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 Respondent

REPLYING AFFIDAVIT

I, Anthony Robin Brink, affirm:

INTRODUCTION:
DEVELOPMENTS SINCE THE LAUNCH OF THE CASE,
AND PRELIMINARY NOTES

1. A lot has happened since I launched this application ('my first/the instant application') on 10 October 2016 two years ago and I'll outline it before commencing my reply, (a) to account for the particular approach I take in it, intended to limit the repetition of my evidence given in two subsequently launched similar applications and the unnecessary duplication of supporting documents put up with them; and (b) to explain the uncommonly long time this case has taken to mature for argument, lest it seem I've been sitting on my hands – quite the opposite:

1.1. As anticipated in paragraph 78 of my founding affidavit ('FA'), instead of meeting them on their respective merits, Legal Aid South Africa ('LASA') tried derailing both this application to compel compliance with my PAIA requests of

July and August 2016 ('my first request' and 'my second request') and my preceding application brought in the Eshowe Magistrate's Court to compel full and proper compliance with the settlement agreement LASA made with me at that court on 11 February 2016 to hand over all the records for which I'd sued there and a compliant section 23 affidavit in the case of any that didn't exist, by applying to this court on 28 October 2016 to have me declared a vexatious litigant (case 12124/16P, the 'vexatious application/case').

1.2. The vexatious application was heard a year later on 27 October 2017, and was found to be so obviously meritless that it was dismissed at the end of the hearing without my even being called upon to argue.

1.3. My instant application, opposed but left unanswered at that stage, had been set down by order of the Judge President for argument on the same day; and upon dismissing the vexatious case with reasons reserved, this court adjourned my application sine die and gave the respondent Mtati thirty days to answer it.

1.4. On Monday 30 October 2017, immediately after its dismissal on the preceding Friday, I filed a PAIA request for all cost records in the vexatious case, for the several purposes stated in an explanatory letter sent LASA information officer Vedalankar a couple of days later.

1.5. LASA delivered notice of intention to apply for leave to appeal against the dismissal of its vexatious case on 10 November 2017, and the 22nd told me it wouldn't be filing an answering affidavit in the instant application until it had seen this court's written reasons for dismissing it and had finally decided whether to appeal or accept.

1.6. On 28 November, Mtati refused my request for the cost records of the vexatious application on the usual basis that it was 'manifestly frivolous and vexatious' under section 45 (which section says 'or' not 'and'), so on 15 December I sued out of this court to compel compliance with it (case 14224/17P; 'my second application'). After Mtati filed his answering affidavit, I filed my replying one, thereby completing the papers for argument.

1.7. Seeing as my second application had been answered, and I wanted to set the two cases down for hearing together, I asked on 31 January 2018 when I might expect Mtati's outstanding answering affidavit in the instant application, my first one; and on 7 February got surprisingly told the same thing: LASA first wanted to see this court's reasons for dismissing its vexatious case.

1.8. Given the futility of trying to extract any information from LASA seeing as virtually all my PAIA requests since 2013 had been routinely rejected as an obvious waste of time under section 45 – and before that in 2010 and 2011 on other spurious grounds, all later abandoned, as detailed in my Special Report (FA annexure 'F') – I sought from the Department of Justice and Correctional Services in December 2017 LASA's two most recent budget applications for its nine Senior Litigator posts and some payment vouchers in this regard, needed to update and complete my collection of budget applications that I'd obtained from LASA in December 2015 (in the necessarily circuitous manner of requesting them from the Department of Justice and Correctional Services ('the Department'), as described in paragraphs 17–18 of my founding affidavit in case 5239/18P, 'my third application') as they were now two years out of date, thanks to the years I'd lost battling LASA in the Magistrate's Court and in this court, struggling to wrest illegally suppressed records out of it and then warding off its attempt to blow me out of court as a vexatious litigant to defeat my litigations to disgorge them.

1.9. Again the Department transferred my request to LASA, and this time LASA's top attorney Chief Legal Executive Patrick Hundermark himself refused it on 2 March 2018 on the usual basis that it was 'manifestly frivolous and vexatious' (matching his fingerprint 'and' error committed in previous refusals), also on the basis of section 7, which has no application to the decision of a PAIA request. So on 10 May 2018 I sued out of this court to compel compliance with it (my third application, 5239/18); and Hundermark delivered his answering affidavit on 21 June.

1.10. Four days later on 25 June this court delivered written reasons for dismissing LASA's vexatious case eight months earlier in October 2017.

1.11. Preparation of my replying affidavit in my third application was delayed by successive invitations by the Judicial Conduct Committee of the Judicial Conduct Committee ('JSC') in June 2018 to comment under back to back deadlines on the responses of LASA Board chairperson Dunstan Mlambo JP and Labour Appeal Court head Basheer Waglay JP to gross misconduct complaints I'd filed against them in mid-2017, anticipated in my FA paragraphs 40–2 and 86–9. (My eight complaints against Mlambo JP are bundled as annexure 'C' to my supplementary affidavit in the vexatious application (12124/16) and are outlined in a descriptive index, annexure 'O' to my founding affidavit in my second application (14224/17). My complaint against Waglay JP, annexure 'G' to my said supplementary affidavit, concerns LASA's criminal perversion of my petition for leave to appeal the dismissal of my labour case by dint of the 'memorandum' turned up during an inspection of the appeal file, canvassed in my FA paragraph 86, supported by its annexure 'K'. Both gross misconduct enquiries are pending. All the papers can be accessed in a Dropbox folder online at https://goo.gl/DVRsdm.)

1.12. On delivering my said comments to the JSC, I was placed to reply to Hundermark's answering affidavit in my third application.

1.13. On 17 July 2018, the day after the expiry of the time allowed by rule 49(1)(b) of the Uniform Rules for LASA to apply for leave to appeal this court's dismissal of its vexatious application, I asked again when I might receive the answering affidavit in the instant application, and was told by 6 August.

1.14. By this time, my draft replying affidavit in my third application (5239/18) was substantially complete, but before finalizing and signing it I decided to hang on until I'd seen the imminently due answering affidavit in the instant application, because although it had been made and delivered last, it would undoubtedly be read by this court first, being part of the papers in this, my first application. I expected that it would contain allegations copied and

pasted from the answering affidavit in my second application, like the answering affidavit in my third application did, to which allegations I'd already replied in my second application, and I wanted to avoid repeating myself unnecessarily. I also anticipated needing to cut some material in my draft replying affidavit in my third application and to export it to this, my replying affidavit in the instant application.

1.15. Mtati indeed delivered his answering affidavit in the instant application on 6 August, and both my expectations proved correct.

1.16. To underscore the point: the answering affidavit in this, my first, instant application was delivered last, out of order, subsequent to delivery of the answering affidavits in my second and third applications. It explains why some matter in this replying affidavit also appears in earlier affidavits I made and filed in my subsequently launched applications.

1.17. As said in my founding affidavits in my second and third applications, I intend setting all three PAIA applications down for hearing on the same day, given their substantial similarity, which means all the papers will be before this court together. So rather than repeating matter contained in affidavits made in my second and third applications, I'll mostly refer to what I've already said, sometimes summarising it. For the same reason, I'll refer to records annexed to my papers in those applications rather than putting up duplicate copies.

2. Some preliminary notes:

2.1. If my tone in this and my other affidavits seems tart, I make no secret of the fact that I'm bitterly aggrieved. The personal cost to me and to those dearest to me of the phenomenal top-level corruption I've run into at LASA and its ongoing violation of my constitutional right to information to stymie my investigation and ventilation of it all, and its reprisals against me (mentioned just below) for my persistence in this project and for pursuing my appointment to the top post in question has been incalculable. For a start, my partner fell ill and died on the way; she despaired that the corruption I'm up

against is invincible given the central role in it of LASA Board chairperson Mlambo JP, and that my solitary mission to expose it and achieve justice in my case is hopeless, especially on learning of LASA's successful perversion of the judicial process, mentioned in paragraph 1.11 above. (Note 8(i) of the Code of Judicial Conduct states: 'The legitimacy of the judiciary depends on the public understanding of and confidence in the judicial process.' And she very understandably lost it.) So if my language is strong, I mean exactly what I say and say exactly what I mean, and nothing less. In its broader context, this is an exceptionally serious case of corruption in our country.

2.2. In addition to trying to have me stripped of two of my most important constitutional rights in our democracy, namely to public information and to seek relief in the courts when denied it, I chanced to discover between the launch of the vexatious application and its dismissal that LASA (Hundermark via Mtati) had already gone all out to gun me down professionally and financially, by complaining to the Society of Advocates of KwaZulu-Natal and to the Magistrate's Commission in November 2015 (neither notified me of the complaints) that on account of my forthright criticism in my labour litigation of Mlambo JP's stupendous, impeachable misconduct in my matter I was unfit to practise as an advocate and to serve as a magistrate.

2.3. So I was wrong in stating in October 2016 in my concluding FA paragraph 89 that 'In again refusing my PAIA requests, and moving to restrain me from compelling compliance with them [LASA's top officers had] chosen to detonate this colossal scandal and start Armageddon.' Unbeknown to me, they'd already escalated the hostilities a year earlier, in response to successive applications I'd brought in the Magistrate's Court to compel compliance with PAIA requests made after trial and then judgment in my labour case, by making two pre-emptive nuclear strikes against me: one hit, one miss. I detail this in my supplementary affidavit in the vexatious application, touch on it below, and mention/will mention it more fully in my founding and replying affidavits in my third application (5239/18).

2.4. As said in my FA paragraph 75, 'Although it's Mtati who's illegally refused me access to the records I've requested and violated my fundamental right to information, he's not acting solo in the matter, not is he the principal actor.' Now that Hundermark has come out into the open with his refusal in his own name of my December 2017 request for LASA's budget records, and now that the answering affidavits in all three of my applications are in, it's clearer than ever that Legal Executive Mtati's immediate superior Chief Legal Executive Hundermark has been 'the decision maker' (Hundermark's expression in paragraph 105.9 of his answering affidavit in my third application (5239/18)), and has been making the final calls both in refusing my requests and opposing my applications to compel compliance with them: nine to date, three here, six below. And should this court grant the order prayed in paragraph 5 of my notice of motion, I'm confident that Mtati will confirm this in his affidavit as to why he shouldn't personally bear all LASA's costs of opposing this application.

2.5. My FA paragraphs 44 and 78 point out, with references, that Hundermark has 'played ... a central role in the handling of my PAIA requests' right from the start since 2010 and has been 'LASA's de facto top advisor on PAIA' – meaning, in my case, the originator of the decisions to consistently refuse my requests. More than 'top advisor', Hundermark has been conducting himself as 'ultimate authority in PAIA matters' and 'supreme appellate authority in PAIA disputes', as I point out in paragraph 12 of my founding affidavit in my second application (14224/17) and demonstrate categorically with a supporting record in its paragraphs 106 and 115. In his refusal to provide me with the budget information I requested (of the Department), LASA's top attorney Hundermark makes exactly the same basic legal mistakes and displays exactly the same negative attitude to my requests that I've been seeing from Mtati and other deputy information officers at LASA for years, in their consistent refusals of my requests, and in their answering affidavits when I sued to compel them. So Hundermark's been behind all their nominal refusals and opposition alright. After playing it from behind the scenes for the past eight years, Hundermark has finally emerged into the open in himself

refusing my PAIA request for the above-mentioned budget records, and in himself answering my third application (5239/18) in which I sued for them.

2.6. In this reply, I'll show Mtati's answering affidavit contains numerous false statements on oath. In mitigation, he'll likely plead that he didn't write it and that it was drawn for him by junior counsel, from scratch like a pleading in an action and not settled for him from any draft answer he prepared to my allegations. That is, he just signed the document prepared for him and did so without carefully ensuring that the words being put in his mouth were true. That junior counsel are routinely brief to draw Mtati's and his colleagues' affidavits is suggested by the PDF metadata of the final drafts of their five answering affidavits in the Magistrate's Court. Annexure 'A' is a screenshot of the 'Author' properties of the first of them, like the others, suggesting they were written from the ground up in this manner by LASA's original junior counsel in my PAIA cases in that court.

2.7. So although I call out Mtati's perjury repeatedly in this reply, also his gross professional incompetence revealed by what he says, I record in all fairness to him that besides appreciating that he just numbly and obediently signed whatever junior counsel drew for him, like before, I'm also mindful that in my protracted legal conflict with LASA over the years Hundermark has persistently abused him as his subaltern, ordering him out the trenches and into the fire-fight, so to say, and sending him out to face the bullets for what are really his (Hundermark's) own persistent and repeated, ongoing illegal and unconstitutional violations of my fundamental right to information by suppressing duly requested records, and his own indefensible opposition to my several necessary applications brought to compel their production. Again, in his affidavit on costs, Mtati looks certain to confirm this.

2.8. I've known Mtati professionally since our first friendly meeting at the first pre-trial conference in my labour case in October 2011 and have repeatedly engaged with him face-to-face in my several litigations against LASA since; and having got my measure of him from this long association, I'm not unsympathetic to his personal situation in this extraordinary mess. Certainly

the low professional and cunning moral type suggested by the content of the documents drawn for him to sign doesn't tally with my impression of him. The problem is just that, like former National Director of Public Prosecutions Mxolisi Nxasana, Mtati has lacked the personal and professional fortitude to resist the overwhelming superior forces bearing on him in the enormously corrupt project in which he's found himself entangled.

REPLY

Ad paragraph 3 of Mtati's answering affidavit.

3. In describing the legal cost records I requested on 25 July 2016 (FA annexure 'A') as 'confidential, private and proprietary information relating to third parties and Legal Aid SA officials', Mtati begins with a new story to justify blocking my access to these public body financial records, not told in his notice of refusal (FA annexure 'E') – which was that (broken grammar in the original) my request was 'manifestly frivolous, vexatious, substantially and unreasonably divert the most needed resources of Legal Aid SA', so it was 'refuse[d] ... in terms of 45' (sic) for that reason.

4. Mtati elaborates his new justification in his paragraphs 69–74, but only in regard to item 1 of my July request, namely my request for LASA's counsels' fee-notes. The other cost records, items 2–4, and items 5–6 in the amendment (FA annexure 'D') go unmentioned. The fee-notes, Mtati says, must be denied me:

· '[i]n terms of section 34';
· '[i]n terms of section 36(1)'; and,
· under 'section 37(1)(a)',

– all three sections.

But as said, that wasn't the reason he gave me for refusing them, which is that, in as many words, I was just wasting his time in asking for the cost records of my PAIA litigation in the Magistrate's Court, and for the other records I specified. The new sections Mtati raises against me in his answering affidavit are an afterthought now that he's been called to explain himself in court.

Appreciating maybe that the old waste-of-time story, which had just been abandoned in the Magistrate's Court, won't cut it in this court either, Mtati tries reinforcing it with as many other legal-sounding justifications he can think of.

5. My constitutional right in principle to access fee-notes submitted for payment by LASA's advocates briefed in litigation against me (or in any other), duly requested under section 18 of PAIA, is thoroughly addressed in paragraphs 49–60 of my founding affidavit in my second application (14224/17) in light of the definitions of 'record' and 'personal information' in section 1 of PAIA, quoted and discussed there.

6. In that discussion, I mention variants of Mtati's obviously spurious, incompetent and unlawful justification for refusing me access to LASA's counsels' fee-notes in both previous and subsequent matters, namely his contentions that they 'belong to a third party' and that the requested 'information is personal information of third parties'. Jumping around like a cat on a hot tin roof, he keeps changing his story.

7. The fallacy that such fee-notes 'belong' to counsel and contain 'proprietary' information (per Mtati's paragraph 3), and that for this reason they're not discoverable under PAIA, originates with LASA's lead corporate counsel, Chief Legal Executive Patrick Hundermark. It's his idea, this is what LASA's top attorney reckons.

8. The evidence of the provenance of this dim brainwave is that after printing the draft settlement agreement I'd just typed at the Magistrate's Court in February 2016, Mtati stepped out to read it to Hundermark on his cellphone. (As said, Hundermark has been centrally involved in the handling and refusal of PAIA requests since 2010, and as Chief Legal Executive is Legal Executive Mtati's immediate superior. And at court Mtati was conspicuously taking instructions over his phone repeatedly, undoubtedly from Hundermark.) On his return, Mtati asked me to add a final clause 9 in manuscript, on Hundermark's final instructions obviously:

Where the information belongs to a third party, the parties agree that CSE Mtati shall demonstrate to the applicant that he has sought consent from a third party and the third party's reaction thereto.

9. It's relevant to dilate on this, because it will show that LASA's most senior attorneys Hundermark and Mtati (formerly Corporate Services Executive) are entirely at sea in the field of constitutional information law; will say any ignorant thing that comes into their untrained heads (vide paragraphs 15 and 238 below) from time to time to justify suppressing the sort of duly requested financial information in question; and that their illegal and unconstitutional concealment of their counsels' invoices – to hide from me and from the Auditor General, among others, what fees they paid them – on shifting grounds, all plainly spurious, has been going on in bad faith for years; and it continues, as I show in my second application brought in December 2017 (14224/17). In his answering affidavit in that case, Mtati persists in refusing me access to LASA's counsels' fee-notes submitted for their services in trying to kill me off as a vexatious litigant.

10. Which fee-notes Mtati would have been all too pleased to give me to pay had LASA won and not lost its vexatious case – like counsels' fee-notes he gladly gave me with LASA's bill of costs after LASA won my labour case, complaining in his paragraph 77.2.3 that I haven't paid them, about which more later on.

11. Not wanting Hundermark's last-minute demand for this new clause 9 to be a deal-breaker, even though I smelt more skulduggery, I didn't object to its inclusion, because I appreciated instantly that it was as good as pro non scripto, having regard to the definition of 'record' in section 1, and the indifference of PAIA as to whom a record 'belongs to' (Hundermark's phrase). So I didn't need anyone else's consent to access any of the requested records that Hundermark had finally agreed via Mtati at court to give me, and I agreed to the insertion of this totally irrelevant, practically meaningless new clause that made LASA's top attorney Hundermark feel happy in his ignorance of the Act.

12. In and among the refused records I'd requested in the period 2013–15, for which I'd sued and which Hundermark finally instructed should be given me, were:

> All counsel's fee-notes for his professional services rendered LASA in the handling of Brink's first three record requests under PAIA in August and December 2010 and March 2011 ...
>
> > Note: CSE Mtati has stated on affidavit that after 'the CEO … felt justified to refuse him access' to the records Brink had requested, his PAIA requests were 'given to counsel for his opinion … to be safe.'[54]
> >
> > [54] Application to subpoena Mlambo JP, page 102, paragraph 75.2.

13. These records, which I originally requested from Makokoane in November 2014 (item 32), became item H32 on my consolidated list of records that I prepared and sent to Mtati in February 2016 in accordance with clause 2 of the settlement agreement. I annex a material excerpt of the list marked 'B'.

14. In a clear allusion to Hundermark's additional new final clause 9 of the surrender treaty, Mtati refused me the invoices once again, now on the new basis (previously section 45) that 'The records requested belongs [sic] to a third party in terms of section 34 and the third party has not granted consent to furnish such record.' Excerpted with its first page, item 61 of Mtati's section 23 affidavit stating this is annexed marked 'C'.

15. En passant: a section 23 affidavit certifies non-existent or lost records, not refused ones; but as I show in paragraph 238 below, even though he was an expected pupil, Mtati failed to present himself for instruction by the SAHRC and the Open Democracy Advice Centre ('ODAC') at the special class on PAIA held for LASA's legally illiterate national office lawyers (as they repeatedly themselves admitted) after my first three PAIA requests had been illegally and unconstitutionally refused, so he never got to learn these things. Or anything else from LASA's remedial teachers about how to respond lawfully to a PAIA request in the discharge of LASA's constitutional information transparency obligations in the democratic era.

16. When I returned to court under the default clause of the settlement agreement to sue again for the yet again illegally withheld fee-notes, Mtati stated in paragraph 63 of his answering affidavit: 'The information relating to Counsel's fee notes on professional services rendered as contained in paragraph "H32" of Applicant's request was refused based on section 34(1) of the PAIA and a section 23 affidavit was furnished to Applicant.' Excerpted with its first page, paragraph 63 of Mtati's answering affidavit stating this is annexed marked 'D.

17. There were no allegations now of third party ownership and consent sought and denied; and by citing section 34 again, Mtati implicitly based his continuing refusal of the fee-notes on the implied contention – to quote subsection (1) – that they contained 'personal information about a third party', and that the 'disclosure' of this personal information about the advocate who drew the invoices for his professional services, implicitly allegedly contained in them, would be 'unreasonable'.

18. Making nonsense of and exposing the mala fides of this legally irrelevant and phoney justification, one of junior counsel's several fee-notes in 2011, fitting precisely the above specification, namely 'counsel's fee-notes for his professional services rendered LASA in the handling of Brink's first three record requests', was included in the just said bill of costs in my lost labour case for me to pay, bundled with LASA's counsels' fee-notes for opposing my labour action. It's annexed marked 'E'.

19. The rest of 'counsel's fee-notes for his professional services rendered LASA in the handling of Brink's first three record requests' made in 2010–11 remain suppressed on the above shifting grounds.

20. What this brightly shows again is that Hundermark and Mtati have no compunction about giving me counsel's fee-notes when they want me to pay them.

21. When they want me to pay them, they've no concern about how much time it will take them to draw the file containing them, lift open its cover, look through it, gather and uplift these fee-notes, and scan and email them to me; or just ask

one of their IT officers to pull down the electronic copies of the already scanned records and email them to me. (All LASA's records are digitised and electronically archived.)

22. When they want me to pay them, Hundermark and Mtati couldn't care less about who they allegedly belong to.

23. The last thing in their minds when they want me to pay them is whether they contain personal information about the advocate(s) who submitted them.

24. Had I requested, for instance, the invoice submitted by the supplier of the office coffee machine, Hundermark and Mtati would hardly have told me: *Sorry but they contain personal information relating to a third party. Also they belong to the supplier and are his private property.*

25. It's only when fretting that I'm going to make good on my promise to expose to the Auditor General, to the Minister, to the Portfolio Committee, to local and international information transparency promoting NGOs, to anti-corruption NGOs, constitutional law-promoting NGOs, and to senior investigative journalists in this country, the vast public revenue they've misspent on advocates and aeroplanes and long-distance taxis and restaurants and local correspondents with the object of blocking my access to their employer LASA's public records needed for my corruption investigation, in the bargain violating my fundamental right to information year after year in their ongoing cover-up of this corruption – it's only when I say I'm going public about all this wasted money that they pretend to be concerned about these things.

26. Their true primary concern is clearly the looming prospect of being ordered to reimburse LASA from their own pockets all this grossly irregular fruitless and wasteful expenditure, once the Auditor General gets on to it, after receiving my intended report about it, now substantially complete, supported by all the fee-notes and other legal cost vouchers in question, and he directs that all this 'fruitless and wasteful expenditure, as defined in section 1 of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999)' (to quote the Treasury's

May 2014 'Guideline on Fruitless and Wasteful Expenditure') be recovered from them personally.

27. In sum, their submission to me for payment of other advocates' fee-notes, reflecting the services they rendered, and their charges for them, also their bank details and their VAT numbers, shows that in truth and in fact LASA's top attorneys Hundermark and Mtati care nothing about unreasonable disclosure of personal information, ownership of records, and all the rest of it when they want me to pay the magnificent legal bills they've run up on hiring advocates to obstruct and frustrate my access to LASA's records in the exercise of my constitutional right to do so.

28. Their eager submission of their advocates' fee-notes to me *for payment* shows that they'll clutch at any half-baked excuse, one after another, without any supportable basis in PAIA, to prevent me seeing and exposing to the authorities, interested NGOs and the newspapers the vast public revenue they've been irregularly, fruitlessly and wastefully squandering since 2011, and continue squandering, on violating my fundamental right to public body information and on trying to prevent me vindicating this persistently violated basic human right in the courts – in contravention of section 83(1)(b) of the Public Finance Management Act, prohibiting 'an irregular expenditure or a fruitless and wasteful expenditure' by a public entity of the LASA sort.

29. In paragraph 60 of my founding affidavit in my second application (14224/17), I cite case authority for the principle that counsels' fee-notes aren't legally privileged under common law either. So there's no question of their being hit by section 40, 'Mandatory protection of records privileged from production in legal proceedings', either.

30. Although I quoted it correctly in my founding affidavit in my second application to compel the delivery of cost records in the vexatious application, and this isn't disputed, I neglected to put up Mtati's notice of refusal itself. Relevant to this application, since I quote it here, his refusal in November 2017 is annexed marked 'F'.

31. None of the other cost records described in my first request in July 2016 (FA annexure 'A'), nor any of the further cost records requested in my amendment in September (FA annexure 'D'), nor LASA's email records described in item 6 of my amendment, are 'confidential, private information relating to third parties and Legal Aid SA officials'.

32. LASA itself confirms in a notice automatically included at the foot of every email sent by its officers via its official email server: 'This email is considered a business record and is therefore the property of Legal Aid South Africa.' An example of this is Mtati's email to me of 6 November 2017 (annexure 'E' to my founding affidavit in my second application (14224/17)).

33. The irrelevance of 'the property' bit of the email notice isn't relevant to address here, because Mtati doesn't claim I'm not entitled to access LASA's emailed business records on the basis that they're LASA's 'property'; and 'property' in the sense meant in the notice anyway doesn't found a basis under PAIA for refusing access to public record. The whole point of public bodies retaining records of emails sent and received via their servers is to ensure their accessibility to PAIA requesters. Hence the illegality of former US Secretary of State Hilary Clinton's use of a private email address and server in conducting official business, thereby evading access to her email records by FOIA (Freedom of Information Act) requesters in the US and evading public scrutiny of the records of her unclassified official communications.

34. In short, all the financial and email records specified in my first request, as amended, fall within the definition of 'record' defined by section 1 of PAIA. None are hit by any 'Grounds for Refusal of Record' envisaged by the closed list of these grounds enumerated in sections 34–45.

35. In plain speech, I filled out and sent in the form and paid my money, and I'm entitled to the records I asked for, no more stories.

36. By declaiming that my July 2016 'request is the fourteenth ... made to Legal Aid SA in recent years', Mtati insinuates – and he's unequivocal later in his affidavit – that the total number of requests I made in the period August 2010

to July 2016 shows my first request (of 1 August 2016) to be 'manifestly frivolous, vexatious' and an unreasonable call on his time, and therefore disallowable by section 45.

37. This court has already considered and rejected this contention. In support of its vexatious case for an additional order that I be:

> interdicted and restrained from in any way harassing and interfering with the duties and functions of the applicant, its officials and Board members by making frivolous requests for information

LASA likewise played up the number of PAIA requests I'd made over the years to portray me as a 'vexatious' sort of individual, 'harassing' it with unreasonably excessive 'frivolous' PAIA requests; and the idle charge was briskly dismissed by this court, along with the rest of LASA's empty case.

38. Mtati's insinuation that I've been abusing PAIA, and that my request made in July 2016 (post-dated 1 August), being my fourteenth since 2010, per se amounts to 'harassing and interfering with the duties and functions of the applicant, its officials and Board members by making frivolous requests for information', as LASA put it, is also untenable in light of other cases in which requesters have properly made incomparably more PAIA requests than I have, and in a much shorter time period, and have likewise defeated illegal and unconstitutional refusals to comply with them with legal pressure and then litigation where it didn't succeed. I canvass some of these in paragraph 14 of my replying affidavit in my second application (14224/17) made in December 2017, which Mtati appears not to have even read. In summary:

38.1. The High Court noted in the *Mandag Centre for Investigative Journalism* case that since its formation in 2011 the Freedom of Information Programme of the South African History Archive ('SAHA') had to date (2014) made over '1800 requests for information from predominantly government departments' in those mere three years followed by 'numerous applications in the High Court' to compel compliance with them – and it didn't suggest this evinced any

abuse of the Act. For quick and easy reference the first page of the judgment and its paragraph 19 are annexed marked 'G'.

38.2. In his exposé *Apartheid Guns and Money* (Jacana Media, 2017), author Hennie van Vuuren mentioned that 'In mid-2013' alone, '48 requests were lodged with state agencies in terms of PAIA' to access records needed for his research, and that they yielded 'hundreds of boxes [of] documents ... We worked through more than two million pages of documents. Many of these were secret government documents declassified in response to access to information requests using the Promotion of Access to Information Act (PAIA)' – mentioning his experience, like mine, that 'Access to most public records remains a challenge in democratic South Africa', due to 'obstinate ... refusal' to allow access:

> Most access to information requests have been ignored or refused on flimsy grounds. It was thanks to wise pro bona legal counsel that some departments finally relented. However, at the time of writing, SAHA has been forced to use the courts ... .

(All of this applies precisely to my dealing with LASA, save that, as mentioned in paragraph 40.1.1 below, the very 'wise ... legal counsel', now a justice of the Constitutional Court, who told LASA to stop hiding records from me, was LASA's very own.) Copies of the cover and the pages of Van Vuuren's book from which I've quoted are annexed marked 'H'.

39. The number of PAIA requests I've made over several years since 2010 is miniscule in comparison with these other cases, and Mtati's insinuation that they amount to an inordinate plethora is clearly insupportable, as this court has already found.

40. Further refuting the false suggestion that the number of PAIA requests I made between 2010 and 2016 shows that my requests over the years, including my instant two, have been 'manifestly frivolous, vexatious' and an unreasonable diversion of LASA's resources to process, and therefore hit by section 45, my Special Report (FA annexure 'F') and my three applications to this court record

that virtually all my requests have been illegally and unconstitutionally refused, and I've repeatedly had to sue to compel compliance with them – nine times in all, including my subsequent second and third applications to this court. And the pattern has been that under sustained legal pressure LASA gives up:

40.1.1. At the first pre-trial conference held in October 2011, LASA reversed its total refusal in its written response to my agenda to discover any of the thirty-seven documents I'd specified, many of which I'd previously requested under PAIA in 2010–11 but which had repeatedly been denied me, which records LASA claimed in its response to my agenda to have been duly refused under the Act. This total reversal followed the advice openly given at the conference by LASA's senior counsel Mbuyiseli Madlanga SC, elevated to the Constitutional Court a couple of months later, that all the records LASA had refused to hand over yet again were indeed discoverable and should be turned over. And then, when LASA failed to deliver on its undertaking, given on its silk's advice, to hand over *all* requested records, it finally did so in dribs and drabs under sustained legal pressure of several further discovery processes repeatedly brought to bear, comprising an application to compel discovery, converted by court at my request into a further pre-trial conference now held under judicial supervision at court, and then another such conference when, LASA failed as usual to deliver all records it had agreed to hand over at the first additional conference.

40.1.2. At the Eshowe Magistrate's Court in February 2016, LASA reversed its almost total refusal to comply with my several PAIA requests made in the period 2013–15 after the trial of, and then judgment in, my labour claim, and undertook to hand over all records I'd requested in that period or to deliver a section 23 affidavit certifying those that don't exist. Many of the pledged records then followed. LASA obviously wouldn't have capitulated to my applications and surrendered many of the requested records, had its refusals, nearly all based on section 45, been supportable. Further records in successive batches were thereafter disgorged by my further application to that court to

compel full and proper compliance with the settlement agreement. (Many pledged records and a compliant section 23 affidavit promised the magistrate for my benefit remain withheld.)

41. Besides showing that all my requests were properly made, or they wouldn't ultimately have been granted in one way or another, the moral of this tale, apparent again and again, year after year, is that LASA's information officer Vedalankar and national office deputy information officers Nair, Makokoane, Mtati, and especially Hundermark taking the ultimate decisions, will not comply with the constitutional information transparency obligations of their public law firm, an organ of state headed by a judge president, unless taken to court, unless legally coerced, unless their feet are held to the fire.

Ad paragraph 4.

42. As mentioned in my FA paragraph 49, insofar as it concerned LASA's Senior Litigator posts, LASA implicitly agreed to respond to this final request in August 2016 that Mtati mentions here (my second request), which I made under clause 7 of the settlement agreement (FA annexure 'L') in February 2016:

> Upon delivery of the documents requested, and the section 23 affidavit, the applicant shall have one further opportunity to request records in regard to the Senior Litigator posts, and records his waiver of his rights to make further requests in relation to the said posts, and shall do so within 60 days.

(The '60 days' rider was added in manuscript to the typed draft at LASA's request, hence the rough grammar.) As this court put it in paragraph 54 of its reasons for dismissing the vexatious application, 'LASA permitted Brink one more PAIA request [in regard to the Senior Litigator posts].' (Not that I needed LASA's or anyone else's permission under section 32 of the Constitution and section 11 of PAIA, so more accurately: *Brink waived his right to make any more than one final request in regard to the Senior Litigator posts*.) As can be seen from it (FA annexure 'B'), my request also sought some records unrelated

to the matter of Senior Litigator posts, in regard to which I'd agreed as a sop in the deal to limit my request to just one more.

43. But as I complain in my FA paragraph 50, when I made this agreed final request, it was contemptuously refused under section 45 as usual as a waste of time.

44. On a point of clarity: I made my second request before all the documents pledged in the settlement agreement had been delivered, before 'delivery of the documents requested' – indeed I had to sue to compel full and proper performance under the agreement – so I wasn't outside my '60 days' and out of time in making my request on 1 August 2016; nor was this alleged. I address this in my letter to Vedalankar covering my first request (FA annexure 'A').

45. If Mtati means to insinuate that the thirty records specified in my second request in August 2016 was an inordinately and unreasonably high number to request of LASA, and that for this reason my request amounted to an abuse of the Act envisaged by section 45, paragraph 14 of my replying affidavit in my second application (14224/17) mentions other cases in which requesters have sought and received many thousands of documents, and have successfully sued for even more. Again to sum up:

45.1. The Gauteng Division of this court didn't think a PAIA request for more than 'the tendered documents in excess of 12 000, copies of which were provided to the applicants' in their investigation of the Inkandla corruption scandal 'crossed "the line between a legitimate request in terms of PAIA and an abuse of the Act"', as the Minister of Public Works, quoted by the court here, had unsuccessfully argued. Vide paragraph 18 of *Mandag Centre for Investigative Journalism* (annexure 'G').

45.2. The Access to Information Network's Shadow Report 2017 ('Shadow Report') mentions at page 25 that the NGO Open Secrets (Hennie van Vuuren's outfit) employed PAIA to obtain 'hundreds of thousands of documents'. Material excerpts of the report are annexed marked 'J'.

(Remarkably pertinent to my case, I'll refer to its general findings and observations repeatedly again.)

46. So the number of documents sought in my second request in August (FA annexure 'B') that Mtati trumpets – thirty – is picayune in comparison, and doesn't ipso facto show my requests to have been 'manifestly frivolous or vexatious' and an unreasonable diversion of LASA's resources to process – more especially considering that the items 1–5 specify records that in some cases definitely, and in others very likely, don't exist. (My obvious purpose in requesting such records is to force sworn confirmation under section 23 that they don't exist, and then to use the section 23 affidavit as evidence supporting perjury complaints, and for other serious purposes.)

Ad 5.

47. My FA paragraphs 13–15 show Mtati's extension to have been unjustified and unlawful; and show further that the extension itself refutes the allegation made later on that my requests were an obvious waste of LASA's time on their face – 'manifestly frivolous or vexatious' as section 45 puts it.

48. Not having had any intention whatsoever to comply with my requests, as clearly shown by his and his colleagues' preceding, instant, and subsequent blanket rejections under section 45 of my requests made in the four-year period October 2013 to December 2017, and refused in the period November 2013 to March 2018, Mtati's extension was furthermore cynically dishonest.

49. Besides being unwarranted and therefore unlawful under section 26, Mtati's delay in responding to my requests was 'deliberate procrastination' of the sort condemned as illegal in the public service by the Supreme Court of Appeal ('SCA') in paragraph 17 of the Dalai Lama case (*Buthelezi & another v Minister of Home Affairs & others* (242/12) [2012] ZASCA 174 (29 November 2012)) and a violation of section 237 of the Constitution requiring that 'All constitutional obligations must be performed diligently and without delay', which imperative applies equally to responses to PAIA requests, Mageza AJ implicitly held, quoting the section, in paragraph 16 of *Dlusha v King Sabata Dalindyebo*

Municipality and others (1494/09) [2011] ZAECMHC 23 (18 March 2011). But as said in my FA paragraph 16, I let Mtati's cynical and dishonest, illegal and unconstitutional abuse and contravention of section 26 go.

50. Still, Mtati's extension bears on the bona fides of his later justification for refusing my instant requests on the usual basis that they were just a waste of his time. In the language of *Dlusha*, in paragraph 8, Mtati's extension 'reflects' his 'real disposition' to my requests, i.e. his basically contemptuous attitude to my constitutional right to information, and to section 195(1)(g) of the Constitution, which requires of state organs: 'Transparency must be fostered by providing the public with timely, accessible and accurate information.'

Ad 7.

51. Bearing on the credibility of everything else Mtati says in his affidavit, I record that the reason I sought item 8 of my amended request for cost records (FA annexure 'D'), i.e. 'Senior counsel's fee-note for his opinion' allegedly furnished to LASA that it should apply to have me declared a vexatious litigant, is that on 8 September 2016, in support of LASA's oral application to postpone and shelve the hearing of my application that I was about to move to compel full and proper compliance with the February 2016 settlement agreement until the vexatious application had been launched and decided, the magistrate was precisely told on the record that such an 'opinion' from 'senior counsel' had been obtained.

52. Considering that such an application brought with the object of preventing me compelling LASA's compliance with the settlement agreement and enforcing my fundamental right to information would be obviously baseless on the facts (and at law, as I later learned on researching the matter for argument*), I was pretty sure this claim about senior counsel's advice given LASA to block my application in this manner was a lie told to the magistrate, and I decided to test its veracity by requesting 'Senior counsel's fee-note for his opinion' that I should be defeated in this way.

53. (*In its reasons for dismissing the vexatious application, this court confirmed my point made in my heads of argument that indeed it has no power to intervene in pending, allegedly vexatious litigation in the Magistrate's Court under any circumstances, because the Vexatious Proceedings Act 3 of 1956 ('VPA') applies only to *future* not pending litigation; and whereas at common law this court does have inherent jurisdiction to stop or stay an allegedly vexatious case that's pending, this power can only be exercised in regard to a clearly vexatious case *pending before it*, and not in any other court.)

54. It already seems clear from Mtati's paragraph 103.2 that I was right in guessing that no such opinion from 'senior counsel' had been obtained and that the magistrate was lied to about this, because now he changes his story, now there's no mention of *senior* counsel in his affidavit.

55. It explains Mtati's reluctance to respond to my request for this particular record, as section 23 requires of him, by certifying on oath that no fee-note by senior counsel for rendering such an opinion exists.

56. When, as ordered by this court in terms of paragraph 3 of my notice of motion, Mtati finally furnishes me with an affidavit under section 23 certifying requested documents that don't exist – like the requested fee-note, which doesn't exist because in truth and in fact no such opinion was given by any *senior* counsel – I'll be furnishing a copy to the Law Society for the Northern Provinces in support of a complaint that he be struck off for telling a blatant lie to the magistrate, via junior counsel in court, to gin up his application to postpone my application about to be argued for orders compelling full and proper compliance with the settlement agreement contemptuously reneged on, in breach of the surrender treaty made with me; in breach of section 11 of PAIA; in breach of section 32(1)(a) of the Bill of Rights; and in breach of section 195(1)(g) of the Constitution governing public administration.

Ad 8.

57. As mentioned in paragraph 2.4–5, it's clear the real decision-maker was Hundermark.

Ad 9.

58. *First,* as is plain from his refusal (FA annexure 'E'), Mtati's contention (chaotic syntax in the original) that my 'requests relate to matters and issues that have been fully ventilated in the Labour Court and Labour Appeal Court in [my] action that [my] non-appointment was impermissible' was not the reason he stated for rejecting my request, and he didn't 'inform...' me of any such thing in this garbled manner or in any other more intelligible one. (This is basically Hundermark's story; I deal with it in my third application (5239/18).) That is, under oath, Mtati perjuriously falsifies his reasons for refusing my request.

59. If by 'issues that have been fully ventilated in the Labour Court and Labour Appeal Court in [my] action that [my] non-appointment was impermissible' Mtati means by this verbal slop that my unfair discrimination claim in the Labour Court has been litigated to its final conclusion, I whole-heartedly agree, no question about it.

60. But as I stated in my answering affidavit in LASA's vexatious application, I intend returning to the Labour Court with an application for rescission on the ground that the judgment was taken by fraud, and that documents subsequently surfaced, most sued for to defeat LASA's (Hundermark's) persistent illegal suppression of them, prove that the oral evidence of National Operations Executive Brian Nair, LASA's single witness at the trial, on which the judgment was squarely based, was centrally perjured.

61. As this court itself pointed out, noting also during argument that cases are occasionally won by fraud, there's nothing 'impermissible' about reopening my case in this way; and Hundermark and Mtati were both present at the debate of the vexatious application to hear this court reiterate with implicit approval to LASA's counsel my intention to bring such a rescission application. I deal with this in paragraphs 58–60 of my founding affidavit in my third application.

62. Despite this court's lesson for them in basic civil procedure, namely that a judgment fraudulently obtained can be rescinded at common law, Hundermark

and Mtati bruit their professionally disgraceful ignorance of this rudimentary principle and their unwillingness to learn it from this court.

63. *Second*, my first request in July 2016 (FA annexure 'A') made to ascertain how much public money LASA squandered on its protracted, meritless, insupportable, and finally collapsed opposition to my five PAIA applications in the Magistrate's Court to compel delivery of all the records I'd requested between 2013 and 2015 had nothing to do with my 'non-appointment as Senior Litigator' and didn't in any way 'relate to the matters and issues that have been fully ventilated in the Labour Court and Labour Appeal Court'. So Mtati compounds his perjury here.

64. *Third*, of the thirty records specified in my second request in August 2016 (FA annexure 'B'), less than a third of the total – items 1–5, 16, 17 and 22 – 'relates' to my 'non-appointment as a Senior Litigator' (as opposed to other Senior Litigator appointments), a matter indeed 'ventilated in the Labour Court and Labour Appeal Court' – but not on all the material facts, which I only succeeded in forcing into the sunlight years later; and crucially the pivotal fact mentioned in my FA paragraph 79, disclosed by the full, unredacted recommendation report by the selection panel for which I'd had to sue, and which LASA finally yielded at the point of argument at court: namely that over a period of about six years prior to the interviews for the top post for which I was selected and recommended, Board chairperson Mlambo JP had repeatedly favoured my rival applicant with acting appointments as a judge of the Labour Court, headed by him at the time. (My FA paragraph 86 mentions the intended cronyism; only, the corrupt plan to appoint my rejected rival instead of me was wrecked by my determined, continuing, very vexing pursuit of my appointment to the top post for which I was unanimously picked, after being found eminently qualified and well experienced for it – unlike my said rival, who as an attorney lacked right of appearance in the High Court and had therefore never litigated a single case on his feet there, much less litigated any civil cases in the SCA and Constitutional Court like I have.)

65. But Mtati's wrong point is anyway irrelevant, because the facts that (i) some of my second request indeed 'relates' to my 'non-appointment' and (ii) that my mistaken unfair discrimination claim has been tried and correctly dismissed, doesn't afford him a ground under PAIA for refusing my second request, nor did either of these facts ipso facto make it manifestly frivolous and/or vexatious under section 45. More especially for the next reason.

66. *Fourth*, my second request was specifically contemplated in the settlement agreement, and LASA implicitly undertook to properly respond to it and not reject it as a waste of time again – the same false excuse it had just dropped when abandoning its opposition to my five applications to the Magistrate's Court to compel the delivery of previously requested records or a section 23 affidavit, all refused on that same spurious, mala fide basis.

67. Mtati blithely declares on oath to this court that LASA aborted my appointment 'as a result of the budget constraints'. This is the central lie between me and my appointment, with which LASA has thus far succeeded – as brazen as the official lies told about murdered apartheid detainees such as 'He died of a hunger strike' or 'He slipped on a bar of soap' or 'He jumped out the window'. Which lies also succeeded for many years until ultimately exposed and discredited, and the liars – looking after their own narrow polity's interests to the exclusion of everyone else's, and in this corrupt project having no respect for the lives and rights of others, no respect for the truth and the law – were finally brought to book. Even if it took decades. (I've been going as my case since early 2010.)

68. In my case, Mtati is full well aware from my pleadings and affidavits detailing them that *totally different, contradictory, mutually destructive excuses* were given variously to me and different authorities, including to LASA's own Board, for not hiring me after I was duly selected and recommended for the top post in question.

69. Illustrating the casual mendacity I've been faced with in my dealing with LASA's utterly corrupt head office, and bearing on the credibility of the

answering affidavits filed to oppose my three applications before this court by Mtati and Hundermark (who also tells the 'budgetary constraints' lie under oath in his answering affidavit in my third application (5239/18)), my collection of 'All the different stories' (mentioned in my FA paragraph 38) is annexed marked 'K'.

70. To the extent that by telling this 'budget constraints' lie Mtati is attempting to show that my instant PAIA requests were 'frivolous and vexatious' because:
· I'm obstinately and unreasonably refusing to accept that unfortunately LASA just didn't have the budget to employ me in the critical, long vacant, top professional echelon post it had thrice advertised and twice interviewed for, all very diligently and persistently, to fulfil this component of its Strategic Plan 2009–12, and to meet the Portfolio Committee's expressly stated concern that critical vacant posts in the Justice sector be filled as soon as possible; and,
· I'm continuing pointlessly to request records thereanent,
what my requests 'relate to' is perfectly irrelevant under section 11(3).

71. Nowhere in his affidavit does Mtati claim to be reporting (per his paragraph 1.4) 'information made available to me or which has been ascertained from the persons whose names I disclose.' He doesn't go on to name anyone as his source, much less does he put up any confirmatory affidavit verifying any hearsay. And the reason Mtati doesn't quote anyone and is giving direct albeit perjured evidence of his own in accordance with his paragraph 1.3 – 'The contents of this affidavit fall within my personal knowledge except where indicated by the context, and are the best of my knowledge and belief both true and correct' – is that he's LASA's second most senior legal executive, who works shoulder to shoulder with CEO Vedalankar, NOE Nair, COO Makokoane, HRE Clark and CLE Hundermark; and having been directly involved in my case from the beginning, he's full well aware of the 'true and correct' facts, having seen all material documents adduced by me in round after round of litigation, flatly contradicting the foolish 'budgetary constraints' story eventually concocted eight months after the silent, unrecorded, illegal abortion of my

appointment, as my knocking on the door turned to pounding and I needed putting off for good with a convincing-sounding cover-story.

72. To show that everything else he alleges in his affidavit about why he refused my July and August 2016 requests is unworthy of credence, it's relevant to show briefly and easily that Mtati's sworn claim to this court that LASA aborted my appointment 'as a result of the budget constraints' is perjured:

72.1. It's common cause that there's *no record of any such decision* by any competent authority at LASA, or indeed by anyone at all – as I forced National Operations Officer and deputy information officer Nair to admit on oath under section 23 in April 2011 (CEO Vedalankar and HRE Clark put up confirmatory affidavits) and again under cross-examination of him in the Labour Court in mid-2013.

72.2. LASA's financial records show that *all nine of its Senior Litigator posts* – six filled, three vacant – *have at all material times been budgeted by LASA and funded by the Department*, with the Treasury providing the many millions of rands for their salaries, after being voted year after year by the National Assembly. So it continues, the money's there, always was.

72.3. LASA reported an *unspent budget surplus of R31.7 million in 2010/11*, so it hardly lacked the cash to hire me that year.

72.4. LASA's records show that some transient uncertainty in 2010 about when it would receive its additional funding for salary increases (as it had received the year before), and the measures executive management proposed, and the Board approved, to meet it (in truth, just to spur payment, Nair frankly testified in the Labour Court) had no bearing on Senior Litigator recruitment at the top of LASA's critical legal professional ranks or on other recruitment generally, all of which continued quite unaffected, in fact boomed in the first quarter April–June 2010. Recruitment only to some *non-critical, entry level public defender posts* serving the *lower criminal courts* was *briefly frozen* in July 2010 (against the express wishes of the Minister) *for about two months* until the matter had been resolved by provision for the extra funding made in

the national mid-term budget announced in October 2010 by the Minister of Finance, upon which event recruitment at LASA soared in the next quarter October–December 2010 and actually peaked for the year. (The extra funding was paid over on 15 December.)

72.5. The unauthorised, off-the-record abortion of my appointment and the unauthorised, off-the-record so-called freezing of my post, and with it two others to make a nice strong cover story – later radically contradicted by Nair in his Report to Board in November 2011, and radically contradicted yet again in his evidence in the Labour Court in mid-2013 – and LASA's failure to apply the many millions of rands in salary budget it received for the posts by filling them with the candidates selected and recommended for them, was on its own terms an illegal breach of the PFMA, as the Constitutional Court confirmed in principle in *Zungu* in January 2018, cited and discussed with reference to chapter and verse of the said Act in paragraphs 104–16 of my founding affidavit in my third application (5239/18). (Mtati didn't notice, but my reference in my FA paragraph 38 (the instant application); in my letter to Vedalankar of 25 July 2016 (FA annexure 'A'); and in my Special Report (FA annexure 'F') to section 39 of the PFMA was wrong; it's actually section 53, a similar provision concerning public entities.)

72.6. In November 2011, Nair told totally different lies to the Board to explain the abortion of my appointment, dropping the 'budgetary constraints' lie after I'd demolished it in my unusually detailed original statement of claim in the Labour Court in July 2011, and replacing it with 'recruitment challenges' as the reason, as well as non-delivery by, and the professional incompetence of, LASA's incumbent Senior Litigators, who were accordingly to be assessed urgently by a special panel 'including possibly a retired judge'. They never were; the whole slick yarn was just made up. In the Labour Court, Nair admitted the competence of LASA's Senior Litigators had never been in question, and PAIA requests I filed to test these new stories of his further confirmed that Nair had fabricated them, and that like the fake 'budgetary

constraints' excuse they were pure invention too. Like instead of a hunger strike, now slipping on the soap and also jumping out the window. All lies.

All this and much more – including Nair's radical contradiction in the Labour Court of the three-Senior-Litigator-posts-frozen-for-lack-of-budget-to-fill-them story – is exhaustively canvassed in my answering affidavit in the vexatious application (12124/16) with reference to masses of supporting documents put up.

73. Even as he correctly dismissed my misconceived unfair discrimination claim, the labour judge observed in his judgment that my cross-examination exposed LASA's single witness Nair – who repeated the bogus 'budget constraints' excuse in court, at the same time repeating the new, different excuses he'd given the Board – to have been 'not generous with the truth ... a number' of times. That is, the labour judge was satisfied that I'd exposed Nair as having repeatedly perjured himself in breaking his oath to tell him the whole truth and nothing but the truth, which oath he took with his hand in the air, looking him straight in the eye. Soon after which this person got a law degree and was admitted to practise as an advocate.

74. More than 'not generous with the truth', this court put it rather more directly. During the argument of LASA's vexatious case, after mentioning that he'd spent a week studying the papers (taking Nair's radically contradictory evidence at trial to pieces, my answering affidavit was encyclopaedic) this court very correctly characterized Nair's evidence, inter alia, about 'budget constraints' preventing my recruitment, also 'recruitment challenges', also underperforming incumbent Senior Litigators, as 'a pack of lies', as I put it at the end of my answering affidavit in the vexatious application, noting that it happens, if not very often, that cases are sometimes won on perjured evidence

Ad 10.

75. As pointed out above, the lie to the 'budget constraints' story is given, inter alia, by the fact that after I'd dismantled and flatly refuted it in light of LASA's own records in my first petition to Mlambo JP in November 2010, and again in

my statement of claim in my labour action launched in July 2011, Nair 'fully advised' the Board that 'the abortion of the recruitment process' was 'as a result of' totally different 'reason[s]'. A copy of Nair's lying Report to Board, leaked to me by a sympathetic top-ranking LASA insider, in which Nair told his totally different new lies, is annexed marked 'L'. (It's to be regretted that although I pertinently pleaded, hammered at trial, and strenuously argued Nair's radically contradictory, mutually destructive excuses for the abortion of my appointment, the labour judge neglected in his judgment, given well over a year after the trial, to deal with the implications of Nair's zigzagging before the trial and during it: from, so to say: *died of a hunger strike*, to: *slipped on his soap and also jumped out the window*, to: *died of a hunger strike and also slipped on his soap and jumped out the window as well*. And, so to say, accepted the hunger strike story contradicted by LASA's own records.)

Ad 11.

76. Once again these are precisely the words from Hundermark's mouth in refusing my December 2017 request for budget records, taken apart in my third application. This is Hundermark talking, not Mtati, except as his ventriloquist's puppet.

77. My request for the legal cost records of the indefensible, dilatory opposition to my PAIA applications in the Magistrate's Court has nothing to do with my 'non-appointment to a Senior Litigator position', so Mtati's (Hundermark's) argument here is irrelevant and can't and doesn't justify blocking my access to them.

78. As to my second request, concerning inter alia LASA's Senior Litigator posts:

78.1. Having implicitly agreed in the Magistrate's Court to respond to a final PAIA request about Senior Litigator posts, expressly contemplated and recorded in clause 7 of the settlement agreement, Mtati's refusal to comply with it, when I then made it precisely in accordance with the agreement, as a waste of his time, is obviously insupportable. In practical effect he formally

agreed to this final request, and then, when I made it, told me that I'm just hassling him with my nonsense again.

78.2. Items 8–15 and 27–30 in my second request annexure plainly have nothing to do with my 'non-appointment to a Senior Litigator position' at Pietermaritzburg or to any of LASA's other Senior Litigator posts. So again, Mtati's argument here is irrelevant and can't and doesn't justify blocking my access to them.

78.3. Nothing in Part 2 in Chapter 4 of PAIA, i.e. the 'Grounds for Refusal of Access to Records' allowed public body information officers by sections 34–45, 'proscribes' me from requesting records after the dismissal of my labour action for the purpose of proving that LASA's national office executives Vedalankar, Nair, Clark and Mtati all committed perjury before and during the trial, or for any other purpose (or indeed for no purpose at all, just curiosity). I'm referring here to items 1–5, 20 and 22, and the way I've worded my requests makes my purpose plain: I've specified records I'm sure don't exist. Had the truth been told under oath in the various contexts mentioned in my second request, the records would have existed; and section 23 requires Mtati to certify on oath that they don't. His unequivocal sworn confirmation of this will be used in support of perjury complaints inter alia to the National Director of Public Prosecutions and to the Labour Court, appreciating which Mtati naturally refuses to cooperate, making feeble excuses for not doing so.

78.4. Nothing in PAIA 'proscribes' me from requesting records in my further investigation of Senior Litigator recruitment corruption, further revealed by a record turned up by a previous PAIA request that I made after judgment in my labour case, and by inside information also sourced after it. I'm referring here to:

· items 23–26, concerning Mlambo JP's illegal rejection of three recommended Senior Litigator candidates – being a *non-executive* director of LASA's Board, with no legal authority to intrude himself into and interfere with executive management's recruitment operations by re-interviewing (in committee with legally incompetent management executives, neither legally qualified nor

legally authorised) and approving or rejecting for appointment Senior Litigator candidates duly selected and recommended by selection panels. LASA's Approval Framework jointly delegates appointment approval authority for recommended Senior Litigator candidates to CEO Vedalankar and NOE Nair, and no one else – not to Board chairperson Mlambo JP and other management executives like CLE Hundermark, COO Makokoane and HRE Clark; and this delegated approval authority is required to be exercised by Vedalankar and Nair upon a consideration of the selection panels' recommendation reports, not after any further interview. The above-mentioned record given me, which I didn't even ask for, not hitherto knowing of its existence, is annexed marked 'M'. And I'm referring to:

· information given me personally and directly by former Regional Operations Executive for the Free State and Northern Provinces Adv Nkululeko Mayisela, chairperson of the selection panel that interviewed shortlisted candidates for the Mahikeng Senior Litigator post, namely that a rejected candidate was appointed instead of the selected and recommended one. (Like the plan in my case, which I foiled by energetically pursuing my appointment instead of pushing off as hoped, and making way for Mlambo JP's friend.) A confirmatory affidavit by Mayisela will be filed shortly. To prevent me exposing the corruption involved in that recruitment – going to show that Senior Litigator recruitment at LASA is generally corrupt, and that it's not limited to my case alone – LASA is determinedly withholding from me the selection panel's recommendation for the Mahikeng Senior Litigator post:

· duly requested from deputy information officer Nair in November 2014 (item 2);

· refused by Mtati in May 2015;

· pledged in the settlement agreement in February 2016, after I sued for it and was about to argue for an order that it be surrendered;

· not supplied as formally undertaken in the agreement handed into court;

· then withheld again when sued for again under the default clause of the settlement agreement, even as other pledged records were turned over after

the further application was launched to compel full and proper compliance with the settlement agreement,
as well as other records concerning the Mahikeng recruitment, also being illegally and unconstitutionally withheld, which are the subject of the instant application (items 23–6 of my FA annexure 'B').

78.5. A PAIA request per se obviously can't 're-litigate' a decided case, whether 'impermissibly' or otherwise, so Mtati's (Hundermark's) argument here is useless.

78.6. Nothing in PAIA 'proscribes' a record request made to gather evidence showing that the judge who decided a case was defrauded by perjury. Nothing prevents an unsuccessful litigant from presenting such evidence, and other newly surfaced documents in a rescission application, i.e. from 're-litigat[ing]' the case in these exceptional circumstances. Indeed, this court has already noted as much, as I mentioned above.

79. Mtati is correct that one of my ultimate purposes – among several unrelated purposes – in making my request, unstated when I did so, but stated later in my answering affidavit in the subsequent vexatious application, is to use the records in my intended, future rescission application to the Labour Court; but that purpose is as irrelevant as my others, because section 11(3)(b) explicitly excludes 'the information officer's belief as to what the requester's reasons are for requesting access' and stipulates that a 'requester's right of access is ... not affected by' it.

80. Six years ago, on 22 August 2012, SAHRC PAIA Unit director Dr Fola Adeleke emailed Mtati:

> We note with concern ... that the requester's [Brink's] reason for requesting particular information is being deduced. It should be noted that PAIA is quite clear that requests made to public bodies do not have to be supported or justified by a reason for the request. Similarly, requests made prior to notification [sic: commencement] of litigation should not

have to be supported by a reason or purpose for the stipulated information.

Annexed marked 'N' is Adeleke's email, along with Mtati's responses showing that he failed to understand the lesson. (LASA's false section 32 report for 2011/12 mentioned in the exchange wasn't amended. And Mtati's statement 'The information requested is clearly relating to the matter pending litigation' missed the point; it had been requested in March 2011 *before* I launched my labour case in July 2011, which was indeed pending in August 2012, but perfectly irrelevantly to LASA's reporting obligations under section 32.)

81. Mtati's contrary contentions in his paragraph 11, his notion that my intention to use the requested records in my return to the Labour Court (i.e. my 'reason for the request', per Adeleke) disqualifies me from accessing the requested records, likewise shows that Adeleke's extra tuition for him in these elementary principles of PAIA failed to sink in – extra tuition delivered to him personally, since he failed to attend the SAHRC's PAIA training workshop on 6 November 2011, at which he was expected to present himself (discussed in paragraph 238 below) to be taught the constitutional imperative that record requesters 'who are wishing to litigate on the basis of PAIA are responded to on the same basis as other[s]'. (The SAHRC's report quoted here is annexure 'AA' to my founding affidavit in my second application (14224/17).)

82. Mtati's phrase 'it follows' makes plain that the premise of his justification for refusing my requests under section 45 – newly stated in his affidavit, and different from the reasons he gave in his refusal – is that, in his opinion, they 'impermissibly' seek 'to re-litigate' my claim to my appointment to the top post for which I was unanimously recommended.

83. Mtati's incompetent, illegal and unconstitutional refusals of both my first and second record requests is founded on his ignorant, legally wrong assertion that I can't go back to the Labour Court with new evidence. Even though, as said, he was physically present when this court confirmed otherwise, in a matter trite to all lawyers besides him and his superior Hundermark. Who was

also present in this court at the said hearing, but who was also unable to benefit from this court's lesson, as shown by his repetition of the same disgracefully ignorant, legally wrong assertion in his answering affidavit in my third application (5239/17).

Ad 12.1.

84. As I've already pointed out in paragraph 54 of my replying affidavit in my second application (14224/17), 'All this is confused and wrong.'

85. My 'fifteenth PAIA request' on '30 October 2017' was not 'for the same information' requested two years earlier in my first PAIA request on 1 August 2016. It was for *different cost records* in respect of *different litigations* brought by *different parties* in *different courts* at *different times*:

85.1. My first PAIA request on 1 August 2016 (FA annexure 'A') was for cost records revealing how much public money LASA fruitlessly and wastefully squandered on indefensibly opposing my five PAIA applications made to the Magistrate's Court (Brink v Vedalankar et al) all the way to the point of argument, before conceding them and delivering many of the requested records; and then on indefensibly, fruitlessly and wastefully opposing my further application to compel full and proper compliance with the settlement agreement it had breached, only to implicitly concede the application under rising pressure by incrementally surrendering further documents in two successive heaps (many key requested records pledged to me in the settlement agreement remain withheld), and by assuring the magistrate on the record, via counsel, that I'd be furnished with a duly compliant section 23 affidavit in regard to records I'd requested that don't exist, as undertaken in the settlement agreement, to replace the uselessly defective and non-compliant affidavits I'd been given, about which I'd complained in my sixth application on my return to court under the default clause of the settlement agreement.

85.2. My 'fifteenth PAIA request' on '30 October 2017' (annexure 'A' to my founding affidavit in my second PAIA application to this court (14224/17)) was for records revealing how much further public money was fruitlessly and

wastefully squandered by LASA (LASA v Brink) on trying to prevent me (i) enforcing the settlement agreement by applying to compel compliance with it, and (ii) prosecuting the instant application, by wholly unjustifiably and maliciously applying to have me banned and gazetted as a vexatious litigant.

86. In his later paragraphs 15 and 17, Mtati himself handily quotes:

· my request in July 2016 (post-dated 1 August) for the cost records in relation to my several applications in the Magistrate's Court – before I amended this first request (FA annexure 'D'); and,

· my request more than a year later in October 2017 for the costs records in relation to LASA's vexatious application (listed in annexure 'A' to my founding affidavit in my second application (14224/17)),

and it's plain to any literate person glancing at these two paragraphs that I'm seeking entirely different records. But not to Mtati.

87. So the relief I claim in the instant application is hardly 'moot', and Mtati's contention that 'events have overtaken the present application' and that the 'relief sought by the applicant would be abstract, academic and have no practical effect' is just so much silly, high-sounding faux legal argot in LASA's usual style, especially Hundermark's, without any correlation to the facts on the ground.

88. This obtuse allegation and the spurious legal contentions based on it well illustrate the abysmal mediocrity of the legal expertise among the attorneys in LASA's national office, and of its junior counsel drawing its papers.

Ad 12.2.

89. As discussed above, Mtati comes up here with a whole new bunch of other sections, in addition to section 45 that he raised against me in his refusal notice. And as I'll show, his affidavit appears not to have been drawn by an educated person, let alone a legally qualified one.

Ad 12.2.1.

90. Since section 7 doesn't afford an information officer a ground for refusing a record request, the section was irrelevant to the decision of my instant two requests; and indeed, in his refusal (FA annexure 'E') Mtati didn't cite it against me. As the Shadow Report (annexure 'J') rightly puts it on page 5: 'Chapter 4 of PAIA sets out specific grounds for refusal; these grounds give detail about when access to recorded information may or must be denied.' And section 7 is in Chapter 2, not in Chapter 4.

91. Besides my pending PAIA litigation in this court – my instant, second and third applications – and my pending application in the Magistrate's Court to compel full and proper compliance with the settlement agreement, I've anyway no 'ongoing litigation' against any of 'the parties' (Mtati is the only respondent in the instant application). None of the 'records the applicant [Brink] seeks to access are the subject of ongoing litigation' besides the instant application, and Mtati's impressive sounding claim on oath is untruthfully false. The records to which I seek access, listed in my first and second requests (FA annexures 'A', 'B' and 'D') are 'the subject' of the instant 'ongoing litigation' only, which can hardly be a bar to my right to access them under section 18, or to sue for them under section 78 when illegally and unconstitutionally refused, and to obtain a court order under section 82 that they be turned over to me as section 11 requires.

92. To the extent that the 'records the applicant seeks to access', specified in my July and August 2016 requests, were, besides my instant, first application, also the subject of LASA's vexatious application to prevent me prosecuting it, it was dismissed by this court and isn't being appealed, so that 'litigation' isn't 'ongoing'.

93. If Mtati is maybe thinking about my intended future application to the Labour Court for rescission of its judgment, it hasn't commenced yet, so isn't pending, and therefore doesn't fall within the contemplation of section 7, even from the Labour Court's future perspective when in several months time I

launch the application. (Under section 7, Mtati's current perspective is of no interest.)

94. My unfair discrimination claim was a dispute between me and LASA that was correctly determined by final judgment, so it isn't 'ongoing' either. It's over, history, dead and buried in the court archives.

Ad 12.2.2.

95. Mtati's sworn allegation that 'the records the applicant seeks to access relates to the private affairs of third parties' is absolutely false, as is plain from the face of my requests (FA annexure 'A', amended by annexure 'D'; and annexure 'B').

96. The closest any requested record gets to the 'private affairs of third parties' is the adulterous affair to which I alluded in item 30 of my second request (annexure 'B'), which a former national management executive tells me is common knowledge among his erstwhile national executive colleagues and among the lady-friend's erstwhile subordinates.

97. I didn't mention my purpose, or need to under section 11(3), but I record here that I requested the record for use in support of an intended ethics complaint against a certain top-ranking LASA officer who returned his mistress's favour by using his influence to grossly improperly arrange her appointment as a member of the first tribunal established by the JSC's Judicial Conduct Committee to try Cape Judge President John Hlophe on ethics charges, right after she'd resigned from LASA one step ahead of a charge of gross dishonesty herself. Sello Chiloane, secretary and deputy information officer of the JSC, himself confirmed in a phone call made to me on 14 November 2016 that, as he recalled it, she resigned from the tribunal after an objection to her appointment to avoid an unseemly scandal.

98. Such is the putrid trickle-down anomie at Legal Aid South Africa, chaired by Mlambo JP under section 8(1) of the Legal Aid South Africa Act 39 of 2014 ('The judge appointed in terms of section 6(1)(a) is the chairperson of the Board') as a

putative guarantee of ethical, constitutional and legal probity in the organisation.

99. As I discovered in my case, unfortunately only long after the trial and decision of my labour claim, it's not what you know at LASA, it's who you know.

100. If Mtati has item 30 of FA annexure 'B' in mind, because it 'relates to the private affairs of third parties' conducted after hours:

100.1. What a record 'relates to' is no basis under any ground permitted by any of sections 34–45, 'Grounds for Refusal of Access to Records', for refusing a duly requested record.

100.2. Both 'parties' were LASA officers when the record was generated, not 'third parties'.

100.3. I'm not seeking details of their affair, a private matter.

100.4. Like all others I've requested, the document is a public body business record.

100.5. It contains no 'personal information about a third party', within the definition of 'personal information' contained in section 1, 'disclosure' of which would be 'unreasonable' – the criterion stipulated by section 34 in Chapter 4 of Part 2, 'Grounds for Refusal of Access to Records', under the heading, 'Mandatory protection of privacy of third party who is natural person'.

101. Although scores at an interview for a job in the public service aren't 'personal information' within the definition in section 1 and therefore aren't hit by section 34, I've no interest in them, and said so: items 24 and 25 of my second request state that 'actual scores aren't needed and can be blacked out'.

102. No 'third parties' rights' are affected by my two record requests, and no one's 'constitutionally enshrined right to privacy' is infringed by them, as Mtati speciously alleges. This isn't just sheer nonsense, it's telling nervous lies under oath.

Ad 12.2.3.

103. From his language here, Mtati can only be referring here to the advocates' fee-notes specified in my first request, which he suggests are hit both by section 36, 'Mandatory protection of commercial information of third party', and by section 37, 'Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party'. I've already disposed of these false excuses for withholding the records from me and from the several high authorities I said I'm going to give them to.

Ad 12.2.4.

104. This cocktail justification for refusing my instant request(s) reinforces Mtati's earlier insinuation that the number of requests I'd made to date shows my instant one(s) to be obviously contrived to waste his time. However:

104.1. My FA paragraph 56 deals with how the false suggestion is refuted by my expressly stated serious purposes.

104.2. I mention above other cases in which requesters have properly made incomparably more PAIA requests than me.

104.3. I mention above that LASA rode on the number of PAIA requests I'd made by August 2016 as one of the legs of its case for an order claimed in its notice of motion that my 'conduct towards the application, its officials and board members, as set out in the founding affidavit, is declared as vexatious and frivolous', but that after pertinently debating the number of requests I'd made with LASA's counsel during argument, this court disagreed and dismissed LASA's claim for this order, along with all the rest of them.

104.4. And as mentioned in my FA paragraph 14, my requests didn't strike Mtati as an obvious waste of time when he read them, or he wouldn't have extended the prescribed time limit to respond (FA annexure 'C'), telling me untruthfully that studying:

· my requests;

· the many documents 'cross-reference[d]' in my 'footnotes' to my record specifications; and,

· the requested records themselves, at which he'd had to 're-look',

'has unfortunately taken a lot of my time'. He'd have seen and decided that my requests were all 'manifestly frivolous or vexatious' within the purview of section 45 and refused them as such on the spot.

105. More to the point than the number of PAIA requests I've made is the number of applications to court I've had to bring to compel LASA's national executives to respect my fundamental right to public body information. The instant application is the seventh, following six in the Magistrate's Court, and I was subsequently constrained to make two more to this court (cases 12442/17 and 5239/18): nine applications in all. At court, LASA expressly conceded the first five, and implicitly conceded much of the sixth by incrementally dribbling out further documents in response to it and by undertaking to the magistrate to deliver a compliant section 23 affidavit. (Instead of keeping this promise, it then tried getting me thrown out of this and the lower court by alleging to this court that I'm a vexatious litigant.)

Ad 12.2.5.

106. I've dealt with and disposed of this idle assertion in my FA paragraphs 57–63.

Ad 13.

107. This 'submission' set in ridiculously affected judicious language is obviously bad.

Ad 15.

108. Correctly quoting my first request in July 2016 for cost records in relation to my Magistrate's Court litigation (FA annexure 'A'), Mtati has overlooked my second request in August 2016 (FA annexure 'B') contemplated by the settlement agreement.

Ad 16.

109. Perhaps on account of the conventional wording of my first order prayed, Mtati (Hundermark) thinks I've brought a 'review application', and his mistake about this shows up again in his affidavit in repeatedly talking about a 'review' of his various refusals of my requests. (Hundermark makes the same tell-tale mistake in his answering affidavit in case 5239/18.) Not so:

> The proceedings that are contemplated by s 78(2) are not a review of or an appeal from the decision of the information officer ... They are original proceedings for the enforcement of the right that the requester has under s 11(1) to be given access to a record in the absence of grounds for refusing it.

So the SCA put it in paragraph 12 of *The President of RSA v M & G Media* (570/10) [2010] ZASCA 177 (14 December 2010).

Ad 17 and 18.

110. Mtati's reference to the number of PAIA requests I've made since 2010 – he inaccurately describes my amendment to my first request as my 'fifteenth' – is irrelevant to whether he was justified in refusing my instant two PAIA requests, be it on the basis of section 45, or on any of the other sections he newly grabs at in his answering affidavit. My request fell to be decided on its own terms. Naturally he doesn't tell this court that nearly all my record requests were illegally and unconstitutionally refused, and that they were later conceded under legal pressure.

Ad 19.

111. Actually 'It is quite clear that the two PAIA requests' for legal costs records in 2016 and 2017 don't 'concern the same subject matter' at all, besides belonging to the *same general category* of financial records. The only thing the requests have in common is that my July 2016 request (FA annexure 'A') and October 2017 request (annexure 'A' to my founding affidavit in case 12442/17)

are both for legal cost records – but, as I've said, in respect of *different litigations* by *different parties* in *different courts* at *different times*.

112. In constructing his argument, Mtati carelessly overlooks my second request in August 2016 request (FA annexure 'B'), which was for quite different records. So his argument is hopeless at several levels.

Ad 20–21.

113. Since the factual premise of Mtati's contentions is wrong, his contentions are wrong.

Ad 22.

114. This is more arrant nonsense. As said, my requests for cost records in July 2016 and October 2017 were in respect of different litigations, mine in the first case, LASA's in the second. And my August 2016 request (FA annexure 'B') didn't concern legal costs, but other matters.

115. So the 'variation' between my PAIA requests of July and August 2016 and my request a year later in October 2017 is total and infinite, and no 'portions of the [instant] application ... fall [within] the scope' of my second application (1422/17). Consequently there's no question of 'severability' of any of my instant requests, and section 28(1) doesn't come into it.

116. Mtati made the same dull point in January 2018 in his answering affidavit in my second application (14224/17). Even though I pointed out his blunder in my replying affidavit the following month, he repeated it regardless in his subsequent answering affidavit made in August 2018 in the instant application.

117. Mtati's persistence with his basic factual error tellingly suggests he didn't even bother reading my reply correcting it, and that he's indeed a cipher not really involved in the case, as I said in the beginning.

Ad 'FACTUAL BACKGROUND', paragraphs 23–55.

118. All this is irrelevant to my constitutional entitlement to sight of the public records I've requested. My underlying dispute with LASA about its failure to appoint me to the big-ticket job at the top of its professional ranks in this province, for which I was duly interviewed, selected and recommended in November 2009, 'is beyond this court's immediate concern', as I pointed out in my FA paragraph 38.

119. Mtati's paragraphs 23–55 are copied and pasted almost word for word from paragraphs 26–55 of his answering affidavit in my second application (14224/17), which he made several months ago in January 2018, and I've already replied to them in my replying affidavit in that case.

120. Since the facts Mtati alleges in his 'FACTUAL BACKGROUND' paragraphs are immaterial to my entitlement under PAIA to access the refused records I've sued for in the instant case, and I've dealt with the allegations before, I refer this court to my evidence in paragraphs 71ff. of my replying affidavit in my second application (14224/17), rather than reciting it all.

121. Before returning to the main case, I point out that this court has already considered the clear implication of Mtati's 'FACTUAL BACKGROUND' paragraphs very purposefully included in his affidavit – indeed he explicitly relies on them in his paragraph 58 – which is that my instant requests were a vexatious waste of his time. The same basic case was made in the vexatious application, to derail the instant application, and this court dismissed it.

122. In sum, LASA has tried this story on this court before – that I'm a vexatious sort of person, unlawfully harassing its officers with repeated pointless PAIA requests and repeated baseless applications to court to compel them – and this court has considered this fake narrative and rejected it.

Ad 56.1.

123. This is perjury. Mtati is full well aware that I *accept unreservedly* the 'outcome of the legal action that [I] brought at the Labour Court regarding [my]

non-appointment' and that my unfair discrimination claim was correctly 'dismissed'. He knows this because I've repeatedly expressly said so:

· In paragraph 4 of my answering affidavit in LASA's vexatious application made in May 2017: The 'claim I brought against LASA in the Durban Labour Court ('LC') – [was] *rightly dismissed, having been wrongly founded*'. (my emphatic italics in the original)

· Again in paragraph 929 of that affidavit:

> In light of pivotal information LASA had determinedly concealed from me since September 2010 when I first asked for it the month before, and which information I finally obtained in April 2016, I now believe I was barking up the wrong tree, and that the trial judge was right about one thing: no unfair discrimination had been directed against me personally in the abortion of my appointment. Rather, the unfair discrimination was indirect: the problem with me as recommended candidate was not my controversial public participation (or ethnic origins); it was that I stood in the way of a candidate who'd been improperly favoured and expected to be selected instead of me.

· And again in paragraph 86 of my replying affidavit in my second application (14224/17) made in February 2018:

> My claim was correctly dismissed, inasmuch as my cause of action was completely wrong and I'd gone to court barking up the wrong tree. On the then available evidence, I'd incorrectly surmised and therefore pleaded unfair discrimination as the probable reason I wasn't appointed, unaware until long after the trial that my rival for the post was Mlambo JP's long-time, repeatedly appointed, acting labour judge colleague – because in a criminal contravention of section 90 of PAIA LASA had carefully altered the selection panel's recommendation report by blacking out this pivotal information contained in it; and I only succeeded in disgorging the complete report long after the trial of and judgment in my labour claim by suing for it.

124. I lodged two PAIA requests, in July and then August 2016 (FA annexures 'A' and 'B'), but Mtati mentions only one without saying which, although implying he's thinking of the second, some of which concerns my 'non-appointment to the Pietermaritzburg Senior Litigator position.'

125. The 'gist of the PAIA request' I made in July 2016 is for the cost records of opposing my PAIA applications in the Magistrate's Court, and has nothing to do with my 'non-appointment' to the said post.

126. According to the OED, the meaning of 'gist, n.[3]' is '1 Law. The real ground or point (of an action, indictment, etc.).' By asserting his belief as to my reasons for making my requests – the gist of them, the point of them – as one of his chief considerations for why 'THE PAIA REQUESTS WERE CORRECTLY REFUSED' (the heading of his paragraphs 56–81), Mtati illegally steps foul of section 11(3)(b), which stipulates that 'the information officer's belief as to what the requester's reasons are for requesting access' is irrelevant, because the 'requester's right of access contemplated in subsection (1) is, subject to this Act, not affect[ed] by' it.

127. In a word, 'the gist of the PAIA request[s]', as Mtati sees it, is of zero legal interest. Yet he stands on it as a criterion in deciding and refusing my request, unlawfully transgressing section 11(3) as he does so.

Ad 56.2.

128. I've already addressed and refuted this. Again, under section 11(3) 'any reasons the requester gives for requesting access' or my suspected and inferred 'reasons for requesting access' are immaterial, but Mtati incompetently and unlawfully makes his case on them.

129. Indeed I'll ultimately be returning to the Labour Court with a rescission application, in which I'll seek the substitution of its order dismissing my claim to my appointment with an order of absolution from the instance, enabling me to proceed afresh on new pleadings, now that I have the real probable reason my appointment was aborted and my post 'frozen' – off the record, without

authority, in contravention of LASA's Strategic Plan 2009–12, and in contravention of the PFMA, which is to say illegally.

130. But under section 11(3), my ultimate intentions in requesting access to the records, stated or surmised, are irrelevant to my constitutional entitlement to them.

131. Only some of my second request bears on my 'non-appointment to a Senior Litigator position', so Mtati's argument, wrong as it is, doesn't go to the other unrelated documents I've requested, and it doesn't justify refusing them.

Ad 56.3.

132. That one of my several purposes in making part of my second request is to gather evidence (in the form of a section 23 affidavit) for perjury prosecutions, clearly implied in the request itself and spelt out in my following letter to Vedalankar, is precisely the sort of reason that section 11(3) excludes from an information officer's deliberation in deciding a PAIA request. Again Mtati illegally stands on it.

Ad 57–8.

133. This isn't 'a review application', so Mtati's (Hundermark's) little homily on the subject is as irrelevant as his conclusion.

134. But he very significantly asserts 'the factual background read with the reasons set out' in his refusal as 'demonstrat[ing] that the decision was correctly taken'. That is, he rides on his tendentious, false and misleading 'FACTUAL BACKGROUND' claims in his paragraphs 23–55, some of it objectively demonstrably perjured, as one of his reasons for refusing my requests in diametric contravention of section 11(3).

135. Also, he's now back to 'section 45 of PAIA' alone, and to the considerations enumerated in his refusal informing and founding his decision to reject my requests on this single ground, and not the others he comes up with elsewhere

in his answering affidavit. He's apparently forgotten about those new stories of his.

Ad 59–61.

136. This honeyed disquisition on PAIA doesn't go to justifying the refusal of my requests.

Ad 62.

137. Correct.

Ad 63.

138. The 'history of the PAIA requests levied [sic] by' me since 2010, and LASA's almost uniform blanket refusal to grant them, and thus prevent my access to the records I wanted to see, and the further history of LASA's repeated reversals of its refusals under legal pressure, is comprehensively and shockingly described in my Special Report (FA annexure 'F'). Detailed in my second and third applications (14224/17 and 5239/18), more such illegal and unconstitutional refusals followed the instant ones.

139. While we're talking the 'history of the PAIA requests' I made: one all-important record LASA's head office was understandably most concerned I shouldn't see was the very first specified record atop the list annexed to my initial PAIA request made in August 2010, namely the selection panel's recommendation report, recording that I'd been picked for the top post in question, and no one else, and that for want of right of appearance in this court and thus no experience as a litigator on his feet in it, my rival applicant, Mlambo JP's judicial friend Ncgamu AJ (as he used to be), was disqualified, rejected, and eliminated from the running.

140. My repeated request for that particular key record was furtively refused *four times*, once mutely in September 2010, and thrice expressly in October 2010, January 2011, and May 2015, on ever-changing grounds: in October under section 34 (semble); then in January under section 44; and then in May

under section 45 – ultimately abandoned when I sued for the record and was on the point of arguing in February 2016 for an order that it be surrendered. Which it was, at the point of this legal bayonet, in April 2016.

141. In his contempt for this court, hiding the material facts from it, like material documents from me and from the authorities I intend displaying them to, Mtati (Hundermark) naturally didn't include that tremendously interesting chapter in the 'history' of LASA's illegal and unconstitutional refusals of virtually all my PAIA requests since 2010.

142. I've already disposed of the irrelevance of how many PAIA requests I'd made by August 2016. So has this court, in dismissing LASA's vexatious application, inter alia for an order interdicting me from making any more.

Ad 64.

143. How much 'valuable time' Mtati 'and various officials' of LASA 'spent' in the past on their blanket refusals to comply with my requests over the years, and the 'valuable time' they 'spent' before that on concocting false excuses for delaying and obstructing them, then ultimately surrendering some of them under pressure of litigation, is irrelevant to my fundamental right to access the instant records I've sued for in this application. Under section 32 of the Constitution, my fundamental right of access to public body records is more important than their 'valuable time' as civil servants required to respect it.

144. As mentioned in paragraph of 63 of my founding affidavit in my second application (14224/17), no record exists to vouch this claim (originally made by Hundermark to me) to have 'spent approximately 181 hours' on my requests, and specifically on 'background' reading of documents filed in the Labour Court, on my 'various review applications [sic] in the Magistrate's Court', and on my requests themselves, according to Hundermark (annexure 'O'), i.e. over a month of office hours 'spent' on doing all this reading. Makokoane made a similar demand, only he and his 'team' (the same 'team' of Legal Services department attorneys) claimed an additional forty hours: 'almost 220 hours' (annexure 'P') on similar reading in relation to my request addressed to him – also totally

refused. Obviously had my requests addressed to Hundermark and Makokoane in November 2014 been 'manifestly frivolous and vexatious', as later declared by Mtati (nominally) in May 2015 when refusing them, Hundermark and Makokoane and their 'team' wouldn't have had to spend all this reading time, as dishonestly falsely alleged to extort money from me. Which enormous reading time wasn't chargeable in any event, since under section 22 of PAIA, search fees can only be charged for finding and preparing documents for access *after it's been granted*; and ultimately, after I pointed this out, Hundermark and Makokoane dropped their illegal money demands.

145. If there was any merit to the justifications that Mtati 'and various officials' advanced for refusing my record requests in the period 2013–15, and any merit to the lever-arch files full of defences raised by very junior counsel in the answering affidavits he drew for them in the Magistrate's Court, Mtati 'and various officials' would have argued them and got my applications for orders reversing their refusals dismissed. Instead, after reading my agenda for the pre-trial conference (annexure 'B' to my answering affidavit in the vexatious application (12124/16)) demolishing their refusal justifications and application defences in one fell strike, they caved at the big moment to get up and argue before the magistrate, abandoned all their useless justifications and defences, and signed a total surrender treaty in which they undertook to hand over all the documents I'd requested and sued for, or to certify under section 23 those that don't exist.

146. Indeed, the settlement agreement (FA annexure 'L') recorded LASA's undertaking to 'deliver to the applicant all documents requested in his requests for such that are the subject of the above cases' (my five applications), and in the case of any that don't exist, 'an affidavit in this regard made under section 23' (clause 4), 'without any admission of wrongdoing by the respondents' (clause 6).

147. For what it's worth, I assented to the inclusion of the latter clause at Hundermark's telephoned instance, because my real interest in suing out of the Magistrate's Court was forcing out of LASA the illegally suppressed records I'd

requested, and getting sworn confirmation of those that don't exist; and I said exactly that on the record before the magistrate when LASA asked me via one of its two junior counsel present whether I had any settlement proposals: 'Sure I do, I just want my documents.' And my said main goal was achieved, I thought at the time, upon LASA's agreement to hand them all over.

148. In my naïveté, I assumed that having been hauled into court and confronted with the imminent peril of declarations of constitutional delinquency and orders to compel about to be argued for and granted, Mtati 'and various officials of Legal Aid SA' (Hundermark) finally understood that I was serious about accessing the records I'd requested in the exercise of my constitutional right to see them; and that having finally agreed to turn them over, Mtati 'and various officials of Legal Aid SA' (Hundermark) were finally treating with me in good faith and would henceforth begin taking my constitutional right to information equally seriously.

149. I was quite wrong in my assessment of the situation. They refused to fully and properly honour the settlement agreement; rejected and ignored my repeated pleas for full and proper compliance with it; opposed my application to enforce it; promptly reverted to refusing my next PAIA requests in July and August 2016 (the subject of the instant application) as a waste of time again under section 45; and finally tried defeating my applications to compel brought in the Magistrate's Court and in this court with an application to rub me out as a vexatious litigant.

150. And even after this court's dismissal of their claim for an order that my 'conduct' in seeking information from LASA be declared 'vexatious', Mtati 'and various officials of Legal Aid SA' (Hundermark) contemptuously persisted in illegally and unconstitutionally refusing my PAIA requests duly made in the following two years, 2017 and 2018, as 'frivolous and vexatious' as well.

151. And they contemptuously continue withholding crucial, certainly extant documents requested for my investigation of recruitment corruption, and of perjury committed in the course of covering it up, that were pledged in the

settlement agreement – documents for which I twice had to sue, before and after the agreement; and they continue refusing to duly certify under section 23, clearly and unequivocally as required, documents we both know don't exist (which would have existed had the truth been told).

152. The breathtaking perfidy, duplicity and treachery displayed by Mtati 'and various officials of Legal Aid SA' (Hundermark), including:

· trying to get me struck off for complaining in my labour litigation of their chairperson Mlambo JP's gross misconduct in my matter (now before the JSC);

· successfully getting me summarily fired (my rolling contracts summarily terminated) as a magistrate for this (without a hearing, without even notice of the complaint); and,

· trying to assassinate me as an alleged vexatious litigant as a last resort to avoid honouring the surrender treaty made with me in the Magistrate's Court when I applied to enforce it there,

obviously precludes absolutely any possibility of a settlement of the instant application, and of my following two, without an order of court, because my experience of LASA's (Hundermark's) formal undertakings made in court, even when handed into court for the public record, is that they're worthless. Should LASA do another volte face at or before court, as in the Magistrate's Court in February 2016, as I expect, my position will be the same as that of the amaBhungane Centre for Investigative Journalism in its dealing with the Department of Defence, described in the Shadow Report (annexure 'J') on page 26:

> The DOD capitulated on the merits just days before the case was due to be argued, but offered no reasons for the about-face – after years of maintaining the documents could not be released. amaB continued with the application for punitive costs, given that the DOD's behaviour was unjustified and had used up valuable time and money. The judge agreed. In awarding the punitive costs order, Makgoka J, setting out the four-year history of amaB's efforts to engage with the DOD, said the objectives of PAIA should be borne in mind: "[a]mong those, is to afford the public a

> simple and inexpensive mechanism of obtaining information held by public bodies. Clearly, that objective has been frustrated in this case." ... [T]he court's judgment in the matter will] strengthen transparency and accountability in the defence sector. This judgement is also likely to serve as a curb to unnecessary litigation in PAIA matters.

The cycle at LASA of routinely illegally and unconstitutionally denying access to duly requested records year after year and then finally capitulating to my repeatedly brought court applications has to be brought to an end. And unless sharply checked and curbed by this court, the abuse is set to continue, with the constitutional information rights of other record requesters likely to be trampled on in the future, in the same way as mine have, with impunity, as in my case to date.

Ad 65–6.

153. It's no justification under PAIA for refusing a request for access to public body records to cry being too busy.

154. Under 'Recommendations' the SAHRC records in its report of the special remedial PAIA training workshop (annexure 'AA' to my founding affidavit in my second application (14224/17)) which it found necessary to hold for LASA's ignorant and incompetent head office lawyers (quoted in paragraph 238–41 below, they frankly admitted it) on 6 October 2011 after I'd repeatedly protested LASA's persistent illegal and unconstitutional refusals of my first three PAIA requests of 2010–11:

> LASA has ad hoc PAIA functionaries in their legal department. Participants agreed during discussions that this was not ideal since PAIA application was time consuming and compliance required dedicated personnel. The lack of application based knowledge; general awareness and organisational design were identified as key reasons why LASA would have challenges complying with PAIA ... LASA identified the need to have a clear budget dedicated to PAIA compliance and implementation [for] the provision of increased accessibility of information [and] to create a

structure ... to further enhance the process of implementation and compliance ... critical ... for fulfilment of the PAIA mandate.

155. LASA characteristically welshed on its undertaking to the SAHRC 'to create a structure' with 'a clear budget' for PAIA compliance. Now Mtati feebly complains that LASA doesn't have the capacity to respond to my PAIA requests.

156. But when confronted in the Magistrate's Court with the jeopardy of an imminent court order against its CEO and 'other officials of Legal Aid SA' declaring that, like former President Zuma had done, they'd violated the Constitution, they suddenly found the time to comply at last, albeit imperfectly, with all my PAIA requests made in 2013–15, as undertaken in clause 4 of the settlement agreement (FA annexure 'L').

157. Then when Mtati failed on their behalf to hand over all the promised documents, including key documents I needed, and delivered useless, grossly defective section 23 affidavits, they reverted to their tired old story about being too busy to fully and properly comply with the settlement agreement in Mtati's answering affidavit opposing my application to compel under the default clause. But as things hotted up for them back in court, they weren't too busy to turn over further requested and pledged documents in two successive lots.

158. In 'prosecuting litigation by and against Legal Aid SA', LASA's 'Corporate Legal Division' has wasted vast time and money on fruitlessly and wastefully opposing my applications to compel compliance with my PAIA requests and on trying to shut me down as a vexatious litigant to prevent me arguing them. The instant and my second applications are aimed at forcing LASA to reveal how much money they've wasted on this.

159. (After the hearing of the instant and my second and third applications, I intend requesting LASA's cost records, including counsels' fee-notes, showing how much money has been wasted on fruitlessly indefensibly opposing them. The Minister, the Portfolio Committee, and the Auditor General, selected NGOs and the newspapers will certainly be interested in Hundermark's ongoing abuse

of public funds to violate the Constitution by suppressing public records, duly requested under section 18 of PAIA.)

160. Mtati persists in mischaracterizing my 'conduct' in duly making my PAIA requests over the years, before and after my labour claim, as 'vexatious', 'unending', 'manifestly frivolous and vexatious', in the teeth of this court's rejection of this false characterisation, thereby betraying his and his head office colleagues' basic animus, their 'real disposition' (per *Dlusha*) to my information requests, that is, their general antipathy to being asked for recorded public information under their control – characteristic, per the Preamble to PAIA, of 'the system of government in South Africa before 27 April 1994, amongst others, [that] resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'. (Further betraying his and his colleagues' 'real disposition' to my duly made record requests, Mtati slagged them off as 'vulgarised' in paragraph 85 of his affidavit opposing my petition for leave to appeal the dismissal of my labour claim. In what manner my requests were 'vulgarised' he didn't say, and he doesn't use that demeaning but revealing adjective in this court. The same 'vulgar' and 'vulgarity' charge to portray me a low-class bloke bobs up in the 'memorandum' that perverted the decision of my petition (annexure 'K') mentioned in my FA paragraph 86.)

Ad 67.

161. This is wrong in fact and anyway irrelevant in law.

Ad 69.

162. Correct, but I'm not seeking any 'personal information about a third party.'

Ad 70–74.

163. All this is obvious humbug. Having raised section 45 alone against me in his refusal, Mtati now comes up with other grounds for refusing my request for LASA's counsels' fee-notes.

164. If they *contained* (not 'relate[d] to', which is Mtati's (Hundermark's) legally irrelevant phrase):

· 'personal information about a third party';

· 'financial, commercial ... information ... the disclosure of which would be likely to cause harm to the commercial or financial interests of that [third] party';

and,

· 'information supplied in confidence by a third party the disclosure of which would be reasonably expected ... to place that commercial party at a commercial disadvantage in contractual or other negotiations ... or ... prejudice that party in commercial competition',

and if giving me these fee-notes 'would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement', all of which Mtati now alleges, LASA wouldn't have avidly thrust a great wad of such fee-notes at me to pay after I lost my labour case. An illustrative example of one of these, given to me for payment without then claiming any of this nonsense, is annexed marked 'Q'. (The fee-note reveals the interesting fact that Mlambo JP was consulted at length in the preparation of LASA's fraudulent defence, based on allegedly insufficient budget received from the Department to employ me. His complicity in the preparation of this fraud on the Labour Court will be the subject of a future complaint to the JSC once I have the Senior Litigator salary budget records for which I've sued in my third application.)

165. So plainly it's not 'counsel's earnings, rate, fee narratives, VAT numbers, bank account details, and business operations if they give discounts by writing time off' that Mtati and his colleagues don't want to divulge, since they gladly divulged them before, it's really the bottom-line information that counsels' invoices contain, and precisely the information I'm after, for sharing with the said high authorities, interested NGOs and the media, namely what LASA paid the advocates it briefed to obstruct my access to LASA's records in violation of my fundamental right to information by way of groundless defensive and aggressive litigation waged year after year in the Magistrate's Court and then in this court – seemingly in 'discount[ed]' amounts after LASA balked at their

unconscionable and indefensibly excessive fees charged in their piranhas' feeding frenzy at the public trough.

166. In short, the fabulous fees LASA's advocates milked from it isn't any secret protected by any provision of PAIA.

167. Not only was no 'consent' by the advocates who submitted their invoices required by PAIA for their release to me, I'm confident that Mtati is lying in claiming that their consent was sought and that their 'consent was not granted', because in paragraph 59 of my founding affidavit in my second application (14224/17), I stated in relation to other such fee-notes:

> In light of the culture of casual brazen mendacity I've encountered in LASA's national office*, I doubt and I dispute that these advocates were ever asked to 'grant permission to release' their fee-notes to me; and I put Vedalankar to the proof of this by appending to her answering papers LASA's request for their consent and their refusals. (*My answering affidavit in case 12124/16 details and objectively proves lie after lie told by LASA executives in the past, including under oath. I've recently discovered more lies Mtati told the SAHRC, copying Hundermark in, and deal with them below.)

168. As expected, no 'request for their consent and their refusals' were appended to the answering affidavit in that case. One draws the obvious conclusion. About the same claim made in the instant answering affidavit too.

Ad 75.

169. Mtati's professed concern that counsels' invoices may 'fall... into the wrong hands' if he provides them to me is both legally and factually unmerited – legally, because this isn't a ground for refusing me access to them under any section of PAIA; and factually, because in my letter to Vedalankar of 16 September 2016 (FA annexure 'D') I explicitly stated my intentions to refer them to 'the Minister, to the Portfolio Committee, and to the Auditor General'.

170. These are hardly 'the wrong hands', other than to LASA's national office executives, understandably alarmed by the prospect that I'm going to inform the said high authorities, as well as anti-corruption and information transparency NGOs, and investigative journalists on the hunt for the next profoundly corrupt public entity to expose in their newspapers.

171. Their anxiety over this would seem to be borne out by their insistence on the inclusion of clause 8 in the settlement agreement (FA annexure 'L'), recording my undertaking that if they breached it I'd 'limit [my] recourse to an application directly to court' and not 'engage the interventions of ... the Minister of Justice and Correctional Services, the Portfolio Committee for the same department, the Public Protector and the SAHRC'.

172. What this all shows is that LASA's national office executives fear the public ventilation of the information I've requested like vampires fear sunlight.

173. Mtati's ludicrously inapposite description of my repeated, necessary resort to 'litigating against Legal Aid SA' – nine applications now to enforce my basic entrenched human right to public information repeatedly violated by LASA's executives – as 'heavy-handed and brusque' calls for no response other than to point up that section 34 of the Bill of Rights provides that 'Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court'. And that my repeated necessary recourse to section 78 of PAIA has been occasioned by his and his national office colleagues' general contempt for the Constitution and the fundamental human rights it entrenches, and specifically my fundamental right to information guaranteed by section 32 of the Bill of Rights.

174. Rather more 'heavy-handed' is Hundermark's, Mtati's, and their national office colleagues' vicious retaliatory attempt in November 2015 to destroy me professionally and throttle me financially, and then in October 2016–17 have me stripped of my basic, constitutionally guaranteed civil rights to information and to seek relief from the courts. Behaving like officials of the apartheid state.

175. As in his complaints about the number of PAIA requests I've made since 2010, and playing the same game to prejudice this court against me, Mtati persists with his false narrative that I'm the malfeasor in the case, not him and his said colleagues. As if my approaches to this court are damnable. Yet again, in the language of the SCA quoted in my FA paragraph 81, he's 'attempted to turn turpitude into rectitude', 'appeared indignant and played the victim', all the while demonstrating a 'flagrant disregard of constitutional norms'.

176. Mtati's wholly impenitent, defensive-aggressive answering affidavit, the final affidavit filed in response to my three applications to this court, profoundly aggravates his and – standing behind and controlling him – Hundermark's persistent and contemptuous violation of my constitutional rights.

Ad 77–81.

177. All this is wrong and irrelevant. Section 7 doesn't afford an information officer a ground for refusing a record request. It regulates the use of documents in civil and criminal proceedings that have been obtained via PAIA after they've commenced, and it gives the court the discretion to admit them into the evidence in the interest of justice. In other words *it governs decision-making by a court, not by an information officer*. In paragraphs 39–55 of my founding affidavit in my third application (5239/18), in which section 7 was indeed raised against me to justify refusing my request for the budget records I'd requested, I deal with similar allegations. My replying affidavit in that case will further talk to Hundermark's contentions in his answering affidavit on the point.

Ad 83–4.

178. My charges 'against senior personnel at the Legal Aid SA and the chairperson of its Board', particularly in my FA paragraphs 29, 30, 36–41, 65, 75–79, and 86, are all relevant to illuminating the extraordinary gravity of the case in its wider context. Nor are my charges 'wholly unsubstantiated', I reference them all. So this isn't just panicking hyperbole, it's perjury.

179. Apropos of my 'accusations' regarding Mlambo JP's atrocious repeated involvement in the violation of my constitutional right to public body information by repeatedly suppressing duly requested records, in violation of his judge's oath to 'uphold and defend the Constitution and the human rights entrenched in it', and his covering this up with mendacious reporting to the Minister and to the Portfolio Committee when they independently instituted enquiries into the matter at my instance – impeachable in the first instance, also criminal in the second – closely detailed in my Special Report (FA annexure 'F'), the JSC's Judicial Conduct Committee doesn't think them 'baseless speculation', 'wholly unsubstantiated', and 'manifestly scurrilous and scandalous' as Mtati (Hundermark) froths here, or it would have summarily dismissed my first eight capital charges against Mlambo JP under section 15(2)(d) of the Judicial Service Commission Act 9 of 1994: 'A complaint must be dismissed if it ... is frivolous or lacking in substance'. On the contrary, Mlambo JP was required to answer my prima facie, documented case against him. Which he did, vouching which I annex the first and last pages of his response marked 'R'. (I've redacted its content, irrelevant for present purposes.)

180. Nor did the Judicial Conduct Committee find 'baseless speculation', 'wholly unsubstantiated', and 'manifestly scurrilous and scandalous' my complaint, mentioned in my FA paragraph 40, about LASA's perversion of my petition for leave to appeal the dismissal of my labour claim, or it would have summarily dismissed it too. Instead, Labour Appeal Court Judge President Waglay was likewise required to please explain. Which he also did, vouching which I annex the first and last pages of his response, its content redacted, marked 'S'.

181. My complaints, the pathetic responses they elicited (unredacted), and my hard comments on them are privately accessible online at the address given in paragraph 1.11 above.

182. In abbreviating Legal Aid South Africa to the acronym 'LASA', I'm following the convention employed by this court in its reasons for dismissing the vexatious application, and by the Portfolio Committee, the SAHRC, and the Parliamentary Monitoring Group in their references to it in their reports and

minutes. If LASA is concerned to promote its brand, in the OED sense of '4.c. A trade-mark', on which it has spent millions marketing, by having everyone refer to it as Legal Aid SA, as I've read somewhere, it seems likely that after this litigation the Legal Aid SA brand will acquire the preceding '4.b' meaning of:

> *fig*. A sign or mark, sometimes in a general sense, but usually (with reference to the practice of branding criminals) conveying the idea of disgrace; a stigma, a mark of infamy.

Ad 89.

183. The language of section 11(3) is categorical and unambiguous, and no amount of repetitive waffle by Mtati can detract from its clear and unequivocal meaning.

Ad 91.

184. If by his clumsy verbiage, 'the records relating to invoices belonged to third parties', Mtati means *counsels' invoices* (two words instead of eight), as seems clear, they don't 'belong' to the advocates who drew and submitted them to LASA for payment, in any sense recognised by PAIA, because they're records within the definition in section 1, in terms of which:

> 'record' of, or in relation to, a public or private body, means any recorded information–
> (a) regardless of form or medium;
> (b) in the possession or under the control of that public ... body, respectively;
> (c) whether or not it was created by that public ... body ... .

185. Just because the advocates created the fee-notes and submitted them for payment doesn't mean they 'belong' to them. As the said definition makes clear, PAIA is indifferent to who created a record in a public body's possession.

186. I've dealt above with Mtati's almost certainly false claim that LASA's counsel were asked to consent to the release of their invoices to me. He's lied about this before.

Ad 92.

187. Mtati's refusal of my second request on the basis that it was 'manifestly frivolous, vexatious, substantially and unreasonably divert the most needed resources of Legal Aid South Africa' gives the lie to his obvious perjury that he 'needed to search and consult with the relevant officials.'

188. In truth and in fact, he searched for nothing and he consulted no one to find out where they were; he just threw my second request out because, he said explicitly, invoking words used in section 45, he thought it another obvious waste of time, since:

· 'You have been requesting records from the Information Officer and Deputy Information Officers since the year 2010';

· 'All these requests relates to the abortion of the Senior Litigator posts';

· 'Despite having been provided with the records which exists and where such documents do not exists, deposed to the affidavit in terms of section 23 of the Act, you have continuously requested further documents' (sic: broken grammar);

· 'Your conduct shows the deliberate desire to vex and annoy the officials of Legal Aid South Africa. This conduct borders on frivolous intentions and diverting the resources of Legal Aid South Africa';

and therefore,

'I accordingly refuse to grant the records requested in terms of section 45'.

(FA annexure 'E').

Ad 93.

189. Mtati's false denial on oath that 'Legal Aid SA Deputy Information Officers and I had since 2013 been routinely raising section 45 of PAIA' is contradicted and exposed as the raw perjury it is by the record of their refusals in the period 2013–15 on precisely this ground, along with section 7, and on a couple of

others advanced in February and May 2015 (all ultimately abandoned). These refusals are bundled and annexed marked 'T'. Their refusals in the period 2016–2018 on this same bogus ground are:

· FA annexure 'E';

· annexure 'F' to this affidavit; and,

· annexure 'F' to my founding affidavit in my third application (5239/18).

All of which refusals over the said five-year period show objectively that LASA's second most senior attorney Mtati lies under oath in the High Court without blinking.

Ad 95.

190. None of these sections apply to my requests.

Ad 96.

191. The relevance of these paragraphs is identified in my FA paragraph 39.

192. My Special Report (FA annexure 'F') comprehensively chronicles:

· the history of LASA's persistent and repeated illegal and unconstitutional refusals of my PAIA requests between 2010 and September 2016 (the date of the report);

· its persistent and repeated false section 32 reporting to conceal this from the National Assembly;

· Mlambo JP's successful false reporting to the Minister and to the Portfolio Committee (in the latter case a crime) to pervert their enquiries;

· Vedalankar's successful criminal lies to the Committee to head off and end its interrogation of her at a meeting, in regard to her repeated non-compliance with my PAIA requests of 2010, reported to the National Assembly by the SAHRC in its section 84 report for 2011/12; and,

· the SAHRC's repeated unsuccessful interventions to achieve LASA's compliance with the Act,

and I presented the Special Report as 'integral to my case' (FA paragraph 6).

193. My FA paragraph 31 invited Mtati to dispute any allegation made in it, but instead of taking issue with anything I state, he feebly tries putting down the entire body of fact I present, referenced to the records, as 'clearly based on, and tainted by, the applicant's personal judgment.' Quite the contrary, as this court will readily appreciate reading my report, it's 'clearly based on' the objective facts, all documented.

Ad 97.

194. The history of LASA's repeatedly demonstrated contempt for my constitutionally guaranteed right to access information held by the state is material to my case for the special orders claimed in paragraphs 4–6 of my notice of motion, because, like a crime spree carried on over many years by an habitual criminal, the refusal of my requests wasn't a single transgression, it was the latest outrage (more followed) in a consistent pattern of the same brazenly illegal and contemptuously unconstitutional conduct. (Errare humanum est, perseverare diabolicum.)

195. Despite my innumerable pleas over the years for their active intervention and support in LASA's repeated and persistent illegal and unconstitutional refusals to comply with my PAIA requests, and its repeated and persistent false annual reporting under section 32 to conceal it, all recounted in my Special Report (FA annexure 'F'), neither the SAHRC nor Public Protector have intervened decisively to put an end to it. The Portfolio Committee itself has remarked on the SAHRC's ineffectiveness at seeing to PAIA compliance – agreeing with its complaint that it's underfunded, but also noting that it's never been asked for 'more money for PAIA' compliance monitoring. Material excerpts from the minute of the Committee's meeting with the then chairperson of the SAHRC, Adv Lawrence Mushwana, on 13 April 2010 recording this are annexed marked 'U'. An internal audit of the SAHRC's PAIA Unit found it seriously operationally deficient; I quote it in my letter to PAIA Unit director Kisha Candasamy on 12 December 2015 (annexure 'GG' to my founding affidavit in my second application (14224/17)). The country's ultimate responsible and supervisory authorities, the Minister and the National

Assembly, are successfully lied to by LASA Board chairperson Mlambo JP, perverting and ending their separate, independently instituted enquiries into my complaint in February 2011 that Vedalankar had repeatedly illegally and unconstitutionally refused to comply with my first two PAIA requests; it's all in my Special Report and in my complaints to the JSC (annexure 'C' to my supplementary affidavit in LASA's vexatious application (12124/16)). There's never been anything like it in our country before.

Ad 98.

196. The letter and transmission vouchers prove I sent the report as alleged. Since no prejudice is alleged, Mtati's chest-thumping claim that this evidence falls to be struck out is baseless.

Ad 99.

197. At the point of argument at court, the refusals were indeed reversed, and Mtati's pilpul over this is itself 'disingenuous'. The refusals were incontestably reversed when all my requests were finally granted, as the settlement agreement records. And two months later I received a box of documents in partial accordance with the agreement, and more in two successive bundles when I sued to compel full and proper compliance with it.

198. I didn't say LASA admitted that it had wrongly violated my fundamental rights, I said it reversed its several refusals to give me the documents I'd duly requested in the period 2013–15 and that it agreed at court to hand them all over at last. I neither demanded nor obtained such an admission of wrongdoing. LASA's (Hundermark's) reversal of its refusals, its total change of mind in court, and its ultimate grant of access to all the documents I'd requested is a matter of objective, documented fact on the public record, since the settlement agreement was handed into court. That my requests had been wrongly refused on the basis of section 45 and 7, nearly all of them, is quite obvious, even though LASA (Hundermark) anxiously insisted on the inclusion of a clause expressly disavowing this.

199. Mtati's false charge that I'm being 'disingenuous' in stating this is a manifestly baseless, gratuitous attack on my personal and professional integrity and it seriously aggravates the case.

200. My evidence about the failure of the SAHRC to perform its statutory mandate to monitor public body PAIA compliance is relevant to showing I had no alternative but to approach this court for relief, because the system, so to say, established by the Legislature to facilitate public access to records held by the state, clearly isn't working, as the history of my case dismally shows.

201. The SAHRC chairperson Professor Bongani Majola's subsequent belated, inattentive, inadequate, and disgracefully derelict response to my Special Report is canvassed in paragraphs 159–61 of my founding affidavit in my second application (14224/17).

202. How Mtati repulsed and defeated the SAHRC's tentative investigation only of LASA's false section 32 reporting, *now for the fifth time*, and led the SAHRC to misinform the National Assembly yet again about LASA's compliance with the Act, is canvassed in paragraphs 162–8 of my just-mentioned affidavit.

Ad 100.

203. The relevance of my FA paragraph 34 is self-evident. No case is made for striking out the information it contains.

204. The Portfolio Committee's repeatedly expressed interest in and concern about LASA's non-compliance with PAIA will be dealt with below.

Ad 101.

205. Mtati's dull, compulsive denial of my point that my first request for costs records (FA annexure 'A') had nothing to do with my non-appointment is obviously perjured, and further illustrates his reckless disregard for the truth in this court.

206. I precisely need the cost records for my intended report to the Auditor General. None of the cost records contain 'third party information' in any sense recognised by PAIA, and the phrase is found nowhere in the Act.

Ad 102.1.

207. In truth, contrary to this blatant repeated perjury, no 'budgetary constraints' impeded my, or any other, recruitment by LASA to its vacant budgeted and funded posts, as its own records show. In July 2010, recruitment to some vacant entry-level non-critical public defender posts serving the lower criminal courts was temporarily stalled with Board approval to spur the Department's transfer of promised funds for legal staff salary increases – which funds were allocated to LASA a couple of months later in the national mid-term budget in October, whereupon recruitment to those bottom-rung legal posts promptly resumed, and recruitment generally at LASA rocketed in the last financial quarter. But not mine.

208. It's common cause that no record exists to show 'the second round of interviews ... were aborted due to budgetary constraints' – or for any other reasons, such as the totally different, contradictory reasons Nair gave the Board in November 2011 (annexure 'L'), alleging 'recruitment challenges' and the non-performance and incompetence of LASA's six incumbent Senior Litigators, having nothing to do with 'budgetary constraints' as alleged to me.

209. Mtati's claim that I was 'never recommended for appointment but to attend a second round of interviews' needs setting straight. Indeed the selection panel's report selecting me is framed to recommend me for another interview, but incompetently, unlawfully and severably, because, as elsewhere in the public service, recruitment and appointment procedure at LASA is precisely governed – at LASA by two internal regulations, its Policies and Procedures on Recruitment, Induction, Probation and Relocation ('Recruitment code') and Approval Framework; and these two legal instruments prescribe that after the 'most suitable candidate has been identified for appointment in a post' by the selection panel, per section 1.2.3.4 of the Recruitment code, the executing officer

delegated by the Approval Framework must approve or reject the recommendation. In the case of Senior Litigator posts, section 8.2.2 (b) of the Approval Framework governing 'Appointments', read with 'Key to Levels', stipulates that the management executives 'delegated for approval' of 'appointment recommendations' concerning such grade LP10 'Senior Professional staff' posts are CEO Vedalankar and NOE Nair jointly: she 'Must agree' with his 'Final approval' of the selection panel's candidate recommendation.

210. How as a *non-executive* Board member Mlambo JP has been unlawfully interfering in this prescribed recruitment and approval procedure by staging so-called second round interviews held by him and a panel of management executives without any authority under either of the said internal regulations, in wholesale disregard for the rule of law, is a matter comprehensively treated with supporting documents in paragraphs 245–95 of my answering affidavit in LASA's vexatious application (12124/16). Bottom line is I was duly picked for the plum job I applied for, after which the next stage in the recruitment process, *under law*, was joint approval and appointment by Vedalankar and Nair, unless good cause existed to reject me. Simple as that. Mlambo JP, Hundermark, Clark, Makokoane – none of these people on the so-called second round interview panel had any *legal* say in my appointment, and their involvement in interviewing, approving and rejecting other Senior Litigator candidates recommended by selection panels has been ultra vires and illegal.

Ad 102.2.

211. It's to be regretted that in his judgment given well over a year after the trial of my claim, the labour judge neglected to determine the issue between LASA and me that I specifically pleaded, dealt with at trial, and again in argument, in other words asked him to please judicially determine for us, namely that the so-called 'two pronged process of interviews' and especially the involvement of *non-executive* Board member Mlambo JP in it, violates the clear and explicit provisions of LASA's Recruitment code and Approval Framework, and is accordingly incompetent and illegal. The labour judge didn't deal with the issue

of his former head of court's grossly unlawful involvement, as a *non-executive* Board member, in staff procurement, which in terms of these two regulations is the exclusive jurisdiction of executive management. That is, the labour judge didn't address Mlambo JP's violation of the rule of law, and thus breach of the Constitution, and also contravention of Article 6 of the Code of Judicial Conduct, 'Compliance with the law': 'A judge must at all times, also in relation to extra-judicial conduct, comply with the law of the land.'

212. Certainly I 'dissent' from the labour judge's uncritical reference in his judgment to LASA's so-called second round interview process, as will any other lawyer who reads the two abovementioned internal regulations promulgated by the Board. (Note 9(v) of the Code of Judicial Conduct recognises the commonplace that 'judges are fallible and can err in relation to fact or law'.) As said, my answering affidavit in the vexatious application extensively addresses, with supporting documents, the illegality of the so-called 'two pronged process of interviews'. Furthermore, the labour judge 'accepted the two pronged process of interviews' only to the extent that he mentioned them; he didn't treat and decide the legality or otherwise of this 'process' in light of LASA's own regulations and the rule of law in our country, as I pertinently asked of him in my pleadings and argument, having regard to the evidence I presented and canvassed at trial.

213. Once LASA has finally disgorged all the records I've requested, including records that are the subject of this application, and records pledged to me in the Magistrate's Court, I'll be filing further complaints against Mlambo JP, inter alia for his multiple felonies committed in his corruption of Senior Litigator recruitment, to wit by illegally interfering in such executive operations in conducting his so-called second round interviews and approving or rejecting Senior Litigator candidates duly recommended by selection panels – even approving for appointment a rejected candidate, as at Mahikeng, and obstructing the filling of the Pietermaritzburg and Durban Senior Litigator posts. And thus running LASA 'as a fiefdom with its accompanying patronage network and largesse at the expense of quality basic service delivery to the

people of the province' (in the apt words of a commentator on unrelated corruption reported by the Public Protector (goo.gl/bPbZ2S)) – *KwaZulu-Natal having no senior litigation capacity at all, despite the budgeting and funding of its two Senior Litigator posts for well over a decade.*

214. As to Mtati's announcement that he proposes to apply to suppress my Special Report – an 'integral' part of my evidence (FA paragraph 6) and critical to contextualising the instant refusal in support of my ancillary orders 4–6 prayed in my notice of motion – LASA tried the same trick in its vexatious application, but its application to strike out my Special Report annexed to my answering affidavit in that case was dismissed by this court.

215. Suppressing documents over the past eight years, trying to suppress my evidence about this, trying to suppress me – this is how LASA behaves in our open democracy, more than two decades after the apartheid era, in which all this kind of thing was normal.

216. I drew my specimen Special Report for the SAHRC because it had proved unable to execute its statutory mandate under section 83; indeed, the minute of the Committee's April 2010 meeting with the SAHRC (annexure 'U') records its members' repeated observations that other parties have had to do the SAHRC's work for it.

217. Unfortunately my Special Report practically went into the SAHRC's bottom drawer, despite the assurance given me that it was being attended to by acting chairperson Priscilla Jana. In the result, only the matter of LASA's most recent false section 32 reporting was taken up – half-heartedly and quickly dropped – and not LASA's substantive refusals to comply with PAIA year after year since 2010, clearly illegally and unconstitutionally as I showed. I canvass the SAHRC's failure here with supporting records in paragraph 159–66 of my founding affidavit in my second application (14224/17).

Ad 102.3.

218. I've already disposed of this false characterisation of my report.

Ad 103.1.

219. In truth and in fact, and as the court record vouches, the magistrate pointed out from the bench one of the major defects of Mtati's main and supplementary section 23 affidavits that I'd complained about, to which one of LASA's two junior advocates in court, Carelse, responded by assuring him that it would be rectified, implicitly by the provision of a duly compliant affidavit.

220. Mtati doesn't claim the magistrate was wrong in identifying one of his affidavits' fundamental defects, in non-compliance with the Act – even if he was identifying this defect from the bench, on the record, 'off the cuff'.

221. Mtati doesn't dispute that he then failed to 'clarify' his section 23 affidavit in accordance with the magistrate's 'off the cuff suggestion'. He doesn't dispute that he reneged on the undertaking given the magistrate by his counsel for my benefit, as he sat directly behind him in court.

222. As to the rest of LASA's breaches of the settlement agreement: too long and insufficiently relevant to annex here, my second amended draft order prayed and its schedule are annexures 'B16' and 'B23' to my answering affidavit in the vexatious application (12124/16), and looking them over this court will quickly appreciate that LASA's performance under the settlement agreement was indeed grossly defective in the numerous respects I identified.

Ad 103.2.

223. None of this relates to my evidence in my paragraph 43 to which it purportedly refers. But as far as unpaid costs go: both this court and the Constitutional Court have observed – in the first case pertinently, in the second in principle – that neither of LASA's costs orders should have been sought and taken against me, i.e. that both were wrongly made:

223.1. I deal with the costs of *my labour case* in paragraph 66 of my founding affidavit in my third application (5239/18) with reference to *Zungu* (fully cited in that affidavit) decided by the Constitutional Court in January 2018.

223.2. During the argument of LASA's vexatious application in October 2017, this court pointed out to its counsel that since the merits of *my interdict application* weren't treated (through a communication failure between my attorney and the sheriff's office, I'd been unable to achieve service by the sheriff in time), I shouldn't have been condemned in costs and the case should simply have been struck from the roll.

224. Nonetheless, I was dutifully complying with the Labour Court's costs order by paying LASA's taxed bill in my labour case (I was never billed for my interdict case) in substantial instalments from my salary as a magistrate when Hundermark, via Mtati, knifed me in the back by getting me fired, thereby preventing me from continuing to pay it as undertaken – also trying to get me struck off to prevent me working and earning as a lawyer in private practice. (Notorious the world over, the conventional penalty for challenging and threatening corrupt state power is deprivation of livelihood and fundamental rights.)

225. The instructions Mtati gave his counsel Carelse, which he conveyed to the magistrate on the record while I listened in disgust to Hundermark's latest chicanery to prevent me enforcing the settlement agreement, were the following:

225.1. *That* Chief Executive Officer Vedalankar and Chief Legal Executive Hundermark had just authorised the application against me, and that one of them had been out of office until recently, which is why the application had only just been authorised on the eve of my hearing.

(But when in paragraphs 8 and 12–19 of my answering affidavit in the vexatious application I objected that Vedalankar and Hundermark had no delegated authority to authorise the case under the Approval Framework (the version LASA had given me), despite their high offices at LASA, and that the application was therefore legally unauthorised, Mtati changed his story in his replying affidavit and claimed on oath in his paragraph 24 that no, under the

Approval Framework (subsequently amended, per his paragraph 19), actually he'd authorised the application under his power to do so, not them.) And,

225.2. *That* Vedalankar and Hundermark had authorised the vexatious application on the advice of 'senior counsel' who'd furnished an opinion that I should be declared vexatious (for repeatedly claiming my rights in court).

(But it's certain this was another lie told to the magistrate, because no 'senior counsel', as alleged, was ever engaged 'during the proceedings' in the Magistrate's Court (to quote Mtati's paragraph 103.2), which means that when Mtati was 'advised by counsel ... to proceed with the application to declare the applicant [Brink] a vexatious litigant' (ibid), 'which advice I [Mtati] accepted' (ibid), the 'counsel' whose advice he was accepting was his very junior counsel in the case, namely Carelse, who he'd just brought in to fortify, and shortly replace, his other very junior counsel Machaba, who'd been in the case from the start and had botched it. Carelse then ran the vexatious application in this court, with a silk, Bokaba SC, brought in to argue vainly the hopeless, quickly dismissed case.)

226. In fabricating an impressive lying excuse to falsely explain the last-minute diversion of my application to compel compliance with the settlement agreement, Mtati blatantly lied to the magistrate through his counsel about who authorised the vexatious application. Just as he blatantly lied to the magistrate through his advocate about having obtained the opinion of 'senior counsel' that I should be declared a vexatious litigant.

227. Over and above repeatedly lying to the magistrate (for which he's liable to be struck off), Mtati now perjures himself in the matter before this court (for which he's liable to be jailed); because it's absolutely false that his 'Counsel' (Carelse) advised him to claim an order in the vexatious application that I 'pay security for costs before [I] can proceed with the applications' (sic: there was only one application at that stage, namely to compel full and proper compliance with the settlement agreement). And the reason Carelse gave no such advice was because:

· perfectly ignorant of vexatious litigation law (vide paragraph 53 above; and he hadn't even heard of the VPA before I told him, Hundermark and Mtati about it in my answering affidavit opposing their vexatious application, as is apparent from the fact that it features nowhere in their notice of motion or Mtati's founding affidavit), it never occurred to Carelse at that stage to seek such a conditional order; instead, his devious innovation to prevent me prosecuting my application to compel compliance with the settlement agreement in the Magistrate's Court was to apply to have me declared a vexatious litigant by the High Court, and his plan to have me thrown out of court in this way was simply and unconditionally stated to the magistrate on the record. Furthermore:

· LASA *already had an application for security pending in the Magistrate's Court*, which it had practically abandoned on seeing my heads of argument showing its late demand for security had been made out of time and was therefore incompetent and a dead letter under the rules of court. On appreciating this from my heads, instead of arguing the security application, LASA's next trick tried to prevent me accessing the outstanding pledged records, and handing them to the authorities I'd mentioned, was to have a go at knocking me down in this court with its vexatious application.

228. As Mark Twain observed, 'If you tell the truth, you never have to remember anything.' Forgetting the lies he's told in court, Mtati contradicts them again and again, now under oath, under penalty of perjury.

Ad 104.

229. My 'conduct' was impeccable, as I show in my FA paragraphs 44–6, and Mtati's 'exception' to it is of no interest.

Ad 105.

230. The cold print of the settlement agreement implies unequivocally that as a matter of fact 'the Information Officer and the two Deputy Information Officers abandoned reliance to (sic) section 45 of the PAIA', because having raised the section against me to refuse all my requests, and having persisted with this

justification in their answering affidavits opposing my five applications to compel, they changed face and indeed abandoned it at court moments before argument, rather than risking trial and a judicial determination that section 45 quite obviously had no application to my clearly serious requests, and that 'the Information Officer and the two [sic: actually *four*] Deputy Information Officers' had violated my fundamental right to information in keeping with the 'secretive and unresponsive culture' (per PAIA Preamble) of the apartheid state and in the manner of apartheid officials.

231. Again, Mtati profoundly aggravates his violation of my constitutional rights by repeating his utterly baseless, reckless charge that I'm 'disingenuous and intend... to mislead this Court', i.e. that I'm dishonest and attempting to defraud it.

Ad 106.

232. Mtati perjuriously disputes that Hundermark was instructing him as to terms of settlement with me. But in his answering affidavit in my third application (5239/18), Hundermark doesn't himself directly address and dispute my deduction that he was instructing his immediate subordinate Mtati.

Ad 107.

233. Of course LASA 'abandoned its defences' – or it would have stood on and argued them to get my applications dismissed. Instead it walked away from them in a total surrender to my five claims.

Ad 108.

234. My paragraph 55 conveyed a contemporaneous report made to me by the victim of the smear, but the collateral issue is insufficiently relevant to pursue here.

Ad 109.

235. Mtati's bald denial of my true evidence and his general denial of my incontestable contentions warrant no reply.

Ad 110.1.

236. It's clear from his paragraphs 110.1–3 read as a whole that Mtati disputes that LASA gave any undertaking to the SAHRC to scale up its PAIA request handling capacity and expertise, not just that it dishonoured it.

237. Squarely refuting Mtati's false denial of this under oath, the SAHRC's report of the workshop (annexure 'AA' to my founding affidavit in my second application (14224/17)) records the undertaking. I quoted it above, and will return to it again shortly below.

Ad 110.2.

238. According to the open, pre-typed, unsigned entry in the attendance register (annexure 'BB' to my founding affidavit in my second application (14224/17)) intended learner #6, 'Mtati[,] Thembile', bunked the special lesson on how PAIA works, held for him and other LASA national office lawyers on 6 October 2011 by the SAHRC in partnership with the information transparency advocacy NGO, ODAC.

239. Prior to this, the SAHRC had already remarked in email correspondence with LASA (it's annexed marked 'V') that its lawyers were 'not aware of the PAIA legislation at all' – causing the SAHRC to note their 'worryingly high' 'incidence of confusion' about it, resulting in their repeated illegal and unconstitutional refusals of my first three PAIA requests, described by the SAHRC's then PAIA Unit director Chantal Kisoon as 'the Brink saga ... reported to ... Parliament'. The workshop report reiterated: 'Most participants had no prior knowledge of PAIA' and 'were a little overwhelmed by the requirements of the legislation' causing 'inconsistent application in the organisation'.

240. These neophytes in the national office of the continent's biggest law firm, who basically told the SAHRC and ODAC that as far as PAIA was concerned they didn't have the faintest idea of what they were doing, included:

· pupil #1, 'Christopher Carelse', then of LASA's Legal Quality Audit Unit, and now an advocate in private practice, briefed against me both in the Magistrate's Court and in the vexatious application; and,

· pupil #13, 'Solly Sekgota', Corporate Legal Manager and so-called 'PAIA functionary' as the cover pages of LASA's section 32 report for 2016/17 describe him (annexure 'J' to my founding affidavit in my second application (12442/17)), who personally handled my request for the vexatious application cost records, for which I had to sue (14224/17).

241. The said self-confessed PAIA ignoramuses in LASA's head office themselves openly admitted their 'lack of application based knowledge' and 'challenges complying with PAIA', and that 'they had previously been misapplying the provisions of PAIA in certain instances' (all per the PAIA workshop report), i.e. to my PAIA requests, the only 'instances' in 2010–11, and the very reason the 'training intervention' (per annexure 'V') was 'urgently' (ibid) held – after which they thought they 'were able to identify the provisions in the formal context to identify and relate to access decisions impacting on practical delivery' (per the said report).

242. At the end of the PAIA training workshop, the SAHRC's and ODAC's report records LASA's head office lawyers' undertaking:

> to create a structure ... to further enhance the process of implementation and compliance ... critical ... for fulfilment of the PAIA mandate ... [and] identified the need to have a clear budget dedicated to PAIA compliance and implementation [for] the provision of increased accessibility of information.

243. Yet Mtati states under oath for the true information of this court that my 'statement' about all this 'is not factually correct and is in fact baseless'.

244. It's Mtati's denial of my true evidence that LASA's head office lawyers:

· admitted having 'previously been misapplying the provisions of PAIA ... [i]n certain instances' (per the report), i.e. my first three PAIA requests in 2010–11; and,

· undertook to create dedicated, budgeted PAIA request handling capacity, to ensure 'misapplication does not recur',

that 'is not factually correct and is in fact baseless' – being contradicted and refuted by the SAHRC's and ODAC's detailed recordal of this admission and of this undertaking in their report.

245. Recklessly perjuriously, Mtati denies my true evidence compulsively, even where I'm talking to objective, recorded fact.

Ad 110.3.

246. It's true that PAIA contains no 'requirement' that public bodies like LASA 'establish ... PAIA units', nor does it contain any 'requirement for the training of Information Officers and Deputy Information Officers.' But section 83(3)(e) provides that the SAHRC 'may ... train information officers and deputy information officers of public bodies' where they've shown they've no understanding of their constitutional information transparency obligations, as evinced by Vedalankar's and Nair's repeated and persistent illegal and unconstitutional refusals (on Hundermark's advice) of my first three requests of 2010 and 2011 on spurious, shifting grounds – ultimately abandoned as records originally requested under PAIA but denied me were finally squeezed out under legal pressure of round after round of discovery procedure in my labour case.

247. In other words, the 'requirement for the training of Information Officers and Deputy Information Officers' at LASA wasn't *peremptorily legal*; but in the view of then PAIA Unit director Kisoon it was *pressingly necessary in the circumstances*, to inculcate 'urgently' (per annexure 'V') and 'as soon as possible' (ibid) 'a working knowledge of PAIA' (ibid) evidently completely lacking among LASA's hopelessly ignorant national office lawyers, as revealed by 'the Brink matter' (ibid), namely the persistent illegal and unconstitutional refusal of my first three PAIA requests by Vedalankar and Nair (on Hundermark's advice), about which I'd repeatedly protested to Kisoon, as described in my Special Report (FA annexure 'F').

248. Like Mtati, neither information officer Vedalankar nor any national deputy information officers (at that stage Nair and Makokoane only) saw fit to attend the PAIA tutorial that the SAHRC held for them under section 83(3)(e) to 'train information officers and deputy information officers' on how to respond lawfully to a duly made PAIA request in compliance with their constitutional obligations in our open democracy.

249. This is despite the fact that 'the SAHRC was of the view' expressed to the Portfolio Committee in December 2012 'that PAIA was very technical and it was necessary that judicial officers had the skills to apply it', achieved in the case of 'magistrates' by 'training' (per the meeting minute, annexed marked 'W'). Since the Act is 'very technical' it behoved Vedalankar, Nair and Makokoane to undergo 'training ... to ensure that [like magistrates they] had the skills to apply it' too.

250. Hundermark skipped the special class as well, notwithstanding that:

· even before his delegation as deputy information officer ex officio on 25 May 2013 (per annexure 'AA' to his answering affidavit), he was already LASA's top de facto PAIA authority, as I show in paragraphs 184 and 194–6 of my Special Report (FA annexure 'F') and in paragraphs 115 and 118 of my founding affidavit in my second application (14224/17); and,

· he was well aware that my PAIA requests of 2010–11 had been illegally refused, as Kisoon recorded in her email of 12 July 2011 to LASA's Legal Training practitioner Raju and to ODAC's PAIA specialist Dimba (annexure 'V'):

> [T]he reporting of the Brink saga (you may be familiar with it – Patrick [Hundermark] is) to Parliament and the Commission has brought LASA's organizational compliance with the legislation into sharp relief[.]

251. Hundermark's failure to submit to instruction by the SAHRC on how the Act works, his truancy from the special remedial lesson, explains his disgracefully unprofessional lack of a 'working knowledge of PAIA' and 'the skills to apply it'. It explains his unfamiliarity with such basic principles in the

democratic era (per the workshop report) as 'transparency and public participation' as a 'fundamental cornerstone of sound democracies', and 'public bodies as repositories of information', and the 'primacy of the legislation', and 'the status of PAIA as a fundamental right [enforcement mechanism] … reiterated and emphasized at different points of the training'. It explains why these concepts remain meaningless to LASA's Chief Legal Executive. It explains his ignorance of PAIA's most basic provisions, on display in his:

· grossly incompetent and unlawful conduct as an internal PAIA appeal authority, described in paragraph 184 of my Special Report (FA annexure 'F') and, vouched with a supporting record, in paragraph 115 of my founding affidavit in my second application (14224/17);

· refusals (in others' names) of my previous PAIA requests;

· legally irrelevant final clause added at his insistence to the settlement agreement in the Magistrate's Court (described in paragraph 8 above);

· illegal and unconstitutional refusal of my request for the budget records for which I've sued in my third application (5239/18); and,

· disgracefully ignorant and professionally incompetent answering affidavit in that case, demonstrated in my reply to it.

252. As for LASA's other lawyers who did attend, including Carelse and Sekgota, the special education that the SAHRC found 'urgently' necessary to provide them 'as soon as possible' to give them 'a working knowledge of PAIA' proved unsuccessful, and the remedial lesson failed: virtually all my subsequent PAIA requests continued to be refused, on the new grounds now that they were hit by sections 7 and 45.

253. LASA's consultant PAIA expert, junior advocate Carelse (formerly a professional performance quality inspector in LASA's national office, and the arbiter of whether other LASA lawyers were competent or dangerously useless and a menace to the public) cluelessly persisted in raising section 7 against me from the bar in the Magistrate's Court in July 2016 to justify Mtati's refusal to deliver all the records he'd pledged in the February settlement agreement, when I returned to court under the default clause to compel full and proper

compliance with it; and this irrelevant section was again raised against me in the vexatious application (in paragraph 89 of Mtati's founding affidavit in the case) that he ran, and in all three answering affidavits opposing my PAIA applications to this court, delivered after judgment in the vexatious case.

Ad 111.

254. In no case is my 'right to access to information ... limited by the provisions of PAIA ... identified in this application'; and section 11 requires that all the public records I've requested be made available to me for examination as a matter of constitutional right.

255. Again, Mtati damnably attacks my integrity to parry the thrust of my well made complaint.

Ad 112.

256. What's 'scandalous' is the conduct I describe, not my 'statements' about it. As is to be expected from a profoundly corrupt public entity, Mtati again tries turning the tables and making me out to be offside in taking its corrupt officers on. Mlambo JP's *documented* repeated collusion in and connivance at Vedalankar's (Hundermark's) repeated illegal and unconstitutional refusals of my first two PAIA requests in 2010, and his mendacious reporting to the Minister and to the Portfolio Committee to cover it up and pervert their separate, independently instituted enquiries into the matter, detailed in my Special Report (FA annexure 'F'), is now before the Judicial Conduct Committee of the JSC, which is currently investigating my complaints about this and other gross misconduct in my matter. They're summed up in annexure 'O' to my founding affidavit in my second application (14224/17); and as said, the complete papers – my complaints, their responses, and my comments – are privately accessible at the secure internet address mentioned in paragraph 1.11 above.

257. In amplification of my case made in my FA paragraphs 72–4 for 'naming and shaming' by orders for publication and referral, as claimed in paragraphs 4

and 6 of my notice of motion, and to counter Mtati's idle allegation that it's 'irrelevant for the purpose of this application' and therefore liable to be 'struck out' (without saying how it's prejudicial), I call this court's attention to certain highly pertinent Portfolio Committee meeting minutes taken by the Parliamentary Monitoring Group, now 'freely available' online (per the minute headers) and therefore in the public domain.

258. The minutes reflect that both the SAHRC and the Portfolio Committee want PAIA 'offenders' like LASA – *repeatedly specifically mentioned at these meetings* – 'named' and 'shamed', and its representatives 'summon[ed]' by the Committee so that they can be 'held to account':

259. On 14 February 2011, the SAHRC complained that the Committee 'had not named nor shamed nor held to account departments that were offenders', despite the 'offenders' being reported to the Committee in 'the SAHRC reports on PAIA' under section 84 'submitted to Parliament every year'.

260. Whereas:

> the role of the SAHRC was to monitor compliance and report on that. The role of the Committee was to act as a critical oversight body to ensure compliance. The country came out of a culture of secrecy in 1994 and this was hard to break. What went with a culture of secrecy was a culture of non-accountability to ordinary people ... Every year the Commission presented to the Committee on the poor non-compliance levels of government departments [and other state organs]. Has this Committee undertaken any steps for the naming and shaming of these departments [and other state organs] or taken any action?

261. The Committee admitted that it:

> had not done anything and that was a problem [given that it] undertook ... at the meeting in October 2010 where the [SAHRC's] annual report [under section 84] was tabled. [SAHRC commissioner] Ms Govender thanked Mr Jeffrey [sic: Jeffery] for the assurance that the Committee would take this

> forward. The Chairperson said that the Committee would go through the report and if necessary name and shame departments ... It was uncomfortable to know that the Committee had not done what it was supposed to but it would do so now. ... The Department of Justice and Constitutional Development (DOJ&CD) had presented last week that one of its Key Performance Indicators (KPI) was the promotion of PAIA ... The advantage of the Public Finance Management Act (PFMA) was that there was an Auditor-General who audited state books and ensured compliance with the PFMA. ... Section 32 had weaknesses including that it did not allow the Commission to test the veracity of statistics. [Nor did it] allow for the Commission to know if disciplinary action was taken against individuals for non-compliance with PAIA within government departments. There was no identified unit in most public bodies dealing with PAIA.

A copy of the February 2011 meeting minute is annexed marked 'X'.

262. At its meeting with LASA on 9 October 2012, Committee member Jeffery pointedly raised with Vedalankar LASA's lack of 'cooperation in terms of PAIA', as the SAHRC had reported in its section 84 report for 2011/12. The matter was also raised by Committee chairperson Landers, and pressed again when Vedalankar failed to address it. I deal with this extensively in paragraphs 163–7 of my Special Report (FA annexure 'F'). Material excerpts of the minute of the Committee's October 2012 meeting with Vedalankar, showing the criminal lies she told the Committee to pervert its enquiries, are annexed marked 'Y'. Although the SAHRC's section 84 report faulted only LASA's repeatedly false section 32 reporting, Vedalankar and both Landers and Jeffery all understood that the real issue was Vedalankar's (Hundermark's) substantive refusal to comply with my PAIA requests, about which I'd complained to Mlambo JP in my first petition to him, copied to Landers, and which I'd discussed with Jeffery on the phone. The lies Vedalankar told the Committee to evade my complaint are quoted and refuted in paragraphs 148–67 of my Special Report, especially the final two paragraphs. (Jeffery's

disbelief of another of Vedalankar's obviously untruthful claims to the Committee is highlighted on the last page of the minute, annexure 'Y'. In lying that LASA couldn't fill posts and had adjusted its budget accordingly, she likely had the Senior Litigator posts in mind, because the same lie was told to the SAHRC (it's quoted in 'All the Different Stories', annexure 'K').

263. At a Committee meeting with the SAHRC two months later on 3 December 2012, Jeffery raised Vedalankar's repudiation of the SAHRC's section 84 report faulting LASA, to which PAIA Unit director Adeleke responded by confirming that the SAHRC's report was indisputably correct. At the said December meeting, the Committee emphasized to SAHRC chairperson Mushwana:

> The Commission had to take PAIA very seriously and the Portfolio Committee could assist through a naming and shaming exercise by summoning government bodies to account before it.

(The December 2012 meeting minute is annexure 'W'.)

264. The last sentence of my FA paragraph 34 reports the Committee's continuing interest in LASA's PAIA delinquency: On 5 October 2016 its secretary phoned me to request a PDF copy of my Special Report for emailing to all Committee members.

265. The Foreword to the SAHRC's PAIA report to the National Assembly under section 84 for 2015–17 (annexure FF to my founding affidavit in my second application (14224/17)) published in September 2017 records its CEO's appeal:

> [W]e would like to additionally request Parliament to take public institutions to task in addressing non-compliance with PAIA obligations.

266. So contrary to Mtati's allegation that it's 'irrelevant for the purpose of this application', my evidence about the Committee's repeatedly expressed concern about LASA's '[non-]cooperation in terms of PAIA', and its false reporting about it to defeat the Committee's constitutional oversight responsibility, is directly relevant to my claim in paragraph 6 of my notice of motion for referral of this court's judgment to the Committee and to the SAHRC so that LASA can be

called and held to account, by being 'summon[ed]' by the Committee for 'naming and shaming'.

267. Both the SAHRC and the Committee want chronic PAIA delinquents like LASA publicly exposed in this manner, and they need to be informed so that they can see to it. My own reports of the problem have been defeated by lies.

Ad 113.

268. It's no 'assumption' that Mtati told me 'I'm only an agent' with an unconcerned shrug when I cautioned him that his several affidavits in my labour case reeked with perjury; and he offers a transparently untruthful answer to my evidence about it. That's exactly what he told me as the two of us sat chatting amiably in court while awaiting the labour judge's entrance to read the punch-line of his judgment; and Mtati's legal misunderstanding of the gravity of testifying on affidavit explains his express lack of concern at his exposure to criminal prosecution for making false allegations that I was implicitly calling to his attention.

269. Mtati's erroneous notion that he's 'only an agent' and therefore immune to criminal prosecution and professional strike-off for the prolific perjuries he's committed in his affidavits sworn to be true before a commissioner of oaths may be traced to his misconception that affidavits are mere 'pleadings', as he calls them in his paragraph 109 of his answering affidavit, and in the first paragraph of his letter to me of 4 November 2016, annexed to it. (Other than to Mtati, it's elementary to all lawyers that pleadings aren't evidence; and whereas, for instance, true facts can properly be denied in pleadings for tactical advantage in actions, knowingly denying true facts under oath in affidavits in applications is a crime.)

Ad 114–16.

270. All this is for argument.

271. Wherefore I persist with my application.

Signed at Eshowe on October 2018.

ANTHONY BRINK

Signed before me at Eshowe on October 2018 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

A

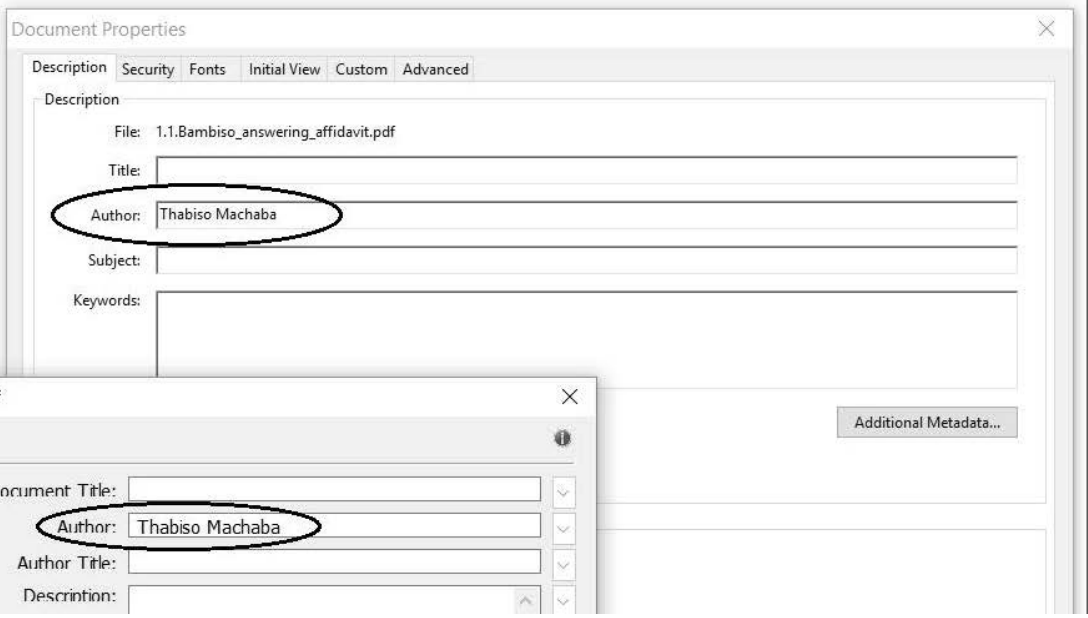
IN THE MAGISTRATES COURT FOR THE DISCTRICT OF ESHOWE

Case No. 257/14

In the matter between:-

ANTHONY ROBIN BRINK

and



NOTE: The original annexures to the replying affidavit to be filed at court are all initialed by the deponent and by the commissioner of oaths.

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

In the matters between:

ANTHONY ROBIN BRINK Applicant

and

The respondents in the following five applications:

HOPE BAMBISO N.O., DEPUTY INFORMATION OFFICER, EASTERN CAPE REGION, LEGAL AID SA ('LASA'): Case 257/14;

VIDHU VEDALANKAR N.O., INFORMATION OFFICER, LASA: Case 258/14;

ZANELE MSWELI N.O., DEPUTY INFORMATION OFFICER, FREE STATE AND NORTH WEST REGION, LASA: Case 259/14;

BRIAN NAIR N.O., DEPUTY INFORMATION OFFICER, LASA:
Case 1005/15; and,

VIDHU VEDALANKAR N.O., INFORMATION OFFICER, LASA:
Case 1432/15

CONSOLIDATED LIST OF RECORDS REQUESTED UNDER PAIA

Preamble: This is a consolidated list of all requested documents that are the subject of the above court applications, drawn by the applicant and delivered to LASA Corporate Services Executive Thembile Mtati ('Mtati') by email on 12 February 2016 in accordance with clause 2 of the Settlement Agreement concluded between the parties, the applicant in person and the respondents represented by Mtati, at the outset of the judicially supervised pre-trial conference on 11 February 2016.

B

H

original response that it took a 'decision to inform Mr B Mngadi who was an internal candidate of the Respondent's decision not to proceed with the filling in of the Senior Litigator posts instead of the Applicant'.[46] Among the facts listed by the applicant for admission in his agenda for the pre-trial conference in October 2011 was: 'At the end of April or in May 2010, even as the respondent was busy recruiting for a Senior Litigator for Mthatha, Nair or Clark telephoned Mdaka or Brijlal and instructed him to tell Mngadi that the Senior Litigator recruitment wasn't being proceeded with.'[47] The respondent 'Agreed'[48] with this and volunteered: 'It was Mr Nair who gave the instruction.'[49] In denying it in court, Nair lied.

[179] Further contradicting Nair's lying denial in court that he had Mngadi put off in April or May 2010 while the applicant was callously left twisting in the wind, the respondent not only confirmed this, it went on to advance a flaccid reason why Mngadi was informed 'of the Respondent's decision not to proceed with the filling in of the Senior Litigator posts instead of the Applicant',[50] despite the applicant's repeated pleas for information about the upshot of the interviews held five months earlier: 'For Mr Mngadi, his appointment as a Senior Litigator was going to result as an internal promotion instead of a new employment hence it was not much of a problem to inform him well in time of Legal Aid South Africa's decision to freeze the recruitment process'.[51] ...

(This latter sworn statement is contradicted by Vedalankar's allegation to Brink in her letter on 18 October 2010: 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.'[52] Which she confirmed on affidavit.)[53]

32. All counsel's feenotes for his professional services rendered LASA in the handling of Brink's first three record requests under PAIA in August and December 2010 and March 2011, and his involvement, if any, in the drafting of Mlambo JP's 'Confidential ... Report ... Re: Advocate Anthony Brink' to the Minister in March 2011 and in 'updated' form to the Portfolio Committee in June 2011, to put down Brink's complaints.

    Note: CSE Mtati has stated on affidavit that after 'the CEO ... felt justified to refuse him access' to the records Brink had requested, his PAIA requests were 'given to counsel for his opinion ... to be safe.'[54]

33. All counsel's opinions in regard to the handling of Brink's said PAIA requests, and the responses to them that he drafted for LASA.

    Note: Since these were not furnished in the course of litigation, no question of privilege arises.

[46] Pleadings bundle, original response, page 162, paragraph 41.4.
[47] Pre-trial conference bundle, applicant's agenda, page 13, paragraph 31.
[48] Pre-trial conference bundle, respondent's answer to agenda, page 55, paragraph 31.1.
[49] Pre-trial conference bundle, respondent's answer to agenda, page 55, paragraph 31.2.
[50] Pleadings bundle, original response, page 162, paragraph 41.4.
[51] Application to subpoena Mlambo JP, Mtati's answering affidavit, page 105, paragraph 81.6.
[52] Bundle, page 103, paragraph 6.7.
[53] Bundle addendum, page 390–1, with reference to page 380, paragraph 13.
[54] Application to subpoena Mlambo JP, page 102, paragraph 75.2.

C

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE HELD AT ESHOWE

CASE NO: 257/14
258/14
259/14
1005/15
1432/15

In the matter between:

ANTHONY ROBIN BRINK **Applicant**

And

HOPE BAMBISO NO. AND 3 OTHERS **Respondents**

AFFIDAVIT IN TERMS OF SECTION 23 OF PAIA

I, the undersigned

THEMBILE VUYO MTATI

do hereby make oath and states as follows:-

1.

1.1 I am adult male admitted attorney employed as a Corporate Service Executive by Legal Aid SA at its offices situated at 29 De Beer Street, Legal Aid House, Braamfontein, Johannesburg, 2017.

1.2 I confirm that I am the designated Deputy Information Officer of Legal Aid SA and I am duly authorised to depose to this affidavit.

C

48.	F2	No such record can be found. The record requested was checked with the specified officials but same could not be located.
49.	F3	No such record can be found. The record requested was checked with the specified officials but same could not be located.
50.	F4	No such record can be found. The record requested was checked with the specified official but same could not be located.
51.	G6	No such record can be found. The record requested was checked with the specified official but same could not be located.
52.	G7	No such record can be found. The record requested was checked with the specified official but same could not be located.
53.	G8	No such record can be found. The record requested was checked with the specified official but same could not be located.
54.	H4	No such record can be found. The record requested was checked with the official who would ordinarily be expected to have knowledge of same but it could not be located.
55.	H6	No such record exists. This request has already been replied to in paragraph 183.2 and confirmed by Ms. Magazi with annexure HB7 to the answering affidavit deposed by Hope Bambiso under case 257/14 in Eshowe Court.
56.	H8	No such record can be found. The record requested was checked with the specified official but same could not be located.
57.	H9	No such record can be found. The record requested was checked with the specified offices but same could not be located.
58.	H11	No such record can be found. The record requested was checked with the official who it would be expected to have knowledge of the record but same could not be located.
59.	H13	No such record can be found. The record requested was checked with the official who it would be expected to have knowledge of the record but same could not be located.
60.	H17	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
61.	H32	The records requested belongs to a third party in terms of section 34 and the third party has not granted consent to furnish such record.

IN THE MAGISTRATE COURT FOR THE DISTRICT OF ESHOWE
HELD AT ESHOWE

CASE NOS: 257/14
258/14
259/14
1005/15
1432/15

In the matters between:

ANTHONY ROBIN BRINK **APPLICANT**

and

HOPE BAMBISO N.O AND OTHERS **RESPONDENTS**

ANSWERING AFFIDAVIT

I, the undersigned

THEMBILE VUYO MTATI

do hereby make an oath and state as follows:-

1. I am a duly admitted male attorney and employed as a Legal Executive by Legal Aid South Africa, a public entity established in terms of section 2 of Legal Aid

AMENDED DRAFT ORDER

Ad prayers 1.1 to 1.3

60. As demonstrated above, the Applicant did not lay any basis for these orders requested from the Court. Applicant has still not complied with Rule 55 (1) (d).

Ad prayer 2

61. The information requested under items **B16**, **B17** and **B18** was provided to Applicant and is all contained on the attached documents marked **"B16".** This information relates to e-mail communication between our Corporate Legal Manager, Solly Sekgota with Fola Adeleke of South African Human Rights Commission (SAHRC). Also forming part of **"B16"** is a response to a questionnaire sent to SAHRC.

62. I also attach marked **"B31"** a delegation letter as requested.

63. The information relating to Counsel's fee notes on professional services rendered as contained in paragraph **"H32"** of Applicant's request was refused based on section 34 (1) of the PAIA and a section 23 affidavit was furnished to Applicant.

21

10 years in the business of satisfying legal practice

ADV. THABISO MACHABA BA LLB LLM LLM (TAX LAW) WITS†

PITJE CHAMBERS: TRANSFORMATION INITIATIVE
7th Floor
81 PITJE CHAMBERS
Cnr Pritchard & Von Wielligh Streets
Johannesburg
South Africa
Cell: 082 634 6486

P.O. Box 4038
Johannesburg
2001
Tel: + 27 11 223 8000 o/h
Tel: + 27 11 223 8031 a/h
Fax: + 27 11 223 8004
Email:tmachaba@telkomsa.net

VAT NO: 4060233725

TAX INVOICE NO: 13/11

To: THE LEGAL AID BOARD

Attention: Mr Solly Sekgota

Your Fax: (011) 887 2000

Your Tel: (011) 887 2011

Date: 31 Mar. 2011

Your Ref: Mr Sekgota

My Ref: 4TH Acc/LAB/A.BRINK PAIA/INV. 13/11

Re: **ACCOUNT IN THE SETTLING OF DRAFT MEMORANDUM IN VIEW OF THIRD REQUEST BY A BRINK AND CONSEQUENT CONSULTATION WITH MR T. MTATI IN A BRINK'S APPLICATION FOR ACCESSTO INFORMATION I.T.O. PAIA 2000**

HEREWITH IS MY FOURTH ACCOUNT FOR YOUR SETTLEMENT

Activity	Dates	Fees
On consultation with Mr Mtati and on considering the papers afresh and preparing to settle a memo to the LASA in view of Mr Brink's 3rd request for access for information	**11 Mar. 2011**	**@ R10000.00**
On researching the law after consideration of Mr Brink's third request and on settling the required memorandum in answer to various questions posed by Mr Mthati o.b.o LASA and on emailing same to Mr Mthati and Mr Sekgota for 3.5 days	**16 – 19 Mar. 2011**	**@ R60000.00**

† *"Forgiveness is the key to action and freedom."* – Hannah Arendt

On perusal of Mr Brink's referral of a complaint to the Human Rights Commission and considering same; and incorporating its contents to the final memo and on settling memo on whether the LAB completely responded to Mr Brink's 15 December 20101 request for access to information.	**26 – 28 Mar. 2011**	**@ R30000.00**
On perusal of Mr Brian Nair's affidavits and considering the laws that arise therefrom and researching the law to see if same complies with PAIA and administrative law principles for 2.5 days.	**29 – 31 Mar. 2011**	**@ R40000.00**

TOTAL BALANCE DUE TO ADV. T MACHABA: R140000.00

ADD VAT AT 14% @: R19600.00

TOTAL PAYABLE: R159600.40

Herewith are Adv. Machaba's banking details for effecting payment.

Bank and branch: Standard Bank (Small Street City Branch)
Account type: Cheque Account
Account No: 001087673

Thank you for the above brief and do enjoy words of wisdom below.

Please provide proof of payment to Adv. Machaba for filing and records.

THABISO MACHABA
PITJE CHAMBERS
JOHANNESBURG

Recommended for payment. [illegible] 30/Sept/2011 pay from legal provision

Legal Aid South Africa
Your voice. For justice.
Independent and within reach.

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

28 November 2017

Advocate Anthony Brink

P.O. Box 565

Empangeni, 3800

Tel: 083 779 4174

Email: anthonybrink.sa@gmail.com

Dear Advocate Brink,

REQUEST FOR ACCESS TO RECORDS OF LEGAL AID SA: AR BRINK

1. I refer to the above matter and to your request of access to records of Legal Aid SA dated **30 October 2017** addressed to the Information Officer, Ms Vedalankar.

2. The request has been referred to me in my capacity as the Deputy Information Officer for reply.

3. Attached hereto please find our responses to your requests.

Yours Faithfully

Thembile Mtati

Legal Executive

Deputy Information Officer

Independent and within reach.

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

No	Record requested	Reply
PART A		
1.	All fee notes by Legal Aid SA's Senior Counsel **Bokaba SC** and Junior Counsel **Carelse** reflecting their charges for their professional services, including for their appearance to argue the meritless application on the said date. If any other Counsel were briefed in the matter before them, their fee notes are also required.	The record is refused. The request is manifestly frivolous and vexatious. Secondly, the information is personal information of third parties and both parties have refused to grant permission to release such information.

2.	The time – sheets kept by Legal Aid SA's **(a)** lead in house attorneys, Hundermark and Mtati; **(b)** Corporate Services attorneys; and, **(c)** Pietermaritzburg Justice Centre correspondents, reflecting the professional time they spent on the application and the legal work they performed on it. Note: See the note to item 3 below	This request is refused. The request is manifestly frivolous and vexatious. Furthermore, all officials mentioned are employees of Legal Aid SA and did not keep time-sheets. Accordingly, these records do not exist. Attached is a section 23 affidavit.
3.	Legal Aid SA's attorneys hourly charge rate(s) for professional services, applicable at the material time, which would have been applied to compute Legal Aid SA's fees in a bill of costs drawn and presented to Brink to pay, had the application been granted against him with costs as between attorney and client, as prayed. Note: If preferred, to simplify and expedite the response to this request, the request for records specified in items 2 and 3 will be satisfied by a single schedule in the form of a draft bill of costs, certified as true and correct by the information officer herself.	Your request is refused as it is manifestly frivolous and vexatious. It further seeks to substantially and unreasonably divert the resources of Legal Aid SA as the request is hypothetical. At any rate, and even if the Legal Aid SA had succeeded in the application and granted costs, such costs would have been subjected to taxation by the taxing master in accordance with the approved rates and allowable items.
4	All vouchers reflecting Legal Aid SA's disbursements on travel, accommodation and meals for **Hundermark** and **Mtati**, who attended the hearing and for their two counsel **Bokaba SC** and	Your request is refused as it is manifestly frivolous and vexatious. It further seeks to substantially and unreasonably divert the resources of Legal Aid SA and has nothing to do with the prescripts

	Carelse or disbursed by the said two counsel themselves and thereafter charged to Legal Aid SA. Note: If preferred, to simplify and expedite the response to this request, it will satisfied by a single schedule, certified as true and correct by the information officer herself, stating all these travel, accommodation and ,meals costs, in place of copies of all individual vouchers.	of the objectives of PAIA, namely to enable the requester to fully exercise his rights and protect such rights.
5.	The Pietermaritzburg sheriff's invoice for serving application on Brink.	The record is refused. The request is manifestly frivolous and vexatious. This is part of the requester's strategy to continuously divert the resources of Legal Aid SA and has nothing to do with the prescripts of the objectives of PAIA, namely to enable the requester to fully exercise his rights and protect such rights.
PART B		
6.	Note: On 25 July 2017, the Society of Advocates of Kwazulu- Natal notified Brink that it had furnished Legal Aid SA with copy of his answer to Legal Aid SA's professional misconduct complaint against him in order to elicit Legal Aid SA's response to it. The core of Legal Aid SA's complaint was that Brink had oppugned Legal Aid SA's Board Chairperson Mlambo JP's integrity in his pleadings and affidavits in his claim in the Labour Court(DLC529/11) and in his petition for leave to appeal*DA21/14) The response Legal Aid SA provided to the Society of Advocates of Kwazulu Natal (the Society) to Brink's answer to its complaint of	The record is refused. The request is manifestly frivolous and vexatious. It further substantially and unreasonably divert the resources of Legal Aid SA. At any rate, it has been confirmed to us by the Society of Advocates that the Requester is already in possession of this record.

	professional misconduct against him, which answer comprised eight gross misconduct complaints by Brink to the Judicial Services Commission (JSC) against Legal Aid SA Board chairperson **Mlambo JP,** copied to the Society.	
7.	The Society's letter to Legal Aid SA in July 2017, covering Brink's answer to its complaint against him (his eight complaints to the JSC against **Mlambo JP**) and inviting its response to it.	The record is refused. The request is manifestly frivolous and vexatious. The request further substantially and unreasonably divert the resources of Legal Aid SA. The requester would have already received such records from the Society.
8.	Besides and in between Legal Aid SA's complaint to the Society against Brink in November 2015 and the Society's notification of Legal Aid SA of its initial finding (since reversed) in February 2017 (which records Brink already has) all other correspondence exchanged between Legal Aid SA and the Society about the complaint, including but not limited to Legal Aid SA's enquiries about progress in the Society's decision of the complaint and the response they drew.	The record is refused. The request is manifestly frivolous and vexatious. The request further substantially and unreasonably divert the resources of Legal Aid SA. The requester would have already received such records from the Society.

9.	Legal Aid SA's letter to the Magistrate's Commission in November 2015, covering a copy of its complaint to the Society against Brink, which complaint resulted in Brink losing his post as a magistrate on contract without a hearing and all further correspondence exchanged between Legal Aid SA and the Magistrate's Commission about the complaint.	The record is refused. The request is manifestly frivolous and vexatious. The request further substantially and unreasonably divert the resources of Legal Aid SA. The requester have every right in terms of the general principle of fairness to approach the Commission for such records who will deal with it in accordance with their own processes.

F

Anthony Brink	**Requester**
And	
Legal Aid South Africa	**Respondent**

AFFIDAVIT IN TERMS OF SECTION 23 OF PAIA
[REQUEST FOR RECORDS DATED 30 OCTOBER 2017]

I, the undersigned

THEMBILE VUYO MTATI

do hereby make oath and states as follows:-

1.

1.1 I am adult male admitted attorney employed as a Legal Executive by Legal Aid SA at its offices situated at 29 De Beer Street, Legal Aid House, Braamfontein, Johannesburg, 2017.

1.2 I confirm that I am the Deputy Information Officer of Legal Aid SA and I am duly authorised to depose to this affidavit.

1.3 The facts contained herein are within my personal knowledge and are both true and correct.

2.

F

2.1. I confirm that I have consulted with all the relevant officials and have ascertained that the records requested under item 2 of Part A do not exist as none of the officials mentioned kept time-sheets. Accordingly such records do not exist.

DEPONENT

THUS SWORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS THE 29 **DAY OF NOVEMBER 2017. THE DEPONENT HAVING ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HE HAS NO OBJECTION TO THE TAKING OF THE PRESCRIBED OATH AND HE CONSIDERS THE AFFIDAVIT BINDING ON HIS CONSCIENCE.**

SUID-AFRIKAANSE POLISIEDIENS
PROVINSIALE KOMMISSARIS
REGSDIENSTE
GAUTENG
29 NOV 2017
GAUTENG
LEGAL SERVICES
PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

FULL NAMES: LOVERS MAWENE

DESIGNATION: WARRANT OFFICER

ADDRESS: 16 EMPIRE ROAD, SAPS PHO PARKTOWN

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER 67574/12

In the matter between:

MANDAG CENTRE FOR INVESTIGATIVE JOURNALISM **FIRST APPLICANT**

BHARDWAJ, VINAYAK **SECOND APPLICANT**

and

MINISTER OF PUBLIC WORKS **FIRST RESPONDENT**

INFORMATION OFFICER:

DEPARTMENT OF PUBLIC WORKS **SECOND RESPONDENT**

and

AMICUS CURIAE

THE SOUTH AFRICAN HISTORY ARCHIVE TRUST

THE DEMOCRATIC GOVERNANCE AND RIGHTS UNIT

JUDGMENT

---

submitted that the missing documents fell within their request and that the respondents were obliged to disclose them or justify fully in terms of PAIA why they could not be disclosed. The applicants persisted in the prayers sought in the Notice of motion.

[17] Mr Masilo, in a further answering affidavit averred that he had been part of the task team appointed by the Minister during October 2012, to investigate allegations of corruption relating to the Nkandla security upgrade which had surfaced in the media. On 12 November 2012 the task team travelled to KZN. According to Mr Masilo he met with the project manager Mr Rindel who was based at the regional office of the Department in KZN. The purpose of the meeting was to collect all documents relating to the Nkandla security project including those in possession of the contractors. Mr Rindel kept working files of each contract/component of the project. The principal agent appointed by the Department (Minenhle Makhanya Architects), the consulting engineers (Ramcom) and, the quantity surveyors (R&G) also kept records on projects in which they were involved. Mr Rindel caused the documents relating to each completed project, except for the records of site meetings and contractors meetings to be filed in the archives of the registry of the KZN office and, no documents were kept at the Head Office of the Department or the Ministry. The documents collected were those referred to as the 42 files consisting of over 12 000 documents. Two sets of copies of the documents were made, one for the task team and the other for the Public Protector who had advised the Minister on 5 November 2012, that she too was investigating the Nkandla security upgrade.

[18] Mr Masilo submitted that the tendered documents in excess of 12000, copies of which were provided to the applicants were reported upon in publications of the Mail and Guardian newspaper of 5 and 12 July 2012. Furthermore, that the

applicants had not taken issue with any of the security sensitive documents that were withheld. Another search was conducted for the missing documents and a further disclosure of site meetings of June 2011 and January 2012 was annexed. Mr Masilo submitted that despite best efforts on the part of the respondents the documents in colour coded yellow and blue in the second disclosure cannot be located. He contended that the applicants' attack on the missing documents related to a limited number of documents and had gone beyond the order sought in the notice of motion and that the applicants had crossed *" the line between a legitimate request in terms of PAIA and abuse of the Act".*

AMICUS CURIAE

SAHA

[19] SAHA is a Non-Governmental Organisation which collects, preserves and catalogues materials of historic, contemporary, political, social economic and of cultural significance and promotes the accessibility of these materials to the general public. 'In 2001 it launched the Freedom of Information Programme dedicated to using PAIA in order to test the boundaries of freedom of information in South Africa ...and to create awareness of compliance with and use of PAIA'. Since 2001 it has launched over 1800 requests for information from predominantly government departments. Arising out of the refusals for access to information it has launched numerous applications in the High Court and as amicus curiae in one Constitutional Court matter. SAHA's interest arises out of the impact the outcome of this application will have on applications contemplated by it. The purpose is also to provide statistics on research conducted by it on requests for information and, to assist the court in appreciating the developing trend, the pervasive culture of secrecy which impacts on

the 'implementation of PAIA and the enjoyment of the Constitutional right of access to information.

[20] According to SAHA limitations on the right of access to information was demonstrated in the 'culture of secrecy pervading public bodies; in the nature and the extent of the reliance by the State on apartheid era legislation' such as the 'NKP' Act and 'PI' Act and, in 'the misapplication of PAIA's security exemptions to withhold information'.

PAIA requests were routinely met with initial refusal without adequate reasons; with refusing access to all requested documents without complying with the obligation to sever material that may be disclosed' (section 28 of PAIA) and without considering the public interest override in section 46 of PAIA. Refusals were withdrawn when litigation is instituted'.

[21] In illustrating statistics on the trends displayed in the 'culture of secrecy were the 159 requests in 2012 administered by SAHA to various public and private bodies and of these 102 were outright refused or no response was received and this equated to 64% refusal rate. 'Out of 11 PAIA requests to the Office of the Presidency 10 were refused' equating to over 90% refusal rate. Two practical examples, the PAIA requests of David Forbes, a filmmaker, on the amnesty hearings into the murders of the 'Cradock 4' and the entire amnesty application by Eugene de Kock to the Truth and Reconciliation Commission ('TRC').

[22] Where apartheid era legislation was relied upon, out of the 1297 requests to public bodies between 2001 and 2011, 79 requests received refusals and out of these 16 requests were initially refused in 'full or in part on grounds relating to

disclosure or not. I am of the view that at this stage, it would not serve any purpose to either examine the records or refer to oral evidence because the respondents have in my view not completed the exercise of disclosure in terms of the original request. As I see it, a referral to oral evidence in order to subject individuals to cross examination would possibly at this stage not yield the result. In my view, clear indication of the issues to be interrogated must at least be outlined. Unless the disclosures extend to Head Office and the DG first reports as he is required to do in terms of section 23(1) of PAIA, there is possibility that the court by referring the matter to oral evidence might be embarking on a wild goose chase. I take this dim view because of the dilly dallying conduct displayed by the respondents in dealing with this request for access to information.

[37] In the circumstances I give the following order:

1. The respondents are ordered to furnish the applicants with such information outlined in their request in terms of PAIA by including documents filed at the Department's Head Office in Pretoria within 30 days of this order;
2. In as far as the missing documents are concerned, the Director General of the Department of Public Works is ordered to comply with section 23(1) of PAIA within 30 days of this order;
3. The respondents are ordered to pay costs of this application including costs of two counsel.

_____

TLHAPI V.V

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON	:	05 NOVEMBER 2013
JUDGMENT RESERVED ON	:	06 NOVEMBER 2013
ATTORNEYS FOR THE 1ST APPLICANT	:	WEBBER WENZEL ATT.
ATTORNEYS FOR THE 2ND APPLICANT	:	WEBBER WENZEL ATT.
ATTORNEYS FOR THE RESPONDENTS	:	THE STATE ATT.

"When secretive evil deeds are covered in darkness they prosper. This work shines a light, revealing many uncomfortable truths."

THULI MADONSELA, FORMER PUBLIC PROTECTOR

APARTHEID GUNS AND MONEY

A tale of profit

"van Vuuren shows that the struggle against corruption is indeed a human rights struggle and that, as we know from South Africa's own history, it can be won. But it must be fought for."

JACOB DLAMINI, AUTHOR OF *ASKARI*

Hennie van Vuuren

to grapple with the longer-term question of elite corruption in South Africa. This is a missing piece of the puzzle.

The research process that has resulted in this book has been an arduous but ultimately rewarding one. We benefited from over 110 interviews with leaders in government, business and the security sector. Some of them were opponents of the regime. Many of these people gave of their time. While they may not all agree with the content of the book, their insights proved hugely important as they were eyewitnesses to many of these secrets.

A vast collection of apartheid-era material remains locked away in public and private archives. Much of it has been untouched by South African researchers. It's a rich vein of material that demands our attention as we come to understand our story. We worked through more than two million pages of documents. Many of these were secret government documents declassified in response to access to information requests using the Promotion of Access to Information Act (PAIA). We collected approximately 40,000 documents in 25 public archives, consulting numerous collections in seven countries including South Africa, Belgium, Germany, the Netherlands, Switzerland, the United Kingdom and the United States. In most instances, these documents have either only recently been declassified or received little attention from researchers given the dearth of investigative work undertaken in this field. All the documents collected will be handed to the South African History Archive (SAHA) to allow for consultation by other researchers.

In some instances, access to information requests made by SAHA, at our request, have been inexplicably denied. In mid-2013, 48 requests were lodged with state agencies in terms of PAIA. Most of these documents date from the period 1978–94 and also include TRC-related investigations (from the late 1990s). Most access to information requests have been ignored or refused on flimsy grounds. It was thanks to wise pro bono legal counsel that some departments finally relented. However, at the time of writing, SAHA has been forced to use the courts to challenge the Department of Defence and the

South African Reserve Bank. Both are obstinate in their refusal to grant access to apartheid-era records. Access to most public records remains a challenge in democratic South Africa.

This book is about a hidden past in a time of oppression. However, it is also a book about the present: about why open, honest government is worth fighting for on a daily basis and why the views of the powerful must never be accepted at face value. It also hopefully serves as a reminder of the destructive role that sinister conservative forces have played in world politics. As democracies lurch towards the right in Asia, Europe and the United States and we see foreign powers attempt to subvert democratic processes, we are reminded that democracy demands daily struggle.

This book is also a reminder to the powerful that the shame of the past will eventually haunt them and those that carry their name, even if they refuse to show contrition for profiting from injustice. We will never forget the names of those who died for freedom. Equally, we will never forget the names of the perpetrators of these crimes.

with the South African History Archive (SAHA) in Johannesburg. Thanks to Catherine Kennedy, Toerien van Wyk, Kathryn Johnson and our team of supporters at SAHA who carefully managed 50 freedom of information requests to eight government departments. You are all tenacious believers in the right to know.

When SAHA needed to use the law to take on errant government institutions that denied access to documents, we could turn to a formidable *pro bono* legal team who support the right to truth. Thanks to Prashianne Hansraj and David Cote and Lawyers for Human Rights in Gauteng. In addition, we drew on the wise counsel of a caring group of advocates in Geoff Budlender, Nasreen Rajab-Budlender, Nyoko Muvangua, Hermione Cronje, Lebogang Kutumela and Frances Hobden.

Accessing the documents was made easier by the staff in the two dozen archives we visited. We were guided by their advice and appreciate their willingness to carry and cart hundreds of boxes that fed our voracious appetite for documents. The archives consulted include the Archive for Contemporary Affairs at the University of the Free State; Armscor Archive; Belgian Foreign Affairs Archive; Belgian National Archives; BStU (Stasi) Archive in Berlin; the Company and Intellectual Property Commission at the Department of Trade and Industry; Department of Defence Force Archive in Pretoria; Department of International Relations and Cooperation Archive in Pretoria; German Ministry of Foreign Affairs Archive in Berlin; International Institute of Social History in Amsterdam; Liberation Movement Archive at the University of Fort Hare; the National Archive in Pretoria; the National Library in Cape Town and Pretoria; the National Security Archive at George Washington University in Washington DC; Shipping Research Bureau Archive in Amsterdam; South African History Archive in Johannesburg; Swiss Federal Archive in Bern; Times Media Archive in Johannesburg; University of Cape Town Archives; the University of Cambridge Archives; University of Leuven Archives and the Kadoc Archive; United Kingdom National Archive at Kew; University of Oxford

SHADOW REPORT 2017

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Access to Information Network

This report has been compiled by Imraan Abdullah a researcher at the South African History Archive (SAHA) on behalf of the Access to Information Network (ATIN).

CONTENTS

Introduction

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It has been 16 years since the Promotion of Access to Information Act, 2000 (PAIA) was enacted. The age of 16 is often associated with a coming of age. It is time to reflect on whether the coming of age of a piece of legislation that was enacted to give effect to the constitutionally enshrined right of access to information should be celebrated or castigated. The feeling on whether there should be some celebration is mixed as, while there has been some improvement with respect to some aspects of compliance with PAIA since its enactment, compliance in general remains poor to average. The Access to Information Network (ATI Network), a network of civil society organisations which cooperate to achieve the common objective of advancing the realisation of the right of access to information the public, and who have engaged passionately and consistently with PAIA over its 16 years of existence have noted with great detail poor compliance with PAIA in previous reports[2]. This report represents a similar sentiment due to the fact that, as transparency activists within civil society, members of the ATI Network still experience difficulties with respect to accessing information from public and private bodies. Yet, there have also been significant and encouraging moments during the reporting period that make members hopeful for the future of PAIA and proactive disclosure obligations within sector specific laws.

This report represents an amalgamation and narration of statistics derived from the submission of freedom of information requests submitted using PAIA (PAIA requests), by ATI Network members, during the period 1 August 2016 to 31 July 2017. Over this period, 408 PAIA requests were submitted by network members, the largest data-sample forming the basis of a Shadow Report to date. The key findings from this period were:

- The number of ignored requests and appeals is still far too high and shows apathy of requestee bodies (i.e. the holders of the information sought), in particular public bodies;
- The number of responses received outside the statutory timeframe is astronomical and needs immediate addressing; and
- Only 22 of the total 408 requests were submitted to private bodies, potentially a result of the complexity of the private body request process.

Requests to public bodies

Of the 408 PAIA requests submitted, 386 PAIA requests were submitted to public bodies. In other words 94.6 percent of the total number of requests submitted, were submitted to public bodies.

[2]Previous Shadow reports can be accessed by contacting any ATIN member, however for convenience this report will make reference to the reports found on SAHA's website at http://foip.saha.org.za/static/paia-reports-and-submissions.

Compliance with the statutory time frame

104 (27 percent) of the requests were responded to within the statutory time frame. Thirty (8 percent) of the PAIA requests submitted during the reporting period were pending at the close of the reporting period (meaning that while no decision had been received, the statutory time frame for a response had not yet run out). The remainder of the requests –252 (65 percent) - were not responded to within the statutory time frame. Sixty five percent represents the largest percentage of non-compliance with statutory time frames by public bodies reported on in recent years[3]. During this reporting period 216 requests submitted to public bodies were submitted to municipalities, the highest number yet, and of those 216 PAIA requests, only 171 requests were responded to within the statutory time frame. In other words, of the total requests not responded to within the statutory time frame (252 ((65 percent)), 171 (68 percent) were requests to local government. This suggests that the ever present need for better capacitation and training is particularly critical at local government level. The increase in non-compliance is also worrying for another reason, and that is because PAIA makes provision for public bodies to extend the statutory time frame by up to a maximum of 30 additional days, when there is a legitimate need for additional time. Yet one ATI Network member (SAHA) has experienced that many public bodies only provide a notice of extension, invalidly, after it has been communicated to them that they have failed to respond to a request within the statutory time frame. This demonstrates a laid back attitude, with the public body waiting for pressure from the requester before taking, legally invalid, steps to increase the time available to search for records and decide on access.

Outcomes of initial PAIA requests

Three hundred and fifty six out of 386 PAIA requests received responses or were deemed to have received responses (deemed refusals). One hundred and sixty nine (47.5 percent) of those requests were deemed to have been refused, meaning that no response was received to those requests at all[4] . Whilst this represents a reduction compared to the statistics reported on in the 2016 Shadow report, this figure is still extremely high. Out of the active refusals (i.e. where a decision to refuse the request was communicated), 24 of the requests (6.74 percent) were refused in full (i.e. none of the information requested could be provided). This percentage is lower than reported in 2016. The number of requests for which the decision was to grant access in full (that is, to every part of every requested record) amounted to 48 requests (13.5 percent), whereas the number of requests for which the decision was to grant access in part (that is, to only some of the requested records, or to only part of a requested record) amounted to 70 (19.65 percent)[5]. In total therefore 118 out of 386 requests (33.15 percent) were actively granted access (either in full or in part).

[3]See the Shadow Reports for 2016 (40% of requests not responded to within statutory time-frame), 2015 (30%), 2014 (37%) and 2013 (22%).
[4]Section 27 of PAIA provides that if a decision is not received on a PAIA request, within the prescribed time-frame, the body to which request was s ubmitted is deemed to have refused access to every part of every record forming part of the request.
[5]Section 28 of PAIA provides that, if access can be given to some of the information in a record, but other information in the record either may not or must not be disclosed, the information to which access cannot be given must be redacted (or severed or deleted) from the rest of the information; and access must be given to the remainder.

Unfortunately there was not a significant improvement in the number of decisions to grant access, either in full or in part, as compared to figures reported on in previous Shadow reports. This is at least in part due to the increase in transfers during this reporting period[6]. A total of 42 (11.8 percent) of the PAIA requests were transferred, either in full or in part. The remaining three (0.81 percent) of the PAIA requests were submitted to bodies that while private bodies, by definition[7], are deemed to be public bodies, in terms of section 8 of PAIA, in relation to the information requested of them. Section 8 of PAIA provides that if recorded information relates to the exercise of a public power or the performance of a public function by a private body, that body will in relation to those records be deemed to be a public body. Unfortunately all of those private bodies refused to acknowledge the applicability of section 8 to those three requests, something which clearly will need to be tested and challenged further in the future[8].

Grounds for refusal

Chapter 4 of PAIA sets out specific grounds for refusal; these grounds give detail about when access to recorded information may or must be denied. The relevant section in Chapter 4 relied on to justify the decision of a public body to refuse access to a record (whether access is denied in full or in part) must be cited in a decision letter to the requester, communicating the decision not to give access (or, not to give access in full). In terms of section 25(3) of PAIA the requester is entitled to receive not only notice of the section relied on to refuse access, but also adequate reasons for the refusal. The South African courts have determined that the duty to provide 'adequate reasons' requires more than just mere recital, verbatim, of the text in the section relied on. Instead, the public body must provide sufficient information to bring the record within the exemption claimed. In other words, the decision-maker must be specific, and must provide some details regarding the nature of the information in the requested record, and must describe the anticipated harm that would be caused by the release of the information[9]. Unfortunately many public bodies do not provide adequate reasons, nor do they cite with sufficient clarity the sections of PAIA that they are relying on to justify their refusal. Take for example responses to a PAIA request submitted by one of the ATI Network's members, the Equal Education Law Centre (EELC). The request was to a the Western Cape Department of Education and the EELC asked for copies of records containing statistics, agreements, contracts, as well as more information describing the methodologies used and processes followed by the Department as well as for copies of supporting documentation (used in the compilation of the records primarily requested) including any relevant reports. After receiving no substantive information to its request, and very few of the supporting documents, which contained scant and vague information about the WCDE's methodologies and processes used, the EELC sent follow up letters to retrieve more of the information it requested.

[6]Section 20 of PAIA provides for the transfer of a request from one public body to another, in certain circumstances (such as when the requested information is not held by the public body to which the request was first submitted, but is held by the body to which it is transferred).
[7]In terms of the definition provided for "private body" in section 1 of PAIA.
[8]SAHA submitted several requests in order to test the applicability section 8 of PAIA in relation to records emanating from a Public Private Partnership. A report is due to be published by SAHA on the outcomes of those requests shortly.
[9]President of the Republic of South African and Others v M & G Media Limited 2012 (2) SA (50) CC

Unfortunately civil society has not been able to fully test this aspect of PAIA throughout the 16 years of engagement. One reason is perhaps that it is often difficult for civil society to meet the threshold requirement PAIA (and the Constitution) sets for the submission of requests to private bodies. The threshold requirement is a demonstration that the record requested is needed for the protection or exercise of a right. Although the definition of a right is not limited to a constitutional right but, more broadly, includes any right, it still remains a challenge for civil society. In addition civil society is more reluctant to litigate due to the fact that, while there is some protection against a costs order when the state is litigated against in furtherance of a constitutional right, the same is not true in relation to litigation against a private person or entity. The *Biowatch* judgement, offers some protection against a costs order when the state is litigated against[10]. The *Biowatch* judgement in a nutshell held that the courts should not grant a costs order against litigants who have brought to court, in good faith, matters relating to constitutional issues that are in the public interest. This means that there are currently greater risks in litigating against private bodies, as the courts have not yet had an opportunity of extending the *Biowatch* principle.

Nevertheless 22 PAIA requests were submitted by network members to private bodies, over the reporting period. This accounts for approximately five percent of the total number of PAIA requests submitted during the reporting period. Of these 22 PAIA requests, nine (40 percent of the total) were deemed to have been refused due to a failure to provide a decision within the prescribed statutory time frame. Seven requests (31.8 percent) were responded to with decisions to grant access to the records requested, either in part or in full, and six (27.3 percent) were met with active refusals. Strangely, in response to requests submitted by ATI Network member Right2Know Campaign (R2K) to the telecommunications companies Telkom, Cell C and MTN, refusals were based not on grounds for refusal in terms of PAIA, but on section 42 of the Regulation of Interception of Communications and Provision of Communication-related Information Act 2002 (RICA)[11]. This is in blatant opposition to the supremacy of PAIA provided for in section 5 of PAIA[12]. R2K will be launching litigation in this matter towards the end of 2017, the outcome of which will be reported on in the next Shadow report.

[10] Biowatch Trust v Registrar Genetic Resources and Others 2009 (6) SA 232 (CC)

[11] Section 42 of RICA encapsulates the general prohibition against the disclosure of information in terms of the Act by any person/s. This is a general feature of certain Acts and is contrary to the openness and supremacy of the Constitutional right of access to information and the central legislation (PAIA) enacted to give effect to that right.

[12] For more information about the supremacy of PAIA see the 2014 shadow report accessible online at: http://foip.saha.org.za/uploads/images/PCSN_ShadowRep2014_final_20150202.pdf pg 10 - 11.

Section 23 of PAIA

Where records cannot be found by a public body or they do not exist, the information officer of the applicable body must, by way of an affidavit or affirmation, notify the requester that access to the particular record will not be possible. In addition, the mere statement of the fact that the record/s cannot be found is not enough, the information officer must also provide details about all the steps taken to ascertain whether the records exist or to search for them, whichever the case may be. This would include detailing any communication with other departments and officials. The primary reason for this requirement is to safeguard requesters from being lied to by information officers who may not have actually conducted a search for the records. Information officers are theoretically forced to conduct searches in good faith and the inclusion of the affidavit / affirmation requirement ensures that the requesters' constitutional right is taken seriously, as their statement under oath can be scrutinised for potential perjury, should the record turn out to exist or be found. This section can only truly be validly relied on if the decision is accompanied by an affidavit or affirmation as described here. Unfortunately this important requirement gets ignored almost as much as public bodies ignore requests (i.e. deemed refusals). Of the 53 times this section was cited or inferred by public bodies, in only 15 (28 percent) instances was an affidavit / affirmation provided at all (compliant affidavits that outline searches undertaken are even harder to come by). This shocking statistic suggests that requesters generally have no way of knowing for certain that officials, within the public body claiming that records do not exist or cannot be found, actually searched for the records before coming to that conclusion. The likening to a deemed refusal then becomes more convincing as they both are blatant disregards of the requester's rights under PAIA.

Sanitisation under the guise of redaction

Section 28 of PAIA provides in summary that when a record consists of information that can be released as well as information that cannot be released under PAIA, the information that cannot be released must be severed (or redacted) from the record, and access must be granted to the remainder of the record. But section 28 goes further, and requires that if there is such a redaction of part of a record, full, adequate, reasons must be given for every redaction, which reasons must include a reference to a section in Chapter 4 of PAIA relied on in refusing access to the redacted information.

In practice what we see is that when records are released which do contain redactions, there is usually no substantiation for the redaction beyond the mere citation of grounds for refusal in Chapter 4 of PAIA. This leads to an inevitable assumption that redaction is not being properly applied and may in fact, in some instances, be an attempt at sanitising records in order to insure what is released is in no way incriminating or even just uncomfortable for some people.

A prime example of this is what transpired when amaB submitted a PAIA request to Eskom for the Dentons Report. A report on an investigation into major issues at the power utility, including load shedding, financial challenges, the high cost of primary energy, and delays at the Medupi and Kusile power stations. The investigation was supposed to last 12 months, but after barely two months Eskom's board pulled the plug, claiming Dentons had given enough to start implementing the necessary changes.The report, which cost Eskom R20-million, was then locked in a safe. In September 2015, amaB submitted a PAIA request for a copy of the report. Eskom refused, relying in their reasons for refusal on section 37 of PAIA which states that a public body:

"must refuse a request for access to a record of the body if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement; or (b) may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party—(i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source".

Eskom further relied on section 44 of PAIA, arguing that disclosure of the report would frustrate the deliberative process of the public body. Then nearly two years later, Eskom did an about-turn in February 2017, saying it would release a redacted version to all PAIA applicants that had requested the report. This included another ATI Network member, SAHA. Notably the redaction was based on almost every section listed under the grounds for refusal and was not substantiated even when the lack of substantiation was challenged by SAHA on appeal. Nevertheless, sometimes sanitised versions of records do reveal damning evidence of mismanagement, corruption and incompetence, as the Eskom release did.

Released records

Throughout the years, the ATI Network has noticed a trend that sometimes decisions to grant access are never implemented, leaving members of the network in an awkward position where a decision to grant access has been given, but no records are ever received. This forces unnecessary litigation on members who already have strained resources in order to get the courts to force the release of the records. Other times members receive decisions to release in full but the records that they do receive (and pay for) do not contain the information requested. Still other times records are created with information requested, instead of access being granted to the original records requested, the result being that the information is 'sanitised' of its context. This means that without the original context, a lot of the meaning is lost. These tactics are particularly worrisome as they masquerade as compliance when in fact they are efforts to block the public's access to the information required. It speaks of an ongoing culture of secrecy instead of the transparency that the Constitution and PAIA aim to move us towards. Take for example SAHA's PAIA request for the Truth and Reconciliation Commission's records which was granted in full, but the information was only released after SAHA took the Department of Justice to court, after which a settlement was negotiated and the 7 year battle was concluded.

Technology, access to information and open data

As technology (specifically information technology) evolves, the public increasingly expect communication between government and themselves to be facilitated by programmes or software. Unfortunately, there has not been much progress by government in this regard with respect to access to information. Unlike the centralised access to information web portal that the Indian government has created in terms of their Right to Information Act, 2005, South Africa seems to be far off from anything similar The creation of software to assist public bodies could improve compliance with PAIA which as the statistics above have shown basic compliance with PAIA by public bodies is poor. This poor trend has been reported on consecutively in each of the ATI Network's previous reports. Nevertheless, ATI Network members have taken it upon themselves to close the gap between government and the public by developing technology that further facilitates the right of access to information.

The CER identified the public commenting process on the draft King IV Report as an opportunity to submit evidence-based research to the King Committee on Corporate Governance, motivating for stricter and more relevant requirements for environmental disclosure. The CER critiqued the fact that King III, and the draft King IV circulated for comment, left the determination of materiality in relation to environmental disclosures in the discretion of company directors. Relying on evidence from *Full Disclosure*, the CER demonstrated that if company directors are not explicitly required to disclose information about breaches of environmental laws, they will almost never do so.[30]

The CER explained that the requirement in the draft King IV (and previous King Codes) to only disclose "material or repeated regulatory penalties, sanctions or fines for contraventions of, or non-compliance with, statutory obligations" is not sufficient to ensure that companies operating in South Africa disclose violations of environmental laws.

The South African environmental regulatory regime does not use a system of administrative penalties in terms of which a regulator can impose a large fine on a company for breaches of environmental laws. Environmental management inspectors conduct inspections of company operations in order to identify violations. These violations are then dealt with by way of compliance notices and directives, and as a last resort, using criminal prosecution, an extremely cumbersome process with relatively small maximum fines available. In South Africa, therefore, a company will hardly ever receive a large fine for breaking environmental laws, regardless of the gravity of its offences. As a result, using financial penalties as an indication of materiality in this context is entirely ineffective.

The CER accordingly recommended to the King Committee that King IV should include a requirement that companies disclose not only penalties and fines in their annual reports, but also non-compliance findings, pursuant to compliance monitoring inspections by environmental regulators. The new King IV Report was launched on 1 November 2016, and incorporates the proposal made by the CER in relation to environmental disclosures. This change represents a significant step towards improving environmental compliance reporting in South Africa, and will provide stakeholders with a much more useful body of information with which to assess and compare environmental risks.

Opening Pandora's Box: analysing the layered nature of engagements around certain information

Communities and civil society typically seek access to information not for its own sake but because that information will assist them in realising other rights. This often means that once one document is obtained, a need for additional information to make sense of that document arises. For example, accessing mining rights, social and labour plans and environmental authorisations is useful, but you really need the relevant inspection or compliance monitoring reports to understand whether companies are delivering on their commitments and complying with the law.

[30]The CER's comments can be accessed here: http://cer.org.za/news/king-iv-cer-calls-for-stricter-requirements-for-environmental-disclosure.

- SARB's contention that there are too many requests submitted is incorrect as SAHA submitted six fresh requests in response to a first set of requests that were refused on the grounds that insufficient particulars were provided. Despite the fresh requests being submitted, SARB still found that it will not grant access to the records. A culture of repetitive stonewalling, it would appear.
- Third parties that are affected by this litigation have sufficient notice of the litigation through compliance with PAIA and PAIA specific court rules. It is therefore unnecessary for SAHA to take further steps to notify third parties again of the litigation.
- The SARB's submission that SAHA should pay the costs of the application should they lose, as the *Biowatch* judgement does not apply, is incorrect as SAHA at numerous places in its founding affidavit made averments regarding how the application is in the public interest and at no stage were these averments denied by the SARB in its replying papers.

At the time of writing this report judgement has not yet been handed down and will likely be reported on in the next Shadow report.

This litigation relates to a large number of requests submitted by SAHA since 2013 in support of the work of Open Secrets (an independent non-profit with a mission to promote private sector accountability for economic crime and related human rights violations in Southern Africa) and Hennie van Vuuren. Many records released in terms of these requests have informed significant parts of the recently released book Apartheid Guns and Money: A tail of profit, authored by Hennie van Vuuren who along with his colleague Michael Marchant expressed the following:

"We relied on the heavy lifting by SAHA and Lawyers for Human Rights to open the door to many of the apartheid archives. Armed with PAIA, determination and goodwill they ensured our access to hundreds of thousands of documents that form much of the evidence presented in Apartheid Guns and Money: A tale of profit. Despite this they were met with stiff resistance by conservative bureaucrats and politicians who continue to block access to key records. The courts should not have to settle these challenges. The public interest should not be undermined by gatekeepers who want to control the flow of secrets of our past and present"

The Gupta Waterkloof Landing, Cronyism and the Right to Information

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ATI Network member, amaB, in May 2017 won a punitive costs order against the Department of Defence (DOD) – mentioned above in the discussion about deemed refusals - in an access to information battle that has spanned over four years. amaB submitted a PAIA request for records of all private landings at the Waterkloof air force base for the 24 months preceding the infamous April 2013 incident where the Gupta family landed an airliner there, bearing their wedding guests from India. The DOD capitulated on the merits just days before the case was due to be argued, but offered no reasons for the about-face – after years of maintaining the documents could not be released. amaB continued with the application for punitive costs, given that the DOD's behaviour was unjustified and had used up valuable time and money. The judge agreed. In awarding the punitive costs order, Makgoka J, setting out the four-year history of amaB's efforts to engage with the DOD, said the objectives of PAIA should be borne in mind: "[a]mong those, is to afford the public a simple and inexpensive mechanism of obtaining information held by public bodies. Clearly, that objective has been frustrated in this case."

Makgoka J wrote further:

"The request, it must be borne in mind, was made approximately thirteen days after the landing of the Gupta chartered airline at the Waterkloof Airforce Base. That matter, a very controversial one indeed, had generated considerable public interest – the landing itself, and how government, in particular the Ministry of Defence, responded to it. Therefore, when the information was sought at that time, the controversy generated by it was still very much in the public space. Now, four years later, as Adv Budlender, counsel for the applicants put it, 'the delay means that the information has lost a considerable amount of currency'."

Makgoka J lambasted the department for its tardiness.

"I gain a distinct view thatthe respondents were unresponsive at best, and obstructionist, at worst. I accept that some latitude should be given to state departments given the obvious and inevitable bureaucratic bottle-necks. Having said that, a delay of eight months to simply acknowledge a simple request is unpardonable. Given all the above considerations, and in particular the conduct of the respondents, and the fact that the applicants conduct investigative journalism, which is pivotal to a vibrant democracy, a punitive costs order is warranted."

amaB and the ATI Network regard this as a victory important both for journalistic purposes and to strengthen transparency and accountability in the defence sector. This judgement is also likely to serve as a curb to unnecessary litigation in PAIA matters.

Centre for Environmental Rights
Advancing Environmental Rights in South Africa

amaBhungane
Centre for Investigative Journalism

WITS JUSTICE PROJECT
Free the innocent

CALS
Centre for Applied Legal Studies

EELC
EQUAL EDUCATION LAW CENTRE

corruption watch

RIGHT2KNOW

OXPECKERS
Investigative Environmental Journalism

SAHA
ARCHIVE FOR JUSTICE
South African History Archive - Since 1988

OPEN DEMOCRACY ADVICE CENTRE
TRANSPARENCY IN ACTION

PSAM
Public Service Accountability Monitor
ADVANCING YOUR RIGHT TO SOCIAL ACCOUNTABILITY

KHULUMANI
Support Group

ALL THE DIFFERENT STORIES

Excerpted from of my answering affidavit in LASA's vexatious application (12124/16P). I've added **boldface** to emphasize direct quotations of LASA's different stories.

Paragraph 242:

(a) ***'Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise. This had the effect of cutting our baseline funding by a significant amount. It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen. ... Therefore the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.'*** – Vedalankar's letter to me, 18 October 2010.

(b) ***'the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible ... I provide you with further information and reasons that led to the freezing of the Senior Litigator posts in Durban, Pietermaritzburg and Mthatha ... I, and the Legal Aid SA under my watch, have never sought to make any decision regarding Senior Litigator posts on any ground other than the budget constraints which you have rejected.'*** – Vedalankar's letter to me, 28 January 2011.

(c) After I again 'rejected' the 'budget constraints' excuse in my detailed original statement of claim filed in the LC in late July 2011, in which I showed with reference to LASA's own records that it was a lie, Nair told the Board two completely different stories a couple of months later, having nothing to do with any budgetary consideration: ***'Six Senior Litigators were filled [sic] during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.'*** – Nair's Report to Board, November 2011.

(d) '***when I wrote this report [Report to Board, November 2011] I was cognisant of the fact that these three posts have remained vacant over a long period of time. In fact, from the time we advertised this post [at Pietermaritzburg] I think it was at the end of 2007, up to the time we froze the posts in July 2010. And during that stage, there was various grounds [sic: rounds] of interviews and we failed to attract suitable candidates.***' – Nair's evidence, Record, 360:3–8.

(e) ***Q: 'Does the ... post remain frozen to this day?' --- 'Yes.' Q: 'And the reason for that is to be found in the report to the Board that you wrote? --- 'Correct.'*** – Nair's evidence, Record, 368:21–3.

(f) ***Q: 'Vedalankar's version in this letter is that the ... Pietermaritzburg, Durban and Umtata senior litigator posts were all frozen in July ... On account of the budgetary shortfall.' --- 'Correct.' Q: 'But we have heard from you this morning that the Umtata post fell away for quite different reasons?' --- 'Yes.'*** – Nair's evidence, Record, 456:11-17.

(g) ***'there was no such funding ... to fill the vacant [Senior Litigator] posts ... even after the OSD funding was resolved it was still not feasible to fill the Senior Litigator posts. The Respondent [LASA] had to relook at its critical vacant positions and fill them in the best possible and feasible manner.'*** – LASA's original response to my labour claim.

(h) ***'the recruitment of a Mthatha Senior Litigator also was affected by the lack of funding and was not proceeded with.'*** – LASA's original response to my labour claim.

(i) ***'it cannot be suggested that the Mthatha, Pietermaritzburg and Durban Senior Litigator posts were not or could not be affected by this urgent need for savings.'*** – LASA's original response to my labour claim.

(j) ***'[LASA] still asserts that the reasons it stated regarding budgetary uncertainties ... remain valid and are the only basis upon which it took the decisions it took in relation to***

the abortion of [Brink's] and other applicants' applications for positions.' – Mtati's answering affidavit in my subpoena application, confirmed by Nair.

(k) ***'the decision to freeze the [Pietermaritzburg Senior Litigator] post [and the Durban and Mthatha posts, per Vedalankar quoted above was] due to change in business-needs budget.'*** – LASA's section 32 report for 2010/11 to the SAHRC. (Tested with PAIA, LASA has confirmed that no records exist to show the 'business needs budget' has ever been changed in regard to Senior Litigator posts, and LASA continues budgeting and applying to the Department for, and being paid, salary budget for the three posts.)

(l) ***'[LASA] later decided ['after the interview of the Applicant [Brink] in KZN had taken place'] not to also proceed with this transfer [of Skibi to Mthatha] as it had become important to divert the funds budgeted to a different project.'*** – Mtati's answering affidavit in my subpoena application, confirmed by Nair. (Tested with PAIA, LASA has confirmed that no records exist to support this claim: no record of any 'different project', no record that it 'divert[ed] the funds budgeted' for the Mthatha Senior Litigator post to this end.)

(m) Contradicting which sworn allegation by Mtati and Nair, LASA confirmed: ***'[There has been] no re-allocation of budget [for any of the allegedly frozen Senior Litigator posts to any] other cost centres'.*** – LASA's answer to my agenda for the first pre-trial conference.

(n) '***The Respondent [LASA] avers that it had a valid reason for not proceeding with the recruitment of the Senior Litigator posts, namely that it experienced budgetary shortfalls in respect of the 2009-2010 financial years. In the face of these budgetary shortfalls it would have been ill advised to go ahead with the recruitment of Senior Litigators.'*** – LASA's amended response in April 2013 to my amended statement of claim, a brand new reason not previously advanced. In truth and in fact, LASA's miniscule budgetary deficit of R1.8 million for 2009/10 went completely unremarked in LASA's annual report for that financial year, and had no bearing on staff recruitment at any level, as its rocketing recruitment and new post creation statistics in 2010/11 show. In which financial year LASA suffered no 'budgetary shortfall', but rather a R31.7 million surplus – which swelled LASA's accumulated surplus to R194 million.

(o) ***'[A] needs analysis' is 'continuously done by the Respondent [LASA] to determine where and when [posts] are required the most'*** – LASA's answer to my agenda for the first pre-trial conference, implying that after such a needs analysis had been performed, it has been resolved not to fill LASA's three remaining vacant Senior Litigator posts. But at the third pre-trial conference, LASA admitted that no records exist to support this allegation, which shows that this smooth-sounding claim for the true information of the judge was a lie.

(p) ***'The main reason which overtook the consideration of any recruitment was that … the Respondent [LASA] had presented it budget proposal for the 2010/2011 financial years to the Department'.*** – LASA's affidavit opposing my petition to the LAC.

(q) Contradicting the original story told by Vedalankar, repeated and verified on oath by Nair, Vedalankar and Clark, that the Mthatha Senior Litigator post was frozen together with the Pietermaritzburg and Durban posts, Nair testified at the trial of my labour claim in mid-2013 that he repeatedly asked Vedalankar to approve the transfer of the Kimberley Senior Litigator post to Mthatha, as resolved by the LSTC in March 2010, and that she'd repeatedly refused, causing the failure of the Mthatha Senior Litigator recruitment: ***'on the minutes of the Legal Services, LSTC, a decision was taken to transfer that position from Kimberley to Umtata. However the … LSTC … can only make a recommendation. In terms of the approval framework, I still needed to obtain the consent of the CEO in order to effect that move. And post that meeting, I did have discussions with the CEO who indicated that she would think about it. … to move the post from Kimberley, which would involve the abolition of the post in Kimberley and creating a new post in Umtata. … Which in terms of our approval framework would require the CEO's and my agreement. Whilst I was in support of it, the CEO was not immediately in support. She, whilst we discussed it once or twice she finally decided that she was not happy with the post. … she did not approve of it. So that decision had to be aborted. … I could not persuade her.'*** – Record, 365:11–25; 366:1–9. (The LSTC for 2010 minutes are silent about this, and show that Nair never reported that Vedalankar had rejected its March resolution to transfer the post;

to the contrary, LASA's June 2010 recruitment statistics reflect the new Mthatha Senior Litigator post as part of LASA's staff establishment, reflected as vacant, which means the transfer must have been approved. Also, in his evidence Nair perjuriously misrepresented the rationale for the transfer of the 'redundant' post to a centre where it was badly needed for several reasons stated in Mtati's motivation. The Northern Provinces ROE recorded in his motivation for the transfer to another centre: 'In all the time since the allocation of this position there has never been a demand for the services of a senior litigator from (indistinct [any]) justice centres in the Northern Cape.' In court, Nair dishonestly concealed this: **'In the CEO's view, Kimberley, which … also has a High Court, also needed a person. And because we were having recruitment difficulties, it was not a good enough reason to move that post. So she felt that province must not be neglected in terms of taking away budget because we could not find someone at that time who was important.'** (Record, 401:18–23)

(r) ***'in giving this region the permission to proceed with recruitment, that we will still under the financial constraints that I spoke about earlier. … if the funding was not resolved I would do exactly what I was doing in KZN, and that is to delay the process until certainty was obtained. … I saw that as being facilitative of filling the post because once the funding issue is resolved we did not have to start from the very beginning of advertising. The first round would have been completed, we could then do the second round where the panel could consider both posts at the same time.'*** – Nair's evidence, Record, 364:10.

(s) ***'The funding was released to the Respondent after it had taken its decision to terminate the recruitment of Senior Litigator posts. This decision has never been revisited.'*** – LASA's answer to my first pre-trial conference agenda.

(t) ***'even after the OSD funding was resolved it was still not feasible to fill the Senior Litigator posts'*** – LASA's original response to my labour claim. (But Mtati's answering affidavit in my application to compel discovery confirms: 'No such record exists' to support this 'still not feasible' allegation.)

(u) ***'It remained Legal Aid SA's intention to recruit the number of employees recorded in Legal Aid SA's annual report.'*** – Mtati's answering affidavit in my subpoena application, confirmed by Nair.

Paragraph 146:

Not expecting me to find out about it, one of LASA's head office liars told the SAHRC the same lie. A PAIA request I addressed to the SAHRC itself turned up a telephone note recording this unidentified liar's lies to it (irrelevant to my PAIA complaints, but calculated to make them look a waste of time) that I'd **'applied to LASA (Legal Aid) for snr advisory position. 2 were available. One candidate got the Durban post and somehow he [Brink] was of the impression he had gotten the Pietermaritzburg post. … Adv Brink received a letter not explaining why he was rejected.'** Only, I wasn't 'rejected'. My 'impression' that I'd 'gotten the Pietermaritzburg post' was correct. I did indeed get it. I 'was of the impression [I'd] gotten the Pietermaritzburg post' from how well the interview went, the visible enthusiasm of three of my interviewers, and the panel's enquiry as to how soon I could begin; an early intimation from a panel member; Clark's back-handed confirmation that I'd been selected; and Vedalankar's claim in October that I'd been 'recommended together with other candidates' – before dropping this lie in January 2011 and positively confirming that the selection panel had recommended me for the post and no one else. The SAHRC's file memo, recording the lies someone at LASA told it, is annexed marked 'H'.

Paragraph 439:

Here are some more abysmally unintelligent, blatantly lying excuses, variously given under oath, pleaded for the true information of the judge, and otherwise alleged:

(a) ***'the drive to secure funding took priority over … these recruitment processes'*** – Vedalankar's letter to me, 28 January 2011.

In truth and in fact, and contrary to her lie to me about this, which she perjuriously verified on affidavit on 8 April 2011, along with Nair and Clark, LASA's recruitment processes were completely unaffected by the discovery on 10 March 2010 – *many months after my successful interview* – that

LASA's OSD phase 1 allocation hadn't been included in its baseline budget. Quite the opposite, LASA's 'recruitment drives' to hire new legal staff sharply accelerated, increasing from 1147 to 1173, a spike of 2.3% more lawyers employed relative to the preceding quarter. These energetic 'recruitment drives' included urgently recruiting for a Senior Litigator for Mthatha. While I was left in the cold. Vedalankar's unequivocal implication that its 'recruitment processes' were put on hold as she and her executive management colleagues went about pursuing payment of LASA's OSD allocation was an outright lie.

(b) ***'it was, for example, financially strategic, and in accordance with the Respondent's [LASA's] mandate from the COO and the Board, to have one or two senior junior professional assistant(s) who cost less, in terms of the costs-to company, with right of appearance in the High Court than to have one high earning Senior Litigator who would, in the main, have to also appear in the High Court. … The aforegoing exercise ensures that (i) the critical position of High Court litigator [sic] is not abandoned and (ii) yet the costs involved in that process are dramatically saved.'*** – LASA's original defence statement.

(i) In truth and in fact, and contrary to this false pleading to deceive the judge, LASA was required by the PFMA (i) to implement its Strategic Plan 2009–12, which included employing Senior Litigators, and (ii) to apply the Senior Litigator salary funding that it had budgeted and applied for, and which the National Assembly had voted and the Department paid, on the budgeted item, not some other.

(ii) Any deviation from the plan to employ Senior Litigators required Board approval under section 1.1 of the Approval Framework. None was sought.

(iii) There was no such 'exercise' or 'process' to decide to rather employ 'one or two senior junior professional assistant(s)' rather than a Senior Litigator, budgeted by the Department. Nor are 'costs-to company … saved', either 'dramatically' or at all by paying two such 'senior junior professional assistant' salaries rather than one budgeted, approved Senior Litigator salary.

(iv) Finally, a 'senior junior professional assistant' isn't competent to perform the high-end specialist litigation that Senior Litigators are exceptionally qualified for, namely, to act in 'complex criminal and civil matters linking to the higher courts (High Courts, Appeal Courts and Constitutional Court) in the country and provide specialist support to Justice Centres on these matters', per the advertisement.

(c) ***'despite the Minister's assurance that he would intervene to ensure that the Respondent [LASA] received the said funding, same did not materialise and the impending further budget cut for the 2012/2013 financial year referred to above meant that the Respondent had to be practical about the financial position it found itself in and act accordingly.'*** – LASA's original defence statement.

(i) In truth and in fact, and contrary to this shameful lie told in the pleadings to mislead and deceive the judge about the Minister not seeing through his promises, the OSD 'funding' for salary increases did indeed 'materialise': it was paid on 15 December 2010, as shown by the payment voucher I eventually forced out of LASA through persistent pre-trial discovery process (annexure 'X8').

(ii) Diametrically contradicting this lie told in the pleadings, Mtati (confirmed by Nair) stated on oath in his answer to my subpoena application that 'Legal Aid SA's pleas to the Department were … ultimately answered after eight (8) months.'

(iii) Nor was there any 'budget cut for the 2012/2013 financial year' – another lie to the judge. Quite the opposite, LASA's annual reports show its baseline budget allocation steadily increased from R1001 million in 2010/11, to R1105 million in 2011/12, to R1223 million in 2012/13 – amounting to rising increases year-on-year of 10.3% and 10.6%.

(d) ***'there was no such funding … to fill the vacant [Senior Litigator] posts.'*** – LASA's original defence statement.

In truth and in fact, and contrary to this lie in the pleadings told to mislead and deceive the judge, the posts have always been and remain fully funded by the Department. In November 2014 I requested under PAIA one of LASA's budget applications for Senior Litigator posts, but as usual it was illegally refused. So I turned to the Department and under PAIA asked for several consecutive years of LASA's budget applications for the posts. It referred my request to LASA, which produced its said budget

applications, refuting this lie. (They're appended to annexure 'B'.) LASA's budget applications to the Department for nine Senior Litigator salaries have never been refused. Contrary to its lie to the judge that 'there was no such funding … to fill the vacant [Senior Litigator] posts', LASA has always had 'funding' from the Department 'to fill the vacant [Senior Litigator] posts'.

(e) ***'The respondent [LASA] had, by then, taken a number of internal measures to limit the budgetary deficit it faced and these included: to review all its recruitment processes, to reduce the Respondent's Court presence by a certain percentage, and to freeze all vacant posts.'*** – Mtati's answering affidavit opposing my interlocutory application to compel document discovery in the LC.

(i) In truth and in fact, and contrary to this ever-so-smooth perjury to mislead and deceive the judge, annexures 'X1'–'X5' show that the only 'internal measures … taken … to limit the budgetary deficit it faced' on account of the Department's slow payment of LASA's OSD phase 1 allocation of R23.8 million (R23 million was paid the previous year) were executive management's recommended proposals (annexure 'X4') approved by the Board (annexure 'X5') that:

> **'I. Savings from the 2010/11 financial year be used to fund the OSD shortfall;**
>
> **II. District Court coverage be approximately no lower than 80% coverage, while Regional Court coverage is reduced to no lower than 90% coverage, for the remaining part of the 2010/11 budget period. This will derive a saving of about R16 million to cover the shortfall.'**

(ii) Indeed, 'The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions' – like priority Senior Litigator posts, according to LASA's original response to my labour claim (i.e. defence statement/plea), twice duly describing them as 'critical'. LASA annually reports its critical post occupancy specifically and separately – a tiny fraction of LASA's total staff establishment, mainly of public defenders in the lower criminal courts. Examples of this critical post occupancy reporting appear in annexure 'B3: J'.

(iii) The just cited records (annexures 'X4' and 'X5') refute the lie told the judge under oath that the 'internal measures … included: … to freeze all vacant posts.' Quite the contrary, LASA continued recruiting new staff after the Board approved the 'internal measures' to freeze recruitment to some lower criminal court public defender posts. In the second quarter July to September 2010, recruitment to other posts continued normally. The effect of the approved freeze was only to dampen the overall increase in staff recruitment, as compared with the preceding and succeeding operating quarters.

(f) ***'Legal Aid SA had decided to abort substantially all the recruitment processes it had embarked upon in reliance on the Department's timeous payment of the budgeted funds.'*** – Mtati's answering affidavit, confirmed by Nair, in my subpoena application.

(i) This perjury committed by Mtati and Nair is exposed and refuted by (a) the records of LASA's response to the problem, namely to reduce lower criminal court public defender coverage, and to prioritise recruitment to critical posts; and (b) LASA's recruitment statistics, which show that it continued recruiting even after the July resolution, and that its recruitment figures soared once the OSD funding had been included in the mid-term budget in October 2010:

(ii) In the third quarter October to December 2010, following Vedalankar's information to the Portfolio Committee on 11 October 2010 that the Minister was 'involved and he had assisted' with the delayed payment of LASA's OSD funding allocation which 'we are in the process of fixing', LASA's legal staff recruitment sharply increased by 2.5%, going up energetically over the previous quarter from 1193 to 1223 posts filled, a peak in such recruitment for the year. (But the Senior Litigator posts remained 'frozen', off the record, and unreported.)

(g) ***'Legal Aid aborted all and any recruitment to any vacant positions during the relevant time herein. It was not certain as to whether there would be monies for the OSD funding and it would have been risky to make appointments when there was no money budgeted for such vacancies.'*** – Mtati's answering affidavit in my subpoena application, confirmed by Nair.

This outright perjury committed by Mtati and Nair is refuted by the records quoted above. In truth and in fact, from the time the Senior Litigator posts were created, 'money' has always been 'budgeted'

for them, and still is to this day. On 27 February 2010, for instance, while my recommendation was lying in the deep freeze, 'The budget 2010/11 was approved by the Board', according to LASA's annual report for 2009/10; and it included 'Budget' for salaries for nine Senior Litigator posts, including two noted as 'Vacant' at Pietermaritzburg and Durban.

(h) ***'The Board accepted a resolution that all recruitment to vacant posts be frozen. This by extension must have extended to the posts of Senior Litigator including others that were vacant.'*** – Mtati's answering affidavit in my subpoena application, confirmed by Nair.

This further outright perjury committed by Mtati and Nair is refuted by the record quoted above. There was never any such resolution, and the Board never accepted any such.

(i) ***'Email from Brian Nair (NOE) dated 15 July 2010 to Executives': 'to show that not only the Senior Litigators' posts were identified for freezing'.*** – Vedalankar's January 2011 letter (annexure 'DD') confirmed on affidavit by her, Nair and Clark in April 2011. Their bundled affidavits are annexed marked 'EE'. Nair's email is annexure 'X3'.

In truth and in fact, and contrary to this lie told to me, and perjuriously verified by Vedalankar, Nair and Clark, Nair's email reflects that the only 'posts … identified for freezing' were:

> **'my first cut of 56 practitioner posts at JCs. I have not looked for paralegal and admin positions at JCs as yet. This amounts to a potential savings of R16m which is much lower than what is required. In terms of this cut, I have ensured that DC [district courts] will not be lower than 80% coverage whilst RCs [regional courts] will not be lower than 90% coverage. If we need to find more savings from practitioner positions, then we will need to agree to lower coverage levels for District and Regional courts'**

– showing, that in truth and in fact, contrary to Vedalankar's lie told to me, and perjuriously verified by her, Nair and Clark, 'Senior Litigators' posts were [never] identified for freezing'; rather, some lower criminal court public defender posts were, and 'If we need to find more savings from practitioner positions' more of them and/or some even lighter 'paralegal and admin positions'. Not critical Senior Litigator posts. COO Makokoane echoed this in his 'Report to Board' (annexure 'X4'), approved by the Board (annexure 'X5'):

> **'Any further reduction on filled legal practitioner positions will result in a further percentage reduction in court coverage [of the 'District Court' and 'Regional Court'] … The recruitment process will be reviewed … with due regard to the need to prioritise critical positions.'**

LASA's records show that contrary to Vedalankar's lie to me, perjuriously verified by her, Nair and Clark, there was never at any time any question of freezing recruitment to LASA's three remaining Senior Litigator posts for which suitable candidates had been recommended. (At trial, contradicting his own story to which he'd repeatedly previously sworn, and contradicting LASA's pleaded defence version, Nair testified that only two Senior Litigator posts had been frozen for budgetary reasons, not three as originally and repeatedly alleged.)

(j) ***'[The Pietermaritzburg Senior Litigator] post was aborted due to operational reasons.'*** – Nair's answering affidavit, application in the Magistrate's Court to compel his compliance with PAIA.

In truth and in fact, contrary to this perjury by Nair, no such decision by LASA was taken 'due to operational reasons'. No record of any such decision exists. There's never been an 'operational reason' not to apply LASA's Senior Litigator salary budget, voted by the National Assembly and paid by the Department, to its approved purpose; and for about the past ten years, the Pietermaritzburg Senior Litigator post has been a vacant, budgeted, funded post in LASA's senior professional staff establishment.

<u>Paragraphs 605–7:</u>

In his Confidential Report, Mlambo JP alleged:

> **'Whilst the initial reason for this ['nationally constituted'] panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints**

> **facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts … We are however comfortable that we would be able to show to a court of law that the decisions we took on this matter made good business sense and were in the best interests of our organization at the time.'**

According to Nair in evidence, the claim 'of which the Chairperson of the Board of Directors is one' was added to the 'updated' report to the chairperson of the Portfolio Committee by Mlambo JP: **'I can only assume the Judge personally wrote that.'** (Record, 355:1)

As mentioned [below], the excuse about **'delays in coordinating a meeting time'** was retracted under oath as **'an error'**, after I exposed it as a lie.

Paragraphs 632–7:

If budget constraints had been the reason, Nair wouldn't have invented two totally different reasons for not finalizing the appointments of the three candidates recommended for the Pietermaritzburg, Durban and Mthatha posts in his 'Report to Board' in November 2011, a couple of months after I'd exploded the basic lie in my original detailed statement of claim in the LC.

Because the bogus financial excuse for Nair's inaction on receiving the recommendation report couldn't stretch as far back and cover the several months between receiving it on 26 November 2009 and LASA's discovery on 10 March 2010 that its OSD phase 1 allocation hadn't been included in the baseline budget as expected, Nair improvised a nice supplementary lie for Mlambo JP to tell the Minister and later the Portfolio Committee: 'the initial reason for this ['nationally constituted'] panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one.'

The trouble for this story is that it was contradicted and refuted by the facts on the ground. In my application for leave to subpoena Mlambo JP to cross-examine him on his lies in the Confidential Report about me, and about his peculiar indifference to my first petitions to the Board protesting the most serious wrongdoing and violation of the Constitution, I presented the evidence that in truth and in fact, nothing had been done to **'coordinat[e] a meeting time suitable for all members of the panel'**, because as LASA pleaded in its original response to my labour claim, Nair **'did not sign the said recommendation thus rendering the said recommendation ineffective. … once the decision was taken not to proceed with the second round of interviews, that was the end of the process.'** Clark **'would not have known the result of the Regional Selection Panel as the process was terminated at the first round of interviews. She would normally be involved if the second round of interviews has been approved. Her responsibility would then be to arrange for the [so-called second round interview] process to be undertaken as per her programme and interviewees to be informed accordingly. … there was no need to pass the Regional Panel's unsigned or unapproved recommendation to anyone as that process would only be applicable if and when one intended to proceed.'** Clearly 'one' didn't.

Cornered by my clear refutation of the lie, Mtati, supported by Nair with a confirmatory affidavit, responded by repeatedly recanting the lie as **'an error'**, **'palpably an error … because there was never a second round of interviews for the Senior Litigator position arising from the 2009 recruitment process.'** (Like calling a lying flat-tyre excuse given a judge for coming to court late, when exposed by the judge as an outright lie, 'an error', 'palpably an error', sorry.)

Whatever; the supplementary lie that Nair and Mlambo JP told the Minister and the Portfolio Committee was retracted on oath. (Confronted by this in cross-examination, Nair said the retraction was itself an error. Only, he'd confirmed it.) And Mlambo JP knew it was a lie, because no one had contacted him about setting up the so-called second round interviews.

Paragraphs 640–9:

Mtati lied again to the LAC in claiming for the first time that when in November 2009 he received my recommendation and the CVs, **'At the same time, Mr Nair testified that … he was preoccupied by a sudden emergency that had confronted [LASA].'**

It was never LASA's case that 'a sudden emergency … confronted' LASA in November 2009 when Nair received my recommendation. Nair never claimed this in evidence, as Mtati falsely alleged. Quite the

contrary, Nair truthfully admitted that no financial issue existed at that time to 'preoccup[y]' him and prevent him proceeding with my appointment. And indeed, LASA's records confirm this.

It was only on 10 March 2010, three-and-a-half months after my successful interview in November 2009, that LASA was 'suddenly confronted' by 'budgetary issues' (as it originally pleaded, and specifically confirmed in its response to my agenda for the first pre-trial conference, in which I sought admissions), when it learned that its OSD phase 1 funding allocation hadn't been included in its baseline budget for 2010/11. But which anyway made zero difference to staff recruitment – contrariwise, it actually spiked in the next quarter – until July 2010 when Nair recommended to COO Makokoane and other management executives that recruitment to 56 non-critical lower criminal court public defender posts be temporarily frozen until the OSD phase 1 funding question was resolved. Which Makokoane put to the Board for approval, and which it gave.

Mtati's new allegation that Nair 'was preoccupied by a sudden emergency' in November 2010 when he got my recommendation is a blatant new lie. Nair admitted in evidence that there were no financial issues facing LASA 'At the same time' he received my recommendation.

Furthermore, LASA's records contradict Mtati's false implication that LASA interrupted its recruitment of staff to fill its vacant posts while it 'presented its budget proposal for the 2010/2011 financial years to the Department'. They show that recruitment never paused or slowed until August 2010, and then only for two months.

Nair's evidence as to his indifference to the identities and professional backgrounds of the recommended candidates, false as it obviously was, confirmed he did nothing to arrange the so-called second round interviews, which is why he encountered no trouble 'coordinating a meeting time suitable for all members of the panel, of which the chairperson is one.' He hadn't contacted Clark – since, as LASA originally pleaded to my labour claim, 'the HRE would not have known the result of the Regional Selection Panel as the process was terminated at the first round of interviews' – and he or Clark hadn't contacted Mlambo JP.

It follows that Mlambo JP uttered this lie – 'the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel' – in full knowledge that it was a lie, and that he told it to deceive the Minister and the Portfolio Committee and pervert their independent investigations as to (a) why I hadn't been appointed to the post for which I'd been recommended, and (b) Vedalankar's repeated, persistent illegal refusals to comply with my PAIA requests probing the true reason.

Annexure 'O' is Nair's 'Report to Board' on Senior Litigators in November 2011, and to read it, after reading the Confidential Report he ghost-wrote for Mlambo JP, is to recall Oscar Wilde: 'As one knows the poet by his fine music, so one can recognise the liar by his rich rhythmic utterance, and in neither case will the casual inspiration of the moment suffice. Here, as elsewhere, practice must precede perfection.'

As discussed above, I used PAIA to test (a) Nair's claims in the report; (b) Mtati's excuse for why the promised professional performance audit of Senior Litigators hadn't been conducted; and (c) Nair's evidence about this at trial, and established that they'd all lied: to the Board, to me, and to court.

Paragraphs 674–8:

Indeed, as I pleaded, my appointment was aborted off the record; this is common cause. Vedalankar, Nair and Clark all confirmed on oath in April 2011, and Nair repeated in his evidence at trial, that no record whatsoever exists to vouch that any decision was taken by any competent authority, or indeed by anyone at all, to cancel the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, for any reason.

Indeed, as I pleaded, my recruitment was immediately cancelled (after word reached the centre that I'd been recommended instead of Mlambo JP's former brother Ngcamu AJ (as he used to be)). And this is not just my conclusion, it's LASA's own sworn account of what happened. Letting the truth slip out and telling it by accident, attorney Mtati confirmed in the affidavit he made on Mlambo JP's behalf to answer my subpoena application that my **'recruitment, together with the other candidates recommended for the second round of interviews was aborted immediately after the first round of interviews.'** Exactly. Nair confirmed this by way of a confirmatory affidavit.

(As I've shown – and in January 2011 Vedalankar was forced by the recommendation report to admit – there were no 'other candidates' recommended for the Pietermaritzburg post; the sole other candidate recommended was Mngadi, but for a different post at Durban. It's a lie that 'other candidates [were] recommended'; to the contrary, they were eliminated for not meeting the qualifying criteria.)

It was **'immediately after the first round of interviews'** (per Mtati's affidavit quoted above, confirmed by Nair) that **'the decision to abort the Applicant's [my] application'** was made (per LASA's original response to my statement of claim) – i.e. **'the decision to abort the recruitment of the Senior Litigator, Pietermaritzburg'** (ibid).

Paragraphs 687–71:

The first *new* lie (later recanted) told in the report about why my appointment wasn't proceeded with was that:

> **'Adv Brink ... was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel. This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. ... the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel'.**

In my application for leave to subpoena Mlambo JP for cross-examination on this criminal lie, among others, that he told the Portfolio Committee, and before that to the Minister, I showed it was a lie, in that Clark on the panel and responsible for arranging the second interview wasn't even aware of the recruitment and hadn't been asked to arrange the panel. This was at all times common cause in the case.

After **'consultations ... with'** Mlambo JP and **'authorised'** by him to do so, Mtati retracted this criminal lie as **'an error'**, **'palpably an error'**.

Nair supported this retraction with a confirmatory affidavit. And Nair knew very well it was a lie, this lie he told when ghost-writing the report for Mlambo JP to repeat to the Minister and to the Portfolio Committee, because on his own version at court, he'd done nothing with the recommendation and CVs when he got them by email from the ROE, and only opened and read these attachments a year or more later. He took no steps towards holding second interviews.

<u>Paragraph 698:</u>

My information from former Free State and Northern Provinces ROE Nkululeko Mayisela is that the best applicant whom he and the selection panel recommended after the interviews of all shortlisted applicants was passed over, and that Skibi, whom they hadn't recommended, was appointed instead. (LASA is illegally withholding from me the Kimberley Senior Litigator recommendation report that I requested under PAIA.)

<u>Paragraph 731–2:</u>

Lying freely in the standard LASA manner of telling any lie as long as it sounds good, to make me look bad, Mtati perjured himself in his affidavit opposing my petition to the JP of the LAC for leave to appeal:

> **'The Petitioner unsuccessfully sought to appeal the decision of the court *a quo* and sought leave to lead further evidence based on information he was yet to receive from his equally vulgarised requests for information. In other words, the Petitioner banked on information yet to be received in order to support his application to lead further new evidence.'**

Mtati signed the response in November 2013 to my 'vulgarised requests for information' in October – how they're 'vulgarised' he doesn't say – to which he attached the 'further evidence' of internal emails proving that Nair knew all about the SAHRC's PAIA training workshop for and PAIA audit of LASA. So the 'information' wasn't 'yet to be received in order to support [my] application to lead further new

evidence', when about a year later on 3 October 2014 I applied for leave to lead this new evidence on appeal. I had indeed 'received' it.

Paragraph 768:

Not only in KZN. Former Free State and North West ROE Mayisela tells me that sometime in 2009/10, he, Nair and Mlambo JP addressed the Mahikeng Justice Centre. After the meeting, Mlambo JP instructed him to promote a certain female Supervisory Professional Assistant (I have her first name) to Principal Attorney there. The Justice Centre didn't have such a position. Mayisela told me he reported this gross irregularity (Mlambo JP doling out jobs to people he likes) to Nair, who said he'd take it up with Vedalankar, and that Nair reported back that Vedalankar had undertaken to raise it with Mlambo JP. Nothing came of his complaint. (Vedalankar and/or Nair can confirm or dispute this very carefully in reply on oath.)

Paragraphs 798–9:

In his proposal to the Board in July 2010 that some public defender posts serving the lower criminal courts be frozen temporarily until the OSD payment uncertainty had been resolved, the COO informed the Board that recruitment to critical posts would be prioritized (annexure 'X4'), thus distinguishing lower criminal court posts from critical posts. In its original response to my labour claim, LASA twice described its Senior Litigator posts as 'critical'. LASA's critical post occupancy is reported annually as a separate item: a small number of posts relative to its vast public defender ('practitioner') staff establishment (examples in annexure 'B3: J'). But at trial, Nair said no, I had it upside down, it was the other way round:

> **Q: '… in this letter you refer to 56 practitioner posts …' --- 'These were our critical posts; there was nothing more important than these posts. (1) … I described the critical positions as being those very same lower court positions … The practitioner positions who serve the lower courts per district, so those were the critical positions.' (2)**
> – Record: (1) 373:11–25; 374:1; (2) 480:19–24.

That is, contradicting LASA's pleaded case Nair dully told the judge that LASA's most junior entry-level lower criminal court public defender posts are critical, not its most senior specialist litigator posts at the apex of the respondent's regional professional staff establishment, created in response to the National Assembly's repeated minuted concern about adequacy of legal professional expertise at LASA and public perceptions in this regard – repeatedly acknowledged by Mlambo JP and by Hundermark inter alia at presentations on 30 May 2007, 5 August 2009, 11 October 2010, and 3 November 2010. In its response to my original statement of claim in September 2011, LASA again conceded that its **'public image … has, for the most part, been negative due to a perception of incompetence and lack of vital court skills.'** (One of the objectives of the Strategic Plan 2009–12 was to fix this. Mlambo JP, Vedalankar, Nair and Clark all acted deliberately and unlawfully to frustrate it.)

Paragraphs 801–2:

Nair couldn't even stick to the concocted cover-story. In deciding in court to suddenly drop the Mthatha leg of it, Nair's evidence radically deviated from the basic lie told me in Vedalankar's October 2010 letter and repeated in January 2011, and verified on oath by Nair, Vedalankar and Clark, that for lack of sufficient budget to fill them, Vedalankar and Nair had frozen the Pietermaritzburg, Durban and Mthatha Senior Litigator posts.

It's not hard to understand why Nair dropped Mthatha from the basic lie: it didn't fit, didn't make any sense. Skibi's 'lateral transfer' from the Mahikeng Senior Litigator post to the Mthatha one would have had zero salary cost implications. So the cancellation of Skibi's 'lateral transfer' from the Mahikeng Senior Litigator post to the Mthatha one likewise had zero cost-saving value.

L

REPORT TO BOARD

SENIOR LITIGATORS
REPORTING RELATIONSHIPS AND JOB CLARIFICATION

26TH November 2011

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1. Background

The senior litigator position was introduced into our organizational structure during the 2009/10 financial year. The key objectives for creating this position were:

- to have an internal group of practitioners who could handle very complex matters
- toprovide a second career stream within the organization to focus on legal technical skills.
- to establish legal expertise to handle matters in specialist courts and higher courts such as the SCA and CC.
- to strengthen legal leadership within the organization and develop role models for other legal practitioners.

Nine senior litigator posts were created to cater for the 9 provinces. However, because there were no high court divisions in Mpumalanga and Limpopo, a second senior litigator post was allocated to Gauteng and KZN, with a view to increasing the number of positions to include posts for Mpumalanga and Limpopo at a later stage. The criteria set for the appointment of a senior litigator was set at a level to ensure that only very senior and experience practitioners were eligible.

A two stage interview process was implemented in order to identify candidates for appointment. Six senior litigators were filled during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.

2. Reporting relationships

In anticipation of the fact that most of the work allocated to senior litigators would emanate from the high court units where they were based, it was therefore decided that senior litigators should report to the high court unit managers. Whilst this reporting relationship has worked satisfactorily, there has been some concern that this reporting relationship was not appropriate because three of the senior litigations were now reporting to high court managers who previously reported to them when they were high court unit managers. Whilst under normal circumstances such a situation should not pose a problem, there has nevertheless been a concern that the low participation of some senior litigators in SCA cases could arise from the fact that they may be in a position to dictate to their high court unit managers on how cases are allocated in the unit.

It has therefore been agreed that from the beginning of the third quarter of this financial year, all senior litigators will directly report to their ROE. ROEs will therefore be more responsible

for the type of matters undertaken by their senior litigators. Senior litigators will nevertheless be permitted to operate from the Justice Centre where they are currently situated. However, should their relocation to the regional office improve the performance of their function, then this will also be permitted.

3. Type of matters to be handled by senior litigators

It was agreed with senior litigators that the following type of matters should ideally be handled by themselves:

- Matters which are regarded as very complex received at HCUs and JCs in the region.
- Matters identified by CCMC as impact litigation matters;
- Matters that are to be heard by a full bench of the HC, the SCA and the CC.
- Matters to be heard at specialist courts such as the commercial crimes court
- High profile matters which could negatively affect our reputation if not handled properly

A very small percentage of their time could also be spent to prepare opinions, assisting other practitioners with the preparations of their heads of arguments as well as training of staff.

An analysis has been done to determine our current coverage of criminal trial matters at both the SCA, as well as full bench appeals done at each HC division with appeal jurisdiction. During the first three terms this year, 49 criminal appeals were done of which 22 (45%) was done by Legal Aid SA. With regards full bench appeals, 206 full bench appeals were done of which 146 (71%) were done by Legal Aid SA. (Refer to Annexure A and B for details)

4. Quality reviews of senior litigators

Noting that our senior litigators constitute some of our most senior and experienced lawyers in our organization, it is felt that the current system of evaluating their performance, firstly by their high court unit managers and thereafter by our legal quality assurance unit may not be appropriate. It has therefore been agreed that a national quality review panel will be established that will include a few senior legal executives, as well as someone external to the organization, possibly a retired Judge, who would conduct these reviews.

The terms of reference for these review panels will include:

- an examination of the type of cases handled to determine if it complies with our requirements;
- an examination of the level of preparedness for their cases
- a review of the appropriateness of the legal strategy adopted in their cases
- a determination of whether the most appropriate outcome of the case was achieved.

The review panel will be established during the third quarter of this financial year. All senior litigators will be reviewed by this panel before the end of this financial year.

Submitted for information.

National Operations Department

Justice for all!

SUMMARY OF THE SCORING FOR SENIOR LITIGATOTR POSITIONS (LVL LP-10)

LEVEL OF COMPETENCY			
1	2	3	4
Poor	**Average**	**Above Average**	**Excellent**
0 %- 49 %	**50 % -64 %**	**65 % - 79 %**	**80 % - 100 %**
Falling short of required standard	Meeting the required standard	Meeting the required standard to an above average level	Exceeding the required standard

CANDIDATE	TOTAL WEIGHTED SCORE	COMPETENCE	COMMENTS
1.Wilson Rambau	54%	Meeting the required standard	Not recommended for the position
2.Heman Alberts	80%	Meeting the required standard	Recommended for the position(**Pretoria**)
3.Patrick Loots	60%	Meeting the required standard	Not recommended for the position
4.Ashok Kaloo	52%	Meeting the required standard to an above average level	Not recommended for the position
5.Lilla Crouse	75%	Meeting the required standard to an above average level	Recommended for the position(**Port Elizabeth**)
6.Mornay Calitz	74%	Meeting the required standard to an above average level	Recommended for the position(**Cape Town**)
7.William Karam	76%	Meeting the required standard to an above average level	Recommended for the position(**Johannesburg**)

Names of panel members who interviewed the candidates

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NAME	DESIGNATION
Judge Dunstan Mlambo	Chairperson Legal Aid Board
Brian Nair	National Operations Executive
Patrick Hundermark	Legal Development Executive
Amanda Clark	Acting Human Resources Executive
Jerry Makokoane	Chief Operations Officer

Consensus of the panel to appoint the following candidates in the position as Senior Litigator at the Legal Aid Board

NAME	High Court UNIT Centre
Herman Alberts	Pretoria
Lila Crouse	Port Elizabeth
Mornay Calitz	Cape Town
William Karam	Johannesburg

Judge Dunstan Mlambo
Chairperson: Legal Aid Board

Amanda Clark
Act Human Resources Executive

Brian Nair
National Operations Executive

Patrick Hundermark
Legal Development Executive

Jerry Makokoane
Chief Operations Officer

2

NAME	RECOMMENDATION ACCEPTED	NOT ACCEPTED	DATE
VIDHU VEDALANKAR CHIEF EXECUTIVE OFFICER	-/ V. Vedalankar		5.12.2008

M

2

M

Candidate	D Mlambo	J Makokoane	B Nair	P Hundermark	A Clark	Average
Wilson Rambau	55	54	55	52	55	**54**
Herman Alberts	85	76	85	74	80	**80**
Patrick Loots	60	64	60	53	65	**60**
Ashok Kaloo	55	50	55	43	55	**52**
Lilla Crouse	75	71	75	78	75	**75**
Mornay Calitz	75	72	75	72	75	**74**
William Karam	80	74	80	76	70	**76**

Anthony Brink N

From: Thembile Mtati [ThembileM@legal-aid.co.za]
Sent: 23 August 2012 09:01 AM
To: Fola Adeleke
Cc: Solly Sekgota
Subject: RE: Amendment of LASA Section 32 Report
Attachments: image001.png.html; image002.gif.html; image003.png.html

This message was archived

image001.png image002.gif image003.png Open email

Dear Fola,

Further to my note below, I have just established that the main application by Applicant is dated 20 July 2011 received by us on 27 July 2011.

The information requested is clearly relating to the matter pending litigation.

Regards,

Thembile Mtati

Corporate Service Executive

Tel: 011 877 2078

Fax: 011 877 2222

www.legal-aid.co.za

Description: cid:image001.png@01C9F405.2660C620

Description: cid:111082511483702802@mail6.mimecast.co.za

From: Thembile Mtati
Sent: Thursday, August 23, 2012 8:54 AM
To: 'Fola Adeleke'
Cc: Solly Sekgota
Subject: RE: Amendment of LASA Section 32 Report

Dear Fola,

I acknowledge receipt of your note below and hereunder is my reply.

By numerous requests made, it was not intended to mean requests ito PAIA. I have a whole folder of requests and allegations made through e-mail.

The material point I'm raising is whether a request made on 2010/11 and responded to on 2011/12 should be reported on during 2010/11 or both years.

It would make sense to me to report thereon during 2010/11 and if you agree we will amend our initial report to add the third although similar request.

The remainder of your comments have been noted.

Regards,

Thembile Mtati

Corporate Service Executive

Tel: 011 877 2078

Fax: 011 877 2222

www.legal-aid.co.za

Description: cid:image001.png@01C9F405.2660C620

Description: cid:111082511483702802@mail6.mimecast.co.za

From: Fola Adeleke [mailto:fadeleke@sahrc.org.za]
Sent: Wednesday, August 22, 2012 3:47 PM
To: Thembile Mtati
Cc: Solly Sekgota
Subject: RE: Amendment of LASA Section 32 Report

Dear Thembile,

Thank you for attempting to respond to our enquiries.

We note with concern however that reference is made in your email to a number of requests from Adv. Brink. This does not reflect in either of your reports to the Commission. We note further that the requester's reason for requesting particular information is being deduced. It should be noted that PAIA is quite clear that

requests made to public bodies do not have to be supported or justified by a reason for the request. Similarly, requests made prior to notification of litigation should not have to be supported by a reason or purpose for the stipulated information.

We remain concerned therefore about the accuracy of your section 32 report and need to advice that we intend auditing the veracity shortly. Notice of the audit will be issued in due course.

Regards,

Fola

South African Human Rights Commission

33 Hoofd Street

Braampark Forum 3

Braamfontein

011 877 3810

email: fadeleke@sahrc.org.za

From: Thembile Mtati [mailto:ThembileM@legal-aid.co.za]
Sent: Wednesday, August 22, 2012 11:55 AM
To: Fola Adeleke
Cc: Solly Sekgota
Subject: RE: Amendment of LASA Section 32 Report

From: Thembile Mtati
Sent: Wednesday, August 22, 2012 11:39 AM
To: 'fadeleke@sahrc.org.za'
Cc: Solly Sekgota
Subject: Amendment of LASA Section 32 Report

Dear Fola,

The annexed document from Mr. Brink was forwarded to me by Solly.

I tried to call you earlier at 011 8773600 but the phone was just ringing hence this note.

According to Mr. Brink, he requires us to report over a two year period over a request that was made within one year.

It is worth noting that there are a number of requests that Mr. Brink made but all these relate generally to one question, namely, that his interview for a senior litigator position was stalled because of some views he held or is holding over supply of ARV's to HIV/AIDS patients and not because of the organisation's financial uncertainty. Any other request is seeking to gather information on processes but not the substance.

A full explanation was provided to him and he decided to pursue the matter at Court. The 1st application will be heard on 29 August 2012.

Since his request was for the f/y 2010/11, I submit that it should correctly be reported on during that year notwithstanding the fact that we responded on 8 April 2012.

If this were to be done, it will mean we should change our annual report which has already been submitted. The process is already at Court and there are processes to be followed to seek clarity or other information through the Court process and my view is that provisions of PAIA are sought to be used to gather information piecemeal.

Regards,

Thembile Mtati

Corporate Service Executive

Tel: 011 877 2078

Fax: 011 877 2222

www.legal-aid.co.za

Description: cid:image001.png@01C9F405.2660C620

Description: cid:111082511483702802@mail6.mimecast.co.za

From: Solly Sekgota
Sent: Wednesday, August 22, 2012 10:46 AM
To: Thembile Mtati
Subject: FW: Amendment of LASA Section 32 Report

Hi Thembile

FYA

Solly Sekgota

Corporate Legal Manager

Legal Aid South Africa

Tel: 011 877 2004

Fax: 011 877222

From: Fola Adeleke [mailto:fadeleke@sahrc.org.za]
Sent: Tuesday, August 21, 2012 2:50 PM
To: Solly Sekgota
Subject: FW: Amendment of LASA Section 32 Report

From: Fola Adeleke
Sent: Monday, August 20, 2012 10:25 AM
To: 'solly@legal-aid.co.za'
Cc: Chantal Kisoon
Subject: Amendment of LASA Section 32 Report

Dear Solly,

As per our earlier conversation, please find attached the scanned PAIA request from Brink to LASA and LASA's response to the request. Please report it in your s 32 report and send it back to me as a matter of urgency.

Regards,

Fola

South African Human Rights Commission

33 Hoofd Street

Braampark Forum 3

Braamfontein

Date: 3 February 2015

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

Advocate Anthony Brink;

1 Boast Road;

Eshowe

3815

Dear Advocate Brink,

REQUEST FOR RECORDS OR INFORMATION IN TERMS OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 DATED 10 AND 17 NOVEMBER 2014

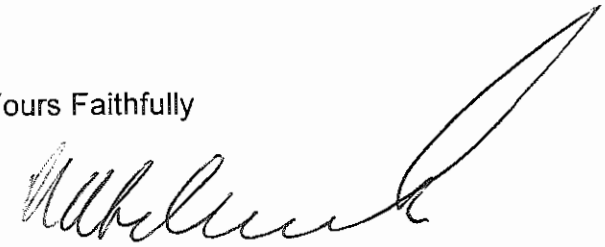
I have had an opportunity of perusing your two requests dated the 10 and 17 November 2014 respectively. I further wish to record that you have consented to a further 30 days extension in terms of section 26(1) of the Promotion of Access to Information Act 2 of 2000 (hereinafter referred as the "Act).

I must further state that due to the lengthy background to the requests, which required me to refer to the bundle of document relating to the proceedings of the Labour Court, references to the various review applications in the Magistrate Court and your specific requests as outlined in your annexure to the letters of 10 and 17 November 2014, I have had to commit Legal Aid SA resources to the preparation of a response. We have accordingly spent approximately 181 hours in excess of the allowed 6 hours in preparation of the reply.

Therefore, in terms of section 22 of the Act you are required to pay the amount of R900 (R15 per hour X 180) being the one third of the amount allowed for the search fees. I have attached for ease of reference the SAHRC fees structure.

Kindly make the payment into the Legal Aid SA bank account, which bank account details are already known to you, to enable me to finalise the reply.

Yours Faithfully



Mr Patrick Hundermark

Deputy Information Officer

Legal Aid South Africa

SAHRC Fee Structure

Schedule of Fess		
Description	**Fee**	
The fee for a copy of the manual as contemplated in regulation 5(c) is R0, 60 for every photocopy of an A4-size page or part thereof.	**R0.60**	
Reproduction Fess: Regulation 7(1):		
For every photocopy of an A4-size page or part thereof	**R0.60**	
For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form	**R0.40**	
For a copy in a computer- readable form on: (i) Stiff disc	**R5.00**	
(ii) Compact disc	**R40.00**	
For a transcription of visual images: (i)for A4-size page or part thereof	**R22.00**	
(ii) copy of visual images	**R60.00**	
(iii)transcription of an audio record, A4 size page or part thereof	**R12.00**	
(iv)copy of an audio record	**R17.00**	
Request fee payable by a requester, other than a personal requester	**R35.00**	
Search Fees- to search and prepare a record for disclosure. The fee is charged per hour (or part of the hour); however the first hour is free.	**R15.00-**	
For purposes of section 22(2) of the Act, the following applies: (a) Six hours as the hours to be exceeded before a deposit is payable; and (b) one third of the access fee is payable as a deposit by the requester.		
The actual postage is payable when a copy of a record must be posted to a requester.		

Legal Aid South Africa

P

29 De Beer Street
Braamfontein
Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

Date: 25 February 2015

Advocate Anthony Brink;

1 Boast Road;

Eshowe

3815

Dear Advocate Brink,

REQUEST FOR RECORDS OR INFORMATION IN TERMS OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 DATED 25 NOVEMBER 2014 AND 15 DECEMBER 2014

I have had an opportunity of perusing your two requests dated the 25 November 2014 and 15 December 2014 respectively. I further wish to record that you have consented to a further 30 days extension in terms of section 26(1) of the Promotion of Access to Information Act 2 of 2000(hereinafter referred as the "Act).

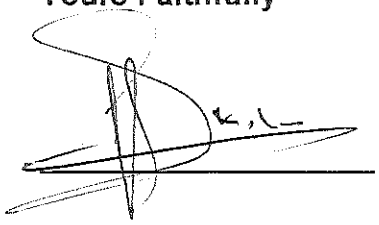
I think it is also worth recording that your background to your request has been extremely long as it required my team to read the bundle as referred in your footnotes to advise me with the gist of background explanation. As a result, my team spent and devoted almost 220 hours of their time to deal with your requests and in terms of section 22 of the Act you are required to pay the amount of R1095 (R15 per hour X 219) being the one third of the amount allowed for the search fees.

P

Therefore, in terms of section 22 of the Act you are required to pay the amount of R1095 (R15 per hour X 219) being the one third of the amount allowed for the search fees.

Kindly make the payment to enable me to finalise the reply.

Yours Faithfully



Mr Jerry Makokoane

Deputy Information Officer

Legal Aid South Africa

Q

12 years in the business of satisfying legal practice

ADV. THABISO MACHABA BA LLB LLM LLM (TAX LAW) WITS†

PITJE CHAMBERS: TRANSFORMATION INITIATIVE
7th Floor
81 PITJE CHAMBERS
Cnr Pritchard & Von Wielligh Streets
Johannesburg
South Africa
Cell: 082 634 6486

P.O. Box 4038
Johannesburg
2001
Tel: + 27 11 223 8000 o/h
Tel: + 27 11 223 8031 a/h
Fax: + 27 11 223 8004
Email:tmachaba@telkomsa.net

VAT NO: 4060233725

TAX INVOICE NO: 005/12

To: **LEGAL AID SOUTH AFRICA**

Attention: Mr T. Mtati

Your Fax: (011) 877 2748

Your Tel: (011) 877 2000

Date: 24 Mar. 2013

Your Ref: Mr Brink

My Ref: Acc/BRINK/ACCOUNT/ACC: 005/12

R431 040-55 Accrued as a legal provision

Recommended for payment

3/07/2013

Re: **ACCOUNTS MADLANGA AND MACHABA IN THE HEARING OF A BRINK v LEGAL AID OF SOUTH AFRICA**
Case No:

HEREWITH IS MY ACCOUNT FOR YOUR SETTLEMENT

Activity	Dates	Fees
On perusal of the Applicant's Request for further particulars and other documents filed off record for 8 hours	**29 Nov. 2011**	**@ ⅔ of Madlanga SC R15,200.00**
On perusal of the Applicant's Core Facts on which the Applicant relied for his case; Request for Pre trial Conference before a Judge; and Pre-Trial Addendum for 1 day	**1 Dec. 2011**	**@ ⅔ of Madlanga SC R19,000.00**

† *"Forgiveness is the key to action and freedom."* – Hannah Arendt

Q

On perusing the Replying affidavit and considering same for 8 hours	**29 Mar. 2012**	**@ ⅔ of Madlanga SC R15,200.00**
On settling the Respondent's notice of motion on counter-application and affidavit for 1 day	**28 Mar. 2012**	**@ ⅔ of Madlanga SC R19,000.00**
On perusing the interlocutory application and documents filed off record in preparation for a consultation with the JP, and on consult with Mlambo JP, T Mtati, S Sekgota for 1 ½ days	**2 – 3 Apr. 2012**	**@ ⅔ of Madlanga SC R31,666.60**
On perusal of Mr Brink's answering affidavit to our counter application for 8 hours; and on drafting our replying affidavit 2 days	**3; 5 – 6 May 2012**	**@ ⅔ of Madlanga SC R38,000.00**
On emailing the final draft reply to Mr Mtati with a view to consult on 17 May 2012 and on Consulting on the document with Mr Mtati and Sekgota (10 hrs)	**15 and 17 May 2012**	**@ ⅔ of Madlanga SC R19,000.00.**
On incorporating comments from LASA Mr Mtati and Sekgota on 11 June 2012 and on emailing Madlanga the finalised draft for his settlement and on receiving same for 1 day	**11, 27 June 2012**	**@ ⅔ of Madlanga SC R19,000.00**
On perusal of Mr Brink's letter to the Registrar seeking hearing in Chambers, on settling a response thereto, and on emailing same to Mr S. Sekgota for correction on content for 7 hours	**10; 11 Aug 2012**	**@ ⅔ of Madlanga SC R13,300.00**

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On perusing of A Brink's response letter to our letter of 11 Aug. 2012 for 1 hour	**17 Aug 2012**	**@ ⅔ of Madlanga SC R1,900.00**
On perusal of correspondence on setting of the matter down, with clients and registrar of Labour Court for 3 hours	**5 Sept. 2012**	**@ ⅔ of Madlanga SC R5,700.00**
On perusing AB's proposed shortening of the application before the hearing on Pre-trial before Judge in Chambers for 8 hrs	**30 Sept. 2012**	**@ ⅔ of Madlanga SC R15,200.00**
On perusing AB's application to subpoena Mlambo JP and considering the issues arising therefrom for 1 day	**15 Nov 2012**	**@ ⅔ of Madlanga SC R19,000.00**
On settling draft affidavit in response to the subpoena application and emailing same to adv Madlanga SC for settling for 2 days	**1 – 4 Dec. 2012**	**@ ⅔ of Madlanga SC R38,000.00**
On perusal of the supplementary affidavit from Mr Brink for 7 hours	**19 Jan 2013**	**@ ⅔ of Madlanga SC R13,300.00**
Perusal of the file received from client in preparation for the Durban Pre-Trial hearing for 3 days	**20 and 23 – 24 Jan 2013**	**@ ⅔ of Madlanga SC R57,000.00**
On appearance in the Labour Court before Gush J with Madlanga SC and on finalising the pre-trial conference	**25 Jan 2013**	**@ ⅔ of Madlanga SC R19,000.00**

TOTAL : R498,433.20

ADD VAT AT 14% @: R69,780.65

Q

TOTAL: R568.213.85

ON ATTACHED MADLANGA'S ACCOUNT

On Madlanga SC's disbursement in the relevant period	2011, 2012 & 2013	R262,827.00

TOTAL PAYABLE IN THIS ACCOUNT INCLUDING MADLANGASC's DISBURSEMENTS:

R831.040.85

Herewith are Adv. Machaba's banking details for effecting payment.

Bank and branch: Standard Bank (Small Street City Branch)
Account type: Cheque Account
Account No: 001087673

Thank you for the above brief and do enjoy words of wisdom below.

Please provide proof of payment to Adv. Machaba for filing and records.

THABISO MACHABA
PITJE CHAMBERS
JOHANNESBURG

Recommended for payment
23/07/2013

Q

MBUYISELI R MADLANGA SC

Vat Reg. No.: 4720193582

The Pitje Group
6th Floor
Pitje Chambers
81 Pritchard Street
Cnr Von Wielligh Street
JOHANNESBURG
2001

Tel. No: (011) 223 8000
Fax No: (011) 223 8004
Cell No: 082 443 1324
Fax-to-mail: 086 623 7415

E-mail: mbuvimad@telkomsa.net

30 March 2013

LEGAL AID SOUTH AFRICA
JOHANNESBURG

ATTENTION: MR T MTATI

RE: BRINK / LEGAL AID SOUTH AFRICA

DATE	DESCRIPTION	AMOUNT
22/01/12	Perusing the applicant's request for further particulars, the applicant's core facts on which the applicant relies for his case, request for pre-trial conference before a judge, pre-trial addendum and other documents filed of record since the previous fee note (including a number of items of correspondence between the parties) – full day (@ R29 000.00 per day)	R 29 000 .00
23/01/12	Settling the respondent's notice of objection to the applicant's request for further information with Adv T Machaba – 3 hrs (@ R2 900.00 per hour)	R 8 700.00
25/01/12	Perusing the applicant's response to the objection referred to above (alone) and settling the respondent's response with Adv T Machaba – 4 hrs	R 11 600.00
9/02/12	Perusing an interlocutory application instituted by the applicant (alone) and settling answering affidavit with Adv T Machaba – full day	R 29 000.00
27/03/12	Settling counter-application with Adv T Machaba – full day	R 29 000.00
3/04/12	Preparing for consultation with Judge President Mlambo, Mr T Mtati and Mr S Sekgota and	

Q

	consulting with the said persons – 2 hrs 30 mins	R 7 250.00
26/06/12	Perusing applicant's answer to the counter-application and settling reply thereto – full day	R 29 000.00
4/12/12	Perusing a variety of documents received from the applicant and / or exchanged between the parties and settling affidavit resisting an application to subpoena Judge President Mlambo – full day	R 29 000.00
24/01/13	Preparing for pre-trial conference to be held before a judge in Durban and travelling there – full day	R 29 000.00
25/01/13	Attending pre-trial conference before Gush J – day's fee	R 29 000.00
	SUB - TOTAL	**R 230 550.00**
	14% VAT	R 32 277.00
	TOTAL	**R 262 827.00**

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OFFICE OF THE JUDGE PRESIDENT

P O Box 442, PRETORIA 0001 - Tel 012- 314-9003 - Fax 012-326-4940
Palace of Justice, Church Square, Room 13, First Floor, Pretoria
E-mail: TMotswasele@judiciary.org.za / NNdungane@judiciary.org.za

Your Ref: JSC/533/17

THE CHAIRPERSON
JUDICIAL SERVICE COMMISSION
186, 14TH ROAD
NOORDWYK
MIDRAND
1685

Dear Chief Justice

RE: COMPLAINT BY ADVOCATE BRINK AGAINST MLAMBO JP

1. I refer to your letter dated 25 May 2018 wherein you sought my response to the complaint that has been lodged by Mr Anthony Brink ("Brink").

INTRODUCTION

2. [redacted]

S

The office of the Honorable Mr. Justice Basheer Waglay

Judge President of the Labour Appeal Court and the Labour Court Of South Africa

and Judge of the High Court of South Africa (Western Cape)

Email Address: bwaglay@justice.gov.za Mobile +27 082 494 2593

Johannesburg: Ms Hali 011 3595736 Cape Town: Ms Allie 021 424 9035

The Chairperson

Judicial Conduct Committee

RE: Complaint; Adv. Brink.

1. I refer to the letter addressed to me by the secretary of the Judicial Service Commission, Ms L Bios, regarding the complaint filed by Adv. Brink.

2. [redacted]

Legal Aid South Africa

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Johannesburg 2017
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Tel: 011 877 2000
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www.legal-aid.co.za

Date: 06 November 2013

Anthony Robin Brink

25 Baker Road

Prestbury

Pietermaritzburg

3201

Fax: 086 672 0776

Email: arbrink@iafrica.com

REQUEST FOR ACCESS TO RECORDS IN TERMS OF SECTION 18(1) OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 200

Dear Mr. Brink

We acknowledge receipt of your request for access to record in terms of section 18(1) of the Promotion of Access to Information Act 2 of 2000, dated 1 October 2013 and which was received by our office on 8 October 2013.

Whilst Legal Aid South Africa has every intention to ensure compliance with the prescripts of the Act, it is however important to set out the following facts which will set the tone of my reply to your request.

Promotion of Access to Information Act 2 of 200

1. The purpose and the object of the Act is to give effect to the constitutional right to access to any information held by the State and any information that is held by

another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith;

2. The second part of the preamble to the Act, further express that the right to any information held by a public or private body may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution[1].

3. Section 7(1) states that this Act does not[2] apply to a record of a public body or a private body if-

   (a) that record is requested for the purpose of criminal or civil proceedings;

   (b) so requested after the commencement of such criminal proceedings or civil proceeding, as the case may be, and

   (c) the production of or access to that record for the purpose referred to in paragraph(a) is provided for in any other law;

4. Section 45 states that the information officer of a public body may refuse a request for access to a record of the body if-

   (a) the request is manifestly frivolous or vexatious; or

   (b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

Reply to the request for access to the records or information

5. I do not intend to reply to each and every averments made by you, and more specifically to your interpretations, conclusions and comments. I however wish to place on record that such interpretations, conclusions and comments should be construed as denied. I therefore reply as follows:

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[1] My underlining
[2] My underlining

5.1 Items 1 to 10 of Annexure to your request is hereby re refused in terms of the provisions of section 45 of the Act. The information or records requested relates to the civil proceedings already before Court.

5.2 Item 11. The records are hereby attached marked "**SAHRC Workshops Records**";

5.3 Item 12. There are no communications between Mr. Nair and SAHRC and therefore no such records exist. I further attached an affidavit in compliance with section 23 of the Act.

5.4 Item 13. See records attached as marked "**SAHRC Workshops Records**" above

5.5. Item 14. There are no communications between Mr. Nair and SAHRC and therefore no such record exists. I further attach the affidavit in compliance with section 23 of the Act.

5.6. Items 15. See the records attached marked **"SAHRC Workshop Records"** above.

5.7. Items 16 to 20. Please find all the communications between Legal Aid South Africa and SAHRC to section 32 report **marked "Section 32 Report Communications"**. Please further note that Mr. Nair had never given any instructions relating to the section 32 report.

5.8 Item 21. Please find the communications relating to audit for PAIA compliance attached as **"Communications on Audit Compliance"**

5.9. Items 22 to 25. Please find the audit compliance questionnaire and the reply thereof, marked "**Compliance Audit and Reply"** respectively;

5.10. Item 26. There were no communication with the Minister and/or the Portfolio Committee on Justice and Constitutional Development concerning the SAHRC's section 84 report and therefore no such record

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exists. Please further see the provision confirming the non-existence of the record in terms of section 23 of the Act;

5.11. Item 27. See the records set out in paragraph 5.7 above;

5.12. Items 28, 29,30, 31, 33, 34,35, 36,37,,38,39,40,and 41 of your request is hereby refused in terms of the provisions of section 7 and section 45 of the Act. The information or records requested relates to the civil proceedings already before Court;

5.13. Item 32. There was no communication between Mr. Nair and Mr. Sekgota with regard to the report nor did Mr. Nair draft the report. Therefore no such record exists. I have further addressed this statement in my affidavit attached hereto in compliance with section 23 of the Act.

Yours Faithfully,

Mr. Thembile Mtati

Legal Aid South Africa

Legal Aid South Africa

Eastern Cape Regional Office

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6001

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6057

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Date: 06 November 2013

Anthony Robin Brink

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3201

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REQUEST FOR ACCESS TO RECORDS IN TERMS OF SECTION 18(1) OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 200

Dear Mr. Brink

We acknowledge receipt of your request for access to record in terms of section 18(1) of the Promotion of Access to Information Act 2 of 2000, dated 1 October 2013 and which was received by our office on 7 October 2013.

Whilst Legal Aid South Africa has every intention to ensure compliance with the prescripts of the Act, it is however important to set out the following facts which will set the tone of my reply to your request.

Promotion of Access to Information Act 2 of 200

1. The purpose and the object of the Act is to give effect to the constitutional right to access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith;

2. The second part of the preamble to the Act, further express that the right to any information held by a public or private body may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution.

3. Section 7(1) states that this Act does not apply to a record of a public body or a private body if-

(a) that record is requested for the purpose of criminal or civil proceedings;

(b) so requested after the commencement of such criminal proceedings or civil proceeding, as the case may be, and

(c) the production of or access to that record for the purpose referred to in paragraph(a) is provided for in any other law;

4. Section 45 states that the information officer of a public body may refuse a request for access to a record of the body if-

(a) the request is manifestly frivolous or vexatious; or

(b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

Reply to the request for access to the records or information

5. Item I. This information was requested as document 43 under paragraph 35 of the requester's proposed pre- trial agenda of the 25 January 2013 under case number LCD529/11 at Durban Labour Court and accordingly responded to. See **Part 2** of the discovery of documents in terms of rule 35(3) of the rules of Court in respect of the pre-trial minutes of 25 January 2013 filed on 14 March 2013 which forms part of the bundle titled ***"Applicant's agenda pre-trial***

conference at Court, 7 June 2013". See further paragraph 6 of the pre-trial minutes of the 7 June 2013.

6. Item 2. This information was requested as document 35 under paragraph 29 (a) to (c) of the requester's proposed pre- trial agenda of the 25 January 2013 under case number LCD529/11 at Durban Labour Court and accordingly responded to. See documents 9 and 35(a) attached to the discovery of documents in terms of rule 35(3) of the rules of Court in respect of the pre-trial minutes of 25 January 2013 filed on 14 March 2013 which forms part of the bundle titled ***"Applicant's agenda pre-trial conference at Court, 7 June 2013"***. See further paragraph 4 of the pre-trial minutes of the 7 June 2013.

7. Item 3. This information was requested as document 36 under paragraph 30 of the requester proposed pre- trial agenda of the 25 January 2013 and was accordingly responded to the effect that no such record exists. See the discovery affidavit of documents in terms of rule 35(3) of the rules of Court in respect of the pre-trial minutes of 25 January 2013 filed on 14 March 2013 which forms part of the bundle titled ***"Applicant's agenda pre-trial conference at Court, 7 June 2013"***.

8. Item 4. This information was requested as document 35 under paragraph 29(c) of the requester proposed pre- trial agenda of the 25 January 2013 and was accordingly responded to. See **Part 2** of the discovery affidavit filed on 14 March 2013 which forms part of the bundle titled ***"Applicant's agenda pre-trial conference at Court, 7 June 2013"***.

9. Item 5. This information was requested as document 35 under paragraph 29 of the requester proposed pre- trial agenda of the 25 January 2013 and was accordingly responded to. See further at page 40 of the discovery affidavit filed on 14 March 2013 which forms part of

the record of the bundle titled "***"Applicant's agenda pre-trial conference at Court, 7 June 2013"***.

10. Item 6. No such record exists as no approval were made for Skibi's appointment but the unsigned recommendation that forms part of the record which has already been provided and forming part of the record as document 35(a) attached to the discovery affidavit filed on the 14 March 2013.

11. Item 7. To the extent that we have searched, no other information exists relating to your request.

Having regard to all the above legal provisions, and noting that all the request relates to legal proceedings before court, I hereby refuse all the requests for information or records as set out in the application as all your request falls within the prescripts of section 7(1) read with section 45 of the Act.

Yours Faithfully,

Hope Bambiso

Designated Deputy Information Officer

Eastern Cape Regional Office

Legal Aid South Africa

196 Nelson Mandela Drive
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Bloemfontein 9301
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Date: 18 November 2013

Anthony Robin Brink

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3201

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REQUEST FOR ACCESS TO RECORDS IN TERMS OF SECTION 18(1) OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 200: ANTHONY BRINK DATED 1 OCTOBER 2103

Dear Mr. Brink

We acknowledge receipt of your request for access to record in terms of section 18(1) of the Promotion of Access to Information Act 2 of 2000, dated 1 October 2013 and which was received by our office on 13th on November 2013.

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Legal Aid South Africa do not intend to respond to each and every request made as we note that all the information requested relates to the legal proceedings currently before court under case D529/12 at Durban Labour Court and is accordingly refused in terms of section 7(1) of the Promotion of Access to Information Act 2 of 2000.

We note further that your requests are manifestly frivolous or vexatious and fall squarely within the ambit of the provisions of section 45 of the aforesaid Act.

Yours Faithfully,

Zanele Msweli

Designated Deputy Information Officer

Free State and North West Regional Office

Legal Aid South Africa

Legal Aid South Africa

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Date: 13 February 2015

Advocate Anthony Brink;
1 Boast Road;
Eshowe
3815

Dear Advocate Brink,

REQUEST BY ADVOCATE BRINK FOR RECORDS OR INFORMATION IN TERMS OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000: 17 NOVEMBER 2014

I have considered your request for the records in terms of the Act as clearly set out in the Annexure to the Form A of your letter of 17 November 2014.

I note with concern, however, that you continue to thread on the path of making demeaning and defamatory comments which are not supported by any facts. I reserve my rights in this regard and will deal with those comments at the appropriate forum.

Just for the record, I confirm your consent to a 30 days extension in terms of section 26(1) of the Promotion of Access to Information Act 2 of 2000(hereinafter referred as the "Act) to reply to your request.
I further wish to put on record that where my response relates to a question of law, such response is given to you on the basis of the advice of my legal representatives, which I verily accept.

Your voice. For justice.

I now reply to your request as follows:

No	Record requested	Reply
1	The minutes kept by HRE Amanda Clark of the second round interviews held for some Regional Operations Executives posts as alleged by Legal Aid SA's single witness Brian Nair at the trial of case No.LC D529/11.	This request cannot be acceded to in terms of section 7 as it relates to the evidence in the matter pending before Court.
2.	The recommendations made by the selection panel of candidates for Bloemfontein, CapeTown, Johannesburg, Mafikeng, Port Elizabeth Senior Litigator posts and for the Pietermaritzburg Senior Litigator post when it was first advertised and for the Kimberly Senior Litigator Post if a recommendation was made showing, the names of the shortlisted and interviewed candidates, the recommended candidates and members of the selection panels.	This information relates to third parties and falls within the ambit of section 37 read with section 47 and 48 of the Act
3.	In respect of Bloemfontein,CapeTown,Johannesburg, Mafikeng, Port Elizabeth and Pretoria Senior Litigator posts the emails sent by ROE to Nair or by RHRMS to Clark, forwarded to Nair covering the selection panel's Recommendations and the CVs of the recommended candidates as well as CV's of other candidates who were shortlisted and interviewed by the selection panel but not recommended by them in compliance with the specific requirements of the second round interview panel to send all CVs and not only those of recommended candidates since it was the practice of the second round panelists to consider if there was anyone else they would be interested to interview.	This information relates to third parties and falls within the ambit of section 37 read with section 47 and 48 of the Act
4.	The email that Kwazulu Natal ROE Vela Mdaka sent to Nair or RHRM Baboo Brijlal sent to Clark, forwarded to Nair covering the selection panel's recommendation of Legal Aid SA attorney Ashok Kaloo for the Pietermaritzburg Senior litigator Post and his CV as well as the CVs of the other candidates who were shortlisted and interviewed by the selection panel for the post but not recommended by it, when it was first advertised.	This records was requested during the discovery process in the trial court for which the matter is still pending. Therefore it is excluded in terms of section 7 of the Act.
5.	The email the Free State and North West ROE sent to Nair or its RHRM sent to Clark, forwarded to Nair covering the selection panel's recommendation of a Candidate for the Kimberly senior litigator post- if a recommendation was made and his/her CV as well as the CV's of the other Candidates who	This requests relates to the evidence and the records already before court, which matter is still pending. Therefore it is excluded in terms of section 7 of the Act

	were shortlisted and interviewed by the selection panel for the post but not recommended by it.	
6.	In respect of the Bloemfontein,CapeTown,Johannesburg, Mahikeng, Port Elizabeth and Pretoria Senior Litigator posts, Nair's email to the five members of the second round panel, forwarding the selection panel's Senior Litigator candidate recommendations in each case and the CVs of all candidates who were shortlisted and interviewed by the selection panels including CVs of all those candidates that were not recommended, in which emails Nair asked the five members of the second round panel to advise him as to who they would like to see and interview. As to the identities of the so called second round interview panel see the Appendix hereto, paragraph (96).	The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.
7.	In respect of the Pietermaritzburg senior Litigator Post when it was first advertised, Nair's emails to the five members of the second round panel forwarding the second round panel forwarding the selection panel's recommendation of attorney Kaloo, his Cv and the CVs of those candidates who were not recommended in which emails Nair asked the members of the second round panel to advise him as to who they would like to see and interview.	This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act
8.	In respect of the Kimberly Senior Litigator Post Nair's emails to the five members of the second round panel forwarding the selection panel's recommendation if one was made of the recommended candidates and his CV and the CVs of those candidates who were not recommended in which emails Nair asked the members of the second round panel to advise him as to who they would like to see and interview.	This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act
9	In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth and Pretoria Senior Litigator's posts, the records of the second round panel members to Nair's enquiries as to which Senior litigator Candidates they wished to see and interview, notifying as to who they would like to see and interview including candidates who had been shortlisted and interviewed by selections panel but not recommended by them	The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.
10.	In respect of the Pietermaritzburg Senior Litigator's posts, when it was first advertised, the records of the second round panel members to Nair's enquiries as to which Senior litigator Candidates they wished to see and interview, notifying as to who they would like to see and interview including candidates who had been shortlisted and interviewed by selection panel but not recommended by it.	This requests forms part of the discovery notice at the trial court and accordingly is excluded in terms of section 7 of the Act

11,	In respect of the Kimberly Senior Litigator's posts, when it was first advertised the records of the second round panel members responses to Nair's enquiries as to which Senior litigator Candidates they would like to see and interview, notifying as to who they would like to see and interview besides the recommended candidate – if a recommendation was made notifying him as to whom they would like to see and interview including candidates who had been shortlisted and interviewed by selection panel but not recommended by it.	This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.
12.	In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth and Pretoria Senior Litigator's posts, the Kimberly senior Litigator Post- if a recommendation was made and the Pietermaritzburg Senior Litigator's post, when it was first advertised, records of the invitation to attend second round interviews sent to the senior Litigator candidates recommended by the selection panels and the invitation to attend second round interviews also sent to any candidates who had been shortlisted and interviewed by the selection panels but not recommended by them on the basis that the second round interview panel had indicated to Nair it would like to see and interview them too.	This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable
13.	The minutes of the meetings of second interview panel on three separate occasions on which it has sat to select prospective candidates for appointment as Senior litigators at which (i) the current six incumbent Senior litigators in Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth and Pretoria were chosen,(ii) Legal Aid SA attorney Ashok Kaloo was rejected and (iii) one other person besides Kaloo that was recommended as possible appointable was also rejected because we did not like him/her	This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable
14.	The record of Mlambo JP's communication to executive management of his brain child of a second round of interviews referred to in Legal Aid SA's original response to the original statement of claim in case LC D529/11.	The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act

Yours Faithfully,

Advocate Brian Nair

Deputy Information Officer

Legal Aid South Africa

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26 May 2015

Advocate Brink

The Flat

1 Boast Street

Eshowe

3815

Dear Adv. Brink,

NATIONAL DEPUTY INFORMATION OFFICERS' FAILURE TO COMPLY WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000; REQUEST FOR THE INFORMATION OFFICER'S INTERVENTION UNDER SECTION 17 (6) (b)

1. We have read your letter of 19 March 2015 annexed thereto being a request in terms of Promotion of Access to Information Act (PAIA) dated 9 March 2015 as well your further letter of 4 May 2015. I have been delegated by the CEO to reply to all.
2. Your continued use of abusive and/or derogatory language against management through use of words like *"liars, scheming up, dishonest, contemptuous, slow learners"* etcetera is again very apparent in your letters and you are called upon to desist from this custom.
3. Once again, we record that at the time the letter of 19 March 2015 was received, namely 31 March 2015, the CEO was on leave and the following officials were appointed to act in her absence-
   3.1. Mr Patrick Hundermark was the acting CEO for the period 30 March 2015 to 2 April 2015.
   3.2. Mr Jerry Makokoane was the acting CEO for the period 13 April 2015 to 17 April 2015.

3.3. Mr Brian Nair was the acting CEO for the period 28 April 2015 to 30 April 2015.

4. As all the aforesaid officials were party to the complaint, they could not reply in their acting capacities.

5. In order to apply her mind on the allegations, I felt it prudent to seek an extension to which you agreed. I will deal with the issue of her absence in this reply.

LETTER OF 19 MARCH 2015

6. The common salient features of your letter and in summary makes the following submissions.

6.1. That the Deputy Information Officers have failed to provide the records requested within the timelines of 60 days as required in terms of the Promotion of Access to Information Act.

6.2. The Deputy Information Officers are extorting money from you as they are not entitled to require the search fees in terms of the Act, more specifically making reference to the provisions of section 22 of the Act.

6.3. That you are seeking CEO's intervention to direct them to provide such records or failing which she must provide such records.

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RECORDS REQUESTED FROM MR PATRICK HUNDERMARK IN THE LETTER OF 10 NOVEMBER 2014

7. There are 23 records sought in the letters referred to above and they quoted below:-

Item	Record requested
1	The minutes of the Regional Management Meeting at which it was decided that the Durban Justice Centre required a Children's Court Practitioner and to apply for the creation of such post at such Centre
2	Kwazulu Natal's Regional Operations Executive Vela Mdaka's motivation under section 8.1.2(b) of the Approval Framework to Legal Services Committee to recommend (he *"originates"*) the creation of the post at the Durban Justice Centre.
3	The record showing that the Human Resources Executive was consulted before the post was created as required by 8.1.2(b) of the Approval Framework
4	The LSTC resolution to recommend the creation of the post
5	National Operations Executive Brian Nair's and Chief Executive Officer Vidhu Vedalankar's approval of the LSTC's resolution to recommend the creation of the post, in their capacities as executing authorities delegated by section 8.1.2(b) of the Approval Framework to co-approve the creation of new posts at 'levels 11-13 and 'OSD-LP – 9 &10'
6	The record of HRE Amanda Clark's confirmation, under Note 17 of the Approval Framework, that the vacancy and budget for the post existed before it was advertised.
7	The record showing the vacancy existed prior to the advertisement.
8.	The record showing the post was budgeted for prior to the advertisement.
9	The advertisement for the post.
10	The shortlist of applicants for the post.
11.	The portion of the interview minute showing that Ngcamu disclosed to Legal Aid SA his two convictions for professional misconduct by the Law Society, and his rebuke by the Judicial Service Commission for not disclosing these when applying for a Labour Court judgeship in 2007.
12.	The selection panel's recommendation of Ngcamu, showing the names of the members, the names of the interviewed candidates, and whether or not they met the advertised

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	qualifying criteria. (Confidential information within the meaning of section 34(1) of PAIA may be blacked out)
13	The covering letter or email transmitting the recommendation to NOE Nair for his approval under section 8.2.2(b) of the Approval Framework.
14.	The record of Nair's approval of the recommendation, and if applicable to the level of the post, Vedalankar's agreement per the said section.
15.	Ngcamu's contract of employment as Children's Practitioner.
16.	The letters to the other shortlisted, interviewed candidates informing them that they had been unsuccessful, as required by section 1.5 of the policies and procedures on Recruitment.
17.	If it's not indicated on the advertisement or Ngcamu's employment contract, any record showing the grade of the post (e.g LP9).
PART TWO	
18	All and any contracts(s) of employment between Ngcamu and Legal Aid SA, at any Justice Centre, entered into prior to his employment as Children's Practitioners at the Durban Justice Centre.
19.	All email or letter communications between Ngcamu and Legal Aid SA prior to his employment as Children's Practitioner at the Durban Justice Center or any other employment by Legal Aid SA.
20.	The selection panel's recommendation of Brink and Mngadi for the Pietermaritzburg and Durban senior Litigator posts, showing (i) Ngcamu's fulfilment or otherwise of the advertisement qualifying criteria, and (ii) the reason he was not recommended.
21.	The letter sent to Ngcamu informing him that he had been unsuccessful as a shortlisted candidate in his application for the Senior Litigator post, as required by section 1.5 of the Policies and Procedures on Recruitment.
22.	The letter sent to Ngcamu informing him that Legal Aid SA has decided not to fill the KwaZulu Natal Senior Litigator posts (like the identical letters sent to the other shortlisted and interviewed candidates Brink, Mngadi and Van Wyk on 23 August 2010.
23.	Deputy Information Officer Patrick Hundermark's written delegation by information officer Vedalankar under section 17(3) of PAIA.

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RECORDS REQUESTED FROM MR PATRICK HUNDERMARK IN THE LETTER OF 17 NOVEMBER 2014

8. There are 4 records sought in the letter referred to above and once again quoted verbatim:-

Item	Records Requested
1.	Aprops of National Operations Executive Brian Nair's allegation in his 'Report to Board' on Senior Litigators in November 2011, concerning which he volunteered at the trial of case LC D529/11,'[1] was the author of this',' It is felt the current system of evaluating their performance by the High Court Unit Managers and thereafter by our Legal Quality Assurance Unit may not be appropriate[2], the minute of the meeting at which this alleged view was expressed, and/or the record of the communication of this view to Nair or other executive.
2.	The record of Nair's instruction 'the Chief Legal Executive, then the Legal Development Executive' Patrick Hundermark to draft the 'terms of reference'[3] of a 'review panel'[4] to conduct 'performance reviews or quality reviews' for 'senior litigators',[5] being the 'person' to whom Nair claimed at the trial to have 'allocated the responsibility'[6] for doing this
3.	The minutes of the number of meetings' that Nair claimed that Hundermark has 'hosted' in the allegedly 'on-going...process...still being attended to 'by him, in the two years since Nair claimed to have 'allocated responsibility' to him ' to properly develop terms of reference ,to identify possible people to contribute to the panel, and to consult' [7]with a view to conducting ' performance reviews or quality 'performance reviews' for senior litigators'[8]
4.	All and any records vouching that Hundermark has acted to (i) 'develop [the] terms of reference' set out in Nair's said Report to Board,(ii) 'to identify possible people to contribute to the panel', and (iii) ' to consult' anyone about it.

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RECORDS REQUESTED FROM MR JERRY MAKOKOANE IN BOTH LETTERS OF 25 NOVEMBER 2014 AND 15 DECEMBER 2014

9. There are 56 records sought in the letters referred to above with an amendment to item 34 and these are:-

No	Record requested
1	Cele J's suggestion that Legal Aid South Africa accommodate the Applicant by providing him with the electronic copy of the record which Legal Aid South Africa did.
2	The transcript of the trial record in case LC D529/11
3	All and any records vouching that a meeting took place between SAHRC and Legal Aid SA's CEO and some of our senior to discuss the SAHRC's allegedly incorrect finding contained in its section 84 report for 2011/12 on public body compliance with PAIA, presented to the National Assembly in October 2012, namely the finding that Legal Aid SA (Vedalankar) had failed to comply with its (her) reporting obligations under section 32. The record will show the date and place of the meeting, who attended it and the outcome.
4	The record reflecting that, as ordered by the Legal Services Technical Committee on 24 March 2010, then Manager: Legal Administration, National Operations, Bee-Mari Schoeman (responsible for Legal Services Delivery) immediately facilitate the transfer of the budget that existed for a Senior Litigator post at Kimberly Justice centre to the Mthatha Justice Centre.
5	The records of CEO Vedalankar and NOE's respective "Final Approval" and "Agree "as he must of the abolition of the Kimberly Senior Litigator post and establishment of the Mthatha Senior Litigator post under section 8.1.2(b) of the Approval Framework as required before the Mthatha post was advertised.
6	After the selection panel's interviews of shortlisted candidates for the Mthatha Senior Litigator post in May 2010, all and any records showing the form of transit that a file that was to be delivered to Legal Aid SA Head Office in respect of the position of Senior Litigator

	position for Mthatha was lost in the form of a registered post slip, courier waybill, covering email, telefax, covering page and transmission report, or other such voucher
7	Copies of the contents of the file in respect of the position of Senior Litigator for Mthatha retained by Eastern Cape Regional Human Resources Manager, Thenjiwe Magazi before dispatching the original or copy to Legal Aid SA's Head Office
8	The complete contents of Human Resources Executive Clark's file or computer folder on the Mthatha Senior Litigator post
9	All records of communications between Legal Aid SA's national office and its Eastern Cape Regional Office after the discovery that a file that was to be delivered to Legal Aid Head Office in respect of the position of the Senior Litigator for Mthatha was lost in transit- including any request for the file, or a copy, to be sent again.
10	Strategic Plan 2009-12.
11	Minutes of the September 2008 Board Meeting at which the Strategic Plan 2009-12 was approved
12	The minutes of all Legal Services Technical Committee meetings held in the period October 2009 to February 2011, besides the minutes of its March 2010 meeting, which Brink already has.
13	The minutes of all Management Executive Committee meetings held in the period October 2009 to February 2011.
14	The minutes of all Board Executive Committee meetings held in the period October 2009 to February 2011.
15	The minutes of all Board meetings held in the period October 2009 to February 2011.
16	Legal Aid SA's Business Plans for 2009/10, 2010/11, 2012/13, and 2013/14
17	Excerpts comprising the cover or first identifying page, and the pages containing provision for Senior Litigator salaries' budget for 2013/14
18	The minute of the Board meeting at which Legal Aid SA's budget for 2013/14 was approved

19	Legal Aid SA's 2013/14 report to SAHRC under section 32
20	The payment voucher of the Department of Justice and Constitutional Development reflecting the date of its transfer of the OSD phase 1 funding for 2009/10
21	The record of any Strategic Plan Annual Review workshop or Board Meeting at which it was resolved not to fill Legal Aid SA's remaining three vacant Senior Litigator posts
22	Record showing mention or discussion by any Legal Aid SA Executive(s) of the issue alleged by Nair in his November 2011 Report to Board that Senior Litigators may not be fulfilling Legal Aid SA's objectives for such posts.
23	All and any reviews of Senior Litigator performance pertaining to whether or not Legal Aid SA's objectives for such posts were being achieved by the current incumbents or not.
24	The record of the decision not to fill Senior Litigator posts for the said reason, referred to in Nair's Report to Board of November 2011
25	All and any records vouching that NOE Nair was among the senior executives who began to deliberate quite intensively in regard to the budgetary issues that suddenly confronted them on 10 March 2010, on learning that Legal Aid SA's expected OSD phase 1 funding hadn't been included in the baseline budget for 2010/11 as had been assured in January 2010, alternatively all and any records vouching that Nair was involved in pursuing the Department's payment of Legal Aid SA's OSD phase 1 funding for 2010/11 in any manner whatsoever.
26	Excerpts of Legal Aid SA's recruitment statistics showing Senior Litigator post occupancies and vacancies for March, April and May 2010, and July, August, September, October and November 2010.
27	The executive instruction issued to transfer the Senior Litigator budget from Mthatha back to Kimberley (from which it had been transferred).
28	Following COO Makokoane's memorandum circulated to them on 30 September 2010, soliciting cost-cutting proposals in view of the slow recovery from the international financial recession, the proposals submitted by: (a) CEO Vidhu Vedalankar,

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	(b) NOE Brian Nair, (c) KZN ROE Vela Mdaka, (d) then Pietermaritzburg JCE Bertus Appel, and, then Durban Justice Centre Executive Kishore Mehta.
29	The Treasury budget allocations letter released at the end of 2009 to which Nair referred in his evidence.
30	The records of all Nair's decisions taken to freeze posts with or without CEO Vedalankar's agreement, and without the approval of the Board.
31	The email or letter to Durban High Court Unit Manager Bongani Mngadi, who was interviewed for and recommended for the Durban Senior Litigator post, informing him in about April/May 2010 (his words) that the Kwazulu-Natal Senior Litigator recruitments had been cancelled.
32	All counsel's fee notes for his professional services rendered Legal Aid SA in the handling of Brink's first three record requests under PAIA in August and December 2010 and March 2011, and his involvement, if any, in the drafting of Mlambo JP's Confidential Report Re: Advocate Anthony Brink to the Minister in March 2011 and in updated form to the Portfolio Committee in June 2011, to put down Brink's complaints.
33	All counsel's opinions in regard to the handling of Brink's said PAIA requests, and the responses to them that he drafted for Legal Aid SA.
34	(a) Legal Aid SA's list of 231 critical legal posts, or other record(s), identifying what legal posts were included under category Critical Occupation in Legal Aid SA's annual report for 2012/13; and (b) the subsequent motivation and resolution to exclude all but the JCE posts from the category of critical legal posts in Legal Aid SA's annual reports to the Minister and to Parliament.
35	Former Board Secretary Bee-Marie Schoeman's resignation or dismissal letter, and/or any other record vouching her information to Brink that she left Legal Aid SA on account of permanent or long-term mentally disabling concussion and amnesia sustained in a motor vehicle accident, alternatively identifying any other reason she quit Legal Aid SA.
36	The minutes of the Board meetings in February and May 2012.

37	The minutes of the Board Executive Committee meetings in February and May 2012.
38	The Charter of the Board Executive Committee.
39	The agenda and the minute of the Board Executive Committee meeting on Friday 23 March 2012; alternatively, if no such meeting was held on that date, the agenda and the minute of the extraordinary extra fifth Board Executive Committee meeting in 2011/12.
40	Vedalankar's confirmatory affidavit, made in support of CSE Mtati's answering affidavit in Brink's application for leave to subpoena Mlambo JP, and referred to in paragraph 107 thereof as annexure DM14.
41	The records of Board Chairperson Mlambo JP's requests to other Board members on 24 January 2011 that they should ignore Brink's repeated appeals for Board investigation in Vedalankar's illegal, falsely justified refusal to comply with his first PAIA request and the manifestly irregular abortion of his appointment on the several indications he identified.
42	The decision originally taken to employ two Professional Assistants (PA's) per backlog court at Pietermaritzburg, or generally, provincially or nationally.
43	The 2010/11, 2011/12, and 2012/13 budgets provided by the Department for salaries for PA's serving the backlog courts at Pietermaritzburg.
44	The minutes of all Kwazulu-Natal regional executive management meetings over the period October 2010 to June 2011.
45	The record of Kwazulu-Natal Regional Operations Executive Vela Mdaka's discussions with National Operations Executive Brian Nair about the streamlining the backlog courts.
46	All and any records identifying the nature of the Stanger court incident.
47	All the records sent to then Board Secretary Bee-Marie Schoeman over the period October 2010 to June 2011 informing her performance of her function: Monitoring of Backlog Court Staffing and compilation of costing to distribute budget received for this purpose to various cost centres, including but not limited to (i) any changes to the number of backlog court posts at the Pietermaritzburg Justice Centre, and (ii) any changes to the budget received for the employment of PA's in the backlog courts at Pietermaritzburg.

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48	The decision to reduce the number of PA's serving the backlog courts at Pietermaritzburg from two to one, according to Nair's emailed announcement of this to Legal Aid SA's Regional Operations Executives on 21 February 2011.
49	The spreadsheet to Nair's email to the ROE's on 21 February 2011, named Backlog courts – 2011 approved courts.
50	The minute of the meeting in February 2011 to identify the sites that will continue to function and be funded, to which Mdaka referred in his email to then Pietermaritzburg Justice Centre Executive Bertus Appel and other JCE's on 7 February 2011.
51	The responses that the members of the selection panel, Manickum, Holtzhauzen, and Shelembe furnished Appel following his referral to them of Mdaka's objections to Brink's appointment to the annual contract PA post for which they'd unanimously recommended him.
52	Appel's transmission to Mdaka of the selection panel's responses to Mdaka's objections to Brink's appointment.
53	Appel's leave application covering 14 and 15 December 2010, alternatively an excerpt from the leave register, reflecting that he was on leave for those two days, and reflecting further the full period he was on leave at that time.
54	The record of Jeffrey Mthimkhulu's appointment as acting Pietermaritzburg Justice Centre Executive in Appel's absence on leave at the said time.
55	The selection panel's recommendation of Brink for the Pietermaritzburg temporary backlog PA post, showing the names of the other candidates interviewed.
56	Any employment contracts subsequently signed between Legal Aid SA and any of the rejected candidates.

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10. I now turn to reply on your submissions made in paragraph 6 above:

10.1. That the Deputy Information Officers have failed to provide the records requested within a period of 60 days as required in terms of the PAIA. Legal Aid South Africa denies the Deputy Information Officers failed to reply within the prescribed period. It submits that this is an issue of interpretation and does not agree with your interpretation and accordingly maintains that it replied within the prescribed period. Further, as you insist that your interpretation is correct, you then should have induced section 58 of PAIA on the basis of deemed refusal.

10.2. That the Deputy Information Officers are extorting money from you as they are not entitled to require the search fees in terms of the Act, more specifically making reference to the provisions of section 22 of the Act, Legal Aid South Africa, once again submits that it is a legal issue of interpretation which cannot be canvassed in the letter but at the appropriate competent forum. We maintain that it is by your own doing that in your requests, you have provided the background to the previous case under case no. D529/11 as well as various footnotes that obliged the Deputy Information Officers to peruse a voluminous bundle of documents in order to familiarise themselves with the facts to enable them to apply their minds and reply to your requests.

10.3. That you are seeking CEO's intervention to direct them to provide such records or failing which she must provide such records. Legal Aid South Africa will not direct them to provide a response to your request for such records for the following reasons:

10.3.1 The records you are requiring relates to and are ancillary to the litigation proceeding that you have brought against Legal Aid South Africa under case number **529/11** at the Labour Court in Durban. Your claim was dismissed with costs and the judgment was further upheld by the Labour Appeal Court.

10.3.2. The records you are requiring further relates to and are ancillary to the litigation proceedings that you have brought against Legal Aid South Africa officials at the Eshowe Magistrate Court under case numbers: **257/14, 258/14 and 259/14.** These matters are still pending.

10.3.3. Your requests are malicious and seek to divert the resources of Legal Aid South Africa and you are required to pay the required amounts as requested.

FURTHER REQUEST IN THE LETTER OF 19 MARCH 2015

11. There are six further requests from the letter referred to above and I provide the reply in the table below:

Item	Records sought	Reply
1	Insurance contract with Carmague	The contracts with Axi Financial Services CC as the broker and Carmague as the underwriter cannot be disclosed as it contains commercial information of a third party in terms of section 36 of the Act
2	Claims lodged with Carmague in respect D529/11	The claim was lodged with Carmague through Axi Financial Services CC. But the information cannot be disclosed as it is relates to commercial information of a third party.
3	All enquiries or reports by Carmague in respect of D529/11	This is information protected in terms of the Act and accordingly is refused.

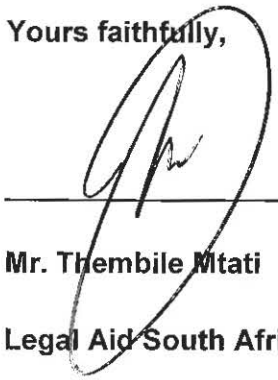
4	All responses and reports to Carmague by Legal Aid South Africa in respect of D529/11	This is information protected in terms of the Act and accordingly is refused.
5	All or other any records vouching that CLE and other staff spend 187 hours reading the documents relating to case 529/11	The search and preparation of the records included reading of documents referenced in the introduction to the request including the record since the requester had made reference to CLE. No specific record exists.
6	All or other any records vouching that COO and other staff spend 220 hours reading the documents relating to case 529/11	The search and preparation of the records included reading of documents referenced in the introduction to the request including the record since the COO was implicated. No specific record exists.

FURTHER REQUEST IN THE LETTER OF 4 MAY 2015 READ WITH THE LETTER OF 15 MAY 2015

12. There are two further requests from the letter which I have summarised and provided the reply in the table below:-

Item	Records sought	Reply
1	LASA's report to SAHRC for 2014 financial year	The report as attached as requested.
2	CEO's approved leave application from office during April 2015	This is personal information that has no relevance in exercising your right in terms the Act. Please find the acting delegations of CLE, COO and NOE.

Yours faithfully,



Mr. Thembile Mtati

Legal Aid South Africa

South African Human Rights Commission (SAHRC) & Legal Aid South Africa on their 2010 Strategic Plans & Budgets

Justice and Correctional Services

13 April 2010

Chairperson: Mr M Gungubele (ANC)(Acting)

Meeting Summary

The South African Human Rights Commission was concerned about delivering on its strategic objectives with its very constrained budget. After accommodation and personnel costs were met, there would be R13 million this year with which to deliver on its mandate. The new Commissioners had been in place for only 90 days. The Chief Executive Officer and the Chief Financial Officer had both left just as the new Commissioners were appointed. Given the "current volatile situation in the country" as one MP termed it, the Commission in delivering on its constitutional mandate faced immense challenges.

There had recently been a big influx of complaints regarding hate speech and race elated matters. The main priority for the Commission was its monitoring function. This entailed the extent to which citizen's rights were protected and enjoyed. The budget was not enough to support all the operations of the Commission.

Despite this, the Committee complained about the lack of visibility of the Commission during the current events in the country. The Committee was also concerned that the work of the Commission itself was not visible. The strategic plan was not comprehensive enough in mapping out how the outputs would be achieved. The outputs themselves were deemed to be too many and unrealistic. A stakeholder meeting was proposed.

The main strategy of the Legal Aid South Africa was to increase access as well as focus on quality legal services. The legal quality assurance unit governed all aspects of quality control within the organisation. One of the goals of the organisation was to try and provide one practitioner per court. Legal Aid South Africa was concerned about the increasing insistence of legal aid by affluent individuals. What was more disturbing was that the courts were instructing Legal Aid to comply in these instances. The Committee was pleased with the quality of the report

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Meeting report

South African Human Rights Commission (SAHRC) Chairperson's Report

Advocate Lawrence Mushwana, Chairperson of the Human Rights Commission (SAHRC) informed the Committee that his document was based on the first impressions of the newly appointed SAHRC. The previous Chief Executive Officer (CEO) and Chief Financial Officer (CFO) both left when the new Commission was appointed. The financial auditors had already begun with auditing the SAHRC's books and there was confidence that the financial state of affairs was in good order. The staff had formally complained to the Speaker of Parliament prior the time the new Commission was appointed. This was not an easy matter to deal with. Staff morale was "down" but this was improving. The Speaker would receive a detailed report once the SAHRC was satisfied that the matter was dealt. There had been a steady decline in the number of public complaints and the SAHR was unsure as to why this was the case. There was a big influx of complaints regarding hate speech and race related matters.

The Chairperson interrupted Adv Mushwana and said that when the Commission was dealing with strategic plans, it had to highlight how the entity was responding to the challenges that it faced.

SAHRC Strategic Plan

Adv Nalezani Mukwevho, Acting CEO, said the SAHRC had eight priorities. The first priority was the monitoring of economic and social rights. The emphasis of the Commission's priorities was on the monitoring function. The Commission looked at the extent to which citizens were enjoying these rights as well as the extent to which their rights were protected. The second and third priorities looked at the internal systems of the Commission. Priority six dealt with human resource capacity. Priority eight dealt with the budget, which was very limited. The budget was not enough to support the operations of the Commission. The budget addressing the Promotion of Equality and the Prevention of Unfair Discrimination *Act* (PEPUDA) and Promotion of Access to Information Act (PAIA) was inadequate.

Mr Nhlungwana referred to page 32 of the slide presentation under the heading Employees Compensation. The allocation from Treasury for 2010/11 was R73.4 million and in addition R1.4 million had been allocated for the compensation of employees. If one had to compare this figure of R75 million then the difference would be R1.4 million. This was the misunderstanding with National Treasury when the allocation letter was received from them. The understanding was that the R73 million excluded the R1.4 million however when the figures were presented to National Treasury the R1.4 million was already included in the R73 million. The R1.4 million was reserved for the compensation of employees.

Mr Jeffery asked what was the figure allocated to SAHRC in the Appropriations Bill?

Mr Nhlungwana responded that it was R73 million.

Adv Mushwana referred to page 29 of the Chairperson's Report where he highlighted that the SAHRC had limited time especially as it had new commissioners. Another document would be tabled, as there were changes that had to be made. The SAHRC apologised for the error however the acting CFO had only been in his position for one and a half months.

The Chairperson said this was not acceptable. The Committee was not at the meeting to listen to a dry run exercise. Such material differences should not be tolerated at any self-respecting institution. The fact that the Commission was new meant that it had to have worked overtime for this meeting. The only choice was for the right figures to be presented.

Dr M Oriani-Ambrosini (IFP) said that the strategic plan was exactly the same as the one that was tabled before the Committee the previous year. According to Adv Mushwana, the SAHRC had been swarming with complaints about hate speech yet no statements had been released by the Commission on this. Why did the Democratic Alliance have to do the human rights work in this country? How many cases of prisoners being abused and of police brutality had been detected and exposed by the SAHRC? As a Member of Parliament he had raised an issue with the CEO on a matter relating to PAIA and not even a letter of acknowledgment was sent. It was unknown what the SAHRC was doing and their budget should be halved, especially their salaries.

Mr S Swart (ACDP) said the budgetary constraints were appreciated, however more had been expected from the SAHRC about comments on the hate speech that was going on, especially about the song 'Kill the Boer, Kill the Farmer'. The Commission had dealt decisively and quickly with the 'Kill for Zuma' song in 2008 that was sung by Mr Malema. There was a high level of tension in society currently and the Commission should have been more proactive in at least writing an opinion piece. The SAHRC had to comment on this. An Equality Court's decision was undermined by Mr Malema. Could there be a comment on the disregard for the rule of law? Did the SAHRC only act on complaints or could it also issue statements of condemnation in the media? The budget issues deserved sympathy and the Portfolio Committee also had to be responsible for this. The Committee had to assist the Commission.

Mr Landers said that even though this was a new Commission, the harsh reality was that one had to hit the ground running. The 'acknowledgment of receipt' failure raised by Dr Oriani-Ambrosini was a chronic problem throughout the government. Professor Kader Asmal in this country was actually doing the work of the SAHRC. Who owned the buildings that were occupied by the SAHRC which were not being maintained?

Mr Jeffery said that the administration of the Commission was in actual fact not new as it was an acting CEO and CFO who were presenting. The mistake with the figures was fairly basic. There were complaints in the past about the Commission's far reaching findings in the past, which seemed to have been made by staff. It was important that Commissioners and not staff should take decisions, they should also be thought out properly. One of the complaints that had been made was that PAIA was not functioning properly particularly where local government was concerned. One of the solutions that had been discussed in the deliberations for the Protection of Personal Information Bill was that everything relating to PAIA should be assigned to the Information Regulator that would be set up for the protection of personal information. Should the new Regulator that would be concerned with protecting personal information also be burdened with PAIA? The SAHRC has complained about limited funds and yet it was virtually invisible. The Commission had to take PAIA very seriously and the Portfolio Committee could assist through a naming and shaming exercise by summoning government bodies to account before it. There should be a dedicated Commissioner to deal with PAIA, putting PAIA under Corporate Services in the document showed a complete lack of understanding for it.

Mr Lander said that the point being made was that the previous Commission had a dedicated full time Commissioner who dealt with PAIA, Mr Leon Wessels. He always raised serious concerns over PAIA, and the Commission was urged to appoint someone.

Ms N Michael (DA) expressed concern over the resignations of senior personnel within the Commission. What were the reasons for the resignations? Was it because the Commission could not compete financially or were the staff not happy? How many of the staff were in acting positions? The Commission should consider having a stakeholder meeting where it could discuss current issues and share ideas. How was the research and the gathering of information going to be carried out and who was going to be involved?

Ms M Smuts (DA) said that the Commission did not carry the sole blame for the ineffectiveness of PAIA in South Africa. The Commission had not been funded properly to assist in this respect. It was important for the Commission to compile a list of outstanding matters and issues that it had to resolve. These were the vacancy rate, the Human Rights Act of 1994 had to be re-written as it was not even compliant with the 1996 Constitution, the regulations for staff, and the conditions of service for the Commissioners. The Portfolio Committee was solely responsible for the first two and should assist in the matters that followed thereafter.

Mr Jeffery said that he had never seen a document requesting more money for PAIA. It would be useful for the Commission to present their requests for PAIA to the Committee. There had not been any proposed amendments tabled before the Committee concerning the Human Rights Act.

(c) V

Sophie Monjelele

Subject: FW: Training in Promotion of Access to Information Act 2 of 2000

From: Upkaar Mungar
Sent: 26 August 2011 02:03 PM
To: Rebecca Hlabatau; Thembile Mtati; Achmed Mayet; Brian Nair
Cc: Patrick Hundermark
Subject: Training in Promotion of Access to Information Act 2 of 2000

Dear Executives

The South African Human Rights Commission is planning a training programme for Legal Aid SA
Below is information on the training
The date is still to be finalized but should be from mid-September
Kindly indicate the names of staff who you would like to attend such training and who deal with PAIA matters by Monday 29th August 2011
Numbers will assist in determining the venue and dates

Discussion of the Promotion of Access to Information Act 2 of 2000 in its constitutional framework and the jurisprudence that has developed from recent litigation in the field

Outcomes:

- Identify a PAIA matter
- Complete a PAIA request
- Be Familiar with the substantive components of the PAIA
- Be able to advice and counsel clients on PAIA issues and procedures
- Have a working knowledge of PAIA

Reading Materials:

- Information packs will be prepared by the SAHRC & ODAC
- Section 32 of the Constitution
- Promotion of Access to Information Act 2 of 2000

Draft Programme:

09h00 – 09h15:	Introductions and Expectations
09h15 – 09h30:	Profile of the PAIA Unit of the South African Human Rights Commission and Open Democracy Advice Centre (ODAC)
09h30 – 09h45:	Overview of training material
09h45 – 10h30:	Introduction and overview of the Promotion of Access to Information Act

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10h30 – 11h30:	DVD on PAIA and Enhancement of Service Delivery and Discussion
11h30 - 11h45:	TEA BREAK
11h45 – 12h45:	Key provisions of the Promotion of Access to Information Act 2000
12h45 – 13h30:	LUNCH BREAK
13h30 – 14h30:	Key provisions of the Promotion of Access to Information Act 2000
14h30 - 15h00:	The South African Human Rights Commission's reporting procedures on the Promotion of Access to Information Act 2000
15h00 - 15h15	TEA
15h15 - 16h15:	Case studies involving requests for information
16h15 – 16h30:	Summation and closure

Upkaar Mungar
Legal Development &
Special Projects Practitioner

Legal Aid South Africa

Tel: 011 8772041
Fax: 011 877 2222
www.legal-aid.co.za

(d) V

Sophie Monjelele

Subject: FW: LASA training

From: Upkaar Mungar
Sent: 12 August 2011 02:14 PM
To: Patrick Hundermark
Subject: RE: LASA training

Hello Patrick

I have spoken to Chantal from SAHRC and she admits that the number is small, however in the light of the Brink matter she suggests that we open it up to members who will normally respond to PAIA queries viz.

- Corporate services
- Finance
- Procurement
- HR departments

This I think will raise the numbers
Training can be done here or at SAHRC offices by mid-September

Upkaar Mungar
Legal Development &
Special Projects Practitioner

Legal Aid South Africa

Tel: 011 8772041
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From: Patrick Hundermark
Sent: 12 August 2011 02:02 PM
To: Upkaar Mungar
Subject: RE: LASA training

Hi Upkaar

So why are we only training 4 people from the call centre. Is it worthwhile for so few and are they happy to only train so few?

Yours sincerely

Patrick Hundermark
Legal Development Executive
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg 2017
Tel: +27 11 8772051
Fax: +27 11 877 2222
E-mail: PatrickH@legal-aid.co.za
www.legal-aid.co.za

(e) V

Legal Aid South Africa

best EMPLOYERS 2010/11 SOUTH AFRICA
AWARDED BY THE CRF INSTITUTE

From: Upkaar Mungar
Sent: Friday, August 12, 2011 12:51 PM
To: Patrick Hundermark
Subject: RE: LASA training

Hello Patrick
This was in response to the request by SAHRC to train call centre staff urgently
If you want we can open it to all civil PA's but then we will have to foot the bill for flights and in some cases accommodation
It will also mean that we will have to schedule the training for end October or November

Upkaar Mungar
Legal Development &
Special Projects Practitioner

Legal Aid South Africa

Tel: 011 8772041
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www.legal-aid.co.za

From: Patrick Hundermark
Sent: 12 August 2011 12:27 PM
To: Upkaar Mungar
Subject: RE: LASA training

Hi Upkaar

Why only 4 persons? Should this not also be for civil PA's?

Yours sincerely

Patrick Hundermark
Legal Development Executive
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg 2017
Tel: +27 11 8772051
Fax: +27 11 877 2222
E-mail: PatrickH@legal-aid.co.za
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(f) V

Legal Aid South Africa

best EMPLOYERS 2010/11 SOUTH AFRICA AWARDED BY THE CRF INSTITUTE

From: Upkaar Mungar
Sent: Friday, August 12, 2011 11:24 AM
To: Patrick Hundermark
Subject: FW: LASA training

Hello Patrick
Attached is the course outline for PAIA training
Andries has indicated that I three of their PA's and himself are available for training on any Friday that suites the facilitators.
Should I go ahead and liaise with SAHRC for the training of the four individuals?

Upkaar Mungar
Legal Development &
Special Projects Practitioner

Legal Aid South Africa

Tel: 011 8772041
Fax: 011 877 2222
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From: Chantal Kisoon [mailto:ckisoon@sahrc.org.za]
Sent: 12 August 2011 08:40 AM
To: Upkaar Mungar
Cc: Mukelani Dimba
Subject: LASA training

Dear Upkaar

I trust you are well. Please forgive our delayed responses your request for a course outline – both Mukelani and myself have been unable to synchronise our hectic schedules!

I hope the outline attached is helpful and you are able to process the training intervention as quickly as possible. Please don't hesitate to contact Mukelani at ODAC if you have any queries relating to the outline.

Looking forward to hearing from you.

Best wishes
Chantal

The South African Human Rights Commission
33 Hoofd Street
Braampark; Forum 3
Braamfontein; Gauteng

email: ckisoon@sahrc.org.za
Website: www.sahrc.org.za
Tel: 27 11 877 3627

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Promote, Monitor and Protect

"K" V

Sophie Monjelele

Subject: FW: Training

Importance: High

From: Chantal Kisoon [mailto:ckisoon@sahrc.org.za]
Sent: 12 July 2011 07:27 PM
To: Upkaar Mungar; Bathabile Mtsweni
Cc: Patrick Hundermark
Subject: FW: Training
Importance: High

Dear Upkaar and Bathabile

I trust you are well. Please the proposal below to Sandy for your urgent responses. Please note that the follow up proposal is based on a meeting last year with Patrick and Sandy. The training will be funded by ODAC and the Commission.

I look forward to hearing from you.

Kind regards
Chantal

From: Chantal Kisoon
Sent: 12 July 2011 07:22 PM
To: 'Sandy Raju'; Mukelani Dimba
Cc: 'PatrickH@legal-aid.co.za'; David Malesa
Subject: RE: Training
Importance: High

Dear Sandy

I trust you are well. I have been in discussions with Mr. Dimba at the Open Democracy Advise Centre about offering funded training to LASA once-more. I am eager to hear your views on this proposal. I should hasten to stress that based on feedback to the Commission it appears that many personnel particularly at your call centres are not aware of the PAIA legislation at all. The incidence of confusion between PAIA and PAJA is worryingly high.

Similarly the reporting of the Brink saga (you may be familiar with it – Patrick is) to Parliament and the Commission has brought LASA's organizational compliance with the legislation into sharp relief as well. I feel therefore that it would stand both organizations in good stead to demonstrate that training of officials has been sourced and undertaken. ODAC together with the Commission will be happy to fund a once off pilot training session for identified officials. We could consider developing an internal resource guide for LASA based on the success of the training thereafter.

Based on our previous discussions it will be best if 15 to 20 officials are trained. I am however mindful that pulling call centre personnel off the job so to speak may be a little difficult. We could possibly accommodate this by directing the training at one of your high volume regional centers and work on a project plan for others thereafter if necessary. Please let me know what your feelings are on this soonest.

I look forward to hearing from you.

Kind regards
Chantal

V

Access to Information (PAIA)
The South African Human Rights Commission
33 Hoofd Street
Braampark; Forum 3
Braamfontein; Gauteng

email: ckisoon@sahrc.org.za
Website: www.sahrc.org.za
Tel: 27 11 877 3627

human rights commission
Promote, Monitor and Protect

From: Sandy Raju [mailto:SandyR@legal-aid.co.za]
Sent: 13 August 2010 09:22 AM
To: Mukelani Dimba; Andries Nthebe
Cc: Chantal Kisoon
Subject: RE: Meeting 08/07/10: Training

Dear Mukelani/Chantal,

I've e-mailed the Call Centre Manger herein and will await his directive.

Dear Andries,

SAHRC and the Open Democracy Advise Centre have offered us training for our Pralegals/ Civil Attorneys. We cannot afford to invite our Regional people as the training programme for them is full.

Please advise if we can have the training for your Civil P.A's/Paralegals and the number you can send. It is a 1 day training on PAIA (Promotion of Access to Information Act). A date has been suggested but this is dependant on you availablility.

If not suitable, please suggest an alternate date.

Regards,

Sandy Raju
Legal Training Practitioner

Legal Aid South Africa

To: Chantal Kisoon; Patrick Hundermark
Cc: Mukelani Dimba; Nokwanda Molefe; Tobela Tapula
Subject: RE: Meeting 08/07/10: Training

V

Dear Chantal,

Can we have a brief description of what the topics are or perhaps a training programme in order for us to advise the P.A's on the content.

Regards,

Sandy Raju

Legal Training Practitioner

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From: Chantal Kisoon [mailto:ckisoon@sahrc.org.za]
Sent: 13 July 2010 02:20 PM
To: Patrick Hundermark; Sandy Raju
Cc: Mukelani Dimba; Nokwanda Molefe; Tobela Tapula
Subject: Meeting 08/07/10: Training

Dear Patrick and Sandy

Thank you for a very interesting and productive meeting last week. It was lovely meeting you both.

I am keen to finalize arrangements for the training of the 25 LAB personnel in November. The training will cover a contextual understanding of the Promotion of Access to Information Act (PAIA), interpretation, application and trouble shooting on the contentious areas for personnel from the regions and a few from H/O. Please feel free to supplement the needs list and we will make adjustments to the program accordingly.

I understand that participants are in fact PA's who will thereafter continue capacity building through train the trainer interventions, and can advise that the ODAC legal practitioner will participate at the end of the scheduled two days with litigation based input specifically directed to their needs.

The Commission will of course continue to engage with you on the provision of training to the 'hotline' personnel and is also looking forward to exploring the prospect for a support agreement between ourselves and LAB on PAIA.

I have every confidence that this training intervention will successfully assist practitioners engage with PAIA and that over time the training support can reach all Justice Centres and satellite offices.

Look forward to the needs list if any and confirmation of dates soonest.

Kind regards

Chantal Kisoon

Information and Communications: PAIA

South African Human Rights Commission

Tel. 011 484-8300 (ext 2107)

Fax 011 643 64 72

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Promotion of Access to Information Act Annual Report: SA Human Rights Commission

Justice and Correctional Services

03 December 2012

Chairperson: Mr L Landers (ANC)

Meeting Summary

The Portfolio Committee on Justice and Constitutional Development received a briefing from the South African Human Rights Commission (SAHRC) on the Promotion of Access to Information Act 2011/2012 Annual Report. The Commission noted that considerable resources were directed towards training for the testing of compliance with the Promotion of Access to Information Act (PAIA). There was a consistent lack of compliance from public bodies. There was also a lack of appreciation of the importance to comply with the right to access to information, particularly at local government level, where service delivery was most important. Five core constitutional and statutory mandates of the SAHRC were identified. These were the promotion of the right of access to information, the need to assist public and private institutions to comply with the PAIA, the need to conduct training, which was done by training over 1 000 Deputy Information Officers in the last year, including training on the Protection of Personal Information Bill, the need to hold management briefings, including senior management from public institutions, and the conducting of compliance audits. These audits would help the SAHRC to gain insight into what was still needed, so that it could develop effective interventions and internal systems aimed at supporting public institutions.

The SAHRC set out its findings with a comparison also of the last five years. Only 25% of public officials knew who their Deputy Information Officers were, or knew of the correct procedures, and 87% of frontline officials were not aware of the Promotion of Access to Information Act procedures. In the 2009/10 reporting period, the Commission had spent a lot of money developing a frontline manual which was distributed to all state institutions. 60% of audited public institutions did not have a designated Information Officer. Only 15% of audited public institutions had a Promotion of Access to Information Act project. Many public institutions did not grant requests for information, for example the Office of the Presidency, National Treasury (NT) and the Department of State Security. It was not known why the requests were denied. The Commission had recommended the amendment of Section 32 of PAIA, so as to include substantive reporting, as well as the expansion of the Commission's powers... These amendments have been proposed to the Department of Justice and Constitutional Development, but there had been no response.

The Committee expressed disappointment that the SAHRC had not included the Protection of Personal Information in its reporting. The Committee was also disappointed that the Commission said it was still awaiting clarity on its role when the Protection of Personal Information was enacted, even though there were clear transitional arrangements. The Committee asked for the views of the SAHRC on the constitutionality of the Protection of State Information Bill, as well as whether the provisions of the Promotion of Access to Information Act that related to the training of magistrates should be removed. More detail on the compliance monitoring audits was sought. Members raised questions on the reporting on Legal Aid South Africa, questioned the role of the Organisation for Institutions Supporting Democracy in assisting the Commission, and asked if the National Archives and Record Keeping Act was working properly. The Committee recommended that the report of the SAHRC should be adopted by the House, with a recommendation from the Committee that national departments should report directly to the National Assembly, and that provincial departments should report to the National Council of Provinces were concerned. The Committee was concerned about the lack of implementation and ratification of international obligations that fell upon South Africa. The Committee would communicate with the Minister of Justice and Constitutional Development on the international obligations that fell under its purview. The Committee recommended that, in future, the SAHRC should also audit Parliament as well as provincial legislatures. It was noted that the Committee would pursue, with the Standing Committee on Appropriations, its recommendation for further appropriations for the Commission.

Meeting report

South African Human Rights Commission 2011/12 Annual Report on Promotion of Access to Information Act

Mr Fola Adeleke, Manager: Promotion of Access to Information, South African Human Rights Commission, noted that the South African Human Rights Commission (SAHRC or the Commission) directed a lot of its resources towards training on the Promotion of Access to Information Act (PAIA). There was a consistent lack of compliance with PAIA, on the part of public bodies. There was also a lack of appreciation of the right to access to information, particularly at local government level, where service delivery was so important. The Commission had set up a specialist unit to monitor the compliance by public institutions. SAHRC had also identified five core mandates that it had as part of its constitutional and statutory obligations have been identified. The mandates were the promotion of the right to access information, the need for SAHRC to assist public and private institutions to comply with PAIA, and the need to conduct training. In this regard, Mr Adeleke noted that over 1 000 deputy information officers were trained. The Protection of Personal Information Bill (PPI) was also incorporated in the training. SAHRC had held management briefings that included senior management from public institutions. Finally, it had to conduct compliance audits. The objective of the audits was to provide insight for the Commission so that it could then develop effective interventions and internal systems aimed at supporting public institutions.

Mr Adeleke noted the SAHRC's findings over the last five years. Only 25% of public officials knew who their Deputy Information Officers were or on procedures, and 87% of frontline officials were not aware of PAIA procedures. In the 2009/10 reporting period the Commission spent a lot of money developing a frontline manual which was distributed to all state institutions. 60% of audited public institutions did not have a designated Information Officer. Only 15% of audited public institutions had a PAIA project.

The Commission's work included the provision of capacity building tools, recruitment opportunities and the showcasing of best practices. The provincial Information Officers Forums had been successful where the Commission had held them - for example in the Free State (FS) and Western Cape (WC) there has been 100% compliance. In other provinces, compliance ratings had improved. 39 200 Section 32 (of the Constitution) requests that were received by government institutions. This figure may not be accurate, as the reporting from public institutions was poor. About 32 000 PAIA requests were granted. The South African Police Service (SAPS) received the most PAIA requests, over 20 000, and their compliance was good. A lot of public institutions did not grant requests for information, for example the Office of the Presidency, National Treasury (NT) and the Department of State Security, but it was not known why the requests were denied. The SAHRC had recommended the amendment of Section 32, so as to include substantive reporting as well as the expansion of the Commission's powers. The SAHRC developed a model law for access to information for the rest of Africa, in partnership with the Centre for Human Rights (CHR).

SAHRC outlined that it faced several challenges, which included budgetary constraints. This impacted on its ability to enforce compliance, as well as to conduct community training sessions. Sustaining the political will of senior leadership for the compliance with PAIA was a problem. The amendments to PAIA had been proposed to the Department of Justice and Constitutional Development (DoJ&CD), but there had been no response.

Discussion

Mr J Jeffery (ANC) said that his main frustration with the PAIA report was that the SAHRC did not include reports on the Protection of Personal Information (PPI) Bill, as opposed to the Protection of State Information Bill (PSI). The amendments that the Commission wanted to effect, to PAIA, had been done in the PPI, and he pointed out in this regard that when the Committee had discussed amending PAIA during its deliberations on the PPI, the SAHRC had not given input, and in the end the Committee relied on information submitted by the Open Democracy Advice Centre (ODAC). It was worrying that the SAHRC was seemingly not aware of the provisions that related to its functions, in the new PPI Bill. The Committee had been engaging with the DOJ&CD on the issue of magistrates and their training on PAIA, yet this was another aspect not covered in the SAHRC's report. He said this was an important issue that the Commission should be following up.

Mr Jeffery asked for more detail on the compliance monitoring audits. The Commission complained about Legal Aid South Africa (LASA) on page 29 of the report, yet when this point was raised with LASA, it had responded that it was not happy with the SAHRC report, and disputed the findings.

Mr Jeffery thought that a reporting format that listed departments that did not comply should be adopted.

Mr Jeffery asked how the Commission had arrived at the 25% figure for officials that were not aware of PAIA.

Ms D Schäfer (DA) asked if the Commission would support the removal of the requirement for magistrates to be trained for PAIA. She asked if the SAHRC had engaged with the Public Protector (PP) regarding any PAIA complaints that this office had received. She noted the comment on the amendments but asked what the SAHRC itself had done to get the Department of Justice to respond. Finally, she called for the SAHRC's view on the current version of the PSI Bill that was passed by the National Council of Provinces (NCOP).

Mr S Swart (ACDP) asked if Parliament had to report according to Section 32. He agreed that it would make sense for the requirement for the training of magistrates to be removed, for the purposes of PAIA implementation. He was concerned that this Annual Report highlighted high levels of non-compliance by public bodies and felt that the Committee and the SAHRC needed to take further steps. He wondered if the unit for Organisation for Institutes

Supporting Democracy (OISD) been supporting the Commission. He also asked if, given its financial constraints, the SAHRC could work with other organisations for litigation purposes. He too wanted to know about the final version of the PSI Bill, particularly the "trumping" clause 1(4) and the lack of a public interest defence specifically.

Ms D Smuts (DA) said that the Commission, in 2010, had correctly pointed out that the Minister of State Security sat "like a big spider with many tentacles" at the heart of the system. The Commission had also correctly pointed out that there was already a law that provided for recording keeping and there was thus no need to include the archives and record keeping in the PSI Bill. She wondered if the Commission could assess whether the National Archives and Record Keeping Act was working, and if the SAHRC was not aware of this at the moment, then it should find out. This could yet be another reason why getting access to information was difficult in South Africa. She noted that the SAHRC was quite correct in the view that Section 46 of PAIA was too stringent and should be amended. However, she wanted to clarify whether the Commission had had a response from the DOJ&CD on the request for the amendment of Section 46 of PAIA?

Advocate Lawrence Mushwana, Chairperson, SAHRC, said that the Commission would need more time to look into and send through a response on section 46 of the PAIA amendment, as well as the implementation of the National Archives and Record Keeping Act.

He noted that the Head of OISD has been ill since February 2012, and the Acting Head had since left. The SAHRC did not receive a lot of help from this unit, and it was dysfunctional. There was an attempt from Chapter 9 Institutions to meet with the Speaker to voice concerns over OISD, as there had been little assistance received from it.

Ms Pregs Govender, Deputy Chairperson, SAHRC, said that the Commission had, at a previous meeting, raised queries as to what this Committee had done with reports where the question of non-compliance with PAIA was raised, and the Chairperson had responded that the Committee would attend to the matter seriously. The SAHRC had developed a plan of action on that point.

Mr Jeffery said that he had been raising this issue, and he proposed that the House should be asked to adopt the SAHRC report, with a recommendation from the Committee that departments must report in future to Parliament. This was not a plan of action; the Commission could then refer a report to the NCOP, for the same proposal to apply to provincial departments.

Adv Mushwana added that he was not sure that the Commission had done everything that its Act allowed it to do. The Commission did have some powers and perhaps it was not using them fully. It would try to do more.

Ms Govender added that the SAHRC had come to the decision that it must use its powers fully, such as power to issue subpoenas, and it had begun to do that in more cases.

Ms Govender said, in relation to the questions around the PPI Bill, that the SAHRC wanted more clarity on the transitional provisions of the PPI, especially for budgetary planning purposes.

The Chairperson said that the Committee had stated, in its Budgetary Review and Recommendations Report (BRRR), that it should have a strategic planning session on the issues raised by Mr Jeffery in the following year. One of the issues raised by the Commission in writing to the Committee had raised the question of international conventions. International Conventions were an Executive prerogative, and Parliament's role was to endorse these. There were constraints on Parliament to take these forward.

Mr Jeffery said that a complaint from the public was that it took exceptionally long for a Bill to be introduced to Parliament, following signature of an international instrument – for example, the length of time between signature of the United Nations Convention on Combating and Prevention of Torture (UNCAT) and the introduction of the Bill. The Committee should write to the Director General of the DOJ&CS for reports on all conventions that fell upon that Department to implement.

Mr Swart agreed that this was a concern, and Parliament did have an oversight role. The Covenant on Civil and Political Rights (CCPR) was dated in 2000 and was still outstanding, and this indeed indicated a serious problem. South Africa had received a negative score from other international bodies on this, as well as on other obligations, and this could not continue.

The Chairperson said that he would like to afford OISD an opportunity to respond to some of the questions raised about its role.

Adv Nonkosi Cetshwayo, Head, OISD, said that the responsibility of the unit was to support and advise the Committee in relation to the Chapter 9 institutions that reported to it. OISD had read the annual reports from the SAHRC, and had analysed them for purposes of advising the Speaker to which Committee they should be referred. OISD had been looking to bringing together all stakeholders that were considered important in the work of OISD. She, in her capacity as Head of OISD, had also held meetings with the Directors General and the Presidency, to deal with the international responsibilities where Chapter 9 Institutions in South Africa played a role.

Mr Jeffery suggested that the Chairperson should write to the Minister or Director General in relation to each treaty

for which the DOJ&CD was responsible, setting out the problem of the outstanding reports and seeking more clarity on where the process was for implementation of the treaties.

Adv Mushwana said that at the last conference in Geneva, a lot was said on South Africa, and referred the Committee to the Universal Periodic Review Report.

Mr Adeleke responded to other questions. He noted that the 25% figure was obtained via the compliance audits. The Commission had considered the period between April 2011 and March 2012 for the purpose of this latest report. During this period there was no engagement with the Parliament on PPI, which was the reason why this was omitted from the Report.

Mr Jeffery said that it was better to leave the matter at that, and for the SAHRC to acknowledge that this should have been done. The figure of 25% was still doubtful.

Mr Adeleke agreed.

Continuing with the answers to questions, he noted that the PPI only amended Section 51, and the presentation had specified that there should be clarity on Section 51, not that there should be an amendment. The Commission was concerned that there were over one million manuals that had not yet been processed. The contracts of the staff who were hired to attend to would lapse at the end of the year, and the SAHRC was concerned about the transitional arrangements in the PPI, what would happen to the manuals and the SAHRC's responsibilities.

The Chairperson said that the Commission should not abandon its mandate.

Mr Adeleke said that the Commission's request for funding to extend the contracts of the data capturers had been refused, and essentially there would not be anybody in the SAHRC who would be able to continue with that work.

Mr Jeffery said that the amendment to Section 51 would mean that the SAHRC could require that the manuals be made available, but not necessarily submitted. The SAHRC could take the lead from the judges of the Supreme Court of Appeal (SCA), who had concluded that it was unduly onerous to require of them that they read an entire record of a trial, in order to consider a petition for leave to appeal. They had simply decided that they would not read the record, and were waiting for the law to be amended. The SAHRC could perhaps follow the same principle, especially since the PPI amendments had already gone through the National Assembly (NA). The SAHRC should not review the Section 51 manuals.

Mr Adeleke continued to state that the consolidated audit reports had been highlighted and recommendations were made. The Commission did have more detailed information on specific institutions, but had not included everything to avoid the documentation being too bulky.

Mr Jeffery said that information on the Department of Justice only was required.

Mr Adeleke answered the question of the LASA disputing the SAHRC's report. He said that LASA could not dispute the finding, because the Commission had shown the PAIA report that they had omitted. The PAIA request was sent to LASA, and it was requested to report on it. However, LASA maintained that this request should have been done during the last reporting period, whereas SAHRC held the view that this fell within the current reporting period.

Mr Jeffery said that the detail was useful and the Committee should get more information and put it to LASA.

Ms L Adams (COPE) said that the North-West (NW) had not been complying for the last three years. The SAHRC had admitted today that it was not, in the past, using its powers as it should, and she asked why the Committee could be expected to take the SAHRC seriously when it did not ensure that it would get compliance. North West was only one example. It seemed that once again it would fail to comply.

Mr Adeleke said that the recommendation for the amendment of Section 90, to enforce Section 32 reporting, was made because the SAHRC would no longer be responsible for PAIA. The envisaged Information Regulator (IR) in the PPI would have far more powerful and broader powers.

Ms Adams asked if Mr Adeleke was suggesting that everything should be left as it was until better systems came into force.

Mr Adeleke said that the SAHRC was unable to enforce Section 32 reporting.

Ms Adams asked if this was not for the courts to decide.

Mr Adeleke said that the most the SAHRC could do was to constantly write and seek the cooperation of departments.

Ms Adams said that surely Section 90(2) and (3) were in place to ensure compliance. She believed that it should be left to the Court to decide whether they were strong enough, rather than for the Committee and SAHRC to engage in

academic debate on the point. She believed that the SAHRC should follow the steps. Somebody had to take responsibility if the North West failed to comply for three years.

Mr Adeleke said that the SAHRC could not simply bring a government department before the Court.

Adv Mushwana said that the Commission had admitted that it had not done enough in the past, and had acknowledged that it did have the powers and it was a question of using them in future.

Adv Adams said that this was the whole point, but she wanted to hear when the SAHRC would be using those powers.

Adv Mushwana said that it was up to the SAHRC to do what Ms Adams suggested.

Mr Adeleke noted that, in relation to the training of magistrates, the SAHRC was of the view that PAIA was very technical and it was necessary to ensure that judicial officers had the skills to apply it.

Mr Jeffery said that the Committee had been chasing this up with the DOJ&CD.

The Chairperson agreed and stated that a letter would be written to the Director General of the DOJ&CD.

Mr Adeleke said that when the Information Regulator was established, it would not be a Chapter 9 Institution, and there was some question whether or not it would have access to classified information. Letters written to the DOJ&CD on this point had been met with a mild response. The current PSI Bill as passed by the NCOP was welcomed in the sense that PAIA had been reinstated to full recognition, and that Chapter 9 Institutions would not be restricted in their access to classified information.

Ms Govender cautioned that the SAHRC Commissioners still had to sit as a collective and engage on the views that it might express on the PSI Bill.

Ms Govender answered the questions on whether PAIA should apply to Parliament by saying that the Commission had interpreted a public body, in terms of PAIA, as applying to the Executive arm of government and perhaps not Parliament. However Parliament had an Information Officer and thus should submit reports as well, although it had not done so in this period.

The Chairperson said that in that case Parliament had to be summoned and answer.

Mr Jeffery said that his reading of the section was that Parliament indeed fell under the definition of a public body, and asked then why it was not included in the Report as not having complied.

Mr Adeleke responded that this was because the reporting format included national and provincial bodies as well as municipalities and other public bodies. It was an omission on the part of the Commission.

Mr Jeffery asked why provincial legislatures had not been included.

Mr Adeleke said that the Commission had largely focused on the Executive since a lot of requests went to public bodies, and not legislatures.

The Chairperson suggested that legislatures could be included, for the purposes of highlighting importance of PAIA.

Adv Mushwana confirmed that the Commission did share resources with other institutions such as drafting of legal documents.

Mr Swart agreed that this was correct, as long as there was no conflict of interest.

Adv Mushwana agreed with this point.

Mr Adeleke commented on the questions around records. Some departments had submitted that they did have file plans, but that some were outdated and not submitted to archives for approval. Some institutions did not have file plans at all.

Ms Smuts added that the PSI Bill perpetuated the problem, because it had intermingled requirements around classification and plain record keeping. There was also a conflicting situation of the National Archives Act, the Archivist, the Minimum Information Security Standards and the PSI Bill all standing alongside each other, and she cautioned that it was necessary to keep an eye on the handling of these records in the future.

Ms Govender said that the SAHRC should keep this in mind.

Mr Adeleke said that the Commission could have record keeping as one of its functions next year.

Mr Jeffery said that it would be useful to know the compliance of all Chapter 9 Institutions. The Section 14 categories were difficult to understand, from the Commission's reporting card. He also wanted to know the difference between 'easily accessible', 'accessible' and 'fairly accessible'.

Ms Govender said that this could easily be rectified and clarified.

Mr Jeffery noted that the Committee had, in the BRRR, specifically recommended further allocations for the SAHRC, but understood that National Treasury may either have refused the request or not responded. He suggested that the Committee should pursue the point with the Standing Committee on Appropriations

the Chairperson asked if National Treasury should not have responded to the Committee.

Mr Jeffery said it was not clear if National Treasury had replied, and this had to be pursued further through the budget process of Parliament.

The Chairperson agreed.

Adv Mushwana thanked the Committee for its efforts. He wanted to let the Committee know that the SAHRC had retained its international "A" rating as a human rights organisation.

The Committee congratulated the Commission.

The meeting was adjourned.

Protection of Personal Information Bill: input by South African Human Rights Commission proposed relocation of certain powers

Justice and Correctional Services

14 February 2011

Chairperson: Mr L Landers (ANC)

Meeting Summary

The South African Human Rights Commission discussed the proposed relocation of certain powers from itself (as provided for in the Promotion of Access to Information Act) to the new Information Regulator envisaged in the Protection of Personal Information Bill. The Commission said that compliance with legislation such as the Promotion of Access to Information Act came down to political will, culture and the psychology of a nation and all of its sectors. The Promotion of Access to Information Act was not an ordinary piece of legislation. It was a law that had to be embraced and interconnected to all the other laws in the country. The South African Human Rights Commission had the requisite expertise in terms of its history with this legislation. The Commission had experience in working with all the rights in the Constitution and it was an expert body. If the Promotion of Access to Information Act were moved in a knee-jerk manner to another body then that wealth of expertise and wisdom would be absent. The Information Protection Regulator under the Protection of Personal Information Bill would be consumed with applications from corporate giants and various industries. resources. The Commission found it difficult to envisage how legislation such as the Promotion of Access to Information Act would compete with such demand for operational resources.

The Commission believed it should be given the power to issue binding orders and enforce such orders. Research showed that most human rights institutions were governed by the Paris Principles. Research had shown that in smaller states where resources were scarce, human rights institutions had been given the power to issue binding orders. Through the South African Human Rights Commission Act, the SAHRC had quasi-judicial powers. The Commissioners were of the view that nothing should limit the body from being able to issue binding orders. The SAHRC had called for a review of the Promotion of Access to Information Act, which should be cautious, detailed and very comprehensive in nature. Section 32 in particular should be reviewed because of the high levels of non-compliance. Section 14 should also be reviewed thoroughly and amended to permit the electronic submission of manuals. The SAHRC urged the Committee to do a full review of Promotion of Access to Information Act.

The Committee was troubled that the SAHRC was of the view that the transfer of the Promotion of Access to Information Act functions were a 'knee-jerk movement'. The Committee described the presentation by the SAHRC as "digging in" as it differed from the submission in 2009 where it had three different options which were: option one was to no longer have the powers and functions of Promotion of Access to Information Act under the Commission, option two was for the South African Human Rights Commission to have the Information Regulator fall under it and option three was to have Promotion of Access to Information Act under the SAHRC or for an interim period. The Committee fully agreed that there was a need for a review of the Promotion of Access to Information Act. The Committee felt that the role of the SAHRC was institutional as it dealt with public bodies and not primarily private citizens, which were mostly assisted by the Public Protector. This was a clinching argument, to vest the enforcement powers of the Promotion of Access to Information Act with an Information Regulator and not the SAHRC, which was not statutorily vested with the primary function of assisting applicants for access to information. The Committee was divided as to whether Section 32 should remain with the South African Human Rights Commission.

The Committee undertook to consider the report of the SAHRC on the non-compliance of PAIA and take the necessary oversight steps. It would also start to consider the enforcement powers and structure of the Information Regulator

Meeting report

South African Human Rights Commission (SAHRC) Presentation

Ms Pregs Govender, SAHRC Deputy Chairperson, said that access to information would remain within the Commission's mandate regardless of what the Committee's decision would be on whether or not to give the new Information Regulator in the Protection of Personal Information Bill certain functions in the Promotion of Access to Information Act (PAIA). The SAHRC had responded well to its constitutional and legislative mandate despite resource constraints.

Ms Chantal Kissoon, Deputy Director of the Access to Information Programme: SAHRC, said that the SAHRC had conducted a

comparative study on compliance using the Public Finance Management Act (PFMA) and it found that compliance levels with the PFMA were far higher. Compliance came down to political will, culture and the psychology of a nation and all of its sectors. It was this "psychology" that the SAHRC had not adequately communicated; PAIA was not an ordinary piece of legislation. It was a law that had to be embraced and interconnected to all the other laws in the country. The SAHRC had the requisite expertise in terms of its history with PAIA. The SAHRC had experience in working with all the rights in the Constitution and it was thus an expert body. If PAIA were moved in a knee-jerk manner to another body then that wealth of expertise and wisdom would be absent. The Information Protection Regulator would be disadvantaged in this way, especially as this was a right that was very difficult to embed already.

The Information Protection Regulator would be dedicated and consumed with applications with a competing interest for resources. The Regulator would be consumed by demands from corporate giants and various industries. The SAHRC found it difficult to envisage how legislation like PAIA would compete with such demand for operational resources. If PAIA were to be put into this kind of competitive structure it would suffer the worst. The SAHRC, Open Democracy Advice Centre (ODAC) and other non-government organisations (NGOs) had made repeated calls for the establishment of an Information Commissioner. This call was justified on the basis that in its current framework, PAIA obliged ordinary people to assert their access to information rights via the courts which was time consuming, costly and sometimes posed a cultural inhibition for people who were disinclined to use its traditional domestic mechanisms to assert their rights. The SAHRC was concerned with the lumping of PAIA with the Protection of Personal Information Bill. The SAHRC had never been given any enforcement rights. This was also one of the reasons why there was a call for an Information Commissioner. The SAHRC welcomed the Committee's view that there was a need for an Information Commissioner.

There were still concerns that there would be competition for resources and that if PAIA were dumped with information protection, it would suffer the worst. A pressing question was whether a Commission could be given the power to issue binding orders and enforce such orders. The reason behind this question was that most human rights institutions were governed by the Paris Principles. The Paris Principles were normative in nature and they came about via a consensus of state parties. The Paris Principles did not expressly state that human rights institutions could not issue binding orders however they recommend that these institutions should operate in a way that did not disempower domestic machinery. Research had shown that in smaller states where resources were scarce, human rights institutions had been given the power to issue binding orders. Through the South African Human Rights Commission Act, the SAHRC had quasi-judicial powers. The Commissioners within the SAHRC were of the view that nothing should limit the body from being able to issue binding orders. It was the case that many human rights institutions that were state bound had the power to issue binding orders in relation to equality issues. The SAHRC had called for a review of PAIA, which would be cautious, detailed and very comprehensive in nature. Section 32 in particular should be reviewed because of the high levels of non-compliance. Section 14 should also be reviewed thoroughly and amended to permit the electronic submission of manuals. The SAHRC urged the Committee for a full review of PAIA.

Ms Govender added that it was important to ensure that the bodies tasked with constitutional mandates were properly funded, resourced and capacitated. This had been raised before, for example, the decrease in the number of commissioners, the decrease in the SAHRC budget in real terms over the years and the question of what happened to the SAHRC annual reports on PAIA. These reports were submitted to Parliament every year and the Justice Portfolio Committee had not named nor shamed nor held to account departments that were offenders. The role of the SAHRC was to monitor compliance and report on that. The role of the Committee was to act as a critical oversight body to ensure compliance. The country came out of a culture of secrecy in 1994 and this was hard to break. What went with a culture of secrecy was a culture of non-accountability to ordinary people, particularly those that were poor. The issues concerning PAIA were in relation to access to information concerning basic rights, socio-economic rights (which affected the rights of ordinary people every day). The issue of access to information within a culture of secrecy, embedded throughout government and the country as a whole, was not ideal.

Discussion

Mr J Jeffery (ANC) said that the Technical Committee had wanted further input from the SAHRC on the Bill's provision for relocating PAIA functions from the SAHRC to the new Information Regulator. This had been in the Bill and it was nothing new, it was troubling to hear that the SAHRC had said that the transfer of the PAIA functions was a 'knee-jerk movement'. The SAHRC had made a submission before in 2009; it was disappointing that the presentation made it seem like the Commission was "digging in". In the 2009 submission, the SAHRC had proposed three options: option one was to no longer have the powers and functions of PAIA under the Commission, option two was for the SAHRC to have the Information Regulator fall under it and option three was to have PAIA under the SAHRC or for an interim period. The Commission had been much more constructive to the move back then but now it was digging in and saying that it did not want it to go, this was problematic and was not a constructive engagement. A letter had been sent to the SAHRC requesting them to provide a submission on these issues by no later than 10 September 2010. There was an informal request for an extension and a submission was only provided on the 29 November 2010. The submission itself was not complete. The argument that the SAHRC was experienced in dealing with PAIA was not substantial. A lot had been made about PAIA being about access to information and the Regulator was about privacy. However if these rights were properly considered, it became clear that one always had to balance the right of access to information against the right to privacy.

The submission was disappointing and not as constructive as the earlier 2009 submission although the input for a PAIA review was agreeable. This was an issue of a body not wanting to surrender its functions. The Committee had stated that it would go through the Commission's PAIA report and it would do so. The Department of Justice and Constitutional Development (DOJ&CD) had presented last week that one of its Key Performance Indicators (KPI) was the promotion of PAIA and other rights. Had the SAHRC been in communication with the Minister of Justice to ensure that there was no duplication? The advantage of the Public Finance Management Act (PFMA) was that there was an Auditor-General who audited state books and ensured compliance with the PFMA.

Ms D Smuts (DA) said that the Technical Committee was of the view that there was a real need for enforcement of PAIA. One would agree with Mr Jeffery that the response from the SAHRC did not take the issue of the transfer of PAIA functions much further. What the Committee had to do now was to draft laws that would grant effect to the right to information through institutions. If one

considered the provisions of PAIA, the role of the SAHRC was institutional and focused on public bodies. The function of the SAHRC was not in fact geared towards persons seeking access to information. It was only Section 83(3)(c) that provided for the assistance of citizens if reasonably possible. It was in fact the Public Protector who took on complaints. This was a clinching argument, to vest the enforcement powers of PAIA with an Information Regulator and not the SAHRC, which was not statutorily vested with the primary function of assisting applicants for access to information. A Regulator was different from a Paris Principle Commission; it was a rule setting, investigative and educatory body. This was what the Committee was constructing and enforcement functionality would logically have to be vested there. The Regulator would also be dealing with the big banks, marketers and insurance companies. The Regulator would be enforcing the right to privacy. There was a need for the enforcement of PAIA given what the Chairperson revealed last week that all Directors General had been issued an instruction to have all requests for information refused. This was a clear denial of a right and it was defiance of a law. There was no need to amend PAIA, in light of Section 83, all that had to be done was to review and modernize the legislation. In light of Section 14 of PAIA, paper manuals had to be dispensed with and electronic copies had to be uploaded and made available. This function would remain with the SAHRC. The duty of promoting Section 32 could remain with the SAHRC; it should simply communicate its activities to the Regulator in this regard. The Committee would have to start thinking about the architecture of the Regulator and also which body within the Regulator would listen to PAIA appeals.

Adv S Swart (ACDP) said that the Committee was in agreement for a review of PAIA. Perhaps one could consider that the Regulator may assist the SAHRC in doing some of its other work.

Mr Jeffery referred to Section 10(3) of PAIA, which read as follows “The Human Rights Commission must, if necessary, update and publish the guide at intervals of not more than two years.”, this has not been done. The proposal from Ms Smuts on Section 32 was not agreeable as the question would be how would monitoring be conducted in order to ensure compliance. Whether Section 32 could remain with the SAHRC could be debated further. The Open Democracy Advice Centre (ODAC) stated that compliance with PAIA had gone down. The annual report of the SAHRC did not indicate this, so the Committee had relied on an NGO on this issue.

Ms Smuts asked if the SAHRC could give a response to the issue of Section 32, as there was a clear argument to have it shifted to the Regulator. The recommendation of the SAHRC that Section 15 of PAIA should be deleted was agreeable. Section 14(g) could also be deleted, as it was really utopia.

Ms Govender replied that the Commission was not digging its heels and the submission was on its constitutional mandate.

Ms Kissoon added that the Commission had not changed its position; it had submitted recommendations in its 2009 submission. These recommendations were in the current submission before the Committee and apologies for their not being articulated well enough. The current submission was highlighting the dangers that were in inherent in splitting the mandate prescribed by PAIA. The concerns of the SAHRC were in the best interests of the right to access. The Public Protector’s role may be that of handling systemic complaints. It had been noted by the SAHRC that there had been non-compliance in terms of Section 10(3) of PAIA. The first guide that was produced by the SAHRC cost between R2 and R5 million. Requests for further funding to update this have been made to Parliament to no avail and no comment either. The PAIA budget that was introduced before the Committee and Treasury was not made available in a similar fashion. The promotion aspect of PAIA had not been done thoroughly because of budget constraints.

The Human Rights Development report did have aspects of monitoring the compliance of Departments in relation to PAIA. There was an increase of compliance at National level but there were marginal differences at local government level. Section 32 had weaknesses including that it did not allow the Commission to test the veracity of statistics. The Commission also could not determine if a request had been made for personal reasons or for other reasons. This Section did not allow for the Commission to know if disciplinary action was taken against individuals for non-compliance with PAIA within government departments. There was no identified unit in most public bodies dealing with PAIA. Most departments struggled to even have a Deputy Information Officer, they tended to handle PAIA on an *ad hoc* basis. There were small changes in compliance due to the Auditor General and Committee. One should be cautious before putting together legislation, mandates and obligations on bodies simply because the laws or Acts dealt with information. This may lead to the adjudication of state information as well as electronic communication; this was not the SAHRC being territorial. It was merely flagging issues that may be problematic.

Mr Jeffery responded and referred to the 2009 annual report of the SAHRC, which had a compliance graph for PAIA amongst public bodies. It was omitted in the 2010 report, which was a bit disappointing because it assisted the Committee in knowing what was happening. The SAHRC had powers to subpoena, if there was a problem with Section 32, why were they not used? The Committee did not know that the guide cost so much. The Committee seemed to be the ones saying that there should be a review of PAIA and that it should be amended. More could have been done in the last ten years from the Commission regarding improving PAIA. The 2009 submission was straightforward and it had three options, not recommendations. The current presentation was much stronger against the re-allocation of PAIA.

Ms Govender said that it was pointless to go backwards and forwards on the 2009 and 2010 submissions, the intentions of the SAHRC have been made clear. Each year the Commission presented to the Committee on the poor non-compliance levels of government departments. Has this Committee undertaken any steps for the naming and shaming of these departments or taking any action?

Mr Jeffery said that the Committee had not done anything and that was a problem. The Committee undertook to go through the PAIA report and map a way forward with the Commission at the meeting in October 2010 where the annual report was tabled.

Ms Govender thanked Mr Jeffery for the assurance that the Committee would take this forward.

The Chairperson said that the Committee would go through the report and if necessary name and shame departments but the matter should not be pre-empted at this stage. It was uncomfortable to know that the Committee had not done what it was supposed to but

it would do so now. The next key matter would be providing enforcement powers to the new Regulator.

Meeting Adjourned.

Portfolio Committee on Justice and Constitutional Development
9 October 2012
Legal Aid South Africa 2011/12 Annual report

Chairperson: Mr L Landers (ANC)

Documents Handed Out:
Pres Release on Legal Aid South Africa (LASA) 2011/12 Annual Report
Power point presentation on the Annual Report
Legal Aid South Africa 2011/12 Annual Report

Summary
Legal Aid South Africa reported that it had successfully completed the third year of its 2009-2012 Strategic Plan period and was able to achieve most of the strategic shift it had set to achieve in that period. In 2011/12 it provided access to legal aid to indigent clients – handling 682 962 legal and legal advice matters. It increased civil legal aid by 48% due to increased civil practitioner capacity. Legal quality remained a focus and a priority and generally legal practitioners met their quality targets. Strong financial management and governance were reflected in the 11th unqualified audit and 7th year of no matters of emphasis. The non-compliance with tax clearance certificates in judicare matters was being attended to. A people-development focus continued as confirmed by the successful accreditation for the third year as a Best Employer.

The Committee members congratulated Legal Aid South Africa on its accomplishments. Members asked about the use of agencies where there were already Legal Aid Centres present. There was also an exchange about the exact numbers of employees versus the number of budgeted posts and how Legal Aid managed their expenditure for its number of employees. Questions also included requests for detail on the Children's Act and the allegation published about the Boeremag. There was a suggestion that because of Legal Aid's large footprint in the country, its offices be used as a gateway for people to reach other agencies such as Chapter 9 organisations.

Minutes
The Chairperson said he had been informed that the Chairperson of the Board would not be able to attend the meeting but that was fine as he was sure that Legal Aid SA had brought qualified people.

Presentation by Legal Aid South Africa (LASA)
Mr Jan Maree, Non-Executive Director and Committee Member, LASA, introduced the report with a short overview. This was the second integrated report that reported on financial and non-financial performance against the Strategic Plan 2009-12 as well as the Annual Performance Plan 2011-12. The integrated report reported on social, economic and environmental considerations that had a bearing on the future of the organisation, the environment within which they operated and the communities they served. It included reports on an overview of the organisation as well as issues and trends impacting on it, sustainability, corporate social investment and stakeholder engagement. LASA reported on its compliance with Global Sustainability Reporting Initiatives (GSRI). The Integrated Report included a statement from the governing board acknowledging its responsibility for ensuring the integrity of the report. 2011-12 completed the three-year period of the LASA Strategic Plan 2009-12. The presentation also reported on progress against the recommendations of Budgetary Review Recommendation Report (BRRR) of the Justice Portfolio Committee dated 26 October 2011.

LASA operated within a strong governance framework which included an effective and functioning governing board and audit committee, compliance with the Legal Aid Act, Public Finance Management Act and National Treasury regulations, 100% implementation of all recommendations of the King III Report on Corporate Governance, compliance with the Promotion of Access to Information Act (PAIA), and an effective and independent internal audit department. The Legal Aid Act was in the process of being redrafted and a new Legal Aid Bill was expected to be tabled before Parliament in 2012.

Ms Vidhu Vedalankar, CEO: LASA, went through the statistics that Legal Aid had produced over the year. Legal Aid now had 2 470 people working in 64 Justice Centres and Satellite Offices and 13 high court and civil units. They had covered 428 653 criminal and civil cases. 95% of these matters were handled by the Justice Centres while the remaining 5% was handled via Judicare, coops or agency agreements. There was also a 50% drop in children cases handled by Legal Aid.

Regarding non-legal functions delivery, Matrix Management had been further consolidated. Functional management committees continued to assist in monitoring performance of support staff at both Justice Centre level and regional office level. The matrix function had been fully embedded resulting in effective

Challenges

▪ Capacity at regional and district courts was insufficient to adequately meet the demand as well as provide a limited relief capacity to deal with staff absence.
▪ High turnaround times at Regional Court and High Court led to increased backlogs at court.
▪ There was also insufficient civil capacity to meet increased demand for civil legal aid services.
▪ There were high numbers of awaiting trial detainees in custody for excess periods.
▪ There was non-compliance on tax clearance certificates in judicare matters as noted by Auditor General. ▪ The IT challenge: problems with K2 patching, finalisation of K2 upgrade, finalisation of switch to sharepoint platform which all impacted on speed and stability of the IT system.
▪ Dependence on candidate attorneys to render services at district courts negatively impacts on perception and sometimes service delivery

Ms Vedalankar concluded by reminding Members that LASA had provided access to legal aid for indigent clients with 682 962 legal and legal advice matters – which was a notable achievement – as was the increase in civil legal aid by 48% due to increased civil practitioner capacity.

Discussion

Mr J Jeffrey (ANC) said that he was extremely pleased with Legal Aid but it was the Committee's job to make sure they did oversight. He was curious about a Promotion of Access to Information Act (PAIA) report that was released that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA. He also noticed that the slide on Child Justice was the exact same slide from their presentation. That did not seem to make sense neither did their allocation of funds for Child Justice. They created 23 district and six regional posts in both 2011 and 2012 and that did not seem possible.

Mr Jeffrey said that the Committee had asked for quarterly reports from Legal Aid not just annual ones. He asked why there was not a cooperation agency agreement and asked how much it cost. The use of agency agreements was also questioned. On a more particular note, he said that Legal Aid could not say technically that they were compliant with the Legal Aid Act because according to the Act, an updated version must be published annually which had not occurred.

The Chairperson told the delegation that they would arrange for Legal Aid to view the PAIA report.

Ms D Schafer (DA) congratulated LASA on their annual achievements. She had a question about the tax sheets that the legal providers were not giving to Legal Aid. She asked if the huge lack of them was because of a lack of oversight. Also, did the trust deposits create a problem for LASA?

Mr J Sibanyoni (ANC) asked specifically about agency agreements. He was curious as to why there were agency agreements in areas where there was already a LASA office. The time limit that came with these agency agreements was also brought into question. He was curious to know about some of the success stories with the agency agreements.

Ms C Pilane-Majake (ANC) asked about LASA's internal audit and how many people on the audit committee were external from LASA. She also congratulated LASA on their report.

Ms M Smuts (DA) congratulated LASA on a sensational report. She was curious what LASA thought about the news article on Sunday about the Boeremag which she believed that LASA had represented. She explained that there was a sensational story that reported that legal information between the members of the Boeremag and their legal team had been intercepted by the police and turned over to the prosecution. She was also curious about what role LASA could play in the unclogging of the legal system particularly the issue with accused being detained, trial times, and missing trial transcripts.

Mr Jeffrey interjected saying that this happened often with awaiting trialists who should not even be there because their crime was not even punishable by prison time.

Response

Ms Vedalankar told the Committee that they had provided quarterly reports and had sent them to the Committee.

Mr Jeffrey interrupted, asking whether anyone in the Committee had received the reports which none of them had or could recollect.

Ms Vedalankar apologised and said that the reports would be sent. She went on to say that the Children's Act expenditures were basically the same because that was how much it cost to keep to the employees on

for the financial year with a slight increase for property costs.

Mr Jeffrey said that the wording was wrong and wanted the CEO to be clear that new positions had not been created but merely maintained. He said that they merely “cut and pasted” from last year’s report which created wrong information.

Ms Vedalankar said they had not cut and pasted but they merely had worded the information wrongly.

Mr Jeffrey said that he did not agree with that.

Ms Vedalankar said they would agree to disagree and that she knew that the Committee did not like cutting and pasting.

The Chairperson said that he wanted to know about the PAIA report.

Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgement about this. In terms of the audit reports, she explained that one of the members of the audit committee had resigned so currently there were five members on the audit committee, of which three were external members.

Ms Pilane-Majake thanked the CEO for the clarification but said that the report seemed to show only what was desirable.

Mr Jeffrey said that he wanted LASA’s statistics on children because those of the South African Police Service seemed to be off. He again asked the question about the successfulness of service agencies.

Ms Vedalankar said that they did not have the statistics on children in the report but that they wanted to do more in terms of domestic violence. In terms of the alignment of services, she said that just because a town was in a province, it did not mean that the closest office was in the same province and that there were no provincial boundaries. She also agreed that the lost records of trials especially in Gauteng was an issue. She then handed over to her colleague.

Adv Wilna Lambley, Regional Operations Executive, explained the issue of proximity. There had been reshuffling of offices and agency agreements. There was constant oversight and discussion about which offices should serve which communities. In terms of the lost transcripts, most of these had occurred in Gauteng. It was due to a turnover in terms of the people who managed the transcripts. As of now, most of the transcripts had been found but there were still 40 to 50 missing.

She went onto say that the Boeremag practitioners were only briefed by Legal Aid but they would be looking into reports that an alleged witness had come forward with this information. This however would probably not create any appeals different from the law’s regular appeals process The Judge would have to make a decision about this and what the law said.

Ms Vedalankar said that 25% of their legal providers had applied for tax sheets while 25% had said that they would not provide LASA with any of them.

The Chairperson asked if these legal providers would be used by LASA if they failed to produce tax clearance certificates.

Ms Vedalankar said, yes, they would be terminated if they were in the middle of any trial proceedings.

Mr Maree added that a tax clearance certificate had never been required for a legal provider.

Mr Jeffrey asked about the discrepancy between staff and number of posts in terms of their expenditure in their budget for each. He also asked if Legal Aid had been in touch with Chapter 9 organisations and if Legal Aid could accept complaints on behalf of a Chapter 9 organisation if such organisation did not have an office in the area. Legal Aid’s footprint throughout the country could make this cost effective and he asked if Legal Aid would be open to the idea.

Mr Jeffrey asked why land cases were up so dramatically this year or last year and their status in relationship with rural development, and also why had Duty Care gone up. He also inquired about the costs of cooperation agreements and the status of the criminal justice review.

Ms Vedalankar said that she could not comment on helping with Chapter 9 organisations because she would have to discuss it with her staff first. In terms of the discrepancy with the posts and employees, it was very clear in the report. They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.

Mr Jeffrey said that the expenditure could not be 99% with the figures that they had.

Ms Vedalankar said she would send the information to the Committee.

Mr Jeffrey then asked for clarification on the IT budget.

Ms Vedalankar said that they had not been given the proper budget for IT and thus Legal Aid had suffered because of it.

Mr Jeffrey said that the Committee would get in touch with the Treasury and find out why the IT budget for LASA had not been fulfilled.

The Chairperson adjourned the meeting.