

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No:

In the matter between:

ANTHONY BRINK

Applicant

and

THEMBILE MTATI N.O.

DEPUTY INFORMATION OFFICER

LEGAL AID SOUTH AFRICA

Respondent

VOLUME 1

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NOTICE OF MOTION

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

1. Reviewing and setting aside the respondent's refusal on 26 September 2016 to allow the applicant access to Legal Aid South Africa's public body records specified in requests for these made under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act') on 1 August 2016, as amended on 16 September 2016.
2. Declaring the respondent's denial of access to the said requested records to have unlawfully contravened section 11 of PAIA and to have violated the applicant's fundamental right to information held by the state, entrenched by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution.

3. Directing the respondent within 20 days of this order to furnish the applicant with copies of all the records he specified in his said requests, as amended; or, where any do not exist or cannot be found, to declare this in an affidavit conforming to the detailed information requirements of section 23 of the Act, and distinguishing unambiguously between extant records that cannot be found and those that do not exist.
4. Directing the respondent to convey to Legal Aid South Africa CEO and information officer Vidhu Vedalankar this court's direction that within 20 days:
 - 4.1 this order be published once in a national weekly newspaper; and,
 - 4.2 the full judgment in this case be posted on Legal Aid South Africa's internet website for a period of one year, with a prominent direct hyperlink to it placed on its homepage.
5. Directing, if this application is opposed, that the respondent pay both the applicant's costs and all costs incurred by Legal Aid South Africa as between attorney and own client, de bonis propriis; provided that the respondent may within ten days of this order file an affidavit identifying other officer(s), if any, who instructed him to refuse the applicant's said record requests or who participated in the decision to do so, and/or who instructed him to oppose this application or who participated in the decision to do so, whereupon either party to this application may set the matter down again on reasonable notice to the other party, and to all thus implicated officers, affording them ten days within which to file affidavits on the costs liability question, for this court's determination of an equitable apportionment between the respondent and such others officers of personal liability for the said costs.
6. Directing the Registrar to refer the full judgment in this case to the Minister of Justice and Correctional Services; to the Chairperson of the Portfolio

Committee on Justice and Correctional Services in the National Assembly;
and to the Chairperson of the South African Human Rights Commission.

7. Further and/or alternative relief.

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

TAKE NOTICE FURTHER that the applicant has appointed 23 Baker Road, Prestbury, Pietermaritzburg as his local address at which he will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that:

(i) Notice of intention to oppose this application must be given within 15 days after receipt hereof and must contain an address within eight kilometres of the court to which the application has been brought, where notice and service of documents will be accepted.

(ii) Answering affidavits, if any, must be filed within 15 days after service of the notice of intention to oppose the application.

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

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

Signed at Eshowe on 7 October 2016.

ANTHONY BRINK
APPLICANT

ANTHONY BRINK

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TO:

The Registrar

High Court of South Africa

KwaZulu-Natal Division, Pietermaritzburg

301 Church Street

Pietermaritzburg

AND TO:

Thembile Mtati N.O.

Deputy Information Officer

Legal Aid South Africa

Pietermaritzburg Justice Centre

183 Church St

Pietermaritzburg

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LEGAL AID SOUTH AFRICA Respondent

FOUNDING AFFIDAVIT

I, Anthony Robin Brink, affirm:

1. I am an adult male advocate residing at 1 Boast Street, Eshowe, KwaZulu-Natal, and I am the applicant.
2. The respondent is Thembile Mtati, an adult male attorney employed by Legal Aid South Africa ('LASA') as its Corporate Services Executive in its national office at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng. I'll refer to him herein as Mtati.
3. LASA's principal place of business within this court's jurisdiction is its Pietermaritzburg Justice Centre at 183 Church St, Pietermaritzburg.
4. LASA is a 'public body' of the category (b)(ii) type, as defined by section 1 of the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act'), being an

'institution ... performing a public function in terms of any legislation', namely the Legal Aid South Africa Act 39 of 2014.

5. Under subsection (c) of the definition of 'information officer' in section 1 of PAIA, LASA CEO Vidhu Vedalankar is its information officer ex officio; and as Mtati correctly claims beneath his signature in correspondence mentioned below, he's a deputy information officer of LASA, holding a delegation by Vedalankar as such under section 17(1) of PAIA, in writing under section 17(6)(a), which I've seen. It's in Mtati's capacity as deputy information officer that he's cited in this application.
6. Where I quote from Mtati's correspondence with me, I do so verbatim without inserting the usual '(sic)' to signify his errors. Where I refer to documents I've authored and annexed to this affidavit, I affirm that to the best of my knowledge and belief the allegations I've made in them are true, and I ask that this court read them as part of this affidavit, because as will soon become apparent they're integral to my case.
7. On 25 July and 1 August 2016 I delivered to Vedalankar two requests for access to specified records by emailing them to her 'electronic mail address', as permitted by section 18(1) of PAIA. Both requests complied with the form prescribed by section 18(2). Before submitting them, I pre-paid by EFT the request fee prescribed by section 22(1) for each request, in the sum of R35 stipulated by LASA's PAIA manual published under section 14.
8. Copies of my first request and covering letter (emailed as a single combined PDF file attachment), my email, and proof of payment of the request fee, are bundled and annexed marked 'A'. My covering letter explains the reason I'd post-dated my request a few days forward to 1 August. My email listed a number of other addressees, all of whom I soon after copied in on the subject of my request, save that I ultimately selected one media organisation not all. Inessential to my case, I haven't annexed copies of my emails to all the cc addressees, nor the responses

they drew from the pan-African and European information transparency organisations that I approached.

9. Copies of my second request and its covering letter (likewise combined), my email, my correction of a year error later in the day, and my request fee payment voucher, are bundled and annexed marked 'B'.
10. In sum, in both cases I duly 'comple[d] with all procedural requirements in this Act relating to a request for access to that record', as contemplated by section 11(1)(a) of PAIA; and under section 11(b) I was accordingly entitled to access the records I'd requested unless they were duly 'refused on terms of any ground for refusal contemplated in Chapter 4 of this Part'.
11. Under section 11(3)(a) of PAIA, my 'right of access contemplated in subsection (1) is ... not affected by ... any reasons the requester gives for requesting access'. Nonetheless, in my letter covering my first request (annexure 'A'), I gave my extraordinarily serious reasons for requesting access to the financial records specified in it.
12. Equally, under section 11(3)(b) of PAIA, my 'right of access contemplated in subsection (1) is ... not affected by ... the information officer's belief as to what the requester's reasons are for requesting access'. In my letter covering my second request (annexure 'B') I didn't give my reasons for making it, but the manner in which I specified some of the records I was requesting was obviously calculated to induce 'the information officer's belief' that one of my 'reasons ... for requesting access' was to gather evidence for perjury prosecutions. (A sworn declaration under section 23 that certain requested records don't exist, where such records ought to exist if the truth had been told under oath, will confirm perjury.) This implied reason was indeed one of my reasons, and it was also an extraordinarily serious reason. As mentioned below, I later explicitly stated this and my other extraordinarily serious reasons for making this request.

13. Read with section 4 of the Interpretation Act 33 of 1957 on the reckoning of days prescribed by a statute, section 25 of PAIA allowed Vedalankar a maximum of thirty calendar days within which to respond to my requests. On her last day for this, 31 August, Mtati notified his extension of the prescribed time limit by a further thirty days to 30 September, as section 26 permits in certain circumstances. His letter ('extension') is annexed marked 'C'.
14. In paragraph 2.3 of his extension, Mtati claimed my requests had 'taken a lot of my time', in that he'd had to 're-look at all the documents and cross-references to clearly understand your requests.' Having eventually succeeded in clearly understanding my requests after doing this, Mtati claimed he'd need to take another month to respond, because, he claimed in his paragraph 2.1, 'compliance with the original period will unreasonably interfere with the activities of Legal Aid South Africa' – 'bearing in mind', per his paragraph 2.3, 'that our offices are spread nationally and would need to search and consult with the relevant officials responsible for the search of such records, where applicable.' That is, in plain speech, gathering all the records I'd requested would be a big, time consuming job. Mtati's extension thus implied his appreciation that my requests were indeed serious, and that he was taking them seriously accordingly.
15. Actually, all the legal cost records I'd requested in my first request were at Mtati's fingertips in a file or two kept by his Corporate Services department attorneys in LASA's national office where he's employed. And besides records I'd specified that don't exist, all the records listed on the annexure to my second request are in LASA's national office too. That is, Mtati's principle justification for his extension was false.
16. Nevertheless, rather than appealing to court under section 26(3)(c) against Mtati's further month extension based on the false main ground he alleged, I elected to wait out his unlawful delay for a response to my requests.

17. I call this court's attention to the tense contradictions and logical incoherence of Mtati's paragraph 2.3 (annexure 'C') as an illustration of the sort of gushing, unctuous, high-toned, disingenuous, Clintonian lawyer-talk he employs when dissembling, because it bears on the bona fides and credibility of his next communication with me.

18. In short, after spending 'a lot of my time' reading and researching my two record requests, and thereby being able to 'clearly understand' them at last, which now clear understanding led him to the conclusion, he said, that he'd need another month to go hunting all around the country for the records I'd requested, Mtati didn't honestly think I'd intended my record requests to be an irritating waste of time, and therefore hit by section 45 of the Act, which bars 'manifestly frivolous and vexatious' requests. (Such as, for instance, a request for a record of how many teacups are chipped in the office canteen.) And this is why in his extension Mtati didn't claim my requests were 'manifestly frivolous and vexatious'. On his own showing, my requests didn't strike him as such.

19. On 16 September, I amended my requests by scratching two records I'd subsequently obtained; by advancing a date to capture a few further cost vouchers; by requesting an additional specific cost voucher; and by requesting certain email records if they exist. Addressed to Vedalankar and copied to Mtati and Chief Legal Executive Patrick Hundermark, my letter amending my requests ('amendment'), and proof of delivery by email attachment, are bundled and annexed marked 'D'.

20. In the amendment, I now spelt out precisely my several extraordinarily serious reasons for seeking access to the records that I'd specified in my second request.

21. In view of Mtati's and other LASA deputy information officers' history since 2013 of routinely raising section 45 against me to deny me access to duly requested records (dealt with below), I pertinently warned Vedalankar off again pretending that my manifestly serious requests were 'manifestly frivolous or vexatious', and notified her of my intention to immediately sue out of this court for an order

compelling due compliance with my requests should this obviously inapplicable ground again be advanced as a justification for refusing them.

22. Despite this, Mtati proceeded ten days later on 26 September to 'refuse to grant the records requested in terms of 45 of the Promotion of Access to Information Act 2 of 2000 as it is manifestly frivolous, vexatious, substantially and unreasonably divert the most needed resources of Legal Aid South Africa.' His notification to me of his refusal ('refusal') of 'your two requests both of which are dated 1 August 2016' is annexed marked 'E'.

23. Mtati didn't mention my amendment on 16 September (annexure 'D') in which I requested a few further records, but from his blanket refusal – 'I hereby refuse to grant all the records requested in respect of the two requests' – it's obvious he meant to refuse the lot.

24. Section 78(2)(c)(i) provides that 'A requester ... aggrieved by a decision of the information officer of a public body referred to in the paragraph (b) of the definition of "public body" in section 1 ... to refuse a request for access ... may, by way of application, within 180 days, apply to a court for appropriate relief in terms of section 82.' (There's no internal appeal at public entities like LASA.)

25. Section 82 provides that 'The court hearing an application may grant any order that is just and equitable, including orders – (a) ... setting aside the decision which is the subject of the application concerned; (b) requiring from the information officer ... of a public body ... to take such action ... as the court considers necessary within a period mentioned in the order; (c) granting an interdict, interim or specific relief, a declaratory order or compensation; (d) as to costs'.

26. I'm aggrieved by Mtati's denial of access to the records I've duly requested; I'm domiciled in this court's area of jurisdiction; and under the definition of 'court' in section 1 of PAIA, this court has jurisdiction to try my claim for 'appropriate relief accordingly.

27. Under section 81(3)(a) of PAIA, ‘The burden of establishing that ... the refusal of a request for access ... complies with the provisions of this Act rests on the party claiming that it so complies’. This sets the onus on Mtati to satisfy this court that my record requests are ‘manifestly frivolous and vexatious’ – per section 45(a); that ‘the work in processing the request[s] would substantially and unreasonably divert the resources of the public body’ – per section 45(b); and that his denial of access to the records I’ve requested is consequently justified by section 45, having regard to the several reasons he states in paragraphs 2.1–6 of his refusal (annexure ‘E’) as the basis for his reliance on this section. Apropos of which:

28. Ad paragraph 2.1: ‘*You have been requesting records from the Information Officer and Deputy Information Officers since the year 2010.*’ Indeed I have, in the exercise of my entrenched right to information held by the state guaranteed by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution, given effect by PAIA – whose Preamble reminds us that ‘the system of government’ during the apartheid regime ‘resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations’ and that things are supposed to have changed.

29. The history of how over the past seven years my duly made PAIA requests for access to LASA’s records have consistently been illegally ignored, obstructed, and refused, outright or substantially, and how this gross illegality and violation of my fundamental right to information has been concealed from the National Assembly by way of repeated deliberately false and deceptive annual and secret reporting to frustrate and defeat the latter’s oversight responsibility over LASA as a public entity, imposed by section 55(2)(b)(ii) of the Constitution, is detailed in a comprehensive specimen report (‘report’) that I delivered both by post and by email to the chairperson of the South African Human Rights Commission (‘SAHRC’) on 19 September, a week before Mtati’s refusal. I annex the report marked ‘F’.

30. I expect this court to find the documented facts set out in the report staggering, particularly LASA Board chairperson Dunstan Mlambo JP's impeachable misconduct described in it.
31. The documents to which the report is footnote-referenced comprise several bulky bundles (the first two alone exceed 1000 pages), and LASA has all or nearly all of them, so I haven't put them up with this affidavit; but if in his answering affidavit Mtati disputes any allegations made in the report and indicates he wants any documents supporting them, I'll put these up with my reply. I'll bring all the bundles to court for the argument, or file them earlier if directed.
32. My covering letter to the chairperson of the SAHRC, my registered post voucher, and my email to a senior PA in the SAHRC's national office are bundled and annexed marked 'G'.
33. My letter to the SAHRC chairperson reports his PAIA Unit's and CEO's amazing indifference to LASA's current false annual report to the SAHRC under section 32, which I brought to their attention earlier in the year, which report is contrived to conceal LASA's several repeated, persistent illegal refusals of my PAIA requests in 2015, reversed at legal sword point at the Eshowe Magistrate's Court ('Magistrate's Court') on 11 February 2016 before the argument of my several applications to compel, as described in my first covering letter to Vedalankar (annexure 'A') and in paragraph 278 of the report (annexure 'F'). In fact, as I recently discovered, the CEO of the SAHRC wasn't bothered to even read my letter to her about LASA's latest false section 32 report, pointed up in capital letters in the subject bar of my covering email in June, and it 'was deleted without being read on Friday, September 20, 2016', according to the automatic notice I received of this, a copy of which I annex marked 'H'. I haven't annexed the letter itself, as it's insufficiently relevant to this application, and the problem it describes is summarised in paragraphs 200–12 of the report (annexure 'F').

34. In view of the SAHRC's unwillingness or inability to do its immensely important job under section 83(b) 'to monitor the implementation of this Act' (more about this below), and considering moreover the documented involvement of Board chairperson Mlambo JP in the illegal obstruction of my earlier PAIA requests (described paragraphs 33–110 of the report (annexure 'F')), I copied the report by post to the Minister of Justice and Correctional Services, to the Deputy Minister, to the chairperson of the Portfolio Committee for the said Department ('Portfolio Committee') and to several members, and to the Chief Justice. Also to some information transparency and anti-corruption NGOs, a publicly active constitutional law academic, and a national media organisation. Copies of my many covering letters are insufficiently material to annex. I might mention that the Portfolio Committee secretary telephoned on 5 October to request that I email the report in PDF for easy distribution to all its members, which I did.

35. Ad paragraph 2.2: '*All these requests relates to the abortion of the Senior Litigator posts.*' Indeed most of them did, but this statement is untrue of my first request before this court (annexure 'A'), as amended (annexure 'D'), which is almost entirely for records of the legal costs that LASA's head office management executives have incurred in obstructing my access to duly requested records since 2013, that is, the public money LASA has spent on violating my constitutional right to information. (Money spent to the same corrupt end in 2011 is the subject of an earlier request, and the illegal refusal of my access to those records on utterly fatuous grounds, is treated at the foot of page 2 of the amendment (annexure 'D').) LASA's national management executives seem most anxious that this grossly irregular expenditure shouldn't be exposed and recovered from them personally.

36. As to 'the abortion of the Senior Litigator posts', namely three of LASA's most senior legal specialist posts in its professional staff establishment, for one of which I was duly recommended in glowing terms by the unanimous vote of a duly constituted selection panel of senior lawyers in November 2009, it's common cause

that no record whatsoever exists to vouch that the posts were duly aborted, as Mtati puts it, by resolution of any competent authority at LASA. In fact, no record exists of any such decision by anyone at all.

37. Quite the contrary, financial records that I obtained via PAIA in December 2015 show that the allegedly aborted but in truth still vacant posts have always been and remain budgeted by LASA and funded by the Department of Justice and Correctional Services ('Department').

38. Why three of these still vacant, critical, top-echelon, specialist legal professional posts haven't been filled (posts created at the special instance of the National Assembly in 2006 to meet repeated public complaints it had received about inadequate legal expertise at LASA), and why the appointments of three recommended candidates for them, myself included, were cancelled off the books; how over the past seven years LASA has repeatedly contravened section 39(1)(a) of the Public Finance Management Act 1 of 1999 ('PFMA') by unlawfully failing to apply around R15 million, sought and received from the Department for three Senior Litigator salaries: revenue budgeted by LASA, approved by vote of the National Assembly, and paid to LASA by the Department year after year; how this gross irregularity, heavily impacting on service delivery of specialist professional legal expertise (KwaZulu-Natal has none) as a declared part of LASA's Strategic Plan 2009–12, has been concealed from the Portfolio Committee, which has stated its particular concern that critical vacant posts in the Justice cluster be filled; and how numerous completely different, chaotically chopping and changing, radically contradictory stories have been told about this, including under oath and to the Minister and to the Portfolio Committee, even retracted under oath when exposed as false, the retraction then retracted under oath, then radically contradicted*; and how as a non-executive member chairing LASA's Board Mlambo JP has unlawfully intruded himself in LASA's recruitment operations, interviewing, picking and choosing recommended and not recommended Senior Litigator candidates for appointment or not, including at least one not recommended

candidate who was appointed instead of the recommended one (requested records being illegally withheld may prove more such cases), and similar gross irregularities in employment practice – all this is beyond this court’s immediate concern, save to indicate the septic backdrop to my relentless interrogation since 2010 of the various changing stories told about the cancellation of my recruitment, and my investigation of the true facts, using PAIA as my basic tool for this. (*If invited by Mtati in his answering affidavit to do so, I’ll put up with my reply the long list I’ve drawn, entitled ‘All the Different Stories’.) The Executive Summary and the first footnote to my report (annexure ‘F’) sketch the unbelievable scene, as do my letter to a Deputy Director of Public Prosecutions (‘DDPP’), annexed marked ‘J’, in which I confidentially sought his advice on how to ensure my intended criminal complaints of perjury and lying to the Portfolio Committee are duly prosecuted. In a word, lawful corporate governance at LASA has seriously broken down.

39. Material to my case stated below for mandatory disclosure under section 46, which over-rides section 45 and certain other grounds for refusal ‘where disclosure of the record would reveal evidence of ... a substantial contravention of, or failure to comply with, the law’, I mention in both the first footnote of the report (annexure ‘F’) and in my letter to the DDPP (annexure ‘J’) the criminal perversion of my petition for leave to appeal against the Durban Labour Court’s dismissal of my claim to my instatement to the post for which I was recommended, right in the middle of LASA’s application for condonation for opposing me out of time, and before I’d answered it – and shown categorically (with the record of an email to Mtati, notifying him that I’d petitioned, with attachments vouching this) that Mtati’s main excuse on oath for opposing me late (that he was unaware I’d petitioned until several weeks later) was brazen perjury committed to defraud the Judge President of the Labour Appeal Court.

40. The anonymous, unstamped, defamatory, lying ‘memorandum’ that achieved the perversion and premature dismissal of my petition before all the papers were

in is annexed marked 'K'. I've not put up an inventory I had drawn in April 2015 of the contents of the Labour Appeal Court file (DA21/14), which the registrar's clerk verified and stamped, after confirming the presence of this 'memorandum' in the file, because I had the file examined again in August 2016, and the criminal evidence of this 'memorandum' was still there. Which suggests that although LASA's highest officers are illegally withholding evidence, they haven't yet begun actually destroying it.

41. Such is the scale and extent of the top-level corruption at LASA that I'm up against and determined to expose – some of it described in the report (annexure 'F'): secret lying to the Minister and to Parliament in 'confidential' reports to pervert their separate independent enquiries instituted, inter alia, into my complaint that Vedalankar was persistently illegally refusing my PAIA requests; perjury in judicial proceedings at every turn; defeating the ends of justice in the Labour Appeal Court; and, to hinder my ventilation and reporting of all this criminal and other corruption, persistent illegal denial of access to public records; and repeated false annual reporting to conceal this suppression of (further) documentary evidence. Such is the criminal energy pumping through the top ranks of the country's biggest law firm headed by a judge president.

42. Should this court fairly wonder why I haven't yet reported the perversion of my petition to the Judicial Service Commission ('JSC'), the answer is I was about to. On returning from my local post office on 26 September, having mailed out the last copies of the report – a huge job to complete, on top of my enormously time and energy devouring PAIA litigation in the Magistrate's Court – I resumed work on my JSC complaint begun last year (the draft is very long and detailed, and contains multiple charges) when Mtati's refusal came in by email later in the day. I then had to shelve the complaint again to attend to this application. If required, I can vouch the exact times I bought stamps in the morning and posted copies of the report minutes later; resumed editing my JSC complaint at midday; and received Mtati's refusal in the afternoon.

43. Ad paragraph 2.3: *'Despite having been provided with the records which exists and where such documents do not exists, deposed to the affidavit in terms of section 23 of the Act, you have continuously requested further documents.'* First, these untrue allegations regarding the handling of my prior PAIA requests have zero bearing on my entitlement to access the records specified in my current requests before this court. Second, even were these allegations true, the due disposal of prior PAIA requests is no bar to making further PAIA requests for access to other records. Third, Mtati's claim to have provided me with 'records which exists' and 'where such documents do not exists, deposed to the affidavit in terms of section 23 of the Act' is substantially false, as I show in my first covering letter to Vedalankar (annexure 'A'), and in paragraphs 252–3 and 268–75 of the report (annexure 'F'). If he persists in pretending otherwise, I invite Mtati to put up with his answering affidavit my 12-page second draft order prayed in my pending application to compel in the Magistrate's Court (progressively amended and reduced as requested documents trickled in under pressure of my set-downs) and the 67-page schedule annexed to the order, identifying all the outstanding and/or unsatisfactorily explained missing records and issues arising in each case, from which it will obvious at a glance that Mtati and his head office colleagues haven't fully and properly complied with their undertaking referred to in his paragraph 2.3. Mtati himself was present when the magistrate pointed out that his section 23 affidavits were non-compliant, just as I'd complained, and his counsel didn't argue.

44. Ad paragraph 2.4: Mtati speciously takes exception (i) to my entirely proper submission of my two PAIA requests to information officer Vedalankar under informative covering letters and to my informative amendment (so she can't later claim she didn't know what was going on when the Portfolio Committee holds its inevitable enquiry); and (ii) to my copying Hundermark in, on account of the central role he's played in the handling of PAIA requests at LASA, mentioned in paragraphs 18, 184 and 219 of the report (annexure 'F').

45. Mtati incoherently and falsely charges that by doing so I've improperly 'bombarded officials of Legal Aid South Africa with communications and further requests relating to the issues which form part of the applications' in the Magistrate's Court.
46. That Mtati was indeed 'delegated to deal with all the issues relating to the matters before Court brought by you in the various applications to compel at the Magistrate's Court' doesn't derogate from the propriety of my submission of two fresh PAIA requests to information officer Vedalankar and my copying them to her top PAIA advisor. Section 18(1) provides: 'A request for access must be made in the prescribed form to the information officer of the public body concerned at his or her address or fax number or electronic email address.' I obeyed the law. I 'ignored' nothing.
47. Ad paragraph 2.5: *'Your conduct shows the deliberate desire to vex and annoy the officials of Legal Aid South Africa. This conduct borders on frivolous intentions and diverting the resources of Legal Aid South Africa.'* Contrary to this baseless hot air, in truth and in fact my repeatedly declared serious intention is to lay bare to the authorities, on the fullest possible available documentary evidence, the massive, pervasive, systemic corruption I've uncovered in LASA's top ranks, some of it criminal.
48. In my first covering letter to Vedalankar (annexure 'A'), I reminded her that in court in February 2016 she and two of her deputy information officers had abandoned their spurious and indefensible reliance on section 45 to refuse my several PAIA requests made in the period 2013–2015, and had undertaken – via Mtati representing them, and taking their instructions on his cell phone – to either deliver them or to certify any that don't exist, after years of delay. Paragraphs 250–3 of the report (annexure 'F') describe this further.
49. Not only did they abandon their reliance on section 45 to block my access to LASA's records, they expressly agreed my entitlement to make a final PAIA

request, concluding my evidence gathering in relation to LASA's Senior Litigator posts. Their agreement to respond to a final PAIA request in this regard is recorded in clause 7 of the written settlement, a copy of which I annex marked 'L'.

50. Having abandoned section 45 as a justification for refusing my previous PAIA requests, and having expressly agreed in the settlement at court to a further PAIA request regarding the Senior Litigator posts, Mtati now revives this vexing story of his to very vexatiously obstruct this agreed request; and to obstruct an unrelated request made to ascertain how much public money LASA has spent since 2013 on violating my fundamental right to information. His mala fides in rejecting my requests as a pointless waste of time are patent.

51. Ad paragraph 2.6: *'As you are aware, Legal Aid South Africa will be bringing an application for order seeking the court to declare you a vexatious litigant.'* My second letter to Vedalankar (annexure 'B'), and paragraphs 268–71 of the report (annexure 'F') describe how the surrender treaty handed into court was reneged on, forcing my return to court under the default clause (annexure 'L', clause 5) to apply to compel delivery of all the promised records or due certification of those that don't exist.

52. On 8 September, as I was on the point of moving my application to compel compliance with the settlement agreement, LASA's counsel applied for the postponement of the case on the basis that LASA wanted to apply to this court to interdict me as a vexatious litigant. Despite my objection that no case at all had been made out to support this ludicrous, malicious charge, the magistrate postponed my application to 31 October, to give LASA time to go about this.

53. The Oxford English Dictionary gives the special legal meaning of 'vexatious' as, 'Of legal actions: Instituted without sufficient grounds for the purpose of causing trouble or annoyance to the defendant.'

54. This applies precisely to LASA's proposed interdict application, intended to prevent me holding Vedalankar and two deputy information officers to their agreement in February to grant me access to all the records I'd requested of them in 2013–15 or to duly certify any that don't exist – in other words to prevent me exercising my fundamental right to information, after eventually conceding in court my constitutional entitlement to access all the records they'd obviously illegally refused; after abandoning all their obviously idle justifications for doing so; and after abandoning all their obviously idle defences to my applications to compel compliance with my requests. The ultimate object of the proposed interdict application is plainly to suppress evidence and to smother my corruption investigation.

55. Smearing bona fide opponents determinedly pressing serious claims against LASA as vexatious litigants appears to be LASA's new ad hominem strategy to discredit them. Mtati will confirm that on 15 September he telephoned his counsel in the Labour Court in Cape Town to instruct him to smear another applicant, also involved in a protracted struggle for justice, Adv Nkululeko Mayisela, in exactly the same way. Which his counsel proceeded to do – on instructions just received, he said – mouthing the same cheap insult.

56. As said, in his extension (annexure 'C') Mtati implied his acceptance that my PAIA requests were made for serious reasons. My first covering letter and amendment (annexures 'A' and 'D') could have left him in no doubt, because after reading them no reasonable, bona fide reader could possibly have concluded that my record requests to which they refer are 'manifestly frivolous and vexatious' within the contemplation of section 45(a).

57. As to section 45(b), which justifies the refusal of records where 'the work involved in processing the request would substantially and unreasonably divert the resources of the public body' (such as a request for the records of all notices to appear in traffic court, issued throughout the country in a given year for driving

with a popped left tail light): Whereas the legal cost records described in my first request (annexure 'A') will be found in one or two files and quickly gathered, it will undoubtedly take longer to gather the many records listed in my second request (annexure 'B'), even if they're all in LASA's national office – where they exist, that is, because I'm sure some don't.

58. Mtati had two full months for 'the work involved in processing the request', but never having had any honest intention of complying with my requests he didn't lift a finger to gather the records I requested or certify those that don't exist. The idea was just to string me along in bad faith.

59. Anyway, section 45(b) isn't available to Mtati as a justification for refusing my requests either, because section 46, 'Mandatory disclosures in public interest', provides: 'Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section ... 45, if – (a) the disclosure of the record would reveal evidence of – (i) a substantial contravention of, or failure to comply with, the law'.

60. The opening paragraph of my first covering letter to Vedalankar (annexure 'A') and part 4 of the amendment (annexure 'D') identify various instances of criminal and other serious lawlessness at LASA that I tell her I'm investigating with my second PAIA request, which serious lawlessness I also tell her I intend reporting to the several high authorities I mention.

61. So it's incompetent for Mtati to refuse to comply with my PAIA requests for the reason that responding to my second request (annexure 'B') will take him and his colleagues some time.

62. Especially since LASA dishonoured its undertaking to the SAHRC to create special PAIA request handling capacity in its national office and to appoint dedicated personnel to handle future PAIA requests, after it had cluelessly botched its handling of mine in 2010–11 by repeatedly illegally refusing them, as its head

office attorneys repeatedly admitted. Quoting from the SAHRC's detailed report of the special remedial PAIA training session it held for LASA in October 2011, I describe all this (and Mtati's and another executive's later perjury about it) in paragraphs 120–47 of the report (annexure 'F').

63. It follows that in denying me access to the records I've duly requested; by falsely aspersing my PAIA requests as 'manifestly frivolous and vexatious'; and by falsely claiming that they 'substantially and unreasonably divert the much needed resources of Legal Aid South Africa', Mtati acted mala fide and in contempt of my fundamental right to information entrenched by section 32(1)(b) of the Bill of Rights in Chapter 2 of the Constitution.

64. My direct approach to this court for mandatory interdictory and other relief, without demonstrating that I've exhausted all available alternative remedies, is sanctioned by section 78(2)(c)(i) of PAIA. Still, I'd naturally have much preferred an extra-curial resolution, and would have pursued it by appealing (i) to LASA's Board to exercise its fiduciary obligation to ensure that LASA's management executives conduct LASA's operations lawfully and comply with our democracy's constitutional information transparency law; (ii) to the SAHRC under section 83(3)(c) of PAIA to, 'if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act'; and (iii) to the Public Protector, in the exercise of her power under section 6 of the Public Protector Act 23 of 1994 'on receipt of a complaint or on request relating to the operation or administration of the Promotion of Access to Information Act [2 of] 2000, endeavour, in ... her sole discretion, to resolve any dispute by – (a) mediation, conciliation or negotiation' etc – except that I've tried all this before, over and over again, to no avail. Despite my repeated appeals over seven years for Chapter 9 institution support, I've had no joy and I've been struggling in vain to get LASA to comply with PAIA quite on my own. The system just isn't working:

65. The Board: When it comes to ensuring compliance with PAIA, which is to say, with the law and with the Constitution, LASA's Board of Directors under Mlambo JP's chairmanship has proved to be as functionally useless as the SABC's, with its members apparently in it strictly for the cakes and ale. Paragraphs 33–86 and 100–10 of the report (annexure 'F') detail my persistent, repeated futile appeals to the Board to intervene in Vedalankar's illegal refusals of my PAIA requests in 2010 and 2011, and describe the stunningly dishonest, dismissive then aggressive-defensive manner in which Mlambo JP reacted over the months, culminating in multiple lies he told the chairperson of the Portfolio Committee in a secretly submitted 'Confidential Report' under a defamatory covering letter to discredit me and put down my true complaints about this, and pervert the Committee's enquiry, in a criminal contravention of sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.
66. The SAHRC: Described in the report (annexure 'F'), the SAHRC's interventions in (i) giving LASA's national office lawyers a special remedial lesson in 2011 in how to implement PAIA (paragraphs 120–136); (ii) reporting LASA to the Portfolio Committee in 2012 for repeated false reporting under section 32 of PAIA (paragraphs 160–7); and (iii) conducting a preliminary audit of LASA on 2013 for PAIA compliance (paragraphs 168–9), have all proved perfectly fruitless; and LASA has continued illegally obstructing and refusing my PAIA requests (paragraphs 170–6; 185–97; 213–16; 229–31; 235; 249–53; and 268–79). Despite my repeated appeals for its direct assistance since 2010 (paragraphs 17, 54, 64, 75, 87, 99, 111, 217, and 221–2), the SAHRC has never achieved LASA's compliance with any of my PAIA requests. Not once has it actively stepped up to support my protests that grounds raised to refuse my requests have been insupportable under the Act and the refusals accordingly illegal.
67. The Public Protector: My complaints and appeals to the Public Protector over the years have likewise all gone nowhere (paragraphs 112, 159, and 198–9).

68. And this is why I didn't first look to these authorities in the hope that they might see to Mtati's compliance with my two latest PAIA requests that he'd illegally refused. Experience had taught me that it would have been a complete waste of time.

69. Owing to a lacuna in the Act – a clear oversight by the Legislature, which I identified to the SAHRC earlier this year so it can 'make recommendations for' a curative 'amendment of this Act' under section 83(3)(a)(i) – there's currently no obligation on LASA to report this application and the result of it to the SAHRC under section 32, so that the latter can convey this information to the National Assembly in its annual report under section 84 on public body compliance with PAIA; and thus informed the National Assembly can call and hold LASA's delinquent information- and deputy information officers to account.

70. This is because, whereas section 84(b)(viii) requires the Commission to report 'in relation to each public body ... the number of applications made to every court and the outcome thereof', there's no equivalent provision in section 32. Section 32(h) requires public body reporting of 'the number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77(7)', i.e. following an internal appeal. But category (b)(ii) public bodies mentioned in paragraph 4 above have no internal appeal procedure. So on a strict reading of section 32, LASA isn't obliged to report this application and its outcome to the SAHRC.

71. Consequently, without a special order for the referral of the judgment given in this application to the Minister of Justice and Correctional Services (LASA's Executive Authority), to the chairperson of the Portfolio Committee (with oversight over LASA, imposed by the Constitution), and to the chairperson of the SAHRC (with the authority under section 83(b) 'to monitor the implementation of this Act' by 'each public body', and the obligation under section 84 to report annually on this to the National Assembly), none of these responsible authorities

will have any way of officially knowing about it. Hence my prayer for a special order in this regard.

72. Besides the payment of ‘compensation’ under subsection (c) – inapplicable in this case – section 82 of PAIA makes no provision for the imposition of sanctions against public body information officers who traduce section 32(1)(a) of the Constitution by illegally denying access to duly requested records. As former SAHRC PAIA Unit director Chantal Kisoon rightly informed me back in September 2010, the only remedy is to ‘name and shame them’.
73. By analogy, the Employment Equity Act 55 of 1998 explicitly provides for the naming and shaming of employers who violate employees’ entrenched right to equality guaranteed by section 9 of the Constitution. Section 50(2)(f) contemplates ‘the publication of the Court’s order’ as an ‘appropriate order ... If the Labour Court decides that an employee has been unfairly discriminated against’.
74. Hence my claim for an order for publication of this court’s order to name and shame, as ‘a form of ‘appropriate relief in terms of section 82’, in the language of section 78, in this court’s special jurisdiction under section 82 of the Act to ‘grant any order that is just and equitable’.
75. Although it’s Mtati who’s illegally refused me access to the records I’ve requested and violated my fundamental right to information, he’s not acting solo in the matter, nor is he the principal actor. Awaiting the delivery of judgment in the Durban Labour Court in 2014, I cautioned him that his several interlocutory affidavits were replete with perjury, and that he needed to work out an exit strategy. He replied with a shrug: ‘I’m only an agent.’ Indeed, Mlambo JP introduced him to the Portfolio Committee in May 2012, saying: ‘He looks after our legal health in terms of people who want to sue us. He protects us.’ (The transcript of this part of the meeting is referenced in paragraph 128 of the report (annexure ‘F’).) As is plain from the facts of this case, Mtati is protecting ‘us’ – not LASA – by sedulously suppressing (further) evidence of the most serious

malfeasance committed by rogue officers in LASA. Hence the particular manner in which I've framed the costs prayer.

76. Vedalankar is full well aware of the outrageous history of this matter, both as a respondent in the Magistrate's Court, and because I pertinently informed her in my covering letters and amendment (annexures 'A', 'B' and 'D'). And as said, in the amendment I specifically warned her off incompetently abusing section 45 to illegally block my requests again. Copied in, Hundermark is equally aware of all this. Yet, after being abandoned in the Magistrate's Court in February, this obviously inapplicable ground – the allegation that my requests were intended to be a pointless and irritating waste of time – has been revived and raised against me yet again, in a manner that can only be described as contemptuous.

77. Under section 17(2) of PAIA, 'The information officer of a public body has direction and control over every deputy information officer of that body'; and section 17(6)(b) 'does not prohibit the person who made the delegation from exercising the power concerned or performing the duty concerned himself or herself'. That is, section 17 requires Vedalankar to make sure that Mtati is doing what she delegated him to do under her 'direction and control', which is, as section 17(1) and (4) both put it in identical language – the repetition underscoring its vital importance in our open democracy – 'to render the public body as accessible as reasonably possible for requesters of its records'. Mtati's refusal of both my PAIA requests in the circumstances of this case makes an abject mockery of this.

78. Vedalankar, as CEO and information officer, and Hundermark, as Chief Legal Executive and LASA's de facto top advisor on PAIA, did not react to my PAIA requests and explanatory correspondence by ensuring that my fundamental right to information is respected at last. Instead they've resolved to try preventing me from exercising this crucial, pivotal constitutional right by shutting me down as 'vexatious'. Vedalankar's counsel informed the magistrate on 8 September that she and Hundermark had just authorised the intended interdict application against

me – at an estimated cost to LASA, he said, of about R300 000. Following which, and adopting the same stance two weeks later, Mtati likewise refused my requests as ‘vexatious’.

79. In falsely and maliciously disparaging me as a ‘vexatious litigant’ (per Vedalankar and Hundermark via counsel in court), and in refusing my two latest record requests as ‘frivolous’ and ‘vexatious’ and made to ‘substantially and unreasonably divert the most needed resources of Legal Aid South Africa’ (per Mtati for Vedalankar in his refusal), the three of them are acting in concert to prevent me accessing LASA’s public records, with the ultimate corrupt object of (i) maintaining the lying cover-up in regard to the cancellation of my recruitment as Senior Litigator at Pietermaritzburg after I was duly selected at the interviews for it and unanimously recommended for this plumb post at the top of LASA’s legal professional ranks, having beaten out Mlambo JP’s long-time judicial colleague in the Labour Court, Ngcamu AJ (as he used to be for six and a half years, so I discovered in April this year; see annexure ‘J’); and (ii) preventing my full ventilation, reporting, and prosecution, on all the available documentary evidence, of the crimes committed and other gross lawlessness involved in this fantastically corrupt Nixonian project.

80. It would therefore be ‘just and equitable’ (per section 82) were this court to follow Legrange J’s precedent in the recent *Solidarity v SABC* case, applying principles laid down by the Supreme Court of Appeal (‘SCA’) in *Gauteng Gambling Board and Another v MEC for Economic Development, Gauteng*, which he cites, and to direct that the costs of this application be borne personally by the delinquent public officers who occasioned it, in contempt of LASA’s constitutional public information transparency obligations and in contempt of my fundamental rights. For quick and easy reference, I annex marked ‘M’ the first identifying page of the *Solidarity* judgment and the last four on costs.

81. In support of my special costs prayer, I underscore, in the language of the SCA quoted by Legrange J, the deplorable ‘attitude’ and ‘behaviour’ displayed by Mtati, and the rogue officers he serves, in obstructing my access to LASA’s public records that I duly requested; the manner in which he ‘attempted to turn turpitude into rectitude’ by representing his deplorable violation of my fundamental right to information as the justified repulsion of a time wasting mischief maker; how he ‘appeared indignant and played the victim’ of harassment by this alleged reprobate making endless, time-wasting, pointless demands that LASA open its books – motivated, Mtati alleges, only by ‘a deliberate desire to vex and annoy the officials of Legal Aid South Africa’); and how he exhibited a ‘flagrant disregard of constitutional norms’.
82. Quoted by Legrange J, the SCA held in *Gauteng Gambling Board* that ‘It is time for courts to seriously consider holding officials who behave in the high-handed manner described above, personally liable for costs. This might have a sobering effect on truant office bearers.’
83. Considering his history of meritless opposition to my applications to compel in the Magistrate’s Court, maintained for years until total surrender on the day of trial, I anticipate similar meritless opposition to this application, more especially since it’s only government money Mtati thinks he’ll be wasting on legal fees, not his and his colleagues’. About which sort of waste Legrange J appositely observed before issuing his de bonis propriis costs order in *Solidarity*: ‘if a more considered, reflective and financially accountable approach been taken’ the respondents ‘would not have ... persisted in opposing this application’.
84. As said, although Mtati has refused my requests, it would be ‘just and equitable’ were those rogue officers supporting and served by his suppression of the documentary evidence I’m gathering to be ordered to share the costs of this application, and that LASA as a public entity be held clear of any liability for it.

85. Profoundly aggravating their conduct in this matter is the history of Vedalankar's, Mtati's and other deputy information officers' refractory, recidivist PAIA delinquency from 2010 to date, fully detailed in my report (annexure 'F').
86. In conclusion, to dilate briefly on the bigger picture: When people hide things there's always reason to. The several reasons for suppressing documents in this case are extraordinarily serious, and they have to do with the characteristic ballooning dynamic of a disintegrating cover-up. As the first lie starts unravelling, further lies multiply in a bid to maintain it, and inevitably the law is broken. After Watergate it was famously and very correctly said, 'The cover-up is always worse than the crime.' What now appears to have begun as a bit of cronyism to look after a professional pal escalated into a criminal cover-up, with a judge president, Dunstan Mlambo JP, at the centre of it. The corruption has even seeped into and poisoned the judicial system: I refer to the perversion of my petition to the Judge President of the Labour Appeal Court for leave to appeal the Labour Court's dismissal of my claim to my instatement to the post for which I was recommended – of which defeating the ends of justice through improper influence I have the hard evidence (annexure 'K'). The wider ramifications of this case are accordingly gargantuan, and unprecedented in our country.
87. I appreciate that I stand alone against leviathan institutional power and interests in this matter, and that for this reason my ultimate prospects of justice in my case after long struggle and heavy setbacks aren't bright; but as Jefferson wrote to Washington in 1784, the foundation of a constitutional order like ours is 'the denial of every pre-eminence'. Which is to say, no one at LASA enjoys any higher ground than I do at the bar of this court. Whatever his other job.
88. Commencing with my first appeal to Vedalankar in July 2010 to see to the finalization of my long delayed appointment, I pleaded at every leg of the way for a conciliated resolution before the matter spiralled past the point of safe return for those involved in unlawfully blocking me. With an understandably preening sense

of impunity and immunity, my entreaties were arrogantly and contemptuously spurned, and my PAIA requests probing the matter were illegally refused, year after year.

89. In again refusing my PAIA requests, and moving to restrain me from compelling compliance with them and with previous requests (LASA's application to do so is said to be coming up), which is to say to restrain me from exercising my constitutional right to information so as to keep the lid on their corruption, they've chosen to detonate this colossal scandal and start Armageddon. And all things being equal, the consequences for them are likely to be extreme.

90. In the situation, I respectfully claim the relief set out in my notice of motion.

Signed at Eshowe on 7 October 2016.

ANTHONY ROBIN BRINK

Signed before me at Eshowe on 7 October 2016 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

1 Boast Street
 Eshowe
 KwaZulu-Natal
 25 July 2016



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

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

And to cc list.

Dear Ms Vedalankar

**PAIA REQUEST FOR RECORDS SHOWING THE MILLION(S)
 LASA HAS SPENT ON LEGAL FEES SINCE 2013 TO OBSTRUCT
 MY ACCESS MY TO ITS RECORDS AND TO VIOLATE
 MY FUNDAMENTAL RIGHT TO INFORMATION**

I enclose a request under the Promotion of Access to Information Act 2 of 2000 ('PAIA') for records I intend passing on to the Justice Minister, Deputy Minister, Portfolio Committee, Auditor General, information transparency organisations, and all national print media, for an enquiry into the massive 'irregular and fruitless and wasteful expenditure' incurred by Legal Aid South Africa ('LASA') in contravention of section 38(1)(c)(ii) of the Public Finance Management Act 1 of 1999 ('PFMA') with the object of suppressing documentary evidence of pervasive criminal corruption in LASA's top ranks, including perjury on multiple scores to pervert the decision of a civil claim, lying to the Justice Portfolio Committee on multiple scores to pervert an enquiry it instituted, and defeating the ends of justice with an anonymous, unsigned, unstamped, lying and defamatory 'memorandum' surreptitiously slipped to a head of court to improperly influence his decision to dismiss a petition for leave to appeal. All to be catalogued with supporting documents for prosecution anon.

Like my first three in 2010/11, my several PAIA requests after the trial of my labour claim in 2013, directed inter alia at testing and exposing LASA National Operation Executive Brian Nair's several novel and unexpected perjuries improvised at trial, were illegally obstructed and refused in violation of my fundamental right to information held by the state, guaranteed by section 32(1) of the Constitution.

This persistent, repeated, corruptly motivated violation of my constitutional rights necessitated five applications to court to vindicate them, in which I sought orders compelling LASA to grant me access to its business records that I'd duly requested or to certify on oath any that don't exist or can't be found.



Without any legally supportable basis whatsoever – later conceded – LASA opposed my applications with several lever-arch files of answering affidavits filled with the most puerile legal junk that I've ever read in my 33 years as an advocate.

When push came to shove, however, and I set my applications down for argument on 11 February, LASA did a radical about-turn at court before we could begin, threw its several lever-arch files full of puerile legal junk into the rubbish bin, and undertook at last to furnish me with all the documents I'd requested or certify those that don't exist or can't be found. Years after I'd first asked for them.

And then didn't. LASA made a desultory, token show of compliance by giving me some requested records, but not all of them. It continued illegally withholding the majority, including key documents: either by expressly refusing them again; or by silently not providing them and not certifying them as non-existent or lost; or by making grossly non-compliant section 23 affidavits about records not supplied, full of obvious perjury to conceal records in a criminal contravention of section 90.

My first demand for full and proper compliance, in which I finely detailed LASA's said breaches, was contemptuously rejected in one dull sentence. My further two demands were then simply ignored.

So under my right reserved in the settlement agreement, I set my applications down again on 28 July for orders compelling LASA's full and proper compliance with my PAIA requests, as it agreed at court in February.

Instead of responding by asking how he might put things right to avoid the entirely avoidable wasted cost of returning to court, your Corporate Services Executive Thembile Mtati responded by demanding on quite spurious grounds that I remove the matter from the roll, and threatening to seek punitive costs against me if I don't. Of course I refused.

In other words, instead of acting to see to the full and proper implementation of the settlement agreement that he signed at court on your behalf, Mtati announced in as many words that he intends hiring counsel at further massive wasted and fruitless cost to LASA, and flying them across the country (he now

has two advocates in the case) to continue uselessly and indefensibly opposing my claims to records that he undertook at court either to furnish or to duly certify as non-existent or lost, which is to say to continue obstructing my access to LASA's records and to continue violating my fundamental right to information held by the state. A

As said, I intend referring this scandal to the authorities and other interested parties enumerated above; and if Mtati persists in wasting more public money on violating my constitutional rights, with the ultimate object of persisting with LASA's criminal concealment of duly requested documents, I'll include this further waste in the total legal bill to be referred to them. I've accordingly post-dated my PAIA request for all these legal costs to 1 August, after the next court date on 28 July.

This then gives you extra time beyond the thirty calendar days prescribed by section 25 within which to decide this request, and I suggest you use it to instruct your Corporate Services attorneys to start gathering immediately the records I've requested. I've paid the request fee by EFT. No request as usual for an extension under section 26 will be considered. If you don't respond within the prescribed 30 calendar day timeframe, I'll apply directly to court to compel.

Section 17 of PAIA holds you ultimately responsible as information officer for LASA's compliance with all PAIA requests.

Section 38(1)(c)(ii) of the PFMA hold you ultimately responsible as accounting officer to 'take effective and appropriate steps' to 'prevent ... irregular and fruitless and wasteful expenditure' at LASA.

Please advise me what you're going to do about this. The Minister, the Deputy Minister, the Portfolio Committee, the Auditor General, the information transparency organisations and all national print media will undoubtedly be interested in hearing too.

Yours sincerely



ANTHONY BRINK

035 474 0145 | 083 779 4174 | anthonybrink.sa (at) gmail.com

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



Cc: Hon Michael Masutha, Minister of Justice and Correctional Services
Hon John Jeffery, Deputy Minister of Justice and Correctional Services
Hon Mathole Motshekga, Chairperson: Portfolio Committee on Justice and Correctional Services, and all members
Thulisile Madonsela: Public Protector
Mukelani Dimba, Executive Director: Open Democracy Advice Centre
Catherine Kennedy, Director: South African History Archive, Freedom of Information Programme
Mark Weinberg, National Coordinator: Right2Know
Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information in Africa: African Union
Sanjay Pradhan, Chief Executive Officer: The Open Government Partnership
Henri Maina, Chairperson: Africa Freedom of Information Centre
José Carlos Ugaz, Chairperson: Transparency International
Martin Welz, Editor: Noseweek
Ferial Haffejee, Editor: City Press
Adriaan Basson, Editor: News24
Bongani Siqoko, Editor: Sunday Times
Jovial Rantao, Editor: Sunday Independent
Aakash Bramdeo, Editor: Sunday Tribune
Waldimar Pelsler, Editor: Rapport
Tim Cohen, Editor: Business Day
Steven Motale, Editor: The Citizen
Kevin Ritchie, Editor: The Star
Verashni Pillay, Editor: Mail & Guardian
Langa Lethiba: LASA Board Secretary.



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 South Africa
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 : **anthonybrink.sa (at) gmail.com**



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

1. All counsels' invoices reflecting their charges for professional services rendered to Legal Aid SA ('LASA') in the matter of Adv Anthony Brink's several requests for access to specified records made since October 2013 under the Promotion of Access to Information Act 2 of 2000 ('PAIA') and his several applications to the Eshowe Magistrate's Court for order compelling LASA's compliance with his requests.
2. All records reflecting LASA's Corporate Services attorneys' charges for time spent on the said PAIA matters.
3. All records reflecting travel, accommodation and meal costs to LASA, both for counsel and for Corporate Services Executive Thembile Mtati, incurred for their several court appearances in Brink's said applications to compel.
4. All invoices by WE White Attorneys in Eshowe, reflecting their charges for representing LASA as local correspondent in Brink's said applications.

The invoices and disbursement vouchers, and LASA Corporate Services attorneys' charges, must include and reflect all costs to LASA of the further court appearance on 28 July 2016 in the said applications. (NB: section F1 below.)

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.*

I paid the R35 request fee into LASA's FNB account by EFT on 23 July 2016 under reference code: PAIA_Brink_Aug_16

F. Form of access to record

*Mark the appropriate box with an "X".
 (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.*

A

1. If the record is in written or printed form -			
X	copies of records – to be scanned to printable PDF, and delivered by emailing them as file attachments; or uploading them to a storage cloud with the link provided; or by furnishing them on a CD or DVD.		inspection of record
2. If record consists of visual images - N/A			
3. If record consists of recorded words or information which can be reproduced in sound - N/A			
4. If record is held on computer or in an electronic form -			
	printed copy of record		printed copy of information derived from the record*
		X	copies in computer readable form – to be emailed as file attachments; or uploaded to a storage cloud with the link provided; or furnished on a CD or DVD. Paper copies will not be accepted.

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 1 August 2016



SIGNATURE OF REQUESTER

7/25/2016

Gmail - PAIA REQUEST FOR RECORDS OF LEGAL EXPENDITURE TO OBSTRUCT MY ACCESS TO LASA'S BUSINESS RECORDS



Anthony Brink <anthonybrink.sa@gmail.com>

PAIA REQUEST FOR RECORDS OF LEGAL EXPENDITURE TO OBSTRUCT MY ACCESS TO LASA'S BUSINESS RECORDS

1 message

Anthony Brink <anthonybrink.sa@gmail.com>

25 July 2016 at 14:37

To: vidhuv@legal-aid.co.za
Cc: patrickh@legal-aid.co.za

Dear Ms Vedalankar

I annex a PAIA request, proof of request fee payment, and a covering letter to you, to be copied in the course of this week to the cc addresses listed at the foot of the letter and copied below.

Yours sincerely

Anthony Brink

Hon Michael Masutha, Minister of Justice and Correctional Services

Hon John Jeffery, Deputy Minister of Justice and Correctional Services

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

Thulisile Madonsela: Public Protector

Mukelani Dimba, Executive Director: Open Democracy Advice Centre

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

Mark Weinberg, National Coordinator: Right2Know

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

Sanjay Pradhan, Chief Executive Officer: The Open Government Partnership

Henri Maina, Chairperson: Africa Freedom of Information Centre

José Carlos Ugaz, Chairperson: Transparency International

Martin Welz, Editor: Noseweek | Ferial Haffejee, Editor: City Press

Adriaan Basson, Editor: News24

Bongani Siqoko, Editor: Sunday Times

Jovial Rantao, Editor: Sunday Independent

Aakash Bramdeo, Editor: Sunday Tribune

Waldimar Pelsler, Editor: Rapport

7/25/2016 Gmail - PAIA REQUEST FOR RECORDS OF LEGAL EXPENDITURE TO OBSTRUCT MY ACCESS TO LASA'S BUSINESS RECORDS

Tim Cohen, Editor: Business Day

Steven Motale, Editor: The Citizen




Kevin Ritchie, Editor: The Star

Verashni Pillay, Editor: Mail & Guardian

Langa Lethiba: LASA Board Secretary.

A

3 attachments

-  **Request fee proof of payment.pdf**
22K
-  **VV PAIA Form A costs.pdf**
202K
-  **VV PAIA costs covering letter.docx**
60K



FNB
First National Bank

A

NOTIFICATION OF PAYMENT

Dear Legal Aid Board

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

Date Actioned : 2016/07/23
Time Actioned : 12:32:02
Trace ID : GV9J743C

Payer Details

Payment from : ADV ANTHONY R BRINK - FNB
Cur/Amount : ZAR35.00

Payee Details

Recipient/Account no. : .831471
Name : LEGAL AID BOARD
Bank : FIRST NATIONAL BANK
Branch Code : 250655
Reference : PAIA_BRINK_AUG_16

END OF NOTIFICATION

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

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

Disclaimer:

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FirstRand Bank Directors: LL Dippenaar (Chairman), JP Burger (CEO), VW Bartlett, AP Pullinger (Deputy CEO), MS Bomela, P Cooper (Alternate), JJ Durand, GG Gelink, PM Goss, NN Gwagwa, PK Harris, WR Jardine, HS Kellan, RM Loubser, EG Matenge-Sebesho, PJ Makosholo, AT Nzimande, D Premnarayan (India), BJ van der Ross, JH van Greuning, Company Secretary: C Low

First National Bank, a division of FirstRand Bank Limited. Reg.No.1929/001225/06.
An Authorised Financial Services and Credit Provider (NCRCP20).

1 Boast Street
Eshowe
KwaZulu-Natal
1 August 2016

B

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

By email

Dear Ms Vedalankar

PAIA REQUEST
CLAUSE 7 OF SETTLEMENT AGREEMENT
BRINK v LASA: ESHOWE MAGISTRATE'S COURT

I enclose a PAIA request for your response within the prescribed 30 calendar days please. I've just paid the request fee by EFT, reference: PAIA_SL_AUG_16.

In clause 7 of the settlement agreement made at court on 11 February, I agreed to limit myself to one further PAIA request about the Senior Litigator posts after receiving the records I'd requested. This is because, as I explained to your CSE Mtati, and as is evident from the instant request, records LASA has given me under PAIA have sometimes generated lines of enquiry requiring investigation with further record requests.

Your and your deputy information officers' failure, through Mtati, to fully and properly comply with the settlement agreement has prevented me from perfecting my final PAIA request about Senior Litigator posts.

Upon eventual delivery to me, under court order, of the outstanding records that Mtati undertook to provide me in clause 4 of the settlement agreement, I record that I may request further records in relation to the Senior Litigator posts, as contemplated in clause 7.

Yours sincerely



ANTHONY BRINK

B

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**The Information Officer**

Legal Aid SA

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 : **anthonybrink.sa (at) gmail.com**

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

See annexure.

E. Fees

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

R35 request fee paid into LASA's FNB account by EFT on 1 August 2016 under reference code: PAIA_SL_AUG_16

F. Form of access to record

Mark the appropriate box with an "X".

*(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.*

1. If the record is in written or printed form -

X	copies of records		inspection of record
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2. If record consists of visual images - N/A

3. If record consists of recorded words or information which can be reproduced in sound - N/A

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

	printed copy of record		printed copy of information derived from the record*	X	copies in computer readable form – to be emailed as file attachments; or uploaded to a storage cloud with the link provided; or furnished on a CD or DVD.
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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 1 August 2016

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

SIGNATURE OF REQUESTER

RECORDS REQUESTED¹

1. Having regard to the information (newly revealed in the recently released² unredacted selection panel report of 23 November 2009, recording its recommendation of Brink and Bongani Mngadi, and no other candidates, for the two simultaneously advertised Pietermaritzburg and Durban Senior Litigator posts)³ that the other two shortlisted and interviewed candidates Van Wyk and Ngcamu (the latter a former long-term acting Labour Court judge, and for about six-and-a-half years a judicial colleague of then Labour Court President and LASA Board chairperson Mlambo JP) were totally disqualified for appointment to the posts because they didn't meet the basic qualifying criteria, any record vouching:

(a) CEO Vedalankar's allegation to Brink in her letter of 18 October 2010, illegally refusing his entire PAIA request for records pertaining to the circumstances in which his recruitment had been aborted:

'You were recommended together with other candidates.'⁴

(b) Vedalankar's reiteration of this claim of hers ('You were recommended together with other candidates') in her letter to Brink of 28 January 2011 (continuing to illegally refuse his said PAIA request, along with his next one in December 2010, and releasing only a few records claimed 'To demonstrate' her claims):

'I must however advise you that the explanation furnished by me to you on 18 October 2010 remains valid'.⁵

¹ Unless stated otherwise, all documents referenced in these footnotes were filed in case D529/11 in the Labour Court, tried in mid-2013, in which Brink claimed an order against Legal Aid South Africa instating him to its Senior Litigator post at Pietermaritzburg for which he was unanimously recommended by a duly constituted selection panel.

² The unredacted recommendation was eventually supplied to Brink on 15 April 2016. His request for it in November 2014 under the Promotion of Access to Information Act 2 of 2000 ('PAIA') on was unlawfully obstructed and then finally refused in May 2015, and his application to court to compel its production was insupportably opposed. But before argument at court in February 2016, LASA abandoned its unlawful justification for refusing the record, dropped all its defences in its answering affidavit, and undertook to supply it. Which it did, in April 2016.

³ Although the recommendation report is silent about this, LASA admitted at the first pre-trial conference at court that Brink was selected for Pietermaritzburg for which he'd applied, and Mngadi for Durban.

⁴ Bundle, page 104, paragraph 7.2.

⁵ Bundle, page 212, paragraph 7.

B

- (c) Vedalankar or NOE Nair's claim about Brink made to Justice Portfolio Committee member Debbie Schäfer MP in the National Assembly:

'according to LASA, he was not the only candidate.'⁶

- (d) Corporate Services Executive Mtati's implication on oath, with Nair confirming on oath, that Brink was not the sole candidate recommended by the selection panel for the Pietermaritzburg Senior Litigator post for which he'd applied, and that other candidates were also recommended for the post along with him:

'[Brink's] recruitment, together with the other candidates recommended for the second round of interviews was aborted immediately after the first round of interviews.'⁷

- (e) Human Resources Executive Clark's same claim by clear implication in her email to Brink on 30 April 2010, by suggesting that the totally eliminated candidates Van Wyk and Ngcamu (until recently Mlambo JP's long-time judicial colleague, before he applied for a Senior Litigator post in KZN) were also eligible for consideration for the posts:

'At this stage it is not even clear which applicants will be considered in the second round'.⁸

- (f) Corporate Legal Manager Sekgota's same claim by clear implication in LASA's false section 32 report on its PAIA performance in 2010/11 that he signed (and which false reporting the SAHRC reported to the National Assembly), by suggesting that the totally eliminated candidates Van Wyk and Ngcamu (Mlambo JP's former colleague) were also eligible for appointment to the posts:

'No decision taken yet on who should be appointed'.⁹

In other words, the record showing that besides Brink and Mngadi, one or more 'other candidates' such as van Wyk and former Acting Labour Court Judge Ngcamu was/were also recommended by the selection panel, as alleged by Vedalankar and other LASA officers bound by LASA's Code of Conduct and Ethics and subject to the law against perjury and lying to a committee of the National Assembly.

⁶ Bundle 2, page 680.

⁷ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 83, paragraph 13.4.

⁸ Bundle, page 256.

⁹ Bundle 2, page 679.

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2. The communication with LASA Board chairperson Mlambo JP in the 'early stages when we were made aware that there were two people recommended for the second round of interviews'¹⁰ for the Pietermaritzburg and Durban Senior Litigator posts¹¹ and no one else (contradicting the repeatedly told lie that 'others' (such as Mlambo JP's former judicial colleague Ngcamu AJ (as he used to be)) were also recommended.
3. The record of the 'decision' that was 'taken ... to terminate the recruitment of Senior Litigator posts'¹² after Brink and Mngadi were recommended for the Pietermaritzburg and Durban posts in November 2009¹³ and Skibi was recommended for the Mthatha post in May 2010.¹⁴
4. With reference to LASA's lead in-house attorney Mtati's sworn allegation made on Mlambo JP's behalf (see item 6 below), which allegation NOE Nair supported as the perfect truth by way of a confirmatory affidavit, also made under penalty of perjury, that LASA 'later decided ['after the interview of the Applicant [Brink] in KZN had taken place']¹⁵ not to also proceed with this transfer [of Skibi to Mthatha]¹⁶ as it had become important to divert the funds budgeted to a different purpose':¹⁷
 - (a) the records of the decisions of (i) LASA's executive management to resolve and propose, and (ii) the Board to authorise, the diversion and expenditure of one third of LASA's salary budget of many millions of rands for nine Senior Litigator posts, three vacant – budget applied for by LASA, voted by the National Assembly, and paid to LASA by the Department of Justice and Correctional Services – to 'a different purpose', and particularly to a more 'important' one than employing Senior Litigators at seats of the High Court in the implementation of LASA's Strategic Plan 2009–12, as twice mentioned

¹⁰ Answer to Brink's pre-trial agenda, paragraph 78.1.

¹¹ The 'early stages' to which 'Mlambo JP may have been referring' (per LASA's answer to Brink's pre-trial agenda, paragraph 78.1) means the period between Brink's recommendation for the post on 23 November 2009 and LASA's discovery three-and-a-half months later on 10 March 2010 that its OSD phase 1 allocation for 2010 hadn't been included in its baseline budget, which anyway made zero difference to its (actually accelerated) recruitment processes until July when, as LASA's records show, recruitment to some lower criminal court public defender posts, and none other, was temporarily frozen, and in the result for two months only.

¹² LASA's answer to Brink's pre-trial agenda, paragraph 66.2.

¹³ Trial document bundle, page 244.

¹⁴ Bundle 2, page 995.

¹⁵ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 106, paragraph 81.9.4.

¹⁶ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 106, paragraphs 81.9.2–3.

¹⁷ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 106, paragraph 81.9.5.

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by Vedalankar in her CEO report in LASA's annual report for 2012/13, regarding LASA's completion of the Plan, which annual report mentions it yet a third time;

- (b) any record identifying the 'different' more 'important ... purpose' to which LASA's said several millions in Senior Litigator salary budget received from the Department for its three now very long-vacant Senior Litigator posts was 'divert[ed]' from spending on three Senior Litigator salaries, for which the National Assembly voted it, and Department provided it, and continues to be 'divert[ed]' year after year in repeated illegal contravention of Chapter 6 of the Public Finance Management Act 1 of 1999, particularly section 53(4) – which holds the accounting authority of a public entity like LASA responsible for ensuring that expenditure of that public entity is in accordance with the approved budget – as LASA continues applying for and being paid salary budget for nine Senior Litigator posts, while deceptively concealing from the Department in its annual budget applications year after year that, without authority to do so, it has unlawfully 'divert[ed]' and continues to unlawfully 'divert' these several millions of rands paid to LASA by the Department to employ senior, specialist litigation lawyers in these three now very long-vacant Senior Litigator posts at the top of LASA's professional staff establishment.
5. The 'explanation' that Mlambo JP 'received from the CEO'¹⁸ in regard to Brink's first petition to him and the Board, in which he protested CEO and information officer Vedalankar's illegal blanket refusal of his first PAIA request made in August 2010 (eventually partially reversed in April 2011 under SAHRC pressure, and with the Minister and Portfolio Committee on alert), by means of which request Brink was probing the abortion, allegedly in July 2010, of his appointment to the Pietermaritzburg Senior Litigator post, for which he'd been unanimously recommended in November 2009 by a duly convened selection panel interviewing for the post, and which 'explanation' by Vedalankar allegedly persuaded Mlambo JP that 'nothing untoward ... was done by the CEO'¹⁹ in (a) refusing the whole of his PAIA request for 59 specified records, and (b) telling him the story unsupported by any record that the Pietermaritzburg, Durban and Mthatha Senior Litigator posts had been frozen due to insufficient budget,²⁰ and that Mlambo JP was accordingly 'correct in dismissing the Applicant's complaint'²¹ to him and the Board about Vedalankar's illegal

¹⁸ Answer to Brink's pre-trial agenda, paragraph 68.2.

¹⁹ Ibid.

²⁰ And which claim was radically contradicted by Nair in his evidence in Brink's labour claim, as regards Mthatha.

²¹ Ibid.

refusal of his PAIA request in violation of his fundamental right to information held by the state guaranteed by section 32(1) of the Constitution, and the manifestly untrue budgetary insufficiency excuse Vedalankar had given him for the abortion of his appointment, having regard to the several already clear indications canvassed in the petition that it was false. And which false excuse she repeated on oath in an affidavit made on 8 April 2011 under penalty of being sent to jail for perjury.²² But which story, confirmed by Vedalankar under oath, Nair contradicted in court at the trial of Brink's labour claim, dropping the Mthatha post from the false story and telling a completely different new one about it, also false.

6. Mtati's email to Mlambo JP (alternatively to CEO Vedalankar, or to NOE Nair, to forward to Mlambo JP) covering the draft answering affidavit (or the final, signed affidavit) that Mtati made in January 2013 to oppose Brink's application for leave to subpoena Mlambo JP for cross-examination at the trial of his labour claim, having been 'duly authorised by the Respondent [Mlambo JP] to depose to this affidavit'²³ on his behalf. (Any legally privileged communications in the body of the email may be blacked out.)
7. All six Senior Litigator appointments.
8. The minute of the Legal Services Technical Committee ('LSTC') meeting held on 30 September 2009.
9. The LSTC decision sheets referred to in paragraph 2.3 'Matters arising' in the LSTC minute of 2 December 2009 and 28 January 2010.
10. The High Court Unit (HCU) reports noted under paragraph 5.1.2 in the LSTC minute of 2 December 2009 and 28 January 2010.
11. The report of the NOE/ROE session held on 21 and 22 October 2009 noted in paragraph 4.1.11 of the LSTC minute of 28 January 2010.
12. The report of the NOE/ROE session planned for February 2010 as noted in paragraph 4.1.11 of the LSTC minute of 28 January 2010.
13. Any record(s) identifying LASA's chief IT officer, and its IT officer responsible for the electronic data storage of LASA's business records and access to them.
14. The charter of LASA's Board of Directors.

²² Bundle, page 380, paragraph 13; and page 390–1.

²³ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 80, paragraph 4.

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15. The charter of the Board Audit and Risk Sub-committee.
16. Excerpts from LASA's monthly recruitment/vacancy statistics for the period December 2009 to February 2010 showing Senior Litigator posts filled and vacant.
17. Any and all recommendation report(s) by selection panels for Regional Operations Executive posts containing the information that the recommended candidate(s) is/are subject to a second interview (by Mlambo JP and national management executives).²⁴
18. Any and all claims by LASA on Camargue insurance underwriter after Brink repeatedly sued LASA in the Eshowe Magistrate's Court in 2014 and 2015 to compel its compliance with his several illegally refused PAIA requests made over the period 2013–2015, and in July 2016 applied for the referral of his applications to oral evidence when LASA failed to fully and properly comply with its written undertaking given at court on 11 February 2016 to comply with all his said PAIA requests, at last, after years of unlawful obstruction of his exercise of his fundamental right to information held by the state.
19. All litigation reports to the Board by LASA's Corporate Services department concerning Brink's five applications to the Eshowe Magistrate's Court in 2014 and 2015 to compel LASA's compliance with his illegally refused PAIA requests, and concerning his further application in July 2016 to refer his cases to oral evidence to achieve full and proper compliance with his requests, as undertaken in February 2016 by LASA's information officer and deputy information officers in the case, represented by Corporate Services Executive Mtati.
20. Concerning Mtati's refusal yet again to allow Brink access to the records described in item E18 on his consolidated list of requested records²⁵ namely for 'All and any contract(s) of employment between Ngcamu and Legal Aid SA, at any Justice Centre, entered into prior to his employment as Children's [Court] Practitioner at the Durban Justice Centre', on the grounds Mtati stated under oath, under penalty of perjury, in his section 23 affidavit of 15 April 2016, 'This record is refused in terms of section 63(1). The third party has refused to grant consent to provide such personal information':

²⁴ According to NOE Brian Nair's evidence at the trial of Brink's labour claim, given under penalty of going to jail for perjury, 'second round interviews' were held 'for some Regional Operations Executive posts': Record, page 338, lines 8–9.

²⁵ In terms of clause 2 of the settlement agreement made at the Eshowe Magistrate's Court on 11 February 2016 in case 257/14 and four others, and handed into court, Brink emailed this list to CSE Mtati the following day.

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- (a) Mtati's request to Ngcamu for his consent, alternatively if some other LASA employee delegated by Mtati sought Ngcamu's consent, that other employee's request; and,
- (b) Ngcamu's refusal to grant his consent.
21. Concerning Mtati's refusal yet again to allow Brink access to the records described in item H32 on his consolidated list of requested records, namely for the several insurance records described therein, on the grounds that 'The records belong to a third party in terms of section 34 and the third party has not granted consent to furnish such record':
- (a) Mtati's request to Camargue insurance underwriter for its consent, alternatively if some other LASA employee delegated by Mtati sought its consent, that other employee's request; and,
- (b) Camargue's refusal to grant its consent.
22. Concerning item H41 of Brink's consolidated list, namely for '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' (per Mlambo JP: 'I have, in turn, requested Board members to ignore all communications from you and/or on your behalf'),²⁶ and Mtati's sworn allegation in his second section 23 affidavit of 12 May 2016 that 'No such records could be found. The record requested was checked with the specified official':
- (a) Mtati's enquiry to Mlambo JP ('the specified official') about these records, alternatively if some other LASA employee delegated by Mtati enquired on his behalf, that other employee's enquiry; and,
- (b) Mlambo JP's response either that no such records exist or that he just couldn't find them anywhere on his computer, no matter how hard he looked for email sent on 24 January 2011 in his Sent Mail folder.
23. The various selection panels' reports recommending Wilson Rambau, Patrick Loots and Ashok Kaloo – the three of whom were 'Not recommended for the position' by the second interview panel, comprising Mlambo JP and others, that interviewed them again for the Senior Litigator posts for which they'd already been recommended by selection panels duly

²⁶ Bundle, page 209.

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constituted under LASA's Recruitment code, as recorded in the record 'Summary of the Scoring for Senior Litigator Positions' signed by CEO Vedalankar on 5 December 2008, and supplied to Brink, without having been requested, in April 2016.

24. The minutes of the second interviews of Wilson Rambau, Herman Alberts, Patrick Loots, Ashok Kaloo, Lilla Crouse, Mornay Calitz and William Karam showing their original scoring by Mlambo JP and the other second panel members, and the dates on which they were scored (actual scores aren't needed and can be blacked out).
25. The minutes of the subsequent second interviews of Senior Litigators Pieter Nel and Nzame Skibi showing their original scoring by Mlambo JP and the other second panel members, and the dates on which they were scored (actual scores aren't needed and can be blacked out).
26. The 'Summary of the Scoring for Senior Litigator Positions' (or similar separate documents) recording Mlambo JP's and other second panel members' recommendations that Nel and Skibi be appointed to the Bloemfontein and Mahikeng Senior Litigator posts.
27. Records showing:
 - (a) the date on which then Board Secretary Bee-Mari Schoeman resigned;
 - (b) the date on which LASA accepted her resignation.
28. Any record of Mlambo JP's communication with the Board Executive Committee or with executive management prior to informing Brink at 4pm on Friday 23 March 2012 that his affidavit emailed to him had been deleted unread, with a message sent Brink to this effect.
29. Concerning the 'Professional Assistant – Civil' post at the Empangeni Justice Centre advertised in January 2016 under reference code: 'EMPANGENIJC/CIVIL PA/15/01/2016':
 - (a) the shortlist of applicants for the post;
 - (b) the selection panel's recommendation of most suitable candidate; and,
 - (c) the appointment made to the post.
30. The notice given to then Bloemfontein Justice Centre Executive Noxolo Maduba before she resigned in 2012 (following her meteoric rise through LASA's ranks after making certain after-hours friends), calling on her to give reasons why she should not be suspended pending the determination of a charge of grossly dishonest misconduct brought against her.

8/1/2016

Gmail - PAIA request Senior Litigator posts and other matters



Anthony Brink <anthonybrink.sa@gmail.com>

B

PAIA request Senior Litigator posts and other matters

1 message

Anthony Brink <anthonybrink.sa@gmail.com>
To: vidhuv@legal-aid.co.za, ThembileM@legal-aid.co.za


1 August 2016 at 16:03

Dear Ms Vedalankar

I attach a PAIA request for your response please.

Yours sincerely

Anthony Brink

 **PAIA_request_SL_Aug_16.pdf**
699K

Year correction: item 30

constituted under LASA's Recruitment code, as recorded in the record 'Summary of the Scoring for Senior Litigator Positions' signed by CEO Vedalankar on 5 December 2008, and supplied to Brink, without having been requested, in April 2016.

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24. The minutes of the second interviews of Wilson Rambau, Herman Alberts, Patrick Loots, Ashok Kaloo, Lilla Crouse, Mornay Calitz and William Karam showing their original scoring by Mlambo JP and the other second panel members, and the dates on which they were scored (actual scores aren't needed and can be blacked out).
25. The minutes of the subsequent second interviews of Senior Litigators Pieter Nel and Nzame Skibi showing their original scoring by Mlambo JP and the other second panel members, and the dates on which they were scored (actual scores aren't needed and can be blacked out).
26. The 'Summary of the Scoring for Senior Litigator Positions' (or similar separate documents) recording Mlambo JP's and other second panel members' recommendations that Nel and Skibi be appointed to the Bloemfontein and Mahikeng Senior Litigator posts.
27. Records showing:
 - (a) the date on which then Board Secretary Bee-Mari Schoeman resigned;
 - (b) the date on which LASA accepted her resignation.
28. Any record of Mlambo JP's communication with the Board Executive Committee or with executive management prior to informing Brink at 4pm on Friday 23 March 2012 that his affidavit emailed to him had been deleted unread, with a message sent Brink to this effect.
29. Concerning the 'Professional Assistant – Civil' post at the Empangeni Justice Centre advertised in January 2016 under reference code: 'EMPANGENIJC/CIVIL PA/15/01/2016':
 - (a) the shortlist of applicants for the post;
 - (b) the selection panel's recommendation of most suitable candidate; and,
 - (c) the appointment made to the post.
30. The notice given to then Bloemfontein Justice Centre Executive Noxolo Maduba before she resigned in 2012 (following her meteoric rise through LASA's ranks after making certain after-hours friends), calling on her to give reasons why she should not be suspended pending the determination of a charge of grossly dishonest misconduct brought against her.



FNB
First National Bank

B

NOTIFICATION OF PAYMENT

Dear Legal Aid Board

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

Date Actioned	: 2016/08/01
Time Actioned	: 15:08:38
Trace ID	: P7XXBL4C

Payer Details

Payment from	: ADV ANTHONY R BRINK - FNB
Cur/Amount	: ZAR35.00

Payee Details

Recipient/Account no.	: ..831471
Name	: LEGAL AID BOARD
Bank	: FIRST NATIONAL BANK
Branch Code	: 250655
Reference	: PAIA_SL_AUG_16

END OF NOTIFICATION

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

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

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31 August 2016

Advocate Brink

1 Boast Street, Eshowe,

Kwazulu Natal

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Dear Advocate Brink,

**NOTIFICATION IN TERMS OF SECTION 26(2) OF PROMOTION OF
ACCESS TO INFORMATION ACT 2 OF 2000 IN RESPECT OF REQUESTS
DATED 1 AUGUST 2016.**

1. Please note that I hereby extend the period for the consideration of your requests dated 1 August 2016 by a further 30 days ending 30 September 2016. During this extended period, I will determine whether or not such documents exist, and if they so exist, whether or not you are entitled to such records in terms of the applicable legislation.
2. The reasons for the extension are-
 - 2.1. You have requested approximately 34 (thirty four records) which requires a search through a large number of records and compliance with the original period will unreasonably interfere with the activities of Legal Aid South Africa.
 - 2.2. In your request for these records, you have in many instances not succinctly specified the records required but instead given a lengthy historical background on the documents so required, making reference to the previous requests you have made to Legal Aid South Africa and the Labour Court proceedings under case D529/11.

Your voice. For justice.

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2.3. As a result, and in terms of the provisions of section 26(1), I am required to re-look at all the documents and cross references made in your footnotes to clearly understand your requests. This has unfortunately taken a lot of my time bearing in mind that our offices are spread nationally and would need to search and consult with the relevant officials responsible for the search of such records, where applicable.

3. Accordingly I am extending the period for the reply to your request to 30 September 2016.

Yours faithfully,



Thembile Mtati

Deputy Information Officer

Legal Aid South Africa



The Cottage
1 Boast Street
Eshowe 3815
KwaZulu-Natal
16 September 2016

Vidhulekha Vedalankar,
CEO and Information Officer
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

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

Dear Ms Vedalankar

**REDUCTION AND AMENDMENT OF PAIA REQUESTS;
SECTIONS 7 AND 45 OF PAIA**

The legal deadline for your responses to my two PAIA requests of 1 August 2016, pushed out by your Mr Mtati under section 26, is 30 September. This leaves you two weeks to consider and notify your response to them.

Before you do so, kindly note the following.

1. REDUCTION OF MY PAIA REQUEST REGARDING THE SENIOR LITIGATOR POSTS

Items 20 and 21 on my list of records annexed to my Form A request were put up with Mtati's answering affidavit in my application to compel you and your deputy information officers' full and proper compliance with the settlement agreement made at court on 11 February 2016, so they can be scratched.

2. AMENDMENT OF PAIA REQUEST FOR ALL LEGAL COSTS INCURRED BY LASA IN OBSTRUCTING MY ACCESS TO LASA'S RECORDS REQUESTED IN 2013-15

As I've said before and repeat here, I intend referring to the Minister, to the Portfolio Committee, and to the Auditor General the massive 'irregular and fruitless and wasteful expenditure' – in the language of section 38(1)(c)(ii) of the Public Finance Management Act

1 of 1999 prohibiting it – that LASA unlawfully incurred with the corrupt object of illegally obstructing my access to LASA’s public records, to which I have a fundamental right guaranteed by section 32(1)(a) of the Bill of Rights in the Constitution.

With the intention of (i) making my complaint to these authorities as current, complete, and accurate in rands and cents as possible (for personal recovery from the delinquent officers), and (ii) reporting Board chairperson Mlambo JP’s involvement, if any, in opposing my PAIA applications (senior and junior counsels’ fee-notes for my labour claim show that as a *non-executive* director he was very strangely and notably involved in it, and was consulted at length about it), I hereby amend section D of my Form A request for these cost records:

(a) by amending the date ‘**28 July 2016**’ in the note immediately below the list of requested records to ‘**8 September 2016**’; and,

(b) by adding fifth and sixth items to the list of requested records:

5. Senior counsel’s fee-note for his opinion that LASA should thwart Brink’s currently pending application in the Eshowe Magistrate’s Court to compel compliance with LASA’s undertaking at court on 11 February 2016 to comply with his PAIA requests made in 2013–15 by applying to the High Court to interdict him as a vexatious litigant.

6. Any and all email communications between Board chairperson Mlambo JP and CEO Vedalankar and/or CSE Mtati and/or any other national office employee(s) in regard to Brink’s PAIA applications in the Eshowe Magistrate’s Court, and Brink’s further application to compel full and proper compliance with the settlement agreement on 11 February 2016 to finally comply with Brink’s said PAIA requests.

In responding to new item 6, please bear in mind the heavy criminal penalty provided by section 90 for concealing records with the object of frustrating a requester’s right of access to them.

Concerning your counsels’ (plural) fee-notes, recall what I very patiently explained in my letter of 29 April 2016:

H32. Your refusal to furnish me with copies of your counsel’s fee-notes, i.e. invoices for services rendered, for the reasons you’ve given is incompetent. They aren’t his property. Such invoices became part of LASA’s business records when he presented them for payment. They contain no ‘personal information about a third party’ per section 34(1), and accordingly your counsel doesn’t need to consent to your release of them to me, nor does section 34(2)(a) give him the prerogative to give or refuse it. Nor are such fee-notes legally privileged: see *A Company and Others v*

Commissioner for SARS (16360/2013) [2014] ZAWCHC 33; 2014 (4) SA 549 (WCC) (17 March 2014) – online at <http://goo.gl/pNZfvb>.

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Since LASA happily presented me with counsels' fantastic fee-notes in my labour claim, including, tossed in for good measure, a fee-note for advice, before I sued, to refuse my PAIA requests in April 2011, this only goes to show that there's nothing secret, personal or confidential about such ordinary commercial invoices, and they're not protected from disclosure by PAIA or any other law or legal principle.

Your terror of the consequences when the Minister, the Portfolio Committee, and the Auditor General get to see all these invoices for counsels' fees run up in the determined violation of my fundamental right to information is not a reason contemplated by PAIA to withhold them.

3. SECTION 7 OF PAIA

If you have in mind to refuse any or all of my requests by raising section 7 of PAIA against me, as foolishly before, you'd be well advised to consult your senior counsel now briefed in my case before you do.

As I've repeatedly said in my correspondence and answering affidavits, and as the SAHRC tried unsuccessfully teaching LASA's unfortunately slow head office lawyers at the special PAIA training workshop it held for them on 6 October 2011, your senior counsel will confirm that section 7 doesn't afford a ground for refusing a PAIA request, for the simple reason that it's not one of the 'Grounds for Refusal of Access to Records' included in sections 34 to 45 in Part 4 of Chapter 2 of the Act.

Sadly, as he's repeatedly shown, this point is beyond your top in-house attorney Mtati's mental grasp, because to my dismal amazement on 8 September 2016 he instructed your new very junior counsel to raise section 7 against me in his argument for a postponement of my application to compel full and proper compliance with the settlement agreement on 11 February.

Which your new very junior counsel tediously proceeded to do, notwithstanding that when still employed by LASA, he was specifically taught the irrelevance of section 7 to the decision of a PAIA request by the SAHRC at its PAIA training workshop. The Introduction of the SAHRC's report afterwards records the key lesson given that requesters, like me, 'who are wishing to litigate on the basis of PAIA are responded to on the same basis as other [requesters]'.

Your Mr Mtati's pitiful ignorance of this legal principle might be explained by the fact that although expected to present himself for instruction on how PAIA works, his missing signature next to his typed name in the attendance register tells us he bunked the lesson.

And it sure shows. In August 2012, for instance, he unbelievably ignorantly and defiantly refused the SAHRC's demand that he correct LASA's false section 32 report concealing DIO Nair's illegal refusals in April 2011 of my PAIA requests in the previous reporting cycle, by alluding to section 7 in mentioning irrelevantly that I'd now sued in the Labour Court. How pathetic.

4. SECTION 45 OF PAIA

Although under section 11(3) my stated purpose, like your surmise about it, is irrelevant to the decision of my PAIA request for records concerning the Senior Litigator posts, I've repeatedly stated in my correspondence and affidavits that I'm investigating and intend reporting (i) gross maladministration at LASA involving millions of rands and directly affecting service delivery; (ii) the wholesale breakdown of the rule of law and due process at LASA, involving, inter alia, the routine illegal flouting of LASA's internal regulations by Board chairperson Mlambo JP and national management executives; (iii) pervasive systemic corruption in the conduct of LASA's recruitment operations; and (iv) a criminal cover-up of the same, involving perjury, conflicting sworn statements, and lying to the Portfolio Committee, on multiple scores.

A finely referenced report I'm preparing about all this, 'ROTTEN TO THE CORE: RECRUITMENT CORRUPTION AT LEGAL AID SOUTH AFRICA' (both at top specialist professional Senior Litigator and bottom lower criminal court Professional Assistant levels), will be delivered to the Minister and the Portfolio Committee.

The innumerable conflicting perjuries in my matter and the many lies told to the Portfolio Committee about it will be reported to the National Director of Public Prosecutions, Judicial Service Commission, General Council of the Bar, and Law Society for the Northern Provinces. (The heartening strike-off yesterday of national office prosecutors Jiba and Mrwebi tells you what's in store for Nair and Mtati.)

All these lies, including under oath, will be canvassed in my application to the Labour Court to set aside the dismissal of my claim to my appointment to the top professional post for which I was duly selected and recommended nearly seven years ago, on the grounds that the defence was a fraud on the court, achieved by perjury – clearer than ever now, in light of documents I've eventually succeeded in clawing out of LASA after a long and persistent struggle. (Other deadly documents remain determinedly withheld.)

I'll be applying for an order that the dismissal be altered to absolution from the instance, enabling me to return to court on fresh pleadings, in which I plead new facts emerged since trial and judgment. I've discovered I was barking up the wrong tree in protesting unfair discrimination, and that the real reason for the off-the-record, unauthorised, illegal abortion of my recruitment now appears to have been illegal cronyism.

About good to go, the title of a separate specimen report I've substantially completed for the SAHRC to deliver to the National Assembly under section 84 of PAIA, edited as desired, speaks for itself: 'SPECIAL REPORT ON LEGAL AID SA: AN AGGRAVATED CASE OF REPEATED WILFUL NON-COMPLIANCE WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 TO ILLEGALLY OBSTRUCT ACCESS TO DULY REQUESTED RECORDS, AND REPEATED FALSE ANNUAL AND 'CONFIDENTIAL' REPORTING TO CONCEAL THIS FROM THE NATIONAL ASSEMBLY' – to frustrate and defeat its oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution, and to evade accountability.

So please consult your senior counsel before again telling me that my said PAIA request made for these extraordinary serious purposes is 'manifestly frivolous or vexatious' and therefore hit by section 45.

Especially since LASA dropped that dim and dishonest excuse at court on 11 February 2016.

If you pull this stunt again to block my PAIA requests and suppress the records that I've requested, not wanting me and the said high authorities to see them, the onus will be on you to justify this justification under section 81(3).

In which case, be my guest in light of the information contained in this letter.

Please understand that if you refuse my PAIA requests on the above or any other obviously incompetent grounds, I'll immediately sue out of the High Court for them – as I indicated to the magistrate I would do during the argument on the 8th, when your very junior counsel irrelevantly raised the fact that I'd made two more PAIA requests, feebly trying to score a point off me in doing so.

In anticipation of being illegally denied access to the records under current consideration, and so as not to lose any time after the expiry of the month-end deadline for your response, I've already drafted an almost complete application.

To complete which, this letter and your response will be annexed.

Yours sincerely



ANTHONY BRINK

Cc: CSE Thembile Mtati and CLE Patrick Hundermark

9/28/2016

Gmail - Brink's two pending PAIA requests



Anthony Brink <anthonybrink.sa@gmail.com>

**Brink's two pending PAIA requests**

3 messages

Anthony Brink <anthonybrink.sa@gmail.com>

16 September 2016 at 15:20

To: vidhuv@legal-aid.co.za

Cc: Thembile Mtati <ThembileM@legal-aid.co.za>, patrickh@legal-aid.co.za


Bcc: Chris Rawlins <cfmrawlins@telkomsa.net>, Maria Schiaffino <mariaschiaffino100@gmail.com>

Dear Ms Vedalankar

I attach a letter for your careful consideration.

Yours sincerely

Anthony Brink

 **Vedalankar_15_September_16.pdf**
370K**Maria Schiaffino** <mariaschiaffino100@gmail.com>

16 September 2016 at 17:55

To: Anthony Brink <anthonybrink.sa@gmail.com>

[Discussion redacted]

Anthony Brink <anthonybrink.sa@gmail.com>

16 September 2016 at 23:57

To: Maria Schiaffino <mariaschiaffino100@gmail.com>

[Discussion redacted]



26 September 2016

Advocate Brink

1 Boast Street, Eshowe,

Kwazulu Natal

Email: anthonybrink.sa@gmail.com;

Dear Advocate Brink,

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www.legal-aid.co.za

**REPLY TO TWO REQUESTS IN TERMS OF THE PROMOTION OF
ACCESS TO INFORMATION ACT 2 OF 2000 DATED 1 AUGUST 2016.**

1. I refer to your two requests both which are dated 1 August 2016 and further to our notice of extension dated 31 August 2016.
2. After careful consideration, I hereby refuse to grant all the records requested in respect of the two requests based on the following reasons-
 - 2.1. You have been requesting records from the Information Officer and Deputy Information Officers since the year 2010.
 - 2.2. All these requests relates to the abortion of the Senior Litigator posts.
 - 2.3. Despite having been provided with the records which exists and where such documents do not exists, deposed to the affidavit in terms of section 23 of the Act, you have continuously requested further documents.

Your voice. For justice.

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- 2.4. I have further noted that despite having been advised that I have been delegated to deal with all the issues relating to the matters before Court brought by you in the various applications to compel at the Eshowe Magistrate Court, you have ignored such advice and instead bombarded officials of Legal Aid South Africa with communications and further requests relating to the issues which form part of the applications.
- 2.5. Your conduct shows the deliberate desire to vex and annoy the officials of Legal Aid South Africa. This conduct borders on frivolous intentions and diverting the resources of Legal Aid South Africa.
- 2.6. As you are aware, Legal Aid SA will be bringing an application for order seeking the court to declare you a vexatious litigant.

3. I accordingly refuse to grant the records requested in terms of 45 of the Promotion of Access to Information Act 2 of 2000 as it is manifestly frivolous, vexatious, substantially and unreasonably divert the most needed resources of Legal Aid South Africa.

Yours faithfully,



Thembile Mtati
Deputy Information Officer
Legal Aid South Africa

SPECIAL REPORT ON LEGAL AID SA

**AN AGGRAVATED CASE OF REPEATED WILFUL
NON-COMPLIANCE WITH THE PROMOTION OF
ACCESS TO INFORMATION ACT 2 OF 2000 TO
ILLEGALLY OBSTRUCT ACCESS TO DULY
REQUESTED RECORDS, AND REPEATED FALSE
ANNUAL AND 'CONFIDENTIAL' REPORTING TO
CONCEAL THIS FROM THE NATIONAL ASSEMBLY**

A specimen report prepared by Adv AR Brink for the PAIA Unit of the South African Human Rights Commission to assist it perform its monitoring and intervention functions under sections 83, and its reporting obligations to the National Assembly imposed by section 84, in regard to regard to public body compliance with the Promotion of Access to Information Act.

Copies of this report may be downloaded from: <http://goo.gl/XXNuX1>
Contact: anthonybrink.sa@gmail.com | 083 779 4174 | 035 474 0145

SPECIAL REPORT ON LEGAL AID SA



AN AGGRAVATED CASE OF REPEATED WILFUL NON-COMPLIANCE WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 TO ILLEGALLY OBSTRUCT ACCESS TO DULY REQUESTED RECORDS, AND REPEATED FALSE ANNUAL AND 'CONFIDENTIAL' REPORTING TO CONCEAL THIS FROM THE NATIONAL ASSEMBLY

EXECUTIVE SUMMARY

This report describes an egregious case of persistent, wilful, recalcitrant PAIA delinquency by an organ of state, Legal Aid South Africa ('LASA'), escalated into a criminal cover-up of its repeated non-compliance with the Act carried out at the highest level of the organisation.

It details how since 2010 LASA has deliberately neglected to comply with its constitutional information transparency obligations by repeatedly illegally refusing access to its business records duly requested under PAIA; and how, to conceal this, it has repeatedly, for five years, falsely reported to the Commission, to the Minister of Justice and Correctional Services, and to the Portfolio Committee for that Department in the National Assembly.

It relates how, after receiving a detailed complaint about LASA CEO and information officer Vidhu Vedalankar's illegal denial of access to LASA's records on wholly spurious grounds, including on the basis of a fraudulently manufactured quotation alleged to be from a reported judgment, LASA Board chairperson Dunstan Mlambo JP dishonoured his judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it' by actively colluding with her to continue violating the record requester's constitutional right to information; and how in a cover-up perpetrated in concert with Vedalankar and National Operations Executive Brian Nair, Mlambo JP furnished the chairperson of the Justice Portfolio Committee with a false 'Confidential Report' containing multiple objectively demonstrable lies, under cover of a defamatory letter containing more such lies, in criminal contravention of sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, to successfully



pervert the Committee's enquiry into a complaint about Vedalankar's repeated illegal denials of access to LASA's records – thus stultifying and defeating the Portfolio Committee's oversight responsibility over LASA as a public entity, imposed by section 55(2)(b)(ii) of the Constitution, and successfully evading detection and accountability for its illegal refusals to comply with PAIA and its repeated violations of section 32(1)(a) of the Constitution, 'Everyone has the right of access to ... any information held by the state'.

It describes the Commission's repeated failed interventions in its attempts to achieve LASA's compliance with PAIA.

It quotes false pleading and perjury repeatedly committed in judicial proceedings to mislead and defraud judicial officers, falsely alleging LASA's due compliance with PAIA to dishonestly counter and discredit true complaints to the contrary.

And it reports protracted, filibustering, factually and legally groundless opposition maintained for years to five applications to court for orders compelling LASA's compliance with PAIA – opposition persisted with in bad faith as a delaying tactic and abuse of court – culminating in LASA's total capitulation and reversal at court on the day of trial and its recorded undertaking within two months to surrender all requested documents or to certify any that do not exist on oath. And then on the agreed date for delivery, LASA's gross non-compliance with its undertaking; its persistence in illegally withholding duly requested records; and its disregard for repeated demands for full and proper compliance, necessitating a return to court to compel, which it continues opposing to avoid surrendering records it formally undertook to furnish, or to duly certify where any do not exist.

All at the cost of massive, corruptly motivated 'irregular and fruitless and wasteful expenditure' of public revenue, prohibited by section 38(1)(c)(ii) of the Public Finance Management Act 1 of 1999.

And all in a determined bid to suppress (further) documentary evidence of (i) gross maladministration involving millions of rands and directly affecting service delivery; (ii) the wholesale breakdown of the rule of law and due process at LASA, involving, inter alia, the routine illegal flouting of LASA's internal regulations by Board chairperson Mlambo JP and national management executives; and (iii) pervasive systemic corruption in the conduct of LASA's recruitment operations.



INTRODUCTION AND REASON FOR PAIA AUDIT OF LASA

1. This is a special report to the National Assembly made under section 84 of the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act'), pursuant to the performance of a comprehensive PAIA audit of LASA, interrogating its compliance with the Act and its reports and claims in this regard since 2010.
2. The audit was conducted by the Commission under its powers imposed by section 83(3)(b) of PAIA 'to monitor the implementation of this Act', and by section 83(3)(i) to 'inquire into any matter ... connected with the objects of this Act'.
3. The Commission's decision to audit LASA for PAIA compliance was occasioned by repeated complaints made to it and to the Public Protector by a record requester, Adv Anthony Brink, charging inter alia that since 2010 LASA has:
 - repeatedly and persistently unlawfully refused him access to its business records, duly requested under the Act, in repeated violation of his fundamental right to information guaranteed by section 32(1)(a) of the Bill of Rights in the Constitution;
 - repeatedly concealed from the Commission its illegal suppression of requested information by falsely reporting to it under section 32 of PAIA, for the ultimate misinformation of the National Assembly via the Commission's annual PAIA section 84 reports, thus concealing from the National Assembly its unlawful failures to comply with the Act and preventing it from carrying out its constitutional oversight function and holding the responsible officers to account;
 - further concealed its repeated illegal denials of access to its records by way of a deliberately false and misleading 'Confidential Report' signed and submitted by LASA Board chairperson Dunstan Mlambo JP to the Minister of Justice, and later, in 'updated' form, to the chairperson of the Justice Portfolio Committee in the National Assembly, to pervert separate, independent enquiries they had instituted inter alia into Brink's complaint that LASA information officer Vidhu Vedalankar had repeatedly illegally refused him access to its records;
 - repeatedly falsely alleged due compliance with PAIA in pleadings and on affidavit in legal proceedings to mislead and defraud judicial officers;
 - continued illegally refusing his further PAIA requests, despite the Commission's repeated remedial interventions;
 - continued concealing these further illegal refusals from the National Assembly by falsely reporting to the Commission under section 32 of PAIA – five times in all to date;

- opposed on wholly spurious grounds five applications to court under section 78 of the Act to compel the delivery of duly requested records – only to capitulate at court on the day of trial of all his cases, reverse all its manifestly unlawful refusals, abandon all its obviously idle defences, and finally undertake, after years of legally unjustifiable deliberate delay, to furnish him with copies of all requested records or certify on oath any that do not exist; and in this manner abused the judicial process to obstruct his access to duly requested documents and to frustrate his exercise of his fundamental right to information; and,
- then, on the due date for performance under its settlement agreement handed into court, breached it in multiple critical respects, inter alia by continuing to silently withhold and expressly refuse duly requested documents that it had undertaken to deliver, and by filing grossly defective, non-compliant, incomplete and internally contradictory section 23 affidavits, and refusing to remedy these breaches enumerated in a notice of breach and demand for full and proper compliance, and two further demands for full and proper compliance, thereby continuing to unlawfully fail to comply with PAIA, as it had undertaken to do at legal gun-point in court, and continuing to violate his fundamental right to information held by the state, entrenched by section 32(i)(a) of the Constitution.

4. In its PAIA section 84 report for 2010/11 presented to the Justice Portfolio Committee of the National Assembly in October 2011, the Commission recorded that ‘non-compliance of public bodies with Section 32 is ... often the basis for an audit of a particular public body’. In other words, where a public body has been found to have falsely reported to the Commission under section 32 of PAIA, such ‘malicious compliance’ with the section (as the Commission describes it) will frequently trigger an audit for substantive compliance with the Act.

5. Satisfied that LASA’s refusals of Brink’s first three PAIA requests in 2010 and 2011 were unjustified and unlawful, and directly on account of this, the Commission held a special PAIA training workshop for its head office legal staff in October 2011, conducted under its power vested by section 83(3)(e) of the Act to ‘train information officers and deputy information officers of public bodies’, and specifically to instruct them on how to lawfully respond to PAIA requests made under section 18 and how to properly report the handling of such requests to the Commission under section 32.

6. In 2012, after investigating Brink’s complaints about this, the Commission found that LASA’s section 32 reports for 2010/11 and 2011/12 indeed failed to fully and

properly detail its refusals of his PAIA requests in the prescribed manner – the first report was defective, the second silent – thereby obscuring and concealing from the National Assembly the unlawfulness of LASA’s refusals of access to its records.

7. Called upon in August 2012 to file an amended report for 2011/12, to include its refusals on 8 April 2011 of Brink’s PAIA requests made in the previous reporting cycle, LASA objected to the Commission’s demand on spurious grounds and failed to comply with it, leaving its illegal refusals of Brink’s PAIA requests unreported.

8. Dissatisfied with LASA’s wilful non-cooperation, the Commission responded by notifying it of its intention to conduct a PAIA compliance audit.

9. In its section 84 report to the National Assembly for 2011/12 presented in October 2012, the Commission duly reported LASA to the National Assembly for its repeated non-compliance with its reporting obligations under section 32, and notified the National Assembly of its intention to conduct a full audit of LASA for PAIA compliance.

10. Repeatedly taxed by two members of the Justice Portfolio Committee on 9 October 2012 about the Commission’s negative PAIA report on LASA, CEO and information officer Vedalankar falsely repudiated the report as ‘untrue’ and made other untruthful and obfuscatory statements to falsely discredit it and maintain the pretence that LASA had duly complied with PAIA in handling Brink’s record requests, to which she unambiguously alluded.

11. In January 2013, the Commission conducted a preliminary probe of LASA’s performance under PAIA by way of a standard-form audit questionnaire, providing for LASA to self-report any PAIA compliance problems. None were declared.

12. In January 2016, the Commission notified information officer Vedalankar that the contents of LASA’s PAIA manual were substantially inconsistent with PAIA on several scores and that it contained false and seriously misleading information, including incompetent and unlawful internal appeal provisions not provided by PAIA for such public bodies as defined by section 1 of the Act. Despite this notice, to date Vedalankar has taken no action to amend LASA’s false and misleading PAIA manual to bring its provisions into conformity with PAIA. Moreover, the hyperlink to the PAIA manual on LASA’s website calls up a red malware hazard notice warning viewers not to proceed, and that they risk infection with malware if they do, thus hindering access to it. Brink’s information about this to Vedalankar and



two other responsible executives on 22 March 2016 was ignored, and to date the problem persists.

13. Despite the Commission's several interventions, and as described in Brink's further complaints to the Commission and to the Public Protector, LASA:

- continued illegally refusing his further PAIA requests made in October 2013, November 2014 and March 2015 on the same spurious grounds as before, including spurious grounds identified as incompetent and unlawful at the Commission's PAIA training workshop in October 2011 – until 11 February 2016 when, facing a calamitous judgment against it and enormous reputational damage, LASA capitulated at court before the argument of Brink's applications for declaratory orders that LASA had violated his fundamental rights and for orders compelling its delivery of the requested records that had illegally been refused, and undertook to surrender all requested documents or certify any that do not exist – only to renege on its agreement handed into court, and to continue silently withholding or expressly suppressing duly requested records that it had undertaken to hand over;
- continued concealing the unlawfulness of its refusals of Brink's PAIA requests from the Commission and from the National Assembly with more false and misleading section 32 reports for 2013/14, 2014/15 and 2015/16 (in total, five false and defective reports to the Commission since 2010/11), and concealing Brink's applications to court to compel LASA's compliance with PAIA – the first three falsely reported as '0', the next two disingenuously reported in such a way as to conceal that LASA had conceded them at court before argument;
- failed to amend its false and misleading PAIA manual, most importantly its incompetent and unlawful internal appeal provisions, and failed to remedy the malware infection problem hindering access to the manual online; and,
- failed to comply with the Act and acted grossly at odds with it in several other respects, described below.

14. Hence the Commission's decision to subject LASA to a full PAIA audit, as undertaken to the National Assembly in its section 84 report for 2011/12, and to report its findings to enable it to exercise its constitutional oversight powers over LASA on the basis of information LASA has hitherto dishonestly concealed from it, and to take appropriate action including imposing disciplinary sanctions against LASA Board chairperson Mlambo JP, Chief Executive Officer and information officer Vedalankar, National Operations Executive and deputy information officer Adv Nair, Corporate Services Executive attorney Thembele Mtati and other officers

mentioned herein who the Commission finds have gravely misconducted themselves in this matter.¹

¹ All supporting documents referenced in this report, contained in Bundles 1–4, are accessible online at <http://goo.gl/28gKRu>. {As at mid-September 2016, Bundles 3 and 4 are still being assembled. For copies of any documents in these bundles urgently required, email [anthonybrink.sa \(at\) gmail.com](mailto:anthonybrink.sa@gmail.com).}

Bundles 3 and 4 contain documents obtained and generated subsequent to Brink's action in the Durban Labour Court tried in mid-2013, in which Brink claimed his instatement to LASA's Senior Litigator post at Pietermaritzburg for which he had been unanimously recommended by a duly constituted selection panel, following his interview for the post in November 2009 along with other shortlisted applicants. Brink's founded his claim on covert unfair discrimination, seemingly the most probable reason on the available information at the time. The judge was unpersuaded, and the claim failed – correctly, albeit for the wrong reasons, as now appears from recently unearthed facts which LASA had sedulously suppressed.

(Before all the papers were in and the matter was ripe for decision, Brink's petition for leave to appeal was prematurely dismissed after being perverted by an anonymous 'memorandum' slipped under the counter to the Judge President (it is unstamped by the registrar), defaming Brink and lying about his case with the object of improperly influencing the court against him to prejudice the decision of his petition. Fortunately for Brink, the document was inadvertently left in the court file (Bundle 3, ...), and the matter – defeating the ends of justice – will shortly be in the hands of the Judicial Services Commission. In its enquiry as to who drew and delivered the 'memorandum' to the current Judge President of the Labour and Labour Appeal Courts to improperly influence him, the JSC will undoubtedly be considering who had the power, influence, and professional connections to achieve this, and who was especially concerned that Brink's petition should fail. Similar fact evidence (evidence of a characteristic modus operandi) described in this report may assist the JSC in its enquiry.)

After five months of peculiar silence following Brink's interview, then stonewalling and palpably dishonest evasion of his enquiries about the outcome of the selection process, then mute refusal of his first PAIA request probing the reason his recruitment had been cancelled, then express refusal of it on indefensible grounds later abandoned, numerous totally different reasons for this were given to Brink, to LASA's Board, to the Commission, to the Minister, to the Portfolio Committee, to the Labour Court, to the Labour Appeal Court, and to the Eshowe Magistrate's Court.

After Brink categorically exposed one of the false excuses given by LASA Board chairperson Mlambo JP to the Minister and to the Portfolio Committee as a lie, it was quietly dropped; and when Brink again fingered this lie that Mlambo JP told the Minister and the Portfolio Committee, it was expressly and insistently retracted as 'an error', 'palpably an error'. (Like calling a flat tyre excuse for coming late to court 'an error', 'palpably an error', after being exposed by the judge as an outright lie.)

Another reason advanced to Brink, as well as to the Minister and to the Portfolio Committee, also exposed as a lie by LASA's business records, which did not support and indeed contradicted it, was also dropped when explaining the cancellation of the recruitment to the Board (totally different reasons were given to it), but was persisted with at trial, only to be radically contradicted by LASA's single witness in his evidence.

All these wildly different, radically contradictory, shifting and changing excuses, all unsupported and/or contradicted by the documentary record, for not appointing Brink to the top professional post for which he was duly recommended are catalogued, with references, in the schedule entitled 'ALL THE DIFFERENT STORIES' (Bundle 3, ...).

After first unlawfully refusing Brink access to the selection panel's full and unredacted

HISTORY AND FINDINGS

It's only when people have things they are not proud of that they try to hide things.²

Ela Gandhi, LASA Board member

15. On 30 August 2010,³ Brink delivered a PAIA request⁴ to LASA information officer Vidhu Vedalankar, seeking access to 51 specified records. Like all subsequent ones, his request duly complied with the formalities prescribed by

recommendation report, and then opposing his application to court to disgorge it, LASA ultimately abandoned its meritless defences and surrendered the report on 15 April 2016 (Bundle 3 ...).

Six-and-a-half years after the silent, unauthorized, off-the-record abortion of Brink's appointment in November 2009, under cover of a false budgetary insufficiency excuse, and the unauthorized, off-the-record, permanent freezing of recruitment to the critical post (in contravention of the Public Finance Management Act, proscribing unauthorized diversion of budgeted revenue: the post is budgeted and fully funded by vote of the National Assembly year after year), the complete, unredacted recommendation report finally revealed that one of the shortlisted applicants for the post, beaten out by Brink at the interviews, and in fact eliminated by the selection panel for not meeting the qualifying criteria, was Mlambo JP's long-time judicial colleague Mzochitwayo Ngcamu, for '± six and a half years' an acting judge of the Labour Court headed by Mlambo JP at the time.

Mlambo JP's peculiar and egregious misconduct in the matter, detailed in this report, following the irregular, unauthorised off-the-record, unlawful abortion of Brink's appointment, and the repeated, determined obstruction of his access to LASA's records as he was testing the excuses given him for this, finally becomes comprehensible. (When the matter returns to court, Brink will present newly sourced evidence of Mlambo JP's history of job-fixing for his friends: nepotism and cronyism.)

Having regard to LASA's Code on Recruitment and its Approval Framework, recruitment operations are the preserve of executive management – with the exception of the CEO and NOE, whose appointments require Board approval. It is common cause, however, that Mlambo JP, a *non-executive* director of LASA, has – ultra vires and illegally – intruded himself in LASA's recruitment operations, inter alia, by (a) conducting further interviews of candidates duly recommended for Senior Litigator posts by duly constituted selection panels, (b) making final approval decisions regarding their appointment, and (c) rejecting three recommended candidates – all without the authority to do any of this under the said regulatory instruments, and in flagrant breach of the rule of law and due process. In at least one case, a Senior Litigator candidate duly recommended by a selection panel was unlawfully passed over, and a rejected candidate unlawfully appointed instead. In another case, involving the same rejected but nonetheless appointed candidate (who sought a transfer from his post to another equivalent post closer to home) the selection process was a sham, with no proper advertising of the top-level post in the print media (Bundle 2, 1021, paragraph 15) and no properly constituted selection panel convened to conduct the interviews, with only two lawyers on the panel and a non-lawyer also scoring the candidates on their professional acumen (Bundle 2, 994). The systemic, pervasive corruption of recruitment operations at LASA, at all levels, will be addressed in Brink's draft report in preparation for the Public Protector, the Minister, and the Portfolio Committee: 'ROTTEN TO THE CORE: RECRUITMENT CORRUPTION AT LEGAL AID SOUTH AFRICA'.

² Bundle 3, {interview in the *Mercury*, 23 November 2011}

³ Bundle 1, 69.

⁴ Bundle 1, 53–68.

section 18. As LASA had not yet published its PAIA manual on its website to advise requesters of the request fee prescribed by section 22, Brink tendered to pay whatever the fee might be upon being informed of it.⁵

16. Section 25 of PAIA afforded Vedalankar 30 calendar days⁶ within which to respond to the request. She neglected to do so by the end of this period, so section 27 deemed her silence a refusal.

17. Brink thereupon telephoned to seek the Commission's support under section 83(3)(c) of the Act, which provides that it may, 'on request, assist any person wishing to exercise a right contemplated in this Act'.

18. Then PAIA Unit director Chantal Kisoan agreed to intercede, and promptly obtained LASA Chief Legal Executive⁷ Patrick Hundermark's assurance that Brink would have a response to his request by 20 October 2010.⁸

19. On 18 October 2010, Vedalankar⁹ responded to Brink's PAIA request by now expressly refusing it in toto. Her reasons for doing so were entirely spurious and unlawful, and as will appear below were later implicitly abandoned and replaced with other justifications, themselves later abandoned.

20. Vedalankar's first justification for refusing Brink access to the records he requested was:¹⁰

The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v*

⁵ Bundle 1, 52.

⁶ Per section 4 of the Interpretation Act 33 of 1957, prescribing the computation of days prescribed in a statute.

⁷ Then 'Legal Development Executive'.

⁸ Bundle 3, {the email}

⁹ Under oath at the trial of Brink's labour claim, National Operations Executive Brian Nair denied having done so (Bundle 3, {transcript}), but repeated unusual idiosyncratic and syntactically incoherent stylistic indications in the letter – his unusual characteristic sentence-opening expression 'Noting ...', which he admitted as his own – suggest that he ghost-wrote or participated in writing it (Bundle 3, {transcript}) As to the veracity of Nair's denial, several other denials and claims under oath were later shown to have been perjured; see *infra*. In paragraph 57 of his judgment, the judge duly found that Brink had shown that on 'a number' of occasions Nair had been 'not generous with the truth'. That is, Nair repeatedly perjured himself, having regard to the oath he took 'to tell ... the whole truth', and not to deceptively conceal any of the true facts from court.

¹⁰ Bundle 1, 101, numbered paragraphs 1 and 2.

Superintendent General: Department of Education & Culture, Kwazulu-Natal and Another (D38/08) [2008] ZALC 18, is as follows:^[11]

- a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*^[12]

In considering your request for information we were guided by this principle, together with Section 32 of the Constitution and the relevant provisions of the PAIA.

21. In truth and in fact, and contrary to this absolutely false, fake, manufactured quotation from the cited judgment, set in an italicized and indented block-quote paragraph to deceptively signify a direct quotation from it when it was not, Pillay J stated precisely the opposite:

Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the exercise or protection of any rights.

22. Pillay J's trite restatement of South African constitutional information law in relation to public body records accorded with that of the Supreme Court of Appeal, two years earlier, in *Mittalsteel SA Ltd v Hlatshwayo* [2006] SCA 94 (RSA):

The issue before us is ... whether the appellant at the relevant time and in creating the requested documents was a “public body” as that term is to be understood in PAIA. If it was then the respondent is entitled to the documents requested by it in terms of s 11 of PAIA. The section is headed “Right of access to records of public bodies”. Subsection 11(1) provides that a “requester *must* be given access to a record of a public body if” (emphasis added) [in the judgment] (a) the requester complies with all the procedural requirements of the Act and (b) access to the record is not refused in terms of any ground set out in the provisions of PAIA dealing with the records of public bodies. None of these provisions is applicable to the respondent's request, and compliance with procedural requirements is not in issue.

¹¹ The phrase 'is as follows' is italicized in the original.

¹² There is no paragraph 'b'.

23. Vedalankar's second justification for refusing Brink's request was an incoherent jumble of reasons,¹³ based on her enumeration of sections 62 to 70¹⁴ of PAIA – quite irrelevantly, since these apply to private and not public bodies:

Your request for information was considered against this background and it was in terms whereof that it was decided that (i) your request for information goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above.

24. It is elementary that a request under PAIA for access to public body records need not pertain to the requester's 'personal circumstances'.

25. And as is plain from the list of documents¹⁵ Brink had requested, he was not seeking 'information on third parties' at all, even less within the meaning of section 34, i.e. 'the unreasonable disclosure of personal information about a third party'; he was duly seeking access to LASA's business records to which he was entitled under section 32(1)(a) of the Constitution:

Everyone has the right of access to ... any information held by the state.

26. Vedalankar's odd phrase 'information on third parties' is not found in PAIA.

27. In twice using this peculiar phrase to justify refusing Brink's entire records request, including the selection panel's recommendation he wanted,¹⁶ it seems clear that Vedalankar was pertinently alluding to the critically material 'information on third parties' contained in the recommendation report¹⁷ that one of Brink's rivals for the top professional post¹⁸ for which Brink had been selected and recommended,¹⁹ who was also interviewed but rejected,²⁰ was a former long-time acting judge of the Labour Court²¹ of which LASA chairperson Mlambo JP was

¹³ Bundle 1, 102–3, paragraph 5.

¹⁴ Bundle 1, 102, paragraph 3.

¹⁵ Bundle 1, 59–68.

¹⁶ Bundle 1, 62, items 1–3.

¹⁷ This appears from a full, unredacted copy of the report, finally given Brink in April 2016, after protracted unlawful resistance and only by agreement at court in a surrender treaty signed at the point of an imminent judgment to compel; see further below.

¹⁸ Bundle 1, 246.

¹⁹ Ibid.

²⁰ Bundle 1, 245.

²¹ Bundle 3, {put up his appointments to LC when delivered under PAIA by the DIO of the Dept Justice}



Judge President at the time.²² More especially because none of the other records Brink requested contained ‘information on third parties’.²³

28. As described below, after first being mutely refused in September then expressly refused in October 2010, the selection panel’s recommendation report was supplied under Commission pressure in January 2011, with this critically material ‘information on third parties’ blacked out.²⁴

29. Vedalankar’s concealment from Brink of the fact that his rival for the post was Mlambo JP’s long-time judicial colleague – at the time Brink was probing with PAIA the true reason for the abortion of his recruitment – first by suppressing the entire recommendation report in October 2010, then by redacting it before it was handed over under Commission pressure in January 2011, was unjustified and illegal.

30. The potently relevant information in the recommendation report that Ngcamu had served with Mlambo JP as a fellow judge in the Labour Court for about six-and-a-half years, and was a long-time judicial colleague of LASA’s Board chairperson, was not ‘personal information about a third party’ hit by section 34 of PAIA, whose ‘disclosure’ would be ‘unreasonable’. LASA implicitly conceded this by eventually surrendering the complete unredacted report to Brink in April 2016 – but only after it had been illegally refused again, and Brink had had to sue for it and haul LASA into court on 11 February 2016, as more fully described below.

31. Vedalankar concluded her refusal (in October 2010) to allow Brink access to the records he had requested²⁵ by reverting to her first reason:

the detailed information requested in your letter, other than the information and explanation provided above,^[26] is declined as it is not relevant to you exercising any right you may have in law.

²² Bundle 3, {put up his appointments to LC, LAC and Gauteng HC when delivered under PAIA by the Department}. See further, footnote 1. LASA chairperson Mlambo JP was still Judge President of the Labour Court when Brink sued LASA in that court for his instatement to the Pietermaritzburg Senior Litigator post. That is, he ran the court in which Brink was constrained to seek justice, and in which court Brink had impeached his misconduct in his statement of claim: an appalling conflict of interest in the circumstances.

²³ Bundle 1, 59–68.

²⁴ Bundle 1, 246.

²⁵ Bundle 1, 104, paragraph 8.

²⁶ Vedalankar’s ‘information and explanation provided above’ comprised her several audacious lies, refuted by records later disgorged, inter alia:

32. As noted above, a request for access to public body records need not be 'relevant to ... exercising any right ... in law', and Vedalankar's refusal of Brink's request on the basis of this completely false 'test to be applied to a request for information in

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- (i) that Brink had not alone been selected for the post for which he had applied (the very object of the interview process), but that he had been 'recommended together with other candidates' (Bundle 1, 104, paragraph 7.2); and Vedalankar repeated this lie in January 2011 (Bundle 1, 211, the last two lines of paragraph 3). The recommendation report later furnished in January 2011 refuted the lie: Brink and Mngadi were recommended for the Pietermaritzburg and Durban posts for which they had respectively applied, and no one else (Bundle 1, 244–8); quite the opposite, the unredacted report eventually surrendered in April 2016 reveals that the other candidates were entirely eliminated by the selection panel for not meeting the qualifying criteria (Bundle 3, ...);
 - (ii) that LASA lacked the budget to fill the post: 'Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise' (Bundle 1, 103, paragraph 6.7). In truth and in fact, the record shows that executive management concern arising in March 2010 about the delayed payment of additional budget for salary increases, and the recorded steps taken to address it, never had any bearing on Senior Litigator recruitment, or any other – to the contrary, in the first quarter April–June 2010 recruitment and new post creation soared – not until 31 July 2010 when, to spur the Department into paying (per Nair's evidence (Bundle 3, ...), it temporarily froze, with Board approval, recruitment to some entry-level public defender posts servicing the lower criminal courts; and in the event for just two months, as the uncertainty passed with the inclusion of this additional budget in the mid-term budget in October and payment in December: see Brink's heads of argument in LC D529/11, finely footnoted to the documentary record (<http://goo.gl/WAuLK6>); And,
 - (iii) that in light of this alleged 'cutting [of] our baseline budget by a significant amount' (Bundle 1, 103, paragraph 6.7) (in truth and in fact, and contrary to this lie, LASA's baseline budget substantially increased (Bundle 3, ...)), Nair had 'motivate[d] a change in the organizational structure, including the freezing of positions for discussion and finalization with the CEO' (Bundle 1, 103, paragraph 6.6). Indeed, on 15 July 2010 Nair motivated the freezing of positions, and they were '56 practitioner posts at JCs [Justice Centres] ... In terms of this cut, I have ensured that DC [district court] will not be lower than 80% coverage whilst RCs [regional courts] will not be lower than 90% coverage' (Bundle 1, 240). This was duly proposed to the Board (Bundle 1, 252–4) and duly approved (Bundle 1, 251). Contrary to Vedalankar's audacious lie to Brink that 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen (Bundle 103, 6.7), the freezing of recruitment to LASA's critical (its own word) Senior Litigator posts was never considered let alone implemented; to the contrary, in April 2010 LASA advertised on its website for applicants for its Mthatha Senior Litigator post (Bundle 1, 46) and briskly interviewed and recommended for it in May (Bundle 2, 994). LASA has repeatedly admitted that no record whatsoever exists to support its story that it froze three Senior Litigator posts for want of budget, which story has chopped and changed over time: see 'ALL THE DIFFERENT STORIES' (Bundle 3, ...). LASA's Senior Litigator posts were then and have remained fully funded (Bundle 3, {annual budgets for SL posts}). Vedalankar's claim to Brink that he could not be appointed due to 'the effects of the recession' was a mellifluous lie. It had nothing to do with LASA's transient financial uncertainty in 2010, and the 'effects of the recession' excuse did not feature again in the case. Actually, despite the recession in 2008, LASA was so amply funded, that in 2009/10 its top management executives paid themselves, unprecedented, massive bonuses – on top of large salary increases – way in excess of nearly 30% annual bonuses that the National Assembly had already queried as inappropriate (Bundle 1, 152, paragraphs 204–14; and Bundle 2, 1003).



terms of the PAIA', which she falsely imputed to Pillay J in the Teachers Union case, was absolutely spurious and illegal.

33. In view of the Board's internal oversight responsibility to ensure statutory compliance by LASA's management executives, including their compliance with PAIA, in other words, the Board's fiduciary duty to ensure that in conducting LASA's operations its management executives comport themselves ethically and in conformity with the Constitution and the law,²⁷ Brink petitioned Board chairperson Dunstan Mlambo JP and other Board members on 30 November 2010²⁸ and over the next few days,²⁹ seeking their intervention and remediation of Vedalankar's illegal, unconstitutional refusal of his PAIA request, as plainly and incontestably demonstrated in paragraphs 17 to 43 of his petition.³⁰

34. It is relevant to mention here that section 4(1)(a) of the Legal Aid Act 22 of 1969, then in operation, required that LASA's Board include a judge – impliedly and in practice to chair it. Indeed, section 8(1) of the succeeding and current Legal Aid South Africa Act 39 of 2014 now explicitly prescribes:

The judge appointed in terms of section 6(1)(a) is the chairperson of the Board.

35. This is to say, LASA's top officer must be a person who has taken the judge's oath to 'uphold and protect the Constitution and the human rights entrenched in it'.³¹

36. The Legislature evidently intended by this unique qualifying requirement for the head of a public entity – that it be headed by a judge – that LASA's most senior public officer can be confidently relied on to always tell the truth and only the truth, and to take seriously the country's hard-won constitutional rights, the rule of law, and ethical conduct at LASA; to see to it that LASA's management executives respect the public's basic civil liberties guaranteed by the Constitution in the democratic era, obey the law, comply with LASA's internal regulations, and act honestly at all times; and himself/herself 'uphold and protect the Constitution and the human rights entrenched in it' as sworn to do, uphold the law, and always

²⁷ Bundle 1, 111–12, paragraphs 8–13.

²⁸ Bundle 1, 109ff.

²⁹ All by email attachment.

³⁰ Bundle 1, 113–19.

³¹ Bundle 3, {judge's oath}



communicate truthfully – and that he/she would be especially cognisant of section 195 in Chapter 10 of the Constitution, headed ‘Public Administration’:

195 Basic values and principles governing public administration

(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.

...

(f) Public administration must be accountable.

(g) Transparency must be fostered by providing the public with timely, accessible and accurate information.

(2) The above principles apply to –

...

(b) organs of state[.]

37. Mlambo JP was abroad when he received Brink’s petition by email attachment, and via the Board Secretary on 6 December 2010 conveyed his intention to respond to it on his return.³²

38. In breach of his said fiduciary obligation to LASA as chairperson of its Board, Mlambo JP did not act to remedy Brink’s extraordinarily serious complaint that in contravention of PAIA and in violation of his constitutional right to information Vedalankar had illegally refused him access to LASA’s business records specified in his request that he had duly made under the Act.³³

39. Instead, after his ‘interaction with’³⁴ Vedalankar about Brink’s petition to him and the Board about, inter alia, her illegal total refusal to comply with his PAIA request, Mlambo JP connived with Vedalankar, the very subject of Brink’s petition and complaint, by permitting her to forge a letter responding to Brink’s petition on her own office computer³⁵ on 15 December 2010 and, ‘with his knowledge and consent’,³⁶ to paste a scanned image of his signature below it to dissemble to Brink

³² Bundle 1, 168.

³³ And his complaint that she had told an elaborate lie, already evident from the then available information, about why his appointment had been aborted.

³⁴ Bundle 3, {pre-trial conference Bundle 1, LASA’s answer to Brink’s agenda, page 61, paragraph 69.2}

³⁵ Bundle 1, 187: ‘Author’ properties of the PDF of the letter sent Brink: ‘VidhuV’.

³⁶ Bundle 3, {pre-trial conference Bundle 1, LASA’s answer to Brink’s agenda, page 61, paragraph 69.2}



that he had written it.³⁷ Vedalankar emailed Mlambo JP the PDF of the letter she had thus prepared for him, and he emailed it on to Brink two weeks later on the 30th.³⁸

40. In two sentences the letter dismissed Brink's 57-page, 254-paragraph petition, which had commenced with a closely detailed, unanswerable complaint about Vedalankar's illegal refusal of his PAIA request:

I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator post in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as alleged or at all.³⁹

41. In sum, in the words of Chief Justice Mogoeng delivering the Constitutional Court's unanimous judgment in the Nkandla case,⁴⁰ Mlambo JP 'failed to uphold, defend and respect the Constitution'⁴¹ when as LASA chairperson his attention was pertinently called to Vedalankar's illegal and indeed dishonest refusal of Brink's PAIA requests for access to LASA's records, and her violation of his constitutional right to information.

42. Obviously as one of South Africa's most senior judges, no defence that 'He might have been following wrong legal advice and therefore acting in good faith' (per the Nkandla judgment)⁴² is available to Mlambo JP to raise against the charge that he disgracefully 'failed to uphold, defend and respect the Constitution'. In other words, it is not open to him to answer that he was too ignorant to know what he was doing when conniving in Vedalankar's illegal obstruction of Brink's request for access to LASA's records.

43. More especially because LASA's Code of Ethics and Conduct – 'which applies equally to all employees, Board Members, and other representatives of [LASA]',⁴³ and requires all of them to 'act honestly and in good faith at all times and report

³⁷ Bundle 3, {ptc agenda, page17, para 80; and response page15, para 69.2}.

³⁸ Bundle 1, 201, paragraph 27. The letter is wrongly dated 9 November, a date three weeks before Brink emailed his petition.

³⁹ Bundle 186. Mlambo JP knew full well that the financial excuse advanced by Vedalankar for not proceeding with Brink's appointment was a lie. In his petition Brink presented the then already available clear evidence of this; much more would later emerge.

⁴⁰ *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11

⁴¹ Paragraph 83 of the judgment.

⁴² *Ibid.*

⁴³ Bundle 2, 772, section 1.2.

any harmful activity they observe in the workplace',⁴⁴ also to 'support and assist the LEGAL AID BOARD to fulfil its commercial and ethical obligations and objectives as set out in this Code'⁴⁵ – requires that such Board members 'maintain knowledge of and comply with all applicable laws',⁴⁶ and 'ensure that their conduct cannot be interpreted as being in any way in contravention of applicable laws'⁴⁷ such as PAIA – concerning which: 'A prompt, courteous and accurate response should be made to all reasonable requests for information'.⁴⁸

44. Compounding his demonstrated contempt for sections 32 and 195 of the Constitution, Mlambo JP did not fail 'to uphold, defend and respect the Constitution' through mere passive dereliction and neglect of his obligation to do so. By conspiring with Vedalankar, the very subject of Brink's complaint, to forge a letter dismissing it, he actively 'failed to uphold, defend and respect the Constitution' in contempt of his oath of office in the manner of a corrupt judge conniving behind the scenes with an obviously guilty criminal accused facing an extraordinarily serious charge, batting aside the complaint's clearly substantiated case, and allowing the accused with whom he has long been a friendly colleague, and who he well knows is guilty, to write a brief judgment for him, falsely pretending he has given the matter his careful attention and acquitting him.

45. Concerning Vedalankar's manifestly illegal refusal of Brink's PAIA requests on the basis of a fraudulent misquotation from a reported judgment and other utterly spurious grounds, all pertinently brought to his attention in paragraphs 17–43 of Brink's petition, Mlambo JP could not possibly have found in good faith that all was well and above board; that Vedalankar had acted lawfully; and that Brink's complaint about her violation of his fundamental right to information was unfounded. That is, Mlambo JP dismissed Brink's petition in bad faith, which is to say dishonestly.

46. In this manner Mlambo JP further contravened LASA's Code of Ethics and Conduct, which requires that 'All employees must ... act honestly and in good faith at all times'.⁴⁹ LASA 'will not condone any violation of the law or unethical business

⁴⁴ Bundle 2, 780, section 15.1.5.

⁴⁵ Bundle 2, 780, section 15.1.1.

⁴⁶ Bundle 2, 775, section 7.5.

⁴⁷ Bundle 2, 775, section 7.3.

⁴⁸ Bundle 2, 778, section 13.

⁴⁹ Bundle 2, 780, section 15.1.5.

dealing⁵⁰ such as putting words in a judge's mouth that she never spoke to fabricate a fake legal cover for illegally refusing a PAIA request in order to conceal from a recommended applicant for a top professional post in LASA, whose appointment has strangely silently stalled, that an unsuccessful applicant for the same post was a long-time colleague in the Labour Court with LASA's chairperson Mlambo JP, then Judge President of that court.

47. And since 'Compliance with the code by all employees is mandatory',⁵¹ no one is above the law at LASA, not even the Board chairperson, just because he is a senior judge.

48. Board members Jan Maree,⁵² Len Konar,⁵³ and Adv Pieter du Rand,⁵⁴ representing the Department of Justice and Constitutional Development (as the Department was then called), all acknowledged receipt of Brink's petition about Vedalankar's illegal refusal of his PAIA request and violation of his fundamental right to information.

49. Du Rand assured Brink that his petition 'will be taken up with the Secretary to the Board for further attention',⁵⁵ but dishonoured this undertaking and failed to see to it that the Board Secretary indeed tabled Brink's petition for discussion and resolution at the next Board meeting – because it never was.

50. No other Board member contacted by Brink even acknowledged receipt of his petition. Two of them, Ela Gandhi and Yusuf Vawda, a law professor, acted to close ranks against him, with Gandhi going as far as to falsely accuse Brink of attempted blackmail and defamation.⁵⁶

51. In view of Mlambo JP's connivance in Vedalankar's illegal blanket refusal of his PAIA request and in her violation of his fundamental right to information, by corruptly colluding with her in the dismissal of his petition in the manner described above, Brink again appealed to the Justice Department's Board representative

⁵⁰ Bundle 2, 774, section 7.2.

⁵¹ Bundle 2, 772, paragraph 1.2.

⁵² Bundle 1, 958.

⁵³ Bundle 3,

⁵⁴ Bundle 1, 735.

⁵⁵ Ibid.

⁵⁶ Bundle 1, 207–8.



du Rand on 10 January 2011, now directly, imploring him to see to Vedalankar's compliance with his PAIA request.⁵⁷ This time du Rand ignored Brink's appeal.

52. On 15 December 2010, Brink emailed Vedalankar a second PAIA request for access to several further documents substantiating the budgetary insufficiency excuse for the abortion of his appointment to the senior professional post for which he had been recommended,⁵⁸ which excuse Vedalankar had given him in her October letter totally refusing his first PAIA request.

53. By now, LASA's PAIA manual stipulating the prescribed request fee had been posted on its website, and Brink sent Vedalankar a cheque by post to cover the fee.⁵⁹

54. On 10 January 2011, Brink sought the Commission's support and assistance again.⁶⁰

55. On 24 January 2011, Brink petitioned Mlambo JP and the Board a second time about Vedalankar's illegal refusal of his first PAIA request.⁶¹

56. With the corrupt intention of cowing and inducing Brink to abandon his effort to vindicate his fundamental rights, Mlambo JP responded at 23h12 that night:⁶²

- by again dismissing Brink's repeated plea for the Board's intervention, by dissembling that 'I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view'. In truth and in fact, Mlambo knew full well from paragraphs 17–43 of Brink's first petition⁶³ that Vedalankar's reasons for refusing Brink's first PAIA request were unlawful and indefensible (and indeed, they were implicitly abandoned and replaced with other reasons four days

⁵⁷ Bundle 1, 190.

⁵⁸ In April 2010 Clark unambiguously implied that Brink had been recommended by suggesting he withdraw his application for the post (Bundle 1, 256); because had Brink been eliminated by the selection panel and another candidate chosen, he would not still have been in the running to withdraw. That Brink was indeed chosen was later positively confirmed by the selection panel's unanimous recommendation report, reluctantly provided under Commission pressure after first being refused, in January 2011, more than five months after Brink had requested it under PAIA.

⁵⁹ Bundle 2, 1041. The cheque was eventually posted back to Brink unrepresented.

⁶⁰ Bundle 1, 192. In the event, with time running out to launch his labour claim, Brink did not proceed with his then intended application to court to compel compliance with his PAIA requests, mentioned in his letter to Kisoona, but elected to pursue the withheld records via document discovery procedure after the close of pleadings in the Labour Court.

⁶¹ Bundle 1, 197ff.

⁶² Bundle 1, 209. As to Mlambo JP's reference to 'a friend of yours', namely Christopher Rawlins a retired accountant assisting Brink, Rawlins reported his engagement with the two strangely hostile Board members in question: Bundle 1, 207–8.

⁶³ Bundle 1, 113–19, paragraphs 17–43.



later),⁶⁴ and that contrary to his dissimulation otherwise, ‘how you [Brink] have been treated by Legal Aid SA’ was manifestly ‘untoward’. This is to say, it was not truly Mlambo JP’s ‘view’ that ‘I could find nothing untoward in how you have been treated by Legal Aid SA’, inter alia in its illegal violation of Brink’s constitutional right to information, and he was dishonestly misrepresenting his actual ‘view’ to shake Brink off, in continuing dereliction of his fiduciary responsibility to LASA as a public entity and breach of his judge’s oath;

- by falsely asserting that ‘the Board of Directors of Legal Aid SA is not the appropriate forum to raise your matter’ – part of which ‘matter’ was Vedalankar’s illegal refusal of Brink’s first PAIA request – because ‘the matter was handled at Executive Management level, being the level at which such matters are handled’. In truth and in fact, it was precisely the unlawful, unconstitutional conduct of ‘Executive Management’ that Mlambo JP and his Board were responsible for correcting;⁶⁵
- by ‘call[ing] on you [Brink] to desist from communicating with Board Members in this regard’. Mlambo JP’s demand was grossly irregular, because naturally unless alerted to Vedalankar’s unlawful and unconstitutional conduct, the Board would not be placed to intervene to remedy it – more especially because then Board Secretary Bee-Mari Schoeman, responsible for tabling matters of importance for the attention of the Board at its meetings, was unresponsive to Brink’s communications with her;⁶⁶
- by falsely and outrageously accusing Brink of impropriety, suggesting he was acting professionally disgracefully and potentially unlawfully, in duly pressing for Board’s intervention inter alia in Vedalankar’s violation of his fundamental right to information: ‘Your conduct is unbecoming and borders on harassment.’ In truth and in fact, Brink’s conduct in pursuit of his rights was impeccably proper, whereas Mlambo JP’s false charge fitted his own deplorable misconduct; and,
- by telling Brink, ‘I have, in turn, requested Board Members to ignore all communications from you and/or on your behalf. I trust you find this in order.’

57. Testing the truth of Mlambo JP’s claim to have requested the other Board members to ignore his petitions inter alia about Vedalankar’s illegal refusal of his PAIA requests, which is to say his alleged request to them that they should not exercise their collective responsibility to oversee and ensure statutory compliance

⁶⁴ Bundle 1, 217–22.

⁶⁵ Bundle 3, {Board and Board Executive Committee charters}

⁶⁶ Bundle 1, 168 and 188.

by LASA's management executives, Brink requested the records of Mlambo JP's email communication that day with the other members of the Board, as alleged.⁶⁷

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58. Corporate Services Executive Thembile Mtati confirmed on oath: 'No such record exists'⁶⁸ – implicitly confirming that Mlambo JP lied to Brink about this, because obviously he would not have individually telephoned each and every one of the sixteen⁶⁹ other Board members that night when he could have sent a single email jointly addressed to all of them.

59. Even had Mlambo JP's lie to Brink been true, such a request to the rest of the Board to abdicate their collective oversight responsibility to ensure that Vedalankar responded lawfully to Brink's PAIA request would have been egregiously out of 'order'.

60. Besides his wilful dereliction of his fiduciary duty to LASA as a director of the Board to ensure that in conducting its business its management executives do not contravene LASA's Code of Ethics and Conduct, do not break the law, and do not violate the Constitution, Mlambo JP's failure to intervene in Vedalankar's violation of Brink's constitutional right to information, and his dissembling to Brink that he found nothing remiss in her unlawful suppression of LASA's records that he wished to examine, constituted a further, repeated deliberate failure by him to 'uphold and protect the Constitution and the human rights entrenched in it'.

61. Mlambo JP's repeated transparent dishonesty on display in dismissing Brink's second petition disclosed multiple contraventions of LASA's Code of Ethics and Conduct again, as quoted above.

62. On 28 January 2011, Vedalankar responded to Brink's second PAIA request:

- by unlawfully refusing it in toto, on the false and untruthful basis that it was a mere repetition of the first;⁷⁰
- by revisiting his first PAIA request and refusing it again, now for a fresh set of factually and legally spurious reasons;⁷¹
- by rejecting his prescribed request fee,⁷² and returning his cheque for it,⁷³ making unambiguously plain her absolute rejection and refusal of both his first and

⁶⁷ Bundle 3,

⁶⁸ Bundle 3,

⁶⁹ Bundle 1, 1043.

⁷⁰ The two lists of requested documents are plainly different: c.f. Bundle 1, 181ff and 351ff.

⁷¹ These are canvassed in Brink's first memorandum to the Commission, discussed *infra*.

⁷² Bundle 1, 224, paragraph 44.



second requests for access to LASA's public records, which he needed to verify or expose and refute the financial insufficiency story she had told him in October 2010 for the cancellation of his appointment to the post for which he had been selected;

- by reiterating her financial insufficiency excuse,⁷⁴ and putting up several documents claimed to support it (in fact they flatly refuted it),⁷⁵ four of which coincidentally more or less met certain of Brink's requests;
- by concealing from him a key record reflecting the Department's delayed payment on 15 December 2010 of LASA's OSD allocation for legal staff salary increases,⁷⁶ utterly negating her financial insufficiency excuse for not concluding his appointment;
- by attempting to put him off pursuing his fundamental right of access to the public records he had requested, like Mlambo JP did, by trying to intimidate him with a threat to sue him for defamation;⁷⁷ and,
- by concluding that she would not communicate with him any further.⁷⁸

63. Vedalankar copied this letter to Mlambo JP.⁷⁹ As a senior judge, sworn to 'uphold and protect the Constitution and the human rights entrenched in it', he did nothing about the very obvious illegality of Vedalankar's persistent refusals of Brink's PAIA requests in violation of his fundamental right to information,⁸⁰ in further continuing breach of his judge's oath, fiduciary obligation to LASA as a public entity, and ethical obligations under LASA's Code of Ethics and Conduct.

64. On 17 February 2011, Brink made a further appeal to the Commission to assist him access documents that LASA was determinedly illegally withholding from him.⁸¹

⁷³ In fact, Brink's cheque for the request fee was not returned with the letter, as stated at its conclusion, but later in August 2012: (Bundle 1, 1041; see PAIA folder for copies of PO tracking etc).

⁷⁴ As noted above, the budgetary insufficiency excuse was not supported, but actually contradicted, by the few documents Vedalankar put up 'To demonstrate' it; see documents referenced in following footnote.

⁷⁵ Bundle 1, 240; 252-4; and 251, paragraph 4.2.

⁷⁶ Bundle 2, 713. This critically material document surfaced during document discovery proceedings after Brink had sued in the Labour Court.

⁷⁷ Bundle 1, 212, paragraph 5.

⁷⁸ Bundle 1, 224, paragraph 44.

⁷⁹ Bundle 1, 957.

⁸⁰ Nor did Mlambo JP contradict the false explanation Vedalankar gave Brink for the abortion of his appointment, which he personally knew to be false from his direct knowledge of the true facts.

⁸¹ Bundle 1, 262.



65. On 25 February 2011, the day before its next meeting, Brink petitioned Mlambo JP and the Board a third time about Vedalankar's illegal refusals of his first and now second PAIA requests.⁸²

66. Brink's third petition to the Board went completely ignored. None of its members acted to remedy Vedalankar's violation of his fundamental right to information, about which he had repeatedly complained. All looked the other way.

67. Brink copied⁸³ his third petition both to LASA's Executive Authority, the Minister of Justice and Constitutional Development, and to the chairperson of the Parliamentary Portfolio Committee for the said Department in the National Assembly – charged by section 55(2)(b)(ii) of the Constitution with oversight of LASA as a public entity.

68. Unlike LASA chairperson Mlambo JP and the rest of the Board, the Minister and the chairperson of the Portfolio Committee did not just ignore Brink's third petition concerning Vedalankar's repeated and persistent illegal refusals to allow him access to LASA's public business records and her violation of his constitutional right to information. Both the Minister⁸⁴ and the chairperson of the Portfolio Committee⁸⁵ took Brink's fundamental rights violation complaints seriously, and instituted separate and independent enquiries into them.

69. Brink chanced to learn of these ministerial and parliamentary enquiries from the chairperson of the Portfolio Committee several months later, when in June 2011, after Brink had approached him in a different connection, the chairperson furnished him with copies of:

- his letter to Mlambo JP calling on him, the Board, and Vedalankar to respond to Brink's extraordinarily serious complaints;⁸⁶
- an 'updated'⁸⁷ version of the report to the Minister that he had received from Mlambo JP;⁸⁸
- Mlambo JP's covering letter for the report, in which he quoted his email to Brink on 24 January 2011⁸⁹ accusing him of serious misconduct in prosecuting his complaint;⁹⁰ and,

⁸² Bundle 1, 310ff.

⁸³ Bundle 1, 314. Both reacted; see next paragraph.

⁸⁴ Bundle 3, {Minister's demand PAIA'd, but yet to be delivered}

⁸⁵ Bundle 1, 503.

⁸⁶ Bundle 1, 503.

⁸⁷ Bundle 1, 507, postscript.

⁸⁸ Bundle 1, 505–7.



- his decision in light of its contents (canvassed below) to close the matter.⁹¹

70. To put down the Minister's enquiry and to avoid his further investigation of Brink's complaints about the violation of his basic civil rights to information and equal employment opportunity, and the already clear indications that he had been given a false excuse for the abortion of his appointment, Mlambo JP asked Vedalankar⁹² to provide him with a report refuting Brink's complaints – complaints that Mlambo JP had himself already twice batted aside in his correspondence with Brink.

71. Vedalankar instructed Nair to write the report for Mlambo JP, and Nair ghost-wrote it as told.⁹³ He then passed it to Vedalankar,⁹⁴ to forward to Mlambo JP to sign and submit to the Minister.

72. Although there was nothing secret about the contents of the report in any proper sense, it was marked '*Confidential*' in the header of every page.⁹⁵ LASA did not provide a copy of this report to Brink about him, and he was unaware of it at the time. That is, the report was kept confidential from Brink. As said, Brink only chanced to learn of the report some months later.

73. LASA's lead in-house attorney Mtati received an electronic copy of the report to the Minister in Microsoft Word,⁹⁶ which is to say, he was in on it.

74. On 1 March 2011, Vedalankar delegated Nair⁹⁷ and COO Jerry Makokoane⁹⁸ as deputy information officers.

⁸⁹ Bundle 1, 209.

⁹⁰ Bundle 1, 504.

⁹¹ Bundle 1, 502.

⁹² Bundle 3, {record of Nair testifying he gave it to Vedalankar}

⁹³ Bundle 1, 1015. At trial, Nair eventually admitted this. On his instructions, his authorship of the report was initially falsely and dishonestly disputed persistently during Brink's cross-examination at the trial of his labour claim (Bundle 3, {record of LASA counsel's cross-examination of Brink on the point}); but cornered by the electronic finger-print evidence of his name, 'Briann', found in the 'Author' properties of the PDF of the report (Bundle 2, 1015) emailed to Brink just before the trial, Nair finally admitted the truth of the matter in the witness stand, namely that that he had indeed ghost-written the report (Bundle 3, {record of Nair's admission}) .

⁹⁴ Bundle 3, {record of Nair's evidence}

⁹⁵ Bundle 1, 505–7.

⁹⁶ At the second pre-trial conference at court in June 2011, shortly before the trial of his labour claim a couple of weeks later, Brink noticed a copy of the report to the Minister in a folder on Mtati's notebook computer as they were searching together for a different document; and as requested, Mtati emailed it to him after the conference.

75. To facilitate the Commission's mediation in the matter, following his request for assistance on 17 February 2011, on 3 March Brink delivered a memorandum to the Commission's PAIA Unit, demonstrating the irrelevance and unlawfulness of Vedalankar's reasons for refusing his first two PAIA requests.⁹⁹

76. On 9 March 2011, Brink filed a third PAIA request with LASA for access to a few further records.¹⁰⁰

77. On the same day, 9 March 2011, Mlambo JP signed the 'Confidential Report to the Honourable Minister of Justice and Constitutional Development Re: Adv Anthony Brink'¹⁰¹ that Nair had ghost-written for him, and which Nair had given Vedalankar to pass on to him to sign and deliver to pervert the Minister's enquiry.

78. Mlambo JP neglected to respond immediately to the enquiry instituted by the chairperson of the Portfolio Committee, and, as mentioned below, only did so several months later.¹⁰²

79. LASA did not favour Brink with a copy of the 'Confidential Report ... Re: Adv Anthony Brink' delivered to the Minister at the time, and it was submitted without his knowledge.¹⁰³

80. Concerning Brink's complaint about Vedalankar's repeated and persistent illegal refusals of his PAIA requests and thus her violation of his fundamental right to information, the report stated unctuously and dishonestly:¹⁰⁴

We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst

⁹⁷ Bundle 1, 369. LASA's PAIA manual amended in 2010 falsely alleged Nair to be a deputy information officer before he was actually delegated as such (Bundle 3, ...).

⁹⁸ Bundle 3, {his recently, eventually, produced delegation}

⁹⁹ Bundle 1, 315.

¹⁰⁰ Bundle 1, 344ff.

¹⁰¹ Bundle 2, 1012.

¹⁰² Bundle 1, 504.

¹⁰³ As said above, Brink only obtained the original report to the Minister in March 2011 from Mtati in July 2013 (after spotting it in a folder on his notebook computer at the second pre-trial conference at court, while they were searching it for a different document), having received a copy of the 'updated' version of the report from the chairperson of the Portfolio Committee in June 2011.

¹⁰⁴ Bundle 2, 1012ff.

Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. ... Notwithstanding the insulting and malicious tone of most of Adv Brink's correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. ... As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

81. The report was self-evidently calculated to defraud the Minister by inducing him to believe incorrectly that:

- Brink's complaints about Vedalankar's illegal refusals of his PAIA requests were baseless;
- Vedalankar had duly complied with his PAIA requests and had refused him nothing;
- a few outstanding records that Vedalankar had agreed to provide him were still being gathered for delivery to him;
- Vedalankar had duly furnished him with all the documents Brink needed to see for himself that the financial explanation she had given for the abortion of his appointment was true;
- Brink was evidently mentally perturbed for not accepting Vedalankar's financial insufficiency explanation for the abortion of his appointment, and for complaining that the documents that she had put up, and others he had sourced, did not support and contradicted her claim that LASA's three remaining vacant critical Senior Litigator posts had been frozen indefinitely for want of sufficient budget from the Department to fill them;
- he had asked for and was wasting LASA's time in seeking access to irrelevant documents that had no bearing on the abortion of his appointment;
- his correspondence with LASA's executive management and Board was 'insulting and malicious' and his 'conduct' in approaching them 'invasive' – which is to say, in repeatedly entreating the Board to see to it that Vedalankar comply with PAIA by granting him access to the records he had duly requested, thereby respecting his fundamental right to information held by the state guaranteed by section



32(1)(a) in the Bill of Rights of the Constitution, Brink had grievously misconducted himself and was continuing to do so; and,

- in his communications with LASA's officers, as he pursued entirely misconceived claims and complaints, he was raving like a demented person.

82. All these claims and clear implications by Mlambo JP to the Minister were lies.

83. With the corrupt intention of prejudicing the Minister against Brink and his complaint, the better to pervert his enquiry inter alia into Brink's complaint about Vedalankar's repeated illegal refusals of his requests for access to LASA's public records in the exercise of his constitutional right to do so, Mlambo JP furnished the Minister with a copy of his false and defamatory late-night email sent Brink on 24 January 2010.¹⁰⁵

84. Since the lies in the report were subscribed by a senior judge, the Minister naturally believed them to be true, and Brink received no reply from him.

85. Mlambo JP, Vedalankar and Nair thus succeeded in corruptly misleading the Minister and thereby perverting his enquiry.

86. Having received a copy of the fraudulent report, Mtati was aware of the perversion of the Minister's enquiry by means of it, and went along with it.

87. On 11 March 2011, Brink delivered a formal fundamental rights violation complaint¹⁰⁶ to the Commission about LASA's repeated and persistent illegal refusals to comply with his PAIA requests for access to its records. It was later updated and amplified.¹⁰⁷

88. Between 11 and 31 March 2011, Mtati sought the advice of junior counsel in private practice, Adv Thabiso Machaba,¹⁰⁸ on how to respond to Brink's third PAIA request and his complaint to the Commission about the refusals of his first two requests, and regarding draft section 23 affidavits drawn for or by Nair.¹⁰⁹ As Mtati later put it on affidavit, this was 'to be safe'.¹¹⁰

¹⁰⁵ Bundle 1, 1014, last sentence, penultimate paragraph: it refers to 'the attached email'.

¹⁰⁶ Bundle 1, 353.

¹⁰⁷ Bundle 1, 395.

¹⁰⁸ Bundle 3, {fee-notes}

¹⁰⁹ Bundle 3, {Machaba's feenote}

¹¹⁰ Bundle 3, {answer in app to subpoena DM, para 75.2}



89. Mtati did not consult and call on the high-level professional expertise of any of LASA's six available Senior Litigators¹¹¹ at the top of LASA's legal ranks: 'some of our most senior and experienced lawyers',¹¹² as Nair has correctly described them, part of whose professional function is to 'Provide legal opinion[s] for the LAB as requested'¹¹³ at no additional cost to LASA. Instead, in this exceedingly important matter involving Brink's fundamental right to information, and his repeated protests that Vedalankar was violating it, Mtati preferred to rely on the advice of the said junior advocate.¹¹⁴

90. As will appear below, Machaba, who repeatedly demonstrated his failure to have even read the Act about whose application he was charging enormous professional fees for his professionally incompetent advice (see below), consistently advocated the refusal of Brink's PAIA requests year after year, and likewise consistently advocated opposing Brink's subsequent applications to court for orders compelling the production of records illegally denied him, which he helped obstruct by raising heaps of completely spurious defences in answering papers he drew, filling many lever-arch files, all later abandoned.¹¹⁵ And milking LASA of vast sums in legal fees for this service.¹¹⁶ But wanting to keep suppressed the incriminating documents Brink had requested, LASA's head office executives gladly followed this legal novice's advice to hamper Brink's exercise of his fundamental right to information, and disregarded his rebuttals in his replying affidavits of all the inept and empty defences raised in LASA's answering affidavits.

91. Satchwell J of the South Gauteng Division of the High Court has sharply deplored the deliberate employment of inexperienced and incompetent junior lawyers by public bodies to obstruct access to their public records duly requested for the purpose of exposing evidence of their corruption.¹¹⁷

92. On 8 April 2011, Nair responded to Brink's third PAIA request addressed to Vedalankar, and revisited his first two,¹¹⁸ now narrowed and reduced¹¹⁹ by Brink in

¹¹¹ Bundle 3, {budget records showing six of nine filled posts}

¹¹² Bundle 2, 870, paragraph 4.

¹¹³ Bundle 1, 45.

¹¹⁴ Bundle 3, {answer in app to subpoena DM, para 75.2; include counsel's fee-note for advice}

¹¹⁵ Filed at the Eshowe Magistrate's Court.

¹¹⁶ Bundle 3, {When eventually delivered, put up all fee-notes, including for groundless opposition to five applications to court to compel: many lever arch files of answering affidavits, eventually abandoned by LASA}

¹¹⁷ Bundle 3,

¹¹⁸ Bundle 1, 363.

¹¹⁹ Bundle 1, 401ff.



light of the specific budgetary excuse for his non-appointment which Vedalankar had given him in her October letter¹²⁰ and repeated in her January one.¹²¹

93. That is, Vedalankar permitted the very management executive involved in blocking Brink's appointment¹²² to control and restrict his access to records bearing on the veracity of the excuses that he¹²³ and she¹²⁴ had given him for not appointing him¹²⁵ – a grossly improper conflict of interest¹²⁶ and abuse of power.

94. As noted above, both Nair and Makokoane were designated deputy information officers the month before. Having been uninvolved in the abortion of Brink's recruitment,¹²⁷ Makokoane could have dealt with Brink's requests, and he ought to have done so, not Nair.

95. Supported by Machaba,¹²⁸ after allegedly spending eight days 'researching the law' and writing up his advice to refuse most of Brink's PAIA requests into a 'memo',¹²⁹ Nair persisted in unlawfully refusing most of Brink's requests on factually and legally spurious grounds (the Commission later agreed,¹³⁰ and LASA later conceded),¹³¹ but at last furnished affidavits under section 23 of PAIA,

¹²⁰ At the trial of Brink's claim for his appointment, Nair later radically deviated from her explanation and told a different story: Bundle 3, {record of Nair's evidence changing the story}

¹²¹ Bundle 1, 223, paragraph 39.

¹²² When in July 2010 Brink appealed to Vedalankar to finalize his appointment, she was unaware that it had been blocked (Bundle 1, 714). She referred the matter to Nair to deal with (ibid), which he did by telling Brink that 'due to various reasons' LASA had decided not to appoint the candidates selected for its three vacant Senior Litigator posts (Bundle 1, 19). In October 2010 Vedalankar actively joined the cover-up by advancing a false budgetary excuse for this (Bundle 1, 103) – which Nair contradicted by telling totally different stories in his 'Report to Board' of November 2011 (Bundle 1, 869, section 1) after Brink had sued for his appointment in July 2011 and refuted the financial excuse in his detailed statement of claim referenced to LASA's records; and contradicted again in his evidence, reviving the financial excuse but radically contradicting it as regards the Mthatha post, about which he told a totally different new story.

¹²³ Bundle 1, 19.

¹²⁴ Bundle 1, 103, paragraph 6.7.

¹²⁵ Their joint prerogative under section 8.2.2(b) of the Approval Framework (Bundle 2, 1036).

¹²⁶ Bundle 3, {quote Aboobaker SC in *The Mercury* on such conflict}

¹²⁷ Bundle 3, {paragraph 37.5 of original response to statement of claim: 'the COO was deliberately left out of the decision to abort the vacant [Senior Litigator] posts'}

¹²⁸ Bundle 3, {'Counsel advised that limited access to information be granted to the Applicant.' : answer in app to subpoena DM, para 75.2}. Bundle 3, {'the CEO sought an external opinion which resulted in the grant of limited access to certain documents/information': answer in app to subpoena DM, para 91.3}

¹²⁹ Bundle 3, {the feenote using this word}

¹³⁰ Bundle 1, 499, paragraph 2: 'A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer of LASA is made in your memorandum.'

¹³¹ At the Commission's PAIA training workshop held on 6 October 2011 (Bundle 2, 915–21). LASA's concessions are quoted below.

certifying that certain requested records did not exist, and most relevantly that no record whatsoever exists to support the allegation Vedalankar made to Brink in October 2010 that LASA's Senior Litigator posts at Pietermaritzburg, Durban and Mthatha had been frozen for lack of budget to fill them.¹³² (Nair's incompetent and unlawful reasons for refusing Brink's requests are dealt with below.)

96. For his advice to refuse most of Brink's PAIA requests, Machaba charged LASA a total fee of R159 600 including VAT,¹³³ and noting 'Recommended for payment',¹³⁴ LASA Corporate Legal Manager Solly Sekgota approved this expenditure on obstructing Brink's access to the records he had duly requested, without demur.

97. On 8 April 2011,¹³⁵ LASA filed its section 32 report for 2010/11.¹³⁶ It was the first time¹³⁷ LASA reported under section 32 – ten years after this obligation was imposed by the Act. The report was grossly defective and misleading, and contained several outright lies to the Commission for the ultimate misinformation of the National Assembly:

- It reported only Brink's first 'Request for information' in August 2010, and failed to report his second in December 2010 and third in March 2011. The report thus failed to comply truthfully with section 32(a) regarding 'the number of requests received' – which was three from Brink.
- It failed to report that Brink's first two requests were totally refused (the third was responded to in the following reporting cycle). What few LASA records Vedalankar did provide, were for her own purposes, namely "To demonstrate"¹³⁸ her various contentions, and not to grant Brink access to the records he had duly requested. Indeed, to underscore her refusal and rejection of Brink's requests, she

¹³² Bundle 1, 381, paragraphs 14, 15, 16; 382, paragraph 22; 383, paragraph 29; and 385, paragraph 35. In his section 23 affidavit, Nair swore to Vedalankar's story that in July 2010 he and she had frozen LASA's vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha: Bundle 1, 380, paragraphs 13–16. Vedalankar and Human Resources Executive Amanda Clark made confirmatory affidavits (Bundle 1, 390 and 392). Giving evidence at trial, however, Nair repudiated and contradicted Vedalankar's story as regards the Mthatha post, which he had confirmed under penalty of perjury, and told a completely different new story: Bundle 3, {transcript} And in between telling these different stories on oath on affidavit and later in court, Nair told more totally different stories to the Board about why the Pietermaritzburg, Durban and Mthatha Senior Litigator posts were not filled with the candidates duly selected for them. See 'ALL THE DIFFERENT STORIES': Bundle 3,

¹³³ Bundle 3, {feenote}

¹³⁴ Bundle 3, {approval}

¹³⁵ Bundle 2, 678.

¹³⁶ Bundle 2, 679.

¹³⁷ Bundle 2, 916, third line.

¹³⁸ Bundle 1, 213–16.



spurned¹³⁹ and returned his request fee.¹⁴⁰ The report thus failed truthfully to comply with section 32(d) regarding ‘the number of requests for access refused in full’ – which was two.

- It dishonestly misdescribed Brink’s first ‘Request for information’ as ‘relating to the process on the conduct of interviews’ only. In truth and in fact, Brink’s first request for 51 records¹⁴¹ was manifestly directed at thoroughly interrogating the circumstances in which his appointment to the Pietermaritzburg Senior Litigator post had been aborted after his selection for it, and testing the veracity of Nair’s story told him nine silent months after his successful interview for the post that ‘the recruitment process to finalise the appointments for all vacant Senior Litigator posts were put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of these posts.’¹⁴²
- It falsely and deceptively misstated the date on which Brink’s first request was delivered, so as to conceal the fact that Vedalankar had unlawfully refused it out of time, outside the 30 days prescribed by section 25 for her response. The actual true date was 30 August 2010,¹⁴³ whereas the report falsely stated 27 September 2010.
- Concerning Brink’s first request, it falsely and misleadingly reported ‘Access partially refused’, whereas in truth and in fact it was totally refused.
- The statement, ‘The other information was provided except for information which was refused in terms of section 65 on the basis that it was not relevant to the exercising of the right he may have in law and further that the request relates to confidential information of third parties’ was false and misleading on multiple scores. Section 32(d) pertinently required LASA, a public body, to report ‘the number of times each provision of this Act was relied on to refuse access in full’. Justifying its refusal of Brink’s first PAIA request (‘information which was refused’, as the report put it), LASA cited section 65. In truth and in fact, section 65 was never relied on; the section is anyway not part of Chapter 4 in Part 2 of the Act concerning public bodies and the permissible ‘Grounds for Refusal of Access to Records’ of a public body. Section 65 provides a ground for refusing access to the record of private body ‘if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement’, and was accordingly completely irrelevant. As the judges quoted above remarked,

¹³⁹ Bundle 1, 224, paragraph 44.

¹⁴⁰ Bundle 2, 1041.

¹⁴¹ Bundle 1, 49–68.

¹⁴² Bundle 1, 19.

¹⁴³ Bundle 1, 69.



a PAIA request for access to public body records need not be ‘relevant to the exercising of the right [a requester] may have in law’ – this was legal nonsense. The report failed to mention Vedalankar’s repeated reliance on sections 43 (semble: section 34) and 44 in her January 2011 letter to refuse Brink access to numerous requested records.¹⁴⁴

- It falsely reported, ‘The other information was provided’, implying that access to the records that Brink had requested had been granted. In truth and in fact, ‘the other information provided’ was Vedalankar’s insufficient budget excuse for the abortion of his appointment, advanced in her October 2010 letter¹⁴⁵ refusing his first PAIA request, and reiterated in her January 2011 letter.¹⁴⁶
- Superfluous to the reporting requirements of section 32, and in furtherance of the lying cover-up of the true reason for not proceeding with Brink’s appointment, the report went on to tell the Commission the additional lies for the intended misinformation of the National Assembly in turn in the Commission’s section 84 report:
 - ‘No decision taken yet on who should be appointed’. In truth and in fact, and contrary to this lie to the Commission told for the ultimate misinformation of the National Assembly, the selection panel’s recommendation report¹⁴⁷ delivered to Nair on 26 November 2009¹⁴⁸ recorded its clear choice of Brink for the Pietermaritzburg post for which he had applied,¹⁴⁹ and Bongani Mngadi for the Durban post, simultaneously advertised and recruited for. This lie to the Commission echoed the same lies earlier told Brink and to Justice Portfolio Committee member Debbie Schäfer,¹⁵⁰ that ‘other candidates’¹⁵¹ had also been recommended for the Pietermaritzburg post, whereas in truth and in fact Brink alone had been duly selected for it in

¹⁴⁴ Bundle 1, 219, 221, and 222.

¹⁴⁵ Vedalankar’s elaborate financial story was contradicted by the then known recorded history of the matter, and then categorically by records she put up three months later; and it was repeatedly radically contradicted by Nair: in his report to the Board in November 2011 and in his evidence in the Labour Court in mid-2013.

¹⁴⁶ ‘[T]he explanation furnished by me to you on 18 October 2010 remains valid’ (Bundle 1, 212, paragraph 7). ‘I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any other ground other than the budget constraints’ (Bundle 1, 223, paragraph 39).

¹⁴⁷ Bundle 1, 244.

¹⁴⁸ Bundle 2, 993.

¹⁴⁹ At the first pre-trial conference at court in Brink’s labour claim, LASA formally admitted that Brink was recommended for Pietermaritzburg and Mngadi for Durban (Bundle 2, 1020, paragraph 11).

¹⁵⁰ Bundle 2, 680.

¹⁵¹ Bundle 1, 104, paragraph 7.2.



accordance with LASA's Recruitment code requiring the selection panel to 'identif[y] the most suitable candidate for appointment in a post'¹⁵² after interviewing all short-listed candidates.¹⁵³ The unredacted copy of the selection panel's recommendation report, eventually surrendered in April 2016, shows that the other two candidates did not even meet the qualifying criteria for the posts;¹⁵⁴ and consequently, as LASA later conceded in its pleadings in Brink's labour case, these 'two persons were eliminated early in the selection process and were not recommended for the second round of interviews'.¹⁵⁵ Contrary to Vedalankar's lie to Brink about this, in truth and in fact no 'other candidates'¹⁵⁶ were recommended for the post for which he had been selected. Contrary to the lie to the Commission in the section 32 report, 'No decision taken yet on who should be appointed', in truth and in fact the selection panel had unequivocally recommended Brink and Mngadi for the Pietermaritzburg and Durban posts respectively. Indeed, as LASA correctly pleaded in Brink's labour case: 'we were made aware that there were two people recommended'¹⁵⁷ for the two posts, and no one else.

- 'the decision to freeze the post due to change in business needs budget.' In truth and in fact, and contrary to this lie to the Commission told for the ultimate misinformation of the National Assembly, 'the business needs budget' in relation to LASA's nine Senior Litigator posts, has never been changed, and LASA has accordingly confirmed on oath that no record exists to show it has.¹⁵⁸ Quite the contrary, since the creation of the posts to date, LASA has applied and continues to apply to the Department of Justice and Constitutional Development/Correctional Services every year for millions of rands in funding to pay salaries for all nine of its Senior Litigator posts.¹⁵⁹

98. In its annual report for 2010/11 to the Minister, the National Assembly and the public, LASA gave quite different false information on its handling of Brink's PAIA requests:¹⁶⁰

¹⁵² Bundle 1, 233, section 1.2.3.4.

¹⁵³ Bundle 1, 230-1, paragraphs 1.2.2.1-2.

¹⁵⁴ Bundle 3,

¹⁵⁵ Pre-trial conference Bundle 1, {answer to pre-trial conference agenda, page 55, paragraph 34.2}

¹⁵⁶ Bundle 1, 104, paragraph 7.2.

¹⁵⁷ Bundle 3, {answer to pre-trial conference agenda, paragraph 78.1}

¹⁵⁸ Bundle 3,

¹⁵⁹ Bundle 3, {put up all annual budget applications to the Department for SL salaries}

¹⁶⁰ Bundle 3,



- It now reported that he had made two requests in the reporting cycle, whereas he had made three, in August and December 2010 and in March 2011.
- It falsely claimed that 'One [was] partly refused', whereas in truth and in fact it was totally refused (the few records Vedalankar furnished were for her own purposes, namely 'To demonstrate'¹⁶¹ her several false contentions, and not to comply with Brink's requests; and as said Brink's request fee prescribed by section 22 was explicitly rejected and later returned).
- It failed to mention the total refusal of Brink's second request (on the false basis alleged that it merely 'repeated'¹⁶² the first).
- It alleged under 'Reason(s) for refusal' only the new grounds advanced in Vedalankar's letter of 28 January 2011:

Information related to third parties which are protected in terms of section 34 of the Act, and to operations of a public body which is protected in terms of section 44 of the Act.

and not the original also factually and legally spurious grounds she advanced on 18 October 2010 for refusing the entire request:¹⁶³

(i) your request for information goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above.

And:¹⁶⁴

Your request ... is declined as it is not relevant to you exercising any right you may have in law.

99. On 28 April 2011, again seeking the Commission's assistance to access LASA's records, Brink filed a second memorandum demonstrating the legal irrelevance and unlawfulness of Nair's reasons for refusing his first, second and third record requests.¹⁶⁵

100. On 22 June 2011, Mlambo JP at last responded¹⁶⁶ to the Portfolio Committee chairperson's enquiry instituted three months earlier, by providing an 'updated'¹⁶⁷

¹⁶¹ Bundle 1, 213–16.

¹⁶² Bundle 1, 217, first paragraph.

¹⁶³ Bundle 1, 102–3, paragraph 6.

¹⁶⁴ Bundle 1, 104, paragraph 8.

¹⁶⁵ Bundle 1, 401.

¹⁶⁶ Bundle 1, 505.

copy of the report given the Minister in March. The ‘updated’ report repeated all the lies about the handling of Brink’s PAIA requests told to the Minister (enumerated and refuted above) and contained several new allegations, inter alia pertaining to Brink’s complaints that Vedalankar had illegally refused his August and December 2010 PAIA requests. These are dealt with below.

101. The chairperson of the Portfolio Committee had specifically required ‘a formal response to these allegations’ from Mlambo JP, from the Board, and from Vedalankar.¹⁶⁸ Disobeying his clear instruction to obtain it, however, Mlambo JP did not seek the Board’s response to Brink’s fundamental rights violation complaints repeated in his three petitions; and the likely reason he did not do so is that he did not want the Board discussing the grave illegality and constitutional rights violations¹⁶⁹ in which he was personally complicit.

102. Concerning PAIA,¹⁷⁰ the report contained the fresh allegation: ‘We have responded to all Adv Brink’s requests for information in terms of PAIA within the timeframe stipulated in the Act.’¹⁷¹ In truth and in fact, and contrary to this criminal lie,¹⁷² told along with many others¹⁷³ to misinform and mislead the Portfolio Committee:

- Brink’s main PAIA request, his first one, had been ignored in the 30 calendar days allowed by section 25 to respond to it, a deemed refusal under section 27; then expressly refused for unlawful reasons three weeks outside ‘the timeframe stipulated in the Act’; then refused again three months later for different unlawful reasons;¹⁷⁴ and then refused again for more unlawful reasons three months after that.¹⁷⁵

¹⁶⁷ Bundle 1, 507, postscript.

¹⁶⁸ Bundle 1, 503.

¹⁶⁹ Besides the violation of his fundamental right to information, Brink complained also of the violation of his fundamental right to equal employment opportunity and to due process in recruitment procedure.

¹⁷⁰ Other new false information in the updated report, contradicted and exposed by LASA’s and other records, is not material to canvass here; see in this regard Brink’s founding affidavit in his application for leave to subpoena Mlambo JP.

¹⁷¹ Bundle 1, 506, first paragraph.

¹⁷² Per section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, quoted below.

¹⁷³ The other lies regarding LASA’s alleged compliance with PAIA, also told to the Minister, to falsely discredit Brink’s complaint that Vedalankar had illegally refused his first and second PAIA requests, are enumerated in paragraph ... above.

¹⁷⁴ Bundle 1, 217–22.

¹⁷⁵ Bundle 1, 363–5.



- Brink's second PAIA request had been timeously but also unlawfully refused in toto – on the false basis that it was a mere repetition of the first request.¹⁷⁶
- Brink's third PAIA request was indeed responded to within the prescribed timeframe, as alleged, but was unlawfully substantially refused.¹⁷⁷

103. Again, like the false report to the Minister, the 'updated' report to the chairperson of the Portfolio Committee contained no indication that LASA was persistently and repeatedly illegally denying Brink access to LASA's business records that he had duly requested. To the contrary, to falsely imply that Brink's PAIA requests had been duly complied with, the report to the Portfolio Committee concerning PAIA concluded with the meretricious new statement, true on its face but false in substance: 'We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.'¹⁷⁸

104. Quite the opposite, four days later on 26 June 2011 the Commission disconfirmed LASA's falsely alleged 'compliance with PAIA'. Referring to Brink's second memorandum¹⁷⁹ exposing the factual and legal vacancy of Nair's reasons for continuing to suppress records Brink has duly requested, the Commission noted in a letter to him: 'A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer is made in your memorandum.'¹⁸⁰

105. And as appears below, LASA itself conceded to the Commission a couple of months later that its refusals of (Brink's) PAIA requests had been unlawful, and undertook to review them.¹⁸¹

106. Through LASA's counsel at the trial of Brink's labour claim, Nair initially dishonestly disputed having ghost-written the lying report to the Minister,¹⁸² in other words lied about having written it, but eventually, cornered by the evidence of the electronic document's 'Author' properties, 'Briann'¹⁸³ i.e. Brian Nair, he admitted having done so.¹⁸⁴

¹⁷⁶ Bundle 1, 217: 'Records Required ... repeated in your letter dated 15 December 2010'.

¹⁷⁷ Bundle 1, 363–5.

¹⁷⁸ Bundle 1, 506, first paragraph, final sentence.

¹⁷⁹ Bundle 1, 401ff.

¹⁸⁰ Bundle 1, 499.

¹⁸¹ Most of the illegally refused documents being withheld from Brink were eventually clawed out of LASA through several round of document discovery procedure determinedly pursued before trial in his labour case; see below.

¹⁸² Bundle 3, {trial transcript}

¹⁸³ Bundle 2, 1015.

¹⁸⁴ Bundle 3, {trial transcript}

107. But Nair denied having 'updated' the report to the Minister by adding the said new allegations before its submission to the chairperson of the Portfolio Committee, and he testified that Mlambo JP¹⁸⁵ or Vedalankar¹⁸⁶ must have done so.

108. That is, under oath Nair accused Mlambo JP or Vedalankar of having told these new lies¹⁸⁷ added to the original report.

109. Prejudiced by Mlambo JP's defamatory covering letter,¹⁸⁸ and successfully defrauded by the false information contained in the report which Mlambo JP had signed and submitted, well knowing from Brink's three petitions to him and the Board that it was false, the chairperson of the Portfolio Committee understandably wrote to Brink on 29 June 2011:¹⁸⁹

In light of the facts set out in Justice Mlambo's response, I now regard the matter as closed.

110. The reason the chairperson of the Portfolio Committee took this decision to close his enquiry is that it was unimaginable to him that 'the facts set out in Justice Mlambo's response' were actually lies¹⁹⁰ told to mislead him, so as to pervert his Portfolio Committee's enquiry and to defeat its constitutional oversight function over LASA, in manifold criminal contraventions of section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, which provides:

A person who –

...

(d) with intent to deceive a House or committee, produces to the House or committee any false, untrue, fabricated or falsified document; or

(e) ... wilfully furnishes a House or committee with information ... which is false or misleading,

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

¹⁸⁵ Bundle 3, {transcript}

¹⁸⁶ Bundle 3, {transcript}

¹⁸⁷ Besides those regarding PAIA identified herein, the several other new lies added to the report to the chairperson of the Portfolio Committee fall outside the scope of this report on LASA's non-compliance with PAIA.

¹⁸⁸ Bundle 1, 504.

¹⁸⁹ Bundle 1, 502.

¹⁹⁰ As said, after Brink had exposed it as such, one of these major lies was retracted as 'an error ... a palpable error' by Mtati and Nair on affidavit.



111. On 18 July 2011, the Commission finally decided not to make a formal determination of Brink’s fundamental rights violation complaint lodged in April, for the ultimate reason given – following an appeal against different reasons given for the refusal of its (inexpert) Gauteng office to do so (and not its expert PAIA Unit) – that Brink’s labour claim was headed for court. Without all the documents he had requested under PAIA, which he needed to fully plead his case and present at trial, Brink instituted action a few days later.¹⁹¹

112. On 10 August 2011, Brink filed a formal complaint to the Public Protector about LASA’s false section 32 report for 2010/11 and its illegal refusal of his PAIA requests,¹⁹² which complaint he amended on 9 November 2011 by updating it with newly surfaced information.¹⁹³ The complaint was acknowledged¹⁹⁴ but not addressed.

113. On 25 October 2011, on the advice of his same junior counsel Machaba,¹⁹⁵ Mtati totally refused Brink’s request for 37 documents made in his agenda for the prescribed pre-trial conference after the close of pleadings, many of which documents Brink had tried obtaining via PAIA before the case, but which had been illegally refused.

114. Mtati justified his refusal with the following lies, false denials and false assertions in regard to PAIA and LASA’s illegal refusals of Brink’s PAIA requests:

- ‘The CEO’s reliance on that case law was not spurious.’¹⁹⁶ In truth and in fact, Vedalankar relied only on the name of the Teachers Union case in refusing Brink’s August 2010 PAIA request, falsely, because the judgment itself held precisely the opposite of what she falsely contended it did. In truth and in fact, her reliance on her forged, false quotation from the judgment, uttered in her letter of 18 October 2010, was indeed ‘spurious’.
- Mtati ‘denied’¹⁹⁷ (i) that ‘the test’ Vedalankar claimed ‘the court ... laid down’ in the said case for the decision of a public body record request was ‘absolutely false’; and that “‘the court’ held precisely to the contrary: “Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the

¹⁹¹ Bundle 1, 543.

¹⁹² Bundle 1, 555.

¹⁹³ Bundle 1, 725.

¹⁹⁴ Bundle 3,

¹⁹⁵ Bundle 2, 980: Per the ‘Author’ properties of the PDF of the response emailed to Brink.

¹⁹⁶ Bundle 3, {LASA’s response to ptc agenda, paragraph 59.}

¹⁹⁷ Bundle 3, {LASA’s response to ptc agenda, paragraph 60.}



exercise or protection of any rights.”¹⁹⁸ A glance at Pillay J’s judgment exposes Mtati’s untruthfully false denial in the pleading.

- Mtati ‘disagree[d]’¹⁹⁹ that Vedalankar ‘rejected [Brink’s] records request on a fraudulent basis’.²⁰⁰ In truth and in fact, by manufacturing fake dicta alleged to have been written by a judge in a reported judgment, Vedalankar had incontestably done so.
- ‘Documents numbered 8; 9; 12; 16; 17; 25; and 26^[201] is [sic] the same as that which [Brink] has lodged a complaint with the Public Protector and which information was lawfully refused in terms of the Promotion of Access to Information Act, 2000 (“PAIA”) a decision which the SAHRC has not reversed or queried.’²⁰² In truth and in fact, the Commission had declined to formally rule on Brink’s information right violation complaint in view of his impending labour case, but it had observed the ‘unlawfulness’²⁰³ of Nair’s refusal of Brink’s third PAIA request and final refusal of his first two – shown in Brink’s second memorandum to the Commission.²⁰⁴
- ‘Documents 19; 21; 27 – 34; 37 are refused on the basis that such documents relate to the internal operations of the Respondent’s business and that the provisions of PAIA, should it be applicable herein, authorizes the respondent to refuse with the production thereof.’²⁰⁵ The fact that ‘documents relate to the internal operations of the Respondent’s business’ are no ground under PAIA for refusing access to such public body records.
- ‘The Respondent contends that the Applicant’s requests in terms of the Promotion of Access to Information Act, 2000 (“PAIA”) were answered completely and lawfully and those documents that were refused were refused in terms of the law.’²⁰⁶ An abject lie to the judge.

115. All this brazen dissimulation by attorney Mtati, in his response to Brink’s agenda for the pre-trial conference in his labour case, that LASA had duly complied

¹⁹⁸ Bundle 3, {ptc agenda, para 69}

¹⁹⁹ Bundle 3, {LASA’s response to ptc agenda, paragraph 71.}

²⁰⁰ Bundle 3 {ptc agenda, para 71}

²⁰¹ Bundle 3 {ptc agenda, pages 29–31}

²⁰² Bundle 3, {ptc 65, para 87.3}

²⁰³ Bundle 1, 499, paragraph 2.

²⁰⁴ Bundle 1, 401ff.

²⁰⁵ Bundle 3, {ptc 66, para 87.5}

²⁰⁶ Bundle 3, {ptc 66, para 87.8}



with Brink's PAIA requests, was professionally unethical false pleading to deceive the judge.²⁰⁷

116. At the pre-trial conference, however, LASA's senior counsel Madlanga SC, now a Constitutional Court judge, openly and very correctly told Mtati and Machaba present that the requested documents were indeed discoverable and should be surrendered, which is to say LASA's (Mtati's and Machaba's) justifications based on PAIA for refusing the requested records were wrong and legally indefensible.

117. LASA's undertaking given Brink at the conference to surrender the documents was then substantially dishonoured, and it took an interlocutory application to compel, converted into a pre-trial conference at court under judicial supervision, and then a further such conference when LASA failed to honour its undertaking to surrender requested documents, to disgorge most of the records Brink needed for his case.²⁰⁸

118. Subsequent to the launch of Brink's labour claim for his appointment, one of LASA's officers told a member of the Commission's PAIA Unit²⁰⁹ a slew of cunning lies about Brink's case (mixed in with a couple of truths), contradicted by LASA's records, and captured in an undated telephone note kept in the Commission's file on Brink's PAIA complaints:²¹⁰

He applied to LASA (Legal Aid) for snr advisory position.^[211] 2 were available.^[212] One candidate got the Durban post,^[213] and somehow he [Brink] was of the impression he had gotten the Pietermaritzburg post.^[214] The 2 other candidates received regret letters.^[215] Adv Brink received a letter not

²⁰⁷ A party's response to a pre-trial agenda forms part of the pleadings for the true information of the judge.

²⁰⁸ See case file: LC D529/11.

²⁰⁹ Neither the LASA officer nor the SAHRC officer who wrote the note is identified on it.

²¹⁰ Bundle 1, 868.

²¹¹ True: for the Pietermaritzburg Senior Litigator post (Bundle 2, 827).

²¹² True: the Pietermaritzburg and Durban Senior Litigator posts were simultaneously advertised (Bundle 1, 45) and the interviews for both posts were held on the same day (Bundle 1, 244–8).

²¹³ True: it was LASA attorney Bongani Mngadi (Bundle 1, 247, paragraph 6).

²¹⁴ False: the deeply deceptive implication to the Commission was that unlike Mngadi selected for the Durban post, Brink had not been selected for the Pietermaritzburg post. In truth and in fact, the recommendation report vouches that Brink was indeed selected for it (Bundle 1, 246; and 247, paragraph 6).

²¹⁵ False: first, there were three other candidates, not two, and the statement conceals the highly significant fact that Mlambo JP's former judicial colleague Ngcamu, rejected and eliminated by the selection panel, was not sent a regret letter claiming the recruitment had been aborted (Bundle 1, 383, paragraph 26; Bundle 1, 20; Bundle 2, 829 and 831).



explaining why he was rejected.^[216] He req [Note incomplete.] Regret letters sent two other candidates.^[217]

119. These several lies told to the Commission by a LASA officer were intended to deceive the Commission and to defraud it into believing that Brink's pursuit of:

- his appointment to the professional post at the apex of LASA's legal professional establishment, for which he had duly been recommended; and,
- his access to LASA's business records in his interrogation of the various stories told him about why his appointment had been irregularly and unlawfully aborted off the record,

were a misguided and misinformed waste of everybody's time.

120. On 6 October 2011, in collaboration with the Open Democracy Advice Centre,²¹⁸ the Commission conducted a special PAIA training workshop for LASA's national office 'key personnel'²¹⁹ on how to implement the Act,²²⁰ at which the capital importance of access to information as a fundamental right was emphasized,²²¹ as well as accurate section 32 reporting to the Commission on its handling of PAIA requests.²²²

121. The Commission's PAIA training workshop for LASA was occasioned directly by LASA's illegal refusals of Brink's request for access to its records, which he had sought for the declared purpose of gathering evidence for his intended action against LASA for an order instating him to the top legal professional post for which he had been unanimously selected:²²³

²¹⁶ False: Brink was not rejected by the selection panel; it recommended him in glowing terms. Nor was he rejected by Nair and Vedalankar – LASA's executing authorities under the Approval Framework, jointly responsible for approving recommendations for such high level professional appointments. No such rejection is recorded, let alone with reasons noted as required. But Brink did receive a bland regret letter, eight months after his interview and after he had begun agitating for his appointment, claiming that the Senior Litigator posts were not going to be filled (Bundle 1, 19). It is common cause that no record exists to vouch that any such decision was duly taken.

²¹⁷ False: contrary to this repeated lie, three regret letters were sent: to Brink, to Mngadi, and to van Wyk, but not to Mlambo JP's former judicial colleague Ngcamu – even though the selection panel rejected and eliminated him for not meeting a basic qualifying criterion for the post, in that he lacked right of appearance in the High Court.

²¹⁸ Bundle 2, 915.

²¹⁹ Ibid.

²²⁰ Bundle 2, 915.

²²¹ Bundle 2, 917 top line.

²²² Bundle 2, 919, section i.

²²³ Bundle 2, 915, Introduction, alluding to Brink's stated intention to 'litigate on the basis of PAIA', i.e. a requester who should be 'responded to on the same basis as other applicants [sic: requesters]'.

The rationale for the training [was] to ensure that personnel of the board [sic: LASA, formerly the Legal Aid Board] had an awareness of the legislation to increase their resource base, the quality of service and advice provided to their stakeholders. It has also been deemed important on the basis of the Commission's monitoring of LASA institutional compliance with PAIA and the need to ensure that clients [sic: record requesters] who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants with recognised rights. ... The status and contestation with some of these requests prompted the need for training to its key personnel.

122. The workshop was attended by sixteen LASA staff members comprising the 'head of the legal department, internal audit, national operations, call centre as well as corporate services',²²⁴ of which three were from Mtati's Corporate Services and seven from Nair's National Operations departments.²²⁵ LASA Corporate Legal Manager Solly Sekgota, 'head of the legal department' was also present.²²⁶

123. Notwithstanding their history of non-compliance with PAIA and their demonstrated ignorance of its provisions and how to apply it – the precise reason the special PAIA training workshop was held – neither information officer Vedalankar nor deputy information officer Nair attended it to be taught how to implement the Act, and consequently both remained ignorant.

124. Although the open entry²²⁷ in the attendance register reflects that he had been expected to present himself for training in how to deal with PAIA requests, Mtati did not do so either – even though he has stated on affidavit,²²⁸ confirmed by Nair,²²⁹ that:

I generally deal with all requests for information in Legal Aid SA, save where same is specifically directed to one of the other Deputy Information Officers.

125. Compounding this, besides having no training in how to implement PAIA, it later emerged that Mtati was not delegated as a deputy information officer until

²²⁴ Bundle 2, 915, Introduction.

²²⁵ Bundle 2, 922–4.

²²⁶ Bundle 2, 923.

²²⁷ Bundle 2, 923, entry 6.

²²⁸ Bundle 3, {VV2 answer para 9}

²²⁹ Bundle 3, {VV2 Nair's con affi para 6}



16 January 2016,²³⁰ which means he acted without authority, ultra vires and unlawfully in refusing Brink's PAIA requests before this.

126. Evidently, in bunking the Commission's PAIA training workshop, Vedalankar, Nair and Mtati believed they did not need any instruction from the Commission as to how to implement PAIA.

127. It is relevant to mention here that the Legislature is so acutely concerned that PAIA be applied correctly in the courts – inter alia to give effect to the object stated in the Preamble: to 'foster a culture of transparency and accountability in public ... bodies by giving effect to the right of access to information' after the 'secretive and unresponsive culture' that characterised the apartheid era, 'which often led to an abuse of power and human rights violations' – that section 91A of the Act permits only specially trained, listed and designated magistrates to deal with PAIA applications.

128. At LASA, on the other hand, PAIA requests involving fundamental rights guaranteed by the Constitution are 'generally deal[t] with' by Mtati, an untrained and unqualified legal ignoramus in the field of constitutional information transparency law, who Mlambo JP introduced to the Portfolio Committee on 8 May 2012 as:²³¹

our Corporate [Services] Executive. He looks after our legal health in terms of people who want to sue us. He protects us.

(Which Mtati effectively achieves by persistently citing manifestly inapplicable and irrelevant provisions of PAIA to suppress duly requested records, in order to conceal evidence of high level corruption.)

129. At the Commission's PAIA training workshop, LASA's national office 'key personnel' very frankly and honestly:

- conceded repeatedly their 'lack of application based knowledge'²³² and 'challenges complying with PAIA'.²³³ 'Most participants had no prior knowledge of PAIA'²³⁴

²³⁰ Bundle 3, {TM's delegation}

²³¹ Bundle 2, 1016.

²³² Bundle 1, 916.

²³³ Ibid.

²³⁴ Ibid.



and ‘were a little overwhelmed by the requirements of the legislation’,²³⁵ which ‘led to inconsistent application in the organisation’;²³⁶

- admitted that ‘they had previously been misapplying the provisions of PAIA in certain instances’²³⁷ (i.e. to Brink’s PAIA requests, the only requests refused) and ‘were able to identify the provisions in the formal context to identify and relate to access decisions impacting on practical delivery’;²³⁸
- ‘identified’ this ‘misinterpretation and misapplication ... as of high risk to LASA’;²³⁹
- ‘reacted to the reporting of LASA as non-compliant to Parliament with concern’;²⁴⁰
- said they ‘were able to gain value from the training. They [i.e. ‘personnel from the Legal Department’] have as a result undertaken to review decisions which may not have had justification in terms of PAIA’,²⁴¹ namely the illegal refusals of Brink’s PAIA requests;
- ‘identified the need to have a clear budget dedicated for PAIA compliance and implementation’²⁴² for the reason that ‘PAIA application was time consuming and compliance required dedicated personnel’;²⁴³ and,
- acknowledged that ‘a review of the organisational response to PAIA was necessary to improve compliance and efficacy.’²⁴⁴

130. The upshot was that LASA’s head office staff present admitted that the legal advice given to Vedalankar and Nair to refuse Brink’s PAIA requests had been wrong, including the wrong advice for which junior advocate Machaba had charged LASA hundreds of thousands of rands. With which wrong advice Mtati, an equally uneducated person in PAIA matters, just went along.

131. In breach of their undertaking to the Commission, LASA’s ‘personnel from the Legal Department’ headed by CLM Sekgota did not review the refusals of Brink’s PAIA requests and did not reverse them by at last allowing Brink access to the records he had duly requested.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Bundle 1, 919.

²³⁹ Bundle 1, 916.

²⁴⁰ Bundle 1, 913.

²⁴¹ Bundle 1, 920.

²⁴² Bundle 1, 920.

²⁴³ Bundle 1, 916.

²⁴⁴ Bundle 1, 917.

132. Quite the contrary, a few months later on 13 February 2012, even after LASA's minuted repeated concessions at the PAIA training workshop that Brink's PAIA requests had unlawfully been refused, attorney Mtati perjuringly alleged on affidavit in Brink's labour case for the misinformation of and to defraud the judge:²⁴⁵

the documents he required under the PAIA ... were lawfully refused under the provisions of that Act.

133. With same corrupt object, Mtati perjured himself again on 16 January 2013 in another affidavit in Brink's labour case:²⁴⁶

I can confirm that the CEO responded to all the Applicant's [Brink's] requests for access to information in terms of PAIA even if such response did not please him.

134. These two perjuries were repetitions of Mtati's false pleading²⁴⁷ on 25 October 2011 in the said case, also to misinform and mislead the judge, a fortnight before the PAIA training workshop, but after the Commission had already remarked in June on the 'unlawfulness' of Nair's refusals of Brink's PAIA in April:

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

135. Nor did LASA 'review ...the organisational response to PAIA ... necessary to improve compliance and efficacy', much less did it create any dedicated PAIA request handling capacity, given that 'PAIA application was time consuming and compliance required dedicated personnel', and not just 'ad hoc PAIA functionaries in their legal department.'²⁴⁸

136. In breach of its implicit undertakings to the Commission to see to this, it was never even put to the Board for discussion and resolution.²⁴⁹

²⁴⁵ Bundle 3, {application to compel discovery, Mtati's answering affidavit, page 6, paragraph 21}

²⁴⁶ Bundle 3, {application to subpoena Mlambo JP, Mtati's answering affidavit, page 103, paragraph 78.3}

²⁴⁷ Bundle 3, {pre-trial conference Bundle 1, answer to agenda, page 66, paragraph 87.8}

²⁴⁸ Bundle 2, 916, second paragraph.

²⁴⁹ Bundle 3, {'no records exist' to show that this was ever put to the Board for resolution, per LASA's response to consolidated list of records list B18-20}

137. Contrariwise, Nair later implicitly relied on LASA's lack of dedicated PAIA request handling capacity, which it had failed to create in breach of its undertaking to the Commission, by complaining dully and irrelevantly on affidavit that Brink's PAIA requests – lawfully and properly made in the exercise of his fundamental right to information, as LASA ultimately conceded in court – were a drain on LASA's resources such as to justify refusing them:²⁵⁰

It is obvious that in order to attend to Applicant's incessant requests for information, we must re-direct our energies and resources away from our mandate as Legal Aid SA to searching for all these information which are spread all over the country.

This is a prejudice which I submit is permissible in terms of the Act (section 45, to be precise) as a basis upon which a request for information could be refused.

138. In his evidence at the trial of Brink's labour claim in mid-2013, national office deputy information officer Nair denied having any knowledge of the Commission's PAIA training workshop in October 2011²⁵¹ – attended by seven staff members in his National Operations department.²⁵²

139. In truth and in fact, contrary to Nair's perjury to the judge about this, he was centrally involved in the organisation of the workshop – as proved by email records²⁵³ that Brink obtained via PAIA in November 2013, a few months after Nair's perjured evidence given about this.

140. Perjuring himself in like manner, Mtati similarly falsely denied on affidavit that the Commission held such a special training workshop for LASA. In his application to compel compliance with several PAIA requests made over the period 2013–15, Brink referred to the 'special lesson' the Commission gave LASA at its PAIA training workshop on how to implement the Act and how to report its handling of PAIA requests to the Commission annually.²⁵⁴

141. Under oath, Mtati responded by telling the following lies:²⁵⁵

²⁵⁰ Bundle 3, {Nair's answering affidavit, paragraphs 17–18}

²⁵¹ Bundle 3, {transcript}

²⁵² Bundle 2, 922–4.

²⁵³ Bundle 3, {the emails}

²⁵⁴ Bundle 3, {VV2, AB founding affidavit, paragraphs 20–21}

²⁵⁵ Bundle 3, {answering affidavit, paragraph 130.3}

There is no truth in all these paragraphs. In fact what the Applicant refers to as a 'special lesson' was a cordial meeting between Legal Aid SA and SAHRC 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.

142. In truth and in fact, and contrary to Mtati's lies under oath about this, the attendance register of the 'special lesson' on PAIA 'given to Legal Aid officers' reflects that Mtati's presence was expected, but that he did not attend, as three of his Corporate Services attorneys did.²⁵⁶

143. In his evidence at the trial of Brink's labour claim, Nair lied similarly about a meeting with the Commission.²⁵⁷

144. There was no such 'cordial meeting between Legal Aid SA and SAHRC to discuss and provide clarity on a method of reporting of various cases that spanned over or straddled two accounting years', as Mtati falsely alleged under oath. In truth and in fact, as the Commission's former PAIA Unit director Adeleke informed Brink by email on 5 November 2013:²⁵⁸

The meeting they [LASA] requested in one of their emails never took place.

145. It follows that Mtati's claim on affidavit to have attended 'that meeting' was perjured. As was Nair's evidence in court that such a meeting had been held between LASA and the Commission.

146. Referring to Brink's affirmed statement of the incontestable facts, vouched by records to which he referred, that the Commission had reported LASA to the National Assembly for repeated non-compliant section 32 reporting; had undertaken to the National Assembly to fully audit LASA for PAIA compliance; and had delivered a PAIA training lesson to LASA's national office staff; and that the National Assembly had repeatedly expressed its concern about LASA's non-compliance with PAIA, Mtati's sworn response on affidavit for the true information of court was that "There is no truth' in all this."²⁵⁹

²⁵⁶ Bundle 2, 923.

²⁵⁷ Bundle 3, {transcript}

²⁵⁸ Bundle 3, {FA email}

²⁵⁹ Bundle 3, {TM answering affidavit, ...}



147. Mtati's false sworn denial of these several documented facts was perjured – in contempt of the truth, in contempt of court, and in keeping with the culture of routine casual mendacity in LASA's top ranks.

148. On 11 April 2012,²⁶⁰ LASA filed its section 32 report for 2011/12.²⁶¹ In wholesale breach of its reporting obligations imposed by the section, and blithely disregarding the special instruction the Commission had given LASA's head office lawyers a few months earlier on the importance of truthful, complete and accurate reporting under the section, the report was totally silent in regard to Nair's:

- response on 8 April 2011 to Brink's third PAIA request made in March 2011;
- second response to Brink's second request in December 2010, which Vedalankar had refused in January 2011; and,
- third response in April 2011 to Brink's first PAIA request in August 2010, which Vedalankar had totally refused in October 2010, and again in January 2011 for different reasons.

149. The section 32 report contained none of the information prescribed by the section, and the National Assembly was consequently not informed by the Commission in the latter's section 84 report²⁶² about LASA's persistent refusals of Brink's duly made requests for access to LASA's records and the spurious and unlawful reasons for refusing them advanced in April 2011 by newly appointed deputy information officer Nair, viz:

- The requests for access to certain records were 'irrelevant',²⁶³ and 'not relevant because it is after you were informed that we are not proceeding to fill the Senior Litigator post.'²⁶⁴ Irrelevance is not one of the 'Grounds for Refusal of Access to Records' permitted by sections 34–45 in Chapter 4 of part 2 of the Act. Unlike the case in document discovery procedure during litigation, records requested from public bodies need not be 'relevant' to anything.
- 'The Board's responsibility relates to policy issues and not to operations', therefore the requests for access to certain specified Board meeting minutes were 'refused in terms of section 44(1)(a)'.²⁶⁵ Public body Board meetings are not secret and their minutes are not covered by the section. For her own purposes in

²⁶⁰ Bundle 1, 866.

²⁶¹ Bundle 1, 867.

²⁶² Bundle 2, 656.

²⁶³ Bundle 1, 364, paragraph 2.

²⁶⁴ Bundle 1, 365, paragraph 9.

²⁶⁵ Bundle 1, 364, paragraph 6.

January 2011, Vedalankar had volunteered part of such a minute;²⁶⁶ and in April 2016, LASA surrendered further Board meeting minutes.²⁶⁷

- ‘The communication that the position was not to be filled was conveyed to the relevant candidate by the Regional Operations Executive of the Eastern Cape [then Mtati]. The information is refused and cannot be provided as it relates to third parties as envisaged in terms of section 34(1)’. Since this business record could not conceivably contain ‘personal information about a third party’, the section had no application. Changing the excuse for not producing it, Mtati later stated before the trial of Brink’s labour claim that no such record exists.²⁶⁸

150. On 20 August 2012, taking up Brink’s complaint that LASA’s section 32 report for 2011/12 unlawfully failed to report Nair’s final refusals of his PAIA requests on 8 April 2011, and in other respects failed to comply with the section,²⁶⁹ the Commission’s then PAIA Unit director Fola Adeleke emailed Mtati to demand the ‘Amendment of LASA Section 32 Report’:²⁷⁰

As per our earlier conversation, please find attached the scanned PAIA request from Brink to LASA and LASA’s response to the request. Please report it in your s 32 report and send back to me as a matter of urgency.

151. On 22 August 2012, Mtati rebuffed the Commission’s demand, with a welter of obfuscatory sophistry, followed by the wholly irrelevant postscript: ‘The information requested is clearly relating to the matter pending litigation.’²⁷¹

152. Adeleke duly responded immediately:²⁷²

We note with concern however that reference is made in your email to a number of requests from Adv. Brink. This does not reflect in either of your reports to the Commission [for 2010/11²⁷³ or 2011/12].^[274] We note further that the requester’s reason for requesting particular information is being deduced. It should be noted that PAIA is quite clear that requests made to public bodies do not have to be supported or justified by a reason for the

²⁶⁶ Bundle 1, 251.

²⁶⁷ Bundle 3, {the minutes}

²⁶⁸ Bundle 1, 1020, paragraph 10.

²⁶⁹ Bundle 3, {complaint}

²⁷⁰ Bundle 3, {FA email}

²⁷¹ Bundle 3, {TM email}

²⁷² Bundle 3, {FA email}

²⁷³ Bundle 1, 678–9.

²⁷⁴ Bundle 1, 866–7.

request. Similarly, requests made prior to notification of litigation should not have to be supported by a reason or purpose for the stipulated information. We remain concerned therefore about the accuracy of your section 32 report and need to advise that we intend auditing the veracity shortly. Notice of the audit will be issued in due course.

153. Mtati ignored this communication, and did not amend LASA's false section 32 report for 2011/12.

154. As a result of this refusal to cooperate with the Commission by amending the false section 32 report, the National Assembly was not informed about LASA's illegal refusals of Brink's PAIA requests during that reporting cycle in the Commission's section 84 report.

155. In its annual report for 2011/12, LASA claimed:²⁷⁵

Legal Aid South Africa applies principle 8.5 of chapter eight(8) of the King III Report, which recommends organisations to consider disclosing in the integrated report, the number and reasons for refusals of requests for information that were lodged with the organisation in terms of the Promotion of Access to Information Act (PAIA), 2000.

156. And then proceeded to conceal Nair's several refusals *on different grounds* on 8 April 2011²⁷⁶ of Brink's PAIA requests made in the previous reporting cycle, by falsely alleging under 'No. of requests refused': 'None'; and under 'Reason(s) for refusal': 'Not applicable'.²⁷⁷

157. In truth and in fact, Nair had refused seven of Brink's requests, variously on the basis:

- of section 44(1)(a),²⁷⁸ irrelevantly raised to illegally refuse Brink access to Board minutes – this bad ground was abandoned with the eventually surrender of Board minutes in April 2016;²⁷⁹
- of section 34(1),²⁸⁰ irrelevantly raised to illegally refuse Brink access to then Eastern Cape ROE Mtati's notification to Mahikeng Senior Litigator Nzame Skibi that the Mthatha Senior Litigator recruitment, for which post he had been

²⁷⁵ Bundle 2, 903.

²⁷⁶ Bundle 1, 363–5.

²⁷⁷ Bundle 3,

²⁷⁸ Bundle 1, 364, paragraph 6.

²⁷⁹ Bundle 3 {Board minutes}

²⁸⁰ Bundle 1, 365, paragraph 9.



selected,²⁸¹ had been cancelled,²⁸² ‘as it relates to third parties as envisaged in terms of section 34(1)’ – the section does not ‘envisage’ this, and similar letters²⁸³ were eventually surrendered during pre-trial discovery in respect of the cancellation of the KwaZulu-Natal Senior Litigator recruitment.

- that ‘it is not relevant’²⁸⁴ to grant three other requests ‘because it is after you were informed that we are not proceeding to fill the Senior Litigator position’.²⁸⁵ But under PAIA, relevance is not a criterion for granting or refusing a request for access to a record, so Nair’s decision ‘The information requested is refused’²⁸⁶ was illegal.

158. By making false reports to the SAHRC under section 32 as well as in its annual report, LASA again succeeded in concealing its illegal refusals of Brink’s PAIA requests from the Portfolio Committee, defeated the National Assembly’s constitutional oversight function over LASA, and evaded being held to account for repeatedly and persistently illegally violating Brink’s constitutionally entrenched right to information.

159. On 4 September 2012, Brink filed a formal complaint about LASA’s false section 32 report for 2011/12 with the Public Protector.²⁸⁷ Again, it was acknowledged²⁸⁸ but not determined.

160. Upon investigating Brink’s complaints that LASA had falsely reported its unlawful refusals of his first three PAIA requests made in 2010 and 2011 in its section 32 reports for 2010/11 and 2011/12, and finding that indeed neither report complied with the detailed reporting requirement of the section and did not reflect LASA’s unlawful refusals of his requests, the Commission reported this to the National Assembly in its section 84 report for 2011/12²⁸⁹ and stated its intention to subject LASA to a full audit for PAIA compliance accordingly:²⁹⁰

²⁸¹ Bundle 2, 994.

²⁸² Totally different reasons for this were given by Vedalankar to Brink, which she, Nair and HRE Clark repeated on oath, and by Nair in his evidence given two years later in the Labour Court. (Bundle.....).

²⁸³ Bundle 2, 829 and 831.

²⁸⁴ Bundle 1, 365, 9.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Bundle 3, {PP complaint}

²⁸⁸ Bundle 3, {acknowledgement}

²⁸⁹ Bundle 2, 925ff.

²⁹⁰ Bundle 1, 927, fourth paragraph.

A case in point [of false section 32 reporting by public bodies is] where a complainant [Brink] brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year. ... The Commission engaged with LASA and remains concerned about the accuracy^[291] of section 32 reporting by LASA.

And duly concluded:²⁹²

The Commission intends auditing LASA fully in the course of the 2012/13 financial year.

161. In October 2012, at the presentation of LASA's annual report for 2011/12, the Portfolio Committee repeatedly expressed its concern about LASA's non-compliance with PAIA. (Copied to him, the chairperson of the Portfolio Committee had read Brink's third petition to the Board in February 2011 about LASA's substantive non-compliance with record requests under the Act, going beyond its false reporting to conceal it.)

162. Board member Jan Maree presented LASA's annual report to the Portfolio Committee.²⁹³ In full knowledge of the true contrary facts, having received and acknowledged²⁹⁴ Brink's first petition protesting and substantiating precisely the opposite, attorney Maree falsely alleged:²⁹⁵

100% ... compliance with the Promotion of Access to Information Act

and that:²⁹⁶

LASA operated within a strong governance framework which included an effective and functioning governing board.

In reality, the Board had shown itself to be so weak as to be entirely ineffective and dysfunctional in ensuring statutory and constitutional compliance by LASA's management executives, despite Brink's repeated petitions to it calling its attention

²⁹¹ In fact the 'veracity' of its reporting (Bundle 3, {FA email}).

²⁹² Bundle 2, 928, second paragraph.

²⁹³ On Mlambo JP's behalf, since he was unavailable (Bundle 2, 894).

²⁹⁴ Bundle 1, 958.

²⁹⁵ Bundle 2, 894, Presentation by Legal Aid South Africa (LASA).

²⁹⁶ Ibid.

to the illegal refusals of his constitutional right of access to LASA's business records duly requested under PAIA.

163. After Vedalankar outlined LASA's general performance during the year,²⁹⁷ veteran Portfolio Committee member Hon Jeffery (now Justice Deputy Minister) cut straight to the Commission's PAIA report:²⁹⁸

Mr Jeffrey (ANC) said ... it was the Committee's job to make sure they did oversight. He was curious about a Promotion of Access to Information Act (PAIA) report that was released that stated the South African Human Right Commission was unhappy with LASA and their cooperation in terms of PAIA.

164. Committee chairperson Hon Landers also raised the adverse PAIA report – the only matter of concern to him that he raised during the presentation:²⁹⁹

The Chairperson told the [LASA] delegation that they would arrange for Legal Aid to view the PAIA report.

165. When Vedalankar tried to silently avoid addressing the negative report that both Hon Jeffery and Hon Landers and had pertinently raised, the latter called her to account:³⁰⁰

The Chairperson said that he wanted to know about the PAIA report.

166. With the corrupt intention of discrediting the Commission's PAIA report against LASA, with the ultimate purpose of concealing her and Nair's repeated and persistent illegal refusals of Brink's PAIA requests to hamper his investigation and refutation of the false budgetary insufficiency excuse she'd repeatedly given him, including under oath,³⁰¹ about why his appointment had been aborted, Vedalankar responded with a series of lies,³⁰² in repeated criminal contravention of section

²⁹⁷ Bundle 2, 894, penultimate paragraph.

²⁹⁸ Bundle 2, 895, Discussion.

²⁹⁹ Bundle 2, 895.

³⁰⁰ Bundle 2, 896.

³⁰¹ Bundle 1, 380, paragraph 13; and 390–1.

³⁰² Bundle 2, 896, sixth paragraph.



17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act:³⁰³

Ms Vedalankar said she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgment about this.

167. In truth and in fact, and contrary to Vedalankar's several criminal lies to the Committee:

- The Commission's report was perfectly true. LASA had indeed repeatedly failed to comply with its reporting obligations prescribed by section 32; and its false and defective, non-compliant reporting of its unlawful refusals of Brink's PAIA requests about which Brink had complained is plainly apparent on the face of LASA's section 32 reports for 2010/11³⁰⁴ and 2011/12³⁰⁵ having regard to the specific information required by the section. The Commission's report did not deal with LASA's substantive non-compliance with PAIA, namely Vedalankar's and Nair's illegal refusals of Brink's PAIA requests, only its false and misleading reporting afterwards to conceal this. Consequently, Vedalankar's obfuscatory effusion, 'Legally one could not use PAIA when one was in court' was, apart from being false on multiple scores mentioned below, also irrelevant and no answer to the Commission's reported findings that LASA had repeatedly failed to comply with its reporting obligations under section 32, thus frustrating and defeating the National Assembly's constitutional oversight function – in that had LASA duly reported to the Commission under section 32 in 2010/11 and 2011/12, the Portfolio Committee would have been alerted, via the Commission's section 84 reports for those years, to Vedalankar's and Nair's illegal refusals of Brink's PAIA requests in 2010 and 2011 and to their repeated violation of his fundamental right to information in determinedly suppressing the documentary evidence of LASA's business records that he wished to examine in his investigation of the circumstances in which his appointment had been aborted and the true reason for it.
- Vedalankar's answer, 'Legally one could not use PAIA when one was in court', was false and contrived to mislead the Committee on two scores.

³⁰³ Section 17(2): 'A person who – ... (e) ... wilfully furnishes a House or committee with information ... which is false or misleading, commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and imprisonment.'

³⁰⁴ Bundle 2, 678.

³⁰⁵ Bundle 2, 866.

- First: when Brink filed his first three PAIA requests in August and December 2010 and March 2011, he was not yet ‘in court’, and only went to court in July 2011³⁰⁶ when he sued for his reinstatement to the top legal professional post for which he had been recommended.
- And second: even had Brink been ‘in court’ when he made his PAIA requests, any documents thus obtained would have been admissible with the leave of the judge under section 7(2) of PAIA. That is, a requester being ‘in court’ is no justification under PAIA for refusing access to a requested record.
- Vedalankar’s claim that ‘there was going to be an official judgment about this’ (‘this’ being her claim that ‘one could not use PAIA when one was in court’) was pure invention to mislead the Committee. The law on the use of documents obtained via PAIA in legal proceedings after they have commenced is clearly set out by section 7 of PAIA. No such issue was before court for decision, as falsely alleged by Vedalankar to the Committee, neither in Brink’s labour case nor in any other. It was a crowning lie to the Committee contrived to put it off taxing her any further about LASA’s repeated non-compliance with the Act. And the minute of LASA’s presentation shows that Vedalankar’s final lie achieved this.³⁰⁷

168. In January 2013, the Commission conducted a preliminary audit of LASA by way of a general questionnaire on its PAIA handling capacity. It did not at that stage audit LASA’s responses to Brink’s PAIA requests and its reporting of them afterwards.

169. LASA’s replies to the Commission’s questionnaire did not point up any problems in this regard, but as will appear below, LASA continued unlawfully obstructing and denying Brink access to its records and continued failing to report these unlawful refusals properly and truthfully under section 32, thus evading accountability for this gross illegality and stultifying the National Assembly’s oversight function imposed by section 55(2)(b)(ii) of the Constitution, by preventing the Commission from informing the National Assembly about these further illegal denials of access in its section 84 reports, with the result that the National Assembly remained unaware about LASA’s ongoing, repeated and persistent unlawful wilful failures to comply with Brink’s PAIA requests and its repeated and

³⁰⁶ Bundle 3, {first and last pages of statement of claim; and Mtati’s email to Adeleke re date of institution of action}

³⁰⁷ Vedalankar’s free-flowing, casually told lies to the Committee about PAIA were not the only lies she told; the minute of her presentation to the Committee shows that she repeatedly misinformed it about other matters, and that Hon Jeffery repeatedly found her unconvincing and did not accept the false information and false explanations she gave (Bundle 2, 894–6, and 907).



persistent violation of his fundamental right to information, and the Justice Portfolio Committee in the National Assembly was thus prevented from taking remedial action.

170. Disregarding the special lesson that the Commission had given it in October 2011 on ‘public bodies as repositories of information’ and ‘transparency and public participation’ as a ‘fundamental cornerstone of sound democracies’³⁰⁸ and the ‘primacy of the legislation’³⁰⁹ and ‘the status of PAIA as a fundamental right [enforcement mechanism] ... reiterated and emphasized at different points of the training’,³¹⁰ LASA persisted in violating Brink’s fundamental right to information by illegally refusing his further PAIA requests made in 2013, 2014 and 2015, on grounds inter alia that the Commission had specifically and repeatedly instructed it were legally incompetent. This is discussed below.

171. In December 2012, February 2013 and March 2013, Brink made three PAIA requests addressed to Vela Mdaka, LASA’s deputy information officer for KwaZulu-Natal, in relation to a temporary Professional Assistant post at Pietermaritzburg, which requests were satisfactorily responded to and duly reported under section 32 in or about April 2013 for the 2012/13 reporting cycle.

172. In October 2013, after the trial of Brink’s labour claim but before judgment, Brink made three more PAIA requests, addressed to information officer Vedalankar and to two regional deputy information officers,³¹¹ in which he:

- interrogated the circumstances in which another Senior Litigator appointment had been aborted, about which Nair had told one story on affidavit before trial, and another totally different one in his oral evidence, and, in between telling these different stories under oath, told the Board two other completely different stories;³¹² and,
- tested the veracity of Nair’s inherently implausible³¹³ evidence given at trial that as deputy information officer in LASA’s national office he had no knowledge of

³⁰⁸ Bundle 2, 917.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Bundle 3, {the three 2013 requests}

³¹² Bundle 3, {‘All the Different Stories’}

³¹³ In his subsequently delivered judgment (paragraph 57), the trial judge referred found that Brink had shown Nair to be ‘not generous with the truth’ on ‘a number’ of scores; which is to say, he repeatedly concealed the true facts within his knowledge and thereby lied in court. The judgment is accessible online at <http://goo.gl/WAuLK6>.

the Commission's PAIA training workshop for LASA's national office staff and its preliminary audit of LASA for PAIA compliance.

173. Besides granting Brink access to LASA's records pertaining to the Commission's PAIA workshop and PAIA audit³¹⁴ (which categorically exposed Nair's perjuries about them at the trial of Brink's labour claim), all other requested records were refused the following month.³¹⁵

174. The unlawful reasons given for denying Brink access to the records he requested, all later abandoned, were that:

- he had previously requested (some of) them during pre-trial document discovery procedure in his labour case (but unable to disgorge them in time for trial, had now requested them again, under PAIA, after trial);
- 'all the request relates to legal proceedings before court'; and,
- 'your request falls within the prescripts of section 7(1) read with section 45 of the Act'.³¹⁶

175. However:

- the fact that a record has been previously requested during past or pending litigation, and/or the fact that it 'relates to' such litigation, is not a ground contemplated and permitted by any of sections 34–45 in Chapter 4 of Part 2 of PAIA, 'Grounds for Refusal of Access to Records' of a public body;
- section 7 is not among these 'Grounds for Refusal of Access to Records', and cannot be relied on to refuse access to a record requested under the Act; and,
- since Brink's PAIA requests were made for a serious stated purpose, inter alia for Nair's prosecution for perjury,³¹⁷ plainly they were not 'manifestly frivolous or vexatious' within the meaning of section 45. Indeed Mtati subsequently acknowledged this and advanced it as a reason for seeking an extension of time to respond:³¹⁸

your requests ... incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa.

³¹⁴ Among these, email records show that Nair knew full well about both the workshop and audit and that he perjured himself in court in denying his knowledge of them. Bundle 1, ...

³¹⁵ Seemingly the only reason LASA gave up its PAIA workshop and audit records is that Brink had indicated his intention to seek the same records from the Commission in order to verify the completeness of the workshop and audit records. Bundle 3, {covering letter}

³¹⁶ Bundle 3, {refusals}

³¹⁷ Bundle 3, {footnote 1 to PAIA request annexure addressed to VV}

³¹⁸ Bundle 3, {extension request}

176. As will appear below, all these factually and legally spurious grounds advanced to Brink for refusing his requests were eventually abandoned at court well over two years later, after he had sued to compel compliance with them.

177. In or about April 2014, LASA filed its section 32 report for the 2013/14 reporting cycle: 1 April 2013 to 31 March 2014. Crucially, it failed to report 'the number of times each provision of this Act was relied on to refuse access in full or partial[ly]', as prescribed by section 32(d).

178. It did not report, as required by the section, that it had relied on sections 7 and 45 to refuse Brink's three PAIA requests made in 2013 (each request seeking access to numerous records). The sections were not mentioned at all.

179. In an apparent allusion to section 7, which prohibits the use of documents in litigation obtained via PAIA after the litigation has started, unless the judge allows them, LASA reported that the reasons it refused two of Brink's requests totally, and one partially (almost completely), were that his requests 'relate to issues before court under case D529_2011' and in an equally irrelevant garble:

This relates to the matter already before court and the requester was referred to part of the records already placed before court in the pleadings and where applicable it was stated that such records were found not available.

180. Chapter 4 in Part 2 of PAIA, 'Grounds for Refusal of Access to Records' does not permit the refusal of requests for access to a public body records on any of these reported grounds.

181. LASA did not even allude to section 45 by reporting that it had rejected Brink's requests as a frivolous waste of LASA's time, much less did it cite this section relied on, as required by section 32(d). It was completely silent about this.

182. Had LASA complied with section 32(d) by duly reporting 'the number of times each provision of this Act was relied on to refuse access', the incompetence and legal irrelevance of these justifications, which is to say the unlawfulness of LASA's refusals of Brink's requests, would have been immediately apparent to the Commission and to the National Assembly in turn on sight of the Commission's section 84 report conveying LASA's section 32 information.

183. The allegation in the report that 'where applicable, it was stated that such records were found not available' was a lie to the Commission for the ultimate



misinformation of the National Assembly. In truth and in fact, requested records not furnished were refused outright. None were alleged to Brink to be ‘not available’. Such a claim, even had it been made, would not have complied with the finely detailed information requirements of section 23(1) in regard to the certification of any record that ‘cannot be found’ or ‘does not exist’.

184. LASA’s section 32 report also failed to report, as required, on what section of the Act LASA relied to refuse the PAIA request of another requester mentioned in the report, one Leston Simpson. And it shows that, based on the misinformation contained in LASA’s PAIA manual, and misled by it, Simpson appealed against the refusal of his PAIA request; and that LASA Chief Legal Executive Hundermark refused his appeal. As will be discussed below, and as the Commission has repeatedly tried teaching LASA, there is no internal appeal against the refusal of PAIA requests by information officers of category-(b) public entities³¹⁹ (per the definition of same in section 1), and LASA has no ‘relevant authority’ (per the definition in section 1) to decide such appeals. In short, Hundermark acted ultra vires and unlawfully.

185. On 29 April 2014, Brink launched three applications to court against Vedalankar and two regional deputy information officers for orders compelling their delivery of records that he had requested but which they had illegally refused.³²⁰

186. Opposing his applications to court, they responded (LASA’s junior counsel Machaba writing for them)³²¹ in their answering affidavits with a flood of factually and legally idle defences, all later abandoned. These were (in Machaba’s awkward, professionally immature, aggressive-defensive language quoted here) that section 7 of PAIA justified the refusal of Brink’s requests for access to its records; section 45 did likewise; Brink had not first appealed to the CEO and/or to the Board before suing; his time to appeal had lapsed; he wished to usurp the function of the Legislature; the court did not have jurisdiction; service of his applications was defective; the court was biased; the matter was too convoluted to decide on the papers; Brink’s claims brought in his local court were intended to deliberately disadvantage the respondents; he had placed the court in a trap to rule differently from the Labour Court; there was a deep-seated dispute of fact requiring oral

³¹⁹ At the October 2011 PAIA training workshop, the Commission had pertinently reminded LASA’s head office staff that ‘LASA falls under the type “B” category of public bodies in terms of LASA’ (Bundle 2, 916).

³²⁰ Bundle 4,

³²¹ Bundle 3, {PDF Author properties}



evidence or a trial to determine; CSE Mtati is indeed a duly delegated deputy information officer; the matters were sub judice; the applications offended against the precedence rule and created unnecessary confusion; Brink had waived his right to request the documents he had requested under PAIA; he had delayed in requesting the documents; he had not joined other parties; he had previously requested certain of the records for trial in his labour case; the requested documents related to his labour case; the requested documents had been improperly requested for the purposes of future criminal, civil, and disciplinary proceedings; Brink's claims were an abuse of court; he was not ordinarily resident in the court's area of jurisdiction; he ought to have made one and not three PAIA requests; the court lacked the power to grant the orders he had sought; the orders were too vague, too convoluted and too incoherent to be granted; Brink should have sought the documents requested via a different mechanism, and not PAIA; it is an abuse to collect evidence for this or that litigation; his allegations were scandalous, irrelevant and a gross abuse of court and of his power as a magistrate; he is not entitled to apply for an order making provision for returning to court on amplified papers for a further order; the orders were insufficiently precise; the court needs sight of the thousands of pages of papers in his labour case to decide his claims; the court does not have the power to find the CEO in contempt; his behaviour is strange and unethical; his provision of copies of the papers to the persons mentioned in his notices of motion are calculated to generate friction and discord amongst LASA's staff and undermine the operation of LASA; sections 7 and 45 of PAIA complement each other; some of his evidence should be struck out; he is guilty of gross misconduct; his conduct is deplorable and deserves the dimmest view a court can give a person; he has failed to comply with the Act; his claims are scandalous, vexatious and a flagrant disregard of the law and the processes of court; the Minister's Notice concerning jurisdiction has no force and effect; other persons not cited need to give oral evidence; and because of the aggravating, defamatory, unethical facts before court, Brink's applications should be dismissed with punitive costs.

187. As said, all of these false allegations and vacant defences were abruptly abandoned at court before argument on the day Brink's applications finally reached trial.



188. In November 2014, after the dismissal of his labour claim on the strength of Nair's oral evidence,³²² Brink sought further records under PAIA in relation to various aspects of the case³²³ and to test, several novel, manifestly untruthful claims Nair made on oath at trial,³²⁴ and expose them as lies.

189. Brink addressed his record requests variously to Hundermark,³²⁵ Chief Operations Officer Jerry Makokoane,³²⁶ and Nair³²⁷ – all alleged by LASA's PAIA manual to be deputy information officers.³²⁸

190. Among the records Brink sought was Hundermark's written delegation under section 17.³²⁹ To date, despite repeated demands for it,³³⁰ none has been produced.³³¹ Which means that contrary to the false information in the PAIA manual, Hundermark is not a deputy information officer, and that in handling Brink's PAIA requests he acted ultra vires and unlawfully.

191. On 31 December 2014, Brink requested LASA Board Secretary Langa Lethiba to inform the Board about the illegal refusal of his PAIA requests in November 2013 and that he had now sued to compel compliance with them.³³²

192. Lethiba declined to do so, on the basis that the matter was now in court,³³³ thus allowing the continuing haemorrhaging of LASA's budget on wastefully

³²² The judgment, delivered well more than a year after trial, was riddled with the most basic legal and factual mistakes, including the judge's radical fatal error in misallocating the onus of proof; see application for leave to appeal, and later petition for the same, at the case archive (post-judgment) online at <http://goo.gl/WAuLK6>. The judge totally accepted and relied on Nair's oral evidence to dismiss Brink's claim, despite finding him 'not generous with the truth' on 'a number' of scores, and despite the radical destructive contradictions between his evidence and (i) the documentary record, (ii) his affidavit before trial in April 2011, (iii) the interlocutory affidavits by him and Mtati, (iv) his report to the Board in November 2011, and (v) LASA's own pleadings in the case – none of which radical contradictions, canvassed in Brink's heads of argument (at: <http://goo.gl/WAuLK6>), featured in the judgment.

³²³ A number of Brink's requests were referenced to the transcript of Nair's evidence, a copy of which he had now obtained from the registrar of the Durban Labour Court.

³²⁴ See penultimate footnote above.

³²⁵ Bundle 4,

³²⁶ Ibid.

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ Bundle 4, {PH request, item 23}

³³⁰ Bundle 4, {demand for full and proper compliance, 29 April 2016. Re item E23, the delegation: 'This item has neither been supplied nor certified.'}

³³¹ Bundle 3, {second s23 affidavit in May: No. 12: 'The record did exist but could not be found after search.' (Both s23 affidavits in April and May 2016 are replete with other obviously false statements – such as that Board minutes and KZN regional management meeting minutes cannot be found.)}

³³² Bundle 3, {letter to Lethiba}



incurred legal costs, in indefensibly opposing Brink's unanswerable claims to vindicate his fundamental right to information.

193. On 13 February 2015, having sought an extension of time within which to respond under section 26,³³⁴ Nair totally refused³³⁵ Brink's request on various spurious and unlawful grounds, all of which were ultimately abandoned at court when Brink sued him to compel his delivery of the requested documents.³³⁶

194. On 3 and 25 February 2015 respectively,³³⁷ after also seeking extensions under section 26,³³⁸ Hundermark and Makokoane responded to Brink's requests, not by notifying their grant or refusal of them, as required of them, but by unlawfully demanding payment of thousands of rands variously for time spent on background reading, on reading the requests, and on being briefed about them.³³⁹

195. Besides prescribing a nominal request fee, section 22 of PAIA does not allow such reading and briefing fees, only search fees – and search fees only in respect of records to which access has been granted.

196. At its PAIA training workshop in October 2011, the Commission had specifically instructed LASA on the 'types of fees'³⁴⁰ that PAIA requesters may be charged, but the lesson evidently failed.

197. In view of Vedalankar's ultimate 'direction and control' responsibility under section 17(2) of PAIA for compliance with the Act by deputy information officers she has delegated, and in view of her power reserved by section 17(6)(b) to take over from them any PAIA request they are handling, on 19 March 2015 Brink protested Hundermark's and Makokoane's unlawful money demands, and asked her to see to their and Nair's compliance with his PAIA requests.³⁴¹ Brink annexed a further PAIA request addressed to her for a few more records.³⁴²

198. On 2 April 2015, Brink complained to the Public Protector about Nair's unlawful total refusal of his PAIA request to him, and about Hundermark's and

³³³ Bundle 3, {Lethiba's response}

³³⁴ Bundle 4,

³³⁵ Bundle 4,

³³⁶ Bundle 4,

³³⁷ Bundle 4,

³³⁸ Bundle 4,

³³⁹ Bundle 4,

³⁴⁰ Bundle 2, 917.

³⁴¹ Bundle 4,

³⁴² Bundle 4,



Makokoane's unlawful money demands and failure to respond to his PAIA requests in the prescribed manner by either granting or refusing them.³⁴³ Nair's several reasons for refusing Brink's request (all later abandoned) were tabulated and refuted in an appendix to the complaint.³⁴⁴

199. KwaZulu-Natal office investigator Siphso Cishe declined to intervene.³⁴⁵ Brink replied by identifying his several basic factual misconceptions that misdirected him, and copied his letter to the Public Protector's national office.³⁴⁶ The latter undertook to review the decision,³⁴⁷ but LASA's total capitulation at court on 11 February 2016 overtook the pending review and rendered it moot.

200. In or about April 2015, LASA filed its section 32 report for the 2014/15 reporting cycle ending 31 March 2015.³⁴⁸ Again it was grossly non-compliant and contained false and misleading information – comprehensively detailed in Brink's later complaint to the Commission about it.³⁴⁹

201. In sum, and most importantly, the reason reported by LASA for refusing Brink's requests was that 'they relate to the litigation proceedings that were pending before the Courts' – a legally spurious reason, not permitted for refusing a record request, and indeed later abandoned.

202. The report failed to state 'the number of times each provision of this Act was relied on to refuse access in full' as required by section 32(d). Had it done so, the irrelevance and unlawfulness of this spurious ground ('they relate to the litigation proceedings that were pending before the Courts'), and of the other irrelevant and unlawful grounds for refusal also advanced to Brink, but not even mentioned in the report as required, would have been apparent.

203. Regarding 'the number of requests for access refused', LASA failed to inform the Commission that fourteen records requested by Brink were refused (by Nair).

204. Regarding 'the number of times each provision of this Act was relied on to refuse access', LASA failed to report section 7: ten times, and sections 37, 47 and 48:

³⁴³ Bundle 3,

³⁴⁴ Ibid.

³⁴⁵ Bundle 3, {Cishe's refusal}

³⁴⁶ Bundle 3, {letter to Cishe}

³⁴⁷ Bundle 1, {complaint to Public Protector}

³⁴⁸ Bundle 3,

³⁴⁹ Bundle 3,

four times each. (Which sections as justifications were also inapplicable and legally irrelevant, and were accordingly also later abandoned.)

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205. The report falsely and misleadingly stated:

The requester, Mr Brink was requested to pay the search fees in terms of section 22 of the Act. He had failed and/or refused to pay the fees and accordingly the reply had not been submitted to him.

206. In truth and in fact, Brink was not 'requested to pay the search fees in terms of section 22 of the Act' as falsely alleged, i.e. the charge allowed by the section for searching for and copying documents to which access has been granted. This allegation was false for two reasons. First, Brink was not granted access to any documents he requested. And second, thousands of rands were demanded from him for hundreds of hours allegedly spent reading Brink's requests, on background reading, and for time spent in briefing sessions³⁵⁰ – and not for searching and copying. Section 22 does not allow such reading and briefing charges.

207. Mtati later confirmed that no records whatsoever exist to vouch that all this time was spent on reading and briefing as alleged.³⁵¹

208. It follows that LASA's illegal demands for compensation for this were a fraudulent attempt to extort money from Brink.

209. The illegal, fraudulent money demands were furthermore made in bad faith and without any intention of furnishing Brink with any of the records he had requested, because Mtati later refused them all.³⁵²

210. The dishonest and corrupt object of raising the illegal and fraudulent money charges against Brink was plainly to put him off pursuing his constitutional right to access to the records he had duly requested.

211. The section 32 report falsely stated '0' applications to court. As it was intended to do, this lie concealed from the Commission and from the National Assembly the fact that in April 2014 Brink had launched three court applications to compel compliance with his illegally refused PAIA requests (which illegal refusals LASA later implicitly conceded at court).

³⁵⁰ Bundle 4,

³⁵¹ Bundle 4,

³⁵² Bundle 4,



212. As a result of this false section 32 reporting by LASA, it succeeded again, now for the fourth time, in misinforming the Commission, and, through it, misleading the National Assembly on its performance under PAIA in 2014/15, and concealing its persistent and wilful non-compliance with it in order to suppress documents its national office executives did not want Brink to see and pass on to the authorities.

213. On 28 April 2015 Mtati acknowledged Brink's March letter and PAIA request to Vedalankar, and requested an extension of time on her behalf within which to respond.

214. Not only was Mtati's extension request legally incompetent, it was also dishonest. The first reason he advanced for the extension, namely that information officer Vedalankar was on leave, was not a competent reason for an extension contemplated and permitted by section 26(1). It was also untrue, in that Mtati later confirmed on oath that Vedalankar 'has not read the Applicant's request and has not made any decision therein.'³⁵³ Section 26(1)(c) which Mtati advanced as a further reason for the extension had no application: it allows an extension if 'consultations among divisions of the public body or with another public body is necessary or desirable to decide the requests that cannot reasonably be completed within the original period.' No such consultations were embarked on.

215. Nonetheless, Brink did not object to the extra 30-day extension, even though the reasons Mtati gave for seeking it were both legally incompetent and dishonest.

216. On 26 May 2015, claiming to have been 'delegated'³⁵⁴ by acting CEO Nair to respond on Vedalankar's (or his) behalf in her absence, Mtati responded to Brink's letter and PAIA request addressed to Vedalankar by:

- now refusing outright all records requested of Hundermark and Makokoane;³⁵⁵
- persisting with the unlawful money demands about which Brink had complained;³⁵⁶ and,
- denying Brink access to all the rest of the records requested of Vedalankar³⁵⁷ – besides providing one record (LASA's section 32 report for 2013/14) and claiming another did not exist, without certifying this on affidavit as required by section 23.

³⁵³ Bundle 4, {VV2 paragraph 10}

³⁵⁴ Bundle 4, {VV2, paragraph 5}

³⁵⁵ Bundle 4,

³⁵⁶ Ibid.

³⁵⁷ Ibid



217. On 19 June 2015, Brink dispatched by registered post a formal fundamental rights complaint to the Commission about Nair's and Mtati's unlawful refusals of his PAIA requests, and the unlawful money demands.³⁵⁸

218. On 29 June 2015 Brink mailed³⁵⁹ copies of his complaint to Hundermark,³⁶⁰ Makokoane,³⁶¹ Audit and Risk Executive Avie Naidoo,³⁶² Board Secretary Lethiba,³⁶³ and Board Audit and Risk sub-committee chairperson Nonhlanhla Mgadza,³⁶⁴ making final appeals for their remedial intervention in Mtati's illegal refusals of his PAIA requests. None responded.

219. On 9 July 2015, Chief Legal Executive Hundermark falsely disclaimed any interest in and responsibility for PAIA matters at LASA,³⁶⁵ despite:

- his engagement with then PAIA Unit director Kisoona regarding Brink's first, ignored, PAIA request made in August 2010, and the assurance he gave her that it would be responded to by 20 October 2010;³⁶⁶
- his central involvement in organizing staff attendance at the Commission's PAIA training workshop in October 2011;³⁶⁷
- his specific knowledge, through his further engagement with Kisoona, of 'the reporting of the Brink saga [to the National Assembly] (you [the Open Democracy Advice Centre] may be familiar with it – Patrick [Hundermark] is)';³⁶⁸
- his rejection of Simpson's appeal against the refusal of his PAIA request, acting as Chief Legal Executive and as such its most senior lawyer on LASA's national management executive committee to whom LASA's head office evidently looked for the last word on PAIA disputes.

220. In short, when Brink called Hundermark's attention to Mtati's extraordinarily serious, illegal refusal on completely spurious grounds of his PAIA requests directed at obtaining further evidence of corruption in the abortion of his recruitment to the

³⁵⁸ Bundle 3,

³⁵⁹ Bundle 3,

³⁶⁰ Bundle 3,

³⁶¹ Bundle 3,

³⁶² Bundle 3,

³⁶³ Bundle 3,

³⁶⁴ Bundle 3,

³⁶⁵ Bundle 3,

³⁶⁶ Bundle 3,

³⁶⁷ Bundle 3,

³⁶⁸ Bundle 3, {Email from then PAIA Unit director Kisoona to the Open Democracy Advice Centre on 12 July 2011, copying Hundermark in}



top professional post for which he had been recommended, LASA's Chief Legal Executive looked the other way.³⁶⁹

221. On learning that his fundamental right violation complaint had not been collected from the Commission's local Post Office, Brink travelled to Johannesburg to hand-deliver copies to the Gauteng office in Braamfontein and to new PAIA Unit director Kisha Candasamy in the national office there on 31 July 2015.³⁷⁰

222. On 6 August 2015, with his formal complaint to the Commission not yet resolved, and his 180 day time limit to apply to court under section 78(2) running low, Brink launched an application to court against Nair for an order compelling his compliance with his PAIA request that he had illegally refused.

223. On 21 September 2015, Brink called the Commission's attention to the ongoing serious problem of LASA's continuing, persistent false section 32 reporting, with reference to the most recent instance of this, its false report for 2014/15.³⁷¹

224. The matter was not resolved, and the National Assembly was once again misinformed³⁷² and misled to believe that LASA had complied with PAIA during the year.

225. On 12 October 2015, the Commission offered LASA an 'alternative dispute resolution (ADR) process facilitated by the Commission in an attempt to amicably resolve this complaint'³⁷³ that Brink had made about the illegal refusals of his PAIA requests and illegal money charges raised against him.

226. Yet again the Commission reminded LASA that:³⁷⁴

³⁶⁹ Winner of the Rusty Wilmot Trophy for loyalty and dependability (1982) (Bundle 3, ... {PH resumé, including his Rusty Wilmot Trophy for loyalty and dependability}, Hundermark's loyalty and dependability were rewarded a few months later by LASA chairperson Mlambo JP, Judge President of the Gauteng Division of the High Court, with an acting judgeship in his Division in November 2015 (Bundle 3, ...).

³⁷⁰ Bundle 3,

³⁷¹ Bundle 3, ... At the time he wrote, Brink had not yet succeeded in obtaining LASA's section 32 report to the Commission for 2013/14, only its PAIA report included its annual report for the year. The Commission eventually furnished him a copy on 17 December 2015 (Bundle 3, ...), and as mentioned above, it proved to be misleading and non-compliant as well.)

³⁷² Bundle 3, {SAHRC s84 report}

³⁷³ Bundle 3, {Candasamy to Sekgota email}

³⁷⁴ Bundle 4, {VV1, replying affidavit, annexure D}

As LASA is a type B public body for the purposes of PAIA, no internal appeal process is available to the Complainant should he be dissatisfied with this decision.

227. As will appear below, LASA disregarded the Commission's repeated elementary advice that there is 'no internal appeal process' available at LASA, and repeatedly insisted on oath (per Nair and Mtati) that there was such an appeal process, and that Brink had wrongly failed to pursue it before coming to court.

228. Notwithstanding that 'The misinterpretation and misapplication [of PAIA] was identified as being high risk to LASA',³⁷⁵ as the Commission recorded in its report of its PAIA training workshop in October 2011, attended by Corporate Legal Manager Sekgota,³⁷⁶ Sekgota spurned the Commission's offer to mediate a resolution of Brink's claims out of court,³⁷⁷ and preferred the matter drag out.

229. On 18 November 2015, Brink sued Vedalankar³⁷⁸ to compel her compliance with his requests addressed to her, to Makokoane, and to Hundermark, which Mtati had illegally refused in May.³⁷⁹

230. This was now Brink's fifth suit against LASA information- and deputy information officers to compel them to respect his constitutional right to information and to open LASA's books, which they were determined to keep hidden.

231. Both applications to court against Nair and Vedalankar were opposed, and voluminous answering affidavits, drawn by LASA's junior counsel Machaba, repeated the same vacant defences raised against Brink's three previous, still pending applications – save that the internal appeal defence was dropped in Mtati's affidavit made on Vedalankar's behalf. All these empty defences were later abandoned.

232. In his answering affidavit, disputing Brink's claim that he was not, Mtati insisted under oath:³⁸⁰

I am without question a Deputy Information Officer.

³⁷⁵ Bundle 2, 916.

³⁷⁶ Bundle 2, 923.

³⁷⁷ Bundle 3, {Sekgota to Candasamy email}

³⁷⁸ Bundle 4, {VV2 application}

³⁷⁹ Brink did not accept that Mtati, Makokoane and Hundermark were deputy information officers as alleged, and indeed Mtati definitely was not and Hundermark almost certainly not: no delegation has been produced despite repeated demand for it (see immediately infra).

³⁸⁰ Bundle 4, {VV2 answer paragraph 8}



233. Referring to himself, Hundermark and Makokoane, all alleged by the PAIA manual to be deputy information officers,³⁸¹ Mtati repeated again under oath:³⁸²

Deputy Information Officers have been duly appointed, alternatively duly delegated.

234. Mtati's written delegation as deputy information officer³⁸³ produced in mid-February 2016³⁸⁴ shows that contrary to his repeated lies under oath about this, in truth and in fact he had not 'been duly appointed, alternatively duly delegated' as a deputy information officer at the time he handled Brink's PAIA requests, refused them, and made answering affidavits opposing his applications to court to compel compliance with them.

235. In view of the substantial similarity of LASA's opposition to all five of his applications, Brink set them down for argument together on the same day, 11 February 2016.³⁸⁵

236. On 12 January 2016, Brink alerted the Commission to serious misinformation in LASA's PAIA manual and to several basic misconceptions about the operation and implementation of PAIA³⁸⁶ disclosed by the answering affidavits in his applications against Vedalankar and Nair to compel their compliance with his illegally refused PAIA requests, namely the wrong contentions that:

- Vedalankar was entitled to withhold her decision of Brink's PAIA requests until he had paid the various reading and briefing charges demanded – but under section 22 of PAIA, only search fees may be levied, and only in respect of documents to which access has been granted;
- Brink ought to have sued Vedalankar out the court where she has her 'principal or employment address' – but under section 1 of PAIA, an aggrieved records requester may sue out of a magistrate's court in whose territorial jurisdiction he is 'ordinarily resident'; and,

³⁸¹ Bundle 4, {VV2 founding affi, paragraph 5}

³⁸² Bundle 4, {VV2 answer paragraph 122}

³⁸³ Bundle 3,

³⁸⁴ Under clause 3 of the settlement agreement at court on 11 February 2016 (Bundle 4, ...).

³⁸⁵ Bundle 4,

³⁸⁶ Bundle 3,

- Brink was required to make an internal appeal before applying to court to compel – per Nair’s answering affidavit in October 2015: Brink ‘ought to have lodged his appeal 60 days after my decision’.³⁸⁷

237. In making this latter assertion, Nair did not say to whom Brink was supposed to appeal. The answering affidavits opposing Brink’s first three applications had variously claimed:

- ‘The CEO [Vedalankar] is the head of the organisation and also the Information Officer. She is the person who ought to consider appeals against decisions for refusal of access to information by a deputy information officer’;³⁸⁸
- or, differently: ‘my seniors including the CEO and/or the Board are the people to whom an appeal against my decision lies’;³⁸⁹
- or, differently again: the ‘Information Officer or even the Board headed by a judge’;³⁹⁰

which is to say, either Vedalankar, or the Board, or Vedalankar and the Board sitting together, or Vedalankar and the Board sitting alternately – whatever.

238. Two months after Nair’s wrong contention about the need to appeal before approaching court, despite the Commission’s failed attempt to teach LASA’s attorneys that it is a category-(b) public body, without internal appeal machinery, Mtati finally quietly dropped this error, and didn’t repeat it in his answering affidavit in December 2015 in Brink’s second application against Vedalankar – unlike in his answering affidavit in August 2014 in Brink’s first application against Vedalankar:³⁹¹

It appears clear to me that the Applicant ought to have proceeded in terms of section 74(1)(a). ... I am not sure under what basis does he come to the ... conclusion ... that no ... appeal lies in his case. ... He himself contends that: ‘... no right of internal appeal lies against the refusal of a request for access to the records of a public body such as Legal Aid SA.’ ... The Applicant could not have been more wrong in his analysis of the above section of the Act.

³⁸⁷ Bundle 4, {Nair answering affidavit, paragraph 10}

³⁸⁸ Bundle 4, {Bambiso, answering affidavit, paragraph 191.5}

³⁸⁹ Bundle 4, {Bambiso, answering affidavit, paragraph 80.5}

³⁹⁰ Bundle 4, {Mtati answering affidavit in VV1, paragraph 65}

³⁹¹ Bundle 4, {VV1 Mtati answering affidavit paragraphs 59–61}



239. Mtati's and Nair's serious mistake about internal appeals, which Brink had repeatedly pointed out, was finally explicitly conceded in LASA's section 32 report for 2015/16 in April 2016:³⁹²

since Legal Aid SA is a category-(b) public body, as defined by section 1 of PAIA, it has no internal appeal procedure available to aggrieved record requesters.

240. By letter of 25 January 2016, the Commission raised with LASA these elementary misunderstandings of the Act and incompetent provisions that had been included in LASA's corrupted PAIA manual – including Brink's point that the new distinction made in the manual between 'deputy information officers' and 'designated deputy information officers' was spurious under section 17.

241. To date, however, many months later, the manifold serious errors and misinformation in LASA's PAIA manual identified by the Commission remain uncorrected. That is, LASA continues to misinform and mislead people wishing to access its records – especially those refused access, who continue to be misinformed and misled into making incompetent internal appeals instead of proceeding directly to court for relief as the Act prescribes.

242. According to Mtati on affidavit:³⁹³

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

243. Mtati was appointed Corporate Services Executive in July 2010,³⁹⁴ and the successive changes to the original PAIA manual were made thereafter.

244. Prior to Mtati's appointment as CSE and his so-called 'development' of the PAIA manual, the original version³⁹⁵ was in perfect shape and conformed precisely to the Act and to the stipulations of section 14, 'Manual on functions of, and index of records held by, public body'.

³⁹² Bundle 3,

³⁹³ Bundle 4, {VV2, Mtati's answering affidavit, paragraph 6}

³⁹⁴ Bundle 2,

³⁹⁵ Bundle 4,

245. It follows that Mtati has been 'responsible' for the progressive corruption of LASA's PAIA manual. As mentioned above, Mtati failed to attend the Commission's PAIA training workshop in October 2011, and his ignorance of the most basic provisions of PAIA as a result is evident from the manner in which he has fouled the manual up.

246. Mtati is not to blame for this alone. Before repeatedly resolving at their Board meetings to approve Mtati's incompetent, unlawful and misleading alterations of LASA's originally perfect PAIA manual, neither chairperson Mlambo JP, nor law professor Yusuf Vawda, nor any of the other several lawyers on the Board, including du Rand and Maree, noticed that Mtati was progressively corrupting it by making changes to it that were inconsistent with and in serious conflict with the provisions of PAIA.

247. Mtati's claim that 'This manual is easily accessible on the Legal Aid SA's website' is incorrect. On 22 March 2016, Brink called LASA Communications Executive Mpho Pashe's attention to the problem that the hyperlink to the PAIA manual on LASA's website attracts a dangerous malware notice.³⁹⁶ Vedalankar and COO Makokoane were copied in.³⁹⁷

248. Pashe did not acknowledge Brink's communication. Both Vedalankar³⁹⁸ and Makokoane did;³⁹⁹ but to date the trouble persists, and consequently LASA's PAIA manual remains inaccessible on LASA's website, other than to persons willing to risk the hazard that their computers may become infected with malware if they proceed to click on the PAIA manual hyperlink that they have been warned not to.

249. The PAIA-specialist senior magistrate⁴⁰⁰ specially appointed to try Brink's five applications to compel LASA's compliance with his illegally refused PAIA requests ordered a pre-trial conference before the hearing on 11 February 2016.⁴⁰¹

250. On 1 February 2016, ten days before the case, Brink delivered⁴⁰² a detailed agenda⁴⁰³ for the conference, pointing up the factual and legal vacancy of each and every one of LASA's defences to his applications.

³⁹⁶ Bundle 3,

³⁹⁷ Bundle 3,

³⁹⁸ Bundle 3,

³⁹⁹ Bundle 3,

⁴⁰⁰ Under section 91A of PAIA, only a designated, listed magistrate who has 'completed a training course' in PAIA may adjudicate applications brought under the Act.

⁴⁰¹ Bundle 3,

251. Instead of conceding Brink's clearly unanswerable case for access to all the records he had requested, Mtati briefed two junior advocates from Johannesburg to fly across the country and appear at the hearing in the Eshowe Magistrate's Court in KwaZulu-Natal, namely Machaba, who had advocated the refusal of Brink's PAIA requests from early 2011 and Christopher Carelse, a former LASA head office lawyer,⁴⁰⁴ who had attended the Commission's PAIA training workshop in October 2011⁴⁰⁵ and therefore had some knowledge of how PAIA works.

252. At court, a couple of minutes into the pre-trial conference, and before the applications could be argued, LASA totally capitulated to Brink's claims; abandoned all its unlawful justifications for denying him access to the records he had requested; reversed its unlawful refusals of access; abandoned its unlawful money demands; abandoned all its patently vacant defences to the five applications, and undertook to provide him with all the records he had requested or to certify on oath any that do not exist, by 15 April 2016.⁴⁰⁶ Also, as an afterthought added in manuscript to the agreement typed and printed at court, to show 'the reaction' of any third party asked for consent to the release of records it owned. (None of the recorded 'information' Brink sought 'belongs' to any third party; and the word 'belongs' doesn't feature in Part 2, Chapter 4, 'Grounds for Refusal of Access to Records'.)⁴⁰⁷

253. The settlement agreement drawn and signed at court required that Mtati furnish Brink with a copy of his delegation as deputy information officer.⁴⁰⁸ He did so a few days later; and, as said, it shows that he was only appointed on 16 January 2016, which gives the lie to his sworn claims in his answering affidavits on 8 August 2014 and 15 December 2015, quoted above, that he was a deputy information officer on the dates he refused Brink's PAIA requests addressed to Vedalankar, on 6 November 2013 and 26 May 2015, and those addressed to Hundermark and Makokoane, also on 26 May 2015. That is, besides refusing Brink's PAIA requests unjustifiably and illegally, Mtati indeed also acted ultra vires and illegally in responding to them without any authority under PAIA to do so, as Brink pointed

⁴⁰² Bundle 3,

⁴⁰³ Bundle 3,

⁴⁰⁴ Bundle 2, 922.

⁴⁰⁵ Bundle 2, 922: the first attendee listed in the attendance register.

⁴⁰⁶ Bundle 3,

⁴⁰⁷ Ibid.

⁴⁰⁸ Per clause 3.



out;⁴⁰⁹ and he later perjured himself about it in insisting that he was a deputy information officer when he was not.

254. Anticipating that LASA was likely to make another, now fifth, false report to the Commission under section 32, as it had on four previous occasions, in order to conceal from the National Assembly its illegal refusals of his PAIA requests in 2015/16, Brink drew a draft section 32 report for Vedalankar⁴¹⁰ containing all the information the section prescribed, and emailed it to her, and to other interested national executives CLE Hundermark, COO Makokoane, and IAE Mamotheti Sethopo on 24 March 2016. All acknowledged receipt.⁴¹¹

255. On 15 April 2016, LASA delivered to the Commission its section 32 report for 2015/16.⁴¹² All the prescribed information stated in Brink's draft report was omitted. Yet again, and now for the fifth time, LASA's report was massively non-compliant with the detailed reporting requirements of the section, and again contained false information for the ultimate misinformation of the National Assembly.

256. On 20 May 2016, Brink raised all this directly with Vedalankar,⁴¹³ but she ignored his demand that the false and non-compliant report be remedied.

257. On 1 June 2016, Brink then indentified all the false information and many non-compliant deficiencies of LASA's 2015/16 report to the Commission.⁴¹⁴

258. Inter alia, the report persisted in falsely claiming as a justification for obstructing/refusing Brink's access to the records he had requested that he had refused to pay 'search fees' – two months after LASA had abandoned its illegal money demands at court on 11 February 2016, thereby implicitly conceding they were not in fact 'search fees' as Brink had shown, and that they were not properly chargeable under PAIA as he had complained.

259. The report falsely alleged '0' requests 'refused in full'. In truth and in fact, on 26 May 2015 Mtati had refused Brink's requests addressed to Hundermark (two requests) and Makokoane in full – three requests refused in full, and virtually all

⁴⁰⁹ Bundle 4,

⁴¹⁰ Bundle 3, Brink emailed an earlier draft to Board Secretary Langa Lethiba (Bundle 3, ...).

⁴¹¹ Bundle 3,

⁴¹² Bundle 3,

⁴¹³ Bundle 3,

⁴¹⁴ Bundle 3,

his request addressed to Vedalankar, but for one record supplied and one said not to exist.

260. By dint of this false reporting, LASA concealed that it had (illegally) denied Brink access to 83 duly requested records.

261. It equally untruthfully reported that '0' provisions of the Act were relied on to refuse access to requested records. In truth and in fact, without having explicitly named the sections in his refusal, Mtati impliedly relied on sections 7 and 45, by claiming, irrelevantly, that the requests were 'related and ancillary to the litigation proceedings you have brought against Legal Aid South Africa' in Brink's labour claim and his applications to compel compliance with his first three PAIA requests made after the claim was tried; and that the requests 'are malicious and seek to divert the resources of Legal Aid South Africa', an unambiguous reference to section 45. Mtati expressly relied on section 36 to refuse Brink access to the insurance records he'd requested. And he impliedly relied on section 34 to refuse access to a leave form requested on the ground that it was 'personal information'. None of this was reported.

262. The report claimed under 'Number of requests granted in full': '2' and 'All the records were granted to Adv Brink in full.' This was absolutely false. Brink's PAIA request addressed to the Department in November 2015 for all LASA's budget applications to the Department for the preceding five years for salaries for its nine Senior Litigator posts⁴¹⁵ was referred by the Department to LASA for a response under section 20 of the Act;⁴¹⁶ and with the Department watching, these records were duly supplied.⁴¹⁷ Besides a previous section 32 report⁴¹⁸ and another record claimed not to exist,⁴¹⁹ all the rest of Brink's record requests addressed to LASA were refused.⁴²⁰

263. Under 'Other matters as may be prescribed', the report mentioned – amidst a mess of false and misleading information calculated to dissemble that the refusals of Brink's PAIA requests had been legally justified – that Brink had brought five 'review applications in the Eshowe Magistrate Court'. The report concealed the facts that at court on 11 February 2016, two months earlier, LASA had abandoned all its

⁴¹⁵ Bundle 3,

⁴¹⁶ Bundle 3,

⁴¹⁷ Bundle 3,

⁴¹⁸ Bundle 4,

⁴¹⁹ Bundle 4,

⁴²⁰ Bundle 4,



unlawful justifications for refusing Brink's PAIA requests; had abandoned its unlawful money demands; had abandoned all its meritless defences to his applications to court; and had totally capitulated to his claims to access to the records he had requested or to sworn certification where any did not exist.

264. In short, with its concealment of prescribed information; concealment of relevant information; provision of false information; and generation of false implications, the report created the wholly false and misleading impression that in 2015/16 LASA had duly complied with its constitutional information transparency obligations as circumscribed by PAIA.

265. To date, LASA's false and deficient section 32 report for 2015/16 remains uncorrected, and the National Assembly stands exposed to being misinformed for a fifth time and misled into wrongly believing that LASA duly complied with PAIA in 2015/16.

266. LASA's false section 32 reporting to the Commission for five years is extraordinarily serious. The reporting requirement imposed on public bodies by the section, namely that they report annually to the Commission with the fine particularity prescribed by subsections (a) to (i) on how they handled PAIA requests in the previous reporting cycle, is no trivial thing. The Preamble to PAIA notes that 'the system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'. Unlike during the apartheid era, now 'section 32(1)(a) of the Constitution provides that everyone has the right of access to any information held by the State', enabling 'everyone' to expose 'secretive' corruption, gross maladministration involving millions of rands and directly affecting service delivery, and the wholesale breakdown of the rule of law, due process and proper corporate governance in public bodies, and 'abuse of power and human rights violations' by rogue officers in their most senior ranks.

267. The detailed reporting requirements of section 32 enable the National Assembly to closely monitor public body compliance with PAIA, enacted to give effect to 'the right of access to any information held by the State'. If a public body reports falsely to the Commission, year after year, the National Assembly is misinformed and misled in turn, and its constitutional oversight function and responsibility in regard to public entities, imposed by section 55(2)(b)(ii) of the Constitution, is frustrated and stultified, thereby defeating the object of section 32 of PAIA, defeating the object of the Act to give effect to the fundamental right to



information in the democratic era, and enabling the delinquent public body to behave like an corrupt organ of the apartheid state run by lawless rogues, year after year, undetected, unaccountably, and with perfect impunity.

268. On 15 April 2016, the due date under its settlement agreement for delivery of all requested documents or sworn certification of those that do not exist, LASA reneged: Its performance was grossly defective and non-compliant with its agreement and with PAIA, in that numerous requested records were neither furnished nor certified under section 23; were claimed to have been furnished but were not; were claimed to have been certified but were not; and were refused again on legally and factually spurious grounds. Mtati's section 23 affidavit failed to include all the detailed information prescribed,⁴²¹ and was generally radically contradictory in claiming both that records did not exist and could not be found – the latter claim implying they did exist and had been searched for accordingly.

269. In an 18-page notice of breach and demand for compliance sent Mtati on 29 April 2016, Brink specified all these general and particular breaches of the settlement agreement and called on Mtati to remedy them.⁴²²

270. Mtati's response on 9 May 2016 was to blandly dispute that LASA was in breach:⁴²³

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

And to undertake only to furnish a supplementary section 23 affidavit in regard to some uncertified records:⁴²⁴

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

271. His 'supplementary affidavit' made on 13 May 2016⁴²⁵ failed to remedy the many breaches Brink identified, and Mtati ignored a second demand to remedy.⁴²⁶

272. Under clause 5 of the settlement agreement,⁴²⁷ Brink accordingly returned to court⁴²⁸ to compel full and proper compliance with the agreement and with his PAIA

⁴²¹ In court on 8 September 2016, the magistrate pointed this out.

⁴²² Bundle 4,

⁴²³ Bundle 4,

⁴²⁴ Ibid.

⁴²⁵ Bundle 4,

⁴²⁶ Bundle 4,

⁴²⁷ Bundle 4,



requests that LASA had in February finally agreed to grant, as legally and constitutionally required.

273. Brink's third demand to remedy⁴²⁹ was also ignored.

274. Set down on 28 July 2016, Brink's application to compel was postponed by court to 8 September 2016 for further affidavits.

275. LASA thereafter surrendered a few further records,⁴³⁰ but persisted in refusing others and failed to remedy its defective and non-compliant section 23 affidavits.

276. To frustrate and obstruct Brink's pursuit of these outstanding records, and of a compliant section 23 affidavit, on 29 August 2016, a few days before the hearing, LASA brought an application for security, demanding Brink pay R150 000 into court.⁴³¹

277. Brink refuted LASA's case for the payment of security on several grounds advanced in his heads of argument.⁴³²

278. In court on 8 September 2016, LASA did not press its application for security. Instead, it applied for and won a postponement of Brink's claims to the requested documents LASA had undertaken to provide him, but had not, and to due certification under section 23 of any that do not exist or cannot be found, on the basis that it wished to apply to the High Court to interdict Brink from pursuing his claims to the said documents and to a compliant section 23 affidavit on the ground that he is a vexatious litigant. Vedalankar and Hundermark had approved this under LASA's Approval Framework.

279. That is, having ultimately failed in its endeavour to successfully obstruct Brink's access to the records he had requested:

- by illegally refusing them on spurious grounds and by raising illegal money charges, all later abandoned;
- by engaging in protracted filibustering opposition of his applications to compel compliance with his PAIA requests on wholly baseless and indefensible grounds, all later abandoned;

⁴²⁸ Bundle 4,

⁴²⁹ Bundle 4,

⁴³⁰ Bundle 4,

⁴³¹ Bundle 4,

⁴³² Bundle 4,



- by reneging on its undertaking at court to fully and properly comply at last with his PAIA requests, after many years of obstruction, and continuing to refuse records it had undertaken to provide, for new manifestly insupportable reasons;
- by opposing his application under the default clause of the settlement agreement for orders directed at compelling compliance with its agreement to respond fully and properly to his PAIA requests; and,
- by trying to knock him out with a baseless last-minute application for the payment into court of massive security for costs, brought out of time under the rules of court⁴³³ and on the dishonestly false ground that Brink's claim to enforce the settlement agreement and hold LASA to its promise to comply with his PAIA requests was vexatious,

LASA moved to obstruct and smother Brink's investigation of criminal and other corruption in LASA's top ranks by blocking his access to the records he had requested for this stated purpose, or due certification of any that do not exist or cannot be found, which records and certification LASA had undertaken on the court record in February 2016 to provide.

280. As defined in LASA's 'Business Plan 2011–2012', the 'Quality' that Mtati and his 'Corporate Service Dept' is expected to deliver is 'Settlements negotiated ... that are in the best interests of Legal Aid South Africa'.⁴³⁴ Instead of negotiating a settlement of Brink's PAIA applications, as required of him – having implicitly conceded at court on 11 February 2016 that LASA cannot lawfully justify continuing to withhold the records Brink has duly requested, and that its defences (set up by junior counsel, since replaced) to his applications to compel are meritless and unsustainable – Mtati, on behalf of LASA's information- and deputy information officers, directly implicated in capital misconduct as management executives, continues opposing Brink's constitutionally supported claims to the public records he requested, so as to avoid handing them over, as he undertook to do, or, in the case of any that do not exist, to avoid certifying this properly under section 23. Consequently the litigation needlessly drags on and multiplies, at massive wasted expense and cost in public revenue, for the essential purpose of preventing Brink from exercising his fundamental civil right to access LASA's records, and ultimately to suppress (further) evidence of criminal corruption in LASA's top ranks.

⁴³³ Rule 62(1) requires that a demand for security be made 'as soon as reasonably practicable after the commencement of proceedings'. The demand was served on 28 July 2016, at the end of them.

⁴³⁴ Bundle 2, 876.



281. Mtati's continuing opposition to Brink's applications is manifestly not 'in the best interests of Legal Aid South Africa'. Rather, his persistent frustration of Brink's access to the records he has requested is in the personal interest only of those top-echelon officers in LASA whom Brink has stated he intends taking to law for their corruption, maladministration and crimes. And it is to protect them personally ('he protects us', per Mlambo JP),⁴³⁵ not LASA as a public entity, that Mtati is squandering enormous sums of public revenue to violate Brink's constitutional right to information.

282. In their persistent, determined obstruction of Brink's access to LASA's business records, with the corrupt object of suppressing and concealing documentary evidence of pervasive corruption in its top ranks, including further evidence of such crimes as perjury, defeating the ends of justice, and lying to the Portfolio Committee, as well as of gross maladministration involving millions of rands and directly affecting service delivery; of the wholesale breakdown of proper corporate governance, of the rule of law, and of due process at LASA, involving, inter alia, the routine illegal flouting of LASA's internal regulations by Board chairperson Mlambo JP and national management executives; and of pervasive systemic corruption in the conduct of LASA's recruitment operations, information officer Vedalankar, deputy information officer Nair and in-house attorney Mtati have since 2010 to date run up legal costs to LASA of R..... million.⁴³⁶

⁴³⁵ Bundle 2, 1016.

⁴³⁶ Bundle 3, {Put up all counsel's invoices, LASA's attorney bills, and their travel vouchers, when delivered under court order – requested under PAIA in November 2014 and on 1 August 2016.} As regards counsel's fee-notes, Mtati's latest spurious reason for refusing them, given on 15 April 2016, is that they 'belong to a third party in terms of section 34 and the third party has not granted consent to furnish such record.' (Bundle 3, ...) In fact and in law, (i) these invoices for professional services rendered LASA and presented for payment belong to LASA; (ii) third party ownership is not a ground contemplated in section 34; (iii) such ordinary commercial records cannot conceivably contain personal information that it would be unreasonable to disclose (per the section); (iv) other such fee-notes from counsel have been supplied; (v) no refusal has been shown; (vi) no third party consent is anyway required to release them.

1 Boast Street
Eshowe
KwaZulu-Natal
19 September 2016



Adv Lawrence Mushwana
Chairperson: South African Human Rights Commission
2nd Floor, Forum 3
33 Hoofd Street
Braampark
Braamfontein

Private Bag X2700
Houghton 2041

By registered post and by email: jhollenbach@sahrc.org.za

Dear Adv Mushwana

**SPECIAL REPORT ON LEGAL AID SA
AN AGGRAVATED CASE OF REPEATED WILFUL NON COMPLIANCE
WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 TO
ILLEGALLY OBSTRUCT ACCESS TO DULY REQUESTED RECORDS, AND
REPEATED FALSE ANNUAL AND 'CONFIDENTIAL' REPORTING TO
CONCEAL THIS FROM THE NATIONAL ASSEMBLY**

In view of the Commission's perennial complaint that it lacks the resources to intervene in Legal Aid South Africa's persistent illegal denials of my requests for access to its records made under the Promotion of Access to Information Act 2 of 2000, and LASA's repeated false annual and other reporting to conceal this, about which I've repeatedly complained since 2010, I enclose a comprehensive specimen report I've prepared under the above title to assist the Commission to fully and properly inform the National Assembly about the extraordinarily serious problem in its next PAIA section 84 report, or at the Commission's presentation of its annual report to the Justice Portfolio Committee next month. So that the Portfolio Committee can at last hold LASA's delinquent information- and deputy information officers to account.

On 1 June I alerted your then PAIA Unit director Kisha Candasamy to the fact that LASA had again filed with the Commission a non-compliant, false and incomplete section 32 report for 2015/16 – now for the fifth year – with the

ultimate object of concealing from the National Assembly its illegal obstruction and refusals of my PAIA requests in the said reporting cycle.

I'd earlier copied to Candasamy a draft section 32 report I'd drawn and emailed to LASA information officer and CEO Vidhu Vedalankar on 24 March containing all the prescribed information the section required her to report to the Commission regarding the illegal obstruction and refusal of my PAIA requests during the year – ultimately conceded at court on 11 February in a total surrender before the commencement of argument in my five applications to compel compliance with my requests. After years of prevarication and delay, LASA abandoned all its spurious justifications for refusing my requests and worthless defences to my applications, and finally undertook to hand over all the documents I'd requested or a section 23 affidavit regarding any that don't exist or can't be found. You can read the case documents and settlement agreement online at: <https://goo.gl/prqE1N>. (LASA then very predictably reneged on its undertaking. My application to compel full and proper compliance with the settlement agreement is online at the said case document archive.)

Besides acknowledging receipt of the draft section 32 report I'd drawn, Vedalankar otherwise ignored it and proceeded to falsely report to the Commission once again.

Candasamy did nothing about this, and ignored my reminder on 10 June. When I telephoned her some weeks later to follow up, she told me she'd quit the PAIA Unit and handed the matter over to Mandisa Mcanyana, to whom she referred me. When we spoke, however, the latter knew nothing about it; but she undertook to investigate.

On 19 August, your CEO Lindiwe Khumalo eventually responded by completely avoiding the issue of LASA's false and incomplete section 32 report and talking instead to several other totally irrelevant matters, and by telling me in as many words that the Commission wasn't interested in LASA's non-compliance with its annual reporting obligations.

That is, the Commission would not be requiring LASA to file a true, complete and accurate section 32 report for 2015/16 for the true, complete and accurate information of the Commission, so as to enable the latter to deliver a true, complete and accurate section 84 report to the National Assembly for it to rely and act upon in the exercise of its oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution.

This is to say, in possession of the true and full facts, CEO Khumalo is happy for the Commission to make a false and incomplete section 84 report to the National

Assembly, conveying false and incomplete information received from LASA via its corrupt and non-compliant section 32 report, knowing it to be false and incomplete because I've advised it of this in fine detail – thus assisting LASA to succeed in again defrauding the National Assembly about its handling of PAIA requests during the year, again dissembling due compliance with the Act, and again concealing its multiple illegal failures to comply with its constitutional information transparency obligations. G

And all this with the object of frustrating and defeating the National Assembly's constitutional oversight function over LASA, and evading detection and accountability for its determined, persistent, repeated illegal denials of access to its public documents in violation of section 32(1)(a) of the Constitution: 'Everyone has the right of access to ... any information held by the state.'

Under sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, it's a serious crime to make a false report and to give false information to the National Assembly. Including by officers of the South African Human Rights Commission.

You can read the above-mentioned correspondence and documents in your files, or in this folder online: <https://goo.gl/a8vBaW>. My specimen 'Special Report on Legal Aid South Africa' is likewise online for easy sharing and copying at: <https://goo.gl/XXNuX1>.

As chairperson of our Chapter 9 constitutional watchdog specifically charged by section 83(3)(b) of PAIA with the important public responsibility to 'monitor the implementation of this Act', please let me know what you intend doing about LASA's ongoing contemptuous, illegal refusal to comply with PAIA since August 2010, and its false annual reporting to conceal this, as mentioned above and particularised in my specimen report.

Yours sincerely



ADV ANTHONY BRINK

anthonybrink.sa@gmail.com | 035 474 0145 | 083 779 4174

Cc: The Minister of Justice and Correctional Services; the chairperson of the Justice Portfolio Committee; information transparency NGOs; university law faculty deans; media; and other interested parties.

G

**Proof of post to SAHRC chairperson Mushwana on
19 September 2016 of 'Special Report on Legal Aid SA'**

<p>Date stamp of delivery</p> <p>Datumstempel van aflewering</p>	<p>REGISTERED LETTER GEREGISTREERDE BRIEF</p> <p>(with an insurance option/met 'n versekeringsopsie)</p>	<p>No. A-Slip</p> <p>Post Office</p> <p>Date stamp received</p> <p>Datumstempel ontvang</p>
<p>Initials of delivery officer</p> <p>Paraaf van afleweringsebeampte</p>	<p>Addressed to/Geadresseerd aan</p> <p>Adv h Mushwana</p> <p>P/Box x 210</p> <p>Hoofstad</p> <p>Postcode/Poskodes</p> <p>2011</p>	<p>Signature of recipient</p> <p>Handtekening van ontvanger</p> <p>REGISTERED LETTER (with a domestic insurance option)</p> <p>RD 826 010 276 ZA</p> <p>CUSTOMER COPY 301028R No</p> <p>Initials of receiving officer</p> <p>Paraaf van ontvangsebeampte</p>
<p>Official proof of identification essential</p> <p>Amptelike bewys van identifikasie noodsaaklik</p>		<p>Please collect at</p> <p>Haal asseblief af by _____</p> <p>Post Office, counter No</p> <p>Poskantoor, toonbankno _____</p> <p>within 30 days of date received at delivery office/ binne 30 dae vanaf datum ontvang by afleweringkantoor</p> <p>701282</p>



Anthony Brink <anthonybrink.sa@gmail.com>

SPECIAL REPORT ON LEGAL AID SA

1 message



Anthony Brink <anthonybrink.sa@gmail.com>
To: Judy Hollenbach <jhollenbach@sahrc.org.za>

19 September 2016 at 14:31

Dear Ms Hollenbach

Marked 'For personal attention; extraordinarily important', I've just posted to Commission chairperson Adv Mushwana a comprehensive specimen report I've prepared for the Commission's PAIA Unit, concerning Legal Aid SA's ongoing refusal since 2010 to comply with PAIA, with the objective of assisting the Commission report LASA's PAIA delinquency to the Justice Portfolio Committee to enable it to exercise its constitutional oversight function of LASA.

Since it's happened before that an important document couriered overnight to the Commission postal address wasn't collected, I thought it prudent to also email the report and its covering letter, along with the registered post slip with its tracking number.

The report can also be downloaded at: <http://goo.gl/XXNuX1>

As appears from the cc list at the foot of my covering letter, I'm now proceeding to copy the report on to the Minister of Justice and Correctional Services; the chairperson of the Justice Portfolio Committee; information transparency NGOs; university law faculty deans; media; and other interested parties.

So I suggest that my report and letter be given the earliest possible attention.

Yours sincerely

Anthony Brink

3 attachments

-  **SPECIAL_REPORT.pdf**
911K
-  **Proof_of_post_to_SAHRC_chairperson_Mushwana.pdf**
96K
-  **Mushwana_19_September_2016.pdf**
75K



Anthony Brink <anthonybrink.sa@gmail.com>

Not read: LASA'S FALSE PAIA SECTION 32 REPORT FOR 2015/16

1 message



Lindiwe Khumalo <LKhumalo@sahrc.org.za>
To: "arbrink@iafrica.com" <arbrink@iafrica.com>

30 September 2016 at 11:34

Your message

To: Lindiwe Khumalo
Subject: Fwd: LASA'S FALSE PAIA SECTION 32 REPORT FOR 2015/16
Sent: Friday, June 10, 2016 10:37:44 AM (UTC+02:00) Harare, Pretoria

was deleted without being read on Friday, September 30, 2016 11:33:29 AM (UTC+02:00) Harare, Pretoria.

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

The Cottage
1 Boast Street
Eshowe 3815
5 August 2016

J

[REDACTED]
Deputy Director of Public Prosecutions
National Prosecuting Authority

Cc: [REDACTED]
[REDACTED]

Dear [REDACTED]

When you and I were children, the reason we didn't stuff our pockets full of sweets and walk out the shop without paying is that our parents had taught us that stealing is wrong.

Also we knew that if caught stealing we'd be severely punished.

As grown-ups and lawyers today, the reason we don't tell lies in court is that we know that telling lies in court is wrong.

Also because we know that if caught telling lies in court we'll be severely punished.

For the same reason we don't tell lies to the Portfolio Committee on Justice and Correctional Services. Like perjury, it's a serious crime under the Powers and Privileges of Parliament Act to tell lies to a Portfolio Committee of the National Assembly to pervert its enquiry into a complaint someone's made.

Honest guys like you and I wouldn't dream of telling lies in court, even had we done bad things and wanted to escape being found out and punished for them.

On the other hand, dishonest people don't stint at telling lies in court, even though they also know, somewhere in the back of their minds, that telling lies in court is wrong and that they can be severely punished for it.

This is because telling lies in court can help them escape being found out and punished for the bad things they've done, as I said. And they don't want to be found out and punished for the bad things they've done.

Unlike us, they don't have moral qualms about telling lies in court.

Also they're reckless of the heavy penalties for telling lies in court, like getting sacked, struck off as lawyers, and jailed. And, if a judge caught telling lies to the Portfolio Committee, impeached.

Dishonest people like this tell these lies reckless of the heavy penalties for doing so, because, like driving home drunk after a long night at the pub, they bargain on their good chance of getting away with it. Especially if they've got a judge on their side to protect them, who (a PAIA request proves) also tells lies. And who's actually at the centre of the bad things that have been done. So that one of counsel's fee-notes reflects a magnificent charge for a lengthy consultation with him, even though he was supposed to be entirely uninvolved in the matter he's being consulted about for several hours.

They calculate that it's worth the risk of telling lies in court and to win by telling these lies, and then dealing later on with the possibility and hassle of being called to answer for their lies in court, which they reckon is remote – since no one has ever taken them on before and gone after them for telling lies in court.

As you'll recall from our incidental chat in your chambers some years ago, in November 2009 I was recommended by a selection panel for Legal Aid South Africa's top professional post in KZN, its Senior Litigator post at Pietermaritzburg.

For a hard-core socialist like me (such as I've become, and, maybe due to my developing senility, the older I get the harder left I go), thoroughly disillusioned,

may viscerally repulsed, by ordinary legal practice for the commercial classes, it was an attractive gig: a few big cases for the very poor. Good tom too!

From the panel's smiling reactions to my many amazing legal anecdotes, I sensed I'd cracked the interview; my rivals in the waiting room looked feeble to me; I got an early intimation that I was the lucky boy from a panel member; the Human Resources Executive back-handedly confirmed it in an email to me; and the panel's recommendation report (clawed out of LASA more than a year later, under heavy pressure from the SAHRC's PAIA Unit) finally proved it.

After my interview, the next thing I heard was nothing at all. Odd, eh? So five months later I began knocking on the door, and then when very unpleasantly and palpably dishonestly fobbed off, banging insistently.

To cut the long story, I was eventually told: Sorry, we had to can the thing because gee, what do you know, unfortunately we just don't have the cash to fill the post.

I tested this silly excuse with PAIA (naturally my request was illegally obstructed) and unsurprisingly found that the money story was a lie. Told to cover the real reason, obviously. Why else?

Now what could that real reason be? The ILO and labour courts the world over recognise that employers don't usually announce their unlawful reasons for not hiring through a megaphone. (Unlike in New York in the early days, for example: 'No Irish'. Or here, not so long ago: 'Whites only'.) So the reason for the true undeclared unlawful hiring decision invariably needs to be inferred from all the circumstances of the case.

Looking at everything very carefully (and safely eliminating my ancient Danish and Irish origins as a possibility) it seemed to me that the most likely reason was political prejudice, since to many self-identified progressives and other right-thinking people (who believe every foolish thing they read in the newspapers) I'm a politically odious person.

Indeed, in his judgment (given well over a year after trial, and pitifully forgetting all the documented details, even making some up) the judge had no trouble finding this, because he copied and pasted wholesale from my heads of argument on this score.

So I sued for my instatement to the big job on the basis that I'd been unfairly discriminated against for political reasons. In the end, the judge tossed my case. And do you know what? I now think that for the wrong reasons he was right after all.

I've just discovered that unfair political discrimination probably had nothing to do with it. The real reason seems to be rather more banal. A couple of months ago, in mid-April, I finally got to see from the selection panel's unredacted recommendation report (eventually surrendered under PAIA after being determinedly refused and illegally withheld, and I'd had to sue for it) that one of my competitors for the job had been a long-time judicial colleague of LASA Board chairperson Dunstan Mlambo JP.

Let's call him Mzo. The recommendation report records Mzo's proud information to the panel that for about six-and-a-half years, and until just a couple of years before his interview, he'd acted on contract on the Labour Court bench.

Headed at the time by Mlambo JP, chairperson of LASA.

Geddit?

Now unfortunately for Mzo AJ (as he used to be), and unanticipated by his long-time judicial colleague until recently Mlambo JP, I beat him out at the interviews. Not only was I found to be the better man professionally, but Mzo, back as an attorney, was eliminated from eligibility for appointment, the panel noted, because he didn't meet the qualifying criteria for the post, lacking right of appearance in the High Court.



Just by the way, unlike the other shortlisted candidates interviewed, Mzo very interestingly wasn't also sent a letter like the rest of us claiming the Senior Litigator recruitment had been cancelled. And he was shortly afterwards employed in two different, lighter posts at Empangeni and then back home in Durban. Whereas, very contrariwise, when I was recommended for a different, lighter post a year after being recommended for the big one (as I much later found out via PAIA), LASA's KZN boss instructed its Pietermaritzburg boss to 'redo the interviews' (I have the email) so as to hire someone else for the post; only, I was sent a letter a fortnight later (the KZN boss sneakily waited for the Pmb boss to go on leave, so it was sent without his knowledge) telling me, very differently, you guessed, that it had been decided not to fill the post. Under PAIA I asked for the record of this decision, and found of course there isn't any.

On LASA's own showing, Mlambo JP has routinely unlawfully intruded himself in staff recruitment by improperly conducting further interviews of duly interviewed and recommended candidates and making final employment decisions, even though as a non-executive director he has zero lawful business involving himself in such management operations.

Worse, I've recently learned that Mlambo JP has a history of job-fixing. [REDACTED]

[REDACTED]

[REDACTED]

an affidavit by an eager former top-ranking insider with quite specific knowledge [REDACTED]

Why I say the beak rightly tossed my case for the wrong reason is because he took LASA's single witness at his word, swallowed his evidence whole without stopping to chew (he jocosely admitted in chambers before argument that he hadn't even read my heads, in which I demolished the defence version), and held the budgetary insufficiency story told him to be the true reason my recruitment was aborted – and never mind that he found I'd shown this witness to be 'not generous with the truth

...a number' of times, which is to say repeatedly concealed the truth from him, broke his oath to tell the whole truth and committed perjury, and that his financial story was unsupported and contradicted by LASA's own records (and by even more records that I eventually forced out of them after the trial with PAIA and no less than five separate applications to court to compel; see: tig.org.za/LC).

Not content to brazenly lie their way out of their big trouble in the Labour Court, they also acted to pervert the decision of my petition for leave to appeal by influencing the Judge President against me. Who proceeded to dismiss my petition right in the middle of LASA's (easy to show lying) condonation application for opposing me out of time and before it had been determined.

Does that sound like the raving of a paranoid nutter? Sure it does.

Except that, like a robber leaving his ID on the floor of the bank, the evidence of it was left in the court file for me to chance upon later, in the form of a lying, defamatory 'memorandum' stridently urging the dismissal of my claim.

Naturally it's anonymous. Its slightly imperfect English signifies a second-language speaker writing in some agitation. Most tellingly, it's unstamped by the registrar, which means it didn't come in through the front door and wasn't handed over his reception counter for filing in the normal course. Of course not – being the murder weapon, so to say, the smoking gun: the hard documentary evidence of a criminal move to defeat the ends of justice.

Now who do you think would have the power, the influence and the connections to bypass the registrar and get that lying, defamatory 'memorandum' directly to the Judge President of the Labour Appeal Court to discredit me and my petition for leave to appeal? And who would have the exceptional motivation to do such a wicked thing? To make sure I stayed knocked down by the judgment of the Labour Court. A judgment given by Mlambo JP's other judicial colleague, Cele J, with staggering disregard for all the documentary evidence before him showing that the

budgetary insufficiency story told me and told him was an obvious stupid lie. That only a [REDACTED] would believe. Or worse.

To read the 'memorandum' is to understand why my petition was summarily thrown out with the trash. Happily, the registrar's clerk made me a photocopy, and after checking the petition file item by item, certified an inventory drawn of its contents, including this 'memorandum', with the court stamp.

Now to the point of this letter. I've been defeated, only for now, by a sea of lies, all readily demonstrable in light of the documentary record. This is not who said what in a kitchen quarrel or who threw the first punch in a drunken brawl – who'll ever know? In my case, the perjury, lying to the Portfolio Committee to pervert its enquiry into my complaints, and defeating the ends of justice by improperly influencing the JP of the LAC, are all easily shown.

I've warned LASA's lead in-house attorney Mtati that every single lie told on oath in my case will be catalogued with supporting documents for prosecution. I meant the same for every single criminal lie told to the Portfolio Committee.

I'm about to commence this project, and write to ask your advice as to the best way to ensure my criminal complaints are prosecuted. Some of them will be against a Judge President. This is seriously big time. I'm up against unimaginable high level corruption, including judicial corruption, of stunning depravity. The stakes are gargantuan. The criminal stamina of my opponents is potent; more than ever now because their lives are practically on the line. And as they've shown, anything is possible from these people.

I propose to start making and filing my criminal complaints at the local police station here in Eshowe, noting the CAS numbers, and forwarding these and copies of my complaints to the right man in the right place to see to it that they aren't dropped into the bottom drawer.

Because the problem is this. No disrespect intended, but you'll understand that the country's national prosecuting authorities don't enjoy the general confidence of the more attentive observers of the contemporary scene. I'm referring to their notorious lack of will to go after the really big guys and their dismal legal dilly-dallying over it, and to their singularly doubtful personal and professional integrity, evidenced by strike-off applications pending against some of them.

You, on the other hand, I'd trust with my life.

Please advise me then how best to go about these important things.

My telephone number is 035 474 0145. If I don't answer – meaning I'm away from my desk, which is seldom because I'm back on this case full-time – my cellphone number is 083 779 4174.

All the best

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

ANTHONY BRINK

DA21/14

ANTHONY ROBIN BRINK**Petitioner****K**

and

LEGAL AID SOUTH AFRICA**Respondent**

MEMORANDUM

The petitioner's vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate. His vulgarity has clouded his mind so that his application does not say in what respect the Labour Court erred in rejecting his claim.

What is common cause is that the petitioner applied and was shortlisted for the position of senior litigator Pietermaritzburg. He was recommended for a second round interview but the position for which he applied for was frozen due to budgetary constraints. He was only made aware of that decision after numerous telephone calls and correspondence. There is a dispute about the veracity of the decision to stop the process of the appointment for which the petitioner had requested recording of the board meeting in terms of the Promotion of Access to Information Act 2 of 2000.

Notwithstanding the above dispute, the petitioner does not say in what respect the court *a quo* erred in dismissing his claim. All is said in his affidavit is his judgmental comments about the credibility of employees of the respondent.

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

In the matters between:

ANTHONY ROBIN BRINK

Applicant

and

The respondents in the following five applications:

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

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

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

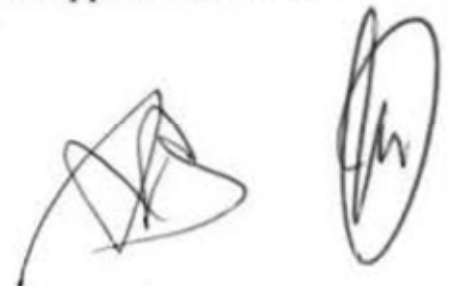
BRIAN NAIR N.O., DEPUTY INFORMATION OFFICER, LASA:
Case 1005/15; and,

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

SETTLEMENT AGREEMENT

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

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



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

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

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

Signed at Eshowe on 11 February 2016

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

APPLICANT


TEMBILE MTATI

Attorney for the respondents



M

Reportable

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: J 1343/16

In the matter between:

SOLIDARITY

First Applicant

FOETA KRIGE

Second Applicant

SUNA VENTER

Third Applicant

KRIVANI PILLAY

Fourth Applicant

JACQUES STEENKAMP

Fifth Applicant

And

**SOUTH AFRICAN BROADCASTING
CORPORATION**

Respondent

Heard: 22 July 2016

Delivered: 26 July 2016

Summary: (Urgent interdict – unlawful summary dismissal – dismissals in breach of contractual right to disciplinary procedure and in breach of right to freedom of expression - dismissals *void ab initio* – costs)

JUDGMENT

LAGRANGE J

[192] It is an employee whose dismissal is unfair that requires an order of reinstatement. An employee whose dismissal is invalid does not need an order of reinstatement. If an employee whose dismissal has been declared invalid is prevented by the employer from entering the workplace to perform his or her duties, in an appropriate case a court may interdict the employer from preventing the employee from reporting for duty or from performing his or her duties. The court may also make an order that the employer must allow the employee into the workplace for purposes of performing his or her duties. However, it cannot order the reinstatement of the employee."

[72] Consequently, an order declaring the applicants' dismissals invalid, will have the legal effect that their dismissals never took place and can be accompanied by an order that the SABCC must allow them into their workplaces for the purpose of performing their duties.

[73] There is also the question of the suspensions and the incomplete enquiries which were initiated prior to the applicants' dismissals. It was argued by the SABC that those would fall away as the fact of the applicants' dismissal would have that effect. However, if the legal consequence of the final relief is that the dismissals did not happen, it does not seem to follow in my view that everything preceding them has no application. As those enquiries were essentially initiated for the same reason as the dismissal or because of the applicants' disagreement over adopting the policy, it would follow from the analysis above that those instructions and steps were unlawful because they were premised on the enforcement of an unlawful policy.

[74] Paradoxically, the applicants did not amend their prayer only for interim relief in respect of the suspensions and pending disciplinary proceedings, linked to the final outcome of the other proceedings. However, if final relief is competent on the papers in respect of the dismissals and because the continuation of those other measures would be unlawful, it is appropriate to make an order for final relief in respect of those too.

Costs

[75] In the amended papers, the applicants also sought an order compelling the SABC to reveal the identity of officials involved in taking the decisions

to terminate the applicants' employment. The object of this was to put them on terms to show cause why they should not be held personally liable for the costs of the application.

[76] The reason for this unusual prayer is that even if it cannot be shown that the SABC proceeded with the dismissals in a wilful attempt to avert the possible consequence of the Constitutional Court application and this one which were launched on 15 July, whoever took the decision to dismiss the applicants did so with reckless regard for the pending applications and arguably if a more considered, reflective and financially accountable approach had been taken, the SABC would not have proceeded with the dismissals or persisted in opposing this application after agreeing to the order in the Suzman Foundation application.

[77] In *Gauteng Gambling Board And Another v MEC for Economic Development, Gauteng*¹⁶ the SCA made the following observation:

[54] In the present case the best that can be said for the MEC and her department is that their conduct, although veering toward thwarting the relief sought by the board, cannot conclusively be said to constitute contempt of court. However, that does not excuse their behaviour. The MEC, in her responses to the opposition by the board, appeared indignant and played the victim. She adopted this attitude while acting in flagrant disregard of constitutional norms. She attempted to turn turpitude into rectitude. The special costs order, namely, on the attorney and client scale, sought by the board and Mafojane is justified. However, it is the taxpayer who ultimately will meet those costs. It is time for courts to seriously consider holding officials who behave in the high-handed manner described above, personally liable for costs incurred. This might have a sobering effect on truant public office bearers. Regrettably, in the present case, it was not prayed for and thus not addressed.

[78] I am satisfied that there is no question that the applicants should not bear the costs of bringing this application including the costs of two counsel. I am also concerned that the dismissals were authorised with reckless disregard for the pending applications and with little regard for the relative costs and benefits to the SABC of doing so. That, this should occur during

¹⁶ 2013 (5) SA 24 (SCA)

a time of financial crisis makes it more worrying. The only question is whether these costs should be levied on those who took the decision or on the SABC as an entity. Accordingly, I think it is appropriate that the person who appears to have authorised the dismissals when signing the dismissal letters should be given an opportunity to explain why he should not be held liable, at least in part, for the costs. The same applies to Tebele who seems to have played an active role in the events.

Order

[79] In light of the above it is ordered that,

79.1 The forms and rules of this Court are dispensed with and this matter is dealt with as a matter of urgency.

79.2 The respondent's dismissals of the second to fifth applicants are unlawful and void *ab initio*.

79.3 The second to fifth applicants are entitled to return to work at the SABC and to continue with their respective duties and responsibilities in accordance with their job descriptions.

79.4 The respondent is interdicted from proceeding with the disciplinary proceedings initiated against the second to fifth applicants prior to their dismissal.

79.5 Within five days of this order, Seboleto Ditlhakanane, the respondent's General Manager: Radio News & Current Affairs and Mololo S Tebele, Acting Group Executive: News and Current Affairs, must file affidavits showing cause why they should not personally be held liable for all or part of the costs of this application, such costs to be paid on the attorney-own client scale and including the costs of two counsel.

79.6 The determination of the final apportionment of liability for payment of the applicants' costs of the application including the costs of two counsel, as between the respondent and any of its officials or employees is postponed *sine die*, and may be enrolled by any party

for determination once 20 days have elapsed from the date of this order.

M



Lagrange J

Judge of the Labour Court of South Africa

APPEARANCE:

For the Applicants: S Budlender assisted by V Bruinders instructed by Serfontein, Viljoen & Swart Attorneys

For the Respondent: D T Skosana SC assisted by Z Madlanga instructed by Ningiza Horner Inc.