



Financial Sector  
Conduct Authority

P.O. Box 35655  
Menlo Park  
0102

Tel. +27 12 428 8000  
Toll free. 0800 20 3722  
Fax. +27 12 346 6941  
Email. [info@fsc.co.za](mailto:info@fsc.co.za)  
Website. [www.fsc.co.za](http://www.fsc.co.za)

ENQUIRIES:	Ms. K Naidoo	D. DIALLING NO.:	012 367 7882
OUR REF:	PAIA	FAX:	
DATE:	23 January 2019	E-MAIL:	<a href="mailto:Kamcilla.naidoo@fsc.co.za">Kamcilla.naidoo@fsc.co.za</a>

Ms. B Maluke  
c/o South African History Archive  
P.O. Box 31719  
Braamfontein  
2017

By Email: [boteng@saha.org.za](mailto:boteng@saha.org.za)

Dear Ms. Maluke

**PROMOTION OF ACCESS TO INFORMATION ACT, 2000  
YOUR REFERENCE: SAH-2018-FSCA-0001**

1. Your request for records in terms of the Promotion of Access to Information Act, and our previous correspondence herein refers.
2. I am the appointed Deputy Information Officer of the Financial Sector Conduct Authority ("FSCA").
3. We set out below a response to each of the records that you have requested, and for the sake of clarity, we have elected to refer to the numbering that you have used in the Form A.

**Ad paragraph 1**

4. The FSCA is in the process of finalising the guidance note that will be issued to the industry on the process to be followed with regards to the deregistered funds. As such, any such disclosure to you of the deliberations to formulate this guidance note will be premature. We undertake to provide you with the note as soon as same has been released.

### **Ad paragraph 1.1**

5. Please note that there have been no internal investigations undertaken by the FSCA into the conduct of Liberty Corporate in relation to the Financial Services Board's pensions cancellation project.

The FSCA has engaged with Liberty Corporate and continues to engage with them with a view to processing the reinstatement of the retirement funds. We submit that the FSCA is not in a position to divulge further information in this regard as such records constitute the operations of a public body. The FSCA is accordingly entitled in terms of section 44 of the PAIA Act to refuse access to these records.

### **Ad paragraph 1.2**

6. Please note that there has been no sanction imposed on Liberty by the FSCA.

### **Ad paragraph 1.3**

7. Please refer to the attached court records of the Constitutional Court case of *Hunter v Financial Services Board and 4 Others*, CCT Case no. 165/2017; which contains the investigations that were commissioned by the FSB /FSCA into the cancellations of the pension funds. Besides containing information of the internal investigations conducted within the FSB/FSCA; the court records also include the reports of investigations conducted by Advocate A M Breitenbach SC and the report by Judge C O' Regan. Please refer to pages 161 and 1301 of the court record.

### **Ad paragraph 2**

8. Please note that the FSB / FSCA has not undertaken any internal investigations into the treatment of assets of funds, the registrations of which were cancelled in the course of the cancellations project. However, the FSB did at the time conduct internal examinations of the process to cancel the registration of funds. Further details of this are to be found on pages 467 and 478 of the court record, which is referred to in paragraph 7 above.

### **Ad paragraphs 2.1 and 2.2**

9. We reiterate that the FSB / FSCA did not undertake any investigations into the treatment of assets of funds that were deregistered; hence this information is not available.

However, in the event that such information has been received by the FSB / FSCA; we submit that such information will receive mandatory protection in terms of section 36 of the PAIA Act; as it relates to commercial information of a third party.

**Ad paragraph 3 – including paragraphs 3.1 and 3.2**

10. Please refer to the attached court record which includes the first and second inspection reports of Mr. Jonathan Mort. These reports may be found on pages 1561 and 2549 respectively of the attached court record.

**Ad paragraphs 3.3 and 3.4**

11. The FSB/FSCA has received the third inspection report of Mr Mort. This report pertains to unclaimed benefits, and it is being used by the FSCA to take regulatory decisions. Accordingly, the FSCA will not grant access to this report, and invokes the provisions of section 44 of the PAIA Act.

Further, as this report refers to unclaimed benefits, it inevitably also contains personal information of natural persons. The FSCA is cognisant of section 34 of the PAIA Act that provides a mandatory protection to the personal information about a third party.

Please note that there are no other reports that were commissioned by the FSB /FSCA into the pensions cancellations project.

12. Please be guided accordingly.

Yours sincerely



**Ms. Kamcilla Naidoo**  
**PAIA: Deputy Information Officer**  
**Financial Sector Conduct Authority**