

1 Boast Street
Eshowe
KwaZulu-Natal
29 December 2015

Kisha Candasamy
Director: PAIA Unit
South African Human Rights Commission
Braampark Forum 3
33 Hoofd Street Braamfontein
Johannesburg
Per email: kcandasamy@sahrc.org.za

Cc: SAHRC deputy chairperson and PAIA commissioner Dr Pregaluxmi Govender
Per email: pgovender@sahrc.org.za

Dear Ms Candasamy

MY COMPLAINT RE LASA'S REFUSAL TO COMPLY WITH PAIA

1. Thank you for your complete and perfect response on the 17 December to my PAIA request in November. Arising from the information you provided me, I have some comments for the record, and some important questions.
2. The 'background' LASA gave you – the windy prelude to its claim to be 'amenable to' your proposal of ADR – provided, it said, that (i) you mediate the matter at your head office, and (ii) ensure 'caution' be 'taken as the issues' that I 'complain of forms part of the legal proceedings before courts' [sic] – is all characteristic obfuscation.
3. LASA's foolish chant, repeated again and again in different documents, that the issues I raise (i.e. LASA's illegal, unconstitutional non-compliance with PAIA) or the documents I request (access to which PAIA plainly entitles me) 'forms part of the legal proceedings before courts', is not only syntactically incoherent and legally illiterate, it's also false and irrelevant.
4. As you're aware (being our country's most senior official PAIA expert), the fact that most of the documents I've requested are in some manner related to my sunk (but only for now) labour claim (defeated by perjury, then perverted in the Labour Appeal Court; see below) is no justification under any provision of the Act for denying me access to them.

5. And LASA knows this full well, because when in November the Department of Justice and Correctional Services' deputy information officer asked LASA information officer Vedalankar to respond to my request for access to LASA's annual budget applications to the Department (voted by the National Assembly) for funding for Senior Litigator salaries for the past five years, Vedalankar duly complied with it. She did so appreciating that the records are directly related to my ongoing claim to my appointment to the Pietermaritzburg Senior Litigator post for which I was duly selected and recommended in 2009. (As I'd anticipated, the budget applications disclose repeated contraventions by her as LASA's chief accounting officer of the Public Finance Management Act.) She didn't again raise section 7 (i.e. my requests were related to my labour claim) or section 45 (i.e. my requests were an obvious waste of her time) against me to justify suppressing these documents, as she'd repeatedly done to obstruct my earlier PAIA requests. Which says everything about her, Nair's and the other deputy information officers' bona fides in previously raising these spurious justifications to block my access to requested records.
6. And when after reading my fundamental right violation complaint, you wrote to LASA on 12 October to propose ADR – instead of just telling it under section 83 that its refusals of my PAIA requests and its money demands were illegal, and to quit prevaricating and start respecting my fundamental right to information – most of my claims to access to the requested documents were not 'before courts'. Running out of time to compel his compliance (because the Commission hadn't collected my couriered original complaint from the Post Office in June, and I'd had to hand-deliver copies at the end of July), I'd only sued DIO Nair at that point (at your recommendation, you'll remember).
7. Since you've recorded (email to LASA, 29 October) that the 'background' LASA gave you influenced your decision (later very properly reversed) not to duly determine my fundamental right violation complaint under the Commission's Complaints Handling Procedures, I wish to respond to this so-called 'background' for the record. I'm referring to the 'BACKGROUND' in LASA's letter to you of 23 October:
8. Ad paragraph 3: Yes, and LASA gave many different, radically contradictory reasons for this. Where these false and contradictory stories were told under oath (perjury) or advanced to the Portfolio Committee to mislead it (a statutory crime), I intend seeing their authors criminally and otherwise prosecuted.
9. Ad paragraph 4: As you know, the fact that a request for access to a document (or sworn certification that it doesn't exist) is in some manner 'ancillary' to some past, current or

future litigation is not a justification contemplated and permitted by the Act for refusing it. So this high-sounding, ignorant babble is irrelevant.

10. Ad 5–7: Correct, but it's perfectly immaterial to my complaint. How the judge botched the case, and all his most basic legal and factual misdirections are detailed in my extensive application for leave to appeal (which he dismissed in a single sentence); how my petition for leave to appeal was perverted by way of a 'memorandum' filed with the Judge President, that I was never meant to see: denigrating me, lying about what the case was about, lying about what the issues were and what was common cause, and lying about what my petition contained – all this you can read, if interested, at www.tig.org.za/LC. The perversion of my petition will be going to the Judicial Service Commission (improper influence of the JP; and failure by the JP to resist it) as well as to the Director of Public Prosecutions for the prosecution of a charge of defeating the ends of justice, once the lying author of the memorandum has been identified. The entire case is headed for the Constitutional Court.
11. Ad 7. It would be tedious unpicking all the falsehoods in this paragraph. To read it is to understand that LASA complied with my PAIA requests. It didn't; it illegally refused nearly all of them. It's elementary that a request for access to a record can't be 'refused based on the provisions of section 7', because section 7 is not included in Part 2, Chapter 4, sections 34 to 45 of the Act: 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS'. I've pointed this out to LASA over and over again, yet it goes on raising section 7 against me like a stuck gramophone, like a child once dropped on its head and now suffering learning difficulties.
12. Ad 8. That's right, and you agree.
13. Ad 9 and 10. Correct.
14. Ad 11. The fees demanded were not in terms of section 22. They were for time spent on reading and on being briefed, which section 22 doesn't contemplate and allow. Furthermore, search fees may only be charged for records allowed, but none had been allowed at the time of the demand; and when I complained to information officer Vedalankar about this, all requested records in question were then refused outright. Still she cluelessly persists in unlawfully demanding this money.
15. Ad 12. I didn't 'construe' anything. The records in respect of which fees were demanded were all expressly refused. But you see how the lying legalese gushes from LASA's useless and dishonest head office lawyers. They say whatever they think sounds good.

16. Ad 13. Yes.
17. Ad 14. Yes, and in the event I did.
18. Ad 15. Indeed I brought an urgent application to interdict the taxing master from taxing LASA's bill in my labour case pending the determination of my complaint to the JSC that my petition had been perverted (the written evidence of which was inadvertently, but very fortuitously for me, left in the petition file, and which the registrar's clerk photocopied for my accountant who found it there). The merits of my interdict application were not considered: the judge didn't see the urgency and tossed it for that reason alone.
19. In your letter to LASA of 12 October offering ADR, you rightly point out that there's no appeal procedure available at LASA against a refused PAIA request. But LASA's PAIA manual falsely and misleadingly claims there is; and in opposing my several applications to court LASA has repeatedly falsely claimed that I'm barred from relief because I failed to first appeal before suing.
20. I'm not the only records requester affected by LASA's misleading misinformation about this. Its section 32 report for 2013/14 shows that on 12 September 2013 Chief Legal Executive Patrick Hundermark rejected an appeal (after a disgraceful three-and-a-half month delay) against the refusal of a PAIA request lodged by one Leston Simpson. Yet Hundermark has no such appellate authority. These people are completely out of control. What's the Commission going to do about it?
21. Since you've very correctly reversed your refusal to resolve my fundamental right violation complaint (all you need do now is (i) record your finding that LASA's refusals of my PAIA requests and money demands are illegal, (ii) point this out to LASA, and (iii) record its responses to your advice), it's unnecessary to address, unpick and refute your now abandoned, insupportable reasons for not dealing with it advanced to LASA (on 29 October) and then, when it naturally eagerly agreed with you (on 5 November), to me (on 11 November).
22. LASA's section 32 report for 2013/14 that you've provided me doesn't even touch sides with the detailed reporting requirements prescribed by the section. How's it possible that the Commission missed this? How did the Commission's expert PAIA Unit miss the fact that LASA's excuse, given three times in the report, for not granting me access to the records I requested – 'they relate to issues before court under case D529_2011' – is not contemplated by PAIA and is thus irrelevant and unlawful; and that LASA's refusals of my PAIA requests on this ground violated my fundamental right to information? Why wasn't LASA's repeated

non-compliance with my PAIA requests, covered by this legally ignorant and stupid reason, not flagged and reported to the National Assembly in the Commission's section 84 report for the year?

23. What's the Commission going to do about LASA's failure for the fourth time to comply with its reporting obligations imposed by section 32? And about the lie in the report that some documents couldn't be found by (the late) DIO Msweli, when in truth and in fact my request for access was totally refused, which is to say they weren't even looked for?

24. I ask, because when on 21 September 2015 I pertinently raised with your new CEO the extraordinarily serious problem of LASA's repeated non-compliance with section 32, she replied in a lengthy letter on 12 October, in which she talked about everything except the extraordinarily serious problem I'd written to her about: LASA's repeated non-compliance with section 32, previously noted with concern by the Justice Portfolio Committee in October 2012. (I annex copies of my letter and her reply for easy reference.) Evidently the extraordinary seriousness of the problem I was raising with her – the way in which LASA is evading Parliamentary oversight and accountability for its persistent illegal refusals to comply with requests for access to its records under PAIA – went right over her (or her ghost-writer's) head.

25. So I repeat my question: What's the Commission going to do about LASA's habitual false section 32 reporting to the Commission for the misinformation of the National Assembly in turn – with the result that, relying on LASA's false reports, the Commission has misled the National Assembly year after year into mistakenly believing that LASA has openly, transparently and accountably complied with its constitutional information transparency obligations to allow record requesters sight of public records they've requested under PAIA, whereas in truth and in fact, again and again since 2010, LASA has persistently illegally and unconstitutionally suppressed documentary evidence, duly requested under PAIA, of pervasive corruption and criminality in its top ranks. And has concealed this by falsely reporting to the Commission under section 32 for four years. With perfect impunity to date.

Yours sincerely



ADV ANTHONY BRINK
arbrink@iafrica.com
083 779 41 74

1 Boast Street
Eshowe
21 September 2015

For personal attention:

Lindiwe Khumalo,
CEO: South African Human Rights Commission
Braampark Forum 3
33 Hoofd Street
Braamfontein

Dear Ms Khumalo

FALSE PAIA SECTION 32 REPORT FOR 2014/15
BY LEGAL AID SOUTH AFRICA

Our National Assembly's particular concern that organs of state should comply with their constitutional information transparency obligations in the democratic era is reflected in the finely specified, detailed reporting obligations imposed on them by section 32 of the Promotion of Access to Information Act 2 of 2000 ('PAIA'), and on the Commission by section 84.

Properly complied with, sections 32 and 84 enable the National Assembly to readily identify delinquent public bodies and take whatever remedial measures necessary to ensure that in future they respect and comply with record requesters' fundamental right to information guaranteed by section 32 of the Constitution, and not continue to violate it, with a view to covering up such gravely serious malfeasance as corruption, maladministration, abuse of power, lying to a court under oath (the crime of perjury), lying to a Portfolio Committee (the crime of contravening section 17(2)(e) of Act 4 of 2004), illegal contraventions of sections 50, 51, 55 and 57 of the Public Finance Management Act 1 of 1999, and such like, knowing that, exposed by records requested under PAIA, big heads will surely roll when it all comes out.

When sections 32 and 84 are improperly complied with, the National Assembly's object in enacting them is defeated; it gets misinformed and misled by the false reports made under these sections by the corrupt public body in question and by the Commission in turn; and the delinquent public body that has falsely reported to the Commission thereby successfully evades being held to account by the National Assembly for its violation of record requesters' fundamental right to information, and evades being taxed about it when presenting its annual report.

And by thus succeeding in illegally suppressing the documentary evidence duly requested, the delinquent public body succeeds in covering up its corruption, maladministration, abuse of power, lying to a court under oath (the crime of perjury), lying to a Portfolio Committee (the crime of contravening section 17(2)(e) of Act 4 of 2004), illegal contraventions of sections 50, 51, 55 and 57 of the Public Finance Management Act 1 of 1999, and so forth, thus keeping the corrupt big heads safe in their big jobs.

It follows that truthful section 32 reporting by public bodies to the Commission is critically important, and that 'malicious reporting' (as the Commission describes it) is a prime evil and the root of many others, allowing them to fester unchecked and stultifying the National Assembly's oversight function to ensure healthy, honest, lawful public administration.

In its section 84 report for 2011/12, presented to the Portfolio Committee in October 2012, the Commission reported Legal Aid South Africa to the National Assembly for repeatedly falsely reporting to the Commission under section 32 about its handling of my first three PAIA requests made to it in 2010 and 2011 (nearly all illegally refused), resulting in both the chairperson of the Justice Portfolio Committee and a senior member (now Deputy Minister) taxing LASA's CEO Vidhu Vedalankar about this when she presented LASA's annual report in the same month. (She responded by falsely disparaging the Commission's report as 'untrue' and elaborated this with false information.)

In its section 84 report, the Commission undertook to the National Assembly that LASA would shortly be 'fully audited' for PAIA compliance. (The Commission didn't keep its undertaking: instead of performing this promised full audit, it merely issued LASA with a shallow, standard-form PAIA compliance questionnaire to answer, which predictably revealed nothing; and by its silence in its next section 84 report, the Commission gave LASA a clean bill, thus misleading the National Assembly.)

On 6 November 2012, in the month following the presentation of its 2011/12 section 84 report, the Commission gave LASA's head office lawyers a special lesson at a PAIA training workshop on the importance of complying with PAIA and of truthful section 32 reporting about it.

It made no difference.

LASA continued illegally refusing to comply with my PAIA requests made in November 2013, November 2014 and May 2015.

And it has continued falsely reporting to the Commission about this under section 32, so as to conceal its illegal refusals of my PAIA requests from the Commission and from the National Assembly in turn.

I filed a complaint about LASA's false section 32 report for 2014/15 to the Public Protector, and copied your PAIA Unit director Ms Candasamy in. Copies of my complaint and my letter to her covering a copy are enclosed for easy reference.

My complaint to the Public Protector specifies precisely in what multiple respects LASA's section 32 report for 2014/15 report is false. And since I furnished the Commission with a copy, it's fully aware that LASA's section 32 report for 2014/15 report is false.

Not having received any acknowledgment of my request that the Commission log my complaint to the Public Protector for reporting to the National Assembly in the Commission's section 84 report for the year, you'll understand that I'm concerned that LASA's false section 32 report will be uncritically echoed by the Commission in its section 84 report to be presented next month, and go unremarked by it, as has happened in the past, and that my complaint to the Public Protector will not be reported by the Commission as required by section 84(x) of the Act, as has also happened in the past, with the result that LASA will succeed via the Commission in deceiving, misleading and defrauding the National Assembly for the fourth time.*

In the situation, I write to request your assurance within ten days of delivery of this letter that (i) LASA's illegal failures/refusal to comply with my four PAIA requests in November 2014 (the subject of my complaint to the Commission, recently referred back to your PAIA Unit by the Gauteng office after several wasted weeks, following my special trip across the country in July to deliver it to your offices in Braamfontein by hand), and (ii) its false reporting about it to the Commission for 2014/15 will be reported to the National Assembly.

Failing which, I propose raising the Commission's dereliction of its reporting obligations directly with the Portfolio Committee.

I hope and trust that in view of the new blood and new energy in the Commission's CEO and PAIA Unit director's posts this won't be necessary.

Yours sincerely

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

ANTHONY BRINK

*Although I haven't been given a copy yet, I already know that LASA's previous section 32 report for 2013/14 is also false, because its PAIA compliance report in its annual report online is false and is almost certainly copied and pasted from its section 32 report to the Commission.

For some unknown reason, the Commission is strangely reluctant to show me LASA's section 32 report for 2013/14, which I've been trying to access since my first request for it by letter in October 2014, which was ignored, followed by a formal PAIA request for it in November 2014, which was improperly responded to by supplying me with the wrong report for the wrong year, followed by my repeated further requests for the correct record, even addressed to your predecessor, which was ignored, and then to your chairman, also ignored.

Not even my complaint to the Public Protector, copied to Ms Candasamy, about the Commission's own failure to comply with PAIA has disgorged this important record from it; and I'm consequently preparing to sue the Commission for it, including among the orders sought a request for condonation for doing so outside my prescribed 180 days. I enclose for easy reference copies of my complaint to the Public Protector and my covering letter to Ms Candasamy.

Can we really not sort this out by just handing over the record I duly asked for? And providing me with a truthful section 23 affidavit?

In which event I'll abandon my plans to sue and withdraw my complaint to the Public Protector, so the Commission doesn't have to report itself in its section 84 report for 2015/16 as a PAIA delinquent like LASA.

1 Boast Street
Eshowe
7 October 2015

For personal attention:

Lindiwe Khumalo, CEO: South African Human Rights Commission
Braampark Forum 3
33 Hoofd Street
Braamfontein

Per email: jhollenbach@sahrc.org.za

Dear Ms Khumalo

FALSE PAIA SECTION 32 REPORT FOR 2014/15
BY LEGAL AID SOUTH AFRICA

I wrote to you on 21 September 2015 in the above important connection, but I see from the post office's registered post tracking facility this morning that weeks later my letter is still marooned at the Durban post office hub.

Herewith a copy of my letter to you, and a scan of the registered post voucher.

Please let me know what you are going to do about this.

As Public Protector Adv Thuli Madonsela very correctly observed on 28 September:

It is about impunity ... if you do wrong things and there are no consequences, the entire system becomes poisoned.

It's really very serious.

Yours sincerely

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

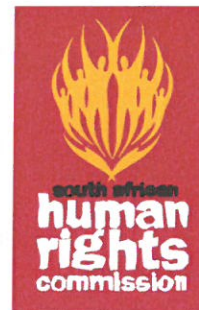
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SOUTH AFRICAN HUMAN RIGHTS COMMISSION

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12 October 2015

Ref: PAIA/ABRINK

Adv Brink
1 Boast Road
Eshowe
3815

Per email: abrink@iafrica.com

Dear Advocate Brink

RE: COMPLAINTS LODGED WITH THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Your complaints lodged with the South African Human Rights Commission (the Commission) against Legal Aid South Africa (LASA) since 2010 as well as your requests for records submitted to the Commission in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA), refers.

Complaints lodged with the Commission against LASA

Since 2010, you have submitted various requests for access to records allegedly held by LASA in terms of PAIA. Based on your dissatisfaction with the manner in which LASA has responded to those requests, you lodged a number of complaints with the Commission. As per its previous advices to you over the years, the Commission engaged with LASA on your behalf. Some of the requested records were provided to you. In respect of those records which were alleged not to exist, an affidavit was deposed to in terms of PAIA.

In a further attempt to access records from LASA, you instituted legal proceedings in the Magistrates Court for the district of Eshowe. In this regard, you submitted further correspondence to the Commission in 2015 pertaining to LASA's alleged failure to comply with a court order relating to the provision of certain information.

Transforming society. Securing rights. Restoring dignity.

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

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. As the matter is now before the courts, the relevant rules and procedures of court are applicable and must be applied in instances where contempt of court is being alleged.

In addition, Section 4(1)(c) of the Commission's Complaints Handling procedures states the following:

"4 (2) The Commission may reject any complaint, which ... is the subject of a dispute before a court of law, tribunal, any statutory body ... or in which there is a judgment on the issues in the complaint or finding of such court of law, tribunal, statutory body or other body..."

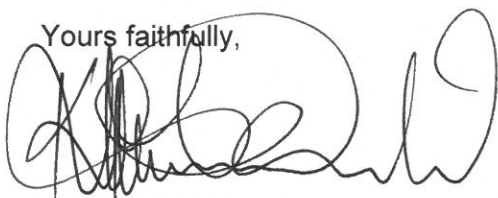
The Commission is of the view that it has in terms of Section 83(3)(c) of PAIA, provided you with assistance, as reasonably possible. The Commission therefore recommends that you secure independent legal advice / representation should you deem further assistance necessary.

In the circumstances, the Commission will now attend to closing those complaints against LASA which are currently before the courts for adjudication.

Request for records submitted to the Commission in terms of PAIA

Regarding the affidavit deposed to by the former DIO of the Commission with which you have indicated your dissatisfaction, the Commission again confirms it has taken reasonable steps to locate such records and that the requested records are not in its possession. Further affidavits setting out additional details of the steps taken are attached hereto. Please be advised that if you remain dissatisfied with the content of these affidavits, you are at liberty to approach a court for further recourse, as provided for in Section 78 of PAIA.

Yours faithfully,



Lindiwe Khumalo
Chief Executive Officer
South African Human Rights Commission

(Acting)

20/10/15