



Advocate Anthony Brink
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Dear Advocate Brink

REQUEST FOR AN INVESTIGATION INTO ALLEGATIONS OF BREACHES OF THE PUBLIC FINANCE MANAGEMENT ACT BY LEGAL AID SOUTH AFRICA

Your letter dated 25 February 2020 requesting the Auditor-General of South Africa (AGSA) to conduct an investigation into allegations of breaches of the Public Finance Management Act of 1999 (PFMA) by Legal Aid South Africa (LASA), additional correspondence dated 2 June, 15 June and 29 June 2020 and your request for information in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA) application to the AGSA dated 22 July 2020 and 25 November 2020 have reference.

In terms of the Public Audit Act, 25 of 2004 (PAA), the AGSA has a constitutional mandate to audit and publicly report on the accounts, financial statements and the financial management of all government departments, all municipalities and municipal entities and selected public entities. In terms of section 5(1) of the PAA, the AGSA has a discretion to perform other, audit-related services, which are secondary to the core function (regularity audit). Among other audit-related services, is the discretion to perform appropriate investigations or special audits, as stipulated in section 5(1) of the PAA.

The regularity audit is vastly different from a forensic investigation. The primary objective of a regularity audit is to provide reasonable (not absolute) assurance that the financial statements do not contain material misstatements. A regularity audit also provides limited assurance that an auditee complied with key legislation. Therefore, the evidence gathered for a regularity audit is persuasive in nature and is not gathered with the intention of determining the impact of a finding. The statutory timelines applicable to regularity audit and the inherent limitation of the audit process prevent us from reaching these in-depth conclusions.

An investigation, however, implies an organised, detailed and critical examination of the books of accounts and transaction records (both past and present) of an entity, conducted by a team of experts to determine the facts behind a particular situation or to uncover the truth. An investigation, therefore, requires the gathering of factual evidence that is sufficient to conclude who is responsible, whether losses had been suffered, and if fraud or theft might

have been committed. Investigations are not time bound, which allows for conclusive evidence to be obtained to either confirm or refute the allegations investigated.

With this in mind, I have assessed your request for investigation and wish to inform you of the following:

- a) The AGSA performed procedures during the 2019-20 PFMA audit cycle to ascertain whether the budgets set aside for personnel costs in the 2019-20 financial year were in fact spent on personnel costs. No findings were identified from these procedures.
- b) Labour disputes are not within the mandate of the AGSA. We note that you have raised the matter via the labour courts previously and we will not be considering this aspect.
- c) The alleged criminal conduct by the executives and board members of the Legal Aid South Africa does not fall within the mandate of the AGSA. The South African Police Service (SAPS) is best suited to deal with matters of this nature. You are advised to pursue the matter via the SAPS, should you so wish.
- d) Your PAIA application to the AGSA, received on 22 July 2020, was assessed and responded to separately on in a letter dated 17 September 2020.
- e) Your PAIA application to the AGSA, received on 25 November 2020, was assessed and responded to separately in a letter dated 11 February 2021.

In view of the above, I have decided not to conduct a separate investigation.

Thank you for reporting the potential irregularities to the AGSA.

Yours sincerely

 24/3/2021

Tsakani Maluleke
Auditor-General

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