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KwaZulu-Natal  
19 June 2015

Adv Elsabe de Waal, Chief Investigator: Service Delivery  
National Office, Public Protector  
Private Bag X677  
Pretoria 0001

Dear Adv de Waal

LEGAL AID SOUTH AFRICA AND THE PROMOTION OF ACCESS TO INFORMATION ACT

Thanks very much for your encouraging call on the 10th, and for undertaking to take this matter up with your Executive Manager: Service Delivery, Mr Reggie Ndou.

I'm sad to say I haven't heard any more.

As I said during our call:

- (i) I've had no response to my letter of 19 May to KZN office investigator Siphosiso Cisse, identifying all his basic misconceptions founding his rejection of my request that the KZN Provincial Representative mediate in LASA's refusal and obstruction of my requests for records made under PAIA last year; and,
- (ii) there's been a negative development since I wrote.

Paragraph 3 of my request for mediation made to your KZN Provincial Representative on 2 April (copied to you on 21 May) mentions my appeal to LASA CEO and information officer Vidhu Vedalankar to intervene in her deputy information officer Brian Nair's illegal blanket refusal of all the records I sought from him (or sworn confirmation where any don't exist) and her other deputy information officers Patrick Hundermark's and Jerry Makokoane's obstruction of my PAIA requests addressed to them with illegal demands for money not permitted by the Act.

The latest development is that Vedalankar has since responded to my letter through LASA's lead in-house attorney, Corporate Services Executive Thembile Mtati:

- (i) informing me that she 'will not direct them to provide a response to your request[s]';
- (ii) now refusing outright my record requests addressed to Hundermark and Makokoane;
- (iii) confirming (for different reasons) Nair's refusal of my request addressed to him; and,
- (iv) refusing all but one of the records I requested from her.

I enclose copies of my letter to Vedalankar and Mtati's reply.

Section 11(1) in Part 2 of PAIA prescribes that a 'A requester must be given access to a record of a public body if [he's complied with the procedural requirements and] access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.'

Chapter 4 in Part 2 does not contemplate the refusal of a request for access to public body records on the basis that they 'relate to and are ancillary to' any adjudicated or pending litigation. This is not a 'ground for refusal contemplated in Chapter 4 of this Part', as section 11(1)(b) puts it.

Mtati seems to have section 7 of PAIA in mind here, because he's raised it against me before to refuse me duly requested records. (I've accordingly sued to compel; the application's pending.) However, section 7 doesn't afford an information officer a justification for refusing a record request, because it's not among sections 34 to 45 in Chapter 4 in Part 2, the only 'Grounds for refusal' permitted by the Act.

(Section 7 ordinarily bars the use in legal proceedings of records obtained via PAIA after the litigation has commenced, unless 'the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice'. That is, records so obtained are not absolutely excluded from being used in litigation, and the court has the discretion to allow them.)

Mtati's second ground for refusing all the records I requested from Hundermark, Nair and Makokoane is that, he now alleges, my 'requests are malicious and seek to divert the resources of Legal Aid South Africa'. That is, he claims in as many words that my requests

are disqualified by section 45, which heads off ‘Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources’.

The lie to Mtati’s last-ditch excuse for not complying with my requests addressed to Hundermark, Nair and Makokoane, namely that they are a pointless and intentional waste of their time, is given by his own earlier express acknowledgment to the contrary. On 11 December 2014 one of his reasons given for requesting an extension of time within which to respond was that my ‘requests ... incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa.’ That is, Mtati well appreciated that provision of the records to me, or sworn certification in some cases that they didn’t exist, would expose LASA’s officers to the gravest personal and professional consequences.

Although my purpose is immaterial under section 11(3) of PAIA, I spelt it out in my letter to Vedalankar, in which I informed her) that I’m ‘collecting evidence for a perjury prosecution on a score of different counts, a sacking, a professional strike-off, and an application for leave to appeal with further cold print evidence of perjury on multiple scores.’

To the extent that LASA has correctly surmised (albeit irrelevantly under section 11(3)) that I’m seeking records (or certification they don’t exist in some cases) for litigation purposes, as appears from its first ground for refusing my November requests, LASA appreciates on its own showing that my purpose in requesting them is deadly serious and not ‘manifestly frivolous’ and intended to waste LASA’s time. So the two grounds for refusing my requests are contradictory and mutually destructive.

Our fundamental right to information entrenched by section 32 of the Bill of Rights is extraordinarily important for the proper functioning of our democracy. The Preamble to PAIA explains that the Act is intended to ‘foster a culture of transparency and accountability in public and private bodies’, in radical contradistinction to the ‘system of government in South Africa before 27 April 1994’ that ‘resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations’. The culture in LASA’s national office.

In view of the critical importance of freedom of information in the post-apartheid era, Parliament has vested both our Chapter 9 institutions, the Public Protector and the South African Human Rights Commission, with jurisdiction to mediate in PAIA disputes.

Section 6(4)(d) of the Public Protector Act 23 of 1994 empowers the Public Protector,

(d) on his or her own initiative, on receipt of a complaint or request relating to the operation or administration of the Promotion of Access to Administration Act, 2000, endeavour, in his or her sole discretion, to resolve any dispute by –

(i) mediation, conciliation or negotiation; ...

Section 83 of PAIA contains substantially similar provisions for the mediation of the South African Human Rights Commission.

Parliament's concern that PAIA disputes be handled by PAIA experts is reflected in section 91A of PAIA, which provides that only 'trained and specialised' magistrates may be 'designated' to 'perform the functions and duties and exercise the powers assigned to or conferred on him or her under this Act or any other law', namely, per section 82, to 'grant any order that is just and equitable'.

In light of this particular concern, and having regard to my information in my April letter to your KZN office that 'Currently pending perjury criminal prosecutions and strike-off applications against former Acting National Director of Public Prosecutions and two other top national and provincial prosecutors are a pointer what's coming in this matter' and to my further information to you on the telephone that my matter involves the perversion of independent ministerial and parliamentary enquiries by dint of false secret reports (I have them) drawn by National Operations Executive Nair for CEO Vedalankar to pass to Board Chairperson Mlambo JP to sign and submit (under a false and defamatory covering letter to the chairperson of the Portfolio Committee) – with Vedalankar and Mlambo JP both knowing full well (I can objectively show) that Nair's reports contained multiple lies to the Minister and to the Portfolio Committee chairperson, told to effect a cover-up of LASA's refusal to comply with my PAIA requests to hinder my exposure of recruitment corruption – I'd be grateful if you would propose to Mr Ndou, or other national office management executive responsible for the allocation for handling of exceptionally serious complaints and requests, that a senior investigator in the national office deal with the case who's specifically familiar with PAIA, or, if you don't have such a specialist investigator, that he or she do so in consultation with the PAIA Unit of the SAHRC.

I intend also filing a complaint about LASA's final refusal of my 2014 and 2015 PAIA requests with the SAHRC, but since the SAHRC failed to act on a previous PAIA complaint of mine in 2011, and is itself unresponsive to my PAIA requests – both the CEO and the chairperson have taken to ignoring my correspondence about this – I've had to file a complaint against it recently to the Public Protector, a copy of which I enclose for information (without its bulky annexures).

Can you credit that the SAHRC, charged by PAIA with supervising PAIA compliance by other public bodies, is not itself complying with PAIA (for the third time)?

My complaint to the Public Protector has yet to be acknowledged. Could you find out why?

As I've said before, my difficulty in achieving LASA's compliance with a PAIA is just the tip of the iceberg – like when Nixon was determinedly resisting, under fatuous pretexts, surrendering his Oval Office tapes, knowing they contained the recorded evidence of his orchestration of the Watergate cover-up – so it would be most desirable for a national office senior investigator and his support staff to run with this matter from start to finish.

It's going to be the next major corruption scandal – on so many levels.

I suggest that all communications with LASA in this matter be written, so that if the Public Protector proves unable to assist me exercise my most basic right to information, and I'm constrained to approach the High Court for relief, I'd like to show what unsuccessful steps the Public Protector took in the matter in the execution of its special PAIA mandate prescribed by section 6(4)(d)(i) of the Public Protector Act. This letter will be among the papers.

Yours sincerely

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

ADV ANTHONY BRINK

arbrink@iafrica.com

083 779 4174

1 Boast Street  
Eshowe  
KwaZulu-Natal  
19 March 2015

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

Per email and per registered post

Dear Ms Vedalankar

NATIONAL DEPUTY INFORMATION OFFICERS' FAILURE TO COMPLY WITH  
THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 ('PAIA');

REQUEST FOR YOUR INTERVENTION UNDER SECTION 17;

NOTICE OF INTENTION TO APPLY TO THE HIGH COURT TO COMPEL UNDER SECTION 78

FURTHER PAIA REQUEST ADDRESSED TO YOU UNDER SECTION 18, ENCLOSED.

1. Your national office deputy information officers Chief Legal Executive Patrick Hundermark, Chief Operations Officer Jerry Makokoane, and National Operations Brian Nair have all unlawfully failed to comply with my PAIA requests addressed to them in November 2014 (with one amendment in December), in contravention of the Act and in violation of my fundamental civil right to freedom of information guaranteed by section 32 in the Bill of Rights contained in Chapter 2 of the Constitution.
2. Subsequent to the expiry in January of the extended sixty calendar days allowed them to respond to my requests, to which I'd generously consented under section 26(1)(e), knowing they wanted to go away on their Christmas holiday – which is to say they were already out of extra time and therefore unlawfully non-compliant with the Act – Hundermark and Makokoane unlawfully demanded money from me, purportedly under section 22 (while failing to comply with subsection 3).
3. Hundermark's claim is for reading (both himself, 'me', and other staff, 'we'):

- ‘the bundle of documents relating to the proceedings of the Labour Court’ (in fact, there were numerous different bundles, including two volumes of documents admitted into the evidence comprising 1073 pages in all);
  - my three pending ‘applications in the Magistrate’s Court’ to compel you and your Eastern Cape- and Free State and North West regional information officers to comply with my PAIA requests which you all illegally refused in November 2013; and,
  - my ‘specific requests as outlined in’ the annexures to my Form A PAIA requests addressed to him, listing the documents I require or, where they don’t exist, sworn certification of this under section 23.
4. They spent 187 hours reading these, Hundermark said.
  5. He doesn’t say whether he and his staff all read all these thousands of pages of documents, thereby multiplying the effort; or whether they divided them up and shared them out, with each of them reading different bundles to lighten the load, thus resulting in each of them being half-educated about my labour case against LASA and my applications to court to disgorge illegally withheld documents from it.
  6. Nor does he say whether the very many hours of reading he claims they all did included taking a few minutes out to read the Act.
  7. I sent Hundermark two requests.
  8. With a couple of exceptions, the first request concerned the Durban Justice Centre’s Children’s Court Practitioner post, which featured nowhere in my labour case or my applications to compel you and your regional deputy information officers’ compliance with my November 2013 PAIA requests.
  9. The exceptions, items 20–23, are:
    - Hundermark’s delegation as deputy information officer;
    - a copy of my recommendation for the Pietermaritzburg Senior Litigator post in November 2009, in a form less redacted than one you eventually very reluctantly surrendered to me under SAHRC pressure in January 2011, five months after I requested it in August 2010, after first mutely, and then expressly, illegally refusing to allow me to see it, not wanting me to read that I’d indeed been selected and recommended for the post, and no one else, contrary to your lie to

me in October 2010 that I'd been 'recommended together with other candidates', even as you refused me sight of the recommendation refuting your lie;

- two documents that I want Hundermark to certify on oath don't exist, thereby providing me with his sworn evidence about this to tender later on:
  - the letter (strangely not) sent former Labour Court judge Mzochithwayo Ngcamu, now Durban Children's Court Practitioner, after his interview for the Pietermaritzburg or Durban Senior Litigator post in November 2009, to inform him that he'd been unsuccessful, as section '1.5 Unsuccessful candidates' of LASA's Recruitment code required be sent to him; and,
  - the letter (strangely not) sent Ncgamu in August 2010 (after I asked you in July 2010 to see to the finalisation of my appointment, now eight months after my interview) alleging that it had been decided not to fill the KwaZulu-Natal Senior Litigator posts. (In my labour case, LASA pleaded that letters to this effect were sent me and two other interviewed applicants, not all three; and later furnished me with copies of the letters sent me and two of the other candidates, Mngadi and van Wyk, but not also the third, Ngcamu.)
- 10. So as you can see, Hundermark and whoever else he's referring to had no reason to read the perfectly irrelevant stacks of papers he alleges they did, for which many hours they allegedly spent reading them all he insists I must first hand over my money before he'll respond to my PAIA requests.
- 11. My second request addressed to Hundermark comprised a mere four items and required no background reading to respond to either, because on sight of them he'd have appreciated instantly that Nair's evidence implicating him, quoted from the trial transcript in the request, was perjured.
- 12. After I'd exposed, in my original very detailed statement of claim in July 2011, and had refuted as lies,
  - (i) the false budgetary excuse you fed me in your October 2010 and January 2011 letters, and very unwisely confirmed under oath in your PAIA confirmatory affidavit in April 2011 (expecting your cover-story about this would put me off pursuing my appointment), and fed also to the Minister and to Parliament in the secret reports Nair ghost-wrote for you to pass on to Board chairperson Mlambo JP to sign and give them to pervert their enquiries into my complaints that you'd repeatedly illegally refused to comply with my PAIA requests and had irregularly aborted my appointment (initially he dishonestly disputed (in cross-examination

of me) being the ghost-writer, but in his evidence later admitted it, cornered by his electronic fingerprints ('Briann') left behind at the scene of the crime in the 'Author' properties folder of the PDF of the report to the Minister, finally surrendered to me in the final few days before trial, nearly two years after I first requested it, and never stopped requesting it);

- (ii) the additional false logistical excuse to patch a gaping hole in the financial one fed the latter authorities, via the secret reports (that I obtained by chance), for not proceeding to finalise my appointment, namely that difficulty had been encountered coordinating the so-called second round interview panel to (irregularly) interview me again (in truth and fact, as he testified, Nair took no action on receiving my recommendation, and no one was contacted to establish their availability to conduct the second interview – Nair twice retracted the lie on affidavit before the case, then revived it in court on oath, then contradicted it on oath),

Nair changed these stories completely, and in November 2011 told the Board totally different new lies about why he'd not finalised the Senior Litigator appointments, namely 'recruitment challenges' (in truth and in fact, there weren't any: three good candidates had been selected for the three posts, one already a Senior Litigator seeking a transfer closer to home) and alleged uncertainty over LASA's incumbent Senior Litigators' professional competence, which was therefore to be audited immediately by a special assessment panel 'including possibly a retired judge' (in truth and in fact, all classes of LASA practitioners had consistently and repeatedly been found to be performing well; and no such panel has ever been convened) causing executive management to hold recruitment to the remaining vacant Senior Litigator posts.

- 13. And as these new different lies Nair told the Board – different from the lies told me, the Minister and Parliament – were unravelling under my cross-examination of him in court, he amplified his perjury to make it sound more convincing by falsely implicating Hundermark in his lies.
- 14. Obviously, had Nair told the truth in court and not gushed the new lies quoted in my request, like a child caught stealing and frantically inventing stories to escape a beating, the documents requested would exist, and would be available for Hundermark to give me.

15. On sight of my second request, Hundermark appreciated immediately that Nair had perjured himself and that the documents I'd specified don't exist; and he was placed to certify this under section 23 on the spot.
16. Hundermark appreciated immediately that a section 23 affidavit by him disposing of my second request would be going straight to the police and to the NDPP as evidence of Nair's perjury for his criminal prosecution; to the Board for his dismissal; to the GCB for his strike-off; and to court for the reopening of my labour case, which miscarried directly on account of Nair's prolific, childish contradictory perjuries about why he didn't act to finalise my appointment. (The judge recorded his finding that I'd demonstrated that Nair was 'not generous with the truth' on 'a number' of scores, without specifying his lies, even as he then believed every lie he told all the same, and tossed my case on the strength of his lies, some novel and not pleaded, others diametrically contradicting LASA's pleadings and sworn case in its interlocutory affidavits.)
17. Do you think while obstructing my exercise of my fundamental right of access to your public body records, or failing to certify they don't exist as required by section 23, to protect Nair from being sacked, struck-off, prosecuted and jailed for his lies told to me, to the Board, to the Minister, to Parliament and to court to defeat the ends of justice and pervert the true and just determination of my claim, Hundermark was trying to extort money from me illegally with lies of his own – about reading all those completely irrelevant documents he alleged that he and his staff needed to read before he could respond to my requests?
18. I must wonder about Hundermark's personal and professional integrity and the extent of his complicity in this next leviathan scandal in all the newspapers, because who can ever forget:
  - his emailed assurance to the director of the SAHRC's PAIA Unit on 4 October 2010, 'We hereby confirm that we will be responding to Mr Brink's request by 20 October 2010', after she'd pressed him on the telephone on the 1st and again by email on the 4th asking 'LASA to respond to the request to avoid unnecessary, expensive and protracted litigation' – which proves Hundermark was centrally involved in handling my August 2010 PAIA request after I called the SAHRC in, following your deemed refusal under section 27 by illegally failing to respond to it – and then:
  - the attempted fraud on me in the ghost-written letter you signed on 18 October 2010 now expressly refusing my entire request for 51 specified records (which

was plainly directed at exposing as a lie Nair's claim to me on 3 August 2010 that a decision had been taken not to fill the Senior Litigator posts) by misquoting a reported judgment to justify the blanket refusal of my entire request, by putting words in the judge's mouth that she never spoke, whereas her actual reported dicta, consistent with the Act, squarely supported my request. I annex the first relevant pages of my petition to LASA chairperson Mlambo JP and the Board about this on 30 November 2010 detailing this revolting chicanery.

19. Although Nair's distinctive stylistic fingerprint sentence-opener, 'Noting that ...', appears repeatedly in your October 2010 letter – he used it repeatedly in his evidence and admitted using it repeatedly at an international legal aid conference in the Netherlands a couple of weeks before the trial – Nair denied in court having written it.
20. Besides Hundermark, Mtati was also involved in the illegal refusal of my first PAIA request, because the record shows he was collecting the documents I'd asked for (they were emailed to him), before they were all illegally refused on the said crooked basis.
21. So was it Hundermark or Mtati or Nair who ghost-wrote your letter advancing the lying budgetary pretext for aborting my appointment and illegally refusing my entire first PAIA request under cover of a fraudulent misquotation from a reported judgment? (If indeed it was Nair, as appears from his stylistic fingerprints all over the letter, he's obviously going to prison for falsely denying it under oath.) If Hundermark or Mtati, they've got big trouble coming too. Please advise.
22. In a letter you forged on your own computer (author 'VidhuV') while Board chairperson Mlambo JP was abroad in the US, copying and pasting an image of his signature below it (one can see the scanning shadow around it) to make it appear to me he'd signed it (this is actually admitted in LASA's pleadings), my extraordinarily serious 59-page petition protesting your illegal refusal to comply with PAIA under cover of a fraudulent misquotation from a reported judgment, uttered in a separate indented, italicised, block quotation to sugar the lie, and the already clear indications that my appointment had been aborted illegally under cover of a lying budgetary justification, was brushed off in two sentences typed on your own computer while he was across the Atlantic:

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

Which verdict concerning my complaint against you, on two serious counts, you then emailed him to email me, two weeks later. Like when a judge allows the accused to write his judgment for him, pretending to have given the case his careful attention, and then acquitting him without reasons given, which the accused in the dock hands up to the judge on the bench to deliver to the complainant in the gallery. What a wonderful world.

23. I didn't ask for it, but the Board Secretary has just given me your 'Confidential' report to the Board on 'Labour Matters Referred to Courts and CCMA' on 31 October 2014 (author 'VidhuV'), and the minute of the Board meeting in November noting it. (In my experience, LASA documents telling lies are invariably marked 'Confidential'; this is now the fourth time I've seen this.)
24. Your report (author 'VidhuV') shows that you've now personally told the Board the lie that the 'Senior Litigator position [at the] Pietermaritzburg JC ... was frozen owing to a management decision in relation to cost-cutting measures', well knowing that:
  - (i) no record of any such decision exists whatsoever; and,
  - (ii) had such decision been taken, the Approval Framework required that the Board approve this deviation from the Business/Performance Plan, based on its Strategic Plan to employ Senior Litigators.
25. A quick look at the chronology exposes your lie to the Board last year.
26. On 16 July 2010, you, Nair and Makokoane proposed in your 'Report to Board' that some vacant public defender posts serving the lower criminal courts be temporarily frozen to save costs until resolution of the uncertainty about when the Department would be providing funds for OSD phase 1 salary increases in 2010/11. In the report you all assured the Board that recruitment to critical posts (like Senior Litigator posts at the very top of LASA's professional ranks) would be prioritised. A fortnight later on 29 July you emailed Nair to discuss my letter just received, in which I was pressing you to see to the finalisation my appointment, now eight months since my successful interview. The following day on 30 July you and Nair attended the Board Executive meeting but said nothing about also freezing Senior Litigator posts to save costs. On 31 July you were present waiting outside as the Board meeting took place, at which the Board approved your, Nair's and Makokoane's proposal to temporarily freeze some lower criminal court posts only. Again there was no talk by you of freezing top-rank critical Senior Litigator posts as a way of making more cost-savings – temporarily, let alone permanently. Then 'in July 2010 after the Board meeting' (per LASA's pleadings) – which means on 31 July after the Board meeting had

finished and the Board members had left for their homes, hotels, restaurants and airports, you and Nair took 'the decision to abort the recruitment' (LASA pleaded) of Senior Litigators for the Pietermaritzburg, Durban, and Mthatha posts – according to your October 2010 letter to me, reiterated in your January 2011 letter, and verified on affidavit in April 2011. Only, as Nair repeatedly admitted on oath in April 2011 and at trial in mid-2013, no record whatsoever exists of this alleged decision. And the Board wasn't even told about it (LASA pleaded), let alone was its approval obtained, as the Approval Framework required.

27. Which story Nair also verified in his affidavit in April 2011, only to change the story completely several months later in his 'Report to Board' of November 2011 (after I'd blown it to pieces in my very detailed original statement of claim in July), telling the Board two entirely different lies about why my appointment was aborted (mentioned above).
28. And then in court in mid-2013, he persisted with the lie you told me in October 2010 that the Pietermaritzburg and Durban recruitments were cancelled 'In July 2010' for budgetary reasons, but, contradicting your lie, not the Mthatha one, which he said you aborted for entirely unrelated reasons, against his repeatedly expressed wishes (mentioned below).
29. Makokoane's money claim is for his 'team to read the bundle as referred in your footnotes to advise me with the gist of the background explanation.' This less extensive reading, which didn't include my pending applications to compel your compliance with PAIA, but included time spent advising him of 'the gist of the background explanation', allegedly took his 'team' a much longer 'almost 220 hours'.
30. Do you think the reason for this is that Makokoane's 'team' can't read as quickly as Hundermark's 'team'? Or could it be because, after reading 'the bundle as referred in your footnotes' (there were several bundles in my labour case) but not the application papers, his 'team' then took four days without a break (33 hours, 8 hours in a working day) to convey to him the 'gist of the background explanation'.
31. Or do you think like Hundermark, Makokoane is also telling me lies in his scheming to obstruct my exercise of my fundamental right to information, and blocking my access to incriminating documents with a view to protecting Nair and other top officers from being brought to book?
32. Do you have any idea why Makokoane needed a different 'team' from Hundermark's to read the papers in my labour case before he could respond to my PAIA request?

Or is it the same team, as would appear from the similar language used in their letters, dishonestly double-charging me like crooked lawyers?

33. Did they possibly think I wouldn't notice, and the High Court wouldn't notice, the substantially identical headings of their letters (Nair's too) containing the same superfluous wrong words 'or information' after the correct words 'request for records' (contrary to its name, PAIA doesn't permit requests for information per se, only for records); and the selfsame opening phrase too, 'I have had an opportunity of perusing' etc, giving the game away, like bumbling criminals leaving their ID books on the floor at the bank for the police to find afterwards?
34. And can you explain why, unlike Hundermark's 'team', Makokoane's 'team' didn't find it necessary to read the application papers compelling you and your regional deputy information officers to comply with my November 2013 PAIA requests, which you illegally refused, in order to provide him with the 'gist of the background explanation' giving rise to my PAIA request addressed to him?
35. Whatever the answers to these very perplexing questions, Hundermark's and Makokoane's demands are illegal. The Act doesn't permit reading fees of any kind by information officers, by deputy information officers, or by their 'teams'. Including a fee for time spent reading a PAIA request.
36. Nor does the Act permit a record requester to be charged a fee for time spent by some person in a deputy information officer's 'team' briefing him on the context in which records have been requested, which is to say the requester's apparent purpose in making his request.
37. More especially because section 11(3) holds a record requester's purpose, whether stated or surmised, in seeking access to the record of a public body to be immaterial. Such as collecting evidence for a perjury prosecution on a score of different counts, a sacking, a professional strike-off, and an application for leave to appeal with further cold print evidence of perjury on multiple scores.
38. The 'background explanation' allegedly summarised for Makokoane is consequently irrelevant.
39. In truth and in fact, however, Makokoane well knew the 'background explanation' of my request already, because back in September 2010 I'd appealed to him to intervene in the irregular abortion of my appointment to the top professional post for which I'd been recommended (he was then Nair's superior according to LASA's

organogram at the time, later changed to elevate Nair to equivalent rank), and I copied Hundermark in, so he knew the 'background explanation' too:

- Both Makokoane and Hundermark already knew full well that the story Nair had told me on 3 August 2010 to cover the true reason for the abortion of my appointment, namely that it had been decided not to fill LASA's Senior Litigator posts, was a lie.

No such decision had duly been taken, and accordingly no record of it exists, as Nair repeatedly confirmed on oath on affidavit in April 2011 and again in court in July/August 2013.

- Makokoane knew better than anyone that had such a major decision been taken at national executive management level not to fill these critical budgeted and funded posts, Board approval of the decision would have been necessary, because the Approval Framework requires Board approval for any deviation from the Business/Performance Plan based on the Board's Strategic Plan 2009–12, drawn in accordance with the requirements of the Public Finance Management Act and the Treasury Regulations and duly presented to the Minister and to Parliament – which Strategic Plan included employing Senior Litigators, as you repeatedly mentioned in your CEO report on the completion of the Strategic Plan for that period, and which information LASA's annual report repeated a third time.

Makokoane knew this very well, because he himself had applied to the Board on 16 July 2010 for such similar approval when proposing on the management executive committee's behalf, at Nair's suggestion the previous day (to spur payment, Nair testified), to temporarily freeze recruitment to some non-critical public defender posts serving the lower criminal courts – and none other – until the uncertainty in 2010 about when LASA's OSD phase 1 funding would be paid had been resolved. All fully documented.

- Both Makokoane and Hundermark knew full well that the story fed me in your first letter of 18 October 2010, even as you were illegally refusing my entire PAIA request in August under cover of a fraudulent misquotation from a reported judgment, namely that budgetary insufficiency prevented LASA filling its remaining vacant Pietermaritzburg, Durban and Mthatha Senior Litigator posts, was another lie, amplifying, with a financial justification, Nair's lie to me on 3 August 2010 that it had been decided not to fill the posts.

They knew this because in truth and in fact your Senior Litigator posts at the top of LASA's professional staff establishment were not affected by the Board's decision on 30 July 2010 to temporarily freeze recruitment to a limited number of vacant public defender posts serving the lower criminal courts at the bottom of LASA's professional ranks. (The approved brake was lifted on such recruitment just two months later, and all the posts were filled '100%', you later reported). To the contrary, as said, Makokoane assured the Board in his Report to Board that recruitment to such critical posts would be prioritised. (Although he foolishly denied it, and testified that LASA's most junior posts were critical, not its most senior ones, it was common cause on the pleadings that Senior Litigator posts are 'critical' (LASA's word)).

40. Incidentally, did you know that testifying under oath in court, Nair practically called you a liar on two counts, trying to pass the buck to you (i) for his egregious misconduct in unlawfully obstructing the implementation of the Board's Strategic Plan regarding the employment of Senior Litigators for grossly improper reasons, and then (ii) for the cover-up going as far as lying to the Minister and to Parliament via secret reports he ghost-wrote for you to give Mlambo JP to sign and submit to these authorities (which you did, knowing they were full of lies) to pervert their independent enquiries into my complaints that you'd repeatedly illegally refused to comply with my first two PAIA requests in 2010 and that my appointment had been irregularly aborted?

- Radically contradicting the story you told me in your October 2010 letter, repeated in your January 2011 letter, and swore to under penalty of perjury in your PAIA affidavit in April 2011, which story, after I sued for reinstatement to the post I was recommended for, was consistently repeated in LASA's pleadings and interlocutory affidavits (but not in Nair's completely different November 2011 Report to Board), namely that due to budgetary insufficiency, LASA had decided not to fill its three vacant Senior Litigator posts at Pietermaritzburg, Durban and Mthatha, Nair alleged quite differently in court, and admitted that the cancellation of the Mthatha recruitment had nothing to do with any budgetary consideration.

He then blamed you for it, claiming that after he and the Legal Services Technical Committee (including Makokoane and Hundermark), of which he's chairperson, had unanimously resolved to recruit a Senior Litigator for the Mthatha post as an immediate priority, being sorely needed there according to then Eastern Cape Regional Operations Executive Thembile Mtati's pressing motivation for the

transfer of the redundant, long-vacant Kimberley Senior Litigator post, you – very unreasonably, and to the detriment of service delivery by LASA – refused to approve the LSTC’s unanimous decision (as required of you by the Approval Framework), despite his repeated attempts to persuade you to agree.

- Nair also blamed you, and then Mlambo JP, and then you again, for telling the several fresh lies that he (Nair) added to the ‘updated’ report to Parliament in June 2011 which he’d ghost-written for Mlambo JP to sign and give the Minister in March to pervert his enquiry into my complaints.

41. And did you know that at trial Nair blamed you for the abortion of my recruitment, alleging that it was your idea, and that you had suggested that the Pietermaritzburg Senior Litigator post for which I’d been selected be frozen (off the record, and without Board approval as required by the Approval Framework)?
42. That is, in his cowardly, pathologically dishonest manoeuvring to evade culpability for his capital misconduct, Nair gave evidence on oath behind your back to frame you for it as principal perpetrator, rather than as his accomplice in the cover-up.
43. Now that you’re aware that Nair told the judge these lies about you, all of which, among so many others, he swore, with his hand in the air were the perfect truth, please advise me what you intend doing as CEO about his repeated perjury in implicating you in and blaming you for his own misconduct. You can be sure that at the enquiry to follow you’ll be questioned about your reaction to this news of Nair’s lies about you told under oath in court.
44. In November 2012, directly on account of my repeated complaints to the SAHRC about your and Nair’s persistent illegal refusal of my PAIA requests in 2010/11 and false section 32 reporting about it afterwards to conceal from the SAHRC and from the National Assembly in turn your illegal suppression of documentary evidence (to obstruct and defeat the ends of justice), the SAHRC found it necessary to deliver your national office lawyers a special remedial lesson on how PAIA works.
45. Lying under oath, as usual, Nair told the judge he knew nothing of this workshop. Email records I obtained from you after trial (the very few you duly surrendered, the majority refused) prove categorically that Nair knew all about it.
46. Nair also denied any knowledge of the SAHRC’s PAIA audit of LASA; again, the email records prove he contemptuously lied to the judge about this too.

47. As CEO, what are you going to do about this further interminable, compulsive perjury of his? As said, you will certainly be asked this again at the enquiry to follow this case.
48. The SAHRC's report of the PAIA training workshop records your national office attorneys' admission that on account of their 'lack of application based knowledge' causing them 'challenges complying with PAIA' they felt 'overwhelmed by the requirements of the legislation', and that 'LASA compliance history was flagged with participants and most responded to the reporting of LASA as non-compliant to Parliament with concern'.
49. The SAHRC was referring to the 'reporting of the Brink saga (you may be familiar with it – Patrick [Hundermark] is) to Parliament', as its PAIA Unit director mentioned in her email to the Open Democracy Advice Centre on 12 July 2011, copying Hundermark in.
50. Indeed, in its Annual Report for 2011/12, the SAHRC reported LASA to the National Assembly as a PAIA defaulter in its section 84 report. Concerning the failure of public institutions to comply with their PAIA compliance reporting obligations, the SAHRC cited:
- A case in point ... 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.
51. Strangely the SAHRC neglected to report to the National Assembly LASA's substantial repeated illegal refusal to comply with my first three PAIA requests, even as it had noted the 'unlawfulness' of this in its correspondence with me. (Nearly all records illegally refused were later released, but only under persistent pressure, in the labour litigation.)
52. The SAHRC's training workshop report further records that 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation', and that it had undertaken 'to create guidelines within the organisation to ensure misapplication does not recur' in the handling of PAIA requests like mine, particularly since 'misinterpretation and misapplication was identified as being high risk to LASA', having regard to 'the status of PAIA as a fundamental right' (sic), a matter 'reiterated and emphasized at different points of the training'.

53. Likewise underscored was ‘the need to break the culture of secrecy which shrouds the public service in general’ and LASA in particular – maintained by its highest officers in their illegal collusion to cover up the most extraordinarily serious misconduct.
54. And then on 25 October 2011, right after LASA’s attorneys had very frankly conceded to the SAHRC that it hadn’t complied with PAIA in the handling of my record requests (besides me, no other records requesters were obstructed), LASA (Nair instructing, Mtati signing) blithely lied to court in its pleadings in my labour case:

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.
55. Which brazen lie Mtati repeated on oath in his prodigiously perjurious interlocutory affidavit on 16 January 2013 supported by a confirmatory affidavit by Nair.
56. And which lie Mtati repeated again in his even more massively perjurious affidavit of 22 January 2015 opposing my petition for leave to appeal, telling fresh new lies contradicting the old ones told in court; in which affidavit, filed out of time, he sought condonation for LASA’s non-compliance with the rules of the Labour Appeal Court with yet more bare-faced perjury, lying to the Judge President that he hadn’t known I’d filed my signed and attested petition before he went off on holiday on 12 December 2014 – his excuse given on oath for his inaction flatly refuted and exposed as a lie by the record of an email I sent him on the 8th, which he admits he read on the same day, before pushing off without attending to my petition.
57. It’s evident from the illegal responses to my current four PAIA requests in November 2014, and from the illegal responses to my three requests in November 2013 now before the Magistrate’s Court, that your ‘team’ of national office ‘legal representatives’ were unable to learn anything from the SAHRC’s training workshop. (The attendance register shows that Hundermark, Makokoane, Nair and Corporate Service Executive Thembile Mtati didn’t think they needed to go.) The special lesson on how to apply PAIA to give effect to the fundamental right to information, and consequently the importance of complying with it, just didn’t sink in.
58. Here’s a refresher course then on how PAIA works for the slow learners in LASA’s national office.

59. After a record requester has lodged his request in the form prescribed by section 18 and paid his request fee prescribed by section 22(1), as I did, section 25(1) requires that the

information officer to whom the request is made ... must, as soon as reasonably possible, but in any event, within 30 days, after the request is received –

(a) decide in accordance with this Act whether to grant the request; and

(b) notify the requester of the decision ...

60. Section 26 allows the timeframe to be extended by a maximum of another 30 days – i.e. calendar days, not court or business days, according to section 4 of the Interpretation Act 33 of 1957 on the ‘Reckoning of number of days’ prescribed by a statute.

61. Section 25(2)(a) provides that:

If the request for access is granted, the notice in terms of subsection 1 (b) must state –

(a) the access fee (if any) to be paid upon access.

62. Section 1, ‘Definitions’ tells us that:

“access fee” means a fee prescribed for the purpose of section 22(6).

63. Which provides:

(6) A requester whose request for access has been granted must pay an access fee for reproduction and for search and preparation contemplated in subsection (7)(a) and (b), respectively, for any time reasonably required in excess of the prescribed hours to search for and prepare ... the record for disclosure.

64. Subsection 7(a) and (b) allows:

a reasonable access fee for –

(a) the cost of making a copy ... and ... the postal fee; and

(b) the time reasonably required to search for the record and prepare ... the record for disclosure to the requester.’

65. The Act therefore required Hundermark and Makokoane to decide, within the prescribed time allowed, which of my record requests they were granting and which they were refusing (with reasons, referenced to Chapter 4, 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS'), and to notify me of (i) their decisions regarding each record allowed or refused, and (ii) their reasonable access fees for searching and copying those allowed.
66. Hundermark and Makokoane have failed to comply with their obligations under the Act.
67. Nair has unlawfully expressly refused, also out of time, my entire request addressed to him, citing various obviously irrelevant and inapplicable sections of PAIA – including section 7, which isn't even included in Chapter 4.
68. To read Nair telling me that his 'response is given to you on the basis of the advice of my legal representatives, which I verily accept' is to recall:
  - (i) LASA's head office attorneys' concession to the SAHRC that when it comes to PAIA they don't know what's going on; and,
  - (ii) Nair's evidence in court that his legal studies through the mail hadn't included a course on PAIA.
69. Apparently the same 'team' of 'legal representatives' advising Hundermark and Makokoane to obstruct my requests gave Nair the 'advice' to refuse my entire request addressed to him. (Centrally involved in my labour case, Nair couldn't sensibly claim to have needed to read all the bundles to be placed to respond.) Their letters have substantially the same headings, as mentioned above, and display the same pitiful legal ignorance.
70. And like Nair's letter, Hundermark's and Makokoane's letters contain the same meretricious statement that I consented to an extension within which to respond. Sure I did; I'm an obliging sort of guy. I knew they all wanted to go away on for their Christmas holiday, and I'm playing a long and patient game to collar the rogues. None of the letters mention that the extensions had expired, and that all three deputy information officers were unlawfully outside the extended time limit for responding when their 'team' of 'legal representatives' wrote to me. Like when a used car salesman declaims brightly that the lemon he's trying to flog has just been serviced. Without mentioning the crack in the block.

71. It's apparent from a glance at my request addressed to Nair that it's directed at categorically exposing some of his more obviously foolish perjury in court. My request practically asks Nair to supply the rope for his own hanging. Naturally he's unwilling, for as Board director Ela Gandhi explained very perspicaciously in the *Mercury* on 23 November 2011:

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

72. Section 17(2) gives you 'direction and control over every deputy information officer' you've delegated.

73. Section 17(6)(b) provides that your delegation of your responsibility as information officer to them:

does not prohibit the person who made the delegation from exercising the power concerned or performing the duty concerned himself or herself.

74. That is, notwithstanding your delegations to these other persons, you remain the person primarily accountable as information officer for LASA's compliance with the Act.

75. I accordingly call on you either to direct your delinquent deputy information officers to belatedly comply with my record requests or take my requests over from them and do so yourself.

76. If you do not do either of these things, I'll conclude, and later argue, that you evidently support their violation of my fundamental right of information by illegally frustrating and refusing my PAIA requests with the object of suppressing documentary evidence of egregious malfeasance, corruption and criminality in LASA's top ranks – including lying to Parliament, to the Minister, to the LASA Board, and internally contradictory and objectively contradicted perjury, going off chaotically in all different directions like cheap fireworks, before, during, and continuing even after the trial of my labour claim.

77. This demand is not any sort of appeal to you under the Act, because contrary to the false information contained in the latest revision of your PAIA manual, to be quoted presently, you have no appeal authority in the matter of PAIA requests.

78. This is because LASA is a section 1(b)(ii) 'institution' among the sorts of 'public body' contemplated by section 1 of the Act under the heading 'Definitions'.

79. A 'public body' is variously defined by section 1 as (I've italicised the pertinent bits for emphasis):

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government;

or

(b) *any other* functionary or *institution when* –

(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or *performing a public function in terms of any legislation.*

80. Such as the Legal Aid South Africa Act 39 of 2014, from the 1st of this month. Or the Legal Aid Act 22 of 1969 before that.

81. And section 78(2)(c) of PAIA provides (I've redacted it for relevance):

A requester - ...

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

(i) to refuse a request for access ...

may, by way of an application, within 180 days apply to court for appropriate relief in terms of section 82.

82. In short, no internal appeal lies against the refusal of a request for access to the records of a public body such as LASA, and my remedy for non-compliance stipulated by the Act is to apply directly to court.

83. The SAHRC's PAIA Unit alerted me to this right at the beginning of my troubles with LASA over PAIA, and will confirm it to you.

84. So the requirement of section 20 of LASA's PAIA manual revised in 2010\* and approved by the Board –

20. Remedies available for noncompliance with the Act

In case of non compliance with any request by the Deputy Information Officer, the Designated Deputy Information Officer or any other personnel authorised by

the Information Officer, the requester shall appeal to the Information Officer who shall consider such appeal within 15 days and after which the requester may resolve the dispute by approaching the relevant court directly.

– is inconsistent with the Act and seriously misleads the public.

85. (\*The 2013 revision of the PAIA manual hasn't yet been published online for easy public access, but I've seen this section quoted by LASA as section 18, apparently renumbered but otherwise unchanged. Apart from the legal nonsense the section contains about appealing to you against 'non compliance with any request' , its impressive-sounding but spurious distinctions between 'Deputy Information Officer, the Designated Deputy Information Officer or any other personnel authorised by the Information Officer' are more legal nonsense unsupported by section 17 of the Act.)
86. Given your repeated persistent past illegal refusals of my PAIA requests in October 2010, January 2011, and November 2013, and your pointless, dilatory opposition on your very junior counsel's clueless advice of my pending application to compel your compliance with the last-mentioned request, I've no reason to expect you'll now begin complying with your constitutional and statutory obligations as LASA's information officer and see to it that my PAIA requests are duly complied with.
87. It also seems unlikely that your very most senior attorney Patrick Hundermark and your very most senior advocate Brian Nair in your national management executive committee will reverse themselves and concede that as deputy information officers of a major public entity, when it comes to responding to PAIA requests they've no idea what they're doing.
88. Or maybe they do, and what they're doing is outrageously abusing their offices as deputy information officers to suppress documentary evidence of exceedingly grave wrongdoing at the top of LASA's directorate and executive, including, in Nair's case, his own.
89. I've asked the SAHRC to intervene, but in view of LASA national executive management's evident united determination to obstruct and defeat the ends of justice by suppressing documentary evidence of Nair's many perjuries at the trial of my claim to my appointment, I'm not optimistic. My past interactions with the SAHRC as our constitutionally appointed fundamental rights watchdog have been bitterly disappointing, time and again.
90. I'm consequently preparing an application to the High Court at Pietermaritzburg under section 78 for an order compelling compliance with my four requests in

November 2014, and I intend citing you as first respondent in your capacity as LASA's information officer ultimately responsible and accountable for PAIA compliance at LASA.

91. But if after consulting the SAHRC you decide it would be better for LASA as a public entity to start complying with the Act, and stop illegally contravening it, and to start respecting my fundamental right to information, and stop illegally violating it, I'll call off my intended application. The same goes for my pending applications in the Magistrate's Court.
92. Please let me know your intentions within ten working days of receiving this letter. This will give you time to consult the SAHRC for its guidance and training on PAIA delivered under section 83(3)(d) and (e). Believe me madam you need it.
93. If I need to sue, as I anticipate from dismal past experience I inevitably will, I'll include this letter in my papers for the High Court's information about the attempt I made to avert the unnecessary, avoidable litigation to vindicate my fundamental right to information.
94. Finally, I enclose another PAIA request addressed to you for your attention, inter alia testing Hundermark's and Makokoane's money claims against me, and seeking sight of LASA's insurance policy with Camargue, referred to in your report to the Board on 31 October 2014 about my case, and all requests for and reports to this insurer to assist it in 'managing the matter'.
95. If my request for access is granted, I'll naturally be cross-checking with your insurer to verify the completeness of the records provided me. I anticipate that the content of the reports will support a criminal charge and a civil action for insurance fraud, and I intend claiming the R5000 reward they tout for reporting it. I need a new wristwatch.
96. I remind you that section 25(1), quoted above, requires that you:
  - must, as soon as reasonably possible, but in any event within 30 days, after the request is received –
  - (a) decide in accordance with this Act whether to grant the request; and
  - (b) notify the requester of the decision ...

97. My request is simple, so to conform yourself with your obligation to decide and notify me 'as soon as reasonably possible', your decision whether to grant it or not 'must' be immediate. The records can follow later.
98. If you decide to grant my request there'll be no access fee for searching, because the extant records are electronically stored and easily located, nor for copying, because I've asked that they be emailed to me, not sent by post. I've paid the prescribed request fee by EFT reference: PAIA/VV.
99. If you refuse my request or any part of it, I'll sue you immediately for the records I want, or your sworn certification that they don't exist.
100. Let me conclude by giving you my sincere assurance that there will be no end to this matter until I have justice (the multiple gross basic irregularities in the premature, hasty dismissal of my petition to the Judge President of the Labour Appeal Court beggar belief), and until all those who've gravely misconducted themselves and lied to me, to the Board, to the SAHRC, to the Minister, to Parliament, and to court in the cover-up are held to account.



ANTHONY BRINK

Cc: Adv Lawrence Mushwana: Chairperson, South African Human Rights Commission

Langa Lethiba: LASA Board Secretary, for the information of the Board

26 May 2015

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Dear Adv. Brink,

**NATIONAL DEPUTY INFORMATION OFFICERS' FAILURE TO COMPLY WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000; REQUEST FOR THE INFORMATION OFFICER'S INTERVENTION UNDER SECTION 17 (6) (b)**

1. We have read your letter of 19 March 2015 annexed thereto being a request in terms of Promotion of Access to Information Act (PAIA) dated 9 March 2015 as well your further letter of 4 May 2015. I have been delegated by the CEO to reply to all.
2. Your continued use of abusive and/or derogatory language against management through use of words like *"liars, scheming up, dishonest, contemptuous, slow learners"* etcetera is again very apparent in your letters and you are called upon to desist from this custom.
3. Once again, we record that at the time the letter of 19 March 2015 was received, namely 31 March 2015, the CEO was on leave and the following officials were appointed to act in her absence-
  - 3.1. Mr Patrick Hundermark was the acting CEO for the period 30 March 2015 to 2 April 2015.
  - 3.2. Mr Jerry Makokoane was the acting CEO for the period 13 April 2015 to 17 April 2015.

- 3.3. Mr Brian Nair was the acting CEO for the period 28 April 2015 to 30 April 2015.
4. As all the aforesaid officials were party to the complaint, they could not reply in their acting capacities.
5. In order to apply her mind on the allegations, I felt it prudent to seek an extension to which you agreed. I will deal with the issue of her absence in this reply.

#### **LETTER OF 19 MARCH 2015**

6. The common salient features of your letter and in summary makes the following submissions.
  - 6.1. That the Deputy Information Officers have failed to provide the records requested within the timelines of 60 days as required in terms of the Promotion of Access to Information Act.
  - 6.2. The Deputy Information Officers are extorting money from you as they are not entitled to require the search fees in terms of the Act, more specifically making reference to the provisions of section 22 of the Act.
  - 6.3. That you are seeking CEO's intervention to direct them to provide such records or failing which she must provide such records.

**RECORDS REQUESTED FROM MR PATRICK HUNDERMARK IN THE LETTER OF  
10 NOVEMBER 2014**

7. There are 23 records sought in the letters referred to above and they quoted below:-

<b>Item</b>	<b>Record requested</b>
<b>1</b>	The minutes of the Regional Management Meeting at which it was decided that the Durban Justice Centre required a Children's Court Practitioner and to apply for the creation of such post at such Centre
<b>2</b>	Kwazulu Natal's Regional Operations Executive Vela Mdaka's motivation under section 8.1.2(b) of the Approval Framework to Legal Services Committee to recommend (he " <i>originates</i> ") the creation of the post at the Durban Justice Centre.
<b>3</b>	The record showing that the Human Resources Executive was consulted before the post was created as required by 8.1.2(b) of the Approval Framework
<b>4</b>	The LSTC resolution to recommend the creation of the post
<b>5</b>	National Operations Executive Brian Nair's and Chief Executive Officer Vidhu Vedalankar's approval of the LSTC's resolution to recommend the creation of the post, in their capacities as executing authorities delegated by section 8.1.2(b) of the Approval Framework to co-approve the creation of new posts at 'levels 11-13 and 'OSD-LP – 9 &10'
<b>6</b>	The record of HRE Amanda Clark's confirmation, under Note 17 of the Approval Framework, that the vacancy and budget for the post existed before it was advertised.
<b>7</b>	The record showing the vacancy existed prior to the advertisement.
<b>8.</b>	The record showing the post was budgeted for prior to the advertisement.
<b>9</b>	The advertisement for the post.
<b>10</b>	The shortlist of applicants for the post.
<b>11.</b>	The portion of the interview minute showing that Ngcamu disclosed to Legal Aid SA his two convictions for professional misconduct by the Law Society, and his rebuke by the Judicial Service Commission for not disclosing these when applying for a Labour Court judgeship in 2007.
<b>12.</b>	The selection panel's recommendation of Ngcamu, showing the names of the members, the names of the interviewed candidates, and whether or not they met the advertised

	qualifying criteria. (Confidential information within the meaning of section 34(1) of PAIA may be blacked out)
13.	The covering letter or email transmitting the recommendation to NOE Nair for his approval under section 8.2.2(b) of the Approval Framework.
14.	The record of Nair's approval of the recommendation, and if applicable to the level of the post, Vedalankar's agreement per the said section.
15.	Ngcamu's contract of employment as Children's Practitioner.
16.	The letters to the other shortlisted, interviewed candidates informing them that they had been unsuccessful, as required by section 1.5 of the policies and procedures on Recruitment.
17.	If it's not indicated on the advertisement or Ngcamu's employment contract, any record showing the grade of the post (e.g LP9).
<b>PART TWO</b>	
18.	All and any contracts(s) of employment between Ngcamu and Legal Aid SA, at any Justice Centre, entered into prior to his employment as Children's Practitioners at the Durban Justice Centre.
19.	All email or letter communications between Ngcamu and Legal Aid SA prior to his employment as Children's Practitioner at the Durban Justice Center or any other employment by Legal Aid SA.
20.	The selection panel's recommendation of Brink and Mngadi for the Pietermaritzburg and Durban senior Litigator posts, showing (i) Ngcamu's fulfilment or otherwise of the advertisement qualifying criteria, and (ii) the reason he was not recommended.
21.	The letter sent to Ngcamu informing him that he had been unsuccessful as a shortlisted candidate in his application for the Senior Litigator post, as required by section 1.5 of the Policies and Procedures on Recruitment.
22.	The letter sent to Ngcamu informing him that Legal Aid SA has decided not to fill the KwaZulu Natal Senior Litigator posts (like the identical letters sent to the other shortlisted and interviewed candidates Brink, Mngadi and Van Wyk on 23 August 2010).
23.	Deputy Information Officer Patrick Hundermark's written delegation by information officer Vedalankar under section 17(3) of PAIA.

**RECORDS REQUESTED FROM MR PATRICK HUNDERMARK IN THE LETTER OF  
17 NOVEMBER 2014**

8. There are 4 records sought in the letter referred to above and once again quoted verbatim:-

Item	Records Requested
1.	<p>Apropos of National Operations Executive Brian Nair's allegation in his 'Report to Board' on Senior Litigators in November 2011, concerning which he volunteered at the trial of case LC D529/11,<sup>11</sup> was the author of this,' It is felt the current system of evaluating their performance by the High Court Unit Managers and thereafter by our Legal Quality Assurance Unit may not be appropriate<sup>2</sup>, the minute of the meeting at which this alleged view was expressed, and/or the record of the communication of this view to Nair or other executive.</p>
2.	<p>The record of Nair's instruction 'the Chief Legal Executive, then the Legal Development Executive' Patrick Hundermark to draft the 'terms of reference'<sup>3</sup> of a 'review panel'<sup>4</sup> to conduct 'performance reviews or quality reviews' for 'senior litigators',<sup>5</sup> being the 'person' to whom Nair claimed at the trial to have 'allocated the responsibility'<sup>6</sup> for doing this</p>
3.	<p>The minutes of the number of meetings' that Nair claimed that Hundermark has 'hosted' in the allegedly 'on-going...process...still being attended to 'by him, in the two years since Nair claimed to have 'allocated responsibility' to him ' to properly develop terms of reference ,to identify possible people to contribute to the panel, and to consult' <sup>7</sup>with a view to conducting ' performance reviews or quality 'performance reviews' for senior litigators'<sup>8</sup></p>
4.	<p>All and any records vouching that Hundermark has acted to (i) 'develop [the] terms of reference' set out in Nair's said Report to Board,(ii) 'to identify possible people to contribute to the panel', and (iii) ' to consult' anyone about it.</p>

**RECORDS REQUESTED FROM MR JERRY MAKOKOANE IN BOTH LETTERS OF  
25 NOVEMBER 2014 AND 15 DECEMBER 2014**

9. There are 56 records sought in the letters referred to above with an amendment to item 34 and these are:-

No	Record requested
1	Cele J's suggestion that Legal Aid South Africa accommodate the Applicant by providing him with the electronic copy of the record which Legal Aid South Africa did.
2	The transcript of the trial record in case LC D529/11
3	All and any records vouching that a meeting took place between SAHRC and Legal Aid SA's CEO and some of our senior to discuss the SAHRC's allegedly incorrect finding contained in its section 84 report for 2011/12 on public body compliance with PAIA, presented to the National Assembly in October 2012, namely the finding that Legal Aid SA (Vedalankar) had failed to comply with its (her) reporting obligations under section 32. The record will show the date and place of the meeting, who attended it and the outcome.
4	The record reflecting that, as ordered by the Legal Services Technical Committee on 24 March 2010, then Manager: Legal Administration, National Operations, Bee-Mari Schoeman (responsible for Legal Services Delivery) immediately facilitate the transfer of the budget that existed for a Senior Litigator post at Kimberly Justice centre to the Mthatha Justice Centre.
5	The records of CEO Vedalankar and NOE's respective "Final Approval" and "Agree" as he must of the abolition of the Kimberly Senior Litigator post and establishment of the Mthatha Senior Litigator post under section 8.1.2(b) of the Approval Framework as required before the Mthatha post was advertised.
6	After the selection panel's interviews of shortlisted candidates for the Mthatha Senior Litigator post in May 2010, all and any records showing the form of transit that a file that was to be delivered to Legal Aid SA Head Office in respect of the position of Senior Litigator

	position for Mthatha was lost in the form of a registered post slip, courier waybill, covering email, telefax, covering page and transmission report, or other such voucher
7	Copies of the contents of the file in respect of the position of Senior Litigator for Mthatha retained by Eastern Cape Regional Human Resources Manager, Thenjiwe Magazi before dispatching the original or copy to Legal Aid SA's Head Office
8	The complete contents of Human Resources Executive Clark's file or computer folder on the Mthatha Senior Litigator post
9	All records of communications between Legal Aid SA's national office and its Eastern Cape Regional Office after the discovery that a file that was to be delivered to Legal Aid Head Office in respect of the position of the Senior Litigator for Mthatha was lost in transit-including any request for the file, or a copy, to be sent again.
10	Strategic Plan 2009-12.
11	Minutes of the September 2008 Board Meeting at which the Strategic Plan 2009-12 was approved
12	The minutes of all Legal Services Technical Committee meetings held in the period October 2009 to February 2011, besides the minutes of its March 2010 meeting, which Brink already has.
13	The minutes of all Management Executive Committee meetings held in the period October 2009 to February 2011.
14	The minutes of all Board Executive Committee meetings held in the period October 2009 to February 2011.
15	The minutes of all Board meetings held in the period October 2009 to February 2011.
16	Legal Aid SA's Business Plans for 2009/10, 2010/11, 2012/13, and 2013/14
17	Excerpts comprising the cover or first identifying page, and the pages containing provision for Senior Litigator salaries' budget for 2013/14
18	The minute of the Board meeting at which Legal Aid SA's budget for 2013/14 was approved

19	Legal Aid SA's 2013/14 report to SAHRC under section 32
20	The payment voucher of the Department of Justice and Constitutional Development reflecting the date of its transfer of the OSD phase 1 funding for 2009/10
21	The record of any Strategic Plan Annual Review workshop or Board Meeting at which it was resolved not to fill Legal Aid SA's remaining three vacant Senior Litigator posts
22	Record showing mention or discussion by any Legal Aid SA Executive(s) of the issue alleged by Nair in his November 2011 Report to Board that Senior Litigators may not be fulfilling Legal Aid SA's objectives for such posts.
23	All and any reviews of Senior Litigator performance pertaining to whether or not Legal Aid SA's objectives for such posts were being achieved by the current incumbents or not.
24	The record of the decision not to fill Senior Litigator posts for the said reason, referred to in Nair's Report to Board of November 2011
25	All and any records vouching that NOE Nair was among the senior executives who began to deliberate quite intensively in regard to the budgetary issues that suddenly confronted them on 10 March 2010, on learning that Legal Aid SA's expected OSD phase 1 funding hadn't been included in the baseline budget for 2010/11 as had been assured in January 2010, alternatively all and any records vouching that Nair was involved in pursuing the Department's payment of Legal Aid SA's OSD phase 1 funding for 2010/11 in any manner whatsoever.
26	Excerpts of Legal Aid SA's recruitment statistics showing Senior Litigator post occupancies and vacancies for March, April and May 2010, and July, August, September, October and November 2010.
27	The executive instruction issued to transfer the Senior Litigator budget from Mthatha back to Kimberley (from which it had been transferred).
28	Following COO Makokoane's memorandum circulated to them on 30 September 2010, soliciting cost-cutting proposals in view of the slow recovery from the international financial recession, the proposals submitted by:  (a) CEO Vidhu Vedalankar,

	<p>(b) NOE Brian Nair,  (c) KZN ROE Vela Mdaka,  (d) then Pietermaritzburg JCE Bertus Appel, and,  then Durban Justice Centre Executive Kishore Mehta.</p>
<b>29</b>	The Treasury budget allocations letter released at the end of 2009 to which Nair referred in his evidence.
<b>30</b>	The records of all Nair's decisions taken to freeze posts with or without CEO Vedalankar's agreement, and without the approval of the Board.
<b>31</b>	The email or letter to Durban High Court Unit Manager Bongani Mngadi, who was interviewed for and recommended for the Durban Senior Litigator post, informing him in about April/May 2010 (his words) that the Kwazulu-Natal Senior Litigator recruitments had been cancelled.
<b>32</b>	All counsel's fee notes for his professional services rendered Legal Aid SA in the handling of Brink's first three record requests under PAIA in August and December 2010 and March 2011, and his involvement, if any, in the drafting of Mlambo JP's Confidential Report Re: Advocate Anthony Brink to the Minister in March 2011 and in updated form to the Portfolio Committee in June 2011, to put down Brink's complaints.
<b>33</b>	All counsel's opinions in regard to the handling of Brink's said PAIA requests, and the responses to them that he drafted for Legal Aid SA.
<b>34</b>	(a) Legal Aid SA's list of 231 critical legal posts, or other record(s), identifying what legal posts were included under category Critical Occupation in Legal Aid SA's annual report for 2012/13; and (b) the subsequent motivation and resolution to exclude all but the JCE posts from the category of critical legal posts in Legal Aid SA's annual reports to the Minister and to Parliament.
<b>35</b>	Former Board Secretary Bee-Marie Schoeman's resignation or dismissal letter, and/or any other record vouching her information to Brink that she left Legal Aid SA on account of permanent or long-term mentally disabling concussion and amnesia sustained in a motor vehicle accident, alternatively identifying any other reason she quit Legal Aid SA.
<b>36</b>	The minutes of the Board meetings in February and May 2012.

37	The minutes of the Board Executive Committee meetings in February and May 2012.
38	The Charter of the Board Executive Committee.
39	The agenda and the minute of the Board Executive Committee meeting on Friday 23 March 2012; alternatively, if no such meeting was held on that date, the agenda and the minute of the extraordinary extra fifth Board Executive Committee meeting in 2011/12.
40	Vedalankar's confirmatory affidavit, made in support of CSE Mtati's answering affidavit in Brink's application for leave to subpoena Mlambo JP, and referred to in paragraph 107 thereof as annexure DM14.
41	The records of Board Chairperson Mlambo JP's requests to other Board members on 24 January 2011 that they should ignore Brink's repeated appeals for Board investigation 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.
42	The decision originally taken to employ two Professional Assistants (PA's) per backlog court at Pietermaritzburg, or generally, provincially or nationally.
43	The 2010/11, 2011/12, and 2012/13 budgets provided by the Department for salaries for PA's serving the backlog courts at Pietermaritzburg.
44	The minutes of all Kwazulu-Natal regional executive management meetings over the period October 2010 to June 2011.
45	The record of Kwazulu-Natal Regional Operations Executive Vela Mdaka's discussions with National Operations Executive Brian Nair about the streamlining the backlog courts.
46	All and any records identifying the nature of the Stanger court incident.
47	All the records sent to then Board Secretary Bee-Marie Schoeman over the period October 2010 to June 2011 informing her performance of her function: Monitoring of Backlog Court Staffing and compilation of costing to distribute budget received for this purpose to various cost centres, including but not limited to (i) any changes to the number of backlog court posts at the Pietermaritzburg Justice Centre, and (ii) any changes to the budget received for the employment of PA's in the backlog courts at Pietermaritzburg.

48	The decision to reduce the number of PA's serving the backlog courts at Pietermaritzburg from two to one, according to Nair's emailed announcement of this to Legal Aid SA's Regional Operations Executives on 21 February 2011.
49	The spreadsheet to Nair's email to the ROE's on 21 February 2011, named Backlog courts – 2011 approved courts.
50	The minute of the meeting in February 2011 to identify the sites that will continue to function and be funded, to which Mdaka referred in his email to then Pietermaritzburg Justice Centre Executive Bertus Appel and other JCE's on 7 February 2011.
51	The responses that the members of the selection panel, Manickum, Holtzhausen, and Shelembe furnished Appel following his referral to them of Mdaka's objections to Brink's appointment to the annual contract PA post for which they'd unanimously recommended him.
52	Appel's transmission to Mdaka of the selection panel's responses to Mdaka's objections to Brink's appointment.
53	Appel's leave application covering 14 and 15 December 2010, alternatively an excerpt from the leave register, reflecting that he was on leave for those two days, and reflecting further the full period he was on leave at that time.
54	The record of Jeffrey Mthimkhulu's appointment as acting Pietermaritzburg Justice Centre Executive in Appel's absence on leave at the said time.
55	The selection panel's recommendation of Brink for the Pietermaritzburg temporary backlog PA post, showing the names of the other candidates interviewed.
56	Any employment contracts subsequently signed between Legal Aid SA and any of the rejected candidates.

10. I now turn to reply on your submissions made in paragraph 6 above:

10.1. That the Deputy Information Officers have failed to provide the records requested within a period of 60 days as required in terms of the PAIA. Legal Aid South Africa denies the Deputy Information Officers failed to reply within the prescribed period. It submits that this is an issue of interpretation and does not agree with your interpretation and accordingly maintains that it replied within the prescribed period. Further, as you insist that your interpretation is correct, you then should have induced section 58 of PAIA on the basis of deemed refusal.

10.2. That the Deputy Information Officers are extorting money from you as they are not entitled to require the search fees in terms of the Act, more specifically making reference to the provisions of section 22 of the Act, Legal Aid South Africa, once again submits that it is a legal issue of interpretation which cannot be canvassed in the letter but at the appropriate competent forum. We maintain that it is by your own doing that in your requests, you have provided the background to the previous case under case no. D529/11 as well as various footnotes that obliged the Deputy Information Officers to peruse a voluminous bundle of documents in order to familiarise themselves with the facts to enable them to apply their minds and reply to your requests.

10.3. That you are seeking CEO's intervention to direct them to provide such records or failing which she must provide such records. Legal Aid South Africa will not direct them to provide a response to your request for such records for the following reasons:

10.3.1 The records you are requiring relates to and are ancillary to the litigation proceeding that you have brought against Legal Aid South Africa under case number **529/11** at the Labour Court in Durban. Your claim was dismissed with costs and the judgment was further upheld by the Labour Appeal Court.

10.3.2. The records you are requiring further relates to and are ancillary to the litigation proceedings that you have brought against Legal Aid South Africa officials at the Eshowe Magistrate Court under case numbers: **257/14, 258/14 and 259/14**. These matters are still pending.

10.3.3. Your requests are malicious and seek to divert the resources of Legal Aid South Africa and you are required to pay the required amounts as requested.

**FURTHER REQUEST IN THE LETTER OF 19 MARCH 2015**

11. There are six further requests from the letter referred to above and I provide the reply in the table below:

Item	Records sought	Reply
1	Insurance contract with Carmague	The contracts with Axi Financial Services CC as the broker and Carmague as the underwriter cannot be disclosed as it contains commercial information of a third party in terms of section 36 of the Act
2	Claims lodged with Carmague in respect of D529/11	The claim was lodged with Carmague through Axi Financial Services CC. But the information cannot be disclosed as it is relates to commercial information of a third party.
3	All enquiries or reports by Carmague in respect of D529/11	This is information protected in terms of the Act and accordingly is refused.

4	All responses and reports to Carmague by Legal Aid South Africa in respect of D529/11	This is information protected in terms of the Act and accordingly is refused.
5	All or other any records vouching that CLE and other staff spend 187 hours reading the documents relating to case 529/11	The search and preparation of the records included reading of documents referenced in the introduction to the request including the record since the requester had made reference to CLE. No specific record exists.
6	All or other any records vouching that COO and other staff spend 220 hours reading the documents relating to case 529/11	The search and preparation of the records included reading of documents referenced in the introduction to the request including the record since the COO was implicated. No specific record exists.

**FURTHER REQUEST IN THE LETTER OF 4 MAY 2015 READ WITH THE LETTER OF 15 MAY 2015**

12. There are two further requests from the letter which I have summarised and provided the reply in the table below:-

Item	Records sought	Reply
1	LASA's report to SAHRC for 2014 financial year	The report as attached as requested.
2	CEO's approved leave application from office during April 2015	This is personal information that has no relevance in exercising your right in terms the Act. Please find the acting delegations of CLE, COO and NOE.

**Yours faithfully,**



---

**Mr. Thembile Mtati**

**Legal Aid South Africa**

Name of Public Body: Legal Aid South Africa

Location of Public Body: Braamfontein, Johannesburg



29 De Beer Street

Braamfontein

Johannesburg 2017

Private Box X76

Braamfontein 2017

Tel: 011 877 2000,

Fax: 011 877 2222

[www.legal-aid.co.za](http://www.legal-aid.co.za)

**SECTION 32 REPORT 2014/15: LEGAL AID SOUTH AFRICA**

Municipality Type and Location: City of Johannesburg
Contact details of DIO: Mr Thembile Mtati
Fax:011 877 2222
Tel: 011 877 2003
Email :thembilem@legal-aid.co.za
Department in which DIO is based: Corporate Services
Alternative Contact Details for PAIA functionary: sollys@legal-aid.co.za
Contact Details for PA of Information Officer: 011 877 2003
Reporting Period: 2014-2015

Signature IO	Signature DIO	Date

REPORTING PERIOD FROM 1 APRIL 2014 TO 31 MARCH 2015			
NO	Items	Total Number	Comments
1	(a) number of PAIA requests received	10	
2	(b) number of requests granted in full	4	Four requests were granted in full, namely, Allen Simpson, System Intergrated by Design, Zane Hartley, and Bernard Anthony Morrow.
3	(c) number of requests granted despite there being a ground of refusal, but granted in the public interest	0	None
4	(d) number of requests:  (i) refused in full, or (ii) refused partially  (iii) number of items a provision of PAIA was relied on to refuse a request in full/partially	5	Five requests were refused or partially granted as they relate the litigation proceedings that were pending before the Courts. 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.

**Your voice. For justice.**

5	(e) number of instances where the 30 day period to deal with a request was extended	4	Three applications from Brink were extended beyond 30 days in terms of section 26(1) of the Act
6	(f) number of internal appeals: lodged with the relevant authority (i) (ii) number of cases where requests were granted as a result of an internal appeal	0	None
7	(g) number of internal appeals lodged on account of a deemed refusal	0	None
8	(h) number of applications to court on the grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision during the timeframes stated in section 77 (3)	0	None
9	(i) Number of requests still pending as at 31 March 2015	1	The request was received on the 31 March 2015 and as at 31 March 2015 was still being considered.

**Your voice. For justice.**



**Your voice. For Justice.**

**LEGAL AID SOUTH AFRICA**

**AUTHORITY FOR A SUBSTITUTE TO ACT**

DEPARTMENT :	Office of the CEO
NAME :	Ms Vidhu Vedalankar
DESIGNATION :	Chief Executive Officer
DATE :	05 March 2015

Copies to : Management Executive Committee (Exco & ROEs)  
PA's

**Notice of absence from office and delegation of authority**

I will not be in the office on Monday **30<sup>th</sup> March** - Thursday, **02<sup>nd</sup> April 2015**. In my absence Mr Patrick Hundermark who holds the permanent position of Chief Legal Executive is appointed to act in my stead as Chief Executive Officer. He shall have the same powers and authority in every respect as the permanent incumbent of the said position:

Name: Ms Vidhu Vedalankar

Signature:

Date: 05.03.2015

**Acceptance:**

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

Name : Mr Patrick Hundermark

Signature :

Date: 5/3/2015

**Approved:**

Name : Judge President D Mlambo

Signature:

Date : 04.03.2015



**Your voice. For Justice.**

**LEGAL AID SOUTH AFRICA**

**AUTHORITY FOR A SUBSTITUTE TO ACT**


DEPARTMENT :	Office of the CEO
NAME :	Ms Vidhu Vedalankar
DESIGNATION :	Chief Executive Officer
DATE :	07 April 2015

Copies to : Management Executive Committee (Exco & ROEs)  
PA's

**Notice of absence from office and delegation of authority**

I will not be in the office on Monday, 13<sup>th</sup> April - Friday, 17<sup>th</sup> April 2015. In my absence Mr Jerry Makokoane who holds the permanent position of Chief Operations Officer is appointed to act in my stead as Chief Executive Officer. He shall have the same powers and authority in every respect as the permanent incumbent of the said position:

Name: Ms Vidhu Vedalankar

Signature: 

Date: 2015.04.07

**Acceptance:**

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

Name : Mr Jerry Makokoane

Signature : 

Date : 2015.04.08

**Approved:**

Name : Judge President D Mlambo

Signature: 

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



Your voice. For Justice.

**LEGAL AID SOUTH AFRICA**

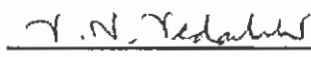
**AUTHORITY FOR A SUBSTITUTE TO ACT**

DEPARTMENT :	Office of the CEO
NAME :	Ms Vidhu Vedalankar
DESIGNATION :	Chief Executive Officer
DATE :	05 March 2015

Copies to : Management Executive Committee (Exco & ROEs)  
PA's


**Notice of absence from office and delegation of authority**

I will not be in the office on Tuesday **28<sup>th</sup> April** - Thursday, **30<sup>th</sup> April 2015**. In my absence Mr Brian Nair who holds the permanent position of National Operations Executive is appointed to act in my stead as Chief Executive Officer. He shall have the same powers and authority in every respect as the permanent incumbent of the said position:

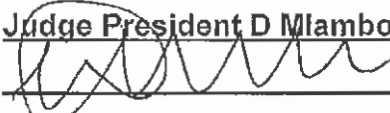
Name: Ms Vidhu Vedalankar  
Signature:   
Date: 05.03.2015

**Acceptance:**

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

Name : Mr Brian Nair  
Signature :   
Date : 09/03/2015

**Approved:**

Name : Judge President D Mlambo  
Signature:   
Date : 09.03.2015



**PUBLIC PROTECTOR  
SOUTH AFRICA**

PUBLIC PROTECTOR  
MOSIRELETSI WA BATHO ● MOSIRELETSI WA BATHO  
MUSIRHELELI WA VANHU ● MUTSIRELEDZI WA VHATHU  
OPENBARE BESKERMER ● UMKHUSELI WABANTU ● UMWIKELI WABANTU

---

NATIONAL OFFICE  
PRIVATE BAG X677 PRETORIA 0001 ● HILLCREST OFFICE PARK, 175 LUNNON ROAD, PRETORIA  
TEL: (012) 366 7000 ● Fax: (012) 366 3473

## **PUBLIC PROTECTOR COMPLAINTS FORM**

<p>FOR OFFICE USE File number: ..... Date received: ..... Received by: .....</p>
--

### **YOUR DETAILS**

- 1. Your name** Adv Anthony Brink
- 2. Your address and telephone and telephone number(s)** 1 Boast Street, Eshowe 3815, KwaZulu-Natal  
Telephone number (home): 035 474 0145  
Telephone number (work): 035 474 2171  
Fax number: 086 672 0776  
Cellphone number: 083 779 4174

### **TELL US ABOUT THE COMPLAINT**

- 3. Is the complaint still happening?** Yes.
- 10. Where did it happen?** At the national office of the South African Human Rights Commission ('SAHRC') in Johannesburg, Gauteng.

11. **Which government agency is involved?** The SAHRC.
12. **Tell us the names of the officials that you contacted to try and solve the problem.** Chairperson Lawrence Mushwana; CEO and information officer Kayum Ahmed; and then deputy information officer Pandelis Gregoriou.
13. **Where can they be reached?** SAHRC, Forum 3, Braampark Office Park, Braamfontein, Johannesburg  
Private Bag X2700, Houghton 2041  
011 877 3600
14. **Have you reported this case to anyone else?** No
15. **Please tell us how you heard about the Public Protector (radio, newspaper, poster, friend?).** As a lawyer I'm au fait with our Chapter 9 institutions.
16. **Use the space provided below and if you need more space, please use a separate piece of paper, that will be provided to you. Please attach copies of relevant correspondence or documents.**

## **Complaint**

1. The SAHRC has unlawfully failed to grant me access to a document I duly requested under the Promotion of Access to Information Act 2 of 2000, namely Legal Aid South Africa's section 32 report to the SAHRC for 2013/14 detailing inter alia its responses to requests for records under PAIA in the annual reporting cycle ending 31 March 2014.

The SAHRC has given me the wrong report, namely LASA's section 32 report for the previous year 2012/13 (incorrectly annotated 'SECTION 32 REPORT HAND DELIVERED 2013/14'), and it has failed to respond to my repeated requests that it provide me with a copy of the correct report for the year that I specified, namely for 2013/14.

2. The SAHRC has furnished me with a perjured section 23 affidavit concerning non-existent records about a meeting between the SAHRC and LASA alleged by the SAHRC to have taken place after the SAHRC reported LASA to the National Assembly

in its section 84 report for 2011/12 as non-compliant with its annual reporting obligations imposed by section 32 and announced that LASA was to be 'fully audited' for PAIA compliance.

Subsequent to the SAHRC deputy information officer's false claim on oath about this meeting having taken place, I chanced upon an earlier email from the SAHRC's previous deputy information officer Fola Adeleke (I'd overlooked it) confirming that, though requested by LASA, such meeting never took place – hence the absence of any record of it.

3. The SAHRC has failed to respond to my request that it intervene under its section 83 powers and responsibilities in the matter of LASA's clearly illegal obstruction and refusal of four PAIA requests I delivered in November 2014, and assist me exercise my fundamental right to information to LASA's public documents that I requested.
4. The SAHRC is ignoring my correspondence and appeals to its most senior officers to remedy its failures to comply with PAIA, namely to grant me access to a duly requested record and to furnish me with a truthful section 23 affidavit, and to perform its obligations imposed by section 83 to advise LASA in the correct application of PAIA to my requests for access to its records, to assist me access them, and to monitor LASA's due compliance with the Act in responding to my requests for them.

### **Relevant correspondence and documents, described and annexed**

On 17 October 2014 I emailed a letter to Pandelis Gregoriou – billed at the time on the SAHRC's website as 'Promotion of Access to Information Specialist'; I later learned he was then the SAHRC's deputy information officer – asking for copies of LASA's section 32 report for 2013/14 and the SAHRC's 84 report for the same year, and explaining my urgent need for them. My letter is annexed marked 'A'.

He didn't respond, so on 5 November I addressed a formal PAIA request for these documents to information officer and CEO and Kayum Ahmed. My PAIA request is annexed marked 'B'.

My covering email to Ahmed, mentioning my fruitless telephonic and emailed reminders, is annexed marked 'C'.

Ahmed's reply, excusing the SAHRC's unresponsiveness, and copying my PAIA request to PAIA Unit officer Nokwanda Molefe to attend to, is annexed marked 'D'.

On 13 November 2014 I made a supplementary request for a third document. My letter is annexed marked 'E'.

Molefe's acknowledgement the following day is annexed marked 'F'.

Deputy information officer Gregoriou responded to my PAIA request by providing me with section 32 and 84 reports and a section 23 affidavit. This bundle of documents ostensibly answering my PAIA request is annexed marked 'G', with the section 84 report redacted by me for relevance.) Gregoriou's affidavit was attested by SAHRC attorney Kisha Candasamy, later to succeed him as SAHRC deputy information officer, the office she currently holds.

On 12 December 2014 I wrote to Gregoriou asking him for a properly drawn affidavit in compliance with section 23. My letter is annexed marked 'H'. (At that stage, I hadn't yet found his predecessor Adeleke's email to me in my email archive confirming that the SAHRC and LASA had not in fact met following the SAHRC's negative section 84 report to the National Assembly in October 2012 about LASA's non-compliance with PAIA).

I shortly afterwards noticed that Gregoriou had given me the wrong section 32 report by LASA – it was for the wrong year – incorrectly marked by the SAHRC. My letter to Gregoriou on 15 December requesting the correct section 32 report I'd asked for, not the wrong one I was given, is annexed marked 'J'.

Gregoriou failed to respond to either of my letters, so I complained to SAHRC CEO and information officer Ahmed about this. My emailed letter to him on 21 January 2015 is annexed marked 'K'.

Ahmed didn't respond either, so on 19 March 2015 I complained to SAHRC chairperson Adv Lawrence Mushwana. My letter to him is annexed marked 'L'.

I mailed it by registered post on the same day. The post office had run out of the usual registered post slips when I sent my letter, so the clerk printed a voucher that I'd done so, which I annex marked 'M'. (It also reflects a second item posted to a different party.)

My letter to Adv Mushwana was delivered on the 26 March 2015; and the Post Office registered post tracking report vouching this is annexed marked 'N'.

My letter to Adv Mushwana has likewise elicited no response.

If the SAHRC, charged with the responsibility of policing public body PAIA compliance, won't itself comply with the Act, and its most senior officers ignore repeated requests that it duly do so, what's the point of the SAHRC?

In the situation, I request the Public Protector's intervention and assistance in this matter, in the discharge of its mandate declaimed on its website:

The mandate of the Public Protector is to strengthen constitutional democracy by [inter alia] resolving disputes relating to the operation of the Promotion of Access to Information Act of 2000.

Should the Public Protector neglect to resolve this matter or report that it's unable to do so, and I'm consequently constrained to sue the SAHRC in the High Court at Pietermaritzburg for orders directing it to comply with the Act, this complaint, and the Public Protector's response to it if any, will be annexed to my founding affidavit for the information of the judge.

Signed at Eshowe on 26 May 2015

A handwritten signature in black ink, appearing to be 'A. Brink', written in a cursive style.

ADV ANTHONY BRINK

CC: Kisha Candasamy, current SAHRC deputy information officer and PAIA Unit director

This complaint and its annexures are accessible as a single combined PDF document for easy copying and reprinting at [www.tig.org.za/LC/Public\\_Protector](http://www.tig.org.za/LC/Public_Protector)