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KwaZulu-Natal
23 May 2018

Chairperson Adv Pansy Tlakula,
Information Regulator
SALU Building
316 Thabo Sehume Street
Pretoria

Cc: Chairperson Adv Bongani Majola,
South African Human Rights Commission

And to LASA Senior Litigators and national and international public
information transparency advocacy NGOs

Dear Adv Tlakula

LASA AND PAIA

I write to call your attention to an extraordinarily serious case of ongoing, flagrant violation by an organ of state of section 32(1)(a) of the Bill of Rights, guaranteeing public access to information held by the state as a fundamental constitutional right in our open democracy, made law by the Promotion of Access to Information Act 2 of 2000 ('PAIA') – to obstruct a corruption investigation.

I appreciate that much of the Protection of Personal Information Act 4 of 2013 hasn't yet been proclaimed effective and that your office doesn't yet have the complaints handling jurisdiction regarding PAIA matters contemplated by new sections 77A–K not yet in force, and that moreover the trouble I'm reporting is anyway now before the courts. Nevertheless, in anticipation of your office later this year taking over from the South African Human Rights Commission ('SAHRC') its responsibilities regarding oversight of public and private body compliance with PAIA, I'm registering the matter with you now to afford you early information about this long festering problem, which neither our Chapter 9 institutions the SAHRC and the Public Protector – not even the Justice Minister and Justice Portfolio Committee – have been able to remedy.

I enclose a copy of an application launched out of the Pietermaritzburg High Court a fortnight ago (case 5239/18) to compel Legal Aid South Africa ('LASA') to comply with a request for financial records, sought for the stated purposes of using them in support of complaints:

- to the Auditor General, requesting a special audit of LASA under sections 5(1)(d) and 29(1) of the Public Audit Act 25 of 2004, arising from its repeated contraventions since 2010 of the Public Finance Management Act 1 of 1999, involving many millions of rands and severely impacting on critical service delivery;
 - to the Public Protector, concerning top-level recruitment corruption, gross mismanagement, abuse of power, and the breakdown of proper corporate governance, including documented illegal interference by *non-executive* Board chairperson Mlambo JP in senior professional recruitment operations, including jobs for pals; and,
 - to the Labour Court,
- all detailed in my founding affidavit.

Thanks to the failure of the SAHRC and the Public Protector to achieve LASA's compliance with PAIA since 2010, despite my many appeals for their support over the years (I gave up on them in 2015), my court application is now the ninth I've had to bring, and it's my third in the High Court to this end, following five in the Magistrate's Court and then a sixth to compel LASA's compliance with a settlement agreement it made with me after totally capitulating to the first five just before argument at court and agreeing, after years of illegal delay, to surrender all requested documents or duly certify under section 23 those that don't exist; and then reneging on the agreement by continuing to withhold requested documents and failing to provide a compliant section 23 affidavit, which is to say continuing to disregard PAIA and the Constitution.

The history of LASA's:

- blatantly illegal and unconstitutional refusals since 2010 to comply with my duly made PAIA requests, on plainly spurious grounds;
- persistent false annual reporting under section 32 of PAIA of its unlawful refusals:
 - to conceal its said constitutional violations from the SAHRC, and thereby stymie its annual reporting obligations to the National Assembly under section 84;

- to obstruct and defeat the National Assembly’s constitutional oversight responsibility over LASA, imposed by section 55(2)(b)(ii) of the Constitution; and ultimately,
 - to evade accountability for:
 - illegally suppressing documentary evidence; and,
 - the underlying top-level corruption and financial irregularity that the records (further) prove;
 - false ‘Confidential’ (secret) reporting to the Minister and to the Portfolio Committee to successfully pervert enquiries they separately and independently instituted into LASA’s repeated and persistent clearly unlawful refusals of my first two PAIA requests in 2010 on utterly spurious, chopping and changing grounds, even forging and uttering a faked dictum from a reported judgment to justify its first refusal;
 - refusal to comply with my further subsequently made PAIA requests, even after the SAHRC’s several early interventions at my instance to induce it to do so, namely:
 - by holding a special remedial training workshop for LASA’s head office lawyers in October 2011 on how to implement PAIA (at which, the report of it records, they repeatedly conceded their ignorance of its provisions), after LASA’s obviously illegal and unconstitutional refusals of my first three requests in 2010–11;
 - by reporting to the National Assembly in its section 84 report for 2011/12 LASA’s repeated false annual reporting under section 32 to conceal its unlawful refusals of my first three PAIA requests, and assuring it that in view of this LASA would be ‘fully’ audited for PAIA compliance – also recommending, separately, to the National Assembly under section 83(3)(a)(i) that such ‘malicious compliance’ with section 32 be criminalised by amendment of the ‘Offences’ provisions of section 90;
 - by conducting a PAIA compliance audit of LASA in January 2013 (but uselessly and ineffectually by way of a general questionnaire)
- all this is detailed in a comprehensive Special Report on LASA’s chronic, intractable PAIA delinquency that I prepared for the chairperson of the SAHRC in September 2016 to facilitate its reporting to the National Assembly the enormous persistent problem: the contempt for constitutional information law in our country, after the secretive, abusive apartheid era, displayed by ‘the biggest law firm on the African continent’, ‘the largest legal institution in Africa’, as

LASA's website proudly bills it – in suppressing (further) evidence of a major cover-up of head-rolling malfeasance committed by its top officers.

The Special Report is annexure 'F' to my founding affidavit in my first PAIA application to the High Court, brought in October 2016 (case 11187/16), a copy of which I also enclose, along with a copy of my second application brought in December 2017 (case 14224/17), detailing LASA's continuing flouting of PAIA to evade being held to account for multiple capital legal transgressions, including such crimes of dishonesty as lying under oath, and lying and deceptively false reporting to the Portfolio Committee in criminal contravention of sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004. Once the answering and replying affidavits in my third, most recent application have been filed (case 5239/18), the three applications will be set down for argument together.

In its combined section 84 report for 2015–17, however, the SAHRC deplorably failed to convey to the National Assembly any of the shocking information set out in my Special Report – besides making passing mention in a buried footnote that it had received a complaint (actually several) about the accuracy of LASA's annual section 32 reporting, with nothing said about the basic problem of its substantive illegal and unconstitutional refusals of my PAIA requests since 2010, including in the period under review, much less its criminal perversion of ministerial and parliamentary enquiries into it, as my Special Report finely details.

The result of the SAHRC's dereliction of its statutory reporting obligations and failure to apprise the National Assembly of this colossal scandal is that:

1. Since 2010 LASA has persisted unchecked in illegally and unconstitutionally suppressing duly requested public records with impunity; indeed, to falsely imply that my complaints about this are baseless, it gloats in court papers that neither the SAHRC nor the Public Protector have ever taken it to task about them.
2. The National Assembly, responsible under the Constitution for overseeing the due conduct of public body operations, and especially their compliance with PAIA, about which it's specifically concerned, hence sections 32 and 84, remains oblivious to the fact that besides being profoundly corrupt the country's biggest public law firm – headed by a Judge President under section

8(1) of the Legal Aid South Africa Act 39 of 2014 to guarantee its probity – is a serial violator of the Constitution.

In addition to chronicling my numerous unsuccessful appeals to the SAHRC under section 83(3)(c) for its support in overcoming LASA's determined, manifestly illegal and unconstitutional refusals of my PAIA requests – on the advice of LASA Chief Legal Executive Patrick Hundermark, to obstruct my investigation and exposure of top-level corruption and serious financial irregularity at LASA, including criminal corruption – my Special Report also details how my repeated complaints and appeals to the Public Protector under section 6(4)(d) of the Public Protector Act 23 of 1994 have been acknowledged with form letters and sometimes followed with promising phone calls, but never pursued to resolution.

It's against this dismal background that I'm hoping that later this year when the Information Regulator gets into action, so to speak, it will take rather more seriously LASA's scorn for its constitutional information transparency obligations demonstrated year after year – as brightly illustrated over the last five years by its blanket rejection of all my PAIA requests made since 2013 as a waste of its time and therefore hit by section 45 – in the teeth of my clear statements in every case of my gravely serious purposes in making them, threatening the careers of those implicated in the extreme misconduct I'm investigating. Hence the illegal and unconstitutional secrecy.

For the sharpest resolution and clearest legibility, I've printed the final PDFs of the applications before signing them, but scanned copies of the signed papers, and other affidavits to which they refer, can be accessed in a Dropbox folder at <https://goo.gl/Ut9eH5>. These further affidavits include pending complaints to the Judicial Service Commission about LASA Board chairperson Mlambo JP's documented active complicity in LASA's repeated violation of my fundamental right to information since 2010 and in covering this up with lies told to the SAHRC, to the Minister, and to the Portfolio Committee variously to conceal this and derail their enquiries into it.

Should you be disposed to approaching LASA in this matter, please be on high alert for more brazen mendacity couched in superficially convincing, honeyed legalese, such as you'll find quoted in my Special Report and in my second and third applications (124424/17 and 5239/18). Making up for his invincibly obtuse

ignorance of PAIA (explained by his bunking of the SAHRC's special lesson on how it works, according to the attendance register), Hundermark is a master of oily, half-baked legal argot; see for instance my third application (5239/18) quoting him stitching high-toned, legal-sounding phrases together incoherently to prevaricate, obfuscate and beguile.

As is notorious, when lawyers go rogue and find themselves cornered, and the stakes are high, they're wont to defend themselves smoothly with deep cunning and practised skill. My Special Report details how LASA's top officers have repeatedly succeeded in defrauding LASA's Board, the SAHRC, the Minister and the Portfolio Committee with their unctuous chicanery to put them off pursuing their enquiries into my complaints about their repeated illegal and unconstitutional refusals to open their books on duly made request under PAIA. Having much to hide. And far to fall.

For the information of the judge trying the three applications, I intend annexing this letter with your reply to it to my replying affidavit in my latest application (5239/18), along with any other responses from my cc addressees. Your reply by email would be preferred.

Thanks for your attention to this sorry mess.

Yours sincerely

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For easy copying/electronic distribution, a PDF of this letter is in the Dropbox folder mentioned in the last paragraph of page 5.

FOR PERSONAL ATTENTION
EXTRAORDINARILY IMPORTANT

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