

1 Boast Street  
Eshowe  
KwaZulu-Natal  
19 March 2015

Adv Lawrence Mushwana  
Chairperson: South African Human Rights Commission  
33 Hoofd Street  
2nd Floor, Forum 3  
Braampark  
Braamfontein

Dear Adv Mushwana

PAIA, LASA, AND THE SAHRC

1. On 21 January 2015 I emailed CEO Ahmed a letter headed 'SAHRC'S FAILURE TO COMPLY WITH PAIA: UNANSWERED CORRESPONDENCE', a copy of which I enclose.
2. Copying the Commission's PAIA Unit, he emailed me his assurance the same day, well meant I'm sure, that my complaint would be attended to.
3. Two months later, nothing.
4. It really would be a poor show were I to have to sue the SAHRC for an order compelling it to comply properly with my last PAIA request addressed to it in October 2014 (I've had to lodge several with the Commission over the years; incredibly, one illegally refused).
5. Responding to my October 2014 request, your deputy information officer Pandelis Gregoriou claimed in his covering letter of 4 December 2014:

Please note that notwithstanding a meeting having taken place between the Commission and Legal Aid South Africa in October we do not have a record of the discussions and resolutions of the same.

6. He repeated this under oath in his accompanying section 23 affidavit:

The Commission does not have any record of the discussions and resolutions which took place at the meeting held in October 2012 between the Commission and Legal Aid South Africa.

7. I've just come across an email to me by your former PAIA Unit director Fola Adeleke on 5 November 2013 explaining precisely why no record of this meeting exists:

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

8. So when making another section 23 affidavit to comply properly with the section – and providing me with the correct 32 report I asked for, not the wrong one for the wrong year – your Mr Gregoriou should get his facts straight, because making false claims on oath is a serious matter.
9. The correct thing to say and to swear to will be: ‘No records exist to vouch that a meeting took place between the Commission and LASA CEO and information officer Vidhu Vedalankar and other senior LASA officers to discuss the Commission’s reporting of LASA to the National Assembly in October 2012 as a “case in point” regarding public body non-compliance with section 32, because no such meeting took place.’
10. The fact that no such meeting took place is significant, because National Operations Executive Brian Nair claimed at the trial of my labour claim that it did. It’s not the biggest lie he told in the case, in the ocean of lies he told, but it’s a lie under oath all the same, and it epitomises his compulsive criminal mendacity even in quite peripheral matters. (Indeed the judge found that I’d shown Nair to have been ‘less than generous with the truth’ on ‘a number’ of scores, but without identifying his lies. And then very strangely accepted his lying evidence all the same.)
11. The same perjury was committed by Vedalankar and by Corporate Services Executive Thembile Mtati in my pending application to the Eshowe Magistrate’s Court (I’m stationed at a different, independent court at the other side of town) to compel Vedalankar’s compliance with my PAIA requests in November 2013. Their lies under oath are quoted in the Note below my request for records of this meeting:

Note: In paragraph 183.2 of LASA Corporate Services Executive Thembile Mtati’s answering affidavit in the requester’s application in the Eshowe Magistrate’s Court under case number 258/14 to compel information officer Vedalankar’s compliance with his PAIA request made in October 2013, Mtati swore to a commissioner of oaths, under penalty of perjury:

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

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

I have read the Answering Affidavit of Thembile Vuyo Mtati and I confirm that

the contents therein, in so far as it relates to me, are both true and correct.

13. To expose the lie Nair told the judge about this, among the many other lies he told the judge, being a naturally mendacious person, as I said, the truth just not being in him, I also directed a PAIA request at LASA seeking its records of the alleged meeting. (What I really want from LASA is the sworn evidence of a section 23 affidavit certifying that no such records exist, for the purpose of proving Nair's perjury.) Predictably, to frustrate my PAIA probe to establish the truth of the matter, my request is currently being illegally blocked.
14. Vedalankar's and Mtati's sworn allegation quoted above, that the SAHRC's 'finding' that LASA was non-compliant with PAIA was 'incorrect', was false.
15. On Nair's dishonest advice, Vedalankar had likewise falsely alleged to the Justice Portfolio Committee at their presentation of LASA's 2011/12 annual report in October 2012 (per the PMG transcript):

Ms Vedalankar said that 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.

16. All these statements to the Portfolio Committee were false. (i) The Commission's section 84 report indicting LASA was not 'untrue'. (ii) I wasn't yet 'in court' when making my first three PAIA requests; but even had I been, section 7(2) gives a court a discretion to allow the admission of a document obtained via PAIA after the commencement of a case. (iii) No 'official judgment' on the point was in store, because it was never in issue.
17. Before my said letter to your CEO of 21 January, I mailed him an earlier one, on the 2nd of the same month, headed 'LASA'S PERSISTENT ILLEGAL REFUSAL TO COMPLY WITH PAIA' and appealing for the Commission's intervention in information officer Vedalankar's and two regional deputy information officers' illegal refusals of records requested in November 2013, and their meritless, dilatory, filibustering opposition to my pending applications to court to compel. I've no doubt your CEO passed it on to the PAIA Unit for action too.
18. But again, nearly three months later, no response.
19. The PMG transcript of Vedalankar's presentation of LASA's annual report to the National Assembly in October 2012 records the Committee's stated concern that:

the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA.

And that both Portfolio Committee chairperson Landers and then member Jeffery, now Deputy Minister, taxed Vedalankar about this.

20. In view of the clear evidence I'd provided the Commission that LASA had repeatedly illegally refused my PAIA requests in 2010 and 2011, and had repeatedly concealed this from the Commission and from the National Assembly in turn by way of false annual reporting under section 32, the Commission assured the Committee in its section 84 report presented in the same month:

A case in point [of public body non-compliance with PAIA was] where a complainant brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year. ... The Commission engaged with LASA [by email] and remains concerned about the accuracy of section 32 reporting by LASA ... The Commission intends auditing LASA fully in the course of the 2012/13 financial year.

21. It's to be greatly regretted that the Commission then dishonoured its undertaking to the Committee.
22. Instead of investigating how LASA had responded to my record requests, by calling for my requests and the responses they drew for auditing, and proceeding to assay the legality of LASA's refusals in light of the grounds allowed by Chapter 4, as in a real audit 'fully' conducted, promised Parliament, the Commission sent LASA a toothless standard-form questionnaire to self-report on various bland generalities, like it did eleven other randomly chosen public bodies in regard to which there was no suspicion of non-compliance – a pointless exercise that revealed nothing about LASA's persistent and repeated illegal refusals to comply with the Act since 2010 and its dishonestly false reporting about this to conceal it.
23. Consequently nothing was mentioned about LASA's recidivist PAIA delinquency in the Commission's section 84 report the following year, thus leaving Parliament with the false impression that LASA had duly complied and continues to duly comply with my requests under PAIA for access to its records.
24. In its correspondence with me in an unrelated connection last year, the Commission very correctly stated:

The South African Human Rights Commission ('Commission') is a state institution established by Chapter 9 of the Constitution to support constitutional democracy. The Commission is mandated in terms of section 184 of the Constitution to promote the protection, development and attainment of human

rights, and to monitor and assess the observance of such rights within the Republic of South Africa. Complaints handling is a core function of the Legal Services Programme of the Commission and it includes investigation of human rights provided for in Chapter 2 of the Constitution of the Republic of South Africa.

25. Lovely words. The rude reality is that over the past five years, the indolence and dereliction of the Commission's PAIA Unit – like useless guards – in failing to carry out its constitutional obligations imposed by section 83 (quoted below) has encouraged LASA's executives to continue brazenly refusing to comply with my PAIA requests; scorning their constitutional obligation to allow me access to LASA records; and contemptuously violating my fundamental right to information guaranteed by section 32 of the Constitution, with a justifiably confident sense of impunity:
26. In January 2015, four further PAIA requests addressed to LASA fell overdue without responses, three since blocked with illegal demands for money for time spent on general, irrelevant background reading not contemplated and permitted by the Act, and the fourth expressly refused in toto on manifestly irrelevant unlawful grounds.
27. My latest requests in November 2014 and the unlawful responses they drew are enclosed, as well as my letter to Vedalankar (i) demanding that she see to compliance at last, and (ii) covering a fifth request addressed to her. But I'm not expecting her cooperation. As you'll appreciate from my letter to her, she's deeply compromised in this matter, to say the least of it.
28. Section 83(3) provides:
  - (3) The Human Rights Commission may –
    - ...
    - (b) monitor the implementation of this Act;
    - (c) if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act;
    - (d) recommend to a public or private body that the body make such changes in the manner in which it administers this Act as the Commission considers advisable;
    - (e) train information officers and deputy information officers of public bodies ...
29. In the situation, I write to plead for the Commission's intervention under the Act

- (i) to assist me vindicate and enforce my constitutional right to information violated by LASA yet again; (ii) to recommend to LASA that it would be advisable to comply with the Act; and (iii) to train LASA's deputy information officers, none of whom attended the SAHRC's PAIA workshop, on how to apply the Act.
30. Practically it would be as simple as your new PAIA Unit director Kisha Candasamy looking over my requests, also my November 2013 ones, noting the very obviously incompetent and unlawful responses they elicited, and picking up the telephone to tell Vedalankar that she and/or her deputy information officers best surrender the records I've requested or certify under section 23 in any case they don't exist, and post haste, or face being named and shamed (i) in the Commission's next report to the National Assembly and (ii) in the law reports following the High Court's inevitable judgment against them.
  31. At the same time, she might address the LASA's current PAIA manual, canvassed in my enclosed letter to Vedalankar: it's a shambles of legal gibberish and seriously misleading information.
  32. I made a similar request in 2011 – refused with wishy-washy excuses, even as the Commission noted the 'unlawfulness' of LASA's refusals of records. I then filed a formal rights violation complaint – declined on various hollow grounds, which, when I refuted them all on appeal to you, were abandoned and replaced with the new false justification for not investigating my complaint that it was headed for court. Untrue. My labour case was, not my claim to documents under PAIA, illegally withheld. The Commission seemed anxious to grab at any empty chopping and changing excuse not to do its constitutional job in my case.
  33. I recently requested LASA's Board Secretary to inform the Board about Vedalankar's and her regional deputy information officers' ignorant, spurious reliance on section 7 in (i) illegally refusing my November 2013 requests and (ii) opposing my pending applications to compel, but he refused to do so.
  34. (All things being equal, the lawyers on the Board would have been appalled at this information, but it's been suppressed by the Board Secretary, thus preventing them from acting to head off the looming legal hazard of judgments against LASA (thanks to its hopeless very junior counsel, who advised that my requests be refused and that my applications to compel be opposed on the said legally irrelevant basis). Time and time again, one sees the breakdown and failure of proper corporate governance at LASA.)
  35. If Ms Candasamy does approach LASA in the exercise of the Commission's section 83

powers, she'll need to treat sceptically any undertakings by LASA's information- and deputy information officers to reverse themselves and finally respond properly to my PAIA requests. These people have a history of making promises they have no intention of keeping:

- Like Chief Legal Executive Patrick Hundermark's dishonoured undertaking to the Commission, mentioned in paragraph 18 of my enclosed letter to Vedalankar. The promised response to my first PAIA request in August 2010 turned out to be a blanket refusal of all 51 records requested, under cover of (i) a fraudulent misquotation from a reported judgment claimed to justify it, (ii) a false allegation that I was seeking personal confidential information, and (iii) the false and anyway cluelessly irrelevant allegation that my request went 'beyond [my] personal circumstances'.
- Like the undertaking LASA's head office lawyers gave the Commission at the special remedial training lesson it provided them in November 2012 on how PAIA works:

LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation ... [It has] undertaken to review decisions which may not have had justification under PAIA and to create guidelines within the organisation to ensure misapplication does not recur.

Naturally none of this was done; and as evinced by LASA's recent unlawful obstruction and refusals of my record requests yet again, 'misapplication' did 'recur'.

36. In sum, LASA's undertakings to comply with PAIA and assurances that it will be complied with in future are worthless. (Its corruptly motivated refusals, dissembled reversals in bad faith, and dishonoured undertakings in the course of my demands for specified document discovery in my labour case, determinedly obstructed over nearly two years right up to the eve of trial, and necessitating an application to compel and not one but two pre-trial conferences at court under judicial supervision to disgorge withheld documents, plus a final subpoena duces tecum, disregarded, would fill a sickening book.)
37. After five years of repeated, persistent, ongoing illegal refusals by LASA to grant me access to its records, in its determined endeavour to suppress documentary evidence of the most serious malfeasance, corruption and criminality at the highest level of the organisation – irrespective of the merits of my labour claim – including lying to Parliament, lying to the Minister, lying to the Commission, lying to the LASA

Board, and interminable internally contradictory and objectively contradicted perjury, before, during, and after the trial of my labour claim, isn't it high time the Commission audited LASA properly for PAIA compliance, as it promised the Portfolio Committee in 2012 it would do, and report its findings?

38. Including about how LASA repeatedly brazenly lied to the judge in its pleadings and affidavits in my labour case, in claiming that it had duly complied with my first three PAIA requests in 2010 and 2011. (I'll provide particulars of these lies to court for the audit report to the National Assembly, on request.)
39. And about how in secret reports I came upon by chance, ghost-written by Nair (first denied, then admitted) for Vedalankar to give Board chairperson Mlambo JP to sign and submit to the Minister in March 2011, and to the chairperson of the Portfolio Committee in June 2011, to pervert their separate and independent enquiries inter alia into my complaint that LASA had repeatedly illegally refused my PAIA requests, these highest authorities were lied to in alleging that:
  - 'we have complied with the provisions of PAIA'
  - 'many of his requests do not relate to his complaint regarding non appointment'
  - '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 have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act' (this last lie was told to Parliament in the 'updated' report given the chairperson of the Portfolio Committee in June 2011, not to the Minister in March)
40. To give you an idea of the extraordinary gravity of this matter:
  - Mlambo JP, who signed and submitted these reports to the Minister and to Parliament well knew that these allegations were lies contrived, calculated, and intended to mislead them, because commencing in November 2010 I'd repeatedly petitioned him and the Board very specifically about Vedalankar's and Nair's persistent, repeated, clearly illegal refusals to comply with my PAIA requests (probing the circumstances in which my appointment to the Pietermaritzburg Senior Litigator post had been aborted, following my recommendation by a professional selection panel of LASA's top lawyers in the region, and testing the lying explanations given me for this).
  - Vedalankar stated in her January 2011 letter to me that she'd read my first petition to Mlambo JP and the Board in November 2010 inter alia about her

illegal refusal to comply with my first PAIA request in August 2010, so she knew that the claims in the reports to the Minister and to Parliament that LASA had complied with my PAIA requests were lies.

- Nair responded to my third PAIA request, and revisited my first and second, continuing to withhold duly requested documents under cover of legally irrelevant justifications – his corrupt motivation for (i) suppressing the documents I wanted and (ii) not certifying certain non-existent document's I'd specified, being to conceal and deprive me of the documentary evidence I needed to expose the stories I'd been told about the abortion of my appointment as lies, so as to hinder my proof of my claim and thereby obstruct and defeat the ends of justice. (I was ultimately able to get most, but not all, of the documents I needed.)

41. That is:

- Nair, who ghost-wrote of the lying reports to the Minister and to Parliament;
- Vedalankar, who, knowing they were full of lies, conveyed them from Nair to Mlambo JP to sign and submit to the Minister and to Parliament; and,
- Mlambo JP, who signed the lying reports and submitted them to the Minister and to Parliament (in the latter case, accompanied by a covering letter he wrote viciously defaming me; I've yet to see his probably identical covering letter to the Minister, first requested by me in September 2011, and repeatedly thereafter),

all knew full well that the Minister and Parliament were being misled to pervert their separate, independent enquiries into my complaints that LASA had repeatedly illegally refused to comply with my PAIA requests.

42. Not being your concern as chairperson of the Commission, I haven't mentioned the other smooth-sounding lies told the Minister and Parliament about why my appointment was not proceeded with. (Nair told the Board quite different lies.)

You'll see these noted in my enclosed letter to Vedalankar.

43. In paragraphs 31ff of my petition for leave to appeal (see below) I explain why Mlambo JP, Vedalankar, and Nair all knew full well that the stories told the Minister and Parliament about why my appointment had not been proceeded with were also lies.

44. In sum, LASA's chairperson, a judge president; its CEO; and its NEO – at the very top of the Board and the management executive committee respectively – have all lied to the Minister and to Parliament to cover up their violation of my fundamental right to information (and to equality) – in Mlambo JP's case his deliberate indifference to

it, at minimum – with the corrupt purpose of perverting the Minister’s and Parliament’s separate, independent enquiries into it.

45. And successfully. The Minister didn’t respond, and the chairperson of the Portfolio Committee told me:

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

46. Only, the ‘facts’ were lies, which worked to pervert ministerial and parliamentary enquiries, as they later worked to pervert the true and just determination of (i) my labour case, (ii) petition for leave to appeal, and (iii) LASA’s condonation application for opposing it out of time – its excuse advanced for this also being a blatant lie brightly exposed and refuted by an email record, as you’ll see from the heads of argument, judgment, application for leave to appeal, dismissal, petition for leave to appeal, opposing affidavit, condonation application, dismissal of the petition, and further documents openly archived online at [www.tig.org.za/LC](http://www.tig.org.za/LC).

47. All relevant documents in the matter of LASA’s persistent, repeated refusal to comply with PAIA and my repeated vain attempts to bring the Commission in to cure it are privately and securely archived online in date sequence at:  
[www.tig.org.za/LASA/SAHRC](http://www.tig.org.za/LASA/SAHRC) username: lasa password: LASA2010.  
If the Commission prefers, I can provide a bound hard-copy dossier.

48. If the Commission can’t resolve the matter under section 83 – and my past experience with the Commission isn’t encouraging – I’ll be applying to the High Court at Pietermaritzburg for a mandatory interdict compelling LASA’s compliance with the Act.

49. In which event, I’ll include this letter, and your response to it, if any, in my application papers for the information of the judge.

50. I look forward then to hearing the Commission’s intentions.

Yours sincerely



ADV ANTHONY BRINK