

**IN THE SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)**

CASE NO: 32512/13

In the matter between:-

THE RIGHT2KNOW CAMPAIGN **First Applicant**

THE SOUTH AFRICAN HISTORY ARCHIVE TRUST **Second Applicant**

And

THE MINISTER OF POLICE **First Respondent**

**THE NATIONAL DEPUTY INFORMATION
OFFICER: SOUTH AFRICAN POLICE SERVICE** **Second Respondent**

**THE MINISTER OF DEFENCE AND MILITARY
VETERANS** **Third Respondent**

FILING SHEET

Document presented for filing: **First and Second Respondents**
Answering Affidavit.

DATED at JOHANNESBURG on this the 31st day of OCTOBER 2013.

Govender

**FIRST & SECOND
RESPONDENTS' ATTORNEY
THE STATE ATTORNEY**
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Refer to: Mr N. Govender
Ref no: 5811/13/P8/kp
Tel no: (011) 330-7780

TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
JOHANNESBURG

AND TO: APPLICANT'S ATTORNEYS
CLIFFE DEKKER HOFMEYR INC.
1 Protea Place
Sandown
SANDTON
Tel: (011) 562 1162
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Ref: C Jesseman/01949175

Copy hereof received on this the
day of 24 October 2013


14/10/13

FOR/APPLICANT'S ATTORNEYS

CLIFFE DEKKER HOFMEYR INC.
1 PROTEA PLACE, SANDOWN, SANDTON
ACCEPTED WITHOUT PREJUDICE AND
WITHOUT WAIVING CLIENTS RIGHTS

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

CASE NO: 32512/2013

In the matter between:

THE RIGHT TO KNOW CAMPAIGN	First Applicant
THE SOUTH AFRICAN HISTORY ARCHIVE TRUST	Second Applicant

and

THE MINISTER OF POLICE	First Respondent
THE NATIONAL DEPUTY INFORMATION OFFICER: THE SOUTH AFRICAN POLICE SERVICES	Second Respondent
THE MINISTER OF DEFENCE AND MILITARY VETERANS	Third Respondent

AFFIDAVIT

I, the undersigned,

AMELDA CROOKS,

do hereby make oath and say that:

1. I am an adult female and a Colonel in the South African Police Services ("SAPS") stationed at, South African Police



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Service, Headquarters, Thibault Building, 225 Pretoria Street, Pretoria. I am the national deputy information officer of the SAPS.

2. The facts to which I depose herein are true and correct. They are within my personal knowledge unless I expressly indicate otherwise or where the context indicates so.
3. I have been authorised by the first respondent to depose to this affidavit on his behalf as well.
4. Before I deal with the allegations made in the affidavit filed on behalf of the applicants I wish to state the following.
5. The issue of the national key points is governed by the provisions of the National Key Points Act, No. 102 of 1980. The administration of the Act was transferred to Minister of Safety and Security on 26 March 2004, now Minister of Police. In this regard I annex hereto, marked "A", a copy of the Proclamation No. 21 of 2004 as published in the Government Gazette No. 26164 dated 26 March 2004, which effected



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such transfer. As a result, the Minister who takes a decision as to places or areas to be declared as national key points, is the first respondent, the Minister of Police.

6. The places/ areas declared national key points range from a one structure establishment to a multi structured one.
7. The consequences of the declaration of a point as a key point are set out in section 3 of the Act. The "owner" as referred to in the Act is not only limited to an individual but to companies, corporations and/ or any other juristic person.
8. The Minister exercises his powers in terms of section 2 either on application by the owner of a place or on his own accord. In the majority of cases it is the owners of the establishments that approach the Minister for such declaration.
9. The national key points in South Africa are such that if information regarding them were to be disclosed, it would cause prejudice to the defence and the security of the



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Republic. Some of the national key points are the banks, munitions industries, petro-chemical industries, water supply, electricity, communications, transport, government institutions, data processing, research or chemical information systems. No further information can be given other than that set out above, as it would prejudice the defence and security of the Republic. The mere mention of the name of a place will attract unnecessary attention to that place.

10. The issue of national key points is not unique to South Africa. The majority of countries have such points, albeit under a different appellation.
11. The first respondent is not averse to a Judge exercising the power in terms of s80 of the PAIA and inspect the list of places declared national key points.
12. No special bank account was opened in terms of s3B of the Act. Neither were monies deposited into such an account.



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13. Any allegations made in the founding affidavit which are inconsistent with the foregoing, are denied as if specifically traversed herein.
14. I now proceed to deal with the allegations made in the founding affidavit deposed to on behalf of the applicants.
15. **AD PARAGRAPHS 1 - 5 THEREOF**

I have no knowledge of the allegations made in these paragraphs. I do not admit them and put the applicants to the proof thereof.

16. **AD PARAGRAPH 6 THEREOF**

Save to state that the applicants have not made out a case for the relief that they seek, the allegations made in this paragraph are noted.



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17. **AD PARAGRAPHS 7, 8 AND 9 THEREOF**

Save to state that the Minister who has now been assigned the power to declare national key points is the Minister of Police, the allegations made in these paragraphs are noted.

18. **AD PARAGRAPH 10 THEREOF**

The allegations made in this paragraph are admitted.

19. **AD PARAGRAPH 11- 13 THEREOF**

I have no knowledge of the allegations made in these paragraphs. I do not admit them and put the applicants to the proof thereof.

20. **AD PARAGRAPHS 15 - 18 THEREOF**

20.1. The Minister of Defence and Military Veterans should not have been cited in these proceedings.

20.2. The powers that have been entrusted to the Minister of Defence were transferred to the Minister of Police.



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20.3. Save for the foregoing, the allegations made in these paragraphs are admitted.

21. AD PARAGRAPHS 21 - 23 THEREOF

21.1. There is no information that could be excised from the reasons for the refusal to grant the information.

21.2. As stated above, all the national key points in South Africa fall within the category wherein the disclosure of information will prejudice the security of the owners, the buildings, defence and the safety of the Republic.

21.3. Save for the foregoing, the allegations made in these paragraphs are admitted.

22. AD PARAGRAPHS 24 - 29 THEREOF

The allegations made in these paragraphs are admitted.



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23. AD PARAGRAPH 30 THEREOF

The refusal to provide the requested information is justifiable and the reasons given therefor are valid.

24. AD PARAGRAPH 31 THEREOF

The allegations made in these paragraphs are admitted.

25. AD PARAGRAPHS 32 and 33 THEREOF

25.1. The disclosure of the information is not the only remedy that is available to the requestor of information.

25.2. This Honourable Court has a discretion conferred upon it. It may even inspect the information on its own to satisfy itself regarding the refusal of the request.



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26. AD PARAGRAPH 34 THEREOF

26.1. I have not given a blanket refusal to the requested information. I considered all the categories of the places declared as national key points and found that they all fall to be refused.

26.2. The fact that even the first respondent gave the categories of places declared as national key points demonstrates the extent to which we have gone to satisfy the request of the applicants.

27. AD PARAGRAPH 35 THEREOF

I have no knowledge of the allegations made in this paragraph.

28. AD PARAGRAPH 36 THEREOF

28.1. Although the National Key Points Act is an apartheid-era security legislation, it still serves an important purpose for the Republic. We have not been over-

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hasty in our decision or placed our reliance on security concerns. We have disclosed the categories the national key points. It is clear from those categories that they are all pivotal to the security and stability of the country.

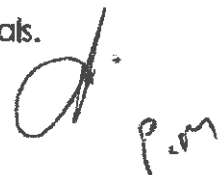
29. AD PARAGRAPH 37 THEREOF

29.1. The allegations made in this paragraph are irrelevant to the present application.

29.2. The affidavit, CMK14, relates to another case to which the present respondents were not parties. The reference therein to the National Key Points Act relates to the present dispute and is dealt with in this the answering affidavit.

30. AD PARAGRAPHS 39 - 43 THEREOF

30.1. As stated above, that majority of national key points are privately owned places. This does not necessarily mean that they are owned by individuals.

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- 30.2. They include places owned by big corporations. In most instances, the mere mention of the name of the national key point will disclose its location.
- 30.3. In the digital and information age in which we live it is easy to find out the location of a place and the details of an individual or corporation. Some persons may not even know that the OR Tambo International Airport is a national key point but its inclusion in the list of national key points may then attract interest in it.
- 30.4. It cannot be denied that we are now living in a very unsafe world where dark forces are always out to seek to destabilise peace-loving countries like the Republic. It is no secret that the bombing of the mall in Mombasa in Kenya had some connection outside Kenya. It demonstrates how vulnerable countries and their citizens are.
- 30.5. One can never know how information regarding the national key points will be used if it becomes public.

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by the letters 'P.M.' in a smaller, cursive script.

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The gist of the matter is that a place might have been regarded as insignificant in the eyes of people who seek to hurt the public but may attract interest once it is known that it is a national key point.

31. AD PARAGRAPHS 44 - 46 THEREOF

31.1. The evidence we have provided is in the nature of the places that that been declared national key points.

31.2. One can assess from those places that the disclosure could endanger the life or physical safety of individuals or may prejudice or impair the security of the buildings or the systems.

32. AD PARAGRAPHS 48 - 57 THEREOF

32.1. The majority of the 200 places or areas that have been declared as national key points are privately owned and not government owned.



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- 32.2. The applicants do not seem to understand the respondents' position regarding the disclosure of the information.
- 32.3. The PAIA should be read together with the provisions of the National Key Points Act. In terms of section 2 of the National Key Points Act, a place may be declared as a national key point if it is so important that its loss, damage, disruption or immobilisation may prejudice the Republic or it is necessary or convenient for the safety of the Republic, or in the public interest.
- 32.4. The import thereof is that once it is known that a place has been declared a national key point, it is then known that the loss, damage, disruption or immobilisation of that place will prejudice the Republic. It will also be known that that place is necessary or expedient for the safety of the Republic or public interest.



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32.5. A place that has been regarded as a normal place may then attract an undue and unwanted attention.

32.6. Furthermore, the disclosure of the addresses alone will constitute disclosure of personal information.

32.7. The disclosure of the name of national key points would of necessity disclose the identity of the owner thereof. The owner will therefore become an identifiable person as referred to in the Act.

32.8. In the circumstances, the reliance of the first respondent on the provisions of section 45 of PAIA is valid.

33. AD PARAGRAPHS 58 - 62 THEREOF

33.1. No special bank account was opened in terms of section 3B of the Act. Neither were monies paid into that account.



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33.2. In the circumstances the request of the applicants could not be referred to anywhere else except to point out that no such an account exists.

34. AD PARAGRAPHS 63 - 73 THEREOF

34.1. It is clear from the nature of the places that have been declared as national key points that the disclosure of information regarding them will not only prejudice the person's buildings but will also prejudice the defence and security of the Republic.

34.2. This far outweighs the public interest in the disclosure of information relating to them.

35. AD PARAGRAPHS 74 - 78 THEREOF

35.1. The respondents are not averse to the exercise of this power.

35.2. The tender to make the records available to this Honourable Court is made under section 80 of PAIA.



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36. AD PARAGRAPH 79 THEREOF

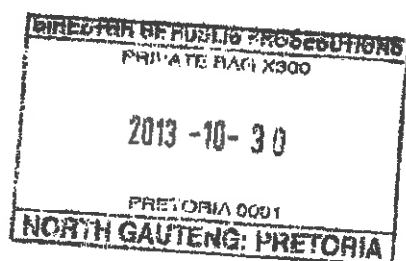
36.1. The applicants have not made out a case for the relief that they seek.

36.2. In the circumstances this Honourable Court should dismiss the application with costs.



Deponent

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at on this 30th day of OCTOBER 2013 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.




COMMISSIONER OF OATHS

PORTIA MONTWE
SENIOR ADMIN
28 CHURCH SQUARE
PRETORIA
0001

PROCLAMATION*by the**President of the Republic of South Africa***No. 21, 2004**

TRANSFER OF FUNCTIONS REGARDING THE NATIONAL KEY POINTS ACT, 1980 (ACT NO.102 OF 1980) FROM THE MINISTER OF DEFENCE TO THE MINISTER FOR SAFETY AND SECURITY, IN TERMS OF SECTION 97 OF THE CONSTITUTION, 1996 (ACT NO. 108 OF 1996)

In terms of section 97(a) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), I hereby transfer the administration of the National Key Points Act, 1980 (Act No 102 of 1980) to the Minister for Safety and Security.

In terms of section 97(b) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996) I hereby transfer the powers and functions entrusted to the Minister of Defence by the National Key Points Act, 1980 (Act No 102 of 1980), to the Minister for Safety and Security.



P.M

Given under my hand and the seal of the Republic of South Africa at Cape Town (place) this 10th day of February (month), Two thousand and Four.


PRESIDENT

By Order of the President-in-Cabinet


MINISTER OF DEFENCE

MOSIUOA GERARD PATRICK LEKOTA


MINISTER FOR SAFETY AND SECURITY
CHARLES NQAKULA



RM.