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KwaZulu-Natal
12 November 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 by post to: Dawood Coovadia CA (SA), Chairperson: Audit Committee
And to: Chairperson Lawrence Mushwana, and CEO Lindiwe Khumalo

Dear Ms Candasamy

YOUR UNLAWFUL DERELICTION OF YOUR OBLIGATION TO DECIDE
MY FUNDAMENTAL RIGHTS VIOLATION COMPLAINT

Page 68 of the Commission's annual report for 2014/14 tells us:

The audit committee's review of the findings of the internal audit work ... revealed certain weaknesses ...

The following were areas of concern:

- a) Non-compliance with complaints handling procedures ...
- d) Lack of policies and procedures with the ... PAIA unit ...
- e) Non-compliance with certain requirements of the PAIA legislation.

Exactly, just as I have found.

When on 31 July 2015 I hand-delivered two copies of my fundamental rights violation complaint to you as PAIA Unit director and to the Commission's Gauteng Office, having driven across the country to do so after discovering that the original I'd couriered on 19 June hadn't been delivered, I expected you to duly handle and determine my complaint in accordance with the Commission's Complaints Handling Procedures.

Instead you decided to go for so-called alternative dispute resolution, a soft alternative to resolving my complaint in the ordinary course by assessing and deciding it – with the terrible implications for LASA of your finding that it, as an organ of state, had violated my fundamental right to information.

I didn't ask you to deviate from the Complaint's Handling Procedures code in this manner, but I didn't object at the time because as I said in my progress enquiry of 7 October:

Practically all you need do is read my complaint; satisfy yourself that LASA is indeed legally out of line and is violating my fundamental right to information (it will be instantly obvious to you); and pick up the phone to LASA CEO and information officer Vedalankar and tell her to quit prevaricating and hand over the documents I've duly requested or certify those that don't exist. And report her response to me in a line or two.

This is because my first prize has always been to get access to the documents illegally denied me by LASA and a PAIA section 23 affidavit in respect of non-existent documents.

You claimed the next day in your email on the 8th to have 'reviewed [my] complaint'.

Upon doing so, you were evidently satisfied that my complaint was well founded and that LASA's refusal to comply with my PAIA requests and its money demands were illegal and a violation of my fundamental right to information, as I pointed out, and as was immediately clear to you, because you informed me four days later on the 12th that you'd approached LASA with an offer to mediate.

Now you tell me a month later in your email on 9 November, repeated in your letter yesterday, that after talking to LASA, you've changed your mind, will not be proceeding with your mediation in this unsolicited manner of yours, and are closing your file – in doing so, leaving my fundamental right violation complaint unresolved. Your various reasons given in your email and letter are manifestly spurious, and are taken to pieces in the notes under my new PAIA request addressed to your CEO and information officer, a copy of which I annex.

If now you don't want to engage with LASA in your so-called 'alternative dispute resolution process', having changed your mind after keeping me waiting for several wasted weeks – fine, don't.

I didn't ask for this in the first place. It was going to be futile anyway: LASA's national management executives will never willingly surrender the documents I've requested under

PAIA, because as I've said before, it's like asking a man to hand over the rope for his own hanging.

The documents I've requested, or sworn certification under PAIA section 23 that they don't exist in some cases, will categorically prove perjury and other gravely unlawful misconduct by top officers in LASA's national office. (The trickle of documents that LASA released in 2013 (the rest of my requests illegally refused) proved two separate instances of perjury committed in court by LASA National Operations Executive and deputy information officer Brian Nair. Given the chance, he didn't even dispute this.)

Now that you've concluded that ADR isn't the way to go (and this ought to have been perfectly obvious to you from the start, had you grasped the enormity of the case headed for the Constitutional Court, the police etc), the Commission's Complaint's Handling Procedures code requires you to determine my complaint in the prescribed manner and rule whether LASA has violated my fundamental right to information or not.

It's like this. In criminal cases daily before me as a magistrate, the Justice Department's new policy in the African spirit is for prosecutors to facilitate out of court settlements between the complainant and the accused wherever possible and desirable. If this fails for whatever reason, the prosecution must take its ordinary course.

You've called off your ADR plans. So the simple question now for you to decide is this:

Did LASA violate my fundamental right to information guaranteed by section 32 of the Constitution by refusing my requests under PAIA for access to its records that I specified?

That's all, and we all know you've already decided that it did.

Only, having decided to take LASA's side in the matter, having been beguiled and distracted by the entirely irrelevant 'brief background' that these phenomenally dishonest people with everything to lose told you, you're now coy about saying so.

The Commission's current annual report rosily declaims on page 10:

The Commission promotes compliance with PAIA ... Key prescripts of the PAIA are the development of transparency frameworks and increasing institutional responsiveness to information requests, with a view to promoting access to information.

In reality, your conduct in my matter makes a mockery of this; and it richly illustrates and exemplifies the audit committee's findings, and my own experience at your hands, that there are a notable 'Lack of policies and procedures with the ... PAIA unit', 'Non-compliance with

complaints handling procedures’, and ‘Non-compliance with certain requirements of the PAIA legislation’ – reported to the Minister and to the National Assembly in the Commission’s said annual report.

I filed a serious fundamental rights violation complaint in due form and I’m entitled to have it decided.

In truth and in fact, notwithstanding your new pussy-footing, you’ve already decided my complaint. You know and I know and even a first-year law student knows that LASA’s refusal of my PAIA requests and its money demands are illegal on their face and violate my fundamental right to information. Your job requires you to stop beating about the bush, stop helping LASA get away with its violation of my fundamental right to information year after year, and just say it.

And if you won’t do your well paid and exceptionally responsible job, and won’t decide my extremely serious fundamental rights violation complaint, please don’t make the mistake of thinking that this matter will end for you with your ‘closure of [my] file’. I’ll be escalating the matter to the Portfolio Committee for Justice and Correctional Services. Your chairperson can then expect to be asked to please explain. And you to him.

Your November email and letter cited section 83(c) as being the section your decision to drop ADR ‘is per’. The section allows the Commission to assist me exercise my fundamental right to information ‘if reasonably possible’. You don’t say why it isn’t. Like I said, it would have been as simple as picking up the phone to LASA’s CEO and information officer. But LASA succeeded in frightening you off with the ‘need for caution’ it urged you heed, which is to say, its advice to back away, and not assist me as the Act allows and as you originally intended. So be it. Just decide my complaint then. And please, no more new stories.

I look forward to your immediate response.

Yours sincerely

A handwritten signature in black ink, appearing to be 'ADV ANTHONY BRINK', written in a cursive, somewhat scribbled style.

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