

1 Boast Road
Eshowe 3815
31 December 2014

Langa Lethiba,
Board Secretary
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

And to cc list

Dear Mr Lethiba

PERSISTENT ILLEGAL REFUSAL TO COMPLY WITH PAIA

Legal Aid South Africa's annual report for 2013/14 (p. 57) sketches your major professional responsibility as newly appointed Board Secretary:

The Board Secretary ... provides guidance to the Board on ... good governance.

LASA's annual report for 2009/10 (p. 107) states your obligations in this regard more explicitly:

The Board is assisted by the Board Secretary in identifying key issues that should form the focus of the directors' attention. The Board Secretary also ensures that all relevant matters are placed on agendas for discussion. The Secretariat, together with the other assurance functions, monitors Legal Aid South Africa's compliance with the requirements in terms of the Public Finance Management Act, Legal Aid Act and other legislation, and regularly reports to the Board in this regard.

This very proper description accords with the internationally recognised duties of a company secretary:

A company secretary is a senior position in a private sector company or public sector organisation, normally in the form of a managerial position or above. ... The company secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the board of directors are implemented. Despite the name, the role is not a clerical or secretarial one in the usual sense. The company secretary ensures that an organisation complies with relevant legislation and regulation, and keeps board members informed of their legal responsibilities. [It is

his] responsibility to ensure that the company and its directors operate within the law.

So Wikipedia tells us, citing various authorities.

That is, your primary responsibility as Board Secretary is to ensure that LASA conducts itself lawfully, and to alert the Board when you find otherwise, so that it can exercise its oversight function as required by its charter and take suitable remedial action.

I write to put you on notice that LASA's information officer and deputy information officers have since 2010 to present repeatedly illegally refused to comply with my requests for records duly made under the Promotion of Access to Information Act 2 of 2000, in contempt of my fundamental right of access to public body information entrenched by section 32 of the Constitution.

To conceal this gravely illegal, unconstitutional misconduct from the National Assembly, LASA has (i) falsely reported to the chairperson of the Portfolio Committee on Justice and Constitutional Development (as it was then called) to pervert a parliamentary enquiry that I initiated into the matter in 2011, and has (ii) repeatedly falsely reported to the SAHRC under section 32 of PAIA for the misinformation of the National Assembly in turn in the SAHRC's section 84 reports to it.

After I informed the SAHRC about this false reporting, it named LASA in its section 84 report for 2011/12 presented to the National Assembly in October 2012 as a 'case in point' of 'malicious compliance' by public bodies with their annual reporting obligations to conceal their non-compliance with the Act.

LASA's repeated dishonest misinformation and misleading of Parliament about this and other matters will be taken up at enquiries to be instituted in 2015.

I enclose the founding papers in three applications to court to compel LASA'S compliance with PAIA requests I lodged in October 2013, practically all of which were illegally refused. For easy access, copying and printing, these papers, and the pitiful responses they drew, together with my replies refuting them, are archived online in a single indexed and paginated PDF file at www.tig.org.za/LC/PAIA.

You'll appreciate reading them that LASA's incorrigible, recidivist PAIA delinquency may be traced in part to your Corporate Services attorney's reliance since 2010 on a privately briefed very junior advocate, who's been advising LASA's information officer and deputy information officers not to comply with the Act for any number of manifestly spurious, legally clueless reasons.

In its correspondence with me on 29 June 2011, the SAHRC noted the 'unlawfulness' of their refusals of my first three PAIA requests in 2010 and 2011; and at a special remedial training workshop the SAHRC held for LASA's Corporate Services attorneys on 6 November 2012 – directly on account of LASA's persistent, repeated illegal refusal of my said PAIA requests – they unequivocally admitted it.

Yet with a confident sense of impunity, LASA brazenly persists in continuing to illegally obstruct my access to its records I've requested.

I enclose also my recently filed request for a pre-trial conference in magistrate's chambers to clarify the basis on which my applications are being opposed, now that LASA Corporate Services Executive and lead-in house attorney Thembele Mtati has implicitly abandoned the original, basic, obviously vacant, incompetent justifications for opposing my claims to access to the documents I've duly requested.

As required of you in the discharge of your professional responsibilities detailed above, I hereby call on you to report this exceedingly serious matter to the Board and to point up LASA's current exposure to the disgrace of three imminent judgments against its information and deputy information officers (i) declaring that they've illegally failed to comply with PAIA and thereby violated my fundamental right to information, and (ii) ordering them to comply with their constitutional obligations under the Act and to allow me access at last to the public documents under their control that I've duly requested.

The judgments will certainly be ignominiously reported to the National Assembly in the SAHRC's next section 84 report dealing with LASA's persistent, corruptly motivated non-compliance with PAIA in order to suppress further documentary evidence of a massive failure of proper corporate governance at LASA, both at Board and national management executive level, gross ethical corruption, and the wholesale breakdown of the rule of law.

Separate letters will be addressed to you in due course about this for reporting to the Board. I'm referring inter alia to LASA national executive management's (i) unlawful non-compliance with and flouting of the Board's regulatory instruments; (ii) unlawful failures to implement Board policy decisions, and their unauthorised, unapproved and off-the-record deviations from the Management Executive Committee's Business/Performance Plan, based on the Board's Strategic Plan prescribed by the Public Finance Management Act 1 of 1999, concealed from the National Assembly in LASA's reports on the completion of the Strategic Plan with the public funds provided for the purpose; and (iii) lying to me in correspondence, and to the Minister and Parliament in secret reports, and perjury before and during legal proceedings.

I should caution that it would be futile looking to LASA's Corporate Services lawyers for advice in the matter. The SAHRC's report of its PAIA training workshop recorded that when it

comes to PAIA they don't know what's going on: 'Most participants were a little overwhelmed by the requirements of the legislation' and had 'challenges complying with PAIA' on account of their 'lack of application based knowledge'. They admitted 'that they had previously been misapplying the provisions of PAIA' in illegally refusing my requests, and that this 'misinterpretation and misapplication was identified as high risk to LASA ... LASA compliance history was flagged with participants and most reacted to the reporting of LASA as non-compliant to Parliament with concern'.

Having put up legally pathetic affidavits opposing my applications (taken to pieces in my replies) it's evident that despite the SAHRC's special lesson for LASA's lawyers to help them understand how PAIA works, its top attorneys Mtati and Corporate Legal Manager Solly Sekgota (who attended the SAHRC's PAIA workshop) remain disgracefully ignorant of the law of information in the democratic era; so if the Board is minded to obtain reliable legal advice as to how to proceed in the matter to head off the approaching hazard, it would be best to look beyond them and their frankly useless very junior counsel and to rather consult one or more of LASA's Senior Litigators.

Your response by email would be preferred.

Yours sincerely



ADV ANTHONY BRINK
arbrink@iafrica.com.

Cc:

Dr Mathole Motshekga, Chairperson of the Portfolio Committee on Justice and Correctional Services, National Assembly

Kayum Ahmed, CEO of the SAHRC and superintendant of its PAIA Unit

Adv Richard Sizani, Chairperson of the Public Service Commission

Sinthia Reddy, investigator in the office of the Public Protector (ref: 7/22-040815/12)

LASA Information Officer and CEO Vidhu Vedalankar; Eastern Cape Deputy Information Officer and ROE Hope Bambiso; Free State and North West Deputy Information Officer and ROE Zanele Msweli; COO Jerry Makokoane; NOE Brian Nair; CLE Patrick Hundermark; and CSE Thembile Mtati.