

1 Boast Street  
Eshowe 3815  
29 April 2016

B8

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:

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 officer 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.

B8

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. Deposing 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?

B8

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.

B8

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.

B8

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 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?

B8

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.

B8

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?

B8

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:

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.

B8

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.

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

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

B8