

IN THE ESHOWE MAGISTRATES COURT

Case No:

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

BRIAN NAIR N.O.

DEPUTY INFORMATION OFFICER,

LEGAL AID SOUTH AFRICA

Respondent

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NOTICE OF MOTION

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

1. Declaring the respondent's refusal on 13 February 2015 of the applicant's requests for access to records on 17 November 2014, made under the Promotion of Access to Information Act 2 of 2000 ('PAIA'), to have been unlawful and a violation of his fundamental right to information guaranteed by section 32 of the Constitution.
2. Setting aside the respondent's refusal of the applicant's request.
3. Directing the respondent within 20 days of this order to furnish the applicant with copies of all the records he requested, or, where they do not exist, to certify this on affidavit under section 23 of PAIA.

4. Directing the respondent to pay the applicant's costs de bonis propriis, if he opposes the application.

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

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

TAKE NOTICE FURTHER that:

- (i) Notice of intention to oppose this application must be given within 15 days after receipt hereof and must contain an address within eight kilometres of the court to which the application is brought, where notice and service of documents will be accepted.
- (ii) Answering affidavits, if any, must be filed within 15 days after service of the notice of intention to oppose the application.
- (iii) In default of your complying with rule 3(5) of the Promotion of Access to Information Rules, the applicant may request the clerk of court to place the application before the court for an order in terms of section 82(b) of the Act.
- (iv) In default of your delivering a notice of intention to oppose, the matter will, without further notice, be placed on the roll for hearing after the expiry of the period mentioned in paragraph (i) above, on a date fixed by the clerk of court.

Signed at Eshowe on 6 August 2015.

Anthony Robin Brink  
Applicant

TO:  
The Clerk of Court  
Eshowe Magistrate's Court

AND TO:  
Brian Nair  
Deputy Information Officer  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein, Johannesburg  
Gauteng

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SUPPORTING AFFIDAVIT

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1. I am an adult male advocate of the High Court of South Africa, currently employed as a contract magistrate at the Inkanyezi Magistrates Court. I reside at The Cottage, 1 Boast Street, Eshowe, and I'm the applicant herein.
2. The respondent is Brian Nair, also an adult male advocate of the High Court of South Africa, employed as National Operations Executive of Legal Aid South Africa ('LASA') in its national office at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng. For brevity I'll refer to him as Nair.
3. Nair holds a written delegation by LASA information officer and CEO Vidhu Vedalankar under section 17 of the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act') as a deputy information officer (see annexure 'A'), and it's in this capacity that he's cited.



BS

4. This is an application under section 78(2)(c)(i) of the Act to compel Nair's compliance with a request I duly made under section 18 for access to certain specified records, or, where any of them don't exist, for his sworn certification of this under section 23.
5. I emailed Nair my request on 17 November 2014 (annexure 'B').
6. Although section 11(3) stipulates 'A requester's right of access ... is not affected by ... any reasons the requester gives for requesting access', I told Nair in my covering letter (annexure 'C') that the purpose of my request was to collect further evidence for his prosecution for perjury committed at the trial of my labour claim in the Durban Labour Court in mid-2013, which had miscarried directly on account of it.
7. An earlier PAIA request in November 2013, a couple of months after trial, disgorged email records from LASA proving irrefragably that Nair had lied to the judge in denying that he knew that the South African Human Rights Commission (a) had held a special remedial PAIA training workshop for LASA's head office lawyers on 6 November 2012, and (b) had audited LASA for PAIA compliance early the following year, after reporting LASA to the National Assembly for repeated false annual reporting under section 32 of the Act – arising from my complaints about (a) LASA's repeated, persistent illegal refusals of my PAIA requests in 2010 and 2011 as I was investigating the developing stories told me about why I was not appointed to LASA's top professional post in the this province, its Senior Litigator post at Pietermaritzburg, following my unanimous recommendation for it by a selection panel of LASA's most senior lawyers in the region; and (b) LASA's repeated false annual reporting of its handling of my

PAIA requests to conceal its illegal refusals to comply with them from the National Assembly.

8. Nair's said two lies were incidental and not central to the dispute, but on being proved by the said email records after the trial they've become highly material to the credibility of Nair's similar denials of his knowledge of other centrally important matters in the case, in that they show that he's given to lying freely under oath and that the truth isn't in him. (I deal with this in my similar application before this court under case number 258/14. That the emails showed Nair to be a serial perjurer isn't disputed in the answering papers.)
9. The judge reported that I'd exposed Nair under cross-examination as 'not generous with the truth' on 'a number' of scores; and I'm confident that the records I've sought from him in my instant PAIA request, or his sworn certification that they don't exist, will demonstrate absolutely Nair's further, central perjuries to pervert the true and just determination of my claim.
10. Indeed, as appears from correspondence quoted below, Nair himself understands very well that my PAIA request has him cornered, and that his compliance with it will be the end of him.
11. In the penultimate paragraph of my covering letter I sought LASA's bank details to make an EFT of the request fee prescribed by section 22; and on being given these (annexure 'D'), I wired it on 24 November (annexure 'E').
12. On 11 December, LASA's lead in-house attorney Corporate Services Executive Thembile Mtati requested an extension of time on Nair's behalf within which to respond (annexure 'F'), to which I agreed (annexure 'G'). (Other PAIA requests mentioned by Mtati are immaterial here.)

13. Nair and his attorney very correctly recognised that my record ‘requests ... incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa’; that is, they appreciated that should Nair comply with my PAIA request and surrender the extant documents I specified, and depose to the section 23 affidavit I require confirming the non-existence of others, this will further expose him to being sacked, struck off, and jailed for perjury, among other capital transgressions, and to a massive damages claim for all legal costs in my labour case, including the fees of three successive Senior Counsel briefed by LASA, incurred and paid by LASA’s general liability insurer Carmague, who maintained the cost of defending my claim on the strength of Nair’s (changing, different, contradictory) lies about why he decided silently not to approve my appointment.

14. On 13 February 2015 Nair refused my entire request (annexure ‘H’).

15. The spurious, unlawful grounds on which he did so are addressed and refuted in the Appendix hereto (annexure ‘J’).


16. In view of the corrupt reason Nair refused my request, namely to suppress evidence of his criminal conduct, and thereby obstruct justice, it would be just and equitable were he to be ordered to pay the costs of this application from his own pocket if he opposes it. My costs are negligible, but LASA’s, including its usual Johannesburg junior counsel’s fees and flight-tickets, will be substantial.

17. In the situation, I seek the relief prayed in my notice of motion.

Signed at Eshowe on 6 August 2015.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 6 August 2015 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he affirms its contents to be true and correct to the best of his knowledge and belief.

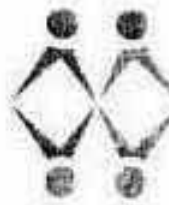
  
7053422-0  
CSA  
COMMISSIONER OF OATHS



Name: BONGIWE FAITH. N SIMELANE

Address: ESHOWE SARS, 73-79 MAIN STREET,  
ESHOWE 3815

Capacity: CONSTABLE



Legal Aid  
South Africa



National Office  
29 De Beer Street  
Braamfontein  
2017  
Tel: 011-877-2000  
Fax: 011-877-2222  
[www.legal-aid.co.za](http://www.legal-aid.co.za)

1<sup>ST</sup> March 2011

Mr Brian Nair  
National Operations Executive  
Legal Aid South Africa

Dear Brian

**APPOINTMENT AND DELEGATION AS DEPUTY INFORMATION OFFICER  
FOR LEGAL AID SOUTH AFRICA**

I hereby, and in my capacity as the Chief Information Officer and in compliance with section 17(6), appoint you to act as the Deputy Information Officer for Legal Aid South Africa with effect from 1<sup>ST</sup> March 2011. Your appointment shall be valid until withdrawn by the Chief Information Officer or Chief Executive Officer.

Regards

Vidhu Vedalankar  
Chief Executive Officer and Chief Information Officer

NOTE: This Annexure A and all other annexures to the original supporting affidavit in the court file are all duly initialled.

**Your voice. For justice.**

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

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

**[Regulation 2]****FOR DEPARTMENTAL USE**

Reference number:

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

Request fee (if any): R .....

Deposit (if any): R .....

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

**A. Particulars of public body**

**Legal Aid SA**

**Brian Nair**

**Deputy Information Officer,**

**National Office**

**29 De Beer Street**

**Braamfontein**

**B. Particulars of person requesting access to the record**

*(a) The particulars of the person who requests access to the record must be recorded below.*

*(b) Furnish an address and/or fax number in the Republic to which information must be sent.*

*(c) Proof of the capacity in which the request is made, if applicable, must be attached.*

Full names and surname : **Anthony Robin Brink**  
Identity number : **590225 5116 081**  
Postal address : **1 Boast Street, Eshowe 3815, KwaZulu-Natal**  
Fax number : **086 672 0776**  
Telephone number : **035 474 0145**  
E-mail address : **arbrink@iafrica.com**

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

**N/A**

### **C. Particulars of person on whose behalf request is made**

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

Full names and surname : **N/A**

Identity number : **N/A**

### **D. Particulars of record**

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

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

1. Description of record or relevant part of the record:
2. Reference number, if available:
3. Any further particulars of record:

**See annexure**

**E. Fees**

(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.

(b) You will be notified of the amount required to be paid as the request fee.

(c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.

(d) If you qualify for exemption of the payment of any fee, please state the reason therefor.

Reason for exemption from payment of fees:

N/A

**F. Form of access to record**

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

Disability: N/A	Form in which record is required:
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Mark the appropriate box with an "X".

NOTES:

(a) Your indication as to the required form of access depends on the form in which the record is available.

(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.

(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

<b>1. If the record is in written or printed form -</b>			
<b>X</b>	copy of record*		inspection of record

## 2. If record consists of visual images -

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

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

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

	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form*  (on compact disc)
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\*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?

**YES**

**A postal fee is payable.**

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

In which language would you prefer the record? **English**

**G. Notice of decision regarding request for access**

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

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

Signed at Eshowe on 17 November 2014

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

SIGNATURE OF REQUESTER

**Annexure to Form A**

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

1. The minutes kept by HRE Amanda Clark<sup>1</sup> of the 'second round interviews' held 'for some Regional Operations Executive posts',<sup>2</sup> 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 Nair<sup>3</sup> (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'<sup>4</sup> 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.'<sup>5</sup>
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

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<sup>1</sup> 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'.

<sup>2</sup> Record, page 338, lines 8–9.

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

<sup>4</sup> 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.'

<sup>5</sup> Record, page 349, lines 10–17.



Litigator post<sup>6</sup> 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.

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 five<sup>7</sup> 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,<sup>8</sup> in which emails Nair asked the five members of the 'second round' panel to advise him as to who they 'would like to see'<sup>9</sup> and 'interview'.<sup>10</sup> (As to the identities of the alleged five members of the so-called second round interview panel, see the Appendix hereto, paragraph [96].)

<sup>6</sup> Record, page 410, lines 15–21.

<sup>7</sup> Record, page 409, line 11.

<sup>8</sup> 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.'

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

<sup>10</sup> 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

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.<sup>11</sup>
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

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

<sup>11</sup> 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.

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 minutes<sup>12</sup> 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’,<sup>13</sup> 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’<sup>14</sup> 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.<sup>15</sup> (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.)

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<sup>12</sup> 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’.

<sup>13</sup> Record: Page 366, lines 14–21.

<sup>14</sup> Record, page 410, lines 21–4.

<sup>15</sup> 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.’

## APPENDIX: AN EXCERPT FROM THE RECORDS REQUESTER'S HEADS OF ARGUMENT

[90] Addressing the respondent's pleaded allegation that he was required to undergo 'a second round of interviews after the interviews conducted by the selection panel'<sup>16</sup> before he could be appointed, the applicant referred in his evidence to the operative provisions of the Board's Recruitment code and Approval Framework governing Senior Litigator recruitment and appointment. The selection panel's terms of reference under the Recruitment code were to interview all short-listed candidates<sup>17</sup> and to make a recommendation, and once it had 'identified the most suitable candidate for appointment in a post'<sup>18</sup> the 'Motivation has to be signed off by all members of the panel and the line executive before being sent to the HRE/COO/CEO/ delegated for approval, appointment recommendations will be approve in line with the approval framework [sic: comma splice and spelling]'.<sup>19</sup> Section 8.2.2 (b) of the Approval Framework<sup>20</sup> governing 'Appointments', read with 'Key to Levels',<sup>21</sup> stipulates that the management executives 'delegated for approval' of 'appointment recommendations' concerning grade LP10<sup>22</sup> 'Senior Professional staff' posts, such as Senior Litigator posts, are the NOE who gives 'Final approval', subject to the CEO's assent: she 'Must agree'<sup>23</sup> with the selection panel's recommendation. That is, Nair and Vedalankar are the executives 'delegated for approval', and no others.

[91] The applicant contended that Nair's second round interview scheme was incompetent and unlawful for several reasons. Contrary to Vedalankar's claim in her letter to him of 28 January 2011 that 'Legal Aid SA Executives are not precluded from formulating processes for recruitment'<sup>24</sup> as they see fit, and, as the respondent pleaded, 'may follow recruitment methods that are not specifically provided for in the Recruitment Code,'<sup>25</sup> only the Board has the power to set the respondent's recruitment policy and procedure, and it does so in its Recruitment code: 'This policy and procedure aims at ensuring that appropriate recruitment procedures are

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<sup>16</sup> Pleadings bundle, amended response, page 21, paragraph 4.4.

<sup>17</sup> Bundle, pages 230–1, paragraphs 1.2.2.1–2.

<sup>18</sup> Bundle, page 233, section 1.2.3.4.

<sup>19</sup> Bundle, page 234 'NB: Motivation ...'.

<sup>20</sup> Bundle addendum, page 1036.

<sup>21</sup> Bundle addendum, page 1034.

<sup>22</sup> Bundle addendum, page 1036, and bundle addendum, page 1002, paragraph 16.

<sup>23</sup> Bundle addendum, pages 1034 and 1036.

<sup>24</sup> Bundle, page 214, paragraph V2.

<sup>25</sup> Pleadings bundle, amended response, page 21, paragraph 4.3.



followed, in line with statutory legislation and business practices<sup>26</sup> ... This policy and procedure provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists.<sup>27</sup> The respondent's executives and other officers are not at large to depart from it and make up new recruitment policy and procedure as and when they feel like it.

[92] In his PAIA section 23 affidavit of 8 April 2011, Nair stated that in 'April 2008'<sup>28</sup> he as 'National Operations Executive, in consultation with both the Chief Executive Officer and the Human Resources Executive agreed that the process of recruitment for Senior Litigators will include a second round of interviews. This decision was taken verbally<sup>29</sup> ... The Chairperson of the Board was also invited to participate in this panel.<sup>30</sup> ... The second round of interviews is, in fact, the brainchild of the Chairperson together with the executive management'.<sup>31</sup> But when several months later on 29 November 2008 the Board reconsidered and resolved to amend its Recruitment code, it was not proposed that it include a novel provision for a 'second round of interviews' of a Senior Litigator candidate, duly selected and recommended by a selection panel of senior lawyers, to be conducted by some 'National Office executives'<sup>32</sup> and 'the Chairperson of the Board';<sup>33</sup> and accordingly in amending its Recruitment code the Board did not consider and resolve to include any such novel provision in its 'Version 2\_Approved by Board 29 November 2008',<sup>34</sup> still in force.<sup>35</sup>

[93] Consequently, no section of the respondent's Recruitment code<sup>36</sup> provides for 'a second round of interviews'<sup>37</sup> by any 'identified National Office executives'<sup>38</sup> and by 'the Chairperson of the Board ... invited'<sup>39</sup> to join them; and the respondent finally conceded this, with Nair confirming on affidavit:<sup>40</sup> 'On close scrutiny it will be noted that [the Board's Recruitment code] does not provide for the two-stage interview

<sup>26</sup> Bundle, page 228, section 1.1.2.

<sup>27</sup> Bundle, page 228, section 1.1.3.

<sup>28</sup> Bundle, pages 379–80, paragraph 8.

<sup>29</sup> Ibid.

<sup>30</sup> Bundle, page 380, paragraph 10.

<sup>31</sup> Pleadings bundle, original response, page 143, paragraph 8.

<sup>32</sup> Bundle, page 380, paragraph 9.

<sup>33</sup> Bundle, page 380, paragraph 10.

<sup>34</sup> Bundle, page 228, footer.

<sup>35</sup> Bundle, pages 228–34; bundle addendum, pages 717–8.

<sup>36</sup> Ibid.

<sup>37</sup> Bundle, page 379, paragraph 8.

<sup>38</sup> Bundle, page 380, paragraph 9.

<sup>39</sup> Bundle, page 380, paragraph 10.

<sup>40</sup> Application to subpoena Mlambo JP, Nair's confirmatory affidavit, pages 122–3.

process referred to'.<sup>41</sup> Before making this true concession, the respondent had meretriciously alleged to this court in its original response that the Recruitment code 'does not in peremptory terms proscribe the use of more than one interviewing methods. On the contrary, clause 1.2.3.5 (page 233 of the Bundle) indicates that there are other possible methods that may still be utilised to complement the interview process adopted by the selection panel.'<sup>42</sup> In fact, looked up, clause 1.2.3.5 provides quite differently: 'The selection committee may require certain short listed candidates undergo psychometric assessment to supplement the interview results.'<sup>43</sup>

[94] The applicant contended that notwithstanding his preeminent legal acumen as a senior judge, Board chairperson Mlambo JP has no legal authority as a non-executive director<sup>44</sup> of the respondent to involve himself in such operational processes as staff recruitment and the interviewing of applicants for the respondent's advertised vacant posts, so as to decide whether he agrees with a selection panel's recommendation and whether an applicant 'identified' by it as 'the most suitable candidate for appointment in a post',<sup>45</sup> is indeed the 'most suitable candidate for appointment' in his opinion, and should be appointed or not. The applicant contended with reference to the Approval Framework that Mlambo JP has no approval power in regard to the appointment of Senior Litigators duly selected and recommended for appointment by duly constituted selection panels, and that his authority to approve or disapprove appointment recommendations is limited to the appointment of the CEO and the NOE<sup>46</sup> – his approval authority here shared with the rest of the Board, and not exercised on his own or in committee with any management executives. According to the King III principles of corporate governance<sup>47</sup> which the respondent claims to observe,<sup>48</sup> Mlambo JP's function as the chairperson of the respondent's Board of Directors is inter alia to serve as 'a link between the board and management', while 'Maintaining an arms-length

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<sup>41</sup> Application to subpoena Mlambo JP, Mtati's answering affidavit, page 81, paragraph 8.

<sup>42</sup> Pleadings bundle, original response, page 176, paragraph 53.3.

<sup>43</sup> Bundle, page 233.

<sup>44</sup> Bundle addendum, page 748.

<sup>45</sup> Bundle, page 233, section 1.2.3.4.

<sup>46</sup> Bundle, page 372, section 8.2.1.

<sup>47</sup> Bundle addendum, pages 749–51.

<sup>48</sup> Bundle addendum, page 751.

relationship'<sup>49</sup> with them, not to re-interview and approve or reject candidates duly recommended by selection panels.

[95] Regarding the powers and functions of the respondent's non-executive directors such as chairperson Mlambo JP, Nair confirmed<sup>50</sup> the respondent's correct assertion: 'The Board's responsibility primarily relates to policy issues and not operations, hence appointments ... are dealt with by Executives.'<sup>51</sup> So did attorney Mtati: 'Staffing of the Respondent is an issue that is ordinarily dealt with by the Respondent's executive officials.'<sup>52</sup> And again: 'The recruitment and staff issues do not fall within the realm/jurisdiction of the Respondent's board of directors. They are properly dealt with at the respondent's management level.'<sup>53</sup> And again: 'recruitment of staff is an exclusive terrain of executives.'<sup>54</sup> And again: 'the Board does not ordinarily get involved in the management of Legal Aid SA. The exception being, of course the recruitment of senior litigators'.<sup>55</sup> Only, no such 'exception' is provided for anywhere in the Board's Recruitment code, either 'of course' or at all, and it does not permit a non-executive director of the Board to 'get involved' in such operational processes and management decisions as Senior Litigator recruitment.

[96] According to Vedalankar, alleging this to the applicant on 18 October 2010, 'The second stage comprises an interview process by a national office panel, including the Chairperson of the Board, National Operations Executive (NOE), Legal Development Executive, Human Resources Executive and the Chief Operations Officer';<sup>56</sup> and the respondent claimed the same in the pleadings: 'The second stage of the interview process was to be conducted by a panel including the Chairperson, the National Operations Executive, the Legal Development Executive, the Human Resource Executive and the Chief Operations Officer.'<sup>57</sup>

[97] Besides her formal responsibility stipulated by Note 17 of the Approval Framework: 'HRE to confirm budget and vacancy and EE statistics with regard to a

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<sup>49</sup> Bundle, page 751.

<sup>50</sup> Application to subpoena Mlambo JP, Nair's confirmatory affidavit, pages 122-3.

<sup>51</sup> Bundle, page 364, paragraph 6.

<sup>52</sup> Pleadings bundle, original response, page 155, paragraph 37.8.

<sup>53</sup> Pre-trial conference bundle, answer to agenda, page 62, paragraph 74.2.

<sup>54</sup> Application to subpoena Mlambo JP, Mtati's answering affidavit, page 110, paragraph 93.4.

<sup>55</sup> Application to subpoena Mlambo JP, Mtati's answering affidavit, page 93, paragraph 57.3.

<sup>56</sup> Bundle, page 103, paragraph 6.4.

<sup>57</sup> Pleadings bundle, original response, page 143, paragraph 6.

JC/region/dept’,<sup>58</sup> the Approval Framework does not vest Clark with any authority to vet and approve or reject a selection panel’s recommendation of a candidate ‘identified’ as ‘the most suitable candidate for appointment’ as a Senior Litigator, following the panel’s interview of him and interrogation of his professional qualifications and experience. Nor under the Approval Framework does LDE Hundermark have any such authority either. Nor does COO Makokoane – as Vedalankar pointed out to the applicant,<sup>59</sup> Note 31 of the Approval Framework specifically ousts him: ‘The COO shall not have authority to approve matters relating to functions that are the responsibility of the NOE and vice versa.’<sup>60</sup> Nor, as said, does chairperson Mlambo JP. Under the Approval Framework, NOE Nair does indeed have the power to approve or reject a selection panel’s recommendation of a Senior Litigator candidate – but upon a review of the selection panel’s recommendation, and not after interviewing him again. This is because, lacking any legal qualifications, Nair is not professionally competent to interview and thereupon assess and vet an appointment recommendation of a senior legal professional for a Senior Litigator post made by a selection panel comprised of the respondent’s senior legal professionals. For the same reason HRE Clark and COO Makokoane are not professionally competent to reassess such senior legal professionals’ qualifications, experience and expertise either.

[98] It follows that to the extent that the selection panel’s recommendation of the applicant specified a further interview in keeping with Nair’s unapproved, unauthorised and unlawful second interview scheme, such language is legally incompetent, pro non scripto, and severable. After interrogating the professional qualifications and experience of the several shortlisted candidates at their interviews, the selection panel duly identified the applicant and Mngadi for the Pietermaritzburg and Durban Senior Litigator posts respectively, in accordance with its prescribed terms of reference under the Recruitment code. The Recruitment code and Approval Framework thereafter required Nair and Vedalankar to exercise their discretion as executing authorities as to whether or not to approve the recommendation upon a consideration of the papers.

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<sup>58</sup> Bundle addendum, page 1040.

<sup>59</sup> Bundle, page 213, paragraph V1.

<sup>60</sup> Ibid.

## 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.

1 Boast Road  
Eshowe 3815  
17 November 2014

Brian Nair  
Deputy Information Officer,  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Per email: [briann@legal-aid.co.za](mailto:briann@legal-aid.co.za)

Mr Nair

#### PAIA REQUEST

Herewith a PAIA request for your personal attention and action.

Although my purpose is irrelevant under section 11(3), you'll see it's directed at categorically exposing your several perjuries at the trial of my unfair discrimination claim last year about the functioning of your so-called 'second round' interview scheme for the recruitment and appointment of Senior Litigators, and, you said, some Regional Operations Executives too. (An excerpt from my heads of argument addressing your obvious lies about this is annexed.)

If you have in mind to illegally refuse any of my requests again, as you've done before, thereby precipitating an immediate application to court to compel your compliance with the Act, adding to my three others already pending against other LASA information and deputy information officers, I suggest you consult the SAHRC's PAIA Unit for advice before doing so; because despite the special remedial training it's given your Corporate Services lawyers in how PAIA works, including on the operation of section 7, they remain as clueless about it as the useless junior advocate they've been briefing since 2010 to advise them to repeatedly violate my fundamental right to information entrenched by section 32 of the Constitution by refusing my several previous PAIA requests, with the corrupt intention of concealing inter alia the documentary evidence refuting the lying budgetary insufficiency excuse I was fed for the abortion of my appointment to LASA's top professional post in KwaZulu-Natal the year before.

Since 'perjury is a very serious crime' (R v Samuels 1930 CPD 67 at 71), you'll appreciate that section 45, barring manifestly pointless and unreasonably time-consuming record requests, isn't available to you to avoid complying with this

request, because, as said, my serious purpose in making it is to extract from you the unequivocal hard documentary evidence of your very serious crimes of perjury to defeat the ends of justice, and, for your successful future prosecution, to plug the greasy drain hole you repeatedly slithered down at trial in blaming your attorneys for their alleged mistakes in the pleadings and interlocutory affidavits whenever I showed your evidence was contradicted by LASA's pleaded and sworn case:

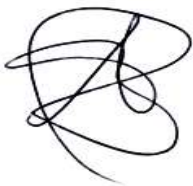
Under PAIA I'm requiring you as deputy information officer to produce records vouching the obviously false claims you made under oath in court about your so-called 'second round' interview scheme you conducted as National Operations Executive; and your section 23 affidavit confirming that many of the records I've specified don't exist will clinch my perjury charges against you, for referral to the Board, to the Public Service Commission, and to the Director of Public Prosecutions, supported by a finely particularised draft indictment cataloguing and demonstrating these and all your other many perjuries in the case.

The Labour Court/Appeal Court will naturally also be told.

As the author of the lies under oath in question, you're best placed to refute them for these high authorities.

In view of the post office strike, a cheque by post isn't likely to reach you any time soon, so if you email LASA's bank account details to arbrink@iafrica.com I'll pay the PAIA request fee by EFT.

*'It's the perjury that gets them in the end. Not so much as the deed itself, but the lying about it afterwards.'* – The District Attorney in *The Walker*, a feature film by Paul Schrader.



ADV A R BRINK

Cc:

Nokwanda Molefe, PAIA Unit, South African Human Rights Commission

Sinthia Reddy, Public Protector investigator (ref: 7/2-040815/12)

Adv Richard Sizani, Deputy and Acting Chairperson, Public Service Commission

Lesleigh Timothy, LASA Board Secretary

Patrick Hundermark, LASA Chief Legal Executive

And other parties.

## ANNEXURE: HEADS OF ARGUMENT EXCERPT

(My heads of argument were drawn without sight of the trial record at the time. I precisely quote Nair's recorded evidence, however, in my Form A PAIA request annexure.)

[146] Nair's new claim in court that there was nothing for him to sign, and that he did not have to approve the recommendation, is contradicted by Vedalankar's statement to the applicant in her January 2011 letter: 'the 2nd round was never approved by NOE thus was never proceeded with',<sup>1</sup> and it is repeatedly contradicted by the respondent's pleadings and affidavits. In its original response the respondent stated: 'The Regional Selection Panel's recommendation for a second round of interviews was never approved and accordingly, the process ended at the regional level.'<sup>2</sup> ... The Regional selection committee signs the recommendation and send[s] to NOE for his approval. Thereafter it will be sent to the HRE who prepares the second panel of interviews.<sup>3</sup> ... the line executive responsible herein – Mr Brian Nair who is the NOE – did not sign the said recommendation thus rendering the said recommendation ineffective.<sup>4</sup> The respondent 'Agreed'<sup>5</sup> this as an admitted fact in its answer to the applicant's agenda<sup>6</sup> for the pre-trial conference in October 2011, and averred in the same pleading: 'The KZN Regional Panel's recommendation had to be approved and by the time when the Applicant and Mr Brijlal conversed, such recommendation had not been approved.'<sup>7</sup> Mtati insisted in an affidavit on 16 January 2013 that Nair's 'signature is a necessary jurisdictional fact before the second round interviews could take place.'<sup>8</sup> ... I repeat that without Nair's signature the recommendation for the second round of interviews was ineffectual.<sup>9</sup> And in his confirmatory affidavit, Nair agreed,<sup>10</sup> contradicting his evidence in court.

[147] The obvious reason Nair lied to court in claiming he did not have to consider the recommendation and record his approval by signing it before the second interviews could take place was to fake a justification to support his allegation that he did not read the recommendation and the applicant's CV until a year after receiving them, by pretending he did not need to, so could not possibly have silently rejected the applicant on political grounds.

[148] Nair's claim that he did not have to record his approval or rejection of the candidates recommended for second round interviews, because all candidates interviewed by the selection panel would be interviewed by the national panel again, including those eliminated

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<sup>1</sup> Bundle, page 215, paragraph V7.

<sup>2</sup> Pleadings bundle, original response, page 158, paragraph 40.6.

<sup>3</sup> Pleadings bundle, original response, page 158, paragraph 40.7.

<sup>4</sup> Pleadings bundle, original response, page 154, paragraph 36.7.

<sup>5</sup> Pre-trial conference bundle, answer to agenda, page 50, paragraph 11.1.

<sup>6</sup> Pre-trial conference bundle, answer to agenda, page 10, paragraph 10.

<sup>7</sup> Pre-trial conference bundle, answer to agenda, page 51, paragraph 15.2.

<sup>8</sup> Application to subpoena Mlambo JP, Mtati's answering affidavit, page 100, paragraph 68.2

<sup>9</sup> Application to subpoena Mlambo JP, Mtati's answering affidavit, page 101, paragraph 71.

<sup>10</sup> Application to subpoena Mlambo JP, Nair's confirmatory affidavit, pages 122–3.

by the selection panel, had only to be stated to be rejected. Not only is it false on its face, it is repeatedly contradicted by the respondent's correspondence, pleadings and affidavits, including by Nair. In her email to the applicant of 30 April 2010 Clark claimed: 'At this stage it is not even clear which applicants will be considered in the second round'.<sup>11</sup> (It was perfectly clear.)<sup>12</sup> Nair swore in his PAIA section 23 affidavit on 8 April 2011: 'The second interview panel would consider all candidates recommended from the first round of interviews to the second rounds of interviews.'<sup>13</sup> The respondent alleged in its answer to the applicant's agenda for the October 2011 pre-trial conference: 'The two persons referred to herein were eliminated early in the selection process and were not recommended for the second round of interviews. Accordingly, they were not entitled to any information that pertains to the second round of interviews.'<sup>14</sup> In his affidavit in February 2012 Mtati wrote of 'those applicants that made it to the second round of interviews',<sup>15</sup> clearly implying, correctly, obviously, that those applicants eliminated by the selection panel would not be interviewed again. In his affidavit in January 2013, Mtati recorded: 'Nair did not pass the fact that he did not approve the second round of interviews arising from the KZN interviews to Ms Clark'.<sup>16</sup> In his confirmatory affidavit Nair agreed.<sup>17</sup> The amended response alleged consistently that 'the selection panel had to identify candidates who had to undergo a second round of interviews.'<sup>18</sup> Nair's opposite claim in court, contradicting evidence he had previously given in two affidavits, was a transparent lie.

[149] Re-interviewing the candidates who had been rejected as unsuitable by the duly constituted selection panel with a view to appointing one of them in place of the recommended candidate, was manifestly irregular and unlawful. It follows that the probable reason Brijal received special 'instructions ... telephonically'<sup>19</sup> to send over all interviewed shortlisted candidates' CVs, 'including those who had neither been shortlisted nor recommended for a second round of interviews',<sup>20</sup> is because this was manifestly irregular, and Nair intended interviewing a rejected candidate for appointment instead of the recommended applicant, having heard of his problematic selection. Indeed, as Clark put it to the applicant, dishonestly contradicting the selection panel's clear recommendations of him and Mngadi for the Pietermaritzburg and Durban posts: 'it is not even clear which applicants will be considered in the second round'.<sup>21</sup>

<sup>11</sup> Pre-trial conference bundle, answer to agenda, page 54, paragraph 26.1.

<sup>12</sup> Bundle, pages 244–8.

<sup>13</sup> Bundle, page 380, paragraph 11.

<sup>14</sup> Pre-trial conference bundle, answer to agenda, page 55, paragraph 34.2.

<sup>15</sup> Application to compel, Mtati's answering affidavit, Volume 2A, page 4, paragraph 14.

<sup>16</sup> Application to subpoena Mlambo JP, Mtati's answering affidavit, page 101, paragraph 69.3.

<sup>17</sup> Application to subpoena Mlambo JP, Nair's confirmatory affidavit, pages 122–3.

<sup>18</sup> Pleadings bundle, amended response, page 21, paragraph 4.6.

<sup>19</sup> Bundle addendum, page 987, Part 2, document 11, paragraph 27.

<sup>20</sup> Pleadings bundle, amended response, page 23, paragraph 10.3.

<sup>21</sup> Pre-trial conference bundle, answer to agenda, page 54, paragraph 26.1.



Our Ref: PAIA/Dick01  
Date: 20 November 2014  
**Anthony Robin Brink**  
1 Boast Road  
Eshowe,  
3815

29 De Beer Street  
Braamfontein  
Johannesburg 2017  
Private Box X76  
Braamfontein 2017  
Tel: 011 877 2000, Fax: 011 877 2222  
[www.legal-aid.co.za](http://www.legal-aid.co.za)

Dear Anthony Brink,

**RE: REQUEST FOR ACCESS TO RECORD IN TERMS OF SECTION 18 (1) OF THE  
PROMOTION OF ACCESS TO INFORMATION: ANTHONY ROBIN BRINK**

1. I hereby acknowledge receipt of your request received by my office on the 17 November 2014;
2. Please be advised that before I can consider your request, you are required to deposit a fee of R35-00 into the bank account set out below:

Bank Name	:	First National Bank
Account Name	:	Legal Aid Board
Account Number	:	62224831471
Branch Name	:	Braamfontein
Reference	:	PAIA/Dick01

3. Please further note that upon depositing the fee, we will consider your request.

Yours faithfully,

**Adv. Brian Nair**  
**Deputy Information Officer**  
**Legal Aid South Africa**



**FNB**  
First National Bank

## **NOTIFICATION OF PAYMENT**

Dear Proof Of Payment

First National Bank hereby confirms that the following payment instruction has been received

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Date Actioned : 2014/11/24  
Time Actioned : 19:37:20  
Trace ID : DT4J31DC

### **Payer Details**

Payment from : A R BRINK  
Cur/Amount : ZAR35.00

### **Payee Details**

Recipient/Account no. : ..831471  
Name : LEGAL AID BOARD  
Bank : FIRST NATIONAL BANK  
Branch Code : 250655  
Reference : PALA/DICK01

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### **END OF NOTIFICATION**

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To authenticate this Payment Notification please visit the First National Bank website at <https://www.fnb.co.za>, select the "Verify Payment" link and follow the on-screen instructions.

Our customer (the payer) has requested FirstRand Bank Limited to send this notification of payment to you. Should you have any queries regarding the contents of this notice, please contact the payer. FirstRand Bank Limited does not guarantee or warrant the accuracy and integrity of the information and data transmitted electronically and we accept no liability whatsoever for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from the transmission of the information and data.

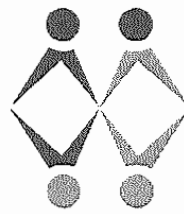
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FirstRand Bank Directors: LL Dippenaar (Chairman), SE Noasana (CEO), VW Bartlett, JH Bester, JP Burger (Deputy CEO), MS Bomela, P Cooper (Alternate), L Crouse, JJ Durand, GG Gelnik, PM Gosa, NN Gwagwa, PK Harris, WR Jardine, HS Kellan, RM Loubser, EG Maseko-Sebeshe, AT Normande, D Prannanayen (India), KB Schoeman, BJ van der Ross, JH van Greuning, Company Secretary: C Low

First National Bank, a division of FirstRand Bank Limited. Reg.No.1929/001225/08.  
An Authorised Financial Services and Credit Provider (NCRCP20).



Our Ref: PAIA/Achmed01  
Date: 11 December 2014  
**Anthony Robin Brink**  
1 Boast Road  
Eshowe,  
3815

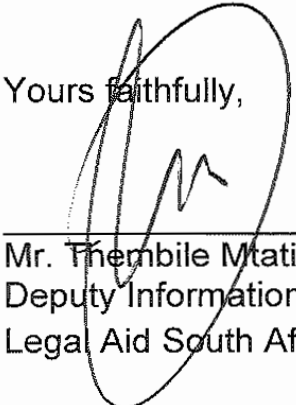
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Braamfontein 2017  
Tel: 011 877 2000, Fax: 011 877 2222  
[www.legal-aid.co.za](http://www.legal-aid.co.za)

Dear Anthony Brink,

**RE: NOTIFICATION IN TERMS OF SECTION 26 FOR THE EXTENSION OF THE TIME  
LINES FOR REPLY TO YOUR REQUESTS: ANTHONY ROBIN BRINK**

1. We refer to the various requests directed to the Deputy Information Officers of Legal Aid South Africa, namely
  - 1.1. Mr Patrick Hundermark dated 10 and 17 November 2014;
  - 1.2. Advocate Brian Nair dated 17 November 2014
  - 1.3. Mr Jerry Makokoane dated 25 November 2014;
2. Whilst we note that in respect of your requests to Mr Jerry Makokoane, you have granted your consent and permission for the extension of his reply to a further 30 days, we have been instructed by the Deputy Information Officers, Mr Patrick Hundermark and Advocate Brian Nair to seek your consent to extend their timelines for reply by a further 30 days in terms of section 26 of the Promotion of Access to Information Act 2 of 200. Accordingly, your reply to all your requests will be provided within 60 days of receipt.
3. The basis for the request for the extension is that firstly, all your requests are voluminous and incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa. The Deputy Information Officers therefore requires sufficient time for investigations and to provide appropriate response. Secondly, Legal Aid South Africa, will be closing for December 2014 holidays starting from the 15 December 2014 and re-opening on the 6 January 2015.

Yours faithfully,



---

Mr. Thembile Mtati  
Deputy Information Officer  
Legal Aid South Africa

**From:** Anthony Brink [arbrink@iafrica.com]  
**Sent:** 11 December 2014 05:22 PM  
**To:** 'Solly Sekgota'  
**Cc:** 'Thembile Mtati'; 'Akhona Nobetsu'  
**Subject:** RE: Notification in terms of section 26 of Promotion of Access to Information Act 2 of 2000

Dear Solly  
Noted, and no problem.  
Cheers  
Anthony

---

**From:** Solly Sekgota [<mailto:SollyS@legal-aid.co.za>]  
**Sent:** 11 December 2014 04:05 PM  
**To:** Anthony Brink  
**Cc:** Thembile Mtati; Akhona Nobetsu  
**Subject:** Notification in terms of section 26 of Promotion of Access to Information Act 2 of 2000  
**Importance:** High

Good Day Mr Brink,

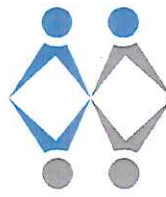
Please find the letter which is self-explanatory.  
Yours Sincerely,

Mr Solly Sekgota  
Legal Aid South Africa

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

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29 De Beer Street  
Braamfontein  
Johannesburg 2017  
Private Box X76  
Braamfontein 2017  
Tel: 011 877 2000  
Fax: 011 877 2222

[www.legal-aid.co.za](http://www.legal-aid.co.za)

Date: 13 February 2015

Advocate Anthony Brink;  
1 Boast Road;  
Eshowe  
3815

Dear Advocate Brink,

**REQUEST BY ADVOCATE BRINK FOR RECORDS OR INFORMATION IN TERMS  
OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000: 17  
NOVEMBER 2014**

I have considered your request for the records in terms of the Act as clearly set out in the Annexure to the Form A of your letter of 17 November 2014.

I note with concern, however, that you continue to thread on the path of making demeaning and defamatory comments which are not supported by any facts. I reserve my rights in this regard and will deal with those comments at the appropriate forum.

Just for the record, I confirm your consent to a 30 days extension in terms of section 26(1) of the Promotion of Access to Information Act 2 of 2000(hereinafter referred as the "Act) to reply to your request.

I further wish to put on record that where my response relates to a question of law, such response is given to you on the basis of the advice of my legal representatives, which I verily accept.

**Your voice. For justice.**

I now reply to your request as follows:

H

No	Record requested	Reply
1	The minutes kept by HRE Amanda Clark of the second round interviews held for some Regional Operations Executives posts as alleged by Legal Aid SA's single witness Brian Nair at the trial of case No.LC D529/11.	This request cannot be acceded to in terms of section 7 as it relates to the evidence in the matter pending before Court.
2.	The recommendations made by the selection panel of candidates for Bloemfontein, CapeTown, Johannesburg, Mafikeng, Port Elizabeth Senior Litigator posts and for the Pietermaritzburg Senior Litigator post when it was first advertised and for the Kimberly Senior Litigator Post if a recommendation was made showing, the names of the shortlisted and interviewed candidates, the recommended candidates and members of the selection panels.	This information relates to third parties and falls within the ambit of section 37 read with section 47 and 48 of the Act
3.	In respect of Bloemfontein,CapeTown,Johannesburg, Mafikeng, Port Elizabeth and Pretoria Senior Litigator posts the emails sent by ROE to Nair or by RHRMS to Clark, forwarded to Nair covering the selection panel's Recommendations and the CVs of the recommended candidates as well as CV's of other candidates who were shortlisted and interviewed by the selection panel but not recommended by them in compliance with the specific requirements of the second round interview panel to send all CVs and not only those of recommended candidates since it was the practice of the second round panelists to consider if there was anyone else they would be interested to interview.	This information relates to third parties and falls within the ambit of section 37 read with section 47 and 48 of the Act
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 Legal Aid SA attorney Ashok Kaloo for the Pietermaritzburg Senior litigator Post 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.	This records was requested during the discovery process in the trial court for which the matter is still pending. Therefore it is excluded in terms of section 7 of the Act.
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 CV's of the other Candidates who	This requests relates to the evidence and the records already before court, which matter is still pending. Therefore it is excluded in terms of section 7 of the Act

	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 email to the five members of the second round panel, forwarding the selection panel's Senior Litigator candidate recommendations in each case and the CVs of all candidates who were shortlisted and interviewed by the selection panels including CVs of all those candidates that 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. As to the identities of the so called second round interview panel see the Appendix hereto, paragraph (96).	The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.
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 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 members of the second round panel to advise him as to who they would like to see and interview.	This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act
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 candidates and his CV and the CVs of those candidates who were not recommended in which emails Nair asked the members of the second round panel to advise him as to who they would like to see and interview.	This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act
9	In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth and Pretoria Senior Litigator's posts, the records of the second round panel members to Nair's enquiries as to which Senior litigator Candidates they wished to see and interview, notifying as to who they would like to see and interview including candidates who had been shortlisted and interviewed by selections panel but not recommended by them	The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.
10.	In respect of the Pietermaritzburg Senior Litigator's posts, when it was first advertised, the records of the second round panel members to Nair's enquiries as to which Senior litigator Candidates they wished to see and interview, notifying as to who they would like to see and interview including candidates who had been shortlisted and interviewed by selection panel but not recommended by it.	This requests forms part of the discovery notice at the trial court and accordingly is excluded in terms of section 7 of the Act

11,	In respect of the Kimberly Senior Litigator's posts, when it was first advertised the records of the second round panel members responses to Nair's enquiries as to which Senior litigator Candidates they would like to see and interview, notifying as to who 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 candidates who had been shortlisted and interviewed by selection panel but not recommended by it.	This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.
12.	In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth and Pretoria Senior Litigator's posts, the Kimberly senior Litigator Post- if a recommendation was made and the Pietermaritzburg Senior Litigator's post, when it was first advertised, records of the invitation to attend second round interviews sent to the senior Litigator candidates recommended by the selection panels and the invitation 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 it would like to see and interview them too.	This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable
13.	The minutes of the meetings of second interview panel on three separate occasions on which it has sat to select prospective candidates for appointment as Senior litigators at which (i) the current six incumbent Senior litigators in Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth and Pretoria were chosen,(ii) Legal Aid SA attorney Ashok Kaloo was rejected and (iii) one other person besides Kaloo that was recommended as possible appointable was also rejected because we did not like him/her	This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable
14.	The record of Mlambo JP's communication to executive management of his brain child of a second round of interviews referred to in Legal Aid SA's original response to the original statement of claim in case LC D529/11.	The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act

Yours Faithfully,

Advocate Brian Nair

Deputy Information Officer

## APPENDIX

Note: My records request addressed to Nair comprised fourteen items, and these are treated in the following centrally numbered parts:

Section '(a)' of each part identifies the records to which I requested access, or Nair's sworn confirmation under section 23 in any case the records don't exist.

Section '(b)' records Nair's various justifications for refusing me access to them, which for clarity I've set in italics.

Section '(c)' rebuts Nair's justifications, and demonstrates the unlawfulness of Nair's refusals and the irrelevance of the sections of PAIA he relies on, as well as his other justifications not referenced to the Act.

### 1.

(a) **Request:** The minutes kept by HRE Amanda Clark<sup>1</sup> of the 'second round interviews' held 'for some Regional Operations Executive posts',<sup>2</sup> as alleged by LASA's single witness NOE Brian Nair at the trial of case LC D529/11.

(b) **Refusal:** *This request cannot be acceded to in terms of section 7 as it relates to the evidence in the matter pending before Court.*

(c) **Rebuttal:** Section 11(1) provides:

11 Right of access to records of public bodies

(1) A requester must be given access to a record of a public body if –

(a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and

(b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

'CHAPTER 4 GROUNDS FOR REFUSAL OF ACCESS TO RECORDS (ss 33-46)' doesn't include section 7, and Nair's justification based on section 7 for refusing these records is accordingly incompetent and unlawful.

Section 7 doesn't afford an information officer a ground for refusing a record. It ordinarily bars a litigant from adducing in evidence a record obtained via PAIA after

<sup>1</sup> 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'.

<sup>2</sup> Record, page 338, lines 8–9.

the commencement of the case, but the rule is not absolute and section 7(2) gives the trial court a discretion to admit such a record.

Not being founded on any grounds allowed by Chapter 4, the fact that a request in some manner 'relates to the evidence in the matter pending before Court' is no valid justification for refusing a request.

Judgment had been delivered when I made the request, so the case was already over, and no longer 'pending'.

2.

- (a) **Request:** 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.
- (b) **Refusal:** *This request cannot be acceded to in terms of section 7 as it relates to the evidence in the matter pending before Court.*
- (c) **Rebuttal:** This repeated incompetent and unlawful justification is rebutted above.

3.

- (a) **Request:** In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, the emails sent by the ROEs to Nair<sup>3</sup> (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'<sup>4</sup> to send all CVs, and not only those of the recommended candidates, since it was 'The practice of the ... second

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

<sup>4</sup> 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.'

round panellists to ... consider if there was anyone else they would be interested to interview.<sup>5</sup>

(b) **Refusal:** *This information relates to third parties and falls within the ambit of section 37 read with section 47 and 48 of the Act.*

(c) **Rebuttal:** Subsection 1(b) of section 37 in Chapter 4, 'Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party' allows that 'the information officer of a public body- ...

(b) may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party –

(i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and

(ii) if it is in the public interest that similar information, or information from the same source, should continue to be supplied.

Nair doesn't have any facts to state to support requirements (i) and (ii).

Section 37 manifestly has no application to the records requested under this item, and Nair has obviously grabbed at the wrong section.

If he possibly meant to grab at subsection 1 of section 34 instead, 'Mandatory protection of privacy of third party who is natural person', which stipulates that 'the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party', he's failed to show that the mere covering emails in question contain any 'personal information about a third party'.

Nair purports to fortify his refusal under section 37 by suggesting that it be 'read with section 47 and 48 of the Act'.

Section 47, 'Notice to third parties', imposes a duty on an information officer to notify an affected third party contemplated in sections 34 and 37. Section 48, 'Representations and consent by third parties', affords such parties an opportunity to oppose or agree to the release of a record containing their 'personal information' or 'confidential information'. Since section 37 is irrelevant (and section 34 too), sections 47 and 48 are equally so.

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<sup>5</sup> Record, page 349, lines 10–17.

The fact that a request ‘relates to third parties’ doesn’t ipso facto bring it within the ambit of section 34 – not unless the record contains ‘personal information’. Not having any interest in such, I headed my annexure with the notice that it ‘may be blacked out’. (I referred to ‘confidential information’, meaning ‘personal information’; section 34 that I mentioned concerns ‘personal information’.)

4.

- (a) **Request:** 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 Litigator post<sup>6</sup> 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.
- (b) **Refusal:** *This record was requested during the discovery process in the trial court for which the matter is still pending. Therefore it is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** Contrary to Nair’s lie about this, in truth and in fact the email record in question was not ‘requested during the discovery process in the trial court’. It was not among the records I specified for discovery in my agenda for the pre-trial conference in October 2011; in my application to compel discovery in January 2012; in my agenda for the first pre-trial conference at court under judicial supervision in January 2013 to compel LASA to discover; and in my agenda for the second pre-trial conference at court under judicial supervision in June 2013 to the same end. (All this extraordinary trouble I was put to was occasioned by LASA’s resolutely determined refusal to discover documents I needed for trial, with the corrupt intention of hindering me in proving my claim, which is to say with the intention of obstructing and defeating the ends of justice. In the result this criminal object was achieved by Nair’s rampant perjury at trial.)

Not being a ground provided for by Chapter 4, the fact that a record was ‘requested during the discovery process’, but was not furnished therein, is anyway not a ground for refusing a request for it later made again under PAIA.

When I made the request, the trial was already over, and was no longer ‘pending’.

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<sup>6</sup> Record, page 410, lines 15–21.

## 5.

- (a) **Request:** 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.
- (b) **Refusal:** *This request relates to the evidence and the records already before court, which matter is still pending. Therefore it is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** The fact that a record requested under PAIA 'relates to the evidence and the records already before court' is not one of the grounds for refusing it provided by Chapter 4.

As said, the case was already over with judgment delivered when I requested the record; and section 7 doesn't afford an information officer a ground for refusing a record request. This incompetent, unlawful justification is rebutted above.

## 6.

- (a) **Request:** In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, Nair's emails to the five<sup>7</sup> 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,<sup>8</sup> in which emails Nair asked the five members of the

<sup>7</sup> Record, page 409, line 11.

<sup>8</sup> 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.'

‘second round’ panel to advise him as to who they ‘would like to see’<sup>9</sup> and ‘interview’.<sup>10</sup>

- (b) **Refusal:** *The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.*
- (c) **Rebuttal:** These incompetent, unlawful justifications are rebutted above.

7.

- (a) **Request:** 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.
- (b) **Refusal:** *This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

8.

- (a) **Request:** 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.
- (b) **Refusal:** *This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

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<sup>9</sup> Record, page 409, lines 10–11. ‘I would send it to the five panellists and say, “Please advise who you would like to see.”’

<sup>10</sup> 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.’

9.

- (a) **Request:** 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.<sup>11</sup>
- (b) **Refusal:** *The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.*
- (c) **Rebuttal:** These incompetent, unlawful justifications are rebutted above.

10.

- (a) **Request:** 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.
- (b) **Refusal:** *This requests forms part of the discovery notice at the trial court and accordingly is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** Contrary to Nair’s lie about this, in truth and in fact I didn’t seek these records by way of pre-trial discovery procedure. And the reason for this is that contradicting LASA’s repeatedly pleaded and sworn case (in the interlocutory affidavits), it was only in his oral evidence that Nair made the novel allegation that after a Senior Litigator selection panel had ‘identified the most suitable candidate for appointment’ (per LASA’s Recruitment code), in the process eliminating the other shortlisted, interviewed candidates, he would email his so-called ‘second round’ interview panel members to enquire as to which of the shortlisted, interviewed Senior Litigator candidate(s) they ‘would like to see’ and interview and to notify 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

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<sup>11</sup> 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.’

recommended by it, and thereby 'eliminated'\* from consideration for appointment.  
(\*LASA's word in the pleadings)

Nair's justification for refusing me access to these records, or certifying on oath under section 23 that they don't exist (thereby proving his perjury for his prosecution on the point), is incompetent and unlawful for the reasons stated in the rebuttals above.

11.

- (a) **Request:** 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 candidates who had been shortlisted and interviewed by the selection panel but not recommended by it.
- (b) **Refusal:** *This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

12.

- (a) **Request:** 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.
- (b) **Refusal:** *This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

13.

- (a) **Request:** The minutes<sup>12</sup> 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’,<sup>13</sup> 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’<sup>14</sup> him/her.
- (b) **Refusal:** *This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

14.

- (a) **Request:** 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.<sup>15</sup>
- (b) **Refusal:** *The request relates to evidence in a matter pending before Court and is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

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<sup>12</sup> 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’.

<sup>13</sup> Record, page 366, lines 14–21.

<sup>14</sup> Record, page 410, lines 21–4.

<sup>15</sup> 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.’

**IN THE MAGISTRATES COURT FOR THE DISCTRICT OF ESHOWE**

**HELD AT ESHOWE**

Case No. 1005/15

In the matter between:-

**ANTHONY ROBIN BRINK**

Applicant

and

**BRIAN NAIR N.O.**

**DEPUTY INFORMATION OFFICER,**

**LEGAL AID SOUTH AFRICA**

Respondent

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**RESPONDENT'S ANSWERING AFFIDAVIT**

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I, the undersigned,

**BRIAN NAIR,**

do hereby make oath and state that,

1. I am an adult male Deputy Information Officer for Legal Aid South Africa ("Legal Aid SA") with my principal address at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg.
2. The facts deposed to herein are within my own personal knowledge unless the context indicates otherwise, and are to the best of my belief both true and correct.
3. Where I make submissions of law, I do so on the basis of the legal advice I received from my legal representatives which advice I verily accept as correct.
4. Where I rely on evidence submitted by a third party, I shall annex such a person's confirmatory affidavit.
5. I have perused the Applicant's affidavit founding his application purportedly in terms of section 78(2)(c)(i) in Chapter 2 of the Promotion of Access to Information Act, 2 of 2000 ("PAIA" and/or "the Act") which reads as follows:



**"CHAPTER 2****APPLICATIONS TO COURT (ss 78-82)****78 Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies**

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

(2) A requester-

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

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

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

(i) to refuse a request for access; or

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

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

(i) to refuse a request for access; or

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



*(3) A third party-*

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

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

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

6. At the outset, I wish to point that the Applicant is not entitled to any relief herein. I shall return to this provision of the Act, its effect, interpretation and implementation, in due course.

7. Before I proceed to deal with the issues herein, I wish to raise a preliminary objection to the application before Court.

#### **FAILURE TO APPLY FOR CONDONATION AND PRESCRIPTION OF THE CLAIM**

8. The Applicant states in his application that he emailed me a request for access to information on 17 November 2014.

9. After an extension that I had requested and the Applicant granted me, I considered his request and declined same on 13 February 2015 (as per annexure H to his founding papers).



10. The Applicant ought to have lodged his appeal 60 days after my decision in terms of sections 74 and 75 which would have lapsed on 13 April 2015. To support this averment, section 78 states-

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

*(2) A requester-*

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

*(b) ...*

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

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

*(d) ...*

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

10.1. Applicant contends that an Amendment to the above Act has extended the time period within which he ought to have approached this Court for relief in terms of section 82 from 30 to 180 days.

10.2. Indeed, section 28(a) of the Judicial Matters Amendment Act, substituted the days within which to lodge an application to Court in terms of section 82 from 30 days to 180 days.

- 10.3. In this case, the Applicant filed his request for access to information form on 17 November 2014. I replied thereto on 13 February 2015, after an extension I sought and obtained from him.
- 10.4. Accordingly, Applicant ought to have brought this application around 13 August 2015 being exactly 180 days after I had refused him access to the information he sought.
11. Accordingly, I strongly submit that the Applicant has failed to comply with the Act and has not demonstrated any compliance with the Act. He has not even applied for condonation of his late filing of this application.
12. I wish to state that the Applicant was aware that he ought to have applied for condonation and that he deliberately avoided same. This I say on the basis of a letter he wrote to me seeking to explain to me the reasons why his application was received long after the statutory provided 180 days had lapsed. I annex hereto his letter which I mark **BN1**.
13. I further wish to demonstrate that the Applicant had no desire to prosecute this application. Instead, there were more pressing activities which occupied his mind than launching this application in time. I demonstrate some of them herein below:
- 13.1. On 9 March 2015, he completed another Request for Information Form to Legal Aid South Africa's CEO Ms Vidhu Vedalankar (hereinafter "the



CEO") and sought access to some other different information. A copy is annexed hereto marked **BN2**;

- 13.2. On 19 March 2015, he directed a 21-paged letter to the CEO complaining that Legal Aid SA 'illegally' refused him access to information he sought. A copy is annexed hereto as **BN3**. I pause to indicate that this application is only four (4) pages long;
- 13.3. On 2 April 2015, he wrote a letter to Adv. Mlandeli Nkosi – a Provincial Representative in the Public Protector's office, Durban seeking an intervention of this officer to facilitate the release of some information he alleged was refused. A copy thereof is annexed hereto as **BN4**;
- 13.4. On 4 and 15 May 2015, he directed a letter and a reminder to the CEO. Copies thereof are annexed hereto as **BN5** and **BN6**;
- 13.5. On 19 May 2015, he directed a scathing letter to Adv. Siphiso Cishe, an Investigator: Office of Provincial Representative, Kwa-Zulu Natal. A copy thereof is annexed as **BN7**;
- 13.6. On or about 2 - 4 June 2015, Applicant prepared for the hearing of his applications to compel certain officials of Legal Aid SA in this Court, to release some information he sought. The Chief Magistrate correctly determined that that Court was not equipped to deal with applications under PAIA. Those applications were then adjourned *sine die*.



13.7. On 19 June 2015:

13.7.1. Applicant completed and directed a complaint form to the SA Human Rights Commission lamenting the fact that Legal Aid SA had refused him access to the information he required. A copy thereof is annexed hereto marked **BN8**;

13.7.2. he wrote a letter to Adv. Elise de Waal – the Chief Investigator: Service Delivery National Office of Public Protector. A copy of which is annexed hereto as **BN9**

13.8. On 29 June 2015:

13.8.1. the Applicant directed numerous long letters to the various members of the Legal Aid SA, copies of which are annexed hereto and marked **BN10, BN11, BN12 and BN13**;

13.8.2. he even threatened an application at the Pietermaritzburg High Court seeking compliance with the PAIA. This threat was made to all members of Legal Aid South Africa, including Nonhlanhla Magadza, Chairperson of Audit Committee of Legal Aid SA. A copy thereof is annexed hereto as **BN14**.

14. On 2 July 2015, Applicant directed a letter to the Legal Aid SA's Chief Legal Executive complaining of Legal Aid SA's 'defective' Section 32 Report that Legal Aid SA submits to Parliament on an annual basis.



15. Applicant also directed another long letter, on the same date, to the Public Protector complaining of the Legal Aid SA's alleged illegal refusal to release information to him and about the 'incorrect' or 'defective' section 32 Report prepared by Legal Aid SA and filed at Parliament. A copy thereof is annexed hereto as **BN15**.
16. It is submitted that had this present application been of any importance to him, he would not have waited for the six months prescribed by the Act to lapse. I submit that six months is in any event, more than long period for one to consider whether or not to challenge a functionary's decision.
17. I submit that I personally and Legal Aid SA suffer serious prejudice by this tardy conduct/litigation. It is obvious that in order to attend to Applicant's incessant requests for information, we must re-direct our energies and resources away from our mandate as Legal Aid SA to searching for all these information which are spread all over the country.
18. This is a real prejudice which I submit is permissible in terms of the Act (section 45, to be precise) as a basis upon which a request for information could be refused.
19. I submit that the Court should also have regard to the incessant, torturous conduct, by the Applicant, always accompanied by unimaginable vulgarity, crass language, and unending requests as grounds for finding that I and legal Aid SA, in particular are, seriously prejudiced.



20. Furthermore, the Applicant's application has no prospects of success and the balance of convenience do not favour the granting of condonation for his failure to seek condonation for his late launching of this application.

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

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

23. I also wish to state up front that the Applicant has issued similar applications, albeit more substantive than this present one, against one Hope Bambiso, the late Zanele Msweli and the CEO. Our answers are more or less similar.

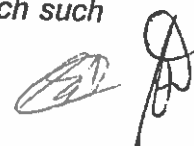
#### **BRIEF LEGAL FRAMEWORK**

24. The Board of Legal Aid SA is established by section 2 of the Legal Aid South Africa Act, Act 39 of 2014 (hereinafter "the Act"). Legal Aid SA is a statutory body which exists in order to give effect to rights enshrined in the Constitution of the Republic of South Africa Act, Act 108 of 1996 ("the Constitution").

25. The Act recognises Legal Aid SA as an autonomous body, accountable to Parliament under the Minister of Justice and Correctional Services watch and guidance.



26. The Act enjoins Legal Aid SA to provide legal aid to the indigent people as provided for by sections 25, 35(2)(c), and (3)(g) of the Constitution and any other right which, in the discretion of the Board, may be worthy of legal representation.
27. The Act also empowers the Board, amongst others, to do all such things and perform all such functions as may be necessary for all and incidental to the attainment of the objects of the board.
28. Those objects appear in section 3 which provides that "[T]he objects of Legal Aid South Africa are-
- (a) Render or make available legal aid and legal advice;*
  - (b) provide legal representation to persons at State expense;*
  - (c) provide education and information concerning legal rights and obligations as envisaged in the Constitution and this Act..."*
29. Section 24 which deals with Legal Aid Manual (hereinafter "the Guide") states that:
- "(1) The Board must compile, amend and approve a Legal Aid Manual and must at least every second year review the Legal Aid Manual relating to-*
- (a) the procedures in terms of which applications for legal aid are administered;*
  - (b) the systems and methods whereby legal aid is delivered;*
  - (c) the requirements and criteria for the accreditation of private legal practitioners who render legal services to legal aid recipients on the instructions of Legal Aid South Africa and the terms and conditions subject to which such*



*instructions are allocated to accredited legal practitioners, including the fees and disbursements that are payable Legal Aid South Africa to accredited legal practitioners, taking into consideration the salary scales applicable to the public service; and*

*(d) the regulation of any other administrative matter which the Board deems necessary for the effective and efficient functioning of Legal Aid South Africa.*

*(2) The Board must submit the Legal Aid Manual and any amendment thereof to the Minister who must-*

*(a) table the Legal Aid Manual and any amendment thereof in Parliament and*

*(b) simultaneously give notice thereof by notice in the Gazette.*

*(3) The Legal Aid Manual and amendments thereof takes effect 60 days after the publication of the notice referred to in subsection(2)(b) and is binding on all persons and organisations providing legal aid assistance in terms of this Act.*

*(4) The Board must publish the Legal Aid Manual and any amendments thereof on its website and a copy thereof must be available for inspection at all offices of Legal Aid South Africa”.*

30. Furthermore and subject to the provisions of this act and in order to attain its objects and to exercise its powers referred to in section 4, do all things and perform all functions necessary for, or incidental to, the attainment of the objects of Legal Aid South Africa.



31. In terms of section 26(6), the Legal Aid Guide, 2014, 13<sup>th</sup> Edition which is applicable at the time of the commencement of the Act, namely 1 March 2015, and remains valid and in force until it is withdrawn and replaced in terms of section 24 of the Act.

32. I submit therefore that the Guide is a statutory instrument binding on all South African including presiding officers.

33. The Guide serves to explain to all how legal aid is granted and managed in a fair and transparent manner.

34. Chapter 1 of the Guide provides a clarification of the mandate imposed on it by the Constitution which I referred to hereinabove and the powers referred to above.

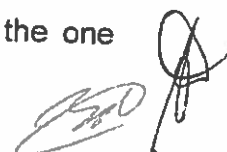
35. What is important for my purposes herein is Clause 1.3 of the Guide which provides as follows:

***"1.3. Place of business and legal service address***

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

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

36. Accordingly, there is only one address at which any person seeking to sue Legal Aid South Africa or its employees arising out of processes involving Legal Aid SA, must serve his or her legal process. The said address is the one



provided for in the Guide i.e. its *domicilium* address. The rest, when perusing the Guide, are merely satellite offices and regional offices with no separate legal personality to sue or be sued.

37. Thus, in order to properly institute these proceedings against me in so far as I represent Legal Aid SA or for any act or failure to perform any act regarding Legal Aid SA's obligations, the Applicant ought to have launched his application where my principal address is i.e. Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg.

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

39. I submit now and even later herein that the failure to comply with this statutory directive is fatal to the Applicant's application. He is thus not entitled to any relief herein.

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

#### **BRIEF FACTUAL BACKGROUND**

41. On or about 17 November 2014, I received a request for access to certain information from the Applicant and which request appears on the Applicant's founding affidavit as annexure A.



42. Due to the length of the said letter which, I submit, was not necessary and meant only to insult and demean me, I then instructed our attorney of record to request an extension in terms of section 26 of the Promotion of Access to Information Act 2 of 2000 as amended, which was granted by the Applicant. See annexures F and G of the Applicant's founding affidavit.
43. I then prepared the answer which I gave to the Applicant on 13 February 2015 and annexed to his application as annexure H.
44. The substance of the answer that I gave to the Applicant was that I declined to grant him access to the information he sought therein fundamentally on two basis namely:
- 44.1. I am aware that the Applicant instituted an unfair discrimination action out of the Labour Court, Durban seeking all sorts of relief including that the Court order that Legal Aid SA employ him to a position of a Senior Litigator to which he had applied but which post was aborted for operational reasons.
- 44.2. At the time the Applicant sent his above request for access to information, the above matter was pending before the Court. Although closing argument had been made, judgment was outstanding.
- 44.3. As it is apparent from the request he made to Legal Aid SA, it all related to information that was dealt with in the evidence before Court. Applicant



prefaced his request for information with a declaration that he seeks the information in order to have me prosecuted for perjury and to destroy me. I will revert back to the effect of this information.

45. I now wish to deal with the relevant provisions of the Act which stand out from this application. I do so herein below.

### RELEVANT LEGAL PROVISIONS AND PRINCIPLES

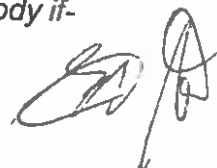
46. In my response to the Applicant, I wish to record that as an organisation Legal Aid SA is bound by the values enshrined in the Constitution and which values amongst others underpins the right of an individual to access to information held by the State and/or its organs.

47. Having said that I stated that the information that he sought cannot be provided to him mainly on the basis of sections 7. That some information fell within the ambit of sections 37, 47 and 48 of the Act.

48. Section 7 of the Act provides as follows:

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

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



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

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

49. It is palpable that the Applicant himself sought this information to pursue either civil or criminal proceedings against me.

50. I submit that even if I was wrong in thinking that the Applicant required the said information for litigation purposes, I am vindicated by his confirmation of my reasons to refuse his application because it is apparent from his affidavit that he intends to criminally prosecute me.

51. In any event, and as I indicated, the matter in respect of which the information he sought was still to be determined by the trial Court and I submit that I was entitled to refuse the said request when I did.



52. On hind sight, I am of the view that I should have stated, as a second reason for refusing with information, that section 45 prohibited access to information where the application is manifestly vexatious frivolous. It reads thus:

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

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

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

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

53. The Applicant has vowed to institute actions and applications against me and other members of Legal Aid SA. He says so himself in his application *in casu*.

54. In fact, the Applicant has for unknown reasons also launched similar applications as this one and out of this Court against Designated Deputy Information Officer for Eastern Cape Region, the Information Officer of Legal Aid SA's (CEO), and Designated Deputy Information Officer for Free State and North West Region. Their case numbers are 257/14, 258/14 and 259/14 respectively.



55. From the perusal of the founding papers, it is not difficult to see that the Applicant has an intense hatred and desire to exact revenge against me for allegedly aborting a position that he had applied for.
56. It is thus easy to conclude that the Applicant seeks all this information to arm himself for purposes of pursuing his cases against me.
57. I submit that he may very well be entitled to proceed against me on any evidence he seeks. However, I am satisfied that as far as the information he sought, I was entitled to refuse same for the reason I did.
58. The use of vulgar and defamatory language in his affidavit is astonishing to say the least and demonstrates conclusively to me that the application, which was dismissed up to the Labour Court Appeal is now being indirectly resuscitated with me.
59. I submit that these applications are manifestly vexatious and frivolous.
60. Furthermore, the Applicant has, not followed the prescripts of the very same Act that he wished to rely on for relief he currently seeks.
61. Specifically, I submit that the Applicant has failed to exhaust the internal remedies provided for in the Act in that he has not, as yet, lodged an appeal against my decision to refuse his request for access to information.
62. The relevant provisions dealing with internal appeals provide as follows:



**"PART 4**

**APPEALS AGAINST DECISIONS (ss 74-82)**

**CHAPTER 1**

**INTERNAL APPEALS AGAINST DECISIONS OF INFORMATION OFFICERS  
OF CERTAIN**

**PUBLIC BODIES (ss 74-77)**

**74 Right of internal appeal to relevant authority**

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

*(a) to refuse a request for access; or*

*(b) taken in terms of section 22, 26(1) or 29(3), in relation to that requester with the relevant authority.*



- (2) *A third party may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of 'public body' in section 1 to grant a request for access.*

**75 Manner of internal appeal, and appeal fees**

**(1) An internal appeal-**

**(a) must be lodged in the prescribed form-**

*(i) within 60 days;*

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

65. The Applicant, as the matters stand, has had a right to appeal my decision to refuse his request for access to information to the CEO and such right still



subsists. I declined his application on 13 February 2015 (as per annexure H to his founding papers).

66. The Applicant ought to have lodged his appeal 60 days after my decision in terms of sections 74 and 75 which would have lapsed on 13 April 2015.

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

68. I am advised that this cannot be.

69. Accordingly, this case falls to be dismissed and if needs be the Applicant be ordered to submit to the internal remedies as provided for in the above Part 4, Chapter 1.

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

71. Section 1 of the Act defines a "*requester*" in relation to-

(a) a public body, means-



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

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

*(b) a private body, means-*

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

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

72. Consequently, Applicant cannot escape the provisions of Part 4, Chapter 1 of the Act.

73. I further submit that this application is ill-founded for lack of jurisdictional fact *i.e.* no internal appeal has been lodged.

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



**"CHAPTER 2**

**APPLICATIONS TO COURT (ss 78-82)**

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

- (1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.
- (2) A requester-
- (a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;
  - (b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75 (2);
  - (c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1-
    - (i) to refuse a request for access; or



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

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

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

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

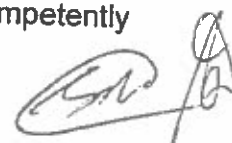
*(3) A third party-*

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

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

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

75. I have underlined and bolded the most important qualification of the above section to highlight to this Court that the Applicant can never competently



launch this application before he had exhausted the internal remedies provided for in the Act.

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

77. What is abundantly clear is that when I refused Applicant's application for access to information, the accusations and issues raised in his application had been determined by the Court *a quo* but were subject of his application for leave to appeal before the Labour Court Appeal.


78. Accordingly, I was entitled to rely on section 7 of the Act when I did.

#### ALTERNATIVELY AND IN THE EVENT I AM WRONG

79. I have noted the Applicant's previous contention that there is no appeal lying to the Information Officer as Legal Aid SA is a public body. According to his contention, the next step after my decision to refuse him access to the information he sought was to proceed straight to Court with this present application.

80. I submit that if this contention is successful, then I must state that the Applicant is in any event late and out of time in launching this application. His claim has prescribed by operation of the law.

81. I have alluded to this submission hereinabove.



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

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

### PRELIMINARY OBJECTION 1 – LACK OF JURISDICTIONAL FACT

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

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

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

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

*(2) A requester-*

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

*(e) ...*

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

*(ii) to refuse a request for access; or ...*

*(g) ...*

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

84.2. Applicant contends that an Amendment to the above Act has extended the time period within which he ought to have approached this Court for relief in terms of section 82 from 30 to 180 days.

84.3. Indeed, section 28(a) of the Judicial Matters Amendment Act, substitute the days within which to lodge an application to Court in terms of section 82 from 30 days to 180 days.

84.4. In this case, the Applicant filed his request for information form on 17 November 2014. I replied thereto on 13 February 2015, after an extension I sought and obtained from him.

84.5. Applicant ought to have brought this application around 13 August 2015 after I had refused him access to the information he sought.

85. Accordingly, I strongly submit that the Applicant has failed to comply with the Act and has not demonstrated any compliance with the Act. He has not even applied for condonation of his (i) failure to comply with the Act and lodge an internal appeal, and (ii) for the late filing of this application.

86. I have stated that the Applicant was aware that he ought to have applied for condonation and that he deliberately avoided doing so.



87. Consequently, and on the basis that a preceding jurisdictional fact *i.e.* internal appeal had not been lodged and determined, this Court has no jurisdiction to deal with this application.

88. This application falls to be dismissed with costs.

## **PRELIMINARY OBJECTION 2 – LACK OF JURISDICTION OF THIS COURT – EFFECTIVE ORDER**

### **First Point**


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

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

91. Unlike in the other applications issued out of the very same Eshowe Magistrate Court and for similar relief as this application (which I am advised my colleagues have objected that the Court has jurisdiction) the Applicant has failed to demonstrate to this Court where does it derive jurisdiction over me.

92. I submit that Applicant has even failed to lay a basis for this honourable Court to assume jurisdiction over this matter.

93. I am advised and which advise I verily accept as correct that it is standard and an important averment, for any litigant to state that the court out of which his



process is being issued has jurisdiction to determine the said process and to proceed and state the basis therefor. The Applicant has not done so or demonstrated this fact.

94. I submit that this failure to allege and establish the above Court's jurisdiction alone is fatal to his case and it falls to be dismissed with costs. He is even precluded from doing so in the replying affidavit.

### Second point

95. I am further advised and accept as correct that the common law principles on jurisdiction to found an action remain applicable in this case.

96. Those common law grounds of jurisdiction are (i) the place where the decision in issue was taken, and (ii) where the residence of the respondent is.

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

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

99. As a former Magistrate of some 20 years' experience, an advocate of over 20 years, and presently an Acting Magistrate in this very same Court, the Applicant



ought to have known this basic principle of our law of jurisdiction and he should have acted accordingly.

100. I submit that in fact, the Applicant knows of this rule because previously when he had concluded that Legal Aid SA's Head Office staff 'unlawfully' refused him access to certain information he required, he threatened Legal Aid SA with an application in terms of the Act and out of the Johannesburg Court.

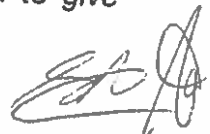
101. Applicant took the above threat a step further and prepared a draft application which he annexed to one of his request for access to information. Because Legal Aid SA's Head Office is based in Braamfontein, Applicant threatened to issue his application out of the Gauteng Local Division. I annex hereto a copy of the said application to demonstrate my point, and mark same as **BN16**.

102. Accordingly, the recent conduct of launching this application out of this Court was deliberate and intended to disadvantage me.

### Third Point

103. Furthermore, I submit that that the other underlying principle of jurisdiction is "effective order". Effectiveness of the order means that the Court in which the Respondent lives or is should be able to enforce its order with ease.

104. I am advised that the term "effective order" is often stated as *"A lawful power to decide something in a case or to adjudicate upon a case, and to give*



*effective judgment, that is, to have the power to compel the person condemned to make satisfaction."*

105. The Applicant lost it, with respect, and I am firm on this point.

106. I submit that the law remains as it is and the Applicant ought to institute these proceedings in an appropriate forum.

107. The above honourable Court, and as a matter of common law, will have no authority over me and will have no power to compel me to comply with anything coming therefrom. The court will be subjected to *extra territorium ius dicenti impune non paretur*.

108. I submit that a Magistrate's Court in Johannesburg is the appropriate forum to institute any proceedings against me primarily because of my place of work, or what the Legal Guide dictates, or mainly because the decision sought to be impugned was taken in Johannesburg.

109. The Johannesburg Magistrates' Court will be more suitable and effective to compel me into compliance.

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



### PRELIMINARY OBJECTION 3 – MATERIAL DISPUTE OF FACTS

111. I have alluded hereinabove, to this fundamental violation of the rules of this Court and of the common law.
112. The Applicant foresaw the potential of material dispute of facts arising from this application and yet he forged ahead nonetheless.
113. The above Court is indirectly requested, by the Applicant, to draw negative inference against me. I am being accused of all sorts of vulgarity that the Applicant could without so much as affording the Court with record of the proceedings he founds these accusations against me.
114. The Court is also hamstrung in this regard because the full picture of the dispute underlying Applicant's reasons for seeking this information (contained in the records, transcript and pleadings of the case he lost in the Labour Court and the Labour Appeal Court) are not before Court. I am advised that there are over 6000 pages that this Court ought to read in order to understand and contextualise the accusations levelled against me.
115. Applicant must have known that I would not accept these accusations and I vehemently deny them. I wish to place them in dispute.



116. I submit that in view of the above possibilities, this application is bad in law and ought to be dismissed with costs. It is riddled with and premised on contested serious accusations of which this Court does not know.

117. I am advised that on this basis alone, a Court is entitled to dismiss this application with costs.

#### **PRELIMINARY OBJECTION 6 – PERCEPTION OF BIAS**

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

119. I am aware that during the last appearance in the Durban Labour Court, Applicant disclosed that he has accepted a temporary acting position in this Court.

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

121. I am advised that even the Chief Magistrate of the above Court expressed his uneasiness about this fact and even offered the parties to have the other existing applications transferred to another Court. Applicant insisted that they be heard herein thus fortifying my suspicion of his perceived advantage over me.



122. This conduct, not only demonstrate a sheer abuse of power, resources and Court's processes but it also, and on all objective facts, give off a sign or perception of bias.
123. I submit that bias is a very nebulous concept which does not have to physically manifest itself but can also be sensed by a lay person who has all the facts with him.
124. In this case:
- 124.1. I stated that the Applicant is in a committed long term fight with Legal Aid SA and its officials and has publicly so vowed.
- 124.2. The issue of jurisdiction mentioned above is so obvious to any trained lawyer that it is odd that the Applicant preferred this matter to be decided in his own turf by one of his colleagues;
- 124.3. It is unlikely that I, as the Respondent, would receive fair hearing in this Court given the fact that as between me and the Applicant, I am a foreigner of the Court.
125. I am advised that even the slightest perception of bias should be sufficient to have this matter being removed from the roll of this Court and be referred to a neutral Court, as it were.



126. I am advised that there is a legal parlance that is universally accepted when coming to the rule against bias viz. "justice must not only be done but must also be seen to be done".
127. In *casu*, I am afraid I do not carry that sense of confidence that justice will be seen to be done. I submit any other reasonable person may also feel as I do.
128. Accordingly, I submit that this Court should remove this matter from its roll on the basis of a real apprehension that I harbour of unfair hearing against me.
129. I now wish to address the application itself. I must preface my approach with the unfair view the Applicant hold of me, i.e. that I do not have scruples, I am a liar and I habitually perjurer myself.

#### AD FOUNDING AFFIDAVIT AD SERIATIM

130. Where I do not address a particular paragraph, I should not be taken to have admitted same. Instead I should be taken to have placed same in issue.
131. AD NOTICE OF MOTION PRAYERS 1 – 3.
- 131.1. I deny the correctness of the contents of these paragraphs.



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

**132. AD NOTICE OF MOTION PRAYER 4.**

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

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

**133. AD PARAGRAPH 1.**

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

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

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

**134. AD PARAGRAPHS 2 – 3.**

134.1. I admit the correctness of the contents of these paragraphs.



135. AD PARAGRAPH 4.

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

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

136. AD PARAGRAPHS 5 – 6.

136.1. Save to admit the date the Applicant sent me his request for access to certain information and the reasons for such request, I deny the correctness of the balance of the contents of these paragraphs.

137. AD PARAGRAPH 7.

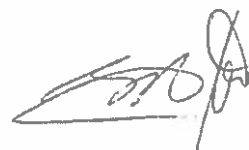
137.1. I vehemently deny the correctness of the contents of this paragraph.

137.2. I did not perjure myself on any aspect during the trial of the Applicant's unlawful discrimination case.

137.3. The Applicant regurgitates contentions, regarding his application to be appointed as a Senior Litigator, which have been dismissed by the trial Court and which dismissal was confirmed by the Labour Appeal Court.

138. AD PARAGRAPH 8.

138.1. I vehemently deny the correctness of the contents of this paragraph.



138.2. I take strong exception to being called a liar by the Applicant and I invite this Court to also take a dim view of this distasteful conduct by a person who sits as a quasi-judicial officer. Especially given the fact that the Applicant has failed to place evidence by way of record or transcript before Court so that I could answer him. He proceeds to insult me nonetheless.

138.3. It is worth mentioning that the Applicant sought, in his leave to appeal, to also apply to lead new evidence apparently to demonstrate that I had lied about certain aspects of the issues he raised. The trial Judge found no merit in this attempt, by the Applicant, to cure his ineffective way of conducting his own trial. This rejection of this application to lead new evidence was confirmed by the Labour Appeal Court when it dismissed the Applicant's further leave to appeal thereto.

138.4. I submit that this is one aspect that calls for punitive cost order.

139. AD PARAGRAPH 9.

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

139.2. The Applicant failed to place sufficient evidence before Court to support his delusionary and ill-tempered accusations. This Court is thus disadvantaged as to what exactly is he referring to. I am also at a loss as the Judge had not found that I had perjured myself.



140. AD PARAGRAPH 10.

140.1. I deny the correctness of the contents of this paragraph. I maintain that I was entitled on the same reasons I advanced then, as I did, to refuse the Applicant's request for access to information he sought.

141. AD PARAGRAPHS 11 – 12.

141.1. I admit the correctness of the contents of these paragraphs.

142. AD PARAGRAPH 13.

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

142.2. The underlying contentions herein regarding the position of a Senior Litigator have been dealt with by the trial Court and have been dismissed. The LAC confirmed the decision of the trial Court.

142.3. I am not under any threat of being struck off, jailed or being ordered to pay costs of any of the actions that the Applicant had, thus far, unsuccessfully launched against Legal Aid SA and its executives.

142.4. I pause and wish the court to observe that the application is vexatious and maliciously driven by the Applicant's hatred of me and Legal Aid South Africa. He is bent on exacting revenge on me for a post that he applied for but was eventually aborted by Legal Aid SA.



143. AD PARAGRAPH 14.

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

144. AD PARAGRAPH 15.

144.1. I deny that the grounds I advanced in refusing the Applicant access to the information he sought were spurious and/or unlawful.

144.2. I note that Applicant refers the Court to an annexure to his founding affidavit and seeks to make out a case for the relief he seeks in the said disputed annexure which, annexure is not evidence and is not even commissioned. I, in any event, deny the contents thereof and will not deal therewith any further.

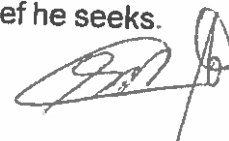
145. AD PARAGRAPH 16.

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

145.2. I submit that if the Applicant is serious with his accusations which I deny, as non-sense at its worst, he could have let the authorities to investigate his accusations against me. I am confident that these authorities have the necessary skill and resources to get to the truth of these allegations.

**CONCLUSION**

146. I submit that the Applicant has failed to make out a case for the relief he seeks.




147. I submit one or more of my preliminary objections holds true and this application falls to be dismissed on any of those objections.

148. I submit that the conduct by the Applicant as set out more specifically in my preliminary objections deserves punitive cost orders.

149. I cannot be dragged into litigation that has no merit, that is scandalous, vexatious and in flagrant disregard of the law and processes of Court.

WHEREFORE it may please the court to dismiss the application with punitive costs.




---

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this the 2nd October 2015. The regulations contained in the Government Notice No. 1258 dated 21<sup>st</sup> July 1972 (as amended) and Government Notice No. 1648 dated 19<sup>th</sup> August 1977 (as amended) having been complied with.



COMMISSIONER OF OATHS  
 FRANCIS ATTORNEY  
 JOHANNESBURG ATTORNEY  
 131 BOSWELL AVENUE  
 MENDELOR

"BN1"

1 Boast Road  
Eshowe 3815  
9 September 2015

Brian Nair  
Deputy Information Officer,  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Per email: briann@legal-aid.co.za

Cc: CSE Thembile Mtati and CLM Solly Sekgota  
Per email: thembilem@legal-aid.co.za and solllys@legal-aid.co.za

Mr Nair

**DELAYED SERVICE OF PAIA APPLICATION**

I refer to my application to compel your compliance with the Promotion of Access to Information Act 2 of 2000 ('PAIA'), issued out of the Eshowe Magistrate's Court under case number 1005/15.

I annex marked 'A' my letter of the 24th ultimo to my local postmaster, which speaks for itself.

Before he replied, I learned from the post office tracking system that my papers in my application to had been delivered to the sheriff at 8h35 the following day, the 25th:

**PARCEL TRACKING RESULTS**

Item Number: TC213271210ZA was last scanned on: 2015 08 25 at 08:35

Location last scanned: JHBCUR

Currently has status of: Delivered

TRACKING LINE	TYPE	DATE	TIME	BRANCH	COMMENTS
1	Delivered	2015 08 25	08:35	JHBCUR	CHR24713
2	Out For Delivery	2015 08 25	02:47	JHBCUR	20
3	In Transit	2015 08 25	01:46	JHBCUR	C44747181
4	In Transit	2015 08 25	00:37	JHBCUR	C44747180
5	In Transit	2015 08 24	21:30	JHBCUR	C44747243
6	In Transit	2015 08 24	18:57	JHBNET	C44747241
7	In Transit	2015 08 24	18:47	JHBNET	C44747242

When I enquired by telephone yesterday, the sheriff's receptionist Gwen confirmed that my application papers had been served on you on the 25th – the same day as they were received, just as faithfully undertaken to me on the telephone by his PA Christine immediately after I'd couriered them.

In sum, but for the snafu by the post office, my application would have been served on you on the 11th, the same day as its anticipated date of delivery at the sheriff's office.

The two-week delay in service on you was beyond my control. I couldn't have anticipated that the parastatal post office's so-called 'Speed Services' courier would turn out to be so unbelievably inefficient.

It's why you were served slightly out of time.

You've no prejudice to complain of, because I emailed you the application papers the day after couriering them to the sheriff for service on you, as a courtesy to give you early notice. The record of my email to you (note the attachments bar) is annexed marked 'B'.

So I trust you won't be standing on any idle time point in your answering affidavit.

If you do, I'll obviously be applying for condonation under PAIA section 82(e).



A R BRINK



"B112"

**FORM A**

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

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

[Regulation 2]

**FOR DEPARTMENTAL USE**

Reference number:

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

Request fee (if any): R .....

Deposit (if any): R .....

Access fee: R .....

**SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER**


**A. Particulars of public body**

Legal Aid SA

Vidhu Vedalankar  
Information Officer,  
National Office  
29 De Beer Street  
Braamfontein

**B. Particulars of person requesting access to the record**

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



Full names and surname : Anthony Robin Brink  
Identity number : 590225 5116 081  
Postal address : 1 Boast Street, Eshowe 3815, KwaZulu-Natal  
Fax number : 086 672 0776  
Telephone number : 035 474 0145  
E-mail address : arbrink@infrica.com

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

N/A

**C. Particulars of person on whose behalf request is made**

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

Full names and surname : N/A

Identity number : N/A

**D. Particulars of record**

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

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

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

2. Reference number, if available:

3. Any further particulars of record:

See annexure



**E. Fees**

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason therefor.

Reason for exemption from payment of fees:

N/A

**F. Form of access to record**

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

Disability: N/A		Form in which record is required:	
Mark the appropriate box with an "X".			
NOTES:			
(a) Your indication as to the required form of access depends on the form in which the record is available.			
(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.			
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.			
<b>1. If the record is in written or printed form -</b>			
<input checked="" type="checkbox"/>	copy of record*	<input type="checkbox"/>	inspection of record

**2. If record consists of visual images -**

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

<input type="checkbox"/>	view the images	<input checked="" type="checkbox"/>	copy of the images*	<input type="checkbox"/>	transcription of the images*
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**3. If record consists of recorded words or information which can be reproduced in sound -**

<input type="checkbox"/>	listen to the soundtrack (audio cassette)	<input checked="" type="checkbox"/>	transcription of soundtrack* (written or printed document)
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**4. If record is held on computer or in an electronic or machine-readable form -**

<input type="checkbox"/>	printed copy of record*	<input type="checkbox"/>	printed copy of information derived from the record*	<input checked="" type="checkbox"/>	copy in computer readable form* (on compact disc)
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\*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?

YES

A postal fee is payable.

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

In which language would you prefer the record? **English**

**G. Notice of decision regarding request for access**

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

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

Signed at Eshowe on 9 March 2015



SIGNATURE OF REQUESTER



**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.
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.

(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.

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.

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.



REGISTERED LETTER  
(with a domestic insurance option)  
RC 036 404 015 ZA  
A BOOK COPY

B113

1 Boast Street  
Eshowe  
KwaZulu-Natal  
19 March 2015

COE and Information Officer Vidhu Vedalankar  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein

Per email and per registered post

Dear Ms Vedalankar

NATIONAL DEPUTY INFORMATION OFFICERS' FAILURE TO COMPLY WITH  
THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 ('PAIA');

REQUEST FOR YOUR INTERVENTION UNDER SECTION 17;

NOTICE OF INTENTION TO APPLY TO THE HIGH COURT TO COMPEL UNDER SECTION 78

FURTHER PAIA REQUEST ADDRESSED TO YOU UNDER SECTION 18, ENCLOSED.

1. Your national office deputy information officers Chief Legal Executive Patrick Hundermark, Chief Operations Officer Jerry Makokoane, and National Operations Brian Nair have all unlawfully failed to comply with my PAIA requests addressed to them in November 2014 (with one amendment in December), in contravention of the Act and in violation of my fundamental civil right to freedom of information guaranteed by section 32 in the Bill of Rights contained in Chapter 2 of the Constitution.
2. Subsequent to the expiry in January of the extended sixty calendar days allowed them to respond to my requests, to which I'd generously consented under section 26(1)(e), knowing they wanted to go away on their Christmas holiday – which is to say they were already out of extra time and therefore unlawfully non-compliant with the Act – Hundermark and Makokoane unlawfully demanded money from me, purportedly under section 22 (while failing to comply with subsection 3).
3. Hundermark's claim is for reading (both himself, 'me', and other staff, 'we'):

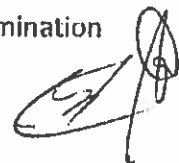


POST ROOM  
2015 -03- 31

- o 'the bundle of documents relating to the proceedings of the Labour Court' (In fact, there were numerous different bundles, including two volumes of documents admitted into the evidence comprising 1073 pages in all);
- o my three pending 'applications in the Magistrate's Court' to compel you and your Eastern Cape- and Free State and North West regional information officers to comply with my PAIA requests which you all illegally refused in November 2013; and,
- o my 'specific requests as outlined in' the annexures to my Form A PAIA requests addressed to him, listing the documents I require or, where they don't exist, sworn certification of this under section 23.
4. They spent 187 hours reading these, Hundermark said.
5. He doesn't say whether he and his staff all read all these thousands of pages of documents, thereby multiplying the effort; or whether they divided them up and shared them out, with each of them reading different bundles to lighten the load, thus resulting in each of them being half-educated about my labour case against LASA and my applications to court to disgorge illegally withheld documents from it.
6. Nor does he say whether the very many hours of reading he claims they all did included taking a few minutes out to read the Act.
7. I sent Hundermark two requests.
8. With a couple of exceptions, the first request concerned the Durban Justice Centre's Children's Court Practitioner post, which featured nowhere in my labour case or my applications to compel you and your regional deputy information officers' compliance with my November 2013 PAIA requests.
9. The exceptions, items 20-23, are:
- o Hundermark's delegation as deputy information officer;
- o a copy of my recommendation for the Pietermaritzburg Senior Litigator post in November 2009, in a form less redacted than one you eventually very reluctantly surrendered to me under SAHRC pressure in January 2011, five months after I requested it in August 2010, after first mutely, and then expressly, illegally refusing to allow me to see it, not wanting me to read that I'd indeed been selected and recommended for the post, and no one else, contrary to your lie to

me in October 2010 that I'd been 'recommended together with other candidates', even as you refused me sight of the recommendation refuting your lie;

- o two documents that I want Hundermark to certify on oath don't exist, thereby providing me with his sworn evidence about this to tender later on:
  - the letter (strangely not) sent former Labour Court judge Mzochithwayo Ngcamu, now Durban Children's Court Practitioner, after his interview for the Pietermaritzburg or Durban Senior Litigator post in November 2009, to inform him that he'd been unsuccessful, as section '1.5 Unsuccessful candidates' of LASA's Recruitment code required be sent to him; and,
  - the letter (strangely not) sent Ngcamu in August 2010 (after I asked you in July 2010 to see to the finalisation of my appointment, now eight months after my interview) alleging that it had been decided not to fill the KwaZulu-Natal Senior Litigator posts. (In my labour case, LASA pleaded that letters to this effect were sent me and two other interviewed applicants, not all three; and later furnished me with copies of the letters sent me and two of the other candidates, Mngadi and van Wyk, but not also the third, Ngcamu.)
- 10. So as you can see, Hundermark and whoever else he's referring to had no reason to read the perfectly irrelevant stacks of papers he alleges they did, for which many hours they allegedly spent reading them all he insists I must first hand over my money before he'll respond to my PAIA requests.
- 11. My second request addressed to Hundermark comprised a mere four items and required no background reading to respond to either, because on sight of them he'd have appreciated instantly that Nair's evidence implicating him, quoted from the trial transcript in the request, was perjured.
- 12. After I'd exposed, in my original very detailed statement of claim in July 2011, and had refuted as lies,
  - (i) the false budgetary excuse you fed me in your October 2010 and January 2011 letters, and very unwisely confirmed under oath in your PAIA confirmatory affidavit in April 2011 (expecting your cover-story about this would put me off pursuing my appointment), and fed also to the Minister and to Parliament in the secret reports Nair ghost-wrote for you to pass on to Board chairperson Mlambo JP to sign and give them to pervert their enquiries into my complaints that you'd repeatedly illegally refused to comply with my PAIA requests and had irregularly aborted my appointment (initially he dishonestly disputed (in cross-examination



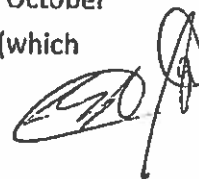
~~of me) being the ghost-writer, but in his evidence later admitted it, corroborated~~  
by his electronic fingerprints ('Briann') left behind at the scene of the crime in the 'Author' properties folder of the PDF of the report to the Minister, finally surrendered to me in the final few days before trial, nearly two years after I first requested it, and never stopped requesting it);

- (ii) the additional false logistical excuse to patch a gaping hole in the financial one fed the latter authorities, via the secret reports (that I obtained by chance), for not proceeding to finalise my appointment, namely that difficulty had been encountered coordinating the so-called second round interview panel to (irregularly) interview me again (In truth and fact, as he testified, Nair took no action on receiving my recommendation, and no one was contacted to establish their availability to conduct the second interview – Nair twice retracted the lie on affidavit before the case, then revived it in court on oath, then contradicted it on oath),

Nair changed these stories completely, and in November 2011 told the Board totally different new lies about why he'd not finalised the Senior Litigator appointments, namely 'recruitment challenges' (in truth and in fact, there weren't any: three good candidates had been selected for the three posts, one already a Senior Litigator seeking a transfer closer to home) and alleged uncertainty over LASA's incumbent Senior Litigators' professional competence, which was therefore to be audited immediately by a special assessment panel 'including possibly a retired judge' (in truth and in fact, all classes of LASA practitioners had consistently and repeatedly been found to be performing well; and no such panel has ever been convened) causing executive management to hold recruitment to the remaining vacant Senior Litigator posts.

13. And as these new different lies Nair told the Board – different from the lies told me, the Minister and Parliament – were unravelling under my cross-examination of him in court, he amplified his perjury to make it sound more convincing by falsely implicating Hundermark in his lies.
14. Obviously, had Nair told the truth in court and not gushed the new lies quoted in my request, like a child caught stealing and frantically inventing stories to escape a beating, the documents requested would exist, and would be available for Hundermark to give me.

15. On sight of my second request, Hundermark appreciated immediately that Nair had perjured himself and that the documents I'd specified don't exist; and he was placed to certify this under section 23 on the spot.
16. Hundermark appreciated immediately that a section 23 affidavit by him disposing of my second request would be going straight to the police and to the NDPP as evidence of Nair's perjury for his criminal prosecution; to the Board for his dismissal; to the GCB for his strike-off; and to court for the reopening of my labour case, which miscarried directly on account of Nair's prolific, childish contradictory perjuries about why he didn't act to finalise my appointment. (The judge recorded his finding that I'd demonstrated that Nair was 'not generous with the truth' on 'a number' of scores, without specifying his lies, even as he then believed every lie he told all the same, and tossed my case on the strength of his lies, some novel and not pleaded, others diametrically contradicting LASA's pleadings and sworn case in its interlocutory affidavits.)
17. Do you think while obstructing my exercise of my fundamental right of access to your public body records, or failing to certify they don't exist as required by section 23, to protect Nair from being sacked, struck-off, prosecuted and jailed for his lies told to me, to the Board, to the Minister, to Parliament and to court to defeat the ends of justice and pervert the true and justice determination of my claim, Hundermark was trying to extort money from me illegally with lies of his own – about reading all those completely irrelevant documents he alleged that he and his staff needed to read before he could respond to my requests?
18. I must wonder about Hundermark's personal and professional integrity and the extent of his complicity in this next leviathan scandal in all the newspapers, because who can ever forget:
- o his emailed assurance to the director of the SAHRC's PAIA Unit on 4 October 2010, 'We hereby confirm that we will be responding to Mr Brink's request by 20 October 2010', after she'd pressed him on the telephone on the 1st and again by email on the 4th asking 'LASA to respond to the request to avoid unnecessary, expensive and protracted litigation' – which proves Hundermark was centrally involved in handling my August 2010 PAIA request after I called the SAHRC in, following your deemed refusal under section 27 by illegally failing to respond to it – and then:
  - o the attempted fraud on me in the ghost-written letter you signed on 18 October 2010 now expressly refusing my entire request for 51 specified records (which



was plainly directed at exposing, as a lie Nair's claim to me on 3 August 2010 that a decision had been taken not to fill the Senior Litigator posts) by misquoting a reported judgment to justify the blanket refusal of my entire request, by putting words in the judge's mouth that she never spoke, whereas her actual reported dicta, consistent with the Act, squarely supported my request. I annex the first relevant pages of my petition to LASA chairperson Mlambo JP and the Board about this on 30 November 2010 detailing this revolting chicanery.

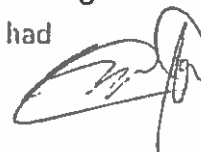
19. Although Nair's distinctive stylistic fingerprint sentence-opener, 'Noting that ...', appears repeatedly in your October 2010 letter – he used it repeatedly in his evidence and admitted using it repeatedly at an international legal aid conference in the Netherlands a couple of weeks before the trial – Nair denied in court having written it.
20. Besides Hundermark, Mtati was also involved in the illegal refusal of my first PAIA request, because the record shows he was collecting the documents I'd asked for (they were emailed to him), before they were all illegally refused on the said crooked basis.
21. So was it Hundermark or Mtati or Nair who ghost-wrote your letter advancing the lying budgetary pretext for aborting my appointment and illegally refusing my entire first PAIA request under cover of a fraudulent misquotation from a reported judgment? (If indeed it was Nair, as appears from his stylistic fingerprints all over the letter, he's obviously going to prison for falsely denying it under oath.) If Hundermark or Mtati, they've got big trouble coming too. Please advise.
22. In a letter you forged on your own computer (author 'VidhuV') while Board chairperson Mlambo JP was abroad in the US, copying and pasting an image of his signature below it (one can see the scanning shadow around it) to make it appear to me he'd signed it (this is actually admitted in LASA's pleadings), my extraordinarily serious 59-page petition protesting your illegal refusal to comply with PAIA under cover of a fraudulent misquotation from a reported judgment, uttered in a separate indented, italicised, block quotation to sugar the lie, and the already clear indications that my appointment had been aborted illegally under cover of a lying budgetary justification, was brushed off in two sentences typed on your own computer while he was across the Atlantic:

I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as you allege or at all.



Which verdict concerning my complaint against you, on two serious counts, you then  
emailed him to email me, two weeks later. Like when a judge allows the accused to write his judgment for him, pretending to have given the case his careful attention, and then acquitting him without reasons given, which the accused in the dock hands up to the judge on the bench to deliver to the complainant in the gallery. What a wonderful world.

23. I didn't ask for it, but the Board Secretary has just given me your 'Confidential' report to the Board on 'Labour Matters Referred to Courts and CCMA' on 31 October 2014 (author 'VidhuV'), and the minute of the Board meeting in November noting it. (In my experience, LASA documents telling lies are invariably marked 'Confidential'; this is now the fourth time I've seen this.)
24. Your report (author 'VidhuV') shows that you've now personally told the Board the lie that the 'Senior Litigator position [at the] Pletermaritzburg JC ... was frozen owing to a management decision in relation to cost-cutting measures', well knowing that:
- (i) no record of any such decision exists whatsoever; and,
  - (ii) had such decision been taken, the Approval Framework required that the Board approve this deviation from the Business/Performance Plan, based on its Strategic Plan to employ Senior Litigators.
25. A quick look at the chronology exposes your lie to the Board last year.
26. On 16 July 2010, you, Nair and Makokoane proposed in your 'Report to Board' that some vacant public defender posts serving the lower criminal courts be temporarily frozen to save costs until resolution of the uncertainty about when the Department would be providing funds for OSD phase 1 salary increases in 2010/11. In the report you all assured the Board that recruitment to critical posts (like Senior Litigator posts at the very top of LASA's professional ranks) would be prioritised. A fortnight later on 29 July you emailed Nair to discuss my letter just received, in which I was pressing you to see to the finalisation my appointment, now eight months since my successful interview. The following day on 30 July you and Nair attended the Board Executive meeting but said nothing about also freezing Senior Litigator posts to save costs. On 31 July you were present waiting outside as the Board meeting took place, at which the Board approved your, Nair's and Makokoane's proposal to temporarily freeze some lower criminal court posts only. Again there was no talk by you of freezing top-rank critical Senior Litigator posts as a way of making more cost-savings – temporarily, let alone permanently. Then 'in July 2010 after the Board meeting' (per LASA's pleadings) – which means on 31 July after the Board meeting had



finished and the Board members had left for their homes, hotels, restaurants and airports, you and Nair took 'the decision to abort the recruitment' (LASA pleaded) of Senior Litigators for the Pietermaritzburg, Durban, and Mthatha posts – according to your October 2010 letter to me, reiterated in your January 2011 letter, and verified on affidavit in April 2011. Only, as Nair repeatedly admitted on oath in April 2011 and at trial in mid-2013, no record whatsoever exists of this alleged decision. And the Board wasn't even told about it (LASA pleaded), let alone was its approval obtained, as the Approval Framework required.

27. Which story Nair also verified in his affidavit in April 2011, only to change the story completely several months later in his 'Report to Board' of November 2011 (after I'd blown it to pieces in my very detailed original statement of claim in July), telling the Board two entirely different lies about why my appointment was aborted (mentioned above).
28. And then in court in mid-2013, he persisted with the lie you told me in October 2010 that the Pietermaritzburg and Durban recruitments were cancelled 'In July 2010' for budgetary reasons, but, contradicting your lie, not the Mthatha one, which he said you aborted for entirely unrelated reasons, against his repeatedly expressed wishes (mentioned below).
29. Makokoane's money claim is for his 'team to read the bundle as referred in your footnotes to advise me with the gist of the background explanation.' This less extensive reading, which didn't include my pending applications to compel your compliance with PAIA, but included time spent advising him of 'the gist of the background explanation', allegedly took his 'team' a much longer 'almost 220 hours'.
30. Do you think the reason for this is that Makokoane's 'team' can't read as quickly as Hundermark's 'team'? Or could it be because, after reading 'the bundle as referred in your footnotes' (there were several bundles in my labour case) but not the application papers, his 'team' then took four days without a break (33 hours, 8 hours in a working day) to convey to him the 'gist of the background explanation'.
31. Or do you think like Hundermark, Makokoane is also telling me lies in his scheming to obstruct my exercise of my fundamental right to information, and blocking my access to incriminating documents with a view to protecting Nair and other top officers from being brought to book?
32. Do you have any idea why Makokoane needed a different 'team' from Hundermark's to read the papers in my labour case before he could respond to my PAIA request?

Or is it the same team, as would appear from the similar language used in their letters, dishonestly double-charging me like crooked lawyers?

33. Did they possibly think I wouldn't notice, and the High Court wouldn't notice, the substantially identical headings of their letters (Nair's too) containing the same superfluous wrong words 'or information' after the correct words 'request for records' (contrary to its name, PAIA doesn't permit requests for information per se, only for records); and the selfsame opening phrase too, 'I have had an opportunity of perusing' etc, giving the game away, like bumbling criminals leaving their ID books on the floor at the bank for the police to find afterwards?
34. And can you explain why, unlike Hundermark's 'team', Makokoane's 'team' didn't find it necessary to read the application papers compelling you and your regional deputy information officers to comply with my November 2013 PAIA requests, which you illegally refused, in order to provide him with the 'gist of the background explanation' giving rise to my PAIA request addressed to him?
35. Whatever the answers to these very perplexing questions, Hundermark's and Makokoane's demands are illegal. The Act doesn't permit reading fees of any kind by information officers, by deputy information officers, or by their 'teams'. Including a fee for time spent reading a PAIA request.
36. Nor does the Act permit a record requester to be charged a fee for time spent by some person in a deputy information officer's 'team' briefing him on the context in which records have been requested, which is to say the requester's apparent purpose in making his request.
37. More especially, because section 11(3) holds a record requester's purpose, whether stated or surmised, in seeking access to the record of a public body to be immaterial. Such as collecting evidence for a perjury prosecution on a score of different counts, a sacking, a professional strike-off, and an application for leave to appeal with further cold print evidence of perjury on multiple scores.
38. The 'background explanation' allegedly summarised for Makokoane is consequently irrelevant.
39. In truth and in fact, however, Makokoane well knew the 'background explanation' of my request already, because back in September 2010 I'd appealed to him to intervene in the irregular abortion of my appointment to the top professional post for which I'd been recommended (he was then Nair's superior according to LASA's



organogram at the time, later changed to elevate Nair to equivalent rank), and I copied Hundermark in, so he knew the 'background explanation' too:

- o Both Makokoane and Hundermark already knew full well that the story Nair had told me on 3 August 2010 to cover the true reason for the abortion of my appointment, namely that it had been decided not to fill LASA's Senior Litigator posts, was a lie.

No such decision had duly been taken, and accordingly no record of it exists, as Nair repeatedly confirmed on oath on affidavit in April 2011 and again in court in July/August 2013.

- o Makokoane knew better than anyone that had such a major decision been taken at national executive management level not to fill these critical budgeted and funded posts, Board approval of the decision would have been necessary, because the Approval Framework requires Board approval for any deviation from the Business/Performance Plan based on the Board's Strategic Plan 2009-12, drawn in accordance with the requirements of the Public Finance Management Act and the Treasury Regulations and duly presented to the Minister and to Parliament – which Strategic Plan included employing Senior Litigators, as you repeatedly mentioned in your CEO report on the completion of the Strategic Plan for that period, and which information LASA's annual report repeated a third time.

Makokoane knew this very well, because he himself had applied to the Board on 15 July 2010 for such similar approval when proposing on the management executive committee's behalf, at Nair's suggestion the previous day (to spur payment, Nair testified), to temporarily freeze recruitment to some non-critical public defender posts serving the lower criminal courts – and none other – until the uncertainty in 2010 about when LASA's OSD phase 1 funding would be paid had been resolved. All fully documented.

- o Both Makokoane and Hundermark knew full well that the story fed me in your first letter of 18 October 2010, even as you were illegally refusing my entire PAIA request in August under cover of a fraudulent misquotation from a reported judgment, namely that budgetary insufficiency prevented LASA filling its remaining vacant Pietermaritzburg, Durban and Mthatha Senior Litigator posts, was another lie, amplifying, with a financial justification, Nair's lie to me on 3 August 2010 that it had been decided not to fill the posts.

They knew this because in truth and in fact your Senior Litigator posts at the top of LASA's professional staff establishment were not affected by the Board's decision on 30 July 2010 to temporarily freeze recruitment to a limited number of vacant public defender posts serving the lower criminal courts at the bottom of LASA's professional ranks. (The approved brake was lifted on such recruitment just two months later, and all the posts were filled '100%', you later reported). To the contrary, as said, Makokoane assured the Board in his Report to Board that recruitment to such critical posts would be prioritised. (Although he foolishly denied it, and testified that LASA's most junior posts were critical, not its most senior ones, it was common cause on the pleadings that Senior Litigator posts are 'critical' (LASA's word).

40. Incidentally, did you know that testifying under oath in court, Nair practically called you a liar on two counts, trying to pass the buck to you (i) for his egregious misconduct in unlawfully obstructing the implementation of the Board's Strategic Plan regarding the employment of Senior Litigators for grossly improper reasons, and then (ii) for the cover-up going as far as lying to the Minister and to Parliament via secret reports he ghost-wrote for you to give Mlambo JP to sign and submit to these authorities (which you did, knowing they were full of lies) to pervert their independent enquiries into my complaints that you'd repeatedly illegally refused to comply with my first two PAIA requests in 2010 and that my appointment had been irregularly aborted?

- o Radically contradicting the story you told me in your October 2010 letter, repeated in your January 2011 letter, and swore to under penalty of perjury in your PAIA affidavit in April 2011, which story, after I sued for Instatement to the post I was recommended for, was consistently repeated in LASA's pleadings and interlocutory affidavits (but not in Nair's completely different November 2011 Report to Board), namely that due to budgetary insufficiency, LASA had decided not to fill its three vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, Nair alleged quite differently in court, and admitted that the cancellation of the Mthatha recruitment had nothing to do with any budgetary consideration.

He then blamed you for it, claiming that after he and the Legal Services Technical Committee (including Makokoane and Hundermark), of which he's chairperson, had unanimously resolved to recruit a Senior Litigator for the Mthatha post as an immediate priority, being sorely needed there according to then Eastern Cape Regional Operations Executive Thembile Mtati's pressing motivation for the



~~transfer of the redundant, long-vacant Kimberley Senior Litigator post, you – very~~  
unreasonably, and to the detriment of service delivery by LASA – refused to approve the LSTC's unanimous decision (as required of you by the Approval Framework), despite his repeated attempts to persuade you to agree.

- o Nair also blamed you, and then Mlambo JP, and then you again, for telling the several fresh lies that he (Nair) added to the 'updated' report to Parliament in June 2011 which he'd ghost-written for Mlambo JP to sign and give the Minister in March to pervert his enquiry into my complaints.

41. And did you know that at trial Nair blamed you for the abortion of my recruitment, alleging that it was your idea, and that you had suggested that the Pietermaritzburg Senior Litigator post for which I'd been selected be frozen (off the record, and without Board approval as required by the Approval Framework)?
42. That is, in his cowardly, pathologically dishonest manoeuvring to evade culpability for his capital misconduct, Nair gave evidence on oath behind your back to frame you for it as principal perpetrator, rather than as his accomplice in the cover-up.
43. Now that you're aware that Nair told the Judge these lies about you, all of which, among so many others, he swore, with his hand in the air were the perfect truth, please advise me what you intend doing as CEO about his repeated perjury in implicating you in and blaming you for his own misconduct. You can be sure that at the enquiry to follow you'll be questioned about your reaction to this news of Nair's lies about you told under oath in court.
44. In November 2012, directly on account of my repeated complaints to the SAHRC about your and Nair's persistent illegal refusal of my PAIA requests in 2010/11 and false section 32 reporting about it afterwards to conceal from the SAHRC and from the National Assembly in turn your illegal suppression of documentary evidence (to obstruct and defeat the ends of justice), the SAHRC found it necessary to deliver your national office lawyers a special remedial lesson on how PAIA works.
45. Lying under oath, as usual, Nair told the Judge he knew nothing of this workshop. Email records I obtained from you after trial (the very few you duly surrendered, the majority refused) prove categorically that Nair knew all about it.
46. Nair also denied any knowledge of the SAHRC's PAIA audit of LASA; again, the email records prove he contemptuously lied to the judge about this too.



47. As CEO, what are you going to do about this further interminable, compulsive perjury of his? As said, you will certainly be asked this again at the enquiry to follow this case.
48. The SAHRC's report of the PAIA training workshop records your national office attorneys' admission that on account of their 'lack of application based knowledge' causing them 'challenges complying with PAIA' they felt 'overwhelmed by the requirements of the legislation', and that 'LASA compliance history was flagged with participants and most responded to the reporting of LASA as non-compliant to Parliament with concern'.
49. The SAHRC was referring to the 'reporting of the Brink saga (you may be familiar with it – Patrick [Hundermark] is) to Parliament', as its PAIA Unit director mentioned in her email to the Open Democracy Advice Centre on 12 July 2011, copying Hundermark in.
50. Indeed, in its Annual Report for 2011/12, the SAHRC reported LASA to the National Assembly as a PAIA defaulter in its section 84 report. Concerning the failure of public institutions to comply with their PAIA compliance reporting obligations, the SAHRC cited:
- A case in point ... where a complainant brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year.
51. Strangely the SAHRC neglected to report to the National Assembly LASA's substantial repeated illegal refusal to comply with my first three PAIA requests, even as it had noted the 'unlawfulness' of this in its correspondence with me. (Nearly all records illegally refused were later released, but only under persistent pressure, in the labour litigation.)
52. The SAHRC's training workshop report further records that 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation', and that it had undertaken 'to create guidelines within the organisation to ensure misapplication does not recur' in the handling of PAIA requests like mine, particularly since 'misinterpretation and misapplication was identified as being high risk to LASA', having regard to 'the status of PAIA as a fundamental right' (sic), a matter 'reiterated and emphasized at different points of the training'.

~~53. Likewise underscored was 'the need to break the culture of secrecy which shrouds~~  
the public service in general' and LASA in particular – maintained by its highest officers in their illegal collusion to cover up the most extraordinarily serious misconduct.

54. And then on 25 October 2011, right after LASA's attorneys had very frankly conceded to the SAHRC that it hadn't complied with PAIA in the handling of my record requests (besides me, no other records requesters were obstructed), LASA (Nair instructing, Mtati signing) blithely lied to court in its pleadings in my labour case:

The Respondent contends that the Applicant's requests in terms of the Promotion of Access to Information Act, 2000 ("PAIA") were answered completely and lawfully and those documents that were refused were refused in terms of the law.

55. Which brazen lie Mtati repeated on oath in his prodigiously perjurious interlocutory affidavit on 16 January 2013 supported by a confirmatory affidavit by Nair.

56. And which lie Mtati repeated again in his even more massively perjurious affidavit of 22 January 2015 opposing my petition for leave to appeal, telling fresh new lies contradicting the old ones told in court; in which affidavit, filed out of time, he sought condonation for LASA's non-compliance with the rules of the Labour Appeal Court with yet more bare-faced perjury, lying to the Judge President that he hadn't known I'd filed my signed and attested petition before he went off on holiday on 12 December 2014 – his excuse given on oath for his inaction flatly refuted and exposed as a lie by the record of an email I sent him on the 8th, which he admits he read on the same day, before pushing off without attending to my petition.

57. It's evident from the illegal responses to my current four PAIA requests in November 2014, and from the illegal responses to my three requests in November 2013 now before the Magistrate's Court, that your 'team' of national office 'legal representatives' were unable to learn anything from the SAHRC's training workshop. (The attendance register shows that Hundermark, Makokoane, Nair and Corporate Service Executive Thembile Mtati didn't think they needed to go.) The special lesson on how to apply PAIA to give effect to the fundamental right to information, and consequently the importance of complying with it, just didn't sink in.

58. Here's a refresher course then on how PAIA works for the slow learners in LASA's national office.

59. After a record requester has lodged his request in the form prescribed by section 18 and paid his request fee prescribed by section 22(1), as I did, section 25(1) requires that the

information officer to whom the request is made ... 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 ...

60. Section 26 allows the timeframe to be extended by a maximum of another 30 days – i.e. calendar days, not court or business days, according to section 4 of the Interpretation Act 33 of 1957 on the 'Reckoning of number of days' prescribed by a statute.

61. Section 25(2)(a) provides that:

If the request for access is granted, the notice in terms of subsection 1 (b) must state –

(a) the access fee (if any) to be paid upon access.

62. Section 1, 'Definitions' tells us that:

"access fee" means a fee prescribed for the purpose of section 22(6).

63. Which provides:

(6) A requester whose request for access has been granted must pay an access fee for reproduction and for search and preparation contemplated in subsection (7)(a) and (b), respectively, for any time reasonably required in excess of the prescribed hours to search for and prepare ... the record for disclosure.

64. Subsection 7(a) and (b) allows:

a reasonable access fee for –

(a) the cost of making a copy ... and ... the postal fee; and

(b) the time reasonably required to search for the record and prepare ... the record for disclosure to the requester.'

- ~~65. The Act therefore required Hundermark and Makokoane to decide, within the~~  
prescribed time allowed, which of my record requests they were granting and which they were refusing (with reasons, referenced to Chapter 4, 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS'), and to notify me of (i) their decisions regarding each record allowed or refused, and (ii) their reasonable access fees for searching and copying those allowed.
66. Hundermark and Makokoane have failed to comply with their obligations under the Act.
67. Nair has unlawfully expressly refused, also out of time, my entire request addressed to him, citing various obviously irrelevant and inapplicable sections of PAIA -- including section 7, which isn't even included in Chapter 4.
68. To read Nair telling me that his 'response is given to you on the basis of the advice of my legal representatives, which I verify accept' is to recall:
- (i) LASA's head office attorneys' concession to the SAHRC that when it comes to PAIA they don't know what's going on; and,
  - (ii) Nair's evidence in court that his legal studies through the mail hadn't included a course on PAIA.
69. Apparently the same 'team' of 'legal representatives' advising Hundermark and Makokoane to obstruct my requests gave Nair the 'advice' to refuse my entire request addressed to him. (Centrally involved in my labour case, Nair couldn't sensibly claim to have needed to read all the bundles to be placed to respond.) Their letters have substantially the same headings, as mentioned above, and display the same pitiful legal ignorance.
70. And like Nair's letter, Hundermark's and Makokoane's letters contain the same meretricious statement that I consented to an extension within which to respond. Sure I did; I'm an obliging sort of guy. I knew they all wanted to go away on for their Christmas holiday, and I'm playing a long and patient game to collar the rogues. None of the letters mention that the extensions had expired, and that all three deputy information officers were unlawfully outside the extended time limit for responding when their 'team' of 'legal representatives' wrote to me. Like when a used car salesman declaims brightly that the lemon he's trying to flog has just been serviced. Without mentioning the crack in the block.

71. It's apparent from a glance at my request addressed to Nair that it's directed at categorically exposing some of his more obviously foolish perjury in court. My request practically asks Nair to supply the rope for his own hanging. Naturally he's unwilling, for as Board director Ela Gandhi explained very perspicaciously in the *Mercury* on 23 November 2011:

It's only when people have things they are not proud of that they want to hide things.

72. Section 17(2) gives you 'direction and control over every deputy information officer' you've delegated.

73. Section 17(6)(b) provides that your delegation of your responsibility as information officer to them:

does not prohibit the person who made the delegation from exercising the power concerned or performing the duty concerned himself or herself.

74. That is, notwithstanding your delegations to these other persons, you remain the person primarily accountable as information officer for LASA's compliance with the Act.

75. I accordingly call on you either to direct your delinquent deputy information officers to belatedly comply with my record requests or take my requests over from them and do so yourself.

76. If you do not do either of these things, I'll conclude, and later argue, that you evidently support their violation of my fundamental right of Information by illegally frustrating and refusing my PAIA requests with the object of suppressing documentary evidence of egregious malfeasance, corruption and criminality in LASA's top ranks -- including lying to Parliament, to the Minister, to the LASA Board, and internally contradictory and objectively contradicted perjury, going off chaotically in all different directions like cheap fireworks, before, during, and continuing even after the trial of my labour claim.

77. This demand is not any sort of appeal to you under the Act, because contrary to the false information contained in the latest revision of your PAIA manual, to be quoted presently, you have no appeal authority in the matter of PAIA requests.

78. This is because LASA is a section 1(b)(ii) 'institution' among the sorts of 'public body' contemplated by section 1 of the Act under the heading 'Definitions'.



79. A 'public body' is variously defined by section 1 as (I've italicised the pertinent bits for emphasis):

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government;  
or

(b) *any other functionary or institution when –*

(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation.

80. Such as the Legal Aid South Africa Act 39 of 2014, from the 1st of this month. Or the Legal Aid Act 22 of 1969 before that.

81. And section 78(2)(c) of PAIA provides (I've redacted it for relevance):

A requester - ...

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

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

may, by way of an application, within 180 days apply to court for appropriate relief in terms of section 82.

82. In short, no internal appeal lies against the refusal of a request for access to the records of a public body such as LASA, and my remedy for non-compliance stipulated by the Act is to apply directly to court.

83. The SAHRC's PAIA Unit alerted me to this right at the beginning of my troubles with LASA over PAIA, and will confirm it to you.

84. So the requirement of section 20 of LASA's PAIA manual revised in 2010\* and approved by the Board –

20. Remedies available for noncompliance with the Act

In case of non compliance with any request by the Deputy Information Officer, the Designated Deputy Information Officer or any other personnel authorised by



the Information Officer, the requester shall appeal to the Information Officer who shall consider such appeal within 15 days and after which the requester may resolve the dispute by approaching the relevant court directly.

– is inconsistent with the Act and seriously misleads the public.

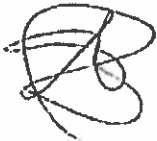
85. (\*The 2013 revision of the PAIA manual hasn't yet been published online for easy public access, but I've seen this section quoted by LASA as section 18, apparently renumbered but otherwise unchanged. Apart from the legal nonsense the section contains about appealing to you against 'non compliance with any request', its impressive-sounding but spurious distinctions between 'Deputy Information Officer, the Designated Deputy Information Officer or any other personnel authorised by the Information Officer' are more legal nonsense unsupported by section 17 of the Act.)
86. Given your repeated persistent past illegal refusals of my PAIA requests in October 2010, January 2011, and November 2013, and your pointless, dilatory opposition on your very junior counsel's clueless advice of my pending application to compel your compliance with the last-mentioned request, I've no reason to expect you'll now begin complying with your constitutional and statutory obligations as LASA's information officer and see to it that my PAIA requests are duly complied with.
87. It also seems unlikely that your very most senior attorney Patrick Hundermark and your very most senior advocate Brian Nair in your national management executive committee will reverse themselves and concede that as deputy information officers of a major public entity, when it comes to responding to PAIA requests they've no idea what they're doing.
88. Or maybe they do, and what they're doing is outrageously abusing their offices as deputy information officers to suppress documentary evidence of exceedingly grave wrongdoing at the top of LASA's directorate and executive, including, in Nair's case, his own.
89. I've asked the SAHRC to intervene, but in view of LASA national executive management's evident united determination to obstruct and defeat the ends of justice by suppressing documentary evidence of Nair's many perjuries at the trial of my claim to my appointment, I'm not optimistic. My past interactions with the SAHRC as our constitutionally appointed fundamental rights watchdog have been bitterly disappointing, time and again.
90. I'm consequently preparing an application to the High Court at Pietermaritzburg under section 78 for an order compelling compliance with my four requests in



~~November 2014, and I intend citing you as first respondent in your capacity as LASA's~~  
information officer ultimately responsible and accountable for PAIA compliance at LASA.

91. But if after consulting the SAHRC you decide it would be better for LASA as a public entity to start complying with the Act, and stop illegally contravening it, and to start respecting my fundamental right to information, and stop illegally violating it, I'll call off my intended application. The same goes for my pending applications in the Magistrate's Court.
92. Please let me know your intentions within ten working days of receiving this letter. This will give you time to consult the SAHRC for its guidance and training on PAIA delivered under section 83(3)(d) and (e). Believe me madam you need it.
93. If I need to sue, as I anticipate from dismal past experience I inevitably will, I'll include this letter in my papers for the High Court's information about the attempt I made to avert the unnecessary, avoidable litigation to vindicate my fundamental right to information.
94. Finally, I enclose another PAIA request addressed to you for your attention, inter alia testing Hundermark's and Makokoane's money claims against me, and seeking sight of LASA's insurance policy with Camargue, referred to in your report to the Board on 31 October 2014 about my case, and all requests for and reports to this insurer to assist it in 'managing the matter'.
95. If my request for access is granted, I'll naturally be cross-checking with your insurer to verify the completeness of the records provided me. I anticipate that the content of the reports will support a criminal charge and a civil action for insurance fraud, and I intend claiming the R5000 reward they tout for reporting it. I need a new wristwatch.
96. I remind you that section 25(1), quoted above, requires that you:  
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 ...

97. My request is simple, so to conform yourself with your obligation to decide and notify me 'as soon as reasonably possible', your decision whether to grant it or not 'must' be immediate. The records can follow later.
98. If you decide to grant my request there'll be no access fee for searching, because the extant records are electronically stored and easily located, nor for copying, because I've asked that they be emailed to me, not sent by post. I've paid the prescribed request fee by EFT reference: PAIA/VV.
99. If you refuse my request or any part of it, I'll sue you immediately for the records I want, or your sworn certification that they don't exist.
100. Let me conclude by giving you my sincere assurance that there will be no end to this matter until I have justice (the multiple gross basic irregularities in the premature, hasty dismissal of my petition to the Judge President of the Labour Appeal Court beggar belief), and until all those who've gravely misconducted themselves and lied to me, to the Board, to the SAHRC, to the Minister, to Parliament, and to court in the cover-up are held to account.



ANTHONY BRINK

Cc: Adv Lawrence Mushwana: Chairperson, South African Human Rights Commission  
Langa Lethiba: LASA Board Secretary, for the information of the Board



1 Boast Street  
Eshowe  
KwaZulu-Natal  
2 April 2015

Adv M'landeli Nkosi  
Provincial Representative, Public Protector  
Suite 2114, 22nd Floor  
Commercial City Building  
40 Dr A B Xuma Street  
Durban

Dear Adv Nkosi

LASA'S REFUSAL TO COMPLY WITH PAIA  
A REQUEST FOR MEDIATION

1. According to the Public Protector's website,

The mandate of the Public Protector is to strengthen constitutional democracy by [inter alia] resolving disputes relating to the operation of the Promotion of Access to Information Act of 2000.

2. I write to request your office's mediation and assistance in achieving Legal Aid South Africa's compliance with several PAIA requests I filed in November 2014, all of which have been illegally obstructed or refused by LASA's national office deputy information officers Patrick Hundermark, Jerry Makokoane and Drian Nair to whom they were addressed.

3. I enclose my requests and the unlawful responses they elicited, together with my recent letter about this to LASA Information officer Vihuh Vedalenkar, asking that she intervene in the matter under her power reserved to her by sections 17(2) and (6)(b) of the Act, and covering a further request addressed to her arising from recently discovered information.

4. However, in view of her repeated illegal refusals to comply with my PAIA requests addressed to her in August and December 2010 and November 2013, I'm not expecting her cooperation.

5. You'll appreciate from my letter to her that the reason for this is that she's deeply involved as CEO in the exceptionally serious malfeasance that my PAIA requests are directed at exposing.
6. That is, Vedalenkar has abused her power as LASA information officer to suppress documentary evidence of her and her colleagues' capital professional misconduct.
7. This feature of the case sets it apart from the ordinary sort of routine difficulties that requesters notoriously encounter in obtaining access to public body records, and makes it extraordinarily grave.
8. Currently pending perjury criminal prosecutions and strike-off applications against former Acting National Director of Public Prosecutions and two other top national and provincial prosecutors are a pointer what's coming in this matter.
9. Hundermark's and Makokoane's demands for money before notifying me of their decisions as to whether to grant my requests or not are illegal, as I show with reference to the relevant provisions of PAIA quoted in my letter to Vedalenkar. In sum, under section 22, (i) an access fee isn't payable before notification by an information officer of his decision to grant a request; (ii) an access fee is only payable in respect of a record to which access has been granted; and (iii) the Act doesn't permit an information officer to raise a fee against a requester for reading anything or consulting anyone (as Hundermark and Makokoane have incompetently and unlawfully done).
10. Nair has justified his blanket refusal of my entire request addressed to him on various obviously legally incompetent grounds, rebutted in the appendix hereto.
11. Will your office assist me under the Public Protector's declared mandate to 'strengthen constitutional democracy by ... resolving disputes relating to the operation of the Promotion of Access to Information Act of 2000'?
12. (My repeated appeals to your national and Gauteng provincial offices to help me disgorge illegally withheld records from LASA, and my repeated complaints about LASA's false reporting under section 32 in 2011 and 2012 to conceal from the SAHRC, and from Parliament in turn, its refusal to comply with its constitutional freedom of information obligations came to nothing, and turned out to be a complete waste of a lot of my time and energy, hence this new tack in hopefully approaching your local provincial office instead.)

"BNA"

13. If I can't get LASA to comply with my PAIA requests through mediation, and it persists in illegally withholding records from me, or where they don't exist certifying this on oath, I'll be approaching the High Court with an application to compel, in which event I'll put this letter up with the papers to show my attempts to engage the Public Protector's assistance in resolving the dispute out of court.

14. An early answer by email to arbrink@lafrika.com would be appreciated.

Yours sincerely



ADV ANTHONY BRINK

#### APPENDIX

Note: My records request addressed to Nair comprised fourteen items, and these are treated in the following centrally numbered parts. Section '(a)' of each part identifies the records to which I requested access, or Nair's sworn confirmation under section 23 in any case the records don't exist. Section '(b)' records Nair's various justifications for refusing me access to them, which for clarity I've set in italics. Section '(c)' rebuts Nair's justifications, and demonstrates the unlawfulness of Nair's refusals and the irrelevance of the sections of PAIA he relies on, as well as his other justifications not referenced to the Act.

1.

(a) Request: The minutes kept by HRE Amanda Clark<sup>1</sup> of the 'second round interviews' held 'for some Regional Operations Executive posts',<sup>2</sup> as alleged by LASA's single witness NOE Brian Nair at the trial of case LC D529/11.

(b) Refusal: *This request cannot be acceded to in terms of section 7 as it relates to the evidence in the matter pending before Court.*

(c) Rebuttal: Section 11(1) provides:

1.1 Right of access to records of public bodies

(1) A requester must be given access to a record of a public body if –

(a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and

(b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

'CHAPTER 4 GROUNDS FOR REFUSAL OF ACCESS TO RECORDS (ss 33-46)' does include section 7, and Nair's justification based on section 7 for refusing these records is accordingly incompetent and unlawful.

Section 7 doesn't afford an information officer a ground for refusing a record. It ordinarily bars a litigant from adducing in evidence a record obtained via PAIA after the commencement of the case, but the rule is not absolute and section 7(2) gives the trial court a discretion to admit such a record.

<sup>1</sup> 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'.

<sup>2</sup> Record, page 338, lines 8-9.



Not being founded on any grounds allowed by Chapter 4, the fact that a request in some manner 'relates to the evidence in the matter pending before Court' is no valid justification for refusing a request.

Judgment had been delivered when I made the request, so the case was already over, and no longer 'pending'.

2

(a) Request: 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.

(b) Refusal: *This request cannot be acceded to in terms of section 7 as it relates to the evidence in the matter pending before Court.*

(c) Rebuttal: *This repeated incompetent and unlawful justification is rebutted above.*

3

(a) Request: In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, the emails sent by the ROEs to Nair<sup>3</sup> (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'<sup>4</sup> to send all CVs, and not only those of the recommended candidates, since it was 'The practice of the ... second round panelists to ... consider if there was anyone else they would be interested to interview'.<sup>5</sup>

<sup>3</sup> Record, page 407, lines 11–14. [i] would then have found that email again because it would have been in my box.

<sup>4</sup> 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 panelists could consider if there was anyone else [besides the recommended candidate] they would be interested to interview.'

<sup>5</sup> Record, page 349, lines 10–17.

(b) Refusal: *This information relates to third parties and falls within the ambit of section 37 read with section 47 and 48 of the Act.*

(c) Rebuttal: Subsection 1(b) of section 37 in Chapter 4, 'Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party' allows that 'the information officer of a public body ...

(b) may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party –

(i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and

(ii) if it is in the public interest that similar information, or information from the same source, should continue to be supplied.

Nair doesn't have any facts to state to support requirements (i) and (ii).

Section 37 manifestly has no application to the records requested under this item, and Nair has obviously grabbed at the wrong section.

If he possibly meant to grab at subsection 1 of section 34 instead, 'Mandatory protection of privacy of third party who is natural person', which stipulates that 'the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party', he's failed to show that the mere covering emails in question contain any 'personal information about a third party'.

Nair purports to fortify his refusal under section 37 by suggesting that it be 'read with section 47 and 48 of the Act'.

Section 47, 'Notice to third parties', imposes a duty on an information officer to notify an affected third party contemplated in sections 34 and 37. Section 48, 'Representations and consent by third parties', affords such parties an opportunity to oppose or agree to the release of a record containing their 'personal information' or 'confidential information'. Since section 37 is irrelevant (and section 34 too), sections 47 and 48 are equally so.

The fact that a request 'relates to third parties' doesn't ipso facto bring it within the ambit of section 34 – not unless the record contains 'personal information'. Not having any interest in such, I headed my annexure with the notice that it 'may be blacked out'.

(I referred to 'confidential information', meaning 'personal information'; section 34 that I mentioned concerns 'personal information'.)

4.

(a) Request: The email that KwaZulu Natal ROE Veia 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 Litigator post<sup>6</sup> 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.

(b) Refusal: This record was requested during the discovery process in the trial court for which the matter is still pending. Therefore it is excluded in terms of section 7 of the Act.

(c) Rebuttal: Contrary to Nair's lie about this, in truth and in fact the email record in question was not 'requested during the discovery process in the trial court'. It was not among the records I specified for discovery in my agenda for the pre-trial conference in October 2011, in my application to compel discovery in January 2012, in my agenda for the first pre-trial conference at court under judicial supervision in January 2013 to compel LASA to discover, and in my agenda for the second pre-trial conference at court under judicial supervision in June 2013 to the same end. (All this extraordinary trouble I was put to was occasioned by LASA's resolutely determined refusal to discover documents I needed for trial, with the corrupt intention of hindering me in proving my claim, which is to say with the intention of obstructing and defeating the ends of justice. In the result this criminal object was achieved by Nair's rampant perjury at trial.)

Not being a ground provided for by Chapter 4, the fact that a record was 'requested during the discovery process', but was not furnished therein, is anyway not a ground for refusing a request for it later made again under PAIA.

When I made the request, the trial was already over, and was no longer 'pending'.

5.

(a) Request: 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 –

Record, pages 410, lines 15–21.

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.

(b) Refusal: This request relates to the evidence and the records already before court, which matter is still pending. Therefore it is excluded in terms of section 7 of the Act.

(c) Rebuttal: The fact that a record requested under PAIA 'relates to the evidence and the records already before court' is not one of the grounds for refusing it provided by Chapter 4.

As said, the case was already over with judgment delivered when I requested the record, and section 7 doesn't afford an information officer a ground for refusing a record request. This incompetent, unlawful justification is rebutted above.

6.

(a) Request: In respect of the Boomfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, Nair's emails to the five<sup>7</sup> 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,<sup>8</sup> in which emails Nair asked the five members of the

<sup>7</sup> Record, page 409, line 11.

<sup>8</sup> Record, page 407, lines 13–17. I would have sent it (the email with recommendation and CVs attached) to the panelists to advise who they would like to see (individually) the recommended candidate. Therefore, all four (CVs) would have been sent to the panelists and everyone would have the opportunity to see who they would have liked to have (individually).

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 panelists can look at all people who were interviewed at the first round and they can say, 'we would like to see X, Y and Z'."

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

Record page 409, lines 15–20. "By email, Ja — Yes. [Through] correspondence — Yes. Okay, so by email that is done — Yes."

Record, page 349, lines 21–2. "...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 panelist[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."

'second round' panel to advise him as to who they 'would like to see'<sup>9</sup> and 'interview'.<sup>10</sup>

(b) **Refusal:** *The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.*

(c) **Rebuttal:** These incompetent, unlawful justifications are rebutted above.

7.

(a) **Request:** 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 Kaboo, 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.

(b) **Refusal:** *This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act.*

(c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

8.

(a) **Request:** 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.

(b) **Refusal:** *This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act.*

(c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

<sup>9</sup> Record, page 409, lines 10–11. "I would send it to the five panelists and say, "Please advise who you would like to see."  
<sup>10</sup> Record, pages 343, 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 panelists could consider if there was anyone else [besides the recommended candidate] they would be interested to interview."

9.

(a) **Request:** 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.<sup>11</sup>

(b) **Refusal:** *The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.*

(c) **Rebuttal:** These incompetent, unlawful justifications are rebutted above.

10.

(a) **Request:** 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 Kaboo, 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.

(b) **Refusal:** *This request forms part of the discovery notice at the trial court and accordingly is excluded in terms of section 7 of the Act.*

(c) **Rebuttal:** Contrary to Nair's lie about this, in truth and in fact I didn't seek these records by way of pre-trial discovery procedure. And the reason for this is that contradicting LASA's repeatedly pleaded and sworn case (in the interlocutory affidavits), it was only in his oral evidence that Nair made the novel allegation that after a Senior Litigator selection panel had identified the most suitable candidate for appointment (per LASA's Recruitment code), in the process eliminating the other shortlisted, interviewed candidates, he would email his so-called 'second round' interview panel members to enquire as to which of the shortlisted, interviewed Senior Litigator candidate(s) they 'would like to see' and interview and to notify 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

<sup>11</sup> Record, pages 410, lines 10–12. "... the panel does not confine itself to only the person that is recommended. The [second round interview] panel, had in the past, requested to see other candidates who were interviewed."

recommended by it, and thereby 'eliminated'\* from consideration for appointment.  
(\*LASA's word in the pleadings)

Nair's justification for refusing me access to these records, or certifying on oath under section 23 that they don't exist (thereby proving his perjury for his prosecution on the point), is incompetent and unlawful for the reasons stated in the rebuttals above.

11.

(a) Request: 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 candidates who had been shortlisted and interviewed by the selection panel but not recommended by it.

(b) Refusal: *This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.*

(c) Rebuttal: This incompetent, unlawful justification is rebutted above.

12.

(a) Request: 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.

(b) Refusal: *This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.*

(c) Rebuttal: This incompetent, unlawful justification is rebutted above.

13.

(a) Request: The minutes<sup>13</sup> 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',<sup>13</sup> 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'<sup>14</sup> him/her.

(b) Refusal: *This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.*

(c) Rebuttal: This incompetent, unlawful justification is rebutted above.

14.

(a) Request: 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 0529/11.<sup>15</sup>

(b) Refusal: *The request relates to evidence in a matter pending before Court and is excluded in terms of section 7 of the Act.*

(c) Rebuttal: This incompetent, unlawful justification is rebutted above.

<sup>13</sup> Record, page 372, line 23 to page 373, line 2; 'HIRE Carli' would assist in the writing up of whatever recommendations flow out of the (second round interview) panel'.  
<sup>14</sup> Record, page 366, lines 14–21.

<sup>15</sup> Record, page 410, lines 21–4.

<sup>16</sup> 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."

11B015  
1 Boast Street  
Eshowe  
KwaZulu-Natal  
4 March 2015

Information Officer Vidhu Vedalankar  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein

Per telefax: 011 877 2222

Dear Ms Vedalankar

**REQUEST FOR RECORDS UNDER PAIA IN MARCH 2015:  
CONSENT TO YOUR REQUEST FOR AN EXTENSION  
REQUEST FOR TWO FURTHER RECORDS**

1. I refer to CSE Thembile Mtati's letter to me of 28 April 2015, in which he requested an extension of time within which to respond to my PAIA request to you of 19 March 2015, delivered on the 31st according to the Post Office tracking system
2. I immediately emailed my consent under section 26(1)(e) of PAIA.
3. I record here that I consented to an extension of time as an indulgence afforded you, and not for the reason advanced for the request for more time, namely that you were 'on leave'.
4. I don't accept it's the true reason more time has been sought, and it's anyway legally invalid, because:
  - (i) an information officer's absence on leave is not a ground allowed by section 26(1) for extending the time limit within which to decide a PAIA request;
  - (ii) according to LASA's PAIA manual, there are several deputy information officers in your national office who can handle PAIA requests in your absence; and,
  - (iii) purporting to act as a deputy information officer, Mtati dealt with my previous request addressed to you in November 2013, even though it appears you were at your desk (he didn't claim that you were away on leave to justify handling my request instead of you).



5. And you don't need more time to direct Hundermark, Nair and Makokwane to comply with the PAIA requests I addressed to them last year, as urged in my letter to you of 19 March 2015, because it's obvious at a glance from it that they've acted illegally in refusing or obstructing my access to the requested documents.
6. While considering your response to my PAIA request addressed to you in March 2015, in the extra time that I've very generously allowed you, kindly consider also my request for two further documents, generated subsequent to my request. These are:
  9. LASA's report to the SAHRC under section 32 of PAIA for 2014/15 (filed in April 2015).
  10. CEO Vedalankar's approved leave application in respect of her absence from office in April 2015, alleged by CSE Mtati in his letter to Brink of 28 April 2015.
7. I trust this supplementary request for these additional two documents I've specified won't also be overlooked, in the way Mtati overlooked my supplementary document request addressed to you on 17 October 2013, following my Form A request delivered a week earlier to you on the 1st.
8. It's with this concern in mind that I look forward to your acknowledgement of receipt of this supplementary request for these additional two documents.

Yours sincerely



ANTHONY BRINK



"BMC"

1 Bont Street  
Eshowe  
KwaZulu-Natal  
15 May 2015

Information Officer Vidhu Vedalankar  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein

Per telefax: 011 877 2222

Dear Ms Vedalankar

REQUEST FOR ACKNOWLEDGMENT OF RECEIPT OF  
CONSENT TO YOUR REQUEST FOR AN EXTENSION  
MY REQUEST FOR TWO FURTHER RECORDS

Please acknowledge receipt of my letter telefaxed to you on 4 May 2015 consenting to an extension of time within to respond to my PAIA request in March and requesting two further documents, a copy of which is annexed for easy reference (I've cut the imprecise bit in parentheses at the end).

I ask because after faxing you on the 4th I found the fax machine toner was out, so I couldn't print a transmission report to prove delivery. Unlike now.

Yours sincerely



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



1 Boast Street  
Eshowe  
KwaZulu-Natal  
19 May 2015

Your reference: None supplied  
Gauteng office references: 7/2 – 44378/11 and 7/2 – 040815/12

Sipho Ciske, Investigator  
Office of the Provincial Representative, KwaZulu-Natal  
Public Protector  
Suite 2114, 22nd Floor, Commercial City Building  
40 Dr A B Xuma Street  
Durban

Per telefax: 031 307 2424

Cc:

Reginald Ndou, Executive Manager: Service Delivery  
Elsabe de Waal, Chief Investigator: Service Delivery  
Lesedi Sekole, Senior Manager: Intake, Assessment and Customer Service  
National Office, Public Protector  
Private Bag X677  
Pretoria 0001

Per registered post

Dear Mr Ciske

LASA'S REFUSAL TO COMPLY WITH PAIA:  
APPEAL FOR MEDIATION BY THE PUBLIC PROTECTOR'S  
PROVINCIAL REPRESENTATIVE FOR KWAZULU-NATAL, REFUSED

1. You're seriously confused. Your emails to me of the 4th and 5<sup>th</sup> instant (annexed) show your basic mistake that my appeal to your provincial office on the 2nd ultimo for your office's Intervention and mediation in LASA's illegal failure to comply with my PAIA requests filed in November 2014 'was raised with our Pretoria Head Office and the Gauteng Provincial Office' and that 'the matter has been attended to by the Gauteng Office'.

2. This is wrong on all scores. I never approached your head office or Gauteng provincial office regarding LASA's failure to comply with these requests, and I didn't do so for the reason stated in paragraph 12 of my letter to your Adv Nkosi on 2 April, namely:

My repeated appeals to your national and Gauteng provincial offices to help me disgorge illegally withheld records from LASA, and my repeated complaints about LASA's false reporting under section 32 in 2011 and 2012 to conceal from the SAHRC, and from Parliament in turn, its refusal to comply with its constitutional freedom of information obligations came to nothing, and turned out to be a complete waste of a lot of my time and energy, hence this new tack in hopefully approaching your local provincial office instead.

3. The years mentioned in this paragraph tell you I was referring to my much earlier fruitless repeated approaches for assistance, to my fruitless repeated formal complaints, and to my fruitless repeated reminders addressed variously to the Public Protector's Gauteng provincial office and national office regarding LASA's illegal refusal to comply with my PAIA requests made in 2010 and 2011 and its false reporting under section 32 to the SAHRC about this afterwards to conceal these illegal refusals from the National Assembly in the SAHRC's section 84 reports – and not to my unlawfully blocked and refused PAIA requests made in November 2014 that are the subject of my appeal to your office.

4. To justify summarily closing your file and saving yourself the work of mediating a resolution of LASA's illegal failure to comply with my latest PAIA requests, you quote Gauteng office senior Investigator Sinthia Reddy's undated letter emailed to me on 2 July 2014 – replete with false information, both LASA's and her own – following LASA's illegal refusal to comply with my three PAIA requests made in October 2013 and my consequent applications launched in the Eshowe Magistrate's Court to compel its compliance with those requests:

We advise that we have received a response from LASA indicating that the issue pertaining to your complaint is currently being dealt with in the Labour Court and the Magistrates Court. Judgement is reserved and any further investigation of your complaint will be a duplication ... We advise that in view of the information provided by LASA, we will proceed to close this file pending the outcome of the Court judgement.

5. My 'complaint' to the Public Protector – in fact there were two, in 2011 and 2012 – was that LASA had illegally refused me access to documents I'd requested under PAIA in 2010 and 2011, and had then falsely reported to the SAHRC under section 32 to conceal its illegal

- non-compliance with PAIA from the National Assembly in the SAHRC's section 84 reports for those years.
6. These two complaints were never referred to the Labour Court to be 'dealt with', and the court accordingly never 'dealt with' them during trial or in its judgment.
7. After trial in mid-2013, I addressed three further PAIA requests to different LASA information and provincial deputy information officers, and when these were illegally refused I applied directly to the Magistrate's Court for orders compelling delivery of the records I'd requested. (My applications in that court are still pending.)
8. I did not file any third complaint with the Public Protector about LASA's continuing refusal to comply with the Act after trial in 2013, because, as said, despite repeated reminders, my earlier complaints hadn't been attended to, and I didn't want to waste any more evidently pointless time and energy pleading for the Public Protector's intervention.
9. Nor did I ask the Magistrate's Court to deal with LASA's unlawful refusals of my PAIA requests in 2010 and 2011, or with its false reporting to the SAHRC to conceal this; I sought orders directing LASA to comply with my PAIA requests made in October 2013.
10. So contrary to Ms Reddy's false statement about this, 'the issue pertaining to [my two] complaint[s]' that I filed with the Public Protector about LASA's failure to comply with my PAIA requests in 2010 and 2011 and its repeated false reporting under section 32 to conceal this from the SAHRC and the National Assembly, was never before 'the Labour Court and the Magistrates Court' for decision.
11. The 'judgement' that had been 'reserved' by the Labour Court when Ms Reddy wrote to me on 2 July 2014 had nothing to do with my complaints to the Public Protector in 2011 and 2012.
12. How 'further investigation of [my] complaint[s] would have been' a duplication' Ms Reddy doesn't say, because her claim is manifestly insupportable. Indeed she didn't investigate my complaints at all: she confirmed to me when I enquired that she hadn't even approached LASA about them. Besides pretending to me that she'd referred my first complaint to a senior investigator (she was then still a junior) to lull me into believing that my very serious complaints – she agreed – were being investigated at a senior level, she did nothing.
13. The underlying 'issue pertaining to my complaint' about LASA's refusal to comply with my PAIA requests and its false section 32 reporting to conceal this in the years 2010–2012 was the very different issue of why LASA had aborted my appointment to its most senior
- professional post in KwaZulu-Natal for which I'd been unanimously recommended by a professional selection panel of LASA's top lawyers in the region. I did not refer that issue to the Public Protector to investigate; I referred it to the Labour Court to determine.
14. (I find that speaking plainly and not using fancy faux legal talk like 'the issue pertaining to your complaint' helps us to think clearly and not muddle things up.)
15. From Ms Reddy's failure to take any action to resolve my first complaint in 2011 – I don't know whether she read my second in 2012 (a Ms Dube foolishly wondered 'whether the law allows this office to investigate your [second] complaint', after which I heard no more) – and from her final belated kiss-off in July 2014, on the basis of the characteristically false information LASA supplied her, which she readily and uncritically accepted and relied on, and then added to, you'll understand my conclusion that when it comes to being held to account for repeatedly illegally refusing to comply with PAIA, repeatedly violating my fundamental right to information, and repeatedly lying to the SAHRC to conceal this in its section 32 reports year after year with the intention of misleading the National Assembly via the Commission's section 84 reports, LASA has more to fear from a kitten.
16. Thanks to the Gauteng office's repeated failures to address my two complaints, not only did LASA succeed in illegally refusing me access to records I'd duly requested in my determined investigation and interrogation, in light of its records, of the budgetary excuse it had fed me for the abortion of my appointment – thereby repeatedly violating my fundamental right to information with perfect impunity; it also succeeded in repeatedly defrauding the SAHRC and more importantly the National Assembly into believing that it had duly complied with PAIA in its responses to my requests for the documents I'd specified.
17. Like when a criminal gives a lying alibi which the police are too lazy to investigate: the police help him get away with it.
18. LASA has repeatedly lied via the SAHRC to the National Assembly about its compliance with my PAIA requests over the years, and the Gauteng office's indolent failure to act on my repeated detailed complaints about this has helped LASA get away with it, thereby incubating the lawless corruption in LASA's top ranks.
19. The extensive, precise reporting requirements imposed on public bodies by section 32 of PAIA reflect the National Assembly's particular concern that they should conduct their business transparently in the democratic era, the better to ensure proper, honest administration.



20. To defeat this object LASA brazenly disregarded these reporting requirements in its reports for 2010/11 and 2011/12; and I anticipate that when I finally get to see its 2013/14 and 2014/15 reports that I've requested, they'll turn out to be lying fakes as well, also uttered to the SAHRC for the misinformation of the National Assembly to conceal its illegal refusals of my PAIA requests in October 2013 and November 2014 to hamper my exposure of improper, dishonest maladministration, abuse of power, and a pervasive culture of lying in the course of a cover-up: to the public, to the SAHRC, to the Minister, to the National Assembly, and to court.
21. Like when for a similar corrupt reason US President Richard Nixon refused to hand over his Oval Office tapes subpoenaed during the investigation of the Watergate burglary and the cover-up he orchestrated, appreciating that their contents, once revealed, would sink him.
22. After Cele J gave his judgment dismissing my claim, and after I'd obtained the transcript of LASA National Operations Executive Brian Nair's evidence at trial recording in cold print his prolific perjuries that had caused my case to miscarry, I filed four further PAIA requests in November 2014.
23. Though it's immaterial under section 11(3) of the Act, my principal purpose was to prove in light of LASA's records, or non-existent records certified on oath under section 23, that in giving evidence in court Nair gushed lies to the judge like a burst sewer.
24. LASA illegally refused nearly all the records I requested. But the very few records that it surrendered – only because I said I'd also applied to the SAHRC for the same ones to make sure that none were dishonestly concealed from me in a criminal contravention of section 90 – categorically prove that LASA national office deputy information officer Nair perjured himself in court in denying that he knew that the SAHRC had conducted a special training workshop to teach LASA's head office lawyers how PAIA works (the lesson was evidently lost on them) and had (shallowly, ineffectually) audited LASA for PAIA compliance.
25. The lesson of which, for the next court to deal with the matter, is that newly admitted Advocate Nair lies freely and compulsively under oath in court, even about non-essential peripheral matters, if he thinks he can get away with his lies.
26. Nair didn't bargain on my use of PAIA after trial to prove that he contemptuously lied to the judge. More central, novel lies he told in court (contradicted by LASA's pleadings and interlocutory affidavits) to pervert the true and just determination of my claim on the true documented facts, in other words more of his perjuries to defeat the ends of justice, will be proved when my PAIA requests are eventually complied with. (The judgment records the
- finding that I'd shown 'a number' of instances (the judge didn't specify them) in which Nair had been 'not generous with the truth' – which is to say had repeatedly concealed the truth careless of the oath he took in the witness stand to tell 'the whole truth'.)
27. I filed a fifth PAIA request in March 2015, supplemented in early May, the response to which is still pending.
28. It was concerning my latest November 2014 PAIA requests, illegally obstructed and refused by LASA, that I sought the mediation of the Public Protector's Provincial Representative for KwaZulu-Natal.
29. In light of this detailed clarification, and considering the Public Protector's declared mission to resolve PAIA disputes where possible, having regard to the critical importance of freedom of information in our democracy, and considering the Preamble's explanation that the Act aims to 'foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access [to] information' enshrined by 'section 32(1)(a) of the Constitution [which] provides that everyone has the right of access to any information held by the State', more especially after our horrible experience of the 'secretive and unresponsive culture in public and private bodies' during the apartheid era 'which often led to an abuse of power and human rights violations', including mine, will you please reopen your file and proceed to mediate in LASA's very obviously illegal refusal to comply with my latest PAIA requests? So I can get the records and section 23 affidavits that I need to hand over to the police, to the Bar Council, to LASA's Board, and to place before the next court that will be dealing with my labour claim (disposed of by the Judge President of the Labour Appeal Court grossly irregularly, in fact it seems by his clerk, but that's another matter, headed for review).
30. Alternatively, if your local office is not up to it for any reason, perhaps because like your Gauteng office, it's unwilling or incapable of handling the matter, would you please forward my April request for mediation plus a copy of this letter directly to your national office for referral to a senior investigator there: someone who's both willing and able to run with the case to its explosive conclusion – because LASA's persistent, repeated refusal to comply with PAIA since 2010 is just the tip of the iceberg.
31. As LASA Board member Ela Gandhi explained it in a different connection: 'It's only when people have things they are not proud of that they want to hide things.' Such as a Judge President in his capacity as LASA Board chairperson lying repeatedly in secret reports to the Minister and to the National Assembly to pervert separate, independently instituted enquiries into my complaints to them. Nair eventually admitted ghost-writing these lying

reports for CEO Vidhu Vedalankar to pass to Mlambo JP to sign and submit, which is to say she connived in the deception of the Minister and the National Assembly.

32. Generally thought to be the jewel in the crown in the Justice cluster, about which the previous Deputy Minister enthused, 'The world would be a better place if it were run by Legal Aid', LASA, I've discovered to the sickening contrary, is extraordinarily corrupt, from the top down. This will be comprehensively detailed with supporting documents in complaints to follow.

33. The dismal handling of my complaints and appeals to the Gauteng and KwaZulu-Natal provincial offices up to now about LASA's persistent illegal non-compliance with PAIA doesn't square with the Public Protector's well-deserved international reputation for independence, integrity, industry, tenacity and success in holding corrupt, lying public servants to account in our country.

34. Kindly let me know your intentions. Should it be necessary to litigate in the High Court to compel LASA's compliance with my document requests, on account of the failure of our Chapter 9 institutions to assist me enforce my most basic rights, this further letter and your response to it, if any, will be annexed to my founding papers for the information of the judge.

Yours sincerely



ADV ANTHONY BRINK





**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

The new address is:  
33 Hood Street  
Braamfontein Forum 3  
Braamfontein  
2195

Postal address remains as:  
Private Bag X 2700  
Houghton  
2041

New Telephone number  
011 877-3500  
Fax numbers: 011 403-0662

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION  
COMPLAINT FORM**

For office use only

Province	City/Town	Post Office	Post Office code
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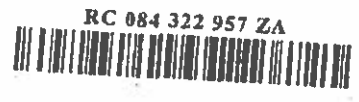
**PART A: YOUR DETAILS**

- 1. Name and surname  
Anthony Brink
- 2. ID number  
5902255116081
- 3. Race  
W
- 4. Gender  
M
- 5. Address and contact numbers  
The Cottage, 1 Boost Street, Eshove 3815, KwaZulu-Natal  
o. 035 474 2171  
h. 035 474 0145  
c. 083 779 4174  
f. 086 672 0776  
e. arbrink@lafica.com

**PART B: DETAILS OF PERSON/PERSONS WHOSE BEHALF YOU COMPLETE FORM (PERSON OR ORGANISATION)**

- 6-11.  
N/A
- PART C: THE COMPLAINT**
- 12. Date  
3 February to 26 May 2015
- 13. Is it still happening  
Yes
- 14. Where did it happen  
Johannesburg, Gauteng
- 15. If you know, which right(s) in the Bill of Rights was/were violated or is/are being violated  
The right to information held by the state, entrenched by Section 32.
- 16. If you know, the full name(s) and surname(s) of person(s), association, organisation or organ of state who violated these rights, please tell us  
Legal Aid South Africa (LASA)
- 17. Where can we contact them  
29 De Beer Street, Braamfontein, Johannesburg  
t. 011 877 2000
- 18-19.  
N/A
- 20. In your own words, tell us exactly what happened (include all information but be as brief as possible)  
1. LASA has unlawfully refused me access to records duly requested under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act'), and is unlawfully demanding fees not contemplated by the Act. All documents referred to herein are annexed hereto.  
2. On 26 May 2015 LASA justified its final blanket refusal of my PAIA requests in November 2014 on the ground firstly that 'The records you are requiring relates to and are ancillary to' previously adjudicated and other pending litigation, and secondly on the ground that 'your requests are malicious and seek to divert the resources of Legal Aid South Africa'.  
3. This is after I'd asked LASA information officer Vidhu Vedalankar in March to intervene under her power and responsibility under section 17 of PAIA to ensure LASA's compliance with the

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Act and to remedy her deputy information officers' failure to comply with PAIA by unlawfully refusing my PAIA requests (Nair) and by obstructing them with unlawful money demands (Hundermark and Makokoane).

4. The legal vacancy of Nair's various justifications is further treated in the Appendix hereto. The legal incompetence of Hundermark's and Makokoane's money demands is dealt with below.

5. Section 11(1) of PAIA requires that I 'must be given access to a record of a public body' (like LASA if I've 'comple[d] with all the procedural requirements' (undisputed) and 'access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part', i.e. Part 2 of the Act).

6. That records requested may 'relate to and are ancillary to' some past or pending litigation isn't a 'ground for refusal contemplated in Chapter 4 of this Part', i.e. sections 34 to 45.

7. LASA appears to have been alluding to section 7 of the Act. This ordinarily bars the use in legal proceedings of records obtained via PAIA after they've commenced, unless 'the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice'.

8. Since LASA's 'relates-to-and-is-ancillary-to-litigation' justification for refusing me access to the records I've duly requested isn't a ground for refusal contemplated by Chapter 4 in Part 2 of PAIA, it's incompetent and unlawful on its face.

9. The second ground advanced for the final blanket refusal of my November requests, namely that they 'are malicious and seek to divert the resources of Legal Aid South Africa' is an apparent allusion to section 45, which bars 'Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources'.

10. Giving the lie to this second justification for refusing all my PAIA requests in November 2014, however, LASA stated as one of its reasons for requesting an extension of time to respond, that my 'requests ... incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa'.

11. That is, LASA acknowledged that provision of the records to me, or sworn certification that they didn't exist in certain cases, would expose 'the officials of Legal Aid South Africa' to the gravest personal and professional consequences.

12. I spell some of these out in my letter to Vedalankai in March 2015, in which I informed her that I was 'collecting evidence for a perjury prosecution on a score of different counts, a sacking, a professional strike-off, and an application for leave to appeal with further cold print evidence of perjury on multiple scores.'

13. On LASA's own version, therefore, my requests weren't 'manifestly frivolous', they were manifestly exceptionally serious. And having been explicitly apprised of my serious purposes, LASA's final empty charge that I merely 'seek to divert the resources of Legal Aid South Africa'

in requesting LASA furnish me with the records I seek (or certification of non-existent records) is transparently insupportable.

14. To the extent that LASA has correctly surmised (albeit irrelevantly under section 11(3)) that I'm seeking records (or certification they don't exist in some cases) for litigation purposes, as appears from its first ground for refusing my November requests, LASA appreciates on its own showing that my purpose in requesting them is serious and not 'manifestly frivolous' and intended to waste LASA's time. So the two grounds advanced for refusing my requests are contradictory and mutually destructive.

15. LASA's refusal of my request in March 2015 for specified insurance records were refused on the ground that each of these 'contains' or 'relates to commercial information of a third party and is 'protected in terms of the Act', namely section 36, specifically mentioned in the final refusal.

16. Subsection 1 provides (subsections 2 and 3 are irrelevant):

36 Mandatory protection of commercial information of third party

(1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if the record contains-

- (a) trade secrets of a third party;
- (b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
- (c) information supplied in confidence by a third party the disclosure of which could reasonably be expected-

- (i) to put that third party at a disadvantage in contractual or other negotiations; or
- (ii) to prejudice that third party in commercial competition.

17. LASA doesn't even allege, much less show, that the insurance records I seek are hit by any of subsections (a) to (c).

18. Even if they had been, the disqualification would have been over-ridden by section 46, which provides (I've redacted it for relevance):

46 Mandatory disclosure in public interest

Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section ... 36(1) ... if: the disclosure of the record would reveal evidence of-

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

the Public Protector about LASA's false annual reporting to the SAHRC under section 32 (vaguely, softly reported by the SAHRC to the National Assembly in 2012), all went nowhere.)

22. Were any steps taken by the person/association/organisation/organ of state to resolve the matter

No. My plea to information officer Vedalanthar to intervene under her power and responsibility under section 17 of PAIA to ensure LASA's due compliance with my record requests and to remedy her deputy information officers' violation of my right to information by unlawfully refusing them and unlawfully obstructing them with incompetent money demands was rejected.

23. What outcome do you propose or expect from this complaint (tell us what you would like to achieve with this complaint and the relief sought)

The relief I seek from the SAHRC is that it carry out its several statutory functions with which it's charged by section 83 of PAIA to 'monitor the implementation of this Act', 'recommend a public ... body make such changes in the manner in which it administers the Act as the Commission considers advisable', 'train information officers and deputy information officers of public bodies', and 'if reasonably possible, on request, assist any person wishing to exercise a right contemplated by the Act', and thereby assist me exercise my fundamental right to information given effect by PAIA.

The ultimate outcome I expect to achieve is that, on the SAHRC's recommendation, LASA reverse its refusal to comply with the Act, respect my fundamental right to information, enforce its obligations under section 32 of the Constitution, and allow me access to the records I've duly requested, or where they don't exist, certify this on oath under section 23. And abandon its illegal money demands.

24. Do you need an interpreter when attending any proceedings, investigations or hearing at our offices

No

In performing its statutory mandate to 'recommend' that LASA 'make such changes in the manner in which it administers the Act as the Commission considers advisable' - namely to begin complying with it - it would be best were the SAHRC to confine its communication with LASA to writing, so that a record is kept of the steps the SAHRC took, if any, should its intervention, if any, be unsuccessful and the matter necessarily then proceeds to the High Court - in other words, should the SAHRC find itself powerless to overcome LASA's brazen contempt for the Constitution and the law and fail to achieve its compliance with the Act to give effect to my constitutional right to information.

25. Can we use your name in news reports or letters we write regarding this matter/complaint

Yes.

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

19. In my letter to Vedalanthar I stated that 'I anticipate that the content of [LASA's] reports [to its Insurer Camague to assist it in 'managing the matter' of my claim against LASA in the Durban Labour Court and on petition to the Judge President of the Labour Appeal Court] will support a criminal charge and a civil action for insurance fraud' - precisely the sort of 'substantial contravention of ... the law' contemplated by section 46.

20. In addition to illegally refusing my PAIA requests, LASA has demanded and persists in demanding thousands of rands from me, variously for reading my requests, for doing background reading, and for time spent being briefed about my requests - none of which is permitted by the Act. The only fees chargeable under section 22 are request fees (which I paid), and search fees for searching and copying, but only in respect of records to which access has been allowed, not refused.

21. Profoundly aggravating this case is that directly on account of my repeated appeals and complaints to the SAHRC about LASA's illegal refusal to comply with my PAIA requests in 2010 and 2011 (to suppress evidence relating its lying budgetary insufficiency excuse for aborting my Pietermaritzburg Senior Litigator appointment), following my unanimous selection for the post), the SAHRC held a special PAIA training workshop for LASA's national office lawyers on 6 October 2011, on, inter alia, (per the SAHRC's report afterwards) 'the need to ensure that clients who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants', at which training workshop LASA admitted that it 'had previously been misapplying the provisions of PAIA (to my requests, the only ones refused), and had undertaken to review decisions which may not have had justification under PAIA (it never did) and to create guidelines within the organisation to ensure misapplication does not recur' (it never did). Despite this special training by the SAHRC, per the report, on 'the importance of PAIA as a fundamental right' (sic), LASA brazenly persists in illegally refusing my PAIA requests, violating my fundamental right to information in so doing, with the criminal intention of hindering the exposure of massive pervasive corruption among LASA's top officers and thereby defeating the ends of justice.

21. Have you reported the matter to anyone else

Yes, to the Public Protector's Provincial Representative for KwaZulu-Natal, but his investigator Sipho Cisho refused to mediate. My reply, copied to the national office, clarifying his several basic misconceptions founding his decision and persisting with my appeal for Public Protector mediation has drawn no response to date, besides a phone call on 10 June 2015 from Adv Elisabe de Waal, Chief Investigator. Service Delivery in the national office, assuring me the matter would be followed up. (A previous appeal for assistance to resolve LASA's persistent illegal refusal to comply with PAIA in 2010 and 2011, and two successive formal complaints to

26. Please tell us how you heard about the South African Human Rights Commission (e.g. radio advert, newspaper, poster, from a friend, etc)

As a lawyer I'm au fait with our Chapter 9 institutions and their functions and responsibilities.



\_\_\_\_\_  
Signature of complainant

19 June 2015

\_\_\_\_\_  
Date

Remember:

- To attach a copy of your ID, birth certificate, passport or proof of the registration number of an association, organisation or organ of state, if available.
- To attach any copies of documents which can assist in this matter.

Copy of ID herewith.

APPENDIX

Note: My records request addressed to Nair comprised fourteen items, and these are treated in the following centrally numbered parts. Section '(e)' of each part identifies the records to which I requested access, or Nair's sworn confirmation under section 23 in any case the records don't exist. Section '(b)' records Nair's various justifications for refusing me access to them, which for clarity I've set in italics. Section '(c)' rebuts Nair's justifications, and demonstrates the unlawfulness of Nair's refusals and the irrelevance of the sections of PAIA he relies on, as well as his other justifications not referenced to the Act.

1.

(a) Request: The minutes kept by HRE Amanda Clark<sup>1</sup> of the 'second round interviews' held 'for some Regional Operations Executive posts',<sup>2</sup> as alleged by LASA's single witness NOE Brian Nair at the trial of case LC D579/11.

(b) Refusal: *This request cannot be acceded to in terms of section 7 as it relates to the evidence in the matter pending before Court.*

(c) Rebuttal: Section 11(1) provides:

11 Right of access to records of public bodies

(1) A requester must be given access to a record of a public body if –

(e) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and

(b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

'CHAPTER 4 GROUNDS FOR REFUSAL OF ACCESS TO RECORDS (ss 33-46)' doesn't include section 7, and Nair's justification based on section 7 for refusing these records is accordingly incompetent and unlawful.

Section 7 doesn't afford an information officer a ground for refusing a record. It ordinarily bars a litigant from adducing in evidence a record obtained via PAIA after the commencement of the case, but the rule is not absolute and section 7(2) gives the trial court a discretion to admit such a record.

<sup>1</sup> Record, page 372, line 23 to page 373, line 2. [HRE Clark] would assist in the writing up of whatever (re)constructions flow out of the [second round interview] panel].  
<sup>2</sup> Record, page 338, lines 8-9.



Not being founded on any grounds allowed by Chapter 4, the fact that a request in some manner 'relates to the evidence in the matter pending before Court' is no valid justification for refusing a request.

Judgment had been delivered when I made the request, so the case was already over, and no longer 'pending'.

2.

(a) Request: 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.

(b) Refusal: *This request cannot be acceded to in terms of section 7 as it relates to the evidence in the matter pending before Court.*

(c) Rebuttal: This repeated incompetent and unlawful justification is rebutted above.

3.

(a) Request: in respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, the emails sent by the RDEs to Nair<sup>2</sup> (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'<sup>4</sup> 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.'<sup>5</sup>

<sup>2</sup> Record, page 407, lines 11–14. [I] would then have found that email again because it would have been in my box.

<sup>4</sup> Record, page 389, 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.'

<sup>5</sup> Record, page 349, lines 10–17.

(b) Refusal: *This information relates to third parties and falls within the ambit of section 37 read with section 47 and 48 of the Act.*

(c) Rebuttal: Subsection 1(b) of section 37 in Chapter 4, 'Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party' allows that 'the information officer of a public body ...

(b) may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party ...

(i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and

(ii) if it is in the public interest that similar information, or information from the same source, should continue to be supplied.

Nair doesn't have any facts to state to support requirements (i) and (ii).

Section 37 manifestly has no application to the records requested under this item, and Nair has obviously grabbed at the wrong section.

If he possibly meant to grab at subsection 1 of section 34 instead, 'Mandatory protection of privacy of third party who is natural person', which stipulates that 'the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, he's failed to show that the mere covering emails in question contain any 'personal information about a third party'.

Nair purports to fortify his refusal under section 37 by suggesting that it be 'read with section 47 and 48 of the Act'.

Section 47, 'Notice to third parties', imposes a duty on an information officer to notify an affected third party contemplated in sections 34 and 37. Section 48, 'Representations and consent by third parties', affords such parties an opportunity to oppose or agree to the release of a record containing their 'personal information' or 'confidential information'. Since section 37 is irrelevant (and section 34 too), sections 47 and 48 are equally so.

The fact that a request 'relates to third parties' doesn't ipso facto not bring it within the ambit of section 34 – not unless the record contains 'personal information'. Not having any interest in such, I headed my annexure with the notice that it 'may be blacked out'.

(I referred to 'confidential information', meaning 'personal information'; section 34 that I mentioned concerns 'personal information').

4.

(a) Request: The email that KwaZulu-Natal ROE Vela Mdaka sent to Nair (or RHRM Baboo Britjal sent to Clark, forwarded to Nair) covering the selection panel's recommendation of LASA attorney Ashok Kaloo for the Pietermaritzburg Senior Litigator post<sup>8</sup> 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.

(b) Refusal: This record was requested during the discovery process in the trial court for which the matter is still pending. Therefore it is excluded in terms of section 7 of the Act.

(c) Rebuttal: Contrary to Nair's lie about this, in truth and in fact the email record in question was not 'requested during the discovery process in the trial court'. It was not among the records I specified for discovery in my agenda for the pre-trial conference in October 2013; in my application to compel discovery in January 2012; in my agenda for the first pre-trial conference at court under judicial supervision in January 2013 to compel LASA to discover; and in my agenda for the second pre-trial conference at court under judicial supervision in June 2013 to the same end. (All this extraordinary trouble I was put to was occasioned by LASA's resolutely determined refusal to discover documents I needed for trial, with the corrupt intention of hindering me in proving my claim, which is to say with the intention of obstructing and defeating the ends of justice. In the result this criminal object was achieved by Nair's rampant perjury at trial.)

Not being a ground provided for by Chapter 4, the fact that a record was 'requested during the discovery process', but was not furnished therein, is anyway not a ground for refusing a request for it later made again under PAJA.

When I made the request, the trial was already over, and was no longer 'pending'.

5.

(a) Request: 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 –

Record, page 410, lines 15–21.

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.

(b) Refusal: This request relates to the evidence and the records already before court, which matter is still pending. Therefore it is excluded in terms of section 7 of the Act.

(c) Rebuttal: The fact that a record requested under PAJA 'relates to the evidence and the records already before court' is not one of the grounds for refusing it provided by Chapter 4.

As said, the case was already over with judgment delivered when I requested the record; and section 7 doesn't afford an information officer a ground for refusing a record request. This incompetent, unlawful justification is rebutted above.

6.

(a) Request: In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, Nair's emails to the five<sup>9</sup> 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,<sup>9</sup> in which emails Nair asked the five members of the

<sup>8</sup> Record, page 409, line 11.

<sup>9</sup> Record, page 407, lines 13–17. I would have sent it [the email with recommendation and CVs attached] to the panelists to advise who they would like to see [independently] the recommended candidate. Therefore, all four [CVs] would have been sent to the panelists and everyone would have the opportunity to see who they would have liked to have [independently].

Record, page 409, lines 28–5 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 panelists 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 panelists 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 409, lines 21–3. "...in deciding who will be [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 panelist(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."

'second round' panel to advise him as to who they 'would like to see'<sup>9</sup> and 'interview'.<sup>10</sup>

(b) **Refusal:** *The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.*

(c) **Rebuttal:** These incompetent, unlawful justifications are rebutted above.

7.

(a) **Request:** 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.

(b) **Refusal:** *This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act.*

(c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

8.

(a) **Request:** 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.

(b) **Refusal:** *This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act.*

(c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

<sup>9</sup> Record, page 409, lines 10–11. <sup>10</sup> I would send it to the five panelists and say, "Please advise who you would like to see..."

<sup>11</sup> 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 panelists could consider if there was anyone else (besides the recommended candidate) they would be interested to interview.

9.

(a) **Request:** 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.<sup>11</sup>

(b) **Refusal:** *The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.*

(c) **Rebuttal:** These incompetent, unlawful justifications are rebutted above.

10.

(a) **Request:** 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.

(b) **Refusal:** *This request forms part of the discovery notice at the trial court and accordingly is excluded in terms of section 7 of the Act.*

(c) **Rebuttal:** Contrary to Nair's lie about this, in truth and in fact I didn't seek those records by way of pre-trial discovery procedure. And the reason for this is that contradicting LSA's repeatedly pleaded and sworn case (in the interlocutory affidavits), it was only in his oral evidence that Nair made the novel allegation that after a Senior Litigator selection panel had identified the most suitable candidate for appointment (per LSA's Recruitment code), in the process eliminating the other shortlisted, interviewed candidates, he would email his so-called 'second round' interview panel members to enquire as to which of the shortlisted, interviewed Senior Litigator candidate(s) they 'would like to see' and interview and to notify 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

<sup>11</sup> 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.



13.

(a) Request: The minutes<sup>13</sup> 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',<sup>13</sup> 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'<sup>14</sup> him/her.

(b) Refusal: This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.

(c) Rebuttal: This incompetent, unlawful justification is rebutted above.

14.

(a) Request: The record of Miambo 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.<sup>15</sup>

(b) Refusal: The request relates to evidence in a matter pending before Court and is excluded in terms of section 7 of the Act.

(c) Rebuttal: This incompetent, unlawful justification is rebutted above.

<sup>13</sup> Record, page 372, line 23 to page 373, line 2: '(NRE Clark) would assist in the writing up of whatever recommendations flow out of the [second round interview panel]'.

<sup>14</sup> Record, page 366, lines 14-21.

<sup>15</sup> Record, page 410, lines 21-4.  
<sup>16</sup> Pleadings bundle, page 143, paragraph 4: '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'.

recommended by it, and thereby 'eliminated' from consideration for appointment.  
(\*LASA's word in the pleadings)

Nair's justification for refusing me access to these records, or certifying on oath under section 23 that they don't exist (thereby proving his perjury for his prosecution on the point), is incompetent and unlawful for the reasons stated in the rebuttals above.

11.

(a) Request: 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 candidates who had been shortlisted and interviewed by the selection panel but not recommended by it.

(b) Refusal: This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.

(c) Rebuttal: This incompetent, unlawful justification is rebutted above.

12.

(a) Request: 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.

(b) Refusal: This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.

(c) Rebuttal: This incompetent, unlawful justification is rebutted above.

1 Boast Street  
Eshowe  
KwaZulu-Natal  
19 June 2015

Adv Elisabe ce Waal, Chief Investigator: Service Delivery  
National Office, Public Protector  
Private Bag X677  
Pretoria 0001

Dear Adv de Waal

LEGAL AID SOUTH AFRICA AND THE PROMOTION OF ACCESS TO INFORMATION ACT

Thanks very much for your encouraging call on the 30th, and for undertaking to take this matter up with your Executive Manager: Service Delivery, Mr Reggie Ndou.

I'm sad to say I haven't heard any more.

As I said during our call:

- (i) I've had no response to my letter of 19 May to KZN office investigator Sipho Cishi, identifying all his basic misconceptions founding his rejection of my request that the KZN Provincial Representative mediate in LASA's refusal and obstruction of my requests for records made under PAIA last year, and,
- (ii) there's been a negative development since I wrote.

Paragraph 3 of my request for mediation made to your KZN Provincial Representative on 2 April (copied to you on 21 May) mentions my appeal to LASA CEO and information officer Vidhu Vedalankar to intervene in her deputy information officer Brian Nair's illegal blanket refusal of all the records I sought from him (or sworn confirmation where any don't exist) and her other deputy information officers Patrick Hundermark's and Jerry Makokoane's obstruction of my PAIA requests addressed to them with illegal demands for money not permitted by the Act.

The latest development is that Vedalankar has since responded to my letter through LASA's lead in-house attorney, Corporate Services Executive Thembile Mtafi:

- (i) informing me that she 'will not direct them to provide a response to your request(s)';
- (ii) now refusing outright my record requests addressed to Hundermark and Makokoane;
- (iii) confirming (for different reasons) Nair's refusal of my request addressed to him; and,
- (iv) refusing all but one of the records I requested from her.

I enclose copies of my letter to Vedalankar and Mtafi's reply.

Section 11(1) in Part 2 of PAIA prescribes that a 'A requester must be given access to a record of a public body if (he's complied with the procedural requirements and) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.'

Chapter 4 in Part 2 does not contemplate the refusal of a request for access to public body records on the basis that they 'relate to and are ancillary to' any adjudicated or pending litigation. This is not a 'ground for refusal contemplated in Chapter 4 of this Part', as section 11(1)(b) puts it.

Mtafi seems to have section 7 of PAIA in mind here, because he's raised it against me before to refuse me duly requested records. (I've accordingly sued to compel; the application's pending.) However, section 7 doesn't afford an information officer a justification for refusing a record request, because it's not among sections 34 to 45 in Chapter 4 in Part 2, the only 'Grounds for refusal' permitted by the Act.

(Section 7 ordinarily bars the use in legal proceedings of records obtained via PAIA after the litigation has commenced, unless 'the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice'. That is, records so obtained are not absolutely excluded from being used in litigation, and the court has the discretion to allow them.)

Mtafi's second ground for refusing all the records I requested from Hundermark, Nair and Makokoane is that, he now alleges, my 'requests are malicious and seek to divert the resources of Legal Aid South Africa'. That is, he claims in as many words that my requests

1119

are disqualified by section 45, which heads off 'Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources'.

The lie to Mtati's last ditch excuse for not complying with my requests addressed to Hundermark, Nair and Makokoane, namely that they are a pointless and intentional waste of their time, is given by his own earlier express acknowledgment to the contrary. On 11 December 2014 one of his reasons given for requesting an extension of time within which to respond was that my 'requests ... incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa.' That is, Mtati well appreciated that provision of the records to me, or sworn certification in some cases that they didn't exist, would expose LASA's officers to the gravest personal and professional consequences.

Although my purpose is immaterial under section 11(3) of PAIA, I spelt it out in my letter to Vedalankar, in which I informed her that I'm 'collecting evidence for a perjury prosecution on a score of different counts, a sacking, a professional strike-off, and an application for leave to appeal with further cold print evidence of perjury on multiple scores.'

To the extent that LASA has correctly surmised (albeit irrelevantly under section 11(3)) that I'm seeking records (or certification they don't exist in some cases) for litigation purposes, as appears from its first ground for refusing my November requests, LASA appreciates on its own showing that my purpose in requesting them is deadly serious and not 'manifestly frivolous' and intended to waste LASA's time. So the two grounds for refusing my requests are contradictory and mutually destructive.

Our fundamental right to information entrenched by section 32 of the Bill of Rights is extraordinarily important for the proper functioning of our democracy. The Preamble to PAIA explains that the Act is intended to 'foster a culture of transparency and accountability in public and private bodies'. In radical contradistinction to the 'system of government in South Africa before 27 April 1994' that 'resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'. The culture in LASA's national office.

In view of the critical importance of freedom of information in the post-apartheid era, Parliament has vested both our Chapter 9 institutions, the Public Protector and the South African Human Rights Commission, with jurisdiction to mediate in PAIA disputes.

3



Section 6(4)(d) of the Public Protector Act 23 of 1994 empowers the Public Protector,

(d) on his or her own initiative, on receipt of a complaint or request relating to the operation or administration of the Promotion of Access to Administration Act, 2000, endeavour, in his or her sole discretion, to resolve any dispute by –

(i) mediation, conciliation or negotiation; ...

Section 83 of PAIA contains substantially similar provisions for the mediation of the South African Human Rights Commission.

Parliament's concern that PAIA disputes be handled by PAIA experts is reflected in section 91A of PAIA, which provides that only 'trained and specialised' magistrates may be 'designated' to 'perform the functions and duties and exercise the powers assigned to or conferred on him or her under this Act or any other law', namely, per section 82, to 'grant any order that is just and equitable'.

In light of this particular concern, and having regard to my information in my April letter to your KZN office that: 'Currently pending perjury criminal prosecutions and strike-off applications against former Acting National Director of Public Prosecutions and two other top national and provincial prosecutors are a pointer what's coming in this matter' and to my further information to you on the telephone that my matter involves the perversion of independent ministerial and parliamentary enquiries by dint of false secret reports (I have them) drawn by National Operations Executive Nair for CEO Vedalankar to pass to Board Chairperson Mlambo JP to sign and submit (under a false and defamatory covering letter to the chairperson of the Portfolio Committee) – with Vedalankar and Mlambo JP both knowing full well (I can objectively show) that Nair's reports contained multiple lies to the Minister and to the Portfolio Committee chairperson, told to effect a cover-up of LASA's refusal to comply with my PAIA requests to hinder my exposure of recruitment corruption – I'd be grateful if you would propose to Mr Ndlovu, or other national office management executive responsible for the allocation for handling of exceptionally serious complaints and requests, that a senior investigator in the national office deal with the case who's specifically familiar with PAIA, or, if you don't have such a specialist investigator, that he or she do so in consultation with the PAIA Unit of the SAHRC.

4

I intend also filing a complaint about LASA's final refusal of my 2014 and 2015 PAIA requests with the SAHRC, but since the SAHRC failed to act on a previous PAIA complaint of mine in 2011, and is itself unresponsive to my PAIA requests – both the CEO and the chairperson have taken to ignoring my correspondence about this – I've had to file a complaint against it recently to the Public Protector, a copy of which I enclose for information (without its bulky annexures).

Can you credit that the SAHRC, charged by PAIA with supervising PAIA compliance by other public bodies, is not itself complying with PAIA (for the third time)?

My complaint to the Public Protector has yet to be acknowledged. Could you find out why?

As I've said before, my difficulty in achieving LASA's compliance with a PAIA is just the tip of the iceberg – like when Ntson was determinedly resisting, under tenuous pretences, surrendering his Oval Office tapes, knowing they contained the recorded evidence of his orchestration of the Watergate cover-up – so it would be most desirable for a national office senior investigator and his support staff to run with this matter from start to finish.

It's going to be the next major corruption scandal – on so many levels.

I suggest that all communications with LASA in this matter be written, so that if the Public Protector proves unable to assist me exercise my most basic right to information, and I'm constrained to approach the High Court for relief, I'd like to show what unsuccessful steps the Public Protector took in the matter in the execution of its special PAIA mandate prescribed by section 6(4)(d)(i) of the Public Protector Act. This letter will be among the papers.

Yours sincerely



ADV ANTHONY BRINK  
arbrink@iafrica.com  
083 779 4174



"BM10"

1 Boast Street  
Eshowe  
29 June 2015

CLE Patrick Hundermark  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Mr Hundermark

#### MY ILLEGALLY REFUSED PAIA REQUESTS

1. According to your profile as Chief Legal Executive at Legal Aid South Africa on the International Legal Aid Group's website, you're 'Responsible for maintaining high quality of legal services'.
2. I presume this includes 'maintaining high quality of legal services' rendered to LASA itself by its own in-house lawyers.
3. You're doubtlessly aware that my two PAIA requests addressed to you in November last year were finally refused last month by LASA's lead in-house attorney, Corporate Services Executive Thembile Mtati, claiming to have been delegated by information officer Vedalankar to deal with them after I'd asked her intervention in:
  - (i) your and Jerry Makokoane's unlawful demands for payment for hundreds of hours allegedly spent on background reading, on being briefed on the background to my requests, and on reading my requests (Mtati has now confirmed that no records whatsoever exist to vouch that such time was spent, as alleged) – charges not permitted by the Act; and,
  - (ii) Brian Nair's unlawful refusal on various spurious grounds of my entire PAIA request addressed to him.
4. Mtati's refusal was almost certainly drawn for him by a junior attorney in his Corporate Services department in your national office. For the purpose of this discussion, however, I'll stay with the fiction that Mtati wrote it.
5. Mtati's first justification for finally refusing my requests was that they 'relate to and are ancillary to' litigation I instituted, some adjudicated, some pending.



6. This isn't a 'ground for refusal contemplated in Chapter 4 of this Part', as section 11(1)(b) in Part 2 of PAIA puts it:

A requester must be given access to a record of a public body if ... access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

7. Mtati seems to have section 7 of PAIA in mind, because he's specifically raised it against me before in refusing documents 'relating to' litigation.

8. The report of the SAHRC's special PAIA training workshop held for your national office lawyers on 6 November 2012 records that it tried teaching them that Section 7 doesn't afford an information officer a justification for refusing a record request.

9. This is because section 7 isn't among sections 34 to 45 in Chapter 4 in Part 2, enumerating the only 'Grounds for Refusal of Access to Records' permitted by the Act.

10. It follows that Mtati's 'relate to and are ancillary to' litigation justification for refusing my requests is unlawful.

11. Mtati's second justification is that my 'requests are malicious and seek to divert the resources of Legal Aid South Africa' – an allusion to section 45 of the Act barring 'Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources'.

12. On Mtati's own showing, this second ground is transparently false and mala fide.

13. One of the reasons he gave me for seeking more time to respond to my requests addressed to you and to Nair (I'd already volunteered an extension to Makokoane) was that they:

incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa.

14. That is, Mtati well appreciated that provision of the records to me, or sworn certification in some cases that they didn't exist, would expose LASA's officers to the gravest personal and professional consequences.

15. Although my purpose in requesting the records is immaterial under section 11(3) of PAIA, I nonetheless spelt it out in my letter to Vedalankar that Mtati answered, informing her, and him, that I'm:



collecting evidence for a perjury prosecution on a score of different counts, a sacking, a professional strike-off, and an application for leave to appeal with further cold print evidence of perjury on multiple scores.

16. Mtati is thus well aware that my intention is not to 'seek to divert the resources of Legal Aid South Africa' and waste its time. (I'm not asking for a record of how many cups are chipped in the head office canteen.) He knows I'm deadly serious. And you do too.

17. I accordingly call on you both in your capacity as Chief Legal Executive 'Responsible for maintaining high quality of legal services' (per your ILAG billing), and as deputy information officer (per LASA's PAIA manual), to remedy LASA's illegal refusal of my PAIA requests with the criminal intention of obstructing and defeating the ends of justice by suppressing documentary evidence of major, widespread systemic corruption in LASA's top ranks.

18. My three preceding PAIA requests in 2013 were refused on the same idle grounds, namely 'section 7 read with section 45'. LASA has employed a useless very junior advocate Thabiso Machaba to oppose my applications to compel on these plainly spurious grounds. I enclose a report in the *Saturday Star* of Johannesburg High Court Judge Cathy Satchwell's recent very apt remarks about the corrupt purpose for which clueless young and inexperienced lawyers like these are used.

19. Will you assist me access those records too, to put an end to the fruitless and wasteful opposition to my pending litigation about it? If you see to it that my 2013 PAIA requests are complied with (the decision to refuse them was taken in national office), I'll withdraw my applications.

20. Arising from the obstruction and refusal of my 2014 PAIA requests, I've filed a formal complaint with the SAHRC over LASA's violation of my fundamental right to information in illegally refusing my PAIA requests, and I've requested the mediation of the Public Protector. I enclose copies; these deal also with Nair's unlawful refusal in February to comply with my PAIA request addressed to him, and to Mtati's almost entirely unlawful handling of my PAIA request addressed to Vedalankar: one record supplied, non-existent records not certified on oath, others illegally refused.

21. (In fact, being ultra vires, Mtati's refusal was completely unlawful, because Vedalankar hasn't delegated him in writing as a deputy information officer under section 17, as is evident from his answering affidavit in my pending PAIA application against her in the Eshowe Magistrate's Court. He's therefore incompetent to respond to PAIA requests on her behalf, irrespective of your current PAIA manual's claim that he's a deputy information officer, revised



and rewritten by him, he says, thereby purporting to appoint himself a DIO, unlawfully and irrelevantly – even if the Board unlawfully and irrelevantly resolved to approve the incompetent revision.)

22. If I can't achieve LASA's belated compliance with my PAIA requests through these non-litigious routes, and if you fail to remedy your ignorant, corruptly-motivated young attorneys' violation of my constitutional right of information, I'll be suing in the Pietermaritzburg High Court to compel. In which event, this letter will be included in the papers for the judge's information as to your deliberate complicity in the illegal suppression of documentary evidence of massive, pervasive corruption in LASA's top ranks.

23. I conclude with the following.

24. The Sicilian *omertà* loyalty code in crime families requires silence about their criminal activities and refusal to give evidence about it. Your CV at LinkedIn boasts the 'Rusty Wilmot Award for Loyalty and Dependability' (1982). Unlike a crime family, LASA is a public law firm (albeit extraordinarily corrupt). Since you owe your outstanding Loyalty and Dependability to the public body that employs you, and not to your corrupt colleagues, and you are not bound to a code of silence and refusal to give evidence of their criminal activities and other corruption, as in a crime family, I'm calling on you to see to it that I'm handed the documentary evidence I've duly asked for, so I can give it to the police, to the courts, and to other interested authorities.

25. It's documents doggedly pursued, and eventually obtained, by journalist and 'document hound' Andrew Jennings – some fortuitously obtained from honest insiders, as in my case – which, handed over to the US FBI, led to the indictment and arrest of the 'criminal scum' at the top of FIFA. I enclose the first two printed pages of a recent article in the *Washington Post* about this. I have similar intentions for similar persons at the top of LASA.

26. The ball's back in your court. If I have to sue to compel compliance with my PAIA requests, you can be sure your conduct in this matter will feature in the judgment, almost certainly destined for the law reports.

Yours sincerely



ANTHONY BRINK



PS: According to your ILAG profile, another of your responsibilities is to 'Manage and direct the senior litigator service of Legal Aid SA in order to ensure the delivery of senior litigation services across the national footprint'.

You haven't done so: eight years after the specialised posts were created, KwaZulu-Natal is still without a Senior Litigator – it's supposed to have two; and despite the burning need for a second Senior Litigator in the Eastern Cape with its four High Courts and the vast distances between them, which you agreed and voted for as a member of the Legal Services Technical Committee on 24 March 2010, it still has only one.

As you know, the story told me on 18 October 2010 that 'Due to the recession' Vedalankar and Nair decided to freeze all Senior Litigator posts at Pietermaritzburg, Durban and Mthatha is a lie, unsupported by any record, contradicted by the extant records, contradicted by Nair in court (contradicting an earlier affidavit of his), and incompetent on their own version, having regard to the Approval Framework requiring Board approval for any such decision to deviate from national executive management's Performance/Business Plan, based on the Board's Strategic Plan.

The extent of your involvement in LASA's unlawful failure, concealed in its annual reports from the Minister and from the National Assembly, to fill a third of its still vacant budgeted and funded Senior Litigator posts, for which LASA applies, the Department allocates, and the National Assembly votes a dedicated salary budget year after year, in contravention of the Public Finance Management Act and in unlawful disregard of the Strategic Plan 2009–12, prescribed by the Treasury Regulations, and presented to the Minister and to the National Assembly, will be examined another day.

Cc: Chief Operations Officer Jerry Makokoane

Audit and Risk Executive Avie Naidoo

Board Secretary Langa Lethiba

A handwritten signature in black ink, appearing to be 'G. D. A.', located in the bottom right corner of the page.

1 Boast Street  
Eshowe  
29 June 2015

Langa Lethiba,  
Board Secretary  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Mr Lethiba

**LASA'S PERSISTENT ILLEGAL REFUSAL TO COMPLY WITH PAIA:  
REQUEST FOR YOUR INTERVENTION TO REMEDY THIS, AND THAT YOU  
APPRISE THE BOARD OF IMPENDING HIGH COURT LITIGATION TO COMPEL**

1. Pointing up your special responsibilities to LASA as Board Secretary, I wrote to you on 31 December 2014 about LASA's unlawful refusal of my three PAIA requests in November 2013, which it had justified by irrelevantly invoking 'section 7 read with section 45' against me, and with which manifestly incompetent and unlawful justification it had dully persisted in its answering papers when I sued to compel in the Eshowe Magistrate's Court.
2. I requested that you refer the plainly illegal refusals of my PAIA requests to the Board so that it might intervene and head off the risk that LASA faced of the ignominy of a declarator that it had violated my fundamental right to information and a mandamus directing it to comply with the Act.
3. Even though you're not a lawyer yourself (as a Board Secretary should be), having come up through HR (you were previously LASA's Regional Human Resources Manager for Limpopo), the advertisement for the post you were promoted into stipulated that:

S/he will ... be accountable to ensure statutory compliance at Board and organisational level.

And it required you to have a

Working knowledge of the Constitution, PFMA, National Treasury Regulations, Legal Aid Act and other relevant Statutes.



Such as PAIA.

4. As a very highly paid, responsible person (level 13, the same as LASA's top legal professionals, its Senior Litigators) with your 'working knowledge' of PAIA, and 'accountable to ensure ... compliance' with it 'at ... organisational level', it was your duty to assess my complaint about LASA national executive management's very obviously malicious legal filibustering to avoid surrendering the documents I'd duly requested under PAIA, and to apprise the Board of the legal hazard that LASA faced.

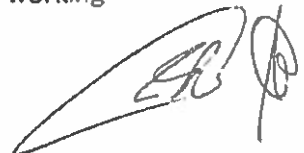
5. Instead, you batted my request aside, claiming you weren't 'in a position at this stage to determine' whether my complaint was well-founded or not, and stating that the matter should just run its course in court. Copies of my letter to you and your response on 12 February 2015 are enclosed for easy reference.

6. LASA is again relying on these same irrelevant sections to justify refusing further PAIA requests I duly made in November 2014. I enclose my evenly-dated letter to CLE Hundermark about this. As mentioned therein, unless the SAHRC or the Public Protector succeeds in assisting me disgorge the records and the section 23 affidavits I've lawfully requested, I intend bringing another application to compel, this time in the Pietermaritzburg High Court so the case can be reported.

7. In the situation, I call on you, in the exercise of your specific functions and responsibilities as Board Secretary recalled in my previous letter to you, and repeated in this one, to bring LASA national executive management's obviously illegal refusal of my PAIA requests to the attention of the Board. The Audit and Risk Subcommittee especially will likely wish to intervene to head off the litigation so as to protect LASA from the massive reputational damage to which it currently stands exposed.

8. Since the matter's not yet in court, I trust you feel you're 'in a position at this stage to determine' my complaint that LASA has again illegally refused to comply with PAIA on manifestly spurious grounds, in view of your specific responsibility to 'ensure statutory compliance at ... organisational level'.

9. Your 'working knowledge' of PAIA will tell you that in law and in fact sections 7 and 45 can't and don't justify the refusal of my latest requests, and that LASA's refusal, again, of my access to its records I've duly requested, on the same legally and factually vacant grounds, is illegal, and a violation of my fundamental right to information. And since it's the state violating my fundamental rights to conceal evidence of perjury and other pervasive high level corruption, this is an extraordinarily serious matter. If, on the other hand, you lack such 'working

A handwritten signature in black ink, appearing to be 'ER' followed by a stylized flourish or initial.

"80112"

1 Boast Street  
Eshowe  
29 June 2015

Avie Naidoo,  
Audit and Risk Executive  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Mr Naidoo

THE 'HIGH RISK TO LASA' OF THE CONTINUING  
'MISINTERPRETATION AND MISAPPLICATION' OF PAIA

1. I enclose a copy of my evenly dated letter to CLE Patrick Hundermark.
2. I write to inform you of LASA's current exposure to what looks like an inevitable application to the Pietermaritzburg High Court for an order compelling its compliance with the Promotion of Access to Information Act 2 of 2000 ('PAIA').
3. In November 2012 the SAHRC gave your national office lawyers a special remedial lesson on how to implement the Act, on account of my repeated complaints about LASA's persistent illegal refusal of my PAIA requests in 2010/11 and false section 32 reporting about it afterwards.
4. The SAHRC's report of the lesson records your attorneys' frank admission that they felt 'overwhelmed by the requirements of the legislation' due to their 'lack of application based knowledge' and that they had 'challenges complying with PAIA. ... LASA compliance history was flagged with participants and most responded to the reporting of LASA as non-compliant to Parliament with concern' – namely the 'reporting of the Brink saga (you may be familiar with it – Patrick [Hundermark] is) to Parliament', as its PAIA Unit director mentioned in an earlier email to the Open Democracy Advice Centre on 12 July 2011, copying Hundermark in.



5. The training report records further that 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation', and that it had 'undertaken to review decisions which may not have had justification under PAIA and to create guidelines within the organisation to ensure misapplication does not recur' in the handling of PAIA requests like mine, particularly since 'misinterpretation and misapplication was identified as being high risk to LASA', having regard to 'the status of PAIA as a fundamental right' (sic), a matter 'reiterated and emphasized at different points of the training', as was 'the need to break the culture of secrecy which shrouds the public service in general' and LASA in particular, evinced by its persistent illegal refusals of my PAIA requests, about which I'd repeatedly complained to the SAHRC.
6. Having evidently been unable to learn from the SAHRC's special lesson on how PAIA works and the importance of complying with it, and contemptuously dishonouring the undertakings it gave the SAHRC, LASA went right on the following year to illegally refuse nearly all my further PAIA requests in November 2013. (The very few records furnished me categorically prove that NOE Brian Nair's perjured himself on two scores in his evidence at the trial of my labour claim in Durban in mid-2013.) The upshot was I had to sue to compel. The matter is still pending in the Eshowe Magistrate's Court.
7. LASA has again recently illegally refused further PAIA requests made in 2014. My letter to Hundermark will fill you in. I'm now looking to bringing an application to compel in the Pietermaritzburg High Court, so the judgment against LASA regarding its persistent, repeated, lawless, recidivist PAIA delinquency can be reported in the legal annals.
8. If I have to sue – and in my papers I intend recounting for the judge the complete history of LASA's persistent, repeated illegal refusal of my PAIA requests since 2010 – LASA will be at 'high risk' of severe reputational damage.
9. As Audit and Risk Executive, it's your job to take whatever measures necessary to avert such 'high risk'. I suggest you consult one of LASA's Senior Litigators for advice on whether sections 7 and 45 justify the refusal of my PAIA requests, and whether the couple of other grounds advanced by Nair and Mtati do too. On their own version, your corporate services attorneys are clueless when it comes to PAIA, and they evidently suffer from learning difficulties.



10. Please be advised that if you don't take the necessary action to avert this 'high risk' to LASA, and I need to sue, this letter will be included among my papers for the information of the judge as your deliberate dereliction of your professional responsibilities to LASA, causing it enormous avoidable harm.

Yours sincerely

ANTHONY BRINK

Cc: Nonhlanhla Mgadza, Chairperson: Board Audit and Risk Committee



knowledge' of PAIA, not having any legal knowledge at all, being only an HR person and having been promoted into the post despite not meeting the qualifying criteria for such a senior, responsible position, I suggest you consult one of your Senior Litigators for reliable independent advice. Any advice given by anyone in the national office can only end up in tears. They told the SAHRC at the special PAIA training workshop held for them on 6 November 2012 that when it comes to PAIA they've no idea what they're doing.

10. In the event that it's necessary to sue, this letter and its annexures will be included among my papers for the information of the judge as to the steps, if any, that you took in the performance of your special responsibilities to LASA as Board Secretary. Which you failed to carry out the first time I approached you about LASA's continuing illegal refusal of my PAIA requests. You can be sure that your action, or inaction, as the case may be, will attract the court's attention in its judgment, very likely to be reported.

Yours sincerely



ANTHONY BRINK

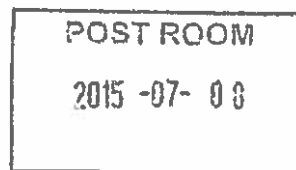
Cc: Nonhlanhla Mgadza, Chairperson: Board Audit and Risk Subcommittee



"B113"

1 Boast Street  
Eshowe  
29 June 2015

COO Jerry Makokoane  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg



Dear Mr Makokoane

MY ILLEGALLY REFUSED PAIA REQUEST

1. This is to inform you, if you aren't already aware, that CSE Mtati last month refused my PAIA request addressed to you in November last year.
2. I enclose my evenly dated letter to CLE Patrick Hundermark pointing up the legal and factual spuriousness of this final refusal.
3. As you're not a lawyer yourself, you might wish to consult him for confirmation that my PAIA request to you was illegally refused. He's a senior attorney. He knows exactly what's going on.
4. If you're concerned about the reliability and dependability of his advice, and aren't sure where his loyalties lie – perhaps because he's implicated and compromised in the main case; was involved in the illegal suppression of documents I requested in August 2010 (falsely assuring the SAHRC that my PAIA request, which had been ignored, would be complied with; all records were then illegally refused); and is therefore understandably very reluctant to cooperate with my request that he see to the surrender of the documents that I've duly sought access to (or certification in some cases where they don't exist) – you have Senior Litigators at your disposal in Johannesburg, Pretoria and elsewhere (but strangely none in KwaZulu-Natal, where there should be two) for impartial, personally and professionally disinterested, accurate and reliable advice on whether to comply with my PAIA request or not.
5. Any Senior Litigator will also tell you that section 22 of PAIA doesn't allow reading and briefing fees that you (your junior attorney ghost-writing) sought to charge me, and that the charge was accordingly illegal.
6. As said, I appreciate you're not a lawyer, but everyone, even the milkman, understands that the violation of fundamental rights, such as the fundamental right to information held by the

A handwritten signature in black ink, appearing to be "CSE".

state, guaranteed by section 32 of the Bill of Rights in the Constitution, is an extraordinarily serious matter, more especially when such a fundamental rights violation is committed by an organ of state. And worse still, by a public law firm that claims to respect the Constitution as it illegally suppresses documentary information with the criminal intention of obstructing and defeating the ends of justice.

7. In the situation, I call on you to comply with my PAIA request without further delay.

8. I listed a lot of documents in my PAIA request, which is why I offered to extend your time allowed for a response by an extra month, the maximum allowed by the Act. This has now come and gone. Nonetheless, if you're disposed to respecting my fundamental right to information at last, and need more time to do, I'm amenable to agreeing as much more time as you reasonably need. You've certainly been let down by the young attorney(s) who drew your obstructive money demand and Mtati's final refusal.

9. If you don't notify your intention to comply with my PAIA request, and I get no joy from the Chapter 9 institutions I've approached in the matter, I intend suing in the Pietermaritzburg High Court to compel, in which event this letter will be included among my papers for the information of the judge and for the record as to your deliberate complicity in the illegal suppression of documentary evidence of massive, pervasive corruption in LASA's top ranks.

10. It's time to do the right thing, Mr Makokoane, which is for you to respect my fundamental right to information under section 32 of the Constitution and to comply with PAIA enacted to give effect to it.

Yours sincerely

A handwritten signature in black ink, consisting of several overlapping loops and lines, appearing to be the name 'Anthony Brink'.

ANTHONY BRINK

A handwritten signature in black ink, consisting of several overlapping loops and lines, appearing to be the name 'Anthony Brink'.

"B7114"

1 Boast Road  
Eshowe, KZN  
29 June 2015

Ms Nonhlanhla Mgadza,  
Chairperson, Board Audit and Risk Sub-committee  
Legal Aid South Africa  
c/o Implats (Group head: Internal audit)  
2 Fricker Road  
Illovo 2196  
Gauteng

Dear Ms Mgadza

**LASA'S ILLEGAL REFUSAL OF ACCESS TO ITS RECORDS REQUESTED UNDER PAIA:  
NOTICE OF INTENTION TO APPLY TO THE PIETERMARITZBURG HIGH COURT TO COMPEL**

I enclose copies of my letters to Board Secretary Langa Lethiba, Audit and Risk Executive Avie Naidoo, and Chief Legal Executive Patrick Hundermark, which I expect will concern you and galvanise pre-emptive intervention by the Board.

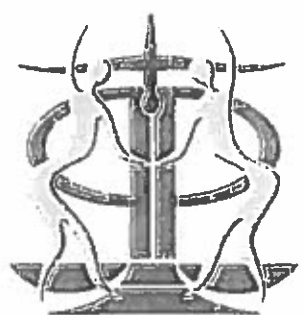
Yours sincerely



ANTHONY BRINK  
arbrink@iafrica.com



"BTH 15"



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**PUBLIC PROTECTOR  
MOSIRELETSI WA BATHO • MOSIRELETSI WA BATHO  
MUSIRHELELI WA VANHU • MUTSIRELEDZI WA VHATHU  
OPENBARE BESKERMER • UMKHUSELI WABANTU • UMWIKELI WABANTU**

**NATIONAL OFFICE  
PRIVATE BAG X677 PRETORIA 0001 • HILLCREST OFFICE PARK, 175 LUNNON ROAD, PRETORIA  
TEL: (012) 366 7000 • Fax: (012) 366 3473**

**PUBLIC PROTECTOR COMPLAINTS FORM**

**FOR OFFICE USE**  
File number: .....  
Date received: .....  
Received by: .....

**YOUR DETAILS**

**1. Your name** Adv Anthony Brink

**2. Your address and telephone and telephone number(s)**  
1 Boast Street, Eshowe 3815, KwaZulu-Natal  
Telephone number (home): 035 474 0145  
Telephone number (work): 035 474 2171  
Fax number: 086 672 0776  
Cellphone number: 083 779 4174

**TELL US ABOUT THE COMPLAINT**

**3. Is the complaint still happening?**  
Yes, and it needs immediate attention and intervention, or the National Assembly will be misled and misinformed yet again in the South African Human Rights Commission's annual section 84 report under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act') on Legal Aid South Africa's compliance with the Act.

10. **Where did it happen?** At the national office of Legal Aid South Africa ('LASA') in Johannesburg, Gauteng.
11. **Which government agency is involved?** LASA.
12. **Tell us the names of the officials that you contacted to try and solve the problem.** None.
13. **Where can they be reached?** LASA, 29 De Beer Street, Braamfontein, Johannesburg  
Private Bag X76, Braamfontein 2017  
011 877 2000
14. **Have you reported this case to anyone else?** No, but this complaint will be copied to the PAIA Unit of the South African Human Right Commission ('SAHRC').
15. **Please tell us how you heard about the Public Protector (radio, newspaper, poster, friend?).** As a lawyer I'm au fait with our Chapter 9 institutions.
16. **Use the space provided below and if you need more space, please use a separate piece of paper, that will be provided to you. Please attach copies of relevant correspondence or documents.**

### **Complaint**

*For easy reference, PAIA sections 7, 22 and 32 and the section headings in Chapter 4 of Part 2 of the Act (sections 33–46) are quoted at the foot of this complaint.*

1. LASA's annual report under section 32 of PAIA to the SAHRC on its handling of requests for access to its records in the reporting period 2014/15 (ending 31 March 2015) is both non-compliant and false in multiple respects. A copy of the report is annexed marked 'A'.
2. In section 4 of the report, LASA falsely states:

Five requests were refused or partially granted as they relate to the litigation proceedings that were pending before the courts.



3. In truth and in fact:

- I delivered five requests for access to LASA records in the reporting period (each of my requests sought a number of specified documents), four in November 2014 and one in March 2015. (The latter is correctly referred to in section 9 of the report as 'still being considered' at the time. It was then unlawfully disposed of in May: only one record furnished; all other records illegally refused on various manifestly incompetent grounds; and non-existent records not certified under section 23.)
- Four, not five, of my requests were responded to in the reporting period (all unlawfully, in addition to being out of time).
- None of my four PAIA requests that LASA dealt with in the reporting period were 'partially granted'; and the claim to the SAHRC, for the misinformation and misleading of the National Assembly in turn, that one or more of my requests were 'partially granted' in the reporting period is a lie.
- Three of my requests, two addressed to Patrick Hundermark and one to Jerry Makokoane (both deputy information officers according to LASA's PAIA manual) were unlawfully obstructed with demands for money not permitted by the Act (discussed below). Copies of Hundermark's and Makokoane's demands are annexed marked 'B' and 'C'.
- A fourth request, addressed to deputy information officer Brian Nair, was expressly refused in toto. A copy of Nair's refusal is annexed marked 'D'.

4. Nair advanced a number of different incompetent, unlawful justifications for refusing me access to the documents (refuted in my appeal for mediation to the Public Protector's KZN Representative in April 2015), concerning which justifications section 32(d) required LASA to report 'the number of requests for access refused in full ... and the number of times each provision of this Act was relied on to refuse access'.

5. My PAIA request addressed to Nair sought access to fourteen records. Nair relied on section 7 to refuse ten of my requests, and section 37, 47 and 48 (together) to refuse four of them.

6. LASA's section 32 report is non-compliant with the reporting requirement of subsection (d) in that it fails to report:

- 'the number of requests for access refused' – it ought to have reported 14;
- 'and the number of times each provision of this Act was relied on to refuse access' – it ought to have reported section 7: 10 (ten times) and sections 37, 47 and 48: 4 (four times each).

7. LASA's unlawful failure to report this prescribed information to the SAHRC threatens to conceal Nair's illegal refusal of my entire request from the National Assembly via the SAHRC's section 84 report to be based on it and presented to the National Assembly in a couple of months' time. Had LASA duly reported to the SAHRC in accordance with the detailed requirements of section 32, the SAHRC – responsible under section 83 for monitoring PAIA compliance by public bodies – would have been alerted to the fact that Nair had refused my requests illegally (it had previously remarked in June 2011 on the 'unlawfulness' of his refusal to comply with earlier PAIA requests), because, for a start, section 7 isn't even included among sections 33 to 46 in Chapter 4 of Part 2 of the Act, which enumerate the only 'Grounds for refusal' that the Act permits.
8. Regarding my other three PAIA requests, addressed to Hundermark and Makokoane, LASA stated further in section 9 of its section 32 report:

The requester, Mr Brink was requested to pay the search fees in terms of section 22 of the Act. He had failed and/or refused to pay the fees and accordingly the reply had not been submitted to him.
9. This is a lie. I wasn't 'requested to pay the search fees in terms of section 22 of the Act.'
10. Section 22 provides for charging of searching and copying fees for documents to which access has been granted. But I wasn't granted access to any documents.
11. I was 'requested to pay' thousands of rands for hundreds of hours allegedly spent reading my requests, on background reading, and for time spent in briefing sessions. (Corporate Services Executive Thembile Mtati later confirmed that no records exist to vouch these claims, which were an attempt to illegally extort money from me in bad faith without any intention of furnishing me with any of the records I'd requested: Mtati later refused them all.)
12. Section 22 doesn't allow such reading and briefing charges.
13. The false statement that I refused to pay search fees was calculated to defraud the SAHRC, and through it, the National Assembly in turn, to believe that the lawful reason LASA refused to comply with my PAIA requests (addressed to Hundermark and Makokoane) was that I'd unlawfully refused to pay search fees that I'd been duly asked to pay and which I was legally obliged to pay. In truth and in fact, I didn't and wasn't; and I was entirely justified in refusing to pay the charges that had been unlawfully levied against me. (When I protested the unlawful charges to information officer Vidhu Vedalankar, Mtati responded by expressly unlawfully refusing all documents I'd

requested from Hundermark and Makokoane – and persisted in demanding that I pay what Hundermark and Makokoane had illegally charged me.)

14. Section 5 of the report falsely states:

Three applications [sic: requests] from Brink were extended beyond 30 days in terms of section 26(1) of the Act.

15. In fact, the response period for all four requests filed and dealt with in the reporting period was extended, one at my instance – I volunteered an extension for Makokoane in view of the large number of documents included in my request to him to consider – and three at LASA's request to which I consented. (I later consented to an extension for the response to my fifth request too.)

16. What LASA fails to report is that all four requests were then responded to out of time, outside the extended 60 calendar day time-frame prescribed by sections 26 to which I'd agreed. (Section 4 of the Interpretation Act 33 of 1957 holds 'days' in a statute such as PAIA to be calendar days.) My PAIA requests addressed to Hundermark, Makokoane and Nair were delivered between 10 and 25 November 2014, with the specification of one record sought from Makokoane amended on 15 December. They responded (Hundermark and Makokoane with demands for money; Nair with an outright refusal) between 3 and 23 February 2015, outside the maximum extended 60-day time limit allowed by section 26.

17. Section 6 of the report irrelevantly reports the 'number of internal appeals': '0'.

18. The Act makes no provision for 'internal appeals' against the refusal of PAIA requests by the information officer or any deputy information officers of public bodies such as LASA; instead it provides for an application directly to court. This is because LASA is a 'public body' envisaged by section 1 of PAIA, being an 'institution ... performing a public function in terms of any legislation' (per subsection (b)(ii) of the definition). And section 78(2)(c) of PAIA (redacted for relevance) provides:

A requester - ...

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

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

may, by way of an application, within 180 days apply to court for appropriate relief in terms of section 82.

19. Section 8 falsely reports '0' applications to court. In truth and in fact, I launched three court applications against LASA in the Eshowe Magistrate's Court in April 2014, served thanks to Post Office inefficiency a couple of months later, to compel its compliance with my PAIA requests filed and illegally refused in November 2013. The applications are still pending.
20. Although no internal appeal lies against the refusal of a request for access to LASA records, the information officer ought nonetheless to have reported that I'd brought three applications to court against it to compel its compliance with PAIA requests that it had illegally refused on the basis of 'section 7 read with section 45'. (Section 7 isn't even among the 'Grounds for refusal' listed in Chapter 4 of Part 2 of the Act, and this doesn't change by 'reading' it with any other section, from 1 to 100. And the answering papers concede my serious purpose, which isn't 'manifestly frivolous' per section 45.)
21. Unless LASA withdraws its false and misleading section 32 report to the SAHRC, and files an accurate, truthful one, the National Assembly will be misinformed yet again, like it was:
- in 2011 by the SAHRC's section 84 report based on LASA's false section 32 report for 2010/11 (my complaint to the Public Protector about this, reference no. 7/2 – 44378/11, was acknowledged but not investigated and resolved);
  - in 2012 by the SAHRC's section 84 report based on LASA's false section 32 report for 2011/12 (again, my complaint to the Public Protector about this, reference no. 7/2 – 040815/12, was acknowledged but not investigated and resolved); and,
  - in 2014 by the SAHRC's section 84 report based on LASA's false section 32 report for 2013/14 (addressed below).
22. Based on LASA's section 32 report for 2013/14, the SAHRC's section 84 report for that year informed the National Assembly that three requests were 'refused partially'. I annex a material excerpt, marked 'E'.
23. (Under PAIA, I requested a copy of LASA's section 32 report for 2013/14 from the SAHRC. It gave me the wrong one for the wrong year, 2012/13, and has ignored several repeated requests for the right one – about which I've complained to the Public Protector in May 2015. A month later my complaint has yet to be acknowledged.)
24. The information in the SAHRC's section 84 report for 2013/14, derived from LASA's section 32 report for that year, is false: in fact, two requests comprising multiple documents specified were totally refused, the third, also for multiple documents, was partially (almost completely) refused.



25. LASA's annual report concerning its handling of PAIA requests in 2013/14 gives LASA's reason for refusing my three PAIA requests in November 2013:

Information was partially granted in response to one request and was refused to two requests. The information that was partially refused and wholly refused emanated from one individual and the information was refused because it related to legal proceedings before the Labour Court.

I annex a material excerpt of LASA's PAIA report in its annual report for 2013/14 marked 'F'.

26. The only grounds PAIA permits for refusing a request for access to public records are those enumerated in Chapter 4 of Part 2; and nowhere does Chapter 4 contemplate the refusal of records because they are 'related to legal proceedings'.

27. It remains to be seen, once the SAHRC eventually furnishes me with LASA's section 32 report for 2013/14, what its contents were and whether LASA complied with the detailed reporting requirements of the section that year – or failed to do so and misled the SAHRC, and through it the National Assembly, for the third time. Given LASA's history of previous repeated failures to comply with section 32 and false reporting in 2011 and 2012, and its subsequent failure to comply and report truthfully and accurately in 2015 (the subject of this complaint), it is highly probable that LASA's section 32 report for 2013/14 was non-compliant and false too.

28. What profoundly aggravates this matter is that in 2012 the SAHRC (i) reported LASA to the National Assembly for not complying with its section 32 reporting obligations; (ii) assured the National Assembly that LASA would be 'fully audited' for PAIA compliance accordingly (the SAHRC then conducted a useless questionnaire-based audit instead); and (iii) held a special PAIA training workshop for LASA on 6 November that year, inter alia on the importance of accurate and truthful section 32 reporting to the SAHRC for the accurate and truthful information of the National Assembly as to LASA's compliance with PAIA or otherwise. The report of the SAHRC's training workshop for LASA's head office lawyers records that they were specifically taught that a request for records for legal proceedings must be treated like any other. It's to be regretted that LASA's head office lawyers proved unable to benefit from this special attention given their deficient knowledge of PAIA, which they repeated admitted at the workshop, because the remedial lesson for them evidently didn't sink in: year after year LASA has continued violating my fundamental right to information under cover of the perfectly irrelevant claim that the records to which I seek access are related to litigation.



29. Given the high likelihood that it was also non-complaint in 2014 (as said, I've been unable to get LASA's section 32 report for 2013/14 out of the SAHRC), LASA's failure to comply with its PAIA request-handling reporting obligations for the 2014/15 reporting cycle is now the fourth time that it has defectively and falsely reported to the SAHRC – the SAHRC calls this 'malicious compliance' – thereby yet again concealing from the National Assembly its substantive illegal refusals of duly made requests for records under PAIA directed at exposing massive, pervasive corruption in its top ranks.

30. The reporting requirement imposed on public bodies by section 32, namely that they report annually to the SAHRC with the fine particularity prescribed by subsections (a) to (i) on how they handled PAIA requests in the previous reporting cycle, is no trivial thing. The Preamble to PAIA notes that 'the system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'. Unlike back then, now 'section 32(1)(a) of the Constitution provides that everyone has the right of access to any information held by the State', enabling us to expose 'secretive' corruption and wholesale breakdown of the rule of law and proper corporate governance in public bodies, and their 'abuse of power and human rights violations.' The detailed reporting requirements of section 32 enable the National Assembly to closely monitor public body compliance with PAIA, enacted to give effect to 'the right of access to any information held by the State'. If a public body reports falsely to the SAHRC, year after year, the National Assembly is misinformed and misled in turn, and its oversight function and responsibility is frustrated and stultified, thereby defeating the object of section 32, defeating the object of PAIA to give effect to the fundamental right to information in the democratic era, and enabling the delinquent public body to behave like an organ of the apartheid state, year after year, unaccountably and with perfect impunity.

Signed at Eshowe on 2 July 2015



ADV ANTHONY BRINK

CC: Kisha Candasamy, SAHRC deputy information officer and PAIA Unit director.

For easy copying and reprinting, this complaint is accessible in PDF at:  
[www.tig.org.za/LC/Public\\_Protector](http://www.tig.org.za/LC/Public_Protector)



"B1116"

IN THE SOUTH GAUTENG HIGH COURT (JOHANNESBURG)

Case No:

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

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FOUNDING AFFIDAVIT

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I, Anthony Robin Brink, solemnly affirm:

1. I am an adult male, 51, an advocate of the High Court of South Africa, resident at 25 Baker Road, Prestbury, Pietermaritzburg, KwaZulu-Natal, and I am the applicant herein.
2. The respondent is Legal Aid South Africa ('LASA'), a statutory body established by the Legal Aid Act, Act 22 of 1969, whose head office and principle place of business is at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

"PP4"

WORKING DRAFT IN PROGRESS

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CEO Ms Vidhu Vedalankar ('Vedalankar'), with her response(s), and the correspondence that preceded this application.

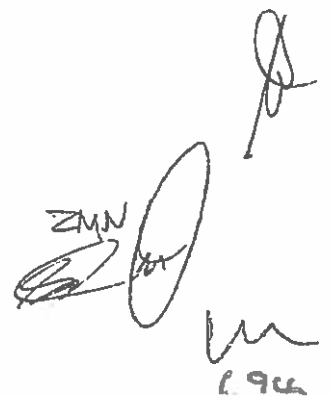
8. My cause of action for a mandatory interdict directing LASA to comply with the Act is founded on a simple and narrow set of facts, to be set out presently. The background dispute regarding my fundamental complaint that LASA has illegally discriminated against me in contempt of my constitutional rights is a matter for determination by another court, following viva voce evidence and cross-examination of all those members of the Management Executive Committee and Board of Directors who've involved themselves and colluded in the matter, to establish the veracity or mendacity of their evidence, as the case may be; and it's consequently neither necessary nor relevant in the instant application for LASA to answer and debate the case made out in my correspondence in this regard.
9. The political context in which the illegal discrimination of which I complain has taken place is sketched in a letter I wrote on 12 October 2010 to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa in Cape Town (Bundle, pages 93-99); in the Addendum to my first letter to Vedalankar on 12 July 2010 (Bundle, pages 11-17); in my Personal and Political History (Bundle, pages 88-92); and in my CV (Bundle, pages 75-77 and 80-82).
10. The immediate factual background to this application is recorded in the main body of my first letter to Vedalankar (Bundle, pages 1-9); and in my successive appeals thereafter to Chief Operations Officer Jerry Makokoane on 1 September 2010 (Bundle, pages 21-39) and to Chairperson Judge Dunstan Mlambo and the Board of Directors on 30 November 2010 (Bundle, pages 109-167). (As noted in paragraph 70 of my letter to the

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like a glorified spaza shop ... In the absence of any paper trail must we just accept that [Chikane and Fowler] are people of standing and they will never mislead, just like [then United States secretary of state] Colin Powell never misled the security council [over Saddam Hussein's possession of weapons of mass destruction].' (ellipses, interpolations, and missing punctuation in the original) (Bundle page ...)

16. In sum, the mere ipse dixit of public servants regarding their administrative actions won't do, especially considered against a history of dealing in bad faith. (Bundle, pages 5-9; page 19, second paragraph, first sentence)
17. I believe the absence of a documentary record supporting her allegations is the true reason Vedalankar is avoiding compliance with my records requests. I further believe that what records do exist will be probative in establishing my complaint of illegal discrimination and of unlawful administrative action to my prejudice. In a nut, Vedalankar cannot, qua information officer, comply with her constitutional obligations under the Act without exposing her violation, qua CEO, of my basic civil liberties protected by the Constitution and other statutes enacted to enforce it. (Bundle, page 4, paragraph 5; pages 35-6, paragraphs 59-65) For this reason Vedalankar spurns all my constitutional rights in the matter, and not just some of them.
18. I reiterate, however, that the merits or otherwise of my discrimination complaint and my surmises and purposes animating my requests for records are immaterial to my constitutional right of access to them.


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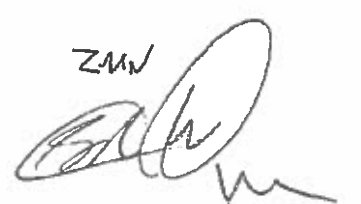
23. Vedalankar refused my records request on the grounds that it 'goes beyond your individual circumstances and extends to information on third parties' and is 'not relevant to any rights you may have in law'. (Bundle, pages 102-103, paragraph 5; and page 108, paragraph 8)
24. These reasons are manifestly spurious: In terms of section 11 of the Act it's unnecessary for a requestor seeking access to records of a public body to show that his request is 'relevant' to the exercise of 'any right' he wishes to protect or enforce; nor need his request be particular to his 'individual circumstances'. Nor was I seeking 'information on third parties': as is plain from the tenor of my request, such information was of no interest or use to me at all. To the extent that Vedalankar was genuinely concerned not to make any 'unreasonable disclosure of personal information about a third party', per section 34 in Chapter 4 of the Act – although I'm at a loss to see what – she could simply have blacked out such 'personal information' from the record(s) in question. And still can. (Bundle, page 117, paragraph 36)
- Or, under section 28 of the Act, she could have severed any genuinely objectionable part of my request, and met the rest of it.

## SECOND RECORDS REQUEST

25. On 15 December 2010 I sent Vedalankar a second request for records in the prescribed form, this time by email per section 18 (1) of the Act, testing her claims in her letter to me concerning the reason she alleged for aborting my recruitment. (Bundle, pages 167-180)
26. On the same day I posted her a R35 cheque covering the request fee. (LASA's PAIA manual indicating this fee was published on its website subsequent to my first records request.) (Bundle, page 181)

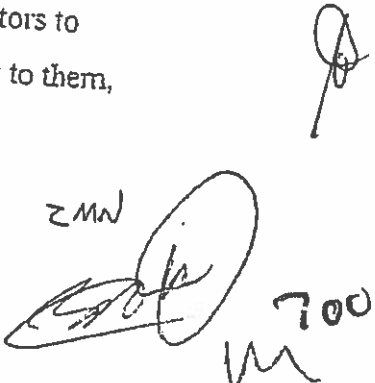
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32. I emailed my letter to Judge Mlambo and to several Board members whose email addresses I'd been able to find on the internet, and on 6 December 2010 Board Secretary Ms Bee-Mari Schoeman ('Schoeman') emailed me to acknowledge that Judge Mlambo had received it, and informed me that he was 'presently out of the country' but 'will respond to your letter as soon as he is able to do so'.
33. In a letter to Schoeman two days later on the 8th, I enquired when Judge Mlambo would be back; asked her to ensure that my letter was brought to the attention of all members of the Board; and requested she give the matter priority attention. (Bundle, pages 183-188) I wasn't favoured with a reply.
34. I then telephoned Judge Mlambo's secretary at the Labour Court in Johannesburg to find out when he'd be back, and was told he was in the US, returning on the 22nd.
35. Judge Mlambo replied to me on the 30th. (Bundle, page 189)
36. His reply is incorrectly dated 9 November 2010, three weeks before mine to him, so I assume he had 9 December 2010 in mind.
37. He emailed his reply in the form of an attached PDF file. Interestingly, according to its file-name and properties, the PDF file was made on 15 December 2010 by none other than Vedalankar, an hour before I emailed my second request for records. (Bundle, page 190) Vedalankar did this while Judge Mlambo was still in the US.
38. Vedalankar's production of a PDF version of Judge Mlambo's letter to me indicates that there was email traffic between them about my letter to him and its contents. And as this email exchange forms part of LASA's records,

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198

of the matter as I'd requested a month earlier. (Bundle, page ...) She [...].  
(Bundle, page ...)

44. Adv Pieter du Rand, Director of Court Services in the Department of Justice and Constitutional Development, was the first Board Director to acknowledge my letter to the Board, and he did so immediately. Dr Len Konar and Attorney Jan Maree promptly did so in turn. (I received no acknowledgments from several other Board Members I emailed.)
45. With the impression that Schoeman had failed to bring the matter to the attention of all Board Directors, I wrote to Adv du Rand, informing him of this, and mentioned Judge Mlambo's unhelpful response. In my letter I petitioned him to intervene to address and resolve Vedalankar's unlawful denial of and trampling on my constitutional rights. I copied Konar and Maree in. (Bundle, page ...)
46. On [...] [...] responded, informing me that he was extremely concerned by the developments I'd brought to his attention, including Judge Mlambo's indifference and inaction regarding Vedalankar's unlawful refusal of my records request, and said he was also most embarrassed by the grossly unethical behaviour of senior members of the Management Executive Committee evident from their correspondence to me, and by Schoeman's indolence in regard to it. He said he'd immediately raised the matter with all other Board Directors and had urged them to join him in a quorum of eight to move for a special meeting of the Board to resolve my complaints and to obviate the looming litigation that threatening to wreck LASA's excellent reputation as an exceptionally well managed exemplary public body. But he said he'd been unable to persuade at least seven other Board Directors to take the matter seriously, to take the trouble to read the papers sent to them,

  
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also rejected my second request for records on the same idle basis that it was 'not relevant to any rights you may have in law'. (Bundle, page ...)

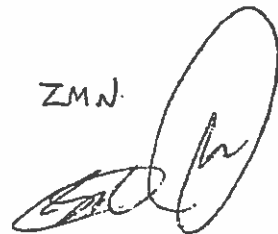
52. Kisoon had previously mentioned to me on 4 October 2010, correctly in fact and in law, that 'the Commission at this stage does not have the power to sanction non compliance except through traditional name and shame mechanisms and through Parliament'. (Bundle, page 205)

53. In view of this, and anticipating no cooperation from Vedalankar in response to Kisoon's mediation, I also approached the Open Democracy Advice Centre in Cape Town ('ODAC'). (Bundle, pages ...-...)

54. According to its website, 'ODAC's mission is to promote open and transparent democracy; foster a culture of corporate and government accountability; and assist people in South Africa to be able to realise their human rights. ODAC seeks to achieve its mission through realising the right to know...' Its 'strategies and interventions to realise this mission' include 'Direct Support' and 'advocat[ing] for a change in attitudes towards the right to access of information, and it does so in order to cultivate a societal, political and legal culture that is supportive of transparency and access to information.' I was much encouraged by this - and even more so to read that ODAC's 'litigation unit operates as a law clinic' that 'specializes in litigating on access to information requests that have been denied by either public or private bodies'. (Bundle, pages ... to ...)

55. Attorney Alison Tilley, Chief Operating Officer of ODAC, responded to my plea for support in litigating to enforce my access to information requests that had been denied by LASA, stating [.....]. (Bundle, page ...)

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702



to assist in the Committee's inquiry into the manifest breakdown of corporate governance, management accountability, and internal control at LASA. [...] confirmed, however, that since the Committee lacks any mechanism to compel LASA to comply with the Act, I should approach the high court under section 78 of the Act for a mandatory interdict without further delay. (Bundle, page ...)

60. Deputy Minister Nel replied that he was shocked by the enormities I'd reported to him and would be taking appropriate action. (Bundle, Page ...)

61. With submission, I've pursued all possible avenues open to me to achieve compliance with my requests for records, and I've no alternative remedy but to humbly seek relief from this honourable court.

#### APPLICATION TO COURT IN TIME

62. I've brought this application within 180 days of Vedalankar's refusal of both my first and second requests – which is the provisional time limit stipulated by the Constitutional Court in *Brümmer v Minister of Social Development and Others* (CCT 25/09) [2009] ZACC 21; 2009 (6) SA 323 (CC) ; 2009 (11) BCLR 1075 (CC) (13 August 2009), in which case the court set aside as unconstitutional the 30 day time limit imposed by section 78 (2) of the Act.

#### PRAYER

63. In the situation, I respectfully pray for an order in the terms set out in the notice of motion.

Dated at Pietermaritzburg this      day of January 2010.

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IN THE ESHOWE MAGISTRATES COURT

Case No:

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

BRIAN NAIR N.O.

DEPUTY INFORMATION OFFICER,

LEGAL AID SOUTH AFRICA

Respondent

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REPLYING AFFIDAVIT

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I, Anthony Robin Brink, affirm:

1. I am the applicant in this matter, and reply herein to the respondent's answering affidavit.
2. Since my due compliance with the prescribed formalities in making my PAIA request is not in question, and the answering contentions about jurisdiction and first lodging an internal appeal are obviously erroneous (corrected below), the only serious issue for decision by this court is whether under PAIA the respondent ('Nair') has legally justified his total refusal to allow me access to the extant records I requested of him, and to certify on oath the non-existence of the other records I've specified.

3. Section 81(3) of PAIA places the onus on Nair to satisfy this court that his reasons for refusing to do these things are lawful under the Act. In the Appendix to my founding affidavit, annexure 'J', I demonstrated that Nair's several reasons for refusing my PAIA request are legally idle. Nair and his junior counsel writing for him (see below) don't take issue with my refutation of his reasons; they just avoid dealing with it.
4. Ad paragraph 5. First, Nair and his junior counsel have quoted from a stale version of the Act before it was amended. Second, they've deliberately or carelessly run the words 'may' et seq. on the penultimate line of the paragraph into the provision contained in subsection (d)(ii), instead of commencing them in an independent bottom line, as in the published Act. In doing this they've made complete legal gibberish of the stale section quoted.
5. Ad 10. There's no appeal to lodge at LASA against the refusal of a PAIA request. The heading of Chapter 1 of Part 4 of the Act ('INTERNAL APPEALS AGAINST DECISIONS') namely 'INTERNAL APPEALS AGAINST DECISIONS OF INFORMATION OFFICERS OF *CERTAIN* PUBLIC BODIES' (my emphasis) points up the distinctions that PAIA makes between different kinds of public bodies in its definition of 'public body' in section 1 – which is to say, they aren't all the same under PAIA.
6. And LASA isn't one of the 'certain public bodies' against whose information officers' refusal of access to requested information an internal appeal must be pursued before an application to court to compel, because section 78(2)(c)(i) of this chapter provides that 'a requester ... aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition

of “public body” in section 1 ... may, by way of an application, within 180 days, apply to court for appropriate relief in terms of section 82.’

7. LASA is precisely such a public body ‘performing a public function in terms of any legislation’, namely the Legal Aid South Africa Act 39 of 2014, as section 1 of PAIA defines it.

8. The SAHRC has tried teaching LASA that it’s a public body in category ‘b’, but the lesson evidently failed. I’ll advert to this below.

9. Adv Nair and his junior counsel have placed their ‘[Emphasis mine]’ on the wrong part of section 78 they quote. They ought to have highlighted subsection 2(c)(i), which applies to the refusal of a request for access by ‘the information officer of a public body referred to in paragraph (b) of the definition of “public body” in section 1’, like LASA.

10. How the Post Office’s Speed Services Couriers unaccountably failed to convey my application overnight, as it contracted to do, and took two weeks instead to deliver it to the sheriff, resulting in service on Nair a fortnight outside the prescribed 180 days to sue, is described in my condonation application filed evenly herewith.

11. Ad 10.2. Actually it’s section 28(b).

12. Ad 10.3. Nair’s characteristic half-truth in his second sentence deceptively implies to this court, as it’s fraudulently intended to do, that he responded to my request within the extended time limit allowed by the Act. He didn’t. As he correctly notes, I agreed to his request for an extension of a further 30 days under section 26(e). This then afforded him a maximum of 60 calendar days within which to respond to my request. Sixty days from 17 November 2014, when I

emailed him my request, was Saturday 16 January 2015, so Nair's response was due on Monday 18 January. He only responded on 13 February, nearly a month later.

13. Nair offers no excuse for this cavalier disregard for his constitutional information transparency obligations as deputy information officer of a major public entity; but in any event, any excuse given would have been legally irrelevant, because there's no provision in the Act for condoning the failure of an information officer to respond to a PAIA request within the extended maximum of 60 days allowed, and thereby unlawfully contravening the Act.

14. Ad 11 and 12. This is addressed in my condonation application, which I didn't 'deliberately avoid' bringing; the charge is maliciously false. The conclusion of my letter to Nair of 9 September 2015 (annexure 'B' to my affidavit supporting my condonation application) shows that I was awaiting his attitude to my fully vouched, incontestably truthful explanation regarding the fortnight's delay in service on him thanks to South African Post Office inefficiency. In view of my explanation, I thought he might reasonably waive the point and not waste everyone's time on it.

15. Ad 13. It's true that I was reluctant to sue and get bogged down in this litigation, because I apprehended from prior experience that it would be dragged out with legally ignorant filibustering, thereby effectively frustrating my vindication of my fundamental right to information. Accordingly, after fruitlessly entreating LASA information officer Vedalankar to intervene and to see to compliance with my illegally blocked and refused requests, I appealed to both our Chapter 9 institutions to mediate a resolution under their respective statutory powers to do so. My correspondence put up by Nair, and my physical visit to the

SAHRC in Johannesburg described in my condonation application, show the lengths to which I went in my efforts to achieve LASA's compliance with my several illegally blocked and refused PAIA requests filed in November 2014 and May 2015, in a bid to avoid this litigation.

16. As described in my condonation application, I ensured that I was 'launching this application in time' by filing and having it issued in time; contracting the sheriff to serve it in time on the same day he received it; and contracting an overnight courier to make a special door delivery in time to the sheriff. The two-week delay in service caused by the courier was beyond my control.

17. Ad 13.6. It's untrue that 'The Chief Magistrate correctly determined that the Court was not equipped to deal with the applications under PAIA.' (This lie reflects Nair's and his junior counsel's ignorance of the jurisdiction provisions of PAIA.) What he actually said, and will confirm, is that he'd not undergone the PAIA training prescribed by section 91A(2), and for this reason was not legally competent to try my applications 257-9/14, for which a duly trained, listed and designated magistrate would need to be specially appointed. (This was the first I heard that he wasn't qualified to handle my cases.) For this same reason he fairly doubted he was legally competent to hold a pre-trial conference in a PAIA matter. The conference – not my applications, as falsely alleged – was then adjourned sine die.

18. Not being a party to that litigation, Nair didn't attend the pre-trial conference, whereas his junior counsel did, so the lie told in this paragraph is his. (When I was in practice, it was wrong for advocates to repeatedly tell lies in court.)

19. Ad 13.8.1. My letter annexure 'BN10' to Nair's affidavit has been put up without its annexures. The likely reason they've been omitted is that they're strikingly apposite to this case. I accordingly annex them, marked 'A' and 'B'.
20. Ad 13.8.2. Indeed I originally intended suing out of the High Court at Pietermaritzburg in order that LASA's persistent, recidivist PAIA delinquency since 2010, which I intended to detail, could be recorded in the country's law reports for all our country's judges, magistrates and lawyers to see; but for the reason explained in my condonation application, I ran short of time for this and was constrained to sue locally.
21. Ad 14. For this court's fuller information, my letter to CLE Hundermark mentioned by Nair, but not put up like the others, is annexed hereto marked 'C'.
22. In point of fact, LASA's section 32 reports are submitted to the SAHRC, not 'to Parliament', and the SAHRC relays LASA's PAIA compliance information to the National Assembly in its annual section 84 reports, trusting it's true and complete and not false for the misinformation of the National Assembly. (The SAHRC calls such false reporting 'malicious compliance'.)
23. Nair and his junior counsel make several dishonest misrepresentations in this paragraph.
24. By setting the word 'defective' in inverted commas in the phrase 'Legal Aid South Africa's "defective" Section 32 Report' (the word doesn't feature in my letter), Nair and his junior counsel dishonestly insinuate that my several complaints about LASA's repeated false section 32 reporting to the SAHRC to conceal its persistent illegal refusals of my PAIA requests from it and from the National Assembly in turn were unfounded.

25. On account of my repeated complaints about this, the SAHRC reported LASA to the National Assembly in October 2012 for its defective section 32 reporting in 2010/11 and 2011/12. I annex a material excerpt from the SAHRC's section 84 about this, highlighted for easy reference, marked 'D'.
26. This caused Justice Portfolio Committee Chairperson Hon Landers (now Deputy Minister of International Affairs and Cooperation) and senior Committee member Hon Jeffery (now Deputy Minister of Justice and Correctional Services) to raise the matter repeatedly at the presentation of LASA's annual report that year. I annex a material excerpt of the minute of the meeting showing this, highlighted and marked 'E'.
27. Irrespective of this concern both by the SAHRC and the National Assembly with its false reporting under section 32, LASA persisted in twice again falsely reporting to the SAHRC under section 32 to conceal its illegal refusals of my further PAIA requests, as I show in my complaint to the Public Protector annexed to Nair's affidavit as 'BN15'.
28. Ad 15. Actually section 32 reports are filed with the SAHRC, which conveys the information provided therein to the National Assembly in its own section 84 reports.
29. Ad 16. I never 'waited for the six months prescribed by the Act to lapse', as Nair falsely alleges here; this is a characteristic blatant lie of his. As described in my condonation application, I filed and had my application issued and couriered for service in time, and emailed him the application papers the day after couriering them to the sheriff, along with the waybill. I acted in time; it was the courier service which unexpectedly didn't. Nair knows this full well, yet he casually lies about it.

30. Ad 17. First, I didn't act tardily. I didn't sit back and wait. Quite the opposite, the record shows that I energetically pursued an extra-curial resolution of LASA's repeated violations of my fundamental right to information, and only when that failed did I launch this application – in time. (The SAHRC is currently corresponding with LASA in an attempt to mediate the resolution of my other illegally refused PAIA requests.)

31. Second, in view of the capital importance of the state respecting citizens' constitutional right to information by complying with PAIA requests for the effective exercise of their other fundamental rights, emphasised by the SAHRC at the special PAIA training workshop it held for LASA's head office staff on 6 November 2012 – on account of its repeated illegal refusals of my PAIA requests in 2010–11 and its repeated false reporting about it afterwards to conceal this from the National Assembly, at which training workshop LASA's head office staff repeatedly admitted that they were entirely at sea in implementing and complying with the Act – LASA had itself:

identified the need to have a clear budget dedicated to PAIA compliance and implementation which will allow internal interventions like training and the provision of increased accessibility of information to be addressed.

32. Had LASA risen to this pressing 'need' which it itself 'identified' to the SAHRC, and not proceeded to renege on its tacit undertaking to the SAHC in this regard, just as it reneged on its recorded undertakings to 'review decisions which may not have had justification in terms of PAIA and to create guidelines within the organization to ensure misapplication does not recur' (it didn't do either), LASA would by now have had have 'a clear budget dedicated to PAIA compliance and implementation', including for providing 'training' to legally

ignorant deputy information officers so as to achieve ‘increased accessibility of information’ being illegally suppressed by them for corrupt ends such as the obstruction of justice.

33. A copy of the SAHRC’s report of the PAIA training workshop, recording LASA’s head office lawyers’ repeated admissions that they had no idea how to implement and comply with PAIA, is annexed marked ‘F’.

34. Third, since Nair is a deputy information officer in LASA’s national office, appointed under section 17(1) of the Act ‘to render the public body as accessible as reasonably possible for requesters of its records’ – and this vitally important purpose in our open constitutional democracy, as distinct from the apartheid state, is repeated in subsection 4 in these exact words – it doesn’t lie in his mouth to complain when asked to do his additional job as a deputy information officer ‘to render the public body as accessible as reasonably possible for requesters of its records’ and to moan about this extra work he has to do as a new phoney irrelevant excuse for blocking my access to such records.

35. Fourth, I’m confident that many of the records specified in my instant PAIA request don’t exist. (They would exist had Nair testified truthfully at the trial of my labour claim and not very obviously perjured himself repeatedly on the record, the transcription of which my request is closely referenced to.) Since Nair has direct personal knowledge of the matters to which he spoke in court, the veracity of which evidence I’m testing with PAIA, with the intention of showing it was perjured, all he need do is certify on oath under section 23 that these records don’t in fact exist.

36. My ‘incessant requests’ for access to specified records since 2010, all quite lawful – but which Nair and his junior counsel writing for him dishonestly

insinuate have been improper – have been directed at establishing the true circumstances in which my appointment to LASA’s most senior professional post was aborted off the record (several different stories were told). Besides a trickle of records released to me – only under pressure – nearly all my requests over the years have been illegally refused. The second page of annexure ‘B’ brightly illuminates the reason I’ve been making my ‘incessant requests’.

37. Ad 18. In his letter refusing me access to the documents I requested, or sworn certification where they don’t exist, Nair stated his several reasons for doing so, and nowhere did he rely on section 45. So it’s too late for him now to start grabbing at this section in court.

38. Ad 19. At the hearing I shall ask this court to require Nair’s junior counsel to particularise and reference his scurrilous charges on pain of a personal punitive costs order for corruptly endeavouring to pervert my claim and defeat the ends of justice with defamation to distract from the merits of my application and from Nair’s outrageous abuse of his office as deputy information officer in withholding incriminating documents that he appreciates will ‘destroy’ him (his word: paragraph 44.3).

39. Ad 22–31. All this is irrelevant.

40. Ad 32. The Legal Aid Guide prescribes how LASA works, period.

41. Ad 35 and 36. Nair was indeed served at this address. The sheriff’s return vouching this is annexure ‘C’ to my supporting affidavit in my condonation application. So the foolish errors and confusion in these paragraphs warrant no further reply.

42. Ad 37–9. Considering the definition of a ‘court’ in section 1 of PAIA, this is wrong.
43. Ad 42. Contrary to Nair’s smoothly told lies about my letter covering my PAIA request, it was less than two pages long, so ‘the length of the said letter’ wasn’t why he asked, via his in-house attorney, for a further month to answer my request.
44. In the request for more time to respond, Nair’s confessed the true reason: ‘your requests are voluminous and incorporate allegations that have far-reaching implications on the officials of Legal Aid South Africa.’ Indeed so. As I flatly and unambiguously stated in my letter, I’m pursuing Nair for perjury, for lying again and again under oath at the trial of my claim in the Labour Court. It was not my intention ‘only to insult and demean’ him, and he knows it full well. On the other hand, the violence of LASA’s ad hominen attacks on me throughout the said litigation (junior counsel doing all legal writing), with which Nair and his junior counsel persist in this application, founded my very substantial general damages claim. Pertinently asked by me, the trial judge found nothing remiss in my conduct – not in his judgment, nor in his dismissal of my application for leave to appeal attacking his costs order, in which he had the opportunity to impeach my conduct to justify it had there been any basis for him to do so. LASA’s sustained lying denigration of me was continued in the Labour Appeal Court, both in the perjurious opposing affidavit that Nair’s junior counsel drew, also lying about what LASA’s case had been at trial, and in an anonymous ‘memorandum’ repeating this persistent personal denigration of me, which effectively sabotaged my petition. (Fortunately for me this written evidence of improper influence in the disposal of my petition – also lying about what had been common cause at trial, lying about what the documentary record showed, and lying about what my

case was on petition – was inadvertently left in the court file. It will shortly be before the Judicial Service Commission.)

45. Indeed a statement of my purpose in making my request was ‘not necessary’ as a legal requirement, but my intention was to anticipate and defang any false justification for refusing it on the ground that it was frivolous and vexatious. I was showing that my purpose was extremely serious. (Section 11(3) specifically contemplates that requesters might volunteer their reasons for seeking access to records.) Still, Nair now comes pretending under oath in court that my request was frivolous, aware this is a lie, having already conceded to the contrary in his request for an extension.

46. Ad 44. Nair’s several spurious justifications for refusing my entire request, i.e. the ‘substance of the answer’ he gave me, were precisely specified in his response, annexure ‘H’ to my founding affidavit. I addressed and refuted them all in my Appendix, annexure ‘J’. Nair and his junior counsel writing for him haven’t taken issue with them, because they can’t. So game’s over.

47. Add 44.1. It’s not material to this application, but Nair’s false allegation here that LASA’s most senior legal professional post in KwaZulu-Natal, for which I was duly selected and recommended, ‘was aborted for operational reasons’ can’t pass unchallenged. It was common cause at the trial of my labour claim that no record of any such alleged decision exists. It was was the basic lie on which my claim miscarried in a cursory judgment given well over a year after the trial, replete with clear factual and elementary legal errors. After I’d squarely refuted this basic lie (the Pietermaritzburg Senior Litigator ‘post was aborted for operational reasons’) in my closely detailed original statement of claim, comprehensively referenced to LASA’s records and other material documents,

Nair changed the story completely and told LASA's Board two very different lies to explain his failure to appoint me to the post for which I'd been recommended, namely that the post (and two others) had not been filled due to (i) 'recruitment challenges' (there weren't any) and (ii) doubt about whether the six incumbent Senior Litigators were performing adequately, for which reason their professional expertise was to be urgently audited by specially convened review panel (it never was) – all very smooth-sounding and convincing, but blatant lies: no record exists to vouch that the expertise of the incumbent Senior Litigators was ever in question; to the contrary, LASA reported again and again that its legal professional staff were performing well. (The SAHRC was told yet another different story.)

48. Ad 44.2. Not only is this irrelevant, it's also untrue. I made the instant PAIA request on 17 November 2014, which was two months after judgment on 18 September 2014. (Later in his affidavit, after first repeating the lie, Nair then admits this.)

49. Ad 44.3. First, the fact that my request 'related to information that was dealt with in evidence before Court' isn't a ground for refusing me access to it under Part 2, Chapter 4, sections 34–45, which list the only grounds on which a request for public information may be refused.

50. Second, section 11(3) explicitly holds a requester's stated or surmised purpose in requesting documentary information to be irrelevant.

51. Ad 46. LASA's repeated illegal refusals of my PAIA requests since 2010, and its violation of my fundamental right to information, with the object of suppressing evidence of pervasive corruption in its top managerial ranks makes a mockery of this hypocritical declamation.

52. Ad 47. All this is dealt with and exploded in the Appendix to my founding affidavit, annexure 'J'.
53. Ad 49. Yes, and at its special PAIA training workshop for LASA's self-admittedly clueless head office staff, the SAHRC tried teaching them 'the need to ensure that clients [i.e. record requestors like me] who are wishing to litigate on the basis of PAIA [like me] are responded to on the same basis as other applicants [i.e. record requestors like me; I'd repeatedly complained to the SAHRC about LASA's illegal refusals of my PAIA requests]' (I'm quoting from the first page of the report, annexure 'F'). Unfortunately, the special remedial lesson given them proved unsuccessful. They were unable to learn from it.
54. LASA's head office staff were also unable to benefit from the SAHRC's extra tuition that 'LASA falls under the type "B" category of public bodies in terms of PAIA' (see top of the second page of the report), which means there's no internal appeal procedure available at LASA for record requestors to pursue against the illegal refusal of a PAIA request.
55. Ad 50. It's very correct that I intend seeing Nair prosecuted for his many perjuries at trial, one of which (the alleged abortion of my appointment for operational reasons) he compounds by repeating it here, and it will be added to the draft charge-sheet. I also intend seeing him struck off and fired, and all of LASA's enormous damages recovered from him personally. These intended uses of the documents I've requested are no reason under PAIA for refusing my request – as the SAHRC tried but was unable to teach LASA's national office.
56. Ad 51. This is untrue. As said and shown above, when I made this PAIA request, my claim had already been dismissed by 'the trial Court'. But even if this

hadn't been so, and judgment had still to be delivered, this wouldn't have afforded Nair a justification under PAIA for refusing my request.

57. Ad. As said, it's too late for Nair to now rely on section 45, because he stated his reasons for refusing my request in his response to it and must stand or fall by them.

58. Nair's new dissimulation, on oath, that my request 'is manifestly vexatious [and] frivolous' is exposed as fresh perjury by his early acknowledgment, quoted above, that my purpose contrariwise is deadly serious. They will found criminal, disciplinary and civil proceedings against him, as I said in my covering letter. He knows very well that the documents I've requested, or his sworn certification where they don't exist will, in his own attorney's words, have 'far-reaching implications on the officials of Legal Aid South Africa', which is to say, as Nair puts it more directly, they will 'destroy' him.

59. Ad 53. Again Nair implicitly acknowledges here that I intend taking him and other LASA officers to law, and that I require the records I've requested, or his sworn certification in any case the specified records don't exist, for this serious stated purpose. He doesn't dispute it – indeed he asserts it as his misconceived defence – so on his own version my request can hardly be 'manifestly frivolous or vexatious'. Anyway, this wasn't the reason he gave for refusing my request, so it's irrelevant.

60. Ad 54. My reasons for bringing 'similar applications' against the information- and deputy information officers whom he mentions is not 'unknown' to Nair and his junior counsel. They know very well that like this application my others have likewise been brought to compel compliance with my earlier PAIA requests, also illegally refused. Yet dishonestly pretending otherwise under oath, Nair and his

junior counsel dishonestly writing for him, backhandedly smear me as an irrational mental case bringing pointless court cases one after another.

61. Ad 55. This frightened bluster is irrelevant. I've repeatedly stated the serious purpose of my PAIA request, albeit that it's irrelevant under section 11(3). My object is justice, the pursuit of which has consumed five precious years of my life at immense personal cost to me and my family, and I will have it.

62. Ad 56. This is very true, but immaterial.

63. Ad 57. As I show in the Appendix to my founding affidavit, annexure 'J', the several reasons Nair gave for refusing my entire PAIA request were unlawful.

64. Ad 58. As said, Nair or his legal representative will be required to specify and justify this base invective at the hearing.

65. For this court's information, the grossly irregular disposal of my petition by the Judge President of the Labour Appeal Court is the subject of an extensive draft complaint to the JSC that I've drawn, to be filed soon.

66. To the extent that Nair understands that my PAIA request is ultimately aimed at 'resuscitat[ing]' my labour claim, among other things, he's dead right: as I've stated, I intend presenting documents elicited by order of this court as new evidence to prove his perjuries at trial.

67. Ad 59. Since this wasn't why Nair refused my request, this belated allegation is irrelevant.

68. Ad 60–73. No appeal lies where a PAIA request has been refused by the information- or deputy information officer of a public body such as LASA. The Act provides for an application directly to court.

69. Ad 74–76. Again Nair and his junior counsel have underlined the wrong bit. As said, section 78(2)(c)(i) applies to the refusal of PAIA requests by LASA, being a ‘public body referred to in paragraph (b) of the definition of “public body” in section 1’, namely one ‘performing a public function in terms of any legislation’. There are no ‘internal remedies provided for in the Act’ in the case of public bodies like LASA.
70. Ad 77. Contradicting his earlier repeated lie about this, Nair now admits that my claim in the Labour Court had ‘been determined’ when I made the PAIA request that’s the subject of this application.
71. Whether ‘the accusations and issues raised’ in my request were before the Labour Appeal Court on petition is irrelevant, because this is not a ground permitted by the Act for refusing a request for access to records.
72. Ad 78. Not being included in PAIA Part 2, Chapter 4, ‘GROUNDS FOR REFUSAL OF ACCESS TO RECORDS’, section 7 doesn’t afford an information officer a justification for refusing a PAIA request.
73. Ad the section heading ‘ALTERNATIVELY AND IN THE EVENT I AM WRONG’. Nair and his junior counsel know perfectly well they are.
74. Ad 79. This isn’t what I say, it’s what the Act says.
75. Ad paragraph 80. The fortnight’s delay in service wasn’t my fault, but the Post Office’s. The matter is covered in my condonation application.
76. Ad 84–8. Under PAIA there’s no internal appeal procedure at LASA for me to exhaust before applying to court. In view of the point taken that I’m late, I’ve applied for condonation.

77. Ad 89–94. In my founding affidavit I correctly stated the essential jurisdictional fact that that I’m ordinarily resident in Eshowe, and this entitles me to sue out of this court. (Adv Nair and his junior counsel seem unaware that it’s unnecessary to plead law in an affidavit, only to allege essential material facts.)

78. Ad 95–99. All this ignorant waffle is irrelevant. PAIA entitles me to sue out of the court in whose area of jurisdiction I’m ordinarily resident. In point of fact I’ve been an admitted advocate for 32 years, and I’ve 10 years experience as a magistrate in the district, regional, and civil courts, four of which were spent in the latter court as a full-time civil trial magistrate. My knowledge of ‘our law of jurisdiction’ in PAIA cases derives from a reading of the Act, and I ‘acted accordingly’.

79. Ad 100–101. When I began preparing that draft affidavit in early 2011, I hadn’t yet given any thought to jurisdiction. Nothing turns on it. (In the result, rather than suing to compel compliance with my PAIA request to disgorge the records I needed, I decided to institute my labour claim instead and to employ the Labour Court’s pre-trial discovery machinery to obtain these documents – all 37 of which were predictably refused by junior counsel who drew LASA’s response to my pre-trial conference agenda requesting them. I eventually forced most but not all then out of LASA, but only after an application to compel discovery, converted into a judicially supervised pre-trial conference at my request, and then another when LASA insouciantly reneged on its minuted signed undertaking to the presiding judge to deliver the listed documents I needed for trial.)

80. Ad 102. This is untrue; I just sued where PAIA permitted me to and where it was convenient for me, as the Act intends.

81. Ad 103–110. PAIA gives this court jurisdiction, and Nair’s and his junior counsel’s hopeless waffle in these paragraphs to the contrary is wrong and irrelevant.

82. Ad 111–117. The only real issue for decision by this court to determine this application is whether Nair’s refusal of my PAIA requests was justified. My Appendix to my founding affidavit, annexure ‘J’, traverses each of my record requests and Nair’s reasons for refusing them, and it shows all Nair’s refusals to have been illegal.

83. The ‘vulgarity’ of which I accuse Nair is that he’s a serial perjurer. Records that I extracted from information officer Vedalankar after trial prove that Nair twice lied to the judge in denying his knowledge of (i) the PAIA training workshop held for LASA’s head office staff and (ii) the PAIA audit of LASA that the SAHRC conducted, arising from my persistent complaints that LASA had illegally refused my PAIA requests and falsely reported to conceal this. When I sued (case 258/14) to compel Vedalankar’s surrender of all the other records I’d requested, Nair didn’t dispute my substantiated perjury accusations in his affidavit put up with the answering affidavit. My four PAIA applications before this court will yield documents proving many more of Nair’s perjuries.

84. It’s unnecessary for this court to find Nair is an unconvicted criminal perjurer in order to decide this case – the Labour Court has already indicated as much, and the matter will be decided definitively later on inter alia by a regional court, the GCB, and the Constitutional Court (where I’ve litigated before), where I intend taking my labour case on review and appeal, upon a consideration inter alia of the new documentary evidence disgorged by order of this court upon the grant of this application.

85. Ad 118–120. I don't work at this court, but at a different one at the other end of town. I sued here because PAIA allows me to, and because the Act makes it as easy and convenient as possible for record requesters to enforce their fundamental right to information by suing out of their local magistrate's court.

86. Ad 121. This is a lie: the Chief Magistrate will confirm that he 'expressed' no such 'uneasiness' about hearing my applications; my applications were in any event not before him to hear: Nair's junior counsel and I were there for a pre-trial conference ordered at my request. The truth of it is that the magistrate doubted whether he could lawfully preside at a pre-trial conference concerning a PAIA matter, not being trained, listed and designated to deal with PAIA cases. When after raising this difficulty with us he mooted the possibility of our agreeing to transfer the matter to another court to be heard by a qualified magistrate, and I demurred, indicating my preference that my applications be heard at my home court, he responded by affirming that I was indeed entitled have my cases tried here. Not having read the Act properly, junior counsel replied that he disagreed. He was going to argue differently, said junior counsel.

87. As said, Nair wasn't there, whereas his junior counsel was, so the lie in this paragraph is his.

88. Ad 122–128. Prior to appearing in the Chief Magistrate's chambers for the intended pre-trial conference, I'd never met him; and in fact I'd deliberately and seemingly rudely never introduced myself to the magistrates at this court across town when I arrived in Eshowe, precisely to avoid any perception and charge of bias in the PAIA applications I anticipated having to bring.

89. In any event, I've been informed that a duly qualified magistrate ordinarily based at another court will be specially appointed to try my first three PAIA

applications. And likely this one too. This puts to bed Nair's empty talk of bias and disadvantage.

90. Apropos the rest of Nair's affidavit, I'll respond only to incorrect factual allegations where necessary, and not to hot air and manifestly vacant 'submissions of law' made 'on the basis of the legal advice I received from my legal representatives', namely his very junior counsel.

91. Ad 133.2. This is untrue. I've no home in Pietermaritzburg. I relocated to Eshowe to work here on 1 December 2013, and I've resided here ever since. Nor am I acting; I'm employed on contract.

92. Ad 133.3. This is true of fixed property, but irrelevant.

93. Ad 138.3. In his judgment dismissing my application for leave to appeal, the trial judge didn't address the potently cogent new evidence surfaced after trial that further proved Nair's repeated mendacity as a witness, his lies contemptuously told him under oath, in a case he'd decided purely on Nair's say-so. The Labour Appeal Court registrar's standard-form order dismissing my petition was silent about this too. The Constitutional Court will likely see it differently in light of the recent unanimous Supreme Court of Appeal decision in *Mkhize v Department of Correctional Services* [2015] ZASCA 7 (11 March 2015), in which the SCA reversed the Labour Appeal Court's refusal of a petition and allowed the presentation of new evidence of perjury. I annex for information the first three pages, marked 'G'. I will revert to its relevance at the end.

94. Ad 139.2. In breach of his oath to the judge to tell him the truth, the whole truth, and nothing but the truth, Nair repeatedly didn't do so, as the judge noted in his judgment. Nair's repeated concealment of his knowledge of all the true facts

of the matter from the court, his less than frank evidence noted by the judge, is perjury. But as said, this is a matter headed for other courts and tribunals.

95. As said at the beginning, the only real issue for decision by this court is whether under PAIA Nair has legally justified his total refusal to (i) allow me access to the extant records I requested of him, and (ii) certify on oath any specified records that don't exist. As I showed in my Appendix, annexure 'J', he hasn't.

96. Ad 144.2. My founding affidavit in the court file shows it was duly attested; and besides its signature pages, both signed, all its other pages including its annexures were initialled in the customary manner. There's nothing wrong with my affidavit.

97. Ad 145.2. The 'authorities' will indeed be investigating Nair for perjury and other misconduct, including lying to the Justice Portfolio Committee, a criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, in the secret 'Confidential' report he ghost-wrote for LASA chairperson Mlambo JP to sign and submit to successfully pervert the Committee chairperson's enquiry instituted at my instance, lying that LASA had complied with my 2010-11 PAIA requests and lying about the circumstances in which my appointment was silently aborted off the record. Nair will also be investigated for brazenly lying in court that Mlambo JP or Vedalankar had added further lies to the report, to 'update' a shorter version sent to the Minister a few months earlier (he'd independently instituted a ministerial enquiry into my complaints).

98. Once I have the documents disgorged by order of this court in this and my other applications, I'll commence drawing my complaints and the draft charge sheets, to which the new documentary evidence will be annexed.

99. Ad 149. This application is not 'vexatious', and in no way do I 'disregard ... the law and processes of Court.' These claims are lies. The Mkhize case cited above lights the serious legal road I'm on.

100. Wherefore I persist with my application.

Signed at Eshowe on 26 October 2015.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 26 October 2015 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he affirms its contents to be true and correct to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity: