

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

**HELD AT ESHOWE**

Case No.1432/15

In the matter between:-

**ANTHONY ROBIN BRINK**

Applicant

and

**VIDHU VEDALANKAR N.O.**

**INFORMATION OFFICER**

**LEGAL AID SOUTH AFRICA**

Respondent

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**RESPONDENT'S ANSWERING AFFIDAVIT**

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I, the undersigned,

**THEMBILE VUYO MTATI,**

do hereby make oath and state that,



1. I am an adult male Corporate Services Executive and a Deputy Information Officer on behalf of Legal Aid of South Africa (“Legal Aid SA”) with my employment address at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg.
2. The facts deposed to herein are within my own personal knowledge unless the context indicates otherwise, and are to the best of my belief both true and correct.
3. Where I make submissions of law, I do so on the basis of legal advice I received from Legal Aid SA’s legal representatives which advice I accept as correct.
4. Where I rely on evidence submitted by a third party, I shall annex such a person’s confirmatory affidavit.
5. The Respondent is currently on leave and will be returning to office on 6 January 2016. Mr Brian Nair has been appointed as the acting Chief Executive Officer until her return with full delegation to exercise all the powers and functions of the Chief Executive Officer. Accordingly, the acting Chief Executive Officer has delegated the power to depose this answering affidavit to me. I annex his confirmatory affidavit as well as his acting delegation herein as **BDN1** and **BDN2**.
6. In Legal Aid SA, I have in the past four years been responsible for the development of the Legal Aid SA’s PAIA manual. The last version that was approved by the Board was adopted in 2015. This manual is easily accessible on the Legal Aid SA’s website.
7. In terms of the said Manual and in paragraph 2.3 thereof “Deputy Information Officer/s” means the Chief Operations Officer, National Operations Executive, Chief Legal Executive and Corporate Service Executive of Legal Aid SA who



are authorised to discharge the duties and responsibilities assigned to the Information Officer relating to access to information in the possession or under control of support functions and legal functions of Legal Aid SA respectively.

8. I also am the Corporate Service Executive of Legal Aid SA and I am, without question a Deputy Information Officer.
9. I generally deal with all the requests for information in Legal Aid SA, save where same is specifically directed to one of the other Deputy Information Officers. I am therefore in a position to deal with this application more so because I am a person, for the reasons that will follow herein below, who has somehow previously dealt with the Applicant's other requests for information.
10. I can also confirm that, despite this application being against Miss Vidhu Vedalankar – Legal Aid SA's CEO, she has not read the Applicant's request and has not made any decision therein. The simple reason therefor is that she, being the main Information Officer, she ordinarily would be a person who must deal with appeals relating to my refusal to grant access to information applications. At this stage, there is no such a decision.
11. I have perused the Applicant's affidavit founding his application purportedly in terms of Chapter 2 of the Promotion of Access to Information Act, 2 of 2000 ("PAIA" and/or "the Act").

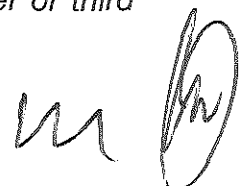
12. Chapter 2 reads as follows:

**"CHAPTER 2**

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

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

*(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third*



party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester-

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

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

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

(i) to refuse a request for access; or

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

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

(i) to refuse a request for access; or

(ii) taken in terms of section 54, 57 (l) or 60, may, by way of an application, within 180 days apply to a court for appropriate relief in terms of section 82.

(3) A third party-

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

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

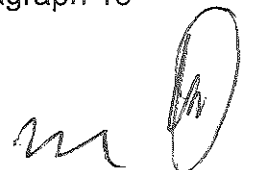
(c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body, may, by way of an application, within 180 days apply to a court for appropriate relief in terms of section 82."

13. Accordingly, the provisions of the above Chapter contemplates that there must be a **decision** that has been made by a public body adverse to the applicant's interest or request. In other words there must be a decision to refuse the requester's request for access to information.

14. It will be clearer herein below that in this case, there is no decision made by the Respondent or any Deputy Information Officer, for that matter, refusing the Applicant with any request for access to information which he made.
15. Consequently, there is no jurisdictional fact preceding or entitling the bringing of this application. I therefore submit that this application falls to be dismissed with costs. I shall make a further case for punitive costs.
16. I start briefly with a legal framework to further demonstrate the challenges that this application cannot meet.

### **BRIEF LEGAL FRAMEWORK**

14. The Board of Legal Aid SA is established by section 2 of the Legal Aid Act, Act 39 of 2014. Legal Aid SA is a statutory body which exists in order to give effect to rights enshrined in the Constitution of the Republic of South Africa Act, Act 108 of 1996 ("the Constitution").
15. The Act recognises Legal Aid SA as an autonomous body, accountable to Parliament under the Minister of Justice and Correctional Services' watch and guidance.
16. The Act, and specifically section 3, enjoins Legal Aid SA to —
- (a) render or make available legal aid and legal advice;
  - (b) provide legal representation to persons at state expense; and
  - (c) provide education and information concerning legal rights and obligations, as envisaged in the Constitution and this Act.
17. The Act also empowers the Board, amongst others, to do all such things that are necessary or expedient to achieve the objects referred to in paragraph 16 above.

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18. The Legal Aid Manual (Guide), which has statutory status as it is approved by Parliament in terms of section 24 of the Act complements the Act in ensuring that Legal Aid SA achieves the objectives set out in section 3 of the Act.
19. In terms of section 26(6) of the Act, the current version of the Guide, 2014 13<sup>th</sup> Edition is still in force and applicable
20. I submit therefore that the Guide is a statutory instrument binding on all South Africans including presiding officers.
21. The Guide serves to explain to all how legal aid is granted and managed in a fair and transparent manner.
22. What is important for my purposes herein is Clause 1.3 of the Guide which provides as follows:

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

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

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

23. Regard being had to the above provision, there is only one address at which any person seeking to sue Legal Aid SA or its employees arising out of processes involving Legal Aid SA, must serve his or her legal process. The said address is the one provided for in the Guide *i.e.* its *domicilium* address. The rest, when perusing the Guide, are merely satellite offices and regional offices with no separate legal personality to sue or be sued.

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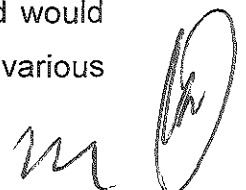
24. Thus, in order to properly institute these proceedings against the CEO and in so far as the CEO represents Legal Aid SA or for any act or failure to perform any act regarding Legal Aid SA's obligations, the Applicant ought to have launched his application where her principal or her employment address is *i.e.* Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, and not in the above honourable Court which does not cover Legal Aid SA's jurisdiction.
25. The above conclusion will be critical, I submit, when regard is had to the submission I intend to make herein below regarding the jurisdiction of the above honourable Court.
26. Accordingly, the entire notice of motion will be incompetent particularly prayers 1, 2, 3, 4, and 5-
27. Also, I shall deal with other reasons why this application is fatally defective. First, I wish to address factual background of this case just to provide context to various issues that the Applicant does not raise in his affidavit. I do so herein below.

#### **BRIEF FACTUAL BACKGROUND**

28. On 10 and 17 November 2014, Applicant directed two requests first, and later on he directed one request for access to information to Legal Aid SA's Deputy Information Officer namely Mrs Patrick Hundermark. Copies of the said requests are annexed to the founding affidavit as annexures B and C.
29. On 25 November 2014, Applicant directed one request for access to certain information and directed same specifically to Legal Aid SA's Deputy Information Officer namely Mr Jerry Makokoane. This request was amended on 15 December 2014. A copy of the said request is annexed hereto as **TM1**.

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30. I pause to point out the strange manner in which the Applicant has had to content himself with how he frames his requests for access to information. Instead of stating in point form what information he seeks, he has contented himself with giving some very long explanations and reasons why he seeks particular information. He even makes extensive footnote references on to these requests for access to information.
31. The above extensive footnotes refer and relate to an action that Applicant brought in the Durban Labour Court in 2013 where he challenged Legal Aid SA's decision to abort a recruitment of Senior Litigators (KZN) a position for which he had applied. In that case, he had made wild allegations based on nothing but speculations and theories of why Legal Aid SA aborted that recruitment process.
32. After about one or two weeks of testimony and after 6000 plus of record and transcript in that case, His Lordship Mr Justice Cele dismissed the Applicant's case with costs.
33. Applicant sought leave to appeal and leave to submit new evidence and again Judge Cele dismissed all these applications.
34. Applicant petitioned the Labour Court Appeal and again he failed.
35. I put up this history because I seek to demonstrate the difficulty that the Applicant places this Court in because in as much as his letters requesting access to information contain footnotes and refers to the Labour Court case, the Applicant has failed to annex the said records that he is referring to.
36. Consequently, the Court is working in the dark when reading these requests. This is the difficulty that Applicant deliberately places this Court in.
37. I also make a point of demonstrating to Court that Applicant's requests for access to information, referenced as he did, are un-usually long and would require Legal Aid SA's officials to spend hours and days searching in various

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offices, justice centres, and records for the information that he seeks. It is also only fair that the Deputy Information Officers will have to do due diligence and read through all the referenced paragraphs to understand the gist of the request. This process clearly diverts the resources of Legal Aid South Africa away from our mandate to one case which does not end.

38. As is evident in certain other cases that Applicant launched against Designated Deputy Information Officers from Free State and Eastern Cape, and recently Johannesburg, Legal Aid SA's officials also have to look and verify if the said information is in any of their other regional offices.

39. The tremendous amount of time and resources taken by Legal Aid SA to search for the information requested is enormous. To compensate for such a use of time searching for the un-ending requests from Applicant, legislature has provided some measure of relief to public bodies like Legal Aid SA.

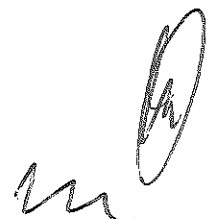
40. Section 22 of the PAIA provides that an information officer, and by necessary logic deputy information officer(s) should be able to claim a financial contribution from the requester of information before processing the request if, *inter alia*, the search therefor has been made or preparation of the record for disclosure would require more than the hours prescribed for this purpose for requesters. It even states that the portion payable is one-third of the access fee that would have been charged.

41. Section 22(5) authorises the information officer, and by necessary logic, the deputy information officer(s) to withhold a record until the requester concerned has paid the applicable fees (if any).

42. It is accordingly clear that from the volume of information that has to be searched and reproduced, if needs be, the hours spent and costs thereof would be astronomical. This is in further consideration of many other long requests for information that Applicant bombards Legal Aid SA with on a regular basis. As it is, there are about four (4) such applications in the above Court.

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43. Accordingly and in accordance with the provisions of section 22 of the Act, the two above named Deputy Information Officers (Mr Makokoane and Hundermark) requested the Applicant to pay in a certain portion of the access fee. Applicant annexed those notices contemplated in the Act in his founding affidavit as annexures G and H.
44. Instead of paying the demanded amount, Applicant commenced a further and protracted process of seeking to complain about the access fees demanded from him in terms of the Act and sought to even have various third parties (notably the Public Protector and the SA Human Rights Commission ("SARHC")) to intervene and put pressure on Legal Aid SA to release the information he requested without him paying a cent therefor.
45. Applicant points out in his affidavit at paragraph 15 that he even drove to Johannesburg to deliver a copy of his complaint to the South African Human Rights Commission. Unfortunately for him, his efforts have come to naught.
46. Applicant further states in paragraph 13 of his founding affidavit that I have refused outright his application for access to information. This is not true and I refer the honourable Court to paragraph 10.3.3 of the annexure M.
47. What is true however, is the fact that I, on behalf of Legal Aid SA and the two other Deputy Information Officers, persisted that the Applicant pays the demanded search/access fee before any information could be released or alternatively processed further for a decision.
48. It is on this basis that I submit that there is no decision that has been made in relation to the above two requests made to Mrrs Makokoane and Hundermark. They are still awaiting payment of the above required money before they can do anything further. They are entitled to do so.

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49. Finally, the Applicant has satisfied himself with making wild and untested allegations that Legal Aid SA has, for many years, persisted with its 'illegal' refusal to provide access to information which he seeks. I deny this too.

50. I submit that the above accusation is a lie and cannot be supported by any objective evidence/finding of either a Court of law; or of any of the organisations that Applicant regularly complains to.

51. I submit that all and any refusal of a request for access to information in terms of PAIA is properly considered and made in accordance with the provisions of the said Act. Applicant may disagree therewith but the fact of the matter is that the said refusal would have been grounded in law.

52. I now proceed to answer Applicant's founding affidavit *ad seriatim*. If I do not answer any paragraph therein, I respectfully submit that neither Legal Aid SA, the Respondent, nor I should be taken to have admitted same unless I say so pertinently.

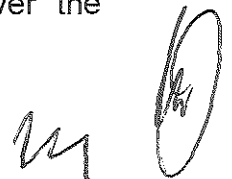
53. I raise the following Preliminary Objections:

#### **PRELIMINARY OBJECTION 1 – LACK OF JURISDICTION OF THIS COURT**

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

55. I say so for the simple reason that the Court does not have jurisdiction over the Respondent by virtue of the location where she, as the Respondent, resides or her principal address, and secondly, where the alleged decision to demand access fees in issue herein was taken.

56. I note that the Applicant has not even laid a basis in law why he is of the view that the Magistrate's Court in Eshowe could have jurisdiction over the

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Respondent. That is telling with respect. We, in any event, reject his submission that he is an ordinary resident of this Court.

57. It is even strange that in this case, Applicant simply does not allege any facts in support of this basic principle of pleadings and civil procedure.

58. However and most importantly, Legal Aid SA persist in its submission that the principles of jurisdiction i.e. the common law grounds of jurisdiction are activated by (i) the place where the impugned decision in issue was taken, and (ii) where the residence of the respondent is applicable herein and must be applied by Court.

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

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

61. As a former Magistrate of some 20 years' experience, an advocate of over twenty (20) years, aspirant Senior Litigator in Legal Aid SA, and presently an Acting Magistrate in this very same Court, I submit the Applicant ought to have known this basic principle of our law of jurisdiction.

62. I submit that, in fact, the Applicant knows of this principle because previously when he had concluded that the Head Office's staff 'unlawfully' refused him access to information he required, he threatened to approach the High Court in an application and in terms of the Act.

63. The Applicant even prepared a draft application which he annexed to one of his requests for access to information in 2014. Because the Head Office is based in Braamfontein, Applicant threatened to issue his application out of the Gauteng Local Division (Johannesburg High Court). I annex hereto a

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copy of the said application to demonstrate my point, and mark same as **TM2**.

64. In view of the Applicant's previous conduct and knowledge, I respectfully submit that the decision and conduct of launching this application out of this Court was deliberate and only intended to disadvantage the Respondent/CEO.

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

66. I am advised that the term "effective order" is often stated as "*A lawful power to decide something in a case or to adjudicate upon a case, and to give effective judgment, that is, to have the power to compel the person condemned to make satisfaction.*"<sup>1</sup>

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

68. The above honourable Court, and as a matter of common law, will have no authority over the Respondent and will have no power to compel her to comply with anything coming therefrom. The Court will be subjected to *extra territorium ius dicenti impune non paretur*.<sup>2</sup>

69. I submit that a Magistrate's Court in Johannesburg, is the appropriate forum to institute any proceedings against the Respondent primarily because of (i) the fact that the Respondent resides in Johannesburg, and/or (ii) the decision Applicant is challenging was taken in Johannesburg.

70. The Johannesburg Magistrates' Court will be more suitable and effective to compel the Respondent into compliance.

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<sup>1</sup> Per Viljoen JA in a 1987 Appeal Division case.

<sup>2</sup> "One administering jurisdiction beyond his territory may with impunity be disobeyed."

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71. Accordingly, the prayers in Applicant's Notice of Motion fall to be dismissed with costs. The Court cannot even order the attachment of Legal Aid SA's computers and assets as is prayed for by Applicant.

72. I submit strongly so, with respect, that this application falls to be dismissed with punitive costs. The level of abuse of process and conduct by the Applicant is unprecedented in the history of Legal Aid SA.

### **PRELIMINARY OBJECTION 2 – SUING WRONG PERSON FOR ACTS OF OTHERS - MISJOINER**

73. What is palpable with this application is that the Applicant is suing the Respondent (the CEO and the Information Officer of Legal Aid SA) for the actions of the two Deputy Information Officers being Mrrs Makokoane and Hundermark. These are the people who demanded payment from him.

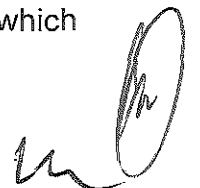
74. The Applicant does not even inform this Court why he could not sue these two Deputy Information Officers directly. No explanation at all!

75. The Applicant has not even joined these two people who have made the very same decisions that he complains about herein.

76. In terms of the law, this application falls to be dismissed on the basis of misjoinder. The two Deputy Information Officers are the necessary and relevant parties to this application.

77. I submit that this application is thus fatally defective and falls to be dismissed. It further demonstrates unprecedented abuse of power by Applicant, abuse of process of Court and unending questionable conduct on his part.

78. The Respondent and I have now being called to answer for decisions which have not been taken by either of us.

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79. This is strange because in the other applications issued out of this Court, Applicant has cited the relevant Deputy Information Officers and sued them for the decisions they have made.

80. There is no explanation why this application is different from the four (4) others herein. The abuse of power and privilege of being an Acting Magistrate in this Court is beyond belief.

81. I submit that this application ought to be dismissed on this ground alone.

### **PRELIMINARY OBJECTION 3 – WAIVER TO APPROACH A COURT**

#### **Lack of bona fide explanation for the extra-ordinary delay in approaching this Court**

82. I submit that most of the information that the Applicant seek has already been sought early last year and the Applicant, instead then, of launching this application, elected to proceed with his complaints to other institutions instead of coming straight to Court

83. I submit that the Applicant knew of the Legal Aid SA's position as early as 3 and 25 February 2015 or shortly thereafter of what the demanded access fee was in respect to the information he sought. These are the dates in annexures G and H to his founding affidavit.

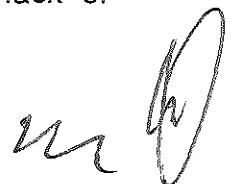
84. Instead, the Applicant did nothing about his right to approach a Court to enforce the right he alleges the Respondent or I violated.

85. There is no proper application for condonation for this unreasonable delay in bringing this application to Court. He is aware that condonation is not there for the mere asking.

86. I submit that the Applicant must be held to an election he made.



87. The Applicant has not offered this Court good cause explanation to demonstrate why he, only now, seeks to approach this Court for the information he sought and was answered in February 2015.
88. Absent this crucial explanation for his extra ordinary delay in bringing this application, I respectfully submit that this Court would be perfectly entitled to dismiss this application on the basis of an undue delay which the Applicant has not even begun to explain.
89. The Applicant's unexplained and deliberate delays prejudice the Respondent and all of us at Legal Aid SA in that there appears to be no end in sight with these applications. The requirement for finality is consistently being violated herein.
90. There is also no certainty in Legal Aid SA's budgeting as we do not have a separate legal budget and these unending cases presents financial problems for execution of our mandate. Deserving and free legal aid to deserving client is compromised because Applicant decides when he seeks to sue.
91. Applicant seems to think that he can apply to Court for old requests as and when he remembers them. This is not fair with respect. Court is request to dismiss this application with punitive costs order.
92. Legal Aid SA most pertinently submits that the institutions that Applicant approached for assistance could not assist him as the position he seek to challenge is a statutory position.
93. At the most, the Applicant should have immediately approached a Court of law and abandoned his approaches to various third parties. His delays in bringing this application resulted in nothing that he could point to.
94. The honourable Court should dismiss this application simply for lack of reasonable explanation for the delay in bringing same to Court.

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**Abuse of Court process: Suing same respondent under two case numbers out of the same Court in related matters**

95. Tied to this, of course, is the extreme abuse of Court process that the Applicant seeks same thing against the same party in a different case number issued out of the same Court.

96. This is now the second application that he issues against the Respondent and given the fact that even the first application was issued after February 2015, there is no explanation why he separated these applications.

97. In this regard, it is also not clear why did Applicant have to issue separate applications when he is in fact suing the same officer of the same organisation and for a 'decision' that took place around the same period as the decision the Respondent is alleged to have made in case 258/2014.

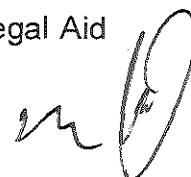
98. Such strange conduct should have been explained at least. The Court should mark its disapproval and mulct the Applicant with punitive cost order.

**PRELIMINARY OBJECTION 4 – PERCEPTION OF BIAS**

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

100. I submit that during the last appearance in the Durban Labour Court in 2013, Applicant disclosed that he has accepted a temporary acting Magistrate position in this Court.

101. I am able to surmise that by launching these many other applications out of this Court, the Applicant only seeks to obtain an unfair advantage over the Respondent (CEO), Legal Aid SA and/or the senior members of Legal Aid



SA by having this matter being adjudicated by his colleagues and who could possibly find it difficult to rule against him over the Respondent – a person based in a different province.

102. As it is, the Respondent and I received what appear to be Court Notices which in fact are documents drafted by the Applicant after engagement with the Chief Magistrate Mr Venter. It is worrying that the Court or Chief Magistrate agrees with notice and the dates proposed by one party to opposed litigation without even asking if the Applicant had discussed same with the Respondents' local correspondent attorneys. We have received a date for the hearing of these matters by the Applicant being 11 February 2016, a copy of which is annexed hereto marked **TM3**. As is expected by ethics and cordial relations between legal representatives, the Applicant failed to discuss these dates with our offices.
103. Just as the matter is proceeding, the Applicant has been conducting this matter in the manner that may trespass on ethics and lead to an inference of bias, the Applicant again engaged with the Chief Magistrate without the involvement of the Respondent attorneys of record or their correspondent. This time the Applicant prepared for the Chief Magistrate's signature a notice calling on the Respondent for a Pre Trial Conference on the same date as the above hearing hereof on 11 February 2016. A copy thereof is annexed hereto as **TM4**.
104. This conduct is un-collegial, hostile and is unbecoming, with respect. We are being ill-treated by both the Applicant before the hearing of these matters commences.
105. Furthermore, this conduct, not only does it demonstrate sheer abuse of power, resources and Court's processes but it also, and on all objective facts, give off a sign or perception of bias against the Respondent and Legal Aid SA's respondents before this Court.

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

107. In this case:

106.1. The Applicant is in a committed long term fight with Legal Aid SA and has publicly so vowed;

106.2. The issue of jurisdiction mentioned above is so obvious to any trained lawyer that it is odd that the Applicant preferred this matter to be decided in his own turf by one of his colleagues, when previously he had correctly threatened Legal Aid SA to sue it out of the Johannesburg High Court; and

106.3. It is unlikely that Legal Aid SA and/or the CEO, as the Respondent, would receive fair hearing in this Court given the fact that as between her and the Applicant, she is a foreigner of the Court.

108. I am advised that even the slightest perception of bias is sufficient to have this matter being removed from the roll of this Court and be referred to a neutral Court.

109. In the event that the Applicant does not wish to follow the Respondent as he is required by the law to do, I submit that the neutral and correct territory would be the Johannesburg Magistrates' Court.

110. I submit that this Court should remove this matter from its roll on the basis of a real apprehension that the Respondent and I harbour of unfair hearing against the Respondent and Legal Aid SA, especially in view of the fact that the computers of Legal Aid SA could be taken on the order of this Court.

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111. I am advised that there is a legal parlance that is universally accepted when coming to the rule against bias viz. "justice must not only be done but must also seem to be done".

112. In *casu*, I am afraid I do not carry that sense of confidence that justice will be seen to be done. I submit any other reasonable person may also feel as I do.

113. I now wish to address the application itself.

114. Accordingly, I shall deal with what falls within my own personal knowledge. Where I do not address a particular paragraph, I should not be taken to have admitted same. Instead I should be taken to have placed same in issue.

115. **AD NOTICE OF MOTION PRAYERS 1 – 2.**

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

114.2. I have demonstrated a legal basis upon which the two Deputy Information Officers demanded payment of access fees in terms of section 22 of PAIA.

114.3. I submit that the Applicant's right to information is not unlimited and I have thus demonstrated compliance with both the Act and section 36 of the Constitution.

115. **AD NOTICE OF MOTION PRAYER 3.**

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

115.2. The Applicant has failed to state what his complaint about section 22 is. He does not say that the Respondent is not entitled to charge the



said fees, nor does he challenge the unconstitutionality of the very same section.

115.3. It is thus incompetent to challenge the contents of the statute without challenging the constitutionality thereof especially in these circumstances where Applicant claims his constitutional right to access to information has been violated by the very same act which arises from section 22 of the Act.

115.4. I have demonstrated a legal basis upon which the two Deputy Information Officers have relied on section 22 for their conduct herein.

115.5. I submit that Applicant's constitutional right is not unlimited and I have demonstrated compliance with both the Act and section 36 of the Constitution.

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

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

116.2. I submit that the above honourable Court is not competent to grant such order and that is clear that the Applicant's motive is malicious and intended to damage the reputation of the Respondent.

**117. AD NOTICE OF MOTION PRAYER 5.**

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

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

A handwritten signature in black ink, consisting of a stylized 'M' followed by a circular flourish.

117.3. I am advised that some of the people who ought to be mentioned in this prayer are not before Court. They have not been cited as parties to any of the three applications brought by the Applicant. I am referring specifically to the owner of the said computers and servers being the Legal Aid SA itself.

117.4. Accordingly, this Court will have no competence and authority to rule over Legal Aid SA, servers and the computers owned by it.

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

117.6. The Applicant has elected only to sue the Respondent (CEO) in this matter. And to the extent that he has failed to join Legal Aid SA, such failure, again, constitutes misjoinder.

117.7. Furthermore, it is strange that the Applicant seeks information from Legal Aid SA's computers without specifying from whose computers he seeks the said information. Again, where Applicant has not cited the owners and/or users of those computers for them to respond and defend their positions, this Court is unable to grant him the said relief.

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

**118. AD NOTICE OF MOTION PRAYER 6.**

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

118.2. The honourable Court has no competence to grant the above prayer.

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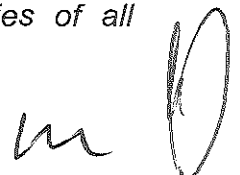
118.3. The Applicant has not made out a proper case for the substitution of one of the parties in a different application with another litigant in a different application.

118.4. I am advised that there is no rule in the Magistrates' Court for change or substitution of parties. Only the Uniform Rules of Court makes provision therefor and I wish to refer to it for purpose of making a point herein below. It reads as follows:

*"15. Change of parties*

*(1) No proceedings shall terminate solely by reason of the death, marriage or other change of status of any party thereto unless the cause of such proceedings is thereby extinguished.*

*(2) Whenever by reason of an event referred to in subrule (1) it becomes necessary or proper to introduce a further person as a party in such proceedings (whether in addition to or in substitution for the party to whom such proceedings relate) any party thereto may forthwith by notice to such further person, to every other party and to the registrar, add or substitute such further person as a party thereto, and subject to any order made under subrule (4) hereof, such proceedings shall thereupon continue in respect of the person thus added or substituted as if he had been a party from the commencement thereof and all steps validly taken before such addition or substitution shall continue of full force and effect: Provided that save with the leave of the court granted on such terms (as to adjournment or otherwise) as to it may seem meet, no such notice shall be given after the commencement of the hearing of any opposed matter; and provided further that the copy of the notice served on any person joined thereby as a party to the proceedings shall (unless such party is represented by an attorney who is already in possession thereof), be accompanied in application proceedings by copies of all notices, affidavits and material documents previously delivered, and in trial matters by copies of all*



*pleadings and like documents already filed of record, such notice, other than a notice to the registrar, shall be served by the sheriff.*

*[Subrule (2) substituted by GN R235 of 18 February 1966.]*

*(3) Whenever a party to any proceedings dies or ceases to be capable of acting as such, his executor, curator, trustee or similar legal representative, may by notice to all other parties and to the registrar intimate that he desires in his capacity as such thereby to be substituted for such party, and unless the court otherwise orders, he shall thereafter for all purposes be deemed to have been so substituted.*


*(4) The court may upon a notice of application delivered by any party within 20 days of service of notice in terms of subrule (2) and (3), set aside or vary any addition or substitution of a party thus affected or may dismiss such application or confirm such addition or substitution, on such terms, if any, as to the delivery of any affidavits or pleadings, or as to postponement or adjournment, or as to costs or otherwise, as to it may seem meet.*

*[Subrule (4) amended by GN R1262 of 1991.]*

118.5. I submit that from the above rules, the Applicant ought to have provided Legal Aid SA with a Notice of Substitution. He has not done so.

118.6. Secondly, in as much as the rule intended for simple substitution of parties, I respectfully submit that where there is an objection to the above-mentioned substitution, then the application Notice, the matter must be decided by Court. There are various grounds under which this application cannot be granted.

118.7. In this matter, the Applicant has not provided the Respondent a Notice of Substitution and he has, by seeking substitution of the parties

*m* 

herein, denied the Respondent an opportunity to object to that possible application.

118.8. In any event, there is a person Mr Peter Makamedi ("Mr Makamedi") who has been appointed to the position of a Deputy Information Officer in the position of the late Ms Zanele Msweli.

118.9. I am advised which advise I accept as correct that the Applicant ought to have made out a separate application for the substitution of various parties herein and deal with, *inter alia*, the reasons why in his opinion should the Respondent, who is based in Johannesburg, be the one who substitutes the late Ms Zanele Msweli a Designated Deputy Information Officer of Free State region.

118.10. The Applicant has to explain why the correct Designated Deputy Information Officer Mr Makamedi cannot be suitable for substituting his immediate predecessor. This has not been done.

118.11. Accordingly, the Court cannot rely on the one line explanation for this prayer to be made.

118.12. Secondly, it is highly improper that an order of substitution would be made in a different application (this application) but seeking the one Respondent to substitute late Ms Msweli who is cited in a different application.

118.13. The above process is unheard of hence, I submit that an independent application using the very same case number in that Brink v Zanele Msweli application (case number 259/2014) ought to have been made for this order.

118.14. Furthermore, I wish to point out that Mr Makamedi is also a relevant and necessary party to these proceedings and as such ought to have been joined before this order could be granted.

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118.15. Again, a pertinent person that should be cited in this prayer is not before Court. Such person has not been cited as party to any of the three applications launched by the Applicant not even the above Brink v Zanele Msweli NO application.

118.16. Accordingly, this Court will have no competence and authority to rule over the said person.

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

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

119. **AD PARAGRAPH 1**

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

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

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

120. **AD PARAGRAPH 2**

120.1. The contents of this paragraph are admitted

121. **AD PARAGRAPHS 3 – 4**

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

Handwritten signature and initials in black ink, consisting of a cursive name and a circled set of initials.

**122. AD PARAGRAPH 5**

122.1. The contents of this paragraph are denied and I submit that Deputy Information Officers have been duly appointed, alternatively duly designated by law.

**123. AD PARAGRAPH 6**

123.1. The Applicant's interpretation of the section 22 is misguided as the Respondent has requested payment in terms of section 22 (6). Further argument will be presented at the hearing of the matter.

**124. AD PARAGRAPH 7**

124.1. Except to *deny* that I mistakenly called myself the Deputy Information Officer, I note the correctness of the contents of this paragraph.

**125. AD PARAGRAPH 8**


125.1. I admit that the two Deputy Information Officers demanded access fee as contemplated in section 22 of the PAIA.

125.2. I have dealt with their legal and constitutional entitlement to do so.

**126. AD PARAGRAPH 9**

126.1. I note the correctness of the contents of this paragraph.

126.2. I submit that section 22(5) authorises the Information Officer (including Deputy Information Officer(s)) to withhold his or her decision making process including procuring the information until a demanded access fee is paid.

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**127. AD PARAGRAPHS 10 – 13**

127.1. I note the correctness of the contents of these paragraphs.

127.2. The Respondent asked me to respond to Applicant's letter and I then insisted on the payment of access fees as is required by section 22 of PAIA.

127.3. I submit that I have not made any decision refusing or granting Applicant's request for access to information regarding the information he seeks from these two Deputy Information Officers.

**128. AD PARAGRAPHS 14 – 17**

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

128.2. I submit that there is no decision made regarding the Applicant's requests for access to information. His consequent escapades to complain to the SAHRC and Public Protector were all misguided.

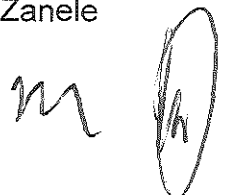
128.3. I have also demonstrated that the Applicant wasted time instead of approaching a Court of law to deal with his complaint which is of a statutory nature.

128.4. Applicant does not even address his waste of time and the delay in bringing this application late in the year when a demand for access fee was communicated to him around February 2015.

**129. AD PARAGRAPHS 18 – 19**

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

129.2. The delegation of being Deputy Information Officer of the late Zanele Msweli lapsed when she met her death.

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129.3. However, the Respondent has long appointed a replacement Designated Deputy Information Officer Mr Makamedi for the same region that the late Ms Msweli occupied.

129.4. Applicant does not deal with this in his founding affidavit and does not demonstrate why this new Designated Deputy Information Officer could not be suitable to replace the deceased Msweli.

**130. AD PARAGRAPH 20 (INCLUDING FOUR BULLETS POINTS THEREIN) and PARAGRAPH 21**

130.1. I deny the correctness of the contents of these paragraphs as if specifically traversed.

130.2. All these paragraphs are irrelevant to this application.

130.3. There is no truth in all of these paragraphs mentioned herein. In fact what the Applicant refers to as a 'special lesson' was a cordial meeting between the Legal Aid SA and SARHC to discuss and provide clarity on a method of reporting of various cases that spanned over or straddled two accounting years. I attended that meeting and there was no lesson given to Legal Aid SA's officers.

**131. AD PARAGRAPH 22**

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

131.2. I have stated that where Legal Aid SA refuses any person with access to a requested information, same is done in accordance with the law.

**132. AD PARAGRAPH 23**

132.1. I note the contents of this paragraph.

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132.2. I submit that the Applicant is aware (fully so) that this Court has no jurisdiction to hear these applications including this one hence he has in his mind the Pietermaritzburg as another Court that he could approach.

132.3. The bringing of these applications to this Court is simply a gross abuse of power and process of Court warranting punitive costs.

## CONCLUSION

133. I submit that for one or more of the points of law taken above, this application falls to be dismissed with punitive costs including the costs of two counsel involved in these matters.

**WHEREFORE** it may please the Court to dismiss this application with Costs and such costs to be payable on a scale as to client and own attorney.

  
\_\_\_\_\_  
**DEPONENT**

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this the 15<sup>th</sup> December 2015. The regulations contained in the Government Notice No. 1258 dated 21<sup>st</sup> July 1972 (as amended) and Government Notice No. 1648 dated 19<sup>th</sup> August 1977 (as amended) having been complied with.

  
\_\_\_\_\_

**COMMISSIONER OF OATHS**

**Mabhoko Mathole Attorneys**  
Commissioner of Oaths  
Ex Officio  
Mansion House, 132 Market Street  
Cell: 082 680 5982 Fax: 086 690 3648  
Email: mabhoko@webmail.co.za

IN THE MAGISTRATES COURT FOR THE DISCTRICT OF ESHOWE

Case No.1432/15

In the matter between:-

**ANTHONY ROBIN BRINK**

Applicant

and

**VIDHU VEDALANKAR N.O.**

**INFORMATION OFFICER**

**LEGAL AID SOUTH AFRICA**

Respondent

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**CONFIRMATORY AFFIDAVIT**

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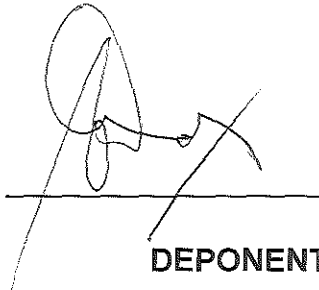
I, the undersigned,


**BRIAN DEVARAJ NAIR,**

do hereby make oath and state that,

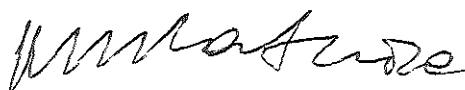


1. I am an adult male Acting Chief Executive Officer and a Deputy Information Officer on behalf of Legal Aid of South Africa ("Legal Aid SA") with my employment address at Legal Aid House, 29 De Beer Street, Braamfontein, and Johannesburg.
2. The Respondent, Vidhulekha Nardev Vedalankar is currently on leave and will be returning to office on 6 January 2016 and I have been appointed as the acting Chief Executive Officer until her return with full delegation to exercise all the powers and functions of the Chief Executive Officer.
3. The facts deposed to herein are within my own personal knowledge, unless the contrary indicate otherwise and are to the best of my belief both true and correct.
4. I confirm that I have delegated the authority to depose to the answering affidavit in this application to the Corporate Services Executive Mr Thembile Vuyo Mtati and that he is to do all what is necessary and ancillary to the opposition of this application.
5. Mr Thembile Vuyo Mtati generally deals with all the requests for information in Legal Aid SA, save where same is specifically directed to one of the other Deputy Information Officers. He is therefore in a position to deal with this application and more so in that he is the person, for the reasons that will appear in the answering affidavit, who has dealt with the Applicant's request for information.
6. I have read the answering affidavit of Mr Thembile Vuyo Mtati and confirm the contents thereof.

  
DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at Johannesburg on this the 15<sup>th</sup> December 2015. The regulations contained in the Government Notice No. 1258 dated 21<sup>st</sup> July 1972 (as amended) and Government Notice No. 1648 dated 19<sup>th</sup> August 1977 (as amended) having been complied with.



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BDN 2'



Your voice. For justice.

**LEGAL AID SOUTH AFRICA**

**AUTHORITY FOR A SUBSTITUTE TO ACT**

<b>DEPARTMENT :</b>	Office of the CEO
<b>NAME :</b>	Ms Vidhu Vedalankar
<b>DESIGNATION :</b>	Chief Executive Officer
<b>DATE :</b>	20 October 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 the 07<sup>th</sup> to 15<sup>th</sup> December 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: *V. V. Vedalankar*

Date: 20/10/2015

**Acceptance:**

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

Name : Mr Brian Nair

Signature : *Brian Nair*

Date : 22/10/15

**Approved:**

Name : Judge President D Mlambo

Signature: *D Mlambo*

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

*M*

*[Signature]*

'TM 1'

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.

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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.

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]

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

Jerry Makokoane  
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

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**E. Fees**

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

Reason for exemption from payment of fees:

N/A

**F. Form of access to record**

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

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

<b>2. If record consists of visual images -</b>				
(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)				
	view the images	<input checked="" type="checkbox"/>	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)	<input checked="" type="checkbox"/>	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*	<input checked="" type="checkbox"/> copy in computer readable form* (on compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?  A postal fee is payable.				YES
<i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i>				
In which language would you prefer the record? <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.*

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



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'.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<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.

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

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

...

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

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

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

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

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

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

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

Note: As above.

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

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

<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'.

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

<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'.

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.

<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.

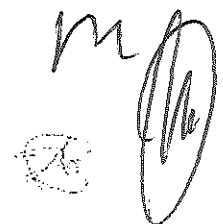
<sup>30</sup> Bundle addendum, page 1066.

<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.

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

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

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

<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.

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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	Employment	Vacancies	Total
Legal	229	200	12,65%

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.

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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's 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.

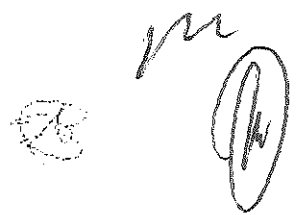
<sup>66</sup> On 23 March 2012, Board member Judge Edwin Molahleh's secretary stated to Brink's accountant Christopher Rawlins that he was attending a LASA meeting on that day, which information Rawlins immediately emailed to Brink: 'Just spoken again with his assistant who told me that he was out at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

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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.

A handwritten signature in black ink is written over a circular stamp. The signature is cursive and appears to be 'M. Mthimkhulu'. The stamp is partially obscured by the signature.

## 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.

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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

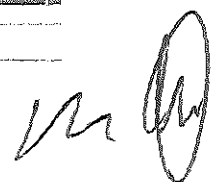
Critical occupation	Number of posts	Number of posts filled	Vacancy rate %
Legal	229	200	12,66%

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	5	14.00%
Finance	7	7	0.00%
Communications	7	5	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	85	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:

000168

IN THE SOUTH GAUTENG HIGH COURT (JOHANNESBURG)

Case No:

In the matter between:

ANTHONY ROBIN BRINK

Applicant

and

LEGAL AID SOUTH AFRICA

Respondent

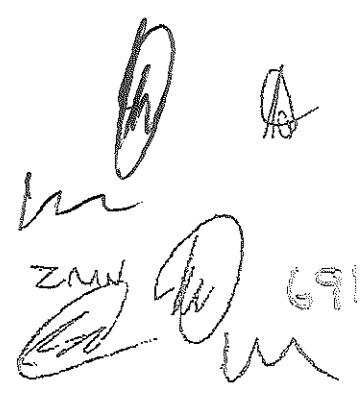
FOUNDING AFFIDAVIT

I, Anthony Robin Brink, solemnly affirm:

1. I am an adult male, 51, an advocate of the High Court of South Africa, resident at 25 Baker Road, Prestbury, Pietermaritzburg, KwaZulu-Natal, and I am the applicant herein.
2. The respondent is Legal Aid South Africa ('LASA'), a statutory body established by the Legal Aid Act, Act 22 of 1969, whose head office and principle place of business is at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

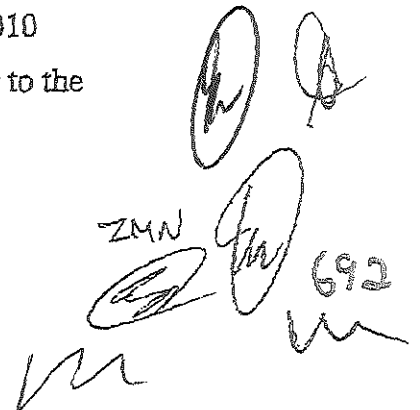
PP4

WORKING DRAFT IN PROGRESS


  
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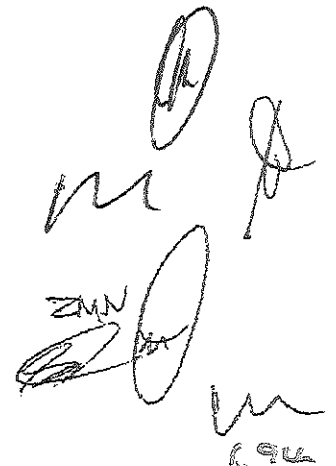
CEO Ms Vidhu Vedalankar ("Vedalankar"), with her response(s), and the correspondence that preceded this application.

8. My cause of action for a mandatory interdict directing LASA to comply with the Act is founded on a simple and narrow set of facts, to be set out presently. The background dispute regarding my fundamental complaint that LASA has illegally discriminated against me in contempt of my constitutional rights is a matter for determination by another court, following viva voce evidence and cross-examination of all those members of the Management Executive Committee and Board of Directors who've involved themselves and colluded in the matter, to establish the veracity or mendacity of their evidence, as the case may be; and it's consequently neither necessary nor relevant in the instant application for LASA to answer and debate the case made out in my correspondence in this regard.
9. The political context in which the illegal discrimination of which I complain has taken place is sketched in a letter I wrote on 12 October 2010 to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa in Cape Town (Bundle, pages 93-99); in the Addendum to my first letter to Vedalankar on 12 July 2010 (Bundle, pages 11-17); in my Personal and Political History (Bundle, pages 88-92); and in my CV (Bundle, pages 75-77 and 80-82).
10. The immediate factual background to this application is recorded in the main body of my first letter to Vedalankar (Bundle, pages 1-9); and in my successive appeals thereafter to Chief Operations Officer Jerry Makokoane on 1 September 2010 (Bundle, pages 21-39) and to Chairperson Judge Dunstan Mlambo and the Board of Directors on 30 November 2010 (Bundle, pages 109-167). (As noted in paragraph 70 of my letter to the

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like a glorified spaza shop ... In the absence of any paper trail must we just accept that [Chikane and Fowler] are people of standing and they will never mislead, just like [then United States secretary of state] Colin Powell never misled the security council [over Saddam Hussein's possession of weapons of mass destruction]. (ellipses, interpolations, and missing punctuation in the original) (Bundle page ...)

16. In sum, the mere ipse dixit of public servants regarding their administrative actions won't do, especially considered against a history of dealing in bad faith. (Bundle, pages 5-9; page 19, second paragraph, first sentence)
17. I believe the absence of a documentary record supporting her allegations is the true reason Vedalankar is avoiding compliance with my records requests. I further believe that what records do exist will be probative in establishing my complaint of illegal discrimination and of unlawful administrative action to my prejudice. In a nut, Vedalankar cannot, qua information officer, comply with her constitutional obligations under the Act without exposing her violation, qua CEO, of my basic civil liberties protected by the Constitution and other statutes enacted to enforce it. (Bundle, page 4, paragraph 5; pages 35-6, paragraphs 59-65) For this reason Vedalankar spurns all my constitutional rights in the matter, and not just some of them.
18. I reiterate, however, that the merits or otherwise of my discrimination complaint and my surmises and purposes animating my requests for records are immaterial to my constitutional right of access to them.

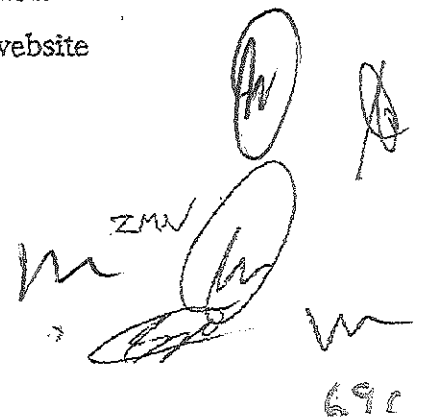
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23. Vedalankar refused my records request on the grounds that it 'goes beyond your individual circumstances and extends to information on third parties' and is 'not relevant to any rights you may have in law'. (Bundle, pages 102-103, paragraph 5; and page 108, paragraph 8)
24. These reasons are manifestly spurious: In terms of section 11 of the Act it's unnecessary for a requestor seeking access to records of a public body to show that his request is 'relevant' to the exercise of 'any right' he wishes to protect or enforce; nor need his request be particular to his 'individual circumstances'. Nor was I seeking 'information on third parties': as is plain from the tenor of my request, such information was of no interest or use to me at all. To the extent that Vedalankar was genuinely concerned not to make any 'unreasonable disclosure of personal information about a third party', per section 34 in Chapter 4 of the Act - although I'm at a loss to see what - she could simply have blacked out such 'personal information' from the record(s) in question. And still can. (Bundle, page 117, paragraph 36)  
Or, under section 28 of the Act, she could have severed any genuinely objectionable part of my request, and met the rest of it.

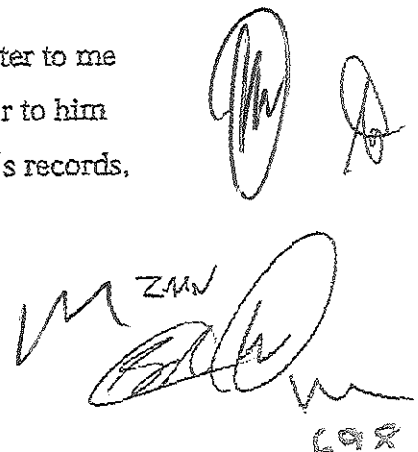
## SECOND RECORDS REQUEST

25. On 15 December 2010 I sent Vedalankar a second request for records in the prescribed form, this time by email per section 18 (1) of the Act, testing her claims in her letter to me concerning the reason she alleged for aborting my recruitment. (Bundle, pages 167-180)
26. On the same day I posted her a R35 cheque covering the request fee. (LASA's PAIA manual indicating this fee was published on its website subsequent to my first records request.) (Bundle, page 181)

ZMW  
691



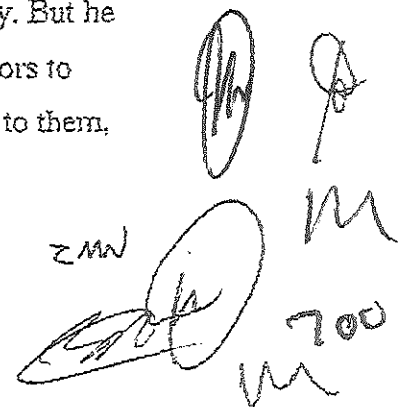
32. I emailed my letter to Judge Mlambo and to several Board members whose email addresses I'd been able to find on the internet, and on 6 December 2010 Board Secretary Ms Bee-Mari Schoeman ('Schoeman') emailed me to acknowledge that Judge Mlambo had received it, and informed me that he was 'presently out of the country' but 'will respond to your letter as soon as he is able to do so'.
33. In a letter to Schoeman two days later on the 8th, I enquired when Judge Mlambo would be back; asked her to ensure that my letter was brought to the attention of all members of the Board; and requested she give the matter priority attention. (Bundle, pages 183-188) I wasn't favoured with a reply.
34. I then telephoned Judge Mlambo's secretary at the Labour Court in Johannesburg to find out when he'd be back, and was told he was in the US, returning on the 22nd.
35. Judge Mlambo replied to me on the 30th. (Bundle, page 189)
36. His reply is incorrectly dated 9 November 2010, three weeks before mine to him, so I assume he had 9 December 2010 in mind.
37. He emailed his reply in the form of an attached PDF file. Interestingly, according to its file-name and properties, the PDF file was made on 15 December 2010 by none other than Vedalankar, an hour before I emailed my second request for records. (Bundle, page 190) Vedalankar did this while Judge Mlambo was still in the US.
38. Vedalankar's production of a PDF version of Judge Mlambo's letter to me indicates that there was email traffic between them about my letter to him and its contents. And as this email exchange forms part of LASA's records,



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of the matter as I'd requested a month earlier. (Bundle, page ...) She [...].  
(Bundle, page ...)

44. Adv Pieter du Rand, Director of Court Services in the Department of Justice and Constitutional Development, was the first Board Director to acknowledge my letter to the Board, and he did so immediately. Dr Len Konar and Attorney Jan Maree promptly did so in turn. (I received no acknowledgments from several other Board Members I emailed.)
45. With the impression that Schoeman had failed to bring the matter to the attention of all Board Directors, I wrote to Adv du Rand, informing him of this, and mentioned Judge Mlambo's unhelpful response. In my letter I petitioned him to intervene to address and resolve Vedalankar's unlawful denial of and trampling on my constitutional rights. I copied Konar and Maree in. (Bundle, page ...)
46. On [...] [...] responded, informing me that he was extremely concerned by the developments I'd brought to his attention, including Judge Mlambo's indifference and inaction regarding Vedalankar's unlawful refusal of my records request, and said he was also most embarrassed by the grossly unethical behaviour of senior members of the Management Executive Committee evident from their correspondence to me, and by Schoeman's indolence in regard to it. He said he'd immediately raised the matter with all other Board Directors and had urged them to join him in a quorum of eight to move for a special meeting of the Board to resolve my complaints and to obviate the looming litigation that threatening to wreck LASA's excellent reputation as an exceptionally well managed exemplary public body. But he said he'd been unable to persuade at least seven other Board Directors to take the matter seriously, to take the trouble to read the papers sent to them,


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also rejected my second request for records on the same idle basis that it was 'not relevant to any rights you may have in law'. (Bundle, page ...)

52. Kisoona had previously mentioned to me on 4 October 2010, correctly in fact and in law, that 'the Commission at this stage does not have the power to sanction non compliance except through traditional name and shame mechanisms and through Parliament'. (Bundle, page 205)

53. In view of this, and anticipating no cooperation from Vedalankar in response to Kisoona's mediation, I also approached the Open Democracy Advice Centre in Cape Town ('ODAC'). (Bundle, pages ...-...)

54. According to its website, 'ODAC's mission is to promote open and transparent democracy; foster a culture of corporate and government accountability; and assist people in South Africa to be able to realise their human rights. ODAC seeks to achieve its mission through realising the right to know...' Its 'strategies and interventions to realise this mission' include 'Direct Support' and 'advocat[ing] for a change in attitudes towards the right to access of information, and it does so in order to cultivate a societal, political and legal culture that is supportive of transparency and access to information.' I was much encouraged by this – and even more so to read that ODAC's 'litigation unit operates as a law clinic' that 'specializes in litigating on access to information requests that have been denied by either public or private bodies'. (Bundle, pages ... to ...)

55. Attorney Alison Tilley, Chief Operating Officer of ODAC, responded to my plea for support in litigating to enforce my access to information requests that had been denied by LASA, stating [.....]. (Bundle, page ...)



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to assist in the Committee's inquiry into the manifest breakdown of corporate governance, management accountability, and internal control at LASA. [...] confirmed, however, that since the Committee lacks any mechanism to compel LASA to comply with the Act, I should approach the high court under section 78 of the Act for a mandatory interdict without further delay. (Bundle, page ...)

60. Deputy Minister Nel replied that he was shocked by the enormities I'd reported to him and would be taking appropriate action. (Bundle, Page ...)
61. With submission, I've pursued all possible avenues open to me to achieve compliance with my requests for records, and I've no alternative remedy but to humbly seek relief from this honourable court.

#### APPLICATION TO COURT IN TIME

62. I've brought this application within 180 days of Vedalankar's refusal of both my first and second requests - which is the provisional time limit stipulated by the Constitutional Court in *Brümmer v Minister of Social Development and Others* (CCT 25/09) [2009] ZACC 21; 2009 (6) SA 323 (CC) ; 2009 (11) BCLR 1075 (CC) (13 August 2009), in which case the court set aside as unconstitutional the 30 day time limit imposed by section 78 (2) of the Act.

#### PRAYER

63. In the situation, I respectfully pray for an order in the terms set out in the notice of motion.

Dated at Pietermaritzburg this      day of January 2010.

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Anthony

CTM 3

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

In the matters between:

ANTHONY ROBIN BRINK

Applicant

and

THE RESPONDENTS in the following four applications:

Case no: 257/14

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

Case no: 258/14

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

Case no: 259/14

ZANELE MSWELI N.O., DEPUTY INFORMATION OFFICER, FREE  
STATE AND NORTH WEST REGION, LEGAL AID SOUTH AFRICA

Case no: 1005/15

BRIAN NAIR N.O., DEPUTY INFORMATION OFFICER, LEGAL AID  
SOUTH AFRICA

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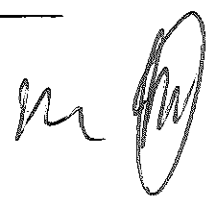
NOTICE OF SET-DOWN

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Received by WE White Attorney  
Without Prejudice.

Date: 2-12-2015

Time: 13:40



CTM 41

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF ESHOWE  
PAIA APPLICATIONS NUMBERS 257/14, 258/14, 259/14 & 1005/15

To: Mr Anthony Robin Brink

Applicant

1 Boast Street

3815

And

Messrs H Bambiso, Vidhu Vedalankar, Zanele Msweli & Brian Nair

Respondents

P/A Messrs W E White Attorneys

12 Osborn Road

Eshowe

Please note that the Presiding Officer in this matter, Mr G van Rooyen, has directed that a pre-trial hearing must be held in this matter on the 11 February, 2016.



L N Venter

Magistrate/ Eshowe

3 December 2015.

