

1 Boast Street  
Eshowe  
29 June 2015

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

Dear Mr Lethiba

LASA'S PERSISTENT ILLEGAL REFUSAL TO COMPLY WITH PAIA:  
REQUEST FOR YOUR INTERVENTION TO REMEDY THIS, AND THAT YOU  
APPRISE THE BOARD OF IMPENDING HIGH COURT LITIGATION TO COMPEL

1. Pointing up your special responsibilities to LASA as Board Secretary, I wrote to you on 31 December 2014 about LASA's unlawful refusal of my three PAIA requests in November 2013, which it had justified by irrelevantly invoking 'section 7 read with section 45' against me, and with which manifestly incompetent and unlawful justification it had dully persisted in its answering papers when I sued to compel in the Eshowe Magistrate's Court.
2. I requested that you refer the plainly illegal refusals of my PAIA requests to the Board so that it might intervene and head off the risk that LASA faced of the ignominy of a declarator that it had violated my fundamental right to information and a mandamus directing it to comply with the Act.
3. Even though you're not a lawyer yourself (as a Board Secretary should be), having come up through HR (you were previously LASA's Regional Human Resources Manager for Limpopo), the advertisement for the post you were promoted into stipulated that:

S/he will ... be accountable to ensure statutory compliance at Board and organisational level.

And it required you to have a

Working knowledge of the Constitution, PFMA, National Treasury Regulations, Legal Aid Act and other relevant Statutes.

Such as PAIA.

4. As a very highly paid, responsible person (level 13, the same as LASA's top legal professionals, its Senior Litigators) with your 'working knowledge' of PAIA, and 'accountable to ensure ... compliance' with it 'at ... organisational level', it was your duty to assess my complaint about LASA national executive management's very obviously malicious legal filibustering to avoid surrendering the documents I'd duly requested under PAIA, and to apprise the Board of the legal hazard that LASA faced.

5. Instead, you batted my request aside, claiming you weren't 'in a position at this stage to determine' whether my complaint was well-founded or not, and stating that the matter should just run its course in court. Copies of my letter to you and your response on 12 February 2015 are enclosed for easy reference.

6. LASA is again relying on these same irrelevant sections to justify refusing further PAIA requests I duly made in November 2014. I enclose my evenly-dated letter to CLE Hundermark about this. As mentioned therein, unless the SAHRC or the Public Protector succeeds in assisting me disgorge the records and the section 23 affidavits I've lawfully requested, I intend bringing another application to compel, this time in the Pietermaritzburg High Court so the case can be reported.

7. In the situation, I call on you, in the exercise of your specific functions and responsibilities as Board Secretary recalled in my previous letter to you, and repeated in this one, to bring LASA national executive management's obviously illegal refusal of my PAIA requests to the attention of the Board. The Audit and Risk Subcommittee especially will likely wish to intervene to head off the litigation so as to protect LASA from the massive reputational damage to which it currently stands exposed.

8. Since the matter's not yet in court, I trust you feel you're 'in a position at this stage to determine' my complaint that LASA has again illegally refused to comply with PAIA on manifestly spurious grounds, in view of your specific responsibility to 'ensure statutory compliance at ... organisational level'.

9. Your 'working knowledge' of PAIA will tell you that in law and in fact sections 7 and 45 can't and don't justify the refusal of my latest requests, and that LASA's refusal, again, of my access to its records I've duly requested, on the same legally and factually vacant grounds, is illegal, and a violation of my fundamental right to information. And since it's the state violating my fundamental rights to conceal evidence of perjury and other pervasive high level corruption, this is an extraordinarily serious matter. If, on the other hand, you lack such 'working

knowledge' of PAIA, not having any legal knowledge at all, being only an HR person and having been promoted into the post despite not meeting the qualifying criteria for such a senior, responsible position, I suggest you consult one of your Senior Litigators for reliable independent advice. Any advice given by anyone in the national office can only end up in tears. They told the SAHRC at the special PAIA training workshop held for them on 6 November 2012 that when it comes to PAIA they've no idea what they're doing.

10. In the event that it's necessary to sue, this letter and its annexures will be included among my papers for the information of the judge as to the steps, if any, that you took in the performance of your special responsibilities to LASA as Board Secretary. Which you failed to carry out the first time I approached you about LASA's continuing illegal refusal of my PAIA requests. You can be sure that your action, or inaction, as the case may be, will attract the court's attention in its judgment, very likely to be reported.

Yours sincerely

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

ANTHONY BRINK

Cc: Nonhlanhla Mgadza, Chairperson: Board Audit and Risk Subcommittee

1 Boast Road  
Eshowe 3815  
31 December 2014

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

And to cc list

Dear Mr Lethiba

#### PERSISTENT ILLEGAL REFUSAL TO COMPLY WITH PAIA

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

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

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

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

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

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

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

So Wikipedia tells us, citing various authorities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Your response by email would be preferred.

Yours sincerely



ADV ANTHONY BRINK  
arbrink@iafrica.com.

Cc:

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

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

Adv Richard Sizani, Chairperson of the Public Service Commission

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

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

1 Boast Road  
Eshowe 3815  
2 January 2015

Dr Mathole Motshekga,  
Chairperson, Portfolio Committee on Justice and Correctional Services  
National Assembly  
Parliament Street  
Cape Town

Dear Dr Motshekga

LEGAL AID SA'S PERSISTENT ILLEGAL REFUSAL TO COMPLY WITH THE  
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

I enclose for your information a copy of my recent letter to LASA Board Secretary Langa Lethiba, and today to SAHRC CEO and PAIA Unit superintendant Kayum Ahmed.

The Portfolio Committee has repeatedly voiced its concern about the failure of public bodies to comply with PAIA, hence this communication. I will report developments.

Yours sincerely

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

ADV ANTHONY BRINK  
arbrink@iafrica.com

1 Boast Road  
Eshowe 3815  
2 January 2015

Kayum Ahmed,  
CEO, SAHRC and PAIA Unit superintendent  
Private Bag X2700  
Houghton 2041

Dear Mr Ahmed

LASA'S PERSISTENT ILLEGAL REFUSAL TO COMPLY WITH PAIA

I enclose:

- (i) a copy of my recent letter to Legal Aid SA's Board Secretary Langa Lethiba;
- (ii) the papers in three application to compel LASA's compliance with the Promotion of Access to Information Act 2 of 2000; and
- (iii) my request for a pre-trial conference in the magistrate's chambers at which LASA will be directed to identify on what basis my applications are being opposed. (All documents archived for easy access at [www.tig.org.za/LC/PAIA](http://www.tig.org.za/LC/PAIA).)

As you'll see from these, LASA continues illegally refusing to comply with PAIA. This has been going on since 2010; and my repeated complaints and appeals to the Commission for its assistance, and the Commission's repeated interventions – namely, reporting LASA to Parliament as non-compliant with PAIA, holding a special PAIA training workshop for it, and conducting a PAIA audit – have made no zero difference.

After noting that LASA's Corporate Services attorneys were found to be ignorant of the provisions and operation of PAIA, the Commission recorded in its report of the PAIA training workshop that they had

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

All these turned out to be empty promises. Year after year, a major public entity brazenly flouts a crucial piece of legislation foundational to our democracy, enacted, per the Preamble,

To give effect to the constitutional right of access to any information held by the State ... In order to ... foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information [and] actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights. [And thus counteract the] secretive and unresponsive culture in public ... bodies [characteristic of] the system of government in South Africa before 27 April 1994 [i.e. the apartheid regime] which often led to an abuse of power and human rights violations.

Having regard to the Commission's statutory responsibility under section 83(3)(b) of PAIA to 'monitor the implementation of this Act' and under subsection (c) 'if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act', I write to enquire what the Commission proposes urgently doing about this.

Yours sincerely



ADV ANTHONY BRINK  
arbrink@iafrica.com

Cc:

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

Adv Richard Sizani, Chairperson of the Public Services Commission

Sinthia Reddy, Public Protector investigator (ref: 7/2-040815/12)

LASA Board Secretary Langa Lethiba; CEO Vidhu Vedalankar; COO Jerry Makokoane; NOE Brian Nair; CLE Patrick Hundermark; and CSE Thembile Mtati.

1 Boast Road  
Eshowe 3815  
2 January 2015

Adv Richard Sizani,  
Chairperson, Public Services Commission  
Commission House  
cnr. Hamilton & Ziervogel Streets  
Pretoria

Dear Adv Sizani

LEGAL AID SA'S PERSISTENT ILLEGAL REFUSAL TO COMPLY WITH PAIA

I enclose for your information a copy of my letter of 31 December 2014 to Legal Aid South Africa Board Secretary Langa Lethiba, and today to Justice and Correctional Services Portfolio Committee Chairperson Dr Mathole Sekgota MP and to SAHRC CEO Kayum Ahmed.

The letters speak for themselves.

I will report developments.

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. Brink', with a stylized, cursive script.

ADV ANTHONY BRINK  
arbrink@iafrica.com

1 Boast Road  
Eshowe 3815  
2 January 2015

Ref: 7/22-040815/12

Sinthia Reddy,  
Public Protector investigator  
Hillcrest Office Park  
175 Lunnon Road  
Pretoria

Dear Ms Reddy

LEGAL AID SA'S PERSISTENT ILLEGAL REFUSAL TO COMPLY WITH PAIA

I enclose for your information copies of my letter of 31 December 2014 to LASA Board Secretary Langa Lethiba, and today to SAHRC CEO Kayum Ahmed, Justice and Correctional Services Portfolio Committee Chairperson Dr Mathole Sekgota MP, and Public Services Commission Chairperson Adv Richard Sizani.

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. Brink', with a large, stylized initial 'A' and 'B'.

ADV ANTHONY BRINK  
arbrink@iafrica.com



12 February 2015

Advocate Brink

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Dear Adv. Brink,

**PERSISTENT ILLEGAL REFUSAL TO COMPLY WITH PAIA: AR BRINK**

I acknowledge receipt of your letter of the 31<sup>st</sup> December 2014. I only received it by post on the 16th January 2015.

Having read your letter, I have contextualized that your request to me is to report to the Board the various alleged non-compliance of the Executive Management of Legal Aid South Africa relating to your requests in terms of Promotion of Access to Information Act 2 of 2000.

As the Board Secretary, I am very aware that there is a report that is submitted to the Board setting out all legal cases by and against Legal Aid South Africa. I am attaching the report together with the relevant extracted minutes. I have blackened the other matters that are not relevant to you.

As I note from your letter, these PAIA requests relate to the matters which are still pending before the Courts and therefore I am not in position at this stage to determine whether or not you are correct in your legal conclusions. I am of the view that we should allow the Courts to pronounce on your legal submission by either confirming or dispelling them.

I hope I have replied to your request and will regard the matter as closed.

Yours Faithfully,

Langa Lethiba

Board Secretary

Legal Aid South Africa