

Kisha Candasamy

From: Kisha Candasamy
Sent: 11 November 2015 02:38 PM
To: Anthony Brink (arbrink@iafrica.com)
Cc: Lauren O'Reilly
Subject: BRINK / LEGAL AID SOUTH AFRICA
Attachments: SKM_C364e15111114471.pdf; image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg

Dear Advocate Brink

Kindly find attached hereto, correspondence for your kind 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>human rights commission</p> <p>www.sahrc.org.za Info@sahrc.org.za</p>
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SOUTH AFRICAN HUMAN RIGHTS COMMISSION

33 Hoofd Street
Braampark, Forum 3
Braamfontein
2017

Private Bag X 2700
Houghton
2041

Tel.: 011 877 3600
Fax: 011 403 0668



11 November 2015

Ref: GP/1516/0395

Advocate Anthony Brink

Per email: arbrink@iafrica.com

Dear Advocate Brink

RE: PAIA REQUEST LODGED WITH LEGAL AID SOUTH AFRICA

The South African Human Rights Commission (Commission) is an institution established in terms of section 184 of the Constitution. The Commission is mandated to promote, protect and monitor the observance of human rights. The Commission has an additional mandate in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA) to advance the right to access information and monitor the implementation of PAIA. The Commission executes this mandate in various ways, including providing assistance to members of the public where possible and appropriate.

We confirm that you lodged a complaint with the Gauteng Provincial (GP) office, which complaint was subsequently transferred to the PAIA Unit of the Commission for further handling. Your complaint is based on your dissatisfaction with the manner in which certain PAIA requests lodged with Legal Aid South Africa (LASA) were dealt with.

We confirm the following:

1. As per our email dated 9th November 2015, the PAIA Unit of the Commission engaged with LASA regarding your complaint. Such engagement was aimed at establishing whether LASA would be willing to engage in an alternative dispute resolution (ADR) process facilitated by the Commission with a view to possibly resolving the complaint;
2. LASA responded to the Commission by providing a brief background of the present matter, as well as various other matters that you and LASA are still engaged on. LASA

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

confirmed a willingness to engage in ADR, noting however the need for caution in respect thereof considering the said background;

3. After due and proper consideration, the Commission has elected not to proceed with ADR in the present matter based on the following:
 - a. The historical background of a number of matters between yourself and LASA (as communicated to the Commission by both parties on numerous occasions over recent years);
 - b. On-going litigation between yourself and LASA;
 - c. The close relationship and interrelatedness of the issues forming the basis of those previous matters and the present one; and
 - d. The potential prejudice that may arise for one and / or both parties as a result of being involved in ADR while parties are at the same time engaged in various closely related litigation matters.

The Commission has exercised the abovementioned discretion in terms of Section 83(a)(c) of PAIA, which reads as follows:

(3) The Human Rights Commission may ... (c) if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act".

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

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

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33 Hoofd Street
Braampark, Forum 3
Braamfontein
2017

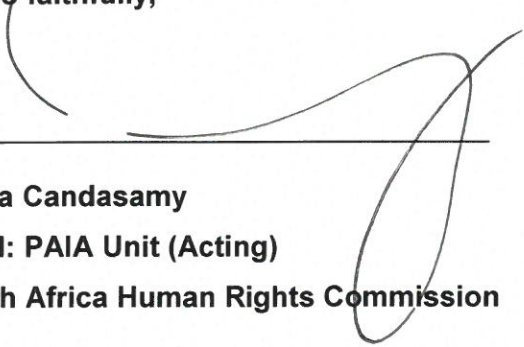
Private Bag X 2700
Houghton
2041

Tel.: 011 877 3600
Fax: 011 403 0668



We thank you for bringing your complaint to the attention of the Commission and trust that your matter will be equitably resolved.

Yours faithfully,



Kisha Candasamy
Head: PAIA Unit (Acting)
South Africa 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

Kisha Candasamy

From: Kisha Candasamy
Sent: 09 November 2015 07:29 AM
To: Anthony Brink (arbrink@iafrica.com)
Cc: 'Lauren O'Reilly'
Subject: YOUR COMPLAINT LODGED AGAINST LEGAL AID SOUTH AFRICA: GP/1516/0395
Attachments: image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg

Dear Advocate Brink

I confirm the following:

1. The South African Human Rights Commission (the Commission) engaged with Legal Aid South Africa (LASA) regarding your complaint lodged with the Gauteng Provincial office of the Commission under reference number GP/1516/0395. Such engagement was aimed at establishing whether LASA would be willing to engage in an alternative dispute resolution (ADR) process facilitated by the Commission with a view to possibly resolving the complaint;
2. LASA responded to the Commission by providing a brief background of your engagements with LASA and confirming their willingness to engage in ADR, noting however the need for caution in respect thereof;
3. After due and proper consideration of the detailed historical background of the matters between yourself and LASA (as provided by yourself and LASA to the Commission on various occasions over the years), the ongoing litigious proceedings between the same two parties and the close relationship and interrelatedness of the issues forming the basis of those matters and the present one, the Commission has elected not to proceed with ADR in the present matter. The basis for this decision also lies with the potential prejudice to one and / or both parties, specifically as mentioned above, with respect to the various litigation matters currently before the courts and their close relationship with the complaint registered under reference GP/1516/0395;
4. The abovementioned decision is as per Section 83(a)(c) which reads as follows:

(3) The Human Rights Commission may ... (c) if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act". The Commission has exercised its discretion in this regard.

5. Formal correspondence confirming the above and the closure of your file will be forwarded to you in the near future.
6. We trust that your matter will be equitably resolved in due course.

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>human rights commission</p> <p>www.sahrc.org.za Info@sahrc.org.za</p>
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Kisha Candasamy

From: Solly Sekgota <SollyS@legal-aid.co.za>
Sent: 05 November 2015 09:57 AM
To: Kisha Candasamy
Cc: Thembile Mtati
Subject: RE: BRINK / LASA
Attachments: image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg; image006.jpg

Good Day Kisha,

Thank you for the response.

We confirm and align with our concerns that ADR is not a possible option considering that it may difficult to separate issues for mediation.

Regards

Mr Solly Sekgota
Legal Aid South Africa



From: Kisha Candasamy [mailto:kcandasamy@sahrc.org.za]
Sent: Thursday, October 29, 2015 3:33 PM
To: Solly Sekgota
Subject: BRINK / LASA

Dear Sir

Thank you for your response.

Having noted the background of the matter contained in your letter, I have concerns that it may not be possible to divorce the matters currently before the courts with the specific issues intended to form the basis of the ADR process facilitated by the Commission. In this regard, I am concerned that the ADR process may prejudice the litigious proceedings, which the Commission would be loathe to do (especially considering the long history of this matter).

Kindly provide me with your comments / thoughts regarding the above.

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>human rights commission</p> <p>www.sahrc.org.za Info@sahrc.org.za</p>
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Thank You.

Kisha Candasamy

From: Kisha Candasamy
Sent: 29 October 2015 03:26 PM
To: sollys@legal-aid.co.za
Subject: BRINK / LASA
Attachments: image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg

Dear Sir

Thank you for your response.

Having noted the background of the matter contained in your letter, I have concerns that it may not be possible to divorce the matters currently before the courts with the specific issues intended to form the basis of the ADR process facilitated by the Commission. In this regard, I am concerned that the ADR process may prejudice the litigious proceedings, which the Commission would be loathe to do (especially considering the long history of this matter).

Kindly provide me with your comments / thoughts regarding the above.

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>human rights commission</p> <p>www.sahrc.org.za Info@sahrc.org.za</p>
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Kisha Candasamy

From: Solly Sekgota <SollyS@legal-aid.co.za>
Sent: 26 October 2015 02:37 PM
To: Kisha Candasamy
Cc: Thembile Mtati
Subject: RE: COMPLAINT LODGED WITH THE SAHRC: ADV BRINK / LASA
Attachments: image006.jpg; image007.jpg; image008.jpg; image009.jpg; image010.jpg; image011.jpg; Response to South African Human Rights Commission on ADR-Brink_23 October 2015.pdf

Good Day Kisha,

Please find the response from Legal Aid SA
Regards

Mr Solly Sekgota
Legal Aid South Africa




From: Kisha Candasamy [mailto:kandasamy@sahrc.org.za]
Sent: Monday, October 12, 2015 1:25 PM
To: Solly Sekgota; Thembile Mtati
Subject: COMPLAINT LODGED WITH THE SAHRC: ADV BRINK / LASA

Dear Sirs

Kindly find attached hereto, correspondence for your kind attention.

Regards,

<p>Kisha Candasamy Acting Head: PAIA T: +27 11 877 3814 E: kandasamy@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>human rights commission</p> <p>www.sahrc.org.za Info@sahrc.org.za</p>
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Thank You.



23 October 2015

Kisha Candasamy

South African Human Rights Commission

2nd Floor, 33 Hoofd Street,

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29 De Beer Street

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Johannesburg 2017

Private Box X76

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Tel: 011 877 2000

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Dear Kisha,

**RE: COMPLAINTS LODGED WITH THE SOUTH AFRICAN HUMAN RIGHTS
COMMISSION: AR BRINK**

INTRODUCTION

1. We refer to your letter dated 12th October 2015.
2. Before replying to the invitation set out in the letter, I thought it prudent that we should lay out some background relating to the various litigation processes we have with Advocate Brink.

BACKGROUND

3. All the matters to the litigation commenced with various PAIA applications with requests seeking to establish reasons why Advocate Brink was not appointed as a Senior Litigator for our Pietermaritzburg Office.

4. All other requests are ancillary to point 3 above as they are intended to prove or disprove veracity of statements or documents provided or non-existence thereof or even supplementing information intended for criminal prosecution of certain officials.
5. Advocate Brink brought an action against Legal Aid South Africa under case number 529/11 at the Labour Court, Durban in June 2011, and the action was dismissed with costs.
6. Advocate Brink applied for leave to appeal which was also dismissed and he then petitioned the Labour Appeal Court. The petition was unanimously dismissed.
7. During prosecution of his case at the Labour Court and the Labour Appeal Court, Advocate Brink continuously sought information which was either given to him, refused based on the provisions of section 7 and/or Legal Aid South Africa alternatively deposed an affidavit in terms of section 23 stating that the requested information was not available.
8. Despite these various responses, Advocate Brink insists that there is no legal basis to refuse the information based on section 7 of Promotion of Access to Information Act 2 of 2000.
9. Accordingly, on 29 April 2014, Advocate Brink brought three applications to compel in the Eshowe Magistrate Court against the CEO, and two Regional

Operations Executives under cases 257/14, 258/14 and 259/14. These applications are still pending before Court

10. During the period November 2014 and December 2014, Advocate Brink further requested similar information from the National Operations Executive, the Chief Legal Executive, and Chief Operations Officer.
11. Legal Aid South Africa considered the requests, but due to the time that would be spent by the officials in doing the search and reading of bundles of records, Advocate Brink was requested to pay fees in terms of 22 of the Promotion of Access to Information Act 2 of 2000.
12. Advocate Brink construed the request for fees as a refusal and hence his complaint to your office.
13. It must be noted further that Advocate Brink had brought another application to compel against the National Operations Executive which emanates from his requests for 17 November 2014 under case 1005/15. This matter is also pending at Eshowe Magistrates Court.
14. Advocate Brink had in recent communication threatened to bring further applications to compel against the Chief Legal Executive and Chief Operations Officer.
15. With regard to case 529/11 and having exhausted all legal avenues within the acceptable timeframes, we sought to tax our bill of costs to obtain an

allocator from the Taxing Master. An urgent application was once again brought by Mr. Brink seeking to interdict the Master from taxing our bill. The application was again dismissed with costs at the Pietermaritzburg High Court.

LEGAL AID SOUTH AFRICA POSITION

16. Legal Aid South Africa is amenable to any Alternative Dispute Resolution process to be facilitated by the South Africa Human Rights Commission subject to such meeting being held at your offices in 2nd Floor, 33 Hoofd Street, Braampark, Forum 3, Johannesburg.

17. However, caution must be taken as the issues to which Advocate Brink complains of forms part of the legal proceedings before courts.

Yours faithfully,



Mr. Solly Sekgota

Legal Aid South Africa

Tel: 011 877 2004

p.s Please note that we do not use the acronym "LASA" but rather "Legal Aid SA" in all our communication.

Kisha Candasamy

From: Kisha Candasamy
Sent: 12 October 2015 01:19 PM
To: 'sollys@legal-aid.co.za'; 'thembilem@legal-aid.co.za'
Subject: COMPLAINT LODGED WITH THE SAHRC: ADV BRINK / LASA
Attachments: SKM_C364e15101213270.pdf; image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg

Dear Sirs

Kindly find attached hereto, correspondence for your kind 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>human rights commission</p> <p>www.sahrc.org.za Info@sahrc.org.za</p>
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Braampark, Forum 3
Braamfontein
2017

Private Bag X 2700
Houghton
2041

Tel.: 011 877 3750
Fax: 011 403 0668



12 October 2015

Ref: PAIA/GP/1516/0395

Legal Aid South Africa

Mr Thembile Mtati

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

CC: sollys@legal-aid.co.za

Dear Sirs

RE: COMPLAINTS LODGED WITH THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The complaints lodged with the South African Human Rights Commission (the Commission) against Legal Aid South Africa (LASA) in August 2015, refers.

The Commission has received the following complaint from Advocate Anthony Brink (the Complainant) against LASA:

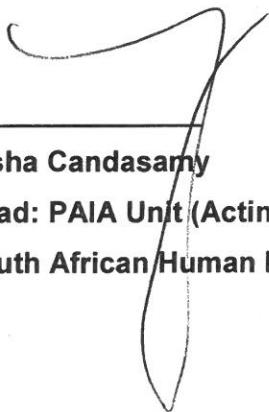
1. The Complainant lodged PAIA requests with LASA. In response, LASA requested payment of certain fees in terms of Section 22 of PAIA;
2. Pursuant thereto, the Complainant requested the intervention of the Chief Executive Officer, of LASA, Ms Vedalankar, in terms of Section 17 of PAIA. On 26 May 2015, Ms Vedalankar, through Mr Thembile Mtati, confirmed the refusal of the Complainant's PAIA requests and again requested payment of certain fees in terms of PAIA. As LASA is a type B public body for the purposes of PAIA, no internal appeal process is available to the Complainant should he be dissatisfied with this decision;
3. In the circumstances, kindly confirm whether LASA would be amenable to participating in an alternative dispute resolution (ADR) process facilitated by the Commission in an attempt to amicably resolve this complaint.

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

The Commission looks forward to receiving your response within 7 (seven) days from date of receipt hereof.

Yours faithfully,



Kisha Candasamy

Head: PAIA Unit (Acting)

South African Human Rights Commission