

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

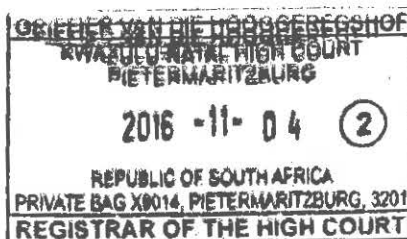
Case No: 12124 /2016 P

In the matter between:

LEGAL AID SOUTH AFRICA

and

ANTHONY ROBIN BRINK



Applicant

Respondent

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BRAAMFONTEIN

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BRAAMFONTEIN, 2017

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C/O: PIETERMARITZBURG JUSTICE CENTRE

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PIETERMARITZBURG, 3201

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REF: T MTATI/S SEKGOTA

TO: THE REGISTRAR OF THE HONOURABLE COURT
PIETERMARITZBURG HIGH COURT

AND TO: **ANTHONY ROBIN BRINK**
RESPONDENT
23 BAKER ROAD
PRESTBURY
PIETERMARITZBURG
CEL: 083 676 0884

15 FA 18"
322

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The new address is:
33 Hoofd Street
Braampark Forum 3
Braamfontein
2198

Postal address remains as:
Private Bag X 2700
Houghton
2041

New Telephone number
011 877-3600
Fax numbers: 011 403-0682.



**SOUTH AFRICAN HUMAN RIGHTS COMMISSION
COMPLAINT FORM**

For office use only

Province:		City/Town:		Reference No:	
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PART A: YOUR DETAILS

1. Name and surname

Anthony Brink

2. ID number

5902255116081

3. Race

W

4. Gender

M

5. Address and contact numbers

The Cottage, 1 Boast Street, Eshowe 3815, KwaZulu-Natal

o. 035 474 2171

h. 035 474 0145

c. 083 779 4174

f. 086 672 0776

e. arbrink@iafrica.com

PART B: DETAILS OF PERSON ON WHOSE BEHALF YOU COMPLETE FORM (PERSON OR ORGANISATION)

N.N

6-11.

N/A

PART C: THE COMPLAINT

12. Date

3 February to 26 May 2015

13. Is it still happening

Yes.

14. Where did it happen

Johannesburg, Gauteng.

15. If you know, which right(s) in the Bill of Rights was/ were violated or is/are being violated

The right to information held by the state, entrenched by Section 32.

16. If you know, the full name(s) and surname(s) of person(s), association, organisation or organ of state who violated these rights, please tell us

Legal Aid South Africa ('LASA').

17. Where can we contact them

29 De Beer Street, Braamfontein, Johannesburg.

t. 011 877 2000

18-19.

N/A

20. In your own words, tell us exactly what happened (include all information but be as brief as possible)

1. LASA has unlawfully refused me access to records duly requested under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act'), and is unlawfully demanding fees not contemplated by the Act. All documents referred to herein are annexed hereto.

2. On 26 May 2015 LASA justified its final blanket refusal of my PAIA requests in November 2014 on the ground firstly that 'The records you are requiring relates to and are ancillary to' previously adjudicated and other pending litigation, and secondly on the ground that 'your requests are malicious and seek to divert the resources of Legal Aid South Africa'.

3. This is after I'd asked LASA information officer Vidhu Vedalankar in March to intervene under her power and responsibility under section 17 of PAIA to ensure LASA's compliance with the

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Act and to remedy her deputy information officers' failure to comply with PAIA by unlawfully refusing my PAIA requests (Nair) and by obstructing them with unlawful money demands (Hundermark and Makokoane).

4. The legal vacancy of Nair's various justifications is further treated in the Appendix hereto. The legal incompetence of Hundermark's and Makokoane's money demands is dealt with below.

5. Section 11(1) of PAIA requires that I 'must be given access to a record of a public body' like LASA if I've 'comple[d] with all the procedural requirements' (undisputed) and 'access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part', i.e. Part 2 of the Act.

6. That records requested may 'relate to and are ancillary to' some past or pending litigation isn't a 'ground for refusal contemplated in Chapter 4 of this Part', i.e. sections 34 to 45.

7. LASA appears to have been alluding to section 7 of the Act. This ordinarily bars the use in legal proceedings of records obtained via PAIA after they've commenced, unless 'the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice'.

8. Since LASA's 'relates-to-and-is-ancillary-to-litigation' justification for refusing me access to the records I've duly requested isn't a ground for refusal contemplated by Chapter 4 in Part 2 of PAIA, it's incompetent and unlawful on its face.


9. The second ground advanced for the final blanket refusal of my November requests, namely that they 'are malicious and seek to divert the resources of Legal Aid South Africa' is an apparent allusion to section 45, which bars 'Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources'.

10. Giving the lie to this second justification for refusing all my PAIA requests in November 2014, however, LASA stated as one of its reasons for requesting an extension of time to respond, that my 'requests ... incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa.'

11. That is, LASA acknowledged that provision of the records to me, or sworn certification that they didn't exist in certain cases, would expose 'the officials of Legal Aid South Africa' to the gravest personal and professional consequences.

12. I spelt some of these out in my letter to Vedalankar in March 2015, in which I informed her that I was 'collecting evidence for a perjury prosecution on a score of different counts, a sacking, a professional strike-off, and an application for leave to appeal with further cold print evidence of perjury on multiple scores.'

13. On LASA's own version, therefore, my requests weren't 'manifestly frivolous', they were manifestly exceptionally serious. And having been explicitly apprised of my serious purposes, LASA's final empty charge that I merely 'seek to divert the resources of Legal Aid South Africa'

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in requesting LASA furnish me with the records I seek (or certification of non-existent records) is transparently insupportable.

14. To the extent that LASA has correctly surmised (albeit irrelevantly under section 11(3)) that I'm seeking records (or certification they don't exist in some cases) for litigation purposes, as appears from its first ground for refusing my November requests, LASA appreciates on its own showing that my purpose in requesting them is serious and not 'manifestly frivolous' and intended to waste LASA's time. So the two grounds advanced for refusing my requests are contradictory and mutually destructive.

15. LASA's refusal of my request in March 2015 for specified insurance records were refused on the ground that each of these 'contains' or 'relates to commercial information of a third party' and is 'protected in terms of the Act', namely section 36, specifically mentioned in the final refusal.

16. Subsection 1 provides (subsections 2 and 3 are irrelevant):

36 Mandatory protection of commercial information of third party

(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.

17. LASA doesn't even allege, much less show, that the insurance records I seek are hit by any of subsections (a) to (c).

18. Even if they had been, the disqualification would have been over-ridden by section 46, which provides (I've redacted it for relevance):

46 Mandatory disclosure in public interest

Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section ... 36(1) ... if-

the disclosure of the record would reveal evidence of-

(i) a substantial contravention of, or failure to comply with, the law;

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... and ...

the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.


19. In my letter to Vedalankar I stated that 'I anticipate that the content of [LASA's] reports [to its insurer Camargue to assist it in 'managing the matter' of my claim against LASA in the Durban Labour Court and on petition to the Judge President of the Labour Appeal Court] will support a criminal charge and a civil action for insurance fraud' – precisely the sort of 'substantial contravention of ... the law' contemplated by section 46.

20. In addition to illegally refusing my PAIA requests, LASA has demanded and persists in demanding thousands of rands from me, variously for reading my requests, for doing background reading, and for time spent being briefed about my requests – none of which is permitted by the Act. The only fees chargeable under section 22 are request fees (which I paid), and search fees for searching and copying, but only in respect of records to which access has been allowed, not refused.

21. Profoundly aggravating this case is that directly on account of my repeated appeals and complaints to the SAHRC about LASA's illegal refusal to comply with my PAIA requests in 2010 and 2011 (to suppress evidence refuting its lying budgetary insufficiency excuse for aborting my Pietermaritzburg Senior Litigator appointment, following my unanimous selection for the post), the SAHRC held a special PAIA training workshop for LASA's national office lawyers on 6 October 2011, on, inter alia, (per the SAHRC's report afterwards) 'the need to ensure that clients who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants', at which training workshop LASA admitted that it 'had previously been misapplying the provisions of PAIA' (to my requests, the only ones refused), and had 'undertaken to review decisions which may not have had justification under PAIA [it never did] and to create guidelines within the organisation to ensure misapplication does not recur' (it never did). Despite this special training by the SAHRC, per the report, on 'the importance of PAIA as a fundamental right' (sic), LASA brazenly persists in illegally refusing my PAIA requests, violating my fundamental right to information in so doing, with the criminal intention of hindering the exposure of massive pervasive corruption among LASA's top officers and thereby defeating the ends of justice.

21. Have you reported the matter to anyone else

Yes, to the Public Protector's Provincial Representative for KwaZulu-Natal, but his investigator Siphso Cishe refused to mediate. My reply, copied to the national office, clarifying his several basic misconceptions founding his decision and persisting with my appeal for Public Protector mediation has drawn no response to date, besides a phone call on 10 June 2015 from Adv Elsabe de Waal, Chief Investigator: Service Delivery in the national office, assuring me the matter would be followed up. (A previous appeal for assistance to resolve LASA's persistent illegal refusal to comply with PAIA in 2010 and 2011, and two successive formal complaints to

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the Public Protector about LASA's false annual reporting to the SAHRC under section 32 (vaguely, softly reported by the SAHRC to the National Assembly in 2012), all went nowhere.)

22. Were any steps taken by the person/association/organisation/organ of state to resolve the matter

No. My plea to information officer Vedalankar to intervene under her power and responsibility under section 17 of PAIA to ensure LASA's due compliance with my record requests and to remedy her deputy information officers' violation of my right to information by unlawfully refusing them and unlawfully obstructing them with incompetent money demands was rejected.

23. What outcome do you propose or expect from this complaint (tell us what you would like to achieve with this complaint and the relief sought)

The relief I seek from the SAHRC is that it carry out its several statutory functions with which it's charged by section 83 of PAIA to 'monitor the implementation of this Act', 'recommend a public ... body make such changes in the manner in which it administers the Act as the Commission considers advisable', 'train information officers and deputy information officers of public bodies', and 'if reasonably possible, on request, assist any person wishing to exercise a right contemplated by the Act', and thereby assist me exercise my fundamental right to information given effect by PAIA.

The ultimate outcome I expect to achieve is that, on the SAHRC's recommendation, LASA reverse its refusals to comply with the Act, respect my fundamental right to information entrenched by section 32 of the Constitution, and allow me access to the records I've duly requested, or, where they don't exist, certify this on oath under section 23. And abandon its illegal money demands.

24. Do you need an interpreter when attending any proceedings, investigations or hearing at our offices

No.

In performing its statutory mandate to 'recommend' that LASA 'make such changes in the manner in which it administers the Act as the Commission considers advisable' – namely to begin complying with it – it would be best were the SAHRC to confine its communication with LASA to writing, so that a record is kept of the steps the SAHRC took, if any, should its intervention, if any, be unsuccessful and the matter necessarily then proceeds to the High Court – in other words, should the SAHRC find itself powerless to overcome LASA's brazen contempt for the Constitution and the law and fail to achieve its compliance with the Act to give effect to my constitutional right to information.

25. Can we use your name in news reports or letters we write regarding this matter/complaint

Yes.

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26. Please tell us how you heard about the South African Human Rights Commission (e.g. radio advert, newspaper, poster, from a friend, etc)

As a lawyer I'm au fait with our Chapter 9 institutions and their functions and responsibilities.



19 June 2015

Signature of complainant

Date

Remember:

- To attach a copy of your ID, birth certificate, passport or proof of the registration number of an association, organisation or organ of state, if available.
- To attach any copies of documents which can assist in this matter.

Copy of ID herewith.

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APPENDIX

Note: My records request addressed to Nair comprised fourteen items, and these are treated in the following centrally numbered parts. Section '(a)' of each part identifies the records to which I requested access, or Nair's sworn confirmation under section 23 in any case the records don't exist. Section '(b)' records Nair's various justifications for refusing me access to them, which for clarity I've set in italics. Section '(c)' rebuts Nair's justifications, and demonstrates the unlawfulness of Nair's refusals and the irrelevance of the sections of PAIA he relies on, as well as his other justifications not referenced to the Act.

1.

(a) **Request:** The minutes kept by HRE Amanda Clark¹ of the 'second round interviews' held 'for some Regional Operations Executive posts',² as alleged by LASA's single witness NOE Brian Nair at the trial of case LC D529/11.

(b) **Refusal:** *This request cannot be acceded to in terms of section 7 as it relates to the evidence in the matter pending before Court.*

(c) **Rebuttal:** Section 11(1) provides:

11 Right of access to records of public bodies

(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.

'CHAPTER 4 GROUNDS FOR REFUSAL OF ACCESS TO RECORDS (ss 33-46)' doesn't include section 7, and Nair's justification based on section 7 for refusing these records is accordingly incompetent and unlawful.

Section 7 doesn't afford an information officer a ground for refusing a record. It ordinarily bars a litigant from adducing in evidence a record obtained via PAIA after the commencement of the case, but the rule is not absolute and section 7(2) gives the trial court a discretion to admit such a record.

¹ Record, page 372, line 23 to page 373, line 2. '[HRE Clark] would assist in the writing up of whatever recommendations flow out of the ['second round interview'] panel'.

² Record, page 338, lines 8–9.

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Not being founded on any grounds allowed by Chapter 4, the fact that a request in some manner 'relates to the evidence in the matter pending before Court' is no valid justification for refusing a request.

Judgment had been delivered when I made the request, so the case was already over, and no longer 'pending'.

2.

- (a) **Request:** The recommendations made by the selection panels of candidates (i) for the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, (ii) for the Pietermaritzburg Senior Litigator post when it was first advertised, and (iii) for the Kimberly Senior Litigator post – if a recommendation was made – showing inter alia the names of (a) the shortlisted and interviewed candidates, (b) the recommended candidates, and (c) the members of the selection panels.
- (b) **Refusal:** *This request cannot be acceded to in terms of section 7 as it relates to the evidence in the matter pending before Court.*
- (c) **Rebuttal:** This repeated incompetent and unlawful justification is rebutted above.

3.

- (a) **Request:** In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, the emails sent by the ROEs to Nair³ (or by the RHRMs to Clark, forwarded to Nair) covering the selection panels' recommendations and the CVs of the recommended candidates, as well as the CVs of the other candidates who were shortlisted and interviewed by the selection panels but not recommended by them – in compliance with the 'specific requirement of the second [round interview] panel'⁴ to send all CVs, and not only those of the recommended candidates, since it was 'The practice of the ... second round panellists to ... consider if there was anyone else they would be interested to interview.'⁵

³ Record, page 407, lines 11–14. '[I] would then have found that email again because it would have been in my box'.

⁴ Record, page 349, lines 7–15. 'In fact, a specific requirement of the second panel was that all candidates who were interviewed or shortlisted for the first round, their CVs had to be sent ... so that the second round panellists could consider if there was anyone else [besides the recommended candidate] they would be interested to interview.'

⁵ Record, page 349, lines 10–17.

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(b) **Refusal:** *This information relates to third parties and falls within the ambit of section 37 read with section 47 and 48 of the Act.*

(c) **Rebuttal:** Subsection 1(b) of section 37 in Chapter 4, 'Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party' allows that 'the information officer of a public body- ...

(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.

Nair doesn't have any facts to state to support requirements (i) and (ii).

Section 37 manifestly has no application to the records requested under this item, and Nair has obviously grabbed at the wrong section.

If he possibly meant to grab at subsection 1 of section 34 instead, 'Mandatory protection of privacy of third party who is natural person', which stipulates that 'the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party', he's failed to show that the mere covering emails in question contain any 'personal information about a third party'.

Nair purports to fortify his refusal under section 37 by suggesting that it be 'read with section 47 and 48 of the Act'.

Section 47, 'Notice to third parties', imposes a duty on an information officer to notify an affected third party contemplated in sections 34 and 37. Section 48, 'Representations and consent by third parties', affords such parties an opportunity to oppose or agree to the release of a record containing their 'personal information' or 'confidential information'. Since section 37 is irrelevant (and section 34 too), sections 47 and 48 are equally so.

The fact that a request 'relates to third parties' doesn't ipso facto not bring it within the ambit of section 34 – not unless the record contains 'personal information'. Not having any interest in such, I headed my annexure with the notice that it 'may be blacked out'.

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(I referred to 'confidential information', meaning 'personal information'; section 34 that I mentioned concerns 'personal information'.)

4.

- (a) **Request:** The email that KwaZulu-Natal ROE Vela Mdaka sent to Nair (or RHRM Baboo Brijlal sent to Clark, forwarded to Nair) covering the selection panel's recommendation of LASA attorney Ashok Kaloo for the Pietermaritzburg Senior Litigator post⁶ and his CV, as well as the CVs of the other candidates who were shortlisted and interviewed by the selection panel for the post but not recommended by it, when it was first advertised.
- (b) **Refusal:** *This record was requested during the discovery process in the trial court for which the matter is still pending. Therefore it is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** Contrary to Nair's lie about this, in truth and in fact the email record in question was not 'requested during the discovery process in the trial court'. It was not among the records I specified for discovery in my agenda for the pre-trial conference in October 2011; in my application to compel discovery in January 2012; in my agenda for the first pre-trial conference at court under judicial supervision in January 2013 to compel LASA to discover; and in my agenda for the second pre-trial conference at court under judicial supervision in June 2013 to the same end. (All this extraordinary trouble I was put to was occasioned by LASA's resolutely determined refusal to discover documents I needed for trial, with the corrupt intention of hindering me in proving my claim, which is to say with the intention of obstructing and defeating the ends of justice. In the result this criminal object was achieved by Nair's rampant perjury at trial.)


Not being a ground provided for by Chapter 4, the fact that a record was 'requested during the discovery process', but was not furnished therein, is anyway not a ground for refusing a request for it later made again under PAIA.

When I made the request, the trial was already over, and was no longer 'pending'.

5.

- (a) **Request:** The email the Free State and North West ROE sent to Nair (or its RHRM sent to Clark, forwarded to Nair) covering the selection panel's recommendation of a candidate for the Kimberly Senior Litigator post – if a recommendation was made –

⁶ Record, page 410, lines 15–21.

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and his/her CV, as well as the CVs of the other candidates who were shortlisted and interviewed by the selection panel for the post but not recommended by it.

- (b) **Refusal:** *This request relates to the evidence and the records already before court, which matter is still pending. Therefore it is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** The fact that a record requested under PAIA 'relates to the evidence and the records already before court' is not one of the grounds for refusing it provided by Chapter 4.

As said, the case was already over with judgment delivered when I requested the record; and section 7 doesn't afford an information officer a ground for refusing a record request. This incompetent, unlawful justification is rebutted above.

6.

- (a) **Request:** In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, Nair's emails to the five⁷ members of the 'second round' panel, forwarding the selection panels' Senior Litigator candidate recommendations in each case and the CVs of all candidates who were shortlisted and interviewed by the selection panels, including the CVs of those candidates who were not recommended,⁸ in which emails Nair asked the five members of the

⁷ Record, page 409, line 11.

⁸ Record, page 407, lines 13-17. 'I would have sent it [the email with recommendation and CVs attached] to the panellists to advise who they would like to see (indistinct) the recommended candidate. Therefore, all four [CVs] would have been sent to the panellists and everyone would have the opportunity to see who they would have liked to have (indistinct).'

Record, page 409, lines 24-5 to page 410, lines 1-2. '...we do not only interview the recommended candidates.'

Record, page 408, line 25 to page 409, lines 1-2. 'The panellists can look at all people who were interviewed at the first round and they can say, "we would also like to see X, Y and Z".'

Page 409, lines 10-11. 'I would send it to the five panellists and say, "Please advise who you would like to see."

Record page 409, lines 16-20. 'By email, Ja --- Yes. [Through] correspondence --- Yes. Okay, so by email that is done --- Yes.'

Record, page 349, lines 21-3. '... in deciding who will be in [the] interview for the second round, we look at all four ['candidates interviewed for the first level'] again and not only the person that the first round panellist[s] interviewed or recommended.'

Record, page 450, lines 7-10. '... the second panel does have sight of ... all CVs and it can also select others in addition to whoever is recommended.'

Record, page 350, lines 10-11. '[The second round interview panel] is free to make the decision it wants to make and to interview whoever it wants to interview.'

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'second round' panel to advise him as to who they 'would like to see'⁹ and 'interview'.¹⁰

- (b) **Refusal:** *The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.*
- (c) **Rebuttal:** These incompetent, unlawful justifications are rebutted above.

7.

- (a) **Request:** In respect of the Pietermaritzburg Senior Litigator post when it was first advertised, Nair's emails to the five members of the 'second round' panel, forwarding the selection panel's recommendation of attorney Kaloo, his CV, and the CVs of those candidates who were not recommended, in which emails Nair asked the five members of the 'second round' panel to advise him as to who they 'would like to see' and interview.
- (b) **Refusal:** *This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

8.

- (a) **Request:** In respect of the Kimberly Senior Litigator post, Nair's emails to the five members of the 'second round' panel, forwarding the selection panel's recommendation – if one was made – of the recommended candidate and his CV, and the CVs of those candidates who were not recommended, in which emails Nair asked the five members of the 'second round' panel to advise him as to who they 'would like to see' and interview.
- (b) **Refusal:** *This is part of the records for the matter still pending before Courts and is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

⁹ Record, page 409, lines 10–11. 'I would send it to the five panellists and say, "Please advise who you would like to see."'

¹⁰ Record, page 349, lines 7–15. 'In fact, a specific requirement of the second panel was that all candidates who were interviewed or shortlisted for the first round, their CVs had to be sent ... so that the second round panellists could consider if there was anyone else [besides the recommended candidate] they would be interested to interview.'

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9.

- (a) **Request:** In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts, the records of the 'second round' panel members' responses to Nair's enquiries as to which Senior Litigator candidate(s) they wished to see and interview, notifying him as to whom they wished to see and interview, including candidates who had been shortlisted and interviewed by selection panels but not recommended by them.¹¹
- (b) **Refusal:** *The request relates to the evidence in a matter pending before Court and is excluded in terms of section 7 of the Act and secondly the information relates to third parties and falls within the ambit of the provisions of section 37, 47 and 48 of the Act.*
- (c) **Rebuttal:** These incompetent, unlawful justifications are rebutted above.

10.

- (a) **Request:** In respect of the Pietermaritzburg Senior Litigator post when it was first advertised, the records of the 'second round' panel members' responses to Nair's enquiries as to which Senior Litigator candidate(s) they 'would like to see' and interview besides attorney Kaloo, notifying him as to whom they 'would like to see' and 'interview', including candidates who had been shortlisted and interviewed by the selection panel but not recommended by it.
- (b) **Refusal:** *This requests forms part of the discovery notice at the trial court and accordingly is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** Contrary to Nair's lie about this, in truth and in fact I didn't seek these records by way of pre-trial discovery procedure. And the reason for this is that contradicting LASA's repeatedly pleaded and sworn case (in the interlocutory affidavits), it was only in his oral evidence that Nair made the novel allegation that after a Senior Litigator selection panel had 'identified the most suitable candidate for appointment' (per LASA's Recruitment code), in the process eliminating the other shortlisted, interviewed candidates, he would email his so-called 'second round' interview panel members to enquire as to which of the shortlisted, interviewed Senior Litigator candidate(s) they 'would like to see' and interview and to notify him as to whom they 'would like to see' and 'interview' – including candidates who had been shortlisted and interviewed by the selection panel but not

¹¹ Record, page 410, lines 10–12. '... the panel does not confine itself to only the person that is recommended. The [second round interview] panel, has in the past, requested to see other candidates who were interviewed.'

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recommended by it, and thereby 'eliminated'* from consideration for appointment.
(*LASA's word in the pleadings)

Nair's justification for refusing me access to these records, or certifying on oath under section 23 that they don't exist (thereby proving his perjury for his prosecution on the point), is incompetent and unlawful for the reasons stated in the rebuttals above.

11.

- (a) **Request:** In respect of the Kimberly Senior Litigator post when it was first advertised, the records of the 'second round' panel members' responses to Nair's enquiries as to which Senior Litigator candidate(s) they 'would like to see' and 'interview' besides the recommended candidate – if a recommendation was made – notifying him as to whom they 'would like to see' and 'interview', including candidates who had been shortlisted and interviewed by the selection panel but not recommended by it.
- (b) **Refusal:** *This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

12.

- (a) **Request:** In respect of the Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria Senior Litigator posts; the Kimberly Senior Litigator post – if a recommendation was made; and the Pietermaritzburg Senior Litigator post when it was first advertised, the records of the invitations to attend 'second round' interviews sent to Senior Litigator candidates recommended by the selection panels, and the invitations to attend 'second round' interviews also sent to any candidates who had been shortlisted and interviewed by the selection panels but not recommended by them, on the basis that the 'second round' interview panel had indicated to Nair that it 'would like to see' and 'interview' them too.
- (b) **Refusal:** *This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

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13.

- (a) **Request:** The minutes¹² of the meetings of the 'second interview panel' on the 'three separate occasions' on which it has 'sat ... to select prospective candidates ... for [appointment as] senior litigators',¹³ at which (i) the current six incumbent Senior Litigators at Bloemfontein, Cape Town, Johannesburg, Mahikeng, Port Elizabeth, and Pretoria were chosen; (ii) LASA attorney Ashok Kaloo was rejected, and (iii) 'one other person [besides Kaloo] that was recommended as possible, as possibly appointable' was also rejected because 'we did not like'¹⁴ him/her.
- (b) **Refusal:** *This information relates to third parties and accordingly the provisions of sections 37, 47 and 48 are applicable.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

14.

- (a) **Request:** The record of Mlambo JP's communication to executive management of his 'brain-child' of a 'second round of interviews' referred to in LASA's original response to the original statement of claim in case LC D529/11.¹⁵
- (b) **Refusal:** *The request relates to evidence in a matter pending before Court and is excluded in terms of section 7 of the Act.*
- (c) **Rebuttal:** This incompetent, unlawful justification is rebutted above.

¹² Record, page 372, line 23 to page 373, line 2: '[HRE Clark] would assist in the writing up of whatever recommendations flow out of the [second round interview] panel'.

¹³ Record, page 366, lines 14-21.

¹⁴ Record, page 410, lines 21-4.

¹⁵ Pleadings bundle, page 143, paragraph 8: 'The second round of interviews is, in fact, the brain-child of the Chairperson together with the executive management after it was realised that most of the senior practitioners who were recruited without having undergone a second interview were lacking experience in vital areas like High Court litigation skills and also given the seniority of the position involved herein.'

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

CASE NO: 12977/15

On the 7th day of OCTOBER 2015
Before The Honourable Madam Justice D PILLAY

In the matter between :

ANTHONY ROBIN BRINK	Applicant
and	
NJABULO NDABUKELWAYO N.O.	First Respondent
LEGAL AID SOUTH AFRICA	Second Respondent
CIVILIOUSPHOPHI N.O.	Third Respondent

HAVING heard Counsel for the Applicant; and having read the Notice of Motion and the other documents filed of record;

IT IS ORDERED, THAT :

1. The application be and is hereby dismissed for want of urgency.
2. COSTS being costs on an attorney and client scale.

BY ORDER OF THE COURT

R J JOOSTE
REGISTRAR

JON WHITE ATTORNEYS

GRIFPER VAN DIE HOOGGERECHTSHOF
KWAZULU-NATAL HIGH COURT
PIETERMARITZBURG
2015 -10- 07
REPUBLIC OF SOUTH AFRICA
PIETERMARITZBURG
REGISTRAR OF THE HIGH COURT

△
SHERIFF
2016 -10- 31
HIGH COURT
PMBURG

DA21/14

ANTHONY ROBIN BRINK

D
Petitioner

and

LEGAL AID SOUTH AFRICA


Respondent

MEMORANDUM

The petitioner's vulgar and insulting language is prevalent throughout his affidavits. Such conduct is unacceptable for a practising advocate. His vulgarity has clouded his mind so that his application does not say in what respect the Labour Court erred in rejecting his claim.

What is common cause is that the petitioner applied and was shortlisted for the position of senior litigator Pietermaritzburg. He was recommended for a second round interview but the position for which his applied for was frozen due to budgetary constraints. He was only made aware of that decision after numerous telephone calls and correspondence. There is a dispute about the veracity of the decision to stop the process of the appointment for which the petitioner had requested recording of the board meeting in terms of the Promotion of Access to Information Act 2 of 2000.

Notwithstanding the above dispute, the petitioner does not say in what respect the court *a quo* erred in dismissing his claim. All is said in his affidavit is his judgmental comments about the credibility of employees of the respondent.

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"FA21"

340

IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

In the matters between:

ANTHONY ROBIN BRINK Applicant

and

The respondents in the following five applications:

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

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

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




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

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

SETTLEMENT AGREEMENT

The parties record their settlement of the above applications on the following basis.

1. The applications are to be adjourned sine die with no order as to costs.
2. By 12 February 2016, the applicant will email CSE Mtati a consolidated list of all requested documents that are the subject of the above applications. The

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consolidated list is to comprise (i) an assembly of the several annexures to the PAIA requests in question, extracted from the applicant's Form A PAIA requests, and (ii) the applicant's amendments to certain of his requests made by letter; and these several documents are to be assembled into a single document (the applicant's several lists will not be redrawn).

3. By 15 February 2016, CSE Mtati will furnish the applicant by email by with a copy of his written delegation as deputy information officer by LASA information officer Vidhu Vedalankar. In the event that such written delegation is not furnished as agreed, the obligation to perform under this agreement shall fall upon information officer Vedalankar.
4. By 15 April 2016, LASA Corporate Services Executive Thembile Mtati will deliver to the applicant all documents requested in his requests for such that are the subject of the above cases. In the event that any requested documents do not exist or cannot be found, Mtati will furnish the applicant with an affidavit in this regard made under section 23 of PAIA. The affidavit will contain all the detailed information prescribed by that section.
5. In the event that the respondents, through CSE Mtati, fail to deliver any requested document(s) and the applicant is not satisfied with Mtati's evidence on affidavit under section 23 that it/they does/do not exist or cannot be found, the applicant shall be entitled to apply to this court to compel the production of such document(s) within 180 days of delivery of the said affidavit.
6. This agreement is made without any admission of wrongdoing by the respondents.
7. Upon delivery of the documents requested, and the section 23 affidavit, the applicant shall have one further opportunity to request records in regard to the Senior Litigator posts, and records his waiver of his rights to make further requests in relation to the said posts, *and shall do so within 60 days.*
8. Insofar as it relates to compliance with this agreement, the applicant undertakes not to engage the interventions of the following institutions including but not limited to the Minister of Justice and Correctional Services,

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the Portfolio Committee for the same department, the Public Protector and the SAHRC, but limit his recourse to an application directly to court as contemplated above.

Signed at Eshowe on 11 February 2016

9. ~~Where the information belongs to a third party, the parties agree that (SE) shall demonstrate in the application that he has sought consent from that third party and the said third party's reaction thereto.~~

APPLICANT


TEMBILE MTATI

Attorney for the respondents

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

'FA22'

34:

CASE NO: 257/14

258/14

259/14

1005/15

1432/15

In the matter between:

ANTHONY ROBIN BRINK

Applicant

And

HOPE BAMBISO NO. AND 3 OTHERS

Respondents

AFFIDAVIT IN TERMS OF SECTION 23 OF PAIA

I, the undersigned

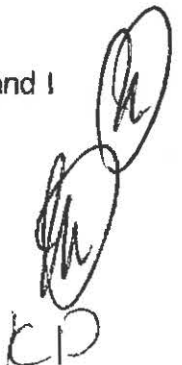
THEMBILE VUYO MTATI

do hereby make oath and states as follows:-

1.

- 1.1 I am adult male admitted attorney employed as a Corporate Service Executive by Legal Aid SA at its offices situated at 29 De Beer Street, Legal Aid House, Braamfontein, Johannesburg, 2017.
- 1.2 I confirm that I am the designated Deputy Information Officer of Legal Aid SA and I am duly authorised to depose to this affidavit.

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CID

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

2.

2.1. I confirm that I have taken all reasonable steps to locate all of the records requested by the Applicant and/or to determine if such records do exist or not.

2.2. I confirm further that Legal Aid SA do not have some of the records requested by the Applicant, as specified on the table below, and as such, it is therefore not possible to make available to the Applicant access to the requested records.

2.3 I confirm further that I did enquire telephonically and held meetings with some official employed by Legal Aid SA, who would ordinarily be expected to bear knowledge of the requested records or other related records, but has established that the records do not exist.

2.4 The below indicates the records which cannot be provided, i.e:

No.	Record requested	Steps taken to locate the document or to determine whether the record exists or not
1.	A3	No such record exists. The record requested was checked with the specified offices which confirmed that there were no regret letters sent.
2.	A4	No such record exists. The record was requested from the Eastern Cape Regional Office and the National Office but same cannot be located. The IT department was also not able to retrieve the record.
3.	A5	No such record exists. The record was requested from the Eastern Cape Regional Office and the National Office but same cannot be located. The IT department was also not able to retrieve the record.

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4.	A7	No such record exists. The record was requested from the specified offices but same cannot be located.
5.	B1	No such record exists. The official specified was consulted and he has no recollection of the existence of such record.
6.	B2	No such record exists. The official specified was consulted and he has no recollection of the existence of such record.
7.	B3	No such record exists. The official specified was consulted and he has no recollection of the existence of such record.
8.	B4	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
9.	B5	No such record exists. The officials specified was consulted and he has no recollection of the existence of such record.
11.	B6	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
12.	B9	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
13.	B19	No such record exists. No committee had a discussion on this issue.
14.	B20	No such record exists. The officials specified were consulted and they have no recollection of the existence of such record.
15.	B28	No such record exists. The requested records were checked with the Human Resource department but cannot be located.
16.	B29	No such record exists. The requested records were checked with the Human Resource department but cannot be located.
17.	B30	No such record exists. The requested records were checked with the Human Resource department but cannot be located.
18.	B33	This record cannot be granted as it is privileged and protected in terms of common law as well as section 40 of the Act. Accordingly is refused.
19.	B34	No such record exists. The existence of the requested record was

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		checked with the official who would be ordinarily expected to know of its existence but same could not be located.
20.	B35	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
21.	B38	No such record exists. The requested records were checked with the relevant department where it could have been directed to but it cannot be located.
22.	B39	No such record exists. The officials specified were consulted and they have no recollection of the existence of such record.
23.	B40	No such record exists. The officials specified were consulted and they have no recollection of the existence of such record.
24.	B41	No such record exists. The officials specified were consulted and they have no recollection of the existence of such record.
25.	C	No such record can be found. The record requested was checked with the relevant officials but same could not be located.
26.	E1	No such record exists. The record requested was checked with the Kwazulu Natal Regional Office and the National Office but same cannot be located.
27.	E2	No such record exists. The record requested was checked with the specified official but same could not be located.
28.	E3	No such record exists. The record requested was checked with the specified official but same could not be located.
29.	E4	No such record exists. The record requested was checked with the specified LSTC but same could not be located.
30.	E5	No such record exists. The record requested was checked with the specified officials but same could not be located.
31.	E6	No such record exists. The record requested was checked with the specified official but same could not be located.
32.	E7	No such record exists. The record requested was checked with the Human Resource department who would have knowledge thereof but same could not be located.
33.	E8	No such record exists. The record requested was checked with the Human Resource department who would have knowledge thereof but same could not be located.

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34.	E9	No such record exists. The record requested was checked with the Human Resource department who would have knowledge thereof but same could not be located.
35.	E10	No such record exists. The record requested was checked with the Human Resource department who would have knowledge thereof but same could not be located.
36.	E11	No such record exists. The record requested was checked with the Kwazulu Natal Regional Office and the National Office but same cannot be located.
37.	E12	No such record exists. The record requested was checked with the Human Resource department who would have knowledge thereof but same could not be located.
38.	E13	No such record exists. The record requested was checked with the Human Resource department and the NOE who would have knowledge thereof but same could not be located.
39.	E14	No such record exists. The record requested was checked with the official specified but same could not be located.
40.	E15	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
41.	E16	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
42.	E17	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
43.	E18	This record is refused in terms of section 63(1). The third party has refused to grant consent to provide such personal information.
44.	E19	No such record can be located. The requested records were checked with the relevant department which could have been sent the communication but same cannot be located.
45.	E21	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
46.	E22	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
47.	F1	No such record can be found. The record requested was checked with the specified official but same could not be located.

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

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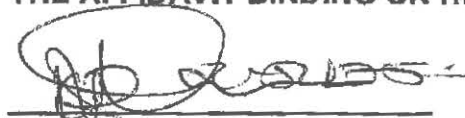
62.	H35	The employee referred to on the request is deceased. The requested record is refused in terms of section 34(1).
63.	H44	No such record exist. The requested records were checked with the specified Regional Office which confirmed its non-existence.
64.	H45	No such record can be found. The record requested was checked with the specified officials but same could not be located.
65.	H46	No such record exist. The requested records were checked with the specified Kwazulu Natal Regional Office which confirmed that it is not aware of any such record.
66.	H50	No such record can be found. The record requested was checked with the specified officials but same could not be located.
67.	H51	No such record can be found. The record requested was checked with the specified officials but same could not be located.
68.	H52	No such record can be found. The record requested was checked with the specified officials but same could not be located.
69.	H54	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
70.	H56	No such record can be found. The record requested was checked with the Human Resource department but same could not be located.
71.	K1	The records requested belongs to a third party. The third party has not granted consent to the granting of such record.
72.	K2	The records requested belongs to a third party. The third party has not granted consent to the granting of such record.
73.	K3	The records requested belongs to a third party. The third party has not granted consent to the granting of such record.
74.	K4	The records requested belongs to a third party. The third party has not granted consent to the granting of such record.

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DEPONENT

THUS SWORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS THE 15.
DAY OF APRIL 2016. THE DEPONENT HAVING ACKNOWLEDGED TO ME THAT HE
KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HE HAS NO
OBJECTION TO THE TAKING OF THE PRESCRIBED OATH AND HE CONSIDERS
THE AFFIDAVIT BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS

FULL NAMES:

DESIGNATION:

ADDRESS:

SUID-AFRYKAANSE POLISIEDIENS
STATION COMMANDER
15 APR 2016
HILLESBOM
SOUTH AFRICAN POLICE SERVICE

N.N



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

FA2
351

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

In the matter between:

ANTHONY ROBIN BRINK

Applicant

And

HOPE BAMBISO NO. AND 3 OTHERS

Respondents

**AFFIDAVIT IN TERMS OF SECTION 23 OF PAIA
[SUPPLEMENTARY AFFIDAVIT]**

I, the undersigned

THEMBILE VUYO MTATI

do hereby make oath and states as follows:-

1.

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

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

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

2.

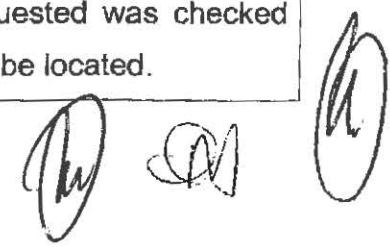
2.1. I confirm that I have taken all reasonable steps to locate all of the records requested by the Applicant and/or to determine if such records do exists or not.

2.2. I confirm further that Legal Aid SA do not have some of the records requested by the Applicant, as specified on the table below, and as such, it is therefore not possible to make available to the Applicant access to the requested records.

2.3 I confirm further that I did enquire telephonically and held meetings with some official employed by Legal Aid SA, who would ordinarily be expected to bear knowledge of the requested records or other related records, but has established that the records do not exist.

2.4 The below indicates the records which cannot be provided, i.e:

No.	Record requested	Steps taken to locate the document or to determine whether the record exists or not
1	A2	No signed recommendation exists. This was confirmed by the Regional Human Resources Manager.
2.	A6	No such record could be found. The record requested was checked with the specified offices but same could not be located.
3.	B7	No such record exists. The record requested was checked with the specified official who confirmed its non-existence.
4.	B8	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same does not exists.
5.	B10	This record cannot be located. The record requested was checked with the specified official who confirmed it cannot be located.

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6.	B36	This record cannot be located. The record requested was checked with the specified officials who confirmed it cannot be located.
7.	B37	This record cannot be located. The record requested was checked with the specified officials who confirmed it cannot be located.
8.	D2	No such record could be found. The record requested was checked with the specified offices but same could not be located.
9..	D3	No such record could be found. The record requested was checked with the specified offices but same could not be located
10.	D4	No such record could be found. The record requested was checked with the specified official and offices but same could not be located
11.	E20	This record could not be located. The record requested was checked with the specified offices but same could not be located.
12.	E23	The record did exist but could not be found after search. The record requested was checked with the specified official.
13.	G1	No such record could be found after search. The record requested was checked with the specified official.
14.	G3	No such records could be found. The record requested was checked with the specified officials but same could not be located.
15.	G4	No such records could be found. The record requested was checked with the specified officials but same could not be located.
16.	G5	No such records could be found. The record requested was checked with the specified officials but same could not be located.
17.	G9	No such records could be found. The record requested was checked with the specified officials but same could not be located.
18.	G10	No such records could be found. The record requested was checked with the specified officials but same could not be located.
19.	G11	No such records could be found. The record requested was checked with the specified officials but same could not be located.
20.	G12	No such records could be found. The record requested was checked with the specified officials but same could not be located.
21.	G13	No such records could be found. The record requested was checked with the specified officials but same could not be located.
22.	G14	No such records could be found. The record requested was checked with the specified officials but same could not be located.




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23.	H1	No such record exists. The existence of the requested record was checked with the legal representatives in the case and confirmed the non-existence of such record.
24.	H3	No such records could be found. The record requested was checked with the specified official but same could not be located.
25.	H5	No such records could be found. The record requested was checked with the specified official but same could not be located.
26.	H14	No such record could be found. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
27.	H15	No such record could be found. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
28.	H18	No such record could be found. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
29.	H20	No such records could be found. The record requested was checked with the specified official but same could not be located.
30.	H21	No such records could be found. The record requested was checked with the specified official but same could not be located.
31.	H22	No such records could be found. The record requested was checked with the specified official but same could not be located.
32.	H23	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
33.	H24	No such records could be found. The record requested was checked with the specified official but same could not be located.
34.	H25	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
35.	H26	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.

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36.	H27	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
37.	H28	No such records could be found. The record requested was checked with the specified officials but same could not be located.
38.	H29	No such records could be found. The record requested was checked with the specified official but same could not be located.
39.	H30	No such records could be found. The record requested was checked with the specified official but same could not be located.
40.	H33	This record cannot be granted as it is privileged and protected in terms of common law as well as section 40 of the Act. Accordingly it is refused.
41.	H39	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
42.	H40	No such records could be found. The record requested was checked but same could not be located.
43.	H41	No such records could be found. The record requested was checked with the specified official.
44.	H42	No such records could be found. The record requested was checked with the specified official but same could not be located.
45.	H43	No such record exists. The existence of the requested record was checked with the official who would be ordinarily expected to know of its existence but same could not be located.
46.	H47	No such record could be located. The former employee is deceased.
47.	J1	No such records could be found. The record requested was checked with the specified official but same could not be located.

N.N   

[Signature]
DEPONENT

THUS SWORN AND SIGNED BEFORE ME AT JOHANNESBURG ON THIS THE 12th DAY OF MAY 2016. THE DEPONENT HAVING ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HE HAS NO OBJECTION TO THE TAKING OF THE PRESCRIBED OATH AND HE CONSIDERS THE AFFIDAVIT BINDING ON HIS CONSCIENCE.

[Signature]
COMMISSIONER OF OATHS

FULL NAMES:
DESIGNATION:
ADDRESS:

COMMISSIONER OF OATHS
[Signature]

AGATHA MAMOGALE LEKABE
SENIOR LEGAL ADVISOR
CITY OF JOHANNESBURG
METRO CENTRE, 158 CIVIC BOULEVARD,
BRAAMFONTEIN 2017

N.N *[Signature]*

39. 229

FA21

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1 Boast Street
Eshowe 3815
24 March 2016

Information Officer Vidhu Vedalankar
Legal Aid South Africa
29 De Beer Street
Braamfontein

And to cc addressees

Per email

Dear Ms Vedalankar

YOUR PAIA SECTION 32 REPORT FOR 2015/16

The 2015/16 reporting cycle under section 32 of the Promotion of Access to Information Act 2 of 2000 closes in a week's time on 31 March, and your annual report as information officer to the South African Human Rights Commission will thereupon fall due.

In view of LASA's false reporting to the SAHRC for four previous years (in order to successfully conceal from the National Assembly LASA's illegal refusals of my PAIA requests in 2010, 2011 and 2013), on 29 February I emailed Board Secretary Langa Lethiba a draft section 32 report I'd drawn, including in it the detailed information LASA is required to report regarding its handling of PAIA requests and related matters.

I annex a revised and improved draft report for your assistance, now including:

- (i) a PAIA request I overlooked: Originally addressed by me to the Department of Justice and Correctional Services, the Department referred it to LASA to handle under section 20. (With the Department watching, LASA complied with it perfectly.) This request dealt with by LASA should therefore be included in your section 32 report as a PAIA request received by LASA and 'granted in full'.
- (ii) a section of PAIA I omitted from the main body of my original draft report (I'd mentioned it only in the Comments section), which was incompetently relied on to refuse four of my requests for access to specified records and later abandoned at court when I sued to compel LASA to surrender them.

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Unlike the earlier draft in PDF, the revised and improved draft that I've attached is in Microsoft Word, making it easy for you and your Corporate Services attorneys to use as a basis for your accurate, complete and truthful section 32 report for 2015/16 to the SAHRC for the ultimate information of the National Assembly in the SAHRC's section 84 report.


As mentioned in my recent letter to Board Secretary Lethiba, I'll providing a copy of my draft report to the SAHRC in mid-April for comparison purposes. This will enable the SAHRC to ascertain whether, unlike in four previous years, LASA has for a change accurately, completely and truthfully included in its section 32 report all the detailed information prescribed by the section that the National Assembly wants to know concerning public body compliance and non-compliance with PAIA.

If this time round it's drawn accurately, completely and truthfully, your section 32 report for 2015/16 will disclose that LASA has repeatedly and persistently illegally refused my duly made requests for access to its records in repeated and persistent violation of my fundamental right to information, only to concede this at court on 11 February 2016, when I sued to compel LASA's delivery of the documents I'd duly requested, by abandoning all its opposition and all its useless, ignorant and incompetent defences filling many lever-arch files, and undertaking within 60 days to provide me with all the requested documents or certify on oath any that don't exist.

The SAHRC will then report LASA's repeated and persistent non-compliance to the National Assembly in its section 84 report for the year. To facilitate this, I've also prepared a draft section 84 report for the SAHRC in respect of LASA's handling of my PAIA requests in the reporting cycle, and the outcome of the five court applications that I brought to compel LASA's compliance with my illegally refused PAIA requests made since November 2013, namely total capitulation at court – like President Zuma's total capitulation in the Constitutional Court two days earlier.

With these tasks behind me, I've now commenced drawing a draft audit report for the SAHRC, to be included in its next section 84 report to the National Assembly later this year, under the title:

SPECIAL REPORT ON LEGAL AID SA: AN AGGRAVATED CASE OF REPEATED AND PERSISTENT NON-COMPLIANCE WITH PAIA OVER FIVE YEARS, DESPITE REPEATED REMEDIAL INTERVENTIONS BY THE SAHRC, AND REPEATED AND PERSISTENT FALSE REPORTING TO THE SAHRC AND TO THE JUSTICE PORTFOLIO COMMITTEE TO CONCEAL THIS NON-COMPLIANCE.

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My comprehensive draft audit report for the SAHRC concerning LASA's repeated and persistent PAIA delinquency to conceal and suppress documentary evidence I duly requested for criminal, civil and disciplinary proceedings will cover, with reference to supporting documents:

- LASA's repeated, persistent illegal refusals of my PAIA requests over the past five years since 2010 in violation of my fundamental right to information entrenched by section 32 of the Constitution;
- the Board's failure to remedy this serious illegality and violation of my fundamental rights when repeatedly brought to its attention (five times), and its hostile and insulting dismissal of my petitions to it to intervene and see to LASA's management executives' compliance with their constitutional information transparency obligations, in the exercise of the Board's ultimate responsibility to oversee and ensure statutory compliance by these executives in the conduct of LASA's operations;
- LASA's false reporting to the chairman of the Justice Portfolio Committee in June 2011 to discredit and dishonestly put down my complaint copied to him that LASA had repeatedly and persistently illegally refused my first two PAIA requests made in 2010, with the intention of (successfully) perverting the Committee's enquiry into the matter (a criminal contravention of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004); and,
- LASA's false reporting under section 32 for four years (and I hope not five) to conceal from the National Assembly its repeated, persistent illegal refusal of access to its records, thus frustrating and defeating Parliament's oversight function in respect of public body compliance with PAIA and preventing it from taking corrective action.

My draft audit report for the SAHRC under the above-mentioned heading will be copied to the Public Protector, to the Auditor General, and to Parliament's Justice Portfolio Committee.

As the SAHRC reminded you in its recent letter of 25 January, you are ultimately responsible, accountable and answerable under section 17 of PAIA for LASA's compliance with the Act. This includes being ultimately responsible, accountable and answerable for accurate, complete and truthful reporting to the SAHRC under section 32, to enable it to fully and correctly report to the National Assembly in its section 84 report the manner in which LASA has dealt with PAIA requests made to it in a given reporting cycle.

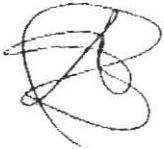
So when after presenting LASA's annual report later this year, you're questioned by the Portfolio Committee on LASA's repeated and persistent illegal non-compliance with my PAIA

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requests, and its false reporting year after year to successfully conceal this from the Committee, it will be no answer to say, 'I just gave it to my Corporate Services attorneys, and they messed it up as usual. The SAHRC recorded their repeated concessions in its report after the special PAIA training lesson it gave them on 6 November 2012 that when it comes to implementing the Act they don't have the faintest idea of what they're doing. And that's why I just left it to them.'

In the situation, you'd be well advised to check that your section 32 report for 2015/16 substantially conforms to my revised draft report before signing it off and sending it to the SAHRC. As said, I'll be providing the SAHRC with a copy of my draft report for comparison purposes to enable it to verify the accurateness, completeness and truthfulness of yours.

Yours sincerely



ANTHONY BRINK

Cc: COO Jerry Makokoane, CLE Patrick Hundermark, and IAE Sethopo Mamotheti

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From: Anthony Brink [<mailto:arbrink@iafrica.com>]
Sent: 24 March 2016 03:54 PM
To: Vidhu Vedalankar
Cc: Jerry Makokoane; Patrick Hundermark; Sethopo Michael Mamotheti
Subject: LASA's PAIA section 32 report for 2015/16
Importance: High

Dear Ms Vedalankar

I attach an important letter for your personal attention concerning your imminently due PAIA section 32 report to the SAHRC, and a revised and improved draft report in MS Word for easy editing, including all the detailed information the section prescribes.

Yours sincerely

Anthony Brink

Cc: COO Makokoane, CLE Hundermark, and IAE Mamotheti

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