

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

CASE NO.: 05598/16

In the matter between:

THE SOUTH AFRICAN HISTORY ARCHIVE TRUST

Applicant

and

THE SOUTH AFRICAN RESERVE BANK

First Respondent

**THE GOVERNOR OF THE SOUTH AFRICAN
RESERVE BANK, L KGANYAGO**

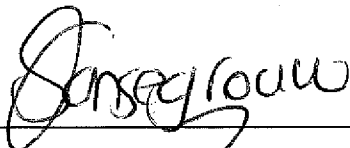
Second Respondent

**FILING SHEET: FIRST AND SECOND RESPONDENTS'
SUPPLEMENTARY AFFIRMATION**

PRESENTED HEREWITH:

**FIRST AND SECOND RESPONDENTS' SUPPLEMENTARY ANSWERING
AFFIRMATION**

DATED at SANDTON on this the 9th day of NOVEMBER 2016



WERKSMANS ATTORNEYS

First and Second Respondents' Attorneys

155, 5th Street

Sandown, SANDTON

Tel: (011) 535 8466 / (011) 535 8424

Fax: (011) 535 8666 / (011) 535 8724

Ref: Ms M Pansegrouw/Ms H Michael/SOUT3267.44

E-mail: mpansegrouw@werksmans.com / hmichael@werksmans.com

TO:
THE REGISTRAR OF THE ABOVE HONOURABLE COURT
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

AND TO:

LAWYERS FOR HUMAN RIGHTS JOHANNESBURG LAW CLINIC

Applicant's Attorneys
4th Floor, Heerengracht Building
87 De Korte Street
Braamfontein, Johannesburg
2001
Tel: (011) 339 1960
Fax: (011) 339 2665
Ref: P Hansraj

Received copy hereof on this the day of NOVEMBER 2016

For: Applicant's Attorneys

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 05598/16

In the matter between:

THE SOUTH AFRICAN HISTORY ARCHIVE TRUST Applicant

and

THE SOUTH AFRICAN RESERVE BANK First Respondent

**THE GOVERNOR OF THE SOUTH AFRICAN
RESERVE BANK, L KGANYAGO** Second Respondent

**FIRST AND SECOND RESPONDENTS' SUPPLEMENTARY
AFFIRMATION**

I, the undersigned,

JOHANNES JURGENS DE JAGER

do hereby affirm and state that -

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- 1 I am the Deputy Information Officer of the First Respondent, the South African Reserve Bank, as contemplated in terms of section 17(3) of the Promotion of Access to Information Act No. 2 of 2000 ("PAIA").
- 2 I am duly authorised to attest to this affirmation on behalf of the South African Reserve Bank and the Second Respondent (jointly referred to as "the SARB").
- 3 The facts set out herein are true and correct and, save where the contrary is indicated, are within my personal knowledge and belief.
- 4 I am the deponent to the SARB's Answering Affirmation as delivered on 31 May 2016 in the above PAIA application.
- 5 In light of new issues raised and allegations made by the Applicant in its replying affidavit delivered on 8 August 2016, further supported by submissions in its heads of argument delivered on 10 October 2016, which new issues are discussed below in paragraph 6, the SARB respectfully submits that it is now forced by the Applicant's untimely raising of these new issues and allegations to make submissions in answer to such new issues and allegations.

Handwritten signature or initials, possibly "J. K. S.", located in the bottom right corner of the page.

- 6 To this end, this supplementary affirmation deals with the following –
- 6.1 the allegations made by the Applicant in paragraph 144 (page 377) of its replying affidavit regarding the SARB's alleged non-compliance with its obligations in respect of certain archival legislation, which the Applicant clearly intends to persist with based on the argument presented in paragraph 83 of its heads of argument where it boldly continues with its unsubstantiated statements in this regard ("archival legislation statements");
- 6.2 provision of copies of the correspondence exchanged between the parties referred to by the Applicant in paragraphs 178 and 179 (page 383) of its replying affidavit, which correspondence is not attached to the application papers, in order to afford the above Honourable Court the benefit of full disclosure and access to such correspondence.
- 7 Where I make legal submissions herein I do so based on advice received from the SARB's legal representatives.

JRS

A ARCHIVAL LEGISLATION STATEMENTS

8 The Applicant makes bold and unsubstantiated statements in its papers in so far as the SARB's compliance with its obligations in respect of certain archival legislation is concerned.

9 To this end, the SARB records, in paragraph 2.3.2.4 of the attached letter dated 26 August 2015, from the SARB's legal representatives, Werksmans Attorneys ("Werksmans") to the Applicant's legal representatives, Lawyers for Human Rights ("LHR"), marked "JDJ14", that the SARB's archival system complies with the relevant archival legislation in response to the statement made on behalf of the Applicant in paragraph 5 of the LHR's attached letter of 19 August 2015, marked "JDJ15", that *"It may be that the provision of your client's filing plan or similar archival filing aid, if compliant with archival legislation, will also enable SAHA to further narrow the requests. If your client is in compliance with archival legislation, it should have systems in place though [sic] which records can be identified using descriptions in metadata."*

10 However, despite the SARB's confirmation on 26 August 2015 that its archival system does, in fact, comply with the relevant archival legislation, the Applicant deemed it necessary in paragraph 144 of its replying affidavit, in response to paragraphs 109 to 114 (pages 164 to

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166) of the SARB's answering affirmation in which the SARB's process of investigation, content of files and analysis of documents in so far as Mr Hill is concerned was set out by me, to allege the SARB's apparent non-compliance in this regard. At no stage was it stated or intimated by the description in paragraphs 104 to 114 of the SARB's answering affirmation that the SARB does not comply with its obligations in respect of archival legislation.

- 11 In paragraph 144 of the Applicant's replying affidavit the Applicant also makes reference to certain archival legislation and then proceeds to boldly allege that the SARB, as a governmental body, has not ensured the "*proper creation, maintenance, use and disposal of records throughout their life cycle to achieve efficient, transparent and accountable governance*" - thus alleging that the SARB is not complying with its obligations in respect of archival legislation.
- 12 In paragraph 83 of the Applicant's Heads of Argument delivered on 10 October 2016, the SAHA persists with its unsubstantiated allegations and states that the "*SARB has failed to comply with its obligations under the National Archives and Records Services of South Africa Act 43 of 1996 with regard to the management and care of these public records in its custody.*"

- 13 The SARB vehemently denies the allegations and statements made by the Applicant in this regard and confirms that it is in compliance with the relevant archival legislation.
- 14 In any event, the SARB's archival policies and procedures are not the subject of the above application as no mention was made and no evidence was adduced by the Applicant in its founding papers of this alleged non-compliance. Save for what has been set out above, the SARB will therefore not further burden the record with details on this aspect.
- 15 It is respectfully submitted that the Applicant's haphazard attempt to introduce new evidence into the record before this Court should not be countenanced as the Applicant did not base its application on this aspect.

B PROVISION OF COPIES OF THE CORRESPONDENCE REFERRED TO BY THE APPLICANT IN PARAGRAPHS 178 AND 179 OF ITS REPLYING AFFIDAVIT

- 16 The Applicant refers and quotes selectively from correspondence exchanged between the parties in this application in paragraphs 178 and 179 (page 383) of its replying affidavit, which correspondence is not included in the application papers before this Court.

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17 To this end, the SARB is of the view that this Court should have the benefit of full disclosure of and access to the relevant correspondence in order to be able to read it in context and also have sight of the SARB's recorded position. Copies of the relevant correspondence are, accordingly, attached as set out below –

17.1 "JDJ15", which is the 19 August 2015 letter from the LHR to Werksmans, introduced as an annexure in paragraph 9 above and referred to in paragraph 178 of the Applicant's replying affidavit. The letter from Werksmans of 27 July 2015, to which the LHR is responding on 19 August 2015, is already part of the application papers as annexure "FA8" to the Applicant's founding affidavit. This Court is specifically referred to paragraphs 6 and 8 of "FA8". Werksmans' letter of 30 July 2015, to which the 19 August 2015 letter from the LHR also responds, deals with another PAIA request received from SAHA which does not form part of the application before this Court and has thus not been attached hereto;

17.2 "JDJ14", which is the letter from Werksmans to the LHR dated 26 August 2015 (introduced as an annexure in paragraph 9 above and referred to in paragraph 178 of the Applicant's replying affidavit) is in response to the LHR's letter of

19 August 2015 and this Court is specifically referred to paragraphs 2.3.2.4 to 2.3.2.6 thereof;

17.3 the letter from the LHR to Werksmans dated 14 October 2015, attached marked "JDJ16", in response to Werksmans' letter dated 26 August 2015. "JDJ16" is referred to in paragraph 178 of the Applicant's replying affidavit;

17.4 the letter from the LHR to Werksmans dated 22 October 2015, attached marked "JDJ17", referred to in paragraph 178 of the Applicant's replying affidavit. "JDJ17" is a letter prepared in response to Werksmans' letter of 20 October 2015, which is attached marked "JDJ18".




JOHANNES JURGENS DE JAGER

The deponent has acknowledged that he knows and understands the content of this affirmation and believes it to be true and correct.

The provisions of the Regulations contained in Government Notice No. R 1258 dated 1 July 1972 (as amended) and Government Notice No. R 1648 dated 19 August 1977 (as amended) having been complied with.



This affirmation was attested to before me and the deponent's signature was placed thereon in my presence at Pretoria on this the 8th day of November 2016.



COMMISSIONER OF OATHS

Full Names: **KANABO SKHOSANA**
Commissioner of Oaths
Address: **Practising Attorney Gauteng**
GILDENHUYS MALATJI INC.
GMI HOUSE, HARLEQUINS OFFICE PARK
Capacity: 164 TOTIUS STR, GROENKLOOF EXT 9,
PRETORIA

Caryann Bodill

From: Helen Michael <hmichael@werksmans.com>
Sent: 26 August 2015 16:06
To: David Cote
Cc: SOUT3267_44 _ Lawyers for Human Rights E_mails; Neil Kirby
Subject: SOUTH AFRICAN HISTORY ARCHIVE TRUST / THE SOUTH AFRICAN RESERVE BANK
- CASE NO.: 14466/15 [WOV-Litigation.FID278027]
Attachments: Letter (26 August 2015).pdf; RE: SOUTH AFRICAN HISTORY ARCHIVE TRUST / THE
SOUTH AFRICAN RESERVE BANK - CASE NO.: 14466/15 [WOV-
Litigation.FID278027]

Dear Sirs

Please see the attached.

Kind regards



Helen Michael
Senior Associate
T: +27 11 535 8424 | F: +27 11 535 8724 | hmichael@werksmans.com

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155 5th Street, Sandton, Johannesburg, 2196
Private Bag 10015, Sandton, 2146, South Africa
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JKS

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WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

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Attention: Mr David Cote
Per e-mail: David@lhr.org.za

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Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr N Kirby/Ms H Michael/SOUT3267.44/#3876132v1
DIRECT PHONE: +27 11 535 8198
DIRECT FAX: +27 11 535 8698
EMAIL ADDRESS: nkirby@werksmans.com

26 August 2015

Dear Sirs

SOUTH AFRICAN HISTORY ARCHIVE TRUST / THE SOUTH AFRICAN RESERVE BANK - CASE NO.: 14466/15

- 1 We refer to the above matter and your letter dated 19 August 2015.
- 2 In so far as the contents of your letter under reply are concerned, we record that –
 - 2.1 In paragraph 3.1 of your letter under reply, you request that, "where notices have been issued to third parties" in respect of your client's requests for information, our client provide you with its decision regarding the requests by no later than 26 August 2015. In this regard, we confirm that, where possible, third party notices were furnished to the companies listed in Part D of your client's request, referenced SAH-2014-SRB-0003 ("request 0003"), and that our client's decision in respect of the aforementioned request was furnished to you on 18 August 2015. We attach a copy of our client's decision for your ease of reference;
 - 2.2 In relation to those companies listed in Part D of request 0003, which our client has been unable to contact - despite reasonable efforts, we confirm that, subject to what is set out below and the contents of our letter dated 18 August 2015, our client will, as requested, provide you with its decision regarding the aforementioned companies on or before Wednesday, 2 September 2015;
 - 2.3 in relation to our client's request, in our letter dated 27 July 2015, for further particulars in terms of section 19(2) of the Promotion of Access to Information Act No. 2 of 2000, as amended ("PAIA"), we advise that –

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa
Directors: D Hertz (Chairman) AL Armstrong BA Aronoff DA Artelro T Bata AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewar JA Gobetz R Gootkin ID Gouws GF Gressel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Lubbe BS Mabasa PK Mabaso MPC Maneka H Masondo C Moraitis KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhan I Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JS Smit CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Weglarski M Wlehaht DC Willans DG Williams E Wood BW Workman-Davies

JOHANNESBURG • CAPE TOWN • STELLENBOSCH • TYGER VALLEY

JKS



- 2.3.1 In our letter dated 27 July 2015 we do not request that your client "precisely" describe the records requested by your client. Instead, we request that your client provide our client with *sufficient* particulars in order to enable our client to identify the records which are sought in your client's requests;
- 2.3.2 we reiterate our client's instructions that your client's requests for information, with references SAH-2014-SRB-0004, SAH-2014-SRB-0005, SAH-2014-SRB-0006, SAH-2014-SRB-0007 and SAH-2014-SRB-0008 ("the relevant requests") are excessively broad and vague and thus impair our client's ability to identify the specific records requested by your client. In this regard, we advise that -
- 2.3.2.1 In light of the excessively broad nature of the relevant requests our client is required subjectively to determine which records your client, in fact, seeks;
- 2.3.2.2 our client is then required, unreasonably and substantially, to divert its resources in order, *inter alia*, to consider thousands of investigations and related documents, in order to ascertain whether or not the records, which our client has assumed are the records sought by your client, exist. Additionally, the records which our client identifies, if any, will invariably contain information concerning additional third parties who would then need to be identified and consulted by our client;
- 2.3.2.3 the risk, however, remains that should our client identify certain records, which it believes pertain to the relevant requests, the aforementioned records may ultimately not be the records actually sought by your client. We therefore reiterate our client's request that your client attempt to narrow the relevant requests by providing us with further and/or better particulars regarding the requested records;
- 2.3.2.4 we confirm that our client's archival system complies with the relevant archival legislation. However, in light of the vast volume of records retained by our client and the unique manner in which archived records are retained and referenced by our client, we respectfully submit that furnishing your client with the filing plan for our client's archives will not aid your client in narrowing the scope of the relevant requests;
- 2.3.2.5 additionally, in so far as you have suggested that your client send researchers to inspect our client's records in order to narrow the relevant requests, we reiterate our contention in our letter dated 18 August 2015 that the aforementioned suggestion is not feasible in light of the confidentiality obligations imposed by law on our client; and
- 2.3.2.6 in so far as section 19(2)(a)(ii) of PAIA is concerned, we confirm that our client will certainly assist your client in any of its attempts to comply with the provisions of section 18(2)(a) of PAIA provided that the assistance contemplated is feasible and lawful. We confirm in this regard, that our client is unable to provide the assistance referenced in your letter under reply on the basis of paragraphs 2.3.2.4 and 2.3.2.5 above;
- 2.4 our client has noted the information contained in paragraph 9.1 of your letter under reply regarding Gencor Limited and Premier Group Limited and will endeavour to contact the aforementioned companies regarding the applicable requests;

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- 2.5 we confirm that our client's affidavit in terms of section 23 of PAIA is currently being prepared. In this regard, we confirm that we will furnish you with a copy of the affidavit immediately upon receipt of the affidavit from our client; and
- 2.6 In so far as paragraphs 9.2, 9.3, 9.4, 9.5 and 9.6 of your letter under reply are concerned, we have noted the contents of these paragraphs. However, in reply to these paragraphs, we repeat the contents of paragraph 2.3 above and reiterate our client's instructions that the relevant requests are overly broad and vague, resulting in our client being required to speculate as to which records are, in fact, being sought by your client. We accordingly, once again, request that your client attempt to narrow the contents of the relevant requests in order to enable our client to identify the specific records requested by your client.
- 3 Our failure to address any of the allegations contained in your letter under reply should not be construed as an admission of those allegations and our clients' rights to address those allegations in the future, remain reserved.
- 4 We look forward to receiving your considered reply.
- 5 Our client's rights remain reserved.

Yours faithfully

Werksmans Inc.

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

Jye

Caryann Bodill

From: David Cote <david@lhr.org.za>
Sent: 19 August 2015 16:32
To: Heien Michael
Cc: SOUT3267_44 _ Lawyers for Human Rights E_mails; Neil Kirby; Prashianne Hansraj
Subject: RE: SOUTH AFRICAN HISTORY ARCHIVE TRUST / THE SOUTH AFRICAN RESERVE BANK - CASE NO.: 14466/15 [WOV-Litigation.FID278027]
Attachments: LHR Correspondence SAHA _ SARB letter 19 Aug 2015.pdf

Dear Ms Michael,

Please find attached a letter for your attention.

If you have any difficulties in accessing the attached documents, please do not hesitate to contact me.

Kindly acknowledge receipt of this email and the attachment.

Regards,

David Cote
Lawyers for Human Rights
Heerengracht Building, 4th Floor
87 De Korte Street, Braamfontein
Johannesburg 2001
SOUTH AFRICA
Tel: (+27) 011 339 1960
Fax: (+27) 011 339 2665

JES

LAWYERS FOR HUMAN RIGHTS

By email

Please quote our reference: SL14/01/PTA

19 August 2015

Johannesburg Law Clinic

4th Floor Heeregracht Building
87 De Korte Street (corner Malle)
Braamfontein, 2001

Tel (011) 339 1960

Fax (011) 339 2665

Web www.lhr.org.za

ATT: Mr. N Kirby
Werksmans Attorney
155 5th Street
Sandton 2196

Email: nkirby@werksmans.com

Your Ref: Mr. Kirby/Mr. Moraitis/hk/SOUT3267.44/#3183509v1

Dear Mr. Kirby:

**RE: PAIA - SOUTH AFRICAN HISTORY ARCHIVES // SOUTH AFRICAN RESERVE BANK
(Case No: 14466/15)**

1. We refer to your letters of 27 and 30 July 2015.
2. Those letters raise the following matters in relation to various of the requests:
 - 2.1 In relation to third party notifications required by section 47 of PAIA, some representations by some third parties remain outstanding, some third parties could not be notified of the requests despite reasonable steps taken to locate them, and some third parties appear to no longer exist;
 - 2.2 Your client contends that some descriptions of records are not compliant with section 18 of PAIA in that they do not "precisely" identify the records relevant to the request. Your client requests SAHA in terms of section 19 of PAIA to address this alleged procedural deficiency;
 - 2.3 Your client states that it may take time to retrieve and peruse records in relation to some of the requests; and
 - 2.4 SAHA has, at your client's request, provided company numbers for some of the companies referred to, where this information is available to SAHA. Your client appears to suggest that it will limit its response to SAHA's requests, to those companies.
3. In this regard we point out the following:
 - 3.1 Section 48 requires a third party to make any submissions, should it wish to do so, within 21 days of receiving notification in terms of section 47 of PAIA. The public body is required to

Anjuli Maltry BA LLB (UCT); Liesl Muller LLB (UP); Ormond Mngomezulu BA LLB (Wits).

J. K. S.

make a decision on each and every record falling within the request description within 30 days of providing notice to a third party. You have requested various extensions until 7 August, 14 August and 17 August 2015. Those dates have all passed. Our client now requests and requires that where notices have been issued to third parties, your client make its decisions by Wednesday 26 August 2015.

3.2 With regard to your client's statement that it has not been able to locate certain third parties in order to notify them of the requests, and that certain other third parties appear to no longer exist, we note that what section 47 requires is that "reasonable steps" be taken to notify third parties. Section 49(2) provides that where reasonable steps were taken and a third party could not be informed, a decision on whether to grant access should take into account that there was no opportunity for the third party to make representations. Your client is required to make those decisions, with due regard to its obligations in terms of sections 28 and 46. Our client therefore requests and requires that by Wednesday 2 September 2015 your client take a decision in relation to records containing information relating to third parties that could not, despite reasonable steps taken, be notified of SAHA's requests; and that we be advised of each such decision and the reasons therefor.

4. Section 18 does not require that a requester "precisely" describe records. It requires that records be described sufficiently well to enable a public body to identify the records that may fall within that request. If your client implies that there are multiple records that fall within SAHA's request descriptions, SAHA seeks access to each of those records.
5. Section 19(2)(ii) provides that if your client intends denying a request on the basis that the request is not compliant with the provisions of section 18, it must offer the assistance of its information officer, or another official identified by the information officer, to ensure that the request meets the requirements of section 18. SAHA has repeatedly offered to send its researchers to inspect records falling within the request description in order to be able to more precisely describe the records to which SAHA seeks to gain access. It may be that the provision of your client's filing plan or similar archival finding aid, if compliant with archival legislation, will also enable SAHA to further narrow the requests. If your client is in compliance with archival legislation, it should have systems in place through which records can be identified using descriptions in metadata.
6. We propose that an arrangement be made as soon as possible for our client's representatives to meet the information officer or his nominee for this purpose. We look forward to receiving your client's proposals in that regard.
7. In relation to the time taken by your client to retrieve and peruse records, if the archival legislation is complied with, retrieval of records should not be very time consuming. Our client repeats its offer to assist in this regard.
8. The company numbers provided by SAHA are those that SAHA was in a position to ascertain, and were provided to assist your client. SAHA's inability to provide company numbers for certain companies cannot lawfully be used as a justification for failing to provide records in respect of those companies. The request is not limited to those companies in respect of which SAHA was able to provide company numbers.
9. We respond below to issues raised by your client in relation to the specific requests. We do not however repeat in each instance the responses set out above.

9.1 SAH-2014-SRB-0003

- 9.1.1 Gencor was 'unbundled' in the late 1990's, and the largest entity in its stable, Billiton, merged with Australian company BHP in 2001 to establish global natural resources giant BHP Billiton. BHP Billiton has offices in Johannesburg. To the best of our knowledge these offices are at 6 Holland Street, Marshalltown, Johannesburg, 2001, South Africa. See also the website: <http://www.bhpbilliton.com>

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9.1.2 SAHA and its associate researchers have no further information about Premier, other than that Premier (or Premier Milling) now trades as Premier and that details can be found here: <http://premierfmcg.com>.

9.2 SAH-2014-SRB-0004

9.2.1 Your client requests clarity on whether SAHA seeks records obtained by your client at any time, or only records obtained during the period 1 September 1985 to March 1995. As per the request description in section D of Form A, SAHA seeks access to "all records" obtained "at any time" as part of investigations into abuses of the "financial rand". The period 1 September 1985 to March 1995 refers to the period during which abuses of the financial rand could have taken place, i.e. the period from the introduction of the financial rand to the abolition of the financial rand.

9.2.2 Re paragraphs 5.2 and 5.3 of your letter of 27 July 2015: We have addressed this issue above. SAHA maintains that this request is sufficiently well described to enable your client to identify records falling within the request. Insofar as your client intends relying on section 19, SAHA seeks assistance from your client in terms of section 19(2), in order to ensure that the request is in such a form that there can be no justified claim of a lack of clarity.

9.3 SAH-2014-SRB-0005

9.3.1 Re paragraph 6.2 of your letter of 27 July 2015: It remains our view that the request is sufficiently clear to enable your client to identify the relevant records falling within the request. Your client has indicated that it requires a "threshold" for what could be considered "substantial contraventions" and "significant fraud." We refer in this regard to section 46. We repeat our proposal that your client's representative meet with a representative of SAHA to attempt to obtain any clarity which is necessary.

9.4 SAH-2014-SRB-0006

9.4.1 Re paragraphs 7.2 and 7.3 of your letter of 27 July of 2015, we await your client's section 23 affidavits.

9.4.2 Re paragraph 7.5: It is not clear to SAHA what "necessary particulars" are requested with respect to Mr Marino (or Mario) Benito Chiavelli, to enable a search for records related to him and falling within the request. We understand that a search of this kind was undertaken with regard to Dr Rhoadie, Dr Mulder and Dr Diederichs. SAHA requests that your client undertake a search of this kind in respect of Mr Chiavelli. Insofar as further information may be required in order to enable such a search, we request that your client provide SAHA with the necessary assistance to enable it to provide the further information which may assist in this regard.

9.5 SAH-2014-SRB-0007

9.5.1 According to media reports in 1996, Mr Oliver Hill was alive and living in 01 Belgravia Place, Westminster, London, UK. He was 56 years old at the time. We have no further details for him except an ID number released as part of a PAIA request relating to Mr Oliver Hill. This yielded the ID number 3907245221004.

9.5.2 If your client is unable to locate Mr Oliver Hill, we refer to our comments in paragraph 1 above.

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9.6 SAH-2014-SRB-0008

9.6.1 RE paragraph 9.2 of your letter of 27 July 2015: we maintain that this request is sufficiently clearly described to enable your client to identify records falling within this request. We note that it ought to be fairly straightforward for your client to determine which records it relied on in its investigations relating to the matter of *South African Reserve Bank v Torwood Properties (Pty) Ltd* (626/94) [1996] ZASCA 104; 1997 (2) SA 169 (SCA); [1996] 4 All SA 494 (A); (25 September 1996). A requester is plainly not able to do that.

9.6.2 Re paragraph 9.3: If your client relies on section 19 of PAIA, we request that it provide SAHA with the necessary assistance to enable it to remedy any defects in the form of the request.

10. In response to paragraph 10 of your letter of 27 July 2015:

10.1. Re. paragraph 10.1: we refer to what we have said above with regard to time limits.

10.2. Re. paragraph 10.2: SAHA denies that any of these requests do not meet the requirements of section 18 of PAIA. However, we refer again in this regard to the duty on your client to provide assistance, to the extent that this is necessary to ensure that the meets the requirements of section 18.

10.3. Re. paragraph 10.3: we refer to what we said above with regard to time limits.

11. We trust that the above is in order.

Yours sincerely,

LAWYERS FOR HUMAN RIGHTS

Per:



ANJULI MAISTRY / DAVID COTE

JKS

Caryann Bodill

From: Prashianne Hansraj <Prash@lhr.org.za>
Sent: 14 October 2015 12:53
To: Neil Kirby; Helen Michael
Subject: SOUTH AFRICAN HISTORY ARCHIVE TRUST / THE SOUTH AFRICAN RESERVE BANK
- CASE NO.: 14466/15
Attachments: Letter - 14 October 2015.pdf

Dear Mr Kirby,

Please find attached a letter for your attention.

If you have any difficulties in accessing the attached documents, please do not hesitate to contact me.

Kindly acknowledge receipt of this email.

Regards,

Prashianne Hansraj
Lawyers for Human Rights
Heerengracht Building, 4th Floor
87 De Korte Street, Braamfontein
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SOUTH AFRICA
Tel: (+27) 011 339 1960
Fax: (+27) 011 339 2665

LAWYERS FOR HUMAN RIGHTS

By email

Please quote our reference: SL14/01/PTA

14 October 2015

Johannesburg Law Circle
4th Floor Heerengracht Building
87 De Korte Street (corner Malle)
Braamfontein, 2001

Tel (011) 339 1960
Fax (011) 339 2665
Web www.jhr.org.za

ATT: Mr. N Kirby
Werksmans Attorney
155 5th Street
Sandton 2196

Email: nkirby@werksmans.com

Your Ref: Mr N Kirby/Ms H Michael/SOUT3267.44/#3876132v1

Dear Mr. Kirby:

**RE: PAIA - SOUTH AFRICAN HISTORY ARCHIVES // SOUTH AFRICAN RESERVE BANK
(Case No: 14466/15)**

1. We refer to the above matter and your letter dated 26 August 2015.
2. Regarding paragraph 2.1 of your letter, we record that we have received your letter of 18 August 2015 and have provided same to our client. We will take instructions in that regard and will revert to you.
3. Regarding paragraph 2.2 of your letter, we thank you for your undertaking to provide a decision on or before 2 September 2015, however we regretfully note that this date has now past – we will therefore now set the pending application, with case number 14466/15, down and issue, with regard to the remaining 2014 requests, new applications, where appropriate.
4. Regarding paragraphs 2.3.1 and 2.3.2 of your letter, as the requester our client does not have access to the records and therefore cannot describe them more accurately. It is apparent from the contents of paragraph 2.3.2.1 of your letter that your client is able to identify records falling within the description of the requests; our client therefore maintains that the request descriptions are not excessively broad, that there is sufficient detail to them and that they are compliant with the provisions of section 18 of PAIA. To the extent that there may be multiple records falling within a single request description our client indicates that it is in fact seeking access to all such records.
5. Regarding paragraph 2.3.2.2, section 19 of PAIA provides that your client has a duty to assist requesters; if your client understands our client's requests to refer to various

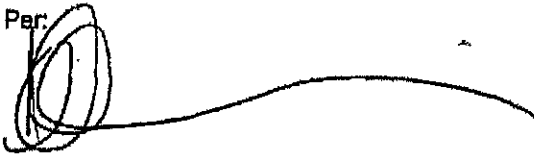
possible "investigations" and they believe that our client may only be seeking access to records relating to one of those investigations, they have a duty to engage with our client to render reasonable assistance in identifying which particular investigations fall under the relevant requests.

6. Regarding paragraph 2.3.2.4, we respectfully submit that as an archive employing two archivists with extensive experience, our client may be able to narrow the scope of the relevant requests if furnished with the filing plan for your client's archives.
7. Regarding paragraph 2.3.2.5, we note that your client is not a commercial bank, but a public entity serving the public interest and as such their reliance on a duty of confidentiality that may be owed by commercial banks is misplaced.
8. Regarding paragraph 2.3.2.6, SAHA has made two reasonable suggestions as to how your client may comply with section 19(2)(a)(ii) of PAIA. If your client regards these suggestions as unfeasible we request that your client provide reasonable alternative suggestions.
9. Regarding paragraph 2.6, please refer to our comments above at paragraphs 2 to 8 above.

Yours sincerely,

LAWYERS FOR HUMAN RIGHTS

Per:



ANJULI MAISTRY / DAVID COTE

J.K.S.

"JDJ 17"
406

Caryann Bodill

From: Prashianne Hansraj <Prash@lhr.org.za>
Sent: 22 October 2015 14:05
To: Neil Kirby; Helen Michael
Subject: RE: SOUTH AFRICAN HISTORY ARCHIVE TRUST / THE SOUTH AFRICAN RESERVE BANK - CASE NO.: 14466/15 [WOV-Litigation.FID278027]
Attachments: Letter 22 October 2015.pdf

Dear Mr Kirby,

Please find attached a letter for your attention.

If you have any difficulties in accessing the attached documents, please do not hesitate to contact me.

Kindly acknowledge receipt of this email.

Kind regards,

Prashianne Hansraj
Lawyers for Human Rights
Heerengracht Building, 4th Floor
87 De Korte Street, Braamfontein
Johannesburg
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SOUTH AFRICA
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Fax: (+27) 011 339 2665

J.K.S.

LAWYERS FOR HUMAN RIGHTS

By email

Please quote our reference: SL14/Q1/PTA

22 October 2015

Johannesburg Law Clinic
4th Floor Heerengracht Building
87 De Korte Street (corner Malle)
Braamfontein, 2001

Tel (011) 339 1960
Fax (011) 339 2665
Web www.jhr.org.za

ATT: Mr. N Kirby
Werksmans Attorney
155 5th Street
Sandton 2196

Email: nkirby@werksmans.com

Your Ref: Mr N Kirby/Ms H Michael/SOUT3267,44/#3876132v1

Dear Mr. Kirby:

**RE: PAIA - SOUTH AFRICAN HISTORY ARCHIVES // SOUTH AFRICAN RESERVE BANK
(Case No: 14466/15)**

1. We refer to the above matter and your letter dated 20 October 2015.
2. Regarding paragraphs 3.1 to 3.3 of your letter of 20 October 2015, we have previously extensively addressed these allegations in correspondence dated 19 August 2015 and 14 October 2015 and we refer you to the contents of that communication, but, in summary, we confirm that our client maintains that:
 - i. The requests are not vague/board;
 - ii. To be more accurate in describing the records our client would need your client to assist (in compliance with its duties under section 19 of PAIA); and
 - iii. Our client is seeking *all* records falling within the request descriptions, there is therefore no need to guess at which of the records falling within the descriptions should be decided on under PAIA.
3. Regarding paragraph 3.4 of your letter of 20 October 2015, kindly confirm that your client intends to have addressed every outstanding part of every outstanding SAHA-2014 request by 17:00 on 28 October 2015. In this respect, we note that your previous communication dated 18 and 26 August 2015 indicated that decisions would be provided under PAIA on records in relation to which your client had attempted to send out 3rd party notifications (see paragraphs 2.2 and 2.4 of your letter dated 26 August 2015) or on which your client was awaiting representation from 3rd parties (see

paragraphs 3, 5 and 7 of your letter dated 18 August 2015 and paragraph 2.4 of your letter dated 26 August 2015). We would expect that any representations still pending as at the date of that communication would have been due some time ago under the provisions of PAIA and that your client would therefore be in a position to provide decisions on those records.

4. Regarding paragraph 3.5 of your letter of 20 October 2015, our client agrees to allow your client until 17:00 on 28 October 2015 to provide its final responses on all outstanding parts of all outstanding SAHA-2014 requests.

Yours sincerely,

LAWYERS FOR HUMAN RIGHTS

Per:

A handwritten signature in black ink, consisting of a circular scribble followed by a long horizontal line extending to the right.

ANJULI MAISTRY / DAVID COTE

JCS

Caryann Bodill

From: Helen Michael <hmichael@werksmans.com>
Sent: 20 October 2015 13:59
To: Prashianne Hansraj; David Cote (David@lhr.org.za)
Cc: Neil Kirby
Subject: RE: SOUTH AFRICAN HISTORY ARCHIVE TRUST / THE SOUTH AFRICAN RESERVE BANK - CASE NO.: 14466/15 [WVOV-Litigation.FID278027]
Attachments: Letter (20 October 2015).pdf

Dear Sirs

Please see the attached.

Kind regards



Helen Michael

Senior Associate
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Werksmans Attorneys

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From: Prashianne Hansraj [<mailto:Prash@lhr.org.za>]
Sent: 14 October 2015 12:53 PM
To: Neil Kirby; Helen Michael
Subject: SOUTH AFRICAN HISTORY ARCHIVE TRUST / THE SOUTH AFRICAN RESERVE BANK - CASE NO.: 14466/15

Dear Mr Kirby,

Please find attached a letter for your attention.

If you have any difficulties in accessing the attached documents, please do not hesitate to contact me.

Kindly acknowledge receipt of this email.

Regards,

Prashianne Hansraj
Lawyers for Human Rights
Heerengracht Building, 4th Floor
87 De Korte Street, Braamfontein
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SOUTH AFRICA
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JKS

DELIVERED BY EMAIL

Lawyers for Human Rights
Per e-mail: David@lhr.org.za

Attention: Mr David Cote

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YOUR REFERENCE:

OUR REFERENCE: Mr N Kirby/Ms H Michael/SOUT3267.44/#3970748v1

DIRECT PHONE: +27 11 535 8198

DIRECT FAX: +27 11 535 8698

EMAIL ADDRESS: nkirby@werksmans.com

20 October 2015

Dear Sirs

SOUTH AFRICAN HISTORY ARCHIVE TRUST / THE SOUTH AFRICAN RESERVE BANK - CASE NO.: 14466/15

- 1 We refer to the above matter and your letter dated 14 October 2015.
- 2 We do not intend to address all of the allegations contained in your letter under reply at this time. However, our failure to address any such allegations should not be construed as an admission of the allegations and our client's rights to address any such allegations, should the need arise at any time in the future, remain reserved.
- 3 Without derogating from the generality of the above, we have been instructed to record that –
 - 3.1 your client's requests for information ("the requests") dated 1 August 2014 are excessively broad and unduly vague and thus do not comply with the provisions of the Promotion of Access to Information Act No. 2 of 2000, as amended ("PAIA");
 - 3.2 your client has failed and/or refused and/or neglected to supplement the requests to include the requisite particulars necessary properly to identify the records contemplated in the requests;
 - 3.3 notwithstanding your client's failure properly to identify the records in the requests, our client has, simply in an effort to assist your client in this matter, but without prejudice to our client's rights, conducted a search of its records in order to ascertain whether or not our client may be in possession of the records, the identity of which our client has presumed (in light of the unduly vague nature of the requests), have been requested by your client;

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa
Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Artelro T Bata AR Berman MNM Bhengu L Bick HGB Boshoff GT Bosser TJ Boswell MC Brönn
W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan 3N de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz
R Gootkin ID Gouws GF Gressel J Hollesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July
J Kallmeyer SLG Kayana A Kenny BM Kew R Kijlura N Kirby HA Kotze S Krige PJ Krusche P Le Roux MM Lessing E Lavenstein JS Lochner JS Lubbe
BS Mabasa PK Mabasa MPC Manaka H Masondo C Moraitis KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy
M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdin L Rood BR Roothman W Rosenberg NL Scott TA Sibida LK Silberman
JA Smit JS Smit CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgaon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk
A Vatalidis RN Wakefield DC Walker D Wagters M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

- 3.4 our client's Deputy Information Officer, Dr J de Jager, is in the process of finalising an affidavit in terms of section 23(3) of PAIA in which Dr J de Jager specifically details which of the records, presumably requested by your client, are not in our client's possession ("the affidavit"); and
- 3.5 our client intends to furnish you with a copy of the affidavit by no later than 17h00 on Wednesday, 28 October 2015.
- 4 In light of what is set out above and in so far as the affidavit will significantly address the contents of the requests, we have been instructed to request that your client postpone any decision to resume legal proceedings in this matter until such time as your client has had an opportunity to consider both the contents of the affidavit as well as our letter dated 18 August 2015.
- 5 We look forward to receiving your considered reply.
- 6 Our client's rights remain reserved.

Yours faithfully

Werksmans Inc.

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.