

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

Judicial Service Commission

188 14th Road, Noordwyk, Midrand, Gauteng

By email, under section 18(1):

To Secretary Lynette Bios

And to Deputy Information Officer Sello Chiloane

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.*

Full names and surname : Anthony Robin Brink

Identity number : 5902255116081

Postal address : 36 Pearson Street, Eshowe 3815, KwaZulu-Natal

Fax number : N/A

Telephone number : 083 779 4174

E-mail address : anthonybrink.sa@gmail.com

C. Particulars of person on whose behalf request is made:

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.

NOTE: Contextual notes to Parts One and Two of this section are annexed hereto.

PART ONE

1. The record of the decision to dispose of the requester's (Brink's) (a) eight gross misconduct complaints to the Commission against Mlambo JP (ref: JSC 533/17), and (b), Brink's further gross misconduct complaints, arising from Mlambo JP's response to them, made in his invited comments on his response, merely under section 17 of the Judicial Service Commission Act 9 of 1944 governing 'serious, non-impeachable complaints'.
2. In addition to item 1 above, the rest of the documents in case file JSC 533/17 kept by the Commission in Brink's complaints against Mlambo JP, i.e. the complete contents of the file, including any and all annotations on its cover – but excluding Brink's complaints; Mlambo JP's response to them; and Brink's invited comments on his response, all of which latter documents Brink already has in his possession.
3. All email records archived on the Commission's email server from 1 June 2017 to the date on which this records request is complied with, responsive to a search on 'Brink' and/or 'Mlambo' and/or '533/17'.
4. The Commission's annual reports to Parliament for 2017 and 2018 made under section 6 of the said Act.
5. The Judicial Conduct Committee's six-monthly reports to the Commission in 2017 and 2018 made under section 10(2) of the said Act.

PART TWO

6. The terms of reference of the Tribunal appointed under section 16 of the said Act to investigate and report on the complaints to the Commission made against Hlophe JP.
7. Mlambo JP's nomination of attorney Noxolo Maduba for appointment to the said tribunal in 2012/2013. (*Note: Only the part of the record reflecting the identity of Mlambo JP as the person who nominated Maduba for appointment is required; the text of his commendation of her in the nomination, i.e. its contents, hit by section 12 of PAIA, may be redacted.*)
8. Maduba's letter of appointment to the said Tribunal in or about February 2013.
9. Hlophe JP's (and/or other) subsequent objection(s) to her appointment.
10. Maduba's response, if any, to the objection(s).
11. Maduba's letter of resignation from the Tribunal.

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.*

On advice under section 22(1) of the amount of the request fee to be paid and of the Commission's bank account details, the fee will be paid by EFT.

F. Form of access to record

Mark the appropriate box with an "X".
(a) Your indication as to the required form of access depends on the form in which the record is available.
(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.
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form -

X	copies of records		inspection of record
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2. If record consists of visual images - N/A			
3. If record consists of recorded words or information which can be reproduced in sound - N/A			
4. If record is held on computer or in an electronic 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"/>	X copies in computer readable form – to be emailed as file attachments.

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 6 March 2019



SIGNATURE OF REQUESTER

CONTEXTUAL NOTES

The law is a web for small flies, the big ones burst through.

Anacharsis (6th Century BC) quoted by Plutarch (c. 46–120 AD)
Jonathan Swift (1667–1745) and Honoré Balzac (1799-1850)
made the same observation.

AD PART ONE

Over the period June–July 2017, the requester ('Brink') lodged eight gross misconduct complaints with the Commission against Legal Aid SA ('LASA') Board chairperson Dunstan Mlambo JP, head of the Gauteng Division of the High Court,¹ and, as requested, resubmitted them in November 2017 in a single indexed and paginated bundle.² All complaints complied with section 14 of the Judicial Service Commission Act 9 of 1944 ('the Act').

Brink's exceptionally serious complaints, all finely particularized and founded on supporting documents, indicted Mlambo JP's:

- subornation of perjury committed on his instructions in an answering affidavit deposed to on his behalf by his de facto attorney, LASA Legal Executive Thembile Mtati, opposing Brink's application under section 25 of the Supreme Court Act 59 of 1959 for leave to subpoena him for cross-examination on his capital misconduct (outlined below), which perjury comprised an elaborate, malicious fabrication contrived to defame Brink and devastate his credibility in court, and thereby pervert the judicial

¹ Further complaints will follow upon LASA's surrender under court order of records it has illegally refused, for which Brink has sued under section 78 of PAIA. His applications to compel access, both in the Eshowe Magistrate's Court and the High Court at Pietermaritzburg, are pending. His three High Court applications have been set down for argument in ten days time, on 15 March 2019. An application to compel full and proper compliance with LASA's settlement agreement concluded in February 2016, on capitulating to five PAIA applications brought there, will be set down after disposal of the High Court cases.

² The bundle is accessible in this Dropbox folder online:

decision of the application – i.e. perjurious defamation to defeat the ends of justice;³

- repeated and persistent collusion in and connivance at LASA CEO and information officer Vidhu Vedalankar’s clearly illegal and unconstitutional repeated blanket refusals to comply with requests for information Brink duly made under section 18 of the Promotion of Access to Information Act 2 of 2000 (‘PAIA’) in 2010, with the corrupt object of perpetuating a mendacious cover-up of recruitment corruption in which he, Mlambo JP, was centrally involved (see below), by suppressing documentary evidence exposing it (disgorged many years later, after protracted illegal obstruction, by suing for it under section 78 of PAIA);
- lying and false reporting to the Justice Minister and to the Justice Portfolio Committee of the National Assembly on multiple scores – in the latter case crimes under sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 – in a secret (‘confidential’) false report he made ‘Re: Adv Anthony Brink’ to pervert enquiries they had separately and independently instituted at Brink’s instance – in the latter case to corruptly defeat the National Assembly’s constitutional oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution – namely enquiries into:
 - § Vedalankar’s clearly false budgetary insufficiency excuse (contradicted and refuted by LASA’s own financial records, finally disgorged with PAIA many years later, after first being refused), concocted on 18 October 2010 in response to a searching PAIA request by Brink in August 2010 (repeatedly refused) probing the silent, unrecorded, unauthorised, illegal abortion of Brink’s recruitment to LASA’s top legal professional post in KwaZulu-Natal, namely its still vacant, still

³ Mentioned below, Mlambo JP resorted to exactly the same kind of false and malicious defamation of Brink to discredit his misconduct complaints against him to the Commission.

budgeted, still funded Senior Litigator post at Pietermaritzburg,⁴ after his successful interview and recommendation for the post on 12 November 2009 by a selection panel of LASA's most senior lawyers in the region; at which interviews the panel disqualified and rejected Mlambo JP's judicial friend, Ngcamu AJ (as he used to be) – whom Mlambo JP had repeatedly over a period of about six years got appointed to act as a fellow judge on the Labour Court bench headed by him at the time, and who was then back at the side-bar⁵ – for the reasons that he had no right of appearance in the High Court and had zero litigation experience on his feet there;

§ repeated clearly illegal and unconstitutional blanket refusals to comply with Brink's PAIA requests in 2010 probing the propriety and legality of the abortion of his recruitment, under cover of the said false financial insufficiency excuse eventually fed him eleven months later under rising pressure to account, in which reports to the Minister and to the Portfolio Committee Mlambo JP falsely and mendaciously alleged full, timeous, and due compliance with Brink's PAIA requests, whereas in truth and in fact, as Mlambo JP knew full well from Brink's repeated petitions to him for his intervention in the exercise of his fiduciary duty to LASA to ensure statutory and constitutional compliance by its management executives, Brink's requests had been totally refused: both of them obviously illegally and unconstitutionally, and the first unlawfully out of time as well.

Which lying financial insufficiency excuse (contradicted and refuted by LASA's own records, later disgorged with PAIA) Mlambo JP mendaciously

⁴ In *Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018, the Constitutional Court observed that allowing a budgeted post to be 'left vacant' constitutes a 'breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.' That is, the abortion of Brink's recruitment was also illegal under the PFMA.

⁵ According to a media report, the Commission had rejected his application for a permanent appointment as a judge on account of his failure to disclose misconduct convictions by the Law Society.

repeated to the Minister and to the Portfolio Committee in his ‘confidential’ reports to falsely put down Brink’s true complaints to them and to successfully pervert their enquiries into the obviously irregular and unlawful abortion of Brink’s recruitment – also, to the same corrupt end, mendaciously advancing a novel false logistical/practical excuse (contradicted and refuted by LASA’s own records), invented to patch a hole in the original financial excuse that exposed it as obviously false.⁶

In short, Brink charged Mlambo JP with ‘gross misconduct, as envisaged in section 177(1)(a) of the Constitution’, per section 14(4)(a) of the Act, eminently warranting his suspension and removal from office under section 177(3) and section 177(1)(a) of the Constitution.

The fact that Mlambo JP was required to respond to Brink’s complaints shows that (a) they were found not to be ‘frivolous or lacking in substance’, per section 15(d), and peremptorily subject to summary dismissal under section 15(2), and that contrariwise they were found to make out serious prima facie answerable cases on all counts; and (b) that Mlambo JP’s misconduct complained of was found to ‘fall within the parameters of any of the grounds set out in section 14(4)’, per section 15(1), namely ‘gross misconduct, as envisaged in section 177(1)(a) of the Constitution’ (section 14(4)(a)); a ‘wilful ... breach of the Code of Judicial Conduct’ (section 14(4)(b)); or ‘other wilful ... conduct ... incompatible with or unbecoming the holding of judicial office’ (section 14(4)(e)).

⁶ A few months after Mlambo JP’s false and mendacious secret report to the Portfolio Committee in June 2011 had been thoroughly exposed and refuted in legal pleadings by Brink filed in July and October 2011, National Operations Executive Brain Nair abandoned the two absolutely false and mendacious financial and false logistical/practical excuses that Mlambo JP gave the Minister and the Portfolio Committee for Brink’s non-appointment, and replaced them in his ‘Report to Board’ in November 2011 with new, totally different, also absolutely false and mendacious excuses (contradicted and refuted by LASA’s own records) namely ‘recruitment challenges’ and the alleged professional incompetence of and non-delivery by LASA’s incumbent six Senior Litigators. In other words, the discredited and refuted lies that Mlambo JP told the Minister and the Portfolio Committee to pervert their enquiries were dropped and substituted with other lies. Indeed, after Brink exposed and refuted the lying false logistical/practical excuse advanced to the Minister and to the Portfolio Committee, it was expressly retracted on affidavit by Mtati, Nair confirming, as ‘an error’, ‘palpably an error’.

In his response to Brink's complaints addressed to the Chief Justice, Mlambo JP massively compounded his gross misconduct by falsely and maliciously defaming Brink as a racist,⁷ and by telling him several other objectively demonstrable lies.

On 11 February 2019, during a telephone call received from Commission secretary Lynette Bios about a different matter, Brink enquired about the status of his complaints against Mlambo JP, to which she responded that it had been decided to deal with them under section 17.

Section 17 governs the disposal of 'serious, non-impeachable complaints' only.

If the secretary's information to Brink that his eight capital complaints against Mlambo JP, profoundly aggravated by his dishonest response to them, are to be dealt with merely under section 17 was correct, it means that the judge who took this decision reckons Mlambo JP's extraordinarily grave misconduct, including his crimes, detailed and documented in Brink's complaints, and disclosed in his response to them, was not gross misconduct contemplated by section 14(4)(a) of the Act and section 177(1) of the Constitution.

It means – in ludicrous contradistinction – that whereas Motata J's conduct in driving drunk, crashing his car into a wall, racially abusing the owner of the wall, and then at trial calling him a racist and falsely denying his intoxication, was duly found by the Judicial Conduct Tribunal chaired by Jappie JP to be impeachable gross misconduct, Mlambo JP's subornation of perjury to falsely defame and discredit Brink so as to pervert an application for leave to subpoena him for cross-examination on his misconduct; his repeated collusion in and connivance at LASA information officer Vidhu Vedalankar's persistent illegal and unconstitutional blanket refusals to

⁷ In his invited comments on Mlambo JP's response, Brink mentioned that his late life-partner was African. His current lady partner is Indian.

comply with Brink's PAIA requests, so as to suppress evidence of recruitment corruption in which he was centrally involved; his lying and false reporting to pervert ministerial and parliamentary enquiries into this illegal, unethical, and unconstitutional conduct; and then his false and malicious smearing of Brink as a racist in his response to Brink's complaints, and his other many clearly false allegations made in his response to counter Brink's complaints, is merely 'serious' criminal and other egregious misconduct – but it is 'non-impeachable', per the heading of section 17, in the opinion of the judge who decided to proceed against Mlambo JP only under section 17; and that all this extreme misconduct charged and documented by Brink, and further disclosed in Mlambo JP's response, warrants no higher a sanction than an apology, reprimand, warning, compensation order, counselling, training, or other appropriate corrective measure, under section 17(8) – besides impeachment – to which range of puny penalties 'remedial action will be limited' under section 17(1)(a).

Even a child can see that the decision to sweep Mlambo JP's aggravated criminal and other capital misconduct under the carpet in this manner doesn't come close to meeting the rationality requirement for valid and lawful administrative action, and won't survive public exposure and judicial review.

Brink's reason for making this request under PAIA for access to the Commission's records specified in Part A – albeit that section 11(3) of PAIA holds his reason to be irrelevant to the Commission's information officer's decision whether to grant it or not – is to investigate the circumstances in which the obviously grossly irregular, indefensible, insupportable decision was made to deal only under section 17 with Brink's plainly impeachable capital misconduct complaints against Mlambo JP, profoundly aggravated by his response to them, with the transparent aim of ensuring that under section 17(8) he escapes justice with a slap on the wrist; and to establish the identity of his friend of his on the JSC who imagines that Brink's capital

charges are going to be quietly disposed of in this unlawful manner, and that his identity and his attempt to protect his friend like this aren't going to be very publicly ventilated and exposed to anti-corruption and Constitution watchdog NGOs and the national newspapers.

Having regard to the stunning double standards being applied, the decision to proceed against Mlambo JP under section 17 only, *yokuthi uvele udonswe ngendlebe*, will undoubtedly interest Hlophe JP facing impeachment by a Tribunal under section 16.

AD PART TWO

A former Free State Provincial Executive of LASA has alleged to Brink that Mlambo JP used his influence to secure the appointment in February 2013 of former LASA Bloemfontein Justice Centre Executive Noxolo Maduba to the Tribunal established to investigate and report on the complaints to the Commission made against Hlophe JP; and that after the latter objected to her appointment, she resigned it.

Whether this information is correct remains to be determined. Commission deputy information officer Sello Chiloane vaguely recalled it in a telephone call he made to Brink on 14 November 2016.

If it's true, the significance of Mlambo JP's agency in achieving Maduba's appointment, his special motivation for doing so, and why it was grossly inappropriate and unethical in the particular circumstances, is not relevant to state here, but will be detailed in an ethics complaint to the Commission upon delivery of the documents requested in Part Two and of another

document for which Brink has sued LASA in the High Court at Pietermaritzburg.⁸

Brink is not seeking access to any record contemplated in section 12(d) of PAIA, namely ‘a record referred to in paragraph (gg) of the definition of “administrative action” in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000),^[9] regarding the nomination, selection or appointment of ... any ... person by the Judicial Service Commission’. That is, Brink is not seeking access to any record revealing *the specifics of the nomination* nor the *reasons the Commission decided to select and appoint Maduba*, i.e. information bearing on the decision-making process, which is protected by section 12 – only confirmation of the fact that Mlambo JP nominated her, and some records generated subsequent to her appointment, and therefore not hit by section 12, concerning her resignation and the reasons for it.

⁸ The application, case 11187/16P, is set down for argument on 15 March 2019, along with two similar PAIA applications, cases 14224/17P and 5239/18P.

⁹ Section 1 of PAJA, ‘Definitions’, provides:

‘In this Act, unless the context indicates otherwise- “administrative action” means any decision taken, or any failure to take a decision, by-

(a) an organ of state, when-

(i) exercising a power in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation; or

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect, but does not include-

...

(gg) a decision relating to any aspect regarding the nomination, selection or appointment of a judicial officer or any other person, by the Judicial Service Commission in terms of any law’.



Anthony Brink <anthonybrink.sa@gmail.com>



Request for access to records under PAIA

1 message

Anthony Brink <anthonybrink.sa@gmail.com>
To: Lynette Bios <lbios@judiciary.org.za>
Cc: Sello Chiloane <Chiloane@concourt.org.za>

6 March 2019 at 15:42

Dear Ms Bios

I attach a PAIA request for the Commission's information officer's or deputy information officer's response as soon as reasonably possible (per the Act) please.

Yours sincerely

Anthony Brink

Cc: DIO Sello Chiloane

 **JSC PAIA request 6 March 2019.pdf**
74K



Anthony Brink <anthonybrink.sa@gmail.com>



Unanswered PAIA request

3 messages

Anthony Brink <anthonybrink.sa@gmail.com>

23 April 2019 at 14:28

To: nphakola@judiciary.org.za


Cc: schiloane@judiciary.org.za, Sello Chiloane <chiloane@concourt.org.za>, Lynette Bios <lbios@judiciary.org.za>

Dear Mr Phakola

I attach an important letter for your immediate attention please.

Yours sincerely

Adv AR Brink

 **Phakola 23 April 2019.pdf**
30K**Nelson Phakola** <nphakola@judiciary.org.za>

24 April 2019 at 14:49

To: Anthony Brink <anthonybrink.sa@gmail.com>

Cc: Sello Chiloane <schiloane@judiciary.org.za>, "Sello Chiloane (Concourt)" <chiloane@concourt.org.za>, Lynette Bios <lbios@judiciary.org.za>

Dear Adv. Brink

Receipt of your below email is acknowledged and I will revert back to you soon.

Regards

Nelson Phakola

Deputy Information Officer

[Quoted text hidden]

anthonybrink.sa@gmail.com <anthonybrink.sa@gmail.com>

25 April 2019 at 11:26

To: Nelson Phakola <nphakola@judiciary.org.za>

Thanks, Mr Phakola.

Anthony Brink

Sent from my Windows 10 device

[Quoted text hidden]



[Home](#) » [Campaign Updates](#) » New report reveals shocking failure by public and private bodies to uphold South Africans' right of access to information

[New report reveals shocking failure by public and private bodies to uphold South Africans' right of access to information](#)

Posted in: [Campaign Updates](#), [InfoAccessNow](#) | [February 23, 2017](#)

New research by the Access to Information Network (ATI Network)¹ has revealed a shocking dereliction of duties by public and private bodies to realise South Africans' constitutional right of access to information.

The Shadow Report 2016 was compiled with statistics from requests for information made using the Promotion of Access to Information Act, 2000 (PAIA) by the 13 civil society organisations which make up the ATI Network. The Report covers the period 1 August 2015 to 31 July 2016, during which ATI Network members submitted 369 PAIA requests to government and private bodies. Key findings of the Shadow Report 2016 are:



[See the full Shadow Report 2016 online here.](#)

- 46% of requests submitted to government were refused – i.e. no information was provided.
- 58% of these refusals were deemed refusals – i.e. the requests were ignored.
- Only 34% of requests submitted to government were granted in full.
- 64% of the appeals submitted to government were deemed to have been dismissed – i.e. the appeals were ignored.
- 67% of requests submitted to private companies were refused – i.e. no information was provided.
- Only 13% of requests submitted to private companies were granted in full.

These findings, in particular the number of PAIA requests and appeals which are simply ignored by government, are deeply concerning. They point to a clear failure by both public and private bodies to realise our right of access to information.

We are, however, encouraged by the progress made in the extent to which certain public bodies are expanding the number and categories of records which they will make automatically available to the public, i.e. without the need to submit a PAIA request.

It is in the State's interests to make information widely, publicly and automatically available. Making information automatically available not only significantly reduces the number of PAIA requests submitted, and therefore reduces the associated administrative burden, it also increases public trust in and cooperation with decision-makers.

The Shadow Report 2016 contains the following key recommendations:

- Public bodies must be encouraged to broaden their categories of automatically available information, and all such information should be placed on their websites.

- All licences should include a condition requiring the licence holder to make a copy of its licence available on its website or to anyone on request.
- Greater adherence to the severability clauses in PAIA would promote the objectives of PAIA while protecting information that should not be disclosed.
- The terms “trade secrets” and “commercial information” in PAIA should be clearly defined, to prevent their use as unsubstantiated excuses for failing to disclose records which should be publicly available.
- Capacity constraints within public bodies need to be addressed to ensure that the obligations under PAIA can be met.

About the ATI Network

The ATI Network was established in 2008 in response to the need for civil society collaboration to strengthen the effective use and implementation of PAIA, the mechanism via which our constitutional right to access information should be realised. The ATI Network currently consists of the following members (in alphabetical order):

amaBhungane Centre for Investigative Journalism

Centre for Applied Legal Studies

Centre for Environmental Rights

Corruption Watch

Equal Education Law Centre

Khulumani Support Group

Open Democracy Advice Centre

Oxpeckers Investigative Environmental Journalism

Probono.org

Public Service Accountability Monitor

Right2Know

South African History Archive

Wits Justice Project

For more about this report, contact:

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Annette Gibbs

Centre for Environmental Rights

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082 467 1295