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IN THE MAGISTRATES COURT FOR THE DISTRICT OF ESHOWE

In the matters between:

ANTHONY ROBIN BRINK Applicant

and

The respondents in the following five applications:

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

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

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

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

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

APPLICANT'S AGENDA FOR THE PRE-TRIAL CONFERENCE 'TO SIMPLIFY THE ISSUES', AS CONTEMPLATED BY SECTION 54 OF THE MAGISTRATES COURT ACT 32 OF 1944

Mit der Dummheit kaempfen Goetter selbst vergebens – Schiller; 1801

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NOTE: *Where defences raised and allegations made in Bambiso's answering affidavit (case 257/14) have been copied and pasted into answering affidavits made in succeeding applications, only the first instance will be referenced and addressed herein unless there's some variation between the first and repeated instances. The affidavits of LASA Corporate Services Executive Thembile Mtati, answering the two applications brought against Vedalankar (258/14 and 1432/15) will be referred to as Mtati 1 and Mtati 2 respectively. Paragraphs in the answering affidavits and their deponents referenced herein will be identified by names and paragraph numbers: e.g. 'Bambiso, 35'. To assist the respondents correctly answer some of the questions put in this agenda with a view to narrowing and defining the issues to be argued, the South African Human Rights Commission's advice to LASA CEO and information officer Vedalankar dated 25 January 2016 is annexed hereto marked 'A'. The SAHRC's notice to the applicant of its decision not to deal with the grounds advanced by the respondents for refusing his PAIA requests, because they're before court, is annexed marked 'B'. Both documents were emailed to the applicant on the 29th: annexure 'C'.*

1. In light of the facts stated in paragraphs 100–15 of the applicant's replying affidavit in his second application against CEO and information officer Vidhu Vedalankar (case 1432/15), do she, deputy information officer ('DIO') and National Operations Executive Brian Nair, their corporate attorney Thembile Mtati, and their advocate Thabiso Machaba, unreservedly retract and apologise for the imputations of unethical, underhanded professional misconduct made against Eshowe Chief Magistrate Mr Venter, contained in paragraphs 100–12 of the answering affidavit in that case, in relation to the set-down of the first four applications and to the reinstitution of the pre-trial conference directed by PAIA-specialist Senior Magistrate Mr van Rooyen, after the applicant

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abandoned his original request for it, which imputations Nair, acting for Vedalankar, authorised Mtati to make, and supported with a confirmatory affidavit, and which imputations Machaba originated in the affidavit he drew for Mtati to sign, wantonly impugning Chief Magistrate Venter's integrity – on oath, on the public record, and in his own court?

2. Do the said persons also unreservedly retract and apologise for their unfounded imputations of unethical and improper conduct made against the applicant in relation to the set-down of the first four applications and to the convention of a pre-trial conference by Senior Magistrate van Rooyen?

3. Seeing that Senior Magistrate van Rooyen – specially appointed to try the applicant's claims as a designated and listed magistrate from the 'dedicated and experienced pool of trained and specialised magistrates for purposes of presiding in court proceedings as contemplated in this Act' (per section 91(A) of PAIA) – is not ordinarily based at the Eshowe Magistrate's Court, and is consequently is as much a personal and professional stranger to the applicant as he is to the respondents, do the respondents accept that no basis exists for questioning his neutrality as an impartial expert trier of the applicant's claims; and do the respondents abandon their 'PRELIMINARY OBJECTION 7 – PERCEPTION OF BIAS' (Bambiso, 135ff) accordingly?

4. Do the respondents concede that they were mistaken in assuming that the applicant was stationed at the Eshowe Magistrate's Court (in town) during the two years he was stationed at the Inkanyezi Magistrate's Court (in King Dinizulu Township, Eshowe), and in which period he launched his applications? If not, on what facts alleged anywhere in any of their answering

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affidavits do they rely to contend that the applicant ever worked at the Eshowe Magistrate's Court?

5. Concerning 'PRELIMINARY OBJECTION 2 – LACK OF JURISDICTION OF THIS COURT' (Bambiso, 83–108) do the respondents accept the corrective official expert legal advice of the PAIA Unit of the South African Human Rights Commission ('SAHRC'), repeatedly given to LASA under section 83(d) and (e) (and for the third time now), that LASA is a 'public body referred to in paragraph (b) of the definition of "public body" in section 1' (in the language of section 78(2)(c) of PAIA), namely an 'institution … (ii) exercising a public … function in terms of any legislation' (per the definition of a type-(b) public body in section 1), i.e. the Legal Aid South Africa Act 39 of 2014, and before that the Legal Aid Act 22 of 1969? If the respondents don't accept the SAHRC's official expert legal advice, repeatedly given LASA, that LASA is a type-(b) public body, and contend contrarily that LASA is a public body referred to in paragraph (a) of the definition of 'public body' in section 1, which of these type-(a) public bodies do the respondents contend LASA is: A 'department of state'? An 'administration in the national or provincial sphere of government'? Or a 'municipality in the local sphere of government'?

6. If, as repeatedly advised by the SAHRC, the respondents concede that LASA is indeed a type-(b) public body – correctly described as 'an autonomous body, accountable to Parliament' (Bambiso, 9), and is not a 'public body referred to in section (a) of the definition of "public body" in section 1' (in the language of section 74(1)), do they further accordingly concede that LASA isn't among the 'CERTAIN PUBLIC BODIES' referred to in the heading of Chapter 1 of

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Part 4 of the Act concerning 'INTERNAL APPEALS AGAINST DECISIONS'?

7. Having regard to the various definitions of '"relevant authority" in section 1 – viz. 'the person designated … by the President'; 'the Minister … or person designated' by him; 'the person designated … by the Premier … the member of the Executive Council … or the person designated … by that member'; 'the mayor … the speaker … or any other person … designated by the Municipal Council' – do the respondents concede that LASA doesn't have any such 'relevant authority', as variously defined in section 1, just quoted, and mentioned in sections 74–7, to consider and decide any 'internal appeal' by any requester aggrieved by the refusal of access to records he's requested? If not, who, and under what provision of PAIA, do the respondents contend is LASA's 'relevant authority' to decide appeals by aggrieved records requesters? 'The CEO [Vedalankar] is the head of the organisation and also the Information Officer. She is the person who ought to consider appeals against decisions for refusal of access to information by a deputy information officer' (Bambiso, 191.5)? Or the 'Information Officer or even the Board headed by a judge' (per Mtati 1, 65), which is to say either Vedalankar or the Board? Or 'my seniors including the CEO and/or the Board are the people to whom an appeal against my decision lies' (Bambiso, 80.5), i.e. his 'seniors' considering appeals alternatively taking turns or together? Or Chief Legal Executive Hundermark (per LASA's section 32 report for 2013/14: annexure 'E' to the applicant's replying affidavit in his second application against Vedalankar)?

8. Since LASA is not (in the language of section 1, in its definition of 'information officer') '(a) … a national department, provincial administration or organisational component', or '(b) … a municipality', but is '(c) any other

public body', do the respondents agree that, the 'information officer' of such 'other public body' like LASA is its 'chief executive officer', i.e. Vedalankar?

9. Do the respondents concede that, being 'information officer' ex officio under section 1 responsible for deciding requests for access to LASA records, Vedalankar isn't also at the same time 'a relevant authority' under section 1 with the power to decide appeals against her or her DIOs' refusals of access to requested records?

10. Since, under section 1, '"internal appeal" means an appeal to the relevant authority in terms of section 74', and since LASA is not 'a public body referred to in paragraph (a) of the definition of "public body" in the national sphere of government' nor 'in the provincial sphere', nor is it a municipality, do the respondents concede that LASA has no 'relevant authority' for an aggrieved record requester to 'appeal to'?

11. Do the respondents concede that under section 74 et seq., only a 'relevant authority' may consider and decide appeals against the refusal of requests for access to records; and that having regard to the definition of 'relevant authority' by section 1, neither LASA's CEO and information officer Vedalankar, nor its Board of Directors, nor its Chief Legal Executive Hundermark are a 'relevant authority' at LASA?

12. Do the respondents concede that all and any provisions in LASA's PAIA manual, as amended by Corporate Services Executive Mtati, purporting to appoint Vedalankar to consider and decide appeals against the refusal of requests for access to LASA's public records, in conflict with the above-cited provisions of PAIA, are irregular, unlawful, and of no legal force and effect; and that all and any allegations by Mtati in his affidavits in the two

applications against Vedalankar (and in the other answering affidavits) that she holds such powers are wrong? If not, on what provisions of PAIA do the respondents rely in support of Mtati's claims in the PAIA manual and in his affidavits that Vedalankar holds such appellate powers in PAIA matters?

13. If the respondents contend that it doesn't matter that PAIA doesn't vest Vedalankar with appellate authority in PAIA matters, do they contend that Mtati can write into LASA's PAIA manual whatever he likes, and that it's all good, just as long as he gets the Board to approve it, even if it's at odds with PAIA?

14. Do the respondents concede that under section 1, '"internal appeal" means an appeal to the relevant authority in terms of section 74'? If not, on what authority do they contend 'internal appeal' has some other meaning at variance with the statutory definition in section 1?

15. Do the respondents concede that, in the language of section 78(2)(c), the applicant (a 'requester') 'aggrieved by the decision of the information officer of a public body referred to in paragraph (b) of the definition of "public body" in section 1 … to refuse a request for access' was entitled to 'apply to a court for appropriate relief in terms of section 82' (since he 'may') directly, without first pursuing any internal appeal, because there's no 'internal appeal procedure' at LASA to first 'exhaust … against [the] decision of the information officer' and no 'internal authority' at LASA with the meaning of section 1 to appeal to?

16. Does Nair concede that his contention that upon his total refusal of the applicant's PAIA request addressed to him, the applicant had the option to

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'appeal my decision to the Information Officer of Legal Aid SA, or he could bring the application he brought recently' (Nair, 14) is:

- wrong concerning any appeal;
- right about applying directly to court; and,
- wrong in contending that the applicant had the option of either appealing or applying to court,

because under the Act, the applicant could only apply to court, and not appeal to information officer Vedalankar?

17. Does Nair concede that the applicant's application directly to court when his requests were refused was procedurally correct, and that all contentions in the other answering affidavits that he was first required to appeal to Vedalankar or the Board are wrong?

18. Do the respondents concede that their 'PRELIMINARY OBJECTION 1 – LACK OF JURISDICTIONAL FACT'[1] based on their contention that the applicant has 'failed to exhaust the internal remedies provided for in the Act in that he has not, as yet, lodged an appeal against my decision to refuse his request for access to information' (Bambiso, 80–2) is wrong; and are they abandoning it accordingly?

19. If the respondents concede, as advised by the SAHRC, that section 78(2)(c)(i) allowed the applicant to 'apply to court for appropriate relief in terms of section 82' directly after the respondents refused him access to the records he

[1] Nair's answering affidavit doesn't contain this heading, but the same contention quoted below it is made in his paragraph 61. In the case of the second application against Vedalankar (1432/15), it's denied that any decision to refuse access was taken at all (even as some requests were allowed, some refused), implying that no question of appeal arises.

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requested, and that he didn't have to first exhaust any internal appeal procedure because there isn't any at LASA, do they concede that the definition of 'court' in section 1, and more particularly section (b)(ii)(cc), afforded him three options as to which district of the magistrate's court to sue in (should he prefer to apply to a lower rather than a higher court), namely the court:

> within whose area of jurisdiction –
> (aa) the decision of the information officer … has been taken;
> (bb) the public body … has its principal place of administration or business; or
> (cc) the requester … is ordinarily resident

and that the applicant was entitled to pick any one of these various magistrates' court jurisdictions as he wished? If not, on what basis do the respondents dispute the applicant's claim to have been entitled to sue in any of these different court districts? And what different reading do they contend this above-quoted section (b)(ii)(cc) in the definition of 'court' should be given, regard being had to elementary principles of the law of interpretation of statutes when there's an 'or' in one?

20. Do the respondents contend that the legislature's alteration of the ordinary common law principle of 'actor sequitur forum rei' in PAIA applications was incompetent, and that to the extent that section 1 changed this ordinary principle in PAIA cases, it's of no legal force and effect? Or do the respondents concede that in the case of applications to court under PAIA this said ordinary principle has effectively been changed by statute?

21. Do the respondents concede that the applicant indeed ordinarily resides at The Cottage, 1 Boast Street, Eshowe, within the magisterial district of Eshowe, as

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he's done since December 2013 when he relocated from Pietermaritzburg to work as a magistrate on contract at the Inkanyezi Magistrate's Court in the Eshowe district; and that their fancies, which they swear to as facts, that he's 'ordinarily a resident of Pietermaritzburg' (Mtati 1, 114) and has 'assets of value' there (Msweli, 105) are mistaken? If not, on what contradictory facts alleged anywhere in any of their answering papers do the respondents rely to refute the applicant's repeatedly affirmed claim, made under penalty of perjury, that Eshowe has been his home since December 2013? And what 'assets of value' is it alleged on oath that the applicant has in Pietermaritzburg (that he doesn't know about, and would be pleased to claim)? If the respondents persist with their claim that the applicant is 'ordinarily a resident of Pietermaritzburg', they're required to identify these 'assets of value' that he's alleged on oath to have there.

22. As to their 'PRELIMINARY OBJECTION 3 – MATERIAL DISPUTE OF FACTS' (Bambiso, 109–14): Seeing as it's common cause in the first four cases that:

    - the applicant complied with all the formalities prescribed by the Act in making his requests and paid the prescribed request fee for each;
    - Bambiso, Msweli and Nair responded by totally refusing the applicant's requests, with various justifications advanced for doing so;
    - Vedalankar, via attorney Mtati, granted access to some records but refused the rest, with various justifications advanced for doing so,

    specifically what material facts do the respondents contend are in dispute, such as to prevent this court from proceeding to determine on the papers, following argument, whether the reasons given by the respondents for refusing the

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applicant's requests for access to requested records are justified under the Act? Or do they concede that there are no material disputes of fact in the applications that need to be tried on oral evidence, and abandon this disputed-facts defence?

23. Since section 78 prescribes (applicant's italics added for emphasis) that an:

> aggrieved … requester … may, *by way of an application*, within 180 days apply to court for appropriate relief in terms of section 82

on what authority do the respondents contend that 'The word "application" must … be read to include "action" in proceedings where same is called for' (Mtati 1, 89–92), and that the applicant should have ignored the procedural prescription of section 78 and proceeded against them *by way of an action* launched against each of them instead?

24. Concerning the first three applications: given that NOE Nair made an affidavit in the Bambiso case and Mtati answered for CEO Vedalankar in the first (and second) application against her, which other 'important people mentioned in this application' hasn't the applicant given an opportunity of a 'hearing'; and what 'character findings against' which 'important people' who haven't been heard do the respondents contend this court has been 'indirectly requested by the Applicant' to make (Bambiso, 111), as essential findings of fact that this court allegedly needs to make in its determination of whether the reasons given by the respondents for refusing the applicant's requests for access to LASA's records were lawful under the Act?

25. In the court's determination of whether the respondents refusals of the applicant's PAIA requests and money demands were justified under the Act, precisely in what manner do the respondents allege the court is 'hamstrung' by

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not having before it the '6000 pages' of 'records, transcript and pleadings' (Bambiso, 112) in the applicant's labour case in the Durban Labour Court? Or do they concede that these documents are irrelevant to the determination of these issues and the decision of his applications?

26. Since the applicant's claims in this court are principally for access to LASA's public records (or sworn certification where they don't exist), whereas in the Labour Court it was principally for his instatement to LASA's top legal professional post in KwaZulu-Natal, namely its still vacant, budgeted and fully funded Senior Litigator post at Pietermaritzburg, and the labour case has anyway since been decided (for the time being), do the respondents abandon their contention that this court is 'placed in a trap to rule differently from the Labour Court' (Bambiso, 113)?

27. Concerning 'PRELIMINARY OBJECTION 4 – SUB JUDICE' raised by the first three respondents: 'The Applicant seeks this Court to make findings, of fact, character and of law on a matter that is before another Court which process may create confusion as decisions may differ' (Bambiso, 118), do the respondents concede that the applicant's cause of action in the Labour Court ('the underlying dispute' about whether LASA had unfairly discriminated against him in aborting his appointment under cover of any number of conflicting excuses) was different from his cause of action in this court, and that the two courts had and have different issues to try under different statutes in relation to different fundamental rights?

28. Do the first three respondents concede that with the decision of the applicant's labour claim (for the time being) their 'sub judice' objection is anyway now

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moot – which is why it wasn't raised by Nair, or by Vedalankar in the second case against her (1432/15) – and do they abandon it accordingly?

29. Concerning 'PRELIMINARY OBJECTION 5 – EXHAUSTING OF INTERNAL REMEDIES' (Bambiso, 121–4), do the respondents concede that LASA had no 'internal remedies' available for the applicant to exhaust before applying to court for relief?

30. Concerning 'PRELIMINARY OBJECTION 6 – WAIVER TO APPROACH A COURT', i.e. 'most of the information that the Applicant seek[s] has already been sought early last year and the Applicant, instead then, of launching this application, waived his right to do so and elected to proceed with his action against Legal Aid SA in Durban' (Bambiso 125, 127), do the respondents concede that having regard to the restriction imposed by section 7 against using documents at the trial of a case, obtained via PAIA after the case has commenced, 'this application' under PAIA wasn't a legal option available to the applicant to 'launch' in the period between the close of pleadings and the trial of his labour case to disgorge documents that he'd requested before trial in the labour litigation that were being withheld from him to prevent him showing them to the judge?

31. Do the respondents concede that when in February 2013 LASA reneged on its minuted, signed undertaking given the supervising judge after the first pre-trial conference at court in January 2013 (i.e. 'early last year' – Bambiso signed his affidavit in 2014) to surrender specified documents requested and needed by the applicant for trial, the applicant relentlessly pursued them by seeking and obtaining a judicial directive for a second judicially supervised pre-trial conference at court on the eve of trial, whereafter further documents were

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surrendered, and that when a key document (the Skibi motivation) was still withheld to prevent the judge seeing it, the applicant subpoenaed it duces tecum? In light of these recorded facts, on what objective grounds do the respondent claim the applicant 'waived his right' to pursue this record and others after the trial, via PAIA? And on what section of Chapter 4 in Part 2 of the Act, 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS, do the respondents rely in support of this contention of theirs that a previous, obstructed, frustrated attempt to obtain a record during pre-trial discovery procedure in past litigation is a ground for refusing access to it when it's requested after trial under PAIA?

32. In view of the applicant's persistent but fruitless repeated attempts in the Labour Court to disgorge from LASA the documents he needed for his labour claim, obstructed and frustrated by LASA – which attempts comprised an application to compel discovery, two pre-trial conferences to achieve discovery, and a final subpoena duces tecum to force discovery – do the respondents concede that their (mixed-up) allegation on oath that 'the Applicant did nothing about his right to approach Court to enforce the right he alleges I violated' (Bambiso, 127) is untrue? And do they abandon this obviously insupportable waiver defence accordingly?

33. Do the respondents concede that the applicant's earlier unsuccessful attempts to disgorge documents from LASA during his labour case (under the rules of court, requested documents must be material to the issues for trial) is irrelevant to his claim to some of the same documents requested again after trial, this time requested under PAIA (under PAIA, requested documents needn't be relevant to anything); and that his earlier thwarted, unsuccessful attempts to obtain such documents during the labour litigation don't afford the respondents

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a justification allowed by any of sections 34 to 45 of PAIA for refusing his request for them again, this time made under PAIA?

34. Having regard to (i) the definition of 'court' in section 1 and the several options it afforded the applicant as regards higher court, lower court and district-jurisdictions in which to litigate, and (ii) the fact that LASA Board chairperson Mlambo JP is Judge President of the Gauteng Division of the High Court of South Africa, do the respondents concede that the assertion that 'the Gauteng Local Division [at Johannesburg] is the appropriate Court to determine this matter' (Bambiso, 107) is both irrelevant and wrong? And that although the applicant had the option to sue out of that court if he wished to, by reason of the fact that LASA has its 'principal place of administration or business' (per section (b)(i)(bb) in the definition of 'court' in section 1) in Johannesburg, he was within his rights to stay away from it?

35. Having regard to the 'RULES REGULATING THE CONDUCT OF THE PROCEEDINGS IN THE MAGISTRATES' COURTS OF SOUTH AFRICA' concerning the 'Service of process, notices and other documents' governed by rule 9, do the respondents concede that all of them were duly served with the applications against them 'at the place of employment of the said person' in each case, 'to a person apparently not less than 16 years of age and apparently in charge at his or her place of employment', under the provisions of rule 9(3)(c)?

36. Do the respondents concede that in South African law a domicilium citandi et executandi is *an address nominated by a party to contract* where legal notices and process may be served – *for the other party's convenience*, and doesn't

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preclude more direct service on a party personally, or where he or she lives or works?

37. Considering that the Guide is a regulatory instrument and not a contract, do the respondents concede that the description of LASA's head office as a 'domicilium citandi et executandi' in Clause 1.3 of the Legal Aid Guide (Bambiso, 19) is a legal misnomer?

38. Do the respondents concede that the so-called 'domicilium citandi et executandi' given in the Guide afforded the applicant the option to serve regional DIOs Bambiso and Msweli at that given address, but did not preclude him from effecting more direct service on them, as allowed by rule 9(3)(c), namely at their 'place of employment'; and that the contention that:

> there is only one address at which any person seeking to sue Legal Aid South Africa or its employees arising out of processes involving Legal Aid SA, must serve his or her legal process. The said address is the one provided for in the Guide i.e. its domicilium address. The rest when perusing the Guide, are merely satellite offices and regional offices with no separate legal personality to sue or be sued' (Bambiso, 20)

is wrong?

39. Do the respondents concede that since none of 'The rest' were sued by the applicant, the rider to the above contention ('The rest when …') is irrelevant?

40. Do the respondents concede that the so-called 'domicilium citandi et executandi' given by LASA as a service address in its Guide doesn't oust the jurisdiction provisions contained in the definition of 'court' in section 1 of PAIA; and that it didn't deprive the applicant of the three options the

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legislature afforded him as to which magistrate's court district to sue in, as he preferred, for the purpose of vindicating his fundamental right to information given effect by the Act?

41. Since section 7 isn't included in Chapter 4 in Part 2 of the Act, whose sections 34–45 enumerate the only 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS', do the respondents concede that section 7 wasn't available to them to invoke – either expressly or by allusion to its provisions – as a lawful justification for refusing the applicant's requests for access to LASA's public records?

42. Having regard to section 11(3) of PAIA:

> A requester's right of access … is not affected by –
> (a) any reasons the requester gives for requesting access

do the respondents concede that the applicant's reasons given for requesting the records he specified, inter alia, to 'pursue either civil or criminal proceedings against the Head Office people' (Bambiso, 33) and to 'criminally prosecute Mr Brian Nair who sits as National Operations Executive in Johannesburg' (Bambiso, 34) was irrelevant to the decision of his PAIA requests?

43. Apropos of:

- the applicant's stated intention to take Nair and other top LASA officers to law for their criminal and otherwise unlawful conduct, which serious intention the respondents recognise and expressly acknowledge:

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- ‘the Applicant seek[s] all this information to arm himself for purposes of pursuing his cases against members of Legal Aid SA’ (Bambiso, 40, also 39); and,

- the applicant’s requests have ‘far reaching implications on [sic: for] the officials of Legal Aid SA’ (paragraph 3, annexure ‘F’ to the founding affidavit in the application against Nair (1005/15), and the same document, annexure ‘F’ to the founding affidavit in the application against Vedalankar (1432/15));

o the allegedly ‘astonishing … vulgar and defamatory language in [the applicant’s] affidavit’ (Bambiso, 41) (six months after the decision to refuse the applicant access to the records requested); and,

o the fact that (eight months after the decision) ‘even to respond to the said application has had the effect of diverting resources and time away from executing my mandate to Legal Aid SA’ (Bambiso, 42)

do the respondents concede that none of this supports the contention that the applicant’s request under PAIA for access to specified records under the respondents’ control is ‘manifestly vexatious and frivolous’, which is to say barred by section 45, more particularly because the respondents record their appreciation that the applicant’s serious object in requesting access to the documents he’s sought is to gather further documentary evidence for use in civil, criminal and disciplinary proceedings against Nair and other ‘members of Legal Aid SA’?

44. Do the respondents concede that the charge against the applicant that he used ‘astonishing … vulgar and defamatory language in [his] affidavit’ (Bambiso, 41) is false? If not, and they persist with it, they are required to identify such

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'astonishing … vulgar and defamatory language' by quoting every instance of the allegedly offensive words, phrases and sentences the applicant used and by giving the numbers of the paragraphs in which they appear, so that the language complained of can be debated in regard whether it fairly fits this description, and this court can thereupon determine the truth or otherwise of the charge, and of the propriety of the respondents' conduct in levelling this charge against the applicant on oath, and, if it's found to be false and mala fide, its costs implications for them.

45. Concerning Mtati's refusal of most of the applicant's first PAIA request addressed to Vedalankar, does Vedalankar concede that the first reason advanced for the refusal, namely that

> the information/documents he required was a subject matter of an action he instituted against Legal Aid SA and some of its senior officers in the Labour Court, Durban under case number D529/11 which action is still pending before Cele J … No judgment has been handed down. (Mtati 1, 41)

was not a justification contemplated and permitted by Chapter 4 in Part 2 of the Act and is not any of the 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS' included in and allowed by sections 34–45?

46. Since under section 11(3) the applicant's:

> right of access contemplated in subsection (1) is, subject to this Act, not affect[ed] by –
> (a) any reasons the requester gives for requesting access

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does Vedalankar concede that the reason the applicant gave for requesting access, namely 'to pursue either civil or criminal proceedings against one of the Legal Aid SA's National Operations Executive Mr Brian Nair' (Mtati 1, 46), is legally irrelevant and does 'not affect' the applicant's 'right of access'? Just as the SAHRC instructed LASA at its special PAIA training workshop on 6 November 2012:

> It has also been deemed important on the basis of the Commission's monitoring of LASA institutional compliance with LASA and the need to ensure that clients [sic: requesters] who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants [sic: requesters]. (Annexure 'F' to replying affidavit in Nair application (1005/15))

47. Having regard to section 11(3):

> A requester's right of of access contemplated in subsection (1) is, subject to this Act, not affect[ed] by –
>
> …
>
> (b) the information officer's belief as to what the requester's reasons are for requesting access

does Vedalankar concede that whatever Mtati was 'thinking' about the reason the applicant requested access to the public records he'd specified, namely 'to criminally prosecute Mr Brian Nair' (Mtati 1, 47), and whether this 'thinking' of his was right or 'wrong', his 'thinking' (albeit quite right) was legally irrelevant to the decision of the request?

48. Considering the provisions of section 11, and of sections 34–45, the closed list of justifications permitted by the Act for refusing a record request, does

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Vedalankar concede that the submission, 'I was entitled to refuse the said request' (Mtati 1, 48), for the two reasons that:

- 'the information/documents [the applicant] required was a subject matters of a [pending] action he instituted' in that 'judgement' had still to be 'handed down' (Mtati 1, 41); and,
- 'the Applicant himself sought this information to pursue either civil or criminal proceedings against … National Operations Executive Brian Nair' and 'to criminally prosecute Mr Brian Nair' (Mtati 1, 46)

was wrong, and that these two considerations didn't afford her a lawful justification on any of the grounds set out in Chapter 4 in Part 2 of the Act for refusing the applicant access to most of the records requested of her in his first PAIA request (case 258/14)?

49. Does Vedalankar concede that the applicant's stated intention to take LASA's delinquent public officers to law, and the respondents' express acknowledgement that his PAIA requests were directed at collecting further documentary evidence of their gravely unlawful conduct, i.e:
    - to 'arm himself for purposes of pursuing his cases against members of Legal Aid SA' (Bambiso, 40);
    - 'the Applicant himself sought this information to pursue either civil or criminal proceedings against … National Operations Executive Brian Nair' (Mtati 1, 46);
    - 'for litigation purposes' (Mtati 1, 47)
    - 'he intends to criminally prosecute Mr Brian Nair' (Mtati 1, 47),

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being a serious reason for making his request, directly contradicts the refusal of the applicant's requests on the basis of that it was 'manifestly vexations [and] frivolous' (Mtati 1, 49) and thus hit by section 45, which bars 'Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources', and refutes this obviously insupportable reason for refusing the requests?

50. Does Vedalankar concede that the time Mtati expended to 'respond to the said application' to court to compel compliance with the applicant's requests for access, thereby 'diverting resources and time away from executing my mandate to Legal Aid SA' (Mtati , 55), is irrelevant to the reason for the decision to refuse the requests taken many months earlier?

51. Does Vedalankar concede that the only 'discovery rules of the Labour Court' (Mtati 1, 178.2) are those provided in rule 4, prescribing a 'Pre-trial conference by parties' after the close of pleadings at which 'the parties must attempt to reach consensus' concerning (per subsection (b)(vi)) 'discovery and the exchange of documents'; and that these 'discovery rules of the Labour Court' don't apply *after the trial*; so the applicant's use of PAIA to access documents after trial in his labour case doesn't render his request for access to them 'manifestly frivolous and vexatious' (Mtati 1, 49)?

52. As to Mtati's assertion, 'This paragraph falls to be struck out as it is evidence arising from information secured from PAIA process' (Mtati 1, 186.1), does Vedalankar concede that Mtati is mistaken in imagining that documents obtained via PAIA are ipso facto excluded from use in legal proceedings?

53. Given that Vedalankar has no appellate power under PAIA, is it conceded that Msweli's 'PRELIMINARY OBJECTION 8 – NON-JOINDER OF

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INFORMATION OFFICER' – based on 'the fact that the CEO of LEGAL AID SA is also the Information Officer of the organisation I represent' (Msweli, 153.1) and 'in terms of clause 18 of LEGAL AID SA's Manual in terms of Section 14 of the Act, the Information Officer is the person that an appeal against my decision would have lied upon [sic]' (Msweli, 153.2), 'thus … she is an interested party ... who ought to have been joined' (Msweli, 153.3), so the applicant's 'non-joinder is fatal to this case' – is idle, and is this defence abandoned accordingly?

54. In noting that 'anything is still possible' in the applicant's labour case until such time as 'the highest Court has pronounced on the dispute' (Msweli, 168.2), was it intended to allege that Labour and Labour Appeal Court head of court Waglay JP – formerly DJP to LASA chairperson Mlambo JP while he was head of that court – could even be slipped an anonymous 'Memorandum' (annexure 'D' hereto) under the table (it's in the petition file, but isn't stamped by the registrar) to pervert the applicant's petition for leave to appeal (annexure 'C' to annexure 'S' to the applicant's replying affidavit in case 1432/16) by crudely denigrating him to prejudice Waglay JP against him and against his case on petition; by lying about what was common cause at the trial of his labour case; by lying about what was in issue in the case; and by repeatedly lying that his petition didn't identify where the trial judge went wrong, over and over again, both on the facts and the law? Is this what was very correctly and confidently meant by 'anything is … possible' when litigating against the sort of people who run Legal Aid South Africa?

55. Does Nair concede that his charge that the applicant has resorted to 'unimaginable vulgarity' and 'crass language' (Nair, 19) and 'astonishing … vulgar and defamatory language' in his affidavit (Nair, 58) is false, and was

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similarly contrived to prejudice this court against the applicant, in the same way that the just-mentioned 'Memorandum' likewise pressed the same false, toxic 'vulgarity' charge to similarly poison the Judge President against the applicant and his case on petition (quite effectively: the petition was thrown out in the middle of LASA's still undecided condonation application for opposing out of time)? If not, and Nair persists with this charge against the applicant, he's required to specify this 'unimaginable vulgarity' and 'crass language'; to cite the words, phrases and sentences the applicant used in this allegedly offensive manner; and to give the numbers of the paragraphs in which they appear in his founding affidavit so that this court can determine the truth of Nair's charge, and if it's found to be false, to decide whether Nair attempted to defeat the ends of justice by defaming the applicant with lies told under oath to prejudice the court against him.

56. Seeing that section 11(3) provides:

> A requester's right of access contemplated in subsection (1) is, subject to this Act, not affect[ed] by –
> (a) any reasons the requester gives for requesting access

does Nair concede that 'the effect of this information' (Nair, 44.3) given by the applicant concerning his reasons for requesting access – he 'prefaced his request for information with a declaration that he seeks the information in order to have me prosecuted for perjury'(ibid)) – is zero as regards the applicant's right of access to the records he requested?

57. Does Nair concede that the applicant's stated intention to use the requested 'information for litigation purposes … to criminally prosecute me' (Nair, 50) was legally irrelevant to his decision of the request for access, in that a

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requester's declared intention to use the requested documentary 'information for litigation purposes' is not a ground for refusing it, not being included in and allowed by the numerus clausus of lawful justifications for refusing a record request listed in sections 34 to 45?

58. Does Nair concede that even were section 7 included among these 'GROUNDS FOR REFUSAL OF ACCESS TO RECORDS' listed in sections 34 to 45, the records asked of him were not 'requested after the commencement of such … criminal proceedings' (per section 7(1)(b)) – in that the applicant still has to file his intended criminal charges against Nair and the 'criminal proceedings' have yet to 'commence' – so section 7 is irrelevant to the decision of the applicant's records request for this further reason?

59. Does Nair concede that that in 'Applications regarding decisions of information officers' (per section 78), 'the common law principles on jurisdiction' (Nair, 95) have been changed and supplanted by section 1 of PAIA, and more particularly by section (b)(ii) under the definition of 'court'?

60. Having regard to Nair's recent provision to the applicant in December 2015 of LASA's annual budget applications to the Department of Justice and Correctional Services over the last five years for funding for salaries for all nine of its Senior Litigator posts, three of them long-vacant (annexure 'O' to the applicant's replying affidavit in his second case against Vedalankar (1432/15)), what does Nair mean in stating under oath in his answering affidavit that the Pietermaritzburg Senior Litigator 'post that he applied for … was eventually aborted by Legal Aid SA' (Nair, 142.4) 'for operational reasons' (Nair, 44.1) – considering also that he repeatedly confirmed on affidavit and in oral evidence in the applicant's labour case that no record

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whatsoever exists of any such decision by LASA national executive management, nor any record of the Board's approval of such alleged decision to deviate from its Strategic Plan 2009–12 to employ Senior Litigators, as required by LASA's Approval Framework? Does Nair concede that he lied about this on affidavit before the trial, lied in his oral evidence at trial, and has lied yet again to this court in his answering affidavit in the PAIA application against him, in that in truth and in fact, 'Legal Aid SA' has never 'aborted' the 'post [that the applicant] applied for' and was unanimously selected and recommend for, 'for operational reasons'; and LASA continues budgeting for the post, applying to the Department for funding for it, and receiving such funding voted by the National Assembly, year after year, to date? If not, and Nair persists with this allegation made to this court under oath on pain of being prosecuted and jailed for perjury, was the Pietermaritzburg Senior Litigator 'post … aborted by Legal Aid SA' (off the record, and without Board approval, and in contravention of sections 50, 51, 55 and 57 of the Public Finance Management Act 1 of 1999 ('PFMA')) for the reason Vedalankar alleged to the applicant in October 2010 (Nair evidently ghost-writing), viz:

> Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise. This had the effect of cutting our baseline funding by a significant amount. It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.

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Or for the two totally different reasons Nair gave the Board in his 'Report to Board' in November 2011 (after the applicant had exposed and refuted the false budgetary excuse in his original statement of claim in the Labour Court in July 2011, closely referenced to LASA's business records), viz:

> Six Senior Litigators [sic: posts] were filled during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.

– even as LASA continues applying to the Department and receiving salary budget for these posts?

61. Do the respondents concede that Nair's decision to grant the applicant access to LASA's annual budget applications to the Department for funding for salaries for its Senior Litigator posts over the last five years – records bearing directly on the applicant's labour claim, and more specifically on his claim to his appointment and his complaint that the original budgetary insufficiency story told to him and to court (but not the Board) for not appointing him is a lie – shows that their reliance on sections 7 and 45 to refuse him access to other records also bearing on his said claim to his appointment and his complaint about the lies he was told wasn't bona fide and isn't supportable?

62. Does Nair concede that the various reasons he gave for totally refusing the applicant's request for records addressed to him were insupportable under PAIA, as demonstrated seriatim by the applicant in annexure 'J' to his founding affidavit in the case against him (1005/15)?

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63. Having regard to the applicant's affirmed, vouched explanation for the two-week delay in service of the application against Nair, which he'd launched within the prescribed time limit, namely unexpected inefficiency by the South African Post Office's Speed Services courier, and having regard further to the fact that Nair experienced no prejudice from the slight delay in formal service on him, in that he received the application papers by email within the time limit right after they were issued and couriered to the sheriff for service, does he concede that the applicant has made a complete case for condonation for the fortnight's delay in formal service on him, and does he consent to the grant of his condonation application, so that the parties and the court can get on with the serious business of the main case – in the same sensible and practical spirit displayed by the applicant in accepting late formal service of the answering affidavit in his second application against Vedalankar (1432/15), having likewise received an emailed copy within the time limit, without demanding, as Nair did, that Vedalankar bring a condonation application? If not, and if Nair contends that the applicant should be barred from proceeding with his application because he wasted time attempting to enlist the support of the Public Protector and the SAHRC in his bid to exercise his fundamental right to access LASA's public records that Nair had blocked (his attempts characterised by Mtati as pointless 'escapades to complain to the SAHRC and the Public Protector' in which the applicant 'wasted time instead of approaching a Court of law to deal with his complaint' (Mtati 2, 128.2–3)), why did Nair put up a confirmatory affidavit in the applicant's case against Bambiso, in whose answering affidavit the exact opposite opinion was expressed on oath, namely that the applicant 'ought to have … appeal[ed] to the SAHRC. He had no basis to assume that the Human Rights Commission would not assist him' (Bambiso, 196.2)?

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64. Does Vedalankar concede that in the absence of a written delegation of Mtati by her as a DIO in accordance with the peremptory requirement of section 17(6)(a) that such delegation be in writing, Mtati's 'humble opinion' (Mtati 1, 19) that:

- 'It is clear in terms of the said [PAIA] Manual and in paragraph 2.3 thereof that "Deputy Information Officer/s" means the Chief Operations Officer, National Operations Executive, Chief Legal Executive and Corporate Services Executive of Legal Aid SA who are authorised to discharge the duties and responsibilities assigned to the Information Officer relating to access to information in the possession or under the control of support functions and legal functions of Legal Aid SA respectively.' (Mtati 1, 18)
- 'In the circumstances and before one delves deep into the Manual and/or issues pertaining to PAIA, it is clear in my humble opinion that I as the Corporate Service Executive am also a Deputy Information Officer authorised to discharge the duties and responsibilities assigned to the Information Officer relating to access to information in the possession or under the control of support functions and legal functions of Legal Aid SA respectively.' (Mtati 1, 19)
- 'It is on this basis that the Applicant's prayers ['1, 3 and 4'] premised on failure to appreciate the above facts [that the CSE is named as DIO by the PAIA Manual] falls to be dismissed with costs.' (Mtati 1, 21)
- 'I have shown that I am a Deputy Information Officer.' (Mtati 1, 176.2)
- 'I have demonstrated that I hold a proper authority as I am the Deputy Information Officer.' (Mtati 1, 184.2)

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- ‘I have demonstrated that I am authorised to depose to the PAIA section 23 affidavit and grant or refuse a request for information.’ (Mtati 1, 179.2)
- ‘Deputy Information Officers have been duly appointed, alternatively duly designated by law. (Mtati 2, 122.1, referring particularly to Mtati, Hundermark and Makokoane)

is wrong (even if he expresses his ‘humble opinion’ about this insistently), in that without her written delegation of him, Mtati isn’t a DIO under PAIA, and the fact that he rewrote LASA’s PAIA manual to proclaim himself one doesn’t make him one? With the same going for Hundermark and Makokoane: no written delegations, no authority as DIOs, even if misdescribed by Mtati as such in the PAIA manual?

65. Does Vedalankar concede that for the reasons stated in paragraphs 15–19 of the applicant’s fundamental right violation complaint to the SAHRC (annexure ‘N’ to his founding affidavit in his second case against her (1432/15)), her reasons given for refusing the applicant access to the insurance records he requested are insupportable under PAIA?

66. Does Vedalankar concede that a deposit on ‘access fees’ under section 22 may only be demanded in respect of records to which access has been granted, and that under section 25(2)(b) this demand must be included in the notice to the requester, delivered under section 25(1)(a), advising him of the decision to grant access? And does she concede that ‘access fees’ can’t be charged under the Act in respect of records that have been refused?

67. Do the respondents retract and unreservedly apologise for their allegations made throughout the answering affidavits in all five applications, and in the condonation application in the Nair case, that the applicant has conducted

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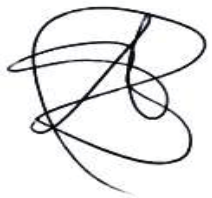
himself personally and professionally in an egregiously improper and unethical manner in the litigation, such as to warrant punitive costs orders against him? If not, and they persist with these charges against him, they are required to enumerate and specify each and every instance of such alleged misconduct so that it can be debated in court, to enable this court to determine whether the respondents' charges are true and bona fide, and whether their claims for punitive costs orders against the applicant are justified; or whether the respondents' repeated allegations of improper conduct made against the applicant on oath are scurrilous and vexatious and a transparently dishonest endeavour to demean him in the eyes of the court and thereby prejudice it against him so as to distract from the merits of his applications and from the enormity of LASA's top officers' persistent violation of his fundamental right to information entrenched by section 32 of the Constitution, with the corrupt object of suppressing further documentary evidence of their criminal and other gravely unlawful misconduct.

Signed at Eshowe on 1 February 2016.



Applicant
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TO:

The Clerk of Court

Eshowe Magistrates Court

AND TO:

W E White Attorneys and Conveyancers

12 Osborn Road, Eshowe

(Mr Munro)

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25 January 2016

Ref: GP/1516/0395

Legal Aid South Africa

Attention: Chief Executive Officer

Ms. Vidhu Vedalankar

Per email: ceo@legal-aid.co.za

CC: tembilem@legal-aid.co.za

CC: sollys@legal-aid.co.za

Dear Ms. Vedalankar,

RE: COMPLAINTS LODGED WITH THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The complaint lodged by Advocate Anthony Brink against Legal Aid South Africa (LASA) in August 2015, refers.

Having considered various concerns raised by Advocate Brink in his complaint, the following is recommended in terms of section 83(3)(d) of the Promotion of Access to Information Act 2 of 2000 (PAIA):

1. **Section 78 – Applications to court**

It is recommended that paragraph 18 of LASA's section 14 manual be revised to include reference to the following:

1.1. Relevant procedures as set out in section 78 of PAIA for instituting legal action (including applicable timelines);[1]

[1] 180 days (Brümmer v Minister for Social Development and Others (CCT 25/09) [2009] ZACC 21; 2009 (6) SA 323 (CC) ; 2009 (11) BCLR 1075 (CC) (13 August 2009))

1.2. Definition of "court" as per section 1 of PAIA:

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"(b)(ii) a Magistrates Court…
(bb) the public body or private concerned has its principal place of administration of business; or
(cc) the requester or third party concerned in domiciled or ordinarily resident"

2. Delegation of deputy information officers

2.1. *"17(6) Any delegation in terms of subsection (3) – (a) must be in writing…"*

In terms of section 17 of PAIA, all officials tasked with fulfilling the duties of the Information Officer in terms of PAIA must be delegated to do so in writing. It is recommended that LASA's section 14 manual be amended to include reference to this requirement, thereby confirming that those appointed by the Information Officer of LASA to attend to PAIA related matters are duly authorised to do so in terms of PAIA.

2.2. No distinction is made between designated deputy information officers and deputy information officers in PAIA. To ensure that laypersons perusing the manual are able to cross-reference LASA's manual with the provisions of PAIA, the following is recommended:

2.2.1. That the distinction between deputy information officers and designated deputy information officers is reviewed for the sake of enhanced clarity of readers;

2.2.2. LASA's section 14 manual be amended to include reference to the following:

- Roles and responsibilities of all officials delegated in terms of section 17 of PAIA; and
- The lines of authority of all delegated officials insofar as they relate to the Information Officer of LASA. The Information Officer remains finally responsible for all PAIA related decisions of the institution notwithstanding the delegation of officials in terms of section 17 of PAIA.[2]

[2] Section 17(2) of PAIA

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3. Fees

*"22(2)If - (b) the preparation of the record for disclosure…would in the opinion of the information officer of the body, require more than the hours prescribed for this purpose for requesters, the information must by notice require the requester…**to pay as a deposit the prescribed portion** (being not more than one third) of the access fees which would be payable[3] **if the request is granted**."*

The notice referred to in subsection (1) and (2) must state –

(a) The amount of the deposit payable in terms of subsection (2), if applicable;

(b) That the requester may lodge an internal appeal or an application with a court, as the case may be, against the tender or payment of the request fee in terms of subsection (1), or the tender of payment of a deposit in terms of subsection (2), as the case may be;

(c) And the procedure (including the period) for lodging the internal appeal or application, as the case may be.

(4) If the deposit has been paid in respect of a request for access which is refused, the information officer concerned must repay the deposit to the requester.

(5) The information officer of a public body must withhold a record until the requester concerned has paid the applicable fees (if any)."

Based on the above, the following is recommended:

3.1. That any notices issued in terms of section 22(2) clearly state that the request for payment of monies constitutes a request for payment of a deposit in terms of that section. Such notice must include the details as required in terms of section 22(2)(b) and (c);

3.2. Reference to the following should be considered for inclusion in LASA's section 14 manual:

3.2.1. That a request for payment of a deposit may be made in terms of section 22(2) and the circumstances under which such a request may be made; and

[3] Section 22(2), 22(6) and 22(7)(b) refers to "search", "prepare" and "preparation". "Prepare" is not defined in the definitions section of PAIA. "Prepare" is defined in the Oxford Dictionary as "Make (something) ready for use or consideration"

3.2.2. The circumstances under which the deposit paid in terms of section 22(2) will be refunded in terms of section 22(4) of PAIA.

4. Appeals

4.1. *"74. (1) A requester may lodge an internal appeal against a decision of the information officer of public body referred to in paragraph (a) of the definition of "public body" in section 1…"*

Section 1 of PAIA states the following under the definition of "public body":

"public body" means - (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government…"[4]

Based on the above, PAIA does not provide for internal appeals in respect of so called "Type B" public bodies, which LASA is.

4.2. In terms of section 17(2) of PAIA: *"[t]he Information Officer of a public body has direction and control over every deputy information officer of that body."*

Based on a holistic consideration of the abovementioned provisions of PAIA, the Commission recommends that LASA reconsiders the approach set out in paragraph 18 of its section 14 manual relating to the lodgement of appeals with the Information Officer of LASA.

Considering that LASA's section 14 manual is due for review in February 2016, the Commission would be more than happy to further engage with your offices regarding the abovementioned recommendations. In addition, the Commission is also available to conduct training workshops for the officials of LASA in terms of section 83(3)(e).

[4] Relevant authority refers to the individual responsible for handling internal appeals lodged in terms of PAIA. A relevant authority is not defined insofar as so called "Type B" public bodies are concerned.

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For any enquiries regarding the above, please do not hesitate to contact Kisha Candasamy on kcandasamy@sahrc.org.za or 011 877 3814.

Yours faithfully,

Lindiwe Khumalo
Chief Executive Officer
South African Human Rights Commission

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25 January 2016

Refs: GP/1516/0395

Advocate Brink

Per email: arbrink@iafrica.com

Dear Advocate Brink

RE: BRINK / LEGAL AID SOUTH AFRICA

Your revised complaint registered under GP/1516/0395 (received on 26 November 2015), refers.

As per our correspondence dated 30 November 2015, the Commission's non-response to all comments made in your various communications relating to GP/1516/0395 should not be interpreted by you to constitute an acceptance of correctness or accuracy of such statements or comments.

A copy of the various recommendations submitted to LASA in terms of section 83(3)(d) of the Promotion of Access to Information Act 2 of 2000 (PAIA) is attached hereto.

The Commission has elected not to engage with LASA on the specific grounds of refusal allegedly cited by them in response to your PAIA requests[1] or LASA's request for the payment of certain monies in terms of section 22 of PAIA. Legal argument in this regard will be presented to and decided upon by the court through the legal proceedings instituted by you in terms of PAIA.[2] The Commission will monitor the outcome of the case as it would welcome the court's judgment as a means of expanding on the body of jurisprudence relating to the application of PAIA.

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[1] Sections 7 and 45 of PAIA.

[2] Chapter 3 of the Commission's Complaints Handling Procedures states the following: *"4 (2) The Commission may reject any complaint, which ... is the subject of a dispute before a court of law, tribunal, any statutory body ... or in which there is a judgment on the issues in the complaint or finding of such court of law, tribunal, statutory body or other body..."*.

In the circumstances, the Commission will close your file herein.

Should you be dissatisfied with this decision, you may lodge an appeal with the Commission in terms of Chapter 9 of the Commission's Complaints Handling Procedures, which provides as follows:

> *"34 (1) (a) Any party to proceedings under these procedures, who feels aggrieved by any determination, decision of finding, may lodge an appeal with the Chairperson, if the appeal is of a substantive nature regarding any determination, decision or finding of a Provincial Manager, within 45 days from the date of being notified of such determination, decision or finding by post, delivery facsimile or email."*

For further information regarding appeals, please contact one of the following officials:

Eden Esterhuizen – 011 877 3632
Sandile Mdunusana – 011 877 3633

We thank you for bringing your complaint to the attention of the Commission.

Yours faithfully,

Kisha Candasamy
Head: PAIA Unit (Acting)
South African Human Rights Commission

C B

From: Kisha Candasamy
To: Anthony Brink (arbrink@iafrica.com)
Cc: Lauren OReilly
Subject: ADVOCATE BRINK / LEGAL AID SOUTH AFRICA
Date: Friday, January 29, 2016 2:53:58 PM
Attachments: SKM_C364e16012914090.pdf
SKM_C364e16012914091.pdf

Dear Advocate Brink

Please find attached, correspondence for your attention.

Regards,

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DA21/14

ANTHONY ROBIN BRINK **Petitioner**

and

LEGAL AID SOUTH AFRICA **Respondent**

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MEMORANDUM

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

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

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