

**REQUEST FOR INFORMATION IN TERMS PROMOTION OF ACCESS TO
INFORMATION ACT 2 OF 2000**

In the matter between:

ANTHONY BRINK

Applicant

and

THE LEGAL AID SOUTH AFRICA

Respondent

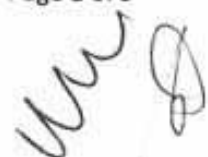
**AFFIDAVIT IN TERMS OF SECTION 23 OF THE PROMOTION OF ACCESS TO
INFORMATION ACT 2 OF 2000**

I, the undersigned,

BRIAN NAIR

do hereby make oath and state that:

1. I am an adult male person employed by Legal Aid South Africa, a statutory body established under Legal Aid Act 22 of 1969, having its principal place of business at 29 De Beer Street, Legal Aid House, Braamfontein, Johannesburg.



2. The information contained herein is, save where otherwise stated by me or where the content clearly indicates the contrary, within my personal knowledge, and to the best of my belief, both true and correct.
3. I am the National Operations Executive of Legal Aid South Africa, responsible for all functions and personnel delivering legal representation to indigent persons.
4. I am equally the person responsible to make all appointments to certain positions in terms of our Approval Framework. The positions referred to herein also include that of Senior Litigator.
5. I confirm that I am the Deputy Information Officer duly delegated by the Information Officer in terms of section 17 of Promotion of Access to Information Act 2 of 2000. I therefore and in compliance with section 17(3) annex my written authority (as annexure BN1) in terms of which I depose to this affidavit.
6. I am accordingly in the best position to respond to a number of requests raised by Mr Anthony Brink.
7. Hereunder, I respond to all the concerns or accusations that Legal Aid South Africa may not have fully responded to Mr Brink's previous requests. I follow his sequencing of the 20 (twenty) points he refers to in his Memorandum to the Human Rights Commission dated 3 March 2011.

FIRST REQUEST, AUGUST 2010

PART 1

Reply to paragraph 1-2

8. The National Operations Executive, in consultation with both the Chief Executive Officer and the Human Resource Executive, agreed that the process of recruitment for Senior Litigators will include a second round of interviews. This

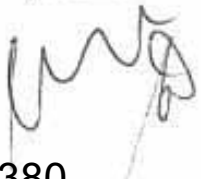
decision was taken verbally in April 2008. Since then the second interview panel has sat on three separate occasions to consider prospective candidates.

9. It was agreed that the second interview panel will consist of identified National Office executives. This decision was guided and informed by the seniority of the senior litigator position.
10. The Chairperson of the Board was also invited to participate in this panel.
11. The second interview panel would consider all candidates recommended from the first round of interviews to the second round of the interviews. The second interview panel would however not be bound to support the recommendation of the first interview panel. It is confirmed that the second panel had previously refused to support a candidate that was recommended by the first panel for this same position that is under dispute.
12. If after the second round of interviews a recommendation is made, the Regional Operations Executive in charge would finalise the appointment only after the National Operations Executive and the Chief Executive Officer agree with the recommendation.

PART 2

Reply to paragraph 9

13. The second round of interviews was not proceeded with and as such, no candidate or persons were considered for the second round. The decision that led us not to proceed with the second round was fully explained to Mr. Brink in the letters by the Chief Executive Officer dated 18 October 2010 and 28 January 2011. I specifically refer to attachments "V1", "V3" to "V6", "V8" and "V10" in the letter dated 28 January 2011 from the Chief Executive Officer to Mr. Brink, clearly



indicating that the reason to freeze the positions of Senior Litigator was due to fiscal pressures.

14. For the sake of completeness, I further mention that no written record exists of the decision taken in July 2010 by the NOE in consultation with the CEO and HRE to freeze the senior litigator post.

PART 3

Reply to paragraph 10

15. There were no time frames set to finalise the recruitment process for the senior litigator positions. It was always anticipated that the process will be completed within a reasonable time. However, as communicated in our earlier submissions/ letters to Mr. Brink dated 18 October 2010 and 28 January 2011, the uncertain funding difficulty resulted in a decision being taken by Legal Aid South Africa executives to delay and eventually freeze the recruitment of certain positions including the vacant senior litigator positions. For the sake of completeness, I further mention that no written record of this decision taken exists except annexures "V1" to "V12" which have already been furnished to Mr. Brink.

PART 4

Reply to paragraphs 11-12

16. The decision was taken by me in consultation with the Chief Executive Officer and the Human Resources Executive. The background leading to the decision was explained to Mr. Brink on letters and annexures referred to on paragraph 15 above. For the sake of completeness, I further mention that no other written record of this decision exists.

PART 5**Reply to paragraph 16**

17. No records of discussions exist where Mr. Brink was mentioned after August 2009 by the Management Executive Committee.

PART 6**B: OTHER RECORDS****Further reply to paragraph 1:**

18. I am advised that there are no other records that exist save for what was previously provided to Mr. Brink.

Further reply to paragraph 28

19. I annex hereto a copy of my email instruction to the ROE which is marked "BN2".

Further reply to paragraph 32

20. As far as I could ascertain, this information was communicated verbally by the ROE to the JCEs at both Durban and Pietermaritzburg JCs. I am also informed that copies of the regret letters were forwarded to both the JCEs.

PART 7**RECORDS****Further reply to paragraph 3 and**

21. I am not aware of any such written communications.

PART 8**Further reply to paragraph 13**

22. I confirm that no such written records exist.

Further reply to paragraph 14

23. I confirm that no such written records exist as the decision was taken by me in consultation with Chief Executive Officer and the HRE.

Further reply to paragraph 15

24. I confirm that the documentation relating to the reasons were sent to Mr. Brink in the letter by the CEO dated 28 January 2011.

PART 9

Further reply to paragraph 16

25. To the best of my knowledge, I can confirm that no such correspondence exists.

Further reply to paragraph 26

26. I confirm that regret letters were sent to two other applicants for the senior litigator positions. However, such information cannot be disclosed to third parties without their consent.

PART 10

Further reply to paragraph 17-18

27. I can confirm that the request by the CEO for me to provide Mr. Brink with a response was done per e-mail. Copy thereof is attached marked "BN3".

PART 11

Further reply to paragraph 25

28. I refer you to the reply to part 6 with specific reference to paragraph 19 above.

PART 12

Further reply to paragraph 33

29. I confirm that no written records of this decision exist. For the sake of completeness I refer you to paragraph 16 above.

PART 13**Further reply to paragraph 35**

30. I confirm that a search was conducted on our internal email system and there are no records found where Mr. Brink's name was discussed or appears prior to his request for information except for an email from one Jeremy Brink containing your CV sent by the Pietermaritzburg JCE and which was further forwarded to Vela Mdaka.

PART 14**Further reply to paragraphs 1-3**

31. I submit with respect that the documentation supplied to Mr Brink by the CEO in her letter of 28 January 2011 contains all the relevant information requested.

PART 15**Further reply to paragraph 4**

32. There are no written records of the relevant discussions between myself and the CEO.

PART 16**Further reply to paragraph 5**

33. I confirm that the consultation with the HRE on this matter was done verbally.

PART 17**Further reply to paragraph 6-8**

34. The documentation forwarded to Mr Brink by the CEO in her letter of response dated 28 January adequately covers, I submit, all the information requested in these paragraphs.

PART 18**Further reply to paragraph 9**

35. I confirm that no written record of this decision exists. For the sake of completeness I refer to paragraph 16 hereinabove.


PART 19**Further reply to paragraph 10**

36. The decision taken by me, in consultation with the Chief Executive Officer and Human Resources Executive, is in accordance with the Approval Framework and within the powers delegated to the executive. There is no need, in terms of the above Framework, for the executive to refer to the Board in this regard. The Board was therefore not informed of the decision.

PART 20**Further reply to paragraph 11**

37. I confirm that all regret notifications were communicated by the relevant Regional Human Resources Managers. However, such information can only be disclosed upon consent by the relevant third parties being granted.

Signed at Braamfontein on this ^{8th}... day of April 2011


DEPONENT

Signed and sworn before me at Braamfontein this ^{8th}..... day of April 2011 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).



COMMISSIONER OF OATHS:
FULL NAMES:
CAPACITY:
ADDRESS:

MOLATELO MAKHURA

COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA

7th FLOOR BRAAMFONTEIN CENTRE
23 JORISSEN STREET

TELEPHONE (011) 403-2765

From: Brian Nair
Sent: 16 August 2010 08:57 AM
To: Vela Mdaka
Cc: Bertus Appel
Subject: FW: Senior Litigator Position: Pietermaritzburg

Hi Vela

As discussed, please find our response letter to Mr Brink. Also ensure that you inform your HR section to regret all persons who attended senior litigator interviews for both PMB and Durban as we will not be proceeding this these recruitment.

Thanks

Regards

Brian Nair
National Operations Executive



Tel: 011 877 2006
Fax: 011 877 2222
www.legal-aid.co.za

From: Nadeen Long
Sent: 04 August 2010 01:55 PM
To: arbrink@iafrica.com
Cc: Brian Nair
Subject: Senior Litigator Position: Pietermaritzburg

Dear Mr Brink

Attached hereto please find a response to your letter dated 11 July 2010.

Thank you.

Regards

Nadeen Long
Executive PA to Brian Nair
National Operations Executive
Legal Aid **South Africa**
Tel: 011 877 2006
Fax: 011 877 2225
E-mail: NadeenS@legal-aid.co.za

A handwritten signature in black ink, appearing to be "Nadeen Long", written in a cursive style.

DN3

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-----Original Message-----

From: Vidhu Vedalankar

Sent: 29 July 2010 02:33 PM

To: Brian Nair; Amanda Clark

Subject: FW: Complaint against the HRE & an interview process

Hi Brian

Please see attached letter

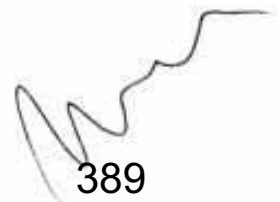
I am not sure what is happening with these senior litigator appointment but we need to finalise the process and advise the persons interviewed of the outcome.

Please will you look into this and discuss with Mandi and then discuss with me.

Regards

Vidhu Vedalankar
CEO

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Fax: 011 877 2222
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