

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 11187/16

In the matter between:

ANTHONY BRINK Applicant

and

THEMBILE MTATI N.O.

DEPUTY INFORMATION OFFICER

LEGAL AID SOUTH AFRICA First Respondent

THE INFORMATION OFFICER

LEGAL AID SOUTH AFRICA Second Respondent

DRAFT ORDER

1. The first respondent's refusal on 26 September 2016 to allow the applicant access to Legal Aid South Africa's public records specified in requests for these made under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act') on 1 August 2016, as amended on 16 September 2016, is reviewed and set aside.

2. The first respondent's denial of the applicant's access to the said requested records is declared to have unlawfully contravened section 11 of PAIA and to have violated the applicant's fundamental right to information held by the state, entrenched by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution.
3. The second respondent is directed within sixty days of this order to furnish the applicant with copies of all the records he specified in his said requests, as amended; or, where any do not exist or cannot be found, to declare this in an affidavit conforming to the detailed information requirements of section 23 of the Act and distinguishing unambiguously between extant records that cannot be found and those that do not exist.
4. The second respondent is directed within twenty days:
 - 4.1 to publish this order once in a national weekly newspaper; and,
 - 4.2 to post the full judgment in this case on Legal Aid South Africa's internet website for a period of one year, with a prominent direct hyperlink to it placed on its homepage.
5. The first respondent is directed to pay both the applicant's costs and all costs incurred by Legal Aid South Africa as between attorney and own client, de bonis propriis; provided that the first respondent may within twenty days of this order file an affidavit identifying other officer(s), if any, who instructed him to refuse the applicant's said record requests or who participated in the decision to do so, and/or who instructed him to oppose this application or who

participated in the decision to do so, whereupon the first respondent or the applicant may set the matter down again on reasonable notice to the other party, and to all thus implicated officers, affording them twenty days within which to file affidavits on the costs liability question, for this court's determination of an equitable apportionment between the first respondent and such others officers of personal liability for the said costs.

6. The second respondent is directed within five days to convey the judgment and the orders made in this application to the first respondent, no longer employed by Legal Aid South Africa, so that he can address the costs question treated in paragraph 5 above.

7. The second respondent is directed within ten days of delivery of judgment in this application to refer a complete copy of it to the Minister of Justice and Correctional Services; to the Chairperson of the Portfolio Committee on Justice and Correctional Services in the National Assembly; and to the Chairperson of the South African Human Rights Commission, and within five days of having done so to file proof of this both with the registrar of this court and with the applicant.