

APPLICATIONS TO COURT (ss 78-82)

78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75 (2);

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1-

(i) to refuse a request for access; or

(ii) taken in terms of section 22, 26 (1) or 29 (3); or

(d) aggrieved by a decision of the head of a private body-

(i) to refuse a request for access; or

(ii) taken in terms of section 54, 57 (1) or 60, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

(3) A third party-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1 to grant a request for access: or

(c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body, may, by

way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.”

9. I disagree with the Applicant's course of action herein and I shall return to this provision of the Act, its effect, interpretation and implementation, in due course.

10. I wish to give a brief legal framework within which Legal Aid SA operates. Although I am aware that Legal Aid SA, as an institution, is not cited as the respondent herein but the CEO is cited as the Respondent albeit in her nominated capacity, the framework I provide herein will be crucial for my answer herein below.

11. I also make a preliminary note herein that this entire application is premised on the basis that I acted ultra vires when I on 6 November 2013, responded to Applicant's request for access to certain identified information.

12. I submit that it is thus apt to conclude that in the event that I prove that I acted within my powers as a Deputy Information Officer in Legal Aid, then the Applicant's case must fall on its face.

13. The Applicant would thus not be able to obtain relief in terms of prayers 1, 3, and 4.

14. Applicant is also not entitled, for different reasons, to the remainder of the prayers and I shall address same as I deal with the contents of his founding affidavit.

15. I shall for the present moment address myself to the authority to depose to PAIA affidavits and respond to PAIA requests.
16. In terms of section 14 of the Act, Legal Aid SA was obliged, within six months of the coming into effect thereof, to develop a manual that would be made accessible to the members of the public.
17. In Legal Aid SA, that responsibility fell in my office and I have in the past four years been responsible for the development of the said PAIA manual. The last version that was approved by the Board was adopted in 2013. This manual is easily accessible onto Legal Aid SA's website.
18. It is clear in terms of the said Manual and in paragraph 2.3 thereof that **"Deputy Information Officer/s"** means the Chief Operations Officer, National Operations Executive, Chief Legal Executive and Corporate Service Executive of Legal Aid SA who are authorised to discharge the duties and responsibilities assigned to the Information Officer relating to access to information in the possession or under control of support functions and legal functions of Legal Aid SA respectively."
19. In the circumstances and before one delves deep into the Manual and/or issues pertaining to PAIA, it is clear in my humble opinion that I as the Corporate Service Executive am also a Deputy Information Officer authorised to discharge the duties assigned to the Information Officer relating to access to information in the possession or under control of support functions and legal functions of Legal Aid SA respectively.
20. I was thus entitled, when I did, to respond to the Applicant's request and to depose to the section 32 affidavit which I have delivered to him.

21. It is on this basis that the Applicant's prayers premised on failure to appreciate the above facts fall to be dismissed with costs. I refer to prayers 1, 3, and 4 of the notice of motion.

BRIEF LEGAL FRAMEWORK

22. The Board of Legal Aid SA is established by section 2 of the Legal Aid Act, Act 22 of 1969 which Act has been amended previously (hereinafter "the Act"). Legal Aid SA is a statutory body which exists in order to give effect to rights enshrined in the Constitution of the Republic of South Africa Act, Act 108 of 1996 ("the Constitution").

23. The Act recognises Legal Aid SA as an autonomous body, accountable to Parliament under the Minister of Justice and Constitutional Development's watch and guidance.

24. The Act enjoins Legal Aid SA to provide legal aid to the indigent people as provided for by sections 25, 35(2)(c), (3)(g) of the Constitution and any other right which, in the discretion of the board, may be worthy of legal representation.

25. The Act also empowers the Board, amongst others, to do all such things and perform all such functions as may be necessary for all and incidental to the attainment of the objects of the board.

26. Those objects appear in section 3 which provides that "[T]he objects of the board shall be to render or make available legal aid to indigent persons and to

provide legal representation at State expense as contemplated in the Constitution...

27. Section 3A which deals with Legal Aid Guide (hereinafter “the Guide”) states that:

“(1)(a) Subject to the provisions of this act and in order to attain its objects and to exercise its powers referred to in section 3(d) and (dA), the board shall, in consultation with the Minister, include particulars of the scheme under which legal aid is rendered or made available and the procedure for its administration in a guide called the Legal Aid Guide.”

28. Around 1996 and in terms of section 3A of the Legal Aid Act, No. 22 of 1969 (as amended), Legal Aid SA together with Parliament released its first edition of the Legal Aid Guide after Parliament had held a number of consultative sessions to ratify the Guide and ensure that the Guide is compliant with the law.

29. Again in 2012 Legal Aid SA, with both houses of Parliament approving, effected amendments to the Guide and replaced the 2009 version of the Guide with the 2012. The 2012 version is still the applicable version to date.

30. I submit therefore that the Guide is a statutory instrument binding on all South Africans including presiding officers.

31. The Guide serves to explain to all how legal aid is granted and managed in a fair and transparent manner.

32. Chapter 1 of the Guide provides a repeat of the mandate imposed on Legal Aid SA by the Constitution which I referred to hereinabove and the powers referred to above.

33. What is important for my purposes herein is Clause 1.3 of the Guide which provides as follows:

“1.3. Place of business and legal service address

The National Office of Legal Aid SA is Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, South Africa.

The National Office of Legal Aid SA is its principal place of business and its domicilium citandi et executandi. This means that this is the address for the service of all legal proceedings relating to legal process involving Legal Aid SA.”

34. Regard being had to the above provision, there is only one address at which any person seeking to sue Legal Aid SA or its employees arising out of processes involving Legal Aid SA, must serve his or her legal process. The said address is the one provided for in the Guide *i.e.* its *domicilium* address. The rest, when perusing the Guide, are merely satellite offices and regional offices with no separate legal personality to sue or be sued.

35. Thus, in order to properly institute these proceedings against the CEO, who represents Legal Aid SA or for any act or failure to perform any act regarding Legal Aid SA's obligations, the Applicant ought to have launched his

application where my principal address is i.e. Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, and not at my regional address.

36. The above conclusion will be critical, I submit, when regards is had to the submission I intend to make herein below regarding the jurisdiction of the above honourable Court.

37. I now deal with brief factual background to this matter before I could deal with all the paragraphs that form part of this application.

BRIEF FACTUAL BACKGROUND

38. On or about 1 October 2013, the CEO received a request for access to certain information from the Applicant and which request appear on the Applicant's founding affidavit as annexure A.

39. The CEO passed the above request for information to me for a response. This she did because the information sought relates to a dispute/issue that I am familiar with.

40. I replied to the Applicant's request by way of a letter which he annexed to his founding affidavit as annexure C. Where I was unable to produce information required, I deposed to an affidavit as provided for by section 23 of PAIA which reads as follows:

“23 Records that cannot be found or do not exist

- (1) If-
 - (a) all reasonable steps have been taken to find a record requested; and
 - (b) there are reasonable grounds for believing that the record-
 - (i) is in the public body's possession but cannot be found; or
 - (ii) does not exist,

the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.
- (2) *The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.*
- (3) *For the purposes of this Act, the notice in terms of subsection (1) is to be regarded as a decision to refuse a request for access to the record.*
- (4) *If, after notice is given in terms of subsection (1), the record in question is found, the requester concerned must be given access to the record unless access is refused on a ground for refusal contemplated in Chapter 4 of this Part.”*

41. The substance of the answer that I gave to the Applicant was that I declined to grant him access to most of the documents he sought therein fundamentally on two bases namely:

41.1. First, the information/documents he required was a subject matter of an action he instituted against Legal Aid SA and some of its senior officers in the Labour Court, Durban under case number D529/11 which action is still pending before Cele J (“the action”).

41.2. It is common cause that the Applicant sought all sorts of relief including that the Court order the Head Office to employ him to a position of a Senior Litigator based in Pietermaritzburg.

41.3. Furthermore, I submit that the above action is still pending in the Labour Court. No judgment has been handed down. I will revert back to the effect of this information to the Applicant's request.

42. I now wish to deal with the relevant provisions of the Act which stand out from this application. I do so herein below.

RELEVANT LEGAL PROVISIONS AND PRINCIPLES

43. In my response to the Applicant, I commenced by stating that as an organisation Legal Aid SA is bound by the values enshrined in the Constitution and which values amongst others underpins the right of an individual to access to information held by the State and/or its organs.

44. Having said that I stated that the information that he sought cannot be provided to him on the basis of sections 7 and 45 of the Act.

45. Section 7 of the Act provides as follows:

“7 Act not applying to records required for criminal or civil proceedings after commencement of proceedings

(1) This Act does not apply to a record of a public body or a private body if-

- (a) *that record is requested for the purpose of criminal or civil proceedings;*
- (b) *so requested after the commencement of such criminal or civil proceedings, as the case may be; and*
- (c) *the production of or access to that record for the purpose referred to in paragraph (a) is provided for in any other law.*

(2) Any record obtained in a manner that contravenes subsection (1) is not admissible as evidence in the criminal or civil proceedings referred to in that subsection unless the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice.”

46. It is palpable that the Applicant himself sought this information to pursue either civil or criminal proceedings against one of the Legal Aid SA's National Operations Executive Mr Brian Nair.

47. I submit that even if I was wrong in thinking that the Applicant required the said information for litigation purposes, I am vindicated by his confirmation of my reasons to refuse his application because it is apparent from his founding affidavit herein that he intends to criminally prosecute Mr Brian Nair who sits as National Operations Executive in Johannesburg.

48. Accordingly, I submit that I was entitled to refuse the said request when I did.

49. I stated, as a second reason for refusing with information, that section 45 prohibited access to information where the request is manifestly vexatious frivolous. The said section reads thus:

“45 Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources

The information officer of a public body may refuse a request for access to a record of the body if-

(a) the request is manifestly frivolous or vexatious; or

(b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.”

50. From perusal of the founding affidavit, it is apparent that the Applicant has vowed to institute actions and applications against Legal Aid SA for many years to come. He says so himself in his application *in casu*.

51. As matters stand, the Applicant has for unknown reasons also launched similar applications as this one and out of this Court against two of our Regional Information Officers *i.e.* of North West and Eastern Cape. Their case numbers are 257/14 and 259/14 respectively.

52. From the perusal of the founding papers, it is not difficult to see that the Applicant has an intense hatred and desire to exact revenge against Mr Nair for allegedly aborting a position that he had applied for.

53. It is thus easy to conclude that the Applicant seek all this information to arm himself for purposes of pursuing his cases against members of Legal Aid SA.

54. The use of vulgar and defamatory language in his affidavit is astonishing to say the least and demonstrates conclusively to me that the application, which he had made previously and was answered is now being resuscitated with in respect of issues that are currently before Court, is manifestly vexatious and frivolous.

55. For me to respond to the said application has had the effect of diverting resources and time away from executing my mandate to Legal Aid SA. It is on this basis and on totality of the facts before me that I refused the Applicant's request for access to information on the basis I did.

56. Furthermore, the Applicant has, not followed the prescripts of the very same Act that he wished to rely on for relief he currently seek.

57. Specifically, I submit that the Applicant has failed to exhaust the internal remedies provided for in the Act in that he has not, as yet, lodged an appeal against my decision to refuse his request for access to information.

58. The relevant provisions dealing with internal appeals provide as follows:

“PART 4

APPEALS AGAINST DECISIONS (ss 74-82)

CHAPTER I

INTERNAL APPEALS AGAINST DECISIONS OF INFORMATION OFFICERS OF CERTAIN

PUBLIC BODIES (ss 74-77)

74 Right of internal appeal to relevant authority

(1) *A requester may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of 'public body' in section 1-*

(a) to refuse a request for access; or

(b) taken in terms of section 22, 26(1) or 29(3), in relation to that requester with the relevant authority.

(2) *A third party may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of 'public body' in section 1 to grant a request for access.*

75 Manner of internal appeal, and appeal fees

(1) An internal appeal-

(a) must be lodged in the prescribed form-

(i) within 60 days;

(ii) if notice to a third party is required by section 49(1) (b), within 30 days after notice is given to the appellant of the decision appealed against or, if notice to the appellant is not required, after the decision was taken;

(b) must be delivered or sent to the information officer of the public body concerned at his or her address, fax number or electronic mail address;

(c) must identify the subject of the internal appeal and state the reasons for the internal appeal and may include any other relevant information known to the appellant:

(d) if, in addition to a written reply, the appellant wishes to be informed of the decision on the internal appeal in any other manner, must state that manner and provide the necessary particulars to be so informed;

(e) if applicable, must be accompanied by the prescribed appeal fee referred to in subsection (3): and

(f) must specify a postal address or fax number.

- (2) (a) If an internal appeal is lodged after the expiry of the period referred to in subsection (1) (a), the relevant authority must, upon good cause shown, allow the late lodging of the internal appeal.*

(b) If that relevant authority disallows the late lodging of the internal appeal, he or she must give notice of that decision to the person that lodged the internal appeal.

- (3) (a) A requester lodging an internal appeal against the refusal of his or her request for access must pay the prescribed appeal fee (if any).*

(b) If the prescribed appeal fee is payable in respect of an internal appeal, the decision on the internal appeal may be deferred until the fee is paid.

- (4) As soon as reasonably possible, but in any event within 10 working days after receipt of an internal appeal in accordance with subsection (1), the information officer of the public body concerned must submit to the relevant authority-*

(a) the internal appeal together with his or her reasons for the decision concerned; and .

(b) if the internal appeal is against the refusal or granting of a request for access, the name, postal address, phone and fax number and electronic mail address, whichever is available, of any third party that must be notified in terms of section 47(1) of the request.”

59. It appears clear to me that the Applicant ought to have proceeded in terms of section 74(1)(a), read with the time frames contained in section 75(1)(a)(i) or (ii).

60. I so submit because the Applicant, despite his conclusion that no right of appeal lies in his case, I am not sure under what basis does he come to the said conclusion. He himself contends that:

“Under section 74(2)(b) of the Act, no right of internal appeal lies against the refusal of a request for access to the records of a public body such as Legal Aid SA. This leaves me no other remedy but to apply to court for the relief I seek in the notice of motion to vindicate and enforce my fundamental right to information guaranteed by section 32 of the Constitution that the respondent has violated.”

61. The Applicant could not have been more wrong in his analysis of the above section of the Act.

62. From the above perusal of my quoted Chapter I dealing with the internal appeals, it is clear that there is no section 74(2) “(b)” in the PAIA Act.

63. Secondly, the scheme of the Act is framed in such a manner that it provides for a process of an internal appeal to a requester or even a third party who has been refused with access to information. Accordingly, it is wrong for the Applicant to firstly misquote a section of the Act knowing that the above Court may rely thereon but to also do so without reading its provisions fully. His conduct is tantamount to misleading the Court to rely on a non-existing section.

64. The Applicant, as the matters stand, has had a right to appeal my decision to refuse his request for access to information and such right still subsists.

65. I submit that the next available authority above mine is the CEO – the Information Officer or even the Board headed by a judge. The Applicant has failed to pursue this avenue and his application is thus defective.

66. I declined his application on 6 November 2013 (as per annexure C to his founding papers).

67. The Applicant ought to have lodged his appeal 60 days after my decision in terms of sections 74 and 75 which would have lapsed on 6 February 2014.

68. The Applicant failed to do so and now wishes this Court to usurp the function ascribed by the Legislature to Legal Aid SA and to have this Court acting as if it is an appeal body contemplated in the Act. He seeks this Court to deal with his application as an internal appeal, a process which ought to have been resolved in accordance with the provisions of sections 74 and 75 of this Act.

69. I am advised that this cannot be.

70. Accordingly, this case falls to be dismissed and if needs be the Applicant be ordered to submit to the internal remedies as provided for in the above Chapter I.

71. The provision of section 74(2) provides for a third party's right to appeal. I submit that the Applicant is not a third party but a requester as defined in the Act.

72. Section 1 of the Act defines a “**requester**” in relation to-

(a) a public body, means-

(i) any person (other than a public body contemplated in paragraph (a) or (b)

(i) of the definition of ‘public body’, or an official thereof) making a request for access to a record of that public body; or

(ii) a person acting on behalf of the person referred to in subparagraph (i);

(b) a private body, means-

(i) any person including but not limited to, a public body or an official thereof, making a request for access to a record of that private body; or

(ii) a person acting on behalf of the person contemplated in subparagraph (i);”

73. Consequently, Applicant cannot escape the provisions of Chapter I of the Act.

74. I further submit that even the application he brought to this Court is ill-founded for lack of jurisdictional fact *i.e.* no internal appeal has been lodged.

75. Furthermore, the relevant sections regulating applications to Court reads as follows:

“CHAPTER 2

APPLICATIONS TO COURT (ss 78-82)

78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 **after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.**

(2) A requester-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75 (2);

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1-

(i) to refuse a request for access; or

(ii) taken in terms of section 22, 26 (1) or 29 (3); or

(d) aggrieved by a decision of the head of a private body-

(i) to refuse a request for access; or

(ii) taken in terms of section 54, 57 (1) or 60, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

(3) *A third party-*

- (a) *that has been unsuccessful in an internal appeal to the relevant authority of a public body;*
- (b) *aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1 to grant a request for access: or*
- (c) *aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82."*

76. I have underlined and bolded the most important qualification of the above section to highlight to this Court that the Applicant can never competently launch this application before he had exhausted the internal remedies provided for in the Act.

77. This failure, I am advised, is fatal to his case. It falls to be dismissed with costs.

78. Furthermore, it is noteworthy that the Applicant demonstrates, by his own factual background to a deep-seated dispute of fact that arise between what

he said, wrote, and done on the one hand, and what either myself, Judge President D Mlambo, Ms Vedalankar, Mr Brian Nair, Patrick Hundermark, Mr Adv Nzame Skibi, Solly Sekgota, Ms Thenjiwe Magazi, may have said, wrote and done on the other hand.

79. What is abundantly clear is that bulk of what was said by all these people is still pending before the Labour Court. Cele J is still to pronounce, after having heard evidence from some of these people, on whether or not the Applicant's accusations are founded.

80. I am aware that the hearing of the said action took two weeks in August 2013 and has generated over 6000 pages in record, pleadings and various annexures.

81. This Court has not had sight of those documents and/or the transcript of those proceedings and yet it is expected to decide this application in a manner that may indeed differ with the Higher Court in Durban.

82. This I am advised would immediately violate the precedence rule and create an unnecessary confusion.

83. It is on this basis that this application ought to fail as the Applicant himself has disclosed that an action he instituted at Durban dealing with factual issues he raised herein is pending before a Higher Court.

84. The application must also fail because of the substantial amount of dispute of facts that exist on this application and indeed the action at Durban. It is by no stretch of imagination, not possible to resolve this application without referring same to oral evidence and hear all those people who have been accused of all sorts of defamatory and insulting deeds.

85. It is only fair that those people be afforded an opportunity to defend themselves and to do so through the presentation of oral evidence.

86. The Applicant was aware before he launched this Application that there would be material dispute of facts which could not be satisfactorily resolved merely on the papers filed of record. Yet he proceeded regardless and launched this factually convoluted application. It is apparent that this is not a straight forward application as it involves a substantial involvement of third parties not cited herein.

87. It is on this basis that such application should fail because it failed to proceed by way of action when same was clearly warranted.

88. I pray that this application be dismissed for the same reason as above. It is too convoluted and disputed that it cannot be meaningfully heard merely on the papers filed of record.

89. The Act supports my contention in that section 81 dealing with evidence in these types of proceedings still is to be processed in terms of the rules of law. It states that:

“81 Proceedings are civil

(1) For the purposes of this Chapter proceedings on application in terms of section 78 are civil proceedings.

(2) The rules of evidence applicable in civil proceedings apply to proceedings on application in terms of section 78.”

90. I am advised that reference to the word “**application**” cannot be limited to motion proceedings especially where adherence to that interpretation would defeat/frustrate the purpose of civil proceedings and its regulation of presentation and securing of evidence before Court.

91. The word “**application**” must, with respect, be read to include “**action**” proceedings where same is called for.

92. The Applicant’s choice of proceedings falls foul to the trite laws of pleadings, conduct of hearings, and execution of actions in terms of South African law.

93. I have dealt with the background of this matter albeit infused with legal framework of the Act herein. I now wish to turn to the specifics of this application.

94. I intend to raise a number of preliminary objections before I deal with the merits of the application in the Applicant's founding affidavit.

PRELIMINARY OBJECTION 1 – LACK OF JURISDICTIONAL FACT

95. In this regard, I wish to bring the following to the Court's attention:

95.1. Chapter 2 of the Act dealing with "APPLICATIONS TO COURT (ss 78-82)" provides that:

"78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body; ...

(b) ...

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1-

(i) to refuse a request for access; or ...

(d) ...

(ii) taken in terms of section 54, 57 (l) or 60, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.” [Emphasis mine]

95.2. Applicant contends that an Amendment to the Act has extended the time within which he ought to have approached this Court for relief in terms of section 82 from 30 to 180 days.

95.3. Applicant then submits that he has complied with the provision of the Act as amended.

95.4. The Applicant however, cannot demonstrate that he has indeed complied with the Act as amended. In fact, he submits when regard is to be had to the provisions for internal appeal against my decision, there is no provision for appeal against my decision.

95.5. I am not certain as to how does the Applicant arrive at such a conclusion. As far as I know, my seniors including the CEO and/or the Board are the people to whom an appeal against my decision lies.

95.6. The provisions of the said section 28(a) of the Judicial Matters Amendment Act, substitute the days within which to lodge an application to Court in terms of section 82 from 30 days to 180 days.

95.7. In this case, the Applicant filed his request for information form on 1 October 2013. I replied thereto on 6 November 2013.

95.8. The Applicant has not exhausted his internal remedies and as such he could not have complied with the provision of the Act as amended by the above Amendment Act.

95.9. I submit that the Amendment referred to above does not apply to the Applicant at all until he has satisfied the internal remedies clause of the Act.

96. Accordingly, I strongly submit that the Applicant has failed to comply with the Act and has not demonstrated any compliance therewith regarding internal remedies.

97. Consequently, this application falls to be dismissed with costs.

PRELIMINARY OBJECTION 2 – LACK OF JURISDICTION OF THIS COURT

98. I submit that this Court has no jurisdiction to adjudicate on this application.

99. I say so for the simple reason that the Court does not have jurisdiction over the CEO by virtue of the location where she, as the respondent, resides, and secondly, where the decision in issue herein was taken.

100. The Applicant, I noted, relies on a general designation of all regional and district magistrates' courts as "courts", in terms of section 1 of the definition of "court" in the said amendment Act, with authority to adjudicate over these types of applications.

101. I wish to demonstrate herein that the Applicant has misconstrued the very same authority he seeks to rely on.

102. I am advised and accept as correct that the common law principles on jurisdiction to found an action cannot be overturned by a Government Notice whose contents do not even go as far as where the Applicant seeks the Notice to go.

103. In fact, the said Notice No. 585 of Government Gazette of 14 May 2004, states that:

“I Penuel Mpapa Maduna, Minister of Justice and Constitutional Development

– (a)

(b) hereby under paragraph (b)(ii) of the definition of “court” in section 1 of the Promotion of Access to Information Act, Act 2000 (Act No. 2 of 2000), designate all magistrates’ courts established for any district or regional division or places appointed within any district or regional division as places of the holding of a court in terms of section 2 of the Magistrates Court Act, 1944 (Act No. 32 of 1994), as courts to hear any application in terms of the Promotion of Access to Information Act, 2000, within whose area of jurisdiction –

(i) the decision of the information officer or relevant authority of the public body or the head of a private body has been taken:

- (ii) *the public body or private body concerned has its principal place of administration or business; or*
- (iii) *the requester or third party concerned is domiciled or ordinarily resident.”*

104. I am advised that the above Government Notice cannot and did not seek to oust the common law principles of jurisdiction. In its own letters, the said Notice does no more than to designate all magistrates' courts as PAIA Courts.

105. However, most importantly, the Notice still re-affirms the common law grounds of jurisdiction being (i) the place where the decision in issue was taken, and (ii) where the residence of the respondent is.

106. In many instances, the place where the transaction was entered into also founds jurisdiction and so is where the respondent's assets are based.

107. I am advised that the common law jurisdiction jurisprudence emphasis to another well-known common law principle of ***actor sequitur forum rei*** viz. that the suitor shall seek the respondent and sue him at his background.

108. As a former Magistrate of some 20 years' experience, an advocate of over twenty (20) years, aspirant Senior Litigator in Legal Aid SA, and presently an

Acting Magistrate in this very same Court, the Applicant ought to have known this basic principle of our law of jurisdiction.

109. I submit that in fact, the Applicant knows of this principle because previously when he had concluded that the Head Office's staff 'unlawfully' refused him access to information he required, he threatened to approach the High Court in an application and in terms of the Act.

110. The difference is that with the above threat, Applicant even prepared a draft application which he annexed to one of his requests for access to information. Because the Head Office is based in Braamfontein, Applicant threatened to issue his application out of the Gauteng Local Division (Johannesburg High Court). I annex hereto a copy of the said application to demonstrate my point, and mark same as **TM1**.

111. The recent conduct of launching this application out of this Court was deliberate and intended to disadvantage Legal Aid SA and the CEO.

112. I submit that the principles of law have escaped him and they did so in an embarrassing fashion given the superiority complex that he has and the insults that he has hurled at me, and Legal Aid SA officials with a sense of pride and impunity.

113. I submit that Applicant's contention *in re* jurisdiction can never work in the manner that he contends *i.e.* that because he '**resides**' in Eshowe, he therefore is entitled to bring this application out of Eshowe.

114. I am advised that in any event, the Applicant is not an “ordinary resident” in Eshowe. He lives within the Court’s jurisdiction on a temporary basis as he has accepted temporary work thereat. The Applicant is ordinarily a resident of Pietermaritzburg.

115. Furthermore, I submit that the underlying principle of jurisdiction is “effective order”. Effectiveness of the order means that the Court in which the Respondent lives or is, should be able to enforce its order with ease.

116. I am advised that the term “effective order” is often stated as *“A lawful power to decide something in a case or to adjudicate upon a case, and to give effective judgment, that is, to have the power to compel the person condemned to make satisfaction.”*¹

117. The Applicant’s reliance on paragraph (iii) of the Government Notice is completely misguided. That provision can only found jurisdiction in the requester’s favour only in the event that the requester is a respondent or defendant in an action or application brought, for example, by an information officer or a third party. It cannot found jurisdiction to launch an application.

118. The Applicant lost it again, with respect, and I am firm on this point.

119. I submit that the law remains as it is and the Applicant ought to institute these proceedings in an appropriate forum.

¹ Per Viljoen JA in a 1987 Appeal Division case.

120. The above honourable Court, and as a matter of common law, will have no authority over the CEO and will have no power to compel her to comply with anything coming therefrom. The Court will be subjected to *extra territorium ius dicenti impune non paretur*.²

121. I submit that a Magistrate's Court in Johannesburg, is the appropriate forum to institute any proceedings against the CEO primarily because of paragraphs (i) and (ii) of the same Government Notice above.

122. The Johannesburg Magistrates' Court will be more suitable and effective to compel the CEO into compliance.

123. I submit strongly so, with respect, that this application falls to be dismissed with costs.

PRELIMINARY OBJECTION 3 – MATERIAL DISPUTE OF FACTS

124. I have alluded hereinabove, to this material/fundamental violation of the rules of this Court and of the common law.

125. The Applicant foresaw the potential of material dispute of facts arising from this application and yet he forced ahead nonetheless.

² "One administering jurisdiction beyond his territory may with impunity be disobeyed."

126. The above Court is indirectly requested, by the Applicant, to make character findings against a number of important people mentioned in this application without hearing them.

127. The Court is also hamstrung in this regard because the full picture of the dispute underlying this application *i.e.* in terms of records, transcript and pleadings are not before Court. As intimated above there are over 6000 pages that this Court ought to read in order to understand and contextualise this dispute.

128. The same issues and facts averred in this application are, in any event, pending in the Labour Court.

129. This Court is thus placed in a trap to rule differently from the Labour Court, a Court of higher standing as compared to this Court. This possibility is immediately undesirable.

130. I submit that in view of the above possibilities, this application is bad in law and ought to be dismissed with costs.

PRELIMINARY OBJECTION 4 – *SUB JUDICE*

131. The Applicant himself alluded to the fact that the underlying dispute he has with Legal Aid SA is pending before Court.

132. Accordingly, much of the Applicant's averments are a repeat of issues dealt with in the action before Cele J and upon which the learned Judge is still to pronounce.

133. The Applicant seeks this Court to make findings, of fact, character, and of law on a matter that is before another Court which process may create confusion as decisions may differ.

134. I am therefore advised, which advice I accept as correct that the common law principle of *sub judice* is applicable herein.

135. It is thus appropriate that this application be dismissed for the above reason only.

PRELIMINARY OBJECTION 5 – EXHAUSTING OF INTERNAL REMEDIES

136. I have referred above and in details to the Applicant's failure to comply with the jurisdictional facts before launching this application. I wish to incorporate the said averments herein as if specifically pleaded.

137. I have even demonstrated how the Act, itself also confirms the position I adopt herein that there must be compliance with the internal remedies (also as a matter of jurisdictional fact) before an Applicant could approach a Court of law.

138. Failing the above compliance with the Act, I submit this application falls to be dismissed and I so pray.

139. Alternatively, the Court is requested to refer the Applicant back to the provisions of the Act and to compel him to comply with its provisions before he approaches a Court of law.

PRELIMINARY OBJECTION 6 – WAIVER TO APPROACH A COURT

140. I wish to submit that most of the information that the Applicant seek has already been sought early last year and the Applicant, instead then, of launching this application, waived his right to do so and elected to proceed with his action against Legal Aid SA in Durban.

141. I submit that the Applicant knew of the Legal Aid SA's position as early as 6 November 2013 or shortly thereafter what the answer was in respect to the information he sought.

142. Instead, the Applicant did nothing about his right to approach Court to enforce the right he alleges I violated.

143. I submit that the Applicant must be held to an election he made.

144. The Applicant has not offered the Court good cause to demonstrate why he, only now, seeks to approach the Court for the same information he sought and was answered in November 2013.
145. I submit that this Court would be perfectly entitled to dismiss this application on the basis of an undue delay which the Applicant has not even begun to explain.
146. Tied to this, of course, is the extreme abuse of Court process that the Applicant seeks same thing over different Courts and using numerous applications for apparent no reason at all. In this regard, it is not clear why did he have to issue separate applications when he is suing officers of the same organisation and doing so in their nominate offices.
147. The Court should mark its disapproval and mulct the Applicant with punitive cost order.

PRELIMINARY OBJECTION 7 – PERCEPTION OF BIAS

148. I am unable to understand why the Applicant chose to bring this application out of the above Court.
149. I submit that during the last appearance in the Durban Labour Court, Applicant disclosed that he has accepted a temporary acting position in this Court.

150. I am able to surmise that by launching these applications out of this Court, the Applicant only seeks to obtain an unfair advantage over the CEO, Legal Aid SA and/or the senior members of Legal Aid SA by having this matter being adjudicated by his colleagues and who could possibly find it difficult to rule against him over the CEO – a person based in a different province.

151. This conduct, not only demonstrate a sheer abuse of power, resources and Court's processes but it also, and on all objective facts, give off a sign or perception of bias.

152. I submit that bias is a very nebulous concept which does not have to physically manifest itself but can also be sensed by a lay person who has all the facts with him.

153. In this case:

153.1. I stated that the Applicant is in a committed long term fight with Legal Aid SA and has public so vowed.

153.2. The issue of jurisdiction mentioned above is so obvious to any trained lawyer that it is odd that the Applicant preferred this matter to be decided in his own turf by one of his colleagues;

- 153.3. It is unlikely that Legal Aid SA and/or the CEO, as the respondent, would receive fair hearing in this Court given the fact that as between her and the Applicant, she is a foreigner of the Court.
154. I am advised that even the slightest perception of bias is sufficient to have this matter be removed from the roll of this Court and be referred to a neutral Court, as it were.
155. In the event that the Applicant does not wish to follow the respondent as he is required by the law to do, I submit that the neutral territory would be the Johannesburg Magistrates' Court.
156. I submit that this Court should remove this matter from its roll on the basis of a real apprehension that I harbour of unfair hearing against me.
157. I am advised that there is a legal parlance that is universally accepted when coming to the rule against bias viz. "**justice must not only be done but must also seem to be done**".
158. In *casu*, I am afraid I do not carry that sense of confidence that justice will be seen to be done. I submit any other reasonable person may also feel as I do.
159. I now wish to address the application itself.

160. Accordingly, I shall deal with what falls within my own personal knowledge. Where I do not address a particular paragraph, I should not be taken to have admitted same. Instead I should be taken to have placed same in issue.

161. **AD NOTICE OF MOTION PRAYERS 1 – 4.**

161.1. I deny the correctness of the contents of this paragraph.

161.2. I have demonstrated a legal basis upon which I have exercised my discretion to refuse the Applicant's request for access to information. I must submit that his right is not unlimited and I have thus demonstrated compliance with both the Act and section 36 of the Constitution.

162. **AD NOTICE OF MOTION PRAYER 5.**

162.1. I deny the correctness of the contents of this paragraph.

162.2. The Court is not competent to grant the above prayer and I submit for reasons set out above. It also is so convoluted and incoherent that it cannot, in any event, be granted at all.

162.3. I am advised that some of the people mentioned in this prayer are not before Court. They have not been cited as parties to any of the three applications brought by the Applicant.

162.4. Accordingly, this Court will have no competence and authority to rule over them.

162.5. I am advised that it is another rule/principle of law, which the Applicant appears to have missed, that a Court would not readily grant an order against a person whom it has not heard.

162.6. The Applicant has elected to sue the CEO in this matter. She is the person to respond hereto and any order would thus be directed at her.

162.7. Furthermore, the Applicant seeks the information from Legal Aid SA's computers without specifying from whose computers he seeks information. Again where Applicant has not cited the owners and/or users of those computers for them to respond and defend their positions, this Court is unable to grant him the said relief.

162.8. I submit that the said order is vague and falls to be rejected and dismissed.

163. **AD NOTICE OF MOTION PRAYER 6.**

163.1. I deny the correctness of the contents of this paragraph.

163.2. I submit that this Court is precluded from making an order against Mr Brian Nair. He is not a party to these proceedings and the Applicant, as a sitting magistrate, ought to know that this Court cannot order anything against Mr Nair without hearing him.

164. AD NOTICE OF MOTION PRAYER 7.

164.1. I deny the correctness of the contents of this paragraph.

164.2. The Applicant has issued application against the CEO in her nominated capacity. He has not sued Legal Aid SA as an organisation.

164.3. Accordingly, the CEO cannot be ordered to publish an order directed to her on Legal Aid SA's organisation. Applicant ought to have joined Legal Aid SA as a respondent for this order to be meaningful and effective.

164.4. This again boils down to Applicant seeking myriads of orders against people who are not before Court. This is a legal impossibility.

165. AD NOTICE OF MOTION PRAYER 8.

165.1. I deny the correctness of the contents of this paragraph.

Ad attachment of computers

165.2. I submit that for the same reasons as the above prayer, this Court is not competent to grant this order.

165.3. The Applicant seeks herein attachment of computers, without specifying whose computers he seeks to attach. Again, where he has

not cited owners of those computers for them to respond and defend their positions, this Court is unable to grant him the said relief.

Ad committal to goal of the CEO for contempt

165.4. In the same prayer, the Applicant seeks committal of the CEO in goal for contempt for as long as this Court deems meet.

165.5. The Applicant must, as a matter of law, bring another application for a competent Court to find the CEO to be in contempt of Court. This Court has not been furnished with facts to support such a finding or even an order to that effect.

165.6. The above Court is, in any event, not even a proper forum to find the CEO to be in contempt. It cannot do so.

Ad wilful and gross negligent refusal to comply with the Order of Court

165.7. The Applicant further seeks committal of the CEO once there is wilful and gross negligent failure to comply with the Order.

165.8. One wonders when is this finding of wilful and gross negligent failure to comply with the Court Order going to be made. How is the said finding to be made?

165.9. The said findings cannot be made presently from this application. There has to be an attempt to enforce compliance before one could

say there was failure and such failure is both grossly negligent and wilful.

165.10. I submit that with these legally unsound prayers, Applicant just demonstrate poor understanding and application of the law.

165.11. The Applicant would have to bring another application to demonstrate that the CEO has wilfully and grossly negligently failed to comply with the Order of the Court.

165.12. Such prayer cannot be granted now and before one determines whether the failure by the CEO is both wilful and/or grossly negligent.

165.13. There is also a further complication, *i.e.* in the event that the CEO is either wilful or grossly negligent, and not both. The Applicant does not state what then is to happen. I submit he cannot do so because the issues required establishing the CEO's gross negligence or wilfulness have not yet been canvassed.

165.14. It is thus pre-mature for the Applicant to seek the above two prayers.

165.15. I submit that the said prayer is vague, embarrassing for a magistrate to make, convoluted, and falls to be rejected and dismissed.

166. **AD NOTICE OF MOTION PRAYER 9.**

166.1. I deny the correctness of the contents of this paragraph.

166.2. I submit that this Court has no business in expending its resources for making copies of all these documents and posting/distributing them to all the people identified in the above prayer.

166.3. No reason is furnished as to why those people should be favoured with all the documents of this application which, in any event, once filed, becomes public record.

167. AD NOTICE OF MOTION PRAYER 10.

167.1. I deny the correctness of the contents of this paragraph.

167.2. I submit that the Applicant should be ordered to pay the costs of this application. The tone, language of his application, the unnecessary mistakes of law that beset this application, and the application itself, all warrant a punitive costs order.

168. AD PARAGRAPH 1.

168.1. I deny the correctness of the contents of this paragraph.

168.2. I submit that the Applicant is an ordinary resident of Pietermaritzburg and only lives in Eshowe by virtue of an acting position he had taken thereat.

168.3. I further submit that the Applicant has no assets attaching to his name at Eshowe.

169. **AD PARAGRAPH 2.**

169.1. I admit the correctness of the contents of this paragraph.

170. **AD PARAGRAPH 3.**

170.1. I note the contents of this paragraph.

171. **AD PARAGRAPH 4.**

171.1. I deny the correctness of the contents of this paragraph.

171.2. Applicant is not entitled to any order in this matter. I have already set out sufficient reasons for this Court to dismiss the Applicant's claim herein.

172. **AD PARAGRAPHS 5 – 6.**

172.1. I deny the correctness of the contents of these paragraphs.

172.2. I have dealt with the effect of Government Notice No. 585 of Government Gazette 14 of 2014. I request that my submissions hereinabove also be incorporated herein as if specifically pleaded.

172.3. Full argument will be presented in respect of these sections of the Act.

173. **AD PARAGRAPHS 7 – 8.**

173.1. I note the contents of these paragraphs.

174. AD PARAGRAPH 9.

174.1. I note the correctness of the contents of this paragraph.

175. AD PARAGRAPH 10.

175.1. I annex the said document hereto. It was inadvertently not delivered to the Applicant. Other documents relating to Legal Aid SA's interaction with SAHRC were delivered to him. It is marked **TM2**.

176. AD PARAGRAPHS 11 – 13.

176.1. I deny the correctness of the contents of these paragraphs.

176.2. I have shown that I am a Deputy Information Officer. The affidavit I deposed to is sufficiently competent and in accordance with the Act.

176.3. I am indeed also authorised to sign all legal processes for and against Legal Aid SA.

177. AD PARAGRAPH 14.

177.1. I deny the correctness of the contents of this paragraph.

177.2. I submit that all objective facts considered, afforded me with reasons to lawfully refuse this application and as the Applicant himself avers in his affidavit he confirms what was, objectively, also evident to me.

177.3. I stand by my decision and, in fact, perusal of his comments to the information he request clearly indicates that it arises, largely, from his cross examination of Mr Nair at the Labour Court where a decision is still outstanding.

178. AD PARAGRAPHS 15 – 18.

178.1. I deny the correctness of the contents of these paragraphs.

178.2. Seeking information relating to a matter that has been argued and using PAIA instead of the discovery rules of the Labour Court is manifestly frivolous and vexatious. I would have thought that same is obvious, with respect.

178.3. I submit that, in addition to being frivolous and vexatious, the information requested by the Applicant has the effect of diverting much needed resources away from Legal Aid SA's mandate.

178.4. In my analysis of the facts and application hereof, only sections 7(1) and 45 of the Act bore relevance to this application. I submit that it is not necessary to recite all the sections merely for the sake of doing so.

179. AD PARAGRAPH 19.

179.1. I deny the correctness of the contents of this paragraph.

179.2. I have demonstrated that I am authorised to depose to the PAIA section 23 affidavit and grant or refuse a request for information.

179.3. I submit that the two sections I relied on complement each other. The Applicant stated herein that there is an action pending in the Labour Court.

179.4. Applicant further disclosed in this application his reason for collecting all this information. He thus falls squarely within section 7 of the Act.

179.5. It is thus apparent to me that to entertain an application that was previously entertained by Head Office, would unnecessarily direct valuable resources away from the main focus of my office.

180. AD PARAGRAPH 20.

180.1. I deny the correctness of the contents of this paragraph.

180.2. In my understanding of the facts forming part of this case, the action in Durban, are still *sub judice*.

180.3. The fact that heads of argument have been submitted and argument presented, does not, by any stretch of imagination suggest that the matter or case has been completed.

181. AD PARAGRAPH 21.

181.1. I deny the correctness of the contents of this paragraph.

181.2. I invite the Court to peruse Applicant's comments under each and every information he requests. It is apparent therein that the information he seeks arises from a matter presently before Court.

181.3. It is, at this stage and without Cele J's judgment, imprudent of the Applicant to refer to Mr Nair as a compulsive liar.

182. AD PARAGRAPH 22.

182.1. I deny the correctness of the contents of this paragraph.

182.2. The Applicant seems to have obtained information from Legal Aid SA in terms of PAIA and without any further waste of time has used same in these proceedings to prove a point.

182.3. This is contrary to his own assurance to this Court that evidence obtained from PAIA is not admissible in Court. He has used evidence so gathered to further his insults on Mr Nair.

182.4. I shall ask this Court to strike out paragraphs 22 – 27, 31 – 32 from his founding affidavit.

182.5. In any event, the contents thereof are denied and placed in dispute as if they are specifically traversed. The Applicant's context is also denied and misplaced. I deal with the context herein below.

183. AD PARAGRAPHS 28 – 32.

183.1. I deny the correctness of the contents of these paragraphs.

183.2. As an organisation, we denied the said finding by SAHRC and I am aware that the CEO and some of our senior members met with SARHC to deal with the said incorrect finding.

183.3. Furthermore, the issue raised by the Applicant relate to findings that Cele J is still to pronounce on.

183.4. Applicant is excited to have discovered certain documents which we delivered to him and is thus quick to make defamatory accusations based thereon.

184. AD PARAGRAPH 33.

184.1. I deny the correctness of the contents of this paragraph.

184.2. I have demonstrated that I hold a proper authority as I am the Deputy Information Officer.

184.3. I submit that all the Deputy Information Officers are responsible for the decisions they take. In this regard, the buck stops with me, unless the Applicant appeals my decisions in terms of the Act.

185. AD PARAGRAPH 34.

185.1. I deny the correctness of the contents of this paragraph.

185.2. I submit that if the refusal to grant access to any information the Applicant request is always based on legal grounds, properly considered and applied.

185.3. I have dealt with Legal Aid SA's position regarding SAHRC's finding and conclusion against Legal Aid SA. I wish same could be incorporated herein as if specifically pleaded.

186. AD PARAGRAPH 35.

186.1. This paragraph also falls to be struck out as it is evidence arising from information secured from PAIA process.

186.2. An appropriate Notice of Motion seeking the foregoing relief will be lodged at the appropriate time.

187. AD PARAGRAPH 36.

187.1. I deny the correctness of the contents of this paragraph.

187.2. I submit that the Applicant's behaviour is strange and possibly unethical.

187.3. On what basis does he provide information sought to generate friction and discord amongst our staff and in our organisation? I submit that his actions, are deliberate and calculated to cause friction and undermine the operation of our organisation.

187.4. Legal Aid SA shall oppose this attempt at all costs and will not allow the Applicant to succeed in his attempts.

187.5. I am advised that the said Senior Litigators cannot confirm or deny anything when they have not been cited in these papers, have not taken any part in the main action in this matter, and when no clear statement of fact or law is ascribed to anyone of them, either directly or indirectly (by the Applicant). All that he intends doing is to cause unnecessary discord amongst our staff.

187.6. I submit this conduct is deplorable and deserves the dimmest view a Court can give to a person.

188. AD PARAGRAPHS 37 – 39.

188.1. I deny that Legal Aid SA violated any of the Applicant's rights.

188.2. If Legal Aid SA indeed violated the Applicant's constitutional rights then, I submit, he should have proceeded with his draft application to Johannesburg High Court and test his accusations thereat.

188.3. Presently, I submit his accusations remain empty as they have never been tested in any Court of law or in any internal appeal process.

188.4. The said untested and legally unsound accusations are simply made to paint a negative picture of Legal Aid SA – a position we vehemently deny.

189. **AD PARAGRAPH 40.**

189.1. I deny the contents of this paragraph.

189.2. I submit that this Court should dismiss this application with punitive costs. The aggravating, defamatory, derogatory, unethical facts are before this Court and by one of its own.

CONCLUSION

190. I submit that the Applicant has not made out a case for the relief he seeks.

191. I submit one or more of my preliminary objections holds true and this application falls to be dismissed.

192. I submit that the conduct by the Applicant as set out more specifically in my preliminary objections deserves punitive cost orders.

193. Legal Aid SA and its CEO cannot be dragged into litigation that has no merit, that is scandalous, vexatious and in flagrant disregard of the law and processes of Court.

194. I annex hereto the confirmatory affidavit of Ms Vidhu Vedalankar which I mark as **TM3**.

WHEREFORE it may please the court to dismiss the application with punitive costs.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this the 5th August 2014. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

See 'HB3' annexed to Bambiso's answering affidavit in the first application.

Annexures 'TM1' and 'HB3' are the same.

"TM2"

301

'TM2'

ota

Fola Adeleke <fadeleke@sahrc.org.za>
Thursday, February 21, 2013 5:16 PM
Solly Sekgota
Joyce Mputla; Thembile Mtati; Amanda Mfuphi
RE: Reply to PAIA Audit Questionnaire from SAHRC

sending this.

Solly Sekgota [SollyS@legal-aid.co.za]
Thursday, February 21, 2013 10:15 AM
Fola Adeleke
Joyce Mputla; Thembile Mtati
RE: Reply to PAIA Audit Questionnaire from SAHRC

The reply to the Questionnaire.
and the documents referred to will be delivered to you.

Legal Manager
South Africa
2004
222
[Email address redacted]

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301

Handwritten signature

Case No. 258/14

DY ROBIN BRINK

Applicant

VEDALANKAR N.O.

TY INFORMATION OFFICER,

Respondent

ERN CAPE REGION,

L AID SOUTH AFRICA

CONFIRMATORY AFFIDAVIT

ndersigned

VIDHU VEDALANKAR

by make oath and state as follows:-

1.

I am an adult female person employed as the Chief Executive Officer of Legal Aid South Africa with my principal address at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg and I am duly authorised to depose to this affidavit.

m

The facts stated herein are within my personal knowledge and are to the best of my personal knowledge both true and correct.

303
TM3'

2.

I have read the Answering Affidavit of Thembile Vuyo Mtati and I confirm that the contents

therein, in as far as it relates to me, are both true and correct.

I herein submit that the Applicant has not made out a case for the granting of the relief he seeks and further that his application falls to be dismissed.

T. N. Nedelchev

DEPONENT

SWORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS THE 8th OF August 2014. THE DEPONENT HAVING ACKNOWLEDGED TO ME HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HE HAS NO OBJECTION TO THE TAKING OF THE PRESCRIBED OATH AND HE MAKES THE AFFIDAVIT BINDING ON HIS CONSCIENCE.

Mature

COMMISSIONER OF OATHS

NAMES : Mabhoko Mathole Attorneys
NATION : Commissioner of Oaths
Ex Officio
Mansion House, 132 Market Street
Cell: 082 680 5982 Fax: 086 690 3648
ESS : Email: mabhoko@webmail.co.za

IN THE MAGISTRATES COURT FOR THE DISCTRICT OF ESHOWE

Case No. 259/14

In the matter between:-

ANTHONY ROBIN BRINK

Applicant

and

ZANELE MSWELI N.O.**DEPUTY INFORMATION OFFICER,****FREE STATE AND NORTH-WEST REGION,****LEGAL AID SOUTH AFRICA**

Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

ZANELE MSWELI,

do hereby make oath and state that,

1. I am an adult female Regional Operations Executive and a Designated Deputy Information Officer for the Regional Office of Free State and North-West in Legal Aid of South Africa ("Legal Aid SA") with my regional address at 196 Nelson Mandela Drive, PHG Building, Bloemfontein. Notwithstanding the above, my principal address for the purposes of executing and serving legal process is Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg.
2. The facts deposed to herein are within my own personal knowledge unless the context indicates otherwise, and are to the best of my belief both true and correct.
3. Where I make submissions of law, I do so on the basis of legal advice I received from my legal representatives which advice I accept as correct.
4. Where I rely on evidence submitted by a third party, I shall annex such a person's confirmatory affidavit.

5. In dealing with the Applicant's answering affidavit, I complied with LEGAL AID SA's Litigation Guidelines the final version 6 having been approved in 24 April 2014. I annex hereto a copy of the said guideline and refer the Court to clauses 4, 4.1, 4.7 and 4.10.8, in particular, which sets out what I should do when served with process against me or LEGAL AID SA and mark same **ZM1**.

6. In accordance with the above clauses, I emailed the Applicant's application to Mr Solly Sekgota who is the Corporate Services' Legal Manager at the National Office. He has, in any event, detailed knowledge about this matter and he has directed, in terms of clause 4.1, that we, having consulted with each other, shall proceed to draft this affidavit and he would file a confirmatory affidavit once an appropriate draft has been finalised.

7. I have perused the Applicant's affidavit founding his application purportedly in terms of Chapter 2 of the Promotion of Access to Information Act, 2 of 2000 ("PAIA" and/or "the Act") which reads as follows:

"CHAPTER 2

APPLICATIONS TO COURT (ss 78-82)

78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has

exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75 (2);

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1-

(i) to refuse a request for access; or

(ii) taken in terms of section 22, 26 (1) or 29 (3); or

(d) aggrieved by a decision of the head of a private body-

(i) to refuse a request for access; or

(ii) taken in terms of section 54, 57 (1) or 60, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

(3) A third party-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1 to grant a request for access: or

(c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

8. I disagree with the Applicant's course of action herein and I shall return to this provision of the Act, its effect, interpretation and implementation, in due course.

9. I wish to give a brief legal framework within which LEGAL AID SA operates. Although I am aware that LEGAL AID SA, as an institution, is not cited as a party to these proceedings but I am cited as the Respondent albeit in my nominated capacity, the framework I provide herein will be crucial for my answer herein below.

BRIEF LEGAL FRAMEWORK

10. The Board of Legal Aid SA is established by section 2 of the Legal Aid Act, Act 22 of 1969 which Act has been amended previously (hereinafter "the Act"). LEGAL AID SA is a statutory body which exists in order to give effect to rights enshrined in the Constitution of the Republic of South Africa Act, Act 108 of 1996 ("the Constitution").

11. The Act recognises LEGAL AID SA as an autonomous body, accountable to Parliament under the Minister of Justice and Correctional Services' watch and guidance.

12. The Act enjoins LEGAL AID SA to provide legal aid to the indigent people as provided for by sections 25, 35(2)(c), (3)(g) of the Constitution and any other right which, in the discretion of the Board, may be worthy of legal representation.
13. The Act also empowers the Board, amongst others, to do all such things and perform all such functions as may be necessary for all and incidental to the attainment of the objects of the Board.
14. Those objects appear in section 3 which provides that *“[T]he objects of the Board shall be to render or make available legal aid to indigent persons and to provide legal representation at State expense as contemplated in the Constitution...”*
15. Section 3A which deals with Legal Aid Guide (hereinafter “the Guide”) states that:

“(1)(a) Subject to the provisions of this act and in order to attain its objects and to exercise its powers referred to in section 3(d) and (dA), the board shall, in consultation with the Minister, include particulars of the scheme under which legal aid is rendered or made available and the procedure for its administration in a guide called the Legal Aid Guide.”
16. Around 2009, LEGAL AID SA together with Parliament released its first edition of the Legal Aid Guide after Parliament had held a number of sessions to ratify the Guide and ensure that the Guide is compliant with the law.

17. Again in 2012, LEGAL AID SA, with both houses of Parliament, effected amendments to the Guide and replaced the 2009 version of the Guide with the 2012. This version still is the applicable version to date.

18. I submit therefore that the Guide is a Statutory instrument binding on all South African including presiding officers.

19. The Guide serves to explain to all how legal aid is granted and managed in a fair and transparent manner.

20. Chapter 1 of the Guide provides a repeat of the mandate imposed on it by the Constitution which I referred to hereinabove and the powers referred to above.

21. What is important for my purposes herein is Clause 1.3 of the Guide which provides as follows:

“1.3. Place of business and legal service address

The National Office of Legal Aid SA is Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, South Africa.

The National Office of Legal Aid SA is its principal place of business and its domicilium citandi et executandi. This means that this is the address for the service of all legal proceedings relating to legal process involving Legal Aid SA.”

22. Regard being had to the above provision, there is only one address at which any person seeking to sue LEGAL AID SA or its employees arising out of processes involving Legal Aid SA, must serve his or her legal process. The said address is the one provided for in the Guide *i.e.* its *domicilium* address.

The rest, when perusing the Guide, are merely satellite offices and regional offices with no separate legal personality to sue or be sued. It was accordingly wrong of the Applicant to sue me directly and at my regional address.

23. Thus, in order to institute these proceedings that the Applicant sought to institute against me in so far as I represent LEGAL AID SA or for any act or failure to perform any act regarding LEGAL AID SA's obligations, the Applicant ought to have launched his application where my principal address is *i.e.* Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, and not at my regional address nor at Eshowe Magistrate Court.

24. The above conclusion will be critical, I submit, when regard is had to the submission I intend to make herein below regarding the jurisdiction of the above honourable Court.

25. I now deal with brief factual background to this matter before I could deal with all the paragraphs that form part of this application.

BRIEF FACTUAL BACKGROUND

26. On or about 13 November 2013, I received a request for access to certain information from the Applicant and which request appear on the Applicant's founding affidavit as **annexure A**.

27. As indicated above, Mr Solly Sekgota made me aware of the legal proceedings brought by the Applicant at the Durban Labour Court under case number 529/11 ("the main action") and further that the Applicant had previously sought access to information regarding Advocate Nzame Skibi from our National Office which then contacted me concerning such information. I formed a view that the Applicant intends to use this information which he seek through the Act and which he learned during the trial of the above case which case I am advised by Mr Solly Sekgota that it is still pending in the Durban Labour Court, in further proceedings.

28. My knowledge of the facts of the above action is not as comprehensive as those of National Office people who are the direct litigants in that matter. I have, in finalising this affidavit, relied mainly on my consultations with Mr Sekgota.

29. I further note that most of the issues herein relate to an employment issue that I am not familiar with.

30. I am advised that the information sought herein is similar to information sought before the trial of the Applicant's trial case in Durban and also relating to similar issues that were before Court therein.

31. The central issue surrounding the Applicant's request is the recruitment of Advocate Nzame Skibi. I state that this issue was, *inter alia*, central to the Applicant's case in Durban when he sought to demonstrate that the recruitment of Advocate Nzame Skibi was part of *stratagem* intended to camouflage the real reason and that being that Mr Brian Nair refused to

finalise Applicant's recruitment to being Senior Litigator, Pietermaritzburg, Kwa-Zulu Natal.

32. After receipt of Applicant's request for access to information, I then spoke to Mr Solly Sekgota who provided me with information upon which I then prepared the answer which I furnished to the Applicant and which answer appears in his application as **annexure B**.

33. The substance of the answer that I gave to the Applicant was that I declined to grant him access to most of the documents he sought therein fundamentally on two basis namely:

33.1. First, the information/documents he required was a subject matter of an action against LEGAL AID SA and some of its senior officers in the Labour Court before Cele J.

33.2. Furthermore, I am made to understand that the above action is still pending in the Labour Court. No judgment has been handed down. I will revert back to the effect of this information to the Applicant's request.

33.3. The second reason for refusing access to the requested information was that the request was manifestly vexatious and with a potential result in unreasonable diversion of resources. This is, as I say, because the request made herein relates to information pending in the Durban Labour Court.

34. I now wish to deal with the relevant provisions of the Act which stand out from this application. I do so herein below.

RELEVANT LEGAL PROVISIONS AND PRINCIPLES

35. In my response to the Applicant, I stated that the information that he sought cannot be provided to him on the basis of sections 7 and 45 of the Act.

36. Section 7 of the Act provides as follows:

“7 Act not applying to records required for criminal or civil proceedings after commencement of proceedings

(1) This Act does not apply to a record of a public body or a private body if-

- (a) that record is requested for the purpose of criminal or civil proceedings;*
- (b) so requested after the commencement of such criminal or civil proceedings, as the case may be; and*
- (c) the production of or access to that record for the purpose referred to in paragraph (a) is provided for in any other law.*

37. I now read his founding affidavit herein that he seeks this information to pursue either civil or criminal proceedings against the National Office officials or people and, in particular Mr Brian Nair, arising out of the aborted recruitment for senior litigator in 2010.

38. I submit that even if I was wrong in thinking that the Applicant required the said information for litigation purposes, I am vindicated by his confirmation of my reasons to refuse his application because it is apparent from his affidavit that he intends to criminally prosecute Mr Brian Nair who sits as National Operations Executive of Legal Aid SA in Johannesburg.

39. Accordingly, I submit that I was entitled to refuse the said request when I did.

40. I stated, as a second reason for refusing with information, that section 45 prohibited access to information where the application is manifestly vexatious frivolous. It reads thus:

“45 Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources

The information officer of a public body may refuse a request for access to a record of the body if-

(a) the request is manifestly frivolous or vexatious; or

(b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.”

41. I am advised that the Applicant has vowed to institute actions and applications against the LEGAL AID SA for many years to come. He says so himself in his application against Hope Bambiso of the Eastern Cape Region.

42. As matters stand, the Applicant has for unknown reasons also launched similar applications as this one and out of this Court against other Regional Information Officer of Eastern Cape and LEGAL AID SA's CEO. Their case numbers are 257/14 and 258/14 respectively.

43. Applicant has also failed and neglected to join, in these proceedings, the LEGAL AID SA as an institution and my employer and the CEO to whom an appeal against my refusal would have lied.

44. From the perusal of the founding papers, it is not difficult to see that the Applicant has an intense hatred and desire to exact revenge against Mr Nair for allegedly aborting a position that he had applied for.

45. It is thus easy to conclude that the Applicant seeks all this information to arm himself for purposes of pursuing his cases against members of LEGAL AID SA.

46. The use of vulgar and defamatory language in his affidavit is astonishing to say the least and demonstrates conclusively to me that the request for

information, which he had made previously and was answered is now being resuscitated through me and still in respect of issues that are currently before Court.

47. The recent request is clearly vexatious and frivolous. It is apparent why the Applicant seeks this information. This is despite his submission in this case that he is busy with investigation regarding Advocate Nzame Skibi's information.

48. Furthermore, to respond to the said request has had the effect of diverting resources and time away from executing my mandate to LEGAL AID SA. It is on this basis and on totality of the facts before me that I refused the Applicant's request for access to information on the basis of section 45 of the Act.

49. I noted that the Applicant has not followed the prescripts of the very same Act that he wishes to rely on for the relief he seeks.

50. I submit that the Applicant has failed to exhaust the internal remedies provided for in the Act in that he has not, as yet, lodged an appeal against my decision to refuse his request for access to information.

51. The relevant provisions dealing with internal appeals provide as follows:

"PART 4

APPEALS AGAINST DECISIONS (ss 74-82)

CHAPTER I

INTERNAL APPEALS AGAINST DECISIONS OF INFORMATION OFFICERS OF CERTAIN PUBLIC BODIES (ss 74-77)

74 *Right of internal appeal to relevant authority*

(1) *A requester may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of 'public body' in section 1-*

(a) to refuse a request for access; or

(b) taken in terms of section 22, 26(1) or 29(3), in relation to that requester with the relevant authority.

(2) *A third party may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of 'public body' in section 1 to grant a request for access.*

75 *Manner of internal appeal, and appeal fees*

(1) *An internal appeal-*

(a) must be lodged in the prescribed form-

(i) within 60 days;

(ii) if notice to a third party is required by section 49(1) (b), within 30 days after notice is given to the appellant of the decision appealed against or, if notice to the appellant is not required, after the decision was taken;

(b) must be delivered or sent to the information officer of the public body concerned at his or her address, fax number or electronic mail address;

(c) must identify the subject of the internal appeal and state the reasons for the internal appeal and may include any other relevant information known to the appellant:

(d) if, in addition to a written reply, the appellant wishes to be informed of the decision on the internal appeal in any other manner, must state that manner and provide the necessary particulars to be so informed;

(e) if applicable, must be accompanied by the prescribed appeal fee referred to in subsection (3): and

(f) must specify a postal address or fax number.

- (2) (a) *If an internal appeal is lodged after the expiry of the period referred to in subsection (1) (a), the relevant authority must, upon good cause shown, allow the late lodging of the internal appeal.*
- (b) *If that relevant authority disallows the late lodging of the internal appeal, he or she must give notice of that decision to the person that lodged the internal appeal.*
- (3) (a) *A requester lodging an internal appeal against the refusal of his or her request for access must pay the prescribed appeal fee (if any).*
- (b) *If the prescribed appeal fee is payable in respect of an internal appeal, the decision on the internal appeal may be deferred until the fee is paid.*
- (4) *As soon as reasonably possible, but in any event within 10 working days after receipt of an internal appeal in accordance with subsection (1), the information officer of the public body concerned must submit to the relevant authority-*
- (a) *the internal appeal together with his or her reasons for the decision concerned; and .*

(b) if the internal appeal is against the refusal or granting of a request for access, the name, postal address, phone and fax number and electronic mail address, whichever is available, of any third party that must be notified in terms of section 47(1) of the request.”

52. It appears clear to me that the Applicant ought to have proceeded in terms of section 74(1)(a), read with the time frame contained in section 75(1)(a)(i) or (ii).

53. I so submit because the Applicant, despite the above provisions of the Act, concluded that no right of appeal lies in his case. I am not sure on which basis does he so conclude.

54. Anyway, the Applicant could not have been more wrong in his analysis of the above section of the Act.

55. The scheme of the Act is framed in such a manner that it provides for a process of an internal appeal to a requester or even a third party who has been refused with access to information. Accordingly, it is wrong for the Applicant to have ignored the provisions of the Act.

56. Applicant has, from the date I refused his request for access to information, had a right to appeal my said decision and such right still subsists. I declined his application on 6 November 2013 (as per annexure B to his founding papers).

57. Applicant ought to have lodged his appeal 60 days after my decision in terms of sections 74 and 75 which would have lapsed on 19 January 2014. But he has not availed himself of the opportunity to do so.

58. By this application in this Court, Applicant now wishes this Court to usurp the functions specified by the Legislature to be followed by the requester and wants this Court to act as if it is an appeal body contemplated in the Act and deal with his application as an appeal, a process which ought to have been made in accordance with the provisions of sections 74 and 75 of the Act.

59. I am advised that this cannot be.

60. Furthermore, clause 18 of the LEGAL AID SA's Manual in terms of section 14 of the Act which is accessible on LEGAL AID SA's website also informs the Applicant that if he is not happy about my decision, he has a right to appeal to the Information Officer. This, he ought to have known and complied with.

61. Accordingly, this case falls to be dismissed and if needs be the Applicant be ordered to submit to the internal remedies as provided for in the above Chapter I.

62. I submit that the Applicant cannot escape the provisions of Chapter I of the Act.

63. Furthermore, I submit that even this application that he brought to this Court is ill-conceived for lack of jurisdictional fact *i.e.* no internal appeal has been lodged. It falls to be dismissed with costs.

64. The sections regulating the applications to Court reads as follows:

“CHAPTER 2

APPLICATIONS TO COURT (ss 78-82)

78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 ***after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.*** (My emphasis)

(2) A requester-

(a) *that has been unsuccessful in an internal appeal to the relevant authority of a public body;*

(b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75 (2);

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1-

(i) to refuse a request for access; or

(ii) taken in terms of section 22, 26 (1) or 29 (3); or

(d) aggrieved by a decision of the head of a private body-

(i) to refuse a request for access; or

(ii) taken in terms of section 54, 57 (l) or 60, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

(3) A third party-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

- (b) *aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1 to grant a request for access: or*
- (c) *aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82."*

65. I have underlined and bolded the most important qualification of the above section to highlight to this Court that the Applicant can never competently launch this application before he had exhausted the internal remedies provided for in the Act.

66. This failure, I am advised, is fatal to Applicant's case. This Court has no authority to condone his non-compliance with the Act. It falls to be dismissed with costs.

67. Furthermore, it is noteworthy that the Applicant demonstrates, by his own factual background, a deep-seated dispute of fact that exists between what he avers in his application, wrote and done, on the one hand, and what either Mr Nair, the CEO Ms Vedalankar, Mr Solly Sekgota, Advocate Nzame Skibi, Mr Thembile Mtati, or Judge President D Mlambo may have said, wrote and done on the other hand.

68. What is abundantly clear is that bulk of what was said by all these people is still pending before the Labour Court. Cele J is still to pronounce, after having heard evidence from some of these people, whether or not the Applicant's accusations are founded or not.
69. I am advised that the hearing of the said action took two (2) weeks and has generated over 6000 pages in record, pleadings and various annexures.
70. This Court has not had sight of those documents and/or the transcript of those proceedings and yet it is expected to decide this application in a manner that may indeed differ with the Higher Court in Durban.
71. This I am advised would immediately violate the precedence rule and create an unnecessary confusion.
72. It is on this basis that this application ought to fail as the Applicant himself has disclosed that an action he instituted at Durban Labour Court dealing with factual issues he raised herein is pending before a Higher Court.
73. The application must also fail because of the substantial amount of dispute of facts that exist in this application and indeed the action at Durban Labour Court. It is by no stretch of imagination, not possible to resolve this application (disputes) without referring same to oral evidence and hear all those people who have been accused of all sorts of defamatory and insulting deeds.

74. It is only fair that those people that he casts aspersions on be afforded an opportunity to defend themselves and to do so through the presentation of oral evidence.

75. Applicant was aware before he launched this application that there would be massive material dispute of facts which cannot be satisfactorily resolved merely on the papers filed of record. Yet he proceeded regardless and launched this factually convoluted application. It is apparent that this is not a straight forward application as it involves a substantial involvement of third parties not cited herein.

76. It is on this basis that such applications fail and are dismissed for failure to proceed by way of action when same is clearly warranted.

77. I pray that this application be dismissed for the same reason as above. It is too convoluted and disputed that it cannot be meaningfully heard merely on the papers filed of record.

78. The Act supports my contention in that section 81 dealing with evidence in these types of proceedings still is in terms of the rules of law. It states that:

“81 Proceedings are civil

(1) For the purposes of this Chapter proceedings on application in terms of section 78 are civil proceedings.

(2) The rules of evidence applicable in civil proceedings apply to proceedings on application in terms of section 78.”

79. I am advised that reference to the word “**application**” cannot be limited to motion proceedings especially where adherence to that interpretation would defeat the purpose of civil proceedings and its regulation of presentation and securing of evidence before Court.

80. The word “**application**” must, with respect, be read to include “**action**” proceedings where same is called for.

81. The Applicant’s choice of proceedings falls foul to the trite laws of pleadings, conduct of hearings, and execution of actions in terms of South African law.

82. I have dealt with background infused with legal framework of the Act herein. I now wish to turn to the specifics of this application.

83. I intend to raise a number of preliminary objections before I deal with the merits of the application in the Applicant’s founding affidavit.

PRELIMINARY OBJECTION 1 – LACK OF JURISDICTIONAL FACT

84. In this regard, I wish to bring the following to the Court’s attention:

84.1.1. Chapter 2 of the Act dealing with “APPLICATIONS TO COURT (ss 78-82)” provides that:

“78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74. (My emphasis)

(2) A requester-

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body; ...

(b) ...

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of ‘public body’ in section 1-

(i) to refuse a request for access; or ...

(d) ...

(ii) taken in terms of section 54, 57 (l) or 60, may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.” [Emphasis mine]

84.2. Applicant contends that an Amendment to the Act has extended the time within which he ought to have approached this Court for relief in terms of section 82 from 30 to 180 days.

84.3. Applicant then submits that he has complied with the provision of the Act as amended.

84.4. The Applicant however, cannot demonstrate that he has indeed complied with the Act as amended. In fact, he submits when regard is to be had with the provisions for internal appeal against my decision, that there is no provision for appeal against my decision. I have shown that this is not true.

84.5. I am not certain as to how does the Applicant arrive at such a conclusion. As far as I know, my seniors including the Information Officer who is also the CEO and/or the Board are the people to whom an appeal against my decision lies.

84.6. The provisions of the said section 28(a) of the Judicial Matters Amendment Act, substitute the days within which to lodge an application to Court in terms of section 82 from 30 days to 180 days.

84.7. In this case, the Applicant filed his request for information form on 13 November 2013. I replied thereto on 18 November 2013.

84.8. The Applicant has not exhausted his internal remedies and as such he could not have complied with the provision of the Act as amended by the above Amendment Act.

84.9. I submit that the Amendment referred to above does not apply to the Applicant at all until he has satisfied the internal remedies clause of the Act.

85. Accordingly, I strongly submit that the Applicant has failed to comply with the Act and has not demonstrated any compliance with the Act regarding internal remedies.

86. Consequently, this application falls to be dismissed with costs.

PRELIMINARY OBJECTION 2 – LACK OF JURISDICTION OF THIS COURT

87. I submit that this Court has no jurisdiction to adjudicate on this application.

88. I say so for the simple reason that the Court does not have jurisdiction over me by virtue of the location where I as the respondent reside, and secondly, where the decision in issue herein was taken.

89. The Applicant, I noted, relies on a general designation of all regional and district magistrates' courts as "***courts***", in terms of section 1 of the definition of "***court***" in the Act, with authority to adjudicate over these types of applications.

90. I wish to demonstrate herein that the Applicant has misconstrued the very same authority he seek to rely on.

91. I am advised and accept as correct that the common law principles on jurisdiction to found an action cannot be overturned by a Government Notice whose contents and clear language do not go as further as the Applicant seeks the Notice to go.

92. In fact, the said Notice No. 585 of Government Gazette of 14 May 2004, states that:

“I Penuel Mpapa Maduna, Minister of Justice and Constitutional Development

– (a)

(a) hereby under paragraph (b)(ii) of the definition of “court” in section 1 of the Promotion of Access to Information Act, Act 2000 (Act No. 2 of 2000), designate all magistrates’ courts established for any district or regional division or places appointed within any district or regional division as places of the holding of a court in terms of section 2 of the Magistrates Court Act, 1944 (Act No. 32 of 1994), as courts to hear any application in terms of the Promotion of Access to Information Act, 2000, within whose area of jurisdiction –

(i) the decision of the information officer or relevant authority of the public body or the head of a private body has been taken:

(ii) the public body or private body concerned has its principal place of administration or business; or

(iii) the requester or third party concerned is domiciled or ordinarily resident.”

93. I am advised that the above Government Notice cannot and did not seek to oust the common law principles of jurisdiction as are known. In its own language, the said Notice does no more than to designate all magistrates' courts as PAIA Courts.

94. However, most importantly, the Notice still re-affirms the common law grounds of jurisdiction being (i) the place where the decision in issue was taken, and (ii) where the residence of the respondent is.

LOCATION OF APPLICANT VIS-À-VIS RESPONDENT

95. In many instances, the place where the transaction was entered into also finds jurisdiction and so is where the respondent's assets are based.

96. I am advised that the common law jurisdiction jurisprudence recognises another well-known common law principle of **actor sequitur forum rei viz.** that the suitor shall seek the respondent and sue him at his background.

97. The above trite principle is cardinal to the South African law of jurisdiction. It is not clear how did the Applicant miss this principle.

98. As a former Magistrate of some 20 years' experience, an advocate of over 20 years, aspirant Senior Litigator in LEGAL AID SA, and presently an Acting Magistrate in this very same Court, the Applicant ought to have known this basic principle of our law of jurisdiction.

99. I wish to submit that in fact and in truth, the Applicant knows of this rule because previously when he had concluded that the National Office staff 'unlawfully' refused him with access to documents he required, he threatened LEGAL AID SA with an application in terms of the Act.
100. The difference is that with the above threat, Applicant took same further and even prepared a draft application which he annexed to one of his request for access to information. Because the National Office is based in Braamfontein, Johannesburg, Applicant threatened to issue his application out of the Gauteng Local Division. I annex hereto a copy of the said application to demonstrate my point, and mark same as **ZM2**.
101. The recent conduct of launching this application out of this Eshowe Court was deliberate and intended to disadvantage me, LEGAL AID SA, and its officials referred to in the founding affidavit but not cited formally for them to respond to the allegations made herein.
102. I submit that the principles of law have escaped him and they did so in an embarrassingly fashion given the superiority complex that he has and the insults that he hurls at me, and LEGAL AID SA officials with a sense of pride and impunity.
103. I submit that his contention in respect of jurisdiction can never work in the manner that he contends *i.e.* that because is 'resides' in Eshowe, therefore he is entitled to bring his application in Eshowe.

104. Secondly and why the Applicant misinterpreted the above Government Notice is, I am advised, that the Applicant is, in any event, not an “ordinary resident” in Eshowe. He lives within the Court’s jurisdiction on a temporary basis as he has accepted temporary work thereat.

105. Originally the Applicant is an ordinary resident within the Pietermaritzburg Magistrate’s Court with assets of value thereat.

PRINCIPLE OF EFFECTIVE ORDER

106. Furthermore, I submit that that the underlying principle of jurisdiction is “effective order”. Effectiveness of the order means that the Court in which the Respondent lives or is should be able to enforce its order with ease.

107. I am advised that the term “effective order” is often stated as *“A lawful power to decide something in a case or to adjudicate upon a case, and to give effective judgment, that is, to have the power to compel the person condemned to make satisfaction.”*¹

108. The Applicant’s reliance on paragraph (iii) of the Notice is completely misguided. That provision can only found jurisdiction in the requester’s favour only in the event that the requester is also a respondent or defendant in an action or application brought, for example, by an information officer or a third party. It cannot found jurisdiction to launch an application.

¹ Per Viljoen JA in a 1987 Appeal Division case.

109. The Applicant lost it, with respect, and I am firm on this point.

110. I submit that the law remains as it is and the Applicant ought to institute these proceedings in an appropriate forum and not out of this Court.

111. The above Honourable Court, and as a matter of common law, will have no authority over me and will have no power to compel me to comply with anything coming therefrom. The court will be subjected to *extra territorium ius dicenti impune non paretur*.²

112. I submit that a Magistrate's Court in Bloemfontein, Free State may even be the appropriate forum to institute any proceedings against me primarily because of paragraphs (i) and (ii) of the same Notice above.

113. The Bloemfontein Magistrates' Court may (without derogating from my above submissions regarding the proper forum), be more suitable and effective to compel me into compliance.

114. I submit strongly so, with respect, that this application falls to be dismissed with costs.

² "One administering jurisdiction beyond his territory may with impunity be disobeyed."

PRELIMINARY OBJECTION 3 – MATERIAL DISPUTE OF FACTS

115. I have alluded hereinabove, to this fundamental violation of the rules of this Court and of the common law.

116. The Applicant foresaw the potential of material dispute of facts arising from this application and yet he forced ahead nonetheless.

117. The above Court is indirectly requested, by the Applicant, to make character findings against a number of numerous important people mentioned in this application without hearing them.

118. The Court is also hamstrung in this regard because the full picture of the dispute underlying this application in terms of records, transcript and pleadings are not before Court. I am advised that there are over 6000 pages that this Court ought to read in order to understand and contextualise this dispute. It is in any event pending in the Labour Court.

119. The Court is thus placed in a trap to rule differently from the Labour Court, a Court of higher standing as compared to this Court.

120. I submit that in view of the above possibilities, this application is bad in law and ought to be dismissed with costs.

PRELIMINARY OBJECTION 4 – SUB JUDICE

121. The Applicant himself alluded to the fact that the underlying dispute he has with LEGAL AID SA is pending before Court.

122. Accordingly, much of the Applicant's averments are a repeat of issues dealt with in the action before Cele J and upon which the learned Judge is still to pronounce.

123. The Applicant seeks this Court to make findings, of fact, of character and of law on a matter that is before another Court which process may create confusion as decisions may differ.

124. I am therefore advised, which advice I accept as correct that the common law principle of *sub judice* is applicable herein.

125. It is thus appropriate that this application be dismissed for the above reason only.

PRELIMINARY OBJECTION 5 – EXHAUSTING OF INTERNAL REMEDIES

126. I have referred above and in details to the Applicant's failure to comply with the jurisdictional facts before launching this application. I wish to incorporate the said averments herein as if specifically pleaded.

127. I have even demonstrated how the Act, itself also confirm the position I adopt herein that there must be compliance with the internal remedies before an Applicant could approach a Court of law.

128. Failing the above compliance with the Act, I submit this application falls to be dismissed and I so pray.

129. Alternatively, the Court is requested to refer the Applicant back to the provisions of the Act and to compel him to comply with its provisions before he approaches a Court of law.

PRELIMINARY OBJECTION 6 – WAIVER TO APPROACH A COURT

130. I wish to submit that most of the information that the Applicant seek has already been sought early last year and the Applicant, instead then, of launching this application, waived his right to do so and elected to proceed with his action against LEGAL AID SA in Durban Labour Court.

131. I submit that the Applicant knew of the LEGAL AID SA's position before he launched his application in the Durban Labour Court early in 2013 or shortly thereafter what the answer was in respect to the information he sought.

132. Instead, the Applicant did nothing about his right to approach a Court to enforce the right(s) he alleges I violated.

133. I deny this and submit that the Applicant must be held to an election he made.

134. The Applicant has not offered the Court good cause to demonstrate why he only applies now, in 2014, to this Court for information he sought in 2013 instead of approaching the Court then.

135. I submit that this Court would be perfectly right to dismiss this application on the basis of an undue delay which the Applicant has not even begun to explain.

136. I so pray.

137. Tied to this of course, is the extreme abuse of Court process in that the Applicant seeks same thing over different Courts and using numerous applications for apparent no reason at all. This is including choosing this Court for no legally sound reason.

138. The Court should mark its disapproval and mulct the Applicant with punitive cost order.

139. I so pray.

PRELIMINARY OBJECTION 7 – PERCEPTION OF BIAS

140. I am unable to understand why the Applicant chose to bring this application out of the above Court.

141. I am advised by Mr Sekgota that during the last appearance in the Durban Labour Court, Applicant disclosed that he has accepted a temporary acting position in this Court.

142. I am able to surmise that the Applicant only seeks to obtain an unfair advantage over me and/or LEGAL AID SA and its un-cited officials by having this matter being adjudicated by his colleagues and who could possibly find it difficult to rule against him over me – a person based far away, in a different province.

143. This conduct, not only demonstrate a sheer abuse of power, resources and Court's processes but it also, and on all objective facts, give off a sign or perception of bias.

144. I submit that bias is a very nebulous concept which does not have to physically manifest itself but can also be sensed by a lay person who has all the facts with him.

145. In this case:

145.1. I stated that the Applicant is in a committed long term fight with LEGAL AID SA and has publicly so vowed.

145.2. The issue of jurisdiction mentioned above is so obvious to any trained lawyer that it is odd that the Applicant preferred this matter to be decided in his own turf by one of his colleagues;

145.3. It is unlikely that I, as the respondent, would receive fair hearing in this Court given the fact that as between me and the Applicant, I am a foreigner of the Court.

146. I am advised that even the slightest perception of bias is sufficient to have this matter be removed from the roll of this Court and be referred to a neutral Court, as it were.

147. In the event that the Applicant does not wish to follow the respondent as he is required by the law to do (a position which I submit he has no choice but to comply), then and only then, I submit that the neutral territory could arguably be Bloemfontein, if not Johannesburg Magistrates' Court.

148. I submit that this Court should remove this matter from its roll on the basis of a real apprehension that I harbour of unfair hearing against me.

149. I am advised that there is a legal parlance that is universally accepted when coming to the rule against bias *viz.* “**justice must not only be done but must also be seen to be done**”.

150. In *casu*, I am afraid I do not carry that sense of confidence that justice will be seen to be done. I submit any other reasonable person may also feel as I do.

151. I now wish to address the application itself. I must preface my approach with the correct view the Applicant hold of me, *i.e.* that I did not attend the action in Durban and have generally not much of an idea except what I hear from other members of LEGAL AID SA.

152. Accordingly, I shall deal with what falls within my own personal knowledge. Where I do not address a particular paragraph, I should not be taken to have admitted same. Instead I should be taken to have placed same in issue.

153. **AD PRELIMINARY OBJECTION 8 – NON-JOINDER OF INFORMATION OFFICER**

153.1. I have already alluded to the fact that the CEO of LEGAL AID SA is also the Information Officer of the organisation I represent.

153.2. I have also demonstrated that in terms of clause 18 of LEGAL AID SA’s Manual in terms of Section 14 of the Act, the Information Officer is the person that an appeal against my decision would have lied upon.

153.3. It thus goes without saying that she is an interested party in these proceedings who ought to have been joined in these proceedings.

153.4. Applicant has failed to join the Information Officer and elected to sue only me and in my nominated office. This is uncalled for and his non-joinder is fatal to this case.

153.5. Accordingly, this application falls to be dismissed.

154. NOTICE OF MOTION PRAYERS 1 – 2.

154.1. I deny the correctness of the contents of this paragraph.

154.2. I have demonstrated a legal basis upon which I have exercised my discretion to refuse the Applicant's request for access to information. I must submit that his right is not unlimited and I have thus demonstrated compliance with both the Act and section 36 of the Constitution.

155. AD NOTICE OF MOTION PRAYER 3.

155.1. I deny the correctness of the contents of this paragraph.

155.2. The Court is not competent to grant the above prayer and I submit for reasons set out above. It also is so convoluted and incoherent that it cannot, in any event, be granted at all.

155.3. I am advised that all people who are mentioned in this order are not before Court. They have not been cited as parties to any of the three applications brought by the Applicant.

155.4. Accordingly, this Court will have no competence and authority to rule over them.

155.5. I am advised that it is another rule of law, which the Applicant appears to have missed, that a Court would not readily grant an order against a person whom it has not heard.

155.6. The Applicant has elected to sue me in this matter. I am the person to respond hereto and any order would thus be directed at me.

156. AD NOTICE OF MOTION PRAYER 4.

156.1. I deny the correctness of the contents of this paragraph.

156.2. I submit that for the same reasons as the above prayer, this Court is not competent to grant this order.

156.3. The Applicant seeks herein attachment of computers, without specifying whose computers he seeks to attach. Again, where he has not cited owners of those computers for them to respond and defend their positions, this Court is unable to grant him the said relief.

156.4. I submit that the said order is vague and falls to be rejected and dismissed.

157. AD NOTICE OF MOTION PRAYER 5.

157.1. I deny the correctness of the contents of this paragraph.

157.2. I submit that this Court has no business in expending its resources for distributing to make copies of all these documents and post them to all the people identified in the above prayer. No reason is furnished as to why those people should be favoured with all the documents of this application in any event, once filed, become public record.

158. AD NOTICE OF MOTION PRAYER 6.

158.1. I deny the correctness of the contents of this paragraph.

158.2. I submit that the Applicant should be ordered to pay the costs of this application. The tone, language of his application, the unnecessary mistakes of law that beset this application, and the application itself all warrant a punitive costs order.

159. AD PARAGRAPH 1.

159.1. I deny the correctness of the contents of this paragraph.

159.2. I submit that the Applicant is an ordinary resident of Pietermaritzburg and only lives in Eshowe by virtue of an acting position he had taken thereat.

159.3. I further submit that the Applicant has no assets attaching to his name at Eshowe.

160. **AD PARAGRAPH 2.**

160.1. I admit the correctness of the contents of this paragraph.

161. **AD PARAGRAPH 3.**

161.1. I note the contents of this paragraph.

162. **AD PARAGRAPH 4.**

162.1. I deny the correctness of the contents of this paragraph.

162.2. Applicant is not entitled to any order in this matter. I have already set out sufficient reasons for this Court to dismiss the Applicant's claim herein.

163. **AD PARAGRAPHS 5 – 6.**

163.1. I deny the correctness of the contents of these paragraphs.

163.2. I have dealt with the effect of Government Notice No. 585 of Government Gazette 14 of 2014. I request that my submissions hereinabove also be incorporated herein as if specifically pleaded.

163.3. Full argument will be presented in respect of these sections of the Act.

164. AD PARAGRAPH 7.

164.1. I note the contents of this paragraph.

165. AD PARAGRAPH 8.

165.1. I admit the correctness of the contents of this paragraph.

166. AD PARAGRAPH 9.

166.1. I deny the correctness of the contents of this paragraph.

166.2. I submit that my grounds for refusing the Applicant's requests are lawful
and in accordance with the Act.

167. AD PARAGRAPH 10.

167.1. I deny the correctness of the contents of this paragraph.

167.2. The Applicant is engaged in speculation. And feeding his speculation is
his apparent deep-seated hatred for Mr Nair who has had nothing to do
with my response to the Applicant's request for access to information.

167.3. As matters stand, I directed queries to Mr Sekgota who sits at National
Office in Johannesburg and he provided me with information and
important dates that formed part of my response to the Applicant.

167.4. On my own, there were certain events which when they took place I was still a Justice Centre Executive at Umlazi and would not have been aware of. Since being the ROE at the North-West, Eastern Cape Region, I, by virtue of being a Deputy Information Officer part of the management of LEGAL AID SA, got to learn about some of the facts/issues arising from the action instituted by the Applicant.

167.5. Save as aforesaid, I have no knowledge of the balance of this paragraph.

168. AD PARAGRAPH 11.

168.1. I deny the correctness of the contents of this paragraph.

168.2. I disagree that the filing heads of argument and/or oral presentation in argument of any case marks the end of a case. I am aware, instead, that a case is concluded, normally, after judgment has been handed down and after the highest Court has pronounced on the dispute between the parties. Before then, I know that anything is still possible.

169. AD PARAGRAPHS 12 – 13.

169.1. I deny the correctness of the contents of these paragraphs.

169.2. I have perused and referred this Court to section 7(1) of the Act which provides a further ground for refusal of a request for access to information.

169.3. The rationale for including this section as a further ground for refusal of access to information is obvious, with respect.

170. AD PARAGRAPHS 14 – 15.

170.1. I deny the correctness of the contents of these paragraphs.

170.2. I submit that the two sections I relied on complement each other. The Applicant stated herein that there is an action pending in the Labour Court. I was also informed of the same fact including the fact that many of the information he now sought from me, he previously sought from the National Office.

170.3. Applicant further disclosed in this application his reason for collecting all this information. He thus falls squarely within section 7 of the Act.

170.4. It is thus apparent to me that to entertain an application for access to information regarding issues and documents that are before Court would unnecessarily divert valuable resources away from the main focus of my office.

171. AD PARAGRAPH 16.

171.1. I note the contents of this paragraph. I have nothing to comment on herein as I have no personal knowledge of the facts deposed to herein by the Applicant.

171.2. I further note the Applicant's resolve in this regard.

172. AD PARAGRAPH 17.

172.1. I deny the correctness of the contents of this paragraph.

172.2. I submit that the statement that he is investigating the circumstances in which Advocate Skibi's appointment and transfer were cancelled, directly contradicts his own resolve above to pursue Mr Nair and all those in LEGAL AID SA who colluded to have his recruitment cancelled.

172.3. It is apparent that the Applicant seeks this information for another legal process he seeks to institute against Mr Nair.

173. AD PARAGRAPHS 18 – 21.

173.1. I deny the correctness of the contents of these paragraphs.

173.2. I have no personal knowledge of the balance of the above paragraphs.

173.3. However, Mr Sekgota informed me that all the submissions made against senior members of LEGAL AID SA at the National Office are denied and have been challenged by counter evidence. A decision thereupon is being awaited.

174. AD PARAGRAPH 22.

174.1. I deny the correctness of the contents of this paragraph.

174.2. I am informed that the recruitment and cancellation of Advocate Skibi, formed a basis for Applicant to contend, in the Durban Labour Court, that it was not aborted for anything other than Mr Nair's elaborate plan to camouflage the unlawful and illegal termination of his application for senior litigator - Pietermaritzburg.

174.3. I submit that this is one of the many issues that His Lordship Mr Justice Cele is still to pronounce upon. Accordingly, this issue is also pending before another Court.

175. AD PARAGRAPH 23.

175.1. I deny that I have misdirected myself in refusing access to information sought by the Applicant.

176. AD PARAGRAPH 24.

176.1. I deny the correctness of the contents of these paragraphs.

176.2. It does not make sense, with respect, to include section 7(1) as a basis for refusing a request for access to information if the reasons for such requests are irrelevant.

176.3. I deny that the said reasons for seeking access to information are irrelevant. They provide a public body with a basis to either reject or accede to that request.

177. AD PARAGRAPH 25.

177.1. I deny the correctness of the contents of this paragraph.

177.2. I note confirmation of my refusal to allow the Applicant access to the information he sought.

177.3. Although my basis for refusal of his request was for a matter that is already before Court, he appears to also intend to launch another round of legal proceedings against Mr Nair.

177.4. I submit that in those instances, the rules of Court are in place to assist him.

178. AD PARAGRAPH 26.

178.1. I deny the correctness of the contents of this paragraph.

178.2. I exercised my own discretion to refuse the Applicant's request for information.

178.3. I have no knowledge of the issues averred herein against Mr Nair.

179. AD PARAGRAPH 27.

179.1. I deny the correctness of the contents of these paragraphs.

179.2. From my previous engagement with Head Office people (Solly Sekgota in particular), I was able to ascertain that the issue relating to Advocate Skibi's recruitment was one of the pillars of Applicant's case.

180. AD PARAGRAPH 29.

180.1. I deny the correctness of the contents of these paragraphs.

180.2. I have no personal knowledge of the facts deposed to herein against Mr Nair. I have perused the two other letters refusing Applicant access to information. I disagree that they are the same.

180.3. Alternatively, even if they are all the same it is because Applicant has sought similar information over and over, and/or he seeks information that is pending before a Court, or alternatively, he merely seeks information to harass, annoy LEGAL AID SA and which will result in unreasonable diversion of resources away from its mandate.

180.4. I submit that the Act provides reasons for refusing access to information.

180.5. Save for what I have stated hereinabove, I have no personal knowledge of what Applicant is referring to.

181. AD PARAGRAPH 30.

181.1. I deny the correctness of the contents of this paragraph.

181.2. I submit that I have a legal basis to refuse the Applicant access to the records he sought.

181.3. Save for what I have stated hereinabove, I cannot admit nor confirm the balance of the averments made hereinabove.

182. AD PARAGRAPH 31

182.1. I deny the correctness of the contents of this paragraph.

182.2. The Applicant has made submissions on a large number of issues which have absolutely nothing to do with me. Furthermore and in any event, all these are issues that are pending before Cele J in the Durban Labour Court.

182.3. I have no personal knowledge of these facts and I wonder why Applicant included all these facts in this application against me.

182.4. The only reason that Applicant has included all these facts herein is simply to paint a very negative picture against LEGAL AID SA and its National Office's officials and to do so freely without citing them or making them part of this application so that they can defend themselves and challenge these submissions.

182.5. At the hearing of this application, I will ask for the striking off of all the paragraphs that have absolutely nothing to do with me. They are

scandalous, irrelevant and constitute a gross abuse of Court's process, and Applicant's power as a magistrate in this Court.

CONCLUSION

183. I submit that Applicant has not made out a case for the relief he seeks.

184. I submit one or more, or all of my preliminary objections hold true and this application falls to be dismissed.

185. I submit that the conduct by Applicant as set out more specifically in my preliminary objections deserves punitive cost order.

186. LEGAL AID SA and I cannot be dragged into litigation that has no merit, that is scandalous, vexatious and in flagrant disregard of the law and processes of Court with impunity.

187. I annex hereto confirmatory affidavit of Mr Solly Sekgota and mark same annexure **ZM3**.

WHEREFORE it may please the court to dismiss the application with punitive costs.

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this the 7th July 2014. The regulations contained in the Government Notice No. 1258 dated 21st July 1972 (as amended) and Government Notice No. 1648 dated 19th August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS



Legal Aid
South Africa

LITIGATION GUIDELINES

Initiated By	Approved By:	Date Approved:	Version
Corporate Services	ManExco	29 April 2010	Version 3
Corporate Services	ManExco	27 January 2011	Version 4
Corporate Services	ManExco	27 February 2012	Version 5
Corporate Services	ManExco	24 April 2014	Version 6

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1. Introduction

- 1.1 Being a public law firm whose main object is to provide legal assistance to the indigent persons in accordance with section 35 of the Constitution, it is envisaged that circumstances may arise where Legal Aid SA is involved in litigation by and against it emanating from the rendering of such services.
- 1.2 In contemplation of the litigation aforesaid, it is hereby promulgated the following guidelines aimed at guiding Legal Aid SA personnel in handling and dealing with all litigation matters.
- 1.3 The guidelines hereunder are supplementary to the rules of court and where there is inconsistency between the two, the rules of the court will prevail.
- 1.4 All Legal Aid SA departments must ensure that they adhere to the guidelines hereunder so as to mitigate litigation risk.

2. Definitions

- 2.1 "Litigation" means civil court proceedings instituted by or against Legal Aid SA.
- 2.2 "Legal Aid SA" means Legal Aid South Africa, a statutory body, established in terms of section 2 of the Legal Aid Act 22 of 1969.
- 2.3 "National Office" means the Head Office of Legal Aid SA situated at Legal Aid House, 29 De Beer Street, Braamfontein.
- 2.4 "Regional Office" means the office of Legal Aid SA which co-ordinates the activities of Legal Aid SA regionally.
- 2.5 "Justice Centre" means the office of Legal Aid SA from which legal services are provided to the indigents.
- 2.6 "Board Attorney" means Corporate Services Executive, Corporate Legal Manager, Corporate Attorney and Candidate Attorneys employed within Corporate Services business unit of Legal Aid SA.

- 2.7 "Correspondent" means an attorney instructed as such, from time to time by the Corporate Services Department, at a Justice Centre situated within 1500 meters of the court house in which litigation has been instituted by or against Legal Aid SA,
- 2.8 "Business Units" means all the departments in the National Office and Justice Centres of Legal Aid SA

3. Application

These guidelines are applicable to all employees of Legal Aid SA and shall be applicable from day of publication on the Ad Infinitum.

4. Litigation

- 4.1 Although sister departments are permitted to make inputs on litigation matters, Corporate Services shall have the final say on how litigation brought for or against Legal Aid SA is to be conducted.
- 4.2 All summonses, applications, motions and requests for arbitration shall upon being received by the Justice Centre concerned, immediately be forwarded to Corporate Legal Services at National Office.
- 4.3 The Human Resources Labour Relations business unit shall be responsible and be accountable for all disciplinary hearings and any other labour related matters as well as the matters referred to Commission for Conciliation, Mediation and Arbitration until the Arbitration Award stage. Corporate Services will be consulted to mitigate any future possible legal risk and exposure in the relevant matters.
- 4.4 Once the award has been made, any decision to review the award shall be made after consultation with Corporate Services.
- 4.5. Once a decision has been made for the review application, Corporate Services shall be responsible and accountable for the prosecution of the application.
- 4.6 All Section 3B applications shall be forwarded by the Justice Centre Executive to the Corporate Legal Manager and Corporate Services Executive who shall

consult with the National Operations Executive, Regional Operations Executive, Chief Legal Executive and Justice Centre Executive for determination of the matter. In forwarding such applications, the Justice Centre Executive shall ensure that each application is accompanied by all information and supporting documents necessary in order to assist the Executives concerned to determine the matter.

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4.7 Summonses issued against Legal Aid SA.

4.7.1 Upon receipt of the summons the recipient must immediately phone the Corporate Legal Manager at the National Office on (011) 877 2000 and immediately thereafter scan and email the summons to him/her.

4.7.2 If an email is used, it is a duty of the sender to ascertain that the email is not blocked and ensure that it reaches the recipient.

4.7.3 The Corporate Legal Manager shall immediately acknowledge receipt thereof and take all steps necessary to defend the matter.

4.7.4 If the matter concerned is instituted in any court other than the Johannesburg Magistrate's Court, North and South Gauteng High Courts or Johannesburg Labour Court but in a court not having jurisdiction over the principal place of business of Legal Aid SA, being 29 De Beer Street, Braamfontein, the Corporate Legal Manager shall request the Justice Centre Executive of a Justice Centre situated in the area of jurisdiction of the court concerned, to act as correspondent attorneys. In such instances:

4.7.4.1 It will be the responsibility of the Justice Centre Executive concerned to delegate one of its attorneys to be the correspondent attorney and contact person for Corporate Services, which person or attorney shall be responsible for service, filling of documents and to perform any other related work or service necessary in the prosecution or defence of the matter.

4.7.4.2 The correspondent appointed as such, shall at all material times ensure that he/she transmits all documents received by him/her

in the matter to Corporate Services by email within 24 hours of receipt thereof, and

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- 4.7.4.3 Upon being instructed, make all necessary preparations for trial and attend court to argue, prosecute and/or defend the matter.
- 4.8 Corporate Legal Services must ensure that litigation against the Legal Aid SA is dealt with as soon as possible and minimize costs as much as possible.
- 4.9 Although it is the responsibility of Corporate Legal Services to attend to litigation, it is imperative that all other business units respond to requests made by Corporate Legal Services for efficient, cost effective and speedy finalization of the matters.
- 4.10 Summonses issued by the Legal Aid SA
 - 4.10.1 Where Legal Aid SA has a claim against any other party, the Debtors' department must raise the debt.
 - 4.10.2 After raising the debt, the Debtors' department must furnish Corporate Legal Services with the following:
 - 4.10.2.1 Details of the debt
 - 4.10.2.2 Full particulars of the debtor
 - 4.10.2.3 Full report as to how the debt was raised.
 - 4.10.3 Corporate Legal Services shall in respect of each debt raised, furnish the Debtors department with the prescribed form outlining the information required in order to furnish Corporate Legal Services with full and sufficient instructions.
 - 4.10.4 At all times business units shall provide Corporate Legal Services with proper and full instructions.
 - 4.10.5 Corporate Legal Services will assess the claim based on merits and advise the Debtors' department and thereafter proceed accordingly.

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See 'HB3' annexed to Bambiso's answering affidavit in the first application.

Annexures 'ZM2' and 'HB3' are the same.

IN THE MAGISTRATE COURT FOR THE DISTRICT OF ESHOWE.

Case No: 259/14

In the matter as between:

ANTHONY ROBIN BRINK

APPLICANT

And

ZANELE MSWELI N.O

DEPUTY INFORMATION OFFICE,

FREE STATE AND NORTH WEST REGION,

LEGAL AID SOUTH AFRICA

RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned;

MAKGANE SOLOMON SEKGOTA


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Do hereby make an oath and state;

1. I am a major male and employed as Corporate Legal Manager of Legal Aid South Africa. I am duly authorized to depose to this confirmatory affidavit.
2. The facts which are herein so confirmed are to my knowledge true and correct, save where the converse so appears and is so expressly stated.
3. I have read the answering affidavit of Ms Zanele Msweli and agree with and confirm the contents thereof insofar as they relate to me.

Signed at Braamfontein on this day of 4th JULY 2014.



DEPONENT

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IN THE MAGISTRATE’S COURT FOR THE DISTRICT OF ESHOWE

Case No: 257/14

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

HOPE BAMBISO N.O.

DEPUTY INFORMATION OFFICER,

EASTERN CAPE REGION,

LEGAL AID SOUTH AFRICA

Respondent

REPLYING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. Ad answering affidavit, paragraph 1: The respondent’s claim that his ‘principal address’ is Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, i.e. the national head office address of his employer Legal Aid South Africa (‘LASA’), is not only untrue, it’s also both irrelevant and nonsensical in view of this court’s rules for service. I’ll explain why presently when correcting the respondent’s several mistakes about this court’s jurisdiction.

2. Ad paragraph 3: The respondent’s ‘legal representatives’ are LASA’s top national office attorneys Corporate Services Executive Thembile Mtati and Corporate Legal Manager Solly Sekgota and their very junior counsel (in my labour case too) who’s identified by the ‘Author’ properties of the PDF of the affidavit that he drew for the respondent, the finalised draft of which was

emailed to him for signature, and later to me at my request for easier copying (sparing me the wasted time of having to scan every page). Proof of his authorship is annexed marked 'A'.

3. It's an abysmal reflection on LASA as a public law firm, to whom the poor look for reliable legal advice, that its senior attorneys Mtati, Sekgota and the respondent should all uncritically 'accept as correct' the clueless 'legal advice' that this legal novice gave them, and positively accord themselves with his manifestly wrong 'submissions of law', one after another – with the respondent doing so by subscribing the embarrassingly inept affidavit this beginner drew for him, and Mtati and Sekgota expressly saying so in paragraph 2 of their confirmatory affidavits, 'HB5' and 'HB6'. I'll return to this matter at the end.

4. As I'll show below, both Mtati and Sekgota have each been specifically tutored by the SAHRC on the irrelevance of section 7 in the consideration of a PAIA request by an information officer, and both have been trained that it affords no ground for refusing it. Yet they obtusely persist in supporting the invocation of section 7 against me to justify violating my fundamental right to information in their bid to suppress incriminating documents exposing the massive corruption in their national head office, involving the violation of fundamental constitutional rights, followed by an escalating cover-up entailing the concealed obstruction of and unlawful failure to implement LASA's three-year corporate plan prescribed by the Public Finance Management Act 1 of 1999 ('PFMA') substantially affecting service delivery; the victimisation of two innocent employees; and a flood of contradictory lies, some sworn, to me, to the Board, to the SAHRC, to the Minister, to Parliament, and to court.

5. Ad paragraph 5: Section 78, as quoted here, is no longer the law. It's been amended, as I noted in paragraphs 115–16 of my founding affidavit. The respondent, Mtati, Sekgota and their very junior counsel all missed this.

6. In paragraph 109 of my founding affidavit, I stated: ‘Under section 74(2)(b) of the Act, no internal appeal lies against the refusal of a request for access to the records of a public body such as LASA.’ I apologise for my slip, I meant (c). But the rest is spot on, for as then SAHRC PAIA Unit director Chantal Kisoon very correctly reminded me in September 2010 – when CEO and information officer Vidhu Vedalankar initially ignored, which is to say under section 27 tacitly illegally refused, my first 51-item PAIA request a month earlier, searchingly probing the circumstances in which my appointment to LASA’s Senior Litigator post at Pietermaritzburg had been silently aborted, and I sought the SAHRC’s assistance to enforce my fundamental right to access the public body information about it that she was concealing from me – LASA is a section 1(b)(ii) ‘institution’ among the sorts of ‘public body’ contemplated by section 1 of PAIA under the heading ‘Definitions’. A ‘public body’ is defined by section 1 (I’ve italicised the relevant bits) as:

- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) *any other* functionary or *institution when* –
 - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or *performing a public function in terms of any legislation*.

Such as the Legal Aid Act 22 of 1969.

And section 78(2)(c) of PAIA (redacted for relevance) provides:

A requester - ...

(a) aggrieved by the decision of the information officer of a public body referred to in paragraph (b) of the definition of ‘public body’ in section 1 –

(i) to refuse a request for access ...

may, by way of an application, within 180 days apply to court for appropriate relief in terms of section 82.

7. Ad paragraph 6: The Act therefore explicitly contemplates my ‘course of action’ in applying to this court for relief ‘by way of application’ following the respondent’s illegal refusal of access to the records I’d requested, so his statement, on his very junior counsel’s advice, that he ‘disagree[s]’ with it is obviously of zero interest.

8. Ad paragraph 7: After calling the ‘legal framework within which Legal Aid SA operates’ ‘crucial’, the respondent then fails to show how any of this fluff is even relevant, let alone ‘crucial’.

9. The simple, narrow point is this: The respondent is a deputy information officer; under PAIA I duly requested access to some documents I believe to be under his control; he illegally refused them, irrelevantly citing ‘section 7(1) read with section 45’ as his justification for doing so; and so I applied to court to compel him to comply with his constitutional and statutory obligations and to surrender them, or certify on oath any he doesn’t have.

10. Nothing in the so-called ‘Brief Legal Framework’ that he mentions in his paragraphs 8–23 has any bearing on this court’s decision of whether ‘section 7(1) read with section 45’ justified the respondent’s blanket refusal of my request. Nor has it any bearing on this court’s jurisdiction.

11. Ad paragraphs 8–14: All this lofty waffle is correct, but it’s irrelevant to the issue for decision.

12. It's precisely because LASA is 'accountable to Parliament' and to the Minister of Justice and Correctional Services as its ultimate executive authority keeping 'watch' that I've sought the referral of this matter to them after judgment, because it's of the first importance that they be officially informed that LASA's management executives have repeatedly and persistently violated my fundamental right to information entrenched by the Constitution, and in a criminal attempt to defeat the ends of justice have disingenuously trotted out manifestly irrelevant provisions of PAIA to justify withholding documentary evidence (including the potent evidence of section 23 affidavits) incriminating their corrupt colleagues.

13. Ad paragraph 15: Again the respondent is behind the times, because the first part's right, the second's wrong. The Legal Aid Guide 2012 is no longer 'still ... the applicable version to date'. It's been substituted with the Legal Aid Guide 2014, which my copy tells me was ratified by the National Assembly and the National Council of Provinces on 29 October and 12 November 2013 respectively.

14. Neither Nair, nor Mtati, nor Sekgota, all of whom made confirmatory affidavits, noticed this glaring mistake – giving rise to the question whether they really did read the respondent's affidavit, as they all claimed on oath they did. Or whether they say things and sign affidavits, swearing they're the truth, mindless of the penalty for perjury, which is jail.

15. Ad paragraph 16: This submission is pertinently contradicted by LASA chairperson Mlambo JP and CEO Vedalankar in their co-authored Foreword to the current Guide, in which they explain very correctly that it 'set[s] out the details of the policies and procedures for the provision of legal aid'. This accords with section 3 of the Legal Aid Act quoted by Mtati in his paragraph 13: the Legal Aid Guide is to 'include particulars of the scheme under which legal

aid is rendered or made available and the procedure for its administration.’ That’s to say, the Guide is an internal regulatory instrument, a piece of subordinate legislation governing the conduct of LASA’s operations, and is in no wise ‘binding on’ me as a ‘South African’ nor on ‘presiding officers’, as the respondent wrongly alleges.

16. Ad paragraphs 17 and 18: This is correct, as indeed the Foreword explains, but it’s beside the point.

17. Ad paragraph 19: Section 1.3 of the Guide hasn’t been changed between the 2012 and 2014 editions, and is correctly quoted here.

18. Ad paragraphs 20–22: This is wrong. First, I didn’t sue LASA as a corporation, nor any of its ‘satellite offices and regional offices’; and it’s elementary, albeit totally irrelevant, even if it sounds very erudite to a professional neophyte trying to impress his legally untutored clients, that these don’t have any ‘separate legal personality to sue or be sued’, either ‘when perusing the Guide’ or at other times when not perusing it.

19. I sued the respondent personally qua deputy information officer for orders compelling his compliance with PAIA, which is to say to conform himself to the Constitution and the law; and this required of me that I serve him with a copy of my application, which I did – personally, via the sheriff, at his office, as the latter’s return, annexure ‘B’ vouches.

20. Rule 2(2) of the Promotion of Access to Information Rules provides that ordinarily ‘the rules governing the procedures in the court to which an application in terms of these rules is brought shall apply’.

21. In the case of natural persons, rule 9(1) of the Rules of the Magistrate’s Court naturally envisages personal service on a defendant; but as convenient alternatives, rule 9(3) allows the sheriff to serve certain responsible people

found at his residence or place of business instead, and rule 9(4) at his place of employment. (In the case of service on corporations such as LASA, rule 9(6) permits service on either their ‘principal address’ or ‘local office’.)

22. Since I sued the respondent, a natural person, in his official and not personal capacity, I cited his place of employment in my notice of application. Citing his home address and serving him there instead would have been equally competent, just impolite. Under the rules of this court, it doesn’t matter where the respondent was personally served: it could just as well have been at the railway station.

23. The Guide can’t and anyway doesn’t purport to supplant this court’s rules for service, applicable under the Promotion of Access to Information Rules to applications like these.

24. The respondent’s claim, on oath, that his ‘principal address’ is Legal Aid House, 29 de Beer Street, Braamfontein, Johannesburg, is:

- (a) false, in that in truth and in fact he’s employed at 5 Mangold Street, Newtown Park, Port Elizabeth, the address of LASA’s Eastern Cape Operating Region office, where he’s in charge as Regional Operations Executive there;
- (b) irrelevant, in view of the sheriff’s personal service on him, vouched by his return of service; and,
- (c) nonsensical, in that the rules of court governing service make no provision for service on a natural person’s ‘principal address’; and what’s more, the term ‘regional address’ isn’t found anywhere in the rules.

25. My application hasn’t ‘involved’ the respondent’s employer LASA in any legal sense, which is why I haven’t cited it, because I’m not claiming any relief against it. Section 1.3 of the Guide is consequently irrelevant.

26. The ‘submission of law’, on the learned young advocate’s ‘legal advice’, that I was bound to serve my papers not on the respondent but on some other person at LASA’s head office across the country is not only risible, it’s moreover contradicted by LASA’s ‘Litigation Guidelines’ annexed to Msweli’s answering affidavit in my concurrent application against her (case 259/14) marked ‘ZM1’:

27. Under the heading ‘Summonses issued against Legal Aid SA’ – and this counts for applications too – paragraph 4.7 provides:

If the matter concerned is instituted in any court other than the Johannesburg Magistrate’s Court, North and South Gauteng High Courts or Johannesburg Labour Court, but in a court not having jurisdiction over the principle place of business of Legal Aid SA, being 29 De Beer Street, Braamfontein, the Corporate Legal Manager shall request the Justice Centre Executive of a Justice Centre situated in the area of jurisdiction of the court concerned, to act as correspondent attorneys.

28. That is, the Guidelines specifically envisage suits against LASA brought outside Johannesburg. But anyway I didn’t sue LASA.

29. The gormless contentions that I wrongly sued out this court, that this court lacks jurisdiction, and that I ought to have sued in Johannesburg, are all knocked down by the sections of the Act and the provisions in the Minister’s Notice quoted in paragraphs 5 and 6 of my founding affidavit.

30. And as mentioned earlier, the respondent’s dissembling about his alleged ‘principal’ and ‘regional’ addresses is patent nonsense, because my application was not ‘issued against Legal Aid SA’. Had it been, rule 9(6) would anyway have allowed service on a ‘local office’ where he works.

31. Ad paragraph 24: This is more or less correct, only I wasn't requesting information per se, but documents, which is to say recorded information. It's a distinction that's been beyond LASA's national executives' and lawyers' comprehension from the start, when I filed my first PAIA request in August 2010. In point of fact, according to his letter refusing it, the respondent received my request a bit later, on 7 October 2013 and not on the 1st.

32. Ad paragraph 25: I accept that the respondent was 'never involved in the matter and issues raised in the request', i.e. in the subject of my request, and that he's innocent of any complicity in Nair's illegal, off-the-record abortion of Mahikeng Senior Litigator Adv Nzame Skibi's transfer to Mthatha, following his recommendation by a selection panel (Mtati on it) for appointment to the newly created Senior Litigator post there, for totally different reasons told me in correspondence and told court in the pleadings and affidavits in my labour case, from those told the Board (another story), and from the court in oral evidence (yet another story still).

33. In view of the clear conflict of interest between LASA's national office executives and lawyers, straining to suppress incriminating documents, and the respondent, who's innocent in the matter and doesn't share the national office's criminal intention and objective of defeating the ends of justice, I'll provide the respondent with a complete set of papers, over and above delivering this reply to LASA's local correspondents, to enable him to take sound and reliable independent legal advice on the best way forward.

34. As said, I wasn't seeking 'information' per se from the respondent about this. Nor had I 'raised' any 'issues' about it 'in the request'. The fact that the respondent hadn't been 'involved' in Nair's cancellation of Skibi's transfer and appointment is irrelevant. Equally so was what 'most of the information sought relates to' – 'an employment issue' – and whether he was 'familiar' with it.

Point is, I was seeking records under PAIA, and the Act required the respondent as deputy information officer to gather the documents I'd specified and supply me with copies, or, where they didn't exist, swear it. That's all; no more, no less. What he knew or didn't know about the subject of my request, apparent from the records I'd specified, and whether he'd been involved in it in any way, no one cares.

35. Ad paragraphs 26–7: The respondent's claim, under oath, 'I then prepared the answer which I then gave to the Applicant', is untrue. His 'answer' illegally refusing my request was 'prepared' for him, not by him, just like the other letters signed by Mtati and Msweli, by one and the same person, and apparently by the selfsame very junior counsel. (I'll return to the evidence of this.)

36. Ad paragraph 28: The respondent's claim, under oath, that he 'declined to grant [me] access to most of the documents [I] sought' is false again. He refused my entire request.

37. The 'two bases' on which the respondent says he was advised by Sekgota to 'fundamentally ... decline' my PAIA requests are legal garbage:

38. First, Sekgota's claim to the respondent that the 'information/documents [I'd] required' under PAIA were 'the subject matter of a similar request' made during discovery procedure before the trial of my labour case was irrelevant. I anticipated and refuted this dull point in paragraphs 31 and 33 of my founding affidavit.

39. Second, as will be plain to this court from a glance at annexure 'A' to my founding affidavit, as against annexure 'HB1' to the respondent's answering affidavit, sub-annexure 'A', page 8, paragraphs 29–30, my detailed PAIA request is different from my request for the few documents and further particulars I sought before trial in my labour case in regard to the abortion of Skibi's appointment.

40. The respondent has only put up my January 2013 agenda for the first pre-trial conference at court that I requested, not my second agenda for the June 2013 conference that I requested again – after LASA reneged on its minuted undertaking to discover the documents I wanted, then, under pressure of my application to court for another conference to compel, dishonestly made defective discovery – in which June agenda I persisted in my demand for documents relating to the abortion of Skibi’s transfer and appointment, which LASA was suppressing under cover of transparently false, lying excuses. Which dishonestly defective discovery was very slightly remedied with a second discovery affidavit made, even after Sekgota had falsely alleged to the supervising judge when the matter was called: ‘My Lord, I submit we have fully discovered.’ Further sordid details of LASA’s disgusting chicanery in this regard would take too long to describe here and are not sufficiently material to this application to warrant recounting.

41. The reason that only my first agenda has been put up may be traced to the fact that my second agenda vividly illustrates LASA’s strenuously dishonest ducking and diving before the trial of my labour case to avoid surrendering incriminating documents, or documents otherwise adverse to its pleaded defence version, sworn to in several interlocutory affidavits. Only the first eight pages of this 20-page agenda are immediately relevant, so I’ve annexed these marked ‘C’. They are relevant to show this court LASA’s history of corruptly hiding documents exposing the corruption in its national office by resorting to one crooked trick after another to do so.

42. The Skibi records that I demanded again in this June agenda (after demanding them previously in my agenda for the January 2013 conference, and before that in my application to compel discovery launched in January 2012) are described on page 4, ‘Document 35, paragraph 29’; on page 6, ‘Paragraph 29,

ad document 35(b), page 13, January agenda’; and on page 7, ‘Paragraph 29, ad document 35(c), page 13, January agenda’.

43. Any similarity, any overlap where it occurs between my PAIA request addressed to the respondent, and my agenda for the first conference at court in January 2013, is anyway irrelevant; in fact, even a perfect match would have been irrelevant, for the reason mentioned in paragraphs 31 and 33 of my founding affidavit.

44. It’s not essential to the decision of this application, but for this court’s fuller information I might mention that in my determined investigation of the corruption and abuse of power in LASA’s national office, I had a very specific, hard purpose in requesting records under PAIA from the respondent specifically. As I show in paragraphs 61–72 of my founding affidavit, records I’d sought via pre-trial discovery procedure from the national office handling the defence of my labour claim had been corruptly suppressed. To state my purpose here without any politesse: side-stepping the lawless rogues in the national office after the trial and directing my PAIA request at the respondent personally across the country in LASA’s Eastern Cape regional office was calculated to present him with the dilemma at legal sword-point either:

- to respect my entrenched fundamental right to information and obey the law of the country by complying with his constitutional and statutory obligations to (i) hand over the documents I’d requested (and thereby provide me with further documentary evidence for Nair’s prosecution), and (ii) swear in the case of non-existent documents that they didn’t exist (highly probative for the prosecution), on pain of imprisonment for perjury or for contravening section 90, namely for destroying, damaging, altering, concealing, and falsifying any record;

or,

- to join and close ranks with Nair, other executives, and head office lawyers in illegally and dishonestly suppressing records, and thereafter being sacked, struck off, and jailed in short order for doing so.

45. Ad paragraph 28.1–3: Sekgota’s information to the respondent that ‘Legal Aid Head SA Office answered the applicant fully and comprehensively and where any information was refused to him, same was done in accordance with the provisions of the law’ was not only a flagrant lie – and the same lie was repeatedly told to the Labour Court; see paragraph 40 of my founding affidavit – it was also irrelevant, as I pointed up in paragraph 33 of the same.

46. As said, my PAIA request concerning the abortion of Skibi’s appointment was much more extensive than my demand for specified document discovery about it before trial had been. But even had Sekgota’s information been true, and I’d been given the documents I’d asked for during pre-trial discovery – and I asked for many more in my PAIA request – this fact afforded the respondent no lawful objection to complying with my PAIA request, because as section 11(1)(b) puts it only ‘a ground for refusal contemplated in Chapter 4’ (quoted in paragraph 15 of my founding affidavit) may justify the refusal of a PAIA request, and none of these grounds apply.

47. Ad paragraph 28.4: Indeed I claimed such relief, and a lot more too. The draft order I handed the judge after oral argument on 28 May 2014, setting out ‘all sorts of relief’ that I claimed, including some unusual orders specifically contemplated by section 50 of the EEA and/or granted in precedent cases in the Supreme Court of Appeal and Constitutional Court, is annexed for this court’s information marked ‘D’. The relevance of this draft order to this application will become apparent below.

48. Ad paragraph 28.5: The respondent’s submission about which Labour Court ‘made sense’ for me to sue out of is irrelevant. The respondent, Mtati, Sekgota

and the junior advocate advising them all seem unaware that any Labour Court in the country had jurisdiction to try my claim, irrespective of where my cause of action arose or where ‘Legal Aid SA has offices’, and I was free to sue in any Labour Court I pleased, and besides Durban anywhere else from Johannesburg down to Cape Town and even to Port Elizabeth, whether it ‘made sense’ to them or not.

49. Ad paragraph 30: Though LASA’s most senior management executives like making these high-sounding professions of respect for the Constitution, its values, and our fundamental right to access its public body information, in practice I’ve found they despise them. The consistent pattern since 2010 and 2011, when my first three PAIA requests were illegally refused (besides a trickle of documents belatedly released, under pressure of my complaints to the SAHRC and to the Board, copied to the Minister and to the Portfolio Committee), has been for its information officers to hypocritically declaim these values before going right on to violate them.

50. Ad paragraph 31: The respondent’s hopeless reliance on ‘section 7(1) read with section 45’ to justify suppressing the records I requested, so as to prevent me delivering them to the Director of Public Prosecutions, to the Public Service Commission, and to the LASA Board, for the criminal, civil, and disciplinary purposes mentioned in paragraph 26 of my founding affidavit, is knocked to pieces in paragraphs 11–25 thereof. Still, on his learned junior counsel’s ‘legal advice’, the respondent lamely persists. With Mtati and Sekgota dully agreeing.

51. Ad paragraphs 33–5: My purpose in requesting the records I sought wasn’t stated in my PAIA request. The respondent (actually his head office) wrongly assumed I wanted them to give the judge in my labour case; and proceeding from that wrong assumption he irrelevantly and incompetently raised section 7 to justify refusing me access to the records I asked him for. Now, having learned

from the background information provided in paragraph 26 of my founding affidavit, namely that I'm gathering documentary evidence for the institution of criminal, civil, and disciplinary proceedings against Nair and possibly other national executives, the respondent has changed his tune and reckons that my stated purpose precludes me from using PAIA to do so.

52. This unbelievably thick 'submission of law' is made to this court, on very junior counsel's 'legal advice', despite:

- the special remedial lesson the SAHRC delivered Sekgota and fifteen other LASA national office lawyers on 6 October 2011 on 'the need to ensure that clients who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants', as the SAHRC reiterated in its report on the training session afterwards; and,
- the SAHRC's email to Mtati on 22 August 2012, following his refusal to correct LASA's false section 32 report for 2011/12, which I'd brought to the SAHRC's attention:

We note with concern ... [that] a number of requests from Adv. Brink does not reflect in either of your [2010/11 and 2011/12] reports to the Commission. We note further that the requester's reason for requesting the information is being deduced. It should be noted that PAIA is quite clear that requests made to public bodies do not have to be supported or justified by a reason for the request. Similarly, requests made prior to notification [i.e., per section 7(1), prior to commencement] of litigation should not have to be supported by a reason or purpose for the stipulated information.

53. It's entirely proper to use PAIA to gather evidence for the purpose of instituting criminal and civil proceedings – and using PAIA to gather evidence with litigation in mind to expose suspected corrupt tenders, and then applying to

court to set the awards aside on the strength of documents thereby obtained, is a major use of the Act reported by the SAHRC.

54. Having bunked (the attendance register tells) the special tutorial that the SAHRC held for them about this, Nair, who's national deputy information officer (and who also put up a confirmatory affidavit, 'HB4'), and Mtati, whose Corporate Services department is internally responsible for PAIA compliance (so it told the SAHRC during its PAIA audit), surely read the SAHRC's report of the training workshop after it, but seemingly lacked the wherewithal to comprehend it, even after the personal extra special lesson the SAHRC gave Mtati the following year on how section 7 works; for neither of them pointed out to the respondent, after reading his affidavit drawn by very junior counsel before swearing that they'd done so in their confirmatory affidavits, that in raising section 7 against me like this, on very junior counsel's 'legal advice', they all demonstrated their understanding of PAIA to be equal to the dustman's.

55. I hadn't 'in any event sought the same information' from 'the Head Office people'. This is untrue. My PAIA request for records was much more extensive.

56. Ad paragraph 36: The respondent's grabbing at section 45 is futile. He relies on 'section 7(1) read with section 45' to justify refusing my request. Quite obviously, if section 7(1) cannot and does not justify refusing a PAIA request – and this is elementary to any lawyer besides LASA's senior attorneys and very junior counsel – then reading it with any other section in the Act, from 1 to 100, doesn't change things.

57. Ad paragraph 37: As mentioned in paragraph 26 of my founding affidavit, indeed I intend holding Nair to account and taking him to law, along with those other LASA officers who colluded with him in the cover-up following his illegal abortion of my appointment in violation of my fundamental rights, at the end of which Nair certainly and quite possibly others will lose their professional heads.

My serious intention cannot be ‘manifestly frivolous or vexatious’ within the meaning of section 45. And considering my extraordinarily grave purpose stated, it can’t plausibly be contended to this court that gathering the records I’ve requested will unreasonably consume the respondent’s time. This is a deadly serious matter, and I’m not playing.

58. Ad paragraph 38: My ‘reasons’ for suing Vedalankar and Msweli in my concurrent applications are not ‘unknown’ to the respondent and his very junior counsel as they falsely pretend, for as they well know, my ‘reasons’ are to compel their compliance with PAIA too.

59. Ad paragraph 39: Nair’s various different lies to me, to the Board, to the Minister, to the chairperson of the Portfolio Committee, and to court, including under oath, have now caught up with him, and I intend seeing to it that he is prosecuted for them and for his other grave misconduct on every single count in the run-up to and during my labour case, all to be finely particularised in the draft charge sheets I’ll be drawing, closely referenced to the documentary record and the trial transcript. But this is immaterial to my entitlement to the records I’ve requested, inasmuch as my purpose in seeking the specified documents is irrelevant under section 11(3) of PAIA. The respondent’s (actually very junior counsel’s) coarse misrepresentation and/or dishonestly distorted opinion of it expressed here is equally irrelevant.

60. It’s not just me alleging my appointment was aborted; Mtati and Nair themselves stated on affidavit before the trial that my ‘recruitment ... was aborted immediately after’ my interview. (In court, again under oath, Nair changed his story completely.) And I hadn’t merely ‘applied for ... the position’; I was unanimously recommended for it. (This court will pick up the casual dishonesty characteristic of very junior counsel’s legal writing, supported by Nair, Mtati and Sekgota, including the deceptive half-truth here.)

61. Ad paragraph 40: This is correct, but irrelevant under section 11(3).
62. Ad paragraph 41: The frantic effusion in this paragraph is bereft of any sense. First, I'm not obliged to employ euphemistic language in describing Nair's and his lawyers' prodigious dishonesty demonstrated before and during my labour case; and my description of it in my founding affidavit is justifiably mordant, not 'vulgar and defamatory'. Second, I haven't made this 'application ... previously', so it's never been 'answered' before; nor is it being 'resuscitated' – this is unthinking nonsense. But the respondent very correctly reiterates my stated 'purposes of pursuing [my] cases against members of Legal Aid SA' and especially 'to criminally prosecute Mr Brian Nair who sits as National Operations Executive in Johannesburg.'
63. Ad paragraph 42: Contrary to all this malarkey, the respondent refused my entire PAIA request, as he recorded in the final paragraph of his letter, so no time and resources were diverted within the meaning of section 45.
64. Ad paragraph 43: Actually I've 'followed the prescripts of the ... Act' precisely.
65. Ad paragraphs 44–62: I've already disposed of this windily restated legal fallacy.
66. Ad paragraphs 63–4: Whatever the disputes referred to here, they've no bearing on the respondent's obligation to comply with my PAIA request.
67. Ad paragraph 65: This is substantially true, but it's irrelevant to my application.
68. Ad paragraph 66: The reason this court has not been given sight of the trial documents and the transcript of the record is that they aren't relevant. The relief I seek from this court under PAIA is quite unrelated to the relief sought in the

Labour Court under the EEA, as is plain from a comparison of my draft order (annexure ‘D’) and my notice of application.

69. Ad paragraph 67: Very junior counsel’s clucking ‘legal advice’ to the respondent that this court’s determination of my application to compel his compliance with PAIA would ‘violate the precedence rule and create an unnecessary confusion’ shows he doesn’t know what he’s talking about. The principle of stare decisis doesn’t come into it. No ‘confusion’ is possible, only more clarity as this court forces to the surface more suppressed documentary evidence of corruption in the national office.

70. Ad paragraph 68: There are no material issues of fact before court in this application. Contrariwise, all material facts are common cause: I submitted a PAIA request in prescribed form and the respondent refused it, relying on ‘section 7(1) read with section 45’ in doing so. The issue for decision, therefore, is whether ‘section 7(1) read with section 45’ justified the respondent’s refusal; and under section 81(3)(a) he bears the onus to show they did. Which he can’t since they didn’t.

71. What’s more, my PAIA request and this application are clearly directed at investigating how and why Skibi’s transfer was cancelled. Before trial, it was a pillar of LASA’s defence stated over and over again in the correspondence, affidavits and pleadings that Skibi’s transfer had necessarily been cancelled, simultaneously with the abortion of my recruitment, for budgetary reasons. On its face, this was a powerful defence version of events; and it was repeatedly suggested that only a conspiracy nut like me would suggest otherwise. But at trial, Nair amazingly jettisoned this story and testified that, unlike the abortion of my recruitment, the cancellation of Skibi’s transfer had nothing to do with any budgetary consideration; it was because Vedalankar had refused to approve the transfer of the Senior Litigator budget and post – from Kimberley, where the

region had reported it wasn't needed, to Mthatha, where then ROE Mtati had urged that it was pressingly needed – despite the Legal Services Technical Committee's unanimous support for the move, and no matter how hard and how often he tried persuading her to agree. So the 'factual issues' that my PAIA request concerned were not 'pending before a Higher Court' as alleged here. Before trial, yes; after trial, on Nair's brand new version in his evidence, no. But at all events, all these conflicting lies are irrelevant to the respondent's obligation to surrender the documents I duly requested from him under PAIA.

72. Ad paragraph 69: Whether or not Nair and other executives are liars and perjurers isn't material to the decision of this application. (The author of the many 'defamatory and insulting deeds' in my labour case was very junior counsel, with Nair and Mtati supporting them on oath – continuing even in his heads of argument to tell the outrageous, wanton, defamatory lie that I had 'grossly inflated' my CV. In fact it's precisely accurate, but very junior counsel's utterly false charge of CV fraud against me only goes to show that he lies in court as freely as his clients do; so if and when he appears to argue this application, this court will need to be on guard against being misled by him, apprised that he's the sort of young advocate who'll say anything for the bang and who lies recklessly during argument if he thinks he can get away with it.)

73. The sole issue before this court is whether the respondent's refusal of my request was justified by 'section 7(1) read with section 45'. There's accordingly nothing to refer to oral evidence. Nair's and other LASA officers' capital misconduct will be tried on oral and documentary evidence by other tribunals in due course.

74. Ad paragraph 70: I agree it's 'only fair' that the 'accused ... be afforded an opportunity to defend themselves', and this is why all will receive a complete set of papers in this and the other two concurrent applications, and will be

invited to file affidavits for the true information and assistance of this court, bearing in mind especially my prayer that the case be referred, upon conclusion, to the several authorities mentioned in paragraph 5 of my notice of application.

75. I mentioned my intention to apprise all tangentially interested parties from the outset; it's in paragraph 121 of my founding affidavit, and on the last page of my notice of application. It's not necessary for them to give oral evidence, because they can say whatever they want on paper. That's how applications work.

76. Both Nair's and Mtati's formal confirmatory affidavits show they read my founding affidavit, yet neither elected to respond to my allegations adversely concerning them. In deposing to his affidavit, Nair didn't dispute that the emails I extracted from LASA after the trial caught him out flat-footed on two counts of perjury in court.

77. Ad paragraph 71: Quite the contrary, there are no material disputes of fact, hence the eminent suitability of motion proceedings for the trial and adjudication of my claim on the affidavits alone. Section 78(2)(c) specifically contemplates applications, not actions, for enforcing PAIA requests (my emphasis):

A requester ... aggrieved by the decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1 ... to refuse a request for access ... may, *by way of an application*, within 180 days *apply to court for appropriate relief* in terms of section 82.

78. There's no 'substantial involvement of third parties' either; this case is between the respondent and me. Anyone who feels unfairly stung on the way can respond on affidavit.

79. Ad paragraph 72: This general proposition is soundly stated, but it has no application to the case.

80. Ad paragraph 73: These contentions are empty. The issue is crystal clear: whether ‘section 7(1) read with section 45’ of PAIA justified the respondent’s total refusal of my request.

81. Ad paragraph 74–6: Basically I agree.

82. Ad paragraph 77: This is wrong. The case is readily resolvable on the papers alone. The respondent hasn’t raised a single factual dispute fit for referral to oral evidence.

83. Ad paragraph 78–80.4: I’ve already disposed of the respondent’s mistakes about this.

84. Ad paragraph 80.5: Nothing in the Act provides for an appeal to LASA’s CEO and information officer or to its non-executive Board following the refusal of a PAIA request by a LASA deputy information officer. There’s no appeal for the reason mentioned earlier. As the SAHRC rightly reminds us.

85. If ‘as far as I know’ the respondent’s belief that I have to appeal to his ‘seniors including the CEO and/or the Board’ emanates from his very junior counsel, then I suggest that to help him understand how I came to ‘arrive at such a conclusion’ that no appeal lies against his unlawful refusal of my PAIA request, he should pick up a copy of PAIA and read sections 1 and 78(2)(c) himself.

86. What LASA’s PAIA manual says about appeals, I’ll deal with when replying to Msweli’s affidavit quoting it.

87. Ad paragraph 80.6: This is correct, as I said in my founding affidavit. (One wonders then why very junior counsel, writing the respondent's affidavit for him, repeatedly quotes the Act as it stood before it was amended.)

88. Ad paragraph 80.7: To be precise: in his letter of 6 November 2013 refusing my PAIA request, the respondent says he got it on 7 October, not the 1st.

89. Ad paragraphs 80.8–82: There are no 'internal remedies' I could have 'exhausted', so the 'submission of law' that my application is premature and should be dismissed is wrong, even if it's made 'strongly'

90. Ad paragraphs 83–92: The respondent's 'submission of law' that this court lacks jurisdiction is wrong. The Minister's Notice is unambiguously clear. It facilitates the enforcement of PAIA in the courts against delinquent information officers illegally withholding documents in violation of record requesters' fundamental right to information. And it vests this court with the jurisdiction to entertain my claim on the basis that I'm 'ordinarily resident ... within [its] area of jurisdiction', as I said.

91. Very junior counsel, writing for the respondent, evidently missed the word 'or' between subsections (b)(ii) and (iii) in the Notice. LASA's top lawyers Mtati and Sekgota too.

92. Ad paragraph 93: In point of fact, I've been an admitted advocate for over thirty-one years, nearly eight of which I've spent on the bench as a magistrate, four of them full-time on the civil trial bench, the rest on the district and regional court benches, and eight years at the Bar specialising in civil law (after which I spent several years in full-time public health politics in this country and abroad, quite a bit of it litigating in this regard in the Cape High Court). It's not me who doesn't know the law of jurisdiction governing PAIA applications; it's very junior counsel, the respondent, and LASA's top lawyers Mtati and Sekgota.

93. Ad paragraphs 94–5: I confess that when I drew that draft three-and-a-half years ago, I’d missed the fact that I was entitled to sue out of the Magistrate’s Court at Pietermaritzburg, where I was living at the time, and mistakenly thought I was bound to sue out of the High Court in Johannesburg. Deterred by the cost and hassle of suing up there, I resolved instead to get hold of the documents being withheld from me through pre-trial document discovery procedure after launching my action in the Durban Labour Court. Nothing turns on my earlier mistake about jurisdiction – and it’s anyway academic, because I didn’t issue the application after deciding to switch tactics and to pursue the documents I wanted via different legal machinery.

94. Ad paragraph 96: It’s untrue that I sued out of this court to ‘disadvantage’ the respondent. I did so as I was entitled, because it was convenient and inexpensive, as the Act and the Minister intend. The respondent’s objection to my choice of legal forum is legally baseless, and his wild imputation of an improper motive to me is just stuff and nonsense.

95. Ad paragraph 97: Contrariwise, it’s plain that ‘the principles of law have escaped’ very junior counsel, the respondent, and LASA’s national office attorneys mentioned above, all of whom have demonstrated their disgraceful ignorance of ‘the principles of law’ applicable to this case. The rest of the flapping in this paragraph is irrelevant.

96. Ad paragraph 98: Being inconsistent with the Act and the Notice, the submission is vain on its face.

97. Ad paragraph 99: The respondent has been incorrectly ‘advised’. Since taking up an appointment as an acting additional magistrate on short-term, recurring contracts, I’m indeed ordinarily resident in Eshowe for the time being while awaiting the final resolution of my labour case instating me to the Senior

Litigator post mentioned earlier. Besides at Eshowe, I don't live or keep a home anywhere else.

98. Ad paragraphs 100–8: All this legally puerile waffle is irrelevant.

99. Ad paragraphs 109: This is sheer nonsense.

100. Ad paragraph 110: The respondent and his very junior counsel seem to be thinking about some other case, because none of this has any bearing on this one. There are no material disputes of fact. The only question for decision is whether 'section 7(1) read with section 45' justified the refusal of my PAIA request. Section 7 is a non-starter on its own terms; and section 45 sort of tacked onto it doesn't change this, and is itself an obvious no-hoper considering my serious purpose in making my request, stated in my founding affidavit.

101. Ad paragraph 111: First, no 'character findings' are required for the decision of this case, which turns on whether 'section 7(1) read with section 45' justified the refusal of my request, and nothing else. And second, all the very 'important people mentioned in this application' will indeed be afforded a 'hearing' when invited to submit affidavits.

102. As I've said, before argument of the case I'll file proof of post of my invitations covering a complete set of the papers to each. And I'll file any affidavits that my invitations might elicit from these very 'important people', some of whose careers and personal fortunes are now on the line – hence the strenuous opposition to this and my two other concurrent applications to extract more documents from LASA to be added to my current pile for their prosecution. Although Nair, at the centre of things, chose not to say anything substantial in his formal confirmatory affidavit when he had his first opportunity to be heard, I'll give him another.

103. Ad paragraph 112: It's unnecessary for this court to read the thousands of pages of trial documents and the trial transcript in my labour case in order to decide whether 'section 7(1) read with section 45' of PAIA justified the respondent's refusal to grant me access to the documents I requested.

104. Ad paragraphs 113–14: The manifest fallacy of these contentions lies in the fact that I approached this court and the Labour Court to try completely different issues, so this court can't possibly be 'placed in a trap to rule differently from the Labour Court' by proceeding to try my claim to the records that have been denied me. Also, I didn't ask the Labour Court to rule on whether the respondent complied with PAIA in regard to my three requests filed in 2010 and 2011 before I instituted action. Different courts, different issues.

105. Ad paragraphs 115–16: Indeed judgment in my labour case was pending at the time. (The judgment delivered on 18 September 2014 and my appeal application on 3 October identifying all its most basic mistakes, right down to the misallocation of the evidential and final onuses, are archived online at www.tig.org.za/LC.) The 'underlying dispute', which is to say the central dispute in that case, is whether Nair unfairly discriminated against me in silently aborting my appointment under cover of several radically different, irreconcilable alibis later advanced, under pressure to explain, to me, to the Board, to the Minister, to the Portfolio Committee, and to court. But that's a different dispute from the instant one before this court.

106. Ad paragraphs 117–20: All this is incorrect, for the reason just stated. My 'averments' in my founding affidavit concerning my cause of action for the relief I seek from this court can't be a 'repeat of issues dealt with in the action before Cele J' because my cause of action in the case before this court arose after the trial in July/August 2013, when on 6 November the respondent illegally refused my entire PAIA request delivered the month before. The 'issue'

as to whether ‘section 7 read with section 45’ justified this refusal hadn’t arisen before November 2013, and the trial took place some months earlier.

107. Ad paragraphs 121–4: I’ve already disposed of the respondent’s mistake about this.

108. Ad paragraph 125: First, the allegation that I tried obtaining ‘most of the information’ via my PAIA request before trial in my labour case during discovery procedure is untrue, as is apparent from a comparison of the documents I demanded before trial and those listed in my PAIA request after it. Second, in respect of those records I’ve sought again, this time under PAIA, the fact that I tried but was obstructed from obtaining them during pre-trial discovery procedure in my labour case is irrelevant for the reason stated in paragraphs 31 and 33 of my founding affidavit. I waived nothing. This imaginative new contention is nonsense.

109. Ad paragraph 126: This is very true; in fact I knew ‘Legal Aid South Africa’s position’ as early as September 2010 when in violation of my fundamental right to information Vedalankar unlawfully ignored my first PAIA request, and then, when I called the SAHRC in, illegally refused it expressly under cover of a false statement of law applicable and a fake misquotation from a reported judgment claimed to support it, in which words were attributed to the judge that she never wrote, as well as telling me a heap of lies, later exposed by documents I eventually obtained, and then contradicted by Nair in court, about why my appointment had been iced.

110. I knew back then that LASA’s officers would go to any lengths, including committing perjury in their section 23 affidavits, answering affidavit in my application to compel discovery, and subsequent discovery affidavits before trial, to avoid surrendering the documents I’d specified and wanted to put before the trial judge. This is detailed in paragraphs 37ff of my founding affidavit.

111. Ad paragraph 127: Contrary to the dull lies the respondent casually tells here on very junior counsel's dishonestly false advice (he was in my labour case from the start, whereas the respondent wasn't involved), the documented history of my pursuit of documents I needed for trial shows that in truth and in fact I 'approach[ed] Court' repeatedly to 'enforce [my] right' to obtain them and to present them to court.

112. After the close of pleadings and LASA had point-blank refused all thirty-seven documents I'd requested in my agenda for the first pre-trial conference in October 2011 (on very junior counsel's bad advice, as the PDF 'Author' properties of LASA's answer to my agenda prove), and then agreed (on LASA's senior counsel's excellent opposite advice openly expressed at the conference) but then failed to deliver (I was only given a few), I brought an application to compel discovery in January 2012, after which not one but two pre-trial conferences were held at court under judicial supervision in January and June 2013 at my request to compel discovery. My final resort to court shortly before trial was to apply to the registrar to issue a subpoena duces tecum against Nair to come to court with a key record he was withholding, namely the selection panel's signed recommendation of Skibi for the Mthatha Senior Litigator post. He didn't bring it. It's included in my PAIA request addressed to the respondent that I'm now enforcing with this application.

113. And the respondent had best be extremely careful in how he deals with this particular document request following the grant of the orders I seek, because I have ways and means of verifying the honesty of his response; and I'm very determined to get hold of that document, and make sure Nair is prosecuted and jailed for his perjury about it. Like his perjuries about not knowing that the SAHRC had conducted a special PAIA training workshop for LASA's head office staff and an audit of LASA for PAIA compliance – lies on oath brightly exposed by emails I flushed out of LASA after trial proving categorically that

he knew all about both. And his many other perjuries at trial, too many to list here, also going in time to the DPP. Such as all interviewed Senior Litigator candidates, including those rejected and eliminated by the selection panels, were interviewed again for possible appointment. I know this obvious lie to have indeed been a lie in the case of at least two second interviews, and I expect that all incumbent Senior Litigators will confirm to the police, and to this court if they wish to assist it, that in truth and in fact, and contrary to Nair's stupid, transparent, flagrant perjury about this (accepted by the judge as the perfect truth), they alone were interviewed again for possible appointment, and not also the candidates rejected and eliminated from the running by the selection panels. And obviously.

114. Ad paragraph 128: My decision, just a couple of weeks before trial and practically out of time, to quit my chase for certain documents through pre-trial discovery procedure, which were being withheld from me and from court, has no bearing on my entitlement to access them via a PAIA request filed after the trial for an unrelated and anyway immaterial purpose.

115. Ad paragraph 129: The respondent's illegal refusal of my PAIA request, citing irrelevant and inapplicable sections of the Act against me, and LASA's history of corruptly suppressing records (and then corruptly concealing this repeatedly from the SAHRC and from Parliament with false section 32 reporting), provides the only 'good cause' I require for the relief in the elaborate form that I claim.

116. I didn't need to, but I did in fact explain why I'm again seeking certain documents that I tried but was prevented from obtaining via pre-trial discovery procedure before trial. It's in paragraph 26 of my founding affidavit.

117. Ad paragraphs 130–1: In the exercise of my constitutional right to information, PAIA allows me to access LASA's records whenever I feel like it.

No questions of ‘undue delay’ can arise when lodging a PAIA request. This is nonsense.

118. Ad paragraphs 132–4: There’s no ‘abuse of Court process’ in applying for orders compelling the respondent to comply with my PAIA request – merely because I previously tried and failed, after being corruptly obstructed, to obtain documents under different legal machinery for a different purpose. This is more nonsense. But it’s gravely aggravating that the respondent and the head office should level this utterly spurious, mud-slinging charge calculated to prejudice this court against me.

119. Ad paragraphs 135: I’ve explained why I sued out of this court. It’s cheap and easy for me. (LASA should be glad that I haven’t incurred many thousands of rands in legal fees for it to pay on judgment, by suing out of the High Court at Pietermaritzburg, in whose area of jurisdiction I’m ‘domiciled’ (per section (b)(iii) of Notice 585 of 14 May 2004), via attorneys and counsel instructed to represent me over there.)

120. Ad paragraph 136: More precisely, I was offered and accepted an acting appointment at the Inkanyezi Magistrate’s Court in King Dinizulu Township, also in the borough of Eshowe, but out of town and several kilometres from the Eshowe Magistrate’s Court. The two courts are on polar opposite ends of town.

121. Ad paragraph 137: The respondent’s ‘surmise’ is mistaken. I’ve explained my reason. Besides the clerk of the civil court on whom I called for a few minutes to issue my papers, I’ve never met anyone at the Eshowe Magistrate’s Court.

122. The magistrates at the Eshowe Magistrate’s Court are unknown to me and are my ‘colleagues’ only in the formal sense that an advocate at a distant bar across the country whom I’ve never met or even seen is also my ‘colleague’ merely because he’s also an advocate.

123. Ad paragraph 138: Expecting that I'd need to bring this application in light of LASA's pattern of prior conduct in corruptly suppressing records, and anticipating the possibility that bias might be suggested when I sued, I very deliberately didn't introduce myself to the resident magistrates across town at the Eshowe Magistrate's Court when I arrived here, even at the risk of seeming rude. The respondent's noisy and insulting moaning about 'a sheer abuse of power, resources and Court's processes' is pointless.

124. Ad paragraph 139: Any recusal application must be well-founded on an objective consideration of the facts. No factual grounds exist to support such an application in this case. The Eshowe Magistrate's Court is as strange to me as it is to the respondent. A magistrate will not recuse himself on mere unsupported demand. Since the respondent is not a 'lay person' but a senior attorney, he should understand this well, even if learned counsel and his instructing attorneys Mtati and Sekgota all give him incorrect 'legal advice' to the contrary.

125. Ad paragraph 140.1: This is irrelevant.

126. Ad paragraph 140.2: No 'trained lawyer' who knows what he's doing will dispute this court's jurisdiction to try this claim. The Eshowe Magistrate's Court is not my 'turf'; and as I said, its magistrates are my colleagues in a formal sense only, like other magistrates around the country whom I've never seen or met.

127. Ad paragraph 140.3: I'm also a 'foreigner of the Court', so the respondent has no proper grounds for suggesting he can't get 'a fair hearing in this Court'.

128. Ad paragraph 141: Since no objective grounds exist to support a claim of bias, there can be no serious basis for any recusal application.

129. The only grounds on which my case can be transferred out of this court to another are by consent or on application under rule 29(1) of this court's rules,

for the reasons that it would be unduly expensive for or inconvenient to the respondent were this court to try my claim. Since he's already said all he can be heard to say in his answering affidavit, the respondent won't need to appear at the argument of the application by his very junior counsel. And since my claim is against him in his official capacity, his employer LASA will be paying his very junior counsel's fee for appearing to advance his dead arguments presaged in the answering affidavit that he drew for him. As a R1.4 billion a year public body, LASA can easily meet the cost of briefing this very junior counsel to appear to argue why my claim shouldn't be upheld for all the asinine reasons he's stated in the answering affidavit he drew. No questions of undue expense or inconvenience can arise, especially in light of the fact that the Act intends to make it as convenient and inexpensive as possible for individuals like me to vindicate their fundamental right to information violated by information officers employed by massively funded public bodies with bottomless pockets.

130. Ad paragraph 142: Very junior counsel has evidently advised the respondent incorrectly in regard to the principles and practice of recusal applications.

131. Ad paragraph 143: The dictum is '... seen to be done'.

132. Ad paragraph 144: If the respondent wants to bring a recusal application, on very junior counsel's 'legal advice', now that he knows the facts, he must carry on and take his chances.

133. Ad paragraphs 145–6: Very junior counsel, who drew the respondent's affidavit, attended the trial and knows exactly what happened. He saw Nair make up preposterous new stories, radically deviate from and contradict the pleaded and sworn defence, and generally perform so pathetically as a witness that Mtati looked sick afterwards. The judge agreed in his judgment that I'd shown Nair to have perjured himself on numerous scores, that he'd been 'less

than generous with the truth’, which is to say, not completely honest in court, as his oath required him to be. (But then failed to consider the ramifications of Nair’s demonstrated mendacity under oath for the credibility of his central evidence that he didn’t open and read the selection panel’s recommendation of me and my CV and the others which he’d especially phoned for – not until more than a year after receiving them, when he decided to read them out of curiosity, so for this reason didn’t know my political background stated in my CV and referenced in my recommendation, so couldn’t have unfairly discriminated against me. Accepting and believing this inherently incredible story, the judge neglected to note that Nair had told a totally different story, radically contradictory in an interlocutory confirmatory affidavit he made before trial.)

134. Ad paragraph 147: By serially traversing and denying the orders claimed in my notice of application on very junior counsel’s ‘legal advice’, the respondent, supported by LASA’s top attorneys Mtati and Sekgota, all appear to have mistaken my notice for a pleading.

135. Whether the respondent had any ‘discretion’ to refuse my request after I’d complied with all the prescribed formalities, and whether ‘section 7(1) read with section 45’ of PAIA afforded him a ‘legal basis’ for refusing it, are the very questions for decision in this application. And the obvious answers to both are No.

136. Ad paragraphs 148.1–2: Nothing in the Act precludes the grant of the order I seek in paragraph 3 of my notice of application. Section 82 specifically vests this court with the power to ‘grant any order that is just and equitable’.

137. My particular formulation of the order, to meet the specific exigencies of the case, is clear to anyone who understands English. A casual court interpreter can be arranged to assist counsel if necessary.

138. Ad paragraphs 148.3–5: I’m not seeking any relief against any of the people mentioned in the order, so all this is irrelevant.

139. Ad paragraph 148.6: Yes, exactly.

140. Ad paragraphs 149.1–2: Having regard to the provisions of section 82 – ‘The court hearing an application may grant any order that is just and equitable’ – it remains to be seen what very junior counsel will say in argument in support of the bald contention that ‘this Court is not competent to grant this order’.

141. Ad paragraphs 149.3–4: Any application for the issue of a warrant, on amplified papers as envisaged, for the attachment and search of staff computers under the respondent’s control will be exactly precise, naming also the IT expert to be appointed to search them, with his credentials provided for the court’s consideration and approval, as in an Anton Pillar order for the search and seizure of computer data. (I have an expert corporate IT professional available to conduct the searches if needs be.) The order is therefore sufficiently precise at this first leg of the application.

142. Ad paragraphs 150.1–2: Very junior counsel advising the respondent appears unaware that judges and magistrates routinely refer serious malfeasance surfacing during legal proceedings before them, e.g. to the Director of Public Prosecutions and even to the Bar Council.

143. Contrary to the lazily false allegation made here, I’ve asked for an order that the respondent copy the papers, not the court.

144. Although the papers will indeed be on the ‘public record’, unless the several responsible authorities mentioned are specifically informed and thereby equipped to take appropriately severe disciplinary action against LASA’s delinquent officers, they won’t know that they have violated my fundamental right to information and have persisted in doing so with baseless opposition to

my claim in this court for relief, wasting the money the Department has allocated LASA, with Parliament's approval, for the defence and representation of the poor, and that they are trying to defeat the ends of justice by suppressing documentary evidence that I need for the institution of criminal and disciplinary proceedings against some of them.

145. Ad paragraph 151: I'm going after rogue officers in LASA, and I've said so without mincing words, as I'm entitled to.

146. As I've shown, the basic 'mistakes of law' made in the case are very junior counsel's, repeated in the affidavit he drew for the respondent, supported by LASA top attorneys Mtati and Sekgota.

147. Punitive costs orders are made to penalise misconduct in litigation. Since I'm not guilty of this, no grounds exist for any such costs order against me. But it gravely aggravates the case that the respondent should idly sling this claim at me. The same dishonest stunt was tried in my labour case to try putting me off pursuing my fundamental right to equality, with Mtati shouting 'punitive costs' at every opportunity in the pleadings and interlocutory affidavits drawn by very junior counsel. As if I can be frightened off pursuing my fundamental rights with this sort of low, dishonest stick-shaking.

148. To avoid needless repetition, I'll not again take issue with the respondent's repeated allegations and contentions where I've already done so; nor will I repeat explanations or make legal submissions already stated. Similarly, I will not address patently vacant legal contentions originating from very junior counsel, nor other obvious humbug and flimflam with which the respondent's affidavit is bloated.

149. The crisp issue for decision in this application is whether 'section 7(1) read with section 45' justify the respondent's refusal of my PAIA request, and under section 81(3) it's up to the respondent to satisfy this court that they do.

150. Ad paragraph 152: I no longer ordinarily live in Pietermaritzburg, as I said. I ordinarily live in Eshowe now, for the reason very correctly stated. It's true I've no fixed property here. So?

151. Ad paragraphs 153–8: I've already disposed of the respondent's opposition to my claim on the basis of his 'submissions hereinabove' and also thereabout.

152. Ad paragraph 159: The allegation that I've 'engaged in speculation' is false. In paragraphs 103–4 of my founding affidavit I showed beyond reasonable doubt that all three letters refusing my three PAIA requests addressed to the respondent, Vedalankar, and Msweli were written by the same author. Since (i) it's entirely improbable that the respondent in Port Elizabeth wrote them all, including for Mtati in Johannesburg and Msweli in Bloemfontein, and (ii) he admits that instead of proceeding to answer my request as he was required to do, he referred the matter to Sekgota in the national office, the conclusion is inescapable that the respondent didn't himself write his letter refusing my request, and that it was prepared in Johannesburg like the others with their striking similarities and their same typographical error, just as I said in my founding affidavit, which the respondent falsely denies, casually, on oath.

153. It appears to me (on the evidence mentioned below) that very junior counsel was briefed to write the respondent's and the other two illegal refusals of my three PAIA requests, and I'm confident that his feenotes will prove it. (I intend obtaining these via my next PAIA request for the Ministerial and/or Parliamentary and/or Public Service Commission and/or Board enquiry or enquiries to follow judgment in my labour case, and for the recovery from Nair and other rogue officers my combined damages and all wasted legal expenses, including the bills of three successive senior counsel in my labour case, occasioned by their misconduct found and eventually remedied by the Labour Appeal Court.)

154. Certainly I intend seeing Nair dismissed and jailed for his perjury committed before and in court, for his lying to the Board, for his lying to the Minister, for his lying to Parliament, for his persistent, repeated violation of my fundamental rights in contravening the EEA and PAIA, and for the massive harm his persistent illegal, corrupt, and dishonest conduct has caused his employer. Beyond that I've no 'deep-seated hatred for Mr Nair'. On the contrary, addressing him by his first name, I went over and shook his hand before the trial and bade him a friendly cheerio after it. But there's no question he's on his way out; the only question is who goes out with him.

155. Ad paragraph 160: On further reflection, I see now that my surmise was wrong: it wasn't Nair, Mtati or Sekgota in the national office who drew the letters refusing my PAIA requests, it was their very junior counsel (possibly so they could later say: It's not our fault the applicant's fundamental right to information was violated, it's our very junior counsel's, and we relied on him because he's a very junior advocate and therefore an expert on PAIA who knows the score better than we do and the SAHRC does).

156. Ad paragraphs 161: I've already disposed of this.

157. Ad paragraph 162: The 'many other sections' of PAIA 'that entitles the holder of information to refuse access thereto' are sections 34–45, listed in paragraph 15 of my founding affidavit, and they have no bearing on the case. As the respondent says, he stands on 'section 7(1) read with section 45' to justify his refusal of my request.

158. Ad paragraph 163: The respondent evades my point.

159. Ad paragraph 164: In no intelligent sense do sections 7 and 45 'complement each other'. They're entirely unrelated. One bars the use of a document in a civil or criminal case – unless the court allows it – if it's been obtained via PAIA after the commencement of the case (having regard to the

availability of the rules of pre-trial discovery for obtaining documents needed). The other section is a lawful ground for refusing a request, if it's demonstrated to be applicable to it.

160. Nor was my request 'previously entertained by Head Office'. My PAIA request in relation to Skibi's recommendation, approval, and then cancellation of his appointment which I addressed to the respondent is much more extensive than my request for certain of these records during pre-trial discovery procedure addressed to 'Head Office'.

161. Ad para 165: The only relevant 'facts forming part of this case' are that I lodged a request for access to records in the prescribed form, and the respondent refused it on the grounds he asserted, considered against the history of LASA's persistent, repeated, illegal, dishonest suppression of records I've sought.

162. It's highly material to note here that in their answering and confirmatory affidavits neither the respondent, nor Nair, nor Mtati took issue with this corrupt history that I set out in my founding affidavit. It consequently stands uncontroverted and common cause.

163. 'The documents [I] seek' in my PAIA request addressed to the respondent – at least some of them – were not demanded 'before the institution' of my 'action in Durban', but after it during pre-trial document discovery following the close of pleadings. These important documents were dishonestly and corruptly suppressed to prevent the trial judge seeing them.

164. I 'never launched an application of this nature', because I hadn't sought the documents via PAIA, since (i) section 7 prevented this, and (ii) I had the Labour Court's pre-trial discovery procedure available to me to extract the documents I needed (in the result partially, not completely effective in disgorging these records, with key records withheld).

165. But I did indeed launch an application to compel discovery, converted at my request under the Labour Court rules into a pre-trial conference supervised by a judge, followed by another one when, after undertaking to me and to the judge, on the record, minuted and signed, to make full and proper discovery, LASA then refused, then again agreed, then failed to discover the documents I wanted. (This is recounted in annexure ‘C’.)

166. Nor, as said, am I seeking the same information again, only some of it; but this is in any event irrelevant, not being, as section 11(1)(b) puts it, ‘a ground for refusal contemplated in Chapter 4’.

167. The fact that judgment in my labour case, arising from a completely different cause of action, was still ‘pending’ when I brought my application is perfectly irrelevant.

168. There are no ‘other mechanisms of securing documents’ available to me (jabbering this nonsense, very junior counsel writing for the respondent naturally doesn’t say what these might be); but even if there were, it’s irrelevant. I lodged with the respondent a duly completed PAIA request for documents in the prescribed form in the exercise of my fundamental right to information secured by section 32 of the Constitution, and he was bound to give me copies, or certify any that didn’t exist on oath.

169. According to Nair’s new version in court – diametrically contradicting the story told me in correspondence, and told court in the pleadings and affidavits – the cancellation of Skibi’s transfer was unrelated to the cancellation of my appointment, so on Nair’s new version the ‘facts’ of that matter don’t form ‘part of this case’. But whatever, it’s irrelevant.

170. Not being included in Chapter 4, section 7 doesn’t afford the respondent a ground for refusing my request.

171. I'm not seeking records for 'an action that has already commenced and is pending.' Even if I was, I'd be entitled to use the records in that action with the leave of court granted under section 7(2). The respondent therefore wasn't 'entitled to rely on section 7(1) alone and in relation to the already commenced action.'

172. Naturally, 'The fact that heads of argument have been filed of record does not mean that the said action has been completed', and I never said it was; again this is very junior counsel trying to be clever. Oral argument was presented on 28 May 2014, and the learned judge, Hamilton Cele, previously a criminal court magistrate, finally dismissed my claim on 18 September 2014, inter alia on the basis that he accepted and believed Nair's fabulous new claim in court, not previously alleged in any prior correspondence, report, pleading or affidavit addressing my complaint of political prejudice, that he didn't read my CV – for which he'd telephoned – setting out my political background, nor the recommendation of me by the selection panel referring to it, until more than a year after receiving them, when he decided to read them out of curiosity. The learned judge very obviously mistakenly held that I bore an onus to prove Nair read these important documents emailed to him, but failed to do so. The Approval Framework delegated Nair as executing officer to approve or disapprove the selection panel's recommendation of me, which means he was required to read it and decide. Despite this, the learned judge held that Nair didn't have to read and approve the recommendation (LASA's pleadings and affidavits consistently contradict this), which anyway, he held further, wasn't the sort of important document that he'd have noticed in his inbox (albeit that it was for LASA's top professional post, and he'd especially telephoned for all CVs to be sent to him, including those of the rejected, eliminated candidates).

173. Ad paragraphs 166–9: I've already disposed of the respondent's idle contention in paragraph 169.2.

174. As to paragraph 169.3, I'm entirely within my rights to exact documents from LASA 'to collect evidence' for the purposes I've stated. How it's 'an abuse' the respondent doesn't say, not being able to. As our government stated on joining the international Open Government Partnership, signed in New York in September 2011:

To promote transparency in South Africa, government has – among other legislation – enacted the Promotion of Access to Information Act in 2000 to ensure that information on government activities and decisions are freely available to the public. PAIA seeks to promote a culture of transparency and accountability in public and private bodies and to actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights.

175. I'm going to make sure that our government's fine declared intentions are realised, and that those LASA officers who've violated my rights and lied repeatedly to me and to different authorities, including under oath, to cover it up will be held to account and severely punished.

176. Ad paragraphs 170–1: I've dealt with this already. Indeed the conduct of 'senior members of Legal Aid SA at the head office' was in issue and 'a decision thereupon is being awaited' – when the respondent wrote this. What's now being awaited is the outcome of the appeal process.

177. Ad paragraph 172: I've already refuted this false allegation.

178. Ad paragraphs 173–4: When he receives a copy of the papers from me and is invited to submit an affidavit, Skibi may confirm or disconfirm my contemporaneously recorded report to the Board of what he told me.

179. Ad paragraphs 175–7: It’s quite irrelevant that the respondent ‘was not even the Eastern Cape ROE and/or the deputy information officer’ when in May 2010 Skibi was interviewed and recommended (Mtati was then ROE). In the paragraphs of my founding affidavit to which the respondent refers, I show that the documents in question were dishonestly suppressed by executives and attorneys in LASA’s national office to keep the judge from seeing them in my labour case.

180. When the respondent got his job as ‘Eastern Cape ROE and/or the deputy information officer’ is immaterial; it could have been as recently as the day he received my request. All that matters is that he was deputy information officer when he got my request, and PAIA required him to gather and supply me with the documents I requested, or certify on oath in any case that a document I wanted didn’t exist.

181. Irrelevant too is the respondent’s knowledge or otherwise of the selection panel’s recommendation of Skibi for the Mthatha Senior Litigator post in May 2010 and of Nair’s off-the-record abortion of his transfer and appointment to it – after reading my letter to Vedalankar in late July 2010 seeking the finalisation of my appointment, following my recommendation eight months earlier in November 2009, and appreciating he needed to fabricate a nice strong cover-story to justify having thrown my recommendation in his bottom drawer, which was that insufficient budget required that ‘In July 2010’ he and Vedalankar had to ‘immediately’ freeze the Pietermaritzburg, Durban and Mthatha Senior Litigator posts. (No such record of this exists; the nine Senior Litigator posts have been budgeted and funded from the outset to this day; the comprehensive record shows that only some lower criminal court public defender posts were temporarily frozen (in the event for just two months) with Board approval in July 2010 to spur the Department, Nair explained in court, into paying over LASA’s outstanding OSD phase funding; and in court Nair

abandoned the Mthatha leg of this grand cover-story, and invented a new story about why Skibi's transfer was aborted.)

182. Ad paragraph 178: My purpose in canvassing the facts set out in paragraphs 60–72 of my founding affidavit is crisply stated in the final paragraph thereof.

183. As said, all affected persons will be invited to 'defendant [sic] themselves and challenged [sic] these submissions'.

184. Ad paragraph 179: Since Mtati's first discovery affidavit contained demonstrable lies, canvassed in paragraphs 37ff of my founding affidavit (and his interlocutory affidavits in my labour case are likewise packed with the most shocking lies, some viciously defamatory, some of which Nair retracted under cross-examination in court), I'm unable to accept any claim that he's made in it. Attorney Mtati has demonstrated to me that I can't trust a word he says, ever, not even under oath. This is why I've now turned to asking the respondent for the documents instead, this time under PAIA, with the heavy penalty clause in section 90 encouraging him to comply completely honestly, by hanging over his neck like a guillotine-blade.

185. Ad paragraph 180.2: No fresh order is sought; I'm elucidating.

186. Ad paragraph 183.3: I'm not interested in the respondent's 'comment'. I just want the documents I've asked for, or sworn confirmation they don't exist. He can share his 'comment' with someone else.

187. Ad paragraph 184.2: To obtain the documents I've requested under PAIA, there are no 'other mechanisms provided for by the law'. Even if there were, this wouldn't afford the respondent a ground for refusing them. He's given his reasons, and he relies on 'section 7(1) read with section 45'; and it's too late to make up more clever-sounding excuses.

188. Ad paragraph 185.4: What's 'scandalous' is Nair's and other LASA officers' conduct in this matter. All will be invited 'to answer for themselves.'

189. Ad paragraph 190.2: Since very junior counsel, who wrote the respondent's dismal affidavit, bristles at my observations concerning the prose style of the respondent's letter refusing my request, it seems to me he wrote it too, inter alia from his trick of beginning with a stilted declamation of respect for the law to 'set the tone' of his letters before going right on to break it. The same pedantic phrase and the same crooked approach is found in Vedalankar's January 2011 letter illegally refusing my first and second PAIA requests in 2010 and in the three letters refusing my requests before this court, as well as the characteristically frothy volubility and the aggressive-defensive style of his writing generally. Mtati said on affidavit before trial in my labour case that LASA had called counsel in to deal with my first request – after I'd complained to the SAHRC when it was expressly refused, and I'd followed it with a second request interrogating the obvious lies told in the letter refusing the first. I'm certain that very junior counsel's feenotes, to be obtained by me via PAIA in time, will confirm my conclusions.

190. (I previously thought Nair had written these letters, in view of his obvious authorship, from his distinctive stylistic fingerprints all over it, of Vedalankar's letter to me in October 2010 (I'm referring to the peculiar, syntactically clumsy way he writes and talks, frequently starting with 'Noting that ...'), and from his authorship, eventually admitted in court, after initially being dishonestly disputed, of Mlambo JP's secret reports to the Minister and the Portfolio Committee about my matter (he neglected to wipe his electronic fingerprints from the scene of the crime and left them ('Briann') in the PDF 'Author' properties file of the first report), also spewing lies to successfully pervert their separate enquiries that they'd ordered into my multiple fundamental rights violation complaints.)

191. That's to say, it's very junior counsel who's helped land LASA in this shameful mess regarding its ongoing illegal failure to comply with PAIA, and its violation of my fundamental right to information, commencing with his drafting of Vedalankar's lying letter to me of 28 January 2011, illegally refusing my PAIA requests for the second time (or the third time, if the silent deemed refusal in September 2010 is included) – as in the instant case, raising all manner of irrelevant sections of the Act against me, all later tacitly abandoned – and lying to me about why my appointment to the Senior Litigator post for which I'd been duly recommended had been cancelled off the record, without telling me, and intentionally keeping me in the dark, hoping I'd just go away.

192. Ad paragraph 191.5: As explained above, no internal appeal lies against the refusal of a PAIA request by LASA's information officer or one of her deputy information officers, and the fact that Vedalankar is 'the head of the organisation and also the Information Officer' makes no difference. (According to learned counsel in paragraph 80.5 of the answering affidavit he drew, the Board had such appellate power too, but unsurprisingly, further into the answering affidavit, he's dropped this equally ignorant, inventive claim.)

193. Ad paragraph 194.2: It's Brümmer not Bummer.

194. Ad paragraph 196.2: I found the SAHRC unhelpful in the past, despite repeatedly imploring it to assist me, even going to the extent of filing a formal rights violation complaint about LASA's persistent, repeated refusals to comply with PAIA, which it indolently declined to accept and investigate for transparently specious reasons, thereby facilitating LASA's violation of my fundamental right to information and frustrating my attempts to vindicate it, in turn facilitating LASA's violation of my right to equality. (It was like going to a police station desperately appealing for intervention to stop a serious crime, and being told 'We're too busy for you'; and then, when later trying to open a

formal charge, being told ‘You’re going to court in some other case, so we can’t investigate.) Consequently, I’d no reason to think the SAHRC would be any more interested this time round. A prior appeal to the SAHRC for help anyway isn’t a prerequisite to an application to court to compel compliance with a PAIA request.

195. I deal with this lying lost-in-the-post excuse in paragraphs 44ff of my founding affidavit.

196. In conclusion, I wish to place the following on record for the information of this court, the several responsible authorities mentioned in my notice of motion, and the further international and local authorities and organisations monitoring and reporting freedom of information, mentioned below.

197. My application to this court for the relief I seek under heads 1–6 of my notice is extraordinarily serious. I complain that the respondent, a public officer employed by an organ of state, has violated my fundamental right to information entrenched by section 32 of the Constitution in the democratic era, and I seek this court’s mandamus that he purge his contempt for it. One would have expected, therefore, that a matter of this gravity be treated seriously, and be referred to an able, senior lawyer for reliable advice and proper handling. Particularly because the respondent, and moreover his employer LASA, stood directly exposed on several fronts, namely to:

- (i) the ignominy of a judicial finding that not only had he violated my constitutionally entrenched rights, he’d persisted in doing so by wholly indefensibly opposing my application to court to compel him to respect them on patently fatuous grounds;
- (ii) the reporting of LASA by the SAHRC to the National Assembly as a recidivist PAIA delinquent in its next PAIA section 84 report on public body compliance with the Act, after ‘the reporting of the Brink saga ... to

Parliament’ (per SAHRC PAIA Unit director Kisoona’s email inter alia to LASA national executive Patrick Hundermark on 12 July 2011) and,

- (iii) LASA’s certain public censure by the Portfolio Committee on Justice and Correctional Services in the National Assembly, which has previously expressed its concern about LASA’s failure to comply with PAIA, after being named and reported to it by the SAHRC.

198. The respondent had such an able, senior in-house lawyer at his disposal to advise him on the proper handling of my application, namely Port Elizabeth Senior Litigator Elizabeth Crouse, one of ‘our most senior and experienced lawyers’ (I’m quoting from various LASA documents), and one of six such expert ‘Senior Professional staff’ engaged by LASA at various seats of the High Court (but strangely enough none in KwaZulu-Natal) to handle inter alia ‘High profile matters which could negatively affect our reputation if not handled properly’, given LASA’s concern that its ‘public image ... has, for the most part, been negative due to a perception of incompetence and lack of vital court skills’, to remedy which LASA has ‘employed Senior Litigators who are working on complex matters and matters in higher court.’ (But as said, none in KwaZulu-Natal, despite asking the Department for, and being given the budget to fill two of such posts in this province, every year since the posts were created in 2007 – and it’s now been seven years – thus unlawfully contravening sections 52–4 of the PFMA.)

199. Among their advertised job functions, Senior Litigators are required to ‘Take responsibility for and expertly/proficiently attend to legal matters in various legal forums/courts requiring expert litigation skills such as impact litigation and/or warranting the services of a Senior Litigator’; ‘Attend to referrals from National Office, Regional Office and Justice Centres regarding cases as in above and provide support to Justice Centres in specialised, complex

or impact litigation matters’; and ‘Provide written legal opinion[s] for the LAB as requested’.

200. For reasons to be determined at the enquiry certain to follow this case, it was decided to bypass this ‘senior and experienced lawyer’ working down the road in the same city as the respondent, with her ‘expert litigation skills’ and her ability to render a reliable ‘written legal opinion’ and ‘expertly/proficiently attend to’ the case, and instead to contract out this inevitably ‘high profile matter’, involving fundamental constitutional rights, at vast wasted expense to a seemingly fresh out of school strutting and crowing junior advocate hopelessly out of his depth, who clearly doesn’t know what’s going on, and whose pitiful ‘incompetence and lack of vital court skills’ are evident everywhere in the letters and affidavits he drew in an attempt to frustrate and obstruct my exercise of my constitutional right of access to the documents I’ve lawfully requested with a view to holding Nair and other officers to account for their criminal and other grave misconduct, thus exposing LASA to massive damage to its ‘public image’ and ‘reputation if not handled properly’.

201. In view of:

- (a) the extraordinary seriousness of LASA’s persistent repeated violation of my fundamental right to information in our democracy and its corrupt suppression of documentary evidence, contrived to pervert the course of justice, under cover of the most transparently idle justifications and objections, and heedlessly disregarding:
 - (i) the SAHRC’s repeated lessons delivered to its officers on the correct and lawful application of PAIA, and in particular the irrelevance of the purpose of a PAIA request, either stated or deduced, especially if it’s to gather evidence for legal proceedings, whether contemplated or even current;

- (ii) the SAHRC's previous reporting of LASA to the National Assembly as a defaulter in its section 84 report on public body compliance PAIA for 2011/12; and,
 - (iii) the SAHRC's subsequent audit of LASA for PAIA compliance in January 2013; and,
- (b) the current paralysis and past ineffectualness of the SAHRC's PAIA Unit in policing compliance with the Act under section 83, evident from its failure to see to LASA's compliance with my PAIA requests in 2010/11 and unwillingness to investigate my complaints about its illegal refusals, and the fact that my simple written request more than a fortnight ago on 17 October 2014 for copies of LASA's section 32 report for 2013/14 – to ascertain whether/how LASA had reported its illegal refusal of my October 2013 PAIA requests, and whether it had continued falsely reporting and thereby concealing its violation of my fundamental right to information, as repeatedly concealed from the SAHRC and from the National Assembly in the past, and the SAHRC's section 84 report to the National Assembly for the same period – has gone unanswered despite repeated written and telephonic follow-up appeals to provide them, being urgently needed for this affidavit, which failure to supply these reports to me has been apologetically justified to me on the basis that no one in the PAIA Unit is available to locate and send them to me; that the very few remaining staff were out giving courses etc; and that in view of the SAHRC's uncertainty over the possible creation by Government of an Information Commissioner to assume all its responsibilities regarding PAIA, the Unit was severely understaffed because no replacements had been hired for those who'd resigned;

(c) the fact that my repeated appeals and complaints to the Public Protector, after the SAHRC failed/declined to assist me, to intervene in LASA's repeated, persistent illegal refusals to comply with my PAIA requests in 2010/11 similarly went nowhere,

I propose to provide complete sets of all the papers in this and my two immediately following similar applications against Vedalankar and Msweli, in addition to the authorities listed in my notice of motion, also to:

- the African Union's Special Rapporteur on Freedom of Expression and Access to Information in Africa, Adv Pansy Tlakula, for her next annual report, to mention also the practical toothlessness of our Chapter 9 institutions to ensure public body compliance with PAIA;
- the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, whose office reports annually;
- The UN Special Rapporteur on Freedom of Opinion and Expression, whose office has monitored and reported on freedom of information annually since 1998: Professor David Kaye;
- the Open Government Partnership (on freedom of information), of which South Africa is a signatory and member state, headquartered in San Francisco and Washington, US, which invites people to 'submit ... case studies [to] disseminate [to] inform open government reformers around the world';
- Africa Freedom of Information Centre, head-quartered in Kampala, Uganda, created by the Lagos Declaration of September 2006,

a pan-African NGO and resource centre that promotes RTI through comparative research, coordinating regional advocacy, facilitating information-sharing and capacity building ... a membership civil society

organization promoting the right of access to information. We strive to become a reliable, dependable and all round freedom of information support centre on the African continent.

for its next annual 'State of Right of Information in Africa' report, and specifically its 'Country Reports';

- Transparency International, whose international secretariat is based in Berlin, Germany, and specifically its 'Access to Information' project, which notes very appositely to this case:

Information is fundamental to make informed decisions. Information is also power. Where it's not freely accessible, corruption can thrive and basic rights might not be realised. People can hide corrupt acts behind a veil of secrecy. ... The truth is gagged. When our right to know is denied, we can't hold decision makers or institutions to account for their actions. ... Transparency International supports the international efforts to have the right of access to information recognised and respected. ... Over 60 countries have passed legislation that recognises and protects the right to access information held by public bodies. This is an important component in any effort to fight corruption, but the mere existence of legal instruments is not enough. Habits and cultures on both sides of the information demand and supply relationship must be changed. While public bodies change their attitudes of secrecy to a climate of openness to prevent potentially corrupt situations, citizens also need to capture the spirit of demanding information. They must exercise their right to information when they suspect that there is a risk of corruption developing. This process can take years or decades, and requires patience, tolerance and much getting used to. When citizens are granted access to information produced by the state, but owned by the people, the balance

of power between citizens and state gains balance. ... Due to historic reasons like old colonial traditions, post-totalitarian or military regimes, citizens are not granted access to state information that might interest them or affect their lives. The holder and withholder of information gains power. ... profiting from a cloud of secrecy to harbour corrupt practices. Those who are denied access to information which belongs to the people, but is in custody of the state, feel disempowered and unable to make informed decisions or to express well-founded opinions. ... When citizens are denied their right to know, corrupt officials can act with impunity.

- Article 19, ‘Defending Freedom of Expression and Information’, the international NGO headquartered in London, England, which emphasizes:

Information has been called ‘the oxygen of democracy’, essential for openness, accountability and good governance. Information:

- enables people to have informed opinions and to engage in full and open debate
- ensures governments are scrutinised, thereby becoming more open, transparent and accountable and delivering good governance
- enables journalists and civil society to expose corruption and wrongdoing. U.S. Supreme Court Justice Louis Brandeis famously noted, “A little sunlight is the best disinfectant.”

- The Open Democracy Advice Centre, the Cape Town-based NGO billed as ‘leading experts in relation to access to information and freedom of expression in South Africa, and on the continent’, and which claims:

We have driven strategic litigation on the Promotion of Access to Information Act ... and remain at the forefront at parliamentary advocacy on laws relating to transparency and good governance. We extend our

scope to providing support to ensure the effective implementation of key legislation, by assisting public and private institutions to develop policies, procedures and systems. We provide public information and training on using the legislation through public awareness campaigns, and workshops. We also perform various forms of monitoring and research through applied and comparative research, which forms the evidence-base for our other activities. ODAC's mission is to promote open and transparent democracy; foster a culture of corporate and government accountability; and assist people in South Africa to be able to realise their human rights. Fundamentally, ODAC believes that realising the right to know will make a material and tangible social change, while forwarding social and economic justice. By promoting transparency, enhancing access to information, supporting whistleblowers and liberating data, we are forwarding a culture of accountability and openness to meet the needs of citizens.

– even as ODAC has ignored my past appeals for assistance in realising my basic right to access LASA's records, illegally withheld from me, which data I needed to liberate to prove my unfair discrimination claim and hold LASA's corrupt management executives to account.

- The South African History Archive, based in Johannesburg, which

In 2002 ... launched its Freedom of Information Programme, and since then has been at the forefront of efforts to utilise the Promotion of Access to Information Act (PAIA) ... SAHA is committed to developing civil society access to public and private information through laws that affect the constitutional rights of access to information. ... Creating awareness of the right to information and its power as an enabling right that can be used to protect, promote and fulfil other human rights.

- The PAIA Civil Society Network in South Africa,

established in November 2008 in response to the need for greater collaboration and cooperation amongst organisations and individuals working to achieve a culture of openness and accountability through the effective implementation of the Promotion of Access to Information Act (PAIA) in South Africa. The member organisations are committed to improving the implementation and usage of PAIA, raising awareness about the right amongst citizens, and working with bodies subject to the Act to improve understanding. The PAIA CSN aims to produce a shadow report annually, which is designed to complement the work done by the South African Human Rights Commission in monitoring the implementation of PAIA by providing a perspective on implementation from organisations that utilise the rights in the Act on a regular basis.
- The Right2Know campaign, head-quartered in Cape Town, which notes: ‘free expression and access to information are the building blocks of an accountable democracy’; and,
- The Public Service Commission;

and I’ll file proof of delivery of all the papers to them all before the hearing, for their information, annual reports, and possible intervention in regard to the incorrigible, recalcitrant delinquency of a major South African public entity and its demonstrated contempt for the principles and law of freedom of information in our democracy, in its determination to cover up a grave fundamental rights violation, gross abuse of power, and the breakdown of proper corporate governance; and to maintain its cover-up of this, escalated secretly (later exposed) all the way to the Minister and to Parliament, and succeeded with (if only to date) in a high court.

202. Wherefore I persist with my application.

Signed at Eshowe on 3 November 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 3 November 2014 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he solemnly affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

Case No. 257/14

In the matter between:-

ANTHONY ROBIN BRINK

and

HOPE BAMBISO N.O.

DEPUTY INFORMATION OFFICER,

EASTERN CAPE REGION,

LEGAL AID SOUTH AFRICA

RESPONDENT'S

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Magistrate's Court for the District of ESHOWE - (Civil Court)
Held at ESHOWE

B

Case No – Saak No

257/14

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and:

HOPE BAMBISO N.O DEPUTY INFORMATION OFFICER

Respondent

Return in accordance with the provisions of the Magistrate's Court Act 32 of 1944, as amended

RETURN OF SERVICE - NOTICE OF MOTION

On this 17th day of July 2014 at 14:13 I served this NOTICE OF MOTION upon HOPE BAMBISO N.O DEPUTY INFORMATION OFFICER personally at C/O LEAGAL AID SOUTH AFRICA E.C REGIONAL OFFICE, 5 MANGOLD STREET, NEWTON PARK, P.E by handing to the abovementioned a copy thereof after explaining the nature and exigency of the said process. RULE 9(3)(a) / RULE 64(3).

PS: The original return together with the original abovementioned process is despatched to the mandator.

Sheriff Fees Baljugele	Date Datum	21.07.2014	Tax Invoice Number Belastingfaktuur Nr.	I 268731
			Description..... Qty	Vat Amount
			-----	-----
			Service (6-12)	2 10.22 73.00
			Registration	1 0.98 7.00
			Return	1 1.75 12.50
			Vat Invoice Copy	1 0.35 2.50
			CELLULAR PHONE (Deputy)	4 6.72 48.00
			Tel.call attend; item 29	4 3.96 28.32
			VAT / BTW	23.98
VAT Reg No. BTW Reg Nr.	4860183450	You may require this account to be taxed and vouched before payment. U kan vereis dat hierdie rekening getakseer en gestaaf word voor betaling		Total Totaal
MISSCELLANEOUS C/O SHERIFFS OFFICE PLAINTIFF TO PAY AT OUR OFFICE		Account No. ♦ Rekening Nr. Your Reference ♦ U Verwysing My Reference ♦ My Verwysing Ret: 971919/NAJWA ROSS/1		24684 VatReg 0837794174
		Clerk of the court: ESHOWE		423

SEAN NIEMAND
Deputy Sheriff

A M Makwetu
Sheriff High & Lower Court
Port Elizabeth South
Tel: 041 582 3705/08
Fax: 041 582 3702
PO Box 3212
North End
6056
Docex 137 PE
sheriffpesouth@iafrica.com
accounts2@sheriffpesouth.co.za
Bank: FNB North End
BrCode: 210417
Name: A M Makwetu
AccNo: 62162358298

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IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

APPLICANT'S AGENDA
RESUMED PRE-TRIAL CONFERENCE AT COURT ON 12 APRIL 2013

INTRODUCTION

The applicant will apply for an order under subrule 6 (6) in terms of the annexed Draft Order, directing the respondent to make full and proper discovery as it undertook to do at the pre-trial conference at court on 25 January 2013, failing which the applicant be given leave under subrule 6 (7) to enrol his claim for hearing on an undefended basis, with the respondent barred from appearing to oppose.

BACKGROUND

On 4 May 2012 this court ordered that the applicant's interlocutory application to compel the respondent's discovery of specified documents, which it failed or refused to discover, be dealt with under rule 7 (7) (a) at a pre-trial conference at court.

The respondent's response on 7 December 2012 to annexure 'A' to the applicant's pre-trial conference agenda listing the documents he requires for trial was a blanket refusal to discover them: 'we do not intend to burden the record with any further documents.'

(This was consistent with the respondent's blanket refusal to comply with the applicant's first two PAIA requests in August and December 2010, later partially reversed, and with its blanket refusal to discover any of the documents listed in the applicant's agenda for the pre-trial conference held on 26 October 2011, later partially reversed.)

At the conference held on 25 January 2013, the respondent reversed itself and undertook to discover the requested documents, as paragraph 4 of the minute records:

The request of the applicant for document discovery set out in paragraphs 22 - 61 at pages 9 - 25 of the pre-trial conference agenda dated 25 January 2013 [sic: 8 January] will be addressed by the respondent by 18 February 2013 by delivery of the documents requested and in respect of those not delivered by delivering an affidavit in the form contemplated by rule 35 (3) of the Uniform Rules of Court.

On the due date, the respondent reversed itself again, notifying its refusal to discover as agreed and justifying this refusal as follows:

In terms of the Draft Order dated 25 January 2013, annexed hereto as PTA-1, Legal Aid of South Africa ("Legal Aid SA") undertook to revert to the applicant (Mr Anthony Brink) regarding whether or not the Legal Aid SA wished to relook at its answers to the applicant's Annexure G in which the applicant sought documents he alleged were outstanding, alternatively, were not satisfactorily responded to in Legal Aid SA's TM16 and TM16A. Legal Aid SA furnishes hereto the applicant with its response as set out in paragraphs 6, 7, and 8 below.

There was no draft order; these were not the terms of the minuted undertaking to discover; annexure 'G' to the founding affidavit on 18 January 2012 in the interlocutory application launched a year earlier did not list the documents required: as the minute records, these were 'set out in paragraphs 22 - 61 at pages 9 - 25 of the pre-trial conference agenda'; and the 'response as set out in paragraphs 6, 7, and 8' in no wise complied with the respondent's minuted undertaking to discover.

The respondent provided four documents:

1. the pre-trial conference minute signed by the respondent ('PTA-1');

2. a further paper copy of the Approval Framework ('PTA-2');
3. an email from the applicant covering his CV in his application for the Pietermaritzburg Senior Litigator post on 2 October 2009 ('PTA-3');
4. CEO Vedalankar's ratification of CSE Mtati's decision to defend the applicant's claim ('PTA-4').

'PTA-2', yet another paper copy of the Approval Framework, did not comply with (a) the applicant's request in paragraph 22 of the conference agenda for a PDF of the document, in order to make a clear print of it (it's set in fine print) for inclusion in the trial document bundle and (b) the respondent's undertaking to email this PDF to the applicant's attorney for this purpose.

'PTA-3', the applicant's application for the Pietermaritzburg Senior Litigator post submitted by email on 2 October 2009, already supplied on 6 July 2012 (annexure 'G38'), is not the different record, i.e. an excerpt of interview minute, requested in paragraph 31 of the conference agenda.

Both of these documents will be further dealt with below.

'PTA-4', CEO Vedalankar's ratification of the defence, wasn't specifically requested, but it resolves the authority issue.

THE RESPONDENT'S DEFECTIVE DISCOVERY

Pressed to comply with its minuted undertaking to discover, the respondent reversed itself again, and delivered a discovery affidavit on 11 March 2013, deficient in multiple respects.

PART 1

Contrary to the sworn allegation in paragraph 3.1 of the affidavit that 'I herewith discover and furnish to the Applicant [the documents] required by him in his proposed pre-trial agenda set out in Part 1 of the attached schedule', the respondent did not 'furnish to the Applicant' any of the documents identified in paragraphs 22, 23, 26, 29 (a), 31, 43 and 46 of the pre-trial agenda.

Only one document and one fragment of a document were provided, and in neither case did they comply with the respondent's minuted undertaking to discover:

The respondent provided yet another paper copy of the Approval Framework. As noted above, this was not requested. The applicant requested and the respondent undertook to provide *an electronic PDF by email attachment*, and an email address was given the respondent at the conference for this purpose. A printed or telefaxed hard copy does not meet the request. An *electronic original PDF* of the Approval Framework is required:

A complete, clear and easily legible copy of the Approval Framework in PDF, generated directly from the Word file kept by LASA for periodic amendment by the Board. {Agenda, paragraph 22}

The respondent provided a fragment of a record, purportedly an extract from the minute of the Board meeting of 26 November 2011, in place of the document requested in paragraph 46 of the agenda, namely:

The minute of the Board or Board Legal Services Committee meeting at which the 'Report to Board' of 26 November 2011 on the subject of Senior Litigators was presented. {Agenda, paragraph 46}

Rule 35 (3) does not permit the redaction of discovered documents in this manner unless under rule 35 (2) (b) 'a valid objection to produce' the full record is established.

The other documents claimed 'furnish[ed] to the Applicant', but which were not in fact 'attached' to the discovery affidavit, are:

Apropos of 'a document ... marked LA4', referred to in paragraph 2.5 of LASA's reply to Brink's pre-trial issues, and annexed to it: (i) the first identifying page of the record from which 'a document ... marked LA4' is excerpted; (ii) the full page of the record from which LA4 is excerpted; (iii) the page reflecting the date of the record; (iv) the final page or signature pages; (v) the page reflecting by whom the record was prepared; ... {Agenda, paragraph 23}

KZN ROE Mdaka's covering email or letter reflecting the date on which he sent the KZN professional selection panel's Motivation and the CVs of the interviewed candidates to

NOE Nair, showing the date ‘when we [members of national executive management] were made aware that there were two people recommended for the second round of interviews’ for the Pietermaritzburg and Durban Senior Litigator posts, namely Brink and Mngadi (paragraph 78.1 of Mtati’s answer to Brink’s pre-trial conference agenda).

{Agenda, paragraph 26}

Excerpt comprising the front and relevant page of the KZN professional selection panel’s minute of its interview of Brink, noting his reply to Brijlal’s enquiry as to his ‘Justice Centre of choice ... which office you are applying for’ (per the advertisement: bundle, page 45) i.e. Pietermaritzburg or Durban. {Agenda, paragraph 31}

Concerning the Mthatha Senior Litigator recruitment: (a) The Eastern Cape regional professional selection panel’s Motivation recording its recommendation of Nzame Skibi for the Mthatha Senior Litigator post; {Agenda, paragraph 35}

Notification of the Board, as required by section 10.3.2 (b) of the Approval Framework, that [Brink’s] claim for [his] instatement to the post for which [he] was selected and recommended, damages in excess of R500 000, and other relief is being defended.

{Agenda, paragraph 43}

PART 2

Part 2 of the schedule lists documents specified by the applicant which the respondent alleges do not exist.

For the reasons stated in each case below, this allegation concerning the following documents is insupportable:

Justice and Constitutional Development Minister Radebe’s letter/email query to Mlambo JP arising from Brink’s third petition to the Board on 25 February 2011 complaining of Vedalankar’s illegal refusal to comply with PAIA and her unfair discrimination against him, which he copied to Parliament, and all letter/email correspondence between Radebe and Mlambo JP in the matter, including (a) the original ‘Confidential ... Report ... Re: Advocate Anthony Brink’ (before it was updated on 22 June 2010 for the chairperson of the Portfolio Committee) that Mlambo JP wrote and submitted to Radebe on 9 March 2011 and (b)

Mlambo JP's email/letter to Radebe covering his said 'Report' in March. {Agenda, paragraph 25}

The respondent's new allegation that 'No such records exist' is contradicted by its sworn confirmation a year ago that such records indeed exist: In item 6 of annexure 'TM16' to the answering affidavit in the application to compel discovery and other relief, the respondent confirmed on 13 February 2012, 'The communication was between the Minister and the Board Chairperson' (interlocutory application, volume 2). The irrelevant justification then given for not discovering the records of the communication between them was that 'the Chair is independent from Management'.

If 'The communication was between the Minister and the Board Chairperson', Board chairperson Mlambo JP will also possess records of it, so the respondent's further new justification for not discovering the documents in question, 'and even if such records existed, they would be in possession of a third party, namely Department of Justice', is both untrue and equally irrelevant.

The documents are relevant to establishing

- (a) the terms of the Ministerial enquiry into the applicant's fundamental rights violation complaints against the respondent; and,
- (b) whether in his covering letter or email to the Minister, chairperson Mlambo JP disparaged the applicant by falsely charging him with improper conduct in seeking to vindicate his fundamental rights to equality and to information, as he did in his covering letter to the chairperson of the Portfolio Committee (document bundle, page 504).

This is relevant to the aggravation issue pleaded in paragraph 18 of the amended statement of claim.

The respondent undertook to furnish these documents nearly a year-and-a-half ago on 18 November 2011 'on or before 25 November 2011' in its reply to the issues raised by the applicant at the pre-trial conference on 26 October 2011, and it undertook to furnish them again at the pre-trial conference at court on 25 January 2013.

Email/letter from the Eastern Cape RHRM, ROE, or other officer, to Nair, covering the said Motivation recommending Skibi, and proof of post, if a letter was sent by post. {Agenda, paragraph 29. Ad document 35 (b)}

The respondent's failure to discover this record on the basis that 'No such record exists' because 'The documents were in the Respondent's possession and have been lost in transit between Mthatha and Johannesburg' cannot be true:

The Motivation itself has now been discovered (Schedule, Part 1, document 35 (a)) although not yet furnished (it was previously alleged on oath not to exist: interlocutory application, Vol 2, annexure 'TM16' item 35). If the Motivation, now discovered, was sent from Mthatha to Johannesburg, so arrived and was not 'lost in transit', the email or letter covering it will likewise have arrived and not have been 'lost in transit'.

If the Motivation was forwarded by email attachment, but was somehow 'lost in transit', a record of the email sent will still exist.

If the Motivation was forwarded by letter, but the hard copy printed and mailed was 'lost in transit', an electronic record of the letter sent will still exist.

That is, a record of the sender's covering email or letter will currently be 'in the Respondent's possession'.

Email/letter to Skibi notifying him that LASA had subsequently decided not to fill the Mthatha post and that his hoped-for transfer from Mahikeng was off. {Agenda, paragraph 29. Ad document 35 (c)}

The respondent's failure to discover this record on the basis that 'No such record exists' because 'The documents were in the Respondent's possession and have been lost in transit between Mthatha and Johannesburg' is contradicted both by its pleading and by the facts on the ground.

On 28 October 2011 Mahikeng Senior Litigator Nzame Skibi informed the applicant that he'd been advised by email that the Mthatha Senior Litigator recruitment had been cancelled.

In its answer to the applicant's agenda for the pre-trial conference held at Pinetown on 26 October 2011, the respondent alleged contrarily in paragraph 96.12 that 'The Mthata [sic] candidate [i.e. 'Nzame Skibi', per paragraph 92.1] was informed by phone of the Respondent's decision not to proceed with the recruitment of Senior Litigator post for Mthata'.

Now the respondent admits on oath that Skibi was indeed informed in writing that the Mthatha Senior Litigator recruitment had been cancelled, only it now claims that 'No such record' of this communication 'exists' because it was 'lost in transit between Mthatha and Johannesburg'.

This cannot be true for two reasons:

First, Skibi is based in Mahikeng so the letter or email to him cancelling his transfer cannot 'have been lost in transit between Mthatha and Johannesburg'.

Second, if Skibi was informed by email of the cancellation of the Mthatha Senior Litigator recruitment and of his transfer, as he told the applicant, a record of the email sent will still exist as an archived business record and will be in the respondent's possession accordingly. If Skibi was informed by letter sent through the post, an electronic record of the letter sent will exist, even if the hard copy printed and mailed to him did not arrive, as alleged.

That is, a record of the sender's email or letter to Skibi is currently 'in the Respondent's possession'.

Excerpt comprising the front and relevant page of the KZN professional selection panel's minute of its interview of Durban Justice Centre High Court Unit head Bongani Mngadi on 12 November 2009 noting his 'Justice Centre of choice ... which office you are applying for' (per the advertisement: bundle, page 45), i.e. Durban or Pietermaritzburg. {Agenda, paragraph 32}

'Doc 38' discovered by the respondent – but not yet furnished – is KZN Regional Human Resources Manager Baboo Brijlal's note of the applicant's Justice Centre of choice, the office he was applying for, namely the Pietermaritzburg Justice Centre. (Brijlal kept the interview minutes.)

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between

ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

DRAFT ORDER

1. It is declared that in aborting the applicant's recruitment to the Senior Litigator post at the Pietermaritzburg Justice Centre, the respondent unfairly discriminated against him on prohibited grounds enumerated in section 6(1) of the Employment Equity Act 55 of 1998, namely on grounds of his conscience, belief or political opinion.
2. The respondent is ordered to appoint the applicant to the said post with all benefits, retrospective to 1 January 2010.
3. The respondent is ordered to pay the applicant damages for lost income in a sum equivalent to the difference between the salary and performance bonuses he would have earned had he been appointed to the said post on 1 January 2010 and the professional income he earned between that date and the date of this order.
4. In the event the parties are unable to agree the amount due to the applicant, they are granted leave to approach this court on the same papers, duly supplemented in so far as necessary, for an order determining the amount due.
5. The respondent is ordered to pay the applicant general compensation in the sum of R1 million.

6. The respondent is ordered to pay the applicant mora interest at the prescribed legal rate on his:
 - 6.1. damages for lost income, calculated from the date on which each monthly salary payment and annual performance bonus became due until date of payment;
 - 6.2. general compensation, calculated from date of judgment to date of payment.
7. The respondent is ordered to publish the order made in this case once in the *Sunday Times* newspaper, and to publish the full judgment on the respondent's website for a period of one year.
8. The respondent is ordered to take steps to prevent the same unfair discrimination or a similar practice occurring in future in respect of other employees or applicants for employment.
9. The respondent is ordered to pay the applicant's costs, including the costs of counsel, on the scale as between attorney and client.
10. The registrar is directed to refer the judgment and the record, comprising the trial transcript and all trial bundles, copies of which are to be provided by the respondent, to the Director of Public Prosecutions: South Gauteng for the investigation of charges of perjury and subornation of perjury by the respondent's National Operations Executive Brian Nair and other officers disclosed by the affidavits and his oral evidence in the case; and to the Public Service Commission for the investigation of charges of gross professional and unethical misconduct by the said officers, and the breakdown of proper corporate governance within the respondent.

IN THE MAGISTRATE’S COURT FOR THE DISTRICT OF ESHOWE

Case No: 258/14

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

VIDHU VEDALANKAR N.O.

INFORMATION OFFICER,

LEGAL AID SOUTH AFRICA

Respondent

REPLYING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. The ‘Author’ properties of the PDF of the final draft of Mtati’s answering affidavit drawn for him and emailed to him for signature, and later to me at my request, show that, as in Bambiso’s case (257/14), very junior counsel drew it too (annexure ‘A’). He’s copied and pasted into it all his bad legal contentions and misconceived allegations that this court is or will be biased. Since I’ve comprehensively refuted them all in my reply to Bambiso, and an affidavit is properly a home for evidence not argument, I propose in this reply merely to note where I take issue with them and then address them further in the oral debate to follow. This reply is consequently limited to refuting the occasional novel allegation made in Mtati’s affidavit. I’ll provide the respondent with a copy of my reply to Bambiso with my reply in the instant case.

2. Ad answering affidavit, paragraph 1: Although Mtati thinks he’s a deputy information officer at LASA, he isn’t – as I’ll show. His claim to have the

power to ‘generally deal with all [PAIA] requests in Legal Aid SA’ is wrong. Fact is, he was no more legally competent to deal with my request and to have ‘refused the Applicant with access to some of the information he seeks’ than the office messenger.

3. Information officer Vedalankar, the respondent, has no power under PAIA – whether ‘ordinarily’, extraordinarily, or ever – to ‘deal with appeals relating to my refusal to grant access to information applications.’ (What LASA’s PAIA manual says about this, I’ll address in my reply to Msweli where she quotes it.) The respondent’s basic mistake about this is consequently no good ‘simple reason’ for not reading and deciding my PAIA request, as PAIA required her to do.

4. Ad paragraph 7: Justifying his handling of it, Mtati records that the respondent ‘has not read the Applicant’s request and has not made any decision therein’ because ‘being the Information Officer she ordinarily would be a person who must deal with appeals relating to my refusal to grant access to information applications’. This excuse for her failure to discharge the obligations imposed on her by PAIA to consider and respond to my request is both factual and legal nonsense.

5. First, as I’ll show, Mtati has no power to deal with records requests under PAIA. Only the respondent and her duly delegated deputy information officers do, and he isn’t one. Second, the respondent has no appellate authority, in that no appeals lie in the case of refusals of requests for records by information officers or deputy information officers of public institutions like LASA. And third, the respondent knows this full well, because when in August and December 2010 I sent her my first two PAIA requests, she personally responded to both by signing letters in October 2010 and January 2010 illegally refusing them. (The trickle of documents she provided in January, under SAHRC

pressure, were put up for her own purposes, claimed ‘To demonstrate’ her various contentions, not to answer my requests; and indeed, she even rejected and returned my prescribed request fee.)

6. That is, the respondent (or at least LASA’s lawyers advising her) appreciated that as information officer she had to deal with my PAIA requests herself. She only subsequently delegated National Operations Executive Brian Nair as a deputy information officer – in writing, as required by section 17(6)(a) – in March 2011. Whether the Board Secretary, described in LASA’s original 2006 PAIA manual as a national deputy information officer, was ever delegated in writing, I don’t know. She was removed from the revised 2010 version. I annex material excerpts of the two versions showing this, marked ‘B’ and ‘C’.

7. There was no (mistaken) suggestion in the respondent’s 2010 or 2011 letters to me that she thought she couldn’t deal with my PAIA requests because I had to appeal to her if they were refused. Indeed she was required to deal with them, and she did. Conforming to the Act, the original PAIA manual said nothing about appeals to her.

8. Ad paragraphs 8–9: Section 78 as quoted here, before it was amended, is stale, and isn’t the law any more.

9. Ad paragraph 10: The ‘framework’ is irrelevant to the decision of my claim.

10. Ad paragraph 11: Indeed I claimed, as I persist in claiming, that Mtati acted ultra vires in deciding my request. But that’s not the end of it. As I’ve shown in my reply to Bambiso, sections 7 and 45 which he also raised against me to justify refusing records I sought were furthermore irrelevant, so his refusal is insupportable. As is his false excuse that I’ve made the same request before. That is, there’s more to it than just his legal incompetence to handle my request, there are the incompetent grounds he advanced for refusing most of my request as well.

11. Ad paragraphs 12–14: The contention that my application ‘must fall on its face’ if Mtati can ‘prove [he] acted within [his] powers as a Deputy Information Officer in Legal Aid’ is wrong, because even if he does – and I’ll show he doesn’t – he still has to demonstrate that his refusal of records that I sought from the respondent under PAIA was justified by sections 7 and 45 or any other legally sound reason, and he can’t.

12. Ad paragraphs 15–17: What Mtati tells us here is that he began rewriting LASA’s PAIA manual in 2010 – the year in which LASA began illegally refusing my successive PAIA requests with the corrupt intention of suppressing records exposing the lies Nair and then the respondent herself had told me about why my appointment to LASA’s top professional post in KwaZulu-Natal had been aborted. (In court, Nair radically contradicted the story she’d told me; see below.)

13. Ad paragraph 18: What Mtati has written into the most recently revised (2013) PAIA manual, which he quotes, is that he’s a deputy information officer, along with the Chief Operations Executive (Jerry Makokoane), the National Operations Executive (Brian Nair) and the Chief Legal Executive (Patrick Hundermark). That is, and as I’ll show further, Mtati has incompetently and irrelevantly purported to appoint himself a deputy information officer, by writing himself into the post.

14. Some detail about LASA’s national deputy information officers would seem to be in order here. At the time I began using PAIA in August 2010 to test the lies I’d been told to cover the true reason my appointment had been aborted, the original PAIA manual posted on LASA’s website (several weeks later) informed me that the respondent was information officer; the Board Secretary was her national deputy information officer; and the Regional Operations Executives for

the various operating regions were her deputy information officers out in the provinces (annexure 'B').

15. In March 2011, as pressure mounted with my complaints to the SAHRC, to the Board, to the Justice Portfolio Committee, and to the Minister about the respondent's persistent, repeated illegal refusal to surrender records that would have further exposed the lies told me about the already obviously false budgetary excuse that had been fed me for the off-the-record abortion of my appointment, Nair fixed himself a written delegation under section 17(6) as a deputy information officer to deal again with my first two PAIA requests in August and December 2010 and my third in March 2011, now in his own name. He did this with the corrupt intention of abusing his new office to continue illegally suppressing records incriminating him – some later very reluctantly disgorged under sustained pressure in the labour litigation by dint of an application to compel discovery and two judicially supervised pre-trial conferences to force full and proper discovery. I annex Nair's delegation by the respondent marked 'D'.

16. At trial in July/August 2013, Nair tried weaselling out of his responsibility for lying in LASA's section 32 report to the SAHRC for 2010/11, which commenced by alleging (superfluously in a report on PAIA compliance): 'No decision taken yet on who should be appointed but the decision to freeze the post due to change in business needs-budget. The other information was provided except for information which was refused in terms of section 65 on the basis that it was not relevant to the exercising of the right he may have in law and further that the request relates to confidential information of third parties.'

17. Contrary to all these lies intended to ultimately mislead Parliament, in truth and in fact, I was the recommended candidate for the Pietermaritzburg Senior Litigator post, and no one else. The issue was not 'who should be appointed',

but whether or not I should be: the Approval Framework delegated Nair and the respondent as executing authorities to approve my recommendation by the selection panel, or disapprove it. No record whatsoever exists of any decision to freeze the post. There'd never been any such change in the budget and the post remains a budgeted, funded vacant post to this day. But the long-standing vacancy – unfilled for more than seven years now – has been concealed from the Minister and from Parliament in the respondent's and LASA's reports on the completion of its Strategic Plan 2009–12, which repeatedly state that Senior Litigators have been employed in this regard and omit to report that three of LASA's nine senior Litigator posts have been permanently frozen off the record, according to the respondent in her correspondence with me, confirmed on affidavit, and all LASA's pleadings and interlocutory affidavits in my labour case – including the Mthatha post specifically alleged by the respondent and LASA in all the said documents – but not including Mthatha according to Nair contradicting this in court. Beyond misleading the Minister and Parliament, as the respondent and LASA have done, HRE Amanda Clark has expressly lied to them about this, claiming in her entry in the Business Plan 2011/12 (and probably others, before and after): 'No longstanding vacancies.'

18. LASA's report on its handling of my August and December 2010 PAIA requests was a rank stew of mellifluous lies and cretinous legal gibberish. Section 65 had never been invoked against me, and was completely irrelevant: it concerns PAIA requests addressed to private bodies and the 'Mandatory protection of confidential information of third party' held by them. I'd never sought any 'confidential information about any third party'; and it's elementary that a PAIA request made by a requester for access to public body records doesn't have to be 'relevant to the exercising of the right he may have in law'. On its own version, LASA had illegally withheld duly requested documents from me under cover of this lying legal junk.

19. I mention this characteristic casual mendacity of LASA's head office staff to alert this court to the fact that anything goes when it comes to covering their tracks. Because if they'll lie to the SAHRC for the misinformation of the National Assembly in turn, they'll lie to anyone, this court included. (Nair's lies through Mlambo JP to the Minister and then to the National Assembly in secret reports he drew to pervert their enquiries into my fundamental rights complaints, alleging perfect compliance with my PAIA requests in 2010 and 2011, and his lie about why he didn't immediately finalise my appointment, which, after I exposed it, he later retracted on affidavit as 'an error', 'palpably an error', then revived it in court claiming it had been retracted in error, then contradicted it – all this is beyond the scope of this application.)

20. Nair's evasion in court of his responsibility for the false contents of the said section 32 report was to claim that COO Jerry Makokoane was also a deputy information officer, so he must have been the author of the just-quoted multiple lies it contained. The report was signed by Sekgota on the same day that Nair signed his responses again to my first and second PAIA requests in 2010 that the respondent had refused, about which I'd complained to the SAHRC, and to my third request in March 2011 (he signed section 23 affidavits too); and Makokoane never had any involvement in the abortion of my recruitment or the handling of my PAIA requests, whereas Nair was at the centre of it. So it was wholly improbable that Makokoane was the real author of the lies in the section 32 report, and highly likely that Nair was.

21. After trial, while investigating Nair's claim that Makokoane was a deputy information officer now too, I revisited LASA's PAIA manual online, and found it had been changed and that Makokoane was indeed now identified as a deputy information officer along with Nair (annexure 'C'). But the Board Secretary no longer.

22. It looked certain that Makokoane hadn't been designated by the respondent at the time he was included with Nair in the November 2010 revision of the PAIA manual, because Nair was only delegated in writing by her in March 2011, so it's highly unlikely that Makokoane was delegated by her before then – indeed ever (to my knowledge he's never handled any PAIA matters). So in my instant PAIA request I included a request for Makokoane's written delegation by the respondent.

23. As expected, Mtati refused to supply it, or admit on oath he couldn't supply it, because contrary to the misinformation of the public by the LASA's PAIA manual, Makokoane has never been duly delegated in writing by the respondent as a deputy information officer.

24. Now Mtati tells us the manual has been revised by him again, and that his latest 'development' of it has been to include himself and Hundermark as deputy information officers as well. (As at current date, the 2013 version of the PAIA manual referred to and quoted in paragraphs 17 and 18 Msweli's affidavit isn't 'easily accessible onto [sic] Legal Aid SA's website' as she wrongly alleges, only the previous 2010 version.)

25. The information to the public contained in the current edition of the PAIA manual that Mtati is a deputy information officer is false. Likewise his claim in his answering affidavit.

26. Mtati obviously can't appoint himself as a deputy information officer by editing the manual to include himself as one – even if the Board approves of his self-appointment (per his paragraph 13), because the only way Mtati and/or anyone else can become a deputy information officer at LASA under PAIA is if the respondent designates him as such by way of a written delegation under section 17(6).

27. The Board can't designate a deputy information officer, not even in writing. Only the respondent has this power.

28. And a deputy information officer is not designated as such by the inclusion of his name in a PAIA manual. Designation is effected by an information officer's written delegation.

29. Had Mtati held a written delegation when he dealt with my PAIA request in November 2013 and answered my application in August 2014, he'd have put it up with his answering affidavit to refute my direct statement of fact at the end of paragraph 11 of my founding affidavit: 'Mtati holds no written delegation as a deputy information officer appointed by Vedalankar under section 17.' He didn't do so, and the reason he didn't do so is that indeed he holds no such written delegation.

30. And it's obviously too late to come running to court with a back-dated delegation (the evidence shows that anything is possible from LASA's executives: any chicanery, perjury in affidavits and in court, even lying to the Minister and to Parliament), because had Mtati held a delegation from the respondent when he made his affidavit, he'd have put it up – just as Nair did on 8 April 2011, to establish his authority to deal with my three PAIA requests of August and December 2010 and March 2011, and to continue illegally refusing them to hinder my disassembly and refutation of the elaborate cover story given me for why my appointment was aborted.

31. The high-water mark of Mtati's claim to be a deputy information officer and therefore 'authorised to discharge the duties and responsibilities assigned to the Information Officer relating to access to information' is that the PAIA manual that he rewrote says he is, whose wording he changed to say he is. But that doesn't make him a deputy information officer under PAIA. (Declaring himself Napoleon in some document doesn't make Mtati the French Emperor; and

posing and acting as him with his hand tucked between his coat buttons doesn't change this, if in fact he's not.) So contrary to his sorry misconception about this, he wasn't 'entitled, when [he] did, to respond to [my] request and to depose to the section 32 [sic: 23] affidavit which [he] delivered to [me].'

32. Mtati's 'failure to appreciate the above facts' means his claim to be a deputy information officer is seriously mistaken. He had no authority to respond to my request and to refuse nearly all of it, as I complained in my founding affidavit, and he indeed acted ultra vires and therefore illegally in doing so, as I said.

33. Ad paragraphs 22–37: Mtati has cited a stale version of the Guide; the '2012 version is' not 'still the applicable version to date' – the 2014 edition is. Most of what he talks to in these paragraphs is anyway irrelevant. And his contention that I was bound to sue in Johannesburg is wrong.

34. Very junior counsel has lazily copied from his Bambiso affidavit and pasted into his Mtati affidavit his ignorant, irrelevant and nonsensical argument that I should have sued the respondent 'not at [her] regional address' but at her 'principal address'.

35. She doesn't have a 'regional address'; under this court's rules of service, a natural person doesn't have a 'regional' or 'principal address'; and I had the sheriff serve the respondent by delivering the application to her receptionist at LASA's head office in Braamfontein where she's employed (annexure 'E') – although she could equally effectively have been served had the sheriff handed her my papers at the top of Table Mountain. Or even dropped them at her feet.

36. Ad paragraphs 38–39: The peculiar thing about Mtati's sworn claim that the respondent 'passed the ... request for information to [him] for a response ... because the information sought relates to a dispute/issue that [he is] familiar with' is that Nair's evidence at the trial of my labour claim in July/August 2013 – diametrically contradicting the respondent's correspondence with me, the

pleadings, and the interlocutory affidavits all claiming the Mthatha Senior Litigator post was simultaneously frozen (off the record) with the Pietermaritzburg and Durban posts – put the ‘issue’ of Mahikeng Senior Litigator Nzame Skibi’s cancelled transfer to Mthatha entirely outside my ‘dispute’ with LASA over the abortion of my appointment to the Pietermaritzburg Senior Litigator post. Because on Nair’s brand-new version at trial, the respondent was personally more ‘familiar’ with the cancellation of Skibi’s transfer (a major subject of my PAIA request) than anyone, Mtati included, for the reason that, according to Nair, stating this to the judge under oath on pain of imprisonment for perjury, the respondent had refused, despite his repeated pleas and attempts to persuade her, to approve the Legal Services Technical Committee’s (‘LSTC’) unanimous resolution to transfer the Kimberley Senior Litigator budget, where it reportedly wasn’t needed, to Mthatha, where it was, and very badly, according to then Eastern Cape ROE Mtati’s motivation for the creation of the post there; and the respondent’s refusal was the direct and single cause of the cancellation of Skibi’s appointment at Mthatha. (Naturally, since Nair’s new story in court implicating the respondent like this was a lie, he said he knew of no record of the respondent’s refusal to approve the abolition of the Kimberley post and the creation of the Mthatha one, and the transfer of the budget between centres.) The reason the respondent refused to approve the transfer was because she was ‘not happy’ about it, Nair said. That is, on his new version in court, the respondent ‘wasn’t happy’ with the efficient utilisation of LASA’s unspent, available budget for a Senior Litigator at a centre where it was badly needed, supported by him and the entire LSTC, so the recruitment had to be aborted. Being the direct cause of it, the respondent – according to Nair under oath in court – was more ‘familiar’ with this than anyone.

37. It seems clear therefore from Mtati's sworn allegation here that in truth and in fact the respondent was not 'familiar' with the cancellation of Skibi's transfer in the circumstances alleged by Nair in court, and that Nair perjured himself in making up his new story that she was directly to blame for it, that he was quite innocent of any complicity in it because he really wanted Skibi in Mthatha, which is why, he alleged, he repeatedly tried to persuade her to agree to the transfer of the budget.

38. The respondent's confirmatory affidavit ('TM3') in relation to Mtati's answering affidavit therefore suggests she'll repudiate Nair's perjury about the reason Skibi's appointment and transfer were cancelled, and his lying under oath in court when he blamed her for it.

39. To the extent that the respondent might have been referring to my labour 'dispute/issue', her claim not to be less 'familiar with' it than Mtati stands contradicted by her letter to me in October 2010, reiterated in her January 2011 letter, and confirmed by her on affidavit in April 2011, in which she alleged that she and Nair aborted my appointment for budgetary reasons by simultaneously freezing the Pietermaritzburg, Durban and Mthatha posts. And in court Nair claimed that it was the respondent who suggested the posts be frozen. Only, he contradicted her by alleging the Mthatha post was never frozen; Skibi's transfer and appointment were cancelled because she wouldn't approve the transfer of the budget from Kimberley to Mthatha.

40. All this bears on my claim for an order disqualifying Nair from carrying out this court's order and that the respondent must do so herself.

41. Ad paragraph 41: Mtati alludes here to section 7(1) of PAIA, and he's specific about this section in his paragraphs 44ff, as he was in his letter refusing me access to most of the documents I requested.

42. The section proscribes the production at trial of any documentary evidence obtained via PAIA after the litigation has commenced, save with the court's leave under section 7(2).

43. It's elementary that section 7 doesn't afford an information officer a ground for refusing a PAIA request, not being 'a ground for refusal contemplated in Chapter 4' as section 11(1)(b) puts it. The SAHRC has even given LASA's national office staff a special lesson on this. Teaching them how section 7 works was one of the specific subjects mentioned in its report afterwards. When despite this special lesson Mtati persisted in misreading and misapplying section 7 – also contravening section 11(3) in guessing and considering my reason for requesting the documents I'd specified – the SAHRC treated him to an extra special lesson by email. Regrettably, neither of the lessons sunk in. (The SAHRC's unsuccessful special lesson and its extra special lesson on the operation of section 7 for LASA's slow learners are detailed in my reply to Bambiso.)

44. Ad paragraph 46: It wasn't 'palpable' that I 'sought this information to pursue either civil or criminal proceedings against ... Nair', because I never stated or even hinted at such a purpose, and moreover because in his paragraph 41 Mtati announces his wrong surmise that I wanted the records for my labour case. So this smooth-sounding claim is yet another casually told lie, under oath.

45. Section 11(3) specifically prohibits an information officer from surmising the purpose of a records request and then deciding on the basis of what he thinks it is whether or not to grant the request. So Mtati had no business guessing my purpose in making my PAIA request, and on the strength of his guess deciding whether to grant it or not. (As said, the SAHRC has even given Mtati a special lesson about this.)

46. Indeed I want the records inter alia ‘for litigation purposes ... to criminally prosecute Mr Brian Nair who sits as National Operations Executive in Johannesburg’ (if only for now) and to go after him in civil and disciplinary proceedings too; and these serious ‘purposes’ stated in my founding affidavit are impeccable, and no bar to the release of the records I’ve requested.

47. Unable to make sense of section 7, even though it’s clearly worded, both the respondent (per ‘TM3’, paragraph 2.2) and LASA’s top attorney Mtati (per his paragraph 3), agree with the useless ‘legal advice’ and clueless ‘submissions of law’ of their very junior counsel who has trouble learning even when things are repeatedly explained to him.

48. Ad paragraphs 49–55: On his own showing in these paragraphs, Mtati fully appreciates that I ‘seek all this information to arm [myself] for purposes of pursuing ... cases against members of Legal Aid SA,’ and that my litigious intentions are therefore serious. I say enough about them in my founding papers to bat section 45 out of court. So section 45, which justifies refusing requests that are ‘manifestly frivolous or vexatious’ or where ‘the work in processing the request would substantially and unreasonably divert the resources of the public body’ can have no bona fide application here.

49. On the face of my request, and even without my indication of my purpose behind my request stated in my founding affidavit, there was nothing to suggest it was a deliberate waste of the respondent’s time. Rather, on very junior counsel’s advice, section 7 was the basis of the refusal, with section 45 invoked as a feeble afterthought to work as a sort of catch-all, just in case section 7 failed to justify the refusal. Which it can’t and doesn’t.

50. Paragraph 5.1 of Mtati’s letter goes: ‘Items 1 to 10 of Annexure to your request is hereby refused in terms of the provisions of section 45 of the Act. The information or records requested relates to the civil proceedings already before

Court.’ Paragraph 5.12 goes similarly: ‘Items 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40 and 41 of your request is hereby refused in terms of the provisions of section 7 and section 45 of the Act. The information or records requested relates to the civil proceedings already before court.’

51. So the basis of the refusal fully explained by Mtati in these paragraphs is that my request for the records ‘relates to the civil proceedings already before court’ – which was both irrelevant under the Act and wrong to the extent that Mtati assumed I wanted to use the records in my labour case.

52. Ad paragraphs 57–77: Mtati’s claim in paragraph 65 that I ought first to have appealed to ‘the CEO – the Information Officer or even the Board headed by a judge’ is wrong. Neither have any appellate authority under PAIA, for the reason I explained in my reply to Bambiso.

53. Ad paragraphs 78–94: The dispute that the Cele J at the Durban Labour Court is seized with (he’s currently considering my application for leave to appeal against the multitude of most basic legal and factual misdirections in his judgment, and for leave to lead further evidence surfaced after trial proving categorically that Nair perjured himself on two peripheral scores, thus devastating the credibility of his central evidence) are quite distinct from the issues – the real issues – joined by Mtati in this court, namely whether he’s a deputy information officer or not, and whether sections 7 and 45 justified his refusal of ‘most of’ my PAIA request.

54. The trial documents and the transcript of the trial record in my labour case have no bearing on this application.

55. The decision of this claim can’t have any bearing on the correct eventual decision of my labour case in the Labour Appeal Court.

56. The just-mentioned issues before this court can readily be determined on the papers, without referring them to oral evidence.

57. The conduct of the individuals named in paragraph 78 is not on trial here; but it certainly will be in cases brought before different tribunals later.

58. Ad paragraphs 95–7: Mtati’s claim that I ought to have first appealed to someone in LASA is wrong and is unsupported by PAIA.

59. Ad paragraphs 98–123: Mtati’s claim that this court has no jurisdiction is wrong. Where the respondent ‘resides’ and ‘where the decision in issue herein was taken’ is irrelevant to the extent that I rely on subsection (b)(iii) of the Notice. Very junior counsel, writing for Mtati, seems not to have seen the ‘or’ after subsection (b)(ii).

60. I’m not ‘an Acting Magistrate in this very same court’, but at another court in the same town.

61. Though the word ‘unlawfully’ is set in inverted commas in paragraph 109, suggesting that my first three PAIA requests in 2010 and 2011 weren’t illegally refused, as I’d persistently complained, the SAHRC itself confirmed on 29 June 2011: ‘A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer of LASA [Nair] is made in your memorandum.’ So it’s really very dishonest to pretend to this court by using inverted commas like this that my earlier PAIA requests weren’t illegally refused. Especially since several of the illegally suppressed documents were later forced out of LASA in the subsequent litigation before the trial.

62. Mtati’s complaint that I deliberately sought to disadvantage the respondent by suing out of this court, as I was entitled to do, is wrong.

63. His claim that I’m ‘ordinarily a resident of Pietermaritzburg’ where I don’t have any home is wrong. Next he’ll allege I’m ordinarily a resident of Japan.

64. If the respondent fails to carry out this court's order, I'll apply on the same papers, amplified as needs be, for an order that she be arrested and committed to prison for contempt of court; and any sheriff in the country will be able to execute this court's warrant. So contrary to very junior counsel's 'legal advice', this court indeed has the 'power to compel her to comply.'

65. It's very junior counsel, writing for Mtati, who's 'lost it again, with respect, and I am firm on the point.'

66. Ad paragraphs 124–35: Mtati's claim that there are material disputes of fact is wrong.

67. I'm not seeking any adverse character findings. Nair is naturally disqualified from carrying out this court's order that the respondent comply with my PAIA request, because it's directed at gathering further documentary evidence for his criminal prosecution and for the institution of civil and disciplinary proceedings against him.

68. In paragraphs 88ff of my founding affidavit in the Bambiso case I showed how records Mtati released to me flatly and incontrovertibly exposed Nair's lies to court under oath on two scores, which means he's a proven liar and perjurer. Nair had an opportunity to respond to the clear evidence I presented of his perjury, but unlike in the preceding application against Bambiso in which he put up a bald confirmatory affidavit, he chose in this case to sit completely mum instead.

69. In all the circumstances, Nair obviously can't be expected to carry out this court's order honestly; and there can't be any sensible debate about this.

70. Mtati's claim that this court needs to read the thousands of pages of trial documents and the transcript in my labour case to get 'the full picture of the dispute underlying this application' and to 'understand and contextualise this

dispute’ is wrong; the only issues are whether the refusal of most of my request was justified and whether Mtati was competent to handle it.

71. Mtati’s claim that ‘the same facts and issues averred in this application are, in any event, pending in the Labour Court’ is wrong: the Labour Court wasn’t concerned with the just-mentioned two issues at all, and couldn’t possibly have been, because the issues before this court for decision arose after the trial.

72. This court’s finding that Mtati’s refusal of most of my request was incompetent and unjustified will be quite unrelated to the Labour Court’s finding made that I didn’t prove LASA unfairly discriminated against me (the court misallocated both the evidential and final onuses, just for starters) or the Labour Appeal Court’s future finding that it plainly did, so this court will naturally be ‘ruling differently’. Mtati’s talk that consequently ‘This court is placed in a trap’ is mere noise.

73. Ad paragraphs 136–9: Mtati’s point about not ‘exhausting ... internal remedies ... before launching this application’ is wrong. There weren’t any ‘remedies’ for me to ‘exhaust’.

74. Ad paragraphs 140–7: Mtati’s claim that I waived my fundamental right to information for the reasons he gives is all wrong. In view of the strict *numerus clausus* of grounds for refusal in Chapter 4 of the Act, any minor overlap between the records that I demanded LASA discover for trial in my labour case, and those listed in my very much more extensive instant request under PAIA, is irrelevant. Such overlap doesn’t give rise to a ground for refusal.

75. PAIA doesn’t contemplate and allow this newly concocted, irrelevant waiver excuse for refusing my request. In his letter, Mtati justified his refusal ‘in terms of the provisions of section 7 and section 45 of the Act. The information or records requested relates to the civil proceedings already before court.’ These

then are his reasons for trial in this court, and he can't now come along making up useless new excuses for continuing to hide the documents I've requested.

76. Mtati's claim that I 'did nothing about [my] right to approach Court to enforce the right' to documents that LASA violated is both untrue and legally irrelevant. First, section 7 precluded me from using PAIA 'early last year' during the litigation commenced in July 2011, so there was no question of 'launching this application' at that stage. Second, although it's immaterial to the decision of this case, the truth is I approached court repeatedly to disgorge the documents I needed for trial that LASA was withholding: I brought an application to compel discovery in January 2012; had a pre-trial conference held at court in January 2013 at my request to the same end; had another in June 2013 for the same reason; and finally had a subpoena duces tecum issued by the registrar for a key document to be brought to court. Mtati knows all this full well.

77. It's very true that I knew of 'Legal Aid SA's position as early as 6 November 2013 or shortly thereafter what the answer was in respect to the information [I] sought' (paragraph 141.1). 'Legal Aid SA's position' was that its management executives would not respect my fundamental right to information secured by section 32 of the Constitution, and they were determined to continue concealing and withholding material documents – or in certain critical instances avoid admitting on oath that they didn't exist – with the intention of perverting the course of justice. This was 'Legal Aid SA's position'.

78. And I learned from Board chairperson Mlambo JP's first tersely dismissive, then aggressively threatening correspondence with me on 30 December 2010 and 24 January 2011, in response to my repeated entreaties that he and the Board intervene in the respondent's persistent illegal refusal of my PAIA requests in 2010, clearly demonstrated in my petitions, that the respondent's

violation of my fundamental right to information entrenched by section 32 of the Constitution and her illegal refusal to comply with PAIA was of no concern to him whatsoever.

79. It did not concern the senior judge at the head of LASA's Board that the respondent was violating my constitutional rights and breaking the law. The senior judge saw nothing wrong, he said. Twice.

80. He even allowed her – the very subject of my complaint – to write his first dismissal of my complaint about her on her own computer while he was overseas and to paste a scanned copy of his signature into the letter, to make it look like he'd written it. Again, the PDF 'Author' properties gave the game away; and all this was admitted in the pleadings in my labour case.

81. Contrary to the muddled false claim in paragraph 141.2, I did indeed 'approach Court to enforce the right' to information that Mtati indeed violated, and I did so with this application.

82. I've never made any 'election' to waive my fundamental rights. Successfully obstructed, and practically out of time to further pursue certain withheld documents for trial further by the time the second pre-trial conference was held at court a couple of weeks before trial in my labour claim, I quit chasing them at that stage, and lost the advantage of presenting them to the trial judge. (My last-ditch attempt was a subpoena duces tecum, disregarded.) Some of these documents I've requested again, now under PAIA, for a quite different, albeit irrelevant, purpose. The only grounds on which a PAIA request can be refused are enumerated in Chapter 4, and this new clever-sounding story about my alleged 'election' to waive my rights doesn't figure among them.

83. I had this application issued within six months of Mtati's refusal of my request 'in November 2013', as envisaged by section 78(2) as amended. Since

there was no ‘undue delay’ on my part, I don’t need to show ‘good cause’ for why I brought my application when I did.

84. (Thanks to Post Office inefficiency, I experienced repeated delays in getting my papers to the sheriffs for service, which I comprehensively explained to LASA’s attorneys, with supporting vouchers; and tacitly accepting this, none of the respondents in any of my three PAIA applications have taken the point that I brought any of my applications out of time (I emailed copies in time), hence I haven’t brought any condonation applications rehashing the cause of these delays that weren’t of my making. In the same spirit, I haven’t called Msweli’s answering affidavit out of time.)

85. Mtati says ‘it is not clear why’ I brought three applications to compel compliance with PAIA. It’s immaterial to the issues before this court – namely whether Mtati was competent to handle my request, and whether sections 7 and 45 justified his refusals – but it’s plain on its face that my PAIA request directed at the respondent was very much more substantial than those directed at Bambiso and Msweli, and canvassed many different matters that I’m investigating, with criminal, civil and disciplinary proceedings in mind. My strategic reason for directing different PAIA requests at Bambiso and Msweli (precisely explained in my replying affidavit in the Bambiso case) is irrelevant to the decision of this application. I acted within my rights and perfectly properly, and Mtati’s excited fulmination about my ‘extreme abuse of court’ is unfounded, wantonly insulting nonsense.

86. Ad paragraphs 148–158: Being entitled to sue out of this court as an ordinary resident in its area of jurisdiction, I don’t need any further reason; but I stated it anyway in my reply to Bambiso. I didn’t have to sue in Johannesburg. My choice to sue here had nothing to do with seeking any ‘unfair advantage’; nor is any available to me, because I’m as much a stranger to this court as the

respondent is. The rest of Mtati's claims in these paragraphs of 'bias' and so forth are factually mistaken and legally wrong.

87. Ad paragraphs 161: Mtati's claim in his letter, repeated in his answering affidavit, that sections 7 and 45 justified his refusal of most of my request is wrong.

88. Ad paragraph 162: This court may grant any relief under PAIA that it considers equitable, and Mtati's contention to the contrary is wrong. The prayer is quite clear to anyone who reads it carefully.

89. The reason the 'people mentioned in the prayer are not before court' and 'have not been cited as parties' in this application is that I claim no relief against them. (This is an elementary principle of civil procedure, seemingly lost on LASA's lawyers.) My claim is against the respondent personally in her capacity as information officer and none other, and I want her directed to carry out this court's order and nobody else.

90. When I launched my application, I knew Nair was a deputy information officer, delegated by the respondent in writing under section 17(6) of PAIA, because he'd annexed his delegation to his responses to my PAIA requests of 2010 and 2011.

91. I didn't know of any other delegated deputy information officers in the national office, and that's why I sought an order that the respondent herself carry out this court's compliance order and not her deputy information officer Nair. (Preparing this reply, I was reminded by LASA's original PAIA manual that the Board Secretary was then stated to be deputy information officer in the national office.)

92. Unlike other delegations of power, the delegation of a deputy information officer under section 17(6)(b) is provisional, in that an information officer can at

any time take over the handling of a PAIA request from a deputy information officer to ensure it's properly complied with.

93. The extraordinarily serious facts of this case warrant the respondent's personal compliance with this court's order and no one else.

94. I didn't believe Nair's story in court that COO Makokoane was also a delegated deputy information officer (Nair was trying to blame him for the false section 32 report for 2010/11 that he'd drawn, and got Sekgota to sign), so after trial I asked to see Makokoane's written delegation among the records specified in my PAIA request founding this application. Unable to produce it, Mtati refused it; but how it related to my unfair discrimination claim (his justification for refusing it, anyway irrelevant) he didn't say.

95. Now Mtati claims a whole bunch of national executives are deputy information officers these days, himself included; but the only evidence he produces of this is LASA's PAIA manual that he's been rewriting since LASA's troubles with my PAIA requests started in 2010 – threatening to expose the corruption in its national office and for that reason illegally refused. He doesn't put up any delegation of himself or the others. That is, the best evidence Mtati produces to vouch that he and the other executives he mentions are now deputy information officers too is a new paragraph he's written into the PAIA manual. Only, that won't do, because section 17(6) of the Act is quite specific: only a written delegation by the information officer qualifies someone as a deputy information officer – so Mtati can't competently go appointing himself and his friends by rewriting the PAIA manual. Even if he gets the Board to approve it.

96. I have 'elected to sue the CEO in this matter' because she unlawfully failed to comply with my PAIA request. Mtati says, 'She is the person to respond hereto and any order would be directed at her.' Well exactly, and that's just what I want.

97. Mtati doesn't contest that after trial I trapped Nair in his lies told the judge about his knowledge of the special PAIA training workshop that the SAHRC held for LASA and about the PAIA audit it conducted. Someone who lies freely under oath like Nair does, and against whom I'm preparing a raft of criminal, civil and disciplinary cases involving multiple counts, is obviously disqualified from handling my request for more documents that will further expose the extent of his criminality and other capital misfeasance; but if Nair wants to put up an affidavit contesting this and contending that contrariwise he's a fit and proper person to carry out this court's compliance order, he can file a belated affidavit saying so, having forgone his first chance when Mtati answered. As I said from the start, I'll give him a copy of all the papers. He'll need to address the clear-cut evidence that he perjured himself in regard to his knowledge of the SAHRC's PAIA workshop and audit.

98. Ad paragraph 162.7: The respondent is in charge of the national office. She's in final control of its records, both printed and stored on staff computers and on office servers. If the respondent fails to implement this court's compliance order fully and properly, and it's necessary to return to this court for a search and seizure order on amplified papers, the draft order sought will be meticulously precise, also naming the independent IT expert and providing his credentials for this court's approval. The order is quite sufficiently precise for present purposes.

99. Ad paragraph 163: I've dealt with this already.

100. Ad paragraph 164: It would have been useless ordering LASA as a corporation to publish this court's orders, because in the event of non-compliance I'd have had no relief available to me by way of committal proceedings. The respondent is both CEO and information officer, and has only to snap her fingers for the orders to be published by LASA's communications

staff. This is why I claimed an order that she be made responsible for seeing to the publication of the orders. So that upon her failure to carry out its order she can be called up by this court to explain why she shouldn't be jailed for contempt, for as long as and until such time as she directs her communications staff to publish the orders as ordered.

101. Ad paragraphs 165.2–3: I've already dealt with this.

102. Ad paragraphs 165.4–15: LASA's top attorney Mtati and his very junior counsel appear to be unfamiliar with this sort of routinely granted order, which I've framed in standard terms. The rest of their confusion evident in these garrulous paragraphs will hopefully be dispelled during argument.

103. Ad paragraph 166: Mtati has merely to look again at the order I sought here to see his mistake about copying.

104. The record of this case deposited in the archives of a country court will not come to the attention of the several authorities I've mentioned unless the case is pertinently brought to their attention. (Mtati's and the rest of the LASA's head office's desperation that these authorities should not learn of the case is understandable: ultimately there's going to be sacking and jailing.)

105. Ad paragraph 167: The 'unnecessary mistakes of law that beset this application' are not mine but very junior counsel's, Mtati's, and the respondent's (per her paragraph 2.2).

106. Ad paragraph 168: It's very true that I 'only live in Eshowe by virtue of an acting position [I've] taken thereat', for indeed I'm only here for the medium term until the final determination of my labour claim and I'm instated to the Senior Litigator post for which I was duly recommended – before Nair decided to throw the selection panel's recommendation of me into his bottom drawer and then start telling lies about why, when I began knocking and then beating on

the door. But it's untrue that I'm 'an ordinary resident of Pietermaritzburg', inasmuch as I currently have no ties with the place whatsoever. Indeed I have no fixed 'assets attaching to [my] name at Eshowe'. This is quite right but it's immaterial.

107. Ad paragraph 171.2: The respondent has failed to prove that Mtati holds a written delegation as a deputy information officer, as section 17(6) requires; and she's failed to prove that sections 7 and 45 justified her refusal via Mtati to allow me access to the public body records I duly requested of her. I'm consequently entitled to the relief I claim, with the particular specification of my orders claimed warranted by the exceedingly grave factual background that I've set out.

108. Ad paragraph 175.1: As said, two emails flushed out of LASA with my PAIA request in this case prove categorically that Nair contemptuously lied to the trial judge under oath on two separate scores; and I expect that when, in compliance with this court's interdict, the respondent eventually surrenders the remaining majority of the documents that I requested, more of Nair's perjury at trial will be exposed, for his criminal prosecution on further counts.

109. Ad paragraphs 176.2–3: Sure, Mtati is 'authorised to sign all legal processes for and against Legal Aid SA', but it's irrelevant, because my claim is not against LASA but against the respondent personally in her official capacity as its information officer.

110. Mtati's showing before this court that he's a deputy information officer – he refers only to his self-description as such in the PAIA manual – falls short of the legal requirement of a written delegation by the respondent. He doesn't have a delegation to show this court, so he's not a duly designated deputy information officer under the Act, and his purported section 23 affidavit is therefore useless.

111. Ad paragraph 177: The decision is now in, but it makes no difference. My purpose in requesting the records is anyway irrelevant under section 11(3). The SAHRC has tried to teach Mtati this simple, clear statutory rule, but its special lesson given him obviously fell on deaf ears.

112. Ad paragraph 178: There's no provision in the rules of the Labour Court, or in any other court, for demanding documents after a trial. The rules of pre-trial discovery are directed at gathering documents for proof of a claim or a defence at trial, not after it. After the trial I used PAIA to gather documents for a different purpose, namely for Nair's prosecution in criminal, civil and disciplinary proceedings. Such a heavy purpose can hardly be 'manifestly frivolous and vexatious' and can't be said to have 'the effect of diverting much needed resources away from Legal Aid SA's mandate.' To Mtati this ought to be 'obvious, with respect'.

113. Ad paragraph 179.3: Sections 7 and 45 are entirely unrelated, so the claim that they 'complement each other' is arrant nonsense.

114. Ad paragraph 179.4: The claim that my 'reason ... disclosed in this application ... for collecting all this information' namely for bring criminal, civil, and disciplinary cases against Nair and maybe other LASA officers means my request 'falls squarely within section 7 of the Act' only goes to show that Mtati and the respondent shouldn't have bunked the SAHRC's special lesson given to LASA's national office staff on 'the need to ensure that clients who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants', as the report of the workshop recorded afterwards.

115. Probably due to his inexperience as a lawyer, and his apparent unwillingness to learn, their very junior counsel who drew the respondent's affidavit still doesn't understand how section 7 works either, even though I tried explaining it nicely in paragraph 18 of my founding affidavit.

116. Nothing in section 7 precludes me from gathering documents via the Act with a view to commencing future litigation, and from then using the documents gathered as ammunition for it. Yet despite the SAHRC's repeated instructions that it doesn't, the respondent, LASA's top lawyers and their very junior counsel all cluelessly insist that it does.

117. Ad paragraph 179.5: I don't know what Mtati's talking about. I never lodged the same request or served the same 'application' on the respondent 'previously', so it couldn't have been 'previously entertained by Head Office'.

118. Ad paragraph 180.2: The 'facts forming part of this case' in this court have never been sub judice in the Durban Labour Court. The disputes in the two courts are quite distinct.

119. Ad paragraph 181.3: Now that Cele J has finally given judgment, I can report that Nair was indeed found to have perjured himself repeatedly at trial. Before testifying, he solemnly swore an oath 'to tell the truth, the whole truth and nothing but the truth'. In his judgment, however, Cele J found that 'the applicant pointed out a number of facts and circumstances in the case of the respondent to suggest that Mr Nair was not generous with the truth', i.e. he repeatedly violated the oath he took to be completely honest with the court – and manifestly so, on the ludicrously improbable face of what he said, or exposed by his previous contradictory evidence on affidavit, by LASA's contradictory affidavits and pleadings drawn on his instructions, and by the documentary record contradicting him. (Nair's many perjuries, elliptically acknowledged by the judge, are very precisely 'pointed out' in my heads of argument, archived with the judgment and my appeal application online at www.tig.org.za/LC.)

120. Ad paragraph 182.2: The 'point' that I 'prove' with these two emails obtained via PAIA is that Nair repeatedly lied under oath in court – it's

incontestable and isn't contested – so for this reason, and the fact that he's the main target of my investigation, he obviously can't be trusted to comply honestly with this court's order that the respondent comply with my PAIA request and hand over the evidence I'm seeking for his prosecution. In short, Nair can't be trusted to give me the rope that will hang him. So notwithstanding the respondent's written delegation of Nair as deputy information officer in her national office, she needs to respond personally to this court's order that she comply with my PAIA request under her section 17(6)(b) power to do so.

121. Ad paragraph 182.3: From the outset in this application I've mentioned my intention to use the records obtained from the respondent for criminal, civil, and disciplinary proceedings against Nair and maybe others. Mtati's, the respondent's, and their very junior counsel's notion expressed here that documents elicited under PAIA can't be used in court is pitifully ignorant.

122. Ad paragraph 182.4: My paragraphs 22–7 and 31–2 directly support my sixth order claimed, so there'll no basis for any application to strike them out, as promised.

123. Ad paragraph 183.2: It's beyond dispute that LASA repeatedly failed to comply with its reporting obligations under section 32 – both its PAIA compliance reports to the SAHRC for 2010/11 and 2011/12 were false – resulting in LASA being reported to Parliament by the SAHRC in October 2012, after I brought this to its attention, as a disgraceful 'case in point' illustrating the problem of non-compliance with PAIA by public bodies. (Strangely, the SAHRC didn't report LASA's substantial non-compliance with PAIA, and the 'unlawfulness' (the SAHRC word) of LASA's repeated illegal refusal of my PAIA requests in 2010 and 2011.) The SAHRC was not 'incorrect' in reporting LASA's false reporting, as falsely alleged here. Mtati has direct knowledge of this repeated false reporting, because the SAHRC pertinently

raised it with him in its August 2010² email to him. The SAHRC duly noted LASA's failures to report all its refusals of my record requests – thereby corruptly concealing from the National Assembly, via the SAHRC's section 84 reports, its repeated violation of my fundamental right to information and its illegal suppression of incriminating documents with the intention of defeating the ends of justice.

124. When called on by the Portfolio Committee to please explain, 'Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgment about this' – as the Parliamentary Monitoring Group's minute of the meeting recorded it. In truth and in fact, nothing in the SAHRC's PAIA report was 'untrue', as the respondent falsely alleged to the Portfolio Committee. I was not 'in court' when I made my first three PAIA requests on 30 August and 15 December 2010, and 9 March 2011 – I only referred my dispute to the CCMA for conciliation on 29 March 2011 and to the Labour Court on 20 July 2011. No 'official judgment about this' alleged issue was pending. Everything the respondent told the Portfolio Committee was itself 'untrue', which is to say she misled Parliament. Nair was with her, and was probably responsible for these lies, seeing as the record shows he habitually lies through others, including even chairperson Mlambo JP. (He can answer this charge in any affidavit he might wish to submit.)

125. Ad paragraph 183.4: The 'certain documents ... delivered' to me show unequivocally that Nair perjured himself in court in denying his knowledge of the SAHRC's PAIA training workshop for LASA and in its audit of LASA for PAIA compliance. These are the 'accusations' I'll be levelling in criminal charges against him to follow, among masses of others.

126. Ad paragraphs 184.2–3: All this is wrong for reasons already mentioned.

127. Ad paragraph 186.1–2: I didn’t use PAIA to obtain documents for this case (i.e. this application to compel), but for other cases I intend bringing; and nothing in the Act prevents me mentioning in this application any of the few documents released in response to my PAIA request and their implications for the credibility and honesty of the deputy information officer I’m investigating regarding his conduct in his other capacity as National Operations Executive, and who I want declared disqualified from carrying out this court’s compliance order. So the respondent would obviously be well advised to obtain some proper legal advice before her promised ‘Notice of Motion seeking’ my paragraph 35 ‘to be struck out’ is ‘lodged’. More especially since I used PAIA before commencing this case to compel the respondent’s compliance with my request, so section 7(1) can’t and doesn’t kick in.

128. Ad paragraph 187: Since my purpose has been clearly stated, there’s no point in responding to all the faffing in this paragraph.

129. Ad paragraph 188: I’ve disposed of all of this already.

130. Ad paragraphs 189–90: None of this obviously hollow chest-beating merits a response.

131. In conclusion: As Corporate Service Executive, one of Mtati’s prescribed professional functions and duties to his employer LASA is deciding how to deal with claims against it, and by extension claims against its officers, in its best interest. Although he ‘protects us’ from people suing LASA, as Board chairperson Mlambo JP introduced him to the Portfolio Committee on 8 May 2012, i.e. people like me suing to vindicate their fundamental rights and take to law those responsible for violating them and lying about it to cover it up, the respondent’s annual ‘Business Plan’ records the responsibility that Mtati’s ‘Corporate Service Dept’ carries to effect ‘Settlements negotiated ... in the best

interests of Legal Aid South Africa'; and the best 'Outputs' that he and his legal team are expected to deliver are 'Actions ... defended without judgment'.

132. That is, in the discharge of his professional obligations to the respondent, as a senior management executive, Mtati 'protects us' as an organ of state, and not his friends and colleagues from being held to account when they violate fundamental rights, break the law, tell lies to cover it up, and illegally suppress documentary evidence further exposing this when the game is so obviously already up.

133. And when his friends and colleagues are sued, or cause LASA to be sued, it's incumbent on Mtati to endeavour to achieve 'Settlements negotiated ... in the best interests of Legal Aid South Africa ... without judgment'.

134. Mtati's conduct to date will undoubtedly be scrutinised at the enquiry to follow. Who he 'protects' in the further conduct of this and the concurrent two cases before this court, in his friends' and colleagues' determined, corrupt suppression of incriminating documents disclosing criminal and other grave misconduct, remains to be seen.

135. Wherefore I persist with my application.

Signed at Eshowe on 3 November 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 3 November 2014 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he solemnly affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

Case No. 258/14

In the matter between:-

ANTHONY ROBIN BRINK

and

VIDHU VEDALANKAR N.O.

INFORMATION OFFICER

LEGAL AID SOUTH AFRICA

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Description

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Title:

Author: Thabiso Machaba

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Keywords:

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1 INTRODUCTION

This Manual is published in terms of Section 14 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) ("the Act"). The Act gives effect to the provisions of Section 32 of the Constitution which provides for the right of access to information held by the State and to information held by another person that is required for the exercise and / or protection of any right.

The reference to any information in addition to that specifically required in terms of Section 14 of the Act does not create any right or entitlement (contractual or otherwise) to receive such information, other than in terms of the Act.

2 DEFINITIONS

Unless the context clearly indicates otherwise, the following terms shall have the meanings assigned to them hereunder, namely –

- **"Act"** means the Promotion of Access to Information Act, Act 2 of 2000, as amended from time to time;
- **"Information Officer"** means the persons acting on behalf of the Legal Aid Board and discharging the duties and responsibilities assigned to the "Information Officer" and "Deputy Information Officer/s" of the Legal Aid Board by the Act. The Deputy Information Officers are duly authorised to act as such and such authorisation has been confirmed by the Information Officer of the Legal Aid Board;
- **"Legal Aid Board"** means the Legal Aid Board constituted in terms of the Legal Aid Act;
- **"Legal Aid Guide"** means the Legal Aid Guide published annually by the Legal Aid Board, through Juta Publishers. A copy of the Legal Aid Guide is available at a current (2003) cost of R50 from Juta Bookshops, other leading booksellers and from Juta Publishers. It is also available for perusal at the Legal Aid Board's Justice Centres and from the Legal Aid Officer at Magistrate's Courts;
- **"Manual"** means this manual published in compliance with Section 14 of the Act;
- **"Personnel"** means any person who works for or provides services to or on behalf of the Legal Aid Board and receives or is entitled to receive any remuneration. This includes, without limitation, Board Members, all permanent, temporary and part-time staff as well as contract workers;
- **"Record"** means any recorded information, regardless of form or medium, which is in the possession or under the control of the Legal Aid Board, irrespective of whether it was created by the Legal Aid Board;
- **"Request"** means a request for access to a record of the Legal Aid Board;
- **"Requestor"** means any person, including a public body or an official thereof, making a request for access to a record of the Legal Aid Board and includes any person acting on behalf of that person;
- **"SAHRC"** means the South African Human Rights Commission.

- o the registration of learnership (articles) agreements between a principal at the Legal Aid Board and the Candidate Attorney.

These services are available to members of the public who qualify in terms of the Legal Aid Board's means test. Services so rendered must also fall within the ambit and objectives of the Legal Aid Board.

All of these services are more fully detailed in the Legal Aid Guide.

- **Core Service Delivery Mechanisms**

The core service delivery mechanisms of the Legal Aid Board are:-

- o Access to Justice
- o Judicare (being the scheme set out in the Legal Aid Guide, as amended by subsequent circulars, by which the Legal Aid Board offers legal aid instructions to legal practitioners in private practice);
- o Co-operation agreements (being the agreements entered into between the Legal Aid Board and another party, not being an individual legal practitioner or a group/firm/company or legal practitioners. This is for the purpose of rendering legal services to indigent persons); and
- o Impact Litigation (corporate services).

- **How to gain access to these services**

Any person may gain access to these specified services, provided that he or she is a member of the public and qualifies in terms of the Legal Aid Board's means test.

Such person may gain access to these services by submitting a request in the prescribed form and manner to a Justice Centre and where no Justice Centre exists, to the Legal Aid Officer at the Magistrate's Court.

Requests are not dealt with at the national or regional offices and anyone making a request at such office will be referred to the closest Justice Centre or Magistrate's Court.

9 **ARRANGEMENT FOR PUBLIC PARTICIPATION IN POLICY FORMULATION**

Formal mechanisms for public participation in policy formulation are not contained in the Legal Aid Act. The Legal Aid Board welcomes public participation and input, however this cannot be translated into participation and representation on the Board, other than in accordance with the Legal Aid Act and the Board composition set out above.

10 **CONTACT DETAILS**

Information Officer

Name of Public Body	Legal Aid Board
Designated Information Officer	CEO – Vidhu Vedalankar
Email address of Information Officer	ceo@legal-aid.co.za
Postal address	Private Bag X76 Braamfontein Johannesburg

	2017
Street address	29 De Beer Street Braamfontein Johannesburg
Phone number	011 877 2000
Fax number	011 877 2222
Docex	Docex 202 Johannesburg

National Deputy Information Officer

Designated Deputy Information Officer	The Board Secretary
Email address	boardsecretary@legal-aid.co.za
Postal address	Private Bag X76 Braamfontein Johannesburg 2017
Street address	29 De Beer Street Braamfontein Johannesburg
Phone number	011 877 2000
Fax number	011 877 2222
Docex	Docex 202 Johannesburg

Regional Deputy Information Officers

The Legal Aid Board has also designated four regionally based Deputy Information Officers. Requests that relate to a specific region are kindly to be addressed to the Deputy Information Officer for that region at the contact details set out below, while requests relating to the national organisation are to be addressed to the Information Officer at the contact details set out above. If you are uncertain as to whether a request is a national or regional issue, or to which region a request relates, please address the request to the national Deputy Information Officer at the contact details set out above.

Kopanong Region (Gauteng, Limpopo and North West Provinces)

Name of Public Body	Legal Aid Board – Kopanong Region
Designated Deputy Information Officer	Regional Operations Executive
Email address	roe.kopanong@legal-aid.co.za
Postal address	129 Cantonment Street

	Selborn Centre Lyttelton Pretoria 0157
Street address	129 Cantonment Street Selborn Centre Lyttelton Pretoria 0157
Phone number	012 664 2921
Fax number	012 664 6920
Docex	Docex 134, Lyttelton, Pretoria

Western and Northern Cape Region

Name of Public Body	Legal Aid Board – Western & Northern Cape Region
Designated Deputy Information Officer	Regional Operations Executive
Email address of Deputy Information Officer	roe.wc&nc@legal-aid.co.za
Postal address	Shiraz House Brandwacht Office Park Stellenbosch 7600
Street address	Shiraz House Brandwacht Office Park Stellenbosch 7600
Phone number	021 886 8653/4/5/6
Fax number	021 886 8657
Docex	Docex 23, Stellenbosch

Eastern Cape & Free State Region

Name of Public Body	Legal Aid Board – Eastern Cape & Free State Region
Designated Deputy Information Officer	Regional Operations Executive



DOCUMENT NO 24: 2010/11

MANUAL IN TERMS OF SECTION 14 OF THE PROMOTION OF ACCESS TO INFORMATION ACT

Initiated By:	Approved By:	Date Approved:
Corporate Services Dept.	Board	01 January 2006
Corporate Services Dept.	Board	Nov 2010

MANUAL IN TERMS OF SECTION 14 OF THE PROMOTION OF ACCESS TO INFORMATION ACT

1. Introduction

This Manual is published in terms of Section 14 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (“the Act”). The Act gives effect to the provision of Section 32 of the constitution which provides for the right of access to information held by the State and to information held by another person that is required for the exercise and/or protection of any right.

The reference to any information in addition to that specifically required in terms of Section 14 of the Act does not create any right or entitlement (contractual or otherwise) to receive such information, other than in terms of the Act.

2. Definitions

Unless the context clearly indicates otherwise, the following terms shall have the meanings assigned to them hereunder, namely –

- 2.1. “**Act**” means the Promotion of Access to Information Act, Act 2 of 2000, as amended from time to time.
- 2.2. “**Information Officer**” means the Chief Executive Officer of the Legal Aid SA who may delegate in writing this function to any other personnel of Legal Aid SA to discharge the duties and responsibilities assigned to the Information officer in terms of the Act. This authority may be withdrawn by the Information Officer on reasonable and justifiable grounds.
- 2.3. “**Deputy Information Officer/s**” means the Chief Operations Officer and the National Operations Executive of Legal Aid SA who are authorised to discharge the duties and responsibilities assigned to the Information Officer relating to access to information in the possession or under control of support functions and legal functions of Legal Aid SA respectively.
- 2.4. “**Designated Deputy Information Officers**” means Regional Operations Executives of Legal Aid SA who are authorised to discharge the duties and responsibilities assigned to

the Information Officer relating to access to information in the possession or under control of the relevant region.

- 2.5 **Legal Aid Guide**” means the Legal Aid Guide 2009, 11th Edition published in 2009 by Legal Aid SA through Juta & Co Limited. A copy of the Legal Aid “Guide is available at cost from Juta bookshops, other leading booksellers and from Juta Publishers. It is also available for perusal at the Legal Aid SA Justice Centres and from the Legal Aid Officer at Magistrate’s Courts.
- 2.6 **“Manual”** means this manual published in compliance with Section 14 of the Act.
- 2.7 **“Personnel”** means any person who works for or provides services to or on behalf of Legal Aid SA and receives or is entitled to receive any remuneration. This includes, without limitation, Board members, all permanent, temporary and part time staff as well as contract workers.
- 2.8 **“Legal Aid SA”** means Legal Aid Board constituted in terms of the Legal Aid Act.
- 2.9 **“Record”** means any recorded information, regardless of form or medium, which is in the possession or under the control of Legal Aid SA, irrespective of whether it was created by Legal Aid SA.
- 2.10 **“Report”** means a report to be submitted annually to the SAHRC in terms of section 32 of the Act and which shall be compiled and managed in accordance with process set out in Annexure 4
- 2.11 **“Request”** means a request for access to a record of Legal Aid SA.
- 2.12 **“Requester”** means any person, including public body or an official hereof making a request for access to a record of Legal Aid SA and includes any person acting on behalf of that person.
- 2.13 **“SAHRC”** means the South African Human Rights Commission.



National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-477-2000
Fax: 011-477-2222
www.legal-aid.co.za

1ST March 2011

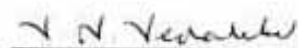
Mr Brian Nair
National Operations Executive
Legal Aid South Africa

Dear Brian

**APPOINTMENT AND DELEGATION AS DEPUTY INFORMATION OFFICER
FOR LEGAL AID SOUTH AFRICA**

I hereby, and in my capacity as the Chief Information Officer and in compliance with section 17(6), appoint you to act as the Deputy Information Officer for Legal Aid South Africa with effect from 1st March 2011. Your appointment shall be valid until withdrawn by the Chief Information Officer or Chief Executive Officer.

Regards



Vidhu Vedalankar
Chief Executive Officer and Chief Information Officer

Your voice. For justice.



IN THE MAGISTRATES COURT FOR THE DISTRICT OF
ESHOWE

POST/WILL COLLECT

E

IN THE MATTER BETWEEN :

CASE NO :258/14

ANTHONY ROBIN BRINK

APPLICANT

and
VIDHU VEDALANKAR NO INFORMATION OFFICER
LEGAL AID SOUTH AFRICA

RESPONDENT

T.A.X. I N V O I C E (REG.NO. 4250141902)

RETURN OF SERVICE

The NOTICE OF MOTION AND FOUNDING AFFIDAVIT

was served on the RESPONDENT at

29 DE BEER STREET, BRAAMFONTEIN, JHB

by exhibiting the original and handing over a copy thereof to

ME C MPONGOSE THE RECEPTIONIST

who is authorised to accept all legal

documents who is apparently over the age of 16 years and in a position of
authority at the RESPONDENT's PRINCIPAL PLACE OF BUSINESS.

and at the same time explaining the nature and contents thereof.

Service was effected in terms of RULE 9(3)(i).

DATE OF SERVICE:

22/07/14 AT 15H30

Dated at Johannesburg this 23rd July 2014



You may require this account taxed and vouched before payment.

N132

ANTHONY BRINK
1 BOAST STREET
ESHOWE

KWAZULU NATAL 3815

Your ref.: 258/14/BRINK/VED

Our ref.: 005/794597/XYZ

.00

= R173.00

INVOICE NO: 480943
SHERIFF JHB. NORTH - UNIT B1
51/61 ROSETTENVILLE ROAD
VILLAGE MAIN OFFICE PARK
P.O.BOX 9025 JHB 2000

Tel (011) 334-4397/98

Fax (011) 334-4320

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF ESHOWE

Case No: 259/14

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

ZANELE MSWELI N.O.

DEPUTY INFORMATION OFFICER,

FREE STATE AND NORTH WEST REGION,

LEGAL AID SOUTH AFRICA

Respondent

REPLYING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. As in Bambiso's and Vedalankar's cases (257 and 258/14), the 'Author' properties of the PDF of the final draft of the respondent's answering affidavit (annexure 'A') show that it was also drawn by very junior counsel. Again he's copied and pasted into it all his bad legal contentions and mistaken allegations of bias. Having disposed of all these in my reply to Bambiso, I'll simply indicate where I dispute them in the respondent's affidavit and then deal with them in oral argument. This reply will largely be confined to responding to new matter not raised in the preceding answering affidavits.

2. Ad answering affidavit, paragraph 1: As mentioned in my reply to Bambiso, natural persons don't have a 'principal address' for the purposes of service under the rules, only corporations do; and the notion of a 'regional address' doesn't even exist in the rules. The fact is, the respondent was duly served, and

this was effected under rule 9(3)(c) by service on a responsible person at her employment address in her absence while she was on leave, as the sheriff's return vouches. I've annexed it marked 'B'.

3. Ad paragraph 2: It's unfortunate, for two reasons, that the respondent didn't read Legal Aid SA's Litigation Guidelines before emailing my application against her to 'Corporate Services Legal Manager' Solly Sekgota in LASA's head office for disposal, on the basis that 'he has ... a detailed knowledge about this matter'.

4. First, the Guidelines govern the conduct of litigation against LASA 'emanating from the rendering of ... legal assistance to the indigent', and my case was not against LASA, nor did it arise in that context. My application was against the respondent personally in her capacity as deputy information officer, on account of her illegal refusal to comply with my request made under PAIA for access to specified records under her control or her certification on oath in any case they didn't exist.

5. Second, Sekgota's alleged 'detailed knowledge about this matter' was perfectly irrelevant and didn't justify the respondent's deference to him for this alleged reason. She was required to respond to my application herself and not abdicate her obligation to do so, and allow someone else do in her name, bringing her in at the end only to sign what had been prepared for her.

6. Ad paragraphs 7–24: The appeal provisions of PAIA, contained in section 78, are irrelevant for the reasons given in my reply to Bambiso, a copy of which, along with the papers in all the other applications, will be provided to the respondent with this reply.

7. The 'framework within which Legal Aid SA operates' is also irrelevant, and the contentions made under this head are wrong, as I showed in the Bambiso case.

8. Ad paragraph 27: The respondent says she ‘formed a view’, on the basis of what Sekgota told her about my labour claim, ‘that the Applicant intends to use this information which he seeks through the Act ... in further proceedings.’ This is untrue. Actually she never formed any view at all; instead, she forwarded my PAIA request to head office, and it was the selfsame person who drew her response as well as Vedalankar’s and Bambiso’s, with their give-away similarities and identical typographical error, who ‘formed’ the very different ‘view’ that my PAIA requests were directed at eliciting further documents for the proof of my labour case. That this was the ‘view’ formed, and not the ‘view’ that my PAIA request was to gather evidence ‘for further proceedings’ – the future criminal, civil, and disciplinary proceedings later announced in my founding affidavit in the Bambiso case, is evident from the concluding paragraph of the letter drawn for Bambiso refusing my entire request: ‘all the request relates to legal proceedings before court ... all your request falls within the prescripts of section 7(1) read with section 45 of the Act.’ The respondent herself confirms in her paragraph 30: ‘the information sought herein is similar to information sought before the trial of the Applicant’s trial case in Durban and also relating to similar issues that were before Court then.’ In any event, the respondent’s alleged ‘view’ as to the purpose of my request was irrelevant, because it’s elementary that section 11(3) specifically prohibits an information officer from deciding a request on the basis of what he or she thinks is the requestor’s purpose in making the request, and what he wants the records for.

9. Ad paragraphs 28–29: Sekgota’s ‘knowledge of the facts ... in an employment issue that I am not familiar with’ was irrelevant. PAIA required the respondent to provide me with the records I asked for, or certify any non-existent ones. She didn’t need any knowledge of my labour case to do this.

10. Ad paragraph 31: As said, the respondent’s opinion as to what ‘the issue’ was ‘surrounding the Applicant’s request’ was immaterial under section 11(3).

11. Indeed I claimed that the abrupt, unauthorised, off-the-record abortion of Skibi's transfer and appointment to the Mthatha Senior Litigator post in July 2010 was part of a audaciously grand dishonest 'stratagem to camouflage the real reason' for the abortion of my 'recruitment to ... the Senior Litigator [post at] Pietermaritzburg' for which I'd been duly selected and recommended on 23 November 2009. I'd written to Vedalankar in July 2010, now eight silent months after my interview, pressing for the finalisation of my appointment, after HRE Clark had back-handedly confirmed my selection in April when I appealed to her for information about the upshot of the interviews by insolently proposing that I 'withdraw' my application for the post if I didn't like 'the pace we have decided' now five silent months after my interview, and actually telling me in as many words to stop bothering them and not to contact them again.

12. The allegation that Skibi's Mthatha post was simultaneously frozen with mine at Pietermaritzburg (Mngadi's at Durban too) for budgetary reasons was the ostensibly powerful and convincing story fed me to cover the real reason I'd been knifed after my recommendation, and it was advanced to me by none other than CEO Vedalankar in her letter to me of 18 October 2010 illegally refusing my first PAIA request, eleven months after I'd been recommended. She repeated this story in her second letter to me in January 2011 (continuing to illegally refuse my PAIA requests testing it) and confirmed it on oath in April 2011; and the seemingly very impressive story was persisted with and repeated in LASA's many pleadings and interlocutory affidavits before trial in my labour case.

13. But at trial, Nair surprisingly abandoned the story as far as Skibi and Mthatha were concerned, and said the cancellation of Skibi's transfer to Mthatha had nothing to do with any budgetary consideration – it was for entirely different reasons, he claimed. Which means Vedalankar lied to me in her correspondence and in her affidavit before I sued, and LASA lied to court

before trial in its pleadings and interlocutory affidavits, all maintaining the lie Vedalankar had told me.

14. Sadly the judgment didn't even mention this massive deviation from the repeatedly alleged, pleaded, and sworn defence version, fundamental to LASA's defence case, let alone weigh its implications for the credibility of the budgetary justification given me for the abortion of my appointment, with the Mthatha post cancellation story integral to it. (The judge's many other basic failures are identified in my 59-page application for leave to appeal against his dismissal of my claim, currently under his consideration. It's archived online at www.tig.org.za/LC.)

15. Ad paragraph 32: The respondent's claim to have 'prepared the answer' to my request is a lie on oath. All she did was blindly sign what was 'prepared' for her and sent to her to sign. The answers to my three PAIA requests addressed to Bambiso, Vedalankar, and the respondent were all very obviously 'prepared' by the same legal ignoramus, and it certainly wasn't the respondent in Bloemfontein, who had no knowledge of my labour case and couldn't have drawn the more detailed refusal that Mtati signed in the Vedalankar case, referring to documents that I'd tried but failed to obtain through pre-trial discovery in my labour claim.

16. Ad paragraph 33: The respondent's claim to have 'declined to grant [me] access to most of the documents [I had] sought' is another casual lie on oath. In truth and in fact, she refused all of them.

17. Her reasons for doing so, namely that 'the information/documents he required was a subject matter of an action against Legal Aid SA and some of its senior officers in the Labour Court before Cele J' was (i) legally irrelevant, not being a ground contemplated in Chapter 4 of PAIA, and (ii) factually wrong in that on Nair's brand-new version in court, contradicting the repeatedly alleged,

pleaded, and sworn defence version, the abortion of Skibi's appointment at Mthatha had nothing to do with my case – and my entire request addressed to the respondent probed the Skibi/Mthatha affair, and nothing else.

18. The respondent's

second reason for refusing access to the requested information was that the request was manifestly vexatious and with a potential result in unreasonable diversion of resources. This is, as I say, because the request made herein relates to information pending in the Durban Labour Court is just a confused restatement of her first reason.

19. According to the respondent here, it would have been an obviously unreasonable waste of her time to gather and send me the documents I'd requested because they relate to an issue before court. This is more legal junk. Even had I wanted the documents to present to the trial judge (I've other intentions, as I've said), I could have done so with his leave under section 7(2). And nothing could be less frivolous and more serious than gathering evidence to place before a judge in a trial action to assist him find out who's telling the truth and who's telling lies. So section 45 can't possibly apply.

20. Ad paragraphs 34–6: This court will note how in quoting section 7, very junior counsel writing for the respondent sneakily leaves out the all-important second bit. Subsection 2 provides:

Any record obtained in a manner that contravenes section (1) is not admissible as evidence in criminal or civil proceedings referred to in that subsection unless the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice.

He leaves out the bit that gives the court the discretion in an exceptional case to admit the document obtained via PAIA after the proceedings have begun, if the

court finds it essential to the correct determination of the dispute. This court will consequently be well-advised to be on guard against similar deceitfulness when very junior counsel appears to argue this case.

21. Ad paragraphs 37–9: The respondent (very junior counsel writing) thinks a requester can't use PAIA to collect evidence with a view to bringing future criminal and civil proceedings; and Sekgota supports this with his confirmatory affidavit ('ZM3').

22. The attendance register shows that Sekgota received the SAHRC's special lesson for LASA's head office staff on how PAIA works, which it found necessary to give because they'd demonstrated, in their repeated illegal refusals of my PAIA requests in 2010 and 2011, that they didn't know how to apply it – and the report of the training session repeatedly records their frank admission of this.

23. One of the things the SAHRC tried in vain to teach LASA's lawyers was 'the need to ensure that clients who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants', as the report afterwards recorded, i.e. that section 7 doesn't bar access to records where a requester has litigation in mind.

24. Despite this special lesson on PAIA and specifically on section 7, the respondent, supported and advised by Sekgota, thinks you can't use PAIA to collect evidence for intended future litigation. It would appear from this that Corporate Legal Manager Sekgota, LASA's top lawyer outside the management structure, has learning difficulties.

25. Ad paragraphs 40–8: Indeed I'm using PAIA to collect evidence 'to arm [my]self for purposes of pursuing [my intended criminal, civil, and disciplinary] cases against members of Legal Aid SA' for breaking the law and telling lies to me, to the LASA Board, to the SAHRC, to the Minister, to Parliament, and to

court (to which they told different contradictory lies at different times). Appreciating this, the purpose of my ‘recent request’ can hardly be ‘vexatious and frivolous’.

26. I didn’t cite LASA or Vedalankar because I don’t claim any relief against them in this application.

27. My reason for suing Vedalankar and Bambiso in my separate applications against them is that they also illegally refused to comply with my PAIA requests, so they also require the compulsion of a court order to respect my fundamental rights and obey the law.

28. The allegation that my instant ‘request for information’ was ‘made previously and was answered [and] is now being resuscitated through me’ is a lie, as can be seen from a comparison of my unsuccessful request for the few records I sought before trial (annexure ‘HB1’ to Bambiso’s affidavit, sub-annexure ‘A’, page 8, paragraphs 29–30) as against my much more comprehensive PAIA request sent to the respondent (annexure ‘A’ to my founding affidavit).

29. I’m indeed ‘busy with investigation of Advocate Nzame Skibi’s’ off-the-record aborted transfer and appointment to the Mthatha Senior Litigator post, the recruitment for which had been unanimously approved and mandated for urgent ‘Immediate’ implementation by LASA’s operational engine-room, its Legal Services Technical Committee, chaired by Nair, having regard (i) to then Eastern Cape ROE Mtati’s pressing motivation for it, and (ii) Nair’s and the LSTC’s obligation to fill all vacant posts approved and budgeted by the Board and approved and funded by the Department, especially critical posts, in the implementation of the Board’s Strategic Plan – i.e. LASA’s ‘corporate plan’ prescribed by section 52 of the Public Finance Management Act 1 of 1999.

30. Once they've been surrendered, the documents I've requested will be collated and indexed with the others I already have, and will form part of the evidence for Nair's criminal prosecution; the state's civil claim against him to recover its now vast losses once my labour case has been correctly decided; and for his prosecution in disciplinary proceedings for gross misconduct on multiple counts, including obstructing the implementation of the Strategic Plan, lying to the Board, lying to the Minister and to Parliament in secret reports he ghost-wrote (he eventually admitted, cornered, at trial) for Board chairperson Mlambo JP to sign and submit to them to pervert their enquiries into my multiple fundamental rights violation complaints, and lying to court to defeat the ends of justice (successfully, if only for now – as in the famous Lord Archer perjury and perversion of justice case in the UK, for which successful crimes in court he was found out and jailed many years later). And this is why my request for these documents has been refused and my application to compel their production is being so strenuously opposed.

31. Ad paragraphs 49–66: The contention that I ought to have appealed before launching this application is wrong for the reason I stated in the Bambiso case.

32. A law of Parliament obviously can't be changed by some employee of a public entity changing its PAIA manual. As I showed in the Bambiso case, PAIA doesn't provide for an appeal in the case of public bodies such as LASA. End of story.

33. Besides relying on irrelevant sections 74 and 75 of PAIA – overlooking the critical 'Definitions' in section 1 (quoted in my reply to Bambiso) – the respondent also tells me that 'clause 18' of LASA's PAIA manual 'informs the Applicant that if he is not happy about my decision, he has a right to appeal to the Information Officer.' And that I 'ought to have known and complied with' this.

34. As at current date, the PAIA manual ‘accessible onto [sic] Legal Aid SA’s website’ is the 2010 version, not the 2013 version mentioned in Mtati’s affidavit; and it remains unavailable to me and the public, other than by special request. That is, it’s not ‘easily accessible’ as wrongly alleged, only a stale one.

35. Indeed section 20 of the 2010 version of LASA’s PAIA manual (and seemingly section 18 of the 2013 version, which I presume hasn’t changed) says:

20. Remedies available for noncompliance with the Act

In case of non compliance with any request by the Deputy Information Officer, the Designated Deputy Information Officer or any other personnel authorised by the Information Officer, the requester shall appeal to the Information Officer who shall consider such appeal within 15 days and after which the requester may resolve the dispute by approaching the relevant court directly.

36. This is inconsistent with the Act, and was obviously drafted by a legal moron.

37. Before I continue, I should point out the peculiar, incompetent distinct categories of ‘the Deputy Information Officer, the Designated Deputy Information Officer or any other personnel authorised by the Information Officer’, unique to LASA’s revised PAIA manual, and appearing nowhere in PAIA. It shows that when it comes to PAIA, LASA’s head office lawyers have no idea what they’re doing.

38. Under section 1 of PAIA, the “‘information officer” ... (c) in the case of any other public body [not being ‘a national department, provincial administration or organisational component’ or ‘municipality’ mentioned in subsections (a) and (b)] means the chief executive officer’. Section 17 provides for the ‘Designation of deputy information officers, and delegation’. Subsection 3 allows: ‘The

information officer of a public body may delegate a power or duty conferred or imposed on that information officer by this Act to a deputy information officer of that public body.’ Subsection 6(a) requires that ‘Any delegation in terms of subsection (3) ... must be in writing’.

39. PAIA does not contemplate a distinction between (I’m quoting from LASA’s PAIA manual above) a ‘Deputy Information Officer’ and a so-called ‘Designated Deputy Information Officer’ such as appears in section 2, the ‘Definitions’ in LASA’s PAIA manual (I’m quoting the 2010 version, presumably unchanged here in the current 2013 one, unavailable on LASA’s website):

2.3. “Deputy Information Officer/s” means the Chief Operations Officer and the National Operations Executive of Legal Aid SA who are authorised to discharge the duties and responsibilities assigned to the Information Officer relating to access to information in the possession or under control of support functions and legal functions of Legal Aid SA respectively.

2.4 “Designated Deputy Information Officers” means Regional Operations Executives of Legal Aid SA who are authorised to discharge the duties and responsibilities assigned to the Information Officer relating to access to information in the possession or under control of the relevant region.

40. As to the meaning of ‘other personnel’ in section 20 of LASA’s 2010 PAIA manual, ‘personnel’ are defined in section 2.7 as ‘any person who works for or provides services to or on behalf of Legal Aid SA and receives or is entitled to receive any remuneration. This includes, without limitation, Board members’ – which means that, according to the bumbling incompetent who drafted this high-sounding trash approved by the Board, non-executive Board members,

with no executive power to involve themselves in LASA's practical operations ever – are among the 'other personnel' who may be 'authorised by the Information Officer' to respond to PAIA requests addressed to her. Such is the quality of legal expertise in LASA's head office. Such is the deplorable inattention of LASA's Board, full of judges, advocates and attorneys, and their failure to perform their oversight function, ignoring five petitions to intervene, the first very detailed, that allowed my labour case to fester and the gangrene to spread all the way up to the Minister, to Parliament and to court.

41. Obviously, to the extent that section 20 of the 2010 version of LASA's PAIA manual (and seemingly section 18 of the 2013 version) tells me, inconsistently with PAIA, that if I didn't like the respondent's refusal of my entire PAIA request, I had to 'appeal to the Information Officer who shall consider such appeal within 15 days and after which the requester may resolve the dispute by approaching the relevant court directly', I was entitled to laugh this off.

42. The added verbiage in section 2.3, 'of support functions and legal functions of Legal Aid SA respectively' incompetently limits the 'information in the possession or under control' of the information officer that the Act obliges to surrender on demand. And as for section 2.4, 'information' can hardly be 'in the possession or under control of the relevant region', because a 'region' can't possess or control records, only a deputy information officer responsible for it.

43. All and any writing in LASA's PAIA manual inconsistent with the Act has no force and effect, and is irrelevant; and the abysmally incompetent lawyer who was allowed to write it and proudly present it to the Board for approval, and then publish it on LASA's website for the misinformation of the public, obviously needs more extra lessons from the SAHRC.

44. Ad paragraph 67: The 'deep-seated dispute of fact' concerning the reason Nair failed to finalise my appointment has been determined, for the moment, by

judgment of the Labour Court (albeit that this ‘deep-seated dispute of fact’ was never relevant to my cause of action in this case).

45. What Mlambo JP, Vedalankar, Nair, Mtati, Sekgota, and Skibi ‘said, wrote and d[id]’ can be read from the black-and-white record in the run-up to and during trial. Also what Clark said, wrote and did. But it’s all irrelevant to my entitlement to the documents I’ve requested, and to the orders I’ve claimed from this court.

46. As paragraph 68: This court is likely to be rather surprised to learn that Judge Cele decided *inter alia* (i) that I bore an onus to prove Nair read the recommendation of me and my CV when they were emailed to him (oddly, he’d specially telephoned for all the CVs of the interviewed candidates, including those of the candidates eliminated by the selection panel), and (ii) that I failed to prove this onus he surprisingly held I bore, defeated, he found, by Nair’s simple novel denial in court that he opened and read his correspondence. Despite noting that I’d shown Nair to have been ‘less than generous with the truth’ on numerous scores, the judge unreservedly accepted and believed that Nair did not open and read the recommendation and my CV, detailing my political background, when he received them on 26 November 2009, and that he only opened and read them at the end of the following year or maybe early the year after that, out of curiosity, and that’s when he learned who I am. So he couldn’t have unfairly discriminated against me on political grounds at the material time, because he didn’t know my political background at the time. Misallocating both the evidential and final onuses, the judge dismissed my claim on this basis. He failed to note that Nair had given a radically contradictory story in his secret false reports to the Minister and to Parliament, which he got Mlambo JP to sign, and then again in a confirmatory affidavit made before trial, thus devastating the credibility of this ridiculous brand-new story told in court, which the judge

accepted and believed as the perfect truth. Naturally I've applied for leave to appeal on this ground and very many others (see: www.tig.org.za/LC).

47. What LASA's said officers stated on record, and whether what they said was 'still pending', is irrelevant and anyway now academic with the decision of the case. The only issue for decision by this court is whether sections 7 and 45 justified the respondent's refusal of my requests for access to the records I sought in my PAIA request.

48. Ad paragraphs 69–72: This court's decision of my application for the relief set out in my notice of motion is quite unrelated to the Labour Court's decision, now in, that I did not prove that LASA unfairly discriminated against me because I failed to prove that Nair read the important documents he'd phoned for until, he said in court, more than a year later. In deciding my application, this court cannot 'differ with the Higher Court in Durban', because it's seized with completely different issues, namely whether the refusal of my PAIA request was justified by the provisions of the Act that the respondent relied on, not whether I was unfairly discriminated against or not.

49. Ad paragraph 73: There are no disputes of fact in this case at all; to the contrary, everything substantial is agreed. The only real dispute is whether sections 7 and 45 justified the respondent's refusal of my PAIA request.

50. Ad paragraph 74: Only Nair is tangentially hit by this application; and as said, I'll send him the complete papers and invite him to respond. But I know from his confirmatory affidavit in the Bambiso case that he read all the papers, and he didn't want to say anything extra then, so I doubt he'll want to do so now.

51. Ad paragraphs 75–82: Not a single factual dispute exists in this case. There is no 'substantial involvement of third parties'. My claim is really quite simple

and can readily be decided on the papers. There's nothing to try on oral evidence.

52. Ad paragraphs 83–173: In the Bambiso case and above, I've disposed of and refuted the respondent's contentions about my not first appealing to her CEO; about this court not having jurisdiction; about this court being biased; about there being a dispute of fact requiring an oral trial; about the matter being sub judice; again about not appealing; about my alleged waiver of my right to request access to the documents in question under PAIA; about my alleged delay in seeking access disqualifying me from doing so; and again about bias – and rather than tediously repeat myself, I'll provide the respondent with my reply in the Bambiso case (plus the papers in the other applications).

53. The respondent's new contention that I ought to have joined information officer Vedalankar, because clause 18 of LASA's PAIA manual says I had to appeal to her, is wrong for the reason mentioned earlier. She has no appellate authority under the Act, and the fact that some hopelessly incompetent person incompetently changed the manual to say differently, and then got the Board to incompetently approve this alteration, doesn't change the law about this.

54. Ad paragraphs 154–8: In my reply to Bambiso, I showed all these attacks, repeated here, on my claims in my notice of motion to be vacant.

55. Ad paragraph 159–187: Again, none of this is new, and it's disposed of in my reply to Bambiso. Any new facts mentioned are incidental and don't warrant a response. Likewise the froth all these paragraphs contain. I've already dealt with and refuted all legal points made, and will address them further in oral argument.

56. I stand by for the respondent's promised substantive application on notice to me, to be argued on full papers, to strike anything out.

57. In conclusion, I record that my sharp words in this affidavit notwithstanding (and they're really directed at LASA's national office executives and attorneys and their very junior counsel), I'm sure that the respondent would have complied with her constitutional and statutory obligations imposed on her by PAIA as deputy information officer for the Free State and North West Region of LASA, and would have granted me access to the documents I requested, had the national office not illegally interfered in her discharge of her legal obligations and instructed her to sign and send me a letter drawn for her illegally refusing my PAIA request addressed to her, with the criminally corrupt intention of suppressing documentary evidence to defeat the ends of justice.

58. In view of the stark conflict of interest between the respondent on one hand and Nair and other executives and the lawyers working for them in the national office on the other, I'll send her a complete set of papers of her own, over and above serving this reply on LASA's appointed local correspondents, to enable her to reconsider her opposition to my claim to the records I've duly requested, and perhaps withdraw it before the disgrace of a judgment against her with her name featuring in the SAHRC's next section 84 report to the National Assembly as a stubbornly delinquent deputy information officer who has to be forced by a court to respect the Constitution and the law. Any of LASA's six Senior Litigators around the country would be well placed to advise her as to how best to proceed in this case. They'll all be getting copies of the papers.

59. Wherefore I persist with my claim.

Signed at Eshowe on 3 November 2014.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 3 November 2014 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he solemnly affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

IN THE MAGISTRATES COURT FOR THE DISCTRICT OF ESHOWE

Case No. 259/14

In the matter between:-

ANTHONY ROBIN BRINK

and

ZANELE MSWELI N.O.

DEPUTY INFORMATION OFFICER,

FREE STATE AND NORTH-WEST REGION,

LEGAL AID SOUTH AFRICA

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Magistrate's Court for the District of ESHOWE - (Civil Court)
Held at ESHOWE

B

Case No – Saak No

259/14

In the matter between:

BRINK A R

Applicant

and:

ZANELE MSWELI N.O DEPUTY INFORMATION OFFICER FREE STATE AND NORTH WEST REGION

LEGAL AID SOUTH AFRICA

Respondent

Return in accordance with the provisions of the Magistrate's Court Act 32 of 1944, as amended

On this 27th day of May 2014 at 08:22 I served this NOTICE OF MOTION & FOUNDING AFFIDAVIT & ANNEXURE "A" & "B" upon ME V ZWANE, HR MANAGER, ostensibly a responsible employee and not less than 16 years of age, of and in control of and apparently in authority at the place of employment of ZANELE MSWELI N.O DEPUTY INFORMATION OFFICER FREE STATE AND NORTH WEST REGION LEGAL AID SOUTH AFRICA at PHG BUILDING, 196 NELSON MANDELA DRIVE, BLOEMFONTEIN the lastmentioned being temporarily absent and by handing to the firstmentioned a copy thereof after explaining the nature and exigency of the said process. RULE 9(3)(c) / RULE 64(3).

Remark: Respondent is on maternity leave (1 May - 31 August 2014). The HR manager will contact the respondent and hand over the document to her.

Note: The original return together with the abovementioned process is dispatched to the mandator.

Sheriff Fees Baljugelde	Date Datum	28.05.2014	Tax Invoice Number Belastingfaktuur Nr.	I 907647		
			Description.....	Qty	Vat	Amount
			-----	---	----	-----
			SERVICE	2	8.68	62.00
			REGISTRATION	1	0.98	7.00
			RETURN	1	1.75	12.50
			COPIES	1	0.35	2.50
			POSTAGE & SUNDRIES	1	0.98	7.00
			VAT / BTW			12.74
VAT Reg No. BTW Reg Nr.	4140115611	You may require this account to be taxed and vouched before payment. U kan vereis dat hierdie rekening getakseer en gestaaf word voor betaling		Total Totaal	103.74	
A R BRINK 1 BOAST STREET ESHOWE 3815 (KWAZULU-NATAL)				Account No. ♦ Rekening Nr. Your Reference ♦ U Verwysing My Reference ♦ My Verwysing Ret: 725253/Nelmari/1	2037 VatReg REC:69270 - R220.00 	
Clerk of the court: ESHOWE				497		


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Bloemfontein
West • Wes • Bophirima
Tel 051 447 8745
Fax 051 448 3489
Privaatsak - Private Bag
30002
Danhof
9310
sheriff@mailbox.co.za
Payments - Betalings
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