

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

In the matters between:

ANTHONY ROBIN BRINK

Applicant

and

The respondents in the following five applications:

HOPE BAMBISO N.O., DEPUTY INFORMATION OFFICER, EASTERN
CAPE REGION, LEGAL AID SA ('LASA'): Case 257/14;

VIDHU VEDALANKAR N.O., INFORMATION OFFICER, LASA: Case 258/14;

ZANELE MSWELI N.O., DEPUTY INFORMATION OFFICER, FREE STATE
AND NORTH WEST REGION, LASA: Case 259/14;

BRIAN NAIR N.O., DEPUTY INFORMATION OFFICER, LASA:
Case 1005/15; and,

VIDHU VEDALANKAR N.O., INFORMATION OFFICER, LASA:
Case 1432/15

CONSOLIDATED LIST OF RECORDS REQUESTED UNDER PAIA

Preamble: This is a consolidated list of all requested documents that are the subject of the above court applications, drawn by the applicant and delivered to LASA Corporate Services Executive Thembile Mtati ('Mtati') by email on 12 February 2016 in accordance with clause 2 of the Settlement Agreement concluded between the parties, the applicant in person and the respondents represented by Mtati, at the outset of the judicially supervised pre-trial conference on 11 February 2016.

Under clause 4 of the Settlement Agreement, Mtati has undertaken on the respondents' behalf to deliver to the applicant all listed documents by 15 April 2016. The clause further provides that where any specified documents requested do not exist or cannot be found, Mtati will furnish the applicant with an affidavit certifying this in compliance with section 23 of PAIA, including all the detailed information the section prescribes. Section 23 is quoted for easy reference below, along with section 90 prescribing the criminal penalties for destroying, damaging, altering, concealing or falsifying a requested record with intent to deny a right of access in terms of the Act.

As contemplated by clause 2 of the Settlement Agreement, this consolidated list comprises several parts, allocated letters 'A' to 'K'.

The applicant proposes that for easy identification, the records supplied be marked according to the following scheme: that the first record specified in part 'A' of the consolidated list be marked 'A1'; the third record in part 'E': 'E3', etc.

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.

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.

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 Thembile 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).

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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 staff²¹ – 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

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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 lawyers’³² ... There was a good trend for quality monitoring and the practitioners were performing well within target range.’³³

- IGNORE ITEMS 11 TO 15: THESE HAVE BEEN SATISFACTORILY DISPOSED OF
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

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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

IGNORE ITEMS 21 TO 27: THESE HAVE BEEN SATISFACTORILY DISPOSED OF

- ~~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 no include Mr Mtati.'

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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 officer(s) 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~~

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~~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.)

IGNORE ITEM 32: IT HAS BEEN SATISFACTORILY DISPOSED OF

- ~~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.

B

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.

B

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

B

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.

B

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

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.

D

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 Centreconcerning Adv Skibi's:
 - 2.1 application,
 - 2.2 short-listing,
 - 2.3 interview,
 - 2.4 selection, and,
 - 2.5 approvalfor 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 officeconcerning 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.

ANNEXURE: RECORDS REQUIRED

PART ONE

Concerning the Children's Court Practitioner post at Legal Aid SA's Durban Justice Centre, currently occupied by Mzochithwayo Ngcamu:

E

1. The minute of the regional management meeting at which it was decided that the Durban Justice Centre required a Children's Court Practitioner and to apply for the creation of such post at such centre.
2. KwaZulu-Natal Regional Operations Executive Vela Mdaka's motivation under section 8.1.2(b) of the Approval Framework to the Legal Services Committee to recommend (he 'originates') the creation of the post at the Durban Justice Centre.
3. The record showing that Human Resources Executive Amanda Clark was 'consulted (before)' the post was created, as required by section 8.1.2(b) of the Approval Framework.
4. The LSTC's resolution to recommend the creation of the post.
5. National Operations Executive Brian Nair's and Chief Executive Officer Vidhu Vedalankar's approval of the LSTC's resolution to recommend the creation of the post, in their capacities as executing authorities delegated by section 8.1.2(b) of the Approval Framework to co-approve the creation of new posts at 'levels 11–13' and 'OSD-LP- 9 & 10'.
6. The record of HRE Amanda Clark's confirmation, under Note 17 of the Approval Framework, that the vacancy and budget for the post existed before it was advertised.
7. The record showing the vacancy existed prior to the advertisement.
8. The record showing the post was budgeted for prior to the advertisement.
9. The advertisement for the post.
10. The shortlist of applicants for the post.
11. The portion of the interview minute showing that Ngcamu disclosed to LASA his two convictions for professional misconduct by the Law Society, and his rebuke by the Judicial service Commission for not disclosing these when applying for a Labour Court judgeship in 2007.
12. The selection panel's recommendation of Ngcamu, showing the names of the panel members, the names of the interviewed candidates, and whether or not

they met the advertised qualifying criteria. (Confidential information within the meaning of section 34(1) of PAIA may be blacked out.)

13. The covering letter or email transmitting the recommendation to NOE Nair for his approval under section 8.2.2(b) of the Approval Framework.
14. The record of Nair's approval of the recommendation, and if applicable to the level of the post, Vedalankar's agreement per the said section.
15. Ngcamu's contract of employment as Children's Practitioner.
16. The letters to the other shortlisted, interviewed candidates informing them that they had been unsuccessful, as required by section 1.5 of the Policies and Procedures on Recruitment.
17. If it's not indicated on the advertisement or Ngcamu's employment contract, any record showing the grade of the post (e.g. LP9).

PART TWO

18. All and any contract(s) of employment between Ngcamu and Legal Aid SA, at any Justice Centre, entered into prior to his employment as Children's Practitioner at the Durban Justice Centre.
19. All email or letter communications between Ngcamu and Legal Aid SA prior to his employment as Children's Practitioner at the Durban Justice Centre or any other employment by LASA.
20. The selection panel's recommendation of Brink and Mngadi for the Pietermaritzburg and Durban Senior Litigator posts, showing (i) Ngcamu's fulfilment or otherwise of the advertised qualifying criteria, and (ii) the reason he was not recommended.
21. The letter sent Ngcamu informing him that he had been unsuccessful as a shortlisted candidate in his application for the Senior Litigator post, as required by section 1.5 of the Policies and Procedures on Recruitment.
22. The letter sent Ngcamu informing him that LASA has decided not to fill the KwaZulu-Natal Senior Litigator posts (like the identical letters sent the other shortlisted and interviewed candidates Brink, Mngadi and van Wyk on 23 August 2010).
23. Deputy information officer Patrick Hundermark's written delegation by information officer Vedalankar under section 17(3) of PAIA.

FORM A ANNEXURE

1. Apropos of National Operations Executive Brian Nair's allegation in his 'Report to Board' on Senior Litigators in November 2011, concerning which he volunteered at the trial of case LC D529/11, 'I was the author of this',¹ 'It is felt that the current system of evaluating their performance by the High Court Unit Managers and thereafter by our Legal Quality Assurance Unit may not be appropriate',² the minute of the meeting at which this alleged view was expressed, and/or the record of the communication of this view to Nair or other executive.
2. The record of Nair's instruction to 'the Chief Legal Executive, then the Legal Development Executive' Patrick Hundermark to draft the 'terms of reference'³ of a 'review panel'⁴ to conduct 'performance reviews or quality reviews' for 'senior litigators',⁵ being the 'person' to whom Nair claimed at the trial to have 'allocated the responsibility'⁶ for doing this.
3. The minutes of the 'number of meetings' that Nair claimed Hundermark has 'hosted' in the allegedly 'on-going ... process ... still being attended to' by him, in the two years since Nair claimed to have 'allocated the responsibility' to him 'to properly develop terms of reference, to identify possible people to contribute to the panel, and to consult'⁷ with a view to conducting 'performance reviews or quality reviews' for 'senior litigators'.⁸
4. All and any records vouching that Hundermark has acted to (i) 'develop [the] terms of reference' set out in Nair's said Report to Board, (ii) 'to identify possible people to contribute to the panel', and (iii) 'to consult' anyone about it.

¹ Record, page 359, lines 10–15.

² Bundle (trial documents), page 870, section 4.

³ Record, page 398, lines 1–3.

⁴ Record, page 397, line 21.

⁵ Record, page 397, line 15.

⁶ Record, page 398, lines 1–3 .

⁷ Record, page 398, lines 3–10.

⁸ Record, page 397, line 15.



Annexure to Form A

Confidential information within the meaning of 34(1) of PAIA may be blacked out.

G

1. The minutes kept by HRE Amanda Clark¹ of the 'second round interviews' held 'for some Regional Operations Executive posts',² as alleged by LASA's single witness NOE Brian Nair at the trial of case LC D529/11.
2. The recommendations made by the selection panels of candidates (i) for the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, (ii) for the Pietermaritzburg Senior Litigator post when it was first advertised, and (iii) for the Kimberly Senior Litigator post – if a recommendation was made – showing inter alia the names of (a) the shortlisted and interviewed candidates, (b) the recommended candidates, and (c) the members of the selection panels.
3. In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, the emails sent by the ROEs to Nair³ (or by the RHRMs to Clark, forwarded to Nair) covering the selection panels' recommendations and the CVs of the recommended candidates, as well as the CVs of the other candidates who were shortlisted and interviewed by the selection panels but not recommended by them – in compliance with the 'specific requirement of the second [round interview] panel'⁴ to send all CVs, and not only those of the recommended candidates, since it was 'The practice of the ... second round panellists to ... consider if there was anyone else they would be interested to interview.'⁵
4. The email that KwaZulu-Natal ROE Vela Mdaka sent to Nair (or RHRM Baboo Brijlal sent to Clark, forwarded to Nair) covering the selection panel's recommendation of LASA attorney Ashok Kaloo for the Pietermaritzburg Senior

¹ Record, page 372, line 23 to page 373, line 2. '[HRE Clark] would assist in the writing up of whatever recommendations flow out of the ['second round interview'] panel'.

² Record, page 338, lines 8–9.

³ Record, page 407, lines 11–14. '[I] would then have found that email again because it would have been in my box'.

⁴ Record, page 349, lines 7–15. 'In fact, a specific requirement of the second panel was that all candidates who were interviewed or shortlisted for the first round, their CVs had to be sent ... so that the second round panellists could consider if there was anyone else [besides the recommended candidate] they would be interested to interview.'

⁵ Record, page 349, lines 10–17.

Litigator post⁶ and his CV, as well as the CVs of the other candidates who were shortlisted and interviewed by the selection panel for the post but not recommended by it, when it was first advertised.

G

5. The email the Free State and North West ROE sent to Nair (or its RHRM sent to Clark, forwarded to Nair) covering the selection panel's recommendation of a candidate for the Kimberly Senior Litigator post – if a recommendation was made – and his/her CV, as well as the CVs of the other candidates who were shortlisted and interviewed by the selection panel for the post but not recommended by it.
6. In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, Nair's emails to the five⁷ members of the 'second round' panel, forwarding the selection panels' Senior Litigator candidate recommendations in each case and the CVs of all candidates who were shortlisted and interviewed by the selection panels, including the CVs of those candidates who were not recommended,⁸ in which emails Nair asked the five members of the 'second round' panel to advise him as to who they 'would like to see'⁹ and 'interview'.¹⁰ (As to the identities of the alleged five members of the so-called second round interview panel, see the Appendix hereto, paragraph [96].)

⁶ Record, page 410, lines 15–21.

⁷ Record, page 409, line 11.

⁸ Record, page 407, lines 13–17. 'I would have sent it [the email with recommendation and CVs attached] to the panellists to advise who they would like to see (indistinct) the recommended candidate. Therefore, all four [CVs] would have been sent to the panellists and everyone would have the opportunity to see who they would have liked to have (indistinct).'

Record, page 409, lines 24–5 to page 410, lines 1–2. '...we do not only interview the recommended candidates.'

Record, page 408, line 25 to page 409, lines 1–2. 'The panellists can look at all people who were interviewed at the first round and they can say, "we would also like to see X, Y and Z".'

Page 409, lines 10–11. 'I would send it to the five panellists and say, "Please advise who you would like to see."

Record page 409, lines 16–20. 'By email, Ja --- Yes. [Through] correspondence --- Yes. Okay, so by email that is done --- Yes.'


Record, page 349, lines 21–3. '... in deciding who will be in [the] interview for the second round, we look at all four ['candidates interviewed for the first level'] again and not only the person that the first round panellist[s] interviewed or recommended.'

Record, page 450, lines 7–10. '... the second panel does have sight of ... all CVs and it can also select others in addition to whoever is recommended.'

Record, page 350, lines 10–11. '[The second round interview panel] is free to make the decision it wants to make and to interview whoever it wants to interview.'

⁹ Record, page 409, lines 10–11. 'I would send it to the five panellists and say, "Please advise who you would like to see."'

¹⁰ Record, page 349, lines 7–15. 'In fact, a specific requirement of the second panel was that all candidates who were interviewed or shortlisted for the first round, their CVs had to be sent ... so that the second round

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7. In respect of the Pietermaritzburg Senior Litigator post when it was first advertised, Nair's emails to the five members of the 'second round' panel, forwarding the selection panel's recommendation of attorney Kaloo, his CV, and the CVs of those candidates who were not recommended, in which emails Nair asked the five members of the 'second round' panel to advise him as to who they 'would like to see' and interview.
 8. In respect of the Kimberly Senior Litigator post, Nair's emails to the five members of the 'second round' panel, forwarding the selection panel's recommendation – if one was made – of the recommended candidate and his CV, and the CVs of those candidates who were not recommended, in which emails Nair asked the five members of the 'second round' panel to advise him as to who they 'would like to see' and interview.
 9. In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, the records of the 'second round' panel members' responses to Nair's enquiries as to which Senior Litigator candidate(s) they wished to see and interview, notifying him as to whom they wished to see and interview, including candidates who had been shortlisted and interviewed by selection panels but not recommended by them.¹¹
 10. In respect of the Pietermaritzburg Senior Litigator post when it was first advertised, the records of the 'second round' panel members' responses to Nair's enquiries as to which Senior Litigator candidate(s) they 'would like to see' and interview besides attorney Kaloo, notifying him as to whom they 'would like to see' and 'interview', including candidates who had been shortlisted and interviewed by the selection panel but not recommended by it.
 11. In respect of the Kimberly Senior Litigator post when it was first advertised, the records of the 'second round' panel members' responses to Nair's enquiries as to which Senior Litigator candidate(s) they 'would like to see' and 'interview' besides the recommended candidate – if a recommendation was made – notifying him as to whom they 'would like to see' and 'interview', including

panellists could consider if there was anyone else [besides the recommended candidate] they would be interested to interview.'

¹¹ Record, page 410, lines 10–12. '... the panel does not confine itself to only the person that is recommended. The [second round interview] panel, has in the past, requested to see other candidates who were interviewed.'

candidates who had been shortlisted and interviewed by the selection panel but not recommended by it.

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12. In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts; the Kimberly Senior Litigator post – if a recommendation was made; and the Pietermaritzburg Senior Litigator post when it was first advertised, the records of the invitations to attend ‘second round’ interviews sent to Senior Litigator candidates recommended by the selection panels, and the invitations to attend ‘second round’ interviews also sent to any candidates who had been shortlisted and interviewed by the selection panels but not recommended by them, on the basis that the ‘second round’ interview panel had indicated to Nair that it ‘would like to see’ and ‘interview’ them too.
13. The minutes¹² of the meetings of the ‘second interview panel’ on the ‘three separate occasions’ on which it has ‘sat ... to select prospective candidates ... for [appointment as] senior litigators’,¹³ at which (i) the current six incumbent Senior Litigators at Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria were chosen; (ii) LASA attorney Ashok Kaloo was rejected, and (iii) ‘one other person [besides Kaloo] that was recommended as possible, as possibly appointable’ was also rejected because ‘we did not like’¹⁴ him/her.
14. The record of Mlambo JP’s communication to executive management of his ‘brain-child’ of a ‘second round of interviews’ referred to in LASA’s original response to the original statement of claim in case LC D529/11.¹⁵ (As to the basic illegality of this scheme, including the illegal involvement of non-executive Board chairperson Mlambo JP, see the Appendix hereto, paragraphs [90] et seq.)

¹² Record, page 372, line 23 to page 373, line 2: ‘[HRE Clark] would assist in the writing up of whatever recommendations flow out of the [second round interview] panel’.

¹³ Record: Page 366, lines 14–21.

¹⁴ Record, page 410, lines 21–4.

¹⁵ Pleadings bundle, page 143, paragraph 8: ‘The second round of interviews is, in fact, the brain-child of the Chairperson together with the executive management after it was realised 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 and also given the seniority of the position involved herein.’

ANNEXURE: RECORDS REQUIRED

Note: The Promotion of Access to Information Act 2 of 2000 will be referred to herein as 'PAIA', and the records requester as 'Brink'.



1. Judge Cele's suggestion to LASA that Brink's request for a directive that LASA hand over the copy of the trial record it printed for him in case LC D529/11 be satisfied by giving him 'an electronic copy of the record' instead.

Note: CSE Mtati alleged in paragraph 7 of his letter to the registrar of 1 October 2014, later copied to Brink:

'Cele J, through his office, suggested that the Respondent accommodate the Applicant by providing him with an electronic copy of the record which the Respondent did.'

This alleged suggestion was not conveyed to Brink by Cele J's secretary/associate or by the registrar; and Brink's written request on 22 October 2014 that Mtati provide him with a copy of this alleged suggestion of 'Cele J, through his office', was ignored.

2. The transcript of the trial record in case LC D529/11.

Note: The request for access to this document will be satisfied (i) by providing Brink with a PDF copy of the record, or (ii) by providing Brink with the extra hard copy of the record at the Durban Justice Centre that LASA printed for Brink (to be collected by him), or (iii) by providing Brink with a copy of this copy (to be collected by him), or (iv) by making the extra hard copy of the record at the Durban Justice Centre available to Brink for copying. If the deputy information officer picks this latter option, Brink will need to uplift the copy at the Durban Justice Centre to scan every page in order to make multiple copies of the record for his appeal, and return it once he's done so.

As a special favour, the registrar of the Durban Labour Court photocopied part of the record for Brink, viz. Nair's evidence, for which Brink paid a copying charge. The whole record, a public document in LASA's possession, is required.

3. All and any records vouching that a meeting took place between the SAHRC and LASA's 'CEO and some of our senior members' to discuss the SAHRC's allegedly 'incorrect finding' contained in its section 84 report for 2011/12 on public body compliance with PAIA, presented to the National Assembly in October 2012, namely the finding that LASA (Vedalankar) had failed to comply with its (her) reporting obligations under section 32. The record(s) will show the date and place of the meeting, who attended it, and the outcome.

Note: In paragraph 183.2 of his answering affidavit in Brink's application in the Eshowe Magistrate's Court under case number 258/14 to compel Vedalankar's compliance with his PAIA request in October 2013, CSE Thembile Mtati swore to a commissioner of oaths under penalty of perjury:

'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 SAHRC to deal with the said incorrect finding.'



In paragraph 2 of her confirmatory affidavit 'TM3', Vedalankar swore to a commissioner of oaths under penalty of perjury that this allegation was true:

'I have read the Answering Affidavit of Thembile Vuyo Mtati and I confirm that the content therein, in so far as it relates to me, are both true and correct.'



In evidence at the trial of case LC D529/11, Nair alleged differently under oath:

'I am aware of engagements that Legal Aid South Africa has made with the Human Rights Commission in terms of our concern with [the SAHRC's section 84 report about LASA]. And our Corporate Services Executive was requested to take it on directly with the respective officials from there, and I believe that engagement did take place. ... We were quite concerned with this report and we did address it with the Human Rights Commission ourselves.'¹

4. The record reflecting that, as ordered by the Legal Services Technical Committee on 24 March 2010, then 'Manager: Legal Administration, National Operations'² Bee-Mari Schoeman (responsible for 'Legal Services Delivery')³ 'Immediate[ly]⁴ ... facilitate[d] the transfer of the budget'⁵ that existed for a Senior Litigator post at the Kimberly Justice Centre⁶ to the Mthatha Justice Centre.
5. The records of CEO Vedalankar's and National Operations Executive Brian Nair's respective 'Final approval' and 'agree[ment]'⁷ (as he 'Must') of the abolition of the Kimberly Senior Litigator post and establishment of the Mthatha Senior Litigator post under section 8.1.2(b) of the Approval Framework as required,⁷ before the Mthatha post was advertised.⁸

Note: The recruitment/vacancy/budget statistics for June 2010⁹ supplied to Brink before trial show that the Kimberly Senior Litigator post had indeed been abolished and the Mthatha post established by that month, with the Mthatha post duly noted as vacant.

6. After the selection panel's interviews of shortlisted candidates for the Mthatha Senior Litigator post in May 2010,¹⁰ all and any records showing the form of 'transit' 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', in the form of a registered post slip, courier waybill, covering email, telefax covering page and transmission report, or other such voucher.

¹ Record, page 474, lines 13–22.

² Per Schoeman's CV posted online at LinkedIn: <http://linkd.in/17DpY3F>.

³ Bundle addendum (trial documents in LC D529/11), page 708, 'Members Present'.

⁴ Bundle addendum, page 709, section 4.1.7 under 'Due Date' column.

⁵ Bundle addendum, page 709, section 4.1.7.

⁶ Bundle addendum page 707.

⁷ Bundle addendum, page 1036.

⁸ Bundle, page 46.

⁹ Bundle addendum, page 1066.

¹⁰ Bundle addendum, page 994.

Note: In paragraph 183 of Eastern Cape deputy information officer Hope Bambiso's answering affidavit in Brink's application in the Eshowe Magistrate's Court under case number 257/14 to compel his compliance with Brink's PAIA request in October 2013, Bambiso stated:



'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.

...

183.4. 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.'

In paragraph 2 of his confirmatory affidavit 'HB6', Corporate Legal Manager Solly Sekgota swore to a commissioner of oaths under penalty of perjury that these allegations were true:

'I have read the Answering Affidavit of Hope Bambiso and I confirm that the content therein, in so far as it relates to me, are both true and correct.'

In paragraph 2 of her confirmatory affidavit 'HB7', Eastern Cape Regional Human Resources Manager Thenjiwe Magazi also swore to a commissioner of oaths under penalty of perjury that these allegations were true:

'I have read the Answering Affidavit of Hope Bambiso and I confirm that the content therein, in so far as it relates to me, are both true and correct.'

(Provision of these records may assist a criminal court magistrate 'believe the explanation given to him' when later dealing with 'the issue' of whether or not Magazi and Sekgota committed perjury.)

7. Copies of the contents of the 'file ... in re the position of senior litigator position for Mthatha' retained by Eastern Cape Regional Human Resources Manager Thenjiwe Magazi before dispatching the original or a copy 'to Legal Aid SA Head Office'.

Note: As above.

8. The complete contents of Human Resources Executive Amanda Clark's file or computer folder on the Mthatha Senior Litigator post.
9. All records of communications between LASA's national office and its Eastern Cape Regional Office after the discovery 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' – including any request for the file, or a copy of it, to be sent again.

Note: The minute of the LSTC's March 2010 meeting, chaired by Nair, records that it prioritised the Mthatha Senior Litigator recruitment for 'Immediate'¹¹ implementation; and the post was

¹¹ Bundle addendum, page 709, paragraph 4.1.7.

advertised in April,¹² with interviews held in May¹³ in short order. Nair would accordingly have been awaiting the selection panel's recommendation in 'Legal Aid SA Head Office'.



10. The Strategic Plan 2009–12.

Note: Brink has only a draft version.¹⁴

11. The minute of the September 2008 Board meeting at which the Strategic Plan 2009–12 was approved.¹⁵

12. The minutes of all Legal Services Technical Committee meetings held in the period October 2009 to February 2011, besides the minute of its March 2010 meeting, which Brink already has.¹⁶

13. The minutes of all management executive committee meetings held in the period October 2009 to February 2011.

14. The minutes of all Board Executive Committee meetings held in the period October 2009 to February 2011.

15. The minutes of all Board meetings held in the period October 2009 to February 2011.

Note: Brink has the first page only of the minute of the July 2010 meeting.¹⁷

According to Nair's sworn evidence at trial:

'...the Board would have been informed at the May meeting of 2010 that ... we did not receive the [OSD] funding and what steps were being taken.'¹⁸

16. LASA's Business Plans for 2009/10 and 2010/11. And for 2012/13 and 2013/14.

Note: Brink has only the 'Business Plan 2011/12'.

In her¹⁹ entry in section P26-10 of LASA's 'Business Plan 2011/12', under the heading, 'Talent acquisition and retention', Clark didn't disclose to the Board, to the Portfolio Committee, and to the South African public, the fact that three of the respondent's critical Senior Litigator posts had long been vacant, despite the selection of suitable candidates for appointment. Contrariwise Clark falsely claimed: 'No longstanding vacancies'.²⁰ There's a similar false entry in the 'Executive Summary' of

¹² Bundle, page 46.

¹³ Bundle addendum, page 994.

¹⁴ Bundle, pages 444–50.

¹⁵ Bundle addendum, page 1060, paragraph 3.2.1.

¹⁶ Bundle addendum, pages 708–10.

¹⁷ Bundle, page 251.

¹⁸ Record, page 425, lines 19–23.

¹⁹ Bundle addendum, page 877, 'Responsible Executive': 'HRE'.

²⁰ Bundle addendum, page 877.



the 'Budget 2011/12': 'The recruitment level was also increased from 97% in 2010/11 financial year to 100% in 2011/12.'²¹

These requests will be satisfied by the furnishing of excerpts comprising the cover or first identifying pages, and the pages dealing with 'Talent acquisition and retention'.

17. Excerpts comprising the cover or first identifying page, and the pages containing provision for Senior Litigator salaries in LASA's budget for 2013/14.
18. The minute of the Board meeting at which LASA's budget for 2013/14 was approved.
19. LASA's 2013/14 report to the SAHRC under section 32 of PAIA.
20. The payment voucher of the Department of Justice and Constitutional Development (as it was then called) reflecting the date of its transfer of OSD phase 1 funding for 2009/10.

Note: This payment is mentioned in LASA's annual report for 2009/10:

'The Occupational Specific Dispensation (OSD) phase 1 shortfall of R23million in the 2009/10 financial year was received from the DoJ.'²²

21. The record of any Strategic Plan Annual Review workshop or Board meeting²³ at which it was resolved not to fill LASA's remaining three vacant Senior Litigator posts.

Note: 'The Strategic Plan is reviewed annually to assess changes in the external and internal environment in which Legal Aid South Africa operates. The changes in the external and internal context are taken into account in the development of each year's business plans.'²⁴ In his 'Report to Board' in November 2011, Nair alleged:

'Six Senior Litigators were filled 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.'²⁵

22. The record showing mention or discussion by any LASA executive(s) of the issue alleged by Nair in his November 2011 'Report to Board' that Senior Litigators may not be fulfilling LASA's objectives for such posts.
23. All and any reviews of Senior Litigator performance pertaining to whether or not LASA's 'objectives' for such posts were 'being achieved by the current incumbents' or not.
24. The record of the decision not to fill Senior Litigator posts for the said reason, referred to in Nair's Report to Board of November 2011.

²¹ Bundle addendum, page 883, section 4.1.

²² Bundle, page 1057.

²³ Bundle addendum, page 1061, section F2-C2-P1.

²⁴ Bundle addendum, page 1060.

²⁵ Bundle addendum, page 869.

25. All and any records vouching that NOE Nair was among the 'senior executives' who 'began to deliberate quite intensively'²⁶ in regard to the 'budgetary issues that suddenly confronted'²⁷ them on 10 March 2010, on learning that LASA's expected OSD phase 1 funding hadn't been included in the baseline budget for 2010/11²⁸ as had been assured in January 2010,²⁹ alternatively all and any records vouching that Nair was involved in pursuing the Department's payment of LASA's OSD phase 1 funding for 2010/11 in any manner whatsoever.

26. Excerpts of LASA's recruitment statistics showing Senior Litigator post occupancies and vacancies for March, April and May 2010, and July, August, September, October, and November 2010.

Note: The June³⁰ and December³¹ 2010 statistics were supplied to Brink before trial.

27. The executive instruction issued to transfer the Senior Litigator budget from Mthatha back to Kimberly (from which it had been transferred).

Note: Whereas the June 2010 recruitment/vacancy/budget statistics reflect a budgeted vacant Senior Litigator post at Mthatha,³² the December 2010 statistics show the post and budget had reverted to Kimberly.³³

28. Following COO Makokoane's memorandum circulated to them on 30 September 2010, soliciting cost-cutting proposals in view of the slow recovery from the international financial recession,³⁴ the proposals submitted by:

(a) CEO Vidhu Vedalankar,

(b) NOE Brian Nair,

(c) KZN ROE Vela Mdaka,

(d) then Pietermaritzburg JCE Bertus Appel, and,

(e) then Durban Justice Centre Executive Kishore Mehta.

29. The 'Treasury ... budget allocations letter ... released ... at the end of 2009' to which Nair referred in his evidence.³⁵

²⁶ Record, page 344, line 9.

²⁷ Pleadings bundle, original response, page 144, paragraph 11.

²⁸ Bundle, page 236, paragraph 6.

²⁹ Bundle, pages 235–6, paragraphs 3 and 5.

³⁰ Bundle addendum, page 1066.

³¹ Bundle addendum, page 1070.

³² Bundle addendum, page 1066.

³³ Bundle addendum, page 1070.

³⁴ Bundle, pages 241–3.

30. The records of all Nair's 'decisions ... take[n] ... to freeze posts' with or without CEO Vedalankar's agreement, and without the approval of the Board.



Note: At trial, Nair testified, on oath, under penalty of perjury, that:

'... it was a very routine decision to freeze three posts. And I take decisions to freeze posts continuously in the organisation, and I consult with the CEO. ... It is a normal part of operations that we have got a staff establishment and for various reasons we freeze posts, we do not proceed with it. What we plan to do and what we actually do, the decisions may change. So it was not something that was abnormal.'³⁶

Contrariwise, Nair also testified (correctly, in light of the requirement of the Approval Framework that the Board be consulted before any change to the Business Plan based on it Strategic Plan):³⁷

'The implementation continues until the Board revisits that issue.'³⁸

31. The email or letter to Durban High Court Unit Manager Bongani Mngadi, who was interviewed for and recommended for the Durban Senior Litigator post, informing him in about 'April/May' 2010 (his words)³⁹ that the KwaZulu-Natal Senior Litigator recruitments had been cancelled.

Note: Brink doesn't need the subsequent letter sent Mngadi on 23 August 2010, which he already has,⁴⁰ identical to the letters sent the other interviewed candidates Brink⁴¹ and van Wyk,⁴² but very interestingly not Ngcamu,⁴³ subsequently employed as Children's Court Practitioner at the Durban Justice Centre.

Paragraphs 178–9 of Brink's heads of argument, quoted below, drawn without sight of the record, deal with LASA's communication with Mngadi in about 'April/May' 2010, the record of which certainly exists, having regard to LASA's pleaded and sworn case before trial.

[178] Nair's claim that Mngadi was 'definitely not' told in April or May 2010 that the Senior Litigator recruitment had been cancelled, and that 'if such a statement was made to him it didn't come from [him, Nair] because the decision was only made in July' is contradicted on all counts by the respondent's pleadings. Answering the applicant's averment in his original statement of claim that "'in April/May"⁴⁴ 2010 Mngadi was notified ... that the respondent had decided not to fill the post for which he had applied, alternatively that the respondent had decided not to fill its remaining vacant Senior Litigator posts',⁴⁵ the respondent admitted in its

³⁵ Record, page 342, lines 14–15.

³⁶ Record, page 434, lines 3–18. (The Minister explicitly told Mlambo JP that he 'didn't want' any posts frozen, as Vedalankar mentioned to the Portfolio Committee on 11 October 2010. Bundle, page 184.)

³⁷ Heads of argument, paragraph 61.

³⁸ Record, page 424, line 25 to page 425 line 1.

³⁹ Bundle, pages 146–7, paragraph 179.

⁴⁰ Bundle addendum, page 831.

⁴¹ Bundle, page 20.

⁴² Bundle addendum, page 829.

⁴³ Bundle, page 383, paragraph 36: 'to two other applicants', not three.

⁴⁴ Ibid.

⁴⁵ Pleadings bundle, original statement of claim, pages 55–6, paragraph 55.



original response that it took a 'decision to inform Mr B Mngadi who was an internal candidate of the Respondent's decision not to proceed with the filling in of the Senior Litigator posts instead of the Applicant'.⁴⁶ Among the facts listed by the applicant for admission in his agenda for the pre-trial conference in October 2011 was: 'At the end of April or in May 2010, even as the respondent was busy recruiting for a Senior Litigator for Mthatha, Nair or Clark telephoned Mdaka or Brijlal and instructed him to tell Mngadi that the Senior Litigator recruitment wasn't being proceeded with.'⁴⁷ The respondent 'Agreed'⁴⁸ with this and volunteered: 'It was Mr Nair who gave the instruction.'⁴⁹ In denying it in court, Nair lied.

[179] Further contradicting Nair's lying denial in court that he had Mngadi put off in April or May 2010 while the applicant was callously left twisting in the wind, the respondent not only confirmed this, it went on to advance a flaccid reason why Mngadi was informed 'of the Respondent's decision not to proceed with the filling in of the Senior Litigator posts instead of the Applicant',⁵⁰ despite the applicant's repeated pleas for information about the upshot of the interviews held five months earlier: 'For Mr Mngadi, his appointment as a Senior Litigator was going to result as an internal promotion instead of a new employment hence it was not much of a problem to inform him well in time of Legal Aid South Africa's decision to freeze the recruitment process'.⁵¹ ...

(This latter sworn statement is contradicted by Vedalankar's allegation to Brink in her letter on 18 October 2010: 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.'⁵² Which she confirmed on affidavit.)⁵³

32. All counsel's fees for his professional services rendered LASA in the handling of Brink's first three record requests under PAIA in August and December 2010 and March 2011, and his involvement, if any, in the drafting of Mlambo JP's 'Confidential ... Report ... Re: Advocate Anthony Brink' to the Minister in March 2011 and in 'updated' form to the Portfolio Committee in June 2011, to put down Brink's complaints.

Note: CSE Mtati has stated on affidavit that after 'the CEO ... felt justified to refuse him access' to the records Brink had requested, his PAIA requests were 'given to counsel for his opinion ... to be safe'.⁵⁴

33. All counsel's opinions in regard to the handling of Brink's said PAIA requests, and the responses to them that he drafted for LASA.

Note: Since these were not furnished in the course of litigation, no question of privilege arises.

⁴⁶ Pleadings bundle, original response, page 162, paragraph 41.4.

⁴⁷ Pre-trial conference bundle, applicant's agenda, page 13, paragraph 31.

⁴⁸ Pre-trial conference bundle, respondent's answer to agenda, page 55, paragraph 31.1.

⁴⁹ Pre-trial conference bundle, respondent's answer to agenda, page 55, paragraph 31.2.

⁵⁰ Pleadings bundle, original response, page 162, paragraph 41.4.

⁵¹ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 105, paragraph 81.6.

⁵² Bundle, page 103, paragraph 6.7.

⁵³ Bundle addendum, page 390-1, with reference to page 380, paragraph 13.

⁵⁴ Application to subpoena Mlambo JP, page 102, paragraph 75.2.

NB: ITEM 34 AMENDED: SEE PART 'J' FOLLOWING

34. ~~LASA's current/most recent list of critical legal posts, or other record(s), identifying what legal posts are included under the category 'Critical Occupation'.~~

~~Note: For instance, at page 123 of LASA's annual report for 2011/12, Table 13 reports 229 critical legal posts:~~

Table 13: Employment and vacancies per critical occupation

Critical Occupation	Number of Posts	Number of Posts Filled	Vacancy Rate %
Legal	229	200	12,66%

~~The report doesn't identify what these 229 critical legal posts are, but LASA's HR department will have a spreadsheet or other record including and identifying these critical legal posts, the sum of which is annually reported, as above.~~

In evidence, Nair alleged that 'practitioners' in the Labour [sic: lower] Courts', the 'criminal court[s] ... were our critical posts; there was nothing more important than these posts.'⁵⁵ 'I described the critical positions as being those very same lower court positions ... the Practitioner positions who serve the lower courts per district ... those were the critical positions.'⁵⁶ 'The critical posts we are, I am referring or we are referring to there are link[ed] to the lower court positions.'⁵⁷ 'So when we are talking about critical, it was linking to coverage of courts.'⁵⁸ Nair's evidence contradicted LASA's pleaded case.⁵⁹ See further: heads of argument, paragraph 229.

35. Former Board Secretary Bee-Marie Schoeman's resignation or dismissal letter, and/or any other record vouching her information to Brink that she left LASA on account of permanent or long-term mentally disabling concussion and amnesia sustained in a motor vehicle accident, alternatively identifying any other reason she quit LASA.

Note: According to Schoeman's CV at LinkedIn, she was employed at LASA until 'March 2012'.⁶⁰ On 19 July 2013, having been located by tracing agents engaged by Brink, and telephoned by him at her home on the eve of trial for her possible provision of relevant information about his case, Schoeman made this claim, which Brink immediately reported to his accountant Rawlins by email:

'Nice but sad call.
She had a terrible car crash, wrote off her car, very severe concussion, memory wrecked, forced to "leave a job I loved", unable to cope.
When I remarked on her fine CV, she yes, yes but "I can't remember any law anymore".
Just surviving.

⁵⁵ Record, pages 373, lines 20–5 to page 374, line 1.

⁵⁶ Record, page 480, lines 19–23.

⁵⁷ Record, page 375, lines 10–11.

⁵⁸ Record, page 375, lines 17.

⁵⁹ Pleadings bundle, original response, page 170, paragraph 48.9; and pre-trial conference bundle, answer to agenda, page 57, paragraph 43.1, and page 58, paragraph 52.1. The respondent contradicts itself in the same pleading: page 63, paragraph 79.1.

⁶⁰ <http://linkd.in/17DpY3F>.

Completely blank on my name, genuinely apologetic.'

After Schoeman acknowledged Brink's first petition to the Board on Mlambo JP's behalf,⁶¹ Brink had twice written to her,⁶² asking that she ensure that his November 2010 petition to the Board be brought to the attention of all Board members (not having all their email addresses). She did not respond.

On 18 March 2012, Schoeman blithely remarked 'Life goes on' on her Twitter account. Two days later on 20 March 2012, and ten days before she quit LASA, she posted a report and a photograph of her car's engine turbocharger having failed, with no mention or sign of any collision damage.



In November 2013, a few months after claiming to Brink to be mentally disabled, Schoeman commenced employment by the 'Department of Justice and Constitutional Development' on 'contract' as a 'Senior Legal Administrative Officer' to conduct a 'Review of the Criminal Justice System', and is still so employed, according to her CV at LinkedIn.⁶³

36. The minutes of the Board meetings in February and May 2012.
37. The minutes of the Board Executive Committee meetings in February and May 2012.
38. The Charter of the Board Executive Committee.⁶⁴

⁶¹ Bundle, page 168, email quoted.

⁶² Bundle, pages 168–72; and 188.

⁶³ <http://linkd.in/17DpY3F>.

⁶⁴ Annual report 2012/13, page 73, top of the page: each board committee has a Charter which details its responsibilities and duties.

39. The agenda and the minute of the Board Executive Committee meeting on Friday 23 March 2012; alternatively, if no such meeting was held on that date, the agenda and the minute of the extraordinary extra fifth Board Executive Committee meeting in 2011/12.

Note: According to LASA' annual report for 2011/12 there was an extra Board Executive Committee meeting in that year,⁶⁵ seemingly on Friday 23 March 2012.⁶⁶

40. Vedalankar's confirmatory affidavit, made in support of CSE Mtati's answering affidavit in Brink's application for leave to subpoena Mlambo JP, and referred to in paragraph 107 thereof as annexure 'DM14'.

Note: Nair also made a confirmatory affidavit – referred to in the same paragraph as 'DM15'. Neither Vedalankar's nor Nair's affidavits were annexed to Mtati's affidavit at the time the latter was delivered to Brink. Nair's confirmatory affidavit was delivered to Brink only after the trial; and Vedalankar's confirmatory affidavit remains outstanding.

41. The records of Board chairperson Mlambo JP's requests to other Board members on 24 January 2011 that they should ignore Brink's repeated appeals for Board intervention in Vedalankar's illegal, falsely justified refusal to comply with his first PAIA request and the manifestly irregular abortion of his appointment on the several indications he identified.⁶⁷

Note: In his email to Brink rebuking Brink's second petition to the Board,⁶⁸ in which he again pleaded for its intervention in Vedalankar's illegal, falsely justified refusal to comply with his first PAIA request and the manifestly irregular abortion of his appointment,⁶⁹ Mlambo JP alleged:

'I have, in turn, requested Board members to ignore all communications from you and/or on your behalf.'⁷⁰

Unless Mlambo JP telephoned each and every Board member between the time he read Brink's second petition and the time he wrote this late-night email on the same day, records will exist to vouch the truth of his allegation that he requested each of them 'to ignore' Brink's future appeals that the Board see to it that LASA's management executives conduct themselves in accordance with with the Constitution and the law.

⁶⁵ Page 21 of LASA's annual report for 2011/12 shows five meetings of the Board Executive Committee, not the usual four.

⁶⁶ On 23 March 2012, Board member Judge Edwin Molahlehi's secretary stated to Brink's accountant Christopher Rawlins that he was attending a LASA meeting on that day, which information Rawlins immediately emailed to Brink: 'Just spoken again with his assistant who told me that he was out at a meeting with LASA.'

⁶⁷ Bundle, pages 109–65; and 197–208.

⁶⁸ Bundle, pages 197–208.

⁶⁹ Bundle, pages 109–65.

⁷⁰ Bundle, page 209.

42. The decision originally taken to employ two Professional Assistants ('PAs') per backlog court at Pietermaritzburg, or generally, provincially or nationally.

Note: Then Pietermaritzburg Justice Centre Executive Bertus Appel twice refers to this decision: in his motivation for the employment of Arnold Mahlobo in August 2008,⁷¹ and in his email correspondence with KwaZulu-Natal Regional Operations executive Vela Mdaka in February 2011.⁷²

43. The 2010/11, 2011/12, and 2012/13 budgets provided by the Department for salaries for PAs serving the backlog courts at Pietermaritzburg.

Note: LASA's budget for 2011/12 was approved by the Board on 26 Nov 2010,⁷³ and it presumably would have provided for 8 contract PA posts at Pietermaritzburg for the four backlog courts, because this number of posts was reduced some months later.⁷⁴

44. The minutes of all Kwazulu-Natal regional executive management meetings over the period October 2010 to June 2011.

45. The record of KwaZulu-Natal Regional Operations Executive Vela Mdaka's discussions with National Operations Executive Brian Nair about streamlining the backlog courts.

Note: Mdaka refers to this in email correspondence with Appel.⁷⁵

46. All and any records identifying the nature of the Stanger court incident.

Note: Mdaka refers to this in his email correspondence with Appel.⁷⁶

47. All records sent to then Board Secretary Bee-Mari Schoeman over the period October 2010 to June 2011 informing her performance of her function: 'Monitoring of Backlog Court Staffing and compilation of costings to distribute budget received for this purpose to various cost centres'⁷⁷, including but not limited to (i) any changes to the number of backlog court posts at the Pietermaritzburg Justice Centre, and (ii) any changes to the budget received for the employment of PAs in the backlog courts at Pietermaritzburg.

48. The decision to reduce the number of PAs serving the backlog courts at Pietermaritzburg from two to one, according to Nair's emailed announcement of this to LASA's Regional Operations Executives on 21 February 2011.⁷⁸

⁷¹ PA bundle (document bundle in Richards Bay CCMA case KNRB1481-14: Brink/LASA), page 116. The PA bundle is also accessible at the case document archive online: www.tig.org.za/LASA username: lasa password: LASA2010.

⁷² PA bundle, page 222.

⁷³ Bundle addendum (second trial document bundle, in case LC D 529/11), page 881.

⁷⁴ PA bundle, pages 220 and 221.

⁷⁵ PA bundle, page 231.

⁷⁶ Ibid.

⁷⁷ Per Schoeman's CV posted online at LinkedIn: <http://linkd.in/17DpY3F>.

⁷⁸ PA bundle, page 123.

49. The spreadsheet attached to Nair's email to the ROEs on 21 February 2011, named 'Backlog courts – 2011 approved courts.xlsx'.⁷⁹
50. The minute of the 'meeting' in February 2011 'to identify the sites that will continue to function [and be] funded', to which Mdaka referred in his email to then Pietermaritzburg Justice Centre Executive Bertus Appel and other JCEs on 7 February 2011.⁸⁰
51. The responses that the members of the selection panel, Manickum, Holtzhausen, and Shelembe furnished Appel following his referral to them of Mdaka's objections to Brink's appointment to the annual contract PA post for which they'd unanimously recommended him.⁸¹

Note: On 17 November 2010, the day after receiving Mdaka's objections to Brink's appointment,⁸² Appel emailed Mdaka: 'I will refer the issues raised by you to the interviewing panel and will revert to you.'⁸³

52. Appel's transmission to Mdaka of the selection panel's responses to Mdaka's objections to Brink's appointment.
53. Appel's leave application covering 14 and 15 December 2010, alternatively an excerpt from the leave register, reflecting that he was on leave for those two days, and reflecting further the full period he was on leave at that time.
54. The record of Jeffrey Mthimkhulu's appointment as acting Pietermaritzburg Justice Centre Executive⁸⁴ in Appel's absence on leave at the said time.
55. The selection panel's recommendation of Brink for the Pietermaritzburg temporary backlog PA post, showing the names of the other candidates interviewed.

Note: The identities of the other shortlisted, interviewed applicants is not confidential information about them. (Such information appears unconcealed on the KwaZulu-Natal Senior Litigator post recommendation provided to Brink.)⁸⁵

56. Any employment contracts subsequently signed between LASA and any of the rejected candidates.

IT'S SUGGESTED THAT THE REQUESTED DOCUMENTS BE DELIVERED TO BRINK ON A DVD, OR OVER THE INTERNET VIA 'DROPBOX' OR SIMILAR SECURE ELECTRONIC FILE DELIVERY SYSTEM.

⁷⁹ Ibid.

⁸⁰ PA bundle, page 219.

⁸¹ PA bundle, pages 18–21.

⁸² PA bundle, page 23.

⁸³ PA bundle, page 212.

⁸⁴ PA bundle, page 53.

⁸⁵ Bundle, pages 244–8.

1 Boast Road
Eshowe 3815
15 December 2014



Jerry Makokoane
Deputy Information Officer,
Legal Aid South Africa
29 De Beer Street
Braamfontein

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

Dear Mr Makokoane

PAIA REQUEST: AMENDMENT OF ITEM 34

Item 34 of my currently pending PAIA request addressed to you specified:

34. LASA's current/most recent list of critical legal posts, or other record(s), identifying what legal posts are included under the category 'Critical Occupation'.

Note: For instance, at page 123 of LASA's annual report for 2011/12, Table 13 reports 229 critical legal posts:

Table 13: Employment and vacancies per critical occupation

Critical Occupation	Number of Posts	Number of Posts Filled	Vacancy Rate %
Legal	229	200	12,66%

The report doesn't identify what these 229 critical legal posts are, but LASA's HR department will have a spreadsheet or other record including and identifying these critical legal posts, the sum of which is annually reported, as above.

I've just discovered to my amazement that whereas the annual report for the following year, 2012/13, shows the number of LASA's critical legal posts had increased by two posts to 231 –

Table 18: Employment and vacancies per critical occupation

Critical occupation	Number of posts	Number of posts filled	Vacancy rate %
Legal	231	211	8.66%

– LASA’s current report for 2013/14 reflects just 64 critical legal posts, a massive reduction by 72% of the number of legal posts previously categorised and reported to the Minister and to Parliament as critical:

Table 19: Employment and Vacancies per critical occupation

Regions	Number of Posts	Number of post filled	Vacancy Rate %
Chief Executive	1	1	0.00%
Chief Operations	1	1	0.00%
National Operations	7	7	0.00%
Legal Development	1	1	0.00%
Human Resources	7	6	14.00%
Finance	7	7	0.00%
Communications	7	6	14.00%
Corporate Services	1	1	0.00%
Information Systems	1	1	0.00%
Internal Audit	1	1	0.00%
Legal	64	63	2.00%
Total	98	95	3.00%

Since the CEO report tells us that LASA has a current ‘national footprint of 64 Justice Centres’, it’s evident that the only critical legal post occupancies and vacancies now being reported to the Minister and to Parliament are LASA’s 64 Justice Centre Executive posts.

Consequently, my request for a record showing –

34. LASA’s current/most recent list of critical legal posts, or other record(s), identifying what legal posts are included under the category ‘Critical Occupation’.

– has already been answered by the latest annual report:

It’s 64 JCE posts.

I naturally wish to peruse the motivation and the resolution passed to declassify almost three-quarters of LASA’s critical legal posts for the purpose of annually reporting their occupancies and vacancies to the Minister and to Parliament, if indeed such a minuted decision was ever duly taken.

In the situation, I hereby amend item 34 of my PAIA request.

What I require instead is:

34. (a) LASA's list of 231 critical legal posts, or other record(s), identifying what legal posts were included under the category 'Critical Occupation' in LASA's annual report for 2012/13; and (b) the subsequent motivation and resolution to exclude all but the JCE posts from the category of critical legal posts in LASA's annual reports to the Minister and to Parliament.

J

I look forward to receiving these records, or, if no record exists of the motivation and resolution specified in part (b) of amended item 34, your certification of this in your section 23 affidavit.

Yours sincerely



ANTHONY BRINK

Cc: CSE Thembile Mtati and CLM Solly Sekgota

ANNEXURE: RECORDS REQUIRED

1. Legal Aid South Africa's (LASA's) insurance contract with Camargue in relation to Durban Labour Court case, Brink v LASA, D529/11, and Brink's petition to the Judge President of the Labour Appeal Court, DA21/14 – which insurance company CEO Vedalankar stated in her report to the Board about the case on 31 October 2014 was 'managing the matter'.
2. LASA's claim on Camargue upon Brink's referral of his case for trial.
3. All enquiries and requests for progress reports about the case by Camargue, including about Brink's petition to the Judge President of the Labour Appeal Court.
4. All responses and reports by LASA to Camargue about the case, including about Brink's petition to the Judge President of the Labour Appeal Court.

IGNORE ITEMS 5 AND 6: THESE HAVE BEEN SATISFACTORILY DISPOSED OF

- ~~5. All and any records vouching that deputy information officer Patrick Hundermark and other staff ('we') spent 187 hours reading 'the bundle of documents relating to the proceedings of the Labour Court' in the said referral; Brink's pending three 'applications in the Magistrate's Court' to compel LASA's compliance with PAIA; and the 'specific requests as outlined in' the annexures to Brink's Form A PAIA requests addressed to Hundermark, listing the documents required or, where they don't exist, sworn certification of this under section 23. (Quotations here are from Hundermark's demand of 3 February 2015 for payment of a one-third deposit of R900.)~~
- ~~6. All and any records vouching that deputy information officer Jerry Makokoane's 'team' spent 'almost 220 hours ... to read the bundle as referred in your footnotes to advise me with the gist of the background explanation.' (Quotations here are from Makokoane's demand of 25 February 2015 for payment of a one-third deposit of R1095.)~~

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

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.