POSTSCRIPT: Shortly after sending this letter, the author learned that Mlambo JP had quit as chairperson of LASA's Board. A copy has been sent to his successor.

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36 Pearson Road
Eshowe, KwaZulu-Natal
12 April 2019

EXCEPTIONALLY IMPORTANT

Dr Shanelle van der Berg
PAIA Unit Director and Deputy Information Officer
South African Human Rights Commission
33 Hoofd Street, Braampark Forum 3, Braamfontein, Johannesburg
Private Bag X2700, Houghton 2041

Cc:

Hon John Jeffery MP, Deputy Minister of the Department of Justice and Correctional Services: Private Bag X395, Pretoria 0001

Hon Madipoane Mothapo MP, Chairperson of the Portfolio Committee on Justice and Correctional Services, National Assembly: PO Box 15, Cape Town 8000

Adv Pansy Tlakula, Information Regulator: Private Bag X81, Pretoria 0001

Nobukhosi Zulu, Coordinator of the Freedom of Information Programme, South African History Archive: PO Box 31719, Braamfontein 2017

Gabriella Razzano, Executive Director of the Open Democracy Advice Centre: 1 Scott Road, Observatory, Cape Town 7925

Mark Weinberg, National Coordinator of The Right2Know Campaign: 107 Community House, 41 Salt River Rd, Salt River, Cape Town 7925

David Lewis, Director of Corruption Watch: PO Box 30630, Braamfontein 2017

Nicole Fritz, CEO of Freedom Under Law: PO Box 1972, Somerset West 7129

Francis Antonie, Director of the Helen Suzman Foundation: Postnet Suite 130, Private Bag X2600, Houghton 2041

Lawson Naidoo, Director of the Council for the Advancement of the Constitution: PO Box 679, Rondebosch 7700

Jay Kruuse, Director of the Public Service Accountability Monitor, Rhodes University: PO Box 94, Grahamstown 6140

With typo fixes

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Lisa Chamberlain, Director of the Centre for Applied Legal Studies, School of Law, University of the Witwatersrand: Private Bag 3, Wits University 2050

Professor Frans Viljoen, Director of the Centre for Human Rights: Faculty of Law, University of Pretoria, Private Bag X20, Hatfield 0028

The Chairperson of the African Platform on Access to Information: Suite A4, Corner House, 436/437 Mawanda Road, Kampala, Uganda. By email: apaicampaign@africaplatform.org

Commissioner Lawrence Mute, African Union Special Rapporteur on Freedom of Expression and Access to Information: 31 Bijilo Annex Layout, Kombo North District, Western Region, The Gambia. By email: au-banjul@africa-union.org

Delia Ferreira Rubio, Chairperson of Transparency International: Alt-Moabit 96, 10559 Berlin, Germany. By email: ti@transparency.org

Professor Alan A. Paterson, Chairperson of the International Legal Aid Group. By email: prof.alan.paterson@strath.ac.uk

Heads of Department, Constitutional Law, South African universities

Hon Dunstan Mlambo JP, Chairperson of the Board of Legal Aid South Africa: South Gauteng High Court, Private Bag X7, Johannesburg 2000

Vidhu Vedalankar, CEO and information officer, Legal Aid South Africa: By email: vidhuv@legal-aid.co.za

And to media and other interested parties

Dear Dr Van der Berg

AN APPEAL TO THE COMMISSION FOR ASSISTANCE IN ACCESSING PUBLIC RECORDS HELD BY LEGAL AID SA AFTER A DECADE OF PERSISTENT NON-COMPLIANCE WITH PAIA TO SUPRESS EVIDENCE OF TOP-LEVEL CORRUPTION AND OTHER GROSS MALFEASANCE

Concerned that after apartheid we make a radical break in our open democracy from the former regime's 'secretive and unresponsive culture in public ... bodies which often led to an abuse of power and human rights violations', as the

Preamble of the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act') balefully reminds us, the National Assembly ('NA') specifically empowered the South African Human Rights Commission ('the Commission') under section 83(3) of the Act, inter alia, to:

> (b) monitor the implementation of this Act;
>
> (c) if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act;
>
> (d) recommend to a public or private body that the body make such changes in the manner in which it administers this Act as the Commission considers advisable;
>
> (e) train information officers and deputy information officers of public bodies[.]

I write to request that the Commission exercise these special powers to see to Legal Aid South Africa's ('LASA's) compliance at last with my fundamental civil right to public information entrenched by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution – 'Everyone has the right of access to … any information held by the state' – and given effect by PAIA[1] – by allowing me access to certain of its records that I've duly requested under section 18 of the Act, or, where they don't exist, by certifying this on oath under section 23.

Annexed is a copy of my PAIA request of even date made in the form prescribed by section 18(2) and proof of delivery to LASA's CEO and information officer Vidhu Vedalankar by email, as permitted by section 18(1).

Since 2010, LASA has consistently and repeatedly refused virtually all PAIA requests I've made in my investigation of recruitment corruption and other gross malfeasance in the organisation, including ongoing illegal contraventions of the Public Finance Management Act 1 of 1999 ('PFMA') running into many millions

[1] Section 9: 'The objects of this Act are– (a) to give effect to the constitutional right of access to–(i) any information held by the State'. Very pertinently to my matter, Open Democracy Advice Centre Executive Director Gabriella Razzano stated in her presentation to the Fourth National Anti-Corruption Forum Summit in Cape Town, 8–9 December 2011: 'Access to information is a fundamental tool in the fight against corruption.'

of rands annually, to the detriment of expert legal professional service delivery to the indigent in KwaZulu-Natal and the Eastern Cape, and, to cover this up, the commission of such crimes as perjury and lying and false reporting to mislead the NA's Justice Portfolio Committee.

To claw out of LASA the records needed for this corruption investigation, determinedly refused every time on obviously incompetent shifting grounds – frankly conceded to the Commission in October 2011 and abandoned in court at the point of argument in February 2016 – I've repeatedly had to sue for them: nine court applications to date, including an application to compel full and proper performance under a settlement agreement (surrender treaty) that LASA made with me after totally capitulating at court to my first five applications, reversing itself after years of delay, and undertaking to finally turn over all the records I'd duly requested and for which I'd had to sue, or to certify under section 23 those that don't exist.

In persistently refusing to make its records available to me upon duly made request, unless forced to do so by litigation, LASA has traduced the point 'emphasize[d]' by the Supreme Court of Appeal ('SCA') in *Claase v Information Officer of South African Airways* [2006] SCA 163 (RSA):

> Section 9 of the Act states that one of the objects of the Act is:
>
> '(d) to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible; . . . .'
>
> I emphasize the words 'swiftly' and 'effortlessly'.

The staggering history of LASA's demonstrated contempt for its constitutional information transparency obligations in obstructing my corruption investigation, so as to hinder my exposure and reporting of the above-mentioned gross malfeasance, including criminal misconduct, and the repeated litigation to which I've been constrained to resort to surmount it, delayed by meritless, ultimately abandoned defences mounted to hinder it; LASA's repeated false annual

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reporting to the Commission under section 32 to misinform the Commission's section 84 reports to the NA and thereby conceal from the NA its illegal and unconstitutional suppression of public records, so as to frustrate and defeat the NA's constitutional oversight responsibility over LASA under section 55(2)(b)(ii) of the Constitution and evade being held to account; LASA board chairperson Dunstan Mlambo JP's perversion, with deliberately false information, of separate, independent ministerial and parliamentary enquiries in 2011, instituted at my instance, inter alia into Vedalankar's repeated illegal and unconstitutional refusals to comply with my first two PAIA requests in 2010 on patently spurious grounds, later abandoned; the Commission's repeated unsuccessful interventions to get LASA to start complying with the Act, including holding a special urgently conducted PAIA training workshop for its national office lawyers in how to respond lawfully and constitutionally in future to PAIA requests for access to its records, and reporting LASA's repeated non-compliance in its section 84 report to the NA; and Vedalankar's perversion, with deliberately false information, of the Justice Portfolio Committee's enquiries into the matter at a meeting with her, arising from the Commission's said report – all this is detailed in a comprehensive memorandum I submitted to the Commission in late 2016, entitled: 'SPECIAL REPORT ON LEGAL AID SA: AN AGGRAVATED CASE OF REPEATED WILFUL NON-COMPLIANCE WITH THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 TO ILLEGALLY OBSTRUCT ACCESS TO DULY REQUESTED RECORDS, AND REPEATED FALSE ANNUAL AND "CONFIDENTIAL" REPORTING TO CONCEAL THIS FROM THE NATIONAL ASSEMBLY'.[2]

[2] The Special Report is accessible online at https://goo.gl/Ut9eH5. It's to be greatly regretted that it lies unattended in the Commission's office files instead of being brought to the Portfolio Committee's attention under section 84 to enable it to exercise its constitutional oversight mandate over LASA and to hold it to account – with the result that the Committee remains unaware of LASA's ongoing repeated PAIA delinquency over the past decade, and has been repeatedly misled by the Commission's section 84 reports into believing that, besides twice falsely reporting to the Commission under section 32 in 2011 and 2012, LASA has otherwise duly complied with its information transparency obligations, when the opposite has been true, in undoubtedly the most egregious case of persistent, corruptly motivated non-compliance with PAIA in the history of our democracy.

Three subsequent applications[3] that I had to bring in the High Court at Pietermaritzburg in 2016, 2017 and 2018 under section 78 of PAIA to compel LASA's compliance with duly made record requests in those years were set down for argument on 15 March 2019, but were postponed on the novel basis, hitherto unrecognised and indeed repeatedly rejected by other Divisions, that LASA's advocates who'd drawn its answering papers were busy elsewhere with other cases that day, and that it would be cheaper to keep them in the case than to brief other counsel to argue.

Interested[4] in ascertaining the total cost of the postponement application in legal fees and disbursements, my instant request seeks all counsels' fee-notes for their services in drawing the papers and arguing it, and all travel expense vouchers.

I've also requested LASA's section 32 reports to the Commission for 2016/17, 2017/18 and 2018/19 to check their accuracy, seeing as by April 2016 LASA had falsely and deceptively reported to the Commission *five times*[5] to conceal its illegal and unconstitutional non-compliance with my several PAIA requests. And since the Commission mentioned in its section 84 report to the NA for 2015/16 that it hasn't the resources to audit the integrity of such reports, I intend to audit LASA's latest three, as I did its previous ones.

More importantly, I've requested some records to test the veracity of certain allegations Vedalankar made to the Justice Portfolio Committee at its meeting with her in October 2012, quoted in my request, which the Committee member challenging them clearly didn't believe, and which, for a complex of reasons not relevant to detail here, including their corrupt motivation, I'm certain were untrue[6] – and, if indeed they prove to have been untrue, will form the basis of

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[3] The papers are accessible online at goo.gl/Ut9eH5.

[4] The Constitutional Court noted in Helen Suzman Foundation v Judicial Service Commission [2018] ZACC (24 April 2018) ('*HSF*') that '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 of the judgment references 'Section 9(a)(i) of PAIA'.

[5] Detailed in the Special Report, also online at goo.gl/Ut9eH5.

[6] Vedalankar made other untruthful, deliberately misleading allegations at the meeting, canvassed in paragraphs 148–67 of the Special Report, in which she (i) falsely justified with outright lies the illegal and unconstitutional refusals of my first three PAIA requests in 2010 and 2011 ('the unlawfulness' of which the Commission had confirmed in its correspondence with me),

criminal complaints I intend making against her under section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004[7] and under section 86(2) of the PFMA.[8]

Since 2013, LASA has consistently been raising sections 7 and 45 of PAIA against me to refuse virtually all my PAIA requests made for similar serious purposes: namely to expose perjury committed in legal proceedings; criminal lies told to mislead the Portfolio Committee; pervasive systemic corruption of recruitment operations at LASA, both procedural and ethical; and the abuse of public funds[9] on meritless litigation directed at preventing my access to its duly requested records – including records pledged in court just before argument, under pressure of imminent orders compelling their surrender and declaring that LASA's deputy information officers had violated the Constitution in refusing them.

As the Commission's deputy information officer and head of its PAIA Unit, you'll appreciate instantly that section 7 has no relevance and application whatsoever to the decision of a PAIA request, and doesn't afford an information officer a ground for refusing it under any circumstances.[10] Yet to block my access to its

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and (ii) falsely repudiated as 'untrue' the Commission's section 84 report concerning LASA's repeated false reporting to it under section 32 – which false repudiation by Vedalankar the Commission's PAIA expert Dr Fola Adeleke refuted when asked about it at the Committee's meeting with the Commission two months later in December 2012: 'Mr Adeleke answered the question of the LASA disputing the SAHRC's report. LASA could not dispute the finding because the Commission had shown [etc].' These other untruthful, deliberately misleading allegations Vedalankar made to the Committee about LASA's non-compliance with PAIA will also found criminal complaints under section 17(2)(e) of Act 4 of 2004.

[7] 'A person who ... wilfully furnishes a House or committee with information, or makes a statement before it, which is false or misleading ... commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and imprisonment.'

[8] 'An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section ... 55.' Section 55(1)(a) requires: 'The accounting authority for a public entity ... must keep full and proper records of the financial affairs of the public entity'. Chaired by Mlambo JP, the Board is LASA's 'accounting authority' by definition under section 1; and under section 56(1)(a) the Board has delegated its powers as such to Vedalankar.

[9] Section 83(1)(b) of the PFMA prohibits 'an irregular expenditure or a fruitless and wasteful expenditure' by a public entity like LASA, and recoverable personally from the delinquent officers responsible under the Treasury's May 2014 'Guideline on Fruitless and Wasteful Expenditure'.

[10] Section 7, headed 'Act not applying to records requested for criminal or civil proceedings after commencement of proceedings', provides:

> (1) 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;

records and to suppress evidence of the most serious malfeasance, including criminal misconduct, LASA has spuriously raised it against me every time.

And a request for records sought for the extraordinarily serious purposes mentioned above – the genuineness of which LASA has never disputed, and which it's well aware I've commenced acting on[11] – can hardly be 'manifestly frivolous or vexatious' on any bona fide assessment. Yet section 45, which disallows obviously time-wasting requests, is raised to refuse my every request. That is, my clearly serious requests are abusively called 'manifestly frivolous or vexatious' to totally block my access to LASA's records every time.[12]

To justify refusing me access to LASA's counsels' fee-notes for their services in meritless defensive litigation in the Magistrate's Court (abandoned in court at the point of argument) and then meritless aggressive litigation in the High Court (quickly dismissed)[13] to prevent me enforcing the settlement agreement LASA

(b) so requested after the commencement of such criminal or civil proceedings, 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.
(2) Any record obtained in a manner that contravenes subsection (1) is not admissible as evidence in the criminal or civil proceedings referred to in that subsection unless the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice.

[11] Commencing to deal with the gross malfeasance I've found at the very top of the organisation, I filed eight gross misconduct complaints to the Judicial Service Commission ('JSC') against LASA Board chairperson Mlambo JP in mid-2017, most of which concern his documented complicity in and connivance at Vedalankar's illegal and unconstitutional refusals of my early PAIA requests and his covering this up with false reporting to the Minister and Portfolio Committee to successfully pervert their special enquiries into it. Satisfied that my charges against him are substantial and answerable, the JSC's Judicial Conduct Committee required him to respond – which he did evidently unconvincingly and unsatisfactorily, because in a telephone call to me on 11 February 2019, JSC secretary Lynette Bios informed me that the Committee had resolved to institute disciplinary proceedings. The Society of Advocates of KwaZulu-Natal briefed LASA with copies of my eight complaints, being my complete answer to its charge laid in November 2015, of which I chanced to learn in April 2017, that as an advocate I'd professionally disgracefully impugned Mlambo JP's integrity as a sitting judge. My complaints to the JSC, effectively dispositive of LASA's complaint against me, were put up in a supplementary affidavit I made in Pietermaritzburg High Court case 12124/16P and are consequently part of the public court record. They're also accessible online at goo.gl/Ut9eH5.

[12] In his evidence given to the Zondo Commission on State Capture on 11 April 2019, former Independent Police Investigations Directorate head Robert McBride described similar routine spurious categorization of ordinary police records as 'classified' to obstruct his unit's access to them and its investigation of serious malfeasance and corruption in the South African Police Services.

[13] In the style of BOSASA interdicting the Special Investigations Unit to block its corruption investigation, LASA tried interdicting me from (i) enforcing the settlement agreement it had dishonoured by not delivering all pledged records and duly certifying under section 23 those that

made with me in the Magistrate's Court to turn over all requested records for which I'd sued, or duly certify those that don't exist, and to respond to a final PAIA request in the matter of LASA's Senior Litigator posts,[14] LASA has also raised sections 34, 36 and 37 against me to conceal the vast wasted cost of this corruptly driven litigation to obstruct my access to its records, which irregular fruitless and wasteful expenditure I've stated I intend reporting to the Auditor General.

To read with any intelligence sections '34 Mandatory protection of privacy of third party who is natural person'; '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,[15] and didn't then pretend that they were

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don't exist; (ii) from making any more PAIA requests; and (iii) from again suing to compel the delivery of requested records illegally and unconstitutionally denied me, by applying to have me declared a vexatious litigant; but the Pietermaritzburg High Court found LASA's case so manifestly meritless both in law and on the facts that it dismissed it without even calling on to argue. My answering papers and heads of argument are online via the just-mentioned hyperlink. Some of the recruitment corruption I've uncovered at LASA is detailed in my answering affidavit.

[14] In an illegal contravention of section 53(4) of the PFMA, three of these posts have been deliberately left vacant for nearly a decade, in an ongoing cover-up of top level recruitment corruption. The Constitutional Court confirmed in Zungu v Premier of the Province of KwaZulu-Natal and Others (CCT136/17) [2018] ZACC 1 (22 January 2018) that 'leaving' a budgeted and funded 'position' in an organ of state 'vacant' is a 'breach of the provisions of the Public Finance Management Act (PFMA)'. Nine Senior Litigator posts were created by resolution of the Board on 24 November 2006, with the object, according to executive management's motivation for them, of 'Increasing Senior Litigation capacity' to remedy the respondent's lack of 'professional staff that are senior enough to take on … cases of a highly complex nature': 'It is proposed that we build up such capacity at each province linked to a high court unit. Such senior litigators would be able to undertake more complex work as well as support and mentor our other High Court staff'. (The Justice Portfolio Committee repeatedly expressed its concern about this professional deficit.) Three of these funded and budgeted critical posts at LASA have been unfilled for twelve-and-a-half years, during which the indigent in KwaZulu-Natal have been deprived of complex in-house litigation services.

[15] Misdirected by LASA's persistent, repeated illegal suppression of a pivotal record that I'd duly requested under PAIA, I lost a case in the Labour Court, having sued on the wrong cause of action: unfair discrimination instead of everyday recruitment corruption in the form of old-boy-network, jobs-for-pals cronyism, revealed by the said key record eventually released years later, after I'd sued for it – and got condemned in costs, wrongly, the Constitutional Court observed in *Zungu*: 'The correct approach in labour matters in terms of the LRA is that the losing party is not

'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.

LASA's persistent invocation of all these irrelevant and inapplicable sections to falsely and insupportably justify refusing me access to its duly requested public records can only be described, in the language of the SCA in *Claase*, as 'intentionally vexatious', and an illustration of the South African History Archive's ('SAHA's') Freedom of Information Programme's observation in its recent review on 8 January 2019, 'Challenges to Full Realisation of PAIA':

> Non-disclosure of information held by the State … as well as enforced secrecy were at the centre of the anti-democratic character of the apartheid system ... It is unfortunate that in the post apartheid era, information continues to be withheld from the public ... Our experience is that not many people receive training or are informed about this piece of legislation and it is no surprise then that its implementation is extremely low.

And by LASA almost zero.

Considering the history of LASA's repeated illegal and unconstitutional refusals to comply with my PAIA requests and its determined and persistent suppression of records I've sought,[16] I'm expecting my instant request to be illegally and unconstitutionally refused in the usual routine again, with sections 7 and 45 raised against me generally, and specifically to justify concealing its counsels' fee-notes, sections 34, 36 and 37 as well.

And there's little doubt about this inevitability, because in refusing my last PAIA request for certain financial information (addressed to the Justice Department, but transferred to LASA under section 20), LASA Chief Legal Executive Patrick

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as a norm ordered to pay the successful party's costs. ... The rule of practice that costs follow the result does not apply in Labour Court matters', and again in Long v South African Breweries (Pty) Ltd and Others [2018] ZACC 7, citing *Zungu*: 'It is well accepted that in labour matters, the general principle that costs follow the result does not apply.'

[16] Like the Free State provincial administration's persistent withholding of records requested by former Free State economic development MEC Mxolisi Dukoana, needed to support his evidence to the Zondo Commission on state capture and former premier Ace Magushule's involvement in it.

Hundermark told me on 2 March 2018 that any 'future requests will be dealt with similarly', namely 'in terms of section 7 [and] section 45 of PAIA'.

Hoping to forestall yet another illegal and unconstitutional refusal of my instant request on all these fatuous grounds and to obviate the necessity of making yet another application to the High Court to compel LASA's compliance with it, I write, as mentioned at the beginning, to request that the Commission exercise its section 83(3) powers to:

- '*monitor*' under subsection (b) LASA's response to my request, and to see to it that in doing so it '*implement*[s] *this Act*' properly, lawfully and constitutionally, thereby respecting my fundamental right to access its public records;

- '*assist*' me under subsection (c) to exercise my said constitutional '*right contemplated in this Act*' to access the requested records, in the wholly predictable event that LASA again refuses my request, contemptuous of its constitutional information obligations in the democratic era when covering up gross malfeasance and criminality in its top ranks by illegally suppressing further evidence of it;

- '*recommend*' under subsection (d), in the inevitable event of another illegal and unconstitutional refusal, that LASA '*changes ... the manner in which it administers the Act as the Commission considers advisable*', and more specifically that it quit very obviously misapplying sections 7, 34, 36, 37 and 45 of PAIA to my requests to incompetently, illegally and unconstitutionally justify concealing from me duly requested records that I've stated I intend referring to the authorities; and,

- '*train*' LASA's information- and deputy information officers under subsection (d) in how to respond lawfully and constitutionally to PAIA requests by simply confirming to them the following rudimentary principles of the Act:

  1. Section 7 has no relevance and application whatsoever to the decision of a PAIA request; doesn't afford an information officer a ground for

refusing it, not being one of the grounds specified in the closed list permitted by Chapter 4 of Part 2 of the Act, 'Grounds for Refusal of Access to Records'; and can't therefore be lawfully relied on to refuse it. And to invoke section 7 to refuse my instant request will be grossly ignorant, incompetent, illegal, and unconstitutional. And, in the language of the SCA in *Claase*, 'intentionally vexatious'.

2. A PAIA request made for such gravely serious purposes as testing the veracity of allegations made to the Justice Portfolio Committee – which, if shown to be lies, could see its author jailed – obviously can't honestly be dismissed as 'manifestly frivolous or vexatious' as envisaged by section 45. Quite the contrary, such a request is manifestly extremely serious; and should LASA refuse my instant request in its usual routine by calling it 'manifestly frivolous or vexatious', this will be clearly dishonest, incompetent, illegal, unconstitutional, and intentionally vexatious.

3. The fact that a requester has repeatedly tried accessing a public body's records for various different serious reasons over a decade, with virtually all his requests illegally and unconstitutionally refused, only to be surrendered under pressure of repeated litigation,[17] doesn't ipso facto render a subsequent request such as the instant one, also made for the most serious stated reasons, 'manifestly frivolous or vexatious' under section 45.

In striking contradistinction to the relatively tiny number of PAIA requests I've made since 2010 for access to an equally relatively tiny number of records, the High Court recorded in Mandag Centre for Investigative Journalism and another v Minister of Public Works and another (67574/12) [2014] ZAGPPHC 226 (29 April 2014) that since its

[17] To wit, round after round of interlocutory discovery procedure in the Labour Court to extract determinedly withheld documents originally requested under PAIA but refused, and then five applications under section 78 to the Eshowe Magistrate's Court, all conceded at court before argument, and then a sixth application to compel full and proper compliance with the settlement agreement, which disgorged more records that had been promised in the agreement but withheld in breach of it. Three applications are currently pending in the High Court, opposing which – to game the system and obstruct my access to its records for as long as possible with all the virtually limitless resources of the state at its disposal – LASA is relying on exactly the same spurious justifications to block my requests that it abandoned in the Magistrate's Court.

formation in 2011, SAHA had made 'over 1800 requests for information from predominantly government departments' and 'numerous applications in the High Court'.

In its investigation of the Inkandla scandal, the Mail & Guardian newspaper ('M&G') successfully applied to court in the above cited case to compel the delivery of further records over and above 'the tendered documents in excess of 12000, copies of which were provided to the applicants', as the court put it in the said judgment, rejecting the information officer's contention that this 'crossed "the line between a legitimate request in terms of PAIA and abuse of the Act."'

In short, the number of requests I've made over the past decade and the number of records to which I've sought access is miniscule compared with SAHA's and the M&G's, and doesn't make my instant request 'manifestly frivolous or vexatious' under section 45, as LASA has persistently alleged to falsely justify its total refusals of my previous requests. And LASA's refusal of my instant request as 'manifestly frivolous or vexatious', because it follows a number of requests made in the past, nearly all refused, will be insupportable in light of the above-mentioned precedents of very numerous PAIA requests for very numerous records that the High Court has approved, and it will be incompetent, illegal, unconstitutional, and intentionally vexatious.

4. Using PAIA to gather documentary evidence for use in future, intended litigation – such as a proposed rescission application to be brought under common law, based on newly surfaced documents obtained with PAIA after trial and judgment, proving that sworn evidence on which a court relied was perjured, which is to say the court was defrauded, prior to which the Justice Portfolio Committee was also blatantly lied to in the matter – is an entirely perfectly proper use of the Act, as the Commission tried teaching LASA at the special PAIA training workshop it held for it on 6 October 2011 unsuccessfully:

The Introduction to the Commission's report of the workshop records that a key point on which LASA was instructed was the legal and constitutional imperative that requesters like me 'who are wishing to litigate on the basis of PAIA are responded to on the same basis as other [requesters]'.

The Commission's special necessary tuition on the point for LASA's head office lawyers failed. LASA's persistent line following the Commission's evidently fruitless seminar has been that my PAIA requests have been improper and disallowable under section 45 as an obvious waste of its time because some of them have been made with the intention of using records I've sought in future litigation, namely an intended rescission application based on fraud; and because, in LASA's head office lawyers' opinion, dismally ignorant of the ancient, well-settled remedy available to litigants defeated by perjury, such a rescission application is 'impermissible'.

Should LASA raise section 45 against me to refuse my instant request as 'manifestly frivolous or vexatious' on the basis that I'm gathering documentary evidence for use in future, intended litigation, its reliance on the section to do so will be grossly ignorant, incompetent, illegal, unconstitutional, and intentionally vexatious.

5. A fee-note/invoice/statement of account presented by an advocate to an instructing public law firm like LASA, an organ of state, for payment for his professional services:

(a) is a 'record' under the 'Definitions' in section 1 of PAIA and therefore accessible to the public under section 11, upon duly made request for it under section 18;

(b) doesn't contain 'personal information' as precisely defined by section 1, and consequently isn't hit by section 34 providing for the 'Mandatory protection of privacy of third party who is natural person', and therefore can't lawfully and constitutionally be refused under that section;

(c) doesn't contain 'trade secrets of a third party' (per section 36(1)(a)) or 'financial, commercial, scientific or technical information ... the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party' (per section 36(1)(b)) or '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' (per section 36(1)(c));

(d) if released to a requester, entails no possibility that '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' (per section 37(1)(a)); or that such invoice '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' (per section 37(1)(b)); and,

(e) doesn't require the advocate's consent under any provision of PAIA or any other law[18] for its release to a requester; and his refusal to consent to its release is legally irrelevant and founds no legal basis under PAIA for LASA to refuse access to it upon request duly made under section 18.

In sum, sections 34, 36 and 37 have no application to a request for access to LASA's advocates' statements of account showing what professional fees they charged it; and LASA's reliance on these sections to deny me sight of these duly requested public records will be manifestly incompetent, illegal, unconstitutional, and intentionally vexatious.

6. What a PAIA request 'relates to' in LASA's opinion (its own endlessly repeated phrase), i.e. a requester's stated or inferred purpose in making a request, is irrelevant under section 11(3) to the decision of whether or not

[18] For instance, it's not legally privileged either – see A Company and Others v Commissioner for SARS (16360/2013) [2014] ZAWCHC 33; 2014 (4) SA 549 (WCC)(17 March 2014).

to grant it, as the Commission's former resident PAIA expert Dr Fola Adeleke tried teaching LASA deputy information officer Mtati by email on 22 August 2012 unsuccessfully:

> We note ... that the requester's reason for requesting particular information is being deduced.[19] 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.[20]

More particularly, the fact that records requested under section 18 of PAIA might in some way 'relate to' past, pending, or future intended litigation is no ground for refusing access to them, and may not lawfully be asserted as a basis for denying the request as 'manifestly frivolous or vexatious' under section 45; and should LASA refuse my instant request on this basis it will be doing so grossly ignorantly, incompetently, illegally, unconstitutionally, and intentionally vexatiously.

7. A requester's stated reason for requesting access to public body records – such as for use in support of an intended criminal complaint to the National Director of Public Prosecutions – is irrelevant under section 11(3)(a)[21] to the decision of the request; and should LASA cite this stated reason of mine for making my instant request as a basis for refusing it, by 'relat[ing]' it somehow to past civil litigation, thus diametrically contravening the said section, it will be doing so grossly ignorantly, incompetently, illegally, unconstitutionally, and intentionally vexatiously.

8. Unlike section 50(1)(a) regarding 'Right of access to records of private bodies' – 'A requester must be given access to a record of a private body if

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[19] In contravention of section 11(3)(b): 'A requester's right of access contemplated in subsection (1) is, subject to this Act, not affected by ... the information officer's belief as to what the requester's reasons are for requesting access.' Quoted in footnote 4 above, the Constitutional Court confirmed in *HSF* that a public record requester needs no reason for access to it.

[20] Section 11(1): 'A requester must be given access to a record of a public body if– (a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and (b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.' C.f. section 50 governing entitlement to public body records, discussed in point 8 below.

[21] 'A requester's right of access contemplated in subsection (1) is, subject to this Act, not affected by ... any reasons the requester gives for requesting access'.

... that record is required for the exercise or protection of any rights' – section 11 governing 'Right of access to records of public bodies' contains no such requirement, as the Labour Court emphasized in National Teachers Union v Superintendent General: Department of Education & Culture, Kwazulu-Natal and Another (D38/08) [2008] ZALC 18:

> Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the exercise or protection of any rights.

Pathetically ignorant of the most basic distinction PAIA draws between *public* and *privately held records*, LASA's national office has over the past decade repeatedly asserted the test for entitlement to access *private body records* as a basis to justify denying me access to its *public records*:

In October 2010, my entire first PAIA request in August[22] was 'declined as it is not relevant to you exercising any right you may have in law'. Again in April 2011, several records requested in March were refused because they were 'not relevant'. Again in November 2017, part of my request in October was refused because it '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'.

Should LASA assert for the fourth time that I'm not entitled to the records I've requested because I haven't claimed and showed that I need them to exercise or protect any of my rights, and because, in LASA's opinion, the records are 'not relevant' to exercising my rights, its refusal to comply with

[22] Made inter alia, and most importantly, for the selection panel's report of its candidate recommendation for the Pietermaritzburg Senior Litigator post, the report was strangely furtively repeatedly refused on changing grounds: first ignored (a mute refusal under section 27); then expressly refused by allusion to sections 34 and 50; then refused again now specifically under section 44; then refused again now under sections 7 and 45 cited, with these justifications repeated in answering papers when I sued for the record. The complete recommendation report was finally released, years after the trial of my labour claim, following LASA's capitulation at court to my claim for the record, at the point of argument, to avoid an imminent order to compel delivery of the record, coupled with a declaration of constitutional delinquency under section 82(c), peremptory under section 172(1)(a) of the Constitution.

my request on this basis will be grossly ignorant, incompetent, illegal, unconstitutional, and intentionally vexatious.

9. The fact that another public body has a copy of the records requested (in casu, LASA's section 32 reports, also in the Commission's possession) is no ground under PAIA to refuse the request.

In November 2017, part of my request in October (for a copy of a letter LASA wrote about me) was refused on the stupefyingly legally illiterate basis that I 'have every right in terms of the general principle of fairness to approach the [Magistrates] Commission who will deal with it [my request for access to the letter] in accordance with their own processes.'

Should LASA deny me access to its section 32 reports that I've duly requested and tell me to go off and 'approach' the Commission for them instead, 'in terms of the general principle of fairness', its refusal of my request on this basis will be grossly ignorant, incompetent, illegal, unconstitutional, and intentionally vexatious.

10. Finally, section 25 doesn't allow an information officer to deliberately keep a requester waiting for the 30 days maximum the section allows before notifying his or her decision to refuse his request as 'manifestly frivolous or vexatious' under section 45. If the request is clearly a waste of time in his or her alleged opinion therefore barred by section 45, section 25 requires that the requester be notified of the refusal 'as soon as reasonably possible', i.e. right away, so the requester can claim access to the illegally and unconstitutionally refused records in court, without unnecessary delay.

And if in the information officer's alleged opinion the request is an obvious waste of time and hit by section 45, then any ground advanced under section 26 for extending the maximum time allowed by section 25 for a response will be mala fide and insupportable, seeing as an extra month – two months in total – can't genuinely be necessary to respond to a request that's a pointless waste of time on its face and therefore disqualified by section 45.

> LASA has consistently and repeatedly failed to respond expeditiously to my requests as section 25 has required of it; and it has consistently and repeatedly abused section 26 to cynically delay notifying me of its refusals on the disingenuous basis claimed after two months that they're plainly just a pointless waste of time and therefore disallowable under section 45, etc.
>
> Should LASA once again slow-walk its response to delay notifying me of its reflexive knee-jerk refusal of my instant request as a waste of its time, this will be unlawful and intentionally vexatious.

Simply confirming to LASA, in the exercise of the Commission's section 83(3) powers, the correctness of these ten elementary points will likely prevent it again misapplying the provisions of the Act and violating my constitutional right of access to its public records – unless LASA means to show its contempt not just for the Constitution but also for the Chapter 9 institution empowered to see to the state's compliance with its information transparency provisions.

So I'm really not asking much of the Commission in requesting merely that it give its imprimatur to these ten basic educational modules in how not to respond PAIA requests illegally and unconstitutionally this time round.

In conclusion, how did we get to this? How's it possible that the 'the biggest law firm on the African continent', as its website bills it, 'the largest legal institution in Africa', headed by a judge president as a putative guarantee of constitutional, legal and ethical probity in the conduct of its operations, should so determinedly, persistently, dishonestly and obtusely violate, with complete impunity over the past decade, the public information transparency provisions of our democratic Constitution, despite all the checks crafted by Parliament and put in place to prevent this, namely the reporting provisions of sections 32 and 84 of PAIA; the monitoring, assisting, training and remedial teaching provisions of section 83(3) of the Act; and the parliamentary oversight provisions of section 55(2)(b)(ii) of the Constitution?

The crisis can be traced to a number of causes:

First, the Commission's email records reveal that LASA's repeated and persistent illegal and unconstitutional refusals to comply with my first three PAIA requests in 2010 and 2011 about which I'd repeatedly complained to it – referred to by the Commission as 'the Brink matter' and 'the Brink saga ... reported to ... Parliament' – showed a 'worryingly high ... incidence of confusion' at LASA about what its information transparency obligations are, to the extent that the Commission found its national officers were 'not aware of the PAIA legislation at all', leading it to 'urgently' conduct a 'training intervention' to provide them with 'a working knowledge of PAIA' found totally lacking among them.

In its report of the PAIA training symposium it held for LASA in October 2011, the Commission reiterated its earlier observations that 'Most participants had no prior knowledge of PAIA' and were 'overwhelmed by the requirements of the legislation' causing 'inconsistent application in the organisation'.

Indeed, LASA's head office lawyers frankly confessed their total 'lack of application based knowledge' and their consequent 'challenges complying with PAIA'. They 'identified [the] misinterpretation and misapplication [of PAIA] as of high risk to LASA' and 'reacted to the reporting of LASA as non-compliant to Parliament with concern.'

Most significantly, they conceded that 'they had previously been misapplying the provisions of PAIA in certain instances' – i.e. to my PAIA requests of 2010–11, the only 'instances' in which any PAIA requests were refused in those years, and the very reason the training workshop was held (per the Commission's email records) 'as soon as possible' (i) to remedy the emergency arising from this major public body's continuing violation of the Constitution in ignorantly, illegally, and unconstitutionally refusing my PAIA requests, and (ii) to ensure that 'misapplication [of the Act by LASA] does not recur'.

Having 'undertaken to review decisions which may not have had justification in terms of PAIA', i.e. the illegal and unconstitutional refusals of my first three PAIA requests, in regard to which it had 'previously been misapplying the provisions of PAIA', LASA promptly reneged on its undertaking to the

Commission and continued withholding records I'd requested, which, by its own admission to the Commission, it had illegally denied me. And which suppressed records I then had to crow-bar out of LASA by dint of round after round of pre-trial discovery procedure in the Labour Court: no less than three pre-trial conferences, two under judicial supervision at court, and an application to compel discovery of the records that LASA didn't want me and the judge to see.

As LASA's subsequent repeated 'misinterpretation and misapplication' of the Act and its obviously illegal and unconstitutional total refusals of my further PAIA requests showed, the Commission's special remedial lesson for LASA's national office in how to apply the Act was a total failure.

Second, having particular regard to the 'primacy of the legislation' in our open democracy (I'm quoting the report); 'the status of PAIA as a fundamental right [enforcement law]'; 'public bodies as repositories of information' and 'transparency and public participation' as 'fundamental cornerstone[s] of sound democracies', all of which was 'reiterated and emphasized at different points of the training', LASA acknowledged that 'a review of the organisational response to PAIA was necessary to improve compliance and efficacy' and it undertook to the Commission 'to create a structure ... to further enhance the process of implementation and compliance ... critical ... for fulfilment of the PAIA mandate.' To ensure 'the provision of increased accessibility of information', LASA 'identified the need to have a clear budget dedicated to PAIA compliance and implementation', for the reason that 'PAIA application was time consuming and compliance required dedicated personnel'.

LASA reneged on this further undertaking to the Commission as well, and failed to attend to any of this, with the result that 'misapplication' of the Act in consistently and repeatedly illegally and unconstitutionally blocking my access to duly requested 'information' has continued to 'recur', year after year to date.

Third, according to the Commission's attendance register, none of LASA's information- and deputy information officers bothered to attend the 'urgently' conducted 'training intervention', and consequently none of them possess any 'working knowledge of PAIA' as is evident from the ongoing illegal and

unconstitutional blanket refusals of my PAIA requests on obviously spurious grounds year after year since 2010, as a result of LASA's continuing 'misinterpretation and misapplication' of the Act.

This is despite the fact that 'the SAHRC was of the view' expressed to the Justice Portfolio Committee in December 2012 (per the Parliamentary Monitoring Group's minute) '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'. Since the Act is 'very technical' it naturally behoved LASA's information- and deputy information officers to undergo the 'training' the Commission offered 'to ensure that', like magistrates, they 'had the skills to apply it' too. But as said, none of them presented themselves for such 'training' when the Commission gave LASA's head office special corrective instruction regarding PAIA under section 83(3)(c) and (d) on how to apply the Act, after the repeated illegal and unconstitutional refusals of my first three PAIA requests in 2010 and 2011, which had moved the Commission to 'urgently' intervene in LASA's repeated ongoing violation of the Constitution.

The result of their truancy from the special remedial class on PAIA is that the 'very technical' field of constitutional information law in our country remains entirely beyond LASA's information- and deputy information officers' mental grasp – likewise such basic constitutional norms in the post-apartheid era, to which they remain complete strangers, as 'transparency and public participation' as 'fundamental cornerstone[s] of sound democracies'; and LASA has continued to grossly misapply the provisions of the Act to meretriciously falsely justify refusing my requests and prevent me accessing its public records in the exercise of my constitutional right to do so, with the object of obstructing my corruption investigation by all means possible.

Fourth, instead of deciding and responding to PAIA requests herself, or duly instructing one of her deputy information officers to do so subject to her supervision under section 17(2), information officer Vedalankar has abdicated her statutory and constitutional obligations imposed by PAIA[23] by passing my PAIA requests on for decision by Corporate Legal Manager Solly Sekgota,

[23] Section 1 designates the CEO of public bodies like LASA 'information officer' ex officio.

described in LASA's section 32 report for 2016/17 as its 'PAIA functionary' – an office unique to LASA; not contemplated by PAIA; and ipso facto illegal – with his refusals of my requests nominally signed by his superiors to fake a patina of legality, invariably deputy information officer Mtati and most recently Hundermark. Sekgota confirmed as much in an email to a third party on 28 November 2017 concerning my PAIA request of 30 October 2017: 'I have to reply tomorrow.' As usual, Mtati signed his 'reply' refusing my request as usual.

Since the Act doesn't permit anyone besides an information officer or a duly delegated deputy information officer to decide PAIA requests, and Sekgota holds no such delegation, he's been refusing my requests ultra vires and illegally, the merits of his justifications quite aside.

Not only is Sekgota legally unqualified and incompetent to handle my PAIA requests, he's also legally clueless. Sekgota was one of LASA's head office lawyers present at the Commission's PAIA training workshop who repeatedly confessed that as far as the practice of constitutional information law goes he doesn't have the faintest idea of what he's doing. (I quote LASA's head office lawyers above frankly admitting this.) And as is evident from his incompetent reliance on wholly irrelevant and inapplicable sections 7, 34, 36, 37 and 45 of PAIA to illegally and unconstitutionally refuse my PAIA requests year after year, Sekgota remains incorrigibly ignorant of the Act and how to apply it to respect and give effect to my fundamental civil right to public information enshrined in section 32(1)(a) of the Bill of Rights in the Constitution. The Commission's training seminar evidently went in one ear and out the other, completely over his head, none of it comprehended. In other words, LASA's Corporate Legal Manager and PAIA functionary Sekgota has demonstrated irremediable learning difficulties, which is to say PAIA requests at LASA are being decided by a legal imbecile.

Another of LASA's special-needs lawyers identified in the attendance register as requiring extra lessons in how to respond to PAIA requests properly was Mtati, the nominal author of most refusals of my requests since 2013; but as the unsigned open entry in the register shows, he bunked the class and therefore

wasn't taught and didn't learn from the Commission how to respond to PAIA requests legally and constitutionally.

Mtati's repeated signature of Sekgota's illegal and unconstitutional refusals of my requests year after year shows that LASA's second most senior attorney remains wholly ignorant of PAIA and equally lacks 'the skills to apply' it.

Fifth, this shambles is compounded by the fact that LASA's de facto supreme authority in PAIA matters, Chief Legal Executive Patrick Hundermark, is even less legally educated than LASA's abysmally ignorant and incompetent 'PAIA functionary' Solly Sekgota.

Both the Commission's email records and Hundermark's correspondence with me reflect that he's been directly involved in the illegal and unconstitutional refusals of my PAIA requests and suppression of duly requested records right from the start. They record his false assurance given the Commission that my initial PAIA request of August 2010, which had been ignored, would be duly responded to in October 2010; instead it was expressly refused in toto that month on utterly spurious grounds, abandoned and replaced with other equally spurious ones in January 2011, themselves later abandoned under relentless pressure in the Labour Court to discover documents that had been duly requested under PAIA but illegally and unconstitutionally refused, but finally yielded in the litigation after protracted resistance.

The Commission's email records further reflect that Hundermark was well aware of the Commission's alarm over Vedalankar's illegal and unconstitutional total refusal in October 2010 of my initial August request, and refusal again on new different equally irrelevant and inapplicable grounds in January 2011, as well as her similarly illegal refusal of my December 2010 request and Nair's illegal refusal in April 2011 of key records listed in my March request. The Commission's email to LASA's Legal Training Practitioner Raju of 12 July 2011 records that 'the reporting of the Brink saga (you may be familiar with it – Patrick [Hundermark] is) to Parliament and the Commission has brought LASA's organizational [non]compliance with the legislation into sharp relief.'

Despite this '[non]compliance' with my early PAIA requests, i.e. 'the Brink saga ... report[ed] to Parliament' that spurred the Commission to 'urgently' teach LASA how PAIA works, and with which '[non]compliance with the legislation' Hundermark was 'familiar' – indeed LASA's internal email records show he was centrally involved in arranging the PAIA training workshop – he has personally persisted in illegally and unconstitutionally obstructing my PAIA requests to date: by himself unlawfully raising a spurious financial charge against me in February 2015 for alleged background reading of my November 2014 request, not permitted by the Act and ultimately abandoned at court, along with the section 7 and 45 justifications advanced for refusing to respond to the request; and by himself refusing in March 2018 – on the usual basis: sections 7 and 45 – my request for certain financial records that I'd addressed to the Justice Department, which the latter had transferred to LASA.

Although he's not a deputy information officer at LASA, not holding a written delegation as such by information officer Vedalankar under section 17,[24] and he therefore has no legal authority to deal with PAIA requests, LASA's section 32 report for 2013/14 shows that Hundermark has been illegally conducting himself as a 'relevant authority' (per section 1) in incompetently deciding and dismissing appeals by requesters against the refusal of their record request.

Had Hundermark deigned to present himself for training by the Commission in how PAIA works – the attendance register shows he didn't – he'd have been taught the basic point, among all the others he missed, that section 1 of PAIA defines LASA as a 'public body' of the category-(b) type (per the report mentioning this), and that accordingly it has no internal appeal process and no 'relevant authority' to decide appeals.

[24] LASA's PAIA manual incorrectly identifies the 'Chief Legal Executive' as a deputy information officer. Corrected in my heads of argument in my second PAIA application to the High Court, I mistakenly allowed in my replying affidavit that Hundermark's designation by the PAIA manual as a deputy information officer, on which nomination he stood and crowed in his answering affidavit, qualified him as such. As I pointed out in my heads (online at goo.gl/Ut9eH5) with reference to the provisions of section 17, Hundermark is not in fact a duly delegated deputy information officer, not holding a written delegation by Vedalankar, and his refusal of my request for financial records (sought from the Justice Department) was ultra vires and illegal on its own terms.

In sum, the ultimate problem with LASA's ongoing wilful non-compliance with PAIA – to illegally and unconstitutionally suppress duly requested records, with the aim of obstructing the exposure and reporting of a disintegrating cover-up of the most serious malfeasance, including criminal misconduct – is that its information- and deputy information officers and head office lawyers, including Legal Executive Mtati and Corporate Legal Manager Solly Sekgota, both in Hundermark's unfortunately named Legal Development Department, are taking their cues in PAIA matters from a complete legal ignoramus in constitutional information law, who's proved incapable of 'legal development' himself.

Thanks to top LASA attorney Hundermark's pitiful ignorance of the Act, its 'misinterpretation and misapplication' continues to pose a 'high risk to LASA'.[25]

Sixth, by repeated false annual reporting under section 32, LASA has concealed from the Commission its flagrant ongoing defiance of the information transparency provisions of the Constitution and its non-compliance with PAIA giving effect to them. And thus misinformed and deceived by LASA year after year, and relying on the false information provided it, the Commission has repeatedly falsely reported LASA to the NA in its annual section 84 reports as PAIA compliant in its responses to my record requests over the years, when in truth and in fact virtually all of them have been illegally and unconstitutionally refused.

Seventh, the gatekeepers of the information I've been requesting since 2010 are the very same national management executives directly implicated in the malfeasance I'm investigating with my PAIA requests, which, after repeated litigation to compel compliance with them, have already turned up dismissible and criminal misconduct. (It's been like asking a man to hand over the rope for his own hanging – explaining LASA's extreme resistance to complying with my record requests under one changing false excuse after another, speciously claimed to be rooted in the Act.)

[25] See the several heavy orders claimed in my three notices of motion in the High Court, online at goo.gl/Ut9eH5.

Looking to LASA's Board to exercise its oversight responsibility over executive management to ensure its compliance with the Constitution and the law in the conduct of LASA's operations has proved to be an absolute waste of time. How Mlambo JP twice responded disgracefully to my repeated appeals to him and the Board in the past concerning the repeated clearly illegal and unconstitutional refusals of my early PAIA requests (also to ministerial and parliamentary enquiries into it), in breach of his oath to defend and uphold the Constitution, is the precisely the subject of several of my pending complaints against him to the Judicial Service Commission.[26]

Eighth, staff turnover at the Commission over the past decade has resulted in loss of institutional memory, with the result that my repeated appeals for its support over the years have aroused no sense of accelerating crisis and the dire need for further intervention in LASA's continuing violation of section 32(1)(a) of the Constitution.

In the event that I have to apply to the High Court yet again, for the fourth time – my tenth application, counting those made to the Magistrate's Court – to vindicate my violated fundamental right to access the public records specified in my instant request, or to obtain sworn certification in some cases that they don't exist, I'll put this letter up with my founding affidavit, together with your response to it, to demonstrate that before approaching the court again under section 78 for relief under section 82 I tried obviating this easily avoided, unnecessary further litigation (per the SCA in *Claase*)[27] by seeking the Commission's support, specifically contemplated by the Act, with a request that it exercise its special statutory powers to assist requesters like me under section 83(3)(c), and to teach LASA's information- and deputy information officers under section 83(3)(e) how to apply the Act properly, including correcting under section 83(3)(d) their persistent misapplication of the Act in responding to my PAIA requests by yet again raising obviously wholly irrelevant and inapplicable

[26] Accessible online at goo.gl/Ut9eH5.
[27] The case 'illustrates how a disregard of the aims of the Act and the absence of common sense and reasonableness has resulted in this court having to deal with a matter which should never have required litigation.'

sections of PAIA against me to falsely justify suppressing duly requested information to obstruct my corruption investigation and evade accountability for the multiple malfeasances, including criminal misconduct, which I've already established, and in regard to which I'm gathering further evidence.

And should LASA disregard the Commission's corrective advice given as our country's officially appointed PAIA experts, monitors, assistants, and teachers under section 83(3), and persist in refusing my instant request on the same spurious grounds it's been raising against me since 2013 to justify violating my constitutionally guaranteed right to public information, and I'm forced to sue yet again, then obviously there'll be hell to pay by the delinquent officers responsible, by way of personal costs orders made against them, *à la* the well known *Black Sash* and *SASSA* decisions of the Constitutional Court.

Please monitor the matter under section 83(3)(b) pending LASA's decision of my instant request. I'll let you know what it is as soon as I receive it.

Yours sincerely

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For convenient copying and/or further distribution, electronic copies of this letter and the PAIA request annexed to it are available both in PDF and MS Word at goo.gl/Ut9eH5.