

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

Case No: 12124 /2016 P

In the matter between:

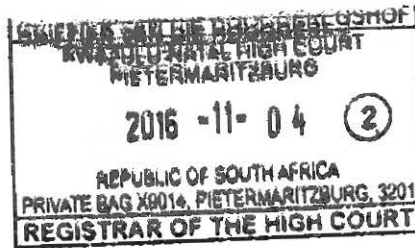
LEGAL AID SOUTH AFRICA

Applicant

and

ANTHONY ROBIN BRINK

Respondent



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BRAAMFONTEIN

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BRAAMFONTEIN, 2017

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C/O: PIETERMARITZBURG JUSTICE CENTRE

183 CHURCH STREET

PIETERMARITZBURG, 3201

TEL: 033 394 2190

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

34. 229

'FA24'

362

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.

△ N N
SHERIFF
2016 -10- 31
HIGH COURT
PMBURG

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

N.N 

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366.

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

N.N



"FA2511"

367

1 Boast Street
Eshowe 3815
29 April 2016

Thembile Mtati,
Deputy Information Officer and
Corporate Services Executive
Legal Aid South Africa
29 De Beer Street
Braamfontein

Cc:

Information Officer and Chief Executive Officer Vidhu Vedalankar
Chief Legal Executive Patrick Hundermark
Internal Audit Executive Sethopo Mamotheti
Board Secretary Langa Lethiba

By email.

Dear Mr Mtati

NOTICE OF BREACH OF SETTLEMENT AGREEMENT AND DEMAND FOR COMPLIANCE

PAIA APPLICATIONS: BRINK v LASA INFORMATION- AND DEPUTY INFORMATION OFFICERS,
ESHOWE MAGISTRATES COURT: CASES 257, 258, & 259/14; 1005 & 1432/15

I refer to your PAIA section 23 affidavit emailed to me on Friday the 15th instant and to your evenly dated letter headed 'Implementation of Settlement Agreement' covering the documents simultaneously couriered to me and delivered the next working day. I refer also to your email of the 19th:

I have picked up that our section 23 affidavit does not address certain requested information. I will be filing a supplementary affidavit to address this. The error was inadvertent.

And to my reply on the same day that I'd immediately spotted many deficiencies in your response as well, and that after auditing it thoroughly I'd be identifying these for you to remedy. I've now done so, and this is what I've found:

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LASA's performance under the settlement agreement is grossly defective and is non-compliant with PAIA in multiple respects.

As I'll show, numerous records on my consolidated list, duly emailed to you under clause 2 of our settlement agreement, have neither been furnished nor certified under section 23.

Numerous records claimed in your 'Implementation of Settlement Agreement' letter to have been certified haven't been.

Some claimed to have been furnished haven't been.

In some cases where I requested a series of records, only a token couple have been furnished, and not the rest.

One request for a set of records has been improperly responded to by providing me a single wrong record that I didn't ask for.

Other records have been refused on legally and factually spurious grounds.

First general defect

Section 23(1)(b) contemplates two radically distinct categories of requested records not furnished to a records requester. These two categories comprise records about which:

- there are reasonable grounds for believing that the record –
- (i) is in the public body's possession but cannot be found, or
- (ii) does not exist[.]

The Legislature's use of the word 'or' between the two categories denotes a fundamental distinction between records 'that it is not possible to give access to', in the language section 23(1), for totally different reasons: those extant records requested that LASA has in its 'possession but cannot be found', and those records requested that 'do.. not exist'.

A record 'that it is not possible to give access to' falls into one category or the other, not both. It can't both exist and not exist.

Nearly all your sworn allegations in your affidavit that 'No such record exists' are contradicted by your allegation that it cannot be located or 'retrieve[d]'.

Your second allegation implies two things: First, that contrary to your first allegation that it does not exist, the record in question does exist to the knowledge of the person whom you or your staff 'consulted' or 'checked with'. And second, that since this person has 'reasonable

grounds for believing that the record ... is in the public body's possession', a search was conducted for it but it couldn't be found. It seems to me, however, that this is not what you really mean to say, and that the second allegation has been added formulaically without thinking through its implications, which is that it contradicts, confounds and makes nonsense of the first allegation.

These radical contradictions everywhere in your affidavit obviously can't be cured with any supplementary affidavit. You'll have to make a fresh affidavit to remove the ambiguity, making unequivocally clear what was communicated to you by the 'person' or 'persons' you or your staff 'consulted' or 'checked with' about the records I requested, but which you didn't furnish me, namely whether (per section 23(1)) 'there are reasonable grounds for believing that the record ... is in [LASA's] possession but cannot be found' – or 'the record ... does not exist.' One or the other, not both.

Second general defect

Clause 4 of our settlement agreement pertinently required that your section 23 affidavit 'will contain all the detailed information prescribed by that section' regarding 'Records that cannot be found or do not exist' (as the section heading puts it). To helpfully remind you what 'all the detailed information prescribed by that section' is, and save you looking it up, I quoted section 23 at the foot of the preamble to my consolidated list of requested records. Despite this, your affidavit doesn't 'contain all the detailed information prescribed by that section'. So let me remind you yet again. Section 23(2) stipulates:

The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

Section 23(1)(a) tells us that 'all steps' means more than whatever 'steps' the information officer felt like taking; 'all steps' means 'all reasonable steps ... taken to find a record requested'. The added word 'reasonable' imposes a duty on an information officer to do everything reasonably possible to find a requested record and to 'give a full account' on affidavit of all these 'reasonable steps [that] have been taken to find a record requested'.

Part of 'the detailed information prescribed by that section' is the requirement that your affidavit 'includ[e] all communications with every person who conducted the search on behalf of the information officer'.

This includes persons you tasked to assist you in your search, and persons asked about the records I requested. The Act doesn't expect the CEO and ex officio information officer of a public entity like LASA, or a deputy information he or she has delegated, to drop everything, suspend the discharge of all other executive management duties, and personally embark on a search for requested records, find and deliver them. But 'every person' involved in the search on his or her behalf must be identified.

In your table of 'Steps taken to locate the document or to determine whether the record exists or not' in paragraph 2.4 of your affidavit, you say variously that this or that 'office', 'offices', 'specified offices', 'department', 'relevant department', 'officials', 'official specified', 'officials specified', 'specified official', 'specified officials', 'the official who would ordinarily be expected to know of its existence', 'National Office', 'committee', 'specified LSTC', 'IT department', 'specified Regional Office', 'specified KwaZulu-Natal Office', 'Eastern Cape Regional Office', and 'the Human Resource Department' was/were 'consulted' or 'checked with' concerning the record identified in your 'Record requested' column.

Relying on their responses, you say: 'No such record exists', 'No such record can be found' and variants of the latter claim. (You refuse a few records, to which I'll advert below.)

Offices, departments, and a committee, however, are not 'persons' for the purposes of a section 23 affidavit.

Neither are anonymous 'officials' – singular and plural – with whom you (or your Corporate Services staff) claim to have communicated at meetings or over the telephone about the records I requested.

The requirement of section 23(2) that you 'includ[e] all communications' with such 'persons' in your affidavit is plainly to identify such 'persons' for the ultimate purpose of a criminal prosecution and imprisonment for two years under section 90 should it be found that 'with intent to deny a right of access in terms of this Act', he/she or they have criminally concealed, destroyed, or falsified any requested records.

Section 23(2) requires that 'every person who conducted the search on [your] behalf', 'every person' with whom you had 'communications' about the requested documents, every 'person' who, as you put it, you 'consulted' or 'checked with', must be identified.

On one hand, you imply in paragraph 2.3 of your affidavit that you conducted the entire search yourself:

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

This doesn't cover records which you claim in your affidavit 'could not be located' or 'retrieve[d]' – implying they do exist, just can't be found – so it seems other persons enquired about these on your behalf. Indeed, there are several indications from your affidavit that at least some of the search, if not all of it, was carried out not by you personally but instead by your Corporate Services department staff on your behalf, in some cases assisted by LASA's IT staff:

- your next paragraph 2.4 of your affidavit is set in indirect speech, not the first person: e.g. this or that office or unnamed official 'was checked' or 'was consulted' – not 'I checked' or 'I consulted';
- you specifically mention the involvement of unnamed members of your IT staff in searching for records;
- one of the email records supplied me was visibly forwarded by email to your Corporate Legal Manager Solly Sekgota recently, which indicates his involvement in the search;
- your email correspondence with me is visibly copied to Sekgota and Thimba Hlungwane, further suggesting they were tasked with or involved in searching for and gathering requested records and establishing in some cases that they don't exist; and,
- your Corporate Services attorneys are generally involved in handling PAIA requests, as indicated by their attendance at the PAIA training workshop conducted by the SAHRC in 2012 and by LASA's response to the SAHRC's PAIA audit questionnaire in 2013.

This is not objectionable per se, because, as said, section 23(2) expressly contemplates that as a deputy information officer you might engage other 'persons [to] conduct.. the search on behalf of the information officer' (or deputy information officer) for documents requested under the Act.

What's objectionable is that you imply in your paragraph 2.3 to have personally conducted the entire search for the requested documents yourself when it's evident that other unnamed persons on your Corporate Services and IT staff were assisting you in your search for, at least in regard to some of them, and that any number of unnamed persons responded to the enquiries about the requested records.

Presumably the 'meetings' that were 'held ... with some official[s] employed by Legal Aid SA' took place in the National Office where you work with them – e.g. with Brian Nair, Patrick Hundermark and Amanda Clark, especially in regard to the records specified on my lists F to J –

and that the enquiries made of other 'official[s] employed by Legal Aid SA' outside the National Office in the Kwa-Zulu-Natal-, Eastern Cape-, and Free State and North West regional offices were made by email, more especially since my lists of documents required from these regional officers are quite long.

I'm sure you didn't personally fly around the country in search of requested records, interviewing all 'official[s] employed by Legal Aid SA' in the provinces, 'who would ordinarily be expected to bear knowledge of the requested records or other related records'. And that you didn't 'enquire telephonically' by reading my long lists to them over the telephone – in which case you'll have notes of such 'communications' to 'includ[e]' – rather than emailing them, and thereby conveying them instantly and much more easily.

In short, although you don't say this – you mention only meetings and telephone calls – I presume you and/or your staff asked the officers outside the National Office for the records I wanted from them by email. If so, to comply with section 23(2), your emailed 'communications', comprising your enquiries and their responses, must be 'includ[ed]' in your affidavit as annexures.

Section 23(2) requires that you be specific about your 'communications', be they face-to-face meetings, telephonic enquiries, and emailed enquiries; and it's not enough to merely say you 'consulted' and 'checked with' unnamed offices or persons. The section requires that 'every person' who assisted you in your search be identified, and that what was 'communicat[ed]' to whom by whom be clearly stated.

Section 23(2) also requires that you be explicit about what records you searched for yourself and what records you had others search for on your behalf. Depositing to an affidavit as the perfect truth to the best of your knowledge and belief is a serious matter, and there's no room for throwing up your hands and retorting later when it's found to be false, 'I'm only an agent', as you did when I mentioned to you in the Labour Court that your interlocutory affidavits drawn for you by your junior counsel were replete with perjury. (Your opposing and condonation affidavits in the Labour Appeal Court were likewise. And now I see from some of the LTSC minutes provided me at long last, your discovery affidavit in the Labour Court was perjured too.)

By failing to 'includ[e] all communications with every person who conducted the search on behalf of the information officer', as prescribed by section 23(2), you've masked the identities of your informants, making it impossible to test the veracity of what they've told you about the missing documents and to hold to account in a criminal court under section 90 those you

'consulted' and 'checked with' who've given you false information founding your claim in your paragraph 2.2:

I further confirm that Legal Aid SA do[es] not have some of the records requested by the Applicant ... and ... it is therefore not possible to make available to the Applicant some of the requested records.

In a few cases it's possible to identify or to surmise the unnamed 'official' to whom you're alluding, by referring back to my particular record request or to my note under it on my consolidated list; but this isn't possible where my request or my note under it refers to more than one person, in which case your vague reference to 'the official' is useless and non-compliant with section 23(2).

As said, your section 23 affidavit must 'includ[e] all communications with every person who conducted the search on behalf of the information officer'. This requires you to name your informants in regard to non-existent or untraceable records.

In sum, having regard to the precise reporting requirements of section 23(2), paragraphs 2.3-4 of your affidavit are insufficiently particular and are consequently non-compliant with the Act.

If despite this notice you persist in failing to comply with section 23(2), or again neglect to comply with it by not 'including all communications with every person who conducted the search on behalf of the information officer' – both your staff and the people they 'consulted' and 'checked with' – I'll set my applications down again for a two-week hearing under clause 5 of the settlement agreement; move for an order that they be referred to oral evidence; subpoena you, other top management executives, and LASA employees with likely knowledge of the requested records not furnished to me; and establish the truth about them in open court, on the record, for transcription for the police if necessary, by conducting a searching cross-examination of you and your subpoenaed colleagues under oath on pain of imprisonment for perjury, about all records not furnished and not explained to my satisfaction. And adduce this letter in evidence to demonstrate your wilful breach of the settlement agreement and your determination not to comply with the Act.

Individual defects

I'll now address each of your responses to my individual record requests on my consolidated list. Please keep in mind the general defects in your responses stated above, which need remedying.

A2. You've failed to certify in your section 23 affidavit your claim made in your letter, 'No signed recommendation exists.'

On 24 May 2010, the date on which Skibi was recommended for the Mthatha Senior Litigator post according to the unsigned recommendation report, you were still ROE for the Eastern Cape based in Port Elizabeth and were on the selection panel that recommended him. Having been promoted to Corporate Services Executive in the National Office w.e.f. 1 July 2010, you were duly designated a deputy information officer on 16 January 2016 by written delegation signed by information officer Vedalankar under section 17.

So in certifying under section 23(2) 'that it is not possible to give access to that record', i.e. the signed recommendation of Skibi, you have the advantage of direct personal knowledge of the true facts.

If you're relying on your direct personal knowledge of the facts to claim 'No signed recommendation exists', because you never signed it, you need to say so on oath. If on the other hand you did sign the recommendation of Skibi's appointment before it was dispatched to NOE Brian Nair in the National Office to approve with CEO Vedalankar's agreement, as required by the Approval Framework (there's no mention of any second interview on the recommendation report, and Skibi was already a Senior Litigator who'd appeared several times in the SCA), but the signed recommendation was 'lost in transit' as I've previously been told on oath, you need to swear it 'cannot be found' (per section 23(1)(b)(ii)).

In making your fresh, PAIA-compliant, section 23 affidavit, you need to pick one of these two conflicting, contradictory stories told me under oath. One or both are perjury; you decide which to swear to. Or you can just furnish me with a copy of the signed recommendation at last.

If you're not relying on your own direct personal knowledge of the non-existence of this record, nor on Eastern Cape RHRM Magazi's radically different story on oath about the loss of the record 'in transit', which is to say it existed until it went missing, you're required to state who claimed to you or to your (named) Corporate Services staff member that it doesn't exist or can't be found and why, and what 'reasonable steps [were] taken to find' it (per section 23(1)(a)).

Unless you now jettison it for the lie that it was, the story told me under oath that the signed Skibi recommendation was 'lost in transit' between Mthatha and Johannesburg will need explaining. By the time the Mthatha Senior Litigator post interviews were held, Mthatha JCE Gwele had been squeezed out of LASA (I have the whole documented history from him), and no one from the Mthatha JC was on the selection panel, so the recommendation wouldn't have been sent to Johannesburg from Mthatha as falsely claimed under oath.

I deal with the obvious mendacity of the sworn 'lost in transit' story in paragraphs 37ff of my founding affidavit in case 257/14.

As I told you at court when settling my PAIA applications, I intend that every single lie told under oath in my matter will be catalogued and documented for prosecution.

If dissatisfied with your new section 23 affidavit for failing to produce or properly certify this record under section 23, I'll exercise my prerogative under section 5 of the settlement agreement, set down my claim to compel it, have the matter referred to oral evidence to enable the magistrate to ascertain the truth, subpoena you and other LASA employees with likely knowledge of the matter, and cross-examine you all about it on the record under oath on pain of imprisonment for perjury and for wilful concealment of a duly requested record.

A3. Who requested these? By 'specified offices', do you mean Eastern Cape RHRM Magazi who works there? Do you mean that as RHRM she wasn't bothered to carry out her basic responsibility prescribed by section 1.5.1 of LASA's Recruitment code to advise the unsuccessful shortlisted candidates, some of whom you said (in H7) 'will be from outside the region, and will have to fly to the venue' for the interviews?

A4. Who requested this? Who in the Eastern Cape and National offices and IT department said it doesn't exist? Or does exist but couldn't be found?

According to the minutes of the Legal Services Technical Committee meeting in Johannesburg on 27 May 2010, you were present. If you took the signed recommendation report with you from the Port Elizabeth regional office at which you were then based (getting it signed would have been a cinch as all panel members were there) to hand-deliver to Nair who chaired the meeting, but you lost your briefcase containing it on the plane, in the taxi or in the hotel, and in this manner the signed recommendation report was 'lost in transit', you're required to say so.

Or is it LASA's version that Nair was sent or you gave him an unsigned recommendation to approve – which is why he testified (amidst a sea of lies) that it wasn't signed?

The sworn allegation that the recommendation report was 'lost in transit' means it was lost on the way to Nair. This needs clarifying.

A5. Who requested these? Who in the Eastern Cape and National offices and IT department said they don't exist? Or do exist but couldn't be found? What about the Mthatha office? Why wasn't someone there asked? An enquiry obviously needs making there. Whose email accounts were searched? Did your IT staff search LASA's email servers? If not why not?

A6. These records have neither been supplied nor certified.

A7. Who requested these? Who at the Eastern Cape and/or Mthatha Justice Centre said they don't exist or can't be found? Whose email accounts were searched? Did your IT staff search LASA's email servers? If not why not?

B1-3. Who requested these? Is Nair the 'official specified'? Do you mean Nair confirms that no such records exist? If so, you need to positively identify him in your affidavit as your informant.

B4. Who requested these? Who is 'the official who would be ordinarily expected to know of its existence'? Nair? You need to positively identify him in your affidavit. Does he confirm that no such records exist? Or is he saying contrariwise that they do exist but can't be found? Which?

B5. Who requested these? Who are 'the officials specified'? Do you mean Nair? Who else, since you mention 'officials' in the plural? Do you mean Nair confirms that no such records exist? If so, you need to positively identify him in your affidavit.

B6. Who requested these? Who is 'the official'? Nair? Does he confirm that no such records exist, or is he saying contrariwise that they do exist but can't be found? Which?

B7-8. These records have neither been supplied nor certified.

B9. Who requested this? Who is 'the official'? Nair? Does he confirm that no such record exists, or is he saying contrariwise that it does exist but can't be found? Which?

B10. These records have neither been supplied nor certified.

B16-18. These records have neither been supplied nor certified. There are no 'records ... attached as appendix B16'.

B19. Who searched for/enquired after these records? Who says, 'No committee had a discussion on the issue'?

B20. Who searched for/enquired after these records? Do all three - Nair, Mtati, Sekgota - state that they have no recollection of such records ever having existed? Make this clear.

B28-30. Who searched for/enquired after these records? Who in the Human Resources Department responded to the enquiry? Did he or she say 'No such records exist', or contrariwise that they do exist but 'cannot be located'?

B31. This record has neither been supplied nor certified.

N.N 

B33. Legal opinion privilege is conceded and this request is abandoned.

B34–35. Who searched for/enquired after this record? Did Vedalankar confirm that these records don't exist? Or contrariwise say that they do exist but can't be found? Which?

B36–37. These records have neither been supplied nor certified.

B38–9. Who searched for/enquired after these records? Was Mlambo JP asked for them? If not, who was?

B40–1. Who searched for/enquired after these records? Do you mean Vedalankar and Nair both claim no such records exist? Or that they do exist but they can't find them?

C. Since Nair emailed this document, he must have it. Did Nair claim it doesn't exist? Or that it does exist but he can't find it? Did your IT staff look for it?

D2–4. These records have neither been supplied nor certified.

E1–17. Who searched for/enquired after these records? Who exactly are the foolish persons who ridiculously allege that no records whatsoever exist regarding Ngcamu's employment as Children's Court practitioner at the Durban Justice Centre, or contrariwise that they do exist but cannot be found? What exactly was the information given about these records in response to the enquiry made in the search for them? That no such records whatsoever exist? Or that the requested records do exist but can't be found? Which?

E18. Under the agreement you undertook to surrender the records requested or certify any that don't exist, so now raising section 63(1) to refuse these records puts you in breach. The section you raise anyway has no application to public body records. The only 'Grounds for Refusal of Access to Records' of a public body are those contained in sections 34–45 in Chapter 4 in Part 2 of the Act. If maybe you had in mind section 34 instead, 'Mandatory protection of privacy of third party who is a natural person', it's no good to you, because 34(2) provides:

A record may not be refused in terms of section (1) insofar as it consists of information –

...

(f) about an individual who is or was an official of a public body and which relates to the position or functions of the individual, including, but not limited to-

- (i) the fact that the individual is or was an official of that public body;
- (ii) the title, work address, work phone number and other similar particulars of the individual;

- (iii) the classification, salary scale, remuneration and responsibilities of the position held or services performed by the individual; and
- (iv) the name of the individual on a record prepared by the individual in the course of employment.

The records must be provided or certified under section 23, or I'll return to court to compel.

E19. Who searched for/enquired after these records? Who said they can't be found? Is it LASA's position that the records exist but can't be found? Or don't exist? Did your IT department search for them?

E21. Who searched for/enquired after this record? Who in 'the Human Resources department' was 'checked with' about it? Is it LASA's position that the record exists but can't be found? Or doesn't exist because it was never sent, as confirmed by RHRM Brijlal and ROE Mdaka?

E22. Who searched for/enquired after this record? 'No such record can be located' implies the letter exists; but on your own pleaded version in my labour case, no such letter was ever sent to Ngcamu – only to the other three shortlisted interviewed candidates, myself included. And when during document discovery proceedings in my labour case I sought the production of such a regret letter sent to Ngcamu, none was produced, only copies of the three letters sent to me, to Mngadi and to van Wyk. If indeed no such record exists, because unlike me, Mngadi and van Wyk, Ngcamu wasn't sent a regret letter*, you are required to say so categorically. (*Perhaps because he was kept expectantly waiting in the wings – considering (i) that I was asked in cross-examination why I hadn't just walked away (as hoped); and (ii) Nair's evidence, as a then aspirant lawyer and soon advocate of the High Court, that it's perfectly in order over at LASA, the way things are routinely done over there, to appoint a candidate who's been rejected by a selection panel, and never mind due process, legitimate expectation, the right to fair administrative action and the rule of law – not at the country biggest law firm.)

E23. This record has neither been supplied nor certified.

F1-4. Who searched for/enquired after this record? Who was 'checked' with about the records? Nair or Hundermark or both? Did he/they say the records exist but 'can[not] be found', or did he/they positively confirm that indeed no such records exist? It's one or the other; section 23 requires you to communicate clearly and unambiguously what they said either way.

G 1. These records have neither been supplied nor certified.

G2. The document provided, marked G2, is a 'Summary of the Scoring for the Senior Litigator Positions' by the so-called second round interview panel. It's very obviously the wrong document, and not what I requested. I requested recommendation reports of the selection panels, and unless these are furnished to me as undertaken, I will apply to compel. There's no room for pretending (criminally under section 90) that they don't exist or can't be found, because they are the founding documents, so to say, for the employment of the said Senior Litigators, and they record the reasons no one was employed at Kimberley when the post was first advertised. (I already know that Skibi wasn't recommended by the selection panel interviewing for the Mahikeng Senior Litigator post. I recently learned that a different candidate was recommended for it and that Skibi was rejected because his scores were too low, but that he was appointed to the post nonetheless.) The document you've provided is also falsified. Kaloo told me he was interviewed by Mlambo JP, Nair and Clark only, and not by Hundermark and Makokoane as well, as the 'Summary of Scores' document falsely claims.

G3-5. These records have neither been supplied nor certified.

G6-8. Who searched for these records? Is Nair your informant about the unavailability of these records? Does Nair say the records don't exist? Or does he say they do exist, but can't be found? If they do exist but can't be found, did your IT staff assist in trying to find them? Section 23 requires you to state categorically whether the records exist or not. You've said they can't be located, which suggests they exist do exist to the best of Nair's knowledge but can't be found.

G9-14. These records have neither been supplied nor certified.

H1. This record has neither been supplied nor certified.

H3. These records have neither been supplied nor certified.

H4. Who searched for these records? Who's the 'official' who said they can't be found? Or does he or she mean the records don't exist?

H5. This record has neither been supplied nor certified.

H6. Section 23 requires certification by the information- or deputy information officer on affidavit or affirmation; no one else can certify it with an affidavit or affirmation of their own. It's incompetent to avoid your obligation under section 23 to certify the record by referring to an affidavit that some other person has previously made. You are required in your own section 23 affidavit, to record what was 'communicat[ed]' to you or your staff in the 'search' for the record.



H8. Who enquired after these records? Did Clark respond that she couldn't find her folder of records concerning the top legal professional post in the Eastern Cape, created, advertised, recruited for, and selected for in the period March to May 2010? Or that she's never had such a folder of records in her possession and that it doesn't exist?

H9. Who enquired after these records? Who said no such records could be found? Did your IT staff search for them? Or was it meant that the records don't exist?

H11. Who enquired after this record? Who said the minute of this important Board meeting couldn't be found?

H12. This request hasn't been properly responded to. The minutes up to May 2010 have been provided, but the rest I requested up to February 2011 haven't been.

H13. Who enquired? Who said the minutes can't be found? Is it intended to allege that LASA Executive Management Committee meetings aren't minuted? Or that none were held over the stated period?

H14. This request hasn't been properly responded to. Only two minutes for Board Executive Committee meetings have been furnished, namely for the meetings on 20 November 2009* and on 18 February 2011. The rest of the requested minutes have not been supplied. (*The meeting previous to the November one was in July 2009; the minute for that wasn't requested.)

H15. This request hasn't been properly responded to. The only Board meeting minutes furnished are those for the meetings of 28 November 2009, 29 May 2010,* and 31 July 2010. (*This minute refers to a 27 February 2010 meeting.) The rest of the requested minutes haven't been supplied.

H17. Who enquired after these records? Who's the liar who said they couldn't be found, seeing as LASA provided them to me in response to a subsequent PAIA request for them addressed to the Department of Justice and Correctional Services, but which it referred to LASA to respond to under section 20?

H18. This record has neither been supplied nor certified. It certainly exists; it just needs digging out.

H20. This record has neither been supplied nor certified.

H21-30. These records have neither been supplied nor certified.

H31. Despite my explicit Note that the August letter not required, it's been supplied instead of the record I asked for: the communication with Mngadi in April/May 2010. Your IT staff will assist you find it.

H32. Your refusal to furnish me with copies of your counsel's feenotes, i.e. invoices for services rendered, for the reasons you've given is incompetent. They aren't his property. Such invoices became part of LASA's business records when he presented them for payment. They contain no 'personal information about a third party' per section 34(1), and accordingly your counsel doesn't need to consent to your release of them to me, nor does section 34(2)(a) give him the prerogative to give or refuse it. Nor are such feenotes legally privileged: see *A Company and Others v Commissioner for SARS* (16360/2013) [2014] ZAWCHC 33; 2014 (4) SA 549 (WCC) (17 March 2014) – online at <http://goo.gl/pNZfvb>. If you persist in unlawfully withholding these records from me, I'll set the case down again for an order compelling them.

H33. These records have neither been supplied nor certified, but I abandon my request for them. Legal advice privilege applies.

H35. I don't accept that the 'disclosure' of Board Secretary Schoeman's resignation or dismissal letter 'would involve the unreasonable disclosure of information about a third party, including a deceased individual' (I'm quoting section 34(1)). If you insist that releasing the record to me would unreasonably disclose such information, and you continue refusing it, I'll set the matter down again, subpoena the document duces tecum, and ask the magistrate to examine it under section 80 and decide whether this is true or not. Although I'm not required by PAIA to justify my request for this document, I record my special interest in:

- the true circumstances in which Schoeman departed from LASA, and lost top-rung, highly paid 'job I loved' (as she put it to me on the telephone); and,
- to what corruption in LASA's head office she was apparently referring to when tweeting from work at 14h01 on Friday 29 October 2010, the day after a LSTC meeting, and ten days after Vedalankar's letter to me of the 18th illegally refusing my first PAIA request in August and telling me lies about why my appointment was aborted, unsupported and contradicted by LASA's records, and repeatedly contradicted by Nair in telling quite different lies to the Board and yet more different lies to the Labour Court (with even more new lies told the Labour Appeal Court): 'Sometimes it's better to be clueless about what's happening around you than to know every bit of information that would silently kill you.' (<https://goo.gl/Ly6PNr>)

H39–43. These records have neither been supplied nor certified.

H44. Who enquired after these records? Who said they can't be found? Did he mean they don't exist? Is it intended to allege that, unlike minuted FS/NW regional meetings (see D1), these KZN regional meetings weren't minuted? Or weren't held?

H47. These records have neither been supplied nor certified.

H48. This request has not been properly responded to. The record of the decision was requested. I already have Nair's email communicating the decision, which has been provided again, instead. Is it intended to allege that Nair incompetently took the decision alone, ultra vires, without discussion and approval by the LSTC, and that for this reason no such record of such decision by the LSTC exist?

H50. Who enquired after this record? Who said it can't be found? Did he mean it doesn't exist? Is it intended to allege this meeting wasn't minuted? Or that it didn't take place?

H51-2. Who enquired after these records? Who said they can't be found? Did he mean they don't exist?

H54. Who enquired after this record? Who said it can't be found? Did he mean it doesn't exist?

H56. Who enquired after these records? Who said they can't be found? Did he mean they don't exist?

J. This record has neither been supplied nor certified.

K1-4. The Preamble to PAIA records that 'section 32(1)(a) of the Constitution provides that everyone has the right of access to any information held by the State'. The records concerning LASA's insurance policy with the insurance underwriter Camargue, LASA's claims on it under the policy, the repeated progress reports Camargue demanded (which you mentioned to me at the first pre-trial conference at court during my labour case) and the progress reports LASA furnished it, are all business records of LASA and thus 'information held by the State', and contrary to your ridiculous false allegation, they do not 'belong.. to a third party' i.e. your insurer Camargue; and Camargue has no prerogative under any provision of PAIA to grant or refuse consent to my duly requested access to these public body records.

Furthermore, paragraph 9 of the settlement agreement, added in manuscript and initialled, provides:

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


Even if the set of insurance records I requested, items K1-4, 'belongs to' Camargue, which they don't, and some or other section in Chapter 4 in Part 2 of the Act, 'Grounds for Refusal of Access to Records', afforded you the right (or duty) to refuse me access to them without Camargue's consent, which it doesn't, and which is why you don't rely on any such section, you haven't 'demonstrate[d]' that you have 'sought consent' from Camargue. So you're out of court any which way.

If you continue illegally withholding these records from me, in violation of my fundamental right to information, in violation of my fundamental right to access public body records, I'll simply set my claim to them down for argument. You can then send your very junior counsel to please explain to the PAIA-expert magistrate why the insurance records in LASA's possession shouldn't be surrendered to me in accordance with my PAIA request for them and your undertaking to furnish them to me, along with all other duly requested records, recorded in paragraph 4 of the settlement agreement handed in to court.

(We both know why you and your head office colleagues are anxious to keep these insurance records suppressed. As I've said before, they'll be founding a massive civil claim against LASA by Camargue, and the criminal prosecutions of some of its top officers for insurance fraud. Once I've apprised Camargue of the true facts of the matter, vouched by LASA's own business records, and have demonstrated how it was defrauded out of millions with lies to induce it to maintain the costs of a false defence in my labour case, it will certainly want its money back and pursue LASA energetically for it. The vast sum of which Camargue was defrauded, and which LASA will have to repay it, will ultimately be recovered by LASA or by the Auditor General from the executives who lied about the facts of the case to defraud Camargue out of its money.)

Final PAIA request

My 60 days within which to file my final PAIA request in relation to LASA's Senior Litigator posts, in terms of clause 7 of the settlement, will commence to run from the date you remedy your defective compliance with your obligations under clause 4, by furnishing me with all outstanding documents requested and with an affidavit complying fully with section 23.

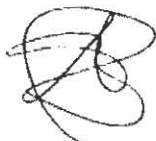
N.N 

Final demand

You are hereby required to remedy your breaches of the settlement agreement, described above, failing which I intend exercising my option provided by clause 5 and setting my applications down again for an order compelling your full and proper compliance.

As to timeframes for this, you have five court days to consider this demand and to convey whether you intend remedying your breaches described in it. If so, I'm open to whatever reasonable request you might make for more time within which to do this. If after five court days of delivery of this notice I haven't heard from you, I'll deem your silence to be a tacit refusal to remedy your defective performance under the settlement agreement, and will proceed to set my cases down to compel and start preparing all your subpoenas.

Yours sincerely



ANTHONY BRINK

Thembile Mtati

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From: Thembile Mtati
Sent: Monday, May 9, 2016 6:42 AM
To: Anthony Brink
Cc: Matimba Hlungwane
Subject: RE: Notice of Breach of Settlement Agreement and Demand for Full Compliance: Brink v LASA: PAIA applications: Eshowe Magistrate's Court

Dear Mr. Brink,

I indicated to you through e-mail that I will be forwarding you a supplementary affidavit.

This will be attended and sent to you before Friday 13 May 2016.

We deny that we are in breach of the settlement agreement at all.

Regards,
Thembile Mtati
Corporate Services Executive

Tel: (011) 877 2000
Fax: (011) 877 2222



From: Anthony Brink [mailto:arbrink@iafrica.com]
Sent: Friday, April 29, 2016 1:01 PM
To: Thembile Mtati
Cc: Vidhu Vedalankar; Patrick Hundermark; Sethopo Michael Mamotheti; Joseph Lethiba
Subject: Notice of Breach of Settlement Agreement and Demand for Full Compliance: Brink v LASA: PAIA applications: Eshowe Magistrate's Court
Importance: High

Dear Mr Mtati
I attach a letter for your attention and action.
Yours sincerely
Anthony Brink

Cc:
Information Officer and Chief Executive Officer Vidhu Vedalankar
Chief Legal Executive Patrick Hundermark
Internal Audit Executive Sethopo Mamotheti
Board Secretary Langa Lethiba

N.N.

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1 Boast Street
Eshowe 3815
6 June 2016

Thembile Mtati,
Deputy Information Officer and Corporate Services Executive
Legal Aid South Africa
29 De Beer Street
Braamfontein

Cc:
Information Officer and Chief Executive Officer Vidhu Vedalankar
Chief Legal Executive Patrick Hundermark
Internal Audit Executive Sethopo Mamotheti
Board Secretary Langa Lethiba

By email

Dear Mr Mtati

PAIA APPLICATIONS:
RECORDS NEITHER FURNISHED NOR CERTIFIED;
FAILURE TO COMPLY PROPERLY AND FULLY WITH SETTLEMENT AGREEMENT;
RETURN TO COURT ON 28 JULY 2016

In your email of 19 April 2016, you very correctly stated: 'our section 23 affidavit does not address certain requested information.'

By letter to you on 29 April, I identified fourteen of these records neither supplied to me nor certified under section 23 as non-existent or untraceable. (This was besides incomplete sets provided of requested records, the missing records neither supplied nor certified.)

Your supplementary section 23 affidavit on 12 May addressed only six of these.

The eight outstanding records that you've neither furnished nor certified under section 23 are:
B16, B17, B18, B31, H12, H31, H32, and H48.

As required of you by our settlement agreement made at court on 11 February 2016, kindly respond to these outstanding record requests without further delay.

△
SHERIFF
2016-10-3
HIGH COURT
PMBURG

Besides your total and partial omissions to respond to my record requests, your performance under the settlement agreement was otherwise massively defective and non-compliant with PAIA in all the respects detailed in my April letter.

Save that your supplementary affidavit now certifies that six records, previously not addressed, don't exist, four credibly, one dubiously, and one certainly falsely, the many basic defects in your performance under the settlement agreement that I identified in my April letter remain unresolved. Your supplementary affidavit is shot through with the same defects.

Under clause 5 of the settlement agreement, I'm consequently returning to court to compel your due compliance with my PAIA requests enumerated in my consolidated list of requested records. The PAIA-specialist magistrate will see about your emailed response to my April letter on 9 May: 'We deny that we are in breach of the settlement agreement at all.'

Although the rules of court didn't require me to do so, I served your local correspondent with a copy of my letter to the Clerk of Court on 27 May requesting the allocation of a new set-down date. In case you haven't yet seen it, I annex a copy. Its annexures, all of which you already have, can be downloaded at tig.org.za/LC/PAIA.

In my letter to the Clerk of Court I stated:

Under rule 55(1)(k)(ii), I intend moving for orders:

- referring my PAIA applications to oral evidence;
- directing that the deponents to the answering- and confirmatory affidavits, Vidhu Vedalankar, Brian Nair, Thembile Mtati, Solly Sekgota, Hope Bambiso and Thenjiwe Magazi, appear personally to be cross-examined about documents that haven't been furnished to me and haven't been explained to my satisfaction or at all; and,
- granting me leave to subpoena LASA Human Resources Executive Amanda Clark, Chief Operations Officer (and alleged deputy information officer) Jerry Makokoane, Chief Legal Executive (and alleged deputy information officer) Patrick Hundermark, LASA's Board Executive Subcommittee chairperson, and chief IT officer (in charge of LASA's computer servers storing its electronic business records) for the same purpose.

I've now been allocated a new date for this purpose, 28 July 2016; and once I've drawn the schedule mentioned at the end of my letter to the Clerk of Court, identifying the issues and the witnesses to be cross-examined to get to the truth about the requested documents not provided me, I'll serve a formal notice of set-down on your local correspondent with the schedule attached to it. And email you a copy.

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This is to give you early, informal notice of our next date in court to ensure that you have counsel retained and ready to go. There'll be no postponement. Your prevarication has wasted enough of my time already.

Please provide me with the name of LASA's chief IT officer; I can't find it online or in any of LASA's reports, and I need it for his subpoena.

Finally, I record that your failure to comply fully and properly with the settlement agreement is preventing me from completing my one final PAIA request about Senior Litigator posts, to which I agreed to limit myself in clause 7 of the settlement agreement. My agreed sixty days within which to lodge it will obviously run from the date you have fully and properly complied. I cannot and will not sign off and deliver my final PAIA request until I've had sight of all the documents previously requested under PAIA or your truthful, full and proper certification of them under section 23, because as I told you at court, documents disgorged from LASA by means of previous PAIA requests (and discovery requests before trial) have sometimes generated new lines of enquiry requiring my access to further records. And as I also told you, I'm essentially conducting a criminal investigation (perjury, defeating the ends of justice, lying to Parliament), so I will not be obstructed and hampered in this exceptionally serious exercise by your continuing, persistent, unlawful failure to provide me with all the information to which sections 11 and 23 of PAIA entitle me, in flagrant breach of the settlement agreement and in contemptuous violation of my fundamental right to information held by the state entrenched by section 32(1) of the Constitution.

You'll naturally be cross-examined on your response or non-response to this letter when my applications go to oral evidence.

As well as on your many criminal contraventions of section 90(1)(b) of PAIA, disclosed by both of your clearly perjured section 23 affidavits, to be shown in my coming schedule.

Yours sincerely



ANTHONY BRINK

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'FA2'
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1 Boast Street
Eshowe 3815
KwaZulu-Natal
20 May 2016

To: Vidhulekha Vedalankar,
Chief Executive Officer and Information Officer
Legal Aid South Africa
29 De Beer Street, Braamfontein
Johannesburg 2017

And to cc list

Dear Ms Vedalankar

LASA'S ONGOING FALSE ANNUAL PAIA REPORTING TO THE SAHRC
FOR THE MISINFORMATION OF THE NATIONAL ASSEMBLY TO OBSTRUCT
AND DEFEAT ITS CONSTITUTIONAL OVERSIGHT FUNCTION

Legal Aid South Africa ('LASA') has filed yet another dishonestly false annual report under section 32 of the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act'), also omitting prescribed information, to conceal from the South African Human Rights Commission ('SAHRC') and from the National Assembly its illegal refusals last year to allow me access to its business records, duly requested under PAIA in the exercise of my fundamental right to information held by public bodies, entrenched by section 32(1) of the Bill of Rights in the Constitution.

Why these records, including insurance records disclosing insurance fraud, are being so anxiously and determinedly suppressed, like Nixon clinging to his Oval Office tapes, is for another day, coming soon.

This is now the fifth false and defective section 32 report LASA has filed since 2011 to conceal its repeated and persistent illegal refusals of my PAIA requests made

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since 2010, in a pattern of what the SAHRC calls 'malicious compliance' by public bodies with their reporting obligations so as to conceal their violations of their constitutional information transparency obligations, or to put it more plainly, their illegal refusals to open their books. To conceal other things obviously.

Accurate section 32 reporting and PAIA manual updating 'were stressed' to LASA as 'key forms of compliance' with PAIA at the special PAIA training workshop the SAHRC conducted for it on 6 October 2011, as a direct result of its illegal refusals of my first three PAIA requests in 2010 and 2011 and false reporting to the SAHRC about this afterwards. The workshop report further recorded: 'The mandatory obligation for all government organizations to compile a report in terms of section 32 of PAIA was discussed. LASA compliance history was flagged with participants and most responded to the reporting of LASA as non compliant to Parliament with concern.'

You'll recall being taxed about this by the then chairperson of the Justice Portfolio Committee, Hon Landers, and by then Committee member Hon Jeffery, now Deputy Minister, when presenting LASA's annual report later in the month. The minute records that Hon Jeffery 'was curious about a Promotion of Access to Information Act (PAIA) report that was released that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA', and that when you failed to deal with it, i.e. the SAHRC's section 84 PAIA report about LASA as 'a case in point', 'The Chairperson said that he wanted to know about the PAIA report.' (The Committee was independently aware from my communications with it that you'd been illegally refusing my PAIA requests.) You managed to duck the Committee's enquiry by falsely calling the SAHRC's PAIA report 'untrue' and by untruthfully obfuscating.

LASA then blithely persisted with making false and defective section 32 reports for 2013/14 and 2014/15, and now 2015/16. What makes this extraordinarily serious is that the SAHRC necessarily relies on and is dependent on truthful and accurate

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reporting by public bodies to discharge its own annual reporting obligations regarding public body compliance with PAIA to the National Assembly under section 84 of the Act. Without reliable and accurate section 84 reporting by the SAHRC to the National Assembly, based on accurate section 32 reporting by public bodies to the SAHRC, the National Assembly can't effectively oversee public body performance, as required of it by section 55(2)(b)(ii) of the Constitution, and, more particularly, supervise the compliance of public bodies with their constitutional freedom of information and transparency obligations.

LASA's five false and defective section 32 reports for the years 2010/11, 2011/12, 2013/14 and 2014/15, and now again for 2015/16, have concealed its persistent illegal, unconstitutional refusals to permit me access to its business records duly requested under PAIA, and they have obstructed and frustrated, and threaten to continue obstructing and frustrating, the National Assembly's constitutional oversight function over LASA. They have prevented it thus far from holding you and your colleagues to account. Of course this has been the whole idea of these false and defective reports.

I approach you directly in this matter because when in August 2012 the SAHRC's then PAIA Unit director Fola Adeleke demanded that LASA's defective section 32 report for 2011/12 be amended to include your deputy information officer Brian Nair's persistent illegal refusal in April 2011 to comply fully and properly with my three PAIA requests addressed to you in August and December 2010 and March 2011, your Corporate Services Executive Thembile Mtati waved him away with an effusion of non-sequiturs in which he displayed his abysmal ignorance of PAIA (the PAIA workshop attendance register shows that he'd been expected to present himself to be taught how it works, but bunked the lesson), leading the SAHRC to report LASA's repeated false section 32 reporting to the National Assembly later in the year in its annual report under section 84 presented in October 2012. This is what the Portfolio Committee repeatedly asked you about.

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Accordingly I call on you as information officer of LASA, ultimately responsible under section 17 for its compliance with PAIA, to see to it that LASA's false section 32 report for 2015/16, signed and submitted by Mtati, is withdrawn and replaced with an amended, truthful, correct, complete and legally compliant one, for the true and full information of the National Assembly in the SAHRC's section 84 report later this year, in conformity with the detailed reporting requirements of the Act.


The false, defective and missing information in Mtati's report filed with the SAHRC on 15 April 2016 is identified below, followed by the true, correct and full information that section 32 requires you to provide.

Item 1: (a) the number of requests received

Mtati reports '2'. It's a minor inaccuracy relative to the egregiously dishonest and misleading reporting and concealment discussed below, but this wrong figure needs correction all the same.

Under 'Comments', Mtati refers to (i) my 'letter dated 4 May 2015', which 'sought two documents', and (ii) my PAIA 'request ... addressed to the information officer of the Department of Justice and Correctional Services on 27 November 2015' for the budget applications LASA made to the Department to pay nine Senior Litigator salaries for the several years I stated, which the Department 'referred to the information officer of Legal Aid South Africa on 3 December 2015 in terms of section 20 of the Act' to respond to. (I'd asked the Department for these records, because LASA has routinely refused my PAIA requests since 2010 on any number of idle grounds, ultimately abandoned (see below).)

Mtati ought to have reported '1' – my request for the budget records, because my letter in May was not a separate PAIA request. Referring to my PAIA request in March 2015 for eight records, still being considered under extended time that Mtati had asked me for, my letter amplified my request by including two further records

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in my Form A request list annexure, namely: '9. LASA's report to the SAHRC under section 32 of PAIA for 2014/15' and '10. CEO Vedalankar's approved leave application in respect of her absence from office in April 2015'.

My May letter was not an independent PAIA request because the Act requires that any PAIA request must comply with certain prescribed formalities, namely that it be (i) made on a completed Form A template, and (ii) covered by a request fee. I didn't use Form A in May and no request fee accompanied my letter, nor was any demanded. Cf. Nair's due demand in respect of my PAIA request addressed to him on 20 November 2014 (after I'd asked him for LASA's bank details for the purpose): 'Please be advised that before I can consider your request you are required to deposit a fee of R35 into the bank account set out below: [details]. ... upon depositing the fee, we will consider your request.'

My May letter, referring to my Form A PAIA request in March, and asking for access to two additional records, was consequently not a separate PAIA request as defined by the Act.

Indeed, in previous reporting under section 32, LASA itself recognised that such a supplementary request made in a postscript to a Form A PAIA request is not a separate request but is part of the main request. LASA's section 32 report for 2013/14 did not report as a separate request my request by letter on 17 October 2013 for a further document, namely '42. The spreadsheet attached to Nair's email [etc]', in addition to the '41 specified records' I'd requested of you in my then 'pending request of the 1st instant' conforming to the prescribed formalities: a Form A request submitted covered by a request fee. Again, no additional request fee for the further record requested was paid or demanded.

A letter not complying with Form A and not covered by a request fee, which requests the inclusion of additional records in a list annexed to a just-submitted Form A PAIA request still under consideration, is not a PAIA request within the meaning of the Act and is not an independent PAIA request for reporting purposes.

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As information officer you need to amend this item of the report to accurately reflect that one request for access was made in the reporting cycle: my request for LASA's budget applications.

Item 2: (b) the number of requests granted in full

Mtati reports '2' and that 'All requests were granted in full.' This is untrue. Only one request was granted in full: my PAIA request for LASA's budget applications (which Nair granted only because the Department was watching).

As said, my letter of 4 May 2015 was not an independent PAIA request, but even if it had been, it's untrue that access to both additional records I sought was granted. I was given a copy of LASA's section 32 report for 2013/14 (also non-compliant), but refused access to your leave form, for the reason Mtati gave me that 'This is personal information that has no relevance in exercising your rights in terms [of] the Act. Please find the acting delegations of CLE, COO and NOE.'

Granting access to an official record of a public officer's absence from office plainly does not entail 'the unreasonable disclosure of personal information about a third party' as contemplated by section 34 of the Act (any particularly personal reason you might have given for taking leave could have been redacted). And it's elementary that a PAIA requester's right to access and examine a public record is not dependant on its 'relevance' to 'exercising [his] rights' or to anything else. The refusal was accordingly not justified under any of the 'Grounds for Refusal of Access to Records' permitted by sections 34–45 in Chapter 4 of part 2 of the Act, and was therefore unlawful. Nonetheless, I didn't pursue your leave form because the other documents given me instead satisfied me that you were indeed out of office for much of April 2015, which allegation I was testing with my request – having been told so many lies by LASA's national management executives over the years: big lies, small lies, central lies and peripheral lies, a sea of lies told to me and to high authorities, some lies contradicting each other, some lies told under oath and to the National Assembly: serious crimes to be catalogued with supporting documents for

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prosecution in due course. But the fact remains that access to the particular record I requested was refused. It was not granted as falsely reported.

You need to amend this item of the report to accurately reflect that one request was granted in full: my request for budget records. That is, Mtati's false claim, 'All requests were granted in full', must be changed to reflect the true position: 'One request was granted in full'.

Item 4: (d) the number of requests for access

(i) refused in full

Mtati has reported '0'. This is untrue. He's failed to report his blanket refusal on 26 May 2015 of my requests (made in the previous reporting cycle) for 83 specified records, addressed to:

- Patrick Hundermark, for access to 23 records/sets of records;
- Hundermark again, for access to 4 records/sets of records;
- Jerry Makokoane, for access to 56 records/sets of records.

You need to amend this item of your report to accurately reflect that three requests for access, comprising a total of 83 specified records, were refused in full.

(ii) refused partially

Mtati has reported '0'. This is untrue. As mentioned above, my PAIA request addressed to you on 19 March 2015, supplemented by my letter of 4 May 2015 asking that two further records be included in it, was partially refused by providing me with one record (the section 32 report) and refusing five requests (your leave form and all four sets of insurance records that I specified). Two records were stated not to exist. Although this wasn't certified under section 23 as required, I took Mtati at his word that no records whatsoever exist to vouch that Hundermark and Makokoane and their 'teams' spent 187 and 220 hours respectively on (irrelevant) background reading of 'the documents relating to case 529/11', per the language of Mtati's report, as alleged to me and unlawfully charged for – about which more

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below.

You need to amend this item of the report to accurately reflect that one request for access, comprising eight specified records, was refused partially.

(iii) number of times each provision of this Act was relied on to refuse access in full or partially

Mtati reports '0': 'Not applicable for current reporting cycle.' This is untrue.

On 26 May 2015 within the 'current reporting cycle' Mtati refused me access to the 83 records I'd requested from Hundermark and Makokoane in the previous cycle. He did not expressly stipulate what sections of the Act he was relying on, but in objecting in paragraph 10.3 of his letter that (i) the records I'd requested were 'related to and ancillary to the litigation proceedings you have brought against Legal Aid South Africa under case number 529/11 at the Labour Court in Durban' and 'against Legal Aid South Africa officials under case numbers 257/14, 258/14 and 259/14' in the Eshowe Magistrate's Court to compel compliance with my three PAIA requests unlawfully refused in November 2013, and (ii) the 'requests are malicious and seek to divert the resources of Legal Aid South Africa', Mtati was clearly alluding to sections 7 and 45 of PAIA as grounds for his refusals, which same two sections he'd explicitly cited and relied on in November 2013, using similar language, to justify his refusal of all my PAIA requests addressed to regional deputy information officers Bambiso and Msweli and nearly all my requests addressed to you, made in October 2013 (hence my said three applications to compel, launched in April 2014).

Mtati expressly relied on section 36 to refuse me access to the four sets of insurance records I requested of you in March 2015.

Mtati impliedly relied on section 34 in refusing my request for access to your leave form on the ground that it's 'personal information', which section justifies the refusal of 'the unreasonable disclosure of personal information about a third party'.

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You need to amend this item of the report to reflect that:

- sections 7 and 45 were relied on 83 times to refuse me access to 83 specified records (requested of Hundermark and Makokoane);
- section 36 was relied on four times to refuse me access to four records (requested of you);
- section 34 was relied on once to refuse me access to one record (requested of you).

You need to record your frank concession in the 'Comments' column for the true and candid information of the SAHRC and the National Assembly that, as the SAHRC has repeatedly taught LASA (see below), section 7 of PAIA and the fact that a record request in some manner 'relates to and is ancillary to' past or pending litigation does not afford any 'Grounds for Refusal of Access to Records' allowed by sections 34–45 in Chapter 4 of Part 2 of the Act; and further that you accept that my requests were made, not frivolously or maliciously to waste LASA's time as falsely alleged to avoid dealing with them, but for exceedingly grave purposes, namely for the intended criminal, civil and disciplinary purposes that I stated, including perjury prosecutions, as indeed Mtati acknowledged (quoted below); and that Mtati's reliance on sections 7 and 45 to refuse me access to the records I duly requested was unlawful. As was his reliance on section 34 for the reason stated above. As was also his reliance on section 36 to refuse me access to the insurance records I requested, on the spurious and irrelevant basis that they 'contain commercial information of a third party' (and recently, differently, equally spuriously, also falsely, in refusing them again on 15 April 2016 (see below)), because they 'belong to a third party' – which is both untrue and anyway not a ground for refusal permitted by section 36, which bars disclosure '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



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in contractual or other negotiations, or (ii) to prejudice that third party in commercial competition.' The insurance records I requested aren't hit by any of this.

Item 5: (e) number of instances where the 30 day period to deal with a request was extended

Mtati reports '0': 'No requests for extension was sought in respect of the two requests submitted during the reporting cycle.' This is materially false and misleading. In truth and in fact, on 28 April 2015 Mtati extended the period within which to respond to my request addressed to you in March 2015.

It's unsurprising that Mtati should wish to conceal from the SAHRC and from the National Assembly the ordinarily unremarkable fact that he requested an extension as usual, because, as I informed you in the draft section 32 report that I took the trouble to draw and send you on 24 March 2016, hoping LASA might use it as the basis for a true and correct report to the SAHRC for a change, the grounds Mtati advanced for the extension were not only legally irrelevant, they were lies.

The first reason he advanced for seeking more time, namely that you were 'on leave' (so 'She has, unfortunately not been able to finalise your request') was legally incompetent under section 26(1), not being among the several permissible reasons enumerated for an extension. (This is what deputy information officers are for: section 17 empowers you to 'designate such number of persons as deputy information officers as are necessary to render the public body as accessible as reasonably possible for requesters of its records', especially when you're not around.)

Worse, the reason Mtati gave – and repeated on 26 May 2015: 'In order to apply her mind ...' – was a lie, revealed by his subsequent confirmation on affidavit that 'the CEO has not read' my request and was not dealing with it, and that he was, because, he thought in his ignorance and incompetence, you as CEO had to decide appeals against refusals by deputy information officers of requests for access to LASA's records. (The SAHRC has repeatedly tried teaching LASA, including at its

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PAIA training workshop, that under section 1 of the Act LASA is a category-b type public body, which means it has no 'relevant authority' to appeal to, and an aggrieved record requester's remedy against the refusal of access is an application directly to court under section 78(2)(c.)


The second basis Mtati stated for extending the 30-day time limit to respond to my request had no application at all. Section 26(1)(c) that he cited allows an extension if 'consultations among divisions of the public body or with another public body is necessary or desirable to decide the request that cannot reasonably be completed within the original period.' No such consultations were necessary, much less engaged in, and the implication that they were was dishonestly false, which is to say another lie in keeping with the culture of mendacity in your national office that I've encountered over the years, again and again.

You need to amend this item to truthfully reflect that the period prescribed by section 25 was extended once, but not on any ground permitted by section 26, and that the two reasons Mtati advanced for the extension were false.

Item 9: (i) other matters as may be prescribed.

In his 'Comments' column for this item, Mtati refers to 'the previous reporting cycle', but not to the current 2015/16 one, during which, on 26 May 2015, he illegally refused me access to 88 of LASA's duly requested business records – only some of his justifications for doing so he then mentions under this head, leaving out the others. This is seriously misleading and needs correction.

Mtati states that my record requests 'were not granted as they ... relate to the litigation proceedings under case [LC D]529/11 which has since been finalised and further that Adv Brink refused to pay the search fees in terms of section 22 of the Promotion of Information Act 2 of 2000.' This dishonestly conceals LASA's subsequent implicit concession that these were not valid and lawful reasons for

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obstructing and refusing my PAIA requests when it later reversed itself and agreed to allow me access to all the records I'd requested (see below).

Firstly, Mtati's refusal of my requests 'as they ... relate to the litigation proceedings under case 529/11' wasn't justified on any of the 'Grounds for Refusal of Access to Records' permitted by sections 34-45 in Chapter 4 of Part 2 of the Act.

The SAHRC has repeatedly taught LASA that the fact that records appear to have been requested, or are stated to have been requested, for use in legal proceedings, whether 'finalised', pending, or intended, is no lawful ground for refusing them under the Act – more especially since section 7(2) of PAIA gives judicial officers the discretion to admit documents obtained via the Act after the commencement of the cases they're trying, if 'the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice.'

The report of the SAHRC's PAIA training workshop on 6 October 2011 for sixteen of LASA's head office attorneys, including Corporate Legal Manager Solly Sekgota, records: 'It has also been deemed important on the basis of the SAHRC's monitoring of LASA institutional compliance with PAIA and 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 with recognised rights.'

The SAHRC's then PAIA Unit director Adeleke repeated this advice to Mtati in email correspondence with him in August 2012, in which he was requiring the amendment of LASA's false and defective section 32 report for 2011/12, which I'd brought to his attention. Adeleke emailed Mtati on the 22nd: 'We note with concern however that reference is made in your email to a number of requests from Adv. Brink. This does not reflect in either of your reports to the SAHRC. We note further that the requester's reason for requesting particular information is being deduced. It should be noted that PAIA is quite clear that requests made to public bodies do not have to be supported or justified by a reason for the request. Similarly, requests made prior to notification of litigation should not have to be supported by a reason

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or purpose for the stipulated information. We remain concerned therefore about the accuracy of your section 32 report and need to advise that we intend auditing the veracity shortly. Notice of the audit will be issued in due course.' (As said, Mtati refused to correct the false report for 2011/12, leading the SAHRC to report LASA to the National Assembly in October 2012 for repeatedly making non-compliant section 32 reports.)

You need to amend this 'Comment' to clarify your appreciation that the refusal of my requests on the ground that 'they ... relate to the litigation proceedings under case 529/11' was unlawful and a violation of my fundamental right to information. It's dishonestly misleading for Mtati to pretend in his report that this was a valid ground for refusing me access to the records I requested, well knowing it wasn't, as the SAHRC has repeatedly taught, which is why it was eventually abandoned.

Mtati's deliberate total omission to report to the SAHRC his reliance on section 45 eighty-three times in refusing my requests for access to as many records, on the false basis alleged that they were an ill-motivated waste of LASA's time, reveals his bad faith in having persistently and repeatedly refused me access to LASA's business records on this basis since 2013, more especially since he himself very correctly acknowledged in his letter of 11 December 2014, asking for an extension under section 26, that 'your requests ... incorporate allegations that have far reaching implications on the officials of Legal Aid South Africa.' Like getting sacked, struck off, jailed, and sued under section 83 of the Public Finance Management Act 1 of 1999 to recover millions in damages LASA has suffered.

The second bogus reason Mtati states for having denied me access to the records I requested is that I 'refused to pay the search fees in terms of section 22 of the Promotion of Information Act 2 of 2000.'

Again, the SAHRC has repeatedly taught LASA about the kinds of fees PAIA allows, but its lessons just go in one ear and out the other. The report of the PAIA training workshop for LASA on 6 October 2011 reflects that 'types of fees' were

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explained to Sekgota and his fellow national office attorneys. And under the heading 'Fees' in her recent letter to you on 25 January 2016, the SAHRC's current PAIA Unit director Kisha Candasamy pertinently advised you (in boldface to drive the repeated lesson home) that search fees may only be charged under section 22 **'if the request is granted.'**

Hundermark and Makokoane hadn't granted me access to the records for which they were demanding I pay 'search fees'. Moreover the fees demanded weren't for searching but for time spent reading 'the documents relating to case 529/11', as Mtati puts it in item 4 of his latest section 32 report. Consequently their demands were not for search fees contemplated and allowed by section 22, and were unlawful; and Mtati's refusal to grant me access to the records I duly requested from Hundermark and Makokoane because, as he says in his report, I refused to pay the money they had unlawfully demanded, was equally unlawful. It's dishonestly misleading for Mtati to pretend in his report that my refusal to pay money I didn't owe was a valid ground for refusing me access to the records I'd requested.

You need to amend this 'Comment' to clarify your appreciation that the fees demanded by Hundermark and Makokoane, which demands Mtati persisted with until earlier this year when he dropped them (see below), were not search fees contemplated and allowed by section 22, and that Mtati's refusal to allow me access to the records I'd requested on the ground that I refused to pay the reading fees demanded of me was unlawful and a violation of my fundamental right to information.

Another aspect to be frankly included in your 'Comment' here, is the marvellous revelation, after LASA's capitulation at court (see below), that contrary to Mtati's repeated perjury on affidavit to falsely refute my repeatedly made charge that he, Hundermark and Makokoane held no written delegations as deputy information officers under section 17(6) of PAIA – I am, without question a Deputy Information

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Officer'; 'I have shown that I am a Deputy Information Officer'; and he, Hundermark and Makokoane as 'Deputy Information Officers have been duly appointed, alternatively duly designated by law' – in truth and in fact, you only designated Mtati on 16 January 2016, and Hundermark and Makokoane not at all, which means at the time they handled and blocked/refused my PAIA requests all three of them were acting ultra vires and unlawfully for that reason alone.

In conclusion, your revised report, amended in the manner described above so as to truthfully, accurately, fully and properly comply with section 32, will frankly disclose LASA's PAIA delinquency in 2015/16, and not continue to conceal its many repeated obvious basic refractory errors, even after I pointed them out again and again, in persistently illegally refusing me access to documents I'd duly sought under PAIA, in violation of my fundamental right to information held by the state, guaranteed by section 32(1) of the Constitution.

Which plainly illegal and unconstitutional refusals were finally reversed at court on 11 February 2016, before I commenced arguing my applications for orders compelling LASA's compliance with my PAIA requests for access to documents I'd been requesting since October 2013, to avoid looming inevitable judgment against LASA and the enormous reputational damage it faced – apparently foreseen and anticipated by your newly briefed advocate Chris Carelse.

Formerly employed in your national office, the attendance register shows that this sharp fellow, named at the very top of it, attended the SAHRC's PAIA training workshop in 2011. Unlike your other hopeless head office lawyers present, including Sekgota, who, the workshop reports records, repeatedly admitted that they had no idea how to handle PAIA requests properly, Carelse was evidently able to benefit from the special remedial lesson and acquire an understanding of constitutional information law from his SAHRC tutors, because his last-minute entry into the case for LASA's big day in court coincided with its total reversal of its persistent illegal

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refusals of my PAIA requests on the advice since 2010 of your other junior counsel, an utterly clueless but now very rich legal novice called Thabiso Machaba.

Which very obviously wrong advice from this smiling person Mtati, Sekgota and your other Corporate Services attorneys eagerly grabbed at to obstruct my access to the documents I'd duly requested, with the object of suppressing further documentary evidence of pervasive and systemic recruitment and financial corruption at LASA, and of a top-level criminal cover-up entailing lying to me; lying to the SAHRC; lying to LASA's Board of Directors; false reporting to the Minister; lying and false reporting to the Portfolio Committee (both crimes under section 17(2) of Act 4 of 2004); false pleading; contradictory perjury committed in PAIA affidavits, in a discovery affidavit, in interlocutory affidavits, in oral evidence, and in opposing and condonation affidavits on petition; defeating the ends of justice with a lying, defamatory 'memorandum' corruptly slipped to a judge to improperly influence and pervert his decision; major maladministration; abuse of power; financial misconduct involving many millions of rands; unauthorised and unlawful deviation from LASA's approved Strategic and Performance Plans; unauthorised and unlawful deviations from LASA's Code on Recruitment and Approval Framework, including unauthorised and unlawful direct, active interference in staff recruitment by the non-executive chairperson of the Board and by unauthorised management executives; massive failures of proper corporate governance both at managerial and Board levels; and the wholesale breakdown of due process and the rule of law in LASA's top echelons – all coming up in complaints later this year to the Public Protector, to the Auditor General, to the Directorate for Priority Crime Investigation copied to the National Director of Public Prosecutions, to the Judicial Service Commission, to the Law Society of the Northern Provinces, and to the General Council of the Bar.

After reading which, I'm not sure anyone will still be agreeing much with former Deputy Minister Andries Nel quoted in *Business Day* on 12 January 2011: 'The world would be a better place if it were run by Legal Aid.'

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LASA's deliberate, persistent, repeated illegal and unconstitutional refusals to comply with PAIA since 2010, despite the SAHRC's repeated attempted but unsuccessful remedial interventions, are detailed in a comprehensive draft 'Special Report on Legal Aid SA: An aggravated case of repeated non-compliance with the Promotion of Access to Information Act 2 of 2000' that I've substantially completed for the SAHRC, for the information of the National Assembly in the SAHRC's next section 84 report to be presented later this year.

As Mtati duly mentions in his section 32 report, at court on 11 February 2016, before the argument of my five applications to compel LASA's compliance with my PAIA requests, LASA decided to abandon its obviously incompetent and unlawful justifications for refusing them (Mtati was visibly taking instructions over the phone), along with its several lever-arch files full of professionally puerile, incompetent, irrelevant and untruthful defences to my applications piled up by young Mr Machaba like so much garbage strewn across the road, and 'agreed ... to provide records ... requested as set out in a ... consolidated list' that I agreed to provide to make things easy, comprising (in the language of clause 2 of the settlement agreement) 'an assembly of the several annexures to the PAIA requests in question ... and ... amendments to certain ... requests made by letter'; and to furnish 'an affidavit in terms of section 23' regarding 'records ... not located or [that] do not exist'.

In view of this complete surrender at court, it's dishonestly misleading for Mtati to then state in his report that 'without admission of liability or any concession of legal argument advanced by the requester', LASA agreed to furnish me with all the records I'd sued for (obtaining third party consent where necessary; none was) or certify any that don't exist or can't be found. This greasy way of talking (LASA's papers are full of it) falsely implies that the refusals of my PAIA requests and the money demands were justified, or were at least fairly arguable, when in truth and in fact they were manifestly illegal to anyone with a passing acquaintance with the provisions of the Act. And to anyone like Chris Carelse paying attention during the

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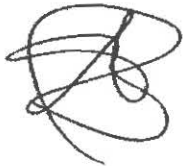


SAHRC's lecture on how PAIA works, delivered in special class for LASA's head office lawyers. And repeated by correspondence when the extra lesson for the slow learners failed, because they seemingly lacked the brains to understand it.

How LASA contemptuously reneged on the settlement agreement on the due date for performance, 15 April 2016, by making a desultory, token show of it, including an obviously perjured sworn certificate regarding records not provided, falls into the 2016/17 reporting cycle and is not material to detail here. Suffice it to say that my five applications will shortly be back in court and you can expect another subpoena.

Since your Corporate Services attorneys have repeatedly shown and repeatedly admitted that they don't know whether they're coming or going with PAIA, I've copied your six Senior Litigators around the country in the hope that your 'most senior and experienced lawyers', as Nair correctly describes them, part of whose professional function is to 'Provide legal opinion[s] for [LASA] as requested', will appreciate the enormity of the matters raised in this letter and advise you accordingly. Because when I raise this heavy stuff with your Chief Legal Executive Patrick Hundermark – who, the records show, has been involved in PAIA matters including mine since 2010 – he tells me he's not interested and that it's none of his business: 'I have responsibility for client legal matters and not the corporate legal matters of Legal Aid SA, which resort under [sic] the Corporate Services Executive.'

Yours sincerely



ANTHONY BRINK
arbrink@iafrica.com

Cc: Chief Legal Executive Patrick Hundermark and Board Secretary Langa Lethiba

All material documents in this matter are posted online at: goo.gl/prqE1N

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Cc on 31 May 2016 to:

Michael Masutha, Minister of Justice and Correctional Services

John Jeffery, Deputy Minister of Justice and Correctional Services

Mathole Motshekga, Chairperson: Portfolio Committee on Justice and Correctional Services, and to all members

Pregaluxmi Govender, PAIA Commissioner: South African Human Rights Commission

Thulisile Madonsela: Public Protector

LASA Senior Litigators William Karam at Johannesburg, Herman Alberts at Pretoria, Mornay Calitz at Cape Town, Elizabeth Crouse at Port Elizabeth, Pieter Nel at Bloemfontein, and Nzame Skibi at Mahikeng

Mukelani Dimba, Executive Director: Open Democracy Advice Centre

Catherine Kennedy, Director: South African History Archive, Freedom of Information Programme

Mark Weinberg, National Coordinator: Right2Know

Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information in Africa: African Union

Sanjay Pradhan, Chief Executive Officer: The Open Government Partnership

Henri Maina, Chairperson: Africa Freedom of Information Centre

José Carlos Ugaz, Chairperson: Transparency International

Ferial Haffajee, Editor: City Press

Adriaan Basson, Editor: News24

Bongani Siqoko, Editor: Sunday Times

Jovial Rantao, Editor: Sunday Independent

Aakash Bramdeo, Editor: Sunday Tribune

Waldimar Pelsler, Editor: Rapport

Tim Cohen, Editor: Business Day

Steven Motale, Editor: The Citizen

Kevin Ritchie, Editor: The Star

Verashni Pillay, Editor: Mail & Guardian

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1 Boast Street
Eshowe 3815
14 July 2016

Thembile Mtati,
Deputy Information Officer and Corporate Services Executive
Legal Aid South Africa
29 De Beer Street
Braamfontein

Cc: Solly Sekgota,
Corporate Legal Manager, Legal Aid South Africa

By email

Dear Mr Mtati

PAIA APPLICATIONS:
FURTHER UNDELIVERED RECORDS AND
NOTICE OF INTENTION TO AMEND AND AMPLIFY DRAFT ORDER

Prompted to do so by my accountant Rawlins after serving and filing my notice of set down for 28 July, I examined the dates of the several minutes of Eastern Cape regional management meetings in 2010 that you supplied me in response to my request for them under item A1 of my consolidated list, and found:

1. The minute for the August 2010 meeting, mentioned in the October 2010 minute is missing.
2. No minute for the July meeting was provided either – if there was such a meeting, which the August minute will confirm or disconfirm.
3. I was only given the first page of the November 2010 minute.

Kindly supply me with these outstanding records in compliance with your undertaking to do so recorded on 11 February to provide me with access to all records specified on my consolidated list. If you don't, I'll hand this letter up on the 28th in support of an amplified amended draft order including this new paragraph 4, the original paragraph 4 et seq. to be renumbered:

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Inasmuch as Mtati has partially failed to respond to item A1 of the consolidated list of requested records, i.e. for 'The minutes of all Eastern Cape regional management meetings held in 2010', by providing only the January, April, June and October minutes, and the first page only of the November minute, and not the August minute referred to and approved in the October minute, nor the complete November minute, nor the July minute (if such a meeting was held as will be confirmed or disconfirmed by the August minute), despite the applicant's demand for these minutes on 14 July 2016 –

- 4.1. Legal Aid South Africa deputy information officer Mtati is declared to have unlawfully failed to comply with PAIA by not granting the applicant access to these outstanding records or by furnishing him with an affidavit made under section 23 if they cannot be found or do not exist, and thereby to have violated his fundamental right to information held by organs of state, entrenched by section 32(1) of the Constitution.
- 4.2. Mtati is directed to respond to the said record requests within twenty days, either by furnishing the applicant with copies of these records or by certifying under section 23 of PAIA that they cannot be found or that they do not exist.

To avoid this further order, could you please simply cooperate by complying with your undertaking given at court to provide me with these important documents bearing on the veracity of the several different stories told me, the Board and the courts, including under oath, about why Skibi's appointment to the Mthatha Senior Litigator post was cancelled completely off the record in mid-2010, even as you'd recently implored the Legal Services Technical Committee as Eastern Cape Regional Operations Executive at the time that a Senior Litigator was sorely needed there for the several very convincing and readily accepted reasons you gave it – just as I was coincidentally pressing for my appointment to the Pietermaritzburg Senior Litigator post, eight strangely silent months after I'd been duly selected for it in glowing terms by a unanimous panel of LASA's top lawyers in the region. The outstanding records will be used inter alia for perjury prosecutions.

Yours sincerely



ANTHONY BRINK

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From: Anthony Brink <anthonybrink.sa@gmail.com>
Sent: Thursday, July 21, 2016 3:56 PM
To: Thembile Mtati; Solly Sekgota; wewmfm@telkomsa.net
Subject: Brink PAIA applications: Eshowe MC: Case 257/14 and four others: 28 July
Attachments: Service stamps.pdf;
Brink_v_LASA_PAIA_Application_for_referral_to_oral_evidence_and_other_relief.pdf;
NoM signature page.pdf; Supporting affidavit signature page.pdf

Dear Mr Mtati

I refer to your demand on the 19th that I remove my matters from the roll.

No.

I've just served an application on your local correspondent and filed it at court.

To save your correspondent the trouble of faxing it to you, I attach:

- 1.The final PDF of the complete application before signature.
- 2.A scan of the signature page of my supporting affidavit, proving I signed it before a CO.
- 3.A scan of the signature page of the notice of motion, proving I signed it.
- 4.The front page of the application bearing your correspondent's and the court's receipt stamps, proving I served and filed the application.

If you want the complete signed and initialled affidavit - it's a large 19 MB - you can download it here:
<https://1drv.ms/b/s!Agt8nu3maFXigQ9u91P4oAp9fLwD>

See you at court on the 28th.

Meanwhile I'm preparing to PAIA all counsels' invoices and all their and your travel and other disbursements incurred in unlawfully obstructing my PAIA requests from 2013 on, in violation of my fundamental rights.

You guys are like frogs in pot unable to feel the water heating.

It's time to learn hard.

Sincerely

Anthony Brink

Cc: Malcolm Munro

"FA 31" 411.
Kef

1 Boast Street
Eshowe
KwaZulu-Natal
1 August 2016

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

By email

Dear Ms Vedalankar

PAIA REQUEST
CLAUSE 7 OF SETTLEMENT AGREEMENT
BRINK v LASA: ESHOWE MAGISTRATE'S COURT

I enclose a PAIA request for your response within the prescribed 30 calendar days please. I've just paid the request fee by EFT, reference: PAIA_SL_AUG_16.

In clause 7 of the settlement agreement made at court on 11 February, I agreed to limit myself to one further PAIA request about the Senior Litigator posts after receiving the records I'd requested. This is because, as I explained to your CSE Mtati, and as is evident from the instant request, records LASA has given me under PAIA have sometimes generated lines of enquiry requiring investigation with further record requests.

Your and your deputy information officers' failure, through Mtati, to fully and properly comply with the settlement agreement has prevented me from perfecting my final PAIA request about Senior Litigator posts.

Upon eventual delivery to me, under court order, of the outstanding records that Mtati undertook to provide me in clause 4 of the settlement agreement, I record that I may request further records in relation to the Senior Litigator posts, as contemplated in clause 7.

Yours sincerely



ANTHONY BRINK

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FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 2]

<p>FOR DEPARTMENTAL USE</p> <p style="text-align: right;">Reference number:</p> <p>Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).</p> <p>Request fee (if any): R</p> <p>Deposit (if any): R</p> <p>Access fee: R</p> <p>SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER</p>
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A. Particulars of public body

The Information Officer

Legal Aid SA

29 De Beer Street, Braamfontein

B. Particulars of person requesting access to the record

<p><i>(a) The particulars of the person who requests access to the record must be recorded below.</i></p> <p><i>(b) Furnish an address and/or fax number in the Republic to which information must be sent.</i></p> <p><i>(c) Proof of the capacity in which the request is made, if applicable, must be attached.</i></p>
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Full names and surname : **Anthony Robin Brink**

Identity number : **590225 5116 081**

Postal address : **1 Boast Street, Eshowe 3815, KwaZulu-Natal**

Fax number : **086 672 0776**

Telephone number : **035 474 0145**

E-mail address : **anthonybrink.sa (at) gmail.com**

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C. Particulars of person on whose behalf request is made: N/A

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.

See annexure.

E. Fees

(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.
(b) You will be notified of the amount required to be paid as the request fee.
(c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.

R35 request fee paid into LASA's FNB account by EFT on 1 August 2016 under reference code: PAIA_SL_AUG_16

F. Form of access to record

Mark the appropriate box with an "X".
(a) Your indication as to the required form of access depends on the form in which the record is available.
(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form -

<input checked="" type="checkbox"/>	copies of records	<input type="checkbox"/>	inspection of record
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2. If record consists of visual images - N/A

3. If record consists of recorded words or information which can be reproduced in sound - N/A

4. If record is held on computer or in an electronic form -

<input type="checkbox"/>	printed copy of record	<input type="checkbox"/>	printed copy of information derived from the record*	<input checked="" type="checkbox"/>	copies in computer readable form – to be emailed as file attachments; or uploaded to a storage cloud with the link provided; or furnished on a CD or DVD.
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G. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record? **By email**

Signed at Eshowe on 1 August 2016



SIGNATURE OF REQUESTER

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RECORDS REQUESTED¹

1. Having regard to the information (newly revealed in the recently released² unredacted selection panel report of 23 November 2009, recording its recommendation of Brink and Bongani Mngadi, and no other candidates, for the two simultaneously advertised Pietermaritzburg and Durban Senior Litigator posts)³ that the other two shortlisted and interviewed candidates Van Wyk and Ngcamu (the latter a former long-term acting Labour Court judge, and for about six-and-a-half years a judicial colleague of then Labour Court President and LASA Board chairperson Mlambo JP) were totally disqualified for appointment to the posts because they didn't meet the basic qualifying criteria, any record vouching:

(a) CEO Vedalankar's allegation to Brink in her letter of 18 October 2010, illegally refusing his entire PAIA request for records pertaining to the circumstances in which his recruitment had been aborted:

'You were recommended together with other candidates.'⁴

(b) Vedalankar's reiteration of this claim of hers ('You were recommended together with other candidates') in her letter to Brink of 28 January 2011 (continuing to illegally refuse his said PAIA request, along with his next one in December 2010, and releasing only a few records claimed 'To demonstrate' her claims):

'I must however advise you that the explanation furnished by me to you on 18 October 2010 remains valid'.⁵

¹ Unless stated otherwise, all documents referenced in these footnotes were filed in case D529/11 in the Labour Court, tried in mid-2013, in which Brink claimed an order against Legal Aid South Africa instating him to its Senior Litigator post at Pietermaritzburg for which he was unanimously recommended by a duly constituted selection panel.

² The unredacted recommendation was eventually supplied to Brink on 15 April 2016. His request for it in November 2014 under the Promotion of Access to Information Act 2 of 2000 ('PAIA') on was unlawfully obstructed and then finally refused in May 2015, and his application to court to compel its production was insupportably opposed. But before argument at court in February 2016, LASA abandoned its unlawful justification for refusing the record, dropped all its defences in its answering affidavit, and undertook to supply it. Which it did, in April 2016.

³ Although the recommendation report is silent about this, LASA admitted at the first pre-trial conference at court that Brink was selected for Pietermaritzburg for which he'd applied, and Mngadi for Durban.

⁴ Bundle, page 104, paragraph 7.2.

⁵ Bundle, page 212, paragraph 7.

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(c) Vedalankar or NOE Nair's claim about Brink made to Justice Portfolio Committee member Debbie Schäfer MP in the National Assembly:

'according to LASA, he was not the only candidate.'⁶

(d) Corporate Services Executive Mtati's implication on oath, with Nair confirming on oath, that Brink was not the sole candidate recommended by the selection panel for the Pietermaritzburg Senior Litigator post for which he'd applied, and that other candidates were also recommended for the post along with him:

'[Brink's] recruitment, together with the other candidates recommended for the second round of interviews was aborted immediately after the first round of interviews.'⁷

(e) Human Resources Executive Clark's same claim by clear implication in her email to Brink on 30 April 2010, by suggesting that the totally eliminated candidates Van Wyk and Ngcamu (until recently Mlambo JP's long-time judicial colleague, before he applied for a Senior Litigator post in KZN) were also eligible for consideration for the posts:

'At this stage it is not even clear which applicants will be considered in the second round'.⁸

(f) Corporate Legal Manager Sekgota's same claim by clear implication in LASA's false section 32 report on its PAIA performance in 2010/11 that he signed (and which false reporting the SAHRC reported to the National Assembly), by suggesting that the totally eliminated candidates Van Wyk and Ngcamu (Mlambo JP's former colleague) were also eligible for appointment to the posts:

'No decision taken yet on who should be appointed'.⁹

In other words, the record showing that besides Brink and Mngadi, one or more 'other candidates' such as van Wyk and former Acting Labour Court Judge Ngcamu was/were also recommended by the selection panel, as alleged by Vedalankar and other LASA officers bound by LASA's Code of Conduct and Ethics and subject to the law against perjury and lying to a committee of the National Assembly.

⁶ Bundle 2, page 680.

⁷ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 83, paragraph 13.4.

⁸ Bundle, page 256.

⁹ Bundle 2, page 679.

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SHERIFF
2016-10-11
HIGH COURT
PIETERMARITZBURG



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2. The communication with LASA Board chairperson Mlambo JP in the 'early stages when we were made aware that there were two people recommended for the second round of interviews'¹⁰ for the Pietermaritzburg and Durban Senior Litigator posts¹¹ and no one else (contradicting the repeatedly told lie that 'others' (such as Mlambo JP's former judicial colleague Ngcamu AJ (as he used to be)) were also recommended.
3. The record of the 'decision' that was 'taken ... to terminate the recruitment of Senior Litigator posts'¹² after Brink and Mngadi were recommended for the Pietermaritzburg and Durban posts in November 2009¹³ and Skibi was recommended for the Mthatha post in May 2010.¹⁴
4. With reference to LASA's lead in-house attorney Mtati's sworn allegation made on Mlambo JP's behalf (see item 6 below), which allegation NOE Nair supported as the perfect truth by way of a confirmatory affidavit, also made under penalty of perjury, that LASA 'later decided ['after the interview of the Applicant [Brink] in KZN had taken place']¹⁵ not to also proceed with this transfer [of Skibi to Mthatha]¹⁶ as it had become important to divert the funds budgeted to a different purpose':¹⁷
 - (a) the records of the decisions of (i) LASA's executive management to resolve and propose, and (ii) the Board to authorise, the diversion and expenditure of one third of LASA's salary budget of many millions of rands for nine Senior Litigator posts, three vacant – budget applied for by LASA, voted by the National Assembly, and paid to LASA by the Department of Justice and Correctional Services – to 'a different purpose', and particularly to a more 'important' one than employing Senior Litigators at seats of the High Court in the implementation of LASA's Strategic Plan 2009–12, as twice mentioned

¹⁰ Answer to Brink's pre-trial agenda, paragraph 78.1.

¹¹ The 'early stages' to which 'Mlambo JP may have been referring' (per LASA's answer to Brink's pre-trial agenda, paragraph 78.1) means the period between Brink's recommendation for the post on 23 November 2009 and LASA's discovery three-and-a-half months later on 10 March 2010 that its OSD phase 1 allocation for 2010 hadn't been included in its baseline budget, which anyway made zero difference to its (actually accelerated) recruitment processes until July when, as LASA's records show, recruitment to some lower criminal court public defender posts, and none other, was temporarily frozen, and in the result for two months only.

¹² LASA's answer to Brink's pre-trial agenda, paragraph 66.2.

¹³ Trial document bundle, page 244.

¹⁴ Bundle 2, page 995.

¹⁵ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 106, paragraph 81.9.4.

¹⁶ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 106, paragraphs 81.9.2–3.

¹⁷ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 106, paragraph 81.9.5.

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by Vedalankar in her CEO report in LASA's annual report for 2012/13, regarding LASA's completion of the Plan, which annual report mentions it yet a third time;

(b) any record identifying the 'different' more 'important ... purpose' to which LASA's said several millions in Senior Litigator salary budget received from the Department for its three now very long-vacant Senior Litigator posts was 'divert[ed]' from spending on three Senior Litigator salaries, for which the National Assembly voted it, and Department provided it, and continues to be 'divert[ed]' year after year in repeated illegal contravention of Chapter 6 of the Public Finance Management Act 1 of 1999, particularly section 53(4) – which holds the accounting authority of a public entity like LASA responsible for ensuring that expenditure of that public entity is in accordance with the approved budget – as LASA continues applying for and being paid salary budget for nine Senior Litigator posts, while deceptively concealing from the Department in its annual budget applications year after year that, without authority to do so, it has unlawfully 'divert[ed]' and continues to unlawfully 'divert' these several millions of rands paid to LASA by the Department to employ senior, specialist litigation lawyers in these three now very long-vacant Senior Litigator posts at the top of LASA's professional staff establishment.

5. The 'explanation' that Mlambo JP 'received from the CEO'¹⁸ in regard to Brink's first petition to him and the Board, in which he protested CEO and information officer Vedalankar's illegal blanket refusal of his first PAIA request made in August 2010 (eventually partially reversed in April 2011 under SAHRC pressure, and with the Minister and Portfolio Committee on alert), by means of which request Brink was probing the abortion, allegedly in July 2010, of his appointment to the Pietermaritzburg Senior Litigator post, for which he'd been unanimously recommended in November 2009 by a duly convened selection panel interviewing for the post, and which 'explanation' by Vedalankar allegedly persuaded Mlambo JP that 'nothing untoward ... was done by the CEO'¹⁹ in (a) refusing the whole of his PAIA request for 59 specified records, and (b) telling him the story unsupported by any record that the Pietermaritzburg, Durban and Mthatha Senior Litigator posts had been frozen due to insufficient budget,²⁰ and that Mlambo JP was accordingly 'correct in dismissing the Applicant's complaint'²¹ to him and the Board about Vedalankar's illegal

¹⁸ Answer to Brink's pre-trial agenda, paragraph 68.2.

¹⁹ Ibid.

²⁰ And which claim was radically contradicted by Nair in his evidence in Brink's labour claim, as regards Mthatha.

²¹ Ibid.

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refusal of his PAIA request in violation of his fundamental right to information held by the state guaranteed by section 32(1) of the Constitution, and the manifestly untrue budgetary insufficiency excuse Vedalankar had given him for the abortion of his appointment, having regard to the several already clear indications canvassed in the petition that it was false. And which false excuse she repeated on oath in an affidavit made on 8 April 2011 under penalty of being sent to jail for perjury.²² But which story, confirmed by Vedalankar under oath, Nair contradicted in court at the trial of Brink's labour claim, dropping the Mthatha post from the false story and telling a completely different new one about it, also false.

6. Mtati's email to Mlambo JP (alternatively to CEO Vedalankar, or to NOE Nair, to forward to Mlambo JP) covering the draft answering affidavit (or the final, signed affidavit) that Mtati made in January 2013 to oppose Brink's application for leave to subpoena Mlambo JP for cross-examination at the trial of his labour claim, having been 'duly authorised by the Respondent [Mlambo JP] to depose to this affidavit'²³ on his behalf. (Any legally privileged communications in the body of the email may be blacked out.)
7. All six Senior Litigator appointments.
8. The minute of the Legal Services Technical Committee ('LSTC') meeting held on 30 September 2009.
9. The LSTC decision sheets referred to in paragraph 2.3 'Matters arising' in the LSTC minute of 2 December 2009 and 28 January 2010.
10. The High Court Unit (HCU) reports noted under paragraph 5.1.2 in the LSTC minute of 2 December 2009 and 28 January 2010.
11. The report of the NOE/ROE session held on 21 and 22 October 2009 noted in paragraph 4.1.11 of the LSTC minute of 28 January 2010.
12. The report of the NOE/ROE session planned for February 2010 as noted in paragraph 4.1.11 of the LSTC minute of 28 January 2010.
13. Any record(s) identifying LASA's chief IT officer, and its IT officer responsible for the electronic data storage of LASA's business records and access to them.
14. The charter of LASA's Board of Directors.

²² Bundle, page 380, paragraph 13; and page 390-1.


²³ Application to subpoena Mlambo JP, Mtati's answering affidavit, page 80, paragraph 4.

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15. The charter of the Board Audit and Risk Sub-committee.
16. Excerpts from LASA's monthly recruitment/vacancy statistics for the period December 2009 to February 2010 showing Senior Litigator posts filled and vacant.
17. Any and all recommendation report(s) by selection panels for Regional Operations Executive posts containing the information that the recommended candidate(s) is/are subject to a second interview (by Mlambo JP and national management executives).²⁴
18. Any and all claims by LASA on Camargue insurance underwriter after Brink repeatedly sued LASA in the Eshowe Magistrate's Court in 2014 and 2015 to compel its compliance with his several illegally refused PAIA requests made over the period 2013–2015, and in July 2016 applied for the referral of his applications to oral evidence when LASA failed to fully and properly comply with its written undertaking given at court on 11 February 2016 to comply with all his said PAIA requests, at last, after years of unlawful obstruction of his exercise of his fundamental right to information held by the state.
19. All litigation reports to the Board by LASA's Corporate Services department concerning Brink's five applications to the Eshowe Magistrate's Court in 2014 and 2015 to compel LASA's compliance with his illegally refused PAIA requests, and concerning his further application in July 2016 to refer his cases to oral evidence to achieve full and proper compliance with his requests, as undertaken in February 2016 by LASA's information officer and deputy information officers in the case, represented by Corporate Services Executive Mtati.
20. Concerning Mtati's refusal yet again to allow Brink access to the records described in item E18 on his consolidated list of requested records²⁵ namely for 'All and any contract(s) of employment between Ngcamu and Legal Aid SA, at any Justice Centre, entered into prior to his employment as Children's [Court] Practitioner at the Durban Justice Centre', on the grounds Mtati stated under oath, under penalty of perjury, in his section 23 affidavit of 15 April 2016, 'This record is refused in terms of section 63(1). The third party has refused to grant consent to provide such personal information':

²⁴ According to NOE Brian Nair's evidence at the trial of Brink's labour claim, given under penalty of going to jail for perjury, 'second round interviews' were held 'for some Regional Operations Executive posts': Record, page 338, lines 8–9.

²⁵ In terms of clause 2 of the settlement agreement made at the Eshowe Magistrate's Court on 11 February 2016 in case 257/14 and four others, and handed into court, Brink emailed this list to CSE Mtati the following day.

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- (a) Mtati's request to Ngcamu for his consent, alternatively if some other LASA employee delegated by Mtati sought Ngcamu's consent, that other employee's request; and,
 - (b) Ngcamu's refusal to grant his consent.
21. Concerning Mtati's refusal yet again to allow Brink access to the records described in item H32 on his consolidated list of requested records, namely for the several insurance records described therein, on the grounds that 'The records belong to a third party in terms of section 34 and the third party has not granted consent to furnish such record':
- (a) Mtati's request to Camargue insurance underwriter for its consent, alternatively if some other LASA employee delegated by Mtati sought its consent, that other employee's request; and,
 - (b) Camargue's refusal to grant its consent.
22. Concerning item H41 of Brink's consolidated list, namely for 'The records of Board chairperson Mlambo JP's requests to other Board members on 24 January 2011 that they should ignore Brink's repeated appeals for Board intervention in Vedalankar's illegal, falsely justified refusal to comply with his first PAIA request and the manifestly irregular abortion of his appointment on the several indications he identified' (per Mlambo JP: 'I have, in turn, requested Board members to ignore all communications from you and/or on your behalf'),²⁶ and Mtati's sworn allegation in his second section 23 affidavit of 12 May 2016 that 'No such records could be found. The record requested was checked with the specified official':
- (a) Mtati's enquiry to Mlambo JP ('the specified official') about these records, alternatively if some other LASA employee delegated by Mtati enquired on his behalf, that other employee's enquiry; and,
 - (b) Mlambo JP's response either that no such records exist or that he just couldn't find them anywhere on his computer, no matter how hard he looked for email sent on 24 January 2011 in his Sent Mail folder.
23. The various selection panels' reports recommending Wilson Rambau, Patrick Loots and Ashok Kaloo – the three of whom were 'Not recommended for the position' by the second interview panel, comprising Mlambo JP and others, that interviewed them again for the Senior Litigator posts for which they'd already been recommended by selection panels duly

²⁶ Bundle, page 209.

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constituted under LASA's Recruitment code, as recorded in the record 'Summary of the Scoring for Senior Litigator Positions' signed by CEO Vedalankar on 5 December 2008, and supplied to Brink, without having been requested, in April 2016.

24. The minutes of the second interviews of Wilson Rambau, Herman Alberts, Patrick Loots, Ashok Kaloo, Lilla Crouse, Mornay Calitz and William Karam showing their original scoring by Mlambo JP and the other second panel members, and the dates on which they were scored (actual scores aren't needed and can be blacked out).
25. The minutes of the subsequent second interviews of Senior Litigators Pieter Nel and Nzame Skibi showing their original scoring by Mlambo JP and the other second panel members, and the dates on which they were scored (actual scores aren't needed and can be blacked out).
26. The 'Summary of the Scoring for Senior Litigator Positions' (or similar separate documents) recording Mlambo JP's and other second panel members' recommendations that Nel and Skibi be appointed to the Bloemfontein and Mahikeng Senior Litigator posts.
27. Records showing:
 - (a) the date on which then Board Secretary Bee-Mari Schoeman resigned;
 - (b) the date on which LASA accepted her resignation.
28. Any record of Mlambo JP's communication with the Board Executive Committee or with executive management prior to informing Brink at 4pm on Friday 23 March 2012 that his affidavit emailed to him had been deleted unread, with a message sent Brink to this effect.
29. Concerning the 'Professional Assistant – Civil' post at the Empangeni Justice Centre advertised in January 2016 under reference code: 'EMPANGENIJC/CIVIL PA/15/01/2016':
 - (a) the shortlist of applicants for the post;
 - (b) the selection panel's recommendation of most suitable candidate; and,
 - (c) the appointment made to the post.
30. The notice given to then Bloemfontein Justice Centre Executive Noxolo Maduba before she resigned in about 2014/15 (following her meteoric rise through LASA's ranks after making certain after-hours friends), calling on her to give reasons why she should not be suspended pending the determination of a charge of grossly dishonest misconduct brought against her.

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IN THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG
 Republic of South Africa

Case No - Saak No 12124/2016P

In the matter between:
 LEGAL AID SOUTH AFRICA
 and:
 ANTHONY ROBIN BRINK

APPLICANT
 RESPONDENT

Return in accordance with the provisions of the Supreme Court Act 59 of 1959, as amended

On the 01 day of NOVEMBER 2016 at 12:45 I duly served a copy of the attached BUNDLE : NOTICE OF MOTION, FOUNDING AFFIDAVIT BY : T.V. MTATI, BUNDLE B : ANNEXURES "FA1-FA10", BUNDLE C : ANNEXURES "FA11-FA17", BUNDLE D : ANNEXURES "FA18-FA23" & BUNDLE E : ANNEXURES "FA24-FA31" upon MR.J.L. RIVETT-CARNAL, a person apparently over the age of 16 years and apparently incharge of the premises for the withinnamed RESPONDENT MR ANTHONY ROBIN BRINK at 23 BAKER ROAD, PRESTBURY, PIETERMARITZBURG at the sametime explaining to him the nature and contents thereof.

Note: The original return together with the original abovementioned process is despatched to the mandator.

KWAZULO-NATAL HIGH COURT
 PIETERMARITZBURG
 2016 -11- 04 (2)
 REPUBLIC OF SOUTH AFRICA
 PRIVATE BAG X9014, PIETERMARITZBURG, 3201
 REGISTRAR OF THE HIGH COURT

Sheriff Fees aljugelde	Date Datum	01.11.2016	Tax Invoice Number Belastingfaktuur Nr.	I 116369			
			Description	Qty	Vat	Amount	S E Vilakazi Deputy Sheriff A M MZIMELA Sheriff Pietermaritzburg High Court Tel: 033 394 5207 / 08 Fax: 033 394 5206 PO Box 548 Pietermaritzburg 3200 Docex 86 Pietermaritzburg Bank Detail: Bank: FNB Beach Branch BrCd: 220126 Name: A M MZIMELA AccNo: 62463338684 Email: sheriffmzimela@sai.co.za
			Registration	1	0.00	8.00	
			Return	1	0.00	28.50	
			Service	1	0.00	55.00	
			Postage Costs	1	0.00	26.65	
			URGENT FEE	1	0.00	600.00	
			Traveling per km	24	0.00	120.00	
VAT Reg No. BTW Reg Nr.	You may require this account to be taxed and vouched before payment. U kan vereis dat hierdie rekening getakseer en gestaaf word voor betaling			Total Totaal	838.15		
LEGAL AID SOUTH AFRICA DOCEX 64 PIETERMARITZBURG			Account No. ♦ Rekening Nr.	12570		VatReg	
			Your Reference ♦ U Verwysing			MR A.H. KALOO/CIVIL	
			My Reference ♦ My Verwysing				
			Ret: 216864/Mandi/1				
Registrar: Republic of South Africa							

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