

1 Boast Road
Eshowe 3815
25 November 2014

Jerry Makokoane
Deputy Information Officer,
Legal Aid South Africa
29 De Beer Street
Braamfontein

Per email: jerrym@legal-aid.co.za

Dear Mr Makokoane

PAIA REQUEST

According to LASA's PAIA manual, published for the true information of the public, you're one of several deputy information officers in LASA's national office – appointed, the Act explains in subsection 17(1) and again in subsection 17(4), 'to render the public body as accessible as reasonably possible for requesters of its records.'

Herewith then a request for records under PAIA for your response please.

In view of the number of records I'm seeking, I hereby consent under section 26(1)(e) to an extension of the ordinary 30 days allowed by section 25 for responding to a PAIA request, by a further 30 days, which will give you 60 calendar days in total, the maximum allowed by the Act.

What I said in my letter of the 10th instant to Chief Legal Executive Patrick Hundermark covering a different PAIA request applies equally to this one:

Please be advised that I'll sue immediately for whatever records you refuse,* and likewise for any records you deny exist if I have reason to believe they do. In this latter regard, my founding affidavit in my PAIA application against Eastern Cape deputy information officer Bambiso records LASA's history of concealing records from me under cover of lies that they don't exist. (*I was constrained to delay suing Bambiso, Vedalankar, and Msweli for the full six months allowed by the Act to apply to court to compel their compliance with my PAIA requests because I was seriously hands-full at the time with my labour case.)

If you have in mind to refuse any of the records I've duly requested, before you do please consider consulting the SAHRC's PAIA Unit for expert advice on whether the Act permits it – especially recalling the SAHRC's PAIA training workshop report in October 2012, which recorded LASA's 'challenges [in] complying with PAIA';¹ its 'lack of application based knowledge';² 'the fact that they had previously been misapplying the provisions of PAIA';³ that this 'misinterpretation and misapplication was identified as high risk to LASA';⁴ 'LASA compliance history was flagged with participants and most reacted to the reporting of LASA as non-compliant to Parliament with concern';⁵ 'Most participants were a little overwhelmed by the requirements of the legislation';⁶ 'personnel from the Legal Department were able to gain value from the training. They have as a result 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';⁷ and 'LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation'.⁸

As you will see from my replying affidavits in my three pending PAIA applications,⁹ LASA's very junior counsel used to date is clueless, so looking to and relying on him again will be disastrous.

Notwithstanding LASA's concessions and undertakings to the SAHRC minuted in its report following its PAIA training course for LASA, its information officers have continued illegally refusing me access to duly requested records, hence my pending applications.

I'm sure you don't want an embarrassing repeat of this, with your name on the front page of another set of court papers and then shamefully included in the SAHRC's next section 84 report to the National Assembly.

If, as I suspect, information officer Vedalankar hasn't yet designated you a deputy information officer in writing under section 17(6) of PAIA, please be sure

¹ Bundle addendum (trial documents in case LC D529/11), page 916.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Bundle addendum, page 919.

⁶ Ibid.

⁷ Bundle addendum, page 920.

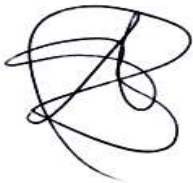
⁸ Ibid.

⁹ Accessible at the case document archive online: www.tig.org.za/LASA
username: lasa password: LASA2010.

to fix this before commencing to deal with my request (like Nair did in March 2011¹⁰ before dealing with my first three PAIA requests made in 2010/11), or you'll be acting ultra vires and unlawfully (like Mtati did in November 2013),¹¹ thus exposing you and LASA to more remedial litigation in the Eshowe Magistrate's Court. [...] merely being named a deputy information officer in LASA's revised PAIA manual, even if the Board approves it, isn't a valid designation under the section.

I paid the prescribed R35 request fee by EFT directly into LASA's bank account yesterday evening under reference code 'PAIA/JM'.

Yours sincerely

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

ANTHONY BRINK

Cc:

Nokwanda Molefe, PAIA Unit, South African Human Rights Commission
Sinthia Reddy, Public Protector investigator (ref: 7/2-040815/12)
Lesleigh Timothy, LASA Board Secretary

¹⁰ Bundle, page 387.

¹¹ Replying affidavit in application to compel Vedalankar; online, see footnote 9 above.

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number:

Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).

Request fee (if any): R

Deposit (if any): R

Access fee: R

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

Legal Aid SA

**Jerry Makokoane
Deputy Information Officer,
National Office
29 De Beer Street
Braamfontein**

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be recorded below.

(b) Furnish an address and/or fax number in the Republic to which information must be sent.

(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname : **Anthony Robin Brink**
Identity number : **590225 5116 081**
Postal address : **1 Boast Street, Eshowe 3815, KwaZulu-Natal**
Fax number : **086 672 0776**
Telephone number : **035 474 0145**
E-mail address : **arbrink@iafrica.com**

Capacity in which request is made, when made on behalf of another person:

N/A

C. Particulars of person on whose behalf request is made

This section must be completed only if a request for information is made on behalf of another person.

Full names and surname : **N/A**
Identity number : **N/A**

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.

*(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Description of record or relevant part of the record:
2. Reference number, if available:
3. Any further particulars of record:

See annexure

E. Fees

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason therefor.

Reason for exemption from payment of fees:

N/A

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: N/A	Form in which record is required:			
<p>Mark the appropriate box with an "X".</p> <p>NOTES:</p> <p>(a) Your indication as to the required form of access depends on the form in which the record is available.</p> <p>(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</p> <p>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</p>				
1. If the record is in written or printed form -				
X	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 5px;">copy of record*</td> <td style="width: 30%; padding: 5px;"></td> <td style="width: 40%; padding: 5px;">inspection of record</td> </tr> </table>	copy of record*		inspection of record
copy of record*		inspection of record		

2. If record consists of visual images -

(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)

	view the images	X	copy of the images*		transcription of the images*
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3. If record consists of recorded words or information which can be reproduced in sound -

	listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)
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4. If record is held on computer or in an electronic or machine-readable form -

	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form* (on compact disc)
--	-------------------------	--	--	----------	--

*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?

YES

A postal fee is payable.

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

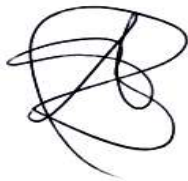
In which language would you prefer the record? **English**

G. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record? **By email**

Signed at Eshowe on 25 November 2014

A handwritten signature in black ink, consisting of several overlapping loops and a central vertical stroke, resembling a stylized 'B' or 'R'.

SIGNATURE OF REQUESTER

ANNEXURE: RECORDS REQUIRED

Note: The Promotion of Access to Information Act 2 of 2000 will be referred to herein as 'PAIA', and the records requester as 'Brink'.

1. Judge Cele's suggestion to LASA that Brink's request for a directive that LASA hand over the copy of the trial record it printed for him in case LC D529/11 be satisfied by giving him 'an electronic copy of the record' instead.

Note: CSE Mtati alleged in paragraph 7 of his letter to the registrar of 1 October 2014, later copied to Brink:

'Cele J, through his office, suggested that the Respondent accommodate the Applicant by providing him with an electronic copy of the record which the Respondent did.'

This alleged suggestion was not conveyed to Brink by Cele J's secretary/associate or by the registrar; and Brink's written request on 22 October 2014 that Mtati provide him with a copy of this alleged suggestion of 'Cele J, through his office', was ignored.

2. The transcript of the trial record in case LC D529/11.

Note: The request for access to this document will be satisfied (i) by providing Brink with a PDF copy of the record, or (ii) by providing Brink with the extra hard copy of the record at the Durban Justice Centre that LASA printed for Brink (to be collected by him), or (iii) by providing Brink with a copy of this copy (to be collected by him), or (iv) by making the extra hard copy of the record at the Durban Justice Centre available to Brink for copying. If the deputy information officer picks this latter option, Brink will need to uplift the copy at the Durban Justice Centre to scan every page in order to make multiple copies of the record for his appeal, and return it once he's done so.

As a special favour, the registrar of the Durban Labour Court photocopied part of the record for Brink, viz. Nair's evidence, for which Brink paid a copying charge. The whole record, a public document in LASA's possession, is required.

3. All and any records vouching that a meeting took place between the SAHRC and LASA's 'CEO and some of our senior members' 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 LASA (Vedalankar) had failed to comply with its (her) reporting obligations under section 32. The record(s) will show the date and place of the meeting, who attended it, and the outcome.

Note: In paragraph 183.2 of his answering affidavit in Brink's application in the Eshowe Magistrate's Court under case number 258/14 to compel Vedalankar's compliance with his PAIA request in October 2013, CSE Thembile Mtati swore to a commissioner of oaths under penalty of perjury:

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



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

'I have read the Answering Affidavit of Thembile Vuyo Mtati and I confirm that the content therein, in so far as it relates to me, are both true and correct.'

In evidence at the trial of case LC D529/11, Nair alleged differently under oath:

'I am aware of engagements that Legal Aid South Africa has made with the Human Rights Commission in terms of our concern with [the SAHRC's section 84 report about LASA]. And our Corporate Services Executive was requested to take it on directly with the respective officials from there, and I believe that engagement did take place. ... We were quite concerned with this report and we did address it with the Human Rights Commission ourselves.'¹

4. The record reflecting that, as ordered by the Legal Services Technical Committee on 24 March 2010, then 'Manager: Legal Administration, National Operations'² Bee-Mari Schoeman (responsible for 'Legal Services Delivery')³ 'Immediate[ly]⁴ ... facilitate[d] the transfer of the budget'⁵ that existed for a Senior Litigator post at the Kimberly Justice Centre⁶ to the Mthatha Justice Centre.
5. The records of CEO Vedalankar's and National Operations Executive Brian Nair's respective 'Final approval' and 'agree[ment]'⁷ (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,⁷ before the Mthatha post was advertised.⁸

Note: The recruitment/vacancy/budget statistics for June 2010⁹ supplied to Brink before trial show that the Kimberly Senior Litigator post had indeed been abolished and the Mthatha post established by that month, with the Mthatha post duly noted as vacant.

6. After the selection panel's interviews of shortlisted candidates for the Mthatha Senior Litigator post in May 2010,¹⁰ all and any records showing the form of 'transit' that 'a file that was to be delivered to Legal Aid SA Head Office in re the position of senior litigator position for Mthatha was lost in', in the form of a registered post slip, courier waybill, covering email, telefax covering page and transmission report, or other such voucher.

¹ Record, page 474, lines 13–22.

² Per Schoeman's CV posted online at LinkedIn: <http://linkd.in/17DpY3F>.

³ Bundle addendum (trial documents in LC D529/11), page 708, 'Members Present'.

⁴ Bundle addendum, page 709, section 4.1.7 under 'Due Date' column.

⁵ Bundle addendum, page 709, section 4.1.7.

⁶ Bundle addendum page 707.

⁷ Bundle addendum, page 1036.

⁸ Bundle, page 46.

⁹ Bundle addendum, page 1066.

¹⁰ Bundle addendum, page 994.



Note: In paragraph 183 of Eastern Cape deputy information officer Hope Bambiso's answering affidavit in Brink's application in the Eshowe Magistrate's Court under case number 257/14 to compel his compliance with Brink's PAIA request in October 2013, Bambiso stated:

'183.2. I am responsible for the Port Elizabeth, Eastern Cape Region and I am advised by Mr Sekgota that a file that was to be delivered to Legal Aid SA Head Office in re the position of senior litigator position for Mthatha was lost in transit. I believe Ms Magazi informed Mr Sekgota telephonically sometime last year.

...

183.4. The Applicant was informed of the lost file and he still does not believe the explanation given to him. I am unable to take this issue any further.'

In paragraph 2 of his confirmatory affidavit 'HB6', Corporate Legal Manager Solly Sekgota swore to a commissioner of oaths under penalty of perjury that these allegations were true:

'I have read the Answering Affidavit of Hope Bambiso and I confirm that the content therein, in so far as it relates to me, are both true and correct.'

In paragraph 2 of her confirmatory affidavit 'HB7', Eastern Cape Regional Human Resources Manager Thenjiwe Magazi also swore to a commissioner of oaths under penalty of perjury that these allegations were true:

'I have read the Answering Affidavit of Hope Bambiso and I confirm that the content therein, in so far as it relates to me, are both true and correct.'

(Provision of these records may assist a criminal court magistrate 'believe the explanation given to him' when later dealing with 'the issue' of whether or not Magazi and Sekgota committed perjury.)

7. Copies of the contents of the 'file ... in re the position of senior litigator position for Mthatha' retained by Eastern Cape Regional Human Resources Manager Thenjiwe Magazi before dispatching the original or a copy 'to Legal Aid SA Head Office'.

Note: As above.

8. The complete contents of Human Resources Executive Amanda Clark's file or computer folder on the Mthatha Senior Litigator post.
9. All records of communications between LASA's national office and its Eastern Cape Regional Office after the discovery that 'a file that was to be delivered to Legal Aid SA Head Office in re the position of senior litigator position for Mthatha was lost in transit' – including any request for the file, or a copy of it, to be sent again.

Note: The minute of the LSTC's March 2010 meeting, chaired by Nair, records that it prioritised the Mthatha Senior Litigator recruitment for 'Immediate'¹¹ implementation; and the post was

¹¹ Bundle addendum, page 709, paragraph 4.1.7.



advertised in April,¹² with interviews held in May¹³ in short order. Nair would accordingly have been awaiting the selection panel's recommendation in 'Legal Aid SA Head Office'.

10. The Strategic Plan 2009–12.

Note: Brink has only a draft version.¹⁴

11. The minute of the September 2008 Board meeting at which the Strategic Plan 2009–12 was approved.¹⁵

12. The minutes of all Legal Services Technical Committee meetings held in the period October 2009 to February 2011, besides the minute of its March 2010 meeting, which Brink already has.¹⁶

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.

Note: Brink has the first page only of the minute of the July 2010 meeting.¹⁷

According to Nair's sworn evidence at trial:

'...the Board would have been informed at the May meeting of 2010 that ... we did not receive the [OSD] funding and what steps were being taken.'¹⁸

16. LASA's Business Plans for 2009/10 and 2010/11. And for 2012/13 and 2013/14.

Note: Brink has only the 'Business Plan 2011/12'.

In her¹⁹ entry in section P26-10 of LASA's 'Business Plan 2011/12', under the heading, 'Talent acquisition and retention', Clark didn't disclose to the Board, to the Portfolio Committee, and to the South African public, the fact that three of the respondent's critical Senior Litigator posts had long been vacant, despite the selection of suitable candidates for appointment. Contrariwise Clark falsely claimed: 'No longstanding vacancies'.²⁰ There's a similar false entry in the 'Executive Summary' of

¹² Bundle, page 46.

¹³ Bundle addendum, page 994.

¹⁴ Bundle, pages 444–50.

¹⁵ Bundle addendum, page 1060, paragraph 3.2.1.

¹⁶ Bundle addendum, pages 708–10.

¹⁷ Bundle, page 251.

¹⁸ Record, page 425, lines 19–23.

¹⁹ Bundle addendum, page 877, 'Responsible Executive': 'HRE'.

²⁰ Bundle addendum, page 877.



the 'Budget 2011/12': 'The recruitment level was also increased from 97% in 2010/11 financial year to 100% in 2011/12.'²¹

These requests will be satisfied by the furnishing of excerpts comprising the cover or first identifying pages, and the pages dealing with 'Talent acquisition and retention'.

17. Excerpts comprising the cover or first identifying page, and the pages containing provision for Senior Litigator salaries in LASA's budget for 2013/14.
18. The minute of the Board meeting at which LASA's budget for 2013/14 was approved.
19. LASA's 2013/14 report to the SAHRC under section 32 of PAIA.
20. The payment voucher of the Department of Justice and Constitutional Development (as it was then called) reflecting the date of its transfer of OSD phase 1 funding for 2009/10.

Note: This payment is mentioned in LASA's annual report for 2009/10:

'The Occupational Specific Dispensation (OSD) phase 1 shortfall of R23million in the 2009/10 financial year was received from the DoJ.'²²

21. The record of any Strategic Plan Annual Review workshop or Board meeting²³ at which it was resolved not to fill LASA's remaining three vacant Senior Litigator posts.

Note: 'The Strategic Plan is reviewed annually to assess changes in the external and internal environment in which Legal Aid South Africa operates. The changes in the external and internal context are taken into account in the development of each year's business plans.'²⁴ In his 'Report to Board' in November 2011, Nair alleged:

'Six Senior Litigators were filled during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.'²⁵

22. The record showing mention or discussion by any LASA executive(s) of the issue alleged by Nair in his November 2011 'Report to Board' that Senior Litigators may not be fulfilling LASA's objectives for such posts.
23. All and any reviews of Senior Litigator performance pertaining to whether or not LASA'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.

²¹ Bundle addendum, page 883, section 4.1.

²² Bundle, page 1057.

²³ Bundle addendum, page 1061, section F2-C2-P1.

²⁴ Bundle addendum, page 1060.

²⁵ Bundle addendum, page 869.



25. All and any records vouching that NOE Nair was among the 'senior executives' who 'began to deliberate quite intensively'²⁶ in regard to the 'budgetary issues that suddenly confronted'²⁷ them on 10 March 2010, on learning that LASA's expected OSD phase 1 funding hadn't been included in the baseline budget for 2010/11²⁸ as had been assured in January 2010,²⁹ alternatively all and any records vouching that Nair was involved in pursuing the Department's payment of LASA's OSD phase 1 funding for 2010/11 in any manner whatsoever.
26. Excerpts of LASA's recruitment statistics showing Senior Litigator post occupancies and vacancies for March, April and May 2010, and July, August, September, October, and November 2010.

Note: The June³⁰ and December³¹ 2010 statistics were supplied to Brink before trial.

27. The executive instruction issued to transfer the Senior Litigator budget from Mthatha back to Kimberly (from which it had been transferred).

Note: Whereas the June 2010 recruitment/vacancy/budget statistics reflect a budgeted vacant Senior Litigator post at Mthatha,³² the December 2010 statistics show the post and budget had reverted to Kimberly.³³

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,³⁴ the proposals submitted by:

- (a) CEO Vidhu Vedalankar,
- (b) NOE Brian Nair,
- (c) KZN ROE Vela Mdaka,
- (d) then Pietermaritzburg JCE Bertus Appel, and,
- (e) then Durban Justice Centre Executive Kishore Mehta.

29. The 'Treasury ... budget allocations letter ... released ... at the end of 2009' to which Nair referred in his evidence.³⁵

²⁶ Record, page 344, line 9.

²⁷ Pleadings bundle, original response, page 144, paragraph 11.

²⁸ Bundle, page 236, paragraph 6.

²⁹ Bundle, pages 235–6, paragraphs 3 and 5.

³⁰ Bundle addendum, page 1066.

³¹ Bundle addendum, page 1070.

³² Bundle addendum, page 1066.

³³ Bundle addendum, page 1070.

³⁴ Bundle, pages 241–3.



30. The records of all Nair's 'decisions ... take[n] ... to freeze posts' with or without CEO Vedalankar's agreement, and without the approval of the Board.

Note: At trial, Nair testified, on oath, under penalty of perjury, that:

'... it was a very routine decision to freeze three posts. And I take decisions to freeze posts continuously in the organisation, and I consult with the CEO. ... It is a normal part of operations that we have got a staff establishment and for various reasons we freeze posts, we do not proceed with it. What we plan to do and what we actually do, the decisions may change. So it was not something that was abnormal.'³⁶

Contrariwise, Nair also testified (correctly, in light of the requirement of the Approval Framework that the Board be consulted before any change to the Business Plan based on its Strategic Plan):³⁷

'The implementation continues until the Board revisits that issue.'³⁸

31. 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)³⁹ that the KwaZulu-Natal Senior Litigator recruitments had been cancelled.

Note: Brink doesn't need the subsequent letter sent Mngadi on 23 August 2010, which he already has,⁴⁰ identical to the letters sent the other interviewed candidates Brink⁴¹ and van Wyk,⁴² but very interestingly not Ngcamu,⁴³ subsequently employed as Children's Court Practitioner at the Durban Justice Centre.

Paragraphs 178–9 of Brink's heads of argument, quoted below, drawn without sight of the record, deal with LASA's communication with Mngadi in about 'April/May' 2010, the record of which certainly exists, having regard to LASA's pleaded and sworn case before trial.

[178] Nair's claim that Mngadi was 'definitely not' told in April or May 2010 that the Senior Litigator recruitment had been cancelled, and that 'if such a statement was made to him it didn't come from [him, Nair] because the decision was only made in July' is contradicted on all counts by the respondent's pleadings. Answering the applicant's averment in his original statement of claim that "'in April/May"⁴⁴ 2010 Mngadi was notified ... that the respondent had decided not to fill the post for which he had applied, alternatively that the respondent had decided not to fill its remaining vacant Senior Litigator posts',⁴⁵ the respondent admitted in its

³⁵ Record, page 342, lines 14–15.

³⁶ Record, page 434, lines 3–18. (The Minister explicitly told Mlambo JP that he 'didn't want' any posts frozen, as Vedalankar mentioned to the Portfolio Committee on 11 October 2010. Bundle, page 184.)

³⁷ Heads of argument, paragraph 61.

³⁸ Record, page 424, line 25 to page 425 line 1.

³⁹ Bundle, pages 146–7, paragraph 179.

⁴⁰ Bundle addendum, page 831.

⁴¹ Bundle, page 20.

⁴² Bundle addendum, page 829.

⁴³ Bundle, page 383, paragraph 36: 'to two other applicants', not three.

⁴⁴ Ibid.

⁴⁵ Pleadings bundle, original statement of claim, pages 55–6, paragraph 55.



original response that it took a 'decision to inform Mr B Mngadi who was an internal candidate of the Respondent's decision not to proceed with the filling in of the Senior Litigator posts instead of the Applicant'.⁴⁶ Among the facts listed by the applicant for admission in his agenda for the pre-trial conference in October 2011 was: 'At the end of April or in May 2010, even as the respondent was busy recruiting for a Senior Litigator for Mthatha, Nair or Clark telephoned Mdaka or Brijlal and instructed him to tell Mngadi that the Senior Litigator recruitment wasn't being proceeded with.'⁴⁷ The respondent 'Agreed'⁴⁸ with this and volunteered: 'It was Mr Nair who gave the instruction.'⁴⁹ In denying it in court, Nair lied.

[179] Further contradicting Nair's lying denial in court that he had Mngadi put off in April or May 2010 while the applicant was callously left twisting in the wind, the respondent not only confirmed this, it went on to advance a flaccid reason why Mngadi was informed 'of the Respondent's decision not to proceed with the filling in of the Senior Litigator posts instead of the Applicant',⁵⁰ despite the applicant's repeated pleas for information about the upshot of the interviews held five months earlier: 'For Mr Mngadi, his appointment as a Senior Litigator was going to result as an internal promotion instead of a new employment hence it was not much of a problem to inform him well in time of Legal Aid South Africa's decision to freeze the recruitment process'.⁵¹ ...

(This latter sworn statement is contradicted by Vedalankar's allegation to Brink in her letter on 18 October 2010: 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.'⁵² Which she confirmed on affidavit.)⁵³

32. All counsel's feenotes for his professional services rendered LASA 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.

Note: CSE Mtati has stated on affidavit that after 'the CEO ... felt justified to refuse him access' to the records Brink had requested, his PAIA requests were 'given to counsel for his opinion ... to be safe.'⁵⁴

33. All counsel's opinions in regard to the handling of Brink's said PAIA requests, and the responses to them that he drafted for LASA.

Note: Since these were not furnished in the course of litigation, no question of privilege arises.

⁴⁶ Pleadings bundle, original response, page 162, paragraph 41.4.

⁴⁷ Pre-trial conference bundle, applicant's agenda, page 13, paragraph 31.

⁴⁸ Pre-trial conference bundle, respondent's answer to agenda, page 55, paragraph 31.1.

⁴⁹ Pre-trial conference bundle, respondent's answer to agenda, page 55, paragraph 31.2.

⁵⁰ Pleadings bundle, original response, page 162, paragraph 41.4.

⁵¹ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 105, paragraph 81.6.

⁵² Bundle, page 103, paragraph 6.7.

⁵³ Bundle addendum, page 390-1, with reference to page 380, paragraph 13.

⁵⁴ Application to subpoena Mlambo JP, page 102, paragraph 75.2.



34. LASA's current/most recent list of critical legal posts, or other record(s), identifying what legal posts are included under the category 'Critical Occupation'.

Note: For instance, at page 123 of LASA's annual report for 2011/12, Table 13 reports 229 critical legal posts:

Table 13: Employment and vacancies per critical occupation

Critical Occupation	Number of Posts	Number of Posts Filled	Vacancy Rate %
Legal	229	200	12,66%

The report doesn't identify what these 229 critical legal posts are, but LASA's HR department will have a spreadsheet or other record including and identifying these critical legal posts, the sum of which is annually reported, as above.

In evidence, Nair alleged that 'practitioners' in the Labour [sic: lower] Courts', the 'criminal court[s] ... were our critical posts; there was nothing more important than these posts.'⁵⁵ 'I described the critical positions as being those very same lower court positions ... the Practitioner positions who serve the lower courts per district ... those were the critical positions.'⁵⁶ 'The critical posts we are, I am referring or we are referring to there are link[ed] to the lower court positions.'⁵⁷ 'So when we are talking about critical, it was linking to coverage of courts.'⁵⁸ Nair's evidence contradicted LASA's pleaded case.⁵⁹ See further: heads of argument, paragraph 229.

35. Former Board Secretary Bee-Marie Schoeman's resignation or dismissal letter, and/or any other record vouching her information to Brink that she left LASA 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 LASA.

Note: According to Schoeman's CV at LinkedIn, she was employed at LASA until 'March 2012'.⁶⁰ On 19 July 2013, having been located by tracing agents engaged by Brink, and telephoned by him at her home on the eve of trial for her possible provision of relevant information about his case, Schoeman made this claim, which Brink immediately reported to his accountant Rawlins by email:

'Nice but sad call.
She had a terrible car crash, wrote off her car, very severe concussion, memory wrecked, forced to "leave a job I loved", unable to cope.
When I remarked on her fine CV, she yes, yes but "I can't remember any law anymore".
Just surviving.

⁵⁵ Record, pages 373, lines 20–5 to page 374, line 1.

⁵⁶ Record, page 480, lines 19–23.

⁵⁷ Record, page 375, lines 10–11.

⁵⁸ Record, page 375, lines 17.

⁵⁹ Pleadings bundle, original response, page 170, paragraph 48.9; and pre-trial conference bundle, answer to agenda, page 57, paragraph 43.1, and page 58, paragraph 52.1. The respondent contradicts itself in the same pleading: page 63, paragraph 79.1.

⁶⁰ <http://linkd.in/17DpY3F>.



Completely blank on my name, genuinely apologetic.'

After Schoeman acknowledged Brink's first petition to the Board on Mlambo JP's behalf,⁶¹ Brink had twice written to her,⁶² asking that she ensure that his November 2010 petition to the Board be brought to the attention of all Board members (not having all their email addresses). She did not respond.

On 18 March 2012, Schoeman blithely remarked 'Life goes on' on her Twitter account. Two days later on 20 March 2012, and ten days before she quit LASA, she posted a report and a photograph of her car's engine turbocharger having failed, with no mention or sign of any collision damage.



In November 2013, a few months after claiming to Brink to be mentally disabled, Schoeman commenced employment by the 'Department of Justice and Constitutional Development' on 'contract' as a 'Senior Legal Administrative Officer' to conduct a 'Review of the Criminal Justice System', and is still so employed, according to her CV at LinkedIn.⁶³

36. 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.⁶⁴

⁶¹ Bundle, page 168, email quoted.

⁶² Bundle, pages 168–72; and 188.

⁶³ <http://linkd.in/17DpY3F>.

⁶⁴ Annual report 2012/13, page 73, top of the page: each board committee has a Charter which details its responsibilities and duties.

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.

Note: According to LASA' annual report for 2011/12 there was an extra Board Executive Committee meeting in that year,⁶⁵ seemingly on Friday 23 March 2012.⁶⁶

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'.

Note: Nair also made a confirmatory affidavit – referred to in the same paragraph as 'DM15'. Neither Vedalankar's nor Nair's affidavits were annexed to Mtati's affidavit at the time the latter was delivered to Brink. Nair's confirmatory affidavit was delivered to Brink only after the trial; and Vedalankar's confirmatory affidavit remains outstanding.

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 intervention 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.⁶⁷

Note: In his email to Brink rebuking Brink's second petition to the Board,⁶⁸ in which he again pleaded for its intervention in Vedalankar's illegal, falsely justified refusal to comply with his first PAIA request and the manifestly irregular abortion of his appointment,⁶⁹ Mlambo JP alleged:

'I have, in turn, requested Board members to ignore all communications from you and/or on your behalf.'⁷⁰

Unless Mlambo JP telephoned each and every Board member between the time he read Brink's second petition and the time he wrote this late-night email on the same day, records will exist to vouch the truth of his allegation that he requested each of them 'to ignore' Brink's future appeals that the Board see to it that LASA's management executives conduct themselves in accordance with with the Constitution and the law.

⁶⁵ Page 21 of LASA's annual report for 2011/12 shows five meetings of the Board Executive Committee, not the usual four.

⁶⁶ On 23 March 2012, Board member Judge Edwin Molahlehi's secretary stated to Brink's accountant Christopher Rawlins that he was attending a LASA meeting on that day, which information Rawlins immediately emailed to Brink: 'Just spoken again with his assistant who told me that he was out at a meeting with LASA.'

⁶⁷ Bundle, pages 109–65; and 197–208.

⁶⁸ Bundle, pages 197–208.

⁶⁹ Bundle, pages 109–65.

⁷⁰ Bundle, page 209.



42. The decision originally taken to employ two Professional Assistants ('PAs') per backlog court at Pietermaritzburg, or generally, provincially or nationally.

Note: Then Pietermaritzburg Justice Centre Executive Bertus Appel twice refers to this decision: in his motivation for the employment of Arnold Mahlobo in August 2008,⁷¹ and in his email correspondence with KwaZulu-Natal Regional Operations executive Vela Mdaka in February 2011.⁷²

43. The 2010/11, 2011/12, and 2012/13 budgets provided by the Department for salaries for PAs serving the backlog courts at Pietermaritzburg.

Note: LASA's budget for 2011/12 was approved by the Board on 26 Nov 2010,⁷³ and it presumably would have provided for 8 contract PA posts at Pietermaritzburg for the four backlog courts, because this number of posts was reduced some months later.⁷⁴

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 streamlining the backlog courts.

Note: Mdaka refers to this in email correspondence with Appel.⁷⁵

46. All and any records identifying the nature of the Stanger court incident.

Note: Mdaka refers to this in his email correspondence with Appel.⁷⁶

47. All records sent to then Board Secretary Bee-Mari Schoeman over the period October 2010 to June 2011 informing her performance of her function: 'Monitoring of Backlog Court Staffing and compilation of costings to distribute budget received for this purpose to various cost centres'⁷⁷, 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 PAs in the backlog courts at Pietermaritzburg.

48. The decision to reduce the number of PAs serving the backlog courts at Pietermaritzburg from two to one, according to Nair's emailed announcement of this to LASA's Regional Operations Executives on 21 February 2011.⁷⁸

⁷¹ PA bundle (document bundle in Richards Bay CCMA case KNRB1481-14: Brink/LASA), page 116. The PA bundle is also accessible at the case document archive online: www.tig.org.za/LASA username: lasa password: LASA2010.

⁷² PA bundle, page 222.

⁷³ Bundle addendum (second trial document bundle, in case LC D 529/11), page 881.

⁷⁴ PA bundle, pages 220 and 221.

⁷⁵ PA bundle, page 231.

⁷⁶ Ibid.

⁷⁷ Per Schoeman's CV posted online at LinkedIn: <http://linkd.in/17DpY3F>.

⁷⁸ PA bundle, page 123.



49. The spreadsheet attached to Nair's email to the ROEs on 21 February 2011, named 'Backlog courts – 2011 approved courts.xlsx'.⁷⁹
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 JCEs on 7 February 2011.⁸⁰
51. The responses that the members of the selection panel, Manickum, Holtzhauzen, 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.⁸¹

Note: On 17 November 2010, the day after receiving Mdaka's objections to Brink's appointment,⁸² Appel emailed Mdaka: 'I will refer the issues raised by you to the interviewing panel and will revert to you.'⁸³

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 Executive⁸⁴ 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.

Note: The identities of the other shortlisted, interviewed applicants is not confidential information about them. (Such information appears unconcealed on the KwaZulu-Natal Senior Litigator post recommendation provided to Brink.)⁸⁵

56. Any employment contracts subsequently signed between LASA and any of the rejected candidates.

IT'S SUGGESTED THAT THE REQUESTED DOCUMENTS BE DELIVERED TO BRINK ON A DVD, OR OVER THE INTERNET VIA 'DROPBOX' OR SIMILAR SECURE ELECTRONIC FILE DELIVERY SYSTEM.

⁷⁹ Ibid.

⁸⁰ PA bundle, page 219.

⁸¹ PA bundle, pages 18–21.

⁸² PA bundle, page 23.

⁸³ PA bundle, page 212.

⁸⁴ PA bundle, page 53.

⁸⁵ Bundle, pages 244–8.



PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

23 Records that cannot be found or do not exist

(1) If-

(a) all reasonable steps have been taken to find a record requested; and

(b) there are reasonable grounds for believing that the record-

(i) is in the public body's possession but cannot be found; or

(ii) does not exist,

the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

90 Offences

(1) A person who with intent to deny a right of access in terms of this Act-

(a) destroys, damages or alters a record;

(b) conceals a record; or

(c) falsifies a record or makes a false record,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.



1 Boast Road
Eshowe 3815
15 December 2014

Jerry Makokoane
Deputy Information Officer,
Legal Aid South Africa
29 De Beer Street
Braamfontein

Per email: jerrym@legal-aid.co.za

Dear Mr Makokoane

PAIA REQUEST: AMENDMENT OF ITEM 34

Item 34 of my currently pending PAIA request addressed to you specified:

34. LASA's current/most recent list of critical legal posts, or other record(s), identifying what legal posts are included under the category 'Critical Occupation'.

Note: For instance, at page 123 of LASA's annual report for 2011/12, Table 13 reports 229 critical legal posts:

Table 13: Employment and vacancies per critical occupation

Critical Occupation	Number of Posts	Number of Posts Filled	Vacancy Rate %
Legal	229	200	12,66%

The report doesn't identify what these 229 critical legal posts are, but LASA's HR department will have a spreadsheet or other record including and identifying these critical legal posts, the sum of which is annually reported, as above.

I've just discovered to my amazement that whereas the annual report for the following year, 2012/13, shows the number of LASA's critical legal posts had increased by two posts to 231 –

Table 18: Employment and vacancies per critical occupation

Critical occupation	Number of posts	Number of posts filled	Vacancy rate %
Legal	231	211	8.66%

– LASA’s current report for 2013/14 reflects just 64 critical legal posts, a massive reduction by 72% of the number of legal posts previously categorised and reported to the Minister and to Parliament as critical:

Table 19: Employment and Vacancies per critical occupation

Regions	Number of Posts	Number of post filled	Vacancy Rate %
Chief Executive	1	1	0.00%
Chief Operations	1	1	0.00%
National Operations	7	7	0.00%
Legal Development	1	1	0.00%
Human Resources	7	6	14.00%
Finance	7	7	0.00%
Communications	7	6	14.00%
Corporate Services	1	1	0.00%
Information Systems	1	1	0.00%
Internal Audit	1	1	0.00%
Legal	64	63	2.00%
Total	98	95	3.00%

Since the CEO report tells us that LASA has a current ‘national footprint of 64 Justice Centres’, it’s evident that the only critical legal post occupancies and vacancies now being reported to the Minister and to Parliament are LASA’s 64 Justice Centre Executive posts.

Consequently, my request for a record showing –

34. LASA’s current/most recent list of critical legal posts, or other record(s), identifying what legal posts are included under the category ‘Critical Occupation’.

– has already been answered by the latest annual report:

It’s 64 JCE posts.

I naturally wish to peruse the motivation and the resolution passed to declassify almost three-quarters of LASA’s critical legal posts for the purpose of annually reporting their occupancies and vacancies to the Minister and to Parliament, if indeed such a minuted decision was ever duly taken.

In the situation, I hereby amend item 34 of my PAIA request.

What I require instead is:

34. (a) LASA's list of 231 critical legal posts, or other record(s), identifying what legal posts were included under the category 'Critical Occupation' in LASA'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 LASA's annual reports to the Minister and to Parliament.

I look forward to receiving these records, or, if no record exists of the motivation and resolution specified in part (b) of amended item 34, your certification of this in your section 23 affidavit.

Yours sincerely

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

ANTHONY BRINK

Cc: CSE Thembile Mtati and CLM Solly Sekgota