36 Pearson Road
Eshowe, KwaZulu-Natal
10 August 2019

FOR PERSONAL ATTENTION
EXCEPTIONALLY IMPORTANT

Commissioner Andre Gaum
South African Human Rights Commission
33 Hoofd Street, Braampark Forum 3, Braamfontein, Johannesburg
Private Bag X2700, Houghton 2041

Cc:
The Honourable Mr Justice Motsamai Makume, Chairperson of the Board of Directors, Legal Aid South Africa, c/o South Gauteng High Court, Private Bag X7 Johannesburg 2000.

Dear Adv Gaum

LEGAL AID SOUTH AFRICA,
THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION,
AND THE PROMOTION OF ACCESS TO INFORMATION ACT

1. I appreciate that the extreme corruption ulcerating our country's organs of state, such as we've become used to these days, is none of your business. Not even when a Judge President wearing his other hat as Board chairperson of the prodigiously corrupt public body in question, Legal Aid South Africa ('LASA'), has been at the centre of it, detailed in eight gross misconduct complaints – two charging crimes – pending before the Judicial Service Commission ('JSC'). So that when the ripening boil finally bursts, it promises to be the most ignominious, damaging public sector corruption scandal in the history of our democracy, undermining public confidence in the integrity of the judiciary, that

remaining third branch of state hitherto above suspicion for the ubiquitous corruption currently being lanced by the State Capture Commission.

2. I'm referring here to repeated criminal lying in minuted oral presentations to the Justice Portfolio Committee of the National Assembly to pervert its several malfeasance enquiries, and to criminal false written reporting to it on multiple scores to the same corrupt end; similar false reporting to the Minister; perjury in affidavits and in transcribed oral testimony; multiple fraudulent fabrications ina report to the Board by executive management; criminal and other illegal contraventions of the Public Finance Management Act 1 of 1999 involving financial misconduct running into many millions of rands and the withholding of critical service delivery to our country's most vulnerable and needy; and even corrupting the legal process through defeating the ends of justice by importuning a judge to throw a case, by dint of an anonymous and unsigned, poisonously defamatory, lethally prejudicial 'memorandum' slipped to him under the counter by an evidently well connected top LASA officer (unstamped by the registrar, it was inadvertently left in the court file and discovered several months later); and besides all this, the wholesale breakdown of lawful corporate governance making it all possible – in sum, the very depths of corruption and criminal depravity in the governing and executive echelons of an organ of state gone bad during the Zuma Era, like so many others, in the familiar escalating pattern of a Nixonian cover-up. And this in an organ of state reputed to be a paragon of impeccably proper corporate governance.

3. None of this is any concern of yours because under section 184(1) of the Constitution your Commission's function is confined to '(a) promote respect for human rights and a culture of human rights' and '(b) promote the protection, development and attainment of human rights'. And bringing the above sort of rogue officers to law and made subject to its penalties: dismissal, strike-off, impeachment, imprisonment, personal recovery of many millions of rands in irregular fruitless and wasteful expenditure on corruptly driven litigation – this is the job of other authorities, not yours.

4. But where on top of their crimes these cancerous criminals in the public service also spit at the Constitution by persistently and contemptuously violating one of the basic civil rights it entrenches, namely our all-important right to public information in our open democracy guaranteed by section 32(1)(a) of the Bill of Rights, with the object of maintaining their criminal cover-up of their multiplying crimes (already disintegrated into a shambles of internal contradictions, themselves objectively contradicted) as they strenuously evade being held to account – this is where your Commission comes in.

5. I appreciate also that you're 'Commissioner of the South African Human Rights Commission responsible for Basic Education', as the Commission's website bills you, and not its PAIA Commissioner primarily concerned with overseeing information transparency, but jumping the gun in anticipation of the Information Regulator's now very long delayed assumption of the Commission's statutory and constitutional responsibilities to oversee compliance with the Promotion of Access to Information Act 2 of 2000, I've recently learned that the Commission disbanded its PAIA Unit back in 2016. (Imagine the criminal irresponsibility of a wartime commander calling off a shift of special expert guards posted at the special instance of Cabinet to a vital strategic centre on the basis that they'll be replaced by others someday. He'd be put against the wall.)

6. The result of the Commission's premature scuttling of its PAIA Unit is that, besides you, the Commission has no competent specialist staff in the recondite terrain of constitutional information law and therefore no capacity to discharge effectively its general constitutional and specific statutory mandate to see to the state's compliance with section 32(1)(a) of the Bill of Rights, a responsibility requiring expert knowledge of that 'very technical' corner of law – so your former PAIA Unit director Dr Fola Adeleke rightly described it to the Justice Portfolio Committee on 3 December 2012. And the Legislature agrees, because under section 91A of PAIA, applications brought in the Magistrate's Court by aggrieved record requesters under section 78 may only be tried by magistrates specially trained in it. But as I'll illustrate, being untrained in PAIA, your remaining national office staff working with it are perilously unfamiliar with applied

constitutional information law, and it confounds the Commission's crucially important responsibilities in regard to information transparency in our country.

7. The Commission's website tells us, on the other hand, that 'Advocate Gaum's work relating to the Constitution of South Africa started at its inception, when he was involved in an advisory capacity in the final stage of the negotiation process that led to the Constitution of the Republic of South Africa, Act 108 of 1996. He has been a member of the Joint Constitutional Review Committee from 1999 to 2000, 2005 to 2009 and 2011 to 2014.' So there's no question that as one of our country's most distinguished constitutional lawyers, you're the Commission's top and probably only such expert lawyer equipped to deal with the matter I'm referring to you.

8. With a sterling background in constitutional law like yours you hardly need reminding that information transparency in the conduct of state business, and the state's respect for our cardinal constitutional right to public information, is critically important for, on one hand, the effective interrogation of the exercise of public power and to testing it for legality and for holding public officers to account where they've acted illegally, and, on the other, for the exercise and protection of other rights. Indeed, the Preamble to PAIA spells this out; it was precisely '... IN ORDER TO– ... foster a culture of transparency and accountability in public and private bodies [and] actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights' that PAIA was 'THEREFORE ENACTED by the Parliament of the Republic of South Africa'.

9. My attempts over recent years to engage your chairperson and deputy chairperson in the matter of LASA's habitual, wilful PAIA delinquency, as it determinedly withholds (further) documentary evidence of the most serious corruption metastasizing through top ranks, have, to put it politely, proved disappointing.

10. Hence this approach to you, my last stop at the Commission before making yet another High Court application against LASA, in which, if this approach to you fails, I'll be joining the SAHRC and seeking a declaratory order against it

(for reasons explained below), putting this letter up with my founding affidavit to demonstrate that like any other applicant seeking interdictory relief, even though not strictly required by section 78, I nonetheless exhausted my extra-curial options before suing.

11. Such further application to court would be my tenth against LASA, after six in the Magistrate's Court – the first five conceded at court, and the sixth, brought to compel full and proper compliance with the total surrender treaty it signed there, partially conceded by incrementally disgorging more and more of the records pledged in the said agreement (the rest of the application is pending) – and three in the High Court, the first to be argued later this month on the 30th. All thanks to the Commission's failure, before your time, to execute its constitutional and statutory mandate to see to the state's, and specifically LASA's, compliance with PAIA, despite my countless appeals for its support over the years to overcome its flagrant ongoing illegal and unconstitutional suppression of incriminating records on the most obviously spurious shifting grounds.

12. LASA's persistent illegal and unconstitutional refusals of my requests since 2010 and its repeated false reporting to conceal this from the Commission, and from the National Assembly in turn, is finely detailed in a specimen 'Special Report' about this, drawn for your chairperson in late 2016 for the ultimate information of the National Assembly, so that in the exercise of its constitutional oversight authority it can call LASA to account.

13. Unfortunately, my comprehensive, meticulously referenced indictment of LASA's persistent illegal and unconstitutional non-compliance with PAIA, concealed from the Commission and from the National Assembly with repeated false reporting year after year, lies unattended in a bottom drawer at the Commission, as during the apartheid civil service. The result has been that with a confident assurance of impunity LASA has continued illegally and unconstitutionally refusing subsequent PAIA requests I made, forcing me to bring two further section 78 applications to the High Court in 2017 and 2018 to compel compliance with them. With another in store unless you head it off.

14. I enclose a formal human rights violation complaint arising from LASA Chief Legal Executive Patrick Hundermark's latest illegal and unconstitutional refusal to grant me access to records I duly requested under section 18, or, where they don't exist (as in the case of the records specified in Part Three of my request annexed to my complaint) to deliver an affidavit certifying this under section 23.

15. It concerns also LASA's sixth false annual report to the Commission under section 32 on its handling of my PAIA requests, thus misinforming the Commission's annual report to the National Assembly under section 84, and thereby frustrating and defeating the latter's oversight responsibility over LASA, imposed by section 55(2)(b)(ii) of the Constitution. (Called to its attention by me, the Commission duly reported LASA's first and second false section 32 reports to the Portfolio Committee in its section 84 report for 2011/12, but then failed to 'fully audit' LASA for PAIA compliance as it undertook to the Committee to do – instead, issuing LASA with a useless, general, standard-form questionnaire to answer. LASA's further repeated false reporting of its ongoing illegal and unconstitutional refusals of my record requests, also pointed out by me, has gone entirely unattended.)

16. My complaint further concerns Hundermark's pretensions to be a deputy information officer, when in fact he holds no such delegation 'in writing', required by section 17(6)(a).

17. And it mentions Hundermark's (or in his name one of his staff's) criminal contravention of section 90(1) by fraudulently altering a record before delivering it to me (one of the few records handed over in response to my request) in an attempt to escape detection for this latest instance of false section 32 reporting by LASA to the Commission, in a perfectly unremarkable, unexceptional instance of contempt for law and ethics in LASA's top ranks, conforming faithfully to the culture of criminal mendacity that I've repeatedly encountered there. As witness this latest brazen example.

18. When I made my instant PAIA request, I correctly anticipated that it would be refused (most of it), because on Hundermark's advice LASA has illegally and unconstitutionally refused nearly every record request I've made since October

2010 to obstruct my investigation of recruitment and other corruption at LASA to the enormous detriment of LASA's mandate to provide legal services to the indigent and depriving the poor of their right to legal representation. And concluding his penultimate refusal in March 2018, couched in his usual half-baked greasy legalese, Hundermark informed me that 'any future requests will be dealt with similarly', meaning summarily thrown in the can.

19. By telling me this, Hundermark put me on notice that 'any future requests' I might make had been pre-decided for rejection out of hand without even considering them, irrespective of the nature of the records I might request and whether my stated or apparent purposes in seeking access to them was plainly serious. And never mind my entrenched constitutional right to sight of such public records. To the consigliore of this profoundly corrupt organisation, I have none to respect.

20. It bears mentioning that Hundermark and his head office colleagues have been so anxious to suppress the documentary evidence I'm gathering that they scooted over to the High Court in October 2016 to try interdicting me from:

(i) compelling full and proper compliance with the settlement agreement they signed at the Eshowe Magistrate's Court in February 2016, following their total capitulation at the point of argument to five PAIA applications I'd brought against them and set down together to compel their production of duly requested records, which surrender treaty recorded their pledge, after years of obstructive delay in the Zuma manner, to at last hand over all the records I'd had to sue for, or to certify under section 23 those that don't exist;

(ii) prosecuting a further application I'd made to the High Court for further records in a particular category specifically contemplated and agreed in their surrender treaty, as well as for all cost records reflecting how much public money they'd irregularly, fruitlessly and wastefully squandered on insupportably opposing my PAIA applications in the Magistrate's Court all the way to the point of argument, to prevent my accessing LASA's records; and,

(iii) requesting access to any more of LASA's records, and from ever again approaching the courts to compel compliance with my requests when refused – much like Gavin Watson did in interdicting the Special Investigating Unit from continuing with its investigation of BOSASA's massive corruption of our government, famously spilled by Angelo Agrizzi years later. An interdict, Wikipedia tells us, is the conventional last resort in maintaining a major cover-up; only, in LASA's case, the judge quickly tossed its baseless, malicious, corruptly driven application without even calling on me to argue.

21. Before this, in the manner of the Mob rubbing out witnesses, Hundermark and his corrupt colleagues tried killing me off differently: by unsuccessfully trying to get me struck off the roll of advocates for complaining in my labour litigation of Board chairperson Mlambo JP's capital misconduct in my matter (now before the JSC), and by successfully getting me thrown off the bench as an acting magistrate. (Falsely told I'd acted for a maximum of two years – there's no such limit – I learned of LASA's knife from behind the curtain eighteen months later.)

22. As saying goes: the heavier the flak you draw, the closer you are to target.

23. Hoping to pre-emptively overcome Hundermark's stated contempt for my fundamental right to information, and his ongoing illegal and unconstitutional refusal to make LASA's public records available to me on duly made request under PAIA, I wrote to the Commission's deputy information officer Dr Shanelle van der Berg – incorrectly assuming that she was director of its PAIA Unit (in fact disbanded) – asking her to exercise the Commission's special statutory powers under section 83(3) to foster information transparency in our country by assisting record requesters like me and by training and providing corrective remedial advice to public information officers misapplying the Act. I was hoping she'd see to LASA's due compliance with my request and thereby avert yet another application to court to compel it.

24. Dr Van Der Berg responded by providing LASA with 'advisory recommendations' on how it should respond to my request, and emailed me a copy. Her letter and its covering email are enclosed.

25. Her advice to LASA is a curate's egg of very good and very bad. All in all, it evinces a genuine, honest, diligent effort on her part. She appears to have done her best, hampered by her inexperience and lack of any training in PAIA, in which she's not daily involved (the Commission, she told me, is down to just one PAIA compliance officer, not her), and by the fact that, as I'll show, LASA's head office lawyers repeatedly lied to her, as they've habitually done in their dealing with the Commission before, to put her off assisting me obtain its proper, lawful response to my request. Clearly it never occurred to Dr Van der Berg that in her own bona fide engagement with LASA's corrupt national office lawyers, she might be dealing with people for whom telling lies is a way of life. This is how fraud works; one's trust is abused, one's taken unawares.

26. Where Dr Van der Berg's 'advisory recommendations' are wrong, they're extremely counterproductive and prejudicial to me, because in practical effect they advise LASA to violate my fundamental rights by affording it a false, unlawful basis to deny me access to records I'd requested. In other words, the Commission's bad advice to LASA was at odds with PAIA and was unconstitutional.

27. The Commission's 'PAIA compliance officer', who I assume was one of the Commission's other officers visibly copied in when Dr Van der Berg emailed me, didn't contradict and correct her major legal mistakes (canvassed below), which shows that he or she is equally dangerously naive in the critically important field of constitutional information law in the democratic era. And if as the Commission's resident constitutional law expert you don't correct their basic errors, other requesters will be exposed to the same serious jeopardy.

28. I might mention that there's nothing new about the Commission's staff dealing with PAIA matters being unqualified to do so. Appalled by former PAIA Unit director Kisha Candasamy's evident poor grasp of the Act some years ago – again practically giving LASA carte blanche to violate my fundamental right of access to its records – I established via a PAIA request addressed to the Commission itself that she also had zero relevant qualifications, notwithstanding that PAIA is so 'very technical' that at its above-mentioned meeting with the

Justice Portfolio Committee in 2012 the Commission itself insisted on the retention of the special training and qualifying requirement for magistrates imposed by section 91A.

29. Consistently with this, your clueless Senior Legal Advisor Mathew du Plessis told me recently, ignorant of the rudimentary distinction between category-(a) and -(b) public bodies as defined by section 1, that I had to file an internal appeal before he could assist me access certain JSC records I'd requested, after my PAIA request for them had been ignored. And when, citing chapter and verse of the Act, my 'clinical and in-depth' reply provided some embarrassing corrective erudition on the point, namely that category-(b) public bodies have no internal appeal procedure, he dropped my plea for Commission support like a hot plate, advancing a ridiculous excuse for declining to assist me.

30. In walking away like this, your Senior Legal Advisor demonstrated his equal ignorance of the injunction imposed by section 13(3)(a) of the South African Human Rights Commission Act 40 of 2013, namely that the Commission '**must** … assist' human rights violation complainants like me (my added emphasis) 'in so far as it is able' to do so, so as to fulfil the Commission's raison d'être set out in section 2 of that Act, namely its 'Objects': '(a) to promote respect for human rights and a culture of human rights; (b) to promote the protection, development and attainment of human rights; and (c) to monitor and assess the observance of human rights in the Republic.' Which ignorance of the peremptory provisions of section 13(3)(a) explains why he unlawfully disregarded them.

31. The Commission itself has confirmed my repeated observations concerning the incompetence of its PAIA enforcement staff. Page 68 of its annual report for 2014/15 records: 'The audit committee's review of the findings of the internal audit work ... revealed certain weaknesses ... The following areas [were] of concern: a) Non-compliance with complaints handling procedures ... d) Lack of policies and procedures with the ... PAIA unit ... e) Non-compliance with certain requirements of the PAIA legislation.'

32. To sum up, even though, as our country's official information transparency policing authority, the Commission rightly insists that only PAIA-qualified

magistrates handle PAIA matters, because they're 'very technical' in both the Commission's and the Legislature's opinion, the Commission's head office personnel, untrained and unqualified in PAIA, are repeatedly giving unsupervised wrong advice on the interpretation and application of this exceptionally important 'very technical' statute, enacted to give effect to our pivotal fundamental right to information enshrined in the Bill of Rights after all the abuses of the apartheid era, with the intention, spelt out in section 9 of PAIA, 'Objects of Act', subsection (e), 'generally, to promote transparency, accountability and effective governance of all public and private bodies by ... empowering and educating everyone– ... (iii) to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.'

33. Especially in the contemporary Corruption Era: Gabriella Razzano, Head of Legal Research at the Open Democracy Advice Centre, pointed out to the Fourth National Anti-Corruption Forum Summit in Cape Town in December 2011 that 'Access to information is a fundamental tool in the fight against corruption,' Investigative journalist Andrew Jennings spoke in similar vein in the *Washington Post* on 3 June 2015 after blowing the FIFA corruption scandal: 'I'm a document hound. If I've got your documents, I know all about you ... You just find some disgraceful, disgustingly corrupt people and you work on it ... Our job is to investigate, acquire evidence.'

34. Unless Dr Van der Berg's serious legal mistakes in her 'advisory recommendations' are corrected, they're likely to attract some caustic comment by the High Court when issuing its declaratory order against the Commission (should this matter proceed in that direction) on the quality of legal professional expertise on display by our country's official experts in constitutional information law, specifically charged by section 83 of PAIA with monitoring information transparency in our country, especially by the state, now that we live in a constitutional democracy, where public officers can be held to account and can't just do whatever they like any more, like they used to.

35. Although the integrity of LASA's PAIA manual, published under section 14, wasn't part of my appeal to her, Dr Van Der Berg nonetheless commendably took

the initiative, time and trouble to audit it, and very correctly identified to LASA its radical defects for fixing.

36. She begins by pointing out that section 19 of the manual wrongly claims that PAIA requesters have 30 days within which to appeal the refusal of their requests (and against certain other decisions under PAIA) instead of 'the correct period of 180 days.' But instead of the amended Act itself, she cites stale case authority in support of this, concerning which identical mistake I had to correct Ms Candasamy back in February 2016: '... you irrelevantly cite the Brümmer case as authority for stating that an aggrieved records requester has 180 days within which to sue for relief. You've missed the fact that Parliament has amended the Act to give effect to the Constitutional Court's decision in that case. Section 78(2)(d) now provides for 180 days, having been amended by section 28(a) of the Judicial Matters Amendment Act 42 of 2013, with effect from 22 January 2014. You ought to have cited the Act as amended, not the decision that spurred the amendment, which is now academic.' The Commission needs to get with it here.

37. Dr Van Der Berg also points out that section 22.3 of LASA's PAIA manual, requiring requesters to 'set out very clearly the reasons that such access is required so as to enable Legal Aid SA to evaluate such requests', diametrically contradicts section 11(3) of PAIA. Indeed, being inconsistent with section 32(1)(a) of the Bill of Rights, it's unconstitutional.

38. Despite my and the Commission's innumerable lessons given them over the years, LASA Chief Legal Executive Patrick Hundermark and his incorrigibly stupid national office colleagues still think the grant of a PAIA request for access to a public record is subject to whether they approve the requester's stated reason, or what they think is his reason, for making it, and that such reason is relevant in considering and deciding the request. Again and again these legal imbeciles assert my stated or surmised reasons as their criterion by which to bounce my requests.

39. In countless letters and court papers I've pointed out to them, as Dr Van der Berg does yet again, making my endlessly repeated point (I'm quoting her letter,

correctly echoing the Act) that 'section 11(3)(a) and (b) of the PAIA ... stipulates that a requester's right of access is not affected by the reasons for the request or the information officer's belief as to the requester's reasons for requesting access.'

40. Quoted in my letter to Dr Van der Berg, your former PAIA Unit director Dr Fola Adeleke made the same point to LASA top corporate attorneys Mtati and Sekgota in 2012.

41. Indeed, the Constitutional Court held in *Helen Suzman Foundation v Judicial Service Commission* [2018] ZACC 8, at paragraph 44: 'PAIA affords any person the right of access to any information held by the state.[50] The person seeking the information need not give any explanation whatsoever as to why she or he requires the information. The person could be the classic busybody who wants access to information held by the state for the sake of it.' (Footnote 50 refers to 'Section 9(a)(i) of PAIA'.

42. Dr Van der Berg summarises this principle perfectly in the heading of section (i) of her 'advisory recommendations': 'Reasons for request irrelevant'.

43. As shown by the reasons given by LASA Chief Legal Executive Patrick Hundermark for refusing my Part Three of my request, the lesson just won't go in.

44. Dr Van der Berg strangely concludes her sound advice about the corruption of LASA's PAIA manual by adding – perfectly redundantly, and right after I'd pointed out on the back of case authority that counsels' fee-notes aren't privileged – that 'If legally privileged records are requested from LASA, LASA must refuse any such requests as mandated by section 40 of the PAIA, unless the person entitled to privilege has waived such privilege.'

45. Why of all possible grounds for refusal recognised by sections 34–45, she picked section 40 to stick into her letter is inexplicable, unless LASA maybe suggested it to her, kicking sand in her eyes to mislead her, in the usual manner, as it did in other respects canvassed below. Yet LASA has never before claimed

its counsels' fee-notes are legally privileged, and Hundermark doesn't do so in his refusal.

46. Things then take a very bad turn at the foot of Dr Van Der Berg's second page. She very incorrectly counsels Vedalankar and Hundermark that 'the information requested in paragraph 1 [of Part One of my request annexure] may constitute records contemplated in section 36 or section 37 of PAIA', which is to say may be 'commercial information' or 'certain confidential information' of a 'third party', and that the consent of such 'third part[ies]' must be sought for the release of the requested 'information' to me.

47. The 'information' that I specified in that paragraph of my request is 'LASA's counsels' fee-notes for their services in drawing or settling [its] postponement application papers, and for arguing the application' it brought to force the postponement of my three PAIA applications to the High Court at Pietermaritzburg, which I'd duly set down for argument on 15 March 2019, for the amazing reason LASA gave that the particular advocates it wished to hire to oppose me in court that day were busy elsewhere with other cases.

48. This story, that advocates' invoices are protected from disclosure without their consent, has been LASA's for years; it's Hundermark's idea conveyed over the phone to his immediate subordinate in the Magistrate's Court on 11 February 2016 and literally written in to the typed settlement agreement as an afterthought (legally irrelevantly). In her 'telephonic conversations' with 'two LASA representatives on Friday 10 May 2019', Dr Van der Berg undoubtedly got it from them.

49. As Hundermark and his 'team' of corporate attorneys know, because I've expressly stated it before when requesting and suing for LASA's legal cost vouchers in other meritless, dilatory litigation in the past, I intend referring to the Auditor General, to the Minister, to the Portfolio Committee, and to other interested parties all legal cost vouchers in LASA's case files showing the millions of rands it's squandered on legal fees to wage insupportable defensive and aggressive litigation against me – variously abandoned at court at the point of argument or smartly dismissed by court after it – in furtherance of its

Stalingrad strategy to prevent me accessing its records to which I'm entitled as a matter of constitutional right.

50. About which crooked legal manoeuvring *Noseweek* editor and publisher Martin Welz explains in his editorial, 'JCI Cover-up, Round 999', in the current issue of his magazine (#237, 1st July 2019):

> When lawyers speak of employing the 'Stalingrad strategy' as a defence, they mean, according to Wikipedia, a strategy of wearing down the plaintiff by tenaciously fighting anything the plaintiff presents by whatever means possible and appealing every ruling favourable to the plaintiff. Here, the defendant does not present a meritorious case. This tactic or strategy is named for the Russian city besieged by the Germans in World War II.
>
> As Jacob Zuma's advocate, Kemp J Kemp put it: 'This is not a battle where you send a champion out and have a little fight and that's it – this is more like "we will fight them in every room, in every street, in every house".'
>
> The key to this strategy is lots of money. Financial institutions with deep pockets frequently resort to this iniquitous strategy.

Corrupt public entities with deep pockets too.

51. Dr Van der Berg continues by stating very correctly in principle that where section 36 or 37 applies to a record request:

> This places a mandatory obligation on LASA's information officer to 'take all reasonable steps to inform a third party to whom the record related of the request' (section 47(1) of the PAIA). The Commission therefore urges LASA to initiate a third party notification procedure within 21 days of receipt of the request, and to provide all information set out in section 47(3) to relevant third parties. In terms of section 48 of the PAIA, relevant third parties enjoy 21 days within which to make oral or written representations, or to provide written consent for the disclosure of the records.

52. But she's very wrong in thoughtlessly repeating what Hundermark told her on the telephone, namely that counsels' fee-notes are the kind of records hit by sections 36 and 36. And here's very obviously why:

53. Section 1, 'Definitions', provides: 'In this Act, unless the context otherwise indicates',

> **'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 or private body, respectively; and
> (c) whether or not it was created by that public or private body, respectively[.]

54. Section 36, 'Mandatory protection of commercial information of third party' provides:

> (1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if the record contains–
> (a) trade secrets of a third party;
> (b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
> (c) information supplied in confidence by a third party the disclosure of which could reasonably be expected–
> (i) to put that third party at a disadvantage in contractual or other negotiations; or
> (ii) to prejudice that third party in commercial competition.

55. Counsels' invoices submitted to public entities for the payment of their professional fees – upon receipt of which event they become public financial

records – plainly don't contain the sort of 'information' contemplated and hit by section 36.

56. Section 37, 'Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party', provides:

> (1) Subject to subsection (2), the information officer of a public body–
>
> (a) 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; and
>
> (ii) if it is in the public interest that similar information, or information from the same source, should continue to be supplied.

57. Again, counsels' fee-notes quite obviously don't comprise the sort of 'information' contemplated and hit by section 37 either.

58. In light of her advice to LASA that counsel's fee-notes are hit by section 36 or 37, I must assume that Dr Van der Berg has never seen a bill of costs prepared for taxation, to which such advocates' invoices are routinely annexed. Indeed, a whole bunch of them were given to me with LASA's bill of costs after my labour case miscarried, thanks to its devious, illegal and unconstitutional suppression of a pivotal document I'd requested, disgorged years later by suing for it and finally revealing the reason my appointment to LASA's top legal professional post in KwaZulu-Natal had been silently illegally cancelled. When it wanted me to pay its advocates' bills (which I began doing), LASA didn't then faff about 'commercial information of third party' (section 36) or 'confidential

information ... of third party' (section 37). It was only too happy to give them to me without any of this nonsensical talk.

59. Dr Van der Berg's very incorrect, unconstitutional advice to LASA basically translates to the contention that my fundamental right to sight of LASA's advocates' fee-notes that I've duly requested is contingent on their consenting to their release to me – and that I have no fundamental right to access to these financial records should they refuse such consent. Practically speaking, in her misinformed view, LASA's advocates have veto power over my fundamental rights.

60. Clearly Dr Van der Berg didn't herself read sections 36 and 37 before repeating back to Vedalankar and Hundermark in her advisory recommendations the patently wrong idea she got from Hundermark, showing up repeatedly in answering affidavits opposing my several PAIA applications to compel discovery of their counsels' fee-notes – financial records that I duly requested and had to sue for:

(i) to ascertain what they've grossly irregularly misspent since 2010 on obstructing my access to its records in the exercise of my constitutional right to public information held by the state;
(ii) for the purpose of reporting this irregular, fruitless and wasteful expenditure to the Auditor General, the Portfolio Committee and the Minister; and,
(iii) for its personal recovery from the corrupt officers who occasioned it.

61. Had Dr Van der Berg actually read sections 36 and 37 herself, she could never have arrived at the conclusion that they apply to the statements of account that advocates send LASA, a public law firm, for payment for their professional services. No Doctor of Laws could possibly have misread these sections so badly, because as I put it in my letter to her:

> To read with any intelligence sections ... '36 Mandatory protection of commercial information of third party' and '37 Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party' is to appreciate at a glance that

they have no relevance and application at all to such ordinary statements of account by LASA's advocates for payment of their legal fees. Indeed, LASA had no compunction about giving me its counsels' fee-notes in the past, when it wanted me to pay them, and didn't then pretend that they were 'confidential, private and proprietary information relating to third parties', as it later stupidly claimed to justify hiding other such invoices from me, and ultimately from the Auditor General.

62. Hundermark's refusal notice shows he avidly adopted and relied upon Dr Van der Berg's very incorrect, unconstitutional advice – or more accurately, her imprimatur on LASA's repeatedly advanced justification for concealing its counsels' invoices from me. Refusing me access to the fee-notes I requested, he alleged that the advocates who drew and submitted them to LASA had refused to let me see them.

63. But instead of claiming the fee-notes to be third party 'commercial information' and therefore protected from disclosure without third party consent by section 36, or 'certain confidential information' similarly protected by section 37, as Dr Van der Berg reckons – parroting what 'LASA representatives' told her in 'telephonic conversations' 'on 10 May 2019' about this – Hundermark very differently calls the 'information' contained in such ordinary commercial invoices 'personal information'. In light of the precise, narrow definition of 'personal information' in section 1, Hundermark's categorisation of counsels' fee-notes as 'personal information' to refuse them is dishonestly fatuous. It's redolent of former Independent Police Investigations Directorate head Robert McBride's complaint to the State Capture Commission on 11 April 2019 about the similar specious categorization of ordinary police records as 'classified' to corruptly obstruct his unit's access to them and thwart its investigation of malfeasance and corruption in the South African Police Services.

64. Refusing my request for access to LASA's counsels' fee-notes, Hundermark failed to comply with section 25(3)(a), requiring that he 'state ... the provisions of this Act relied upon' to reject my request for them. But by invoking the tell-tale phrase 'personal information', he leaves no doubt that he means to rely on

section 34, the only section in Part 4 of Chapter 2, 'Grounds for Refusal of Access to Records', containing it. No doubt at all, because on Hundermark's advice LASA has repeatedly raised section 34 against me in the past to block my access to its counsels' fee-notes in other matters.

65. The manifest inapplicability of section 34 to LASA's advocates' statements of account submitted to it for payment, in light of the definition of 'personal information' in section 1, is treated in my complaint.

66. Should the Commission fail to resolve my complaint about Hundermark's illegal and unconstitutional refusal of my request for the fee-notes in question, and should I have to apply to the High Court to compel compliance with it, he is certain to add further justifications in his answering affidavit for refusing them, namely sections 36 and 37 commended (back) to him by Dr Van der Berg, piling them on like so much junk heaped onto a street barricade. These were precisely the multiplying additional justifications showing up in LASA's answering affidavit when in December 2017 I sued out of the High Court for LASA's counsels' fee-notes for their legal services (rendered ignorant of the most basic principles of law applicable) in unsuccessfully trying to shut me down as a vexatious litigant. (LASA had abandoned exactly the same insupportable justifications for refusing my requests for other earlier fee-notes at the Eshowe Magistrates Court on 11 February 2016 – only to revive them contemptuously in the High Court.)

67. So in his answering affidavit opposing the application that I might have to bring to compel compliance with my request, Hundermark is certain to assert that in raising these further justifications he's very reasonably relying on the 'advisory recommendations' of our country's official PAIA experts.

68. In my complaint, I deal with Hundermark's rejection of my request for LASA's advocates' and attorneys' 'subsistence and travel vouchers' in respect of the postponement application – refusing which he scorned Dr Van der Berg's very correct advice to him that access to these financial records should be granted 'unless LASA has identified a ground for refusal which would render disclosure harmful.'

69. Dr Van der Berg states that 'The Commission is in possession of LASA's section 32 reports for the 2016/17 and 2017/18 financial years', incorrectly telling me in her covering email that 'Section 32 reports for the 2018/19 year are not yet due' and implying that LASA hasn't delivered its section 32 report for this last reporting cycle. But granting my request for access to all three of LASA's 2016/17, 2017/18, and 2018/19 section 32 reports (notwithstanding his earlier announcement that any future record requests I might make would be automatically refused), Hundermark has provided me with a copy of this current 2018/19 report, covered by a filing sheet signed by him on 13 May 2019.

70. In the situation, please investigate whether Dr Van der Berg simply missed it in the Commission's files or whether in breach of its legal obligation under section 32 LASA has failed to submit to the Commission its annual PAIA report for 2018/19, and let me know.

71. If LASA has indeed reported, it will be in possession of either an email record or of a Commission stamp and signature on its service copy to vouch service and receipt. Insist on seeing this, because in my experience LASA's head office lawyers lie freely, so Dr Van der Berg's claim to me that 'Section 32 reports for the 2018/19 year are not yet due' may have been informed by a lie they told her to cover LASA's failure to have reported. If indeed LASA hasn't reported for 2018/19, I'll deal with this in my application to the High Court, should it be necessary to sue.

72. Finally, Dr Van der Berg claims absolutely incorrectly that 'The Commission is unable to determine whether the information requested under Part Three', concerning (more of) CEO Vedalankar's lies to the Justice Portfolio Committee on 9 October 2012, in criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, to pervert its inquiry into the obvious discrepancy between reported post occupancy and reported budget expenditure at LASA, namely her criminal lies that LASA 'had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.'

73. In refusing my request for these specified records, Hundermark confirmed that 'those positions' were indeed LASA three remaining vacant Senior Litigator posts as I'd correctly surmised; and a PAIA request made to the Justice Department in November 2014, transferred to LASA under section 20, and granted by LASA for a change (only because the Department was watching), shows that LASA has continued applying to the Department for salary budget for all nine of its Senior Litigator posts, three of them long vacant – flatly contradicting and exposing Vedalankar's blatant criminal lies to the Portfolio Committee that 'they adjusted the budget' because 'they knew that those positions could not be filled'. (Quite the contrary, in truth and in fact 'those positions could [indeed] be filled', even now: LASA's own records show that three suitably qualified and experienced candidates beat out the other shortlisted applicants interviewed for 'those positions' and that they were selected and recommended for them, namely Nzame Skibi for Mthatha, Bongani Mngadi for Durban, and me for Pietermaritzburg. Nothing but recruitment corruption prevented the filling of the posts.

74. As mentioned in the contextual notes to Part Three of my request, the three posts have long been deliberately left vacant after the off-the-record illegal abortion of the appointments of the selected and recommended candidates – an unlawful contravention of section 53(4) of the PFMA, pointed out by the Constitutional Court in *Zungu v Premier of the Province of KwaZulu-Natal and Others* (CCT136/17) [2018] ZACC 1 (22 January 2018); our apex court observed in paragraphs 8 and 9 of its judgment that 'leaving ... vacant' a budgeted and funded 'position' in an organ of state is a 'breach of the provisions of the Public Finance Management Act (PFMA)'.

75. Albeit irrelevant to the decision of my request, I made plain in my contextual notes that my purpose in requesting the records specified in Part Three was to force the production of a section 23 affidavit certifying that none of those records exist, and that I intended using this affidavit in support of a criminal complaint of lying to the Justice Portfolio Committee to cover up top-level recruitment corruption at LASA.

76. Dr Van der Berg was evidently baffled and defrauded by the barrage of lies she was told about Part Three of my request by the LASA officer(s) to whom she spoke, namely that, as she put it, 'the information has already been requested and/or disclosed under the Settlement Agreement dated 11 February 2016, or in any of the three subsequent requests currently pending before the High Court.'

77. Common sense should have told her that I wouldn't have wasted my time, and LASA's and the Commission's, by requesting the same records twice, more especially if I'd already sued for them, much less would I have requested them again had LASA already turned them over to me under its settlement agreement following its total capitulation to my five PAIA applications in the Magistrate's Court.

78. Dr Van der Berg didn't notice that the lies she gullibly quoted were internally contradictory too. On one hand, the lies suggest that I'd requested the records, and that they'd been refused, and that after I'd sued for them in the Magistrate's Court and LASA had ultimately caved in to my claim to them, it had handed them over in compliance with its settlement agreement made with me there to surrender all records I'd sued for or to certify under section 23 those that don't exist. On the other hand, the lies suggest that I requested them *after* the settlement of my five applications in the Magistrate's Court, and that when they were refused, I sued for them in the High Court, and that my claim to them is still pending.

79. In order 'to determine' quite easily this bogus issue of 'whether the same records have been requested and/or disclosed in the past', dishonestly manufactured by LASA's lawyers to put her off assisting me under section 83(3)(c), all Dr Van der Berg had to do was ask them to show her any previous request I'd allegedly made – before or after my five applications to the Magistrate's Court – in which I'd already asked for this information (I hadn't), and show her that LASA had already disclosed it to me (it hadn't).

80. Indeed, had there been any truth in LASA's lawyers' characteristic lie to Dr Van der Berg that I'd requested this information before, 'and/or' that LASA had already provided it, Hundermark would have alleged this in his refusal, and

stood on the *BHP Billiton* case that Dr Van der Berg very diligently dug out and cited to LASA regarding the unenforceability of PAIA request that have been repeated. He didn't. In refusing my request for this particular information, Hundermark didn't repeat any of these lies told to Dr Van der Berg, namely that 'the same records have been requested and/or disclosed in the past'. His justification for refusing Part Three of my request was quite different. (It's taken to pieces in my complaint.)

81. LASA also told Dr Van der Berg the familiar lie, which she trustingly believed and quoted in her covering email to me, that before the Commission could assist me under section 83(3)(c) to access the records I'd requested, its sole remaining PAIA compliance officer would have to 'peruse the voluminous papers in this matter' – i.e. the Commission's now enormous case file, opened nearly a decade ago in September 2010, full of unresolved appeals for support and complaints about LASA's ongoing refusals to comply with my PAIA requests, and about its persistent false section 32 reporting to conceal this – a practically impossible task. To discourage the Commission from assisting me access its records illegally and unconstitutionally refused, LASA has told it exactly the same lie before. I have the email record of it.

82. In truth, contrary to the lies LASA's head office lawyers told her, all Dr Van der Berg (or the PAIA compliance officer) had to do was read my letter to her and the PAIA request it covered, and not the whole case file. Which limited reading Dr Van der Berg did, and found quite manageable. (Indeed, without being asked she went further and read LASA's PAIA manual for consistency with the Act, even digging up case law that had no bearing on my matter after being misinformed by LASA's lying lawyers and sent off on a wild goose chase, wasting her time.)

83. Please find out from Dr Van der Berg who the 'two LASA representatives' are with whom she had 'telephonic conversations ... on Friday 10 May 2019', and who, in dismissible contravention of LASA's Code of Ethics and Conduct, told her the above-mentioned lies to frustrate and obstruct the Commission in the execution of its statutory and Constitutional mandates to foster information

transparency in our country. This culture of lying at LASA really must come to an end.

84. Dr Van der Berg concludes with an open-ended offer to LASA to advise it further: 'The Commission ... avails itself to engage with LASA should LASA have any queries regarding the application of the PAIA.' I trust the Commission equally avails itself to engage with me and further with LASA regarding the application of the PAIA and its interpretation by the Commission itself, because as indicated in this letter I've several serious queries of my own about this. Under the heading 'Redress', paragraph 70 of my complaint requests the Commission to engage with information officer Vedalankar by simply confirming to her the correctness of the several propositions of information law I set out in it.

85. The Commission's successful resolution of my human rights violation complaint under section 13(3)(a) of the South African Human Rights Commission Act will stave off an otherwise inevitable further application to the High Court at Pietermaritzburg to compel compliance with my request.

86. And as said, should I have to sue again, I'll be joining the Commission and apply for a declaritor under section 82 that our country's official expert PAIA watchdog's advice to LASA, given under section 83(3)(b),(d) and (e), was wrong and unconstitutional.

87. In conclusion, a closing thought: If as a seasoned advocate, admitted to practice more than three-and-a-half decades ago and specialising in civil litigation, including in the Supreme Court of Appeal (papers and appearance) and Constitutional Court (urgent papers, commended by the Chief Justice), finds himself unable to access duly requested public records, because for nearly a decade they've been illegally and unconstitutionally suppressed on patently spurious, changing grounds by a massively corrupt public entity whose top officers have committed multiple crimes and are naturally straining to avoid being held to account for them, so that he's constrained to repeatedly sue for these records after his innumerable pleas to the Commission and to the Public Protector over the years to exercise their statutory powers to mediate and assist

him have fallen on hard ground, only to find his litigation successfully bogged down with manifestly meritless, dilatory defences, abandoned at the point of argument at the Magistrates Court then set up again in the High Court, as well as other low tricks to derail his claims, what chance your regular guy without the professional skills, the wits, and the time – or the millions to fork out in legal fees – to launch and prosecute round after round of this sort of complex litigation year after year to force access to records he needs to fully expose the colossal corruption he's run into? What use is the Bill of Rights to him? What's the value of having Chapter 9 institutions vested with special powers and mandates to assist him, but who don't because they can't or they won't. What, really, is the practical difference for him between our democracy and the apartheid regime, under which he got screwed by similar top-level state corruption? Besides a round zero.

Yours sincerely

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