

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

2nd Floor
33 Hoofd Street
Braampark, Forum 3
Braamfontein
2017

Private Bag X 2700
Houghton
2041

Tel.: 011 877 3750
Fax: 011 403 0668



25 January 2016
Ref: GP/1516/0395

Legal Aid South Africa
Attention: Chief Executive Officer
Ms. Vidhu Vedalankar
Per email: ceo@legal-aid.co.za

CC: tembilem@legal-aid.co.za
CC: sollys@legal-aid.co.za

Dear Ms. Vedalankar,

RE: COMPLAINTS LODGED WITH THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The complaint lodged by Advocate Anthony Brink against Legal Aid South Africa (LASA) in August 2015, refers.

Having considered various concerns raised by Advocate Brink in his complaint, the following is recommended in terms of section 83(3)(d) of the Promotion of Access to Information Act 2 of 2000 (PAIA):

1. Section 78 – Applications to court

It is recommended that paragraph 18 of LASA's section 14 manual be revised to include reference to the following:

- 1.1. Relevant procedures as set out in section 78 of PAIA for instituting legal action (including applicable timelines);¹

¹ 180 days (Brümmer v Minister for Social Development and Others (CCT 25/09) [2009] ZACC 21; 2009 (6) SA 323 (CC) ; 2009 (11) BCLR 1075 (CC) (13 August 2009))

1.2. Definition of “court” as per section 1 of PAIA:

“(b)(ii) a Magistrates Court...

(bb) the public body or private concerned has its principal place of administration of business; or

(cc) the requester or third party concerned is domiciled or ordinarily resident”

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2. Delegation of deputy information officers

2.1. “17(6) Any delegation in terms of subsection (3) – (a) must be in writing...”

In terms of section 17 of PAIA, all officials tasked with fulfilling the duties of the Information Officer in terms of PAIA must be delegated to do so in writing. It is recommended that LASA’s section 14 manual be amended to include reference to this requirement, thereby confirming that those appointed by the Information Officer of LASA to attend to PAIA related matters are duly authorised to do so in terms of PAIA.

2.2. No distinction is made between designated deputy information officers and deputy information officers in PAIA. To ensure that laypersons perusing the manual are able to cross-reference LASA’s manual with the provisions of PAIA, the following is recommended:

2.2.1. That the distinction between deputy information officers and designated deputy information officers is reviewed for the sake of enhanced clarity of readers;

2.2.2. LASA’s section 14 manual be amended to include reference to the following:

- Roles and responsibilities of all officials delegated in terms of section 17 of PAIA; and
- The lines of authority of all delegated officials insofar as they relate to the Information Officer of LASA. The Information Officer remains finally responsible for all PAIA related decisions of the institution notwithstanding the delegation of officials in terms of section 17 of PAIA.²

² Section 17(2) of PAIA

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3. Fees

*"22(2)If - (b) the preparation of the record for disclosure...would in the opinion of the information officer of the body, require more than the hours prescribed for this purpose for requesters, the information must by notice require the requester...**to pay as a deposit the prescribed portion** (being not more than one third) of the access fees which would be payable³ **if the request is granted.**"*

The notice referred to in subsection (1) and (2) must state –

- (a) The amount of the deposit payable in terms of subsection (2), if applicable;*
- (b) That the requester may lodge an internal appeal or an application with a court, as the case may be, against the tender or payment of the request fee in terms of subsection (1), or the tender of payment of a deposit in terms of subsection (2), as the case may be;*
- (c) And the procedure (including the period) for lodging the internal appeal or application, as the case may be.*
- (4) If the deposit has been paid in respect of a request for access which is refused, the information officer concerned must repay the deposit to the requester.*
- (5) The information officer of a public body must withhold a record until the requester concerned has paid the applicable fees (if any)."*

Based on the above, the following is recommended:

- 3.1. That any notices issued in terms of section 22(2) clearly state that the request for payment of monies constitutes a request for payment of a deposit in terms of that section. Such notice must include the details as required in terms of section 22(2)(b) and (c);
- 3.2. Reference to the following should be considered for inclusion in LASA's section 14 manual:
 - 3.2.1. That a request for payment of a deposit may be made in terms of section 22(2) and the circumstances under which such a request may be made; and

³ Section 22(2), 22(6) and 22(7)(b) refers to "search", "prepare" and "preparation". "Prepare" is not defined in the definitions section of PAIA. "Prepare" is defined in the Oxford Dictionary as "Make (something) ready for use or consideration"

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3.2.2. The circumstances under which the deposit paid in terms of section 22(2) will be refunded in terms of section 22(4) of PAIA.

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4. Appeals

4.1. *“74. (1) A requester may lodge an internal appeal against a decision of the information officer of public body referred to in paragraph (a) of the definition of “public body” in section 1...”*

Section 1 of PAIA states the following under the definition of “public body”:

“public body” means - (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government...”⁴

Based on the above, PAIA does not provide for internal appeals in respect of so called “Type B” public bodies, which LASA is.

4.2. In terms of section 17(2) of PAIA: *“[t]he Information Officer of a public body has direction and control over every deputy information officer of that body.”*

Based on a holistic consideration of the abovementioned provisions of PAIA, the Commission recommends that LASA reconsiders the approach set out in paragraph 18 of its section 14 manual relating to the lodgement of appeals with the Information Officer of LASA.

Considering that LASA’s section 14 manual is due for review in February 2016, the Commission would be more than happy to further engage with your offices regarding the abovementioned recommendations. In addition, the Commission is also available to conduct training workshops for the officials of LASA in terms of section 83(3)(e).

⁴ Relevant authority refers to the individual responsible for handling internal appeals lodged in terms of PAIA. A relevant authority is not defined insofar as so called “Type B” public bodies are concerned.

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For any enquiries regarding the above, please do not hesitate to contact Kisha Candasamy on kcandasamy@sahrc.org.za or 011 877 3814.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Lindiwe Khumalo". The signature is written in a cursive style and is positioned above a horizontal line.

Lindiwe Khumalo
Chief Executive Officer
South African Human Rights Commission

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Chairperson: M L Mushwana; **Deputy Chairperson:** P Govender; **Commissioners (Full-Time):** B Malatji, L Mokate; M S Ameerma
Commissioners (Part-Time): J Love, D Titus;
Chief Executive Officer: L Khumalo

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25 January 2016

Refs: GP/1516/0395

Advocate Brink

Per email: arbrink@iafrica.com

Dear Advocate Brink

RE: BRINK / LEGAL AID SOUTH AFRICA

Your revised complaint registered under GP/1516/0395 (received on 26 November 2015), refers.

As per our correspondence dated 30 November 2015, the Commission's non-response to all comments made in your various communications relating to GP/1516/0395 should not be interpreted by you to constitute an acceptance of correctness or accuracy of such statements or comments.

A copy of the various recommendations submitted to LASA in terms of section 83(3)(d) of the Promotion of Access to Information Act 2 of 2000 (PAIA) is attached hereto.

The Commission has elected not to engage with LASA on the specific grounds of refusal allegedly cited by them in response to your PAIA requests¹ or LASA's request for the payment of certain monies in terms of section 22 of PAIA. Legal argument in this regard will be presented to and decided upon by the court through the legal proceedings instituted by you in terms of PAIA.² The Commission will monitor the outcome of the case as it would welcome the court's judgment as a means of expanding on the body of jurisprudence relating to the application of PAIA.

¹ Sections 7 and 45 of PAIA.

² Chapter 3 of the Commission's Complaints Handling Procedures states the following: "4 (2) The Commission may reject any complaint, which ... is the subject of a dispute before a court of law, tribunal, any statutory body ... or in which there is a judgment on the issues in the complaint or finding of such court of law, tribunal, statutory body or other body...".

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Commissioners (Part-Time): J Love, D Titus;
Chief Executive Officer: L Khumalo

In the circumstances, the Commission will close your file herein.

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Should you be dissatisfied with this decision, you may lodge an appeal with the Commission in terms of Chapter 9 of the Commission's Complaints Handling Procedures, which provides as follows:

"34 (1) (a) Any party to proceedings under these procedures, who feels aggrieved by any determination, decision of finding, may lodge an appeal with the Chairperson, if the appeal is of a substantive nature regarding any determination, decision or finding of a Provincial Manager, within 45 days from the date of being notified of such determination, decision or finding by post, delivery facsimile or email."

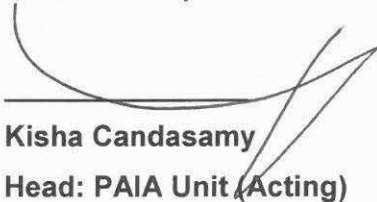
For further information regarding appeals, please contact one of the following officials:

Eden Esterhuizen – 011 877 3632

Sandile Mdunusana – 011 877 3633

We thank you for bringing your complaint to the attention of the Commission.

Yours faithfully,



Kisha Candasamy
Head: PAIA Unit (Acting)

South African Human Rights Commission

From: [Kisha Candasamy](#)
To: [Anthony Brink \(arbrink@iafrica.com\)](mailto:arbrink@iafrica.com)
Cc: [Lauren O'Reilly](#)
Subject: ADVOCATE BRINK / LEGAL AID SOUTH AFRICA
Date: Friday, January 29, 2016 2:53:58 PM
Attachments: [SKM_C364e16012914090.pdf](#)
[SKM_C364e16012914091.pdf](#)

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Dear Advocate Brink

Please find attached, correspondence for your attention.

Regards,

<p>Kisha Candasamy Acting Head: PAIA T: +27 11 877 3814 E: kcandasamy@sahrc.org.za</p> <p>Forum 3 Braampark Offices, 33 Hoofd Street, Braamfontein, 2017</p> <p>Switchboard T: +27 11 877 3600</p>	<p>Upcoming events Click here for upcoming events</p>  <p>Think before printing</p> <p>Follow us:  @SAHRCommission  SAhumanrightscommission  YouTube: SAHRC1</p>	 <p>www.sahrc.org.za Info@sahrc.org.za</p>
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