

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

The Information Officer

South African Human Rights Commission

33 Hoofd Street

Braampark Forum 3

Braamfontein

Private Bag X 2700

Houghton 2041

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.***

Description of record or relevant part of the record:

- 1. All communications by letter and/or email and file notes of any communications by telephone between the South African Human Rights Commission ('the Commission') and Legal Aid South Africa ('LASA') regarding the records requester Brink's formal complaint lodged with the Commission (GP/1516/0395) that LASA has violated his fundamental right to information entrenched by section 32 of the Bill of Rights in the Constitution by refusing**

him access to its records that he'd specified and duly requested in November 2014 and March 2015 under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act'), and by making incompetent and unlawful money demands in response to his requests that are not permitted by the Act.

Note: These records will include (per the Commission's PAIA Unit director Kisha Candasamy's email to Brink on 9 November 2015, copied and pasted into her following emailed letter two days later):

- the 'brief background' that LASA 'provid[ed]' the Commission regarding Brink's 'engagements with LASA', which 'brief background' and 'engagements with LASA' the Commission considered and treated as material and relevant in its disposal of Brink's complaint about LASA's illegal refusals of his PAIA requests and its illegal money demands in violation of his fundamental right to information – and not completely immaterial and irrelevant;
- LASA's 'noting' of 'the need for caution' by the Commission before proceeding with 'an alternative dispute resolution (ADR) process facilitated by the Commission with a view to possibly resolving the complaint', and the particular reason for this special 'caution' in Brink's exceptional case that LASA 'not[ed]' and advised the Commission it needed to exercise in dealing with Brink's fundamental rights violation complaint against it, which 'caution[ary]' advice from LASA as a respondent charged with violating Brink's fundamental rights, the Commission summarily accepted and acted upon to Brink's prejudice, without observing the most elementary principle of fairness in the decision of disputes, the audi alteram partem rule, which is to say without affording him an opportunity to answer and refute LASA's anyway immaterial and irrelevant version of the 'background' and 'the need for caution' to be exercised by the Commission, which is to say to desist from proceeding with an 'alternative dispute resolution (ADR) process facilitated by the Commission with a view to possibly resolving the complaint', and 'not to proceed with ADR in the present matter',

– which 'brief background ... provid[ed]' by LASA and LASA's 'noting' of 'the need for caution in respect' of the 'alternative dispute resolution (ADR) process facilitated by the Commission with a view to possibly resolving the complaint', caused the Commission to:

- reverse its decision to 'engage' with LASA with a view to 'possibly resolving the complaint', after Candasamy had 'reviewed [Brink's] matter' (per her email of 8 October) and satisfied herself that it 'falls within the mandate of the SAHRC' namely 'to investigate prima facie violations of human rights as contained within

the Bill of Rights’ (per Gauteng Provincial Office Manager Kisoona’s letter of 20 August) and had acted on this assessment that, prima facie, LASA had indeed violated Brink’s fundamental right to information by ‘forward[ing] ... correspondence ... to LASA offering ADR facilitated by the Commission as a possible means of resolving the complaint’ about this (per Candasamy’s email to Brink on 12 October), which complaint ‘remain[ed] active with the Commission’ (per Candasamy’s email to Brink on 20 October) until LASA perverted it;

- resile from its repeated implicit assurances to Brink that it was attempting to achieve LASA’s compliance with his PAIA requests which it had very obviously, even to a sophomore law student, illegally refused, via an alternative dispute resolution process, rather than determining his complaint about this in the ordinary course in accordance with the Commission’s Complaints Handling Procedures code, thus wasting several important weeks of his time in his pursuit of the illegally suppressed records;
- abdicate its extraordinarily important, constitutional sentinel obligations prescribed by section 83(3) of PAIA to ‘monitor the implementation of this Act’; ‘if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act’; ‘recommend a public ... body make such changes in the manner in which it administers the Act as the Commission considers advisable’; and ‘train information officers and deputy information officers of public bodies’ in how to apply the Act properly so as to give effect to it and thereby respect record requesters’ fundamental right to information;
- leave unresolved and undetermined Brink’s formal fundamental rights violation complaint duly lodged with the Commission in the prescribed form, without complying with its own Complaints Handling Procedures code in disposing of it,

– in other words, to abort the alternative dispute resolution process it had initiated to achieve LASA’s compliance with Brink’s PAIA requests, notwithstanding that the Commission had examined and assessed Brink’s complaint and had satisfied itself that prima facie:

- LASA’s refusals of Brink’s said PAIA requests, and its money demands to obstruct his access to its records, were illegal and violated his fundamental right to information; and that,
- LASA’s information officers and deputy information officers accordingly need corrective instruction and advice from the Commission under its section 83(3) powers to ‘recommend a public ... body make such changes in the manner in

which it administers the Act as the Commission considers advisable’, and to ‘train information officers and deputy information officers of public bodies’ in how to apply the Act properly, so as to comply with it and give effect to Brink’s fundamental right to information guaranteed by section 32 of the Constitution. And also the fundamental right of any other record requesters seeking access to documents exposing inter alia the widespread corruption in LASA’s national executive management ranks, especially in the matter of recruitment in KwaZulu-Natal, and at Senior Litigator level across the country.

2. **Any record vouching that the Commission’s PAIA Unit director Ms Kisha Candasamy has undergone special training in PAIA and how to apply it.**

Note: To ensure inter alia that they fully understand and appreciate the cardinal, critical importance of freedom of information in our democracy for the effective exercise of other rights, know what they’re doing when handling PAIA matters, handle them competently, and don’t flub such cases with an effusion of misdirected mindless legalese, possibly quite impressive-sounding and convincing to legally uneducated persons, with the consequence that organs of state succeed year after year in violating record requesters’ fundamental right to information with impunity, section 91A(2) of PAIA specially prescribes that PAIA cases in the lower courts may only be dealt with by designated magistrates who’ve completed and passed ‘a training course’ in the subject and have been listed as such.

Although the purpose of this request is irrelevant under section 11(3) of PAIA, it’s directed at determining whether the Commission’s most senior PAIA compliance policing officer, its PAIA Unit director Candasamy, has any similar special training in PAIA to ensure that she likewise fully understands and appreciates the cardinal, critical importance of freedom of information in the democratic era for the effective exercise of other rights, knows what she’s doing when handling PAIA matters, deals with them competently, and in her professional inexperience isn’t easily distracted and beguiled by:

- inherently partisan and prejudicial, wholly immaterial and irrelevant ‘background ... provid[ed]’ by a respondent in a fundamental rights violation complaint with a documented history of high-level criminal dishonesty, including (and there’s much more):
 - repeated perjury noted by a judge (he found LASA’s National Operations Executive and national deputy information officer Brian Nair to be ‘not generous with the truth ... a number’ of times in his evidence at the trial of

LC D529/11: Brink v LASA – Nair’s many perjuries in court further repeatedly exposed by documents elicited with a prior PAIA request in November 2013 after the trial); and,

- lying repeatedly to a Portfolio Committee of the National Assembly in a criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 (when one criminal lie was exposed, LASA repeatedly admitted on affidavit that the specific detailed excuse given the Justice Portfolio Committee for not proceeding with Brink’s appointment to its most senior professional post in KwaZulu-Natal was absolutely false – feebly and further dishonestly discounting the criminal lie as a mere ‘error’, which feeble, lying retraction Nair (being ‘not generous with the truth ... a number’ of times, including on this occasion) proceeded to retract in his evidence as itself an error – going on to revive the criminal lie, and then radically contradicting it);
- irrelevant warnings by this respondent to the Commission to exercise ‘caution’ when offering to conciliate a resolution of the respondent’s manifestly illegal and unconstitutional refusal to comply with PAIA and allow access to its records, now for the eleventh time since 2010;
- irrelevant, wholly unfounded, meretriciously facile, transparently untruthful fatuous and specious talk of ‘potential prejudice to one and / or both parties’ should the Commission mediate the resolution of a fundamental rights violation complaint through an alternative dispute resolution process rather than determining it in the ordinary course under the Commission’s Complaints Handling Procedures code;
- any wholly irrelevant alleged ‘close relationship’ between, ‘and interrelatedness of the issues’ in, a fundamental rights violation complaint and ‘various litigation matters currently before the courts’ concerning other similar fundamental rights violations,

and doesn’t flub them with an effusion of misdirected mindless legalese, possibly quite impressive-sounding and convincing to legally uneducated persons and other junior attorneys, with the grave consequence that organs of state like LASA succeed year after year in violating record requesters’ fundamental right to information with impunity, and succeed also in concealing this repeated violation by the state of fundamental rights from the Commission and from the National Assembly in turn with repeated false annual reporting under section 32 on its handling of PAIA requests, with the object of suppressing documentary evidence of systemic

corruption and criminality in their senior managerial ranks (perjury; lying to the National Assembly; contraventions of the Public Finance Management Act and the Treasury Regulations), effectively aided and abetted by the Commission in this criminal and unconstitutional conduct in consistently and reliably always looking the other way when year after year this failure of LASA to comply with PAIA, and its ‘malicious’ (the Commission’s word) annual reporting afterwards (for four years now), is pertinently brought to the Commission’s attention – thus failing, in a gross dereliction of its constitutional obligations, to ‘monitor the implementation of this Act’ as it’s charged by section 83(3)(b) of PAIA to do.

That is, this request is directed at establishing whether Ms Candasamy has a higher level of expertise in PAIA and how to apply it, and has a better appreciation of the critical, cardinal importance of implementing it properly for the effective exercise of other rights than LASA’s information and deputy information officers, which the Commission has repeatedly found and reported to be dismally deficient. Or the same level.

3. The Commission’s PAIA section 84 report for 2014/15.

Note: LASA’s PAIA compliance report included in its annual report for 2014/15 is false in multiple respects. The point of this request is to determine:

- whether LASA gave the Commission the same false information in its section 32 report for that year as it gave the Minister, the National Assembly, and the South African public in its annual report, or different false information. (LASA has a history of reporting differently in its annual and section 32 reports, the reports containing different false information); and,
- whether the Commission duly reported, as section 84(x) required it to do, that during the said reporting cycle Brink lodged a complaint with the Public Protector against the Commission for non-compliance with his PAIA request for access to LASA’s section 32 report for 2013/14 – or whether, despite being given a copy of the complaint to the Public Protector, the Commission concealed this fact and thereby concealed its own non-compliance with the Act, from the National Assembly in breach of its reporting obligations imposed by section 84(x).

4. LASA's PAIA section 32 report for 2013/14.

Note: Abysmally ignorant¹ of the elementary fact that PAIA contemplates access to documents and other recorded information, and not to information per se, despite the word 'information' in its title, the Commission's Head of Legal Services and so-called 'Promotion of Access to Information Specialist' Pandelis Gregoriou cluelessly and unlawfully fobbed off Brink's PAIA request in November 2014 for this report (first informally requested from him on 17 September 2014, Gregoriou ignored the request) in the fifth paragraph of an affidavit he made on 31 August 2015 by irrelevantly referring Brink to the Commission's mention of LASA's section 32 report in its section 84 report (Gregoriou gets the year wrong):

In terms of Adv. Anthony Brink's third PAIA request, he was informed that the Commission's PAIA Annual Report for the period 2012/13 provides

¹ The shocking ignorance of PAIA displayed in their correspondence by all of its PAIA Unit directors since 2010, and by current CEO Khumalo, for whom the incumbent PAIA Unit director Candasamy or Head of Legal Services Gregoriou appears to write in PAIA matters, is legion.

Kisoon didn't know how to compute the number of days allowed for responding to a PAIA request, and gave LASA wrong advice about this.

Adeleke ignorantly and unlawfully cited section 7 of PAIA to illegally refuse a PAIA request for SAHRC documents; and illegally refused others by transparently falsely, spuriously, and dishonestly relying on section 44.

Both Candasamy's and Gregoriou's incompetence and ignorance of PAIA is pointed up by the notes to this current PAIA request.

CEO and information officer Khumalo ignorantly wrote on 12 October 2015: 'In terms of section 78 of PAIA, a requester may approach the courts for relief after having exhausted all internal processes available in terms of PAIA, which you accordingly did in terms of section 78 of PAIA.' In the case of category B public bodies like LASA, however (as the Commission tried teaching LASA at its special PAIA training workshop on 6 November 2012), there are no 'internal processes available in terms of PAIA' to 'exhaust' before applying to court to compel access to documents requested under PAIA but illegally refused. Consequently, contrary to Khumalo's false claim that he 'exhausted all internal processes available', Brink didn't, because there aren't any at LASA.

It seems the Commission and its PAIA Unit are taking lessons from LASA in how PAIA works: LASA has consistently opposed Brink's applications to court to compel its compliance with his PAIA requests by ignorantly objecting that he didn't first appeal the refusals of his PAIA requests to LASA's CEO or Board. As said, however, under PAIA no appeals lie against a LASA information- or deputy information officer's refusal of a PAIA request. The Commission's CEO and information officer, almost certainly advised by Candasamy or Gregoriou writing for her, doesn't know this elementary aspect of information law.

Kisoon's, former CEO and information officer Ahmed's, and current and information officer CEO Khumalo's indifference to LASA's repeated false annual reporting to the Commission under section 32 of PAIA, for the misinformation of the National Assembly in turn (a criminal contravention of section 17(2)(e) of Act 4 of 2004), reveals that the Commission's and its PAIA Unit's officers have no conception of the critical importance of accurate and truthful PAIA compliance reporting by public bodies. Recorded details of these officers' demonstrated indifference and deliberate blind-eye turned to LASA's repeated false reporting will be provided on request.

information on section 32 reports, including the Section 32 Report submitted by Legal Aid South Africa.

This response is manifestly not compliant with Brink's request under PAIA for access to the specified document. Referring to some information contained in a different document is not equivalent to granting access to the specified document requested under PAIA by providing a copy of it.

The Commission's section 84 report anyway can't be relied on to see what LASA reported to it under section 32 in a given year, because the Commission has a history of altering and sweetening false section 32 information provided by LASA when reporting to the National Assembly under section 84.

Brink's numerous requests and reminders for this record – LASA's PAIA section 32 report for 2013/14 – were, after first being ignored, answered with the wrong, mislabelled record provided for the previous year, 2012/13. Now, getting the year wrong again, Gregoriou says in as many words: Just look at the Commission's section 84 report.

Since:

- (i) it's unclear whether this dull suggestion by Gregoriou is intended to constitute a final refusal under section 25 to grant Brink access to this public body record in its possession, or just a characteristic display of legal ignorance and professional indolence such as has been consistently and routinely exhibited by the Commission's officers over the years, starting in 2010 when Brink first appealed for the Commission's support, mistakenly and naively believing it was seriously concerned that public bodies should comply with PAIA; and,
- (ii) the Commission's high officers (including its DIO, CEO and chairperson) have a history of consistently ignoring Brink's several letters and reminders in pursuit of this particular record (this conduct is detailed in Brink's complaint to the Public Protector, copied to the Commission), so further correspondence in pursuit of it would seem to be futile,

the record required – LASA's PAIA section 32 report for 2013/14 – is formally requested under PAIA once again, now a year later.

And this time, if it's not promptly provided, it will be promptly sued for.

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.

Kindly email the SAHRC’s bank details for payment of the request fee by EFT.

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><i>Mark the appropriate box with an "X".</i></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	copy of record*
<input type="checkbox"/>	inspection of record

2. If record consists of visual images - N/A			
(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)			
<input type="checkbox"/>	view the images	<input type="checkbox"/>	copy of the images*
<input type="checkbox"/>		<input type="checkbox"/>	transcription of the images*
3. If record consists of recorded words or information which can be reproduced in sound - N/A			
<input type="checkbox"/>	listen to the soundtrack (audio cassette)	<input type="checkbox"/>	transcription of soundtrack* (written or printed document)
4. If record is held on computer or in an electronic or machine-readable form -			
<input type="checkbox"/>	printed copy of record*	<input type="checkbox"/>	printed copy of information derived from the record*
<input type="checkbox"/>		<input checked="" type="checkbox"/>	copy in computer readable form* (by email)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? N/A			
A postal fee is payable.			
<i>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.</i>			
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 12 November 2015

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above the text 'SIGNATURE OF REQUESTER'.

SIGNATURE OF REQUESTER