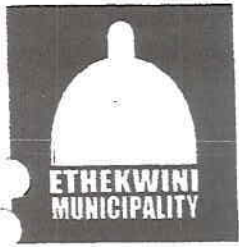


10019



GOVERNANCE CLUSTER
City Hall Administration & Secretariat

Ground Floor, Room 5, City Hall
Dr Pixley KaSeme Street, Durban, 4001
P O Box 1014, Durban, 4000
Tel: 031 311 2131, Fax: 031 311 2171
www.durban.gov.za

IN THE MATTER OF

CENTRE FOR ENVIRONMENTAL RIGHTS

REQUESTER

and

ETHEKWINI MUNICIPALITY

INFORMATION OFFICER

ENGEN

AFFECTED THIRD PARTIES

SAPREF

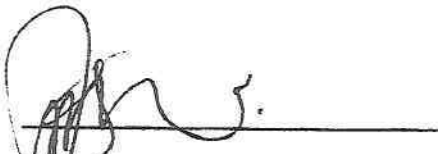
AFFECTED THIRD PARTIES

**NOTICE IN TERMS OF SECTION 25(3) OF THE PROMOTION OF ACCESS TO
INFORMATION ACT 2 OF 2000 (THE ACT)**

Kindly take note as follows:

- 1) That the request for information is hereby refused by the Deputy Information Officer
- 2) That the refusal is based on Section 36 of the Act which reads as follows:
 - * ***Mandatory protection of commercial information of third party(1)***
Subject to subsection(2), the information officer of a public body must refuse a request for access to a record of the body if the record contains-
 - (a) *trade secrets of a third party*
 - (b) *financial, commercial, scientific or technical information, other than trade secrets, of a third party the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or*
 - (c) *information supplied in confidence by a third party the disclosure of which could reasonably be expected*
 - (i) *to put that third party at a disadvantage in contractual or other negotiations; or*
 - (ii) *to prejudice that third party in commercial competition"*

- 3) Should the Requester decide to exercise the option of an appeal; the Requester must lodge an appeal within 30days of the date of signature hereof.
- 4) The requester must deliver the duly completed prescribed Form B attached hereto to the Information Officer via post, fax or electronic mail.
- 5) The Appeal must clearly identify the subject for appeal and state the reasons for the appeal.
- 6) The Requester must clearly state the manner in which he/she wishes to be informed of the decision on the internal appeal, in addition to a written reply.
- 7) The Requester must specify a postal address, fax number or electronic mail address.
- 8) The Requester may relinquish the right to an internal appeal and by way of an application apply to court for appropriate relief.
- 9) The said application must be lodged within 30 days of signature hereof.



On Behalf of Deputy Information Officer
Dr Joseph David

03 July 2013



Centre for Environmental Rights
Advancing Environmental Rights in South Africa

"DDZO"

The Information Officer / Deputy Information Officer: Mr J David
eThekweni Metropolitan Municipality

By email: davidj@durban.gov.za

Copied to: Mary Ann Grafestsberger
By email: MaryAnn.Grafestsberger@durban.gov.za

Our Ref: CER-2013-TMM-0002
Your Ref: 105395

30 August 2013

Dear Mr David

INTERNAL APPEAL AGAINST THE REFUSAL TO GRANT INFORMATION REQUESTED PURSUANT TO THE PROMOTION OF ACCESS TO INFORMATION ACT, ACT 2 OF 2000 (PAIA)

Please find enclosed a completed Form B Notice of internal appeal, and the grounds for the internal appeal marked "Annexure A" (which includes "Annexures 1-8") supporting the appeal, submitted in accordance with section 75 of PAIA.

This internal appeal relates to your refusal to grant Vaal Environmental Alliance (VEJA) copies of the Atmospheric Emission Licences (AELs) and AEL compliance reports for Shell and BP Petroleum Refinery and Engen Petroleum Refinery submitted to eThekweni Metropolitan Municipality.

In accordance with section 77 (3) (a) of PAIA, you are required to respond to this internal appeal within 30 (thirty) days of receipt hereof. We therefore expect a decision on this internal appeal to be communicated to us by 30 September 2013.

Kindly confirm receipt.

Yours sincerely
CENTRE FOR ENVIRONMENTAL RIGHTS

PP *Ahukunda*
Amantha

per:
Robyn Hugo
Attorney
Direct email: rhugo@cer.org.za

223 Lower Main Road,
Observatory, 7925
Cape Town, South Africa
Tel 021 447 1647, Fax 086 730 9098
Email info@cer.org.za, www.cer.org.za

FORM B

eThekwini Municipality
NOTICE OF INTERNAL APPEAL

(Section 75 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 8]

STATE YOUR REFERENCE NUMBER(S):
Our reference: CER-2013-TMM-0002
Your reference: 105395

A. Particulars of public body

Name & Designation	Postal Address	Physical Address	Telephone Number	E mail Address
Dr. M.O Sutcliffe City Manager	PO Box 1014 Durban 4000	City Hall West Street Entrance, Durban 4001	031 3112100	sutcliffem@durban.gov.za

Deputy Information Officers

Name & Designation	Postal Address	Physical Address	Telephone Number	Email Address
Mr. S Thusi Head: Communications	PO Box 5588 Durban 4000	Old Mutual Centre 303 West Street Durban 4001	031 3112315	
Mr. J David Head: City Hall & City Secretariat	PO Box 1014 Durban 4000	City Hall West Street Entrance, Durban 4001	031 3112390	davidj@durban.gov.za
Mr. G Strydom Head: Regional Centres	P O Box 49 Pinetown 3600	Pinetown Civic Centre 60 Kings Roas Pinetown 3610	031 7182002	strydomg@durban.gov.za

B. Particulars of requester/third party who lodges the internal appeal

- (a) *The particulars of the person who lodge the internal appeal must be given below.*
(b) *Proof of the capacity in which appeal is lodged, if applicable, must be attached.*
(c) *If the appellant is a third person and not the person who originally requested the information, the particulars of the requester must be given at C below.*

Full names and surname: **Centre for Environmental Rights**
Registration number: **2009/020736/08**
Postal address: **223 Lower Main Road, Observatory, 7925, Cape Town**
Fax number: **086 730 9098**
Telephone number: **021 447 1647**
E-mail address: **rhugo@cer.org.za / eheitmann@cer.org.za**
Capacity in which an internal appeal on behalf of another person is lodged: **Attorney**

C. Particulars of requester

This section must be completed ONLY if a third party (other than the requester) lodges the internal appeal.

Full names and surname: **Vaal Environmental Justice Alliance (VEJA)**
Registration number:

D. The decision against which the internal appeal is lodged

Mark the decision against which the internal appeal is lodged with an X in the appropriate box:

<input checked="" type="checkbox"/>	(Deemed) Refusal of request for access
<input type="checkbox"/>	Decision regarding fees prescribed in terms of section 22 of the Act
<input type="checkbox"/>	Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act
<input type="checkbox"/>	Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
<input type="checkbox"/>	Decision to grant request for access

E. Grounds for appeal

If the provided space is inadequate, please continue on a separate folio and attach it to this form. You must sign all the additional folios.

State the grounds on which the internal appeal is based:

Grounds for internal appeal attached

State any other information that may be relevant in considering the appeal:

Grounds for internal appeal attached

F. Notice of decision on appeal

You will be notified in writing of the decision on your internal appeal. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

State the manner: **By electronic mail**

Particulars of manner: **rhugo@cer.org.za / eheitmann@cer.org.za**

Signed at Cape Town this 30 day of August 2013

PP *Ahukunda
Amantha*

SIGNATURE OF APPELLANT

FOR DEPARTMENTAL USE:

OFFICIAL RECORD OF INTERNAL APPEAL:

Appeal received on _____ (date) by
(state rank, name and surname of information officer/deputy information officer).

Appeal accompanied by the reasons for the information officer's/deputy information officer's decision and, where applicable, the particulars of any third party to whom or which the record relates, submitted by the information officer/deputy information officer on (date) to the relevant authority.

OUTCOME OF APPEAL:

DECISION OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER
CONFIRMED/NEW DECISION SUBSTITUTED

NEW DECISION:

_____	_____	DATE
RELEVANT AUTHORITY		
RECEIVED BY THE INFORMATION OFFICER/DEPUTY INFORMATION OFFICER FROM THE RELEVANT AUTHORITY ON (date):		

VAAL ENVIRONMENTAL JUSTICE ALLIANCE

Appellant

ETHEKWINI MUNICIPALITY

Respondent

ANNEXURE "A" TO THE APPEAL PURSUANT TO THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 IN RESPECT OF COPIES OF THE ATMOSPHERIC EMISSION LICENCES (AELS) AND AEL COMPLIANCE REPORTS FOR SHELL AND BP PETROLEUM REFINERY AND ENGEN PETROLEUM REFINERY

The Appellant

1. The Appellant is the Vaal Environmental Justice Alliance (**VEJA**), a voluntary association of non-governmental and community-based organisations that is established to advocate the promotion of environmental issues, a healthy environment and sustainable development in the "the Vaal Triangle".
2. In this matter, VEJA is represented its attorneys, the Centre for Environmental Rights (**CER**), with registration number 2009/020736/08, PBO number 930032226 and NPO number 075-863. The CER is a non-profit organisation established for the advancement of environmental rights in South Africa.

The PAIA request

3. On 10 April 2013, CER on behalf of the Appellant submitted a request (**the request**) to eThekweni Municipality in terms of the Promotion of Access to Information Act 2 of 2000 (**PAIA**). The request is enclosed as **Annexure "1."**
4. The request was sent by electronic mail (email) to Mary Ann Grafetsberger on behalf of Dr JE David - eThekweni Municipality's deputy information officer. The request bore the reference number CER-2013-TMM-0001.
5. The request was in respect of copies of:
 - 5.1 the Atmospheric Emission Licence (AEL) for Shell and BP Petroleum (SAPREF) and Engen Petroleum Refinery;

alternatively, if the AELs had not been granted:
 - 5.1.1 a copy of the applicable Atmospheric Pollution Prevention Act, 1965 (APPA) permits, and
 - 5.1.2 the pending application for an AEL; and
 - 5.2 the most recent annual reports reporting on compliance with the AELs submitted to eThekweni Municipality for the above refineries;

alternatively, if there had not been reports on compliance in terms of the relevant AELs (or the AELs had not yet been granted):
 - 5.2.1 the most recent APPA permit compliance reports.

Background leading up to this internal appeal

6. On 11 April 2013, CER received confirmation of receipt of the request from eThekweni Municipality and a request for payment of the prescribed request fee in the amount of R35.00 (thirty five rand). This correspondence is enclosed as **Annexure "2"**.
7. On 12 April 2013, the CER sent proof of payment of the prescribed fee by email to eThekweni Municipality. (See **Annexure "3"**)
8. On the same date, eThekweni Municipality responded, indicating that it would register the request on Monday 15 April 2013. This correspondence is enclosed as **Annexure "4"**.
9. On 17 May 2013, eThekweni Municipality requested an extension of an additional 30 days to respond to the request (in terms of section 26 of PAIA). CER was informed that, with respect to item 1 of the request, eThekweni Municipality would have to transfer the request in terms of section 20(1)(a)(b) of PAIA to the information officers of SAPREF and Engen. In respect to item 2 of the request, the environmental health department needed time to respond. This communication is enclosed as **Annexure "5"**.
10. On the same day, CER responded to Annexure 5 and stated that it would expect a response from eThekweni Municipality by 14 June 2013. In this communication, CER explained that section 20 of PAIA could not be used to transfer the request to Engen and SAPREF. It advised that section 20 only entitles a public body to refer to a request to another public body in certain circumstances and made reference to the provisions of section 47, 48 and 49 of PAIA as the possibly applicable sections. Engen and SAPREF are not public bodies. This communication is enclosed as **Annexure "6"**.
11. On 13 June 2013, eThekweni Municipality requested a further extension of its response to the request to 26 July 2013. It stated that section 47 notices had been sent to both Engen and SAPREF on 4 June 2013 and the Municipality had requested them to respond by 12 June 2013, which they had done. It further stated that Engen and SAPREF had indicated that they required 21 days to follow their internal processes. eThekweni Municipality indicated that they would thereafter require additional time for consultation with their legal advisor and the environmental health department. This communication is enclosed as **Annexure "7"**.

eThekweni Municipality refused the request in terms of section 36(1) (a) (b) and (c) of PAIA

12. On 3 July 2013, eThekweni Municipality responded to the request stating that the request was refused based on section 36 (1) of PAIA. The section reads as follows:

"36. Mandatory protection of commercial information of third party.—(1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if the record contains—

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or

(c) information supplied in confidence by a third party the disclosure of which could reasonably be expected—

(i) to put that third party at a disadvantage in contractual or other negotiations; or

(ii) to prejudice that third party in commercial competition."

This response letter is enclosed as **Annexure "8"**.

13. eThekwini Municipality's refusal to grant access to the documents requested is the subject of this appeal.
14. The reasons for this appeal are addressed below.

Grounds for this appeal

15. CER respectfully submits the following grounds of appeal, which are addressed in more detail from paragraph 16 below:
 - 15.1. In refusing to grant the requested information eThekwini Municipality has failed to apply its mind to the request;
 - 15.2. eThekwini Municipality has not appropriately interpreted PAIA so as to promote transparency and in favour of disclosure;
 - 15.3. eThekwini Municipality has not discharged its onus of proof;
 - 15.4. the documents requested do not fall within the scope and ambit of section 36 (1) and can therefore not be refused on these grounds;
 - 15.5. even if it were accepted that some or all of the documents did fall within the scope and ambit of section 36 (1) of PAIA (which, expressly, it is not):
 - 15.5.1 the request was made in the public's interest and disclosure of certain of the requested documents may reveal evidence of a substantial contravention of, or failure to comply with, the law. As such, the general "override provision" contained in section 46 of PAIA finds application;
 - 15.5.2 eThekwini Municipality should have relied on section 28 of PAIA; and
 - 15.6. eThekwini Municipality did not comply with the provisions of section 25 (3) (a)(b) and (c) of PAIA.

eThekwini Municipality has failed to apply its mind to the request

16. eThekwini Municipality was obliged to assess the request for information and appropriately determine whether or not the Appellant was entitled to the information. If the decision is taken to refuse access, this should have been done based on one of the grounds of refusal as listed within chapter four (4) of PAIA.
17. eThekwini Municipality has failed to appropriately assess the request. This is manifest in the manner in which the response letter was drafted. The letter contained several errors; for example paragraph 3, which stated that, "should the requester decide to exercise the option of an appeal; the requester must lodge an appeal within 30 days of the date of signature thereof." Section 75 (1) (a) of PAIA states that an internal appeal must be lodged in the prescribed form within 60 days and not 30 days as stated in the response letter. Paragraph 8 of the same response letter states that, "the requester may relinquish the right to an internal

appeal and by way of an application apply to court for appropriate relief.” Section 78 of PAIA provides that a requester may only apply to a court for appropriate relief in terms of section 82 after that requester has exhausted the internal appeal procedure against a decision of the information officer of a public body. It is submitted that this is indicative of eThekweni Municipality failing properly to apply its mind to the request and the provisions of PAIA.

eThekweni Municipality has not appropriately interpreted PAIA so as to promote transparency and in favour of disclosure

18. PAIA has its genesis in section 32 of the Constitution of the Republic of South Africa (“the Constitution”), which provides:

“32 Access to information

(1) Everyone has the right of access to

(a) any information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.”

19. Section 32, in turn, had its origin in Constitutional Principle IX in Schedule 4 to the Interim Constitution which required the Constitutional Assembly to produce a Constitution which made provision for “freedom of information so that there can be open and accountable administration at all levels of government”. Commenting on Constitutional Principle IX, the Constitutional Court emphasised that what the principle required was:

“not access to information merely for the exercise or protection of a right, but for a wider purpose, namely to ensure that there is open and accountable administration at all levels of government”¹

20. PAIA is constitutionally-mandated legislation as envisaged in section 32 (2) of the Constitution and captures the spirit of the Constitution. The purposes of PAIA are:

a) “to foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information; and

b) actively [to] promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights...”²

21. The Constitutional Court has stated that

“The importance of this right too, in a country which is founded on values of accountability, responsiveness and openness, cannot be gainsaid. To give effect to these founding values, the public must have access to information held by the State. Indeed one of the basic values and principles governing public administration is transparency. And the Constitution demands that transparency must be fostered by

¹ *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa, 1996 1996 (4) SA 744 (CC) at para 83.*

² Preamble to PAIA.

providing the public with timely, accessible and accurate information'. . . Apart from this, access to information is fundamental to the realisation of the rights guaranteed in the Bill of Rights."³

22. The courts have emphasised that PAIA must be interpreted to promote transparency and accountability,⁴ and that grounds of refusal must be interpreted strictly and narrowly so as to promote the overriding purposes of PAIA.⁵
23. According to the Department of Environmental Affairs Chief Directorate: Air Quality Management and Climate Change Atmospheric Emission Licence: Manual for Licensing Authorities,⁶ one of the aims of PAIA is to enhance transparency, accountability and effectiveness of government. PAIA is also applicable to public bodies, which includes national, provincial and local government. Public bodies are legally obliged to provide any information requested in terms of PAIA by a member of the public - subject to certain exceptions.
24. It is manifest from the response letter to the request (*Annexure "B"*), that eThekweni Municipality has not interpreted the provisions of PAIA with a view to promoting transparency and accountability. The sections on which EDM has relied to refuse the request have been interpreted by it to have far-reaching application, and, in redacting some of the information, EDM has not taken into consideration the spirit of promoting the overriding purposes of PAIA.

eThekweni Municipality has not discharged its onus of proof

25. In keeping with the purpose of PAIA, a party seeking to justify refusal of access to a record bears the onus of proving that the information requested falls within a ground of refusal under PAIA.⁷ Further, a party relying on section 36 (1) of PAIA must provide a basis to substantiate its reliance and must adduce evidence that harm 'will and might' happen if it provides access to the requested information. The burden lies with the holder of the information and not with the requester.⁸
26. The onus of justification resting on the party refusing disclosure comprises two separate parts:⁹
 - 26.1. First, there is a burden of justification. That is, the party must allege sufficient facts which, if proven true, would justify non-disclosure.
 - 26.2. Second, there is a true onus of proof. If any of the facts alleged in justification are disputed by the requester, the dispute of fact must be resolved on a balance of

³ *Brümmer v Minister for Social Development and Others* [2009] ZACC 21; 2009 (6) SA 323 (CC); 2009 (11) BCLR 1075 (CC).

⁴ *Minister for Provincial and Local Government v Unrecognised Traditional Leaders, Limpopo Province (Sekhukhuneland)* 2005 (2) SA 110 (SCA) at para 18. *MEC for Roads & Public Works, EC v Intertrade Two (Pty) Ltd* 2006 (5) SA 1 (SCA) at para 21; *Claase v Information Officer, SAA (Pty) Ltd* 2007 (5) SA 469 (SCA) at para 1; *President of the Republic of South Africa and Others v M&G Media Ltd* 2011 (2) SA 1 (SCA); *Centre For Social Accountability v Secretary of Parliament and Others* 2011 (5) SA 279 (ECG) at paras 50-59.

⁵ *Avusa Publishing Eastern Cape (Pty) Ltd v Qoboshiyane* NO 2012 (1) SA 158 (ECP) at para 17.

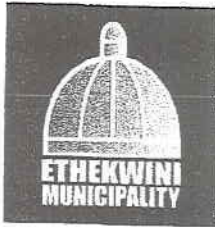
⁶ [http://www.airqualitylekgotla.co.za/Downloads/2009/Atmospheric emission licence Manual for licensing authorities.pdf](http://www.airqualitylekgotla.co.za/Downloads/2009/Atmospheric%20emission%20licence%20Manual%20for%20licensing%20authorities.pdf)

⁷ Section 81(3) of PAIA.

⁸ *BHP Billiton PLC Inc v DE Lange* (189/2012) [2013] ZASCA 11 (15 March 2013) at para 25

⁹ *President of the RSA v M&G Media Ltd* 2011 (2) SA 1 (SCA) at para 14.

"DOZI"



OFFICE OF THE SPEAKER

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Dr Pixley KaSeme Street, Durban, 4001
PO Box 1014, Durban 4000
Tel: 031 311 2015, Fax: 031 311 2032
www.durban.gov.za

Our reference: PAIA/105395/JED/mag/2/4/1
Telephone: 031 3112366
Facsimile: 031 3112171

15 October 2014

Centre for Environmental Rights
Attention Li-Fen Chien
Per eMail: lichien@cer.org.za

Dear Madam,

PROMOTION OF ACCESS TO INFORMATION ACT APPLICATION –SAPREF AND ENGEN – APPA - INTERNAL APPEAL

Your internal appeal regarding the above matter refers.

RULING BY THE APPEAL AUTHORITY IN RESPECT OF AN INTERNAL APPEAL BY THE CENTRE FOR ENVIRONMENTAL RIGHTS AGAINST THE REFUSAL TO GRANT INFORMATION REQUESTED PURSUANT TO THE PROMOTION OF ACCESS TO INFORMATION ACT, ACT NO.: 2 OF 2000 & ALSO KNOWN AS PAIA

1. The Appeal Authority has considered an appeal by the Centre for Environmental Rights (CER), hereinafter referred to as the appellant, against the decision to refuse to grant information requested pursuant to an application made pursuant to the Promotion of Access to Information Act, 2 of 2000 (PAIA) under a covering letter dated 30 August 2013.
2. Under paragraph 15 of the Notice of Internal Appeal the appellant has advanced six grounds of appeal as set out hereunder:

15.1


- i) In refusing to grant the requested information Ethekwini Municipality has failed to apply its mind to the request;
- ii) Ethekwini has not appropriately interpreted PAIA so as to promote transparency and in favour of disclosure;

- iii) EThekwini Municipality has not discharged its onus of proof;
 - iv) The documents requested do not fall within the scope and ambit of section 36(1) and can therefore not be refused on these grounds;
 - v) Even if it were accepted that some or all of the documents did fall within the scope and ambit of Section 36(1) of PAIA:
 - the request was made in the public's interest and disclosure of certain requested documents may reveal evidence of a substantial contravention of, or failure to comply with the law. As such, the general "override position contained in section 46 of PAIA finds application";
 - vi) EThekwini Municipality should have relied on section 28 of PAIA; and
 - vii) EThekwini Municipality did not comply with the provision of section 25 (3) (a) (b) and (c) of PAIA.
3. Having complied with the relevant provisions of the Act (PAIA) regarding the administrative handling of this matter and with specific reference to the provision of section 76 of the Act, I will proceed to deal with the merits of the appeal.
4. For purpose of this ruling it is not necessary to traverse each and every ground of appeal individually. I have however applied my mind to all six grounds of appeal.
5. Having evaluated all the submissions that form part of the record in this matter, these being the preceding application by the requester, the submissions made by both third parties in relation to the initial request, the municipality's findings as well as subsequent submissions by both Engine and SAPREF in terms of section 76(5), I find as follows:
- 5.1 I am satisfied that the relevant officials involved in the handling of this application have duly applied their minds to the request and have

appropriately interpreted not only the PAIA but also the general spirit of the Act.

- 5.2 The information requested by the requester contains information relating to confidential operations and technology of the third parties; this information is commercially sensitive. Its disclosure may cause harm and prejudice to the operations of the two third parties.
 - 5.3 The requested information fall within the ambit of section 36(1)(a) and (b) of PAIA and therefore the record thereof cannot be disclosed.
6. I am mindful of the overriding provisions of section 46 of PAIA. I have not been advised in what respects the disclosure of the record would reveal substantial contravention of the law or an imminent and serious threat to public safety or environmental risk. The submissions by the requester do not substantiate enough the public interest element they seek to rely on in asking for the override powers of section 46 to be invoked. I accordingly rule against invoking the said provision.
 7. The appellant is hereby notified that it may lodge an application with a court against this ruling within 60 days.

Yours faithfully



Logie Naidoo
Appeal Authority
eThekweni Municipality

FORM A
REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY
(Section 18 (1) of the Promotion of Access to Information
Act, 2000
(Act No. 2 of 2000)
[Regulation 2]

FOR DEPARTMENTAL USE

Reference number: _____

Request received
by: _____

(state rank, name and surname of information officer/deputy information officer) on
_____ (date) at _____ (place).

Request fee (if any): R _____

Deposit fee (if any): R _____

Access fee: R _____

SIGNATURE OF INFORMATION
OFFICER/DEPUTY
INFORMATION OFFICER

A. Particulars of public body

The Information Officer/Deputy Information Officer: Sbu Sithole
eThekweni Metropolitan Municipality
P.O Box 1014
Durban
South Africa
4000

Telephone: +27313111111
Fax: +27313113555

Email: info@durban.gov.za; MaryAnn.Grafetsberger@durban.gov.za;
DavidJ@durban.gov.za; SitholeSbu@durban.gov.za

B. Particulars of person requesting access to the record

- o *The particulars of the person who requests access to the record must be recorded below.*
- o *Furnish an address and/or fax number in the Republic to which information must be sent*
- o *Proof of the capacity in which the request is made, if applicable, must be attached.*

Name of organisation: South Durban Community Environmental Alliance
Registration number: 028-964-NPO
Postal address: 224 Austerville Drive, Austerville, KwaZulu Natal
Fax number: [031-4681257]
Telephone number: +27314611991
E-Mail Address: desmond@sdceango.co.za

Capacity in which request is made, when made on behalf of another person: n/a

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: n/a

Registration number: n/a

D. Particulars of record

- o *Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.*
- o *If the provided space is inadequate please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.*

- o Description of record or relevant part of the record:
 1. Copies of the Atmospheric Emission Licences (AELs) for Shell and BP Petroleum Refinery (SAPREF) and Engen Petroleum Refinery; and
 2. The most recent annual reports reporting on compliance with the AELs submitted to eThekweni Metropolitan Municipality for the above refineries;

alternatively, if the AEL compliance reports has not yet been submitted:
 2.1 the most recent annual reports reporting on compliance with the Atmospheric Pollution Prevention Act, 1965 registration certificates.

- o Reference number, if available: Not known
- o Any further particulars of record: Not known

E. Fees

- *A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.*
- *You will be notified of the amount required to be paid as the request fee.*
- *The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.*
- *If you qualify for exemption of the payment of any fee, please state the reason for exemption.*

Reason for exemption from payment of fees:

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: _____ Form in which record is required: _____

Mark the appropriate box with an "X".

NOTES:

- Your indication as to the required form of access depends on the form in which the record is available.
- Access in the form requested may be refused in certain circumstances. In such a

case you will be informed if access will be granted in another form.

(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in printed form:

<input checked="" type="checkbox"/>	Copy of record*	<input type="checkbox"/>	Inspection of record
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2. If record consists of visual images:

(this includes photographs, slides, video recordings, computer-generated images, sketches, etc).

<input type="checkbox"/>	view the images	<input checked="" type="checkbox"/>	copy of the images*	<input type="checkbox"/>	transcription of the images*
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3. If record consists of recorded words or information which can be reproduced in sound:

<input type="checkbox"/>	Listen to the soundtrack (audio cassette)	<input checked="" type="checkbox"/>	transcription of soundtrack* (written or printed document)
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4. If record is held on computer or in an electronic or machine? readable form:

<input type="checkbox"/>	Printed copy of record*	<input checked="" type="checkbox"/>	Printed copy derived from the record*	<input type="checkbox"/>	copy in computer readable form*(stiffy or compact disc)
--------------------------	-------------------------	-------------------------------------	---------------------------------------	--------------------------	---

YES NO

* If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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A postal fee is payable.

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

In which language would you prefer the record? ENGLISH

• **G. Notice of decision regarding request for access**

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

How would you prefer to be informed of the decision regarding your request for access to the record? By Email to desmond@sdceango.co.za and bongani@sdceango.co.za

Signed at AUSTERVILLE this 29th day of October 2014

[]

SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE

Mr Desmond D'Sa (Co-ordinator)

South Durban Community Environmental Alliance



Our reference: PAIA/115824/JED/mag/2/4/1
Telephone: 031 3112366
Facsimile: 031 3112171

28 November 2014

South Durban Community Environmental Alliance
Per eMail: desmond@sdceango.co.za

Dear Sir,

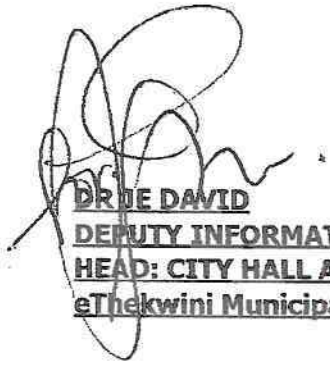
PROMOTION OF ACCESS TO INFORMATION ACT APPLICATION – NOTICE IN TERMS OF SECTION 25(3) OF THE PROMOTION OF ACCESS TO INFORMATION ACT NO. 2 OF 2000 (THE ACT) – REQUEST FOR AEL'S, SAPREF AND ENGEN

Your application registered on the 29th October 2014 regarding the above matter refers.

Kindly take note as follows:

- 1) That the request for information is hereby refused by the Deputy Information Officer
- 2) That the refusal is based on Section 36 of the Act which reads as follows:
"Mandatory protection of commercial information of third party (1) Subject to subsection(2), the information officer of a public body must refuse a request for access to a record of the body if the record contains:-
 - (a) trade secrets of a third party
 - (b) financial, commercial, scientific or technical information, other than trade secrets, of a third party the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
 - (c) information supplied in confidence by a third party the disclosure of which could reasonably be expected
 - (i) to put that third party at a disadvantage in contractual or other negotiations; or
 - (ii) to prejudice that third party in commercial competition."
- (3) Should the requester decide to exercise the option of an appeal; the requester must lodge an appeal within 60 days of the date of signature hereof.
- (4) The requester must deliver the duly completed prescribed Form B (Appeal Form) to the Information Officer via post, fax or electronic mail.
- (5) The appeal must clearly identify the subject for appeal and state the reasons for the appeal.
- (6) The requester must clearly state the manner in which he/she wishes to be informed of the decision on the internal appeal, in addition to a written reply, and must specify a postal address, fax number or electronic mail address.
- (7) The requester may relinquish the right to an internal appeal and by way of an

application apply to Court for appropriate relief.

A handwritten signature in black ink, appearing to read 'DR DE DAVID', is written over the printed name and title.

DR DE DAVID

DEPUTY INFORMATION OFFICER

HEAD: CITY HALL ADMINISTRATION AND SECRETARIAT

eThekweni Municipality