

1 Boast Street  
Eshowe  
KwaZulu-Natal  
19 May 2015

Your reference: None supplied

Gauteng office references: 7/2 – 44378/11 and 7/2 – 040815/12

Sipho Cishe, Investigator  
Office of the Provincial Representative, KwaZulu-Natal  
Public Protector  
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Per telefax: 031 307 2424

Cc:

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Per registered post

Dear Mr Cishe

LASA'S REFUSAL TO COMPLY WITH PAIA:  
APPEAL FOR MEDIATION BY THE PUBLIC PROTECTOR'S  
PROVINCIAL REPRESENTATIVE FOR KWAZULU-NATAL, REFUSED

1. You're seriously confused. Your emails to me of the 4th and 5<sup>th</sup> instant (annexed) show your basic mistake that my appeal to your provincial office on the 2nd ultimo for your office's intervention and mediation in LASA's illegal failure to comply with my PAIA requests filed in November 2014 'was raised with our Pretoria Head Office and the Gauteng Provincial Office' and that 'the matter has been attended to by the Gauteng Office.'

2. This is wrong on all scores. I never approached your head office or Gauteng provincial office regarding LASA's failure to comply with these requests, and I didn't do so for the reason stated in paragraph 12 of my letter to your Adv Nkosi on 2 April, namely:

My repeated appeals to your national and Gauteng provincial offices to help me disgorge illegally withheld records from LASA, and my repeated complaints about LASA's false reporting under section 32 in 2011 and 2012 to conceal from the SAHRC, and from Parliament in turn, its refusal to comply with its constitutional freedom of information obligations came to nothing, and turned out to be a complete waste of a lot of my time and energy, hence this new tack in hopefully approaching your local provincial office instead.

3. The years mentioned in this paragraph tell you I was referring to my much earlier fruitless repeated approaches for assistance, to my fruitless repeated formal complaints, and to my fruitless repeated reminders addressed variously to the Public Protector's Gauteng provincial office and national office regarding LASA's illegal refusal to comply with my PAIA requests made in 2010 and 2011 and its false reporting under section 32 to the SAHRC about this afterwards to conceal these illegal refusals from the National Assembly in the SAHRC's section 84 reports – and not to my unlawfully blocked and refused PAIA requests made in November 2014 that are the subject of my appeal to your office.
4. To justify summarily closing your file and saving yourself the work of mediating a resolution of LASA's illegal failure to comply with my latest PAIA requests, you quote Gauteng office senior investigator Sinthia Reddy's undated letter emailed to me on 2 July 2014 – replete with false information, both LASA's and her own – following LASA's illegal refusal to comply with my three PAIA requests made in October 2013 and my consequent applications launched in the Eshowe Magistrate's Court to compel its compliance with those requests:

We advise that we have received a response from LASA indicating that the issue pertaining to your complaint is currently being dealt with in the Labour Court and the Magistrates Court. Judgement is reserved and any further investigation of your complaint will be a duplication ... We advise that in view of the information provided by LASA, we will proceed to close this file pending the outcome of the Court judgement.

5. My 'complaint' to the Public Protector – in fact there were two, in 2011 and 2012 – was that LASA had illegally refused me access to documents I'd requested under PAIA in 2010 and 2011, and had then falsely reported to the SAHRC under section 32 to conceal its illegal

non-compliance with PAIA from the National Assembly in the SAHRC's section 84 reports for those years.

6. These two complaints were never referred to the Labour Court to be 'dealt with', and the court accordingly never 'dealt with' them during trial or in its judgment.
7. After trial in mid-2013, I addressed three further PAIA requests to different LASA information and provincial deputy information officers, and when these were illegally refused I applied directly to the Magistrate's Court for orders compelling delivery of the records I'd requested. (My applications in that court are still pending.)
8. I did not file any third complaint with the Public Protector about LASA's continuing refusal to comply with the Act after trial in 2013, because, as said, despite repeated reminders, my earlier complaints hadn't been attended to, and I didn't want to waste any more evidently pointless time and energy pleading for the Public Protector's intervention.
9. Nor did I ask the Magistrate's Court to deal with LASA's unlawful refusals of my PAIA requests in 2010 and 2011, or with its false reporting to the SAHRC to conceal this; I sought orders directing LASA to comply with my PAIA requests made in October 2013.
10. So contrary to Ms Reddy's false statement about this, 'the issue pertaining to [my two] complaint[s]' that I filed with the Public Protector about LASA's failure to comply with my PAIA requests in 2010 and 2011 and its repeated false reporting under section 32 to conceal this from the SAHRC and the National Assembly, was never before 'the Labour Court and the Magistrates Court' for decision.
11. The 'judgement' that had been 'reserved' by the Labour Court when Ms Reddy wrote to me on 2 July 2014 had nothing to do with my complaints to the Public Protector in 2011 and 2012.
12. How 'further investigation of [my] complaint[s would have been] a duplication' Ms Reddy doesn't say, because her claim is manifestly insupportable. Indeed she didn't investigate my complaints at all: she confirmed to me when I enquired that she hadn't even approached LASA about them. Besides pretending to me that she'd referred my first complaint to a senior investigator (she was then still a junior) to lull me into believing that my very serious complaints – she agreed – were being investigated at a senior level, she did nothing.
13. The underlying 'issue pertaining to my complaint' about LASA's refusal to comply with my PAIA requests and its false section 32 reporting to conceal this in the years 2010–2012 was the very different issue of why LASA had aborted my appointment to its most senior

professional post in KwaZulu-Natal for which I'd been unanimously recommended by a professional selection panel of LASA's top lawyers in the region. I did not refer that issue to the Public Protector to investigate; I referred it to the Labour Court to determine.

14. (I find that speaking plainly and not using fancy faux legal talk like 'the issue pertaining to your complaint' helps us to think clearly and not muddle things up.)
15. From Ms Reddy's failure to take any action to resolve my first complaint in 2011 – I don't know whether she read my second in 2012 (a Ms Dube foolishly wondered 'whether the law allows this office to investigate your [second] complaint', after which I heard no more) – and from her final belated kiss-off in July 2014, on the basis of the characteristically false information LASA supplied her, which she readily and uncritically accepted and relied on, and then added to, you'll understand my conclusion that when it comes to being held to account for repeatedly illegally refusing to comply with PAIA, repeatedly violating my fundamental right to information, and repeatedly lying to the SAHRC to conceal this in its section 32 reports year after year with the intention of misleading the National Assembly via the Commission's section 84 reports, LASA has more to fear from a kitten.
16. Thanks to the Gauteng office's repeated failures to address my two complaints, not only did LASA succeed in illegally refusing me access to records I'd duly requested in my determined investigation and interrogation, in light of its records, of the budgetary excuse it had fed me for the abortion of my appointment – thereby repeatedly violating my fundamental right to information with perfect impunity; it also succeeded in repeatedly defrauding the SAHRC and more importantly the National Assembly into believing that it had duly complied with PAIA in its responses to my requests for the documents I'd specified.
17. Like when a criminal gives a lying alibi which the police are too lazy to investigate: the police help him get away with it.
18. LASA has repeatedly lied via the SAHRC to the National Assembly about its compliance with my PAIA requests over the years, and the Gauteng office's indolent failure to act on my repeated detailed complaints about this has helped LASA get away with it, thereby incubating the lawless corruption in LASA's top ranks.
19. The extensive, precise reporting requirements imposed on public bodies by section 32 of PAIA reflect the National Assembly's particular concern that they should conduct their business transparently in the democratic era, the better to ensure proper, honest administration.

20. To defeat this object LASA brazenly disregarded these reporting requirements in its reports for 2010/11 and 2011/12; and I anticipate that when I finally get to see its 2013/14 and 2014/15 reports that I've requested, they'll turn out to be lying fakes as well, also uttered to the SAHRC for the misinformation of the National Assembly to conceal its illegal refusals of my PAIA requests in October 2013 and November 2014 to hamper my exposure of improper, dishonest maladministration, abuse of power, and a pervasive culture of lying in the course of a cover-up: to the public, to the SAHRC, to the Minister, to the National Assembly, and to court.
21. Like when for a similar corrupt reason US President Richard Nixon refused to hand over his Oval Office tapes subpoenaed during the investigation of the Watergate burglary and the cover-up he orchestrated, appreciating that their contents, once revealed, would sink him.
22. After Cele J gave his judgment dismissing my claim, and after I'd obtained the transcript of LASA National Operations Executive Brian Nair's evidence at trial recording in cold print his prolific perjuries that had caused my case to miscarry, I filed four further PAIA requests in November 2014.
23. Though it's immaterial under section 11(3) of the Act, my principal purpose was to prove in light of LASA's records, or non-existent records certified on oath under section 23, that in giving evidence in court Nair gushed lies to the judge like a burst sewer.
24. LASA illegally refused nearly all the records I requested. But the very few records that it surrendered – only because I said I'd also applied to the SAHRC for the same ones to make sure that none were dishonestly concealed from me in a criminal contravention of section 90 – categorically prove that LASA national office deputy information officer Nair perjured himself in court in denying that he knew that the SAHRC had conducted a special training workshop to teach LASA's head office lawyers how PAIA works (the lesson was evidently lost on them) and had (shallowly, ineffectually) audited LASA for PAIA compliance.
25. The lesson of which, for the next court to deal with the matter, is that newly admitted Advocate Nair lies freely and compulsively under oath in court, even about non-essential peripheral matters, if he thinks he can get away with his lies.
26. Nair didn't bargain on my use of PAIA after trial to prove that he contemptuously lied to the judge. More central, novel lies he told in court (contradicted by LASA's pleadings and interlocutory affidavits) to pervert the true and just determination of my claim on the true documented facts, in other words more of his perjuries to defeat the ends of justice, will be proved when my PAIA requests are eventually complied with. (The judgment records the

finding that I'd shown 'a number' of instances (the judge didn't specify them) in which Nair had been 'not generous with the truth' – which is to say had repeatedly concealed the truth careless of the oath he took in the witness stand to tell 'the whole truth'.)

27. I filed a fifth PAIA request in March 2015, supplemented in early May, the response to which is still pending.
28. It was concerning my latest November 2014 PAIA requests, illegally obstructed and refused by LASA, that I sought the mediation of the Public Protector's Provincial Representative for KwaZulu-Natal.
29. In light of this detailed clarification, and considering the Public Protector's declared mission to resolve PAIA disputes where possible, having regard to the critical importance of freedom of information in our democracy, and considering the Preamble's explanation that the Act aims to 'foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access [to] information' enshrined by 'section 32(1)(a) of the Constitution [which] provides that everyone has the right of access to any information held by the State', more especially after our horrible experience of the 'secretive and unresponsive culture in public and private bodies' during the apartheid era 'which often led to an abuse of power and human rights violations', including mine, will you please reopen your file and proceed to mediate in LASA's very obviously illegal refusal to comply with my latest PAIA requests? So I can get the records and section 23 affidavits that I need to hand over to the police, to the Bar Council, to LASA's Board, and to place before the next court that will be dealing with my labour claim (disposed of by the Judge President of the Labour Appeal Court grossly irregularly, in fact it seems by his clerk, but that's another matter, headed for review).
30. Alternatively, if your local office is not up to it for any reason, perhaps because like your Gauteng office, it's unwilling or incapable of handling the matter, would you please forward my April request for mediation plus a copy of this letter directly to your national office for referral to a senior investigator there: someone who's both willing and able to run with the case to its explosive conclusion – because LASA's persistent, repeated refusal to comply with PAIA since 2010 is just the tip of the iceberg.
31. As LASA Board member Ela Gandhi explained it in a different connection: 'It's only when people have things they are not proud of that they want to hide things.' Such as a judge president in his capacity as LASA Board chairperson lying repeatedly in secret reports to the Minister and to the National Assembly to pervert separate, independently instituted enquiries into my complaints to them. Nair eventually admitted ghost-writing these lying

reports for CEO Vidhu Vedalankar to pass to Mlambo JP to sign and submit, which is to say she connived in the deception of the Minister and the National Assembly.

32. Generally thought to be the jewel in the crown in the Justice cluster, about which the previous Deputy Minister enthused, 'The world would be a better place if it were run by Legal Aid', LASA, I've discovered to the sickening contrary, is extraordinarily corrupt, from the top down. This will be comprehensively detailed with supporting documents in complaints to follow.
33. The dismal handling of my complaints and appeals to the Gauteng and KwaZulu-Natal provincial offices up to now about LASA's persistent illegal non-compliance with PAIA doesn't square with the Public Protector's well-deserved international reputation for independence, integrity, industry, tenacity and success in holding corrupt, lying public servants to account in our country.
34. Kindly let me know your intentions. Should it be necessary to litigate in the High Court to compel LASA's compliance with my document requests, on account of the failure of our Chapter 9 institutions to assist me enforce my most basic rights, this further letter and your response to it, if any, will be annexed to my founding papers for the information of the judge.

Yours sincerely

A handwritten signature in black ink, appearing to be 'ADV ANTHONY BRINK', written in a cursive, somewhat stylized script.

ADV ANTHONY BRINK