

## IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

Case No:

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

VIDHU VEDALANKAR N.O.

INFORMATION OFFICER,

LEGAL AID SOUTH AFRICA

Respondent

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NOTICE OF MOTION

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

1. Declaring the respondent's (i) total refusal of the applicant's requests for access to records made under the Promotion of Access to Information Act 2 of 2000 ('PAIA'/'the Act') on 14 and 17 November 2014, as amended on 15 December 2014; and (ii) partial refusal of the applicant's request for access to records under the Act on 9 March 2015, as amended on 4 May 2015, to have unlawfully contravened section 11 of PAIA, and to have violated the applicant's fundamental right to information guaranteed by section 32 of the Constitution.

2. Directing the respondent within 30 days of this order to furnish the applicant with copies of all the records he requested, or, where they do not exist, to certify this on affidavit under section 23 of the Act.
3. Declaring the demands for payment of 'search fees' made on the applicant before and after the refusal of his requests for access to records on 14 and 17 November 2014, as amended on 15 December 2014, to be incompetent and unlawful under the Act.
4. Directing the respondent to publish this court's judgment in this case, and the judgment in case 1005/15 against national deputy information officer Brian Nair, on Legal Aid South Africa's internet website for a period of one year.
5. Granting the applicant leave to approach this court again on the same papers, supplemented as needs be, for an order for further and better compliance with the order set out in paragraphs 2–4 above; and/or for the attachment of Legal Aid South Africa's staff computers and business computer servers by the sheriff and their search by a suitably qualified, independent computer Information Technology expert appointed by this court for electronic copies of the requested records; and/or in the event that the respondent wilfully or grossly negligently fails to comply with this order, committing her for contempt for such period as this court deems meet.
6. Directing that the respondent be substituted for the late Zanele Msweli N.O., formerly Legal Aid South Africa's deputy information officer for the Free State and North West operating region and erstwhile respondent in case 529/14, and to assume responsibility for complying with this court's orders made in that case.

7. Directing the Clerk of Court, after the final disposal of this application, to refer a complete set of all papers filed in this application and in case 1005/15, together with a copy of this court's judgments – extra copies of which the applicant is to make and provide for this purpose – to the Minister of Justice and Correctional Services; to the Chairperson of the Portfolio Committee on Justice and Correctional Services in the National Assembly; and to the Chairperson of the South African Human Rights Commission.
8. Directing the respondent to pay the applicant's costs.

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

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

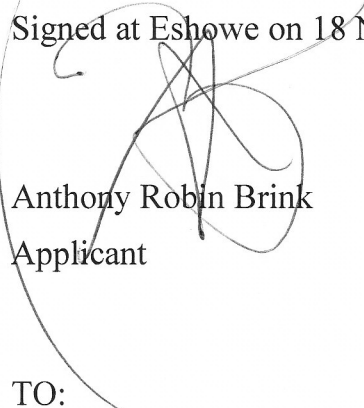
TAKE NOTICE FURTHER that:

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

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

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

Signed at Eshowe on 18 November 2015.



Anthony Robin Brink  
Applicant

TO:  
The Clerk of Court  
Eshowe Magistrate's Court

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

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FOUNDING AFFIDAVIT

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I, Anthony Robin Brink, affirm:

1. I am an adult male advocate of the High Court of South Africa, ordinarily resident at The Cottage, 1 Boast Street, Eshowe, KwaZulu-Natal, and I am the applicant herein.
2. The respondent is Vidhu Vedalankar, an adult female, cited in her capacity as information officer of Legal Aid South Africa ('LASA'), a category (b)(ii) 'public body' envisaged by section 1 of the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act'), being an 'institution ... performing a public function in terms of any legislation' namely the Legal Aid South Africa Act 39 of 2014. Her business address is Legal Aid South Africa, 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

AB  
BFS

3. In November 2014 I lodged three requests under PAIA for access to various specified documents – two requests with LASA’s Chief Legal Executive Patrick Hundermark and one with Chief Operations Executive Jerry Makokoane. Both of them are alleged to be deputy information officers by LASA’s PAIA manual published under section 14 of the Act, subsection (1)(b) of which requires the identification ‘of every deputy information officer of the body designated in terms of section 17(1)’. A screenshot from LASA’s PAIA manual online claiming this is annexed marked ‘A’.
4. Copies of my requests and their covering letters are annexed marked ‘B’, ‘C’, and ‘D’. My amendment of one item of my request addressed to Makokoane is annexed marked ‘E’.
5. Notwithstanding the claim in LASA’s PAIA manual in this regard, I’m not sure that Hundermark and Makokoane really are deputy information officers duly delegated by the respondent in writing in compliance with section 17(6)(a). My requests for copies of their written delegations have been refused, so I’ve been unable to verify this; and LASA’s PAIA manual contains other false and unreliable information, inter alia, its claim, in conflict with the Act, that refusals of requests for access to records must be appealed to the respondent, and that Corporate Services Executive Thembile Mtati, LASA’s lead in-house attorney, is also a deputy information officer. Disputed in case 258/14, Mtati failed to put up a written delegation with his answering affidavit to meet and refute my point, so contrary to the manual’s false claim that he’s a deputy information officer, and his own mistake in billing himself as such (see below), he isn’t. In view, however, of the respondent’s ultimate blanket refusal of my requests, it’s unnecessary for this court to decide whether Hundermark and Makokoane are indeed deputy information officers.

6. I duly paid the request fee prescribed by section 22 in respect of each of my said three requests, and I have the EFT vouchers if this is disputed.
7. Because my request addressed to Makokoane specified a lot of documents, I volunteered my consent under section 26(1)(e) of the Act to an extension of the prescribed time within which to respond (see third paragraph of my covering letter, annexure 'D'). On 11 December, Mtati (mistakenly calling himself 'deputy information officer') asked for more time to respond to my two requests addressed to Hundermark as well. His request is annexed marked 'F'. In a one-line reply by email I agreed. (I lost the record of this when reinstalling my computer's operating system recently, not having backed up old email).
8. Instead of deciding my requests within the maximum extended 60-day timeframe allowed by the Act, to which I'd consented, Hundermark and Makokoane then demanded money from me for time spent variously on background reading, reading my requests, and being briefed about them. Their demands on 3 and 25 February 2015 are annexed marked 'G' and 'H'.
9. Their undertakings at the conclusions of their letters to 'finalise the reply' upon 'payment' implied that their responses were in preparation and that my requests for access to the records I'd requested hadn't been refused outright.
10. So on 19 March I wrote to the respondent about Hundermark's and Makokoane's money demands, showing that they were incompetent and unlawful, and asking her to see to their compliance with my PAIA requests under her ultimate responsibility and control as information officer provided by sections 17(2) and 17(6)(b) of the Act. My letter covered a further PAIA request for a few more documents. A copy of my letter to her with its annexure and this new PAIA

request is annexed marked 'J'. I duly paid the request fee by EFT, and I have the voucher if this is disputed.

11. On 28 April, irrelevantly citing section 26 (1)(c) of the Act, Mtati told me the respondent would be taking a further 30 days within which to respond. A copy of his letter is annexed marked 'K'. I emailed back that I didn't object. (For the reason stated earlier, I've lost the record of this email.)

12. On 4 May I requested two further records from the respondent. This additional request is annexed marked 'L'.

13. On 26 May, claiming to have been 'duly delegated' by the respondent to reply to my letter to her and to the request for access to records that it covered, Mtati communicated the respondent's response, which was to (i) refuse my PAIA requests addressed to Hundermark and Makokoane outright; (ii) persist with their illegal money demands; and (iii) allow me access to a couple of the records I'd requested from the respondent but to refuse the rest. Mtati's letter is annexed marked 'M'.

14. I addressed the incompetence and unlawfulness of the respondent's refusals of my PAIA requests and money demands in a formal fundamental rights violation complaint lodged with the South African Human Rights Commission ('SAHRC'). A copy is annexed marked 'N'. (I haven't put up its Appendix, because it's not relevant to this application, nor all my PAIA requests and the responses they elicited, which were annexed to it, because they're annexed to this affidavit.)

15. When some weeks after couriering the complaint to the SAHRC on 19 June I discovered that it hadn't been delivered, I drove up to the SAHRC's national and Gauteng offices to personally hand-deliver copies on 31 July. Eventually, after repeatedly assuring me that she was mediating and attempting to conciliate a

resolution of my complaint, thereby lulling me into waiting expectantly for some weeks for the outcome of her intervention, the new acting director of the SAHRC's PAIA Unit Kisha Candasamy reversed herself by letter on 11 November (preceded by a similar email on the 9th), offering various irrelevant excuses for not determining my complaint and exercising the SAHRC's PAIA section 83 powers to assist me and set the respondent straight. Her letter is annexed marked 'O'. It's clear from it that LASA's head office had improperly warned her off dealing with my matter, as I complained in my response on the 12th. I annex a copy marked 'P'. On Friday the 13th Candasamy reacted by email: 'I will ... telephonically contact you during the early part of this week to further discuss.' Her email is annexed marked 'Q'. By Tuesday 17 November, she hadn't yet done so; and with my 180-day time limit to apply to court to compel fast drawing near, I couldn't wait any longer before proceeding with this application.

16. Also approached to assist me obtain LASA's compliance with my illegally refused PAIA requests, the Office of the Public Protector finally on 16 October offered to review its KwaZulu-Natal representative's failure to mediate under the Public Protector's statutory powers to do so under section 6(4)(d)(i) of the Public Protector Act 23 of 1994. Its advice of this is annexed marked 'R'. A month later, I've heard no more, but in any event it's now too late. My complaint to the Public Protector's KwaZulu-Natal representative; my letter to his investigator correcting his several basic factual misconceptions that caused him to mistakenly reject my complaint; and my follow-up letter to the Public Protector's national office, are annexed to Nair's answering affidavit in case 1005/15, marked 'BN4', 'BN7' and 'BN9'.

17. Though not essential to my cause of action, I mention my approaches to the SAHRC and Public Protector to illustrate the lengths I've gone to in trying to avoid this litigation to vindicate my fundamental right to information that the respondent has violated.
18. In paragraph 23 of his answering affidavit in case 1005/15, Nair indicated by reference to 'the late Zanele Msweli', formerly deputy information officer for LASA's Free State and North West operating region, that she'd died subsequent to answering my application against her in case 259/14.
19. The respondent's 'delegat[ion]' to Msweli under 17(3) of her 'power and duty imposed on that information officer [the respondent] by this Act' has lapsed with Msweli's death and has reverted to the respondent. In the circumstances I seek an order substituting the respondent for the late Msweli in case 259/14. It's evident from the other cases before this court that all my PAIA requests and applications have been/are being handled by LASA's national office.
20. As mentioned and vouched in my replying affidavit in my application against LASA deputy information officer Nair in case 1005/15:
- in its section 84 report to the National Assembly for 2011/12 on public body compliance with PAIA, the SAHRC reported LASA's failure for two years running to comply with its obligation to truthfully and accurately report its handling of my PAIA requests in 2010 and 2011 under section 32 of the Act, and more specifically its failure to report its refusals to comply with them (in April 2011, Nair finally made section 23 affidavits certifying non-existent records but continued illegally withholding extant records that I'd requested);
  - in light of this repeated failure by LASA, the SAHRC undertook in its said report to subject it to a full PAIA compliance audit (then didn't);

- the National Assembly's Justice Portfolio Committee repeatedly expressed its concern to the respondent about LASA's non-compliance with the Act when she presented LASA's 2011/12 annual report in October 2012;
- the SAHRC gave LASA's head office staff a special lesson in November the following month on the importance of complying with PAIA requests and accurate annual reporting as to how it responded to them, at which lesson the SAHRC emphasized the importance of complying with PAIA requests to give effect to and to respect my fundamental right to information entrenched by the Constitution (only my requests had been illegally refused).

21. All this arose from LASA's repeated illegal refusal to allow me access to its records specified in three PAIA requests I made in 2010 and 2011. (The respondent's fraudulent refusal of my first request in August 2010 is described in the annexure to my letter to the respondent, annexure 'J'. It's an excerpt of my first petition to LASA chairperson Mlambo JP and the Board. Mlambo JP was unconcerned, and shockingly dismissed it. The respondent refused my second PAIA request in December 2010 on the false basis that it was merely a repeat of the first.)

22. Still the respondent persists in illegally refusing me access to LASA's records, or certifying what specified records don't exist, as required under section 23; still this CEO and information officer of an organ of state persists in violating my fundamental right to information guaranteed by section 32 of the Constitution given effect by PAIA. The matter is thus extraordinarily serious, hence my prayer that the Clerk of Court bring it to the attention of LASA's ultimate executive authority, the Minister of Justice and Correctional Services, and to its Parliamentary oversight authority, the Portfolio Committee for the same

department. And also to the attention of the SAHRC, charged by section 83(3)(b) with 'monitor[ing] the implementation of this Act' and reporting annually about it under section 84.

23. I'd intended suing out of the High Court so that the judgment detailing the respondent's repeatedly displayed contempt for my fundamental rights could be reported, but on second thoughts I've decided it would be more expedient for one court, this court, to deal with all my PAIA applications against LASA's information officer and deputy information officers combined.

24. Wherefore I seek the relief claimed in my notice of motion.

Signed at Eshowe on 18 November 2015.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 18 November 2015 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and that he solemnly affirms its contents to be true to the best of his knowledge and belief.

  
7063400-0  
SP  
COMMISSIONER OF OATHS

Name: BONGIWE FAITH NTOMBIZODWA SIMELANE

Address: ESHOWE SAPS, 73-79 MAIN STR, ESHOWE

Capacity: CONSTABLE

**SOUTH AFRICAN POLICE SERVICE**  
STATION COMMISSIONER

2015 -11- 1 8

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**SOUTH AFRICAN POLICE SERVICE**  
ESHOWE

NOTE: The originals of these annexures to the founding affidavit in the court file have been duly initialled by the deponent and commissioner of oaths.

Phone Number	011 877 2000
Fax number	011 877 2222
Docex	Docex 117, Johannesburg

## 15.2 Deputy Information Officers

Deputy Information Officers	Chief Operations Officer
	National Operations Officer
	Chief Legal Executive
	Corporate Service Executive
Email address	<a href="mailto:coo@legal-aid.co.za">coo@legal-aid.co.za</a> <a href="mailto:noe@legal-aid.co.za">noe@legal-aid.co.za</a> <a href="mailto:cle@legal-aid.co.za">cle@legal-aid.co.za</a>
Postal Address	Private Bag X76 Braamfontein 2107 Johannesburg
Street Address	29 De Beer Street Braamfontein Johannesburg

1 Boast Road  
Eshowe 3815  
10 November 2014

B

Patrick Hundermark  
Deputy Information Officer,  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein

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

Dear Mr Hundermark

#### PAIA REQUEST

According to LASA's PAIA manual, published for the true information of the public, you're one of several deputy information officers in LASA's national office – appointed, subsection 17(1) of the Act explains, and again in subsection 17(4), 'to render the public body as accessible as reasonably possible for requesters of its records.'

Herewith then a request for records under PAIA for your response please.

It was prompted by CLM Sekgota's amazing email to me on 15 October (annexed marked 'A'), that Mzochithwayo Ngcamu, shortlisted and interviewed with me for the Pietermaritzburg Senior Litigator post on 12 November 2009, but not recommended by the selection panel,<sup>1</sup> has been appointed LASA's local correspondent in my appeal against Cele J's dismissal of my claim of unfair discrimination in the abortion of my appointment to the post.<sup>2</sup> My Google search on his name then turned up the news that he's the Children's Court Practitioner at the Durban Justice Centre (annexure 'B').

In light of these new discoveries, some seemingly trivial and insignificant factual details that I established before trial and most peculiar, obviously false evidence given by your National Operations Executive Brian Nair, mentioned below, now suddenly loom large.

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<sup>1</sup> Bundle (trial document bundle in my labour case, LC D529/11), pages 244–8.

<sup>2</sup> Heads of argument, judgment, and application for leave to appeal are all online at [www.tig.org.za/LC](http://www.tig.org.za/LC).

Before trial and during argument of my case, I pertinently considered nepotism as a possible reason for the abortion of my recruitment. But finding no evidence of it, I eliminated it, and said so in court.

B

As far as I could see, my interview and the selection process had been conducted impeccably properly.<sup>3</sup>

The Calitz affair in Cape Town strongly militated against possible race prejudice in the national office as the reason I wasn't appointed.<sup>4</sup> Indeed, after the judgment, a comparison performed by my accountant Rawlins of the demographics at the Pietermaritzburg Justice Centre in November 2009<sup>5</sup> (when I was recommended for the Senior Litigator post) and in November 2010<sup>6</sup> (when I was recommended for a temporary backlog court post) shows that white employment actually increased over the year by ten percent. This further precludes race prejudice as the reason I was not appointed.

Records that I sourced myself and elicited from LASA with PAIA and with demands for specific document discovery exposed the budgetary excuse given me eleven months after my interview as an obvious lie.

Consequently, until I saw that Ngcamu had been employed by your Durban Justice Centre, unfair political discrimination against me by the national office looked to be the most likely explanation of why I wasn't appointed.<sup>7</sup>

Now I'm beginning to wonder whether before the interviews were held, KZN ROE Mdaka, national NOE Nair, or even higher had decided to prefer Ngcamu, but that my unanticipated, last-minute application for the post, supported by a much better CV than Ngcamu's, followed by a much better showing at the interviews, stymied the plan. But because, objectively considered, I was the 'most suitable candidate for appointment'<sup>8</sup> and not Ngcamu, and the selection panel unanimously recorded this,<sup>9</sup> it was decided to quietly drop the panel's recommendation of me into Nair's bottom drawer, not communicate the happy result to me, and do nothing about finalising my appointment – hoping I'd conclude from the silence that I'd been unsuccessful and

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<sup>3</sup> Bundle, pages 2–4, paragraphs 5–16. And in argument.

<sup>4</sup> Judgment, pages 13–14, paragraph 30.

<sup>5</sup> Bundle, page 247.

<sup>6</sup> PA bundle (in my upcoming CCMA claim), page 21. The PA bundle is accessible at the case document archive online: [www.tig.org.za/LASA](http://www.tig.org.za/LASA) username: lasa password: LASA2010.

<sup>7</sup> Judgment, pages 14–18, paragraphs 31–41.

<sup>8</sup> Bundle, page 233, section 1.2.3.4.

<sup>9</sup> Bundle, page 248.

just go away,\* making way for Ngcamu's appointment instead of me later on. (\*Revealing this at trial, LASA's counsel very clumsily asked me on Nair's instructions why I'd not concluded from LASA's silence that my interview had been unsuccessful and abandoned my pursuit of the post.)

B

In sum, I'm now investigating the possibility that (i) I was mistaken about the integrity of the selection process; and (ii) although the interviews were conducted unimpeachably, it had been pre-decided by Mdaka, Nair, or even higher that I should not be appointed, and that Ngcamu should be instead, without informing the panel/the other members of the panel, and that this decision had been taken even before Mdaka sent the selection panel's recommendation of me up to Nair; and (iii) the recruitment was thus corrupt, and it was nepotism after all that was behind the abortion of my appointment.

What got me thinking about this was the following:

1. My internet search on his name revealed that Ngcamu is a former acting Labour Court judge (annexure 'C') – and coincidentally an erstwhile judicial colleague of LASA Board directors Mlambo JP and Molahlehi J. In its original response to my first statement of claim in the Durban Labour Court, LASA pleaded that 'The Chairperson took particular interest in the interviews of senior practitioners as their experience would directly affect and impact on the Respondent's public image which has, for the most part, been negative due to a perception of incompetence and lack of vital court skills'.<sup>10</sup> (Under the Approval Framework, Board chairperson Mlambo JP has zero authority to intrude himself in such operational matters.)<sup>11</sup>

This makes me wonder now whether Ngcamu's application wasn't supported at the very top, considering Mlambo JP's egregious lack of concern<sup>12</sup> about (i) CEO Vedalankar's illegal blanket refusal<sup>13</sup> of my first PAIA request for 51 records probing the circumstances in which my appointment had been aborted,<sup>14</sup> under cover of a fake misquotation from a reported judgment claimed to justify her refusal,<sup>15</sup> and (ii) the evidence then available to me, which I presented, that it had been irregular and that the budgetary excuse for it, eventually given me, was a

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<sup>10</sup> Pleadings bundle, page 143, paragraph 9

<sup>11</sup> Heads, pages 32–4, paragraphs 91–5.

<sup>12</sup> Bundle, pages 186 and 207.

<sup>13</sup> Bundle, page 104, paragraph 8.

<sup>14</sup> Bundle, pages 59–68.

<sup>15</sup> Bundle, page 101, paragraph 1; pages 114–9, paragraphs 23–43.

lie, and I was repeatedly pleading for his and the Board's intervention.<sup>16</sup> In response to which, he first tersely<sup>17</sup> (with his 'knowledge and consent'<sup>18</sup> Vedalankar, the very subject of my complaint, herself wrote his response dismissing it),<sup>19</sup> then rudely and threateningly told me to hit the road,<sup>20</sup> later repeating this unpleasantness, by way of a block quotation of it, to the chairperson of the Justice Portfolio Committee.<sup>21</sup>

2. On 23 November 2009, the day that the recommendation of me<sup>22</sup> was 'signed off',<sup>23</sup> as required by the Recruitment code, by 'all members of the selection panel and the line executive'<sup>24</sup> (Mdaka), RHRM Brijlal emailed it to Mdaka for forwarding to Nair and to HRE Clark, along with the CVs of all interviewed shortlisted candidates.<sup>25</sup>

That is, Brijlal sent the CVs not only of the applicant and Mngadi whom the selection panel had selected to 'recommend'<sup>26</sup> for the Pietermaritzburg and Durban posts, but also 'the curricula vitae of all the individuals who had applied for the Senior Litigator positions (i.e. including those who had neither been shortlisted nor recommended for a second round of interviews)',<sup>27</sup> namely the 'two persons ... eliminated early in the selection process and ... not recommended for the second round of interviews',<sup>28</sup> van Wyk and Ngcamu.<sup>29</sup>

The reason Brijlal also sent Mdaka the CVs of the unsuccessful, eliminated candidates for transmission to Nair is because he'd received 'instructions ... telephonically'<sup>30</sup> to do so.

This strongly suggests that (i) but for these special 'instructions', Brijlal wouldn't have sent Mdaka the CVs of the of the unsuccessful, eliminated candidates, and (ii) Nair knew of my selection even before Mdaka sent the recommendation up to

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<sup>16</sup> Bundle, pages 109–67, 190–1, and 197–206; bundle addendum, page 547–8.

<sup>17</sup> Bundle, page 186.

<sup>18</sup> Pre-trial conference bundle, answer to agenda, page 61, paragraph 69.2.

<sup>19</sup> Bundle, page 187.

<sup>20</sup> Bundle, page 209.

<sup>21</sup> Bundle, page 504.

<sup>22</sup> Bundle, page 244–8.

<sup>23</sup> Bundle, page 234, 'N.B. ...'.

<sup>24</sup> Ibid.

<sup>25</sup> Bundle addendum, page 712.

<sup>26</sup> Bundle, page 247.

<sup>27</sup> (First) amended response, paragraph 10.3.

<sup>28</sup> Pre-trial conference bundle, answer to agenda, page 55, paragraph 34.2.

<sup>29</sup> Bundle, page 245.

<sup>30</sup> Bundle addendum, page 987, Part 2, document 11, paragraph 27.

him, and that he was contemplating appointing someone other than me, most probably Ngcamu, especially since:

3. Unlike the other three candidates interviewed for the simultaneously advertised Pietermaritzburg and Durban Senior Litigator posts, myself included,<sup>31</sup> Mdaka never sent Ngcamu a letter alleging that it had been resolved not to fill the posts. Demanded during pre-trial discovery,<sup>32</sup> no such letter to him was produced in my labour case; and indeed LASA explicitly confirmed that besides me, only 'two other applicants',<sup>33</sup> not all three were sent such letters.<sup>34</sup>

This suggests that Ngcamu was comfortably kept waiting for his appointment to the Pietermaritzburg Senior Litigator post once I was out of the way. (Durban Justice Centre High Court Unit Manager Bongani Mngadi had been selected for the Durban post. Although the recommendation itself is not specific about this, LASA admitted before trial that I was selected for Pietermaritzburg<sup>35</sup> for which I'd applied, and by implication Mngadi for Durban.)

4. In April 2010, five silent months after the interviews, when I was repeatedly pleading with Human Resources Executive Amanda Clark for information about the upshot and the progress of the recruitment process, she told me the lie, among others: 'At this stage it is not even clear which applicants will be considered in the second round'. In truth and in fact, the selection panel's unanimous recommendation of me,<sup>36</sup> which I eventually disgorged from LASA after several months of determined concealment (my request for it under PAIA in August 2010,<sup>37</sup> was illegally ignored,<sup>38</sup> then illegally expressly refused,<sup>39</sup> then under SAHRC pressure<sup>40</sup> finally surrendered in January 2011)<sup>41</sup> showed I was the lucky boy and no one else.<sup>42</sup> (As said, Mngadi was recommended for a different post at Durban.)

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<sup>31</sup> Bundle, page 245.

<sup>32</sup> Pre-trial conference bundle, page 35, item 28.

<sup>33</sup> Bundle, page 383, paragraph 26.

<sup>34</sup> Bundle, page 20; bundle addendum, pages 829 and 831.

<sup>35</sup> Bundle addendum, page 1020, paragraph 11.

<sup>36</sup> Bundle, page 248.

<sup>37</sup> Bundle, page 62, items 1 and 2.

<sup>38</sup> Bundle, page 113, paragraphs 17–20.

<sup>39</sup> Bundle, page 104, paragraph 8.

<sup>40</sup> Bundle, pages 262–314.

<sup>41</sup> Bundle, page 215, section V7.

<sup>42</sup> Bundle, pages 244–8.

Clark's lie to me strongly suggests that Nair was contemplating inviting Ngcamu to his so-called 'second round' interview for the post, and not me.

Only, what spoiled the plan was that I didn't walk away as hoped, and pressed increasingly insistently for information about the recruitment process, gradually moving up the corporate hierarchy as I did so.

5. In October 2010, illegally refusing my first PAIA request for the records that would have revealed the truth of it,<sup>43</sup> CEO Vidhu Vedalankar (Nair ghost-writing for her)<sup>44</sup> told me the lie: 'You were recommended together with other candidates for the second round of interviews.'<sup>45</sup>

The same lie was told to Justice Portfolio Committee member Hon Schäfer MP: 'according to LASA, he was not the only candidate.'<sup>46</sup>

Confirmed by Nair on oath,<sup>47</sup> and instructed by him to allege this, CSE Mtati falsely implied the same on oath in an interlocutory affidavit: the applicant's 'recruitment, together with the other candidates recommended for the second round of interviews was aborted immediately after the first round of interviews.'<sup>48</sup>

On Nair's instructions (Nair denied it at trial, but certainly untruthfully) CLM Sekgota falsely implied likewise to the SAHRC in the respondent's section 32 report on its PAIA performance in 2010/11: 'No decision taken yet on who should be appointed'.<sup>49</sup> (Nair falsely blamed COO Makokoane for this lie.)

In truth and fact, I'd indeed been the only candidate recommended, as the recommendation, finally forced out of LASA in January 2011, confirmed. And obviously so: the selection panel's function circumscribed by the Policies and Procedures on Recruitment was precisely to interview all short-listed candidates<sup>50</sup> and to 'identif[y] the most suitable candidate for appointment in a

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<sup>43</sup> Bundler, page 62, items 1 and 2.

<sup>44</sup> Heads, page 77, paragraph 233.

<sup>45</sup> Bundle, page 104, paragraph 7.2.

<sup>46</sup> Bundle addendum, page 680.

<sup>47</sup> Application to subpoena Mlambo JP, Nair's confirmatory affidavit, pages 122–3.

<sup>48</sup> Application to subpoena Mlambo JP, Mtati's answering affidavit, page 83, paragraph 13.4.

<sup>49</sup> Bundle addendum, page 679.

<sup>50</sup> Bundle, pages 230–1, paragraphs 1.2.2.1–2.

post<sup>51</sup> – singular, not plural. (Mngadi was recommended for a different post at Durban.)

That is, in October 2010 – while illegally refusing<sup>52</sup> my request<sup>53</sup> for a copy of the recommendation that would have exposed the lie, dishonestly misquoting a reported judgment as his crooked justification for doing so<sup>54</sup> – Nair’s intention was to defraud me into thinking that ‘other candidates’, meaning Ngcamu, had also been recommended for the post.

He hadn’t bargained on my persistence in demanding the recommendation under PAIA, which exposed his lie, and showed that I was indeed ‘singly’<sup>55</sup> recommended for the post and no one else.

6. In court in July/August 2013, Nair testified – incredibly stupidly and contradicting all the correspondence, the pleadings and the interlocutory affidavits about this,<sup>56</sup> but most revealingly as to the corrupt plan – that all candidates interviewed by the selection panel had to be interviewed again by him and his so-called ‘second round’ interview panel (more about this below), including candidates eliminated by the selection panel; and that he and his panel were free to recommend for appointment a candidate (like Ngcamu) who’d been rejected by the selection panel – thus stultifying and defeating the very purpose of the selection process by competent persons (in my case by LASA’s top five lawyers in the region), prescribed by the Recruitment code.

This again strongly suggests that Nair had in mind to appoint Ngcamu and not me – his plans derailed by my determined pursuit of my appointment, commencing five months after my interview when Clark insolently suggested I ‘withdraw’ if I didn’t like ‘the pace we have decided’ (thereby backhandedly confirming I’d been recommended), five strangely silent months after my interview, and rudely kissing me off with a Don’t call us we’ll call you.<sup>57</sup>

(Beyond mentioning elliptically that I’d shown Nair to be ‘less than generous with the truth’ on several scores,<sup>58</sup> the judge didn’t remark on Nair’s obvious lie about

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<sup>51</sup> Bundle, page 233, section 1.2.3.4.

<sup>52</sup> Bundle, page 104, paragraph 8.

<sup>53</sup> Bundle, page 62, items 1 and 2.

<sup>54</sup> Bundle, page 101; and pages 114–15, paragraphs 23–8.

<sup>55</sup> Bundle, page 211, paragraph 3.

<sup>56</sup> Heads, page 46–7, paragraph 148.

<sup>57</sup> Bundle, page 256.

<sup>58</sup> Judgment, page 32, paragraph 67. (See footnote 2.)

all candidates interviewed by selection panels having been and having to be interviewed again by his so-called 'second round' panel, including those rejected by the selection panels; and Nair's lie on oath about this will be categorically exposed, for his criminal prosecution for perjury, once I have the responses of all regional deputy information officers in whose regions Senior Litigators are employed, to each of whom I'll be addressing pointed PAIA requests testing Nair's obvious lie.)

B

7. The qualifying criteria for the Pietermaritzburg and simultaneously advertised Durban Senior Litigator posts were set much higher than elsewhere in the country when re-advertised in 2009, including at Kimberly also advertised that year and at Mthatha advertised the following year, for which latter two posts the original lower criteria were set.<sup>59</sup> LASA admitted in the pleadings that no written authority exists for the doubling of the qualifying criteria for the KZN posts.<sup>60</sup>

This suggests that the qualifying criteria for the KZN posts were manipulated and tailored for a particular applicant, and contrived to exclude other ordinarily suitable applicants – the standard trick in rigging a recruitment process to favour someone it had been pre-decided to employ.

8. On Nair's instructions, LASA alleged in paragraph 7 of its amended response that 'Mr Vela Mdaka' had final say over who was to be appointed Senior Litigator, 'after the CEO and the NOE had agreed with the recommendation.'<sup>61</sup> (During his cross-examination when I referred him to the Approval Framework contradicting this and showing that Mdaka had no approval power subsequent to his vote as a member of the selection panel, Nair retracted this false allegation.)

That is, Nair claimed to court in the pleadings that the final (de facto, albeit unlawful) call as to who should be appointed was Mdaka's, not his, even as he initially told me contrariwise but correctly in his letter of 3 August 2010 that the final power to approve Senior Litigator appointments is his.<sup>62</sup>

This suggests that Nair connived in disregarding:

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<sup>59</sup> Heads, page 36, paragraph 100.

<sup>60</sup> Ibid.

<sup>61</sup> Pleadings bundle, page 22, paragraphs 7.2.2–3.

<sup>62</sup> Bundle, page 19.

- the function of the selection panel, prescribed by the Recruitment code, to decide who the most suitable candidate was, following interviews of all shortlisted candidates, and recommend him for appointment accordingly;<sup>63</sup>
- which candidate had been duly selected and recommended after the interviews of all shortlisted candidates;<sup>64</sup> and,
- his (Nair's) and Vedalankar's respective approval prerogatives ('Final approval' and 'Must agree'), prescribed by the Approval Framework.<sup>65</sup>

9. Everywhere I've looked, I've found recruitment at LASA to be utterly corrupt:

- (a) Despite the top seniority of the post, the Mthatha Senior Litigator post was advertised only on the respondent's website,<sup>66</sup> and not in the print media,<sup>67</sup> i.e. it was not publicly advertised 'nation-wide' as required for such a senior professional post in the public service<sup>68</sup> (at grade LP10,<sup>69</sup> formerly 'level 13',<sup>70</sup> Senior Litigators are the respondent's most 'Senior Professional staff').<sup>71</sup>

Furthermore, then Eastern Cape ROE Mtati allowed EC RHRM Thenjiwe Magazi, lacking any legal qualifications, to participate in the selection panel of just three members<sup>72</sup> as a scoring member evaluating the shortlisted interviewees' suitability for the post<sup>73</sup> – in contravention of her and Mtati's obligation ('the responsibility of the Human Resources Department and the relevant line manager')<sup>74</sup> imposed by the Recruitment code 'to jointly ensure that a diverse and knowledgeable selection committee/panel is appointed.'<sup>75</sup>

This suggests that the recruitment process was a sham to circumvent section 1.2.3.3 of the Recruitment code – 'An internal candidate who qualifies for the post in terms of the advertised requirements will not automatically be appointed to the position but will be selected through the same process as an

<sup>63</sup> Bundle, page 233, paragraph 1.2.3.4.

<sup>64</sup> Bundle, pages 244–8.

<sup>65</sup> Bundle addendum, pages 1034 and 1036, section 8.2.2(b).

<sup>66</sup> Bundle, page 46.

<sup>67</sup> Bundle addendum, page 1021, paragraph 15.

<sup>68</sup> Bundle addendum, page 791, section 6.4(1), and page 793, section 7.

<sup>69</sup> Bundle addendum, page 1021, paragraph 16; and page 1036.

<sup>70</sup> Bundle, page 372, paragraph 8.2.2.b; and bundle addendum, page 690.

<sup>71</sup> Bundle addendum, page 1036, section 8.2.2 (b).

<sup>72</sup> Bundle addendum, page 995.

<sup>73</sup> Ibid.

<sup>74</sup> Bundle, page 231, section 1.2.2.2.

<sup>75</sup> Bundle, page 231, section 1.2.2.2.

external candidate’ – and that the outcome, namely the selection and transfer of Adv Nzame Skibi at the Mahikeng JC,<sup>76</sup> had been pre-decided. (Port Elizabeth JCE Lynette Franklin was evidently not complicit in this corruption, because her grading of Skibi was much lower than Mtati’s and Magazi’s.)<sup>77</sup>

B

- (b) Without the approval of the Board, and in a massive illegal deviation from and contravention of the Board’s Recruitment code and Approval Framework, Nair has been conducting so-called ‘second round’ interviews of Senior Litigator candidates (and, he testified, some ROE candidates too) duly recommended by selection panels, which so-called ‘second round’ interview panels have comprised him (a former schoolmaster with no legal qualifications), HRE Clark (without any either, for her useless and irrelevant ‘perspective’, he testified) and Board chairperson Mlambo JP (with no authority as a non-executive director to involve himself in recruitment decisions, besides approving the appointment of the CEO and NOE, but even then, only in committee with the rest of the Board and not on his own).<sup>78</sup>

Lies repeatedly told me and court<sup>79</sup> about you and COO Makokoane also being members of Nair’s so-called ‘second round’ panel are refuted by my firm knowledge that only the three said persons re-interviewed recommended candidates for the Port Elizabeth and Pietermaritzburg Senior Litigator posts when originally advertised. Imminent further PAIA requests will establish the truth about the so-called ‘second round’ interviews for the other posts.

- (c) When a year after my appointment to the Pietermaritzburg Senior Litigator post had been aborted and I applied for and was selected and recommended for appointment to a temporary public defender post for which I’d applied to tide me over while preparing my claim to my appointment to the Senior Litigator post (I’d crossed the country in anticipation, and been left in a jam), Mdaka instructed then Pietermaritzburg Justice Centre Executive Bertus Appel (I only discovered via PAIA last year) to ‘redo the interviews’ to find someone else to hire instead, raising transparently specious objections to my appointment to this light post even as he’d (formally) recorded his support for

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<sup>76</sup> Bundle addendum, pages 995–6.

<sup>77</sup> Ibid.

<sup>78</sup> Heads, page 31–5, paragraphs 90–8.

<sup>79</sup> Heads, page 34, paragraph 96.

my appointment to LASA's top professional post a year earlier. Only, I was told a completely different story, in Appel's absence and without his knowledge, a couple of weeks later, namely that it had been decided not to fill the post: the selfsame lying cover-story, likewise unsupported by any records, that I'd been fed about the Senior Litigator post, eight months after I was interviewed for it, and I'd written to Vedalankar pressing for my appointment. In short, I was unlawfully blocked a second time under cover of the same casually told but easily refuted lie. The second case comes up for a preliminary hearing in the CCMA at Richards Bay later this month on the 28th. My papers record that Mdaka and Nair have grossly irregularly been appointing practitioners at the Pietermaritzburg Justice Centre without any interviews of them at all, and how in one case Mdaka specifically ordered the reappointment of a consistent underperformer despite constant written complaints about him by his supervisors at LASA and the prosecutors at the Pietermaritzburg Magistrate's Court.<sup>80</sup>

- (d) The corrupt manner in which my appointment as Senior Litigator, Pietermaritzburg, was blocked, and the several different, contradictory lies about this variously told to me, to the SAHRC, to the Board, to the Minister, to the National Assembly, and to court (with different, contradictory lies told to court before and during trial), is enough to fill a book – all detailed in my heads of argument and my application for leave to appeal.<sup>81</sup>

It's against this rotten background that I've decided to investigate the circumstances in which Ngcamu was employed by LASA; because I wonder now whether the plan from the start wasn't to ease him into the Senior Litigator post for which I'd been recommended, once I'd been disposed off, first with studied silence, then stonewalling, then more silence, and finally multiplying contradictory lies in the classic dynamic of a disintegrating cover-up.

Their correspondence with me shows that Clark,<sup>82</sup> Nair,<sup>83</sup> Mdaka,<sup>84</sup> Vedalankar<sup>85</sup> and Mlambo JP<sup>86</sup> all tried very hard to put me off pursuing my appointment – and in this

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<sup>80</sup> See CCMA referral, footnote referenced to PA bundle (see footnote 6).

<sup>81</sup> [www.tig.org.za/LC](http://www.tig.org.za/LC). All trial documents referenced in the heads are accessible at the main case document online (see footnote 6).

<sup>82</sup> Bundle, page 256.

<sup>83</sup> Bundle, pages 19 and 380–1.

<sup>84</sup> Bundle, page 20.

<sup>85</sup> Bundle, pages 101–8, 210–58; and 390–1.

<sup>86</sup> Bundle, pages 186 and 209.

endeavour never mind LASA's Code of Ethics and Conduct<sup>87</sup> and the Ethics and Conduct provisions of the Senior Management Services Handbook.<sup>88</sup>

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I could be quite wrong in my new ruminations, sparked by Sekgota's recent email, and that political prejudice against me was indeed the problem, as I believed all along. Your response to my PAIA request, going to the propriety of Ngcamu's appointment, may be illuminating here.

But one thing's for sure: as the records very clearly show, budgetary insufficiency did not prevent my appointment,<sup>89</sup> as Nair,<sup>90</sup> Vedalankar,<sup>91</sup> and Mlambo JP<sup>92</sup> all falsely alleged it did, to me, to the Minister, to the National Assembly, and to court.

I mention all this for your background information only. Under section 11(3) of PAIA, my purpose, or what you think it is, is irrelevant to your decision as to whether to grant my request; and the only grounds on which you may refuse it are those listed in Chapter 4 of the Act. Collecting documents for the purpose of litigation, whether future (section 7(1)) or even current (section 7(2)), isn't among them.

Unfortunately, despite the repeated lessons the SAHRC has given them about this, your corporate services lawyers still have trouble understanding this. Hence my three pending applications to court<sup>93</sup> to compel LASA's compliance with my PAIA requests made in October last year.

I'd like to conclude that in making this records request, I've no beef with Ngcamu personally. We chatted before the Senior Litigator interviews and he struck me as a very nice guy. I'm certainly not looking to dislodge him.

But make no mistake, I will have the Senior Litigator post that I was duly selected and recommended for, and no one else; and I will not permit prejudice, dishonesty, and corruption to succeed in perverting this.

This PAIA request comprises two parts: the first interrogates Ngcamu's appointment to the Children's Court post, and the second lists a few other records I require.

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<sup>87</sup> Bundle addendum, pages 770–80.

<sup>88</sup> Bundle addendum, pages 802–16.

<sup>89</sup> Heads, pages 41–3, paragraphs 134–41.

<sup>90</sup> Bundle, page 381, paragraphs 14–6.

<sup>91</sup> Bundle, page 101, paragraph 103, paragraph 6.7; page 223, paragraph 39; and pages 390–1.

<sup>92</sup> Bundle addendum, page 1012; and bundle, page 505.

<sup>93</sup> Online at the main case document archive; see footnote 6.

Please be advised that I'll sue immediately for whatever records you refuse,\* and likewise for any records you deny exist if I have reason to believe they do. In this latter regard, my founding affidavit in my PAIA application against Eastern Cape deputy information officer Bambiso records LASA's history of concealing records from me under cover of lies that they don't exist. (\*I was constrained to delay suing Bambiso, Vedalankar, and Msweli for the full six months allowed by the Act to apply to court to compel their compliance with my PAIA requests because I was seriously hands-full at the time with my labour case.)

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If you have in mind to refuse any of the records I've duly requested, before you do please consider consulting the SAHRC's PAIA Unit for expert advice on whether the Act permits it – especially recalling the SAHRC's PAIA training workshop report in October 2012, which recorded LASA's 'challenges [in] complying with PAIA';<sup>94</sup> its 'lack of application based knowledge';<sup>95</sup> 'the fact that they had previously been misapplying the provisions of PAIA';<sup>96</sup> that this 'misinterpretation and misapplication was identified as high risk to LASA';<sup>97</sup> 'LASA compliance history was flagged with participants and most reacted to the reporting of LASA as non-compliant to Parliament with concern';<sup>98</sup> 'Most participants were a little overwhelmed by the requirements of the legislation';<sup>99</sup> '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';<sup>100</sup> and 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation'.<sup>101</sup>

As you will see from my replying affidavits in my three pending PAIA applications,<sup>102</sup> LASA's very junior counsel used to date is clueless, so looking to and relying on him again will be disastrous.

Notwithstanding LASA's concessions and undertakings to the SAHRC minuted in its report following its PAIA training course for LASA, its information officers have

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<sup>94</sup> Bundle addendum, page 916.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Bundle addendum, page 919.

<sup>99</sup> Ibid.

<sup>100</sup> Bundle addendum, page 920.

<sup>101</sup> Ibid.

<sup>102</sup> Online, see footnote 6.

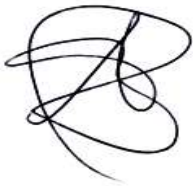
continued illegally refusing me access to duly requested records, hence my pending applications.

I'm sure you don't want an embarrassing repeat of this, with your name on the front page of another set of court papers and then shamefully included in the SAHRC's next section 84 report to the National Assembly.

If, as I suspect, information officer Vedalankar hasn't yet designated you a deputy information officer in writing under section 17(6) of PAIA, please be sure to fix this before commencing to deal with my request (like Nair did in March 2011<sup>103</sup> before dealing with my first three PAIA requests made in 2010/11), or you'll be acting ultra vires and unlawfully (like Mtati did in November 2013),<sup>104</sup> thus exposing you and LASA to more remedial litigation in the Eshowe Magistrate's Court. As an attorney, you'll appreciate that merely being named a deputy information officer in LASA's revised PAIA manual, even if the Board approves it, isn't a valid designation under the section.

In view of the ongoing post office strike, a cheque mailed you for the prescribed R35 request fee isn't likely to reach you any time soon, so if you email me LASA's bank details, I'll deposit it by EFT. My address is arbrink@iafrica.com.

Thanks.



ANTHONY BRINK

Cc:

Nokwanda Molefe, PAIA Unit, South African Human Rights Commission

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

Ben Mthembu, Chairperson, Public Service Commission

Lesleigh Timothy, LASA Board Secretary

Lynette Franklin, LASA Justice Centre Executive, Port Elizabeth

And other parties.

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<sup>103</sup> Bundle, page 387.

<sup>104</sup> Replying affidavit in application to compel Vedalankar; online, see footnote 6.

**Anthony Brink**

A

**From:** Solly Sekgota [SollyS@legal-aid.co.za]  
**Sent:** 15 October 2014 09:11 AM  
**To:** sdwarika@justice.gov.za; Anthony Brink  
**Cc:** Mzochithwayo Ngcamu; Thembile Mtati  
**Subject:** Notice to oppose application for leave to appeal  
**Attachments:** Notice to oppose Appeal\_Brink and Legal Aid South Africa.pdf

**Importance:** High

B

Good Day

Please find the notice to oppose leave to appeal  
The original notice will be sent to Mr Mgcamu of our Durban Justice Centre  
Regards

Mr Solly Sekgota  
Legal Aid South Africa  
Tel: 011 877 2004

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Thank You.

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## Premature baby now doing well

April 16 2014 at 06:15pm  
By ANELISA KUBHEKA

### Durban -

A KwaZulu-Natal infant who had been given an "extremely urgent" blood transfusion by doctors who obtained a high court order to allow the procedure, is now 6 months old and doing well.

The infant, from Empangeni, was born prematurely at 28 weeks, weighing 730g in November when his mother had to have an emergency caesarian section.

The child's paediatrician, Dr Tavengwa Usaiwevhu, said the infant was a bundle of joy and now weighed 4kg.

"I last saw the child in February and he is doing very well," he said.

According to papers filed in the High Court in Empangeni by Legal Aid SA on behalf of doctors at the Garden Clinic Hospital, the baby had been on cardio-respiratory support and an urgent blood transfusion was discussed with the parents.

They refused the procedure because it was against their beliefs as Jehova's Witnesses.

The court order giving authority to doctors at Garden Clinic to perform the transfusion was granted on November 15 and the baby had the transfusion on that day.

Usaiwevhu, who spoke to the Daily News this week, said the infant would not have survived if he had not had the transfusion.

"The transfusion was needed because most nutrients are transported in the blood from the mother to the child in the last 13 weeks of pregnancy and this infant didn't get this as he was premature," he said.

He said the baby had a low blood cell count and the number had been dropping daily.

Bhekisgcino Dladla, an elder at Klaarwater Jehovas Witness near Pinetown, said the child's parents were merely obeying the word of God.

"In (the Bible's book of) Proverbs it says promiscuity and worshipping man-made gods are an equal sin as taking blood through consumption or transfusion," he said.

Dladla in an interview this week said blood was life and could not be accepted to save your own because only God could do so.

"The sin is upon the doctors who gave the blood, and not the parents or the child."

In the application for the order to be granted, Mzochithwayo Ngcamu, a children's court practitioner with Legal Aid SA, said the application had been made on an urgent basis as any delay would have prejudiced the child's right to life.

"On November 13, in the afternoon, I received instructions to investigate a matter relating to a child who had been admitted in the Garden Clinic Hospital... On receipt of instructions, I telephoned the hospital. I was advised that there was a child who was very sick and I was also advised to speak to Dr Ladie (Dr Usaiwevhu)," the application read.

When Ngcamu went to the hospital, before the application was made, Ladie showed him a text message sent by the child's father, saying there should be no blood transfusion owing to his religious beliefs.

"I was also advised by Dr Ladie that the father of the child came to the hospital on November 9 to confirm that there should be no blood transfusion," the application read.

"The father came with two elders from the church, as well as the paternal grandmother of the child."

While at the hospital, the child's father wrote a letter confirming that the family refused the transfusion; the letter was attached to the application papers.

In the letter, the father asked for any other available methods to be used on his child, and "not the blood transfusion".

In the application papers, Ngcamu wrote that the transfusion was "extremely urgent" as other means of saving the child's life would have no effect.

"The child is unable to absorb the mother's milk and supplements cannot be used because of his tiny body.



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## Past misconduct haunts judge candidate

April 13 2007 at 07:05pm

A KwaZulu-Natal acting judge, who at one stage doubled as a taxi owner, could be barred from practising on the bench after the Judicial Service Commission discovered he was found guilty of professional misconduct in the past.

**Mzochitwayo Ngcamu, a KwaZulu-Natal attorney and acting judge, was appearing before the Judicial Service Commission (JSC) in Cape Town on Friday.**

He admitted during his interview for a labour court judge position that he did not during his appointment disclose the fact that he had been found guilty of professional misconduct.

Ngcamu, who was twice found guilty of professional misconduct by the KwaZulu-Natal provincial law society, told the commission following a grilling by JSC panellists that he should have told Natal Judge President Mka Tshabalala, who appointed him as acting judge, about the issue.

"I do realise now that I should have discussed it with him, it was an error of judgment," he said.

The law society a few years ago found Ngcamu guilty of professional misconduct after the acting judge failed to respond to letters from the society, and made him pay a fine of R2000.

In 2006, the society once again found him guilty after he failed to submit his legal practice's audited statements on time. He was ordered to pay a R3000 fine before the end of March 2007.

It later emerged during the interview that he had also failed to pay the fine on time. "I only paid the fine in April," he said.

JSC member Advocate George Bizos expressed concern about Ngcamu's professional conduct.

"Integrity is of the utmost importance in the position that you are applying for, and your problems with your professional body are of great concern to us," he said.

Bizos also berated Ngcamu for failing to indicate in his application documents that the Law Society was now in the process of instituting court action against him.

"They sent you a notice - why did you not indicate this on your application - is it once again another error of judgment on your part," he asked.

About his involvement in the taxi business, Ngcamu said he had since sold his taxi and was now only a legal adviser to one of the provincial taxi associations. - Sapa

**FORM A**

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

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

**B**

**[Regulation 2]**

**FOR DEPARTMENTAL USE**

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

**A. Particulars of public body**

**Legal Aid SA**

**Patrick Hundermark  
Deputy Information Officer,  
National Office  
29 De Beer Street  
Braamfontein**

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

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

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

**B**

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

N/A

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

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

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

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

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

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

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

**See annexure**

**E. Fees**

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

Reason for exemption from payment of fees:

N/A

**F. Form of access to record**

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

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

<b>2. If record consists of visual images -</b> (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)			
	view the images	<b>X</b>	copy of the images*  transcription of the images*
<b>3. If record consists of recorded words or information which can be reproduced in sound -</b>			
	listen to the soundtrack (audio cassette)	<b>X</b>	transcription of soundtrack*  (written or printed document)
<b>4. If record is held on computer or in an electronic or machine-readable form -</b>			
	printed copy of record*		printed copy of information derived from the record*  <b>X</b> copy in computer readable form*  (on compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?  <b>A postal fee is payable.</b>			<b>YES</b>
<i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i>			
In which language would you prefer the record? <b>English</b>			

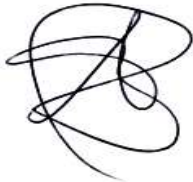
## G. Notice of decision regarding request for access

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

B

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

Signed at Eshowe on 10 November 2014

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

SIGNATURE OF REQUESTER

## 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:

# B

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.

## PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

# B

### 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.

### 90 Offences

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

(a) destroys, damages or alters a record;

(b) conceals a record; or

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

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

## INTERPRETATION ACT 33 OF 1957

### 4 Reckoning of number of days

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

1 Boast Road  
Eshowe 3815  
17 November 2014



Patrick Hundermark  
Deputy Information Officer,  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Per email: patrickh@legal-aid.co.za

Dear Mr Hundermark

#### FURTHER PAIA REQUEST

Further to my PAIA request a week ago concerning your Durban Justice Centre's Children's Court Practitioner, which you kindly acknowledged immediately, there's another matter I'm investigating – this time one in which National Operations Executive Brian Nair claims you're directly involved, making you best placed to respond to my further brief PAIA request about it.

Nair's allegations about you, made under oath during my cross-examination of him at the trial of my labour claim, are recited in the annexure to my request. I expect they'll be news to you, and that you'll accordingly be able to promptly dispose of my request under section 23, by certifying that none of the records I've specified exist – which is to say Nair falsely implicated you in his elaborate, corrupt scheming, as he was inventing and developing new stories to replace the budgetary pretext given me for not finalising my appointment to the Pietermaritzburg Senior Litigator post, which I'd refuted and exposed as a lie in my first petition to the Board in November 2010.

Since I pressingly need your response for the purposes of my appeal (and, in time, for referral to the Public Service Commission and the Director of Public Prosecutions), I'd appreciate it if you'd let me have your response 'as soon as reasonably possible' in

compliance with section 25(1), and not wait out the full maximum thirty calendar days allowed you.

If you email me LASA's bank account details I'll deposit the PAIA request fee.

Thanks again.

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

arbrink@iafrica.com

Cc:

Nokwanda Molefe, PAIA Unit, South African Human Rights Commission

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

Lesleigh Timothy, LASA Board Secretary

C



**FORM A**

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

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

**[Regulation 2]**

**FOR DEPARTMENTAL USE**

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

**A. Particulars of public body**

**Legal Aid SA**

**Patrick Hundermark  
Deputy Information Officer,  
National Office  
29 De Beer Street  
Braamfontein**

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

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



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

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

**N/A**

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

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

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

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

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

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

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

**See annexure**

**E. Fees**

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

Reason for exemption from payment of fees:

N/A

**F. Form of access to record**

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

Disability: N/A	Form in which record is required:
-----------------	-----------------------------------

<p>Mark the appropriate box with an "X".</p> <p>NOTES:</p> <p>(a) Your indication as to the required form of access depends on the form in which the record is available.</p> <p>(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</p> <p>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</p>
--

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

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

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

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

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

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

**YES****A postal fee is payable.**

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

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

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

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

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

Signed at Eshowe on 17 November 2014

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

SIGNATURE OF REQUESTER

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',<sup>1</sup> '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',<sup>2</sup> 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'<sup>3</sup> of a 'review panel'<sup>4</sup> to conduct 'performance reviews or quality reviews' for 'senior litigators',<sup>5</sup> being the 'person' to whom Nair claimed at the trial to have 'allocated the responsibility'<sup>6</sup> 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'<sup>7</sup> with a view to conducting 'performance reviews or quality reviews' for 'senior litigators'.<sup>8</sup>
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.

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<sup>1</sup> Record, page 359, lines 10–15.

<sup>2</sup> Bundle (trial documents), page 870, section 4.

<sup>3</sup> Record, page 398, lines 1–3.

<sup>4</sup> Record, page 397, line 21.

<sup>5</sup> Record, page 397, line 15.

<sup>6</sup> Record, page 398, lines 1–3 .

<sup>7</sup> Record, page 398, lines 3–10.

<sup>8</sup> Record, page 397, line 15.



## PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

### 23 Records that cannot be found or do not exist

(1) If-

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

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

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

### 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.

### 90 Offences

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

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

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

## INTERPRETATION ACT 33 OF 1957

### 4 Reckoning of number of days

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

C

1 Boast Road  
Eshowe 3815  
25 November 2014



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

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

Dear Mr Makokoane

#### PAIA REQUEST

According to LASA's PAIA manual, published for the true information of the public, you're one of several deputy information officers in LASA's national office – appointed, the Act explains in subsection 17(1) and again in subsection 17(4), 'to render the public body as accessible as reasonably possible for requesters of its records.'

Herewith then a request for records under PAIA for your response please.

In view of the number of records I'm seeking, I hereby consent under section 26(1)(e) to an extension of the ordinary 30 days allowed by section 25 for responding to a PAIA request, by a further 30 days, which will give you 60 calendar days in total, the maximum allowed by the Act.

What I said in my letter of the 10th instant to Chief Legal Executive Patrick Hundermark covering a different PAIA request applies equally to this one:

Please be advised that I'll sue immediately for whatever records you refuse,\* and likewise for any records you deny exist if I have reason to believe they do. In this latter regard, my founding affidavit in my PAIA application against Eastern Cape deputy information officer Bambiso records LASA's history of concealing records from me under cover of lies that they don't exist. (\*I was constrained to delay suing Bambiso, Vedalankar, and Msweli for the full six months allowed by the Act to apply to court to compel their compliance with my PAIA requests because I was seriously hands-full at the time with my labour case.)

If you have in mind to refuse any of the records I've duly requested, before you do please consider consulting the SAHRC's PAIA Unit for expert advice on whether the Act permits it – especially recalling the SAHRC's PAIA training workshop report in October 2012, which recorded LASA's 'challenges [in] complying with PAIA';<sup>1</sup> its 'lack of application based knowledge';<sup>2</sup> 'the fact that they had previously been misapplying the provisions of PAIA';<sup>3</sup> that this 'misinterpretation and misapplication was identified as high risk to LASA';<sup>4</sup> 'LASA compliance history was flagged with participants and most reacted to the reporting of LASA as non-compliant to Parliament with concern';<sup>5</sup> 'Most participants were a little overwhelmed by the requirements of the legislation';<sup>6</sup> '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';<sup>7</sup> and 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation'.<sup>8</sup>

As you will see from my replying affidavits in my three pending PAIA applications,<sup>9</sup> LASA's very junior counsel used to date is clueless, so looking to and relying on him again will be disastrous.

Notwithstanding LASA's concessions and undertakings to the SAHRC minuted in its report following its PAIA training course for LASA, its information officers have continued illegally refusing me access to duly requested records, hence my pending applications.

I'm sure you don't want an embarrassing repeat of this, with your name on the front page of another set of court papers and then shamefully included in the SAHRC's next section 84 report to the National Assembly.

If, as I suspect, information officer Vedalankar hasn't yet designated you a deputy information officer in writing under section 17(6) of PAIA, please be sure

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<sup>1</sup> Bundle addendum (trial documents in case LC D529/11), page 916.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Bundle addendum, page 919.

<sup>6</sup> Ibid.

<sup>7</sup> Bundle addendum, page 920.

<sup>8</sup> Ibid.

<sup>9</sup> Accessible at the case document archive online: [www.tig.org.za/LASA](http://www.tig.org.za/LASA)  
username: lasa password: LASA2010.

to fix this before commencing to deal with my request (like Nair did in March 2011<sup>10</sup> before dealing with my first three PAIA requests made in 2010/11), or you'll be acting ultra vires and unlawfully (like Mtati did in November 2013),<sup>11</sup> thus exposing you and LASA to more remedial litigation in the Eshowe Magistrate's Court. [...] merely being named a deputy information officer in LASA's revised PAIA manual, even if the Board approves it, isn't a valid designation under the section.

D

I paid the prescribed R35 request fee by EFT directly into LASA's bank account yesterday evening under reference code 'PAIA/JM'.

Yours sincerely



ANTHONY BRINK

Cc:

Nokwanda Molefe, PAIA Unit, South African Human Rights Commission  
Sinthia Reddy, Public Protector investigator (ref: 7/2-040815/12)  
Lesleigh Timothy, LASA Board Secretary

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<sup>10</sup> Bundle, page 387.

<sup>11</sup> Replying affidavit in application to compel Vedalankar; online, see footnote 9 above.

**FORM A**

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

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

**[Regulation 2]**

<p><b>FOR DEPARTMENTAL USE</b></p> <p style="text-align: right;">Reference number:</p> <p>Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).</p> <p>Request fee (if any): R .....</p> <p>Deposit (if any): R .....</p> <p>Access fee: R .....</p> <p>SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER</p>
--

**A. Particulars of public body**

**Legal Aid SA**

**Jerry Makokoane  
Deputy Information Officer,  
National Office  
29 De Beer Street  
Braamfontein**

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

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

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

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

N/A

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

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

Full names and surname : N/A  
Identity number : N/A

### D. Particulars of record

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

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

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

**See annexure**

**E. Fees**

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

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

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

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

Reason for exemption from payment of fees:

N/A

**F. Form of access to record**

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

Disability: N/A	Form in which record is required:		
<p>Mark the appropriate box with an "X".</p> <p>NOTES:</p> <p>(a) Your indication as to the required form of access depends on the form in which the record is available.</p> <p>(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</p> <p>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</p>			
<b>1. If the record is in written or printed form -</b>			
<b>X</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">copy of record*</td> <td style="width: 50%; padding: 5px;">inspection of record</td> </tr> </table>	copy of record*	inspection of record
copy of record*	inspection of record		

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

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

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

	listen to the soundtrack (audio cassette)	X	transcription of soundtrack*  (written or printed document)
--	--	---	---

**4. If record is held on computer or in an electronic or machine-readable form -**

	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form*  (on compact disc)
--	-------------------------	--	--	---	--

\*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?

YES

**A postal fee is payable.**

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

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

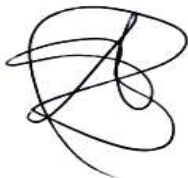
## G. Notice of decision regarding request for access

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

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

Signed at Eshowe on 25 November 2014

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

SIGNATURE OF REQUESTER

## 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'.

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

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

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

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

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

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

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

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

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

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

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

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

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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.'<sup>1</sup>

4. The record reflecting that, as ordered by the Legal Services Technical Committee on 24 March 2010, then 'Manager: Legal Administration, National Operations'<sup>2</sup> Bee-Mari Schoeman (responsible for 'Legal Services Delivery')<sup>3</sup> 'Immediate[ly]<sup>4</sup> ... facilitate[d] the transfer of the budget'<sup>5</sup> that existed for a Senior Litigator post at the Kimberly Justice Centre<sup>6</sup> 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]'<sup>7</sup> (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,<sup>7</sup> before the Mthatha post was advertised.<sup>8</sup>

Note: The recruitment/vacancy/budget statistics for June 2010<sup>9</sup> 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,<sup>10</sup> 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.

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<sup>1</sup> Record, page 474, lines 13–22.

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

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

<sup>4</sup> Bundle addendum, page 709, section 4.1.7 under 'Due Date' column.

<sup>5</sup> Bundle addendum, page 709, section 4.1.7.

<sup>6</sup> Bundle addendum page 707.

<sup>7</sup> Bundle addendum, page 1036.

<sup>8</sup> Bundle, page 46.

<sup>9</sup> Bundle addendum, page 1066.

<sup>10</sup> 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:

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'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'<sup>11</sup> implementation; and the post was

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<sup>11</sup> Bundle addendum, page 709, paragraph 4.1.7.

advertised in April,<sup>12</sup> with interviews held in May<sup>13</sup> in short order. Nair would accordingly have been awaiting the selection panel's recommendation in 'Legal Aid SA Head Office'.

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10. The Strategic Plan 2009–12.

Note: Brink has only a draft version.<sup>14</sup>

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

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.<sup>16</sup>

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.<sup>17</sup>

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.'<sup>18</sup>

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 her<sup>19</sup> 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'.<sup>20</sup> There's a similar false entry in the 'Executive Summary' of

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<sup>12</sup> Bundle, page 46.

<sup>13</sup> Bundle addendum, page 994.

<sup>14</sup> Bundle, pages 444–50.

<sup>15</sup> Bundle addendum, page 1060, paragraph 3.2.1.

<sup>16</sup> Bundle addendum, pages 708–10.

<sup>17</sup> Bundle, page 251.

<sup>18</sup> Record, page 425, lines 19–23.

<sup>19</sup> Bundle addendum, page 877, 'Responsible Executive': 'HRE'.

<sup>20</sup> 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.'<sup>21</sup>

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'.

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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.'<sup>22</sup>

21. The record of any Strategic Plan Annual Review workshop or Board meeting<sup>23</sup> 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.'<sup>24</sup> 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.'<sup>25</sup>

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.

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<sup>21</sup> Bundle addendum, page 883, section 4.1.

<sup>22</sup> Bundle, page 1057.

<sup>23</sup> Bundle addendum, page 1061, section F2-C2-P1.

<sup>24</sup> Bundle addendum, page 1060.

<sup>25</sup> Bundle addendum, page 869.

25. All and any records vouching that NOE Nair was among the 'senior executives' who 'began to deliberate quite intensively'<sup>26</sup> in regard to the 'budgetary issues that suddenly confronted'<sup>27</sup> them on 10 March 2010, on learning that LASA's expected OSD phase 1 funding hadn't been included in the baseline budget for 2010/11<sup>28</sup> as had been assured in January 2010,<sup>29</sup> 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 June<sup>30</sup> and December<sup>31</sup> 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,<sup>32</sup> the December 2010 statistics show the post and budget had reverted to Kimberly.<sup>33</sup>

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,<sup>34</sup> 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.<sup>35</sup>

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<sup>26</sup> Record, page 344, line 9.

<sup>27</sup> Pleadings bundle, original response, page 144, paragraph 11.

<sup>28</sup> Bundle, page 236, paragraph 6.

<sup>29</sup> Bundle, pages 235–6, paragraphs 3 and 5.

<sup>30</sup> Bundle addendum, page 1066.

<sup>31</sup> Bundle addendum, page 1070.

<sup>32</sup> Bundle addendum, page 1066.

<sup>33</sup> Bundle addendum, page 1070.

<sup>34</sup> 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.

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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.'<sup>36</sup>

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 its Strategic Plan):<sup>37</sup>

'The implementation continues until the Board revisits that issue.'<sup>38</sup>

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)<sup>39</sup> 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,<sup>40</sup> identical to the letters sent the other interviewed candidates Brink<sup>41</sup> and van Wyk,<sup>42</sup> but very interestingly not Ngcamu,<sup>43</sup> 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"<sup>44</sup> 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',<sup>45</sup> the respondent admitted in its

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<sup>35</sup> Record, page 342, lines 14–15.

<sup>36</sup> 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.)

<sup>37</sup> Heads of argument, paragraph 61.

<sup>38</sup> Record, page 424, line 25 to page 425 line 1.

<sup>39</sup> Bundle, pages 146–7, paragraph 179.

<sup>40</sup> Bundle addendum, page 831.

<sup>41</sup> Bundle, page 20.

<sup>42</sup> Bundle addendum, page 829.

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

<sup>44</sup> Ibid.

<sup>45</sup> 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'.<sup>46</sup> 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.'<sup>47</sup> The respondent 'Agreed'<sup>48</sup> with this and volunteered: 'It was Mr Nair who gave the instruction.'<sup>49</sup> 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',<sup>50</sup> 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'.<sup>51</sup> ...

(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.'<sup>52</sup> Which she confirmed on affidavit.)<sup>53</sup>

32. All counsel's feenotes 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'.<sup>54</sup>

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.

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<sup>46</sup> Pleadings bundle, original response, page 162, paragraph 41.4.

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

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

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

<sup>50</sup> Pleadings bundle, original response, page 162, paragraph 41.4.

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

<sup>52</sup> Bundle, page 103, paragraph 6.7.

<sup>53</sup> Bundle addendum, page 390-1, with reference to page 380, paragraph 13.

<sup>54</sup> Application to subpoena Mlambo JP, page 102, paragraph 75.2.



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'.

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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.'<sup>55</sup> '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.'<sup>56</sup> 'The critical posts we are, I am referring or we are referring to there are link[ed] to the lower court positions.'<sup>57</sup> 'So when we are talking about critical, it was linking to coverage of courts.'<sup>58</sup> Nair's evidence contradicted LASA's pleaded case.<sup>59</sup> 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'.<sup>60</sup> 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.

<sup>55</sup> Record, pages 373, lines 20–5 to page 374, line 1.

<sup>56</sup> Record, page 480, lines 19–23.

<sup>57</sup> Record, page 375, lines 10–11.

<sup>58</sup> Record, page 375, lines 17.

<sup>59</sup> 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.

<sup>60</sup> <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,<sup>61</sup> Brink had twice written to her,<sup>62</sup> 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.<sup>63</sup>

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.<sup>64</sup>

<sup>61</sup> Bundle, page 168, email quoted.

<sup>62</sup> Bundle, pages 168–72; and 188.

<sup>63</sup> <http://linkd.in/17DpY3F>.

<sup>64</sup> 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,<sup>65</sup> seemingly on Friday 23 March 2012.<sup>66</sup>

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.<sup>67</sup>

Note: In his email to Brink rebuking Brink's second petition to the Board,<sup>68</sup> 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,<sup>69</sup> Mlambo JP alleged:

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

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.

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

<sup>66</sup> 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.'

<sup>67</sup> Bundle, pages 109–65; and 197–208.

<sup>68</sup> Bundle, pages 197–208.

<sup>69</sup> Bundle, pages 109–65.

<sup>70</sup> 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,<sup>71</sup> and in his email correspondence with KwaZulu-Natal Regional Operations executive Vela Mdaka in February 2011.<sup>72</sup>

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,<sup>73</sup> 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.<sup>74</sup>

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.<sup>75</sup>

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

Note: Mdaka refers to this in his email correspondence with Appel.<sup>76</sup>

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'<sup>77</sup>, 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.<sup>78</sup>

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<sup>71</sup> 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](http://www.tig.org.za/LASA) username: lasa password: LASA2010.

<sup>72</sup> PA bundle, page 222.

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

<sup>74</sup> PA bundle, pages 220 and 221.

<sup>75</sup> PA bundle, page 231.

<sup>76</sup> Ibid.

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

<sup>78</sup> 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'.<sup>79</sup>
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.<sup>80</sup>
51. 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 for which they'd unanimously recommended him.<sup>81</sup>

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

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 Executive<sup>84</sup> 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.)<sup>85</sup>

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.*

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<sup>79</sup> Ibid.

<sup>80</sup> PA bundle, page 219.

<sup>81</sup> PA bundle, pages 18–21.

<sup>82</sup> PA bundle, page 23.

<sup>83</sup> PA bundle, page 212.

<sup>84</sup> PA bundle, page 53.

<sup>85</sup> Bundle, pages 244–8.

## PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

# D

### 23 Records that cannot be found or do not exist

(1) If-

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

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

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

(ii) does not exist,

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

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

### 90 Offences

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

(a) destroys, damages or alters a record;

(b) conceals a record; or

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

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



1 Boast Road  
Eshowe 3815  
15 December 2014



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

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

Dear Mr Makokoane

PAIA REQUEST: AMENDMENT OF ITEM 34

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

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

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

Table 13: Employment and vacancies per critical occupation

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

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

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

Table 18: Employment and vacancies per critical occupation

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

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



**Table 19: Employment and Vacancies per critical occupation**

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

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

Consequently, my request for a record showing –

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

– has already been answered by the latest annual report:

It’s 64 JCE posts.

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

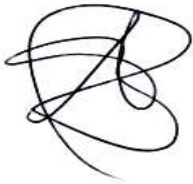
In the situation, I hereby amend item 34 of my PAIA request.

What I require instead is:

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

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

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

Cc: CSE Thembile Mtati and CLM Solly Sekgota

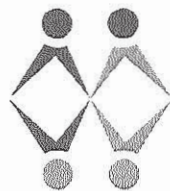
**Proof of post**

**Letter to COO Jerry Makokoane on 15 December 2014**

The letter was emailed to him that day, but since it was not acknowledged with an email 'read receipt' as requested, it was sent also by registered post on 29 December 2014.

E

<b>REGISTERED LETTER</b> <b>GEREGISTREERDE BRIEF</b> <i>(with an insurance option/met 'n versekeringsopsie)</i>			
<b>Full tracking and tracing/Volledige volg en spoor</b>		Postage paid R _____ c Service fee / Diensgeld R _____ c Insurance / Versekering R _____ c Total / Totaal R _____ c	
Addressed to/Geadresseer aan <i>Cooseng Makokoane</i> <i>11 Bar 776</i> <i>Breyersfontein</i> 2017 Postcode Poskode		Insured value of contents Versekerde waarde van inhoud R _____ c	
The value of the contents of this letter is as indicated and compensation is not payable for a letter received unconditionally. Compensation is limited to R100.00. No compensation is payable without documentary proof. Optional insurance up to R2 000.00 is available and applies to domestic registered letters only. Die waarde van die inhoud van hierdie brief is soos aangedui en vergoeding sal nie betaal word vir 'n brief wat sonder voorbehoud ontvang word nie. Vergoeding is beperk tot R100.00. Geen vergoeding is sonder dokumentere bewys betaalbaar nie. Opsionele versekering tot R2 000.00 is beskikbaar en is slegs op binnelandse geregistreeerde briewe van toepassing.		Enquiries/Navrae ShareCall number/nommer <b>0860 111 502</b> www.postoffice.co.za	
		Initial of accepting officer	Date Stamp 
		<b>REGISTERED LETTER</b> <i>(with a domestic insurance option)</i> <b>RD 826 019 638 ZA</b> <b>CUSTOMER COPY 301028R</b> Plak volgens kliëntskrif	Paraaf van aaneem-beampte Datumstempel



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

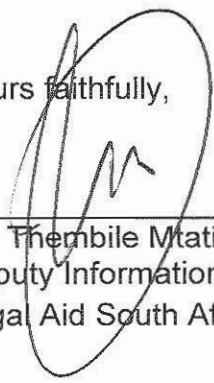
29 De Beer Street  
Braamfontein  
Johannesburg 2017  
Private Box X76  
Braamfontein 2017  
Tel: 011 877 2000, Fax: 011 877 2222  
[www.legal-aid.co.za](http://www.legal-aid.co.za)

Dear Anthony Brink,

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

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

Yours faithfully,

  
\_\_\_\_\_  
Mr. Thembile Mtati  
Deputy Information Officer  
Legal Aid South Africa



Date: 3 February 2015

Advocate Anthony Brink;  
1 Boast Road;  
Eshowe  
3815

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

Dear Advocate Brink,

**REQUEST FOR RECORDS OR INFORMATION IN TERMS OF PROMOTION OF  
ACCESS TO INFORMATION ACT 2 OF 2000 DATED 10 AND 17 NOVEMBER 2014**

I have had an opportunity of perusing your two requests dated the 10 and 17 November 2014 respectively. I further wish to record that you have consented to a further 30 days extension in terms of section 26(1) of the Promotion of Access to Information Act 2 of 2000 (hereinafter referred as the "Act).

I must further state that due to the lengthy background to the requests, which required me to refer to the bundle of document relating to the proceedings of the Labour Court, references to the various review applications in the Magistrate Court and your specific requests as outlined in your annexure to the letters of 10 and 17 November 2014, I have had to commit Legal Aid SA resources to the preparation of a response. We have accordingly spent approximately 181 hours in excess of the allowed 6 hours in preparation of the reply.

Therefore, in terms of section 22 of the Act you are required to pay the amount of R900 (R15 per hour X 180) being the one third of the amount allowed for the search fees. I have attached for ease of reference the SAHRC fees structure.

Kindly make the payment into the Legal Aid SA bank account, which bank account details are already known to you, to enable me to finalise the reply.



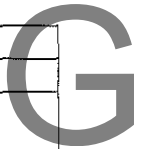
Yours Faithfully

A handwritten signature in black ink, appearing to read 'Patrick Hundermark', is written below the closing. The signature is fluid and cursive, with a long, sweeping tail that extends upwards and to the right.

Mr Patrick Hundermark

Deputy Information Officer

Legal Aid South Africa



Schedule of Fess	
Description	Fee
The fee for a copy of the manual as contemplated in regulation 5(c) is R0, 60 for every photocopy of an A4-size page or part thereof.	R0.60
<b>Reproduction Fess: Regulation 7(1):</b>	
For every photocopy of an A4-size page or part thereof	R0.60
For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form	R0.40
For a copy in a computer- readable form on:	
(i) Stiff disc	R5.00
(ii) Compact disc	R40.00
For a transcription of visual images:	
(i) for A4-size page or part thereof	R22.00
(ii) copy of visual images	R60.00
(iii) transcription of an audio record, A4 size page or part thereof	R12.00
(iv) copy of an audio record	R17.00
Request fee payable by a requester, other than a personal requester	R35.00
Search Fees- to search and prepare a record for disclosure. The fee is charged per hour (or part of the hour); however the first hour is free.	R15.00-
For purposes of section 22(2) of the Act, the following applies: (a) Six hours as the hours to be exceeded before a deposit is payable; and (b) one third of the access fee is payable as a deposit by the requester.	
The actual postage is payable when a copy of a record must be posted to a requester.	



Legal Aid  
South Africa

H

Date: 25 February 2015  
Advocate Anthony Brink;  
1 Boast Road;  
Eshowe  
3815

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

Dear Advocate Brink,

**REQUEST FOR RECORDS OR INFORMATION IN TERMS OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 DATED 25 NOVEMBER 2014 AND 15 DECEMBER 2014**

I have had an opportunity of perusing your two requests dated the 25 November 2014 and 15 December 2014 respectively. I further wish to record that you have consented to a further 30 days extension in terms of section 26(1) of the Promotion of Access to Information Act 2 of 2000 (hereinafter referred as the "Act").

I think it is also worth recording that your background to your request has been extremely long as it required my team to read the bundle as referred in your footnotes to advise me with the gist of background explanation. As a result, my team spent and devoted almost 220 hours of their time to deal with your requests and in terms of section 22 of the Act you are required to pay the amount of R1095 (R15 per hour X 219) being the one third of the amount allowed for the search fees.

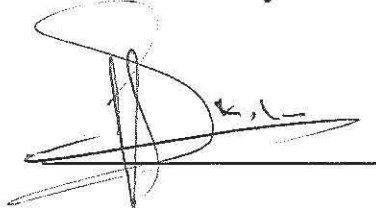
**Your voice. For justice.**

H

Therefore, in terms of section 22 of the Act you are required to pay the amount of R1095 (R15 per hour X 219) being the one third of the amount allowed for the search fees.

Kindly make the payment to enable me to finalise the reply.

**Yours Faithfully**

A handwritten signature in black ink, appearing to be 'J. Makokoane', written over a horizontal line. The signature is stylized and somewhat illegible.

**Mr Jerry Makokoane**

**Deputy Information Officer**

**Legal Aid South Africa**

1 Boast Street  
Eshowe  
KwaZulu-Natal  
19 March 2015



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

Per email and per registered post

Dear Ms Vedalankar

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

REQUEST FOR YOUR INTERVENTION UNDER SECTION 17;

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

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

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

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

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


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Makokoane knew this very well, because he himself had applied to the Board on 16 July 2010 for such similar approval when proposing on the management executive committee's behalf, at Nair's suggestion the previous day (to spur payment, Nair testified), to temporarily freeze recruitment to some non-critical public defender posts serving the lower criminal courts – and none other – until the uncertainty in 2010 about when LASA's OSD phase 1 funding would be paid had been resolved. All fully documented.

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

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

40. Incidentally, did you know that testifying under oath in court, Nair practically called you a liar on two counts, trying to pass the buck to you (i) for his egregious misconduct in unlawfully obstructing the implementation of the Board's Strategic Plan regarding the employment of Senior Litigators for grossly improper reasons, and then (ii) for the cover-up going as far as lying to the Minister and to Parliament via secret reports he ghost-wrote for you to give Mlambo JP to sign and submit to these authorities (which you did, knowing they were full of lies) to pervert their independent enquiries into my complaints that you'd repeatedly illegally refused to comply with my first two PAIA requests in 2010 and that my appointment had been irregularly aborted?
- o Radically contradicting the story you told me in your October 2010 letter, repeated in your January 2011 letter, and swore to under penalty of perjury in your PAIA affidavit in April 2011, which story, after I sued for reinstatement to the post I was recommended for, was consistently repeated in LASA's pleadings and interlocutory affidavits (but not in Nair's completely different November 2011 Report to Board), namely that due to budgetary insufficiency, LASA had decided not to fill its three vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, Nair alleged quite differently in court, and admitted that the cancellation of the Mthatha recruitment had nothing to do with any budgetary consideration.

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

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

- Nair also blamed you, and then Mlambo JP, and then you again, for telling the several fresh lies that he (Nair) added to the ‘updated’ report to Parliament in June 2011 which he’d ghost-written for Mlambo JP to sign and give the Minister in March to pervert his enquiry into my complaints.
41. And did you know that at trial Nair blamed you for the abortion of my recruitment, alleging that it was your idea, and that you had suggested that the Pietermaritzburg Senior Litigator post for which I’d been selected be frozen (off the record, and without Board approval as required by the Approval Framework)?
  42. That is, in his cowardly, pathologically dishonest manoeuvring to evade culpability for his capital misconduct, Nair gave evidence on oath behind your back to frame you for it as principal perpetrator, rather than as his accomplice in the cover-up.
  43. Now that you’re aware that Nair told the judge these lies about you, all of which, among so many others, he swore, with his hand in the air were the perfect truth, please advise me what you intend doing as CEO about his repeated perjury in implicating you in and blaming you for his own misconduct. You can be sure that at the enquiry to follow you’ll be questioned about your reaction to this news of Nair’s lies about you told under oath in court.
  44. In November 2012, directly on account of my repeated complaints to the SAHRC about your and Nair’s persistent illegal refusal of my PAIA requests in 2010/11 and false section 32 reporting about it afterwards to conceal from the SAHRC and from the National Assembly in turn your illegal suppression of documentary evidence (to obstruct and defeat the ends of justice), the SAHRC found it necessary to deliver your national office lawyers a special remedial lesson on how PAIA works.
  45. Lying under oath, as usual, Nair told the judge he knew nothing of this workshop. Email records I obtained from you after trial (the very few you duly surrendered, the majority refused) prove categorically that Nair knew all about it.
  46. Nair also denied any knowledge of the SAHRC’s PAIA audit of LASA; again, the email records prove he contemptuously lied to the judge about this too.

47. As CEO, what are you going to do about this further interminable, compulsive perjury of his? As said, you will certainly be asked this again at the enquiry to follow this case.
48. The SAHRC's report of the PAIA training workshop records your national office attorneys' admission that on account of their 'lack of application based knowledge' causing them 'challenges complying with PAIA' they felt 'overwhelmed by the requirements of the legislation', and that 'LASA compliance history was flagged with participants and most responded to the reporting of LASA as non-compliant to Parliament with concern'.
49. The SAHRC was referring to the 'reporting of the Brink saga (you may be familiar with it – Patrick [Hundermark] is) to Parliament', as its PAIA Unit director mentioned in her email to the Open Democracy Advice Centre on 12 July 2011, copying Hundermark in.
50. Indeed, in its Annual Report for 2011/12, the SAHRC reported LASA to the National Assembly as a PAIA defaulter in its section 84 report. Concerning the failure of public institutions to comply with their PAIA compliance reporting obligations, the SAHRC cited:

A case in point ... where a complainant brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year.
51. Strangely the SAHRC neglected to report to the National Assembly LASA's substantial repeated illegal refusal to comply with my first three PAIA requests, even as it had noted the 'unlawfulness' of this in its correspondence with me. (Nearly all records illegally refused were later released, but only under persistent pressure, in the labour litigation.)
52. The SAHRC's training workshop report further records that 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation', and that it had undertaken 'to create guidelines within the organisation to ensure misapplication does not recur' in the handling of PAIA requests like mine, particularly since 'misinterpretation and misapplication was identified as being high risk to LASA', having regard to 'the status of PAIA as a fundamental right' (sic), a matter 'reiterated and emphasized at different points of the training'.

53. Likewise underscored was 'the need to break the culture of secrecy which shrouds the public service in general' and LASA in particular – maintained by its highest officers in their illegal collusion to cover up the most extraordinarily serious misconduct.
54. And then on 25 October 2011, right after LASA's attorneys had very frankly conceded to the SAHRC that it hadn't complied with PAIA in the handling of my record requests (besides me, no other records requesters were obstructed), LASA (Nair instructing, Mtati signing) blithely lied to court in its pleadings in my labour case:
- The Respondent contends that the Applicant's requests in terms of the Promotion of Access to Information Act, 2000 ("PAIA") were answered completely and lawfully and those documents that were refused were refused in terms of the law.
55. Which brazen lie Mtati repeated on oath in his prodigiously perjurious interlocutory affidavit on 16 January 2013 supported by a confirmatory affidavit by Nair.
56. And which lie Mtati repeated again in his even more massively perjurious affidavit of 22 January 2015 opposing my petition for leave to appeal, telling fresh new lies contradicting the old ones told in court; in which affidavit, filed out of time, he sought condonation for LASA's non-compliance with the rules of the Labour Appeal Court with yet more bare-faced perjury, lying to the Judge President that he hadn't known I'd filed my signed and attested petition before he went off on holiday on 12 December 2014 – his excuse given on oath for his inaction flatly refuted and exposed as a lie by the record of an email I sent him on the 8th, which he admits he read on the same day, before pushing off without attending to my petition.
57. It's evident from the illegal responses to my current four PAIA requests in November 2014, and from the illegal responses to my three requests in November 2013 now before the Magistrate's Court, that your 'team' of national office 'legal representatives' were unable to learn anything from the SAHRC's training workshop. (The attendance register shows that Hundermark, Makokoane, Nair and Corporate Service Executive Thembile Mtati didn't think they needed to go.) The special lesson on how to apply PAIA to give effect to the fundamental right to information, and consequently the importance of complying with it, just didn't sink in.
58. Here's a refresher course then on how PAIA works for the slow learners in LASA's national office.

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

information officer to whom the request is made ... must, as soon as reasonably possible, but in any event, within 30 days, after the request is received –

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

(b) notify the requester of the decision ...

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

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

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

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

62. Section 1, ‘Definitions’ tells us that:

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

63. Which provides:

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

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

a reasonable access fee for –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) *any other* functionary or *institution when* –
  - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
  - (ii) exercising a public power or *performing a public function in terms of any legislation.*

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

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

A requester - ...

- (c) aggrieved by the decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1 –
  - (i) to refuse a request for access ...

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

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

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

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

20. Remedies available for noncompliance with the Act  
In case of non compliance with any request by the Deputy Information Officer, the Designated Deputy Information Officer or any other personnel authorised by

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

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

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

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

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91. But if after consulting the SAHRC you decide it would be better for LASA as a public entity to start complying with the Act, and stop illegally contravening it, and to start respecting my fundamental right to information, and stop illegally violating it, I'll call off my intended application. The same goes for my pending applications in the Magistrate's Court.
92. Please let me know your intentions within ten working days of receiving this letter. This will give you time to consult the SAHRC for its guidance and training on PAIA delivered under section 83(3)(d) and (e). Believe me madam you need it.
93. If I need to sue, as I anticipate from dismal past experience I inevitably will, I'll include this letter in my papers for the High Court's information about the attempt I made to avert the unnecessary, avoidable litigation to vindicate my fundamental right to information.
94. Finally, I enclose another PAIA request addressed to you for your attention, inter alia testing Hundermark's and Makokoane's money claims against me, and seeking sight of LASA's insurance policy with Camargue, referred to in your report to the Board on 31 October 2014 about my case, and all requests for and reports to this insurer to assist it in 'managing the matter'.
95. If my request for access is granted, I'll naturally be cross-checking with your insurer to verify the completeness of the records provided me. I anticipate that the content of the reports will support a criminal charge and a civil action for insurance fraud, and I intend claiming the R5000 reward they tout for reporting it. I need a new wristwatch.
96. I remind you that section 25(1), quoted above, requires that you:
  - must, as soon as reasonably possible, but in any event within 30 days, after the request is received –
    - (a) decide in accordance with this Act whether to grant the request; and
    - (b) notify the requester of the decision ...

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



ANTHONY BRINK

Cc: Adv Lawrence Mushwana: Chairperson, South African Human Rights Commission

Langa Lethiba: LASA Board Secretary, for the information of the Board

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
30 November 2010



The Honourable Mr Justice Dunstan Mlambo  
Judge President: Labour Court  
Chairperson: Legal Aid South Africa

Labour Court  
6<sup>th</sup> and 7<sup>th</sup> Floors, Arbour Square Building  
Cnr. Juta & Melle Streets  
Braamfontein  
Johannesburg

And to:

The Board of Directors: Legal Aid South Africa

Mr M Makume, Mr J Maree, Ms N Mgadza, Prof P Kruger, Mr V Jarana,  
Prof Y Vawda, Adv P du Rand, Ms E Gandhi, Mr M Moabi, Ms M Naidoo,  
Judge E Molahlehi, Ms S Monaledi, Ms A Mosidi, Ms N Memka, Ms A Rhoda,  
Dr D Konar, Ms T Mhlungu, Ms J Luthuli, Mr E Moolla, and Mr I Ramdas

Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

And to:

Ms Chantal Kisoona  
Head: PAIA Unit  
South African Human Rights Commission  
29 Princess of Wales Terrace  
Houghton  
Johannesburg

Dear Judge Mlambo

**Pietermaritzburg Senior Litigator post:**

**• Illegal political / racial discrimination – covered with false reasons advanced to justify it, and two African candidates selected and recommended for similar posts sacrificed to effect it; • failure by members of the Management Executive Committee to execute a key component of Legal Aid South Africa’s Strategic Plan, concealed from the Board of Directors and from the Parliamentary Portfolio Committee for Justice and Constitutional Development; • multiple contraventions of the Public Finance Management Act, including the presentation of false financial information in Legal Aid South Africa’s 2009/10 Annual Report; • and refusal to comply with a request for records in terms of the Promotion of Access to Information Act on bogus legal and factual grounds**

1. When a year ago I told my partner, my sons, my brothers, and a couple of my closest friends that my interview for the Pietermaritzburg Senior Litigator post had gone extremely well and that I was certain I’d been selected for it (confirmed to me last month), I was met with unwelcome scepticism: ‘They’ll never appoint you, you’re too politically controversial.’ ‘They’re going through the motions formally, but behind the scenes they’ll just do whatever they want.’ One even suggested that ultimately I’d be disqualified for being white.
2. These disagreeably pessimistic predictions sprung from the fact that to many people whose opinions are informed by the newspapers I’m indeed a ‘politically sensitive person’, to cite the lingo of PW Botha’s State Security Council and its operatives, with the extreme prejudice such an appellation attracted. And indeed I’m indubitably a white person too.
3. I remember rebuking their cynicism vehemently: ‘No, you don’t understand. The process is transparent, it’s clean. Things have changed. We’re not living

under apartheid anymore, we have a constitutional democracy now.’ Words and sentiments along those lines.

4. By ‘clean’ I meant the recruitment process was being managed by honourable and honest executives of impeccable and unquestionable integrity who would never do anything illegal and who would never think of telling lies.
5. I really believed it and I insisted, even as the months passed by, but I could not convince them.
6. As things turned out, I was to be sorely disappointed in my absolute confidence and conviction that the recruitment process was being managed by honourable and honest executives of impeccable and unquestionable integrity who would never do anything illegal and who would never think of telling lies.
7. I found that in fact the recruitment process was not transparent and clean; that the executives managing it were not honourable and honest; and that they didn’t stint at acting illegally and telling lies to cover up the illegal things they’d done.
8. The ‘Introduction’ to ‘Corporate Governance Arrangements’ in Section 4 of LASA’s Annual Report 2009/10 states that ‘processes and practices are reviewed on an ongoing basis to ensure compliance with the legal obligation to use funds in an economic, efficient and effective manner and to adhere to good corporate governance practices’.
9. It assures us: ‘Processes are underpinned by the principles of openness, integrity and accountability.’
10. And it explains: ‘Corporate governance is concerned with structures and processes for decision making, accountability, control and behaviour. It starts at the Board of the organisation and this sets the tone for behaviour down to operational level at Justice Centres.’
11. Finally the ‘Business Conduct’ subsection records that ‘Legal Aid South Africa has an ethics programme which promotes ethical behaviour in the workplace. This is supported by a written business conduct policy dealing with ethics,

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which is applicable throughout Legal Aid South Africa. The continued focus on the business conduct policy has raised awareness of the need for ethical behaviour across the organisation. Employees are required to maintain high ethical standards and to ensure that Legal Aid South Africa's business practices are conducted in a manner that is above reproach.'

12. And it's relevant to mention that section 50(1) (b) of the Public Finance Management Act 1 of 1999 ('PFMA') stipulates that 'The accounting authority for a public entity must act with fidelity, honesty and integrity and in the best interests of the public entity in managing the financial affairs of the public entity.'
13. Having regard to the Board of Directors' oversight responsibility to ensure that 'good corporate governance practices' based on 'principles of openness, integrity and accountability' are observed by the Management Executive Committee in 'decision making, accountability, control and behaviour', and the Board's concern about 'ethical behaviour in the workplace', that 'high ethical standards' be observed, and that 'business practices' should be 'above reproach' – which is why their 'processes and practices are reviewed on an ongoing basis' – I write to report gross, in fact illegal, breaches in this regard by certain individuals on the Management Executive Committee.
14. The basic history is set out in my letters to CEO Vidhu Vedalankar and to COO Jerry Makokoane at pages 1–17 and 21–39 of the Document Bundle appended hereto, read with NOE Brian Nair's and CEO Vedalankar's responses at pages 19 and 101–108. (I will henceforth refer to all LASA officers simply by their surnames.)
15. One might even conclude from the 'behaviour' described in these letters, compounded by the dishonest cover-up that followed it (to be detailed and exposed below) that far from respecting 'the rights enshrined in our constitution' (per LASA's 'Vision') and 'principles of openness, integrity and accountability' in 'decision making' (per LASA Annual Report 2010), the

executives in question have no respect for these rights and principles and that they actually despise them.

16. In my letters to Vedalankar and Makokoane mentioned above, I'd assumed political prejudice against me – something I'm accustomed to. (Bundle, page 11, paragraphs 5.1–14 and pages 93–99 (a letter to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa, including information intended for the unwritten 'Postscript' mentioned in paragraph 58 of my letter to Makokoane)). I've recently appreciated, however, though I doubt it, that the prejudice may simply be racial, albeit no less illegal, inasmuch as my selection and recommendation for the appointment in question might have been inconvenient for the targets set out in LASA's 'Employment Equity Plan for 2010-2015'.
17. Arising from the 'behaviour' in question, I filed an extensive request for records under the Promotion of Access to Information Act ('PAIA') with Vedalankar as LASA's information officer ex officio on 30 August. (Bundle, pages 49–69)
18. On 29 September, the day before the end of the month provided by the Act for compliance with my request, and not having received any response to it, not even an acknowledgement of receipt, I approached the South African Human Rights Commission ('SAHRC') with a plea for assistance.
19. Kindly taking the matter up for me, the director of the SAHRC's PAIA Unit Chantal Kisoona ably negotiated an undertaking from LDE Patrick Hundermark to deal with my records request. Although Vedalankar was out of time for compliance (there was a mix-up over the computation of the period prescribed), I didn't mind, I was just glad that my request would be given attention at last.
20. On 18 October I received a letter from Vedalankar rejecting my request. (Bundle, pages 101–108)

21. Although the letter bears Vedalankar's electronic signature (a scanned image of it is pasted above her name at the end, identical to the image at the end of her CEO report in the 2009/10 Annual Report) it's unimaginable to me that she actually wrote it, and indeed it seems doubtful that she even read it with any attention. I say this having regard to the letter's contents, which are irreconcilable with my understanding of her personal integrity, noted in my letter to her of 12 July. (Bundle, page 10, paragraph 1.1) The letter is replete with false statements, deceptive red herrings, deceptive non-disclosures, and a breathtakingly brazen false statement of the law in regard to the application of PAIA, advanced as a justification for not complying with her obligations under the Act and for refusing my request for records.
22. Vedalankar seems to have authorized the letter drawn in her name trusting that it was in order. I therefore hold her clear of culpability for its disgraceful contents and hope you will too. Although I accept that Vedalankar never actually wrote the letter, for reference sake I must continue referring to it and its contents as if she did. I apologise to her in advance for the hard criticism to follow: it's directed at the real author of the letter, and not at her as the nominal author only.
23. The letter begins with a fraud. Numbered paragraph 1 claims:

The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, KwaZulu-Natal and Another (D38/08) [2008] ZALC 18*, is as follows:

- a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

24. (There is no paragraph ‘b’) and the phrase ‘is as follows’ is italicized in the original as above.)
25. The use of indented block paragraphs is a universal writing convention to distinguish quoted text from the writer’s own prose. One understands, therefore, that the indented block quote is an excerpt from the judgment. This impression is further emphasized by the use of distinguishing italics in the indented paragraph. Indeed, the indented, italicized block paragraph is preceded by the explicit claim that the ‘test to be applied ... as laid down by the court ... is as follows:’.
26. To read the National Teachers Union case is to discover that in truth no such ‘test to be applied’ was ‘laid down by the court’. The judge said nothing of the sort. He said precisely the opposite. The alleged ‘test to be applied’ is pure invention, with the lie compounded by dressing it in fake legal authority, even putting words in the judge’s mouth that he never spoke. From the CEO of Legal Aid South Africa. Magnificent!
27. In paragraph 32 of his judgment Pillay J pertinently noted to the contrary: ‘Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the exercise or protection of any rights.’ (The judgment is online at <http://j.mp/dxh3sZ>. (All shortened internet URLs in this letter will henceforth be given simply as ‘j.mp [.....]’))
28. Having sucked this so-called ‘test to be applied’ out of her thumb, pretending that a ‘court ... laid [it] down’, Vedalankar proceeds to apply her false test to my records request. Paragraph 2 commences: ‘In considering your request for information we were guided by this principle, together with Section 32 of the Constitution and the relevant provisions of the PAIA.’
29. Decorating her decision in bits of the Constitution and PAIA quoted at me at some length, in a manner possibly quite impressive-looking to legally unschooled persons, Vedalankar concludes by refusing my records request on

wholly unrelated grounds, namely ‘(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above’. (Bundle, page 102, paragraph 5)

30. Of course, this reason given has nothing to do with the fake ‘test’ or ‘principle’ that I’d only be entitled to the records requested if ‘the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure’. And as hard as one looks, nowhere in PAIA does one find entitlement to records of a public body excluded by reason of being ‘beyond [the requestor’s] personal circumstances’. It’s just made up out of thin air, once again.
31. The so-called ‘principle’ by which ‘we were guided’ bobs up at the very end of the letter in paragraph 8. My request for records is ‘declined’ for the further reason given that ‘it is not relevant to you exercising any right you may have in law’ – only it’s a ‘test’, a ‘principle’ that has no bearing on a request for records from a public body, as PAIA makes clear, and the court in the National Teachers Union case plainly stated.
32. And as the Supreme Court of Appeal underscored in *Mittalsteel SA Ltd v Hlatshwayo* [2006] SCA 94 (RSA): ‘The issue before us is ... whether the appellant at the relevant time and in creating the requested documents was a “public body” as that term is to be understood in PAIA. If it was then the respondent is entitled to the documents requested by it in terms of s 11 of PAIA. The section is headed “Right of access to records of public bodies”. Subsection 11(1) provides that a “requester *must* be given access to a record of a public body if” (emphasis added) [in the judgment] (a) the requester complies with all the procedural requirements of the Act and (b) access to the record is not refused in terms of any ground set out in the provisions of PAIA dealing with the records of public bodies. None of these provisions is applicable to the

respondent's request, and compliance with procedural requirements is not in issue.' (j.mp/bKUmCW)

33. Despite the obstacles I encountered due to (a) LASA's failure to publish a PAIA manual on its website (a stale version of the manual was stuck under a bright new cover and posted on the website some weeks after I'd raised this problem with the SAHRC), and (b) CE Mpho Mphasha's failure to respond to my emailed enquiry about the identities of LASA's information officer/deputy information officer, I duly complied 'with all the procedural requirements of the Act' (per Mittalsteel) and I was and remain accordingly entitled to the records I requested.
34. As to the first excuse manufactured for not complying with the Act – '(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above' – a glance at the list of records that I seek will show I wasn't asking for 'information on third parties'. (Bundle, pages 59– 68). This is because I have no interest in any 'information on third parties' whatsoever.
35. What I require – and it's a relatively small part of my request – are records of communications with certain third parties or sworn confirmation, as PAIA requires, that such records don't exist, showing that contrary to what has been suggested to me such communications never took place.
36. To protect their privacy – if privacy really was the issue rather than a false pretext for refusing my request – records of communications to and from third parties have only to 'be edited by blanking out the name of any third party whose privacy would otherwise be infringed by disclosure', as Brand JA put it in *Unitas Hospital v Van Wyk* [2006] SCA 32 (RSA). (j.mp/cHDY5D)
37. The particular records of communications with third parties or lack of them will be probative in establishing that my constitutional rights have been violated. By a public legal body professing to serve the Constitution.

38. And since the ramifications of this are awesome to contemplate, it seems this is why Vedalankar should have strained to seize upon this most peculiar, manifestly untenable pretext for refusing my entire request for records, the great majority of which have nothing to do with third parties by any stretch of the imagination.
39. Since Vedalankar's provision of the records I requested could not conceivably 'involve the unreasonable disclosure of personal information about a third party', as Section 34 (1) of PAIA puts it, the provisos in Section 46 cited and discussed in paragraph 3 of Vedalankar's letter are perfectly irrelevant.
40. But even if it were relevant, Section 46 would anyway require my access to the records for the reasons that '(a) the disclosure of the record would reveal evidence of ... a substantial contravention, or failure to comply with, the law ... and (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question'.
41. The fundamental premise of my records request, supported by the evidence I present, is that the disclosure of the records would indeed reveal further documentary 'evidence of ... a substantial contravention of, or failure to comply with, the law'.
42. Here I'm referring to the Constitution and to the Acts I've cited prohibiting discrimination on unlawful grounds in the democratic era, including by reason of 'conscience and belief' and because, motivated by these, I 'campaign for ... a cause'. (Bundle, pages 2–4, paragraphs 6–15 and pages 34–36, paragraphs 56–65) And by reason of race, unless justified by the provisions of the Employment Equity Act 55 of 1998 and the reported cases elucidating its practical application. I'm referring also to Acts and regulations, mentioned below, governing the operation of public bodies.
43. As for 'the public interest' – proviso (b) of Section 46 – the public have a clear interest in the disclosure of the records in this case, because they have a fundamental interest in having the certain assurance that they will not be

subject to illegal discrimination of any form when applying for employment with a public entity responsible through Parliament to the people of South Africa. It's clearly in the public interest that any breach of constitutional rights by publicly accountable institutions, especially those within the sphere of justice and constitutional development, be exposed. The hard won political gains of justice and human rights for all citizens of our country are jeopardized if a major public entity whose purpose is to secure justice for those citizens can subvert and undermine those very principles of justice and human rights without being held accountable.

44. With the 'tone' of Vedalankar's letter 'set' in the first half of it (cf. paragraph 10 above), it will not surprise you to learn that the second half only goes downhill.
45. In paragraph 6 of her letter, Vedalankar alleged the 'explanation' of why, after I'd been selected and recommended by the KwaZulu-Natal regional professional selection board on 12 November 2009 for appointment as Senior Litigator at the Pietermaritzburg Justice Centre, she and Nair moved to terminate the recruitment process – 'immediately' was the word used – in July, eight months later, thereby preventing your assessment and approval or disapproval of my selection and recommendation. (Bundle, page 103, paragraph 6.7 and page 104, paragraph 7)
46. Vedalankar's statement of the alleged financial reason for the abortion of my recruitment just prior to the confirmation or otherwise of my recommended appointment was 'provided to clarify the position and to definitively address your suspicion that your right to a fair administrative process is threatened, breached or may be rendered unenforceable'. (Bundle, page 104, paragraph 8)
47. It was intended to allay my conviction – founded on the evidence already available, weighed with the probabilities – that certain members of LASA's Management Executive Committee have illegally discriminated against me for exercising my basic civil liberties motivated by my 'conscience and belief' and guaranteed in the democratic era by the Bill of Rights in Chapter Two of the



**FORM A**

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

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

**[Regulation 2]**

**FOR DEPARTMENTAL USE**

Reference number:

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

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

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

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

**A. Particulars of public body**

**Legal Aid SA**

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

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

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

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

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

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

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

N/A

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

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

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

### D. Particulars of record

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

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

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

**See annexure**

**E. Fees**

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

Reason for exemption from payment of fees:

N/A

**F. Form of access to record**

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

Disability: N/A	Form in which record is required:
-----------------	-----------------------------------

<p>Mark the appropriate box with an "X".</p> <p>NOTES:</p> <p>(a) Your indication as to the required form of access depends on the form in which the record is available.</p> <p>(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</p> <p>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</p>
--

<b>1. If the record is in written or printed form -</b>			
---	--	--	--

<b>X</b>	copy of record*		inspection of record
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<p><b>2. If record consists of visual images -</b> (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)</p>				
	view the images	X	copy of the images*	transcription of the images*
<p><b>3. If record consists of recorded words or information which can be reproduced in sound -</b></p>				
	listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)	
<p><b>4. If record is held on computer or in an electronic or machine-readable form -</b></p>				
	printed copy of record*		printed copy of information derived from the record*	X copy in computer readable form* (on compact disc)
<p>*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?</p> <p><b>A postal fee is payable.</b></p>				<p>YES</p>
<p><i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i></p>				
<p>In which language would you prefer the record?    <b>English</b></p>				

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

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

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

Signed at Eshowe on 9 March 2015

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

SIGNATURE OF REQUESTER

## ANNEXURE: RECORDS REQUIRED

1. Legal Aid South Africa's (LASA's) insurance contract with Camargue in relation to Durban Labour Court case, Brink v LASA, D529/11, and Brink's petition to the Judge President of the Labour Appeal Court, DA21/14 – which insurance company CEO Vedalankar stated in her report to the Board about the case on 31 October 2014 was 'managing the matter'.
2. LASA's claim on Camargue upon Brink's referral of his case for trial.
3. All enquiries and requests for progress reports about the case by Camargue, including about Brink's petition to the Judge President of the Labour Appeal Court.
4. All responses and reports by LASA to Camargue about the case, including about Brink's petition to the Judge President of the Labour Appeal Court.
5. All and any records vouching that deputy information officer Patrick Hundermark and other staff ('we') spent 187 hours reading 'the bundle of documents relating to the proceedings of the Labour Court' in the said referral; Brink's pending three 'applications in the Magistrate's Court' to compel LASA's compliance with PAIA; and the 'specific requests as outlined in' the annexures to Brink's Form A PAIA requests addressed to Hundermark, listing the documents required or, where they don't exist, sworn certification of this under section 23. (Quotations here are from Hundermark's demand of 3 February 2015 for payment of a one-third deposit of R900.)
6. All and any records vouching that deputy information officer Jerry Makokoane's 'team' spent 'almost 220 hours ... to read the bundle as referred in your footnotes to advise me with the gist of the background explanation.' (Quotations here are from Makokoane's demand of 25 February 2015 for payment of a one-third deposit of R1095.)

## PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

23 Records that cannot be found or do not exist

(1) If-

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

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



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

#### 90 Offences

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

(a) destroys, damages or alters a record;

(b) conceals a record; or

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

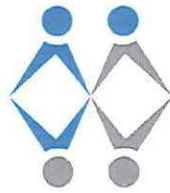
commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

#### INTERPRETATION ACT 33 OF 1957

##### 4 Reckoning of number of days

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





Our Ref: PAIA/Achmed01

Date: 28 April 2015

**Anthony Robin Brink**

1 Boast Road

Eshowe,

3815

29 De Beer Street

Braamfontein

Johannesburg 2017

Private Box X76

Braamfontein 2017

Tel: 011 877 2000, Fax: 011 877 2222

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

Dear Advocate Brink,

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

1. I am acknowledging receipt of your letter dated the 19th March 2015 and which was received by the office of the CEO whilst she was on leave.
2. She has, unfortunately not been able to finalise your request and had accordingly instructed us to notify you in terms section 26(1)(c) of the Promotion of Access to Information Act 2 of 2000 to an extension of a further 30 days
3. You will further appreciate that the records sought are records which have resulted from the contractual relationship with the independent company, Carmague and therefore subject the terms and conditions of the agreements.

**Yours faithfully,**

**Mr. Thembile Mtati**

**Legal Aid South Africa**

1 Boast Street  
Eshowe  
KwaZulu-Natal  
4 May 2015



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

Per telefax: 011 877 2222

Dear Ms Vedalankar

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

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

5. And you don't need more time to direct Hundermark, Nair and Makokoane to comply with the PAIA requests I addressed to them last year, as urged in my letter to you of 19 March 2015, because it's obvious at a glance from it that they've acted illegally in refusing or obstructing my access to the requested documents.

6. While considering your response to my PAIA request addressed to you in March 2015, in the extra time that I've very generously allowed you, kindly consider also my request for two further documents, generated subsequent to my request. These are:

**9. LASA's report to the SAHRC under section 32 of PAIA for 2014/15 (filed in April 2015).**

**10. CEO Vedalankar's approved leave application in respect of her absence from office in April 2015, alleged by CSE Mtati in his letter to Brink of 28 April 2015.**

7. I trust this supplementary request for these additional two documents I've specified won't also be overlooked, in the way Mtati overlooked my supplementary document request addressed to you on 17 October 2013, following my Form A request delivered a week earlier to you on the 1st.

8. It's with this concern in mind that I look forward to your acknowledgement of receipt of this supplementary request for these additional two documents (like CLE Hundermark provided me on 3 February 2015 regarding my supplementary document request addressed to him on 17 November 2014, following my Form A request for several documents delivered a week earlier on the 10th).

Yours sincerely



ANTHONY BRINK



Legal Aid  
South Africa

M

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

26 May 2015

Advocate Brink

The Flat

1 Boast Street

Eshowe

3815

Dear Adv. Brink,

**NATIONAL DEPUTY INFORMATION OFFICERS' FAILURE TO COMPLY WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000; REQUEST FOR THE INFORMATION OFFICER'S INTERVENTION UNDER SECTION 17 (6) (b)**

1. We have read your letter of 19 March 2015 annexed thereto being a request in terms of Promotion of Access to Information Act (PAIA) dated 9 March 2015 as well your further letter of 4 May 2015. I have been delegated by the CEO to reply to all.
2. Your continued use of abusive and/or derogatory language against management through use of words like *"liars, scheming up, dishonest, contemptuous, slow learners"* etcetera is again very apparent in your letters and you are called upon to desist from this custom.
3. Once again, we record that at the time the letter of 19 March 2015 was received, namely 31 March 2015, the CEO was on leave and the following officials were appointed to act in her absence-
  - 3.1. Mr Patrick Hundermark was the acting CEO for the period 30 March 2015 to 2 April 2015.
  - 3.2. Mr Jerry Makokoane was the acting CEO for the period 13 April 2015 to 17 April 2015.

- 3.3. Mr Brian Nair was the acting CEO for the period 28 April 2015 to 30 April 2015.
4. As all the aforesaid officials were party to the complaint, they could not reply in their acting capacities.
5. In order to apply her mind on the allegations, I felt it prudent to seek an extension to which you agreed. I will deal with the issue of her absence in this reply.

## LETTER OF 19 MARCH 2015

6. The common salient features of your letter and in summary makes the following submissions.
  - 6.1. That the Deputy Information Officers have failed to provide the records requested within the timelines of 60 days as required in terms of the Promotion of Access to Information Act.
  - 6.2. The Deputy Information Officers are extorting money from you as they are not entitled to require the search fees in terms of the Act, more specifically making reference to the provisions of section 22 of the Act.
  - 6.3. That you are seeking CEO's intervention to direct them to provide such records or failing which she must provide such records.



**RECORDS REQUESTED FROM MR PATRICK HUNDERMARK IN THE LETTER OF  
10 NOVEMBER 2014**

7. There are 23 records sought in the letters referred to above and they quoted below:-

Item	Record requested
1	The minutes 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's Regional Operations Executive Vela Mdaka's motivation under section 8.1.2(b) of the Approval Framework to Legal Services Committee to recommend (he " <i>originates</i> ") the creation of the post at the Durban Justice Centre.
3	The record showing that the Human Resources Executive was consulted before the post was created as required by 8.1.2(b) of the Approval Framework
4	The LSTC 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 Legal Aid SA 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 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).
<b>PART TWO</b>	
18.	All and any contracts(s) of employment between Ngcamu and Legal Aid SA, at any Justice Centre, entered into prior to his employment as Children's Practitioners 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 Center or any other employment by Legal Aid SA.
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 advertisement qualifying criteria, and (ii) the reason he was not recommended.
21.	The letter sent to 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 to Ngcamu informing him that Legal Aid SA has decided not to fill the KwaZulu Natal Senior Litigator posts (like the identical letters sent to 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.

**RECORDS REQUESTED FROM MR PATRICK HUNDERMARK IN THE LETTER OF 17 NOVEMBER 2014**

8. There are 4 records sought in the letter referred to above and once again quoted verbatim:-

Item	Records Requested
1.	<p>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,<sup>1</sup> 'I was the author of this', 'It is felt 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<sup>2</sup>, 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.</p>
2.	<p>The record of Nair's instruction 'the Chief Legal Executive, then the Legal Development Executive' Patrick Hundermark to draft the 'terms of reference'<sup>3</sup> of a 'review panel'<sup>4</sup> to conduct 'performance reviews or quality reviews' for 'senior litigators',<sup>5</sup> being the 'person' to whom Nair claimed at the trial to have 'allocated the responsibility'<sup>6</sup> for doing this</p>
3.	<p>The minutes of the number of meetings' that Nair claimed that 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 responsibility' to him ' to properly develop terms of reference ,to identify possible people to contribute to the panel, and to consult' <sup>7</sup>with a view to conducting ' performance reviews or quality 'performance reviews' for senior litigators'<sup>8</sup></p>
4.	<p>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.</p>



**RECORDS REQUESTED FROM MR JERRY MAKOKOANE IN BOTH LETTERS OF  
25 NOVEMBER 2014 AND 15 DECEMBER 2014**

9. There are 56 records sought in the letters referred to above with an amendment to item 34 and these are:-

No	Record requested
1	Cele J's suggestion that Legal Aid South Africa accommodate the Applicant by providing him with the electronic copy of the record which Legal Aid South Africa did.
2	The transcript of the trial record in case LC D529/11
3	All and any records vouching that a meeting took place between SAHRC and Legal Aid SA's CEO and some of our senior 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 Legal Aid SA (Vedalankar) had failed to comply with its (her) reporting obligations under section 32. The record will show the date and place of the meeting, who attended it and the outcome.
4	The record reflecting that, as ordered by the Legal Services Technical Committee on 24 March 2010, then Manager: Legal Administration, National Operations, Bee-Mari Schoeman (responsible for Legal Services Delivery) immediately facilitate the transfer of the budget that existed for a Senior Litigator post at Kimberly Justice centre to the Mthatha Justice Centre.
5	The records of CEO Vedalankar and NOE's respective "Final Approval" and "Agree" 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 before the Mthatha post was advertised.
6	After the selection panel's 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 Legal Aid SA Head Office in respect of 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
7	Copies of the contents of the file in respect of the position of Senior Litigator for Mthatha retained by Eastern Cape Regional Human Resources Manager, Thenjiwe Magazi before dispatching the original or copy to Legal Aid SA's Head Office
8	The complete contents of Human Resources Executive Clark's file or computer folder on the Mthatha Senior Litigator post
9	All records of communications between Legal Aid SA's national office and its Eastern Cape Regional Office after the discovery that a file that was to be delivered to Legal Aid Head Office in respect of the position of the Senior Litigator for Mthatha was lost in transit-including any request for the file, or a copy, to be sent again.
10	Strategic Plan 2009-12.
11	Minutes of the September 2008 Board Meeting at which the Strategic Plan 2009-12 was approved
12	The minutes of all Legal Services Technical Committee meetings held in the period October 2009 to February 2011, besides the minutes of its March 2010 meeting, which Brink already has.
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.
16	Legal Aid SA's Business Plans for 2009/10, 2010/11, 2012/13, and 2013/14
17	Excerpts comprising the cover or first identifying page, and the pages containing provision for Senior Litigator salaries' budget for 2013/14
18	The minute of the Board meeting at which Legal Aid SA's budget for 2013/14 was approved

19	Legal Aid SA's 2013/14 report to SAHRC under section 32
20	The payment voucher of the Department of Justice and Constitutional Development reflecting the date of its transfer of the OSD phase 1 funding for 2009/10
21	The record of any Strategic Plan Annual Review workshop or Board Meeting at which it was resolved not to fill Legal Aid SA's remaining three vacant Senior Litigator posts
22	Record showing mention or discussion by any Legal Aid SA Executive(s) of the issue alleged by Nair in his November 2011 Report to Board that Senior Litigators may not be fulfilling Legal Aid SA's objectives for such posts.
23	All and any reviews of Senior Litigator performance pertaining to whether or not Legal Aid SA'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
25	All and any records vouching that NOE Nair was among the senior executives who began to deliberate quite intensively in regard to the budgetary issues that suddenly confronted them on 10 March 2010, on learning that Legal Aid SA's expected OSD phase 1 funding hadn't been included in the baseline budget for 2010/11 as had been assured in January 2010, alternatively all and any records vouching that Nair was involved in pursuing the Department's payment of Legal Aid SA's OSD phase 1 funding for 2010/11 in any manner whatsoever.
26	Excerpts of Legal Aid SA's recruitment statistics showing Senior Litigator post occupancies and vacancies for March, April and May 2010, and July, August, September, October and November 2010.
27	The executive instruction issued to transfer the Senior Litigator budget from Mthatha back to Kimberley (from which it had been transferred).
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, the proposals submitted by:  (a) CEO Vidhu Vedalankar,

	<p>(b) NOE Brian Nair,  (c) KZN ROE Vela Mdaka,  (d) then Pietermaritzburg JCE Bertus Appel, and,  then Durban Justice Centre Executive Kishore Mehta.</p>
29	The Treasury budget allocations letter released at the end of 2009 to which Nair referred in his evidence.
30	The records of all Nair's decisions taken to freeze posts with or without CEO Vedalankar's agreement, and without the approval of the Board.
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) that the Kwazulu-Natal Senior Litigator recruitments had been cancelled.
32	All counsel's fee notes for his professional services rendered Legal Aid SA 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.
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 Legal Aid SA.
34	(a) Legal Aid SA's list of 231 critical legal posts, or other record(s), identifying what legal posts were included under category Critical Occupation in Legal Aid SA'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 Legal Aid SA's annual reports to the Minister and to Parliament.
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 Legal Aid SA 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 Legal Aid SA.
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.
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.
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.
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 investigation 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.
42	The decision originally taken to employ two Professional Assistants (PA's) per backlog court at Pietermaritzburg, or generally, provincially or nationally.
43	The 2010/11, 2011/12, and 2012/13 budgets provided by the Department for salaries for PA's serving the backlog courts at Pietermaritzburg.
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 the streamlining the backlog courts.
46	All and any records identifying the nature of the Stanger court incident.
47	All the records sent to then Board Secretary Bee-Marie Schoeman over the period October 2010 to 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 (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 PA's in the backlog courts at Pietermaritzburg.

48	The decision to reduce the number of PA's serving the backlog courts at Pietermaritzburg from two to one, according to Nair's emailed announcement of this to Legal Aid SA's Regional Operations Executives on 21 February 2011.
49	The spreadsheet to Nair's email to the ROE's on 21 February 2011, named Backlog courts – 2011 approved courts.
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 JCE's on 7 February 2011.
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.
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 Executive 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.
56	Any employment contracts subsequently signed between Legal Aid SA and any of the rejected candidates.

10. I now turn to reply on your submissions made in paragraph 6 above:
- 10.1. That the Deputy Information Officers have failed to provide the records requested within a period of 60 days as required in terms of the PAIA. Legal Aid South Africa denies the Deputy Information Officers failed to reply within the prescribed period. It submits that this is an issue of interpretation and does not agree with your interpretation and accordingly maintains that it replied within the prescribed period. Further, as you insist that your interpretation is correct, you then should have induced section 58 of PAIA on the basis of deemed refusal.
- 10.2. That the Deputy Information Officers are extorting money from you as they are not entitled to require the search fees in terms of the Act, more specifically making reference to the provisions of section 22 of the Act, Legal Aid South Africa, once again submits that it is a legal issue of interpretation which cannot be canvassed in the letter but at the appropriate competent forum. We maintain that it is by your own doing that in your requests, you have provided the background to the previous case under case no. D529/11 as well as various footnotes that obliged the Deputy Information Officers to peruse a voluminous bundle of documents in order to familiarise themselves with the facts to enable them to apply their minds and reply to your requests.
- 10.3. That you are seeking CEO's intervention to direct them to provide such records or failing which she must provide such records. Legal Aid South Africa will not direct them to provide a response to your request for such records for the following reasons:
- 10.3.1 The records you are requiring relates to and are ancillary to the litigation proceeding that you have brought against Legal Aid South Africa under case number **529/11** at the Labour Court in Durban. Your claim was dismissed with costs and the judgment was further upheld by the Labour Appeal Court.

10.3.2. The records you are requiring further relates to and are ancillary to the litigation proceedings that you have brought against Legal Aid South Africa officials at the Eshowe Magistrate Court under case numbers: **257/14, 258/14 and 259/14**. These matters are still pending.

10.3.3. Your requests are malicious and seek to divert the resources of Legal Aid South Africa and you are required to pay the required amounts as requested.

#### FURTHER REQUEST IN THE LETTER OF 19 MARCH 2015

11. There are six further requests from the letter referred to above and I provide the reply in the table below:

Item	Records sought	Reply
1	Insurance contract with Carmague	The contracts with Axi Financial Services CC as the broker and Carmague as the underwriter cannot be disclosed as it contains commercial information of a third party in terms of section 36 of the Act
2	Claims lodged with Carmague in respect of D529/11	The claim was lodged with Carmague through Axi Financial Services CC. But the information cannot be disclosed as it relates to commercial information of a third party.
3	All enquiries or reports by Carmague in respect of D529/11	This is information protected in terms of the Act and accordingly is refused.

4	All responses and reports to Carmague by Legal Aid South Africa in respect of D529/11	This is information protected in terms of the Act and accordingly is refused.
5	All or other any records vouching that CLE and other staff spend 187 hours reading the documents relating to case 529/11	The search and preparation of the records included reading of documents referenced in the introduction to the request including the record since the requester had made reference to CLE. No specific record exists.
6	All or other any records vouching that COO and other staff spend 220 hours reading the documents relating to case 529/11	The search and preparation of the records included reading of documents referenced in the introduction to the request including the record since the COO was implicated. No specific record exists.

**FURTHER REQUEST IN THE LETTER OF 4 MAY 2015 READ WITH THE LETTER OF 15 MAY 2015**

12. There are two further requests from the letter which I have summarised and provided the reply in the table below:-

Item	Records sought	Reply
1	LASA's report to SAHRC for 2014 financial year	The report as attached as requested.
2	CEO's approved leave application from office during April 2015	This is personal information that has no relevance in exercising your right in terms the Act. Please find the acting delegations of CLE, COO and NOE.

M

Yours faithfully,



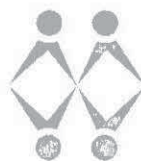
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**Mr. Thembile Mtati**

**Legal Aid South Africa**

Name of Public Body: Legal Aid South Africa

Location of Public Body: Braamfontein, Johannesburg



Legal Aid  
South Africa



29 De Beer Street

Braamfontein

Johannesburg 2017

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## SECTION 32 REPORT 2014/15: LEGAL AID SOUTH AFRICA

# M

Municipality Type and Location: City of Johannesburg
Contact details of DIO: Mr Thembile Mtati
Fax:011 877 2222
Tel: 011 877 2003
Email :thembilem@legal-aid.co.za
Department in which DIO is based: Corporate Services
Alternative Contact Details for PAIA functionary: sollys@legal-aid.co.za
Contact Details for PA of Information Officer: 011 877 2003
Reporting Period: 2014-2015

Signature IO	Signature DIO	Date

REPORTING PERIOD FROM 1 APRIL 2014 TO 31 MARCH 2015			
NO	Items	Total Number	Comments
1	(a) number of PAIA requests received	10	
2	(b) number of requests granted in full	4	Four requests were granted in full, namely, Allen Simpson, System Intergrated by Design, Zane Hartley, and Bernard Anthony Morrow.
3	(c) number of requests granted despite there being a ground of refusal, but granted in the public interest	0	None
4	(d) number of requests:  (i) refused in full, or (ii) refused partially  (iii) number of items a provision of PAIA was relied on to refuse a request in full/partially	5	Five requests were refused or partially granted as they relate the litigation proceedings that were pending before the Courts. The requester, Mr Brink was requested to pay the search fees in terms of section 22 of the Act. He had failed and/or refused to pay the fees and accordingly the reply had not been submitted to him.

**Your voice. For justice.**

5	(e) number of instances where the 30 day period to deal with a request was extended	4	Three applications from Brink were extended beyond 30 days in terms of section 26(1) of the Act
6	(f) number of internal appeals: lodged with the relevant authority (i) (ii) number of cases where requests were granted as a result of an internal appeal	0	None
7	(g) number of internal appeals lodged on account of a deemed refusal	0	None
8	(h) number of applications to court on the grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision during the timeframes stated in section 77 (3)	0	None
9	(i) Number of requests still pending as at 31 March 2015	1	The request was received on the 31 March 2015 and as at 31 March 2015 was still being considered.

**Your voice. For justice.**



Your voice. For Justice.

M

LEGAL AID SOUTH AFRICA

AUTHORITY FOR A SUBSTITUTE TO ACT

DEPARTMENT :	Office of the CEO
NAME :	Ms Vidhu Vedalankar
DESIGNATION :	Chief Executive Officer
DATE :	05 March 2015

Copies to : Management Executive Committee (Exco & ROEs)  
PA's

Notice of absence from office and delegation of authority

I will not be in the office on Monday **30<sup>th</sup> March** - Thursday, **02<sup>nd</sup> April 2015**. In my absence Mr Patrick Hundermark who holds the permanent position of Chief Legal Executive is appointed to act in my stead as Chief Executive Officer. He shall have the same powers and authority in every respect as the permanent incumbent of the said position:

Name: Ms Vidhu Vedalankar

Signature:

Date: 05.03.2015

Acceptance:

I, the undersigned hereby accept the above delegation for the above period.

Name : Mr Patrick Hundermark

Signature :

Date : 5/3/2015

Approved:

Name : Judge President D Mlambe

Signature:

Date : 05.03.2015

Your voice. For Justice.

LEGAL AID SOUTH AFRICA

AUTHORITY FOR A SUBSTITUTE TO ACT

DEPARTMENT :	Office of the CEO
NAME :	Ms Vidhu Vedalankar
DESIGNATION :	Chief Executive Officer
DATE :	07 April 2015

Copies to : Management Executive Committee (Exco & ROEs)  
PA's

Notice of absence from office and delegation of authority

I will not be in the office on Monday, 13<sup>th</sup> April - Friday, 17<sup>th</sup> April 2015. In my absence Mr Jerry Makokoane who holds the permanent position of Chief Operations Officer is appointed to act in my stead as Chief Executive Officer. He shall have the same powers and authority in every respect as the permanent incumbent of the said position:

Name: Ms Vidhu Vedalankar

Signature: 

Date: 2015.04.07

Acceptance:

I, the undersigned hereby accept the above delegation for the above period.

Name : Mr Jerry Makokoane

Signature : 

Date : 2015.04.08

Approved:

Name : Judge President D.Mlambo

Signature: 

Date : \_\_\_\_\_



Your voice. For Justice.

M

LEGAL AID SOUTH AFRICA


AUTHORITY FOR A SUBSTITUTE TO ACT

DEPARTMENT :	Office of the CEO
NAME :	Ms Vidhu Vedalankar
DESIGNATION :	Chief Executive Officer
DATE :	05 March 2015

Copies to : Management Executive Committee (Exco & ROEs)  
PA's


Notice of absence from office and delegation of authority

I will not be in the office on Tuesday 28<sup>th</sup> April - Thursday, 30<sup>th</sup> April 2015. In my absence Mr Brian Nair who holds the permanent position of National Operations Executive is appointed to act in my stead as Chief Executive Officer. He shall have the same powers and authority in every respect as the permanent incumbent of the said position:

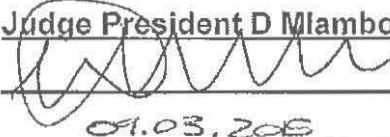
Name: Ms Vidhu Vedalankar  
Signature:   
Date: 05.03.2015

Acceptance:

I, the undersigned hereby accept the above delegation for the above period.

Name : Mr Brian Nair  
Signature :   
Date : 09/03/2015

Approved:

Name : Judge President D Mlambo  
Signature:   
Date : 09.03.2015

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

The new address is:  
33 Hoofd Street  
Braampark Forum 3  
**Braamfontein**  
2198

Postal address remains as:  
Private Bag X 2700  
**Houghton**  
2041

New Telephone number  
011 877-3600  
Fax numbers: 011 403-0682.



**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**  
**COMPLAINT FORM**

For office use only

Province:		City/Town:		Reference No	
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**PART A: YOUR DETAILS****1. Name and surname**

Anthony Brink

**2. ID number**

5902255116081

**3. Race**

W

**4. Gender**

M

**5. Address and contact numbers**

The Cottage, 1 Boast Street, Eshowe 3815, KwaZulu-Natal

o. 035 474 2171

h. 035 474 0145

c. 083 779 4174

f. 086 672 0776

e. arbrink@iafrica.com

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

6–11.

N/A

### **PART C: THE COMPLAINT**

#### **12. Date**

3 February to 26 May 2015

#### **13. Is it still happening**

Yes.

#### **14. Where did it happen**

Johannesburg, Gauteng.

#### **15. If you know, which right(s) in the Bill of Rights was/ were violated or is/are being violated**

The right to information held by the state, entrenched by Section 32.

#### **16. If you know, the full name(s) and surname(s) of person(s), association, organisation or organ of state who violated these rights, please tell us**

Legal Aid South Africa ('LASA').

#### **17. Where can we contact them**

29 De Beer Street, Braamfontein, Johannesburg.

t. 011 877 2000

18–19.

N/A

#### **20. In your own words, tell us exactly what happened (include all information but be as brief as possible)**

1. LASA has unlawfully refused me access to records duly requested under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act'), and is unlawfully demanding fees not contemplated by the Act. All documents referred to herein are annexed hereto.

2. On 26 May 2015 LASA justified its final blanket refusal of my PAIA requests in November 2014 on the ground firstly that 'The records you are requiring relates to and are ancillary to' previously adjudicated and other pending litigation, and secondly on the ground that 'your requests are malicious and seek to divert the resources of Legal Aid South Africa'.

3. This is after I'd asked LASA information officer Vidhu Vedalankar in March to intervene under her power and responsibility under section 17 of PAIA to ensure LASA's compliance with the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 Mandatory protection of commercial information of third party

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

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or

(c) information supplied in confidence by a third party the disclosure of which could reasonably be expected-

(i) to put that third party at a disadvantage in contractual or other negotiations; or

(ii) to prejudice that third party in commercial competition.

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

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

46 Mandatory disclosure in public interest

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

the disclosure of the record would reveal evidence of-

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

... and ...

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

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

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

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

### **21. Have you reported the matter to anyone else**

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

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

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

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

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

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

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

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

No.

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

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

Yes.

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

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



19 June 2015

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Signature of complainant

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Date

**Remember:**

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

Copy of ID herewith.

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

33 Hoofd Street  
Braampark, Forum 3  
**Braamfontein**  
2017

Private Bag X 2700  
**Houghton**  
2041

Tel.: 011 877 3600  
Fax: 011 403 0668



**11 November 2015**

**Ref: GP/1516/0395**

**Advocate Anthony Brink**

**Per email: arbrink@iafrica.com**

Dear Advocate Brink

**RE: PAIA REQUEST LODGED WITH LEGAL AID SOUTH AFRICA**

The South African Human Rights Commission (Commission) is an institution established in terms of section 184 of the Constitution. The Commission is mandated to promote, protect and monitor the observance of human rights. The Commission has an additional mandate in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA) to advance the right to access information and monitor the implementation of PAIA. The Commission executes this mandate in various ways, including providing assistance to members of the public where possible and appropriate.

We confirm that you lodged a complaint with the Gauteng Provincial (GP) office, which complaint was subsequently transferred to the PAIA Unit of the Commission for further handling. Your complaint is based on your dissatisfaction with the manner in which certain PAIA requests lodged with Legal Aid South Africa (LASA) were dealt with.

We confirm the following:

1. As per our email dated 9<sup>th</sup> November 2015, the PAIA Unit of the Commission engaged with LASA regarding your complaint. Such engagement was aimed at establishing whether LASA would be willing to engage in an alternative dispute resolution (ADR) process facilitated by the Commission with a view to possibly resolving the complaint;
2. LASA responded to the Commission by providing a brief background of the present matter, as well as various other matters that you and LASA are still engaged on. LASA

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**Commissioners (Part-Time):** J Love, D Titus;  
**Chief Executive Officer:** L Khumalo

confirmed a willingness to engage in ADR, noting however the need for caution in respect thereof considering the said background;

3. After due and proper consideration, the Commission has elected not to proceed with ADR in the present matter based on the following:
  - a. The historical background of a number of matters between yourself and LASA (as communicated to the Commission by both parties on numerous occasions over recent years);
  - b. On-going litigation between yourself and LASA;
  - c. The close relationship and interrelatedness of the issues forming the basis of those previous matters and the present one; and
  - d. The potential prejudice that may arise for one and / or both parties as a result of being involved in ADR while parties are at the same time engaged in various closely related litigation matters.

The Commission has exercised the abovementioned discretion in terms of Section 83(a)(c) of PAIA, which reads as follows:

*(3) The Human Rights Commission may ... (c) if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act".*

In the circumstances, the Commission will close your file herein.

Should you be dissatisfied with this decision, you may lodge an appeal with the Commission in terms of Chapter 9 of the Commission's Complaints Handling Procedures, which provides as follows:

*"34 (1) (a) Any party to proceedings under these procedures, who feels aggrieved by any determination, decision of finding, may lodge an appeal with the Chairperson, if the appeal is of a substantive nature regarding any determination, decision or finding of a Provincial Manager, **within 45 days** from the date of being notified of such determination, decision or finding by post, delivery facsimile or email."*

For further information regarding appeals, please contact one of the following officials:

Eden Esterhuizen – 011 877 3632

Sandile Mdunusana – 011 877 3633

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

33 Hoofd Street  
Braampark, Forum 3  
**Braamfontein**  
2017

Private Bag X 2700  
**Houghton**  
2041

Tel.: 011 877 3600  
Fax: 011 403 0668



We thank you for bringing your complaint to the attention of the Commission and trust that your matter will be equitably resolved.

Yours faithfully,

A handwritten signature in black ink is written over a horizontal line. The signature is fluid and cursive, starting with a large loop and ending with a smaller loop. The signature is positioned to the right of the 'Yours faithfully,' text.

**Kisha Candasamy**  
**Head: PAIA Unit (Acting)**  
**South Africa Human Rights Commission**

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**Chairperson:** M L Mushwana; **Deputy Chairperson:** P Govender; **Commissioners (Full-Time):** B Malatji, L Mokate; M S Ameerma  
**Commissioners (Part-Time):** J Love, D Titus;  
**Chief Executive Officer:** L Khumalo

P

1 Boast Street  
Eshowe  
KwaZulu-Natal  
12 November 2015

Kisha Candasamy  
Director: PAIA Unit  
South African Human Rights Commission  
Braampark Forum 3  
33 Hoofd Street Braamfontein  
Johannesburg

Per email: kcandasamy@sahrc.org.za

Cc by post to: Dawood Coovadia CA (SA), Chairperson: Audit Committee  
And to: Chairperson Lawrence Mushwana and CEO Lindiwe Khumalo

Dear Ms Candasamy

YOUR UNLAWFUL DERELICTION OF YOUR OBLIGATION TO DECIDE  
MY FUNDAMENTAL RIGHTS VIOLATION COMPLAINT

Page 68 of the Commission's annual report for 2014/14 tells us:

The audit committee's review of the findings of the internal audit work ... revealed certain weaknesses ...

The following were areas of concern:

- a) Non-compliance with complaints handling procedures ...
- d) Lack of policies and procedures with the ... PAIA unit ...
- e) Non-compliance with certain requirements of the PAIA legislation.

Exactly, just as I have found.

When on 31 July 2015 I hand-delivered two copies of my fundamental rights violation complaint to you as PAIA Unit director and to the Commission's Gauteng Office, having driven across the country to do so after discovering that the original I'd couriered on 19 June hadn't been delivered, I expected you to duly handle and determine my complaint in accordance with the Commission's Complaints Handling Procedures.



Instead you decided to go for so-called alternative dispute resolution, a soft alternative to resolving my complaint in the ordinary course by assessing and deciding it – with the terrible implications for LASA of your finding that it, as an organ of state, had violated my fundamental right to information.

I didn't ask you to deviate from the Complaint's Handling Procedures code in this manner, but I didn't object at the time because as I said in my progress enquiry of 7 October:

Practically all you need do is read my complaint; satisfy yourself that LASA is indeed legally out of line and is violating my fundamental right to information (it will be instantly obvious to you); and pick up the phone to LASA CEO and information officer Vedalankar and tell her to quit prevaricating and hand over the documents I've duly requested or certify those that don't exist. And report her response to me in a line or two.

This is because my first prize has always been to get access to the documents illegally denied me by LASA and a PAIA section 23 affidavit in respect of non-existent documents.

You claimed the next day in your email on the 8th to have 'reviewed [my] complaint'.

Upon doing so, you were evidently satisfied that my complaint was well founded and that LASA's refusal to comply with my PAIA requests and its money demands were illegal and a violation of my fundamental right to information, as I pointed out, and as was immediately clear to you, because you informed me four days later on the 12th that you'd approached LASA with an offer to mediate.

Now you tell me a month later in your email on 9 November, repeated in your letter yesterday, that after talking to LASA, you've changed your mind, will not be proceeding with your mediation in this unsolicited manner of yours, and are closing your file – in doing so, leaving my fundamental right violation complaint unresolved. Your various reasons given in your email and letter are manifestly spurious, and are taken to pieces in the notes under my new PAIA request addressed to your CEO and information officer, a copy of which I annex.

If now you don't want to engage with LASA in your so-called 'alternative dispute resolution process', having changed your mind after keeping me waiting for several wasted weeks – fine, don't.

I didn't ask for this in the first place. It was going to be futile anyway: LASA's national management executives will never willingly surrender the documents I've requested under

PAIA, because as I've said before, it's like asking a man to hand over the rope for his own hanging.

The documents I've requested, or sworn certification under PAIA section 23 that they don't exist in some cases, will categorically prove perjury and other gravely unlawful misconduct by top officers in LASA's national office. (The trickle of documents that LASA released in 2013 (the rest of my requests illegally refused) proved two separate instances of perjury committed in court by LASA National Operations Executive and deputy information officer Brian Nair. Given the chance, he didn't even dispute this.)

Now that you've concluded that ADR isn't the way to go (and this ought to have been perfectly obvious to you from the start, had you grasped the enormity of the case headed for the Constitutional Court, the police etc), the Commission's Complaint's Handling Procedures code requires you to determine my complaint in the prescribed manner and rule whether LASA has violated my fundamental right to information or not.

It's like this. In criminal cases daily before me as a magistrate, the Justice Department's new policy in the African spirit is for prosecutors to facilitate out of court settlements between the complainant and the accused wherever possible and desirable. If this fails for whatever reason, the prosecution must take its ordinary course.

You've called off your ADR plans. So the simple question now for you to decide is this:

Did LASA violate my fundamental right to information guaranteed by section 32 of the Constitution by refusing my requests under PAIA for access to its records that I specified?

That's all, and we all know you've already decided that it did.

Only, having decided to take LASA's side in the matter, having been beguiled and distracted by the entirely irrelevant 'brief background' that these phenomenally dishonest people with everything to lose told you, you're now coy about saying so.

The Commission's current annual report rosily declaims on page 10:

The Commission promotes compliance with PAIA ... Key prescripts of the PAIA are the development of transparency frameworks and increasing institutional responsiveness to information requests, with a view to promoting access to information.

In reality, your conduct in my matter makes a mockery of this; and it richly illustrates and exemplifies the audit committee's findings, and my own experience at your hands, that there are a notable 'Lack of policies and procedures with the ... PAIA unit', 'Non-compliance with

complaints handling procedures’, and ‘Non-compliance with certain requirements of the PAIA legislation’ – reported to the Minister and to the National Assembly in the Commission’s said annual report.

P

I filed a serious fundamental rights violation complaint in due form and I’m entitled to have it decided.

In truth and in fact, notwithstanding your new pussy-footing, you’ve already decided my complaint. You know and I know and even a first-year law student knows that LASA’s refusal of my PAIA requests and its money demands are illegal on their face and violate my fundamental right to information. Your job requires you to stop beating about the bush, stop helping LASA get away with its violation of my fundamental right to information year after year, and just say it.

And if you won’t do your well paid and exceptionally responsible job, and won’t decide my extremely serious fundamental rights violation complaint, please don’t make the mistake of thinking that this matter will end for you with your ‘closure of [my] file’. I’ll be escalating the matter to the Portfolio Committee for Justice and Correctional Services. Your chairperson can then expect to be asked to please explain. And you to him.

Your November email and letter cited section 83(3)(c) as being the section your decision to drop ADR ‘is per’. The section allows the Commission to assist me exercise my fundamental right to information ‘if reasonably possible’. You don’t say why it isn’t. Like I said, it would have been as simple as picking up the phone to LASA’s CEO and information officer. But LASA succeeded in frightening you off with the ‘need for caution’ it urged you heed, which is to say, its advice to back off, and not assist me as the Act allows and as you originally intended. So be it. Just decide my complaint then. And please, no more new stories.

I look forward to your immediate response.

Yours sincerely



ADV ANTHONY BRINK  
arbrink@iafrica.com  
083 779 41 74





**From:** [Kisha Candasamy](#)  
**To:** [Anthony Brink](#)  
**Subject:** RE: BRINK / LEGAL AID SOUTH AFRICA  
**Date:** Sunday, November 15, 2015 5:49:53 PM

Q

Dear Sir

I am away for work purposes during this coming week. I intended to respond in writing but would prefer engaging telephonically in the first instance. I will therefore telephonically contact you during the early part of this week to further discuss (please note that I do not have the entire file contents at hand as I am out of the office).

Regards,

<p><b>Kisha Candasamy</b> Acting Head: PAIA T: +27 11 877 3814 E: <a href="mailto:kcandasamy@sahrc.org.za">kcandasamy@sahrc.org.za</a></p> <p>Forum 3 Braampark Offices, 33 Hoofd Street, Braamfontein, 2017</p> <p><b>Switchboard</b> T: +27 11 877 3600</p>	<p><b>Upcoming events</b> <a href="#">Click here for upcoming events</a></p>  <p><a href="#">Think before printing</a></p> <p>Follow us:  <a href="#">@SAHRCommission</a>  <a href="#">SAhumanrightscommission</a>  <a href="#">YouTube: SAHRC1</a></p>	 <p><a href="http://www.sahrc.org.za">www.sahrc.org.za</a> <a href="mailto:Info@sahrc.org.za">Info@sahrc.org.za</a></p>
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**From:** Anthony Brink [mailto:arbrink@iafrica.com]  
**Sent:** 13 November 2015 05:07 PM  
**To:** Kisha Candasamy  
**Subject:** RE: BRINK / LEGAL AID SOUTH AFRICA

Dear Ms Candasamy

On seeing your reply below, I decided not to post hard copies of my letter and PAIA request to the cc addressees for the time being, to give you the opening to fix the problem complained of in the manner I require, which is to rule clearly and definitively on my fundamental rights violation complaint – on its own terms, on the case I make out in the complaint, on the four corners of the papers, without regard to wholly irrelevant, extrinsic historical and other considerations raised by the respondent.

In which event, and on proper resolution and determination of my complaint, I will retract my complaint against the Commission for bungling it.

Sincerely

Anthony Brink

**From:** Kisha Candasamy [mailto:kcandasamy@sahrc.org.za]  
**Sent:** Thursday, November 12, 2015 7:10 PM  
**To:** Anthony Brink  
**Cc:** Judy Hollenbach  
**Subject:** RE: BRINK / LEGAL AID SOUTH AFRICA


Q

Dear Adv Brink

I am out of the office tomorrow but will attend to your matter upon my return to the office next week.

I trust that you find the above in order.

Regards,

<p><b>Kisha Candasamy</b> Acting Head: PAIA T: +27 11 877 3814 E: <a href="mailto:kcandasamy@sahrc.org.za">kcandasamy@sahrc.org.za</a></p> <p>Forum 3 Braampark Offices, 33 Hoofd Street, Braamfontein, 2017</p> <p><b>Switchboard</b> T: +27 11 877 3600</p>	<p><b>Upcoming events</b> <a href="#">Click here for upcoming events</a></p>  <p><a href="#">Think before printing</a></p> <p>Follow us:  <a href="#">@SAHRCommission</a>  <a href="#">SAhumanrightscommission</a>  <a href="#">YouTube: SAHRC1</a></p>	 <p><a href="http://www.sahrc.org.za">www.sahrc.org.za</a> <a href="mailto:Info@sahrc.org.za">Info@sahrc.org.za</a></p>
<p><i>Transforming society. Securing rights. Restoring dignity</i></p>		

**From:** Anthony Brink [mailto:arbrink@iafrica.com]  
**Sent:** 12 November 2015 05:29 PM  
**To:** Kisha Candasamy  
**Cc:** Judy Hollenbach  
**Subject:** RE: BRINK / LEGAL AID SOUTH AFRICA  
**Importance:** High

Dear Ms Candasamy

I attach a letter for your attention and a new PAIA request addressed to your information officer but likely to be handle by you as DIO, regarding which request please email me the SAHRC's bank details for payment of the R35 request fee by EFT.

Yours sincerely  
Anthony Brink

Cc: Judy Hollenbach, PA to SAHRC CEO and information officer Lindiwe Khumalo

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R

Please quote this reference in your correspondence: 7/2 040815/12

Enquiries: Adv. S. Mathebula  
Tel: 012 366 7000 | Fax: 086 575 3292

E-mail: registration2@pprotect.org

Adv A Brink  
1 Boast Street  
Eshowe  
KwaZulu Natal  
3201

Dear Mr. Brink

**RE: YOUR REQUEST FOR REVIEW**

The above subject matter refers.

We acknowledge receipt of your request to review the outcome of investigation concluded at the (name the office) Provincial Office, Public Protector.

Be informed that a process of a review will be finalised within 60 working days after we have received a properly substantiated request from you. Kindly complete the attached review form and return either by fax or post as soon as possible. Should you have any questions, please feel free to contact the writer on the contact numbers shown above.

Kind Regards

A handwritten signature in black ink, appearing to be 'N Matlawe', written over a horizontal line.

**Ms N MATLAWE**  
**SENIOR INVESTIGATOR: REVIEW UNIT**  
**DATE: 16 October 2015**