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IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

In the matters between:

ANTHONY ROBIN BRINK

Applicant

and

The respondents in the following five applications:

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

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

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



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

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

SETTLEMENT AGREEMENT

The parties record their settlement of the above applications on the following basis.

1. The applications are to be adjourned sine die with no order as to costs.
2. By 12 February 2016, the applicant will email CSE Mtati a consolidated list of all requested documents that are the subject of the above applications. The

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consolidated list is to comprise (i) an assembly of the several annexures to the PAIA requests in question, extracted from the applicant's Form A PAIA requests, and (ii) the applicant's amendments to certain of his requests made by letter; and these several documents are to be assembled into a single document (the applicant's several lists will not be redrawn).

3. By 15 February 2016, CSE Mtati will furnish the applicant by email by with a copy of his written delegation as deputy information officer by LASA information officer Vidhu Vedalankar. In the event that such written delegation is not furnished as agreed, the obligation to perform under this agreement shall fall upon information officer Vedalankar.
4. By 15 April 2016, LASA Corporate Services Executive Thembile Mtati will deliver to the applicant all documents requested in his requests for such that are the subject of the above cases. In the event that any requested documents do not exist or cannot be found, Mtati will furnish the applicant with an affidavit in this regard made under section 23 of PAIA. The affidavit will contain all the detailed information prescribed by that section.
5. In the event that the respondents, through CSE Mtati, fail to deliver any requested document(s) and the applicant is not satisfied with Mtati's evidence on affidavit under section 23 that it/they does/do not exist or cannot be found, the applicant shall be entitled to apply to this court to compel the production of such document(s) within 180 days of delivery of the said affidavit.
6. This agreement is made without any admission of wrongdoing by the respondents.
7. Upon delivery of the documents requested, and the section 23 affidavit, the applicant shall have one further opportunity to request records in regard to the Senior Litigator posts, and records his waiver of his rights to make further requests in relation to the said posts, *and shall do so within 60 days.*
8. Insofar as it relates to compliance with this agreement, the applicant undertakes not to engage the interventions of the following institutions including but not limited to the Minister of Justice and Correctional Services,



the Portfolio Committee for the same department, the Public Protector and the SAHRC, but limit his recourse to an application directly to court as contemplated above.

Signed at Eshowe on 11 February 2016

9. Where the information belongs to a third party, the parties agree that CSE Mkhomo shall demonstrate to the applicant that he has sought consent from that third party and the said third party's wishes.

APPLICANT


TEMBILE MTATI

Attorney for the respondents

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

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CONSOLIDATED LIST OF RECORDS REQUESTED UNDER PAIA

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

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

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

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

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

90 Offences

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

(a) destroys, damages or alters a record;

(b) conceals a record; or

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

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

23 Records that cannot be found or do not exist

(1) If-

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

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

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

(ii) does not exist,

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

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

ANNEXURE: RECORDS REQUIRED

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

ANNEXURE: RECORDS REQUIRED¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³ Bundle addendum, page 870, paragraph 4.

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

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

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

7. All and any records vouching that LASA is concerned about the type of work Senior Litigators are performing, as differently alleged by Nair under oath in the witness stand at trial.

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

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

¹⁷ Bundle addendum, page 870, paragraph 4.

¹⁸ Bundle addendum, pages 869–70.

¹⁹ Ibid.

²⁰ Bundle addendum, page 869.

Provide written legal opinions ... Assist with in-house training ... mentoring and coaching to legal staff²¹ – consistent with the purpose originally advanced to the Board for which the post was created: to employ ‘professional staff that are senior enough to take on ... cases of a highly complex nature ... build up such capacity at each province linked to a high court unit. Such senior litigators would be able to undertake more complex work as well as support and mentor our other High Court staff’,²² and summarised in LASA’s amended response to Brink’s amended statement of claim: ‘to create a pool of specialist professionals whose role would be to attend to complex matters at various courts’.²³ A public statement on 5 March 2012 stated consistently again: ‘In very complex matters [involving ‘the rights of women and children’], our Senior Litigators provide support and advice to practitioners that need it.’²⁴ The whole thrust of the Strategic Plan 2009–12 was to scale up LASA’s civil legal services delivery capacity; this is canvassed, with references, in Brink’s heads of argument.²⁵

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

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

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

²¹ Bundle, pages 43 and 45.

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

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

²⁴ Bundle addendum, pages 825–6.

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

²⁶ Bundle addendum, page 986.

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

²⁸ Bundle addendum, page 870, paragraph 4.

²⁹ Bundle addendum, page 869.

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

Contradicting this allegation to the Board, and featuring nowhere in the pleadings and several affidavits in the matter, all essaying into the alleged budgetary reason for the abortion of the substantially completed Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, Nair informed the Portfolio Committee on 11 October 2010 that ‘LASA had no problems with regards to recruiting lawyers’³² ... There was a good trend for quality monitoring and the practitioners were performing well within target range.’³³

- IGNORE ITEMS 11 TO 15: THESE HAVE BEEN SATISFACTORILY DISPOSED OF
~~11. All and any communications by letter or email between the South African Human Rights Commission (‘SAHRC’) and LASA concerning the arrangement of the SAHRC’s PAIA training workshop for LASA’s national office staff held at the SAHRC Training Centre³⁴ in Braamfontein on 6 October 2011.³⁵~~

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

³⁰ Ibid.

³¹ Bundle, pages 244–8.

³² Bundle addendum, page 963.

³³ Bundle addendum, pages 961–2.

³⁴ Bundle addendum, page 922.

³⁵ Bundle addendum, pages 915–21.

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

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

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

³⁹ Bundle, pages 49–69.

⁴⁰ Bundle, pages 174–85.

⁴¹ Bundle addendum, pages 344–52.

⁴² Bundle addendum, page 915.

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

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

⁴³ Bundle addendum, pages 915–21.

⁴⁴ Bundle addendum, page 916.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Bundle addendum, page 919.

⁴⁹ Ibid.

⁵⁰ Bundle addendum, page 920.

⁵¹ Ibid.

⁵² Bundle addendum, pages 679 and 867.

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

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

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

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

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

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

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

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

⁵⁸ Bundle, pages 401-14.

⁵⁹ Bundle, page 499, paragraph 2.

⁶⁰ Bundle addendum, page 916, penultimate paragraph.

⁶¹ Bundle, pages 401-14.

⁶² Application to compel, volumes 1 and 3.

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

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

⁶⁵ Bundle addendum, page 916.

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

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

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

~~IGNORE ITEMS 21 TO 27: THESE HAVE BEEN SATISFACTORILY DISPOSED OF~~
21. ~~All and any communications between the SAHRC and LASA by letter or email concerning the SAHRC’s decision to subject LASA to a full audit for PAIA compliance, announced by the SAHRC to the National Assembly in October 2012 in its section 84 PAIA report for 2011/12, in which it reported LASA’s failure to comply with its PAIA reporting obligations to the SAHRC:~~

⁶⁶ Ibid.

⁶⁷ Bundle, page 920.

⁶⁸ Bundle, pages 678–9.

⁶⁹ Bundle, pages 866–7.

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

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'A case in point [was] where a complainant [Brink] brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year. ... The Commission engaged with LASA and remains concerned about the accuracy of section 32 reporting by LASA⁷¹ ... The Commission intends auditing LASA fully in the course of the 2012/13 financial year.'⁷² In court, LASA's national deputy information officer Nair⁷³ claimed under oath not to have known that the SAHRC had audited LASA for compliance with PAIA. According to SAHRC PAIA Unit director Fola Adeleke, per email to Brink on 18 January 2013: 'I confirm the LASA audit is currently underway and the officers who received the audit questionnaire this week did no include Mr Mtati.'

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

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

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

24. ~~LASA's officer(s) response(s) to the SAHRC's PAIA audit questionnaire, and covering letter(s) or email(s) to the SAHRC.~~

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

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

⁷¹ Bundle addendum, page 927, fourth paragraph.

⁷² Bundle addendum, page 928, second paragraph.

⁷³ Bundle, page 387.

⁷⁴ Bundle addendum, pages 927–8.

⁷⁵ Bundle addendum, page 894.

⁷⁶ Bundle addendum, page 896, 'The Chairperson said ...'.

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

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

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

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

⁷⁷ Bundle addendum, page 895, 'Mr J Jeffery...'

⁷⁸ Bundle addendum, page 896, sixth paragraph.

⁷⁹ Ibid.

⁸⁰ Bundle addendum, page 895.

⁸¹ Bundle addendum, page 915.

⁸² Ibid.

⁸³ Bundle addendum, pages 925–30.

⁸⁴ Bundle addendum, pages 1027–9.

⁸⁵ Bundle addendum, pages 1030–33.

⁸⁶ Bundle addendum, pages 1065–9.

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

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

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

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

IGNORE ITEM 32: IT HAS BEEN SATISFACTORILY DISPOSED OF

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

⁸⁷ Bundle addendum, page 1071.

⁸⁸ Bundle addendum, page 1070.

⁸⁹ Bundle addendum, page 709.

⁹⁰ Bundle, addendum, page 1031.

⁹¹ Bundle, addendum, page 1066.

⁹² Bundle, addendum, page 679.

⁹³ Bundle, addendum, page 678.

⁹⁴ Bundle, pages 363–86.

⁹⁵ Bundle, page 363.

⁹⁶ Bundle, page 387.

⁹⁷ Bundle addendum, pages

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

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

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

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

⁹⁹ Bundle, pages 101–4.

¹⁰⁰ Bundle, pages 210–24.

¹⁰¹ Bundle addendum, page 1041.

¹⁰² Bundle, pages 213–16.

¹⁰³ Bundle addendum, pages 390–1.

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

¹⁰⁵ Bundle addendum, pages 392–3.

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

¹⁰⁷ Bundle addendum, pages 736–7.

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

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

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

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

¹⁰⁸ Bundle addendum, pages 738–40.

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

¹¹⁰ Bundle addendum, page 708

¹¹¹ Bundle addendum, page 738, paragraph 1.

¹¹² Bundle addendum, page 709, paragraph 4.1.7.

¹¹³ Bundle, page 736, 'Background'.

¹¹⁴ Bundle addendum, pages 994–7.

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

¹¹⁶ Bundle, page 46.

¹¹⁷ Bundle addendum, pages 994–7.

¹¹⁸ Bundle addendum, page 1040.

¹¹⁹ Bundle addendum, page 738, paragraph 1.

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

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

¹²⁰ Bundle, pages 109–65.

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

¹²² Bundle, page 119ff, paragraphs 44ff.

¹²³ Bundle, page 186.

¹²⁴ Bundle, page 187.

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

¹²⁶ Bundle addendum, pages

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

¹²⁸ Bundle, pages 101–4.

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

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

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

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

¹³⁰ Bundle, page 104, paragraph 7.3.

¹³¹ Bundle, page 101, paragraph 6.7.

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

¹³³ Bundle addendum, pages 1012 – 4.

¹³⁴ Bundle, pages 505–7.

¹³⁵ Bundle, page 502.

¹³⁶ Bundle addendum, page 1015.

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

¹³⁸ Bundle, pages 210–24.

¹³⁹ Bundle, page 223, paragraph 39.

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

NOTE WELL:

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

90 Offences

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

(a) destroys, damages or alters a record;

(b) conceals a record; or

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

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

23 Records that cannot be found or do not exist

(1) If-

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

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

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

(ii) does not exist,

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

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

25 Decision on request and notice thereof

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

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

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

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

INTERPRETATION ACT 33 OF 1957

4 Reckoning of number of days

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

B

25 Baker Road
Prestbury
Pietermaritzburg
17 October 2013

C

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

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

Dear Ms Vedalankar

PAIA REQUEST
ADDITIONAL RECORD REQUIRED

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

There is a further record I require, namely:

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

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

Yours sincerely



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

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

ANNEXURE: RECORDS REQUIRED

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

1. The minutes of all Free State and North West regional management committee meetings held between April and September 2010.
2. All and any communications between:
 - the Free State and North West regional office, and/or
 - the Mahikeng Justice Centre, and/or
 - Mahikeng Senior Litigator Adv Nzame Skibi, and
 - the LASA national office, and/or
 - the Eastern Cape regional office, and/or
 - the Mthatha Justice Centreconcerning Adv Skibi's:
 - 2.1 application,
 - 2.2 short-listing,
 - 2.3 interview,
 - 2.4 selection, and,
 - 2.5 approvalfor the Mthatha Senior Litigator post, and,
 - 2.6 the subsequent cancellation of the recruitment and of Adv Skibi's transfer and appointment to the said post, and the reasons given therefor.
3. All and any communications between:
 - the Free State and North West regional office, and/or
 - the Mahikeng Justice Centre, and
 - the LASA national officeconcerning the replacement of Adv Skibi at Mahikeng with another Senior Litigator, and/or the intended advertisement of the post being vacated by Adv Skibi, and/or any decision not to seek a replacement to fill the Mahikeng Senior Litigator post that Adv Skibi was to vacate on being transferred to the equivalent post at Mthatha before the cancellation of the recruitment.

4. All and any communications between Adv Skibi and:
- the Free State and North West regional office, and/or
 - the Mahikeng Justice Centre, and/or
 - the LASA national office

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

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

90 Offences

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

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

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

23 Records that cannot be found or do not exist

(1) If-

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

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

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

25 Decision on request and notice thereof

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

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

INTERPRETATION ACT 33 OF 1957

4 Reckoning of number of days

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

ANNEXURE: RECORDS REQUIRED

PART ONE

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

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

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

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

PART TWO

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

FORM A ANNEXURE

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

¹ Record, page 359, lines 10–15.

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

³ Record, page 398, lines 1–3.

⁴ Record, page 397, line 21.

⁵ Record, page 397, line 15.

⁶ Record, page 398, lines 1–3 .

⁷ Record, page 398, lines 3–10.

⁸ Record, page 397, line 15.



Annexure to Form A

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

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

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

² Record, page 338, lines 8–9.

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

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

⁵ Record, page 349, lines 10–17.

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

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

⁶ Record, page 410, lines 15–21.

⁷ Record, page 409, line 11.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³ Record: Page 366, lines 14–21.

¹⁴ Record, page 410, lines 21–4.

¹⁵ Pleadings bundle, page 143, paragraph 8: ‘The second round of interviews is, in fact, the brain-child of the Chairperson together with the executive management after it was realised that most of the senior practitioners who were recruited without having undergone a second interview were lacking experience in vital areas like High Court litigation skills and also given the seniority of the position involved herein.’

ANNEXURE: RECORDS REQUIRED

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

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

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

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

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

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

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

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

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

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

'As an organisation, we denied the said finding by SAHRC and I am aware that the CEO and some of our senior members met with SAHRC to deal with the said incorrect finding.'

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

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

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

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

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

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

6. After the selection panel's interviews of shortlisted candidates for the Mthatha Senior Litigator post in May 2010,¹⁰ all and any records showing the form of 'transit' that 'a file that was to be delivered to Legal Aid SA Head Office in re the position of senior litigator position for Mthatha was lost in', in the form of a registered post slip, courier waybill, covering email, telefax covering page and transmission report, or other such voucher.

¹ Record, page 474, lines 13–22.

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

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

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

⁵ Bundle addendum, page 709, section 4.1.7.

⁶ Bundle addendum page 707.

⁷ Bundle addendum, page 1036.

⁸ Bundle, page 46.

⁹ Bundle addendum, page 1066.

¹⁰ Bundle addendum, page 994.

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

'183.2. I am responsible for the Port Elizabeth, Eastern Cape Region and I am advised by Mr Sekgota that a file that was to be delivered to Legal Aid SA Head Office in re the position of senior litigator position for Mthatha was lost in transit. I believe Ms Magazi informed Mr Sekgota telephonically sometime last year.

...

183.4. The Applicant was informed of the lost file and he still does not believe the explanation given to him. I am unable to take this issue any further.'

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

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

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

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

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

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

Note: As above.

8. The complete contents of Human Resources Executive Amanda Clark's file or computer folder on the Mthatha Senior Litigator post.
9. All records of communications between LASA's national office and its Eastern Cape Regional Office after the discovery that 'a file that was to be delivered to Legal Aid SA Head Office in re the position of senior litigator position for Mthatha was lost in transit' – including any request for the file, or a copy of it, to be sent again.

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

¹¹ Bundle addendum, page 709, paragraph 4.1.7.

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

10. The Strategic Plan 2009–12.

Note: Brink has only a draft version.¹⁴

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

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

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

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

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

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

According to Nair's sworn evidence at trial:

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

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

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

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

¹² Bundle, page 46.

¹³ Bundle addendum, page 994.

¹⁴ Bundle, pages 444–50.

¹⁵ Bundle addendum, page 1060, paragraph 3.2.1.

¹⁶ Bundle addendum, pages 708–10.

¹⁷ Bundle, page 251.

¹⁸ Record, page 425, lines 19–23.

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

²⁰ Bundle addendum, page 877.

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

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

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

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

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

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

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

'Six Senior Litigators were filled during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.'²⁵

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

²¹ Bundle addendum, page 883, section 4.1.

²² Bundle, page 1057.

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

²⁴ Bundle addendum, page 1060.

²⁵ Bundle addendum, page 869.

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

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

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

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

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

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

(a) CEO Vidhu Vedalankar,

(b) NOE Brian Nair,

(c) KZN ROE Vela Mdaka,

(d) then Pietermaritzburg JCE Bertus Appel, and,

(e) then Durban Justice Centre Executive Kishore Mehta.

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

²⁶ Record, page 344, line 9.

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

²⁸ Bundle, page 236, paragraph 6.

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

³⁰ Bundle addendum, page 1066.

³¹ Bundle addendum, page 1070.

³² Bundle addendum, page 1066.

³³ Bundle addendum, page 1070.

³⁴ Bundle, pages 241–3.

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

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

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

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

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

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

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

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

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

³⁵ Record, page 342, lines 14–15.

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

³⁷ Heads of argument, paragraph 61.

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

³⁹ Bundle, pages 146–7, paragraph 179.

⁴⁰ Bundle addendum, page 831.

⁴¹ Bundle, page 20.

⁴² Bundle addendum, page 829.

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

⁴⁴ Ibid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁵² Bundle, page 103, paragraph 6.7.

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

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

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

B
H

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

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

Table 13: Employment and vacancies per critical occupation

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

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

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

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

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

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

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

⁵⁶ Record, page 480, lines 19–23.

⁵⁷ Record, page 375, lines 10–11.

⁵⁸ Record, page 375, lines 17.

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

⁶⁰ <http://linkd.in/17DpY3F>.

Completely blank on my name, genuinely apologetic.’

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

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



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

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

⁶¹ Bundle, page 168, email quoted.

⁶² Bundle, pages 168–72; and 188.

⁶³ <http://linkd.in/17DpY3F>.

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

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

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

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

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

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

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

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

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

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

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

⁶⁷ Bundle, pages 109–65; and 197–208.

⁶⁸ Bundle, pages 197–208.

⁶⁹ Bundle, pages 109–65.

⁷⁰ Bundle, page 209.

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

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

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

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

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

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

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

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

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

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

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

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

⁷² PA bundle, page 222.

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

⁷⁴ PA bundle, pages 220 and 221.

⁷⁵ PA bundle, page 231.

⁷⁶ Ibid.

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

⁷⁸ PA bundle, page 123.

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

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

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

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

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

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

⁷⁹ Ibid.

⁸⁰ PA bundle, page 219.

⁸¹ PA bundle, pages 18–21.

⁸² PA bundle, page 23.

⁸³ PA bundle, page 212.

⁸⁴ PA bundle, page 53.

⁸⁵ Bundle, pages 244–8.

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

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

Dear Mr Makokoane

PAIA REQUEST: AMENDMENT OF ITEM 34

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

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

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

Table 13: Employment and vacancies per critical occupation

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

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

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

Table 18: Employment and vacancies per critical occupation

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

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

Table 19: Employment and Vacancies per critical occupation

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

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

Consequently, my request for a record showing –

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

– has already been answered by the latest annual report:

It’s 64 JCE posts.

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

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

What I require instead is:

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

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

Yours sincerely



ANTHONY BRINK

Cc: CSE Thembile Mtati and CLM Solly Sekgota

ANNEXURE: RECORDS REQUIRED

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

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

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

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

23 Records that cannot be found or do not exist

(1) If-

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

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



Legal Aid
South Africa

Mr. Thembile Mtati
Chief Operations Officer of Legal Aid South Africa,
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Johannesburg

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Dear Mr. Mtati,

APPOINTMENT AS THE DEPUTY INFORMATION OFFICER AND DELEGATION OF POWERS IN TERMS SECTION 17 OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000: THEMBILE MTATI

I hereby, in my capacity as the Chief Information Officer, and by virtue of the provisions of section 17 of the Act, appoint you as the Deputy Information Officer for Legal Aid South Africa.

I further delegate all the powers conferred upon me in terms of the Act without any condition. Please note that the delegation of these powers do not prohibit me from exercising any of the powers conferred upon me in terms of the Act.

Your appointment and delegation shall be valid for an indefinite period subject to your employment with Legal Aid South Africa and may be withdrawn or amended at any time at my discretion.

Regards,



Vidhu Vedalankar

Chief Executive Officer and Information Officer

Legal Aid South Africa

Date: 11 - 01 - 2016

Your voice. For justice.



Our Ref: T. Mtati
Your Ref:
Date: 15 April 2016

Advocate Anthony Brink
1 Boast Road;
Eshowe
3815

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Dear, Sir

RE: IMPLEMENTATION OF SETTLEMENT AGREEMENT: A BRINK / LEGAL AID SA

The above matter refers.

In terms of clause 4 of the settlement agreement, I was required to provide you with all documents requested by you on the 15th April 2016. I have provided all the documents I could find and in the event that any of the documents requested do not exist or cannot be found, I have accordingly attached an affidavit in terms section 23 of the Promotion of Access to Information Act 2 of 2000 ("Act") certifying that such documents do not exist or otherwise could not be found.

Request Number	Request	Reply
A1	Minutes of all Eastern Cape Regional Management Committee meetings held in 2010	Four sets of minutes are attached, as appendix A1 namely 18 January 2010, 15 & 16 April 2010, 11 June 2010, 8 October 2010 and 12 November 2010.

A2	Apropos of the aborted Mthatha Senior Litigator recruitment, the selection panel's recommendation of Adv Nzame Skibi for appointment on 24 May 2010 signed by all members of the panel.	The unsigned selection process panel's recommendation is attached as appendix A2 , and the names of candidates have been blackened. No signed recommendation exists.
A3	Regret letters/emails sent to unsuccessful candidates	Section 23 of the PAIA deposited.
A4	If the recommendation of Adv Skibi was scanned and emailed as attachment to the Legal Aid SA national office for approval, the covering email; if sent to the national office for approval via postal service, the covering letter and proof of registered post.	Section 23 of the PAIA deposited.
A5	All other communications between National Office and Eastern Cape Regional Office and/or Mthatha Justice Centre concerning recommendation of Adv Skibi for transfer and appointment to the post	Section 23 of the PAIA deposited.
A6	All communications between National Office and the Eastern Cape Regional Office and/or Mthatha JC concerning: -approval of Adv Skibi's appointment and transfer to the post; The cancellation of Adv Skibi's appointment and transfer to the post and - the reason for the cancellation of the recruitment to the post	Section 23 of the PAIA deposited.

A7	All communications between Eastern Cape Regional Office and/or Mthatha Justice Centre and the Free State and North-West regional office, and/or the Mafikeng Justice Centre, and or Mafikeng Senior Litigator Adv Nzame Skibi concerning the Senior Litigator post.	Section 23 of the PAIA deposited.
B1	All and any records vouching the sworn allegation made on affidavit to the Durban Labour Court ('court') on Legal Aid South Africa National Operations Officer Brian Nair's instructions ² in the matter of Anthony Robin Brink ('Brink') v Legal Aid South Africa ('LASA'), Case No. LC D529/11, that 'many of the senior litigators have failed to live up to the required expectations as they, despite many years in practice, lacked the required Court experience.	Section 23 of the PAIA deposited.
B2	All and any records vouching the allegation made to court in the pleadings on Nair's instructions that 'most of the senior practitioners who were recruited without having undergone a second interview were lacking experience in vital areas like High Court litigation skills	Section 23 of the PAIA deposited.
B3	All and any records vouching the allegation made to court on affidavit on Nair's instructions, and supported by Nair on affidavit, ⁹ that LASA had 'conducted a quality assurance in respect of the existing senior litigators and it was out of concern from the results of such exercise that the concerns around these officials were noted.' ¹⁰ More particularly, the documents required are the record of the decision allegedly taken to 'conduct a quality assurance' audit of LASA's Senior Litigators' professional Performance; the record of the	Section 23 of the PAIA deposited.

	audit; and the record where 'concerns around' their performance were 'noted'.	
B4	All and any records identifying which of the 'many of the senior litigators', ¹¹ namely Pieter Nel at Bloemfontein; Herman Alberts at Pretoria; Mornay Calitz at Cape Town; William Karam at Johannesburg; Nzame Skibi at Mahikeng; and Elizabeth Crouse at Port Elizabeth ¹² (described by Nair to the Board as 'some of our most senior and experienced lawyers'), ¹³ 'have failed to live up to the required expectations as they, despite many years in practice, lacked the required Court experience' ¹⁴ and are 'lacking experience in vital areas like High Court litigation skills'. ¹⁵	Section 23 of the PAIA deposited.
B5	All and any communications between LASA executive management and the said allegedly inexperienced and unskilled Senior Litigators concerning their alleged inadequate professional ability to do their jobs properly, as alleged by Nair in the pleadings and interlocutory affidavits before trial for the true information of court.	Section 23 of the PAIA deposited.
B6	All and any records vouching Nair's allegation to the Board in his 'Report to Board' of 26 November 2011 ¹⁶ under the heading 'Quality reviews of senior litigators' that 'It has therefore been agreed that a national quality review panel will be established that will include a few senior legal executives, as well as someone external to the organization, possibly a retired Judge, who would conduct these reviews. The terms of reference for these review panels will include: <ul style="list-style-type: none"> • an examination of the type of cases handled to 	Section 23 of the PAIA deposited.

	<p>determine if it complies with our requirements • an examination of the level of preparedness for their cases • a review of the appropriateness of the legal strategy adopted in their cases • a determination of whether the most appropriate outcome of the case was achieved. The review panel will be established during the third quarter of this financial year [i.e. by the end of December 2011]. All senior litigators will be reviewed by this panel before the end of this financial year¹⁷ [i.e. before 31 March 2012]. More particularly, the record required is of the decision, which Nair alleged to the Board had been 'agreed', that 'a national quality review panel will be established' to audit the performance of LASA's allegedly underperforming Senior Litigators.</p>	
B7	<p>All and any records vouching that LASA is concerned about the type of work Senior Litigators are performing, as differently alleged by Nair under oath in the witness stand at trial.</p>	<p>Section 23 of the PAIA deposited.</p>
B8	<p>All and any records vouching that as at 11 March 2013,²⁶ 'The ['national quality review'] panel [for Senior Litigators] has not been constituted and terms of reference are still under consideration.'²⁷ More particularly, records are required vouching that the 'terms of reference are still under consideration'.</p>	<p>Section 23 of the PAIA deposited.</p>
B9	<p>The record of the decision, which Nair alleged in his November 2011 'Report to Board' had been taken, that 'We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is [sic] being achieved by the current incumbents'.²⁹</p>	<p>Section 23 of the PAIA deposited.</p>

B10	All and any records identifying the 'recruitment challenges'30 alleged by Nair in his November 2011 'Report to Board' to have prevented the promotion of Durban High Court Unit Manager Bongani Mngadi to the Durban Senior Litigator post for which he was recommended on 23 November 2009.31	Section 23 of the PAIA deposited.
B16	All and any communications, memoranda, minutes, reports, recommendations and the like- including to the Board-following Legal Aid SA's receipt of the SAHRC's PAIA training workshop report noting Legal Aid SA's challenges in complying with PAIA, its lack of application based knowledge, the fact they had previously been misapplying the provisions of PAIA.	The records relating to the communications with SAHRC is attached as appendix B16 <i>irrelevant</i>
B17	All and any records vouching that Legal Aid SA proceeded to review decisions which may not have had justification in terms of PAIA as undertaken to the SAHRC	The records are attached as appendix B16 <i>irrelevant</i>
B18	All and any records vouching that Legal Aid SA proceeded to create guidelines within the organisation to ensure that misapplication does not recur as undertaken to SAHRC	The records are attached as appendix B16 <i>irrelevant</i>
B19	All and any records vouching that a clear budget dedicated to PAIA compliance and implementation the need for which Legal Aid SA identified to the SAHRC was discussed by any competent committee at Legal Aid SA after the PAIA training workshop and proposed to the Board for approval.	Section 23 of the PAIA deposited.
B20	All and any e-mail communications between Nair and the CSE and/or CLM over the period 20-24 August	Section 23 of the PAIA deposited.

	2012 in respect of Amendment of Legal Aid SA Section 32 report.	
B28	Records identifying what posts were frozen as at 30 November 2009; ⁸⁴ as at 31 March 2010; ⁸⁵ and as at 30 June 2010. ⁸⁶	Section 23 of the PAIA deposited.
B29	The instruction to alter the recruitment/vacancy/budget statistics as at 30 June 2010 before furnishing them to Brink on 5 July 2013.	Section 23 of the PAIA deposited.
B30	Instruction to alter the recruitment/vacancy/budget statistics after 30 June 2010 to reflect that the Eastern Cape only had one budgeted, filled Senior Litigator post.	Section 23 of the PAIA deposited.
B31	The record of COO's delegation as national deputy information officer	The delegation of the COO is attached as appendix B31 .
B33	The record of counsel's advice allegedly given to CEO supporting her refusal on 18 October 2010 to surrender records duly requested by Brink in August and December 2010 with which refusals she persisted on 28 January 2011 even rejecting Brink's compulsory request fee	Section 23 of the PAIA deposited.
B34	The record of Vedalankar's approval of the LSTC's resolution to abolish the Kimberley Senior Litigator post, create a new Senior Litigator post at Mthatha, and transfer the budget, before the Mthatha Senior Litigator post was advertised in April 2010 ¹¹⁶ and Adv Nzame Skibi was recommended for appointment to it on 24 May. ¹¹⁷	Section 23 of the PAIA deposited.
B35	The record for the CEO's refusal to approve the abolition of the redundant Kimberley Senior Litigator	Section 23 of the PAIA deposited.

	post, the creation of the pressingly needed Mthatha Senior Litigator post, and the transfer of budget.	
B36	All Communication between Mlambo JP and CEO and NOE regarding Brink's first petition to the Board on 30 November 2010 protesting CEO's illegal blanket refusal of his August 2010 request for 51 specified records under section 11(1) of PAIA or sworn certification under section 23 that they do not exist and the manifestly irregular abortion of his recruitment in light of the surge in recruitment and the new post creation in the first quarter April to June 2010, and the advertisement in April for Senior litigator for Mthatha, while his recruitment remain silently unfinalised- the dismissive response to which was written on CEO own computer with Mlambo J signature image pasted in with his knowledge and consent according to Mtati instructed by Nair.	Section 23 of the PAIA deposited.
B37	Email from CEO to Mlambo JP in December 2010 covering the letter She drew on her computer for him with his image signature pasted, to send to Brink dismissing his fundamental rights violation complaints, which letter Mlambo JP emailed to Brink 30 December 2010.	Section 23 of the PAIA deposited.
B38	The Minister's demand for an explanation following Brink's third petition to the Board on 25 February 2011 copied to the Minister and to Parliament, about CEO's persistence repeated illegal refusal to surrender records duly requested under PAIA and the plainly irregular abortion of his recruitment to PMB senior litigator post on the evidence then known to him	Section 23 of the PAIA deposited.

B39	Mlambo JP's letter or email to the Minister covering the Confidential report Re: Adv Anthony Brink on 9 March 2011 that Nair wrote	Section 23 of the PAIA deposited.
B40	Nair's covering email to CEO to which he attached the letter he drew for her to send to Brink on 18 October 2010 refusing his entire 51 item PAIA request of August 2010 on the basis of a false statement of legal principles claimed applicable and a fake quotation from a reported judgment claimed to support them and alleging that the Durban, Pietermaritzburg and Mthatha Senior Litigator's Post has been frozen in July 2010 on account of budgetary insufficiency	Section 23 of the PAIA deposited.
B41	Nair's covering email to CEO to which he attached the letter he drew for her to send to Brink on 28 January 2011 refusing his second PAIA request on 15 December 2010, refusing his August 2010 request again and reiterating the budgetary justification advanced in October 2010 for the abortion of the Applicant's recruitment	Section 23 of the PAIA deposited.
C	Spreadsheet attached to Nair's email to COO on 15 July 2010 with heading "Budget cuts-Reduction in Criminal Court Coverage." July 2010	Section 23 of the PAIA deposited.
D1	Minutes of all Free State and North West Regional Management Committee meetings held between April and September 2010	The records are attached as appendix D1
D2	All and any Communication between the Free State and North-West Regional office and/or the Mahikeng Justice Centre, and/or Mahikeng Senior Litigator Adv	Section 23 of the PAIA deposited.

	<p>Skibi and National Office and/or the EC Regional office and/or the Mthatha JC concerning Adv Skibi's:</p> <ul style="list-style-type: none"> -application -short-listing -interview -selection -approval <p>For the Mthatha Senior Litigator Post: the subsequent cancellation of the recruitment and, of Adv Nzame Skibi's transfer and appointment to the said post and the reasons given therefore</p>	
D3	<p>All and any Communications between the Free State and North West regional office and/or Mafikeng Justice Centre and National Office concerning the replacement of Adv Skibi at Mafikeng and/or the intended advertisement of the post being vacated by Adv Skibi, and/or any decision not to seek a replacement to fill the Mafikeng Senior litigator post that Adv Skibi was to vacate on being transferred to the equivalent post at Mthatha before the cancellation of the recruitment</p>	<p>Section 23 of the PAIA deposited.</p>
D4	<p>All and any Communications between Adv. Skibi and the Free State and North West regional office, and/or the Mafikeng Justice Centre, and/or Legal Aid SA's national office concerning the relocation to Mthatha</p>	<p>Section 23 of the PAIA deposited.</p>

	before the cancellation of his recruitment to the Mthatha Senior Litigator post	
E1	Concerning the Children's court Practitioner post at Legal Aid SA's Durban Justice Centre currently occupied by Mgcamu: The minute of the regional management meeting at which it was decided that the Durban JC required a Children's Court practitioner and to apply for the creation of such post	Section 23 of the PAIA deposited.
E2	Mdaka's motivation under section 8.1.2 (b) of the Approval Framework to the Legal Services Committee to recommend(he originates) the creation of the post at Durban JC	Section 23 of the PAIA deposited.
E3	The record showing that the HRE was consulted before the post was created as required by section 8.1.2 (b) of the Approval Framework	Section 23 of the PAIA deposited.
E4	The LSTC's resolution to recommend the creation of the post	Section 23 of the PAIA deposited.
E5	The NOE and CEO's approval of the LSTC's resolution to recommend the creation of the post in their capacities as executing authorities delegated by 8.1.2 (b) of the Approval Framework to co-approve the creation of the new posts at levels 11 – 13 and OSD LP 9 &10	Section 23 of the PAIA deposited.
E6	Record of the HRE's confirmation under Note 17 of the Approval Framework that the vacancy and budget for the post existed before it was advertised	Section 23 of the PAIA deposited.

E7	Record showing that the vacancy existed prior to the advertisement	Section 23 of the PAIA deposited.
E8	Record showing that the post was budgeted for prior to the advertisement	Section 23 of the PAIA deposited.
E9	The advertisement for the post	Section 23 of the PAIA deposited.
E10	The shortlist of applicant's for the post	Section 23 of the PAIA deposited.
E11	The portion of the interview minute showing that Ngcamu disclosed his two convictions for professional misconduct by the Law Society and his rebuke by the JSC for not disclosing those upon application for a Labour Court judgeship in 2007.	Section 23 of the PAIA deposited.
E12	The selection panel's recommendation of Ngcamu, showing the names of the panel members, the names of the interviewed candidates, and whether or not they met the advertised qualifying criteria. Confidential information to be blacked out.	Section 23 of the PAIA deposited.
E13	The covering letter or email transmitting the recommendation to NOE for his approval under section 8.1.2 (b) of the Approval Framework	Section 23 of the PAIA deposited.
E14	The record of the NOE's approval of the recommendation and if applicable to the level of the post the CEO's agreement as per the said section.	Section 23 of the PAIA deposited.
E15	Ngcamu's contract of employment as Children's Practitioner	Section 23 of the PAIA deposited.

E16	The letters to the other shortlisted interviewed candidates informing them that that they had been unsuccessful as required by section 1.5 of the Policies and Procedures on Recruitment	Section 23 of the PAIA deposited.
E17	A record indicating the grade of Ngcamu's post if it does not appear on the advertisement	Section 23 of the PAIA deposited.
E18	All and any contracts of employment between Ngcamu and Legal Aid SA at any Justice Centre entered into prior to his appointment as Children's Practitioner at Durban JC	Section 23 of the PAIA deposited.
E19	All email or letter Communications between Ngcamu and Legal Aid SA prior to employment as Children's Practitioner at Durban JC or any other employment by Legal Aid SA	Section 23 of the PAIA deposited.
E20	The selection panel's recommendation of Brink and Mngadi for the Pietermaritzburg and Durban Senior Litigator posts showing Ngcamu's fulfilment or otherwise of the advertised qualifying criteria and the reason why he was not recommended	Section 23 of the PAIA deposited.
E21	Letter to Ngcamu informing him that he was unsuccessful as a shortlisted candidate in his application for the Senior Litigator post as required by section 1.5 of the Policies and Procedures on Recruitment	Section 23 of the PAIA deposited.
E22	Letter sent to Ngcamu informing him that Legal Aid SA has decided not to fill the KwaZulu-Natal Senior Litigator post.	Section 23 of the PAIA deposited.

E23	Deputy Information Officer Patrick Hundermark's written delegation by CEO under section 17(3) of PAIA	Section 23 of the PAIA deposited.
F1	Apropos of NOE's allegation in his Report to Board on Senior Litigators in November 2011 where it was expressed that the current method of evaluation of their performance by the High Court Managers and thereafter by our Legal Quality Assurance may not be inappropriate in respect of Senior Litigators. The minute of the meeting where this alleged view was expressed and or the record of the communication of this view to Nair or other executive.	Section 23 of the PAIA deposited.
F2	The record of the NOE's instruction to Mr Hundermark the Legal Development Executive to draft the terms of reference of a review panel to conduct performance reviews or quality reviews for Senior Litigators	Section 23 of the PAIA deposited.
F3	The minutes of the number of meetings that NOE claimed to have been hosted by Mr Hundermark in upholding the responsibility outlined in F2.	Section 23 of the PAIA deposited.
F4	All and any records vouching that Mr Hundermark has acted to develop the terms of reference set out in Nair's said report to the Board and to identify possible people to contribute to the panel and to consult anyone about it	Section 23 of the PAIA deposited.
G1	The minutes kept by the HRE of the second-round interviews held for some of the ROE posts as alleged by Nair at the trial of trial case LC D529/11	Section 23 of the PAIA deposited.
G2	The recommendations made by the selection panel of candidates for Bloemfontein, Cape Town, Johannesburg, Mafikeng, Port Elizabeth and Pretoria	The records are provided marked appendix G2 .

NA 2nd panel.

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	<p>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.</p>	
G3	<p>In respect of Bloemfontein, CapeTown, Johannesburg, Mahikeng, 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 interview panelists to consider if there was anyone else they would be interested to interview.</p>	<p>Section 23 of the PAIA deposited.</p>
G4	<p>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.</p>	<p>Section 23 of the PAIA deposited.</p>

G5	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 were shortlisted and interviewed by the selection panel for the post but not recommended by it.	Section 23 of the PAIA deposited.
G6	In respect of the Bloemfontein, CapeTown, 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	Section 23 of the PAIA deposited.
G7	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.	Section 23 of the PAIA deposited.
G8	In respect of the Kimberly Senior Litigator Post Nair's emails to the five members of the second round panel	Section 23 of the PAIA deposited.

	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.	
G9	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	Section 23 of the PAIA deposited.
G10	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.	Section 23 of the PAIA deposited.
G11	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	Section 23 of the PAIA deposited.

	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.	
G12	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.	Section 23 of the PAIA deposited.
G13	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	Section 23 of the PAIA deposited.
G14	The record of Mlambo JP's communication to executive management of his brain child of a second	Section 23 of the PAIA deposited.

	round of interviews referred to in Legal Aid SA's original response to the original statement of claim in case LC D529/11.	
H1	Judge Cele's suggestion to Legal Aid SA that Brink's request for a directive that Legal Aid SA hand over the copy of the trial record it printed for him under case number LC D529/11 be satisfied by giving him an electronic copy of the record instead	Section 23 of the PAIA deposited.
H2	The transcript of the trial record under case number LC D529/11	The trial bundles marked appendix H2 are provided.
H3	All and any records vouching that a meeting took place between the SAHRC and LASA's 'CEO and some of our senior members' to discuss the SAHRC's allegedly 'incorrect finding' contained in its section 84 report for 2011/12 on public body compliance with PAIA, presented to the National Assembly in October 2012, namely the finding that LASA (Vedalankar) had failed to comply with its (her) reporting obligations under section 32. The record(s) will show the date and place of the meeting, who attended it, and the outcome.	Section 23 of the PAIA deposited.
H4	The record reflecting that as ordered LSTC on 24 March 2010 then manager then Legal Administration, National Operations Bee-Mari Schoeman facilitated the transfer of budget that existed for a Senior Litigator post at Kimberley to Mthatha JC.	Section 23 of the PAIA deposited.
H5	The records of CEO and NOE's respective final approval and agreement of the abolition of the Kimberley Senior litigator post and establishment of the Mthatha Senior Litigator post under section 8.1.2	Section 23 of the PAIA deposited.

	(b) of the Approval Framework before the Mthatha post was advertised	
H6	After the selection panels interviews of shortlisted candidates for the Mthatha Senior Litigator post in May 2010 all and any records showing the form of transit that a file that was to be delivered to National Office in re the position of senior litigator position for Mthatha was lost in the form of a registered post slip, courier waybill, covering email, telefax covering page and transmission report or other such voucher	Section 23 of the PAIA deposited.
H7	Copies of the contents of the file in re the position of senior litigator position for Mthatha retained by the Eastern Cape HR Manager: Thenjiwe Magazi before dispatching the original or copy to the National Office	The records are attached as appendix H7 .
H8	The complete contents of the HRE's file or computer folder on the Mthatha Senior Litigator post	Section 23 of the PAIA deposited.
H9	All Records of communications between National Office and the Eastern Cape Regional Office after the discovery that a file was to be delivered to National Office in re the position of senior litigator for Mthatha was lost in transit including any request for the file, or a copy of it, to be sent again	Section 23 of the PAIA deposited.
H10	The Strategic Plan 2009-12	The record is attached as appendix H10 .
H11	The minute of the September 2008 Board meeting at which the Strategic Plan 2009-12 was approved	Section 23 of the PAIA deposited.

H12	The minutes of all the LSTC meetings held in the period October 2009-February 2011 besides the minute of its March 2010 meeting	The record is attached as appendix H12 .
H13	The minutes of all management executive committee meetings held in the period October 2009 to February 2011.	Section 23 of the PAIA deposited.
H14	The minutes of all Board Executive meetings held in the period October 2009-February 2011	Section 23 of the PAIA deposited.
H15	The minutes of all Board meetings held in the period October 2009-February 2011	Section 23 of the PAIA deposited.
H16	Business Plans for 2009/10 and 2010/11. Business Plans for 2012/2013 and 2013/14.	The records attached as appendix H16
H17	Excerpts comprising of the cover or first identifying page, and the pages containing provision for Senior Litigator salaries in the budget for 2013/2014	Section 23 of the PAIA deposited.
H18	The minute of the Board meeting where the budget for 2013/2014 was approved	Section 23 of the PAIA deposited.
H19	The 2013/2014 report to the SAHRC under section 32 of PAIA	The record is attached as appendix H19
H20	The payment voucher of the Department of Justice and Constitutional Development reflecting the date of its transfer of OSD phase 1 funding for 2009/10	Section 23 of the PAIA deposited.
H21	The record of any Strategic Plan Annual Review workshop or Board meeting at which it was resolved not to fill the remaining three vacant Senior Litigator posts.	Section 23 of the PAIA deposited.

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H22	The record showing discussion by Legal Aid SA executives that Senior Litigators may not be fulfilling Legal Aid SA's objectives for such posts as alleged by Nair.	Section 23 of the PAIA deposited.
H23	All and any reviews of Senior Litigator performance pertaining to whether or not objectives for such posts were being fulfilled.	Section 23 of the PAIA deposited.
H24	The record of the decision not to fill Senior litigator Post for the said reason referred to in Nair's report to the Board of November 2011	Section 23 of the PAIA deposited.
H25	All and any Records vouching that the NOE was amongst executives who began to deliberate in regard to the budgetary issues that confronted them in March 2010; that the expected OSD phase 1 funding had not been included in the baseline budget for 2010/11 or alternatively that the NOE was involved in pursuing the Department's payment of ISD phase 1 funding in any manner whatsoever	Section 23 of the PAIA deposited.
H26	Excerpts of recruitment statistics showing Senior Litigator post occupancies and vacancies for March, April, and May 2010 and July, August, September, October and November 2010	Section 23 of the PAIA deposited.
H27	The executive instruction to transfer the Senior Litigator budget from Mthatha back to Kimberley	Section 23 of the PAIA deposited.
H28	In response to the COO's memorandum circulated on 30 September 2010 requesting Cost-cutting proposals	Section 23 of the PAIA deposited.

	<p>from them. The following records are requested in relation to Cost-cutting proposals submitted</p> <ul style="list-style-type: none"> -CEO -NOE -KZN ROE -Bertus Appel -Kishore Mehta 	
H29	The Treasury budget allocations letter released at the end of 2009 to which Nair referred in his evidence	Section 23 of the PAIA deposited.
H30	The records of all Nair's decisions taken to freeze posts with or without the CEO's agreement and without the approval of the Board.	Section 23 of the PAIA deposited.
H31	Email/letter to Bongani Mngadi informing that the KZN Senior Litigator posts have been cancelled (April/May 2010)	The record is attached marked appendix H31
H32	All counsel's fee notes for professional services rendered to Legal Aid SA in the handling of Brink's first three records under PAIA in August and December 2010 and March 2011 and his involvement, if any, in the drafting of Mlambo JP's Confidential Report to the Minister in March 2011 and the updated form to the Portfolio Committee in June 2011 to put down Brink complaints	Section 23 of the PAIA deposited.
H33	All counsel's opinions regarding the handling of Brink's PAIA requests	Section 23 of the PAIA deposited.

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H35	Former Board Secretary Bee-Marie Schoeman's resignation or dismissal letter and or any other record vouching her information to Brink that she left Legal Aid SA because of a long-term disabling concussion and amnesia sustained in a motor vehicle accident or any other reason why she left	Section 23 of the PAIA deposited.
H36	The minutes of the Board meetings in February and May 2012	The minutes are attached as appendix H36 .
H37	The minutes of the Board Executive meetings in February and May 2012	The minutes are attached as appendix H37 Board Secretary to provide
H38	The Charter of the Board Executive Committee	The Charter is attached as appendix H38
H39	The agenda and minute of the Board Executive Committee meeting on Friday 23 March 2012 alternatively the agenda and minute of the extraordinary extra fifth Board Executive Committee meeting in 2011/12	Section 23 of the PAIA deposited.
H40	The CEO's confirmatory affidavit made in support of the CSE's answering affidavit in the leave to subpoena Mlambo JP.	Section 23 of the PAIA deposited.
H41	The records of Mlambo JP's requests to other Board Members on 24 January 2011 that they should ignore Brink's repeated appeals for Board intervention to comply with the first PAIA application	Section 23 of the PAIA deposited.
H42	The decision taken to employ two PA's per backlog court at Pietermaritzburg	Section 23 of the PAIA deposited.

H43	The 2010/2011, 2011/12, and 2012/13 budgets provided by the Department for salaries for the two backlog PA's	Section 23 of the PAIA deposited.
H44	The minutes of all KZN regional executive management meetings over the period October 2010-June 2011	Section 23 of the PAIA deposited.
H45	The records of Mdaka's discussions with the NOE about streamlining backlog courts	Section 23 of the PAIA deposited.
H46	All records identifying the nature of the Stanger court incident	Section 23 of the PAIA deposited.
H47	The records sent to Bee-Mari Schoeman over the period October 2010 - June 2011 informing her performance of her function: "Monitoring of Backlog Court Staffing and compilation of costing to distribute budget received for this purpose to various cost centres" including but not limited to any changes to the number of backlog posts at the Pietermaritzburg JC and any changes received for the employment of Pas in the backlog courts at the Pietermaritzburg JC	Section 23 of the PAIA deposited.
H48	The decision to reduce the number of PAs serving the backlog courts at Pietermaritzburg from two to one according to Nair's emailed announcement to the ROEs on 21 February 2011	Records attached as appendix H48
H49	The spreadsheet attached to Nair's email to the ROEs on 21 February 2011 named "Backlog Courts-2011 approved courts"	Records attached as appendix H49
H50	The minute of the meeting in February 2011 to identify the sites that will continue to function and be funded to	Section 23 of the PAIA deposited.

	which Mdaka referred to in his email to Bertus Appel and other JCEs on 7 February 2011	
H51	The responses that the members of the selection panel, Manickum, Holtzhauzen, and Shelembe furnished Appel following his referral to them of Mdaka's objections to Brink's appointment to the annual contract PA post which they had unanimously recommended for him	Section 23 of the PAIA deposited.
H52	Appel's transmission to Mdaka of the selection panel's responses to Mdaka's objection to Brink's appointment	Section 23 of the PAIA deposited.
H53	Appel's leave application covering 14-15 December 2010 alternatively a reflection of his leave	The record is attached marked appendix H53
H54	The record of Mthimkulu's appointment as acting JCE-Pietermaritzburg: 14-15 December 2010	Section 23 of the PAIA deposited.
H55	The selection panel's recommendation of Brink for the Pietermaritzburg temporary backlog PA post showing the names of other candidates interviewed	The record is attached as appendix H55
H56	Any employment contracts subsequently signed with any of the rejected candidates	Section 23 of the PAIA deposited.
J1	The list of 231 critical legal posts or other records identifying what legal posts were included under the category Critical Occupation in the annual report 2012/13 and the subsequent motivation and resolution to exclude all but the JCE posts from the category of critical legal posts in the annual reports to the Minister and Parliament	Section 23 of the PAIA deposited.

K1	The insurance contract with Camargue	Section 23 of the PAIA deposited.
K2	The claim on Camargue upon Brink's referral of his case to trial	Section 23 of the PAIA deposited.
K3	Enquiries and requests for progress reports about the case by Camargue including about Brink's petition to the JP of the LAC	Section 23 of the PAIA deposited.
K4	All responses and reports by Legal Aid SA to Camargue about the case including Brink's petition to the JP of the LAC	Section 23 of the PAIA deposited.

Yours Faithfully,


pp _____
Mr Thembile Mtati
Deputy Information Officer,
Legal Aid South Africa

IN THE MAGISTRATES COURT FOR THE DISTRICT OF
ESHOWE HELD AT ESHOWE

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CASE NO: 257/14

258/14

259/14

1005/15

1432/15

In the matter between:

ANTHONY ROBIN BRINK

Applicant

And

HOPE BAMBISO NO. AND 3 OTHERS

Respondents

AFFIDAVIT IN TERMS OF SECTION 23 OF PAIA

I, the undersigned

THEMBILE VUYO MTATI

do hereby make oath and states as follows:-

1.

- 1.1 I am adult male admitted attorney employed as a Corporate Service Executive by Legal Aid SA at its offices situated at 29 De Beer Street, Legal Aid House, Braamfontein, Johannesburg, 2017.
- 1.2 I confirm that I am the designated Deputy Information Officer of Legal Aid SA and I am duly authorised to depose to this affidavit.



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1.3 The facts contained are within my personal knowledge and are both true and correct.

2.

2.1. I confirm that I have taken all reasonable steps to locate all of the records requested by the Applicant and/or to determine if such records do exist or not.

2.2. I confirm further that Legal Aid SA do not have some of the records requested by the Applicant, as specified on the table below, and as such, it is therefore not possible to make available to the Applicant access to the requested records.


2.3 I confirm further that I did enquire telephonically and held meetings with some official employed by Legal Aid SA, who would ordinarily be expected to bear knowledge of the requested records or other related records, but has established that the records do not exist.

2.4 The below indicates the records which cannot be provided, i.e:

No.	Record requested	Steps taken to locate the document or to determine whether the record exists or not
1.	A3	No such record exists. The record requested was checked with the specified offices which confirmed that there were no regret letters sent.
2.	A4	No such record exists. The record was requested from the Eastern Cape Regional Office and the National Office but same cannot be located. The IT department was also not able to retrieve the record.
3.	A5	No such record exists. The record was requested from the Eastern Cape Regional Office and the National Office but same cannot be located. The IT department was also not able to retrieve the record.



4.	A7	No such record exists. The record was requested from the specified offices but same cannot be located.
5.	B1	No such record exists. The official specified was consulted and he has no recollection of the existence of such record.
6.	B2	No such record exists. The official specified was consulted and he has no recollection of the existence of such record.
7.	B3	No such record exists. The official specified was consulted and he has no recollection of the existence of such record.
8.	B4	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
9.	B5	No such record exists. The officials specified was consulted and he has no recollection of the existence of such record.
11.	B6	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
12.	B9	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
13.	B19	No such record exists. No committee had a discussion on this issue.
14.	B20	No such record exists. The officials specified were consulted and they have no recollection of the existence of such record.
15.	B28	No such record exists. The requested records were checked with the Human Resource department but cannot be located.
16.	B29	No such record exists. The requested records were checked with the Human Resource department but cannot be located.
17.	B30	No such record exists. The requested records were checked with the Human Resource department but cannot be located.
18.	B33	This record cannot be granted as it is privileged and protected in terms of common law as well as section 40 of the Act. Accordingly is refused.
19.	B34	No such record exists. The existence of the requested record was


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		checked with the official who would be ordinarily expected to know of its existence but same could not be located.
20.	B35	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
21.	B38	No such record exists. The requested records were checked with the relevant department where it could have been directed to but it cannot be located.
22.	B39	No such record exists. The officials specified were consulted and they have no recollection of the existence of such record.
23.	B40	No such record exists. The officials specified were consulted and they have no recollection of the existence of such record.
24.	B41	No such record exists. The officials specified were consulted and they have no recollection of the existence of such record.
25.	C	No such record can be found. The record requested was checked with the relevant officials but same could not be located.
26.	E1	No such record exists. The record requested was checked with the Kwazulu Natal Regional Office and the National Office but same cannot be located.
27.	E2	No such record exists. The record requested was checked with the specified official but same could not be located.
28.	E3	No such record exists. The record requested was checked with the specified official but same could not be located.
29.	E4	No such record exists. The record requested was checked with the specified LSTC but same could not be located.
30.	E5	No such record exists. The record requested was checked with the specified officials but same could not be located.
31.	E6	No such record exists. The record requested was checked with the specified official but same could not be located.
32.	E7	No such record exists. The record requested was checked with the Human Resource department who would have knowledge thereof but same could not be located.
33.	E8	No such record exists. The record requested was checked with the Human Resource department who would have knowledge thereof but same could not be located.



34.	E9	No such record exists. The record requested was checked with the Human Resource department who would have knowledge thereof but same could not be located.
35.	E10	No such record exists. The record requested was checked with the Human Resource department who would have knowledge thereof but same could not be located.
36.	E11	No such record exists. The record requested was checked with the Kwazulu Natal Regional Office and the National Office but same cannot be located.
37.	E12	No such record exists. The record requested was checked with the Human Resource department who would have knowledge thereof but same could not be located.
38.	E13	No such record exists. The record requested was checked with the Human Resource department and the NOE who would have knowledge thereof but same could not be located.
39.	E14	No such record exists. The record requested was checked with the official specified but same could not be located.
40.	E15	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
41.	E16	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
42.	E17	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
43.	E18	This record is refused in terms of section 63(1). The third party has refused to grant consent to provide such personal information.
44.	E19	No such record can be located. The requested records were checked with the relevant department which could have been sent the communication but same cannot be located.
45.	E21	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
46.	E22	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
47.	F1	No such record can be found. The record requested was checked with the specified official but same could not be located.



48.	F2	No such record can be found. The record requested was checked with the specified officials but same could not be located.
49.	F3	No such record can be found. The record requested was checked with the specified officials but same could not be located.
50.	F4	No such record can be found. The record requested was checked with the specified official but same could not be located.
51.	G6	No such record can be found. The record requested was checked with the specified official but same could not be located.
52.	G7	No such record can be found. The record requested was checked with the specified official but same could not be located.
53.	G8	No such record can be found. The record requested was checked with the specified official but same could not be located.
54.	H4	No such record can be found. The record requested was checked with the official who would ordinarily be expected to have knowledge of same but it could not be located.
55.	H6	No such record exists. This request has already been replied to in paragraph 183.2 and confirmed by Ms. Magazi with annexure HB7 to the answering affidavit deposited by Hope Bambiso under case 257/14 in Eshowe Court.
56.	H8	No such record can be found. The record requested was checked with the specified official but same could not be located.
57.	H9	No such record can be found. The record requested was checked with the specified offices but same could not be located.
58.	H11	No such record can be found. The record requested was checked with the official who it would be expected to have knowledge of the record but same could not be located.
59.	H13	No such record can be found. The record requested was checked with the official who it would be expected to have knowledge of the record but same could not be located.
60.	H17	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
61.	H32	The records requested belongs to a third party in terms of section 34 and the third party has not granted consent to furnish such record.

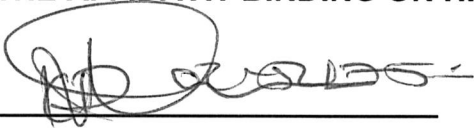
62.	H35	The employee referred to on the request is deceased. The requested record is refused in terms of section 34(1).
63.	H44	No such record exist. The requested records were checked with the specified Regional Office which confirmed its non-existence.
64.	H45	No such record can be found. The record requested was checked with the specified officials but same could not be located.
65.	H46	No such record exist. The requested records were checked with the specified Kwazulu Natal Regional Office which confirmed that it is not aware of any such record.
66.	H50	No such record can be found. The record requested was checked with the specified officials but same could not be located.
67.	H51	No such record can be found. The record requested was checked with the specified officials but same could not be located.
68.	H52	No such record can be found. The record requested was checked with the specified officials but same could not be located.
69.	H54	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
70.	H56	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
71.	K1	The records requested belongs to a third party. The third party has not granted consent to the granting of such record.
72.	K2	The records requested belongs to a third party. The third party has not granted consent to the granting of such record.
73.	K3	The records requested belongs to a third party. The third party has not granted consent to the granting of such record.
74.	K4	The records requested belongs to a third party. The third party has not granted consent to the granting of such record.




DEPONENT

E

THUS SWORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS THE 15.
DAY OF APRIL 2016. THE DEPONENT HAVING ACKNOWLEDGED TO ME THAT HE
KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HE HAS NO
OBJECTION TO THE TAKING OF THE PRESCRIBED OATH AND HE CONSIDERS
THE AFFIDAVIT BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS

FULL NAMES:

DESIGNATION:

ADDRESS:





From: [Thembile Mtati](#)
To: [Anthony Brink](#)
Cc: [Solly Sekgota](#); [Matimba Hlungwane](#)
Subject: RE: Affidavit - Brink Matter
Date: Tuesday, April 19, 2016 10:22:28 AM

Morning Adv Brink,

I have picked up that our section 23 affidavit does not address certain requested information. I will be filing a supplementary affidavit to address this. The error was inadvertent.

Regards,
Thembile Mtati
Corporate Services Executive

Tel: (011) 877 2000
Fax: (011) 877 2222

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

From: Anthony Brink [<mailto:arbrink@iafrica.com>]
Sent: Tuesday, April 19, 2016 8:31 AM
To: Thembile Mtati
Cc: Solly Sekgota; Matimba Hlungwane
Subject: RE: Affidavit - Brink Matter

Dear TM
Got the box of docs.
Thanks
AB

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

From: Thembile Mtati [<mailto:ThembileM@legal-aid.co.za>]
Sent: Friday, April 15, 2016 11:41 AM
To: Anthony Brink
Cc: Solly Sekgota; Matimba Hlungwane
Subject: FW: Affidavit - Brink Matter

Morning Adv Brink,

Attached is my section 23 affidavit as per our settlement agreement.

The documents are simultaneously being sent per courier to you today as they are too voluminous to send through e-mail.

Regards,
Thembile Mtati
Corporate Services Executive

Tel: (011) 877 2000
Fax: (011) 877 2222



1 Boast Street
Eshowe 3815
29 April 2016

Thembile Mtati,
Deputy Information Officer and
Corporate Services Executive
Legal Aid South Africa
29 De Beer Street
Braamfontein

Cc:

Information Officer and Chief Executive Officer Vidhu Vedalankar
Chief Legal Executive Patrick Hundermark
Internal Audit Executive Sethopo Mamotheti
Board Secretary Langa Lethiba

By email.

Dear Mr Mtati

NOTICE OF BREACH OF SETTLEMENT AGREEMENT AND DEMAND FOR COMPLIANCE

PAIA APPLICATIONS: BRINK v LASA INFORMATION- AND DEPUTY INFORMATION OFFICERS,
ESHOWE MAGISTRATES COURT: CASES 257, 258, & 259/14; 1005 & 1432/15

I refer to your PAIA section 23 affidavit emailed to me on Friday the 15th instant and to your evenly dated letter headed 'Implementation of Settlement Agreement' covering the documents simultaneously couriered to me and delivered the next working day. I refer also to your email of the 19th:

I have picked up that our section 23 affidavit does not address certain requested information. I will be filing a supplementary affidavit to address this. The error was inadvertent.

And to my reply on the same day that I'd immediately spotted many deficiencies in your response as well, and that after auditing it thoroughly I'd be identifying these for you to remedy. I've now done so, and this is what I've found:



LASA's performance under the settlement agreement is grossly defective and is non-compliant with PAIA in multiple respects.

As I'll show, numerous records on my consolidated list, duly emailed to you under clause 2 of our settlement agreement, have neither been furnished nor certified under section 23.

Numerous records claimed in your 'Implementation of Settlement Agreement' letter to have been certified haven't been.

Some claimed to have been furnished haven't been.

In some cases where I requested a series of records, only a token couple have been furnished, and not the rest.

One request for a set of records has been improperly responded to by providing me a single wrong record that I didn't ask for.

Other records have been refused on legally and factually spurious grounds.

First general defect

Section 23(1)(b) contemplates two radically distinct categories of requested records not furnished to a records requester. These two categories comprise records about which:

- 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 Legislature's use of the word 'or' between the two categories denotes a fundamental distinction between records 'that it is not possible to give access to', in the language section 23(1), for totally different reasons: those extant records requested that LASA has in its 'possession but cannot be found', and those records requested that 'do.. not exist'.

A record 'that it is not possible to give access to' falls into one category or the other, not both. It can't both exist and not exist.

Nearly all your sworn allegations in your affidavit that 'No such record exists' are contradicted by your allegation that it 'cannot be located' or 'retrieve[d]'.

Your second allegation implies two things: First, that contrary to your first allegation that it does not exist, the record in question does exist to the knowledge of the person whom you or your staff 'consulted' or 'checked with'. And second, that since this person has 'reasonable

grounds for believing that the record ... is in the public body's possession', a search was conducted for it but it couldn't be found. It seems to me, however, that this is not what you really mean to say, and that the second allegation has been added formulaically without thinking through its implications, which is that it contradicts, confounds and makes nonsense of the first allegation.

These radical contradictions everywhere in your affidavit obviously can't be cured with any supplementary affidavit. You'll have to make a fresh affidavit to remove the ambiguity, making unequivocally clear what was communicated to you by the 'person' or 'persons' you or your staff 'consulted' or 'checked with' about the records I requested, but which you didn't furnish me, namely whether (per section 23(1)) 'there are reasonable grounds for believing that the record ... is in [LASA's] possession but cannot be found' – or 'the record ... does not exist.' One or the other, not both.

Second general defect

Clause 4 of our settlement agreement pertinently required that your section 23 affidavit 'will contain all the detailed information prescribed by that section' regarding 'Records that cannot be found or do not exist' (as the section heading puts it). To helpfully remind you what 'all the detailed information prescribed by that section' is, and save you looking it up, I quoted section 23 at the foot of the preamble to my consolidated list of requested records. Despite this, your affidavit doesn't 'contain all the detailed information prescribed by that section'. So let me remind you yet again. Section 23(2) stipulates:

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.

Section 23(1)(a) tells us that 'all steps' means more than whatever 'steps' the information officer felt like taking; 'all steps' means 'all reasonable steps ... taken to find a record requested'. The added word 'reasonable' imposes a duty on an information officer to do everything reasonably possible to find a requested record and to 'give a full account' on affidavit of all these 'reasonable steps [that] have been taken to find a record requested'.

Part of 'the detailed information prescribed by that section' is the requirement that your affidavit 'includ[e] all communications with every person who conducted the search on behalf of the information officer'.

This includes persons you tasked to assist you in your search, and persons asked about the records I requested. The Act doesn't expect the CEO and ex officio information officer of a public entity like LASA, or a deputy information he or she has delegated, to drop everything, suspend the discharge of all other executive management duties, and personally embark on a search for requested records, find and deliver them. But 'every person' involved in the search on his or her behalf must be identified.

In your table of 'Steps taken to locate the document or to determine whether the record exists or not' in paragraph 2.4 of your affidavit, you say variously that this or that 'office', 'offices', 'specified offices', 'department', 'relevant department', 'officials', 'official specified', 'officials specified', 'specified official', 'specified officials', 'the official who would ordinarily be expected to know of its existence', 'National Office', 'committee', 'specified LSTC', 'IT department', 'specified Regional Office', 'specified KwaZulu-Natal Office', 'Eastern Cape Regional Office', and 'the Human Resource Department' was/were 'consulted' or 'checked with' concerning the record identified in your 'Record requested' column.

Relying on their responses, you say: 'No such record exists', 'No such record can be found' and variants of the latter claim. (You refuse a few records, to which I'll advert below.)

Offices, departments, and a committee, however, are not 'persons' for the purposes of a section 23 affidavit.

Neither are anonymous 'officials' – singular and plural – with whom you (or your Corporate Services staff) claim to have communicated at meetings or over the telephone about the records I requested.

The requirement of section 23(2) that you 'includ[e] all communications' with such 'persons' in your affidavit is plainly to identify such 'persons' for the ultimate purpose of a criminal prosecution and imprisonment for two years under section 90 should it be found that 'with intent to deny a right of access in terms of this Act', he/she or they have criminally concealed, destroyed, or falsified any requested records.

Section 23(2) requires that 'every person who conducted the search on [your] behalf', 'every person' with whom you had 'communications' about the requested documents, every 'person' who, as you put it, you 'consulted' or 'checked with', must be identified.

On one hand, you imply in paragraph 2.3 of your affidavit that you conducted the entire search yourself:

I did enquire telephonically and held meetings with some official[s] employed by Legal Aid SA, who would ordinarily be expected to bear knowledge of the requested records or other related records, but ha[ve] established that the records do not exist.

This doesn't cover records which you claim in your affidavit 'could not be located' or 'retrieve[d]' – implying they do exist, just can't be found – so it seems other persons enquired about these on your behalf. Indeed, there are several indications from your affidavit that at least some of the search, if not all of it, was carried out not by you personally but instead by your Corporate Services department staff on your behalf, in some cases assisted by LASA's IT staff:

- your next paragraph 2.4 of your affidavit is set in indirect speech, not the first person: e.g. this or that office or unnamed official 'was checked' or 'was consulted' – not 'I checked' or 'I consulted';
- you specifically mention the involvement of unnamed members of your IT staff in searching for records;
- one of the email records supplied me was visibly forwarded by email to your Corporate Legal Manager Solly Sekgota recently, which indicates his involvement in the search;
- your email correspondence with me is visibly copied to Sekgota and Thimba Hlungwane, further suggesting they were tasked with or involved in searching for and gathering requested records and establishing in some cases that they don't exist; and,
- your Corporate Services attorneys are generally involved in handling PAIA requests, as indicated by their attendance at the PAIA training workshop conducted by the SAHRC in 2012 and by LASA's response to the SAHRC's PAIA audit questionnaire in 2013.

This is not objectionable per se, because, as said, section 23(2) expressly contemplates that as a deputy information officer you might engage other 'persons [to] conduct.. the search on behalf of the information officer' (or deputy information officer) for documents requested under the Act.

What's objectionable is that you imply in your paragraph 2.3 to have personally conducted the entire search for the requested documents yourself when it's evident that other unnamed persons on your Corporate Services and IT staff were assisting you in your search for, at least in regard to some of them, and that any number of unnamed persons responded to the enquiries about the requested records.

Presumably the 'meetings' that were 'held ... with some official[s] employed by Legal Aid SA' took place in the National Office where you work with them – e.g. with Brian Nair, Patrick Hundermark and Amanda Clark, especially in regard to the records specified on my lists F to J –

and that the enquiries made of other ‘official[s] employed by Legal Aid SA’ outside the National Office in the Kwa-Zulu-Natal-, Eastern Cape-, and Free State and North West regional offices were made by email, more especially since my lists of documents required from these regional officers are quite long.

I’m sure you didn’t personally fly around the country in search of requested records, interviewing all ‘official[s] employed by Legal Aid SA’ in the provinces, ‘who would ordinarily be expected to bear knowledge of the requested records or other related records’. And that you didn’t ‘enquire telephonically’ by reading my long lists to them over the telephone – in which case you’ll have notes of such ‘communications’ to ‘includ[e]’ – rather than emailing them, and thereby conveying them instantly and much more easily.

In short, although you don’t say this – you mention only meetings and telephone calls – I presume you and/or your staff asked the officers outside the National Office for the records I wanted from them by email. If so, to comply with section 23(2), your emailed ‘communications’, comprising your enquiries and their responses, must be ‘includ[ed]’ in your affidavit as annexures.

Section 23(2) requires that you be specific about your ‘communications’, be they face-to-face meetings, telephonic enquiries, and emailed enquiries; and it’s not enough to merely say you ‘consulted’ and ‘checked with’ unnamed offices or persons. The section requires that ‘every person’ who assisted you in your search be identified, and that what was ‘communicat[ed]’ to whom by whom be clearly stated.

Section 23(2) also requires that you be explicit about what records you searched for yourself and what records you had others search for on your behalf. Deposing to an affidavit as the perfect truth to the best of your knowledge and belief is a serious matter, and there’s no room for throwing up your hands and retorting later when it’s found to be false, ‘I’m only an agent’, as you did when I mentioned to you in the Labour Court that your interlocutory affidavits drawn for you by your junior counsel were replete with perjury. (Your opposing and condonation affidavits in the Labour Appeal Court were likewise. And now I see from some of the LTSC minutes provided me at long last, your discovery affidavit in the Labour Court was perjured too.)

By failing to ‘includ[e] all communications with every person who conducted the search on behalf of the information officer’, as prescribed by section 23(2), you’ve masked the identities of your informants, making it impossible to test the veracity of what they’ve told you about the missing documents and to hold to account in a criminal court under section 90 those you



‘consulted’ and ‘checked with’ who’ve given you false information founding your claim in your paragraph 2.2:

I further confirm that Legal Aid SA do[es] not have some of the records requested by the Applicant ... and ... it is therefore not possible to make available to the Applicant some of the requested records.

In a few cases it’s possible to identify or to surmise the unnamed ‘official’ to whom you’re alluding, by referring back to my particular record request or to my note under it on my consolidated list; but this isn’t possible where my request or my note under it refers to more than one person, in which case your vague reference to ‘the official’ is useless and non-compliant with section 23(2).

As said, your section 23 affidavit must ‘includ[e] all communications with every person who conducted the search on behalf of the information officer’. This requires you to name your informants in regard to non-existent or untraceable records.

In sum, having regard to the precise reporting requirements of section 23(2), paragraphs 2.3–4 of your affidavit are insufficiently particular and are consequently non-compliant with the Act.

If despite this notice you persist in failing to comply with section 23(2), or again neglect to comply with it by not ‘including all communications with every person who conducted the search on behalf of the information officer’ – both your staff and the people they ‘consulted’ and ‘checked with’ – I’ll set my applications down again for a two-week hearing under clause 5 of the settlement agreement; move for an order that they be referred to oral evidence; subpoena you, other top management executives, and LASA employees with likely knowledge of the requested records not furnished to me; and establish the truth about them in open court, on the record, for transcription for the police if necessary, by conducting a searching cross-examination of you and your subpoenaed colleagues under oath on pain of imprisonment for perjury, about all records not furnished and not explained to my satisfaction. And adduce this letter in evidence to demonstrate your wilful breach of the settlement agreement and your determination not to comply with the Act.

Individual defects

I’ll now address each of your responses to my individual record requests on my consolidated list. Please keep in mind the general defects in your responses stated above, which need remedying.

A2. You've failed to certify in your section 23 affidavit your claim made in your letter, 'No signed recommendation exists.'

On 24 May 2010, the date on which Skibi was recommended for the Mthatha Senior Litigator post according to the unsigned recommendation report, you were still ROE for the Eastern Cape based in Port Elizabeth and were on the selection panel that recommended him. Having been promoted to Corporate Services Executive in the National Office w.e.f. 1 July 2010, you were duly designated a deputy information officer on 16 January 2016 by written delegation signed by information officer Vedalankar under section 17.

So in certifying under section 23(2) 'that it is not possible to give access to that record', i.e. the signed recommendation of Skibi, you have the advantage of direct personal knowledge of the true facts.

If you're relying on your direct personal knowledge of the facts to claim 'No signed recommendation exists', because you never signed it, you need to say so on oath. If on the other hand you did sign the recommendation of Skibi's appointment before it was dispatched to NOE Brian Nair in the National Office to approve with CEO Vedalankar's agreement, as required by the Approval Framework (there's no mention of any second interview on the recommendation report, and Skibi was already a Senior Litigator who'd appeared several times in the SCA), but the signed recommendation was 'lost in transit' as I've previously been told on oath, you need to swear it 'cannot be found' (per section 23(1)(b)(ii)).

In making your fresh, PAIA-compliant, section 23 affidavit, you need to pick one of these two conflicting, contradictory stories told me under oath. One or both are perjury; you decide which to swear to. Or you can just furnish me with a copy of the signed recommendation at last.

If you're not relying on your own direct personal knowledge of the non-existence of this record, nor on Eastern Cape RHRM Magazi's radically different story on oath about the loss of the record 'in transit', which is to say it existed until it went missing, you're required to state who claimed to you or to your (named) Corporate Services staff member that it doesn't exist or can't be found and why, and what 'reasonable steps [were] taken to find' it (per section 23(1)(a)).

Unless you now jettison it for the lie that it was, the story told me under oath that the signed Skibi recommendation was 'lost in transit' between Mthatha and Johannesburg will need explaining. By the time the Mthatha Senior Litigator post interviews were held, Mthatha JCE Gwele had been squeezed out of LASA (I have the whole documented history from him), and no one from the Mthatha JC was on the selection panel, so the recommendation wouldn't have been sent to Johannesburg from Mthatha as falsely claimed under oath.

I deal with the obvious mendacity of the sworn 'lost in transit' story in paragraphs 37ff of my founding affidavit in case 257/14.

As I told you at court when settling my PAIA applications, I intend that every single lie told under oath in my matter will be catalogued and documented for prosecution.

If dissatisfied with your new section 23 affidavit for failing to produce or properly certify this record under section 23, I'll exercise my prerogative under section 5 of the settlement agreement, set down my claim to compel it, have the matter referred to oral evidence to enable the magistrate to ascertain the truth, subpoena you and other LASA employees with likely knowledge of the matter, and cross-examine you all about it on the record under oath on pain of imprisonment for perjury and for wilful concealment of a duly requested record.

A3. Who requested these? By 'specified offices', do you mean Eastern Cape RHRM Magazi who works there? Do you mean that as RHRM she wasn't bothered to carry out her basic responsibility prescribed by section 1.5.1 of LASA's Recruitment code to advise the unsuccessful shortlisted candidates, some of whom you said (in H7) 'will be from outside the region, and will have to fly to the venue' for the interviews?

A4. Who requested this? Who in the Eastern Cape and National offices and IT department said it doesn't exist? Or does exist but couldn't be found?

According to the minutes of the Legal Services Technical Committee meeting in Johannesburg on 27 May 2010, you were present. If you took the signed recommendation report with you from the Port Elizabeth regional office at which you were then based (getting it signed would have been a cinch as all panel members were there) to hand-deliver to Nair who chaired the meeting, but you lost your briefcase containing it on the plane, in the taxi or in the hotel, and in this manner the signed recommendation report was 'lost in transit', you're required to say so.

Or is it LASA's version that Nair was sent or you gave him an unsigned recommendation to approve – which is why he testified (amidst a sea of lies) that it wasn't signed?

The sworn allegation that the recommendation report was 'lost in transit' means it was lost on the way to Nair. This needs clarifying.

A5. Who requested these? Who in the Eastern Cape and National offices and IT department said they don't exist? Or do exist but couldn't be found? What about the Mthatha office? Why wasn't someone there asked? An enquiry obviously needs making there. Whose email accounts were searched? Did your IT staff search LASA's email servers? If not why not?

A6. These records have neither been supplied nor certified.

A7. Who requested these? Who at the Eastern Cape and/or Mthatha Justice Centre said they don't exist or can't be found? Whose email accounts were searched? Did your IT staff search LASA's email servers? If not why not?

B1–3. Who requested these? Is Nair the 'official specified'? Do you mean Nair confirms that no such records exist? If so, you need to positively identify him in your affidavit as your informant.

B4. Who requested these? Who is 'the official who would be ordinarily expected to know of its existence'? Nair? You need to positively identify him in your affidavit. Does he confirm that no such records exist? Or is he saying contrariwise that they do exist but can't be found? Which?

B5. Who requested these? Who are 'the officials specified'? Do you mean Nair? Who else, since you mention 'officials' in the plural? Do you mean Nair confirms that no such records exist? If so, you need to positively identify him in your affidavit.

B6. Who requested these? Who is 'the official'? Nair? Does he confirm that no such records exist, or is he saying contrariwise that they do exist but can't be found? Which?

B7–8. These records have neither been supplied nor certified.

B9. Who requested this? Who is 'the official'? Nair? Does he confirm that no such record exists, or is he saying contrariwise that it does exist but can't be found? Which?

B10. These records have neither been supplied nor certified.

B16–18. These records have neither been supplied nor certified. There are no 'records ... attached as appendix B16'.

B19. Who searched for/enquired after these records? Who says, 'No committee had a discussion on the issue'?

B20. Who searched for/enquired after these records? Do all three – Nair, Mtati, Sekgota – state that they have no recollection of such records ever having existed? Make this clear.

B28–30. Who searched for/enquired after these records? Who in the Human Resources Department responded to the enquiry? Did he or she say 'No such records exist', or contrariwise that they do exist but 'cannot be located'?

B31. This record has neither been supplied nor certified.

B33. Legal opinion privilege is conceded and this request is abandoned.

B34–35. Who searched for/enquired after this record? Did Vedalankar confirm that these records don't exist? Or contrariwise say that they do exist but can't be found? Which?

B36–37. These records have neither been supplied nor certified.

B38–9. Who searched for/enquired after these records? Was Mlambo JP asked for them? If not, who was?

B40–1. Who searched for/enquired after these records? Do you mean Vedalankar and Nair both claim no such records exist? Or that they do exist but they can't find them?

C. Since Nair emailed this document, he must have it. Did Nair claim it doesn't exist? Or that it does exist but he can't find it? Did your IT staff look for it?

D2–4. These records have neither been supplied nor certified.

E1–17. Who searched for/enquired after these records? Who exactly are the foolish persons who ridiculously allege that no records whatsoever exist regarding Ngcamu's employment as Children's Court practitioner at the Durban Justice Centre, or contrariwise that they do exist but cannot be found? What exactly was the information given about these records in response to the enquiry made in the search for them? That no such records whatsoever exist? Or that the requested records do exist but can't be found? Which?

E18. Under the agreement you undertook to surrender the records requested or certify any that don't exist, so now raising section 63(1) to refuse these records puts you in breach. The section you raise anyway has no application to public body records. The only 'Grounds for Refusal of Access to Records' of a public body are those contained in sections 34–45 in Chapter 4 in Part 2 of the Act. If maybe you had in mind section 34 instead, 'Mandatory protection of privacy of third party who is a natural person', it's no good to you, because 34(2) provides:

A record may not be refused in terms of section (1) insofar as it consists of information –

...

(f) about an individual who is or was an official of a public body and which relates to the position or functions of the individual, including, but not limited to-

(i) the fact that the individual is or was an official of that public body;

(ii) the title, work address, work phone number and other similar particulars of the individual;

- (iii) the classification, salary scale, remuneration and responsibilities of the position held or services performed by the individual; and
- (iv) the name of the individual on a record prepared by the individual in the course of employment.

The records must be provided or certified under section 23, or I'll return to court to compel.

E19. Who searched for/enquired after these records? Who said they can't be found? Is it LASA's position that the records exist but can't be found? Or don't exist? Did your IT department search for them?

E21. Who searched for/enquired after this record? Who in 'the Human Resources department' was 'checked with' about it? Is it LASA's position that the record exists but can't be found? Or doesn't exist because it was never sent, as confirmed by RHRM Brijlal and ROE Mdaka?

E22. Who searched for/enquired after this record? 'No such record can be located' implies the letter exists; but on your own pleaded version in my labour case, no such letter was ever sent to Ngcamu – only to the other three shortlisted interviewed candidates, myself included. And when during document discovery proceedings in my labour case I sought the production of such a regret letter sent to Ngcamu, none was produced, only copies of the three letters sent to me, to Mngadi and to van Wyk. If indeed no such record exists, because unlike me, Mngadi and van Wyk, Ngcamu wasn't sent a regret letter*, you are required to say so categorically. (*Perhaps because he was kept expectantly waiting in the wings – considering (i) that I was asked in cross-examination why I hadn't just walked away (as hoped); and (ii) Nair's evidence, as a then aspirant lawyer and soon advocate of the High Court, that it's perfectly in order over at LASA, the way things are routinely done over there, to appoint a candidate who's been rejected by a selection panel, and never mind due process, legitimate expectation, the right to fair administrative action and the rule of law – not at the country biggest law firm.)

E23. This record has neither been supplied nor certified.

F1–4. Who searched for/enquired after this record? Who was 'checked' with about the records? Nair or Hundermark or both? Did he/they say the records exist but 'can[not] be found', or did he/they positively confirm that indeed no such records exist? It's one or the other; section 23 requires you to communicate clearly and unambiguously what they said either way.

G 1. These records have neither been supplied nor certified.

G2. The document provided, marked G2, is a 'Summary of the Scoring for the Senior Litigator Positions' by the so-called second round interview panel. It's very obviously the wrong document, and not what I requested. I requested recommendation reports of the selection panels, and unless these are furnished to me as undertaken, I will apply to compel. There's no room for pretending (criminally under section 90) that they don't exist or can't be found, because they are the founding documents, so to say, for the employment of the said Senior Litigators, and they record the reasons no one was employed at Kimberley when the post was first advertised. (I already know that Skibi wasn't recommended by the selection panel interviewing for the Mahikeng Senior Litigator post. I recently learned that a different candidate was recommended for it and that Skibi was rejected because his scores were too low, but that he was appointed to the post nonetheless.) The document you've provided is also falsified. Kaloo told me he was interviewed by Mlambo JP, Nair and Clark only, and not by Hundermark and Makokoane as well, as the 'Summary of Scores' document falsely claims.

G3–5. These records have neither been supplied nor certified.

G6–8. Who searched for these records? Is Nair your informant about the unavailability of these records? Does Nair say the records don't exist? Or does he say they do exist, but can't be found? If they do exist but can't be found, did your IT staff assist in trying to find them? Section 23 requires you to state categorically whether the records exist or not. You've said they can't be located, which suggests they do exist to the best of Nair's knowledge but can't be found.

G9–14. These records have neither been supplied nor certified.

H1. This record has neither been supplied nor certified.

H3. These records have neither been supplied nor certified.

H4. Who searched for these records? Who's the 'official' who said they can't be found? Or does he or she mean the records don't exist?

H5. This record has neither been supplied nor certified.

H6. Section 23 requires certification by the information- or deputy information officer on affidavit or affirmation; no one else can certify it with an affidavit or affirmation of their own. It's incompetent to avoid your obligation under section 23 to certify the record by referring to an affidavit that some other person has previously made. You are required in your own section 23 affidavit, to record what was 'communicat[ed]' to you or your staff in the 'search' for the record.

H8. Who enquired after these records? Did Clark respond that she couldn't find her folder of records concerning the top legal professional post in the Eastern Cape, created, advertised, recruited for, and selected for in the period March to May 2010? Or that she's never had such a folder of records in her possession and that it doesn't exist?

H9. Who enquired after these records? Who said no such records could be found? Did your IT staff search for them? Or was it meant that the records don't exist?

H11. Who enquired after this record? Who said the minute of this important Board meeting couldn't be found?

H12. This request hasn't been properly responded to. The minutes up to May 2010 have been provided, but the rest I requested up to February 2011 haven't been.

H13. Who enquired? Who said the minutes can't be found? Is it intended to allege that LASA Executive Management Committee meetings aren't minuted? Or that none were held over the stated period?

H14. This request hasn't been properly responded to. Only two minutes for Board Executive Committee meetings have been furnished, namely for the meetings on 20 November 2009* and on 18 February 2011. The rest of the requested minutes have not been supplied. (*The meeting previous to the November one was in July 2009; the minute for that wasn't requested.)

H15. This request hasn't been properly responded to. The only Board meeting minutes furnished are those for the meetings of 28 November 2009, 29 May 2010,* and 31 July 2010. (*This minute refers to a 27 February 2010 meeting.) The rest of the requested minutes haven't been supplied.

H17. Who enquired after these records? Who's the liar who said they couldn't be found, seeing as LASA provided them to me in response to a subsequent PAIA request for them addressed to the Department of Justice and Correctional Services, but which it referred to LASA to respond to under section 20?

H18. This record has neither been supplied nor certified. It certainly exists; it just needs digging out.

H20. This record has neither been supplied nor certified.

H21–30. These records have neither been supplied nor certified.

H31. Despite my explicit Note that the August letter not required, it's been supplied instead of the record I asked for: the communication with Mngadi in April/May 2010. Your IT staff will assist you find it.

H32. Your refusal to furnish me with copies of your counsel's feenotes, i.e. invoices for services rendered, for the reasons you've given is incompetent. They aren't his property. Such invoices became part of LASA's business records when he presented them for payment. They contain no 'personal information about a third party' per section 34(1), and accordingly your counsel doesn't need to consent to your release of them to me, nor does section 34(2)(a) give him the prerogative to give or refuse it. Nor are such feenotes legally privileged: see *A Company and Others v Commissioner for SARS (16360/2013) [2014] ZAWCHC 33; 2014 (4) SA 549 (WCC) (17 March 2014)* – online at <http://goo.gl/pNZfvb>. If you persist in unlawfully withholding these records from me, I'll set the case down again for an order compelling them.

H33. These records have neither been supplied nor certified, but I abandon my request for them. Legal advice privilege applies.

H35. I don't accept that the 'disclosure' of Board Secretary Schoeman's resignation or dismissal letter 'would involve the unreasonable disclosure of information about a third party, including a deceased individual' (I'm quoting section 34(1)). If you insist that releasing the record to me would unreasonably disclose such information, and you continue refusing it, I'll set the matter down again, subpoena the document duces tecum, and ask the magistrate to examine it under section 80 and decide whether this is true or not. Although I'm not required by PAIA to justify my request for this document, I record my special interest in:

- the true circumstances in which Schoeman departed from LASA, and lost top-rung, highly paid 'job I loved' (as she put it to me on the telephone); and,
- to what corruption in LASA's head office she was apparently referring to when tweeting from work at 14h01 on Friday 29 October 2010, the day after a LSTC meeting, and ten days after Vedalankar's letter to me of the 18th illegally refusing my first PAIA request in August and telling me lies about why my appointment was aborted, unsupported and contradicted by LASA's records, and repeatedly contradicted by Nair in telling quite different lies to the Board and yet more different lies to the Labour Court (with even more new lies told the Labour Appeal Court): 'Sometimes it's better to be clueless about what's happening around you than to know every bit of information that would silently kill you.' (<https://goo.gl/Ly6PNr>)

H39–43. These records have neither been supplied nor certified.

H44. Who enquired after these records? Who said they can't be found? Did he mean they don't exist? Is it intended to allege that, unlike minuted FS/NW regional meetings (see D1), these KZN regional meetings weren't minuted? Or weren't held?

H47. These records have neither been supplied nor certified.

H48. This request has not been properly responded to. The record of the decision was requested. I already have Nair's email communicating the decision, which has been provided again, instead. Is it intended to allege that Nair incompetently took the decision alone, ultra vires, without discussion and approval by the LSTC, and that for this reason no such record of such decision by the LSTC exist?

H50. Who enquired after this record? Who said it can't be found? Did he mean it doesn't exist? Is it intended to allege this meeting wasn't minuted? Or that it didn't take place?

H51–2. Who enquired after these records? Who said they can't be found? Did he mean they don't exist?

H54. Who enquired after this record? Who said it can't be found? Did he mean it doesn't exist?

H56. Who enquired after these records? Who said they can't be found? Did he mean they don't exist?

J. This record has neither been supplied nor certified.

K1–4. The Preamble to PAIA records that 'section 32(1)(a) of the Constitution provides that everyone has the right of access to any information held by the State'. The records concerning LASA's insurance policy with the insurance underwriter Camargue, LASA's claims on it under the policy, the repeated progress reports Camargue demanded (which you mentioned to me at the first pre-trial conference at court during my labour case) and the progress reports LASA furnished it, are all business records of LASA and thus 'information held by the State', and contrary to your ridiculous false allegation, they do not 'belong.. to a third party' i.e. your insurer Camargue; and Camargue has no prerogative under any provision of PAIA to grant or refuse consent to my duly requested access to these public body records.

Furthermore, paragraph 9 of the settlement agreement, added in manuscript and initialled, provides:



Where the information belongs to a third party, the parties agree that CSE Mtati shall demonstrate to the applicant that he has sought consent from that third party and the said third party's reaction thereto.

Even if the set of insurance records I requested, items K1–4, 'belongs to' Camargue, which they don't, and some or other section in Chapter 4 in Part 2 of the Act, 'Grounds for Refusal of Access to Records', afforded you the right (or duty) to refuse me access to them without Camargue's consent, which it doesn't, and which is why you don't rely on any such section, you haven't 'demonstrate[d]' that you have 'sought consent' from Camargue. So you're out of court any which way.

If you continue illegally withholding these records from me, in violation of my fundamental right to information, in violation of my fundamental right to access public body records, I'll simply set my claim to them down for argument. You can then send your very junior counsel to please explain to the PAIA-expert magistrate why the insurance records in LASA's possession shouldn't be surrendered to me in accordance with my PAIA request for them and your undertaking to furnish them to me, along with all other duly requested records, recorded in paragraph 4 of the settlement agreement handed in to court.

(We both know why you and your head office colleagues are anxious to keep these insurance records suppressed. As I've said before, they'll be founding a massive civil claim against LASA by Camargue, and the criminal prosecutions of some of its top officers for insurance fraud. Once I've apprised Camargue of the true facts of the matter, vouched by LASA's own business records, and have demonstrated how it was defrauded out of millions with lies to induce it to maintain the costs of a false defence in my labour case, it will certainly want its money back and pursue LASA energetically for it. The vast sum of which Camargue was defrauded, and which LASA will have to repay it, will ultimately be recovered by LASA or by the Auditor General from the executives who lied about the facts of the case to defraud Camargue out of its money.)

Final PAIA request

My 60 days within which to file my final PAIA request in relation to LASA's Senior Litigator posts, in terms of clause 7 of the settlement, will commence to run from the date you remedy your defective compliance with your obligations under clause 4, by furnishing me with all outstanding documents requested and with an affidavit complying fully with section 23.

Final demand

You are hereby required to remedy your breaches of the settlement agreement, described above, failing which I intend exercising my option provided by clause 5 and setting my applications down again for an order compelling your full and proper compliance.

As to timeframes for this, you have five court days to consider this demand and to convey whether you intend remedying your breaches described in it. If so, I'm open to whatever reasonable request you might make for more time within which to do this. If after five court days of delivery of this notice I haven't heard from you, I'll deem your silence to be a tacit refusal to remedy your defective performance under the settlement agreement, and will proceed to set my cases down to compel and start preparing all your subpoenas.

Yours sincerely



ANTHONY BRINK

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RE: Notice of Breach of Settlement Agreement and Demand for Full C

PAIA applications: Eshowe Magistrate's Court

From: Thembile Mtati

To: Anthony Brink

Cc: Matimba Hlungwane

Dear Mr. Brink,

I indicated to you through e-mail that I will be forwarding you a supplementary affidavit.

This will be attended and sent to you before Friday 13 May 2016.

We deny that we are in breach of the settlement agreement at all.

Regards,

Thembile Mtati

Corporate Services Executive

Tel: (011) 877 2000

Fax: (011) 877 2222



IN THE MAGISTRATES COURT FOR THE DISTRICT OF
ESHOWE HELD AT ESHOWE

J

CASE NO: 257/14
258/14
259/14
1005/15
1432/15

In the matter between:

ANTHONY ROBIN BRINK

Applicant

And

HOPE BAMBISO NO. AND 3 OTHERS

Respondents

**AFFIDAVIT IN TERMS OF SECTION 23 OF PAIA
[SUPPLEMENTARY AFFIDAVIT]**

I, the undersigned

THEMBILE VUYO MTATI

do hereby make oath and states as follows:-

1.

1.1 I am adult male admitted attorney employed as a Corporate Service Executive by Legal Aid SA at its offices situated at 29 De Beer Street, Legal Aid House, Braamfontein, Johannesburg, 2017.

1.2 I confirm that I am the designated Deputy Information Officer of Legal Aid SA and I am duly authorised to depose to this affidavit.



1.3 The facts contained are within my personal knowledge and are both true and correct.

2.

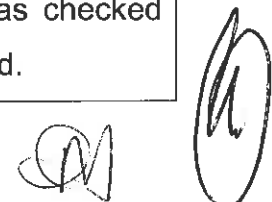
2.1. I confirm that I have taken all reasonable steps to locate all of the records requested by the Applicant and/or to determine if such records do exist or not.

2.2. I confirm further that Legal Aid SA do not have some of the records requested by the Applicant, as specified on the table below, and as such, it is therefore not possible to make available to the Applicant access to the requested records.

2.3 I confirm further that I did enquire telephonically and held meetings with some official employed by Legal Aid SA, who would ordinarily be expected to bear knowledge of the requested records or other related records, but has established that the records do not exist.

2.4 The below indicates the records which cannot be provided, i.e:

No.	Record requested	Steps taken to locate the document or to determine whether the record exists or not
1	A2	No signed recommendation exists. This was confirmed by the Regional Human Resources Manager.
2.	A6	No such record could be found. The record requested was checked with the specified offices but same could not be located.
3.	B7	No such record exists. The record requested was checked with the specified official who confirmed its non-existence.
4.	B8	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same does not exist.
5.	B10	This record cannot be located. The record requested was checked with the specified official who confirmed it cannot be located.



6.	B36	This record cannot be located. The record requested was <u>checked</u> with the specified officials who confirmed it cannot be located.
7.	B37	This record cannot be located. The record requested was checked with the specified officials who confirmed it cannot be located.
8.	D2	No such record could be found. The record requested was checked with the specified offices but same could not be located.
9..	D3	No such record could be found. The record requested was checked with the specified offices but same could not be located
10.	D4	No such record could be found. The record requested was checked with the specified official and offices but same could not be located
11.	E20	This record could not be located. The record requested was checked with the specified offices but same could not be located.
12.	E23	The record did exist but could not be found after search. The record requested was checked with the specified official.
13.	G1	No such record could be found after search. The record requested was checked with the specified official.
14.	G3	No such records could be found. The record requested was checked with the specified officials but same could not be located.
15.	G4	No such records could be found. The record requested was checked with the specified officials but same could not be located.
16.	G5	No such records could be found. The record requested was checked with the specified officials but same could not be located.
17.	G9	No such records could be found. The record requested was checked with the specified officials but same could not be located.
18.	G10	No such records could be found. The record requested was checked with the specified officials but same could not be located.
19.	G11	No such records could be found. The record requested was checked with the specified officials but same could not be located.
20.	G12	No such records could be found. The record requested was checked with the specified officials but same could not be located.
21.	G13	No such records could be found. The record requested was checked with the specified officials but same could not be located.
22.	G14	No such records could be found. The record requested was checked with the specified officials but same could not be located.

23.	H1	No such record exists. The existence of the requested <u>record</u> was checked with the legal representatives in the case and confirmed the non-existence of such record.
24.	H3	No such records could be found. The record requested was checked with the specified official but same could not be located.
25.	H5	No such records could be found. The record requested was checked with the specified official but same could not be located.
26.	H14	No such record could be found. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
27.	H15	No such record could be found. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
28.	H18	No such record could be found. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
29.	H20	No such records could be found. The record requested was checked with the specified official but same could not be located.
30.	H21	No such records could be found. The record requested was checked with the specified official but same could not be located.
31.	H22	No such records could be found. The record requested was checked with the specified official but same could not be located.
32.	H23	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
33.	H24	No such records could be found. The record requested was checked with the specified official but same could not be located.
34.	H25	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
35.	H26	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.

36.	H27	No such record exists. The existence of the requested <u>record</u> was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
37.	H28	No such records could be found. The record requested was checked with the specified officials but same could not be located.
38.	H29	No such records could be found. The record requested was checked with the specified official but same could not be located.
39.	H30	No such records could be found. The record requested was checked with the specified official but same could not be located.
40.	H33	This record cannot be granted as it is privileged and protected in terms of common law as well as section 40 of the Act. Accordingly it is refused.
41.	H39	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
42.	H40	No such records could be found. The record requested was checked but same could not be located.
43.	H41	No such records could be found. The record requested was checked with the specified official.
44.	H42	No such records could be found. The record requested was checked with the specified official but same could not be located.
45.	H43	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
46.	H47	No such record could be located. The former employee is deceased.
47	J1	No such records could be found. The record requested was checked with the specified official but same could not be located.


DEPONENT **J**

THUS SWORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS THE 12th
DAY OF MAY 2016. THE DEPONENT HAVING ACKNOWLEDGED TO ME THAT HE
KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HE HAS NO
OBJECTION TO THE TAKING OF THE PRESCRIBED OATH AND HE CONSIDERS
THE AFFIDAVIT BINDING ON HIS CONSCIENCE.




COMMISSIONER OF OATHS

FULL NAMES:

DESIGNATION:

ADDRESS:

COMMISSIONER OF OATHS

.....
AGATHA MAMOGALE LEKABE
SENIOR LEGAL ADVISOR
CITY OF JOHANNESBURG
METRO CENTRE, 158 CIVIC BOULEVARD,
BRAAMFONTEIN 2017

10 years in the business of satisfying legal practice



ADV. THABISO MACHABA BA LLB LLM LLM (TAX LAW) WITS[†]

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Fax: + 27 11 223 8004
Email: tmachaba@telkomsa.net

VAT NO: 4060233725

TAX INVOICE NO: 13/11

To: THE LEGAL AID BOARD
Attention: Mr Solly Sekgota
Your Fax: (011) 887 2000
Your Tel: (011) 887 2011
Date: 31 Mar. 2011
Your Ref: Mr Sekgota
My Ref: 4TH Acc/LAB/A.BRINK PAIA/INV. 13/11

Re: ACCOUNT IN THE SETTLING OF DRAFT MEMORANDUM IN VIEW OF THIRD REQUEST BY A BRINK AND CONSEQUENT CONSULTATION WITH MR T. MTATI IN A BRINK'S APPLICATION FOR ACCESSTO INFORMATION I.T.O. PAIA 2000

HEREWITH IS MY FOURTH ACCOUNT FOR YOUR SETTLEMENT

Activity	Dates	Fees
On consultation with Mr Mtati and on considering the papers afresh and preparing to settle a memo to the LASA in view of Mr Brink's 3 rd request for access for information	11 Mar. 2011	@ R10000.00
On researching the law after consideration of Mr Brink's third request and on settling the required memorandum in answer to various questions posed by Mr Mthati o.b.o LASA and on emailing same to Mr Mthati and Mr Sekgota for 3.5 days	16 – 19 Mar. 2011	@ R60000.00

[†] "Forgiveness is the key to action and freedom." – Hannah Arendt

On perusal of Mr Brink's referral of a complaint to the Human Rights Commission and considering same; and incorporating its contents to the final memo and on settling memo on whether the LAB completely responded to Mr Brink's 15 December 2010 request for access to information.	26 – 28 Mar. 2011	@ R30000.00
On perusal of Mr Brian Nair's affidavits and considering the laws that arise therefrom and researching the law to see if same complies with PAIA and administrative law principles for 2.5 days.	29 – 31 Mar. 2011	@ R40000.00

TOTAL BALANCE DUE TO ADV. T MACHABA: R140000.00

ADD VAT AT 14% @: R19600.00

TOTAL PAYABLE: R159600.40

Herewith are Adv. Machaba's banking details for effecting payment.

Bank and branch: Standard Bank (Small Street City Branch)
 Account type: Cheque Account
 Account No: 001087673

Thank you for the above brief and do enjoy words of wisdom below.

Please provide proof of payment to Adv. Machaba for filing and records.

**THABISO MACHABA
 PITJE CHAMBERS
 JOHANNESBURG**

*Recommended
 for payment
 M. Pitje
 30/03/2011
 pay from legal prem*



1 Boast Street
Eshowe 3815
KwaZulu-Natal
20 May 2016

To: Vidhulekha Vedalankar,
Chief Executive Officer and Information Officer
Legal Aid South Africa
29 De Beer Street, Braamfontein
Johannesburg 2017

And to cc list


Dear Ms Vedalankar

**LASA'S ONGOING FALSE ANNUAL PAIA REPORTING TO THE SAHRC
FOR THE MISINFORMATION OF THE NATIONAL ASSEMBLY TO OBSTRUCT
AND DEFEAT ITS CONSTITUTIONAL OVERSIGHT FUNCTION**

Legal Aid South Africa ('LASA') has filed yet another dishonestly false annual report under section 32 of the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act'), also omitting prescribed information, to conceal from the South African Human Rights Commission ('SAHRC') and from the National Assembly its illegal refusals last year to allow me access to its business records, duly requested under PAIA in the exercise of my fundamental right to information held by public bodies, entrenched by section 32(1) of the Bill of Rights in the Constitution.

Why these records, including insurance records disclosing insurance fraud, are being so anxiously and determinedly suppressed, like Nixon clinging to his Oval Office tapes, is for another day, coming soon.

This is now the fifth false and defective section 32 report LASA has filed since 2011 to conceal its repeated and persistent illegal refusals of my PAIA requests made




since 2010, in a pattern of what the SAHRC calls ‘malicious compliance’ by public bodies with their reporting obligations so as to conceal their violations of their constitutional information transparency obligations, or to put it more plainly, their illegal refusals to open their books. To conceal other things obviously.

Accurate section 32 reporting and PAIA manual updating ‘were stressed’ to LASA as ‘key forms of compliance’ with PAIA at the special PAIA training workshop the SAHRC conducted for it on 6 October 2011, as a direct result of its illegal refusals of my first three PAIA requests in 2010 and 2011 and false reporting to the SAHRC about this afterwards. The workshop report further recorded: ‘The mandatory obligation for all government organizations to compile a report in terms of section 32 of PAIA was discussed. LASA compliance history was flagged with participants and most responded to the reporting of LASA as non compliant to Parliament with concern.’

You’ll recall being taxed about this by the then chairperson of the Justice Portfolio Committee, Hon Landers, and by then Committee member Hon Jeffery, now Deputy Minister, when presenting LASA’s annual report later in the month. The minute records that Hon Jeffery ‘was curious about a Promotion of Access to Information Act (PAIA) report that was released that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA’, and that when you failed to deal with it, i.e. the SAHRC’s section 84 PAIA report about LASA as ‘a case in point’, ‘The Chairperson said that he wanted to know about the PAIA report.’ (The Committee was independently aware from my communications with it that you’d been illegally refusing my PAIA requests.) You managed to duck the Committee’s enquiry by falsely calling the SAHRC’s PAIA report ‘untrue’ and by untruthfully obfuscating.


LASA then blithely persisted with making false and defective section 32 reports for 2013/14 and 2014/15, and now 2015/16. What makes this extraordinarily serious is that the SAHRC necessarily relies on and is dependent on truthful and accurate



reporting by public bodies to discharge its own annual reporting obligations regarding public body compliance with PAIA to the National Assembly under section 84 of the Act. Without reliable and accurate section 84 reporting by the SAHRC to the National Assembly, based on accurate section 32 reporting by public bodies to the SAHRC, the National Assembly can't effectively oversee public body performance, as required of it by section 55(2)(b)(ii) of the Constitution, and, more particularly, supervise the compliance of public bodies with their constitutional freedom of information and transparency obligations.

LASA's five false and defective section 32 reports for the years 2010/11, 2011/12, 2013/14 and 2014/15, and now again for 2015/16, have concealed its persistent illegal, unconstitutional refusals to permit me access to its business records duly requested under PAIA, and they have obstructed and frustrated, and threaten to continue obstructing and frustrating, the National Assembly's constitutional oversight function over LASA. They have prevented it thus far from holding you and your colleagues to account. Of course this has been the whole idea of these false and defective reports.

I approach you directly in this matter because when in August 2012 the SAHRC's then PAIA Unit director Fola Adeleke demanded that LASA's defective section 32 report for 2011/12 be amended to include your deputy information officer Brian Nair's persistent illegal refusal in April 2011 to comply fully and properly with my three PAIA requests addressed to you in August and December 2010 and March 2011, your Corporate Services Executive Thembile Mtati waved him away with an effusion of non-sequiturs in which he displayed his abysmal ignorance of PAIA (the PAIA workshop attendance register shows that he'd been expected to present himself to be taught how it works, but bunked the lesson), leading the SAHRC to report LASA's repeated false section 32 reporting to the National Assembly later in the year in its annual report under section 84 presented in October 2012. This is what the Portfolio Committee repeatedly asked you about.



Accordingly I call on you as information officer of LASA, ultimately responsible under section 17 for its compliance with PAIA, to see to it that LASA's false section 32 report for 2015/16, signed and submitted by Mtati, is withdrawn and replaced with an amended, truthful, correct, complete and legally compliant one, for the true and full information of the National Assembly in the SAHRC's section 84 report later this year, in conformity with the detailed reporting requirements of the Act.


The false, defective and missing information in Mtati's report filed with the SAHRC on 15 April 2016 is identified below, followed by the true, correct and full information that section 32 requires you to provide.

Item 1: (a) the number of requests received

Mtati reports '2'. It's a minor inaccuracy relative to the egregiously dishonest and misleading reporting and concealment discussed below, but this wrong figure needs correction all the same.

Under 'Comments', Mtati refers to (i) my 'letter dated 4 May 2015', which 'sought two documents', and (ii) my PAIA 'request ... addressed to the information officer of the Department of Justice and Correctional Services on 27 November 2015' for the budget applications LASA made to the Department to pay nine Senior Litigator salaries for the several years I stated, which the Department 'referred to the information officer of Legal Aid South Africa on 3 December 2015 in terms of section 20 of the Act' to respond to. (I'd asked the Department for these records, because LASA has routinely refused my PAIA requests since 2010 on any number of idle grounds, ultimately abandoned (see below).)

Mtati ought to have reported '1' – my request for the budget records, because my letter in May was not a separate PAIA request. Referring to my PAIA request in March 2015 for eight records, still being considered under extended time that Mtati had asked me for, my letter amplified my request by including two further records




in my Form A request list annexure, namely: ‘9. LASA’s report to the SAHRC under section 32 of PAIA for 2014/15’ and ‘10. CEO Vedalankar’s approved leave application in respect of her absence from office in April 2015’.

My May letter was not an independent PAIA request because the Act requires that any PAIA request must comply with certain prescribed formalities, namely that it be (i) made on a completed Form A template, and (ii) covered by a request fee. I didn’t use Form A in May and no request fee accompanied my letter, nor was any demanded. Cf. Nair’s due demand in respect of my PAIA request addressed to him on 20 November 2014 (after I’d asked him for LASA’s bank details for the purpose): ‘Please be advised that before I can consider your request you are required to deposit a fee of R35 into the bank account set out below: [details]. ... upon depositing the fee, we will consider your request.’

My May letter, referring to my Form A PAIA request in March, and asking for access to two additional records, was consequently not a separate PAIA request as defined by the Act.

Indeed, in previous reporting under section 32, LASA itself recognised that such a supplementary request made in a postscript to a Form A PAIA request is not a separate request but is part of the main request. LASA’s section 32 report for 2013/14 did not report as a separate request my request by letter on 17 October 2013 for a further document, namely ‘42. The spreadsheet attached to Nair’s email [etc]’, in addition to the ‘41 specified records’ I’d requested of you in my then ‘pending request of the 1st instant’ conforming to the prescribed formalities: a Form A request submitted covered by a request fee. Again, no additional request fee for the further record requested was paid or demanded.

A letter not complying with Form A and not covered by a request fee, which requests the inclusion of additional records in a list annexed to a just-submitted Form A PAIA request still under consideration, is not a PAIA request within the meaning of the Act and is not an independent PAIA request for reporting purposes.




As information officer you need to amend this item of the report to accurately reflect that one request for access was made in the reporting cycle: my request for LASA's budget applications.

Item 2: (b) the number of requests granted in full

Mtati reports '2' and that 'All requests were granted in full.' This is untrue. Only one request was granted in full: my PAIA request for LASA's budget applications (which Nair granted only because the Department was watching).

As said, my letter of 4 May 2015 was not an independent PAIA request, but even if it had been, it's untrue that access to both additional records I sought was granted. I was given a copy of LASA's section 32 report for 2013/14 (also non-compliant), but refused access to your leave form, for the reason Mtati gave me that 'This is personal information that has no relevance in exercising your rights in terms [of] the Act. Please find the acting delegations of CLE, COO and NOE.'

Granting access to an official record of a public officer's absence from office plainly does not entail 'the unreasonable disclosure of personal information about a third party' as contemplated by section 34 of the Act (any particularly personal reason you might have given for taking leave could have been redacted). And it's elementary that a PAIA requester's right to access and examine a public record is not dependant on its 'relevance' to 'exercising [his] rights' or to anything else. The refusal was accordingly not justified under any of the 'Grounds for Refusal of Access to Records' permitted by sections 34–45 in Chapter 4 of part 2 of the Act, and was therefore unlawful. Nonetheless, I didn't pursue your leave form because the other documents given me instead satisfied me that you were indeed out of office for much of April 2015, which allegation I was testing with my request – having been told so many lies by LASA's national management executives over the years: big lies, small lies, central lies and peripheral lies, a sea of lies told to me and to high authorities, some lies contradicting each other, some lies told under oath and to the National Assembly: serious crimes to be catalogued with supporting documents for



prosecution in due course. But the fact remains that access to the particular record I requested was refused. It was not granted as falsely reported.

You need to amend this item of the report to accurately reflect that one request was granted in full: my request for budget records. That is, Mtati's false claim, 'All requests were granted in full', must be changed to reflect the true position: 'One request was granted in full'.

Item 4: (d) the number of requests for access

(i) refused in full

Mtati has reported '0'. This is untrue. He's failed to report his blanket refusal on 26 May 2015 of my requests (made in the previous reporting cycle) for 83 specified records, addressed to:

- Patrick Hundermark, for access to 23 records/sets of records;
- Hundermark again, for access to 4 records/sets of records;
- Jerry Makokoane, for access to 56 records/sets of records.

You need to amend this item of your report to accurately reflect that three requests for access, comprising a total of 83 specified records, were refused in full.

(ii) refused partially

Mtati has reported '0'. This is untrue. As mentioned above, my PAIA request addressed to you on 19 March 2015, supplemented by my letter of 4 May 2015 asking that two further records be included in it, was partially refused by providing me with one record (the section 32 report) and refusing five requests (your leave form and all four sets of insurance records that I specified). Two records were stated not to exist. Although this wasn't certified under section 23 as required, I took Mtati at his word that no records whatsoever exist to vouch that Hundermark and Makokoane and their 'teams' spent 187 and 220 hours respectively on (irrelevant) background reading of 'the documents relating to case 529/11', per the language of Mtati's report, as alleged to me and unlawfully charged for – about which more



below.

You need to amend this item of the report to accurately reflect that one request for access, comprising eight specified records, was refused partially.

(iii) number of times each provision of this Act was relied on to refuse access in full or partially

Mtati reports '0': 'Not applicable for current reporting cycle.' This is untrue.

On 26 May 2015 within the 'current reporting cycle' Mtati refused me access to the 83 records I'd requested from Hundermark and Makokoane in the previous cycle. He did not expressly stipulate what sections of the Act he was relying on, but in objecting in paragraph 10.3 of his letter that (i) the records I'd requested were 'related to and ancillary to the litigation proceedings you have brought against Legal Aid South Africa under case number 529/11 at the Labour Court in Durban' and 'against Legal Aid South Africa officials under case numbers 257/14, 258/14 and 259/14' in the Eshowe Magistrate's Court to compel compliance with my three PAIA requests unlawfully refused in November 2013, and (ii) the 'requests are malicious and seek to divert the resources of Legal Aid South Africa', Mtati was clearly alluding to sections 7 and 45 of PAIA as grounds for his refusals, which same two sections he'd explicitly cited and relied on in November 2013, using similar language, to justify his refusal of all my PAIA requests addressed to regional deputy information officers Bambiso and Msweli and nearly all my requests addressed to you, made in October 2013 (hence my said three applications to compel, launched in April 2014).

Mtati expressly relied on section 36 to refuse me access to the four sets of insurance records I requested of you in March 2015.


Mtati impliedly relied on section 34 in refusing my request for access to your leave form on the ground that it's 'personal information', which section justifies the refusal of 'the unreasonable disclosure of personal information about a third party'.



You need to amend this item of the report to reflect that:

- sections 7 and 45 were relied on 83 times to refuse me access to 83 specified records (requested of Hundermark and Makokoane);
- section 36 was relied on four times to refuse me access to four records (requested of you);
- section 34 was relied on once to refuse me access to one record (requested of you).

You need to record your frank concession in the ‘Comments’ column for the true and candid information of the SAHRC and the National Assembly that, as the SAHRC has repeatedly taught LASA (see below), section 7 of PAIA and the fact that a record request in some manner ‘relates to and is ancillary to’ past or pending litigation does not afford any ‘Grounds for Refusal of Access to Records’ allowed by sections 34–45 in Chapter 4 of Part 2 of the Act; and further that you accept that my requests were made, not frivolously or maliciously to waste LASA’s time as falsely alleged to avoid dealing with them, but for exceedingly grave purposes, namely for the intended criminal, civil and disciplinary purposes that I stated, including perjury prosecutions, as indeed Mtati acknowledged (quoted below); and that Mtati’s reliance on sections 7 and 45 to refuse me access to the records I duly requested was unlawful. As was his reliance on section 34 for the reason stated above. As was also his reliance on section 36 to refuse me access to the insurance records I requested, on the spurious and irrelevant basis that they ‘contain commercial information of a third party’ (and recently, differently, equally spuriously, also falsely, in refusing them again on 15 April 2016 (see below)), because they ‘belong to a third party’ – which is both untrue and anyway not a ground for refusal permitted by section 36, which bars disclosure ‘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.’ The insurance records I requested aren’t hit by any of this.


Item 5: (e) number of instances where the 30 day period to deal with a request was extended

Mtati reports ‘0’: ‘No requests for extension was sought in respect of the two requests submitted during the reporting cycle.’ This is materially false and misleading. In truth and in fact, on 28 April 2015 Mtati extended the period within which to respond to my request addressed to you in March 2015.

It’s unsurprising that Mtati should wish to conceal from the SAHRC and from the National Assembly the ordinarily unremarkable fact that he requested an extension as usual, because, as I informed you in the draft section 32 report that I took the trouble to draw and send you on 24 March 2016, hoping LASA might use it as the basis for a true and correct report to the SAHRC for a change, the grounds Mtati advanced for the extension were not only legally irrelevant, they were lies.

The first reason he advanced for seeking more time, namely that you were ‘on leave’ (so ‘She has, unfortunately not been able to finalise your request’) was legally incompetent under section 26(1), not being among the several permissible reasons enumerated for an extension. (This is what deputy information officers are for: section 17 empowers you to ‘designate such number of persons as deputy information officers as are necessary to render the public body as accessible as reasonably possible for requesters of its records’, especially when you’re not around.)

Worse, the reason Mtati gave – and repeated on 26 May 2015: ‘In order to apply her mind ...’ – was a lie, revealed by his subsequent confirmation on affidavit that ‘the CEO has not read’ my request and was not dealing with it, and that he was, because, he thought in his ignorance and incompetence, you as CEO had to decide appeals against refusals by deputy information officers of requests for access to LASA’s records. (The SAHRC has repeatedly tried teaching LASA, including at its



PAIA training workshop, that under section 1 of the Act LASA is a category-b type public body, which means it has no ‘relevant authority’ to appeal to, and an aggrieved record requester’s remedy against the refusal of access is an application directly to court under section 78(2)(c.)


The second basis Mtati stated for extending the 30-day time limit to respond to my request had no application at all. Section 26(1)(c) that he cited allows an extension if ‘consultations among divisions of the public body or with another public body is necessary or desirable to decide the request that cannot reasonably be completed within the original period.’ No such consultations were necessary, much less engaged in, and the implication that they were was dishonestly false, which is to say another lie in keeping with the culture of mendacity in your national office that I’ve encountered over the years, again and again.

You need to amend this item to truthfully reflect that the period prescribed by section 25 was extended once, but not on any ground permitted by section 26, and that the two reasons Mtati advanced for the extension were false.

Item 9: (i) other matters as may be prescribed.

In his ‘Comments’ column for this item, Mtati refers to ‘the previous reporting cycle’, but not to the current 2015/16 one, during which, on 26 May 2015, he illegally refused me access to 88 of LASA’s duly requested business records – only some of his justifications for doing so he then mentions under this head, leaving out the others. This is seriously misleading and needs correction.

Mtati states that my record requests ‘were not granted as they ... relate to the litigation proceedings under case [LC D]529/11 which has since been finalised and further that Adv Brink refused to pay the search fees in terms of section 22 of the Promotion of Information Act 2 of 2000.’ This dishonestly conceals LASA’s subsequent implicit concession that these were not valid and lawful reasons for




obstructing and refusing my PAIA requests when it later reversed itself and agreed to allow me access to all the records I'd requested (see below).

Firstly, Mtati's refusal of my requests 'as they ... relate to the litigation proceedings under case 529/11' wasn't justified on any of the 'Grounds for Refusal of Access to Records' permitted by sections 34–45 in Chapter 4 of Part 2 of the Act.

The SAHRC has repeatedly taught LASA that the fact that records appear to have been requested, or are stated to have been requested, for use in legal proceedings, whether 'finalised', pending, or intended, is no lawful ground for refusing them under the Act – more especially since section 7(2) of PAIA gives judicial officers the discretion to admit documents obtained via the Act after the commencement of the cases they're trying, if 'the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice.'

The report of the SAHRC's PAIA training workshop on 6 October 2011 for sixteen of LASA's head office attorneys, including Corporate Legal Manager Solly Sekgota, records: 'It has also been deemed important on the basis of the SAHRC's monitoring of LASA institutional compliance with PAIA and 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 with recognised rights.'

The SAHRC's then PAIA Unit director Adeleke repeated this advice to Mtati in email correspondence with him in August 2012, in which he was requiring the amendment of LASA's false and defective section 32 report for 2011/12, which I'd brought to his attention. Adeleke emailed Mtati on the 22nd: 'We note with concern however that reference is made in your email to a number of requests from Adv. Brink. This does not reflect in either of your reports to the SAHRC. We note further that the requester's reason for requesting particular information is being deduced. It should be noted that PAIA is quite clear that requests made to public bodies do not have to be supported or justified by a reason for the request. Similarly, requests made prior to notification of litigation should not have to be supported by a reason




or purpose for the stipulated information. We remain concerned therefore about the accuracy of your section 32 report and need to advise that we intend auditing the veracity shortly. Notice of the audit will be issued in due course.’ (As said, Mtati refused to correct the false report for 2011/12, leading the SAHRC to report LASA to the National Assembly in October 2012 for repeatedly making non-compliant section 32 reports.)

You need to amend this ‘Comment’ to clarify your appreciation that the refusal of my requests on the ground that ‘they ... relate to the litigation proceedings under case 529/11’ was unlawful and a violation of my fundamental right to information. It’s dishonestly misleading for Mtati to pretend in his report that this was a valid ground for refusing me access to the records I requested, well knowing it wasn’t, as the SAHRC has repeatedly taught, which is why it was eventually abandoned.

Mtati’s deliberate total omission to report to the SAHRC his reliance on section 45 eighty-three times in refusing my requests for access to as many records, on the false basis alleged that they were an ill-motivated waste of LASA’s time, reveals his bad faith in having persistently and repeatedly refused me access to LASA’s business records on this basis since 2013, more especially since he himself very correctly acknowledged in his letter of 11 December 2014, asking for an extension under section 26, that ‘your requests ... incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa.’ Like getting sacked, struck off, jailed, and sued under section 83 of the Public Finance Management Act 1 of 1999 to recover millions in damages LASA has suffered.

The second bogus reason Mtati states for having denied me access to the records I requested is that I ‘refused to pay the search fees in terms of section 22 of the Promotion of Information Act 2 of 2000.’

Again, the SAHRC has repeatedly taught LASA about the kinds of fees PAIA allows, but its lessons just go in one ear and out the other. The report of the PAIA training workshop for LASA on 6 October 2011 reflects that ‘types of fees’ were




explained to Sekgota and his fellow national office attorneys. And under the heading ‘Fees’ in her recent letter to you on 25 January 2016, the SAHRC’s current PAIA Unit director Kisha Candasamy pertinently advised you (in boldface to drive the repeated lesson home) that search fees may only be charged under section 22 **‘if the request is granted.’**

Hundermark and Makokoane hadn’t granted me access to the records for which they were demanding I pay ‘search fees’. Moreover the fees demanded weren’t for searching but for time spent reading ‘the documents relating to case 529/11’, as Mtati puts it in item 4 of his latest section 32 report. Consequently their demands were not for search fees contemplated and allowed by section 22, and were unlawful; and Mtati’s refusal to grant me access to the records I duly requested from Hundermark and Makokoane because, as he says in his report, I refused to pay the money they had unlawfully demanded, was equally unlawful. It’s dishonestly misleading for Mtati to pretend in his report that my refusal to pay money I didn’t owe was a valid ground for refusing me access to the records I’d requested.

You need to amend this ‘Comment’ to clarify your appreciation that the fees demanded by Hundermark and Makokoane, which demands Mtati persisted with until earlier this year when he dropped them (see below), were not search fees contemplated and allowed by section 22, and that Mtati’s refusal to allow me access to the records I’d requested on the ground that I refused to pay the reading fees demanded of me was unlawful and a violation of my fundamental right to information.

Another aspect to be frankly included in your ‘Comment’ here, is the marvellous revelation, after LASA’s capitulation at court (see below), that contrary to Mtati’s repeated perjury on affidavit to falsely refute my repeatedly made charge that he, Hundermark and Makokoane held no written delegations as deputy information officers under section 17(6) of PAIA – ‘I am, without question a Deputy Information




Officer’; ‘I have shown that I am a Deputy Information Officer’; and he, Hundermark and Makokoane as ‘Deputy Information Officers have been duly appointed, alternatively duly designated by law’ – in truth and in fact, you only designated Mtati on 16 January 2016, and Hundermark and Makokoane not at all, which means at the time they handled and blocked/refused my PAIA requests all three of them were acting ultra vires and unlawfully for that reason alone.

In conclusion, your revised report, amended in the manner described above so as to truthfully, accurately, fully and properly comply with section 32, will frankly disclose LASA’s PAIA delinquency in 2015/16, and not continue to conceal its many repeated obvious basic refractory errors, even after I pointed them out again and again, in persistently illegally refusing me access to documents I’d duly sought under PAIA, in violation of my fundamental right to information held by the state, guaranteed by section 32(1) of the Constitution.

Which plainly illegal and unconstitutional refusals were finally reversed at court on 11 February 2016, before I commenced arguing my applications for orders compelling LASA’s compliance with my PAIA requests for access to documents I’d been requesting since October 2013, to avoid looming inevitable judgment against LASA and the enormous reputational damage it faced – apparently foreseen and anticipated by your newly briefed advocate Chris Carelse.


Formerly employed in your national office, the attendance register shows that this sharp fellow, named at the very top of it, attended the SAHRC’s PAIA training workshop in 2011. Unlike your other hopeless head office lawyers present, including Sekgota, who, the workshop reports records, repeatedly admitted that they had no idea how to handle PAIA requests properly, Carelse was evidently able to benefit from the special remedial lesson and acquire an understanding of constitutional information law from his SAHRC tutors, because his last-minute entry into the case for LASA’s big day in court coincided with its total reversal of its persistent illegal



refusals of my PAIA requests on the advice since 2010 of your other junior counsel, an utterly clueless but now very rich legal novice called Thabiso Machaba.

Which very obviously wrong advice from this smiling person Mtati, Sekgota and your other Corporate Services attorneys eagerly grabbed at to obstruct my access to the documents I'd duly requested, with the object of suppressing further documentary evidence of pervasive and systemic recruitment and financial corruption at LASA, and of a top-level criminal cover-up entailing lying to me; lying to the SAHRC; lying to LASA's Board of Directors; false reporting to the Minister; lying and false reporting to the Portfolio Committee (both crimes under section 17(2) of Act 4 of 2004); false pleading; contradictory perjury committed in PAIA affidavits, in a discovery affidavit, in interlocutory affidavits, in oral evidence, and in opposing and condonation affidavits on petition; defeating the ends of justice with a lying, defamatory 'memorandum' corruptly slipped to a judge to improperly influence and pervert his decision; major maladministration; abuse of power; financial misconduct involving many millions of rands; unauthorised and unlawful deviation from LASA's approved Strategic and Performance Plans; unauthorised and unlawful deviations from LASA's Code on Recruitment and Approval Framework, including unauthorised and unlawful direct, active interference in staff recruitment by the non-executive chairperson of the Board and by unauthorised management executives; massive failures of proper corporate governance both at managerial and Board levels; and the wholesale breakdown of due process and the rule of law in LASA's top echelons – all coming up in complaints later this year to the Public Protector, to the Auditor General, to the Directorate for Priority Crime Investigation copied to the National Director of Public Prosecutions, to the Judicial Service Commission, to the Law Society of the Northern Provinces, and to the General Council of the Bar.

After reading which, I'm not sure anyone will still be agreeing much with former Deputy Minister Andries Nel quoted in *Business Day* on 12 January 2011: 'The world would be a better place if it were run by Legal Aid.'



LASA's deliberate, persistent, repeated illegal and unconstitutional refusals to comply with PAIA since 2010, despite the SAHRC's repeated attempted but unsuccessful remedial interventions, are detailed in a comprehensive draft 'Special Report on Legal Aid SA: An aggravated case of repeated non-compliance with the Promotion of Access to Information Act 2 of 2000' that I've substantially completed for the SAHRC, for the information of the National Assembly in the SAHRC's next section 84 report to be presented later this year.

As Mtati duly mentions in his section 32 report, at court on 11 February 2016, before the argument of my five applications to compel LASA's compliance with my PAIA requests, LASA decided to abandon its obviously incompetent and unlawful justifications for refusing them (Mtati was visibly taking instructions over the phone), along with its several lever-arch files full of professionally puerile, incompetent, irrelevant and untruthful defences to my applications piled up by young Mr Machaba like so much garbage strewn across the road, and 'agreed ... to provide records ... requested as set out in a ... consolidated list' that I agreed to provide to make things easy, comprising (in the language of clause 2 of the settlement agreement) 'an assembly of the several annexures to the PAIA requests in question ... and ... amendments to certain ... requests made by letter'; and to furnish 'an affidavit in terms of section 23' regarding 'records ... not located or [that] do not exist'.

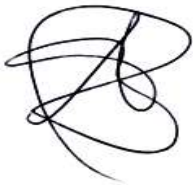
In view of this complete surrender at court, it's dishonestly misleading for Mtati to then state in his report that 'without admission of liability or any concession of legal argument advanced by the requester', LASA agreed to furnish me with all the records I'd sued for (obtaining third party consent where necessary; none was) or certify any that don't exist or can't be found. This greasy way of talking (LASA's papers are full of it) falsely implies that the refusals of my PAIA requests and the money demands were justified, or were at least fairly arguable, when in truth and in fact they were manifestly illegal to anyone with a passing acquaintance with the provisions of the Act. And to anyone like Chris Carelse paying attention during the

SAHRC's lecture on how PAIA works, delivered in special class for LASA's head office lawyers. And repeated by correspondence when the extra lesson for the slow learners failed, because they seemingly lacked the brains to understand it.

How LASA contemptuously reneged on the settlement agreement on the due date for performance, 15 April 2016, by making a desultory, token show of it, including an obviously perjured sworn certificate regarding records not provided, falls into the 2016/17 reporting cycle and is not material to detail here. Suffice it to say that my five applications will shortly be back in court and you can expect another subpoena.

Since your Corporate Services attorneys have repeatedly shown and repeatedly admitted that they don't know whether they're coming or going with PAIA, I've copied your six Senior Litigators around the country in the hope that your 'most senior and experienced lawyers', as Nair correctly describes them, part of whose professional function is to 'Provide legal opinion[s] for [LASA] as requested', will appreciate the enormity of the matters raised in this letter and advise you accordingly. Because when I raise this heavy stuff with your Chief Legal Executive Patrick Hundermark – who, the records show, has been involved in PAIA matters including mine since 2010 – he tells me he's not interested and that it's none of his business: 'I have responsibility for client legal matters and not the corporate legal matters of Legal Aid SA, which resort under [sic] the Corporate Services Executive.'

Yours sincerely



ANTHONY BRINK
arbrink@iafrica.com

Cc: Chief Legal Executive Patrick Hundermark and Board Secretary Langa Lethiba

All material documents in this matter are posted online at: goo.gl/prqE1N



Cc on 31 May 2016 to:

Michael Masutha, Minister of Justice and Correctional Services

John Jeffery, Deputy Minister of Justice and Correctional Services

Mathole Motshekga, Chairperson: Portfolio Committee on Justice and Correctional Services, and to all members

Pregaluxmi Govender, PAIA Commissioner: South African Human Rights Commission

Thulisile Madonsela: Public Protector

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

Mukelani Dimba, Executive Director: Open Democracy Advice Centre

Catherine Kennedy, Director: South African History Archive, Freedom of Information Programme

Mark Weinberg, National Coordinator: Right2Know

Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information in Africa: African Union

Sanjay Pradhan, Chief Executive Officer: The Open Government Partnership

Henri Maina, Chairperson: Africa Freedom of Information Centre

José Carlos Ugaz, Chairperson: Transparency International

Ferial Haffajee, Editor: City Press

Adriaan Basson, Editor: News24

Bongani Siqoko, Editor: Sunday Times

Jovial Rantao, Editor: Sunday Independent

Aakash Bramdeo, Editor: Sunday Tribune

Waldimar Pelsler, Editor: Rapport

Tim Cohen, Editor: Business Day

Steven Motale, Editor: The Citizen

Kevin Ritchie, Editor: The Star

Verashni Pillay, Editor: Mail & Guardian