

CASE NO: 44670/14

In the application of:

**THE SOUTH AFRICAN HISTORY ARCHIVE TRUST**

Applicant

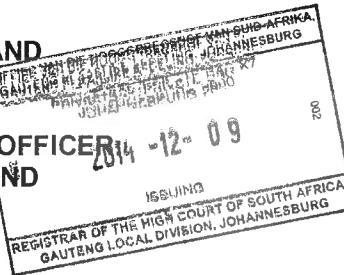
and

**THE MINISTER OF JUSTICE AND  
CORRECTIONAL SERVICES**

First Respondent

**THE DEPUTY INFORMATION OFFICER  
DEPARTMENT OF JUSTICE AND  
CORRECTIONAL SERVICES**

Second Respondent



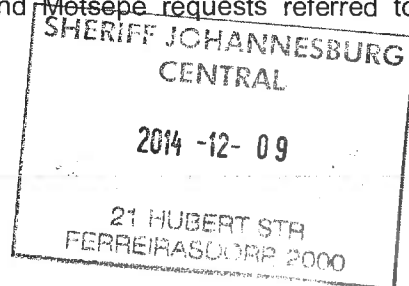
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**NOTICE OF MOTION**

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**TAKE NOTICE THAT** the Applicant intends applying to this Court on a date and time to be determined with the Registrar, for an order in the following terms:

1. Condoning the Applicant's non-compliance with the 180-day period in section 78(1) of the Promotion of Access to Information Act 2 of 2000 ("PAIA") in respect of the RICA, Secret Defence Fund, de Beers, Palazollo, Smit, September and Motsepe requests referred to in the Founding Affidavit;



- 2 Declaring that the First and Second Respondent's refusal of access to the information described in the Founding Affidavit ("the records") is unlawful and in conflict with the provisions of PAIA;
- 3 Reviewing and setting aside the refusals by the First and Second Respondents of the Applicant's requests;
- 4 Directing the Respondents to provide the requested records to the Applicant within 15 (fifteen) days of the granting of this order;
- 5 Directing that SAHA may approach this court, on the papers presently before this Court duly supplemented as appropriate, in the event that the respondents fail to comply with this order;
- 6 Directing the First and Second Respondents to pay the costs of this application, including the costs of two counsel; and
- 7 Further and/or alternative relief.

**TAKE NOTICE FURTHER** that the accompanying affidavit of **CATHERINE MOIRA KENNEDY** and the annexures thereto, will be used in support of this application.

**TAKE NOTICE FURTHER** that the Applicant has appointed **LAWYERS FOR HUMAN RIGHTS** of the address below as the address at which it will accept notice and service of all further process in these proceedings.

**TAKE NOTICE FURTHER** that:

- (a) Notice of intention to oppose this application must be given within 15 days after receipt hereof and must contain an address within fifteen

kilometres of the court to which the application is brought, where notice and service of documents will be accepted.

- (b) Your answering affidavits, if any, must be filed within 15 days after service of the notice of intention to oppose this application.
- (c) In default of your complying with rule 3(5) of the Rules of Procedure for Application to Court in terms of PAIA, the Applicant may request the Registrar to place this application before the Court for an order in terms of section 82(b) of PAIA.
- (d) In default of your delivering a notice of intention to oppose, the matter will without further notice, be placed on the roll for hearing after the expiry of the period mentioned in paragraph (a) above, on a date fixed by the Registrar.

Braamfontein 101  
DATED at SANDTON on this the 8<sup>th</sup> day of DECEMBER 2014.

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**LAWYERS FOR HUMAN RIGHTS**  
Applicant's Attorneys  
4<sup>th</sup> Fl, Heerengracht Building  
87 De Korte Street  
Braamfontein, Johannesburg  
Tel: 011-339-1960  
Fax: 011-339-2665  
Ref: David Cote

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TO:  
THE REGISTRAR OF THE HIGH COURT  
NORTH WESTERN LOCAL DIVISION, JOHANNESBURG

BY HAND

AND TO:  
THE MINISTER OF JUSTICE AND  
CORRECTIONAL SERVICES

BY SHERIFF

First Respondent  
Momentum Centre  
329 Pretorius Street  
PRETORIA

c/o The State Attorney  
12<sup>th</sup> Floor, North State Building  
95 Market Street  
Johannesburg

AND TO:  
THE DEPUTY INFORMATION OFFICER:  
DEPARTMENT OF JUSTICE AND CORRECTIONAL  
SERVICES

BY SHERIFF

Second Respondent  
Momentum Centre  
329 Pretorius Street  
PRETORIA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NO:

In the matter between:

THE SOUTH AFRICAN HISTORY ARCHIVE TRUST Applicant

and

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES First Respondent

THE DEPUTY INFORMATION OFFICER:  
DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES Second Respondent

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FOUNDING AFFIDAVIT

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I, the undersigned,

**CATHERINE MOIRA KENNEDY**

do hereby make oath and state the following:

- 1 I am a director of the South African History Archive Trust, situated at the Women's Jail, Constitution Hill, 1 Kotze Street, Braamfontein, Johannesburg.
- 2 The facts herein contained are within my personal knowledge, unless stated otherwise or indicated by the context, and are to the best of my knowledge and belief both true and correct. Where I make legal submissions, I do so on the

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basis of advice of the applicant's legal representatives.

- 3 I am duly authorised to bring this application on behalf of the applicant. In this regard, I attach a copy of a resolution of the Trustees of the South African History Archive Trust marked "**CMK1a**".

**THE PARTIES**

- 4 The applicant is **THE SOUTH AFRICAN HISTORY ARCHIVE TRUST ("SAHA")**, a non-governmental organisation constituted as a trust in terms of the laws of South Africa. SAHA requested the information, which forms the subject matter of this application, from the first and second respondents.

- 5 The first respondent is the **MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**, formerly known as the Minister of Justice and Constitutional Development, in the national government ("**the Minister**"), who is cited in his official capacity as the Minister responsible for the Department of Justice and Correctional Services, with offices situated at the Momentum Centre, 329 Pretorius Street, Pretoria. The first respondent is cited care of the State Attorney, Pretoria, whose address is Office of the State Attorney Pretoria, SALU Building, 255 Francis Baard Street. The first respondent is a member of the National Executive and is responsible for the records that were subject to SAHA's request for information under the Promotion of Access to Information Act 2 of 2000 ("**PAIA**"). The Minister or the person designated by him or her is the "relevant authority" for deciding appeals, in terms of section 1 of PAIA.

authority" for deciding appeals, in terms of section 1 of PAIA.

- 6 The second respondent is **THE DEPUTY INFORMATION OFFICER OF THE DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES**, with offices situated at the Momentum Centre, 329 Pretorius Street Pretoria. The second respondent is cited in her official capacity, as the officer who decides whether requests to the Department of Justice and Correctional Services for access to information, in terms of PAIA, should be granted or refused.
- 7 In what follows, where I refer to "the Department" this is a reference to both respondents, unless the context indicates otherwise.

#### **THE OBJECTIVES AND FUNCTION OF SAHA**

- 8 SAHA's objectives are to preserve, collect and catalogue materials of historic, contemporary, political, social, economic and cultural significance, and to encourage the accessibility of such materials to the public as a whole. I attach a copy of SAHA's trust deed marked "**CMK1b**".
- 9 SAHA is an independent non-governmental organisation (NGO) dedicated to documenting and providing access to archival holdings that relate to past and contemporary struggles for justice in South Africa. In the late 1980's SAHA was established by anti-apartheid activists. Its founding mission was to promote the recapturing of South Africa's lost and neglected history and to record history in the making. SAHA aims to document, support and promote awareness of past and contemporary struggles for justice through archival practices and outreach,

and the utilisation of access to information laws.

- 10 In 2001 SAHA launched its Freedom of Information Programme, which is dedicated to using PAIA as a method to test and extend the boundaries of freedom of information in South Africa. This programme further seeks to create awareness of, compliance with and use of PAIA.
- 11 Since 2001, SAHA has made over 1800 requests for information from various government departments and it has brought numerous applications in the High Court arising out of refusals of such requests. SAHA has also intervened as *amicus curiae* in a number of PAIA applications.
- 12 SAHA has developed a comprehensive capacity training programme for NGOs and community based organisations on using PAIA. It has developed resource kits, workshop guides, PAIA case study DVDs, and a dedicated online management system for the submissions and monitoring of PAIA requests made by the PAIA Civil Society Network, an umbrella body of organisations, established in 2008, working to advance the right of access to information in South Africa. Since 2008 SAHA has also trained hundreds of activists, students, community members, NGO members, attorneys and paralegals in the use of PAIA.
- 13 In line with these objectives, SAHA made the PAIA requests which are the subject matter of this application after consulting with SAHA research associates. They included the Open Secrets project, a group of South African researchers based in Cape Town who are in the process of collecting and analysing

apartheid-era archival material for the purpose of publishing a book that will focus on procurement practices and public accountability during apartheid; and Professor Jane Duncan, a media academic currently conducting research into communications surveillance and interception.

#### THE NATURE OF THIS APPLICATION AND RELIEF SOUGHT

- 14 This application is brought in terms of section 78(2) read with section 82 of PAIA, in response to refusals by the first and second respondents of the SAHA's requests for access to information.
- 15 This application seeks relief related to seven requests for information which it made to the Department in respect of records in the Department's possession, and two requests which it made to the National Prosecuting Authority (NPA), which transferred those requests to the Department.
- 16 In this section of this affidavit, I summarise the manner in which the Department has dealt with the requests in issue. This is unfortunately reflective of a failure on its part to comply with its obligations under PAIA and the Constitution. It repeatedly does not comply with the statutory time periods; it backdates letters which it sends, in a dishonest attempt to make it appear that they were sent earlier; it issues blanket refusals; and it issues template responses to requests for access to records without engaging meaningfully or at all with the requests.
- 17 SAHA brings this application in respect of those nine requests. It does so in order to avoid the duplication of cost, and because it is, I submit, in the interests

of the administration of justice and judicial economy for one application to be brought in respect of all of these requests rather than for multiple applications to be brought. As appears below, the PAIA applications in issue were made by the same applicant, they were refused by the same respondents, and they raise common questions of fact and law.

**Jurisdiction**

18 I am advised and submit that this Court has jurisdiction to hear this application by virtue of the definition of 'court' in section 1 of PAIA, which provides that 'court' includes the High Court within whose area of jurisdiction the requester is domiciled or ordinarily resident.

19 Section 82(2) of PAIA provides that the court hearing an application of the present kind may grant any order that is just and equitable including orders:

- "(a) confirming, amending or setting aside the decision which is the subject of the application concerned;*
- (b) requiring from the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court considers necessary within period mentioned in the order;*
- (c) granting an interdict, interim or specific relief, a declaratory order or compensation;*
- (d) as to costs; or*
- (e) condoning non-compliance with the 180-day period within which to bring an application, where the interests of justice so require.*

20 Each of the respondents is a "public body" defined in section 1 of PAIA. SAHA has exhausted the relevant internal appeal procedures in PAIA in that:

20.1 The second respondent refused (either explicitly or through a deemed

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refusal) all of the applications for access;

20.2 Internal appeals were lodged against such refusals in terms of section 74 of PAIA;

20.3 Section 77(7) provides that where the relevant authority fails to give notice of a decision on an internal appeal within the stipulated period, the authority is regarded as having dismissed the internal appeal.

21 I submit below that either the late "decisions" by the second respondent were ineffective because they were made after there was a deemed refusal as a matter of law, and after internal appeals had been lodged; or they are to be treated as decisions on appeal. In either event, the administrative process has run its course.

22 If this court were to find that the refusals issued by the second respondent were valid decisions in relation to the initial request, and that an internal appeal is still available, I submit that exceptional circumstances exist to exempt SAHA from lodging internal appeals. These include the sequence of events which I have described above, and the respondents' clear disregard of the time limits and obligations imposed upon them by PAIA. It would be inconsistent with the scheme of the Act if a public entity were permitted to prevent a requester from achieving the determination of its request, by delaying its decision on the application.

23 Accordingly, SAHA is entitled to bring this application in terms of section 78(2) read with section 82 of PAIA.

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24 In this affidavit, I address the following issues in turn:

24.1 The importance of the right of access to information and the role of PAIA in giving effect to the constitutional right;

24.2 The factual background to this application;

24.3 The refusals by the respondents to grant access to the records concerned and why there is no basis in law for such refusals; and

24.4 The fact that public interest requires that access be granted.

25 Before dealing with those matters, I describe the requests which SAHA made, and summarise the Department's response (or lack of response) to those requests.

**The requests**

26 SAHA made the following requests for access to information held by the respondents:

26.1 The request made on 21 August 2013 sought access to the following:

*"Copies of any records or part of records, including internal reports or Minutes, relating to the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act, 2010 and/or the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (the Interception legislation, also known as RICA):*

*1. In relation to interception directions under the Interception legislation by each financial or calendar year that is available for the period from the earliest date of commencement of the Interception legislation (also known as the fixed date under the Interception legislation) to 31 July 2013:*

- The different types of interception directions able to be granted*



- *The different type of offences for non-compliance with an interception direction and for unlawful interceptions of communications*
- *The number of interception directions requested, granted or modified, set out by agency that applied for the direction (where that information in relation to each agency is available - noting these numbers are sought even if they are not available in relation to each agency)*
- *The average cost to applicants in obtaining an interception direction*
- *The overall annual budget allocated within the department for administering interception directions*
- *The annual average number of employees in the department with responsibilities that include administering interception directions*
- *The types of surveillance used in interception directions*
- *The number of each of the prosecutions, convictions, arrests and penalties imposed as a result of the successful use of an interception direction, set out by agency that applied for that direction (where that information in relation to each agency is available - noting these numbers are sought even if they are not available in relation to each agency)*

*2. In relation to each of the real-time communication-related directions and archive communication-related interception directions and decryption directions and entry warrants under the Interception legislation by each financial or calendar year that is available for the period from the earliest date of commencement of the Interception legislation (also known as the 'fixed date' under the Interception legislation) to 31 July 2013:*

- *The number of each type of direction or warrant requested, granted or modified, set out by agency that applied for the direction or warrant (where that information in relation to each agency is available - noting these numbers are sought even if they are not available in relation to each agency)*
- *The number of each of the prosecutions, convictions, arrests and penalties imposed as a result of the successful use of each type of direction or warrant, set out by agency that applied for that direction or warrant (where that information in relation to each agency is available - noting these numbers are sought even if they are not available in relation to each agency)*

*3. Any directives issued by the designated judge to supplement the procedure for making applications for the issuing of any type of direction or entry warrant.*

*4. The number of each of the prosecutions, convictions, arrests and penalties imposed as a result of information gained from SIM card (or cell phone) registrations by each financial or calendar year that is available for the period from the earliest date of commencement of that*

part of the Interception legislation to 31 July 2013”

A copy of the request is attached hereto marked “**CMK2.**” For ease of reference, I refer to this request as the “*RICA request*”.

26.2 The request made on 23 August 2013 sought access to the following:

*“All records of TRC investigations (including evidence gathered) and findings of the TRC regarding the use of secret funds by SADF, Armscor and front companies from 1978 to 1994, including:*

1. *Report of the Auditor General on all secret funds from 1960 to 1994 provided to the TRC (see TRC Final Report, Volume 2, pg. 524).*
2. *The schedule of secret projects compiled by the Auditor General provided to the TRC (see TRC Final Report, Volume 2, pg. 539).*
3. *Any records relating to the Kahn Committee (also known as the Advisory Committee on Special Secret Projects) provided to the TRC (see TRC Final Report, Volume 2, pg. 525)*
4. *Any records relating to the Ministers’ Committee on Special Projects provided to the TRC (see TRC Final Report, Volume 2, pg. 530)*
5. *Any records relating to the Secret Services Evaluation Committee provided to the TRC (see TRC Final Report, Volume 2, pg. 532)*
6. *Any records relating to the Special Defence Account provided to the TRC (see TRC Final Report, Volume 2, pg. 532)*
7. *Any records relating to the Secret Service Account provided to the TRC (see TRC Final Report, Volume 2, pg. 532)*
8. *Any records relating to the Steyn Commission provided to the TRC (see TRC Final Report, Volume 2, pg. 542)”*

A copy of the request is attached hereto marked “**CMK3.**” For ease of reference, I refer to this request as the “*Secret Defence Fund request*”.

26.3 Three requests were made on 13 September 2013.

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26.3.1 The first request of 13 September 2013 sought the following information:

*"All investigations and evidence gathered by and made available to the South African Truth and Reconciliation Commission (TRC), and the TRC reporting of findings into the murder of Ms Dulcie September (former ANC diplomatic representative to France, in Paris) on 29 March 1988. (We note that the date of death is over 20 years ago and so this is not personal information).*

*To assist in locating those records the TRC evidence gathering was referred to in the TRC Final Report, Volume 2, pages 199-122 at:*

*<http://www.justice.gov.za/trc/report/finalreport/Volume%202.pdf> as follows:*

*"On 29 March 1988, Ms Dulcie September, the ANC chief representative in France, was assassinated in Paris. She died instantly when hit by a volley of five bullets fired at close range. Though no submission was made to the Commission on the murder, it was identified as a priority case for investigation. A delegation travelled to Paris and elicited the co-operation of the French police, who made available to the Commission the files of the investigating judge, Ms Claudine Forkel."*

A copy of the request is attached hereto marked "CMK4." For ease of reference I refer to this request as the "September request".

26.3.2 The second request of 13 September 2013 sought the following information:

*"All investigations and evidence gathered by and made available to the South African Truth and Reconciliation Commission (TRC), and the TRC reporting of findings into the attempted assassinations of the late Mr Godfrey Motsepe (former ANC diplomatic representative to the BENELUX countries, in Brussels) on 2 February 1988 and on 27 March 1988.*

*To assist in locating those records the TRC evidence gathering was referred to in the TRC Final Report, Volume 2, pages 199-122 at: <http://www.justice.gov.za/trc/report/finalreport/Volume%202.pdf> as follows:*

*"In a submission to the Commission, Mr Motsepe alleged that he had twice been the target of assassination attempts in 1988. In the*

*first, on 2 February 1988, two shots were fired through the window of the office in which he was working, but missed him. In the second, on 27 March 1988, a seventeen- kilogram bomb was discovered in his office. This occurred two days before the killing of Ms Dulcie September in Paris”*

A copy of the request is attached hereto marked “**CMK5.**” For ease of reference, I refer to this request as the “*Motsepe request*”.

26.3.3 The third request of 13 September 2013 sought the following information:

*“All investigations and reports made at any time into the export of uncut diamonds during the period 1992-1993 by the company 'De Beers'.*

*To assist in locating those records, these include records that were compiled in preparation of a briefing document on the matter to the Standing Committee on Public Accounts in 2007”*

A copy of the request is attached hereto marked “**CMK6.**” For ease of reference I refer to this request as the “*de Beers request*”.

26.4 Two requests were made on 4 February 2014.

26.4.1 The first request of 4 February 2014 sought the following information:

*“All investigations covering the period the period 1986-2009 into alleged illegal activities involving Mr Vito Roberto Palazzolo (also known as Mr Robert von Palace Kolbatschenko).*

A copy of the request is attached hereto marked “**CMK7.**” For ease of reference I refer to this request as the “*Palazzolo request*”.

26.4.2 The second request of 4 February 2014 sought the following information:

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*1. All investigations into the events surrounding the murder of Dr Robert Van Schalkwyk Smit and Mrs Jeanne-Cora Smit in Springs, just outside of Johannesburg, on 22 November 1977.*

*To assist in locating those records, Mr Smit was a prominent politician. The murders are commonly referred to in media reports over the past 35 years as the 'Smit murders'. It is noted that as these deaths occurred over 20 years ago, this is not personal information"*

A copy of the request is attached hereto marked "CMK8." For ease of reference I refer to this request as the "Smit request".

26.5 On 4 February 2014 SAHA made two separate requests to the NPA.

26.5.1 The first request of 4 February 2014 was made in the same terms as the *Palazzolo request*.

26.5.2 In a letter dated 18 March 2014, the NPA informed SAHA that it had transferred the request made in the same terms as the *Palazzolo request* to the respondents, on the basis that the NPA was not in existence at the relevant time. A copy of the NPA's letter of 18 March 2014 is attached marked "CMK9". For ease of reference, I refer to this request as the "*transferred Palazzolo request*".

26.6 The second request of 4 February 2014 sought the following information:

*"All investigations covering the period 1977 to 1997 into alleged illegal activities (including but not limited to 'gold smuggling') involving Mr Paul Ekon"*

A copy of the request is attached marked "CMK10." The NPA also transferred this request to the Department, in terms of the letter of 18

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March 2014, attached as annexure CMK9 above. For ease of reference I refer to this request as the "*transferred Ekon request*".

**The responses to the requests**

***Explicit refusals***

27 The second respondent explicitly refused access to the records referred to in three of the requests:

27.1 On 23 September 2013 the second respondent refused access to the records referred to in the "*RICA request*".

27.2 On 9 and 16 May 2014 respectively the second respondent also refused access to the records referred to in the *transferred Palazollo* and *transferred Ekon requests*.

28 SAHA then lodged internal appeals in terms of section 74 of PAIA as follows:

28.1 The *RICA request's* internal appeal was lodged on 12 November 2013;

28.2 The *transferred Ekon request's* internal appeal was lodged on 17 July 2014;

28.3 The *transferred Palazollo request's* internal appeal was lodged on 20 July 2014.

29 A response to these internal appeals was due, in terms of PAIA, by 12 December 2013, 16 August 2014 and 19 August 2014 respectively. To date, the first

respondent has failed to respond to SAHA's internal appeals. Accordingly, the appeals are deemed to have been refused in terms of section 77(7) of PAIA.

***Deemed Refusals***

30 No response was received from the second respondent within the time period contemplated in section 25 of PAIA in relation to the following six requests:

30.1 *Secret Defence Fund*;

30.2 *September*;

30.3 *Motsepe*;

30.4 *De Beers*;

30.5 *Palazollo*; and

30.6 *Smit*.

31 In the circumstances, the second respondent was deemed to have refused those six requests as contemplated in section 27 of PAIA.

32 SAHA then lodged internal appeals in terms of section 74 of PAIA as follows:

32.1 *September, Motsepe and de Beers requests'* internal appeals were lodged on 23 January 2014.

32.2 *Secret Defence Fund request's* internal appeal was lodged on 4 February 2014.

32.3 *Smit request's* internal appeal was lodged on 10 April 2014.

32.4 *Palazzolo request's* internal appeal was lodged on 10 April 2014.

33 Subsequent to the lodging of the internal appeals the second respondent did the following:

33.1 On 26 February 2014 the second respondent refused access to the records requested in the *Secret Defence Fund, September and Motsepe requests*;

33.2 On 13 March 2014 she refused access to the records requested in the *de Beers request*. This decision was followed by the first respondent's letter on 8 May 2014, which purports to be a decision relating to an internal appeal. In the letter of 8 May 2014, the first respondent also refused access to the *de Beers* records;

33.3 On 9 May 2014 she refused access to the records requested in the *Smit and Palazzolo requests*.

34 As appears from the sequence I have described, these decisions were issued after the internal appeals had been lodged against the deemed refusal. I submit that either:

34.1 The "decisions" are ineffective, as by that time the second respondent was deemed by operation of law to have refused the applications, and internal appeals had already been lodged. In that event, there has been no decision on the internal appeals; or



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34.2 these decisions are to be regarded as refusals of the internal appeals.

35 SAHA is therefore compelled to bring these proceedings in order to obtain access to the records requested.

36 SAHA seeks an order:

36.1 Declaring that the decisions to refuse access to the records concerned, are unlawful and in conflict with PAIA;

36.2 Reviewing and setting aside the refusals by the first and second respondents of SAHA's requests; and

36.3 Directing the first and second respondents to supply SAHA with copies of the records requested in SAHA's requests for information within 15 days of this order;

36.4 Directing that SAHA may approach this court, on the papers presently before this Court duly supplemented as appropriate, in the event that the respondents fail to comply with this order.

**THE IMPORTANCE OF THE CONSTITUTIONAL RIGHT OF ACCESS TO INFORMATION AND THE ROLE OF PAIA IN GIVING EFFECT TO THE RIGHT**

37 Section 32 of the Constitution establishes a right of access to information held by both public and private bodies. It states that:

*"(1) Everyone has the right to have access to*

*a) any information held by the State; and*

*b) any information that is held by another person that is required for the exercise or protection of any right.*

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(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."*

38 PAIA is the national legislation envisaged in section 32(2) of the Constitution. It was enacted in order to give effect to the right of access to information and to promote the values of openness, transparency, accountability and good governance – principles foundational to the Constitution.

39 The preamble of PAIA records that the system of government in South Africa before 27 April 1994 "*resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations*". The preamble continues that PAIA is enacted to "*foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information*".

40 Section 9 of PAIA describes as its object, *inter alia*, the promotion of:

*"... transparency, accountability and effective governance of all public and private bodies by including, but not limited to, empowering and educating everyone*

- i) to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;*
- ii) to understand the functions and operation of public bodies;*
- iii) to effectively scrutinise... decision-making by public bodies that affects their rights."*

41 I am advised and submit that:

41.1 in terms of PAIA, public bodies are under a duty to provide access to a requested record, or part of it, unless refusal of the request is permitted or required by one or more of the grounds listed in PAIA; and

41.2 every request for access to information in terms of PAIA is an invocation of the section 32 right in the Constitution and entitles the requestor to access to the requested record, or part thereof, if that requestor complies with all the procedural and statutory requirements set out in the statute, unless there is a valid ground of refusal on which the private or public body may rely.

41.3 the Constitutional Court has repeatedly made clear that the right of access to information is fundamental to the realisation of the other rights guaranteed in the Bill of Rights.

***The Conduct of the Department in relation to PAIA requests***

42 It is in this context that the responses received from the Department must be evaluated.

Practices and policies under RICA

43 The request for the RICA records is important because the information will allow the public to assess how effective interception directions, granted in terms of RICA, are as crime fighting tools.

44 Scant information is provided to the public about interceptions that are undertaken in terms of RICA. The designated judge's report is made public through the report to Parliament of the Joint Standing Committee on Intelligence, but the report is only a general overview of directions requested and granted, per agency, on an annual basis. Aggregate figures are provided about the number

of interception directions requested per agency, the number granted and the number refused. This information tells the public very little about the effectiveness of RICA.

45 RICA was enacted to assist the state in the fight against terrorism and crime. Communications surveillance and interception are by definition rights-limiting: they reduce a person's right to privacy and, potentially, and also freedom of expression, as the possibility of being surveilled may have a chilling effect on speech that may otherwise be conveyed over communications networks.

46 The revelations by Edward Snowden of the US government's widespread mass surveillance practices, which were allowed to develop behind a cloak of secrecy, underline the fact that people should not just simply give up these rights without insisting on accountability from their government about how their government is using these intrusive capacities of the state for the benefit of the people. This information request would help to shine a light on these practices, and enable the public to ask and answer whether the pressing public purposes that led to the limitation of their rights are actually being achieved. They would answer the question of how effective RICA is in actually bringing down levels of crime, about public expenditure on these practices, about whether the public is getting 'value for money' out of these activities, and about whether there is any value in the public being made to register their SIM cards, which is an expensive and time-consuming exercise.

47 Research undertaken elsewhere has suggested that SIM card registration is of limited value as a crime fighting tool, and that the negative consequences of this

practice for the right to privacy outweighs the limited public benefits that have flowed from these processes. This information request attempts to establish whether South Africa has followed this trend. Arguably real time directions are more intrusive of the right to privacy than archive-related directions, so this request also attempts to establish how frequent the former are in relation to the latter.

- 48 In the circumstances, this request relates to an important, but poorly researched and understood aspect of South Africa's current practices as a democratic and constitutional country. It is critical that SAHA associates gain access to these records to enable detailed research which helps South Africans understand how South Africa carries out its surveillance practices and whether such practices are effective in its efforts against crime.

#### Practices and policies of the apartheid regime

- 49 The requests at issue, with the exception of the *RICA request*, relate to practices and policies during the final phase of the apartheid regime (1976-1994) which may have enabled economic crime and corruption.
- 50 This period represents the height of militarisation of the state and the economy and was characterised by repressive laws and practices. This not only gave context to the gross violations of human rights, it also limited the flow of information and favoured a culture of censorship and large-scale secrecy within the public and private sector.

- 51 Much of the requested documentation has been withheld from public access. The withholding of this information has had a negative effect on the ability of the South African public to engage with and understand the extent of illegal practices and their relationship to apartheid.
- 52 Save for the *RICA request*, these requests relate to aspects of governance in South Africa which are largely focussed on a period of between 20 and 40 years ago. It has become increasingly difficult to find individuals and material that can help shed light on some of the narrative which emerges from documents which previously had restricted access.
- 53 The longer the delay in accessing material, the more likely that key sources (some of whom will be identified by these documents) would have passed away. Therefore, any delays in accessing the information will inhibit the ability of the researchers and the public to understand the documents within the proper context.
- 54 In essence, these requests relate to important, but poorly researched and understood aspects of South Africa's recent past. It is critical that this material should be accessible. SAHA associates such as the Open Secrets project will undertake detailed research which will help South Africans understand the long term impact of this important aspect of our history.

TRC Records

- 55 Some of the requests relate to the records of the TRC. The records of the TRC are an important part of South Africa's transition to democracy. A central purpose of the TRC process was to investigate the gross violations of human rights under apartheid and to make the findings known in an effort to prevent a recurrence of such atrocities in future.
- 56 The public nature of the TRC process was considered to be a vital mechanism for promoting national healing and guarding against amnesia. .

*Dulcie September*

- 57 Ms Dulcie September was a representative of the ANC and the liberation movement in France, Luxemburg and Switzerland. She actively campaigned for the political and economic isolation of South Africa. Substantial evidence suggests that all three countries were important partners of the apartheid state in strategic sectors such as arms trade, nuclear energy and banking.
- 58 On 29 March 1988, Ms September was assassinated in Paris. She died instantly when hit by a volley of five bullets fired at close range. Her case represents not only a gross violation of human rights for which there has been no accountability, but also a high profile but poorly understood key point in South African history. It is the only known case of a South African liberation movement activist assassinated in mainland Europe.

- 59 The case has never been settled in a court, and 25 years later the crime remains unpunished. There is no indication that any investigation is ongoing in South Africa in relation to this matter. The French case was closed in 2002, as it had been 10 years since new information had been uncovered.
- 60 The possibilities raised by ongoing research have broad implications for our understanding of the motives behind by the assassination and of the relationships between this incident and other related matters, and between the countries concerned.
- 61 Access to the available data is accordingly in the interest of all who continue to grapple with the legacy of our violent past.

*Godfrey Motsepe*

- 62 Mr Godfrey Motsepe was a representative of the ANC and the liberation movement in Belgium. He actively campaigned for the political and economic isolation of South Africa.
- 63 While Belgium publicly implemented sanctions measures, research suggests that the country was home to influential pro-apartheid lobby groups.
- 64 In a submission to the TRC, Mr Motsepe asserted that he had twice been the target of assassination attempts in 1988.
- 65 In Volume 2 of the TRC's Final Report, the TRC expressed no explicit conclusion



on the assassination attempts against Godfrey Motsepe. It however suggested at page 119 that these attacks may, together with that on Dulcie September, have "formed part of a CCB [Civil Co-operation Bureau] operation undertaken in collusion with covert French right-wing elements".

- 66 This makes access to the available data on the alleged attempts on Godfrey Motsepe's life central to the public interest.
- 67 There is no indication that any investigation is ongoing in South Africa in relation to this matter.

#### *Smits*

- 68 Dr Robert Van Schalkwyk Smit was a prominent politician. He was a National Party parliamentary candidate and a former national representative to the International Monetary Fund ("IMF").
- 69 Dr Smit and his wife Mrs Jeanne-Cora Smit were murdered in Springs on 22 November 1977. The murders are commonly referred to in media reports over the past 35 years as the 'Smit murders'.
- 70 The TRC's findings at volume 2, page 269 detailed the prevailing suspicions that the still-unsolved murder was related to Dr Smit's possession of certain "explosive" information, possibly concerning high-level government corruption and/or sanctions busting.

- 71 A further source of suspicion was provided by the subsequent murder investigation, which was thought to have been subverted by a South African Police officer who, it transpired, had been involved in a cover-up of security force involvement in another case. This suspicion is recorded at page 268 of the TRC's findings.
- 72 Other than these suspicions, the motive behind Dr Smit's assassination has never been made clear. The post-apartheid research community and the public have a strong interest in reaching a fuller understanding of this unique case.
- 73 Thirty-seven years later, there appears to be no meaningful investigation into the Smit murders.

*Secret Defence Fund*

- 74 Chapter 6 of Volume 2 of the TRC's Final Report is entitled "Special Investigation into Secret State Funding". It details the TRC's investigations into the "use of secret funding to promote the policies of the former state".
- 75 Based on investigations and submissions received from the Auditor-General and directly from numerous departments, the TRC estimated that between 1978 and 1994 over R2.7 billion (R2 751 041 170) in secret funds was transferred by the Treasury (later the Department of State Expenditure), plus almost a further R50 billion (R49 648 737 969) through the Defence Special Account alone.

- 76 The Defence Special Account and the Secret Services Account were established via a specific statute in order to facilitate the funding of secret services in the context of growing foreign and internal pressure on the apartheid regime, and by their nature involved severely limited oversight.
- 77 The modern equivalent of the total estimate of secret apartheid spending of R52 billion, adjusted for inflation, is just under R400 billion. This is equivalent to over a third of government's total allocated expenditure for the 2013/2014 financial year, and almost ten times the year's budget for Defence. The scale of secret spending is illustrated by the fact that by comparison, the estimated total cost of the Strategic Defence Procurement Package excluding financing costs (more commonly known as the 'Arms Deal' and which has caused massive public outcry), is in the region of R47 billion.
- 78 The TRC, at chapter 6, volume 2 page 541, repeatedly stressed, however, that it had little assurance as to the accuracy or completeness of the figures it provided. This was a result of the "need-to-know" principle that prevailed, the limitations on audit procedures, as well as "the extent that information and documentation has been destroyed, and persons with the appropriate knowledge have left the relevant departments".
- 79 For all their considerable limitations, the documents compiled by the TRC likely constitute by far the fullest record of these funds that has ever been made, and its uniqueness will only have been compounded by the decade since then. There likely no longer exists another means to access this information.

80 Importantly, the TRC's final recommendations state that:

*"further research and investigation be done into the hundreds of projects thus funded in secret, and through which, the Commission confirmed, "dubious and illegal activities had been successfully woven into authorised and official operations".*

81 Giving effect to this mandate for the promotion of transparency and accountability for possible apartheid corruption requires the full and free provision of the requested information.

82 Accordingly SAHA is seeking to give effect to the TRC's recommendation that the TRC records be made available in the widest possible way, and in making these records available to researchers, such as the Open Secrets project, is also promoting the implementation of the recommendations around further research and investigation.

83 Once the requested records have been received, the intention is to publish a books in order to ensure that the public gains access to this research material. The books are an opportunity for a public, which is unlikely to ever seek access to public archives, to understand the content and implication of these documents.

84 The relevant parts of the TRC's final report are voluminous, and have not been attached to these papers in order to avoid overburdening the record. Copies will however be made available at the hearing of this matter should this be necessary. The report is in any event publicly accessible on the Department's website.

*De Beers records*

- 85 In May 2008, following an investigation by the Standing Committee on Public Accounts (SCOPA), Parliament was directed to form a task team to more fully investigate claims that De Beers had exported large stockpiles of diamonds during the 1990s and that this might have constituted illegal capital flight and tax avoidance. A copy of the minutes of the SCOPA meeting is attached marked **“CMK12”**.
- 86 It was suggested in the earlier SCOPA meetings that approximately 20 million carats of diamonds with a value of USD\$900 million had been moved, avoiding payment of a possible tax liability of about USD\$135 million. Adjusting for inflation, this figure is equivalent to R1.47 billion today, This is equivalent to more than 10% of what the SA Treasury budgeted for spending on HIV/Aids and Tuberculosis (TB) in the 2013/2014 financial year.
- 87 It was reported in the press that the task team in 2009 appealed to the Reserve Bank for assistance in its investigations. It is unclear what, if anything, was the outcome of these investigations. A copy of the article of 2009 is attached marked **“CMK13”**.
- 88 SAHA believes that this matter, if properly investigated, should have received the attention of the National Prosecuting Authority (NPA) or one of its Units such as the Directorate of Special Operations (DSO) or the Special Commercial Crimes Unit (SCCU). Given that it is more than two decades after the fact, it is unlikely that investigations are ongoing. Access to such information would therefore not

have a disruptive impact on current investigations.

*The approach of the respondents to the requests*

89 In light of the importance of the issues raised in the requests and the clear mandate issued by the TRC in its findings, I submit that the respondents' conduct in either issuing blanket refusals of access or ignoring SAHA's requests is entirely unjustifiable.

Pattern of Conduct

*Historical Patterns of Conduct*

90 Such "decisions" reflect a pattern of conduct by the Department in failing to give effect to its obligations under PAIA. I say this based on the following:

90.1 Prior to the submission of these requests and between 2001 and 2014, SAHA submitted over 60 PAIA requests to the Department, specifically in relation to the TRC records.

90.2 In more than 90% of the requests submitted, the Department failed to respond within the statutory time frames.

90.3 Records were released (either in full or in part) in response to less than 20% of requests initially submitted, although in some instances there were documents missing from the released records, which, despite SAHA having followed up about these gaps, have not subsequently been provided.

90.4 Only five refusals were overturned at the internal appeal stage.

90.5 SAHA secured favourable out-of-court settlements in the two court challenges it lodged against the Department, in respect of five specific requests.

*Patterns of Conduct Relating to Current Requests*

90.6 The respondents failed to respond to the *Secret Defence Fund, September, Motsepe, de Beers, Palazollo and Smit requests*;

90.7 When internal appeals were lodged in relation to these requests, the first respondent failed to render a decision to the internal appeals within the stipulated time period in each of these cases, with exception of the *Smit and Palazollo requests*;

90.8 In relation to the *RICA, transferred Palazollo and transferred Ekon requests*, the respondents responded to the requests outside the stipulated time period.

90.9 Equally, when internal appeals were lodged in relation to these requests, the respondents failed to respond to the internal appeals.

90.10 As will be indicated more fully below, when responding to the requests, the respondents fail to apply themselves to the merits of each request, and resort merely to reproducing pro forma templates refusing access.

91 The result is that the Department has repeatedly failed to engage meaningfully or at all with its obligations under PAIA and under section 7 and 33 of the Constitution.

**FACTUAL BACKGROUND OF THE MATTER**

92 As described above, SAHA submitted seven PAIA requests to the Department in respect of the above records. It also submitted two requests to the NPA, which were later transferred to the Department. The second respondent as the designated deputy information officer, and the first respondent as the relevant authority for deciding appeals, have refused to provide any information whatsoever in response to any of the requests. These responses amount to a blanket refusal in respect of everything which has been requested.

93 I now deal in detail with the manner in which each of the requests was dealt with by the Department. In doing so, I point out that the Department has failed to provide SAHA with reasons for its refusal of access, save to refer generally and in a conclusory manner to the permitted grounds of refusal under PAIA, without providing facts which purport to justify those conclusions. This makes it very difficult, if not impossible, for SAHA to engage meaningfully with the "reasons" given for the Department's refusal.

***RICA Request***

94 On 23 September 2013 SAHA received an email from the second respondent, Ms M M Raswiswi, attaching a letter dated 17 September 2013 in which she refused the *RICA request*. The refusal was made on the basis that:

94.1 *"the documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our*



*undertaking;*

94.2 *The nature of the work and the need to obtain information from various sources to enable us to carry out our function in the public interest may be jeopardised by disclosure of information supplied in confidence. The disclosure is therefore refused in terms of section 37(1)(b) of PAIA*"

A copy of the refusal letter is attached marked "CMK14".

95 An internal appeal was then lodged on 12 November 2013. Although the deadline for the internal appeal was 12 December 2013, the relevant authority has simply not answered it. The appeal is therefore deemed to be dismissed in terms of section 77(7) of PAIA. I attach hereto a copy of the internal appeal marked "CMK15".

96 On 16 January 2014 SAHA sent an email to the second respondent requesting a timeframe within which a response to the internal appeal could be expected. No response was received from the second respondent, save for what appears to be an automated response acknowledging receipt of the email and promising further communication. A copy of SAHA's email of 16 January 2014 is attached marked "CMK16". I also attach a copy of the second respondent's email of 16 January 2014 marked "CMK17".

**September Request**

97 On 22 October 2013 SAHA received a letter from the Department, dated 11 October 2013 and extending the stipulated 30 day period by a further 30 days

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(the extension letter). A copy of the extension letter is attached marked "CMK18".

98 Upon receipt of the extension letter, SAHA sent an email to the Department confirming that the time period for the issuing of the response would accordingly be 18 November 2014.

99 SAHA received no response either to that email or to its request. The *September request* was therefore deemed refused on the basis of the provisions of section 27 of PAIA. SAHA consequently lodged an internal appeal on 23 January 2014 in terms of section 74 of PAIA.

100 On 26 February 2014 SAHA received a letter from the second respondent dated 4 November 2013. The letter was in an envelope postmarked 13 February 2014. The second respondent refused access to the requested records on the grounds that she was unable to provide the documents requested for the reasons set out below in terms of the requested information of the "abovementioned individual":

100.1 *"the disclosure of these documents could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety;*

100.2 *the disclosure would constitute an unreasonable disclosure of highly personal information in terms of section 34(1) of PAIA;*

100.3 *the disclosure could reasonably be expected to endanger the lives or physical safety of 'the individual' or individuals implicated;*

100.4 *the disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputation and dignity of individual names may be impaired as contemplated in section 39(i)(b)(dd) of PAIA (sic);*

100.5 *the documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so the Department is unable to breach its undertaking;*

100.6 *the nature of the Department's work and the need to obtain information from various sources may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of section 37(1)(b) of PAIA".*

I attach copies of the refusal letter and accompanying envelope as Annexures "**CMK 19(a) and (b)**".

101 This decision was issued subsequent to the lodging of the internal appeal.

102 On 7 March 2014 SAHA sent an email to the second respondent stating that:

102.1 The refusal letter dated 4 November 2013 was only received on 26 February 2014, in an envelope postmarked 13 February 2014;

102.2 Although all correspondence from SAHA had been conducted entirely by email, the refusal letter was not emailed to SAHA;

102.3 The reasonable inference can be drawn that the refusal letter was "backdated" to 4 November 2013, as it was only posted three months after

the date which appears on the letter;

102.4 SAHA would treat the second respondent's decision as a decision in respect of the internal appeal.

I attach a copy of the email of 7 March 2014 marked Annexure "CMK20".

103 The Department failed to respond to SAHA's email of 7 March 2014. SAHA's inference about the backdating of letters remains unchallenged.

### *Motsepe Request*

104 On 22 October 2014 SAHA received a letter from the Department, dated 11 October 2013 and extending the stipulated 30 day period by a further 30 days. Copies of the letter of 22 October 2013 together with the accompanying envelope postmarked 18 October 2013 are attached marked "CMK21(a) and (b)".

105 Upon receipt of the extension letter, and on 22 October 2013, SAHA sent an email to the Department confirming that the time period for the issuing of the response will accordingly be 18 November 2013.

106 SAHA received no response, either to that email or to its request. The *Motsepe request* was therefore deemed refused on the basis of the provisions of section 27 of PAIA. SAHA consequently lodged an internal appeal on 23 January 2014 in terms of section 74 of PAIA.

107 On 26 February 2014 SAHA received a letter from the second respondent dated

6 November 2013. The letter was in an envelope postmarked 13 February 2014. The letter refused access to the requested records on exactly the same grounds as set out in the *September request* refusal. I attach copies of the refusal letter and accompanying envelope as Annexures "CMK22(a) and (b)".

108 This decision was issued subsequent to the lodging of the internal appeal.

109 On 7 March 2014 SAHA sent an email to the second respondent stating that:

109.1 The letter dated 6 November 2013 (the refusal letter) was only received on 26 February 2014, in an envelope postmarked 13 February 2014;

109.2 Although all correspondence from SAHA had been conducted entirely by email, the refusal letter was not emailed to SAHA.

109.3 The reasonable inference can be drawn that the refusal letter was backdated to 6 November 2013, as it was only posted three months after the date which appears on the letter;

109.4 SAHA would treat the decision as a decision in respect of the internal appeal.

I attach hereto a copy of the email of 7 March 2014 marked Annexure "CMK23".

110 The Department failed to respond to SAHA's email of 7 March 2014. SAHA's inference about the backdating of letters remains unchallenged.

*Secret Defence Fund Request*

111 On 14 October 2013 SAHA received a letter from the second respondent. The letter was dated 2 September 2013 and had been posted on 10 October 2013.

112 The letter of 2 September 2013 purported to transfer the request to Armaments Corporation of South Africa ("ARMSCOR") on the basis that "*the record's subject matter is more closely connected with the functions of ARMSCOR*". Copies of the letter of 14 October 2013 together with the accompanying envelope are attached marked "**CMK24(a) and (b)**".

113 On 17 October 2013 SAHA sent an email to the second respondent requesting her to reconsider the purported transfer, on the grounds that the purported transfer does not satisfy the requirements of section 20 of PAIA, specifically in respect of:

113.1 Section 20(1)(a) - it seems unlikely that the TRC records are not in the possession of the Department of Justice, and it seems unlikely that the TRC records are in the possession of ARMSCOR;

113.2 Section 20(1)(b) - the request for the TRC records is not more closely connected with the functions of ARMSCOR than those of the Department of Justice; and

113.3 Section 20(1)(c) - the request for the TRC records is not about commercial information.

A copy of the email of 17 October 2013 is attached marked "**CMK25**".

- 114 On 31 October 2013 SAHA followed up with the second respondent to enquire whether the request was remaining with the Department, in light of the objection of 17 October 2013. A copy of the email of 31 October 2013 is attached marked "CMK26".
- 115 Save for what appears to be an automated response, received on 31 October 2013, which acknowledged receipt of SAHA's email of 31 October 2013, no response was received from the second respondent in relation to SAHA's emails of 17 and 31 October 2013.
- 116 On 5 December 2013 ARMSCOR sent a letter to the second respondent stating that the request is more closely connected to the functions of the Department than ARMSCOR. ARMSCOR accordingly advised that the request must remain with the Department. A copy of that letter is attached marked "CMK27".
- 117 Having not heard from the second respondent, and in light of ARMSCOR's letter of 5 December 2013, SAHA on 15 January 2014 sent an email to the second respondent asking when a response to the request could be expected. A copy of the email of 15 January 2014 is attached marked "CMK28".
- 118 On 15 January 2014 ARMSCOR sent an email to SAHA advising that ARMSCOR had also not received a response from the second respondent to its letter of 5 December 2013. A copy of ARMSCOR's email of 15 January 2014 is attached marked "CMK29".
- 119 As the second respondent had not responded, the *Secret Defense Fund request*

was therefore deemed refused on the basis of the provisions of section 27 of PAIA. SAHA therefore lodged an internal appeal on 4 February 2014 in terms of section 74 of PAIA. A copy of the internal appeal is attached marked "CMK30".

120 On 26 February 2014 SAHA received a letter from the second respondent dated 15 January 2014. The letter was in an envelope postmarked 13 February 2014. The letter refused access to the requested records on the grounds that:

120.1 *"I am unable to provide the documents requested for the reasons set out below in terms of the requested information of the abovementioned individual;*

120.2 *the disclosure of these documents could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety;*

120.3 *the disclosure would constitute an unreasonable disclosure of highly personal information in terms of section 34(1) of PAIA;*

120.4 *the disclosure could reasonably be expected to endanger the lives or physical safety of 'the individual' or individuals implicated;*

120.5 *the disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputation and dignity of individual names may be impaired as contemplated in section 39(i)(b)(dd) (sic);*

120.6 *the documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our*



undertaking;

120.7 *the nature of the department's work and the need to obtain information from various sources to enable the department to carry out its function in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of section 37(1)(b) of PAIA". (own emphasis)*

I attach copies of the refusal letter and accompanying envelope as annexures marked Annexure "**CMK 31(a) and (b)**".

121 This decision was issued subsequent to the lodging of the internal appeal.

122 SAHA received a second letter from the second respondent on 26 February 2014. The letter was dated 4 February 2014, and the envelope was postmarked 14 February 2014.

123 The second letter of 26 February 2014 alleged that the Department had made a request for an extension of time on 19 September 2013 and thereafter refused the request on 15 January 2014. On this basis, the Department suggested that SAHA should withdraw its internal appeal of 4 February 2014. I attach copies of the second letter of 26 February 2014 together with the accompanying envelope marked Annexure "**CMK32(a) and (b)**".

124 On 27 February 2014 SAHA sent an email to the second respondent, in which it stated that:

124.1 The letter dated 15 January 2014 (the refusal letter) was only received on

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25 February 2014 in an envelope post-marked 14 February 2014;

124.2 Although all correspondence from SAHA had been conducted entirely by email the refusal letter was not sent to SAHA by email.

24.3 The reasonable inference can be drawn that the refusal letter was backdated to 15 January 2014, as it was only posted a month after the date which appears on the letter;

124.4 The Department was invited to dispel this inference by explaining the lapse of dates between the date appearing on the letters and the date of posting;

124.5 This explanation was sought having regard to the fact that five other letters had been received by SAHA (in response to other requests) on 27 February 2014. These letters were dated 4 November 2013 and 31 January 2014 but had been sent in envelopes postmarked 13 or 14 February 2014. The five letters in question had also not been sent to SAHA by email.

124.6 SAHA would not be withdrawing its internal appeal and would treat the second respondent's decision as a decision in respect of the internal appeal.

I attach a copy of the email of 27 February 2014 marked Annexure "CMK33".

***Palazollo Request***

125 On 25 March 2014 SAHA received a letter from the Department dated 20 March

2014 and extending the stipulated time period for a response by 30 days. The letter was dated 27 February 2014 and appears to have been posted on 20 March 2014.

126 On 26 March 2014, SAHA sent an email to the Department confirming that if a decision was not received by 8 April 2014, an internal appeal would be lodged based on deemed refusal.

127 SAHA did not receive a response either to its email of 26 March 2014 or to the request. The *Palazzolo request* was therefore deemed refused on the basis of the provisions of section 27 of PAIA. SAHA consequently lodged an internal appeal on 10 April 2014 in terms of section 74 of PAIA. A copy of the internal appeal is attached marked "CMK34".

128 On 9 May 2014 SAHA received a letter from the second respondent dated 11 March 2014. The letter 11 March 2014 had been posted on 24 April 2014 and refused access to the requested information on exactly the same grounds as set out in the *September, Motsepe and Secret Defence Fund requests*. I attach a copy of the letter dated 11 March 2014 together with the accompanying envelope as Annexure "CMK35(a) and (b)".

**Smit Request**

129 On 25 March 2014 SAHA received a letter from the Department extending the stipulated time period for a response by 30 days. The letter was dated 27 February 2014 and appears to have been posted on 20 March 2014.

130 On 26 March 2014, SAHA sent an email to the Department stating that if a decision was not received by 8 April 2014, an internal appeal would be lodged based on deemed refusal.

131 SAHA did not receive a response either to its emailed communication of 26 March 2014 or to the request. The *Smit request* was therefore deemed refused on the basis of the provisions of section 27 of PAIA. SAHA therefore lodged an internal appeal on 10 April 2014 in terms of section 74 of PAIA. A copy of the internal appeal is attached marked "**CMK36**".

132 On 9 May 2014 SAHA received a letter from the second respondent dated 13 March 2014. The letter had been posted on 24 April 2014. It refused access to the requested information on the exactly the same grounds as set out in the *September, Motsepe, Secret Defence Fund and Palazollo requests*. I attach hereto copies of the letter together with the accompanying envelope marked Annexure "**CMK37(a) and(b)**".

#### ***Transferred Palazollo request***

133 SAHA was informed by the NPA in a letter dated 18 March 2014 that SAHA's request to the NPA had been transferred to the Department.

134 On 9 May 2014 SAHA received a letter from the second respondent dated 25 March 2014. The letter had been posted on 30 April 2014, and refused access to the requested information on the same grounds as set out in the response to the *September, Motsepe, Palazzolo and Secret Defence Fund requests*. I attach

copies of the letter of 9 May 2014 together with the accompanying envelope, marked Annexure "CMK38(a) and(b)".

135 On 20 July 2014 SAHA submitted an internal appeal in terms of section 74 of PAIA, appealing the second respondent's decision to deny access to the records. A copy of the internal appeal is attached marked "CMK39".

136 As the first respondent has failed to give notice within the 30 day period provided for under PAIA of the decision on internal appeal, the internal appeal is deemed to have been dismissed in terms of section 77(7) of PAIA.

***Transferred Ekon Request***

137 SAHA was informed by the NPA in a letter dated 18 March 2014 that SAHA's request to the NPA had been transferred to the Department.

138 On 16 May 2014 SAHA received a letter from the second respondent dated 25 March 2014. The letter had been posted on 30 April 2014, and refused access to the requested information on the same grounds as set out in response to the *September, Motsepe, Secret Defence Fund, Palazollo and transferred Palazollo requests*. I attach copies of the letter together with the accompanying envelope marked Annexure "CMK40(a) and(b)".

139 On 17 July 2014 SAHA submitted an internal appeal in terms of section 74 of PAIA, appealing the second respondent's decision to deny access to the records. A copy of the internal appeal is attached marked "CMK41".

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140 As the first respondent has failed to give notice within the 30 day period provided for under PAIA of the decision on internal appeal, the internal appeal is deemed to have been dismissed in terms of section 77(7) of PAIA.

***De Beers Request***

141 On 22 October 2013 SAHA received a letter from the Department dated 11 October 2013 and extending the stipulated 30 day period by a further 30 days (the extension letter). A copy of the extension letter of 22 October 2013 is attached marked "CMK42".

142 Upon receipt of the extension letter, and on 22 October 2014, SAHA sent an email to the Department confirming that a response would accordingly be due by 18 November 2013.

143 SAHA received no response either to the email of 22 October 2013 or its request. The *de Beers request* was therefore deemed refused on the basis of the provisions of section 27 of PAIA. SAHA therefore lodged an internal appeal on 23 January 2014 in terms of section 74 of PAIA. A copy of the internal appeal is attached marked "CMK43".

144 On 13 March 2014 SAHA received a letter from the second respondent dated 8 October 2013. The letter was in an envelope postmarked 25 February 2014. The letter refused access to the requested records on the following grounds:

144.1 *"the documents contain information that was supplied in strict confidence by various third parties;*

44.2 *the information was supplied after their confidentiality was guaranteed, so we are unable to breach our undertaking;*

44.3 *the nature of the Department's work and the need to obtain information from various sources to enable the Department to carry out its functions in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of section 37(1)(b) of PAIA.*

44.4 *The requested records contain trade secrets of third parties, and its disclosure could reasonably be expected to cause harm to the commercial or financial interest of the third parties.*

144.5 *The disclosure would constitute an unreasonable disclosure of highly confidential commercial financial information of third parties in terms of section 36(1)(b) of PAIA".*

I attach copies of the refusal letter and accompanying envelope as Annexure "CMK 44(a) and (b)".

145 This decision was issued subsequent to the lodging of the internal appeal.

146 On 13 March 2014 SAHA sent an email to the second respondent stating that:

146.1 her letter dated 8 October 2013 was only received on 13 March 2014, in an envelope postmarked 25 February 2014;

146.2 although all correspondence from SAHA had been conducted entirely by email the refusal letter was not sent to SAHA by email;

46.3 a reasonable inference can be drawn that the refusal letter was "backdated" to 8 October 2013, as it was only posted five months after the date which appears on the letter;

46.4 SAHA would treat the second respondent's decision as a decision in respect of the internal appeal.

I attach hereto a copy of the email of 13 March 2014 marked Annexure "CMK45".

147 The Department failed to respond to SAHA's email of 13 March 2014. SAHA's inference about the backdating of letters remains unchallenged.

148 On 8 May 2014 SAHA received a faxed letter from the first respondent, dated 5 May 2014 and purporting to be a response to the internal appeal of 23 January 2014. This letter was later posted to SAHA in an envelope post marked 13 May 2014.

149 The letter refused access to the requested records on the following grounds:

149.1 *"Parts of the requested documents contain details of alleged involvement of other individuals in unlawful activities.*

149.2 *Public access to such records will be detrimental to those individual's physical safety, including members of their families;*

149.3 *The NPA has not ruled out the possibility of prosecuting apartheid era offenders and in their investigations they will be relying on the requested records and such further information which may be obtained from*



*individuals on the basis of confidentiality;*

149.4 *Third party notification process was followed in refusing access;*

149.5 *Requested documents contain details of various categories of information, i.e. highly personal information about the third parties as well as information relating to unlawful activities perpetrated by other individuals;*

149.6 *The information relating to the other individuals implicated by various third parties is also not in the public domain. Such information has also not been tested and/or verified and its disclosure could be defamatory of them and infringe their dignity which is protectable under the Constitution;*

149.7 *Disclosure of the requested information would constitute unreasonable disclosure of information in terms of section 34 of PAIA;*

149.8 *The disclosure would be highly detrimental to the other individuals involved and could be expected to endanger their lives or physical safety and thirdly, "the document in question was furnished to the TRC" on a confidential basis and any disclosure thereof would be in breach of the conditions of confidentiality. As such, the request is refused in terms of section 37(1)(a), 38(1) and 39(1)(b)(iii)(bd)".*

Copies of the letter of 8 May 2014 together with the accompanying envelope are attached marked "**CMK46(a) and (b)**".

150 I deal below with the deficiencies of these refusals.

## THE RESPONDENTS' REFUSALS OF THE REQUESTS ARE UNJUSTIFIED

151 As appears from what I have set out above, the respondents have asserted pro forma, generic and often identical grounds of refusal in response to PAIA requests which are very different from each other. Many of the grounds of refusal are self-evidently inappropriate, as I demonstrate below. These refusal decisions show that decision-maker cannot have considered the matter properly, and cannot have had regard to relevant considerations, namely the individual facts and nature of each of the applications, and whether the exemptions provided in PAIA are actually applicable.

152 The refusals are all blanket refusals, applying to every part of every document covered by every request. I invite the respondents to state how many documents are governed by each of the requests. I submit that it is inconceivable that every part of every document may not be disclosed. It is clear the respondents have not properly considered every part of every record covered by every one of the requests.

153 The respondents are required by PAIA to provide adequate reasons for the refusal of any request. I submit that a simple repetition of the statutory grounds of refusal, without applying those to the facts of the case, does not amount to the giving of reasons at all, let alone adequate reasons. The failure to give adequate reasons, where this is a legal obligation, gives rise to the inference that there are no justifiable or adequate reasons for the refusals.

154 In essence, the requests have been refused on the grounds that:



- 154.1 The disclosure of these records could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety of 'the individual' or 'individuals' implicated;
- 54.2 The disclosure would constitute an unreasonable disclosure of 'highly' personal information in terms of section 34(1) of PAIA;
- 54.3 The disclosure could reasonably be expected to endanger the lives or physical safety of 'the individual' or 'individuals' implicated;
- 154.4 The disclosure could reasonably be expected to facilitate a contravention of the law to the extent that 'the reputation and dignity' of individuals may be impaired as contemplated in 'section 39(i)(b)(dd) (sic)';
- 154.5 The documents contain information that was supplied in 'strict' confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so the Department is unable to breach its undertakings;
- 154.6 The nature of the Department's work and the need to obtain information from various sources may be jeopardised by the disclosure of information supplied in confidence. The requests were therefore refused in terms of section 37(1)(b) of PAIA.
- 154.7 The requested records contain trade secrets of third parties, and disclosure could reasonably be expected to cause harm to the commercial or financial interest of third parties.
- 154.8 The disclosure would constitute an unreasonable disclosure of highly

confidential commercial financial information of third parties in terms of section 36(1)(b) of PAIA.

155 I am advised and submit that these responses are flawed for the reasons which I have given above, and for the further reasons which follow. In light of the general approach adopted by the respondents, I deal with these reasons in a consolidated manner to avoid prolixity. My analysis below, with the necessary adjustments, accordingly applies to all of the refusals.

***Failure to apply section 28 (severability)***

156 At no stage in any of the decisions does there appear to have been any attempt to consider whether any part of any of the requested records can be released. This is required by section 28 of PAIA. In summary, section 28 of PAIA provides that information must be disclosed where information that may or must be refused can reasonably be severed from any part of a record that does not contain information that may or must be refused.

157 The failure to consider whether any part of the requested records may be released with the appropriate severance of those portions of the records which may validly be withheld, constitutes a failure to comply with the obligations imposed on the Department by PAIA.

***Release is not detrimental to individual's lives***

158 The second respondent has stated that disclosure of the documents:

*"could be highly detrimental to the individuals involved and could reasonably be expected to endanger their lives or physical safety."*

- 158.1 While no reference is made to PAIA in making this assertion, as is required by section 25 of PAIA, I assume that this is a reference to section 38(a) of PAIA as a ground for refusal.
- 158.2 This ground cannot apply to the *September, Motsepe* and *Smit requests*, as these individuals are deceased. The lives and physical safety of the dead cannot be endangered. If the alleged danger relates to these individuals' relatives or other persons, no basis has been laid for such an apprehension, and no explanation has been given for it.
- 158.3 This ground also cannot apply to the records relevant to Mr Ekon, whose alleged illegal activities occurred in the thirty years prior to 1997 and have been regarded as "open secrets" since at least 1997.
- 158.4 The publication of such "open secrets" has not resulted in any harm to Mr Ekon. In order for this reason to apply, some facts are required to show that Mr Ekon's life has been placed in danger by virtue of people learning about his alleged activities through the material available on the internet and other forms of media. No such facts have been provided.
- 158.5 Mr Palazzolo's alleged illegal activities through the use of South African political connections appear to have started in the mid-1980s and have been "open secrets" since at least 1997.
- 158.6 This has not resulted in any harm to Mr Palazzolo. I note further that Mr Palazzolo has been in prison in Italy since February 2014, where he presumably enjoys a degree of protection.

58.7 In order for this ground to apply, some facts are required to show that Mr Palazollo's life has been placed in danger through people learning of his alleged activities through the information already publically available on the internet and through other media. Again, no such facts have been provided.

58.8 This applies equally to the de Beers group and its owners. There have been reports in the media which alleged that during 1992 and 1993 de Beers exported large stockpiles of diamonds abroad in possible contravention of exchange control and tax laws. The minutes of the SCOPA meetings attached above, as "CMK12" shows that these are "open secrets".

158.9 It appears that this ground for refusal has been determined at a global level, without considering the facts and circumstances of each requested document and without considering whether part of such documentation could be made available, as required by section 28 of PAIA.

158.10 The Department is obliged and has failed to undertake a considered approach, on the basis of a case-by-case and record-by-record analysis, before placing reliance on this ground as a reason for refusal to release the requested records.

***Most of the requested information is not personal information***

159 Ms September and the Smits have been dead for more than 20 years. Section 1 of PAIA provides that "personal information" excludes information about an

individual who has been dead for more than 20 years. Accordingly, any information about Ms September and the Smits cannot be refused to be released on the basis of section 34 of PAIA.

***Third party procedure was not followed***

160 The Department has apparently not considered as a relevant factor section 34(2)(a) of PAIA, which states that a record containing personal information about a third party may not be refused in so far as it consists of information about an individual who has consented in writing in terms of section 48 of PAIA (or otherwise) to its disclosure.

160.1 Section 47(1) of PAIA states that an information officer who is considering a record under section 34(1) of PAIA must take all reasonable steps to inform a third party to whom the record relates of the PAIA request. There is no evidence that this has been done, other than a reference to this in the letter of 8 May 2014 in the *de Beers request*.

160.2 If the appropriate notices had been sent to third parties, there is a reasonable likelihood that some, or all, of the requested documentation would have been released by consent under section 34(2)(a) of PAIA. Not following this process is a clear and obvious breach of the requirements of PAIA. This is a further ground on which the respondents' refusal to provide access to the requested records is not justified.

***Some of the requested information belongs to a class of information which is to be made public***

161 The second respondent has apparently not considered as a relevant factor section 34(2)(b) of PAIA, which, in summary states that a record containing personal information may not be refused if it was given to a public body by the individual to whom it relates, and the individual concerned was informed, before the information was given, that it belongs to a class of information that would or might be made available to the public.

161.1 Certain of the information requested was given to the TRC, a public body.

161.2 It does not appear that the respondents considered whether the evidence provided to the TRC is to be made available on this basis.

***Some of the requested information is already publicly available***

162 The respondents have provided no indication that they have considered as a relevant factor section 34(2)(c) of PAIA, which states that a record containing personal information about a third party may not be refused insofar as it consists of information already publicly available.

162.1 Through the use of *inter alia* the internet, SAHA has conducted an exercise to determine whether any of the information, likely to be contained in the requested records, is already publicly available. For example, I attach a copy of an article relating to the *RICA requests* as "CMK47." This, I submit, shows that some of the requested records are publicly available.

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32.2 I invite the respondents to demonstrate what steps, if any, they have taken to establish whether any of the information in any of the requested records is already publicly available.

32.3 The respondents' blanket refusal is again indicative of a failure to undertake a considered analysis of the requested records when making a decision about whether or not to release the requested records.

***Some of the requested information relates to an official of a public body***

163 It appears that the respondents have also not considered section 34(2)(f) of PAIA which, in summary, states that a record containing personal information about a third party may not be refused insofar as it consists of information about an individual who is, or was, an official of a public body, and which relates to his or her position or functions in that capacity.

163.1 This is of particular relevance to the documents relating to the *Secret Defence Fund request*. The individuals who carried out the respective operations were officials of a public body and the information sought relates to their functions in those capacities.

163.2 It is probable that the records relevant to the remaining eight requests also contain information relating to the functions of officials of public bodies.

163.3 Given the nature and origin of the requested records, it seems unlikely that there could not have been a single record or part of a record to which this subsection would be applicable. The respondents do not, however, indicate that this aspect was ever considered. They do not say that they

have not found a single document, or any part of a record, to which this applies.

**Release of the requested information will not result in contravention of the law**

164 The respondents' reasons for refusal include that disclosure of the records could reasonably be expected to facilitate the commission of a contravention of the law because it will affect reputations and dignity under "section 39(1)(b)(dd)" of PAIA.

164.1 No such ground of refusal exists in PAIA.

164.2 It is possible that the respondents intended to refer to section 39(1)(b)(iii)(dd) of PAIA, which refers to disclosure of a record, in circumstances where such disclosure could reasonably be expected to facilitate a contravention of the law (including, but not limited to, escape from lawful detention).

164.3 I submit that this section is not intended to authorise a refusal to release information on the basis of a potential loss of reputation or dignity.

164.4 The respondents have, in each of the above decisions, simply made a bald assertion that this section is applicable, reciting the provisions of the section, but failing to provide reasons for their reliance on this section. They have not indicated which law they expect may be contravened, who they expect will contravene it, and why they reasonably expect this.

164.5 To the extent that the provisions of section 39(1)(b)(iii)(dd) of PAIA may find application in respect of some, or some part of, the requested records, I submit that a proper application of section 28 of PAIA would mean that

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the personal information of the person affected (whether as an informant or otherwise) could be severed from the record(s) and that the record(s) could be provided in a redacted form.

***There is no need for the ongoing supply of information***

165 Section 37(1)(b) of PAIA provides that information can be refused if the record consists of information that was supplied in confidence by a third party and the disclosure could reasonably be expected to prejudice the future supply of similar information, or information from the same source and it is in the public interest that similar information, or information from the same source, should continue to be supplied.

165.1 The records requested in the *September, Motsepe and Secret Defence Fund requests* were supplied to the TRC. The TRC has completed its mandate and has ceased to exist. As it no longer exists the TRC could not require similar information or information from the same source(s).

165.2 The respondents have, in each of the above decisions, simply made a bald assertion that this section is applicable, reciting the provisions of the section, but failing to provide reasons for their reliance on this section. They have not indicated what other public body may reasonably require further information, who may supply it, and why disclosure may reasonably be expected to prejudice the supply of further information.

165.3 The refusals do not identify what information was supplied in confidence, or why that should lead to the results contemplated in section 37(1)(b)

which provides for a discretion to refuse access to a record where that record consists of information supplied in confidence and it is reasonable to expect that disclosure would prejudice future supply of similar information or information from the same source, in circumstances where it is in the public interest that such similar information or information from the same source continue to be supplied. It is hard to credit that this would apply to information about Mr Palazzolo and Mr Ekon's alleged illegal activities which date back to more than 30 years ago. The same applies to information relating to Ms September, Mr Motsepe and the Smits.

165.4 In relation to the *RICA request*, the source of the requested records is in some instances the Department itself, and in others it is the courts and law enforcement agencies. The release of the requested records cannot reasonably be expected to stop these public bodies from performing their statutory duties in continuing to collect relevant information.

165.5 The Department, courts and law enforcement agencies are in any event not "third parties" as defined in section 1 of PAIA.

***The information sought was not supplied in confidence***

166 Although the section is not cited by the respondents in their refusal letters, it appears that in refusing to release information based on grounds of confidentiality and breach of an undertaking, reliance was placed by the respondents on section 37(1)(a) of PAIA. This section provides that a PAIA request must be refused if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

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36.1 However, as submitted in relation to other grounds of refusal, this may not be refused where the information is publicly available, which happens to be the case in relation to the records requested in *inter alia* the *De Beers, Dulcie, Motsepe, Palazollo, transferred Ekon and Smit requests*.

36.2 In addition, there is no evidence of any undertakings that would give rise to legal action against the respondents for a breach of duty of confidence. The respondents' refusal letters merely, in scant manner, allege that the requested records were supplied in confidence, without providing any reason or justification for this assertion. I submit that not only is there no evidence of any legal action relating to breach of confidence by the respondents, but further there is in any event no basis for such action or claims.

166.3 This ground can also not apply to the TRC records, having regard to the fact that:

166.3.1 in 2006, SAHA requested records relating to confidentiality agreements which were in the respondent's possession;

166.3.2 in particular, the request asked for "all records relating the confidentiality agreements, including such agreements, entered into between the Truth and Reconciliation Commission (TRC) and/or the Department of Justice and individuals who made submissions or testified at hearings of the TRC."

166.3.3 in refusing access to the requested records, the second respondent indicated that there are reasonable grounds to

believe that these records do not exist and accordingly, in compliance with section 23 of PAIA, provided an affidavit to this effect.

Copies of the refusal letter and accompanying affidavit are attached as annexure "CMK48".

66.4 This assertion applies equally to the *RICA request*. The source of the requested records is in some instances the Department itself and in others the source is the courts and law enforcement agencies. The Department would and could not have entered into a confidential undertaking with themselves.

166.5 Furthermore, courts and law enforcement agencies collect and provide the required information in line with their statutory mandates. They accordingly would not enter into confidentiality undertakings with the Department when they are in fact performing a statutory duty.

166.6 To further indicate that these were mere blanket refusals, the first respondent in his letter of 5 May 2014 and in dealing with the *de Beers request* states that "*the document in question was furnished to the TRC on a confidential basis*". SAHA's request makes no mention of TRC records but to the Standing Committee on Public Accounts. In fact, the TRC has no relevance to this request.

***No harm will be caused to de Beers commercial interests***

167 Like the other arguments raised by the respondents in their letters refusing

process, this reason is proffered in general terms, with the provisions of the section being recited but without giving any reasons for reliance on section 36, or any indication:

167.1 why the provisions of section 28 could not find application;

167.2 that all the requested records and/or parts of those records relate to de Beers' trade secrets and/or financial or commercial information, other than trade secrets the disclosure of which would be likely to cause harm to the financial or commercial interests of de Beers;

167.3 that consideration has been given to whether any of the information is already publicly available; and

167.4 of evidence that third party process had been followed.

***Further evidence of lack of proper consideration of the requests***

168 The refusal of the *Secret Defence Fund request* demonstrates that the respondents did not properly consider the request at all. The first respondent simply reproduced what appears to be a template response which had been used in the *September, Motsepe, Palazzolo, Smit, transferred Palazzolo and transferred Ekon requests*. The irrelevance of the reasons provided in this template response to the facts of the specific request, points to a complete failure by the second respondent to apply her mind to the request. Thus, the *Secret Defence Fund request* does not relate to an individual, yet the second respondent said:

*"I am unable to provide the documents requested for the reasons set out*

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below in terms of the requested information of the abovementioned individual... the disclosure of these documents could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives (sic) or physical safety" (own emphasis).

169 This applies equally to the refusal in the *de Beers request*, where reference is made to TRC records which have no relevance to the *de Beers request*.

170 This demonstrates that the respondents did not consider the merits and relevant circumstances of each of the requests: they simply resorted to a knee-jerk and uniform refusal.

**South Africans have a right to access state-held information**

171 The refusal by the Department to provide SAHA with access to the requested records, and the manner of these refusals, demonstrates that the Department has only paid lip service to the right of all South Africans to access any information held by the State, as contained in section 32 of the Constitution and PAIA. This will be addressed in argument at the hearing of this matter.

172 The decisions also did not consider the purpose and objectives of the Promotion of National Unity and Reconciliation Act 34 of 1995 ("TRC Act") which provided for the establishment of the TRC, for the purpose of, among other things, uncovering and making available to the South African people as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the apartheid era.

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**THE PUBLIC INTEREST**

73 In any event, even if there was potentially a valid ground for refusing access to the requested records, I am advised and submit that the public interest in the disclosure of the records is so significant that it would in any event outweigh any harm contemplated in any such ground.

74 Section 46 of PAIA provides:

*"Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34(1), 36(1), 37(1)(a) or (b), 38(a) or (b), 39(1)(a) or (b), 40, 41(1)(a) or (b), 42(1) or (3), 43(1) or (2), 44(1) or (2) or 45, if-*

*(a) the disclosure of the record would reveal evidence of-*

- (i) a substantial contravention of, or failure to comply with, the law; or*
- (ii) an imminent and serious public safety or environmental risk; and*

*(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question."*

175 This general override provision is mandatory and does not vest any discretion in the information officer.

176 In other words, even if any one of the grounds of refusal were otherwise valid, the second respondent was nevertheless obliged to make the records available in the public interest. The respondents do not show that they considered this issue adequately or at all.

***The public interest in disclosure***

177 The contents of the records are of profound public interest, as they are of great



...importance to public understanding of past and contemporary struggles for justice in South Africa.

178 The TRC has been recognised globally as a shining example of using restorative justice to deal with the atrocities of a repressive and authoritarian regime. But the work of the TRC was, as it itself acknowledged, only part of a broader, long term process. Part of this ongoing reconciliation process, after the conclusion of the TRC itself, would necessarily include the archiving of the enormous body of records generated by the TRC, and making these records publicly available.

179 This, I submit, would be in line with the TRC's recommendations, at Volume 5, Chapter 8, subsection 2, paragraph 14, wherein it is recorded that:

179.1 *"The records of the commission's proceedings, this report and the recorded audio and video tapes of the public hearings form a rich contribution to the public memory, and should be made available in the widest possible way..."*

180 Volume 5, Chapter 8, at subsection 31 paragraph 103 also states that:

180.1 *"The Commission thus recommends that: ... all commission records be accessible to the public, unless compelling reasons exist for denying such access..."*

181 These publications underscore, in numerous case studies, the inability and often unwillingness of the various government departments to fulfil their obligations to archive.

182. The right of access to information is embodied in PAIA. These publications show that many government departments have failed to fulfil their obligations under PAIA. Many of them do not have either a dedicated PAIA unit or budget for PAIA compliance. The first respondent is the political head of the Department that is the custodian of the PAIA process. If any Minister and Department should lead and set an example of compliance with PAIA, it is they who should do so.

183. A nation that has understanding of its past is better placed to avoid repeating the mistakes of the past. In this context, it is of paramount importance for the people of South Africa to have access to TRC and other relevant records that form the basis of this application. The TRC process was central to the early successes of our democracy. South Africans are entitled to know the full extent of the atrocities committed under apartheid in order that they may move forward and ensure that such atrocities are never repeated within our borders beyond. That right is of course not limited to the information uncovered by the TRC.

184. The respondents have all but conceded that the records concerned fall within the purview of section 46:

184.1 In the refusals for access, the second respondent states that "*the disclosure could reasonably be expected to facilitate the contravention of the law . . .*" It seems that what is actually meant is that the information concerned could reasonably be expected to reveal a contravention of the law.

184.2 The first respondent's refusal letter, provided in relation to the *de Beers request* states that:

*Parts of these records contain details of alleged involvement of other individuals in unlawful activities...*

*The requested documents contain details of various categories of information, i.e. highly personal information about the third parties as well as information relating to unlawful activities perpetrated by other individuals.* (own emphasis)

34.3 I submit that the public interest in the disclosure of the records clearly outweighs any harm contemplated in any of the grounds of refusal relied on by the respondents. Therefore, I am advised and submit that section 46 of PAIA is applicable and accordingly access must be granted to the requested records.

**SECTION 80 OF PAIA**

185 Section 80(1) of PAIA makes provision for what our courts have termed “a judicial peek”. It provides:

*“Despite this Act and any other law, any court hearing an application, or an appeal against a decision on that application, may examine any record of a public or private body to which this Act applies, and no such record may be withheld from the court on any grounds.”*

186 Should this Court wish to examine the records concerned with a view to determining whether there is any basis for refusing access to the records concerned, it is empowered to do *mero motu*.

187 I am advised and submit that a “judicial peek” may be appropriate if there are any material disputes of fact as to what the records contain. The manner in which

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the respondents have given "reasons" has made it impossible for SAHA to engage further with the facts in these founding papers, because the respondents have simply not put up any facts which can be addressed.

#### CONDONATION

188 SAHA seeks condonation in relation to the *RICA, Secret Defence Fund, September, Motsepe, de Beers, Palazollo and Smit requests*.

189 This application is one month late in relation to *de Beers, Palazollo and Smit requests*. The *RICA request* is six months late, whilst the *Secret Defence Fund, Motsepe and September requests* are approximately 14 weeks late.

190 In relation to the *RICA request*, in January 2014, the Department undertook to respond to the internal appeal. Having received such undertaking, SAHA sent an email to the Department to enquire when it could anticipate receipt of the response. It was accordingly reasonable for SAHA to rely on the Department's undertaking before these proceedings were launched.

191 Having regard to the facts of this matter, I respectfully submit that such delay is not excessive and a reasonable explanation has been proffered below.

192 The *RICA, Secret Defence Fund, de Beers, September and Motsepe requests* referred to above were lodged in August and September 2013 respectively. Four months later and by December 2013, SAHA had still not received a decision in respect of four of these requests, whilst an internal appeal remained pending in

the fifth matter. In the circumstances and from December 2013 to April 2014 SAHA engaged law firms in an attempt to secure *pro bono* legal representation. In particular:

92.1 SAHA engaged Cliffe Dekker Hofmeyr ("CDH") in December 2013.

92.2 SAHA's offices closed from 13 December 2013 until 6 January 2014.

92.3 The discussions with CDH resumed on 7 February 2014. Whilst CDH expressed an interest in assisting with these matters, the head of its Pro Bono and Human Rights Department was out of the office on sick leave and unable to meet.

192.4 A further meeting was then held with CDH on 20 February 2014. At this meeting, CDH raised a concern about a potential conflict of interest.

192.5 In light of CDH's concern, SAHA on 6 March 2014 decided to seek assistance be secured from a non-profit legal organization which would be less likely to have a conflict of interests, such as Legal Resources Centre (LRC) or Lawyers for Human Rights (LHR).

192.6 On 12 March 2014 SAHA contacted the LRC to enquire if the LRC would be interested and available to assist SAHA. On 25 March 2014 SAHA was advised that the delays on the LRC's part were occasioned by its involvement in the Marikana Commission. SAHA was also advised that the LRC Executive Committee would be meeting in early April and would thereafter be able to indicate whether they could assist SAHA.

192.7 SAHA then sent a follow up email to the LRC on 7 April 2014. In response

thereto, the LRC forwarded an email explaining that the LRC Director, Janet Love, had been out of the country, hence the delay in response.

- 93 On 11 April 2014 SAHA contacted LHR to find out whether it would be willing to represent SAHA on these matters. On 13 April 2014 I met with the LHR representatives to discuss this further. LHR then indicated its willingness to represent SAHA. I therefore notified the LRC that we would be using LHR and would not need their assistance.
- 194 On 15 April 2014 SAHA sent LHR voluminous documentation relating to the ongoing requests.
- 195 Kathryn Johnson, who was the person responsible for making and managing PAIA requests on SAHA's behalf, was out of office from 17 April 2014 to 1 May 2014. Upon her return to the office and on 6 May 2014, a teleconference was held between SAHA and the LHR. Further teleconferences were held between SAHA and the LHR on 9 and 20 May 2014, followed by a consultation on 3 June 2014.
- 196 David Cote, who is entrusted with this matter on LHR's part, was then out of the country from 6 to 24 June 2014.
- 197 In the meantime, counsel was appointed and furnished with voluminous documentation on 26 June 2014. This documentation runs through five lever arch files.

198 Kathryn Johnson was out of office from 27 June to 1 July and also from 4 to 7 July 2014.

199 Counsel was unavailable from 30 June 2014 to 7 July 2014, due to prior commitments.

200 Upon counsel's return to the office, consultations were then held on 13 August 2014, followed by the drafting of papers. The finalisation of the draft papers was an involved process which required numerous consultation between the parties together with a consideration of voluminous documents.

201 By the time this affidavit was finalised, the *de Beers*, *Palazollo* and *Smit* matters were one month late. These applications could not be launched separately from the other requests, as it was more convenient to launch these 9 applications together as one application. I refer to my assertions above relating to the convenience of launching these applications together and ask that such assertions be incorporated as if specifically pleaded herein.

202 The delay, as appears from the above was occasioned by factors beyond SAHA's control.

203 I submit that the respondents have not been prejudiced by the delay in the institution of these proceedings. Their own tardy responses to the requests and to correspondence (when they have responded at all) do not suggest that they have regarded the matter as pressing. The major cause of the failure to resolve



is matter earlier is the respondents' failure to comply with clearly defined statutory time periods.

204 Should the delay not be condoned, SAHA will be prejudiced:

204.1 It will be unable to assert and enforce its constitutional right; and

204.2 The important records which SAHA seeks will remain unavailable to the public, and will not form part of the public record.

205 I respectfully submit that SAHA has good prospects of success having regard to what is stated above.

206 In the circumstances, I respectfully submit that a case has been made out for condoning the delay in instituting these proceedings.

**CONCLUSION**

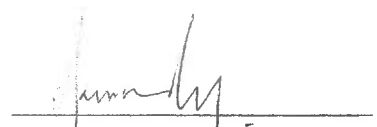
207 For all the reasons set out in this affidavit, I submit that:

207.1 The respondents have failed to give effect to their constitutional obligations and their obligations under PAIA; and


207.2 There is no justifiable basis for the refusals of access to the information requested.

208 In the circumstances, I ask that this Honourable Court grant an order in terms of the notice of motion.

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CATHERINE MOIRA KENNEDY

I hereby certify that the deponent stated that she knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at **JOHANNESBURG** on this the \_\_\_ day of NOVEMBER 2014, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

  
COMMISSIONER OF OATHS  
Full names: DUNISANI MATHIBA  
Address: 01 Hospital Street  
Capacity: Sny Registrar Clerk

Dunisani Mathiba  
KOMMISSARIS VAN EDE EX OFFICIO  
COMMISSIONER OF OATHS  
AMP/RANK Sny Registrar Clerk  
CONSTITUTIONAL COURT/KONSTITUSIONELE HOF S.A.  
1 HOSPITAL STREET  
CONSTITUTIONAL HILL  
BRAAMFONTEIN 2017

2014-12-08  
BRAAMFONTEIN 2017  
SECTION OF THE CONSTITUTIONAL COURT

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**RESOLUTION BY THE TRUSTEES OF THE SOUTH AFRICAN HISTORY ARCHIVES TRUST**  
*Pursuant to clause 9.6 of the Deed of Trust*

It is resolved that:

1. The South African History Archive Trust ("SAHA") will launch applications in its own name in the High Court of South Africa, Johannesburg, challenging various compliance issues under the Promotion of Access to Information Act, 2000 ("PAIA") including relating to certain provisions around application of exemptions, providing adequate reasons, searches for records and obligations to respond to PAIA requests submitted in consultation with researchers, including Mr Hennie van Vuuren and Professor Jane Duncan.
2. That Lawyers for Human Rights Pretoria Law Clinic be appointed to act as attorneys of record and represent SAHA in the proceedings to be instituted against respondents to be confirmed and that the said attorneys do all things necessary in the application on behalf of SAHA.
3. That Catherine Moira Kennedy be authorised to depose to such affidavits in the said proceedings on behalf of SAHA, as may be required and further Catherine Moira Kennedy be authorised to give instructions from time to time as she may deem necessary to the said attorneys in relation to the proceedings.

Signed on this the 27th day of September 2014.

TRUSTEE	SIGNATURE	DATE
VERNE HARRIS ID: 5804215085085		30/9/2014
SELLO HATANG ID: 7504285846089		27/09/2014
HORST KLEINSCHMIDT ID: 4510175466089		28.11.2014
ANTHONY MANION ID: 7604135132084		27/09/2014
MN NIEFTAGODIEN ID: 6410225158083		27/09/14

Box 31719, Braamfontein 2017, Johannesburg - Tel: +27 (0) 11 718 2560 - Fax: +27 (0) 865 001 600 - Email: info@saha.org.za - www.saha.org.za

Trustees: D Ntsebeza (Chairperson), L Callinicos, V Harris, S Hatang, H Kleinschmidt, MN Niefertagodien, P Pigou, M Powell, C Rassool, R Saleh, A Manion (ex officio)  
Non-Profit Trust No. 2522/93 - 031-807-NPO



TRUSTEE	SIGNATURE	DATE
DUMISA NTSEBEZA ID: 4910315121083		01/10/2014
PIERS PIGOU ID: 6705305221184		27 Sept 2014
MARLENE POWELL ID: 5907270095087		27 Sep 2014
CIRAJ RASSOOL ID: 6112275648084		28 SEPT 2014
RAZIA SALEH ID: 6208080199089		27 Sep 2014
SPIRIDOULA WEBSTER (also known as Luli Callinicos) ID: 3611100106088		2 December 2014

Box 31719, Braamfontein 2017, Johannesburg - Tel: +27 (0) 11 718 2560 - Fax: +27 (0) 865 001 600 - Email: [info@saha.org.za](mailto:info@saha.org.za) - [www.saha.org.za](http://www.saha.org.za)

Trustees: D Ntsebeza (Chairperson), L Callinicos, V Harris, S Hatang, H Kleinschmidt, MN Nieftagodien, P Pigou, M Powell, C Rassool, R Saleh, A Manson (ex officio)

Non-Profit Trust No. 2522/93 - 031-807-NPO

"CMK 1(b)" 81

SOUTH AFRICAN  
HISTORY ARCHIVE

"SAHA"

DEED OF TRUST

Amended by resolution 28 October 2002  
Further amended by resolution 09 April 2011  
Further amended by resolution 24 November 2012

SAHA Deed of Trust – as amended by resolution 24 November 2012 – Page 1

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## 1. ORIGINAL MOTIVATION

- 1.1 There is a need to collect, preserve and catalogue materials of historical and contemporary political, social, economic and culture importance.
- 1.2 There is a need to promote awareness of the importance of preserving records of contemporary events of historical significance.
- 1.3 There is a need to make the above-mentioned materials accessible to the public, to historians and to researchers.
- 1.4 There is a need to promote public awareness of recent historical events.

## 2. ESTABLISHMENT OF A TRUST

- 2.1 A trust is hereby constituted to be known as the South African History Archive ("SAHA") Trust for the purpose herein set out and otherwise on the terms and conditions of this Trust Deed.
- 2.2 SAHA is a body corporate and has an identity and existence distinct from its members and office bearers.
- 2.3 SAHA continues to exist despite changes in the composition of its trustees and director.
- 2.4 Trustees or directors have no rights in the property or other assets of the organisation solely by virtue of holding those positions.

## 3. OBJECTIVES OF THE TRUST

- 3.1 The main objective of the Trust is to document, support and promote greater awareness of past and contemporary struggles for justice through archival practices and outreach, and the utilisation of access to information laws.
- 3.2 It is not the objective of the Trust to make a profit or gain and the income and assets of the Trust may not be distributed to any person save for the payment of reasonable remuneration for services actually rendered in furtherance of the objects of the Trust.

## 4. ANCILLARY OBJECTIVES OF THE TRUST

- 4.1. In furtherance of its primary objectives the Trust shall:
  - 4.1.1 Recapture lost and neglected histories;
  - 4.1.2 Record aspects of South African democracy in the making;
  - 4.1.3 Bring history out of the archives and into schools, universities and communities

SAHA Deed of Trust – as amended by resolution 24 November 2012 – Page 3

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In new and innovative ways;

- 4.1.4 Extend the boundaries of freedom of information in South Africa;
- 4.1.5 Raise awareness, both nationally and internationally, of the role of archives and documentation in promoting and defending human rights.

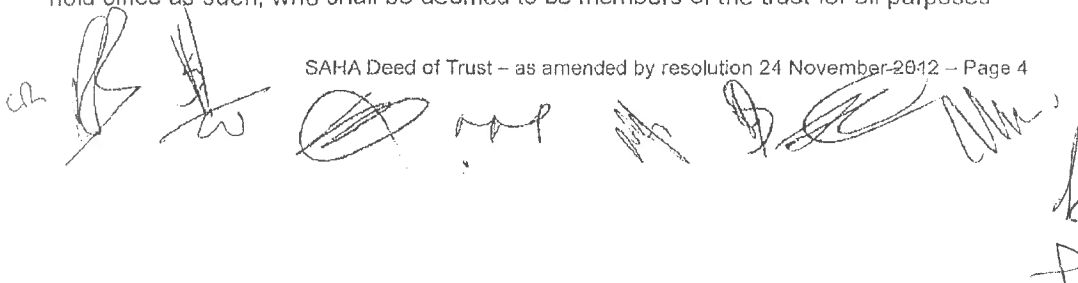
## 5. GALA

- 5.1 It is recorded that in 1996 SAHA established the Gay and Lesbian Archives (GALA) as a project of SAHA.
- 5.2 In 2007, GALA formed a separate and independent trust. However, the work of SAHA and GALA remains closely aligned and the organisations continue to work in close collaboration.

## 6. INTERPRETATION

In this Deed, unless the context otherwise requires, words importing the singular shall include the plural. The following expressions used in this Deed shall have the meaning hereinafter assigned to them unless the context shall clearly otherwise require:

- 6.1 "Trust Fund" : shall mean the assets or funds held and administered by the Trustees from time to time, that is to say, the Trust capital together with donations and any additions or accruals thereto, including bequests from time to time from any sources and in any form.
- 6.2 "Trust Capital" : shall mean the capital of the Trust consisting of the Trust Fund and including that part of the net income which is not distributed and is accumulated as part of the capital after deducting:
  - 6.2.1 the aggregate of the liabilities of the Trust, both actual and contingent, and
  - 6.2.2 the sum of all provisions for depreciation, renewals or diminution in value of assets or for liabilities (actual or contingent) the amount of which cannot be determined with substantial accuracy.
- 6.3 "Fund Raising Act" : shall mean the Fund Raising Act 107 of 1978 as amended from time to time.
- 6.4 "Nonprofit Organisations Act" : shall mean the Nonprofit Organisations Act 71 of 1997 as amended from time to time.
- 6.5 "Income Tax Act" : shall mean the Income Tax Act 58 of 1962 as amended from time to time.
- 6.6 "Trust" : shall mean the Trust created under this Deed of Trust.
- 6.7 "Trustees" : shall mean the signatories to this Deed as Trustees and any other persons appointed to that office in terms of this Trust Deed from time to time for so long as they hold office as such, who shall be deemed to be members of the trust for all purposes





under the Fund Raising Act and the Nonprofit Organisations Act.

## 7. THE AFFAIRS OF THE BUSINESS

7.1 The affairs and business of the Trust shall be conducted from Johannesburg.

## 8. TRUSTEES PROVISIONS

8.1 The parties listed in Annexure A of this Trust Deed were the first Trustees of the Trust;

8.2 The parties listed in Annexure B of this Trust Deed are the Trustees of the Trust at the date of amendment of this Trust Deed.

8.3 Upon the death, permanent incapacity, removal or resignation of anyone of the Trustees, the Trustees then remaining shall, as soon as possible, appoint another Trustee to the office of Trustee, which person shall be decided upon by the remaining Trustees as they in their sole and absolute discretion may determine, it being the intention of the parties hereto that there shall always be a minimum of 5 Trustees and not more than 15 Trustees of the Trust in office. Between 2 and 4 Trustees shall serve as members of the Management Committee, as nominated by the Trustees on an annual basis.

8.4 Where the death, permanent incapacity, removal or resignation of one of the Trustees results in the number of remaining Trustees being less than 5, those remaining Trustees may appoint a further Trustee in the manner outlined in clause 8.3 but may take no other action in relation to the operation of the Trust until such appointment has been made, restoring the number of Trustees to at least 5;

8.5 The Trustees shall at any time from time to time be entitled to accept the resignation of any other Trustee;

8.6 The Trustees shall at any time from time to time have unlimited power of co-option of further Trustees, subject to the maximum referred to in 8.3 above, which shall be exercised on such terms and conditions and for such period as they in their sole discretion may determine;

8.7 Any appointment, removal or resignation, delegation of powers or co-operation shall not be valid unless recorded in writing;

8.8 A Trustee shall vacate his/her office if:

8.8.1 he/she commits any Act of insolvency as defined in the insolvency law from time to time in force;

8.8.2 he/she becomes of unsound mind or is declared incapable of managing his/her own affairs;

8.8.3 he/she resigns his/her office by written notice to the other Trustees;

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- 3.8.4 he/she fails to attend three (3) consecutive meetings of the Trustees without the leave of the remaining Trustees;
- 3.8.4 he/she is removed from office by the decision of the majority of the remaining Trustees after he/she has been given written notice of the intention of the remaining Trustees to remove him/her and given an opportunity to address the remaining Trustees or furnish them with reasons in writing why he/she should not be removed as a trustee.

9. PROCEEDINGS OF TRUSTEES

- 9.1 A quorum for a meeting of the Trustees shall be 50 per cent of the Trustees, at least one of whom shall be a member of the Management Committee. In the event of the meeting being inquorate thirty (30) minutes after the time of commencement, it shall stand adjourned to a date which all Trustees shall be notified of in writing, but which shall be not less than seven (7) days after the date of the inquorate meeting, and at such adjourned meeting all those Trustees present shall constitute a quorum.
- 9.2 Subject to the Trustees giving effect to the terms and conditions of this Deed, administering the Trust and its affairs, they shall adopt such procedures and take such administrative steps as they shall, from time to time, deem necessary and advisable including the appointment of a management committee from amongst themselves which shall be responsible for the disbursement of monies, application by criteria for such disbursement, reporting to funders on a quarterly basis, and control an administration of activities;
- 9.3 The Trustees shall meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, but not less than twice a year. The date and the place of the meetings shall be as determined by the Trustees. The Chairperson shall, however, have the power to call a meeting of the Trustees when in his or her opinion circumstances justify such a step and will be obliged to do so on receipt of a written request signed by not less than three (3) Trustees specifying the business to be transacted at such a meeting. Reasonable notice will be given to Trustees of all meetings of the Trustees, which notice may be given by letter, telegram, telex, telefax, electronic mail, or orally.
- 9.4 A notice dispatched to the last address of a Trustee as made known to the Secretary of the Trust when appointed shall be valid;
- 9.5 Decisions are made by majority vote indicated by way of a show of hands;
- 9.6 A resolution in writing signed or approved by other written means, such as by email, by majority vote is valid and effectual as if it had been passed at a meeting of the said Trustees and shall be noted at the next meeting. Such a resolution is constituted at the time of the last signature or approval of the resolution and may consist of several documents in like form each signed by one or more of the Members. If a resolution is written by email, an actual signature is not required. Emails from the Trustees are sent

to the Director, who will then inform all the Trustees of the outcome of the resolution

9.7 The Trustees shall elect from amongst their number a chairperson who shall remain in office until he/she resigns as a Trustee or as chairperson or if the remaining Trustees remove him/her from office by resolution to that effect;

9.8 The Director shall provide written notice to the Director of Nonprofit Organisations of the names, physical business and residential addresses of the Trustees and Director of the Trust one month after any appointment or election of such persons, even if their appointment or election did not result in any changes to the persons occupying those positions, in accordance with section 18(1)(b) of the Nonprofit Organisations Act.

9.9 If the chairperson is absent from any meeting the remaining Trustees shall elect a chairperson for the purposes of that meeting;

10 DISPENSATION OF SECURITY

10.1 The Trustees or any of them shall not be required to furnish security for any reason or under any circumstances whatsoever for their duties as such and accordingly no person hereby or subsequently appointed or co-opted or to whom powers are delegated shall be required to furnish security to any state or any official under the provisions of any law which may now or which may in the future be in force. Insofar as it may be necessary, the said state or other official is hereby directed to dispense with the requirement that any Trustee or subsequent Trustees shall furnish security in terms of the Trust Property Control Act or any other law.

10.2 If despite the provisions of clause 10.1 hereof, security is lawfully required to be furnished, then the costs of providing the same shall be borne by the Trust.

11 VESTING, COLLECTION, UTILISATION OF FUNDS AND CONTRIBUTIONS

11.1 The Trustees are hereby empowered to accept for the purposes of the Trust any gift, bequest or payment of any nature whatsoever from any person which may be given or paid to them with the intention that it form part of the Trust Fund. Any assets so accepted shall be administered and dealt with subject to the terms of this Deed of Trust. All donations of the Trust shall be irrevocable and subject to the terms and conditions of the Trust.

11.2 Contributions may be collected in and from any portion of the Republic of South Africa and outside its borders provided that the contributions from outside the Republic of South Africa shall be actually received in the Republic of South Africa.

11.3 The funds of the Trust shall be utilised solely for investment or for the objects for which it has been established.

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- 11.4 No portion of the income or assets of the Trust shall accrue for the benefit of the Trustees, office bearers, or their relatives or any employee but nothing herein before contained shall limit the right of the trustees to be reimbursed in respect of any reasonable expenses incurred on behalf of the Trust or to be paid a reasonable remuneration for any services rendered on behalf of the Trust including under any contract of employment.

## 12. TAX ISSUES

If the Commissioner approves SAHA as a "public benefit organisation", and for as long as such status is renewed, then the SAHA Trust will-

- 12.1 in the year of assessment preceding the year of assessment in which the donation is received, distribute at least 75% of its S18A (of the Income Tax Act, 1962) donations received;

12.2 issue a receipt for the donation on which the following details are provided-

- 12.2.1 the reference number issued by the Commissioner;
- 12.2.2 the name and address of the SAHA Trust;
- 12.2.3 the date of receipt of the donation;
- 12.2.4 the amount of the donation
- 12.2.5 the name and address of the donor;
- 12.2.6 a certificate to the effect that the receipt is issued for purposes of Section 18A of the Income Tax Act, 1962 and that the donation has been or will be used exclusively for the object of the SAHA Trust;

12.3 on dissolution transfer its assets to any similar approved public benefit organisations;

12.4 not accept any donation-

- 12.4.1 which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and;
- 12.4.2 conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; or
- 12.4.3 in circumstances where a donor has imposed conditions which could enable that donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation,

12.5 submit to the Commissioner a copy of any amendments to the Deed of Trust.

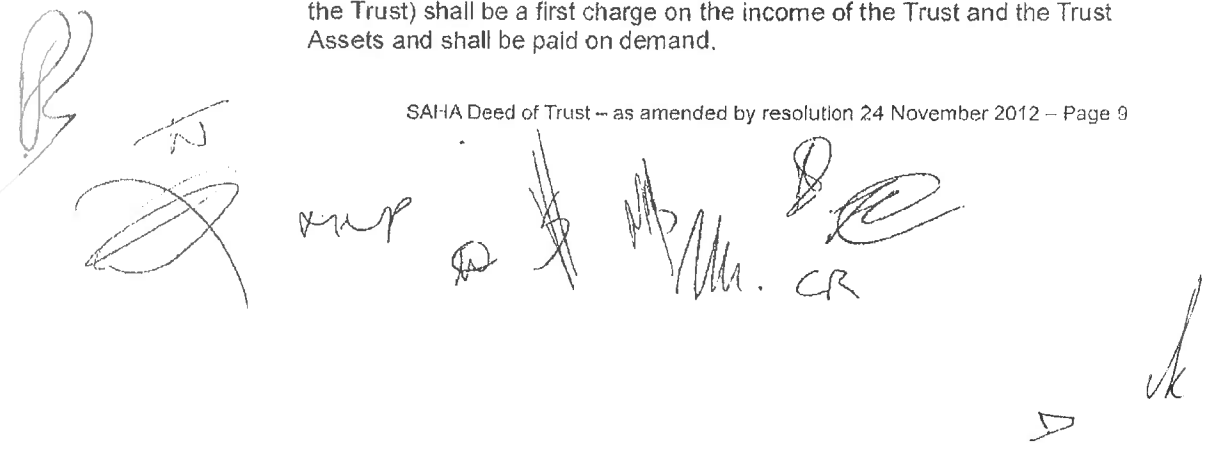
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13 DUTIES OF TRUSTEES

13.1 The Director of SAHA and the members of the Management Committee accept the fiduciary responsibility of the organisation. In addition to any duties imposed upon them under law enforced from time to time, the Trustees shall have the following duties:

- 13.1.1 The Trustees shall appoint a person as Director. The Director shall have responsibility for the day to day management of the accounts of the Trust and such other responsibilities as delegated to the Director from time to time by the Trust. The Director shall be at all times subject to the direction and control of the Management Committee in the performance of their duties.
- 13.1.2 The Trustees shall take and maintain written minutes of the meetings held pursuant to the provisions of clause 9 above. An official minute book shall be retained at the Trust's principal office.
- 13.1.3 The Trustees shall, at the expense of the Trust, cause proper books of accounts to be kept, which books of account together with all other papers and documents connected with or relating to the Trust shall be kept as such place as may be agreed upon by the Trustees.
- 13.1.4 The Trustees at the expense of the Trust shall be entitled to cause accounts of the Trust to be audited by an auditor appointed by the Trustees from time to time, which auditor shall be charged with drawing up the financial statements of the Trust at the end of each and every year. The first financial statements of the Trust shall be prepared on 31 December following the date of resignation of this Trust Deed in terms of the Trust Property Control Act. The auditor may be one of the Trustees or a firm of which he is a member and he/she or his/her firm may charge their reasonable fee for such services.
- 13.1.5 The financial statement shall be prepared as at the last day of each succeeding year for this purpose every year shall commence on 1 January and shall end on 31 December of each succeeding year.
- 13.1.6 All monies received on behalf of the Trust shall be paid by the Trustees into a banking account or other account maintained by the Trustees at a registered commercial bank or building society or other financial institution in terms of the Financial Institutions (Investment of Funds) Act 1984 and all payments made on behalf of the Trust shall be drawn from such account. All withdrawals may be made on the signature of such persons as the Trustees may determine from time to time.
- 13.1.7 All charges, expenses and disbursements including reasonable travelling expenses reasonably incurred by the Trustees in or arising from their administration of the Trust (including the costs of attending meetings of the Trust) shall be a first charge on the income of the Trust and the Trust Assets and shall be paid on demand.


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4 INDEMNIFICATION OF THE TRUSTEES

- 14.1. Subject to the foregoing a Trustee shall in performance of his/her duties and in the exercise of his/her power act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another;
- 14.2. No Trustee shall be liable for any loss of the Trust arising by reason of any investment made on behalf of the Trust whether authorised in terms of the Trust Deed or not, or for negligence or fraud of any agent employed by such Trustee (although the employment of such agent was not strictly necessary or expedient) , or by any other Trustee or by reason of any mistake or omission made in good faith by any Trustee hereof or by reason of any matter or thing whatsoever, except as is occasions by such Trustees own personal, wilful act of dishonesty.
- 14.3. The Trustees shall be indemnified out of the Trust Assets against all claims or demands of whatever nature that may be made upon them arising out of the exercise, purported exercise or omission to exercise any of the powers conferred upon them by this Deed of Trust. Nothing herein contained shall be deemed to exempt a Trustee from or indemnify him/her against liability for breach of trust where he/she failed to show the degree of care diligence and skill referred to above.

15 TRADING ACTIVITY

- 15.1 SAHA will not carry on any business undertaking or trading activity, otherwise than to the extent that-
  - 15.1.1 if the undertaking or activity—
    - 15.1.1.1. is integral and directly related to the sole or principal object of that public benefit organisation as contemplated in paragraph (b) of the definition of "public benefit organisation " in section 30 of the Income Tax Act 1962 (as amended)1;
    - 15.1.1.2. is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and
    - 15.1.1.3. does not result in unfair competition in relation to taxable entities;
  - 15.1.2 if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;
  - 15.1.3 if the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—
    - 15.1.3.1 the scope and benevolent nature of the undertaking or activity;
    - 15.1.3.2 the direct connection and interrelationship of the undertaking or

1 <http://www.sars.gov.za/lmb/mylmb.asp?jilc/kilc/atrg/ulrg/vlrg/72k0a#ag>

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activity with the sole or principal object of the public benefit organisation;  
 15.1.3.3 the profitability of the undertaking or activity; and  
 15.1.3.4 the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity; or

15.1.4 other than an undertaking or activity in respect of which item (aa), (bb) or (cc) applies and do not exceed such amount as specified under the Income Tax Act 1962 or applicable legislation from time to time'

16. POWERS OF TRUSTEES

16.1 The Trustees in their discretion shall have plenary powers to perform all acts and execute all documents relevant to the carrying out of the objects of the Trust and the administration thereof. Without derogating from the generality of the foregoing, the Trustees shall have the power to open and operate any banking account and/or building society account and to draw and issue cheques and promissory notes and to endorse any of the same for collection. The Trustees shall determine the manner of operating the banking or other accounts of the Trust.

16.2 The Trustees shall be subject to a majority resolution, have the power to acquire, lease, renovate, restore immovable property in pursuance of the objectives of the Trust. In addition, to buy or sell and transfer Trust Assets and invest the proceeds (including dividends accruing on the Trust Fund) and sign and execute any agreement in regard thereto provided that the Trustees shall not have the power to:

16.2.1 enter into any transactions of a patently speculative nature in relation to property;

16.2.2 carry on business including inter alia ordinary trading operations in the commercial sense as well as the administration of any immovable property acquired by the Trust.

16.3 The Trustees shall have the power to:

16.3.1 hold the whole or any part of the Trust Fund or any investments made by them from time to time during the administration of the Trust in their own names or in the name of any person or institution which is nominated by them from time to time for that purpose or, in the name of the Trust; and

16.3.2 exercise the voting power attached to any share, stock or debenture in such manner as they may deem fit, exercise and take up or realise any rights of conversion or subscription appertaining to any or debenture forming part of the Trust;

16.3.3 From time to time to borrow such monies on such terms and conditions as they

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deem fit:

- 16.3.3.1 for the payment of any liability (including taxes payable in respect of the Trust); or
  - 16.3.3.2 which may be required from time to time for the protection or better or further investment of all or any of the Trust Assets; or
  - 16.3.3.3 generally for such other purposes in connection with all or any of the assets forming part of the Trust Fund.
- 16.3.4 Invest any funds that are not required for immediate use of the Trust, provided that investments may only be made in:
- 16.3.4.1 a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984;
  - 16.3.4.2 securities listed on a licensed stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985;
  - 16.3.4.3 in other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and Director of Non-Profit Organisations.
- 16.3.5 Obtain such legal advice from time to time as the said Trustees in their discretion require and in which event all costs of and in connection therewith shall be borne by the Trust.
- 16.3.6 Engage the service of financial advisers, brokers, property administrators, consultants, accountants, auditors, architects and experts of all kinds and to make payment of their fees.
- 16.3.7 Institute or defend any proceedings in any court of law or arbitration proceedings in the name of the Trust.
- 16.3.8 Decide (which decision shall be final and binding and shall not be subject to dispute or challenge) whether any monies or assets received by them from time to time as part of the Trust Assets constitutes "capital" or "income" and for the purpose they shall be entitled to make such apportionment in the Trust's account.
- 16.3.9 Apply all or any of the Trust assets or monies held by them towards payment of any tax levied on the Trust or the income of the Trust, if any.
- 16.3.10 Leave the capital of the Trust or any part thereof invested as it may be when it is handed over to them.
- 16.3.11 Sell, realise, call in or convert into cash so much of the Trust assets as the Trustees may from time to time deem fit and make such further investments of the same in such form and in such manner as the Trustees may determine from time

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to time vary any of such investments as the Trustees may determine.

13.3.12 Enter into contracts in the name of the Trust in furtherance of the interests of the Trust and to nominate one or more of them or to delegate their authority to any person selected by them for the purpose of management of the Trust and the execution of all documents or other activities of any nature relating to the carrying out of the purposes of this Trust, including documents in connection with the investment and realisation of the Trust assets which realisation shall be in whatever manner they deem fit.

13.3.13 Permit any premises owned by the Trust to be occupied free of rental or for a rental to be determined by the Trustees.

13.3.14 Engage and discharge employees and to set their terms and conditions of employment.

13.3.15 Do all things necessary to achieve the objects of the Trust.

17 BOOKS OF ACCOUNTS, RECORDS OR OTHER DOCUMENTS

17.1 Any books of account, records or other documents must be retained and preserved by SAHA for a period of 4 years –

17.1.1 after the date of the last entry in any book; or

17.1.2 after completion of financial transaction, acts or operations; and

17.2 Trustee may not without the written consent of the Master destroy any document which serves as proof of an investment, safe custody, control, administration, alienation or distribution of SAHA property before the expiry of a period of five years from the termination of the SAHA.

17.3 The Trust is to keep accounting records of its income, expenditure, assets and liabilities, and

17.3.1 Within six month after the end of its financial year, draw up financial statements, which must include at least

17.3.1.1 A statement of income and expenditure for that financial year; and

17.3.1.2 A balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

17.4 Within two months after drawing up its financial statements, the Trust must arrange for a written report to be compiled by an accounting officer and submitted to the Trustees stating whether or not-

17.4.1 The financial statements of the organisation are consistent with its accounting records;

17.4.2 The accounting policies of the organisation are appropriate and have been appropriately applied in the preparation of the financial statements;

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- 17.4.3 ind, The Trust has complied with the provisions of the Nonprofit Organisations Act and this Deed of Trust which relate to financial matters.
- 7.5 The Trust must, in writing, provide the Director of Nonprofit Organisations with
  - 17.5.1 a narrative report of its activities together with its financial statements and the accounting officer's report as set out in clause 17.4 above, within nine months after the end of its financial year; and
  - 17.5.2 a physical address in the Republic for service of documents and notices, and advice of any change of such address.

8 AMENDMENTS

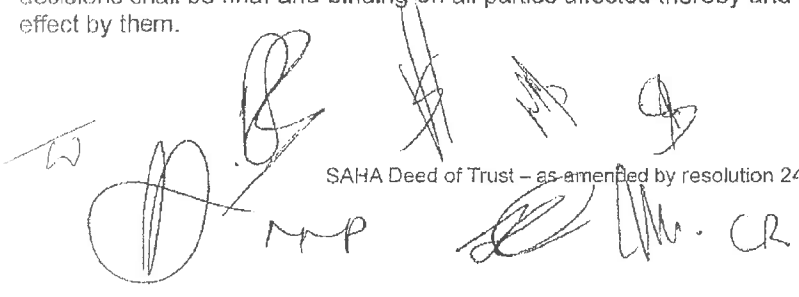
- 18.1 A Resolution approved by at least two thirds of the Trustees then in office shall be required for any amendment to this Deed of Trust.
- 18.2 Any amendments to this deed of Trust shall be submitted to the Commissioner of the South African Revenue Service.
- 18.3 In addition, the Trust must send to the Director of Nonprofit Organisations a copy of the resolution and a certificate signed by a duly authorised office-bearer stating that the resolution complies with its constitution and all relevant laws.

19. TERMINATION OF TRUST AND DISTRIBUTION OF ASSETS

- 19.1 The Trust shall continue indefinitely but the Trustees shall have the right, in their sole and absolute discretion passed by two-thirds of the Trustees, to terminate the Trust.
- 19.2 Upon its termination the remaining assets of the Trust, after satisfaction of its liabilities shall be given or transferred to one or more trusts or associations not for gain with objects similar to the objects of the Trust which have been approved in terms of section 30 of the Income Tax Act, 1962.
- 19.3 The Trust must provide the Director of Nonprofit Organisations with at least two months' written notice of the intention of the Trustees to terminate the Trust.

20 DISPUTES

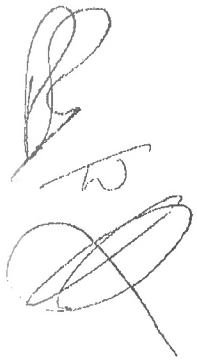
Should any question arise as to whether the interpretation of this Deed or any of the provisions hereof as to the true construction thereof or as to the administration of the Trust or otherwise howsoever, the Trustees shall have the power to decide such questions either acting on their own judgement or upon the advice of attorneys and/or counsel and any such decisions shall be final and binding on all parties affected thereby and shall be carried into effect by them.


  
 SAHA Deed of Trust – as amended by resolution 24 November 2012 – Page 14



*Handwritten initials/signature*

21 COSTS

All costs of and incidental to the negotiations and finalisation of this Deed of Trust and its registration in terms of the Trust Property Control Act shall be paid by the Trust out of the Trust assets.



SAHA Deed of Trust – as amended by resolution 24 November 2012 – Page 15

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ANNEXURE A - ORIGINAL TRUSTEES

HORST GERHARD HERMANN KLEINSCHMIDT  
(BORN: 17/10/1945)

AND

SUSAN J BOOYSEN  
(born: 17/9/1954)

AND

JEAN DE LA HARPE  
(born: 3/9/1960)

AND

GIBSON THEMBA SIRAYI  
(born: 12/10/1953)

AND

SAM MAHOSHA MKHABELA  
(born: 23/10/1960)

AND

LULI CALLINICOS  
(born: 10/11/1936)

AND

MICHELE PICKOVER  
(born: 1/8/1959)

AND

NOEL FRANCIS STOTT  
(born: 28/12/1958)

AND

JOHANNES MAFODI MANAMA  
(born: 16/3/1949)

SAHA Deed of Trust – as amended by resolution 24 November 2012 – Page 16

APPENDIX B: CURRENT TRUSTEES

HORST GERHARD HERMANN KLEINSCHMIDT

(born: 17/10/1945)

and

SPIRIDOULA WEBSTER (also known as LULI CALLINICOS)

(born: 10/11/1936)

and

MARLENE MERCER POWELL

(born: 07/27/1959)

and

DUMISA BUHLE NTSEBEZA

(born 31/10/1949)

and

CIRAJ SHAHID RASSOOL

(born 27/12/1961)

and

MOHAMED NOOR NIEFTACODIEN

(born 25/10/1964)

and

RAZIA SALEH

(born 08/08/1962)

and

ANTHONY ANDREW MANION

(born 13/04/1976)

Signature: 

Date: 3.4.2014.

Signature: 

Date: 6.12.2013

Signature: 

Date: 07/10/2013

Signature: 


Date: 07/12/2013

Signature: 

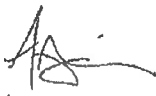
Date: 07/04/2014

Signature: 

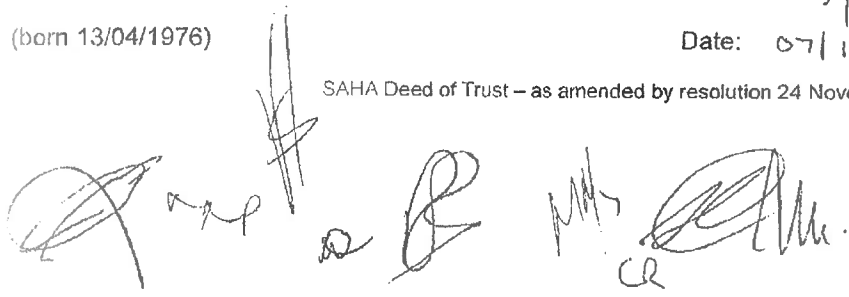
Date: 15/01/14

Signature: 

Date: 15/01/2014

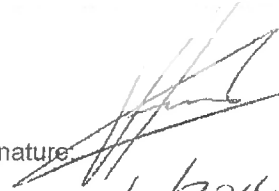
Signature: 

Date: 07/12/2013






nd  
VERNE SHELDON HARRIS  
(born 21/04/1958)

Signature:   
Date: 15/11/2014

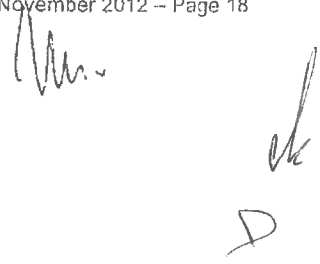
and  
PIERS ASHLEY PIGOU  
(born 30/05/1967)

Signature:   
Date: 07/12/2013

and  
SELLO KOOS HATANG – 7504285846089  
(born 28/04/1975)

Signature:   
Date: 14/01/2014

(hereinafter collectively referred to as "the Trustees")



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**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: Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria  
0001

Tel. +27123151715

Fax. +27123578004

Email: [mraswiswi@justice.gov.za](mailto:mraswiswi@justice.gov.za)

*[Handwritten signature]*  
*[Handwritten mark]*

**B. Particulars of person requesting access to the record**

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

**Full names and surname:** South African History Archive (SAHA)

**Identity/Passport number:** Non-Profit Trust No. 2522/93

**Postal address:** P.O.Box 31719, Braamfontein, 2017

**Fax number:** +27866491491

**Telephone number:** +27117182563

**E-Mail Address:** foip@saha.org.za

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

**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:

Identity number:

**D. Particulars of record**

- *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.*
- *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. **All investigations and evidence gathered by and made available to the South African Truth and Reconciliation Commission (TRC), and the TRC reporting of findings into the murder of Ms Dulcie September (former ANC diplomatic representative to France, in Paris) on 29 March 1988. (We note that the date of death is over 20 years ago and so this is not personal information).**

To assist in locating those records the TRC evidence gathering was referred to in the TRC Final Report, Volume 2, pages 199-122 at:

<http://www.justice.gov.za/trc/report/finalreport/Volume%202.pdf> as follows:

ok  
D



"On 29 March 1988, Ms Dulcie September, the ANC chief representative in France, was assassinated in Paris. She died instantly when hit by a volley of five bullets fired at close range. Though no submission was made to the Commission on the murder, it was identified as a priority case for investigation. A delegation travelled to Paris and elicited the co-operation of the French police, who made available to the Commission the files of the investigating judge, Ms Claudine Forkel."

- o Reference number, if available:
- o Any further particulars of record:

**E. Fees**

- a) 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.
- b) You will be notified of the amount required to be paid as the request fee.
- c) 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.
- d) 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:**

- (a) Your indication as to the required form of access depends on the form in which the record is available.
- (b) 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:

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X Copy of record\* Inspection of record

2. If record consists of visual images:

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

view the images X copy of the images\* transcription of the images\*

3. If record consists of recorded words or information which can be reproduced in sound:

Listen to the soundtrack (audio cassette) X transcription of soundtrack\* (written or printed document)

4. If record is held on computer or in an electronic or machine? readable form:

Printed copy of record\* X Printed copy derived from the record\* 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? X

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?

IN WRITING.

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Signed at Johannesburg this 13<sup>th</sup> day of September 2013.

SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE

*Kathryn Johnson*

Kathryn Johnson  
Freedom of Information Programme  
South African History Archive (SAHA)

*JK*

*-P*

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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:

Marlyn Raswiswi

Department of Justice and Constitutional Development

*Handwritten initials/signature*

Private Bag X81

Pretoria

0001

Tel. +27123151715

Fax. +271 3578004

Email: mraswiswi@justice.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.*

**Full names and surname:** South African History Archive (SAHA)

**Identity/Passport number:** Non-Profit Trust No. 2522/93

**Postal address:** P.O.Box 31719, Braamfontein, 2017

**Fax number:** +27866491491

**Telephone number:** +27117182563

**E-Mail Address:** foip@saha.org.za

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

**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:

Identity number:

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D. Particulars of record

- 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.
- 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.**
  - Description of record or relevant part of the record:

All records of TRC investigations (including evidence gathered) and findings of the TRC regarding the use of secret funds by SADF, Armscor and front companies from 1978 to 1994, including:

1. Report of the Auditor General on all secret funds from 1960 to 1994 provided to the TRC (see TRC Final Report, Volume 2, pg. 524).
  2. The schedule of secret projects compiled by the Auditor General provided to the TRC (see TRC Final Report, Volume 2, pg. 539).
  3. Any records relating to the Kahn Committee (also known as the Advisory Committee on Special Secret Projects) provided to the TRC (see TRC Final Report, Volume 2, pg. 525)
  4. Any records relating to the Ministers' Committee on Special Projects provided to the TRC (see TRC Final Report, Volume 2, pg. 530)
  5. Any records relating to the Secret Services Evaluation Committee provided to the TRC (see TRC Final Report, Volume 2, pg. 532)
  6. Any records relating to the Special Defence Account provided to the TRC (see TRC Final Report, Volume 2, pg. 532)
  7. Any records relating to the Secret Service Account provided to the TRC (see TRC Final Report, Volume 2, pg. 532)
  8. Any records relating to the Steyn Commission provided to the TRC (see TRC Final Report, Volume 2, pg. 542)
- Reference number, if available:
  - Any further particulars of record:

*[Handwritten signature]*





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:

X Copy of record\*                      Inspection of record

2. If record consists of visual images:

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

view the images

copy of the images\*

transcription of the images\*

X

3. If record consists of recorded words or information which can be reproduced in sound:

Handwritten initials

Handwritten letter 'D'

Listen to the  transcription of soundtrack\*  
soundtrack (audio (written or printed document)  
cassette)

**4. If record is held on computer or in an electronic or machine ?  
readable form:**

Printed copy  Printed copy derived from  copy in computer readable  
of record\* the record\* 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?

**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?

**IN WRITING.**

Signed at this 23<sup>rd</sup> of August 2013.



SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE

Catherine Kennedy

South African History Archive (SAHA)



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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: Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria  
South Africa  
0001

D  
v/h

Telephone: +27123151715  
Fax: +27123578004  
Email: [mrswiswi@justice.gov.za](mailto:mrswiswi@justice.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.*

**Full names and surname:** South African History Archive (SAHA)  
**Identity/Passport number:** Non-Profit Trust No. 2522/93  
**Postal address:** P.O.Box 31719, Braamfontein, 2017  
**Fax number:** +27866491491  
**Telephone number:** +27117182563  
**E-Mail Address:** foip@saha.org.za

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

**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:  
Identity number:

**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.*

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- o Description of record or relevant part of the record:

Copies of any records or part of records, including internal reports or Minutes, relating to the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act, 2010 and/or the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (the Interception legislation, also known as RICA):

1. In relation to **interception directions** under the Interception legislation by each financial or calendar year that is available for the period from the earliest date of commencement of the Interception legislation (also known as the fixed date under the Interception legislation) to 31 July 2013:

- o The different types of interception directions able to be granted
- o The different type of offences for non compliance with an interception direction and for unlawful interceptions of communications
- o The number of interception directions requested, granted or modified, set out by agency that applied for the direction (where that information in relation to each agency is available - noting these numbers are sought even if they are not available in relation to each agency)
- o The average cost to applicants in obtaining an interception direction
- o The overall annual budget allocated within the department for administering interception directions
- o The annual average number of employees in the department with responsibilities that include administering interception directions
- o The types of surveillance used in interception directions
- o The number of each of the prosecutions, convictions, arrests and penalties imposed as a result of the successful use of an interception direction, set out by agency that applied for that direction (where that information in relation to each agency is available - noting these numbers are sought even if they are not available in relation to each agency)

2. In relation to each of the **real-time communication-related directions** and **archive communication-related interception directions** and **decryption directions** and **entry warrants** under the Interception legislation by each financial or calendar year that is available for the period from the earliest date of commencement of the Interception legislation (also known as the 'fixed date' under the Interception legislation) to 31 July 2013:

- o The number of each type of direction or warrant requested, granted or modified, set out by agency that applied for the direction or warrant (where that information in relation to each agency is available - noting these numbers are sought even if they are not available in relation to each agency)
- o The number of each of the prosecutions, convictions, arrests and penalties imposed as a result of the successful use of each type of direction or warrant, set out by agency that applied for that direction or warrant (where that information in

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relation to each agency is available - noting these numbers are sought even if they are not available in relation to each agency)

- 3. Any directives issued by the designated judge to supplement the procedure for making applications for the issuing of any type of direction or entry warrant.
- 4. The number of each of the prosecutions, convictions, arrests and penalties imposed as a result of as a result of information gained from SIM card (or cell phone) registrations by each financial or calendar year that is available for the period from the earliest date of commencement of that part of the Interception legislation to 31 July 2013.
  - o Reference number, if available:
  - o Any further particulars of record

**E. Fees**

- o 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.
- o You will be notified of the amount required to be paid as the request fee.
- o 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.
- o 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:

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

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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:

Copy of record\*                       Inspection of record

2. If record consists of visual images:

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

view the images                       copy of the images\*                       transcription of the images\*

3. If record consists of recorded words or information which can be reproduced in sound:

Listen to the soundtrack (audio cassette)                       transcription of soundtrack\* (written or printed document)

4. If record is held on computer or in an electronic or machine ? readable form:

Printed copy of record\*                       Printed copy derived from the record\*                       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?

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.

*de*  
*D*



How would you prefer to be informed of the decision regarding your request for access to the record?

**IN WRITING.**

Signed at Johannesburg on this 21st day of August 2013.



SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE:

Ms Kathryn Johnson (FOIP Project Officer)

South African History Archive (SAHA)



"CMK 5" 117

**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]

<b>FOR DEPARTMENTAL USE</b>	
	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: Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria  
0001

Tel. +27123151715  
Fax. +27123578004  
Email: [mraswiswi@justice.gov.za](mailto:mraswiswi@justice.gov.za)

*(Handwritten marks)*

**I. Particulars of person requesting access to the record**

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

**ull names and surname:** South African History Archive (SAHA)

**Identity/Passport number:** Non-Profit Trust No. 2522/93

**Postal address:** P.O.Box 31719, Braamfontein, 2017

**Fax number:** +27866491491

**Telephone number:** +27117182563

**E-Mail Address:** foip@saha.org.za

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

**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:

Identity number:

**D. Particulars of record**

- a) *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.*
- b) *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. All investigations and evidence gathered by and made available to the **South African Truth and Reconciliation Commission (TRC)**, and the TRC reporting of findings into the attempted assassinations of the late **Mr Godfrey Motsepe** (former ANC diplomatic representative to the BENELUX countries, in Brussels) on 2 February 1988 and on 27 March 1988.

To assist in locating those records the TRC evidence gathering was referred to in the TRC Final Report, Volume 2, pages 199-122 at:

<http://www.justice.gov.za/trc/report/finalreport/Volume%202.pdf> as follows:

*Handwritten signature*

"In a submission to the Commission, Mr Motsepe alleged that he had twice been the target of assassination attempts in 1988. In the first, on 2 February 1988, two shots were fired through the window of the office in which he was working, but missed him. In the second, on 27 March 1988, a seventeen-kilogram bomb was discovered in his office. This occurred two days before the killing of Ms Dulcie September in Paris."

- o Reference number, if available:
- o Any further particulars of record:

**Fees**

- a) 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.
- b) You will be notified of the amount required to be paid as the request fee.
- c) 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.
- d) 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:**

- (a) Your indication as to the required form of access depends on the form in which the record is available.
- (b) 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:**

X  Copy of record\* |  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).

view the images

X

copy of the images\*

transcription of the images\*

3. If record consists of recorded words or information which can be reproduced in sound:

Listen to the soundtrack (audio cassette)

X

transcription of soundtrack\* (written or printed document)

4. If record is held on computer or in an electronic or machine? readable form:

Printed copy of record\*

X

Printed copy derived from the record\*

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?

X

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?

IN WRITING.

124

Signed at Johannesburg this 13<sup>th</sup> day of September 2013.

SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE

  
Kathryn Johnson  
Freedom of Information Programme  
South African History Archive (SAHA)

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"CMK6" 123

**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]

<b>FOR DEPARTMENTAL USE</b>	
	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: Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria  
0001

Tel. +27123151715  
Fax. +27123578004  
Email: [mrswiswi@justice.gov.za](mailto:mrswiswi@justice.gov.za)

D



**B. Particulars of person requesting access to the record**

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

**Full names and surname:** South African History Archive (SAHA)  
**Identity/Passport number:** Non-Profit Trust No. 2522/93  
**Postal address:** P.O.Box 31719, Braamfontein, 2017  
**Fax number:** +27866491491  
**Telephone number:** +27117182563  
**E-Mail Address:** foip@saha.org.za

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

**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:  
 Identity number:

**D. Particulars of record**

- a) *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.*
- b) *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:
- All investigations and reports made at any time **into the export of uncut diamonds during the period 1992-1993** by the company 'De Beers'.

To assist in locating those records, these include records that were compiled in preparation of a briefing document on the matter to the Standing Committee on Public Accounts in 2007.

- o Reference number, if available:
- o Any further particulars of record:

D k

E. Fees

- a) 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.
- b) You will be notified of the amount required to be paid as the request fee.
- c) 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.
- d) 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:

- (a) Your indication as to the required form of access depends on the form in which the record is available.
- (b) 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
-------------------------------------	-----------------	--------------------------	----------------------

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	<input checked="" type="checkbox"/>	transcription of soundtrack*
--------------------------	---------------	-------------------------------------	------------------------------

Handwritten mark resembling a stylized 'A' or 'K'.

Handwritten mark resembling a stylized 'D'.

soundtrack (audio cassette)

(written or printed document)

**If record is held on computer or in an electronic or machine? readable form:**

Printed copy of record*	<input checked="" type="checkbox"/>	Printed copy derived from the record*	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?

X

**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?

**IN WRITING.**

Signed at Johannesburg this 13<sup>th</sup> day of September 2013.

SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE

Kathryn Johnson  
Freedom of Information Programme  
South African History Archive (SAHA)

"CMK7" 126

**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: Ms Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria 0001

Tel. +27123151715  
Fax. +27123578004  
Email: [mraswiswi@justice.gov.za](mailto:mraswiswi@justice.gov.za)

*Handwritten initials/signature*

**B. Particulars of person requesting access to the record**

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

**Full names and surname:** South African History Archive (SAHA)  
**Identity/Passport number:** Non-Profit Trust No. 2522/93  
**Postal address:** P.O.Box 31719, Braamfontein, 2017  
**Fax number:** +27866491491  
**Telephone number:** +27117182563  
**E-Mail Address:** foip@saha.org.za

Our reference: SAH-2014-DOJ-0005

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

**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:  
Identity number:

**D. Particulars of record**

- a) *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.*
- b) *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:

Copies of any and all records, or part of records, as follows:

1. All investigations covering the period the period 1986-2009 into alleged illegal activities involving **Mr Vito Roberto Palazzolo (also known as Mr Robert von Palace Kolbatschenko).**

D 

- o Reference number, if available:
- o Any further particulars of record

**E. Fees**

- a) 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.
- b) You will be notified of the amount required to be paid as the request fee.
- c) 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.
- d) 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:**

- (a) Your indication as to the required form of access depends on the form in which the record is available.
- (b) 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:**

X Copy of record\*                      Inspection of record

**2. If record consists of visual images:**

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

D ↓

view the images  copy of the images\* transcription of the images\*

3. If record consists of recorded words or information which can be reproduced in sound:

Listen to the soundtrack (audio cassette)  transcription of soundtrack\* (written or printed document)

4. If record is held on computer or in an electronic or machine ? readable form:

Printed copy of record\*  Printed copy derived from the record\* 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?

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? In writing, preferably by email.

Signed at Johannesburg this 4th day of February 2014.

SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE

Kathryn Johnson
Freedom of Information Programme
South African History Archive (SAHA)

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**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]

<b>FOR DEPARTMENTAL USE</b>	
	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: Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria 0001

Tel. +27123151715  
Fax. +27123578004  
Email: [mraswiswi@justice.gov.za](mailto:mraswiswi@justice.gov.za)

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**B. Particulars of person requesting access to the record**

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

**Full names and surname:** South African History Archive (SAHA)

**Identity/Passport number:** Non-Profit Trust No. 2522/93

**Postal address:** P.O.Box 31719, Braamfontein, 2017

**Fax number:** +27866491491

**Telephone number:** +27117182563

**E-Mail Address:** foip@saha.org.za

**SAHA reference:** SAH-2014-DOJ-0002

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

**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:

Identity number:

**D. Particulars of record**

- a) *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.*
- b) *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:

Copies of any and all records, or part of records, as follows:

1. All **investigations** into the events surrounding the murder of **Dr Robert Van Schalkwyk Smit and Mrs Jeanne-Cora Smit** in Springs, just outside of Johannesburg, on 22 November 1977.

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to assist in locating those records, Mr Smit was a prominent politician. The murders are commonly referred to in media reports over the past 35 years as the 'Smit murders'. It is noted that these deaths occurred over 20 years ago.

- o Reference number, if available:
- o Any further particulars of record

**E. Fees**

- a) 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.
- b) You will be notified of the amount required to be paid as the request fee.
- c) 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.
- d) 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:**

- (a) Your indication as to the required form of access depends on the form in which the record is available.
- (b) 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:**

- X Copy of record\*       Inspection of record

D      ch

2. If record consists of visual images:

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

view the images  copy of the images\*  transcription of the images\*

3. If record consists of recorded words or information which can be reproduced in sound:

Listen to the soundtrack (audio cassette)  transcription of soundtrack\* (written or printed document)

4. If record is held on computer or in an electronic or machine ? readable form:

Printed copy of record\*  Printed copy derived from the record\*  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?

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.

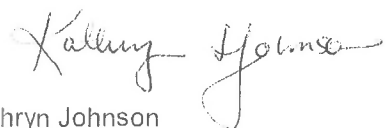
How would you prefer to be informed of the decision regarding your request for access to the record?

In writing, preferably by email.

D A

Signed at Johannesburg this 4<sup>th</sup> day of February 2014.

SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE.



Kathryn Johnson  
Freedom of Information Programme  
South African History Archive (SAHA)

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"CMK9" 136



18 March 2014

The South African History Archive  
P.O. Box 31719  
Braamfontein  
2017

Attention: Catherine Johnson

RE: REQUEST FOR ACCESS TO INFORMATION IN TERMS  
OF SECTION 18 OF THE PROMOTION OF ACCESS TO  
INFORMATION ACT, ACT 2 OF 2000

Dear Ms Johnson

I hereby confirm receipt of your PAIA applications referenced as  
SAH-2014-NPA-0001 to 0005.

After careful perusal of your requests it became apparent that the  
information that you requested dates back to dates before the  
existence of the NPA and therefore the NPA will not be in a  
position to grant you access to such information.

The cases that you refer to was most probably handled by the  
then Attorney-General in the Department of Justice.

However, please note that the Attorney-General never had any  
investigative authority and therefore investigative reports may be  
in the possession of the South African Police Services.

I will therefore, in terms of section 20 of PAIA, transfer your  
request to both the Department of Justice and Constitutional  
Development and the South African Police Services for further  
handling and disposal.

Page 1

I consider your requests referenced as SAH-2014-NPA-0001 to 0005 as closed on my side.

Yours truly



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**Theodore Leeuweschut**  
**Deputy Information Officer: NPA**  
Date: 18/03/14.

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**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]


<b>FOR DEPARTMENTAL USE</b>	
	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: Mr Theodore Leeuwshut  
National Prosecuting Authority  
Private Bag X752  
Pretoria 0001

Tel. +27128456000  
Fax. +27128047335  
Email: [tleewschust@npa.gov.za](mailto:tleewschust@npa.gov.za)

D





## Particulars of person requesting access to the record

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

**Full names and surname:** South African History Archive (SAHA)  
**Identity/Passport number:** Non-Profit Trust No. 2522/93  
**Postal address:** P.O.Box 31719, Braamfontein, 2017  
**Fax number:** +27866491491  
**Telephone number:** +27117182563  
**E-Mail Address:** foip@saha.org.za

Our reference: SAH-2014-NPA-0003

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

## 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:  
 Identity number:

## D. Particulars of record

- a) *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.*
- b) *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:

Copies of any and all records, or part of records, as follows:

1. All investigations covering the period 1977-1997 into alleged illegal activities (including but not limited to 'gold smuggling') involving **Mr Paul Ekon**.

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- o Reference number, if available:
- o Any further particulars of record

**E. Fees**

- a) 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.
- b) You will be notified of the amount required to be paid as the request fee.
- c) 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.
- d) 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:**

- (a) Your indication as to the required form of access depends on the form in which the record is available.
- (b) 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:**

X Copy of record\*      Inspection of record

**2. If record consists of visual images:**

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

D J

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

Listen to the soundtrack (audio cassette)	<input checked="" type="checkbox"/>	transcription of soundtrack* (written or printed document)
---	-------------------------------------	--

**4. If record is held on computer or in an electronic or machine readable form:**

Printed copy of record*	<input checked="" type="checkbox"/>	Printed copy derived from the record*	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?

**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? **In writing, preferably by email.**

Signed at Johannesburg this 4<sup>th</sup> day of February 2014.

SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE

*Kathryn Johnson*  
 Kathryn Johnson  
 Freedom of Information Programme  
 South African History Archive (SAHA)

*P* *↓*

Published on *Parliamentary Monitoring Group* | *Parliament of South Africa monitored* (<http://www.pmg.org.za>)

Home > De Beers on Tax Exemptions of Export Diamonds; Fidentia: hearings

## De Beers on Tax Exemptions of Export Diamonds; Fidentia: hearings

Public Accounts [1]

Meeting Report Information

Date of Meeting: 12 Sep 2007

### Minutes:

#### STANDING COMMITTEE ON PUBLIC ACCOUNTS

12 September 2007

#### DE BEERS ON TAX EXEMPTIONS OF EXPORT DIAMONDS; FIDENTIA: HEARINGS

Acting Chairperson: Mr V Smith (ANC)

#### Relevant documents:

De Beers briefing document – strictly for Members only

AG's briefing document on De Beers

Standing Committee on Public Accounts: 12 June 2007 meeting: interaction with the Minister of Minerals and Energy on

SCOPA 62nd report 2005: South African Diamond Board [2]

Business Report news article June 13 2007: MPs challenge De Beers over mysterious exports (see Appendix)

#### Audio recording of meeting [3]

#### SUMMARY

The Committee interrogated the De Beers delegation on the tax exemptions relating to the export of diamonds in order to conclude the matter and submit its report to Parliament. It was the Committee's view that there had been a 'spike' in the export of diamonds just prior to the coming to power of a democratic government. The Department of Minerals and Energy, the South African Diamonds Board, and the Office of the Auditor-General expressly concurred with this view. De Beers denied that there had been a 'spike'.

The Committee was concerned that tax revenues had thereby been lost through the tax exemptions that De Beers claimed it had been granted by the South African Diamonds Board. De Beers denied that there was any irregularity in its being granted tax exemptions.

De Beers agreed to co-operate with the Committee by providing requested documentation promptly. The Committee's view was that no corporation or individual was above the law.

The Committee interacted with the curator and co-curator of the Fidentia Group and urged them to bring the matter of the Fidentia Group to a conclusion as soon as possible and recover the money that was intended for Fidentia's beneficiaries. The curator and co-curator said that they wanted to co-operate fully, without prejudice to the assets that they hoped to recover. The Committee was concerned about the cost of the curatorship and its duration. The curator said that he had offered to serve at no charge, but this offer had been declined; as for the duration of curatorship, they were constrained by court proceedings and processes; they were also frustrated by non-recognition in South Africa of the doctrine of conversion, whereby assets could be attached to exact payment of debts.

#### MINUTES

Mr V Smith (ANC) as Acting Chairperson in the temporary absence of Mr N Godi (African People's Convention) opened the meeting. Mr Godi arrived subsequently, but Mr Smith continued as Acting Chairperson.

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### Interaction with De Beers

The Acting Chairperson welcomed the De Beers delegation, which the Committee in its 12 June 2007 meeting had agreed should be summoned to appear before it. The delegation consisted of Mr David Noko, Managing Director, Mr Bruce Cleaver, Group Director for Commercial Affairs and Legal Services, and Mr Barend Petersen, Director of Information Services. Also welcomed were Mr W Van Heerden, Corporate Executive, Office of the Auditor-General, Mr Sandile Nogxina, Director-General: Department of Mineral Affairs and Energy, and Mr Abbey Chikane, Chairman: South African Diamond Board.

The Acting Chairperson said that he hoped that the outcome of the meeting would be resolution and closure of the matter of the tax exemptions related to the export of diamonds by De Beers and that the Committee would thereupon be in a position to report on the matter to Parliament.

The Acting Chairperson said that the Committee had one and a half hours to deliberate on the De Beers matter. He asked that Members should ask only pertinent questions so as not to prolong the deliberations. He asked that respondents should answer the questions completely but strictly to the point so that the Committee could conclude its deliberations on the evidence before it and thereafter report to Parliament.

The Acting Chairperson asked Mr Pierre-Jean A Gerber (ANC) to summarise the background to the matter.

Mr Gerber thereafter began the Committee's interrogation of De Beers. He said that in 1993 at the dawn of democracy in South Africa, De Beers took out approximately 20 million carats of uncut diamonds. These had a value of about 900 million US dollars. The tax levy due on these was some 135 million US dollars. This was equivalent to about 1 billion rands. This tax levy was not paid, because De Beers claimed that it had been given an exemption by the South African Diamond Board.

The objectives of the Diamonds Act were to regularise the activities of the diamond industry and to establish a more effective control structure. It was a fact that the diamond industry was an industry that lent itself to suspicion. The Government had found it necessary to order no fewer than three formal and three informal investigations.

Since 1999 SCOPA had raised this issue. It had been in the media. It had been raised in Parliament. Various ministers had raised it. De Beers at no time and nowhere had produced evidence of its permission for the export of the diamonds without paying tax.

Only when SCOPA had asked De Beers to appear before the Committee did De Beers produce a document.

The Acting Chairperson asked the Committee Members if they were familiar with the document about which Mr Gerber was talking, namely, the agreement between the South African Diamond Board and De Beers Consolidated Mines

Mr Gerber asked the De Beers delegation for the names of those who had signed on behalf of De Beers Consolidated Mines Ltd. The De Beers signature was illegible. He further asked who had signed on behalf of the Diamond Board.

Mr Bruce Cleaver, Group Director for Commercial Affairs and Legal Services: De Beers, said that there were two signatures: the first was of Mr Gary Ralfe [De Beers Non-Executive Director], the second was not clear.

Mr Gerber further asked who had signed on behalf of the Diamond Board.

Mr Cleaver said that he was not in a position to say.

Mr Gerber, addressing the Acting Chairperson, said that the document that he was now referring to consisted of seven pages. All pages had been signed by the Diamond Board managers and by the members of De Beers.

With regard to the diamonds that De Beers had exported in 1993, Mr Gerber asked the De Beers delegation if he could ask them questions on the 1992 agreement that De Beers had from the Diamond Board. He asked if De Beers had a copy of that document. That was the document that had been approved on 03 December 1992.

Mr Cleaver replied: 'Yes, we do.'

Mr Barend Petersen, Director for information services: De Beers, said that he confirmed that on behalf of De Beers.

Mr Gerber asked the De Beers delegation for the names of those who had signed the 1998 agreement, which had five signatures, and if De Beers could show him any of the names of signatories to the 1992 agreement. The 1992 agreement, unlike the 1998 agreement, lacked signatures. He again asked for the names of those who had accepted this agreement on behalf of De Beers.

Mr Cleaver replied that the document had been submitted to De Beers on 13 January 1993. There was a copy of the document dated 12 February 1993. The Diamond Board had agreed and its officials had signed. He said further that the 1992 agreement consisted of a suite of documents, that together constituted a written agreement, although not all parties had signed the annex. No party had signed the attachment.

Mr Gerber said that he had in front of him a letter addressed to Mr Link; this was the letter that they had been looking for 13 years. This letter had many smudge marks.

Mr Cleaver asked if that was the letter that bore the date 13 January 1993 in the top right hand corner.

Mr Gerber said that was correct.

Mr Gerber said that there were three different kinds of lettering on this letter. This was significant, since in 1993 word processing facilities that would easily enable a writer to use three different kinds of lettering in the same letter were not readily available.

Mr Cleaver asked Mr Gerber to enlighten him with regard to his observation.

Mr Gerber said that the lettering for 'Yours sincerely' was different.

Mr Cleaver replied that De Beers had no knowledge as to how the South African Diamond Board had composed the letter, but De Beers regarded it as 'a solid letter'.

Mr Gerber asked De Beers why, if in their view the 1992 agreement constituted a valid legal document, did they feel the need in 1998 to go and ask the Diamond Board for another agreement.

Mr Cleaver said that in the attachment to the 1992 agreement there was a sentence 'The agreement will be subject to annual review'. Each year the Diamond Board had confirmed continuation of the 1992 agreement, and De Beers had felt no reason to doubt the validity of these yearly reconfirmations. In 1998, however, there had been, after negotiations, a new, formal agreement with slightly different terms. He said that both were perfectly valid legal documents. He could not shed any further light upon these agreements, since he was not present at the time. However, the 1998 agreement clearly referred to the terms of the 1992 agreement.

Mr Gerber asked if the 1992 agreement had come about through protracted negotiation or had it been the result of one Diamond Board meeting.

Mr Cleaver said that in 1990 and 1991 the industry had asked De Beers to provide a more consistent mix of diamonds. It was his impression that there had been negotiations behind the 1992 agreement. De Beers had agreed in the 1992 agreement for the first time to mix South African diamonds to be exported to London with De Beers diamonds from all over the world, and re-import not only De Beers South African produced diamonds but diamonds from De Beers mines all over the world. He confirmed that it was his understanding that there had been negotiation preliminary to the 1992 agreement.

Mr Cleaver thereupon informed the Acting Chairperson that he, Mr Cleaver, had just been offered an original of the letter issued to De Beers by the South African Diamond Board in January 1993. He would be happy to hand out a copy of the letter.

The Acting Chairperson asked Mr Gerber to continue.

Mr Gerber asked Mr Cleaver if he had copies of the discussion with the Diamond Board preliminary to the 1992 agreement, or had the discussion documents been given to a subcommittee.

Mr Cleaver asked if he could confer with a colleague.

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Afterwards, Mr Cleaver said that they did not have with them any of those documents; they know that there had been lengthy discussions, and that the Diamond Board subcommittee was involved. They could investigate that. Nonetheless, they could confirm that there had been lengthy discussions.

The Acting Chairperson asked if the Diamond Board could enlighten the Committee.

Mr A Chikane, Chairperson: South African Diamond Board, said that they were aware only that there had been some resolutions.

The Acting Chairperson emphasized that the Committee really wanted to conclude the matter that day, and so he appealed to De Beers to conduct that investigation and return to the Committee as soon as possible.

Mr Cleaver reiterated that De Beers had a valid agreement. However, De Beers would do its best to conduct the investigation regarding the documents. They would search for any relevant minutes.

The Acting Chairperson said it was in the interests of De Beers, if they had substantial documentation related to the agreement, to produce that documentation. It was in everybody's interest to produce that documentation. Failure to do so would leave the Committee to draw its own conclusions.

Mr Gerber asked De Beers what had motivated the company, on the eve of a new democratic South Africa, to ship 20 million carats of uncut diamonds to London, only to re-import some of them afterwards. These diamonds were worth 900 million US dollars free of tax. For a company such as De Beers, that was and remains an institution in South Africa, it really raised many questions.

Mr Cleaver said that that, in De Beers' view, was a misconception. De Beers had comprehensive evidence for every diamond. It was De Beers' view, based on its own records and evidence, that no more than its usual number of diamonds were exported in 1993. De Beers had comprehensive records and could substantiate that for every shipment of diamonds it had a certificate of exemption. There was not a material 'spike' in De Beers' export of diamonds in the year prior to the 1994 election.

The Acting Chairperson said that the Committee had documentation from the Office of the Auditor-General that gave a different picture. The Committee's information was contrary to that of De Beers, which argued that its exports had remained constant. He asked the Auditor-General's representative to confirm the information given by the Office of the Auditor-General to the Committee, in particular the information given on page seven of the document that the Auditor-General had provided on 11 September 2007. According to that document, there was a substantial difference in the sale of South African diamonds in the year 1992 from any other year. He asked for the source of that information.

Mr W Van Heerden, Corporate Executive: Office of the Auditor-General, said that the information had been supplied by the Department of Minerals and Energy.

The Acting Chairperson asked if the Committee could assume that De Beers had exported all those diamonds, or if any other company or organisation had contributed to the total. He asked if they were all De Beers' diamonds.

Mr Van Heerden said that the total included the products of other companies or organisations, but that De Beers was the biggest diamond producer at the time.

The Acting Chairperson thanked Mr Van Heerden, saying that the Committee just wanted to set the record straight.

The Acting Chairperson said that the export of uncut diamonds to the value of R4.6 billion in 1992, compared with R1.7 billion in the year before, was, contrary to what De Beers had said, clear evidence of 'a spike'.

Mr Petersen said that it was necessary to distinguish exports from sales. The document in question referred to sales.

The Acting Chairperson said that the Committee had a problem in reconciling the figures given by De Beers with the figures given by the Auditor-General to Parliament. It was a frustrating situation for the Committee. He asked the Department of Minerals and Energy if it had any information that could assist the Committee in its interrogation and if there had been 'a spike' in diamond exports.

Mr Sandile Nogxina, Director-General: Department of Minerals and Energy, said that the Department could confirm what the Auditor-General's representative had said.

The Acting Chairperson asked Mr E W Trent (DA) if the above constituted an answer to his question.

Mr Trent said that his question was answered.

Mr Gerber asked De Beers if he was correct in assuming, with reference to the 1992 agreement, which De Beers insisted was legal, that De Beers had not paid any export levies up to 2007.

Mr Cleaver said that De Beers had a valid certificate of exemption.

The Acting Chairperson said that he did not want to open a debate between De Beers and the Auditor-General's Office. He asked De Beers, that if they disputed the figures that the Committee had received from the Auditor-General's Office, they should submit their figures to the Committee in writing so that the Committee could itself interrogate them. He said that the question that the Committee was now asking De Beers was whether or not they had been paying duties on exports since 1992. He asked Mr Gerber to repeat his question.

Mr Gerber asked if De Beers could give details of the exemption certificates.

Mr Cleaver said that De Beers had not paid duties on exports since 1992 since De Beers had been given exemption. De Beers could provide the Committee with copies of exemptions granted since 1993. The delegation members had with them the exemption for 1993, and could leave a copy with the Committee.

The Acting Chairperson asked De Beers to confirm, for the record, that De Beers had an exemption.

Mr Cleaver confirmed that De Beers had an exemption.

The Acting Chairperson asked that De Beers furnish the Committee with copies of the exemption.

Mr Gerber asked if De Beers had had an exemption for every parcel of stones that had been exported.

Mr Cleaver replied that De Beers had valid certificates of exemption for every shipment. De Beers would be happy to provide the Committee with copies of exemption for the year in question, 1993; it was a very large file, but De Beers would provide 1993 certificates to the Committee before they left that day, and subsequently any other documentation that the Committee required. They did not have with them the documentation for other years.

The Acting Chairperson thanked Mr Cleaver and said that the Committee would certainly examine the documents, either on the Committee's premises or on De Beers' premises.

The Auditor-General's representative said that the 1992 exemptions were wanted as well.

Mr Gerber asked where the head office of De Beers was located.

Mr Cleaver said that it was in Kimberley.

The Acting Chairperson asked if De Beers would confirm that it had not deliberately held back any of its production as a stockpile. It was necessary to move away from being 'nice' and instead be 'frank' He asked De Beers if they were disputing that prior to 1992 there had been a big stockpile that had been shipped to London. He understood De Beers to be saying that there had been nothing untoward in its actions. However, the Committee was sure that there was something untoward in the shipment of a large stockpile to London just before the 1994 elections.

Mr Cleaver admitted that De Beers held stockpiles around the world. De Beers, however, maintained that the stockpile that it held at the time in question was substantially less than the Committee had alleged, and it was certainly not accumulated to avoid any kind of duty. It was shipped in 1992 in order to be mixed with other diamonds in London. De Beers denied any stockpiling in order to ship an abnormally large number of diamonds prior to the 1994 elections.

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Mr Trent asked if it was De Beers' view that De Beers had no liability to pay any duty whatsoever on those exports.

Mr Cleaver acknowledged that De Beers had a requirement to comply with the law, but De Beers had obtained an exemption

Mr Gerber asked if members of the Auditor-General's Office who had gone to London could supply the Committee with information.

The Acting Chairperson said that, before any question was put to the Auditor-General's representative, he wanted to ask the Director-General of the Department of Minerals and Energy whether or not there had been a stockpile. Also he wanted to ask the South African Diamond Board if there had been a stockpile.

Mr Van Heerden said that the Diamond Board evaluator had commissioned in London two audit reports by PKF to investigate the stockpile.

Mr Nogxina said that according to the Department's understanding there had been a stockpile.

Mr Chikane said that there had indeed been a stockpile.

Mr Godi observed that the issue had been before the Committee for a long time. It appeared that De Beers was now more willing to provide information. He asked why they had not been willing to provide that information previously, which raised Mr Gerber's question.

The Acting Chairperson asked for the reason for the difficulty in providing documentation. He asked why it had taken such a long time and such effort to provide it.

Mr Chikane said that the Diamond Board had instituted an investigation.

Mr Petersen said that De Beers had supplied the required information in February 2006 within two days.

Mr Cleaver said that in 1999 it was quite likely that a stockpile might have been built up. He said further that the 1998 agreement was a written agreement in the form of a letter from the South African Diamond Board with the terms and conditions attached. De Beers accepted the agreement by way of a letter dated 13 February 1998. De Beers' position was that it was a valid agreement in writing, and De Beers had the originals. However, the relevant statute, in De Beers' view, had not required a written agreement.

The Acting Chairperson said that the Committee was composed not of lawyers but of 'mere mortals'. He asked for a copy of the agreement, and if De Beers could tell the Committee who was the chief executive officer of the Diamond Board at the time.

Mr Cleaver said that the letter appeared to have been signed by a Mr C J Hambley, Chief Executive Officer, as far as De Beers could tell, for the Diamond Board.

Acting Chairperson said that the Committee was not going to dispute that now, but take that as De Beers' position for purposes of the Committee's final deliberations. He asked the Auditor-General's representative please to help. He asked for any further input from the Auditor-General's representative in order that the Committee could take an informed decision.

Mr Van Heerden asked if the Committee had copies of the 1987-1991 agreements, and did the 1992 agreement differ in format from the other agreements referred to.

Mr Cleaver said that it was his understanding that there was in 1987 a one-page letter from the Diamond Board indicating an agreement. It was not a formal agreement.

Mr Trent asked if members of the Diamond Board at the time were available and could be called to appear before the Committee.

Mr Chikane said that he wished that the matter could be brought to a logical conclusion. He said that it would be helpful if

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De Beers and the Treasury could agree on figures to determine whether anything was owed to the state. The legal side of the matter, Mr Chikane felt, could be settled without recourse to the courts.

The Acting Chairperson said that definitely there would not be another hearing on De Beers. That was why he had been determined not to involve the Committee in legalistic discussions.

The Acting Chairperson repeated that the Committee's view was that De Beers had an obligation to pay any taxes that it should have paid but which it had not paid. If De Beers had not paid taxes that it should have paid, the question remained how the Committee should proceed in the matter. If De Beers did not owe taxes, then that chapter could be closed.

Mr Trent said that he was satisfied that there was nothing more to be gleaned from the parties present.

Mr Gerber said that the 1992 agreement had been open-ended. He asked why there was a need for another agreement in 1998.

Mr Cleaver replied that the 1992 agreement had not been intended as a permanent agreement. Changes in circumstances by 1998 led to negotiation of a new agreement. He was aware that the Section 59 committee had reviewed the agreement.

The Acting Chairperson asked if any other Committee Member wished to ask a question.

Mr Gerber asked if the South African Revenue Service (SARS) had at any time audited De Beers.

Mr Cleaver said that De Beers had been subject to many audits by SARS.

The Acting Chairperson said that he would now review the proceedings and bring them to a close.

He said that the Committee required De Beers to submit its export duty exemption certificates for 1992 and 1993.

The Committee also wanted De Beers to investigate to see if it had paid RSC levies.

The Committee also wanted to indicate here that the Department of Minerals and Energy, the Diamond Board, and the Office of the Auditor-General had all confirmed that there had been a stockpile of diamonds in 1992.

He said that De Beers had a different view. The Committee asked De Beers therefore to give the Committee its information as soon as possible because that was critical to the Committee's position.

He affirmed that the Members of the Committee were politicians. The Committee had received a report from the Office of the Auditor-General that a large corporate citizen of South Africa had had a stockpile and had taken it out of the country just before the 1994 elections. It had not paid duty.

The South African Diamond Board, which was supposed to be the regulator, had ruled in favour of business rather than the government.

A regime change was imminent.

These factors had aroused the Committee's concern, and the Committee could not shirk its responsibility to Parliament to ask these questions.

He said that the Committee wanted to send a strong message. No corporation or individual was untouchable. There must be no perception that anyone was above being held accountable. If a corporation or individual had broken the law, the Committee would investigate the matter, as mandated by the Constitution. The Committee could call anyone to account, whether it be a director-general or even an ordinary civilian. In that context the Committee had summoned De Beers. In that context the Committee sent a message that everyone was accountable.

So De Beers was going to co-operate, and there would not be another engagement like the present one. The Committee would make its ruling and stand by it. The Auditor-General would live by it, in terms of reputation and otherwise. De Beers would live with it, and so would the present Diamond Board, and the future Board. The Committee would pronounce on all

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these matters, including the future role of the Board.

The Acting Chairperson thanked De Beers for appearing before the Committee and trusted that De Beers would provide the documentation requested as soon as possible.

The Auditor-General, the Board, and the Department would help the Committee by reaching agreement on the financial aspect of the matter.

If the Committee had any further questions of the parties present at the meeting, it would ask them telephonically or by letter. There would be no further meetings.

The Committee would complete its report and submit it to the matter to Parliament.

Mr Cleaver expressed De Beers' thanks for the opportunity to appear before the Committee and assured the Committee of De Beers' co-operation.

#### **Interaction with Mr Dines Gihwala, curator of the Fidentia Group**

The Committee interacted with the curator and co-curator of the Fidentia Group and urged them to conclude the matter as soon as possible. The Committee explained that its aim was to recover money intended for Fidentia's investors and beneficiaries, including money intended for the use of training.

The curator, Mr Dines Gihwala, said that he and his co-curator, Mr George Papadakis, wanted to co-operate fully, without prejudice, with regard to the assets that they hoped to recover. He asked if the curator and co-curator had privilege in the meeting, to which the Acting Chairperson replied that, in so far as they were appearing before the Committee, they had privilege. However, members of the media were present and the Committee could give no guarantees that what was said might not be reported in the media.

Mr Gihwala said that on taking up the administration of Fidentia, the curator and co-curator had sought to cut costs; other than the Fidentia Football Club, they had not sold a single asset. R49 million had been paid to beneficiaries. Of this, R16 million had been repaid to the Transport Education Training Authority (Teta).

Mr Gerber asked how long would it take to resolve the Fidentia matter. The Committee wanted 'an end to this debacle'.

Mr Gihwala said that when he took up his appointment as curator, he was told to prepare himself for a task that would take ten years. He said that the curator and co-curator were handicapped in their process. The Financial Services Board was aware of that handicap. It was hoped to produce a final liquidation account by the end of 2007. It was then hoped to make an award.

Mr George Papadakis, co-curator, said that the curator and co-curator had identified Fidentia's assets to be in three groups: firstly, an equity portfolio, secondly, a property portfolio, and, thirdly, a cash portfolio.

Mr Godi (African People's Convention) said that the curators had not been categorical with regard to the R49 million, and asked if that sum had included the R16 million.

Mr George Papadakis said that it was separate.

Mr Trent asked what was a reasonable time for curatorship.

Mr Dines Gihwala replied, 'How long is a piece of string?' Because of the urgent need of widows and orphans to be repaid, the curators lacked the time and space to build up assets.

To this, the Acting Chairperson responded that the Committee wanted to focus on Teta.

Mr Dines Gihwala said that, subject to court approval, it was hoped to make a distribution by 31 December 2008. The curator and co-curator said that they would try to achieve the highest price in the sale of assets.

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Mr Gerber asked, in the interests of the taxpayer, what was the cost of curatorship.

Mr Gihwala said that the curatorship fees were at a discounted rate.

Mr Papadakis said that the Auditor-General had approved the rates.

Mr Gihwala said that he had offered to serve at no charge, but this offer had been declined, because it was thought that if he undertook to do the work *pro bono* then, because it was a difficult case, the work might be delayed behind more straightforward cases for which normal fees were applicable. So he had agreed upon a fee. However, with due respect to the Committee, the curator had to decline to disclose the agreed fee. He said that it was 'not appropriate to put my private business on display.' Moreover, Mr Gihwala, an attorney by profession, did not want to disclose to the Committee the level of the fees that he was charging for fear that he would be subjected by his profession to disciplinary proceedings for charging fees below those recommended by his profession. It was his view that the creditors of Fidentia were getting good value for their money.

Mr Gerber said that the Committee respected his view.

Mr Gihwala said that Teta had also informed them that Teta had engaged lawyers and forensic accountants. It was for Teta to decide if it was getting value for money. Lawyers could not accelerate the speed of what the curator and co-curator were doing already, since the curator and co-curator were constrained by the requirements and processes of the courts.

Mr Papadakis said that liquidation would not have helped.

The Acting Chairperson asked Mr Hennie J Bekker (IFP) if he had any questions.

Mr Bekker replied that he had no questions.

Mr G Koomhof (ANC) asked about Sunset Beach. It was a low valuation. He asked the curator and co-curator if they were going to sue for that money.

Mr Gihwala said that their valuation was R20 million. The curator and co-curator were constrained by the non-recognition in South African law of the doctrine of conversion, whereby property could be attached to exact payment of debt. This meant that a thief could profit from what he had stolen and keep his profit. However, this would not stop the curator and co-curator from suing for the money. He wanted to challenge this doctrine. Since the courts were inundated, the earliest likely trial date was in the first part of 2009.

Mr Koomhof said that the process did not make much sense.

Mr Gihwala said that there were pleadings. Mr J Arthur Brown, former head of Fidentia, had frustrated them every step of the way. January 2009 remained the earliest likely date for a trial. It was better to err on the side of caution.

Mr Gihwala and Mr Papadakis gave the Committee their unequivocal commitment to conclude the matter as soon as possible, but reminded the Committee that they were subject to external procedural constraints such as those of the court. Mr Gihwala said that Members should feel free to contact him. He had left his telephone number with the Committee Secretary, Mr Gurshwyn Dixon.

The meeting was adjourned.

#### Appendix:

Business Report news article: MPs challenge De Beers over mysterious exports  
June 13, 2007

By Michael Hamlyn

Cape Town - MPs are considering whether to call De Beers to give evidence to the financial watchdog committee on public

accounts on how it came suddenly to export huge numbers of uncut diamonds shortly before apartheid officially ended and the new democratic government came to power.

The committee was told yesterday that the export of uncut diamonds each year amounted to about R1.8 billion, but that in 1992 there was a sudden spike to R4.67 billion. But the Diamond Board said it had not been able to discover a copy of any agreement allowing the export of diamond without payment of the export levy.

It had no copy in its files, according to Abbey Chikane, who chairs the board. And when the board wrote to De Beers asking for the company's copy, all it received was a copy of a board resolution on the subject.

The chairman of the committee, Themba Godi, asked: "Where is the agreement that allowed De Beers to loot the diamonds out of the country?"

ANC MP Piene Gerber referred to what happened in Namibia just before that country's independence, when uncut diamonds were similarly exported to be stockpiled in London, in what the MP called "a scorched earth policy".

The committee will consider the possibility of legal action against the company to recover the unpaid levies. The levies arise from clauses in the Diamond Act that require that gems be first offered to local polishers or cutters before being exported. Offering the diamonds locally allows the diamonds to be exported free of the 15 percent levy.

But Catinka Smit of the litigation department of the SA Revenue Service told the committee that the law was very imprecisely drawn. It did not, for example, specify in what way or how often the diamonds should be offered locally. Nor did it prescribe what form an agreement to export should take. It could even be a simple oral agreement, she said.

The director-general of minerals and energy, Sandile Nogxina, told MPs that the imprecision of the act encouraged the government to draw up a new bill that would tighten up the law. That bill, which was first to be called the Beneficiation Bill, has now taken the form of the Diamond Export Levy Bill before parliament.

The bill lays down specific terms under which uncut diamonds should be offered to local cutters and polishers.

De Beers spokesperson Tom Tweedy said uncut diamonds were exported when an equivalent amount of diamonds were imported, and when the diamonds themselves were not of sufficient quality or size to make it worthwhile cutting them here. "Local cutters are more expensive than those in India or Asia."

He later said: "De Beers keeps a record of its agreements and we are happy to assist the board should it require copies of agreements that we have." An agreement in section 59 of the Diamond Act "has been an evergreen agreement, which is reviewed annually by passing a resolution, unless there are material changes in any of the terms or technical details".

This had happened last year, when particular types of diamond were added to a section that deals with specials, which are diamonds of a colour, size or type of a higher value reserved for South African diamond cutters and not exported."

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# Mining

## S. Africa: Gov't Appeals to Reserve Bank to Help in De Beers Tax Probe

Feb 4, 2009 7:29 AM By Deena Taylor, Avi Krawitz

**RAPAPORT...** A task team mandated to establish whether De Beers benefited from improper export duty exemptions in the mid-1990s has appealed to Tito Mboweni, governor of the South African Reserve Bank (SARB), for assistance in its efforts, Reuters reported. The team, led by the Department of Minerals and Energy (DME), asked Mboweni to help verify whether the diamond mining giant exported more diamonds than usual between 1992 and 1998. The investigation began last year after discrepancies in government data emerged.

The team wants to verify the records of De Beers diamond stockpiles in London during the period from December 3, 1992 to March 19, 1998, Reuters explained. According to a progress report by the team, De Beers exported a shipment of 20 million carats of locally mined rough diamonds worth \$822 million to London in 1992. The shipment was not accompanied by payment of export duty nor was any documentary evidence produced showing that such a large shipment had been authorized, Reuters said. "The comparisons done on the data sets received from SARB and DME in relation to the diamond exports during the period 1992 to 1998 indicated no correlation, and inferences were made that either no full disclosure was made by De Beers during that whole period or SARB documentation requires further input from them," according to the progress report.

Lynette Gould, De Beers spokesperson, stressed that the company rejects the allegations. "We confirm, again, that the company fully complied with the applicable legislation governing the export, and the importation, of diamonds for the South African cutting industry," Gould said. She noted that following a 2007 meeting initiated by parliamentary watchdog group Scopa, De Beers provided the committee with company and official agreement documents and diamond export and import receipts from its records. "We remain committed to assisting our government in addressing the veracity of the allegations now recirculating," Gould added.

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**RAPAPORT**  
INFORMATION THAT MEANS BUSINESS.

Handwritten initials: "D" and "K" with a vertical line.

"CMK 14"

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Kathryn Johnson <kathryn@saha.org.za>

**FW: FOR ACTION TODAY: Follow up to PAIA Request SAH-2013-DOJ-0007**

1 message

**Raswiswi Marlyn** <MRaswiswi@justice.gov.za>  
To: "kathryn@saha.org.za" <kathryn@saha.org.za>

Mon, Sep 23, 2013 at 4:15 PM

**Good day**

Find herewith an electronic version of the letter we sent to you in reply to your request.

Regards



Marlyn Raswiswi

**From:** Kathryn Johnson [mailto:kathryn@saha.org.za]  
**Sent:** 20 September 2013 04:34 PM  
**To:** Raswiswi Marlyn  
**Cc:** FOIP  
**Subject:** Fwd: FOR ACTION TODAY: Follow up to PAIA Request SAH-2013-DOJ-0007

Dear Ms Marlyn Raswisi

Thank you for your email earlier today providing a letter dated 6 August 2013 (received by SAHA on 20 August 2013).

Unfortunately there appears to be some confusion between two different PAIA requests sent by SAHA.



The letter you have provided is a response to SAH-2013-DOJ-0003 (your reference 7/6/9 SAHA (Johnson K L)) sent to you on **26 July 2013**.

The PAIA request that I am following up on is SAH-2013-DOJ-0007 sent to you on **21 August 2013**. A copy is attached with the covering email for your ease of reference.

**This response was due today, and I wanted to follow up to see if you have an estimated timeframe for responding to this request?**

Please also let us know if any PAIA request fees are due on this matter.

I look forward to your response. Kind Regards, Kathryn

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**Communication sent on the 2013-08-21 16:34:51**

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**Name:** Witness Ndou  
**Position:** Acting Deputy Information Officer  
**Email:** wndou@justice.gov.za

**Name:** Marlyn Raswiswi  
**Position:** DIO  
**Email:** mraswiswi@justice.gov.za  
**Fax:** +27123578004

Subject Submission of PAIA request SAH-2013-DOJ-0007

Dear Marlyn Raswiswi

Re: Submission of PAIA request SAH-2013-DOJ-0007

Please find enclosed a request for information made in terms of the Promotion of Access to Information Act (PAIA) for your urgent attention. In accordance with PAIA, you are obliged to respond to this PAIA request within 30 days of submission.

Yours faithfully,

Kathryn Johnson  
Freedom of Information Programme  
South African History Archive

This communication has been automatically generated by the PAIA Tracker System, administered by the South African History Archive (SAHA). Please email foip@saha.org.za to report any errors in this communication, or for more information about the system.

**Attachment**

----- Forwarded message -----

From: **Raswiswi Marlyn** <MRaswiswi@justice.gov.za>  
Date: Fri, Sep 20, 2013 at 3:33 PM  
Subject: FOR ACTION TODAY: Follow up to PAIA Request SAH-2013-DOJ-0007  
To: "kathryn@saha.org.za" <kathryn@saha.org.za>

**Good day**

I acknowledge receipt of your e-mail of 20 September 2013.

Find herewith an electronic version of the letter we sent to you in reply to your request.

Regards

Marlyn Raswiswi

**From:** Kathryn Johnson [mailto:kathryn@saha.org.za]  
**Sent:** 20 September 2013 01:29 PM  
**To:** Raswiswi Marlyn  
**Cc:** FOIP  
**Subject:** FOR ACTION TODAY: Follow up to PAIA Request SAH-2013-DOJ-0007

*[Handwritten initials]*



ISS

Dear Ms Marlyn Raswisi

I refer to SAHA's email dated 21 August 2012 providing SAHA's PAIA request (Our Reference SAH-2013-DOJ-0007). I note we received an auto-response to this email from you on the same day. I also refer to our follow up email on 26 August 2013.

As I understand it, your department's response to **SAHA's PAIA request is due today.**

**At this stage, do you have an estimated timeframe for responding to this request?**

**If not, and if you require a 30 day extension of time to answer this request by Monday 21 October 2013 under section 26 of PAIA (for example, due to large number of documents required or due to searches out of the city) please let us know TODAY (so that the request is within the 30 day time limit).**

Please also let us know if any PAIA request fees are due on this matter.

We will follow up a response to this matter again on 25 September 2013.

Thanks for your assistance. Kind Regards, Kathryn

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Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

Tel: +2711 718 2563  
Fax: +2786 649 149  
Email: foip@saha.gov.za

Web: www.foip.saha.org.za  
Twitter: @sahanews

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Kathryn Johnson  
Freedom of Information Programme (FOIP)  
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Web: www.foip.saha.org.za  
Twitter: @sahanews

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3 attachments

 SAHA(JohnsonKL)0001.pdf  
1067K

 SAH-2103-DOJ-007\_Form A\_21 Aug.pdf  
92K

 SAHA(JohnsonKL)0002.pdf  
1555K

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**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, Pretoria, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004

*Please quote our full reference number in all correspondence*

Our ref: 7/6/9 SAHA (Johnson K L)  
Enquiries: Ms MM Raswiswi  
E-mail: [MRaswiswi@justice.gov.za](mailto:MRaswiswi@justice.gov.za)

17 September 2013

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foip@saha.org.za](mailto:foip@saha.org.za)

Dear Ms Johnson

**APPLICATION FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

Your request to have access to documents held by the Department of Justice and Constitutional Development specified by yourself as:

A. *"Copies of records or part of records, including internal reports or Minutes, relating to the Regulation of Interception of Communications and Provision of Communication related Information Amendment Act, 2010 and / or the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (the Interception legislation, also known as RICA):*

1. *In relation to interception directions under the Interception legislation by each financial or calendar year that is available for the period from the earliest date of commencement of the Interception legislation (also known as the fixed date under the Interception legislation) to 31 July 2013:*
  - *The different types of interception directions able to be granted*
  - *The different type of offences for non compliance with an interception direction and for unlawful interceptions of communications*
  - *The number of interception directions requested, granted or modified, set out by the agency that applied for the direction (where that information in relation to each agency is available – noting these numbers are sought even if they are not available in relation to each agency)*
  - *The average cost to applicants in obtaining an interception direction*

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- *The overall annual budget allocated within the department for administering interception directions*
  - *The annual average number of employees in the department with responsibilities that include administering interception directions*
  - *The types of surveillance used in interception directions*
  - *The number of each of the prosecutions, convictions, arrests and penalties imposed as a result of the successful use of an interception direction, set out by agency that applied for that direction (where that information in relation to each agency is available – noting these numbers are sought even if they are not available in relation to each agency)*
2. *In relation to each of the real-time communications-related directions and archive communication-related interception directions and decryption directions and entry warrants under the Interception legislation by each financial or calendar year that is available for the period from the earliest date of commencement of the Interception legislation (also known as the 'fixed date' under the Interception legislation) to 31 July 2013:*
    - *The number of each type of direction or warrant requested, granted or modified, set out by agency that applied for the direction or warrant (where that information in relation to each agency is available – noting these number are sought even if they are not available in relation to each agency)*
    - *The number of each of the prosecutions, convictions, arrests and penalties imposed as a result of the successful use of each type of direction or warrant, set out by agency that applied for that direction or warrant (where that information in relation to each agency is available – noting these numbers are sought even if they are not available in relation to each agency)*
  3. *Any directives issued by the designated judge to supplement the procedure for making applications for the issuing of any type of direction or entry warrant*
  4. *The number of each of the prosecutions, convictions, arrests and penalties imposed as a result of as a result of information gained from SIM card (or cell phone) registrations by each financial or calendar year that is available for the period from the earliest date of commencement of that part of the Interception legislation to 31 July 2013."*

Having carefully considered your application our decision is as follows:

The documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our undertaking.

Further, the nature of our work and the need to obtain information from various sources to enable us to carry out our function in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of Section 37 (1) (b) of the Promotion of Access to Information Act 2 of 2000.

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The above decision has been carefully considered in terms of the Promotion of Access to Information Act, 2000 (Act no. 2 of 2000).

Kindly be advised that you can lodge an appeal in terms of section 74 (1) of the promotion of Access to Information Act, 2000.

I trust that you will find the above in order.

Regards



**M M RASWISI (Ms)**  
**DEPUTY INFORMATION OFFICER**

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**FORM B**  
**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: SAH-2013-DOJ-0007

**A. Particulars of public body**

The Information Officer/Deputy Information Officer: Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria  
South Africa 0001

Telephone: +27123151715  
Fax: +27123578004  
Email: mraswiswi@justice.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.*

**Organisation:** South African History Archive (SAHA)  
**Reference number:** Non-Profit Trust No. 2522/93  
**Postal address:** P.O.Box 31719, Braamfontein, 2017  
**Fax number:** +27866491491  
**Telephone number:** +27117182563  
**E-Mail Address:** foip@saha.org.za

Capacity in which an internal appeal on behalf of another person is lodged:

**C. Particulars of requester**

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

-D Jc

Full names and surname:  
Identity 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:

- Refusal of request for access
- Decision regarding fees prescribed in terms of section 22 of the Act
- Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(l) of the Act
- Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
- 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: **See annexure A**

State any other information that may be relevant in considering the appeal: **See annexure A**

### 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 email**

Particulars of manner: kathryn@saha.org.za and foip@saha.org.za

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Signed at JOHANNESBURG this 12 day of November 2013.

*Kathryn Johnson*

SIGNATURE OF APPELLANT  
Ms Kathryn Johnson  
Freedom of Information Programme  
South African History Archive (SAHA)

**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):

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## Annexure A

**Reasons for Internal Appeal****1. Factual Background**

1.1 On 21 August 2013 the South African History Archive (SAHA) submitted a request to the Department of Justice and Constitutional Development (Department) for information under the Promotion of Access to Information Act, 2000 (PAIA), for records relating to the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act, 2010 and/or the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (the Interception legislation, also known as RICA) (PAIA Request). In particular the request sought records for general figures and records for periods from the earliest date of commencement of the Interception legislation to 31 July 2013 relating:

- interception directions,
- each of the real-time communication-related directions and archive communication-related interception directions and decryption directions and entry warrants,
- directives issued by the designated judge to supplement the procedure for making applications for the issuing of any type of direction or entry warrant, and
- the number of each of the prosecutions, convictions, arrests and penalties imposed as a result of information gained from a SIM card registration (or cell phone).

1.2 On 23 September 2013 SAHA received by email a letter dated 17 September 2013 signed by M M Raswiswi, Deputy Information Officer refusing the request for records required in the PAIA Request (PAIA Decision) on the basis of:

- section 37(1)(b) of PAIA, which provides, in summary, that ongoing information from the information source may be jeopardised if information is released;
- a breach of a confidential undertaking. Although the PAIA section is not referenced in the Department's decision, it is assumed that this exemption from release was based on section 37(1)(a) of PAIA.

**2. Issues**

- 2.1 SAHA contests the refusal of all of the requested documents under PAIA, and submits this appeal on a number of bases.
- 2.2 **First**, the PAIA Decision has not provided an indication as to **whether any part of any requested record can be released, as required by section 28 of PAIA**. In summary, section 28 of PAIA provides that information **must** be disclosed where information that may or must be refused can reasonably severed from any part that does **not** contain information that may or must be refused.
- 2.3 The PAIA Decision makes no decision as to whether any single word, paragraph or page of any of the requested records can be released.
- 2.4 Without some high level reasoning for the refusal of the PAIA Request, it is submitted that the blanket refusal of all material requested suggests that there has

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been no detailed consideration of the material requested. Accordingly, a more detailed consideration and review of the information requested is sought as part of the internal appeal.

5 **Secondly**, the refusal to release information is based on the ground at section 37(1)(b) of PAIA that the records consist of **information, all of which, was supplied in confidence by a third party and if disclosed could reasonably be expected to prejudice the future supply of similar information or information from the same source, and it is in the public interest that such information should continue to be supplied to the Department.**

2.6 The information requested in the PAIA Request includes information from a variety of sources that need to be considered separately in a PAIA Decision.

2.7 The interception direction information sought at item 1 of the PAIA Request included information about:

- **the types** of directions able to be granted
- **the types** of offences that exist for non-compliance,
- **the type** of surveillance used.

It is expected that the source of this information is the Department, and release of this information would not stop the Department from supplying the names of directions and the types of offences available in future matters. It is almost nonsensical that no response was given in relation to this part of this PAIA Request based on the exemption at section 37(1)(b) of PAIA. It is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request, and that this information be released.

2.8 Additionally, the interception direction information sought at item 1 of the PAIA Request included information about:

- **figures about the costs** to the Department and applicants, and
- **the employee resources** required to administer the interaction directions.

Again, it is expected that the source of this information is the Department, and release of this information would not stop the Department from supplying budget figures in the future. While it is conceivable that the costs to applicant, if available, might come directly from applicants, it seems likely that applicants would not refuse to continue to supply those costs, if they were advised that only a global annual cost figure for all applicant costs had been provided in response to this PAIA Request. It is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request, and that this information be released.

2.9 Finally, the interception direction information sought at item 1 of the PAIA Request included information about **the numbers of directions and prosecutions (including convictions arrests and penalties)**. Again, it is expected that this information would be made available to the Department by the Courts or law enforcement agencies. It seems unlikely that any other government agency would refuse to continue to provide that data, if they were advised that a global annual figure had been provided in response to this PAIA Request. It is submitted that that information is information that would not be refused in the future if supplied in response to the

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- PAIA Request. Again, it is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request, and that this information be released.
- 2.10 Similarly, the real-time communication-related directions and archive communication-related interception directions and decryption directions and entry warrants information that was sought at item 2 of the PAIA Request included information on the **numbers of those directions or warrants issued by each agency, or in total** (if not available by each agency). It is expected that this information would be made available to the Department by the Courts or law enforcement agencies. It seems unlikely that any other government agency would refuse to continue to provide that data, if they were advised that only a global annual figure had been provided in response to this PAIA Request. It is submitted that that information is information that would not be refused in the future, if supplied in response to the PAIA Request. Accordingly, it is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request, and that this information be released.
- 2.11 Again, the real-time communication-related directions and archive communication-related interception directions and decryption directions and entry warrants information that was sought at item 2 of the PAIA Request included information on the **numbers of directions and prosecutions (including convictions arrests and penalties)**. It is expected that this information would be made available to the Department by the Courts or law enforcement agencies. It seems unlikely that any other government agency would refuse to continue to provide that data, if they were advised that only a global annual figure had been provided in response to this PAIA Request. It is submitted that that information is information that would not be refused in the future if supplied in response to the PAIA Request. Accordingly, it is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request and that this information be released.
- 2.12 It is submitted that information sought at item 3 of the PAIA Request about **directives issued by the designated judge supplementing warrant procedures** is not information that would not be supplied in the future if it was provided in response to the PAIA Request. Again, it is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request and that this information be released.
- 2.13 Again, it is assumed that information sought at item 4 of the PAIA Request about **numbers of prosecution, conviction, arrest and penalties for SIM card registrations** is information compiled by the Department and/or other law enforcement agencies. It is submitted that that information, especially if a global annual figure was provided, is information that would not be refused in the future, if supplied in response to the PAIA Request. Again, it is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request and that this information be released.
- 2.14 In summary, it is submitted that none of the sources of the information request could, or would, stop providing this information if the information was released in response to the PAIA Request. The PAIA Decision is appealed on this basis.
- 2.15 **Thirdly**, the refusal to release information is based on the ground that release of the records would constitute an action for **breach of a duty of confidence owed to a third party in terms of an agreement**, which is an agreement entered into with a third party. It is presumed that this exemption is claimed pursuant to section 37(1)(a) of PAIA.

- 2.16 In the first instance it is difficult to know which information is provided by third parties. However, where that information is supplied by third parties, evidence should be provided by the Department of an agreement with those third parties.
- 2.17 Based on the analysis above, it is expected that a range of information requested at item 1 of the PAIA Request would be available to the Department from its own sources and therefore would not be the subject of a confidentiality agreement that could be breached including information about:

- types of directions able to be granted,
- types of offences that exist for non-compliance,
- type of surveillance used,
- costs to the Department, and
- employee resources required to administer the directions processes.

Logically, this information is information that does not appear to be able to be exempted on the basis of a **breach of a duty of confidence owed to a third party in terms of an agreement**, under section 37(1)(a) of PAIA. In summary, this internal appeal is made on the basis that the information set out above which was sought at item 1 of the PAIA Request should not be exempted on any basis set out in the PAIA Decision. It is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request, and that this information be released.

- 2.18 While it is conceivable that the information requested at item 1 of the PAIA Request about costs to applicants, if available, might come directly from applicants, it seems unlikely that applicants have entered into a confidentiality agreement with the Department to provide those costs. However, if that is the case, it would be appropriate for the Department to provide a copy of such an agreement (or the relevant part of such an agreement) in response to this internal appeal. Any such agreement would already be public in that it would be provided to all applicants and there could be no reason not to provide that agreement (or part of the agreement) made with applicants to keep information about the costs of their proceedings confidential, to SAHA.
- 2.19 The requested material at items 1 and 2 of the PAIA Request also included information on the numbers of:

- interception directions,
- interception directions prosecutions,
- real-time communication-related directions and archive communication-related interception directions and decryption directions and entry warrants, and
- real-time communication-related directions and archive communication-related interception directions and decryption directions and entry warrants prosecutions,

by each agency or in total (if not available by each agency).

- 2.20 It is expected that that information would be made available to the Department by the Courts or law enforcement agencies. It seems unlikely that any other government agency would require (or have signed) a confidentiality agreement before providing

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that data to the Department. Accordingly, it is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request, and that this information be released.

- 2.21 If a confidentiality agreement does exist between the Department and another government agency, it would be appropriate for the Department to provide a copy of such an agreement (or the relevant part of such an agreement) to SAHA in response to this internal appeal. Any such agreement to keep information about the number of directions issued or prosecutions is of public interest, and the agreement itself ought not to be confidential.
- 2.22 If a confidentiality agreement exists between the Department and another government agency (ie an agreement that makes data supplied to the Department confidential) this internal appeal asks that it be reviewed and, if necessary reconsidered, if it makes confidential a global annual figure about the numbers of directions/warrants and prosecutions. That is, this internal appeal submits it is not reasonable or appropriate for such an agreement to make a global annual figure about the number of directions/warrants and the number of prosecutions confidential from members of the South African public.
- 2.23 If a confidentiality agreement exists between the Department and another government agency (ie an agreement that makes data supplied to the Department confidential) this internal appeal asks that it be reviewed and, if necessary reconsidered, as to whether an agreement with another government party is an agreement with a separate legal entity or a 'third party' for the purposes of PAIA.
- 2.24 Additionally, it is submitted that information sought at item 3 of the PAIA Request about **directives issued by the designated judge supplementing warrant procedures** is not information that is supplied by a judge under a confidentiality agreement. Again, it is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request, and that this information be released.
- 2.25 If a confidentiality agreement does exist between the Department and the Courts, it would be appropriate for the Department to provide a copy of such an agreement (or the relevant part of such an agreement) to SAHA in response to this internal appeal. Any such agreement to keep information about judicial directions about warrant procedures confidential is of public interest, and the agreement itself ought not to be confidential.
- 2.26 If a confidentiality agreement exists between the Department and the Courts (ie an agreement that makes directives supplied by judges confidential) this internal appeal asks that it be reviewed and, if necessary reconsidered, if it makes confidential judicially issued directives. That is, this internal appeal submits it is not reasonable or appropriate for such an agreement to make judicial directions confidential from potentially affected persons.
- 2.27 Again, it is assumed that information sought at item 4 of the PAIA Request about **numbers of prosecution, conviction, arrest and penalties for SIM card registrations** is information compiled by the Department and/or other law enforcement agencies, and it is submitted that that information is not information that is supplied by the law enforcement agencies under a confidentiality agreement. Again, it is requested that the PAIA Decision be reconsidered in relation to this part of the PAIA Request, and that this information be released.
- 2.28 If a confidentiality agreement does exist between the Department and another government agency, it would be appropriate for the Department to provide a copy of such an agreement (or the relevant part of such an agreement) in response to this internal appeal. Any such agreement to keep information about the number of

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- prosecutions for SIM registrations is of public interest, and the agreement itself ought not to be confidential.
- 2.29 If a confidentiality agreement exists between the Department and another government agency (ie an agreement that makes data supplied to the Department confidential) this internal appeal asks that it be reviewed and, if necessary reconsidered, if it makes confidential a global annual figure about the numbers of prosecutions in relation to SIM card registrations. That is, this internal appeal submits it is not reasonable or appropriate for such an agreement to make a global annual figure about the number of the number of prosecutions for SIM registrations confidential from members of the South African public.
- 2.30 If a confidentiality agreement exists between the Department and another government agency (ie an agreement that makes data supplied to the Department confidential) this internal appeal asks that it be reviewed and, if necessary reconsidered, as to whether an agreement with another government party is an agreement with a separate legal entity or a 'third party' for the purposes of PAIA.
- 2.31 In summary, this internal appeal is made on the basis that the information set out above which was sought at items 1 to 4 of the PAIA Request is very unlikely to be subject to a third party confidential agreement that provides an exemption from release under PAIA. If such agreements do exist, it is requested that serious consideration be given to whether such agreements are made with separate third parties, as those agreements are generally with other government agencies which are arguably the one legal entity under PAIA. However, if reliance continues to be placed on this exemption, it is requested that a copy any agreement(s), or the relevant part of such an agreement(s) that makes the requested information confidential, be provided in response to this internal appeal.
- 2.32 In any event, if relevant confidential agreements with third parties do exist, it is submitted that those agreements ought to be reconsidered in relation to whether it is reasonable to make such a confidential agreement in relation to the information requested.

### 3 Submission

- 3.1 Section 11 of PAIA provides that a requester must be given access to a record of a public body if the requester complies with the procedural requirements in PAIA and access to the record is not refused in terms of any ground for refusal contemplated in Chapter 4.
- 3.2 SAHA has complied with the procedural requirements of PAIA and the requestee has not offered grounds for refusal in Chapter 4 that justify refusing access to all the requested records.
- 3.3 Furthermore, there is no justifiable basis on which the requestee could refuse access to all the requested records.
- 3.4 The requestee has therefore unlawfully refused access to the requested records.
- 3.5 SAHA therefore respectfully submits that the office should order that SAHA be given access to the requested records pursuant to section 77(2) of PAIA, which empowers the office to substitute the information officer's decision with a new decision.



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**FOR ACTION: PAIA Request re interception legislation directions and warrants - our ref SAH-2013-DOJ-0007// your ref 7/6/9 SAHA (Johnson KL)**

Kathryn Johnson <kathryn@saha.org.za>  
To: Raswiswi Marlyn <MRaswiswi@justice.gov.za>  
Cc: FOIP <foip@saha.org.za>

Thu, Jan 16, 2014 at 2:56 PM

Dear Ms Marlyn Raswisi

I am writing to ask if you are able to **provide a timeframe for a response to an internal appeal submitted on 12 November 2013** (attached).

**Background:** The initial PAIA request was submitted on 21 August 2013 for information about directions and warrants issued under the Interception legislation (our reference SAH-2013-DOJ-0007// **Your reference 7/6/9 SAHA (Johnson KL)**).

You responded to the initial request with a decision provided on 23 September 2013, in general terms denying the request on the basis of a breach of a confidential undertaking (assumed to be claiming section 37(1)(a of PAIA)). The request was also denied on the basis that information from that source may be jeopardised if information is released pursuant to section 37(1)(b) of PAIA.

An internal appeal was lodged on 12 November 2013 which in general terms argued that almost all information requested (for example the overall budget, types of surveillance or number of employees and even numbers of prosecutions) do not seem to be information that would be caught by these two exemptions.

**FOR ACTION: To date we have not receive a response to the internal appeal dated 12 November 2013, and accordingly, given the Christmas break are seeking to confirm the current status and expected timeframe for a response.**

I look forward to hearing from you.

Kind Regards, Kathryn

Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

Tel: +2711 718 2563  
Fax: +2786 649 149  
Email: foip@saha.gov.za

Web: www.foip.saha.org.za  
Twitter: @sahanews

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**3 attachments**

- SAH-2103-DOJ-0007\_Form B\_20131112.pdf  
45K
- SAH-2013-DOJ-0007\_Form B Annexure\_20131107.pdf

168K

 SAH-2103-DOJ-0007\_Form A\_21 Aug.pdf  
92K

170

D





1/16/14

South African History Archive Mail - Auto Response

Gmail

"CMK17"

171

**Auto Response**

SAH-2013-105-0007

Raswiswi Marlyn <MRaswiswi@justice.gov.za>  
To: Kathryn Johnson <kathryn@saha.org.za>

Thu, Jan 16, 2014 at 2:54 PM

Thank you for your email.

I acknowledge receipt of your communication and advise that I will respond to your request shortly.

Kindly note that I put high value on all communications sent to me, and will to ensure your satisfaction in my responses.



With warm Regards

Marlyn Raswiswi

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<http://www.codetwo.com>



D Jc



"CMK18" 172

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, PRETORIA, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004  
Please quote our full reference number in all correspondence

Ref: 7/6/9 SAHA (Johnson K L)(4)  
Enq: Ms M Raswiswi  
E-mail: MRaswiswi@justice.gov.za

11 October 2013

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foi@saha.org.za](mailto:foi@saha.org.za)

South Africa History Archive (SAHA)
Freedom of Information Programme
Records Released Under PAIA
2013 -10- 22
PAIA Request No: SAH-2013-DOT-0009
Receiving Officer: Kathryn Johnson
Signature: <i>Kat Johnson</i>

Dear Ms Johnson

**APPLICATION FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000)**

Reference is made to your request to have access to records in terms of the Promotion of Access to Information Act, 2000 (Act 2, of 2000).


In terms of the provision of section 26 of PAIA, you are hereby notified that the 30 day period provided for within which to deal with a request for access to a record is extended for a further 30 day period for the following reasons:

*The request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the public body concerned.*

Please expect a further communication from our office in due course. Your favourable consideration in this regard will be highly appreciated.

I trust that you will find the above in order.

Regards

  
MM Raswiswi (Ms.)  
Deputy Information Officer

*[Handwritten initials]*



Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, Pretoria, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004

Please quote our full reference number in all correspondence

Our ref: 7/6/9 SAHA (Johnson K L) (4)

Enquiries: Ms MM Raswiswi

E-mail: [MMRaswiswi@justice.gov.za](mailto:MMRaswiswi@justice.gov.za)

04 November 2013

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foi@saaha.org.za](mailto:foi@saaha.org.za)

Dear Ms Johnson

**REQUEST TO HAVE ACCESS TO RECORDS IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

Your request to have access to documents held by the Department of Justice and Constitutional Development specified by yourself as:

*"all investigations and evidence gathered by and made available to the South African Truth and Reconciliation Commission (TRC), and the TRC reporting of findings into the murder of Ms Dulcie September (Former ANC diplomatic representative to France, in Paris) on 29 March 1988 (we note that the date of death is 20years ago and so this is not personal information)*

*To assist in locating those records the TRC evidence gathering was referred to in the TRC Final report, volume 2, pages 1990-122 at: <http://www.justice.gov.za/trc/report/finalreport/Volume%202.pdf> as follows:*

*On 29 March 1988, Ms Dulcie September, the ANC chief representative in France was assassinated in Paris. She died instantly when hit by a volley of five bullets fired at close range. Though a submission was made to the Commission on the murder, it was identified as a priority case for investigation. A delegation travelled to Paris and elicited the co-operation of the French police, who made available to the Commission the files of the investigating judge, Ms Claudine Forkel."*

was unsuccessful.

Having carefully considered your application and having applied my mind thereto I regret to inform you that I am unable to provide the documents requested for the reasons set out below in terms of the requested information of the abovementioned individual.

consider that the disclosure of these documents could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety. Notwithstanding the need for disclosure in the light of the factors already referred to.

I refuse this request first because, it would constitute an unreasonable, disclosure of highly personal information in terms of Section 34(1) of PAIA.

Secondly, because its disclosure could reasonably be expected to endanger the lives or physical safety of the individuals implicated.

The disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputation and dignity of the individual names may be impaired thereby as contemplated in Section 39(i)(b)(dd) of PAIA.

Thirdly, the documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our undertaking.

Further, the nature of our work and the need to obtain information from various sources to enable us to carry out our function in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of Section 37(1)(b) of the Promotion of Access to information Act 2 of 2000.

The above decision has been carefully considered in terms of the Promotion of Access to Information Act 2000 (Act No. 2 of 2000). Kindly be advised that you can lodge an appeal in terms of Section 74(1) of the Promotion of Access to information Act, 2000.

I trust that you will find the above in order.

Regards



**M M RASWISWI (Ms)**  
**DEPUTY INFORMATION OFFICER**



175 1961 175

Mrs. Kathryn Johnson

South African History Archive (SAHA)

P.O. Box 31719

BIRMINGHAM

1961

Handwritten initials or marks

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"CMK 20" 176

**SAHA's PAIA Request re Dulcie September (our SAH-2013-DOJ-0009//your refs 7/6/9 SAHA (Johnson K L)(5) and your ref 7/6/9 SAHA (Johnson K L)(4))**

**Kathryn Johnson** <kathryn@saha.org.za>  
To: Raswiswi Marlyn <MRaswiswi@justice.gov.za>  
Cc: FOIP <foip@saha.org.za>

Fri, Mar 7, 2014 at 11:48 AM

Dear Ms Marlyn Raswiswi

**Background:** I am writing in relation to SAHA's PAIA Request sent to you on 17 September 2013 (dated 4 September 2013) in relation to records relating to Dulcie September (our ref SAH-2013-DOJ-0009//your ref 7/6/9 SAHA (Johnson K L)(5) (attached)).

As you would recall an internal appeal was submitted in relation to that request on 23 January 2014 (also attached).

I am also writing to you in relation to SAHA's PAIA request originally sent to the National Archives on 18 September 2013 also in relation to records relating to Dulcie September (our ref SAH-2013-NAR-0008 (attached)) and part transferred to DOJ on 19 September 2013 (our ref SAH-2013-DOJ-0009/ your ref 7/6/9 SAHA (Johnson K L)(4)(transfer letter also attached)).

**Issue:** In summary, you have written to me two letters received by me on 26 February 2014 dated 4 November 2013 in an envelope **postmarked 13 February 2014**. These letters were not emailed to SAHA although my correspondence to you has been conducted entirely by email and that is SAHA's preferred method of communication. The two letters notified SAHA of your decision to refuse to disclose documents in response to SAHA's request.

Both letters refer to the ability to make an internal appeal. This is **incorrect** in relation to the first request for records on Dulcie September (our ref SAH-2013-DOJ-0009//your ref 7/6/9 SAHA (Johnson K L)(5)).

I confirm that at this stage SAHA takes the view that there has already been an internal appeal in relation to the first request for records on Dulcie September (our ref SAH-2013-DOJ-0009//your ref 7/6/9 SAHA (Johnson K L)(5)). That internal appeal was submitted on 23 January 2013, some four months (and well over 30 days after the PAIA request was made) and well before you sent a decision on the internal appeal which you have dated 4 November 2013 (but did not send until 13 February 2014).

We have assumed that your correspondence on that PAIA request is in response to SAHA's internal appeal and we will now consider SAHA's position in relation to litigation on this first SAHA request regarding Dulcie September.

As I have previously mentioned in other recent email correspondence to you, I cannot ignore that a reasonable inference from the fact that **this letter was not sent by your Department until more than three months after it was dated**, is that this letter to SAHA was backdated by you to the date of 4 November 2013. The backdating of this letter in this way does not mean you are able to bypass the requirements of an internal appeal. The non-compliance with the internal appeal requirements will also be an issue we consider, when considering litigation in relation to this matter.

Yours sincerely, Kathryn

Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

Tel: +2711 718 2563







Fax: +2786 649 149  
Email: foip@saha.org.za

177

Web: www.foip.saha.org.za  
Twitter: @sahanews

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**6 attachments**

-  SAH-2013-DOJ-0009\_Form\_B\_20140123.pdf  
234K
-  SAH-2013-DOJ-0009\_FormA\_20130913.pdf  
71K
-  SAH-2013-NAR-0008\_FormA\_20130913.pdf  
64K
-  SAH-2013-NAR-0008\_ltr\_NAR-FOIP-rel\_20131011.pdf  
42K
-  SAH-2013-DOJ-0009\_ltr2\_DOJ\_\_FOIP\_20140226\_deny.pdf  
234K
-  SAH-2013-DOJ-0009\_ltr\_DOJ\_\_FOIP\_20140226\_denyferfrom NAR.pdf  
289K

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"CMK 21(a)" 178

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, PRETORIA, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004  
Please quote our full reference number in all correspondence

Ref: 7/6/9 SAHA (Johnson K L)(5)  
Enq: Ms M Raswiswi  
E-mail: [MRaswiswi@justice.gov.za](mailto:MRaswiswi@justice.gov.za)

11 October 2013

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foip@saha.org.za](mailto:foip@saha.org.za)

<p>South Africa History Archive (SAHA) Freedom of Information Programme Records Released Under PAIA</p> <p>2013 -10- 22</p> <p>PAIA Request No: SAH-2013-FOI-0010</p> <p>Receiving Officer: Kathryn Johnson</p> <p>Signature: <i>K. Johnson</i></p>
---

*Assumed correct*

Dear Ms Johnson

**APPLICATION FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000)**

Reference is made to your request to have access to records in terms of the Promotion of Access to Information Act, 2000 (Act 2, of 2000).

In terms of the provision of section 26 of PAIA, you are hereby notified that the 30 day period provided for within which to deal with a request for access to a record is extended for a further 30 day period for the following reasons:

*The request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the public body concerned.*

Please expect a further communication from our office in due course. Your favourable consideration in this regard will be highly appreciated.

I trust that you will find the above in order.

Regards

*MM Raswiswi*  
MM Raswiswi (Ms.)  
Deputy Information Officer

*D*



"(MK2(b)) 179"

South African History Archive

P.O. Box 31719

BRAMFONTEIN

2017

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D



Department of Justice and Constitutional Development

REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, Pretoria, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004

Please quote our full reference number in all correspondence

Our ref: 7/6/9 SAHA (Johnson K L) (2)  
Enquiries: Ms MM Raswiswi  
E-mail: [MMRaswiswi@justice.gov.za](mailto:MMRaswiswi@justice.gov.za)

06 November 2013

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foip@saha.org.za](mailto:foip@saha.org.za)

Dear Ms Johnson

**REQUEST TO HAVE ACCESS TO RECORDS IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

Your request to have access to documents held by the Department of Justice and Constitutional Development specified by yourself as:

*"all investigations and evidence gathered by and made available to the South African Truth and Reconciliation Commission (TRC), and the TRC reporting of findings into the attempted assassinations of the late Mr Godfrey Motsepe (Former ANC diplomatic representative to the BENELUX countries, in Brussels) on 02 February 1988 and on 27 March 1988*

*To assist in locating those records the TRC evidence gathering was referred to in the TRC Final report, volume 2, pages 1990-122 at: <http://www.justice.gov.za/trc/report/finalreport/Volume%202.pdf> as follows:*

*In a submission to the Commission, Mr Motsepe alleged that he had twice been the target of assassination attempts in 1988. In the first, on 2 February 1988, two shots were fired through the window of the office in which he was working, but missed him. In the second, on 27 March 1988, a seventeen – kilogram bomb was discovered in his office. This occurred two days before the killing of Ms Dulcie September in Paris."*

was unsuccessful.

Having carefully considered your application and having applied my mind thereto I regret to inform you that I am unable to provide the documents requested for the reasons set out below in terms of the requested information of the abovementioned individual.

I consider that the disclosure of these documents could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or

physical safety. Notwithstanding the need for disclosure in the light of the factors already referred to.

I refuse this request first because, it would constitute an unreasonable, disclosure of highly personal information in terms of Section 34(1) of PAIA.

Secondly, because its disclosure could reasonably be expected to endanger the lives or physical safety of the individuals implicated.

The disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputation and dignity of the individual names may be impaired thereby as contemplated in Section 39(i)(b)(dd) of PAIA.

Thirdly, the documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our undertaking.

Further, the nature of our work and the need to obtain information from various sources to enable us to carry out our function in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of Section 37(1)(b) of the Promotion of Access to information Act 2 of 2000.

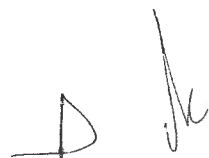
The above decision has been carefully considered in terms of the Promotion of Access to Information Act 2000 (Act No. 2 of 2000). Kindly be advised that you can lodge an appeal in terms of Section 74(1) of the Promotion of Access to information Act, 2000.

I trust that you will find the above in order.

Regards



**M M RASWISI (Ms)**  
**DEPUTY INFORMATION OFFICER**



DEPARTMENT OF JUSTICE  
REPUBLIC OF SOUTH AFRICA  
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PRETORIA 0001

Ms. Kathryn Johnson  
South African History Archive (SAHA)  
P.O. Box 31719  
BRAAMFONTEIN  
2017.

This was included  
in original  
envelope now at

SAHA - 2013 - D05 - 0009

281 (1972/11)"

Gmail

"CMK 23"

183

**relating to Mr SAHA's PAIA request re Godfrey Motsepe (our ref SAH-2013-DOJ-0010/your ref 7/6/9 SAHA (Johnson K L)(2))**

Kathryn Johnson <kathryn@saha.org.za>  
To: Raswiswi Marlyn <MRaswiswi@justice.gov.za>  
Cc: FOIP <foip@saha.org.za>

Fri, Mar 7, 2014 at 1:39 PM

Dear Ms Marlyn Raswiswi

I am writing in relation to SAHA's PAIA Request sent to you on 17 September 2013 in relation to records relating to Mr Godfrey Motsepe (our ref SAH-2013-DOJ-0010/your ref 7/6/9 SAHA (Johnson K L) (2) (attached)).

As you would recall an internal appeal was submitted in relation to that request on 23 January 2014 (also attached).

In summary, you have written to me a letter received by me on 26 February 2014 dated 6 November 2013 in an envelope **postmarked 13 February 2014** (attached). This letter was not emailed to SAHA although my correspondence to you has been conducted entirely by email and that is SAHA's preferred method of communication. The letter notified SAHA of your decision to refuse to disclose documents in response to SAHA's request. That letter also notified SAH of its right to make an internal appeal.

I confirm that at this stage SAHA takes the view that there has already been an internal appeal submitted on 23 January 2013, some four months (and well over 30 days after the PAIA request was made) and well before you sent a decision on the internal appeal which you have dated 6 November 2013 (but did not send until 13 February 2014).

I confirm that SAHA have assumed that your correspondence on that PAIA request is in response to SAHA's internal appeal and we will now consider SAHA's position in relation to litigation on SAHA's PAIA request regarding Godfrey Motsepe.

As I have previously mentioned in other recent email correspondence to you, I cannot ignore that a reasonable inference from the fact that **this letter was not sent by your Department until more than three months after it was dated**, is that this letter to SAHA was backdated by you to the date of 6 November 2013. The backdating of this letter in this way does not mean you are able to bypass the requirements of an internal appeal. The non-compliance with the internal appeal requirements will also be an issue we will consider, when considering litigation in relation to this matter.

Yours sincerely, Kathryn

Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

Tel: +2711 718 2563  
Fax: +2786 649 149  
Email: foip@saha.org.za




Web: www.foip.saha.org.za  
Twitter: @sahanews

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184

3 attachments

-  SAH-2013-DOJ-0010\_Form\_B\_20140123.pdf  
234K
-  SAH-2013-DOJ-0010\_FormA\_20130913.pdf  
70K
-  SAH-2013-DOJ-0010\_ltr\_DOJ\_FOIP\_20140226\_deny.pdf  
377K

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"(MIC24(a))" 185

Department:  
Justice and Constitutional Development  
**REPUBLIC OF SOUTH AFRICA**

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, PRETORIA, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004  
*Please quote our full reference number in all correspondence*

**Our reference: 7/6/9 SAHA (Kennedy C)**  
**Your ref: SAH-2013-DOJ-0008**  
**Enquiries: Ms M Raswiswi**  
**E-mail: [MRaswiswi@justice.gov.za](mailto:MRaswiswi@justice.gov.za)**

**02 September 2013**

Ms Catherine Kennedy  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foip@saha.org.za](mailto:foip@saha.org.za)

Dear Ms Kennedy

**APPLICATION FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

My office hereby wishes to acknowledge receipt of your request to have access to documents held by the Department of Justice and Constitutional Development specified by yourself as:

1. "All records of TRC investigations (including evidence gathered) and findings of the TRC regarding the use of secret funds by SADF, Armscor and front companies from 1978 to 1994, including:
2. Report of the Auditor General on all secret funds from 1960 to 1994 provided to the TRC (see TRC Final Report, Volume 2, pg. 524)
3. The schedule of secret projects compiled by the Auditor General provided to the TRC (see TRC Final Report, Volume 2, pg. 539)
4. Any records relating to the Kahn Committee (also known as the Advisory Committee on Special Secret Projects) provided to the TRC (see TRC Final Report, Volume 2, pg. 525)
5. Any records relating to the Ministers' Committee on Special Projects provided to the TRC (see TRC Final Report, Volume 2, pg. 530)
6. Any records relating to the Secret Services Evaluation Committee provided to the TRC (see TRC Final Report, Volume 2, pg. 532)
7. Any records relating to the Special Defence Account provided to the TRC (see TRC Final Report, Volume 2, pg. 532)
8. Any records relating to the Secret Service Account provided to the TRC (see TRC Final Report, Volume 2, pg. 532)
9. Any records relating to the Steyn Commission provided to the TRC (see TRC Final Report, Volume 2, pg. 542)"

D J

186

rdly be informed that your application has been transferred to the Armaments Corporation of South Africa (ARMSCOR), Pretoria.

Contact details:

Mr Johannes Siphon Mkwanazi  
Information Officer (PAIA)  
Armaments Corporation of South Africa (ARMSCOR)  
Private Bag X337  
PRETORIA  
0001

Tel: 012 428 2113

Fax: 012 428 3410

The request is transferred in terms of section 20 of the Promotion of Access to Information Act 2, 2000.

Reason for transfer of your request is as follows:

*The record's subject matter is more closely connected with the functions of the Armaments Corporation of South Africa (ARMSCOR).*

I trust you will find the above in order

Regards



**M M RASWISWI (Ms)**  
**DEPUTY INFORMATION OFFICER**

D





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2013-10-10



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"CMK 25"

188



Kathryn Johnson <kathryn@saha.org.za>

**Transfer of PAIA Request from Department of Justice to ARMSCOR - Our reference SAH-2013-DOJ-0008**

1 message

Kathryn Johnson <kathryn@saha.org.za>

Thu, Oct 17, 2013 at 6:42 PM

To: Raswiswi Marlyn <MRaswiswi@justice.gov.za>, siphom@armscor.co.za

Dear Ms Marlyn Raswiswi and Mr Siphon Makwanazi

I refer to the attached PAIA Request sent to the Department of Justice on 23 August 2013 seeking various records that were created by, or provided to, the Truth and Reconciliation Commission.

I also refer to the Department of Justice's letter dated 2 September 2013 (received on 14 October 2013 under cover of envelope stamped by the post office as 10 October 2013) (attached) in which we were advised that this request is to be transferred to ARMSCOR.

***We request that Department of Justice reconsider the transfer of this request to ARMSCOR, as the information requested is the information as provided to the Truth and Reconciliation Commission and we do not consider that this information is able to be provided by ARMSCOR.***

In summary, we do not consider that the transfer of this request satisfies the legislative requirements of section 20 of PAIA as follows:

- section 20(1)(a) - it seems unlikely that the TRC records are not in the possession of the Department of Justice and it seems unlikely that the TRC records are in the possession of ARMSCOR;
- section 20(1)(b) - the request for the TRC records are not more closely connected with the functions of ARMSCOR than the Department of Justice, and
- section 20(1)(c) - the request for the TRC records are not about commercial information.

We look forward to your earliest response confirming that this PAIA request will remain with the Department of Justice for response.

I look forward to your response, Kathryn

Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

Tel: +2711 718 2563  
Fax: +2786 649 149  
Email: foip@saha.gov.za

Web: [www.foip.saha.org.za](http://www.foip.saha.org.za)  
Twitter: @sahanews

PAIA


**2 attachments**

SAH-2013-DOJ-0008\_FormA.pdf  
68K

D 10/17/2013 6:42 PM

189

h African History Archive Mail - Transfer of PAlA Request from Dep... <https://mail.google.com/mail/u/0/?ui=2&ik=5bd3b0e2c7&view=pt&sear...>

 SAH-2013-DOJ-0008\_ltr\_DOJ\_FOIP\_20131014.pdf  
248K

*D* *ck*

GM !!

"(MK26)" 190

**Follow Up Transfer of PAIA Request from Department of Justice to ARMSCOR - Our reference SAH-2013-DOJ-0008/department's reference is 7/6/9 SAHA (Kennedy C).**

Kathryn Johnson <kathryn@saha.org.za>

Thu, Oct 31, 2013 at 6:27 PM

To: Raswiswi Marlyn <MRaswiswi@justice.gov.za>, siphom@armscor.co.za, Pamela Nyawo

<pamelan@armscor.co.za>

Cc: FOIP <foip@saha.org.za>

Dear Ms Marlyn Raswiswi and Mr Siphon Makwanazi

In relation to the email below in which I am seeking to confirm that SAHA's PAIA request regarding various TRC records is remaining with the Department of Justice for response - I note that SAHA's reference is SAH-2013-DOJ-0008 and the **department's reference is 7/6/9 SAHA (Kennedy C).**

I look forward to your response, Kathryn

On Thu, Oct 31, 2013 at 6:18 PM, Kathryn Johnson <kathryn@saha.org.za> wrote:

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Can I confirm that this request is remaining with the Department of Justice for response?

I look forward to your response, Kathryn

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I also refer to the Department of Justice's letter dated 2 September 2013 (received on 14 October 2013 under cover of envelope stamped by the post office as 10 October 2013) (attached) in which we were advised that this request is to be transferred to ARMSCOR.

***We request that Department of Justice reconsider the transfer of this request to ARMSCOR, as the information requested is the information as provided to the Truth and Reconciliation Commission and we do not consider that this information is able to be provided by ARMSCOR.***

In summary, we do not consider that the transfer of this request satisfies the legislative requirements of section 20 of PAIA as follows:

- section 20(1)(a) - it seems unlikely that the TRC records are not in the possession of the Department of Justice and it seems unlikely that the TRC records are in the possession of ARMSCOR;
- section 20(1)(b) - the request for the TRC records are not more closely connected with the functions of ARMSCOR than the Department of Justice, and
- section 20(1)(c) - the request for the TRC records are not about commercial information.

We look forward to your earliest response confirming that this PAIA request will remain with the Department of Justice for response.

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I look forward to your response, Kathryn

—  
Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

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Fax: +2786 649 149  
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Twitter: @sahanews

PAIA

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Twitter: @sahanews

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CMK27

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Gateway to Defence Solutions

Private Bag X337  
PRETORIA  
0001  
South Africa  
Web: [www.armscor.co.za](http://www.armscor.co.za)

370 Nossob Street  
Erasmuskloof X4  
Pretoria, South Africa  
Tel : +27 12 428 1911  
Fax : +27 12 428 5635

Company registration: 1968/008611/06 VAT registration: 4500101169

Ms MM Raswiswi  
Private Bag x 81  
Pretoria  
0001

Date : 05 December 2013  
Telephone : 012 428 2523  
Fax : 012 428 2101  
E-mail : [pamelan@armscor.co.za](mailto:pamelan@armscor.co.za)

Your ref: Our ref: LEG 9/2/C/44 Enquiries : P Nyawo

Dear Madam


**REQUEST FOR ACCESS TO INFORMATION: SAH-2013-DOJ-0008/NOTICE OF TRANSFER IN TERMS OF SECTION 20 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO.2 OF 2000)**

We acknowledge receipt of your referral of a request for access to information in terms of section 20 of the Promotion of Access to Information Act 2000.

Armscor is of the view that this request must reside with and be attended to by the Department of Justice ("Department"). The requested documents were compiled for the Truth and Reconciliation Commission. As mentioned in the correspondence received from the South African History Archives ("SAHA") dated 17 October 2013 and in lieu of section 20 of the Act, Armscor is of the view that this request must be read in context and it seems to be a request closely connected to the functions of the Department than Armscor. That being the case, Armscor is and therefore unlikely to be in the possession of the requested information.

Armscor is of the view that this request for information should remain with the Department.

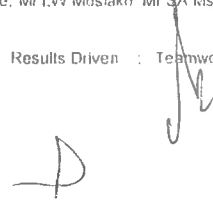
Regards

  
Pamela Nyawo  
NODAL POINT OFFICER:  
Armscor

Page 1 of 1

Directors: Mr JS Mkwanazi (Acting CEO); Dr RR Mgijima; Dr PP Dyanlyi; Dr (Col) JL Job; Mr EL Borole; Mr LW Mosiako; Mr SA Mtshibane; Mr JG Grobler (Chief Financial Officer)

Customer Focus : Care and Respect for Others : Excellence : Integrity : Leading by Example : Results Driven : Teamwork



Gmail

"CNK 25" 193

**Confirming NO TRANSFER of PAIA Request from DOJ to ARMSCOR - Our reference SAH-2013-DOJ-0008/department's reference is 7/6/9 SAHA (Kennedy C).**

Kathryn Johnson <kathryn@saha.org.za> Wed, Jan 15, 2014 at 9:47 AM  
To: Raswiswi Marlyn <MRaswiswi@justice.gov.za>, Pamela Nyawo <pamelan@armscor.co.za>  
Cc: FOIP <foip@saha.org.za>, siphom@armscor.co.za

Dear Ms Marlyn Raswiswi and Ms Pamela Nyawo

Happy New Year to you both.

I am just following up on an email that I sent late last year (below - 31 October 2013) that might have got missed in all the email traffic.

The email was about SAHA's PAIA Request (**attached**) submitted on 23 August 2013 regarding the **TRC records of the TRC's investigations (including evidence gathered) and findings of the TRC** regarding the use of secret funds by SADF, ARMSCOR and front companies from 1978 to 1994 (this included a request for records related to the Khan Committee and Steyn Commission). Our reference for this PAIA Request is SAH-2013-DOJ-0008//Department's reference is 7/6/9 SAHA (Kennedy C).

I had a conversation with ARMSCOR late last year and understood that ARMSCOR agreed that the attached request for TRC records and records relating to the Khan Committee and Steyn Commission - **is NOT a request that should be transferred from DOJ to ARMSCOR.**

Accordingly, **SAHA is now working on the basis that the attached request is due for response by Department of Justice and Constitutional Development.**

**We are writing to seek an indication as to when a response on this PAIA request can be expected.** If we do not hear from you shortly (that is, by **Monday 27 January 2014**), we will need to submit an internal appeal in relation to the deemed refusal of this request.

We look forward to your response, Kathryn

On Thu, Oct 31, 2013 at 6:27 PM, Kathryn Johnson <kathryn@saha.org.za> wrote:  
Dear Ms Marlyn Raswiswi and Mr Siphon Makwanazi

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I am just following up the email below.

Can I confirm that this request is remaining with the Department of Justice for response?

I look forward to your response, Kathryn

194

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I also refer to the Department of Justice's letter dated 2 September 2013 (received on 14 October 2013 under cover of envelope stamped by the post office as 10 October 2013) (attached) in which we were advised that this request is to be transferred to ARMSCOR.

**We request that Department of Justice reconsider the transfer of this request to ARMSCOR, as the information requested is the information as provided to the Truth and Reconciliation Commission and we do not consider that this information is able to be provided by ARMSCOR.**

In summary, we do not consider that the transfer of this request satisfies the legislative requirements of section 20 of PAIA as follows:

- section 20(1)(a) - it seems unlikely that the TRC records are not in the possession of the Department of Justice and it seems unlikely that the TRC records are in the possession of ARMSCOR;
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- section 20(1)(c) - the request for the TRC records are not about commercial information.

We look forward to your earliest response confirming that this PAIA request will remain with the Department of Justice for response.

I look forward to your response, Kathryn

--  
Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

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PAIA

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*[Handwritten initials]*



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---  
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Support the work of SAHA - make a donation online today

 SAH-2013-DOJ-0008\_FormA.pdf  
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J

GM !!

"CMK 29"

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**RE: Confirming NO TRANSFER of PAIA Request from DOJ to ARMSCOR - Our reference SAH-2013-DOJ-0008/department's reference is 7/6/9 SAHA (Kennedy C).**

Pamela Nyawo <PamelaN@armscor.co.za>  
To: Kathryn Johnson <kathryn@saha.org.za>

Wed, Jan 15, 2014 at 11:31 AM

Dear Kathryn,

The request as per our meeting late last year was referred to the DoJ. I have not received anything from the Department as yet to indicate any current status on the requested information.

Please also be informed that request SAH-0003 is near completion and will be forwarded to yourselves shortly. As for SAH-0002, we are working on the list sent to us and we will revert in due course.

Regards

Pam

**From:** Kathryn Johnson [mailto:kathryn@saha.org.za]  
**Sent:** 15 January 2014 9:47 AM  
**To:** Raswiswi Marlyn; Pamela Nyawo  
**Cc:** FOIP; Sipho Mkwanzazi  
**Subject:** Confirming NO TRANSFER of PAIA Request from DOJ to ARMSCOR - Our reference SAH-2013-DOJ-0008/department's reference is 7/6/9 SAHA (Kennedy C).

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197

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D

198

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I look forward to your response, Kathryn

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 Kathryn Johnson  
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 SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

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PAIA

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 Kathryn Johnson  
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--

Kathryn Johnson  
 Freedom of Information Programme (FOIP)



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**SOUTH AFRICAN HISTORY ARCHIVE (SAHA)**

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Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

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Disclaimer: This message and/or attachment(s) may contain privileged or confidential information. If you are not the intended recipient you may not disclose or distribute any of the information contained within this message. In such case you must destroy this message and inform the sender of the error. Ammscor does not accept liability for any errors, omissions, information and viruses contained in the transmission of this message. Any opinions, conclusions and other information contained within this message not related to Ammscor's official business is deemed to be that of the individual only and is not endorsed by Ammscor.

D dk

CMK30

200

**FORM B**  
**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: SAH-2013-DOJ-0008

**A. Particulars of public body**

The Information Officer/Deputy Information Officer: Ms Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria  
0001

Tel. +27123151715  
Fax. +27123578004  
Email: [mraswiswi@justice.gov.za](mailto:mraswiswi@justice.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:** South African History Archive (SAHA)  
**Identity/Passport number:** Non-Profit Trust No. 2522/93  
**Postal address:** P.O.Box 31719, Braamfontein, 2017  
**Fax number:** +27866491491  
**Telephone number:** +27117182563  
**E-Mail Address:** [foip@saha.org.za](mailto:foip@saha.org.za)

Capacity in which an internal appeal on behalf of another person is lodged:

**C. Particulars of requester**

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

D

Full names and surname:

Identity number:

### 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:

- Refusal of request for access
- Decision regarding fees prescribed in terms of section 22 of the Act
- Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act
- Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
- 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:

1. On 23 August 2013 SAHA made a request to the Department of Justice and Constitutional Development ('the requestee') for information under the Promotion of Access to Information Act, 2000 (PAIA). A copy of SAHA's request is attached to this appeal. An automatic read receipt email from the requestee was received on the same day in response to the sending of that request. A further acknowledgement email was also received by SAHA from the requestee later that day.
2. On 11 September 2013 a hard copy letter was received by SAHA from the requestee dated 23 August 2013 acknowledging receipt of the request and seeking payment of the request fee. On 20 September 2013 the request fee was paid and this was notified to the requestee on 1 October 2013. Acknowledgment of that payment was received from the requestee by SAHA.
3. On 27 September 2013, 7 and 22 October 2013, further follow up reminder emails were sent by SAHA to the requestee seeking a response to the PAIA request within the 30 days set out in PAIA.
4. On 14 October 2013 SAHA received a letter from the requestee dated 2 September 2013 notifying that this request was transferred to ARMSCOR for response. On 17 and 31 October 2013 SAHA wrote to the requestee and ARMSCOR contesting the transfer as the records sought are copies of records created by, or given to, the Truth and Reconciliation Commission, and so are records which are in the possession of the requestee and are more closely connected with the functions of the requestee. Accordingly, SAHA takes the view that the request should remain with the requestee under section 20 of PAIA. Automatic read receipt emails from the requestee were received on the same day in response to each of SAHA's emails.
5. On or around 6 December 2013 ARMSCOR wrote to the requestee also indicating that they took the view that SAHA's PAIA request must reside with the requestee

*[Handwritten signature]*

and, in summary, that ARMSCOR did not consider a transfer appropriate in the circumstances. On 15 January 2014 ARMSCOR indicated that they had not had a response to their correspondence to the requestee.

6. On 15 January 2013 SAHA again wrote to the requestee seeking a response on the basis that SAHA now assumed that the requestee was responsible for responding to this request, and seeking a response by 27 January 2014, or SAHA would be forced to lodge an internal appeal, some five months after first submitting the original request. Again an automatic read receipt email was received on the same day in response to SAHA's email. As at 4 February 2014 there has been no response to that email correspondence from SAHA.
7. The failure by the requestee to provide a decision on the PAIA request, despite multiple follow up and contact from SAHA, constitutes a deemed refusal in accordance with section 27 of PAIA.
8. SAHA contests the refusal and submits this appeal.
9. Section 11 of PAIA provides that a requester must be given access to a record of a public body if the requester complies with the procedural requirements in PAIA and access to the record is not refused in terms of any ground for refusal contemplated in Chapter 4.
10. SAHA has complied with the procedural requirements of PAIA and the requestee has not offered any ground for refusal in Chapter 4 for refusing access to the requested records. The requestee has therefore unlawfully refused access to the requested records.
11. Furthermore, there is no justifiable basis on which the requestee could refuse access to the requested records.
12. SAHA therefore respectfully submits that the relevant authority should order that SAHA be given access to the requested records pursuant to section 77(2) of PAIA, which empowers the relevant authority to substitute the information officer's decision with a new decision.

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

## 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.

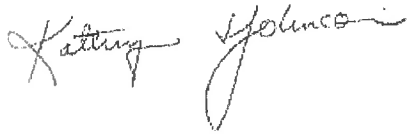
State the manner: In writing, preferably by email

Particulars of manner: Email address: [foip@saha.org.za](mailto:foip@saha.org.za)

D M



Signed at JOHANNESBURG this 4<sup>th</sup> day of February 2014.



SIGNATURE OF APPELLANT

Ms Kathryn Johnson  
Freedom of Information Programme  
South African History Archive (SAHA)



**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):

D  
J

"CMK3(A)"

206



Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, Pretoria, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004

Please quote our full reference number in all correspondence

Our ref: 7/6/9 SAHA (Kennedy C)  
Enquiries: Ms MM Raswiswi  
E-mail: [MMRaswiswi@justice.gov.za](mailto:MMRaswiswi@justice.gov.za)

15 January 2014

Ms Catherine Kenney  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foip@saha.org.za](mailto:foip@saha.org.za)

Dear Ms Kennedy

**REQUEST TO HAVE ACCESS TO RECORDS IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

Your request to have access to documents held by the Department of Justice and Constitutional Development specified by yourself as:

*"All records of TRC investigations (including evidence gathered) and findings of the TRC regarding the use of secret funds by SADF, Armscor and front companies from 1978 to 1994, including:*

1. *Report of the Auditor General on all secret funds from 1960 to 1994 provided to the TRC (see TRC Final Report, Volume 2, pg. 524)*
2. *The schedule of secret projects compiled by the Auditor General provided to the TRC (see TRC Final Report, Volume 2, pg. 539)*
3. *Any records relating to the Kahn Committee (also known as the Advisory Committee on Special Secret Projects) provided to the TRC (see TRC Final Report, Volume 2, pg. 525)*
4. *Any records relating to the Ministers' Committee on Special Projects provided to the TRC (see TRC Final Report, Volume 2, pg. 530)*
5. *Any records relating to the Secret Services Evaluation Committee provided to the TRC (see TRC Final Report, Volume 2, pg. 532)*
6. *Any records relating to the Special Defence Account provided to the TRC (see TRC Final Report, Volume 2, pg. 532)*
7. *Any records relating to the Secret Service Account provided to the TRC (see TRC Final Report, Volume 2, pg. 532)*
8. *Any records relating to the Steyn Commission provided to the TRC (see TRC Final Report, Volume 2, pg. 542)"*

was unsuccessful.

D M

Having carefully considered your application and having applied my mind thereto I regret to inform you that I am unable to provide the documents requested for the reasons set out below in terms of the requested information of the abovementioned individual.

I consider that the disclosure of these documents could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety. Notwithstanding the need for disclosure in the light of the factors already referred to.

I refuse this request first because, it would constitute an unreasonable, disclosure of highly personal information in terms of Section 34(1) of PAIA.

Secondly, because its disclosure could reasonably be expected to endanger the lives or physical safety of the individuals implicated.

The disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputation and dignity of the individual names may be impaired thereby as contemplated in Section 39(i)(b)(dd) of PAIA.

Thirdly, the documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our undertaking.

Further, the nature of our work and the need to obtain information from various sources to enable us to carry out our function in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of Section 37(1)(b) of the Promotion of Access to information Act 2 of 2000.

The above decision has been carefully considered in terms of the Promotion of Access to Information Act 2000 (Act No. 2 of 2000). Kindly be advised that you can lodge an appeal in terms of Section 74(1) of the Promotion of Access to information Act, 2000.

I trust that you will find the above in order.

Regards

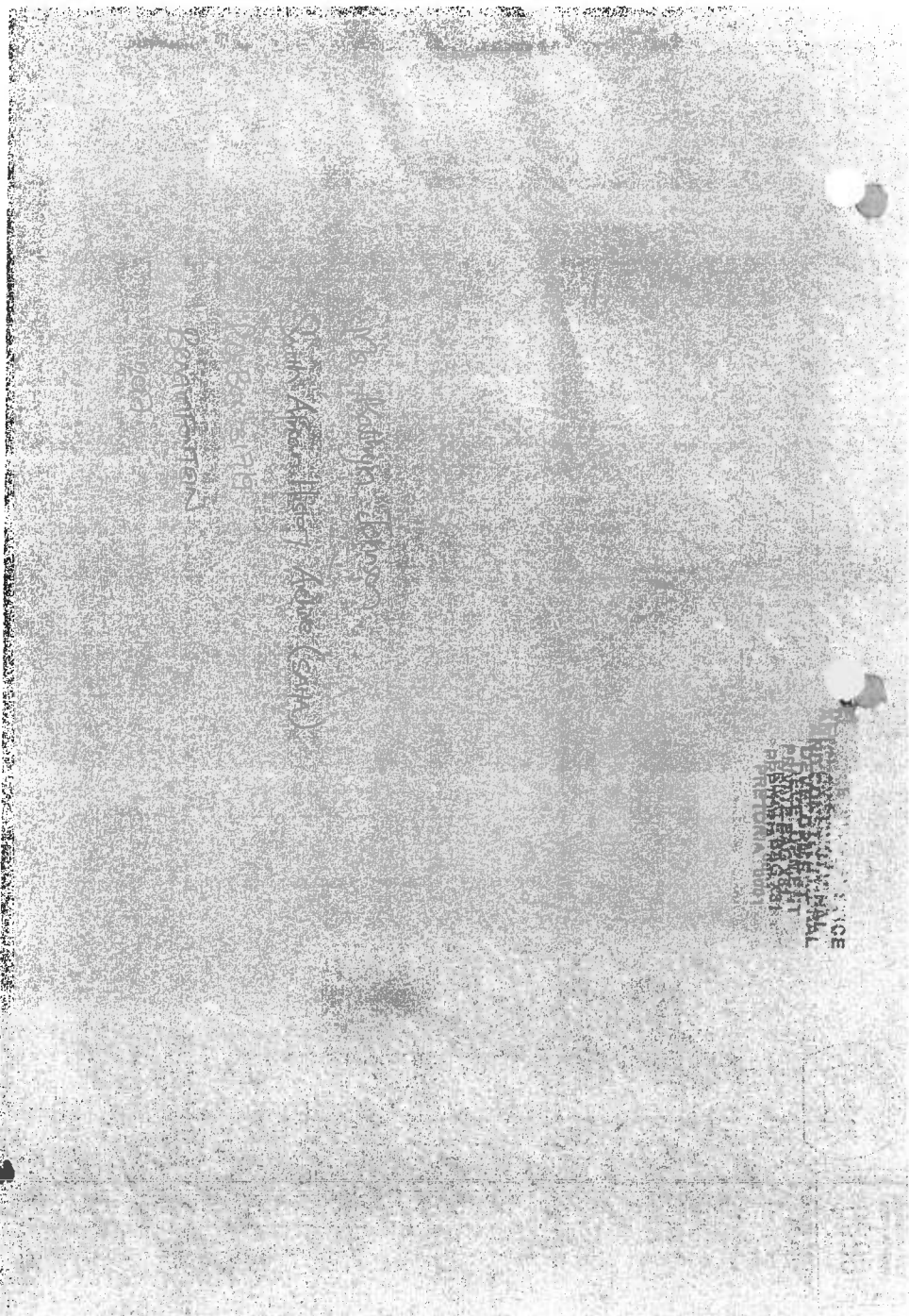


**M M RASWISI (Ms)  
DEPUTY INFORMATION OFFICER**



✓

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"(MK 31(6))"

207



Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, Pretoria, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004

*Please quote our full reference number in all correspondence*

Our ref: 7/6/9 SAHA (Kennedy C)  
Enquiries: Ms MM Raswiswi  
E-mail: [MRaswiswi@justice.gov.za](mailto:MRaswiswi@justice.gov.za)

04 February 2014

Ms Catherine Kennedy  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foip@saha.org.za](mailto:foip@saha.org.za)

Dear Ms Kennedy

**SUBJECT: APPLICATION FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

Your appeal is based on the purported failure by the deputy Information Officer of the Department to respond to your request within 30 days.

Your appeal does not appear to take into consideration, firstly our request for extension which was sent to you on 19 September 2013 and secondly our letter in which we refused in full your request to access the requested records dated 15 January (copy of which is attached for your convenience).

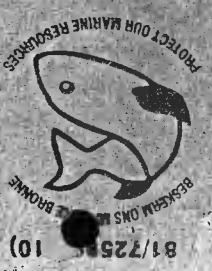
In the circumstance I suggest you withdraw your appeal based on deemed refusal and lodge a fresh appeal which should be based on the Deputy Information Officer's grounds of refusal as set out in the letter of 15 January 2014.

M M RASWISWI (Ms)  
DEPUTY INFORMATION OFFICER

Box 209

725XWJ

Ms. C. Kennedy  
South African History Archive (SAAH)  
P.O. Box 31719  
BENONI  
2017



Gmail

"CMK 33"

210

### Updated Response: Claim against Deemed refusal - our ref SAH-2013-DOJ-0008//you ref 7/6/9 (Kennedy C)

**Kathryn Johnson** <kathryn@saha.org.za>  
To: Raswiswi Marlyn <MRaswiswi@justice.gov.za>  
Cc: FOIP <foip@saha.org.za>

Thu, Feb 27, 2014 at 8:57 AM

Apologies - a second attachment was not attached. It is now attached.

Regards, Kathryn

Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

tel: +2711 718 2563  
Fax: +2786 649 149  
Email: foip@saha.org.za

Web: www.foip.saha.org.za  
Twitter: @sahanews

Support the work of SAHA - make a donation online today

On Thu, Feb 27, 2014 at 8:56 AM, Kathryn Johnson <kathryn@saha.org.za> wrote:  
Dear Ms Marlyn Raswiswi

I am writing in relation to SAHA's PAIA Request sent to you on 23 August 2013 in relation to a range of Auditor-General reports and schedules, records of Commissions and accounts (our ref SAH-2013-DOJ-0008//your ref 7/6/9 (Kennedy C) (attached)).

**Background:** This PAIA Request has been the subject of considerable correspondence from me to you.

Yesterday (25 February 2014) I received the attached letter from you, addressed to the SAHA Director, Catherine Kennedy dated 15 January 2014 in an envelope **postmarked 14 February 2014**. That letter was not emailed to SAHA although my correspondence to you has been conducted entirely by email and that is SAHA's preferred method of communication. That letter notified SAHA of your decision to refuse to disclose documents in response to SAHA's request.

**Issue:** Given the history of correspondence on this PAIA Request set down below, I cannot ignore that a reasonable inference from the fact that this letter was not sent by your Department until a month after it was dated, is that this letter to SAHA was backdated by you to the date of 15 January 2014. I have come to this initial view because it took a month for your Department to post that letter, and it was not emailed to SAHA (even though correspondence on other matters has been emailed to SAHA) in the month from the date of your letter to the date it was posted.

However, perhaps you are able to indicate that the delay in posting this letter was due to another reason.

If so, it would also assist me if you were also able to indicate whether the reason for the delay in posting this letter is the same reason for the delay in posting five other letters also sent in envelopes postmarked 13 or 14 February 2014 with letters dated between 4 November 2013 and 31 January 2014, noting those letters were also not emailed to SAHA.



211

Also today I received another letter from you (also attached) again addressed to the SAHA Director, Catherine Kennedy dated 4 February 2014 in an envelope **ALSO postmarked 14 February 2014**. In your second letter received yesterday AND PUT INTO THE POST TO SAHA ON THE SAME DAY AS THE ABOVE DECISION LETTER, you have stated that you consider SAHA should withdraw an internal appeal sent to you by email on 4 February 2014, because SAHA should not consider that there was a deemed refusal of SAHA's PAIA Request when you had provided a decision dated 15 January 2014 - NOTING THAT YOU DID NOT PUT THAT DECISION INTO THE POST UNTIL THE SAME DAY AS THE CURRENT LETTER AND HAD NOT RAISED THIS ISSUE BY EARLIER WHEN THAT INTERNAL APPEAL WAS RECEIVED. Again that letter was not emailed to SAHA.

Even under the postal acceptance rule, given the 15 January 2014 letter was not sent by your Department until 14 February, the internal appeal emailed and received by you on 4 February 2014 must be considered valid almost five months after the initial PAIA Request had been received by you. Especially given that your decision letter dated 15 January 2014 could have been emailed prior to 4 February 2014 or mentioned that it had been drafted well before it was posted on 14 February 2014.

**Conclusion:** At this stage, SAHA does not propose to withdraw the internal appeal in relation to this matter and has treated your response as a response to our internal appeal, noting that that response does not comply with the requirements of PAIA for a decision by a relevant authority. Our more detailed summary of correspondence is set out below.

**Summary of Correspondence - SAH-2013-DOJ-0008:**

- 23 August 2013 - SAHA submits PAIA Request
- 14 October 2013 - DOJ attempts to transfer request to ARMSCOR
- 17 and 31 October 2013 -SAHA writes to DOJ and ARMSCOR contesting the transfer
- 6 December 2013 - ARMSCOR notify DOJ that they do not accept the transfer
- 15 January 2014 - SAHA noted that SAHA will send an internal appeal if no response is received by 27 January 2014
- 4 February 2014 - No response received from DOJ, and SAHA submits an internal appeal

Kathryn


Kind Regards, Kathryn

Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)

Tel: +2711 718 2563  
Fax: +2786 649 149  
Email: foip@saha.org.za

Web: www.foip.saha.org.za  
Twitter: @sahanews

Support the work of SAHA - make a donation online today

 SAH-2013-DOJ-0008\_itr\_DOJ\_SAH-20140226\_deny.pdf  
307K

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**FORM B**  
**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: SAH-2014-DOJ-0005

**A. Particulars of public body**

The Information Officer/Deputy Information Officer: Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria 0001

Tel. +27123151715  
Fax. +27123578004  
Email: [mraswiswi@justice.gov.za](mailto:mraswiswi@justice.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:** South African History Archive (SAHA)  
**Identity/Passport number:** Non-Profit Trust No. 2522/93  
**Postal address:** P.O.Box 31719, Braamfontein, 2017  
**Fax number:** +27866491491  
**Telephone number:** +27117182563  
**E-Mail Address:** foip@saha.org.za

Capacity in which an internal appeal on behalf of another person is lodged:

**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:**  
**Identity number:**

D

ik

### 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:

X	Refusal of request for access
	Decision regarding fees prescribed in terms of section 22 of the Act
	Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act
	Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
	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:

1. On 4 February 2014 SAHA made a request to Department of Justice and Constitutional Development ('the requestee') for information under PAIA. On 4 February the requestee acknowledged the receipt of SAHA's PAIA request. A copy of the request is attached to this appeal.
2. On 9 and 14 February 2014, 11 and 21 March 2014 SAHA wrote to the requestee, reminding them that in accordance with PAIA they were required to respond to the request within 30 days and that period had expired.
3. By letter dated 4 February 2014 (received on 26 February 2014 in an envelope postmarked 14 February 2014) the requestee notified SAHA of the request fee. This request fee was paid on 10 March 2014 and SAHA notified the requestee of the payment of the request fee on 11 March 2014.
4. By letter dated 27 February 2014 (received on 25 March 2014 in an envelope postmarked 20 March 2014) the requestee notified SAHA of an extension of time. On 26 March 2014 SAHA wrote to the requestee stating that it takes the view the notice of extension of time did not comply with PAIA, because the notice was issued outside the 30 day PAIA timeframes. However, SAHA agreed to allow additional time to 9 April 2014 before SAHA would lodge an internal appeal. This effectively gave the requestee an extension of time in which to respond to SAHA's PAIA request.
5. Despite SAHA reminding the requestee of its obligations under PAIA and allowing the requestee additional time to 9 April 2014 to respond to this request, no substantive response

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*[Handwritten signature]*

providing a decision has been received by SAHA from the requestee. The failure by the requestee to provide a decision on the request constitutes a deemed refusal in accordance with section 27 of PAIA.

6. SAHA contests the refusal and submits this appeal.

7. Section 11 of PAIA provides that a requester must be given access to a record of a public body if the requester complies with the procedural requirements in PAIA and access to the record is not refused in terms of any ground for refusal contemplated in Chapter 4.

8. SAHA has complied with the procedural requirements of PAIA and the requestee has not offered any ground for refusal in Chapter 4 for refusing access to the requested records. The requestee has therefore unlawfully refused access to the requested records.

9. Furthermore, there is no justifiable basis on which the requestee could refuse access to the requested records.

10. SAHA therefore respectfully submits that the relevant authority should order that SAHA be given access to the requested records pursuant to section 77(2) of PAIA, which empowers the relevant authority to substitute the information officer's decision with a new decision.

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

## 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:

Particulars of manner:

D  
h

Original of [REDACTED] dated 10th April 2011.



SIGNATURE OF APPELLANT  
Ms Nozipiwo Magabuko (FOIP Officer)  
South African History Archive (SAHA)

D  
sk

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):

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dh



"CMK 35(a)"

217<sup>64</sup>

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, Pretoria, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004

Please quote our full reference number in all correspondence

Our ref: 7/6/9 SAHA (Johnson K) (7)

Enquiries: Ms MM Raswiswi

E-mail: [MMRaswiswi@justice.gov.za](mailto:MMRaswiswi@justice.gov.za)

11 March 2014

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foip@saha.org.za](mailto:foip@saha.org.za)

Dear Ms Johnson

**REQUEST TO HAVE ACCESS TO RECORDS IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

Your request to have access to documents held by the Department of Justice and Constitutional Development specified by yourself as:

*"All investigations covering the period 1986-2009 into alleged illegal activities involving Mr Vito Roberto Palazzolo (also known as Mr Robert von Palace Kolbatschenko)."*

was unsuccessful.

Having carefully considered your application and having applied my mind thereto I regret to inform you that I am unable to provide the documents requested for the reasons set out below in terms of the requested information of the abovementioned individual.

I consider that the disclosure of these documents could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety. Notwithstanding the need for disclosure in the light of the factors already referred to.

I refuse this request first because, it would constitute an unreasonable, disclosure of highly personal information in terms of Section 34(1) of PAIA.

Secondly, because its disclosure could reasonably be expected to endanger the lives or physical safety of the individuals implicated.

D M

The disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputation and dignity of the individual names may be impaired thereby as contemplated in Section 39(i)(b)(dd) of PAIA.

Thirdly, the documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our undertaking.

Further, the nature of our work and the need to obtain information from various sources to enable us to carry out our function in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of Section 37(1)(b) of the Promotion of Access to information Act 2 of 2000.

The above decision has been carefully considered in terms of the Promotion of Access to Information Act 2000 (Act No. 2 of 2000). Kindly be advised that you can lodge an appeal in terms of Section 74(1) of the Promotion of Access to information Act, 2000.

I trust that you will find the above in order.

Regards



**M M RASWISI (Ms)**  
**DEPUTY INFORMATION OFFICER**

D  
ck



Handwritten text on a textured surface, possibly a document or envelope, oriented vertically. The text is mirrored and includes:

112 (95510)  
No. K. 10000  
South African History  
O. 10000  
D. 10000  
D. 10000



"CMK 36"

226

**FORM B  
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: SAH-2014-D0J-0002

**A. Particulars of public body**

The Information Officer/Deputy Information Officer: Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria 0001

Tel. +27123151715  
Fax. +27123578004  
Email: [mrswiswi@justice.gov.za](mailto:mrswiswi@justice.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:** South African History Archive (SAHA)  
**Identity/Passport number:** Non-Profit Trust No. 2522/93  
**Postal address:** P.O.Box 31719, Braamfontein, 2017  
**Fax number:** +27866491491  
**Telephone number:** +27117182563  
**E-Mail Address:** foip@saha.org.za

Capacity in which an internal appeal on behalf of another person is lodged:

**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:**  
**Identity number:**

D dc

**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:*

X	Refusal of request for access
	Decision regarding fees prescribed in terms of section 22 of the Act
	Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act
	Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
	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:

1. On 4 February 2014 SAHA made a request to Department of Justice and Constitutional Development ('the requestee') for information under PAIA. On 4 February the requestee acknowledged the receipt of SAHA's PAIA request. A copy of the request is attached to this appeal.

2. On 9 and 14 February 2014 and 11 and 21 March 2014 SAHA wrote to the requestee, reminding them that in accordance with PAIA they were required to respond to the request within 30 days and that period had expired.

3. By letter dated 4 February 2014 (received on 26 February 2014 in an envelope postmarked 14 February 2014) the requestee notified SAHA of the request fee. This request fee was paid on 10 March 2014 and SAHA notified the requestee of the payment of the request fee on 11 March 2014.

4. By letter dated 27 February 2014 (received on 25 March 2014 in an envelope postmarked 20 March 2014) the requestee notified SAHA of an extension of time. On 26 March 2014 SAHA wrote to the requestee stating that it takes the view the notice of extension of time did not comply with PAIA, because the notice was issued outside the 30 day PAIA timeframes. However, SAHA agreed to allow additional time to 9 April 2014 before SAHA would lodge an internal appeal. This effectively gave the requestee an extension of time in which to respond to SAHA's PAIA request.

5. Despite SAHA reminding the requestee of its obligations under PAIA and allowing the requestee additional time to 9 April 2014 to respond to this request, no substantive response

D d



providing a decision has been received by SAHA from the requestee. The failure by the requestee to provide a decision on the request constitutes a deemed refusal in accordance with section 27 of PAIA.

6. SAHA contests the refusal and submits this appeal.

7. Section 11 of PAIA provides that a requester must be given access to a record of a public body if the requester complies with the procedural requirements in PAIA and access to the record is not refused in terms of any ground for refusal contemplated in Chapter 4.

8. SAHA has complied with the procedural requirements of PAIA and the requestee has not offered any ground for refusal in Chapter 4 for refusing access to the requested records. The requestee has therefore unlawfully refused access to the requested records.

9. Furthermore, there is no justifiable basis on which the requestee could refuse access to the requested records.

10. SAHA therefore respectfully submits that the relevant authority should order that SAHA be given access to the requested records pursuant to section 77(2) of PAIA, which empowers the relevant authority to substitute the information officer's decision with a new decision.

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

## 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:

Particulars of manner:

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sk

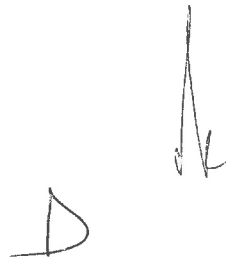
Signed at JOHANNESBURG this 10th of April 2014.



SIGNATURE OF APPELLANT

Ms Nozipiwo Magabuko (FOIP Officer)

South African History Archive (SAHA)



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):

D  
ck

CMK 37(a)

225



Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, Pretoria, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004

Please quote our full reference number in all correspondence

Our ref: 7/6/9 SAHA (Johnson K) (6)

Enquiries: Ms MM Raswiswi

E-mail: [MRaswiswi@justice.gov.za](mailto:MRaswiswi@justice.gov.za)

13 March 2014

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foip@saha.org.za](mailto:foip@saha.org.za)

Dear Ms Johnson

**REQUEST TO HAVE ACCESS TO RECORDS IN TERMS OF THE PROMOTION  
OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

Your request to have access to documents held by the Department of Justice and Constitutional Development specified by yourself as:

*"All investigations into the events surrounding the murder of Dr Robert Van Schalkwyk Smit and Mrs Jeanne-Cora Smit in Springs, just outside of Johannesburg, on 22 November 1977."*

was unsuccessful.

Having carefully considered your application and having applied my mind thereto I regret to inform you that I am unable to provide the documents requested for the reasons set out below in terms of the requested information of the abovementioned individual.

I consider that the disclosure of these documents could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety. Notwithstanding the need for disclosure in the light of the factors already referred to.

I refuse this request first because, it would constitute an unreasonable, disclosure of highly personal information in terms of Section 34(1) of PAIA.

Secondly, because its disclosure could reasonably be expected to endanger the lives or physical safety of the individuals implicated.



The disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputation and dignity of the individual names may be impaired thereby as contemplated in Section 39(i)(b)(dd) of PAIA.

Thirdly, the documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our undertaking.

Further, the nature of our work and the need to obtain information from various sources to enable us to carry out our function in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of Section 37(1)(b) of the Promotion of Access to information Act 2 of 2000.

The above decision has been carefully considered in terms of the Promotion of Access to Information Act 2000 (Act No. 2 of 2000). Kindly be advised that you can lodge an appeal in terms of Section 74(1) of the Promotion of Access to information Act, 2000.

I trust that you will find the above in order.

Regards



**M M RASWISWI (Ms)**  
**DEPUTY INFORMATION OFFICER**

D de

011 (2599 10)



Ms. K. Johnson  
South African History Archive (SAHA)  
P.O. Box 31719  
BRAAMFONTEIN

"CMK 37(b)"

27

"MK 38(a)"

228



Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, Pretoria, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004

Please quote our full reference number in all correspondence

Our ref: 7/6/9 Johnson K (SAHA) (NPA) (5)

Enquiries: Ms MM Raswiswi

E-mail: [MRaswiswi@justice.gov.za](mailto:MRaswiswi@justice.gov.za)

25 March 2014

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foia@saha.gov.za](mailto:foia@saha.gov.za)

Dear Ms Johnson

**REQUEST TO HAVE ACCESS TO RECORDS IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

Your request to have access to documents held by the Department of Justice and Constitutional Development specified by yourself as:

*"All investigations covering the period 1984-1998 into alleged illegal activities involving Mr Vito Roberto Palazzolo (also known as Mr Robert Von Palace Kolbatschenko)."*

was unsuccessful.

Having carefully considered your application and having applied my mind thereto I regret to inform you that I am unable to provide the documents requested for the reasons set out below in terms of the requested information of the abovementioned individual.

I consider that the disclosure of these documents could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety. Notwithstanding the need for disclosure in the light of the factors already referred to.

I refuse this request first because, it would constitute an unreasonable, disclosure of highly personal information in terms of Section 34(1) of PAIA.

Secondly, because its disclosure could reasonably be expected to endanger the lives or physical safety of the individuals implicated.

The disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputation and dignity of the individual names may be impaired thereby as contemplated in Section 39(i)(b)(dd) of PAIA.

Thirdly, the documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our undertaking.

Further, the nature of our work and the need to obtain information from various sources to enable us to carry out our function in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of Section 37(1)(b) of the Promotion of Access to Information Act 2 of 2000.

The above decision has been carefully considered in terms of the Promotion of Access to Information Act 2000 (Act No. 2 of 2000). Kindly be advised that you can lodge an appeal in terms of Section 74(1) of the Promotion of Access to Information Act, 2000.


I trust that you will find the above in order.

Regards



**M M RASWISWI (Ms)**  
**DEPUTY INFORMATION OFFICER**

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"(9)M39(b)"

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**FORM B**

**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):** SAH-2014-DOJ-0014  
(was SAH-2014-NPA-0005 which was transferred to Department of Justice – see also SAH-2014-DOJ-0005)

**A. Particulars of public body**

The Information Officer/Deputy Information Officer: Ms Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria 0001

Tel. +27123151715  
Fax. +27123578004  
Email: [mraswiswi@justice.gov.za](mailto:mraswiswi@justice.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:** South African History Archive (SAHA)

**Identity/Passport number:** Non-Profit Trust No. 2522/93

**Postal address:** P.O.Box 31719, Braamfontein, 2017

**Fax number:** +27866491491

**Telephone number:** +27117182563

**E-Mail Address:** [foip@saha.org.za](mailto:foip@saha.org.za)

Capacity in which an internal appeal on behalf of another person is lodged:

**C. Particulars of requester**

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

PAIA Forms

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Full names and surname:

Identity 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"/>	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: **See annexure A**

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

**F. Notice of decision on appeal**

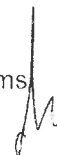
*You will be notified in writing of the decision on your internal appeal. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.*

State the manner: **By email**

Particulars of manner: [kathryn@saha.org.za](mailto:kathryn@saha.org.za)

PAIA Forms

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igned at Johannesburg this 20<sup>th</sup> day of July 2014.

*Kathryn Johnson*

GNATURE OF APPELLANT

s Kathryn Johnson  
Freedom of Information Programme  
South African History Archive (SAHA)

**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):

*D* *da*



Annexure A

Reasons for Internal Appeal

1. Factual Background

1.1 On 4 February 2014 the South African History Archive (SAHA) submitted a request to the National Prosecuting Authority (Authority) for information under the Promotion of Access to Information Act, 2000 (PAIA), requesting records of all investigations covering the period 1986-2009 into alleged illegal activities involving Mr Vito Roberto Palazzolo (also known as Mr Robert von Palace Kolbatschenko) (PAIA request).

1.2 By email letter dated 18 March 2014 (received on 18 March 2014) the Authority transferred the request to the Department of Justice and Constitutional Development (Department) and the South African Police Services on the basis that the information requested "dates back" to a date before the Authority came into existence, and so the Authority was not able to grant access to the information requested.

1.3 By letter received on 9 May 2014 (dated 18 March 2014 and in an envelope postmarked 30 April 2014) the Department acknowledged receipt of that transferred request and sought the request fee in the sum of R35.

1.4 However, before payment could be made, SAHA received a decision letter on 9 May 2014 (dated 25 March 2014 in an envelope postmarked 30 April 2014) signed by Ms M M Raswiswi, the Deputy Information Officer of the Department, refusing the request for records required in the PAIA request (PAIA decision) on the basis that:

- a) *'disclosure could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety'* and subsequently raised the same concerns in relation to *'individuals implicated'*. Presumably this is intended to refer to section 38 of PAIA,
- b) *'disclosure would constitute an unreasonable, disclosure of highly personal information in terms of section 34(1) of PAIA'*,
- c) *'disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputations and dignity of the individual names may be impaired thereby as contemplated in section 39(i)(b)(dd) of PAIA' (sic)<sup>1</sup>*, Presumably this is intended to refer to section 39(1)(b)(iii)(dd) of PAIA,
- d) *'information was supplied after their confidentiality was guaranteed, so we [the Department] are unable to breach our undertaking'*. Presumably this is intended to refer to section 37(1)(a) of PAIA, and
- e) the nature of the Department's work and the need to obtain information from various sources to carry out the Department's function in the public interest *'may be jeopardised by the disclosure of information supplied in confidence'*, leading to a refusal under section 37(1)(b) of PAIA.

<sup>1</sup> The word 'sic' is used here as this section is quoted from the PAIA decision, but the section is incorrectly cited by the Department. It should be noted that this section does not exist in PAIA. SAHA's reference to this incorrect section is merely by way of a quote from the PAIA decision.

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2. ISSUES

- 2.1 SAHA contests the Department's refusal of all of the requested documents under PAIA, and submits this appeal on a number of bases.
- 2.2 In particular, SAHA seeks on internal appeal a setting out of adequate reasons for the decision, as is required by section 25(3) of PAIA, rather than just a listing of reasons in a template decision letter. Further, there must be clear application of the reasons to the current PAIA request, as was determined is a requirement by the court in *President of the Republic of South African and Others v M & G Media Limited* 2012 (2) SA (50) CC.
- 2.3 **First**, the PAIA decision has not provided an indication as to **whether any part of any requested record can be released, as required by section 28 of PAIA**. In summary, section 28 of PAIA provides that information **must** be disclosed where information that may or must be refused can reasonably be severed from any part that does **not** contain information that may or must be refused.
- 2.4 The PAIA decision does not indicate that a decision was taken as to whether any single word, paragraph or page of any of the requested records could be released.
- 2.5 Without some high level reasoning for the refusal of the PAIA request, it is submitted that the blanket refusal of all material requested suggests that there has been no detailed consideration of the material requested. Accordingly, **a more detailed consideration and review of the information requested is sought as part of the internal appeal**.
- 2.6 **Secondly**, the decision-maker has indicated a concern that disclosure of the documents "*could be highly detrimental to the individuals involved and could reasonably be expected to endanger their lives or physical safety*" and subsequently raises the same concern with regard to "*individuals implicated.*" While no reference is made to the provision relied upon under PAIA in making this refusal, despite section 25 of PAIA requiring that such reference be made, it is assumed that this is a reference to section 38 of PAIA as a ground for refusal.
- 2.7 It appears that this ground for refusal has been determined at a global level and **this internal appeal seeks a more considered decision, before a decision to refuse release of information is made on this ground**. In particular, implied in the application of this ground of refusal by the Department is an assumption that a person or persons will commit a criminal offence following disclosure of these records. That is, it is implied that some unknown person or persons will threaten the life of Mr Palazzolo or of other implicated persons, or will commit some kind of violent act against him (or other implicated persons). In the first instance, severance may be able to protect other implicated persons. Secondly, **Mr Palazzolo's alleged illegal activities through use of South African political connections appear to have started in the mid 1980s, and have been suspected as "open secrets" since at least 1997, as revealed by a simple internet search<sup>2</sup>. This has not resulted in any harm to Mr Palazzolo, noting that some recent research suggests Mr Palazzolo has been in prison in Italy since February 2014**. It is argued that the threshold legislative requirement before applying this ground, i.e. that release of information "could be highly detrimental" to Mr Palazzolo's life or safety, requires more reasoning than a mere conjecture on the part of the Department, where there is no easily identifiable evidence that his life or safety has been at risk because of people learning of his alleged illegal activities through the media.

<sup>2</sup> Mail & Guardian, entitled "Diamond deal probed" dated 23 October 1997.

- 2.8 Additionally, **the public interest exemption at section 46 of PAIA** must be considered when section 38 of PAIA is contemplated in relation to records that would reveal evidence of a substantial contravention of, or failure to comply with, the law. That provision also requires that the public interest in the disclosure of the record clearly outweighs the harm contemplated.
- 2.9 In its decision, the Department has not explicitly considered the application of section 46 of PAIA. This is despite the fact that a simple internet search, suggests that there is evidence of a substantial contravention of, or failure to comply with, the law. SAHA can only assume, unless adequate reasons are provided to the contrary, that the Department's review of the requested information would also provide evidence of a substantial contravention of, or failure to comply with, the law. On that basis, it is argued that the lack of any potential harm to Mr Palazzolo at this stage of his life, should be weighed against the public's right of access to this information, in order to understand the effect in the past, and even presently, on the South African political framework as a result of his alleged use of multi-party political connections to facilitate alleged illegal activities. It is argued that, in this case, **the weighing of these factors should result in release of the requested information on internal appeal.**
- 2.10 **Thirdly**, the decision-maker makes clear in the PAIA decision that she refused the request after considering section 34(1) of PAIA.
- 2.11 Section 47(1) of PAIA states that an information officer who is considering a record under section 34(1) of PAIA **must** take all reasonable steps to **inform a third party to whom the record relates of the PAIA request.**
- 2.12 There is no evidence that this has occurred.
- 2.13 Where a person is properly informed, as is required by section 47(1) of PAIA, such a person is provided with an opportunity to make representations on whether or not the request should be granted or refused, or to provide their consent for the release of records.
- 2.14 Not following this process is a clear and obvious breach of the requirements of PAIA, and this **internal appeal is made to ensure that this breach is now remedied by the Department, potentially by contacting Mr Palazzolo through his South African companies or lawyers.**
- 2.15 Additionally, **the public interest exemption at section 46 of PAIA** must be considered when section 34(1) of PAIA is contemplated in relation to records that reveal personal information. For the reasons set out above, without adequate reasoning to the contrary, it appears that the Department may well have evidence of a substantial contravention of, or failure to comply with, the law and weighing of relevant factors at this time, should result in the release of this information in the public interest.
- 2.16 **Fourthly**, the decision-maker has not considered as a relevant factor section 34(2)(c) of PAIA which states that a record containing personal information about a third party may not be refused insofar as it consists of **information already publicly available.**
- 2.17 Without being provided with adequate reasons to the contrary, it seems likely that at least some of the information that is publicly available is with the Department and could have been released in response to this PAIA request. The fact that a check of the available evidence against internet searches was not mentioned in the decision, is indicative that a detailed analysis of the requested information did not occur when a decision not to release the requested records was made. Accordingly, **a more**

detailed consideration and review of the information requested is sought as part of the internal appeal.

- 2.18 **Fifthly**, a reference is made in the PAIA decision to a **contravention of the law to release information that might affect reputations and dignity** under section 39(i)(b)(dd) (sic)<sup>3</sup> of PAIA.
- 2.19 There is no legislative citation that reflects that citation for a ground of refusal. As noted in a previous internal appeal to the Department, the reliance on this ground of refusal is in a template decision letter used by the Department, and citing legislation incorrectly is confusing to a requester and may limit their ability to challenge this ground of refusal.
- 2.20 It is assumed by SAHA that the Department intended the ground of refusal to refer to section 39(1)(b)(iii)(dd) of PAIA, on the basis that disclosure could reasonably be expected to facilitate the commission of a contravention of the law, including but not limited to, escape from lawful detention.
- 2.21 It is submitted that this provision is not intended to encourage a refusal to release information on the basis of a **potential defamation or other claim relating to the loss of reputation or dignity of a person**. In this internal appeal it is submitted that this is a tenuous basis for refusal to release all information requested in the PAIA request, and needs to be reconsidered, particularly in light of **similar information that is available on the internet and in the media more generally, that do not seem to have resulted in defamation action**.
- 2.22 **Sixthly**, the refusal to release information based on the grounds of **confidentiality and breach of an undertaking** was not made by explicit reference to section 37(1)(a) of PAIA, as is required by section 25(3) of PAIA.
- 2.23 Assuming that is the section meant to be referred to by the Department, section 37(1)(a) of PAIA provides that a PAIA request must be refused if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.
- 2.24 Again, the notice to third parties and request for consent procedure should also have been applied before this ground for refusal was applied. There is no evidence that this was undertaken, and the PAIA decision is clearly defective on this ground alone.
- 2.25 In any event, there is **no evidence of any agreement** that would give rise to a legal action against the Department for a breach of a duty of confidence. That is, the PAIA decision gives no indication that there was any undertaking/agreement to hold the information in confidence in a manner that would lead to any breach of confidence. Therefore, it is submitted that this is a baseless ground for refusal of the PAIA request.
- 2.26 **Seventhly**, it is argued that the reliance on section 37(1)(b) of PAIA is an insufficient ground to deny the release of the requested information in the current circumstances.
- 2.27 In summary, section 37(1)(b) of PAIA provides that information can be refused if the record consists of **information that was supplied in confidence by a third party and the disclosure could reasonably be expected to prejudice the future supply of similar information, or information from the same source and it is in the public interest that similar information, or information from the same source, should continue to be supplied**.

<sup>3</sup> As noted above, the use of the word 'sic' is used here as this section is quoted from the PAIA decision, but the section is incorrectly cited by the Department. The section quoted does not exist in PAIA.

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- 2.28 Again, the PAIA decision gives no indication that all information about Mr Palazzolo's political connections and any associated illegal activities was supplied in confidence and continues to be held in confidence many years later and that the relevant source continues to provide information of public interest and importance to the Department. In all of the circumstances, it seems likely that the continued ability to rely on this exemption has eroded so substantially over the years since the information was supplied by the source, that it is no longer appropriate to apply this exemption in the circumstances.
- 29 Again, the notice to third parties and request for consent procedure should also have been applied before this ground for refusal process was applied, and it does not appear that this process has been followed. Again, this reason could stand alone as a basis for appeal against the PAIA decision.
- 2.30 **Finally**, in the PAIA decision, reference is made to the right of South Africans to have their dignity respected and protected under the Constitution of the Republic of South Africa (see section 10).
- 2.31 However, no reference is made to the countervailing constitutional right given to all South Africans, to access any information held by the state. The importance of that right has been considered in *Brummer v Minister for Social Development and Others* 2009 (6) SA 323 (CC) as follows:

*"The importance of this right.. 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 providing the public with timely, accessible and accurate information' ..."*

- 2.32 It is submitted that the PAIA decision has not undertaken an appropriate weighing of all counterbalancing factors for and against release of the information, particularly in relation to the constitutional rights that are raised by the PAIA request. That **weighing of all appropriate factors is sought as part of a new decision in response to this internal appeal.**

### 3 Submission

- 3.1 Section 11 of PAIA provides that a requester must be given access to a record of a public body if the requester complies with the procedural requirements in PAIA and access to the record is not refused in terms of any ground for refusal contemplated in Chapter 4 of PAIA.
- 3.2 SAHA has complied with the procedural requirements of PAIA and the Department has not offered any justifiable ground for refusal in Chapter 4 for refusing access to the requested records. The Department has therefore unlawfully refused access to the requested records.
- 3.3 Furthermore, there is no justifiable basis on which the Department could refuse access to the requested records.
- 3.4 SAHA therefore respectfully submits that the relevant authority should order that SAHA be given access to the requested records pursuant to section 77(2) of PAIA, which empowers the relevant authority to substitute the information officer's decision with a new decision.

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Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

"(MK 40(a))" 239

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, Pretoria, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004

*Please quote our full reference number in all correspondence*

Our ref: 7/6/9 Johnson K (SAHA) (NPA)(3)  
Enquiries: Ms MM Raswiswi  
E-mail: [raswiswi@justice.gov.za](mailto:raswiswi@justice.gov.za)

25 March 2014

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foip@saha.org.za](mailto:foip@saha.org.za)

Dear Ms Johnson

**REQUEST TO HAVE ACCESS TO RECORDS IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

Your request to have access to documents held by the Department of Justice and Constitutional Development specified by yourself as:

*"All investigations covering the period 1977-1997 into alleged illegal activities (including but not limited to 'gold smuggling') involving Mr Paul Ekon, reference number, if available and any further particulars of record."*

was unsuccessful.

Having carefully considered your application and having applied my mind thereto I regret to inform you that I am unable to provide the documents requested for the reasons set out below in terms of the requested information of the abovementioned individual.

I consider that the disclosure of these documents could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety. Notwithstanding the need for disclosure in the light of the factors already referred to.

I refuse this request first because, it would constitute an unreasonable, disclosure of highly personal information in terms of Section 34(1) of PAIA.

Secondly, because its disclosure could reasonably be expected to endanger the lives or physical safety of the individuals implicated.

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The disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputation and dignity of the individual names may be impaired thereby as contemplated in Section 39(i)(b)(dd) of PAIA.

Thirdly, the documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our undertaking.

Further, the nature of our work and the need to obtain information from various sources to enable us to carry out our function in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of Section 37(1)(b) of the Promotion of Access to information Act 2 of 2000.

The above decision has been carefully considered in terms of the Promotion of Access to Information Act 2000 (Act No. 2 of 2000). Kindly be advised that you can lodge an appeal in terms of Section 74(1) of the Promotion of Access to information Act, 2000.

I trust that you will find the above in order.

Regards



**M M RASWISI (Ms)**  
**DEPUTY INFORMATION OFFICER**

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HERSIRKULEER

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"CMK 41"

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FORM D

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): SAH-2014-DOJ-0009  
(from SAH-2014-NPA-0003 which  
was transferred to Department of  
Justice – see also SAH-2014-DOJ-  
0003)

A. Particulars of public body

The Information Officer/Deputy Information Officer: Ms Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria 0001

Tel. +27123151715  
Fax. +27123578004  
Email: [mraswiswi@justice.gov.za](mailto:mraswiswi@justice.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:** South African History Archive (SAHA)  
**Identity/Passport number:** Non-Profit Trust No. 2522/93  
**Postal address:** P.O.Box 31719, Braamfontein, 2017  
**Fax number:** +27866491491  
**Telephone number:** +27117182563  
**E-Mail Address:** [foip@saha.org.za](mailto:foip@saha.org.za)

Capacity in which an internal appeal on behalf of another person is lodged:

C. Particulars of requester

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

PAIA Forms

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Full names and surname:

Identity 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:

<b>X</b>	Refusal of request for access
	Decision regarding fees prescribed in terms of section 22 of the Act
	Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act
	Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
	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: **See annexure A**

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

**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 email**

Particulars of manner: [kathryn@saha.org.za](mailto:kathryn@saha.org.za)

PAIA Forms

Handwritten signature and initials.

Signed at Johannesburg this 17<sup>th</sup> day of July 2014.

*Kathryn Johnson*

SIGNATURE OF APPELLANT

Ms Kathryn Johnson  
Freedom of Information Programme  
South African History Archive (SAHA)

**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):

PAIA Forms

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Annexure A

Reasons for Internal Appeal

1. Factual Background

- 1.1 On 4 February 2014 the South African History Archive (SAHA) submitted a request to the National Prosecuting Authority (Authority) for information under the Promotion of Access to Information Act, 2000 (PAIA), requesting records of all investigations covering the period 1977 to 1997 into alleged illegal activities (including but not limited to 'gold smuggling') involving Mr Paul Ekon (PAIA request).
- 1.2 By email letter dated 18 March 2014 (received on 18 March 2014) the Authority transferred the request to the Department of Justice and Constitutional Development (Department) and the South African Police Services on the basis that the information requested "dates back" to a date before the Authority came into existence, and so the Authority was not able to grant access to the information requested.
- 1.3 By letter received on 9 May 2014 (dated 18 March 2014 and in an envelope postmarked 25 April 2014) the Department acknowledged receipt of that transferred request and sought the request fee in the sum of R35.
- 1.4 However, before payment could be made, SAHA received a decision letter on 16 May 2014 (dated 25 March 2014 in an envelope postmarked 30 April 2014) signed by Ms M M Raswisi, the Deputy Information Officer of the Department, refusing the request for records required in the PAIA request (PAIA decision) on the basis that:
  - a) 'disclosure could be highly detrimental to the individual involved and could reasonably be expected to endanger their lives or physical safety' and subsequently the raised the same concerns in relation to 'individuals implicated'. Presumably this is intended to refer to section 38 of PAIA,
  - b) 'disclosure would constitute an unreasonable, disclosure of highly personal information in terms of section 34(1) of PAIA',
  - c) 'disclosure could reasonably be expected to facilitate a contravention of the law to the extent that the reputations and dignity of the individual names may be impaired thereby as contemplated in section 39(i)(b)(dd) of PAIA' (sic)<sup>1</sup>, Presumably this is intended to refer to section 39(1)(b)(iii)(dd) of PAIA,
  - d) 'information was supplied after their confidentiality was guaranteed, so we [the Department] are unable to breach our undertaking'. Presumably this is intended to refer to section 37(1)(a) of PAIA, and
  - e) the nature of the Department's work and the need to obtain information from various sources to carry out the Department's function in the public interest 'may be jeopardised by the disclosure of information supplied in confidence', leading to a refusal under section 37(1)(b) of PAIA.

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<sup>1</sup> The word 'sic' is used here as this section is quoted from the PAIA decision, but the section is incorrectly cited by the Department. It should be noted that this section does not exist in PAIA. SAHA's reference to this incorrect section is merely by way of a quote from the PAIA decision.

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2. Issues

- 2.1 SAHA contests the Department’s refusal of all of the requested documents under PAIA, and submits this appeal on a number of bases.
- 2.2 In particular, SAHA seeks on internal appeal **adequate reasons** for the decision under section 25(3) of PAIA, rather than just a listing of reasons in a template decision letter, without clear application to the current PAIA Request, as is required by the court decision in *President of the Republic of South African and Others v M & G Media Limited 2012 (2) SA (50) CC*.
- 2.3 **First**, the PAIA Decision has not provided an indication as to **whether any part of any requested record can be released, as required by section 28 of PAIA**. In summary, section 28 of PAIA provides that information **must** be disclosed where information that may or must be refused can reasonably be severed from any part that does **not** contain information that may or must be refused.
- 2.4 The PAIA Decision does not indicate that a decision was taken as to whether any single word, paragraph or page of any of the requested records could be released.
- 2.5 Without some high level reasoning for the refusal of the PAIA Request, it is submitted that the blanket refusal of all material requested suggests that there has been no detailed consideration of the material requested. Accordingly, **a more detailed consideration and review of the information requested is sought as part of the internal appeal.**
- 2.6 **Secondly**, the decision-maker has indicated a concern that disclosure of the documents **“could be highly detrimental to the individuals involved and could reasonably be expected to endanger their lives or physical safety” as well as to “individuals implicated.”** While no reference is made to the provision relied upon under PAIA in making this refusal, despite section 25 of PAIA requiring that such reference be made, it is assumed that this is a reference to section 38 of PAIA as a ground for refusal.
- 2.7 It appears that this ground for refusal has been determined at a global level and **this internal appeal seeks a more considered decision, before a decision to refuse release of information is made on this ground.** In particular, implied in the application of this ground of refusal by the Department is an assumption that a person or persons will commit a criminal offence following disclosure. That is, it is implied that some unknown person or persons will threaten the life of Mr Ekon or of other implicated persons, or will commit some kind of violent act against him (or other implicated persons). In the first instance, severance may be able to protect other implicated persons. Secondly, **Mr Ekon’s alleged illegal activities occurred in the thirty years prior to 1997, and have been suspected as “open secrets” since at least 1997, as revealed by a simple internet search. This has not resulted in any harm to Mr Ekon.** It is argued that the threshold legislative requirement before applying this ground, i.e. that release of information “could be highly detrimental” to Mr Ekon’s life or safety, requires more reasoning than a mere conjecture on the part of the Department, where there is no easily identifiable evidence that his life or safety has been at risk because of people learning of his alleged illegal activities through the media.
- 2.8 Additionally, **the public interest exemption at section 46 of PAIA** must be considered when section 38 of PAIA is contemplated in relation to records that would reveal evidence of a substantial contravention of, or failure to comply with, the law. That provision also requires that the public interest in the disclosure of the record clearly outweighs the harm contemplated.

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- 2.9 In its decision, the Department has not explicitly considered the application of section 38 of PAIA. This is despite the fact that a simple internet search,<sup>2</sup> suggests that there is evidence of a substantial contravention of, or failure to comply with, the law. SAHA can only assume, unless adequate reasons are provided to the contrary, that the Department's review of the requested information would also provide evidence of a substantial contravention of law. On that basis, it is argued that the lack of any potential harm to Mr Ekon at this stage of his life, should be weighed against the public's right of access to this information, in order to understand the effect in the past, and even presently, on the South African economy as a result of these alleged illegal activities. It is argued that, in this case, **the weighing of these factors should result in release of the requested information on internal appeal.**
- 2.10 **Thirdly**, the decision-maker makes clear in the PAIA decision that she refused the request after considering section 34(1) of PAIA.
- 2.11 Section 47(1) of PAIA states that an information officer who is considering a record under section 34(1) of PAIA **must** take all reasonable steps to **inform a third party to whom the record relates of the PAIA request.**
- 2.12 There is no evidence that this has occurred.
- 2.13 Where a person is properly informed, as is required by section 47(1) of PAIA, such a person is provided with an opportunity to make representations on whether or not the request should be granted or refused or to provide their consent for the release of records.
- 2.14 Not following this process is a clear and obvious breach of the requirements of PAIA, and this **internal appeal is made to ensure that this breach is now remedied by the Department.**
- 2.15 Additionally, the **public interest exemption at section 46 of PAIA** must be considered when section 34(1) of PAIA is in contemplated in relation to records that reveal personal information. For the reasons set out above, without adequate reasoning to the contrary, it appears that the Department may well have evidence of a substantial contravention of, or failure to comply with, the law and weighing of relevant factors at this time, should result in the release of this information in the public interest.
- 2.16 **Fourthly**, a reference is made in the PAIA decision to **a contravention of the law to release information that might affect reputations and dignity** under section 39(i)(b)(dd) (sic)<sup>3</sup> of PAIA.
- 2.17 There is no legislative citation for that ground of refusal. As noted in a previous internal appeal to the Department, the reliance on this ground of refusal is in a template decision letter used by the Department, and citing legislation incorrectly is confusing to a requester and may limit their ability to challenge this ground of refusal.
- 2.18 It is assumed by SAHA that the Department intended the ground of refusal to refer to section 39(1)(b)(iii)(dd) of PAIA, on the basis that disclosure could reasonably be expected to facilitate the commission of a contravention of the law, including but not limited to, escape from lawful detention.
- 2.19 It is submitted that this provision is not intended to encourage a refusal to release information on the basis of a **potential defamation or other claim relating to the loss of reputation or dignity of a person.** In this internal appeal it is submitted that

<sup>2</sup> Mail & Guardian, entitled "Paul Ekon under scrutiny for gold deal" dated 8 November 1996 refers to Mr Paul Ekon's "possible involvement in a gold- smuggling racket which a Supreme Court affidavit says lost South Africa a quarter of a billion rands in a single year".

<sup>3</sup> As noted above, the use of the word 'sic' is used here as this section is quoted from the PAIA decision, but the section is incorrectly cited by the Department. The section quoted does not exist in PAIA.

this is a tenuous basis for refusal to release all information requested in the PAIA request, and needs to be reconsidered, particularly in light of **similar allegations that are easily available in the media that do not seem to have resulted in defamation action.**

.20 **Fifthly**, the refusal to release information based on the grounds of **confidentiality and breach of an undertaking** was not made by explicit reference to section 37(1)(a) of PAIA, as is required by section 25(3) of PAIA.

.21 Assuming that is the section meant to be referred to by the Department, section 37(1)(a) of PAIA provides that a PAIA request must be refused if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

.22 Again, the notice to third parties and request for consent procedure should also have been applied before this ground for refusal was applied. There is no evidence that this was undertaken, and the PAIA decision is clearly defective on this ground alone.

.23 In any event, there is **no evidence of any agreements** that would give rise to a legal action against the Department for a breach of a duty of confidence. That is, the PAIA decision gives no indication that there was any undertaking/agreement to hold the information in confidence in a manner that would lead to any breach of confidence. Therefore, it is submitted that this is a baseless ground for refusal of the PAIA request.

2.24 **Sixthly**, it is argued that the reliance on section 37(1)(b) of PAIA is an insufficient ground to deny the release of the requested information in the current circumstances.

2.25 In summary, section 37(1)(b) of PAIA provides that information can be refused if the record consists of **information that was supplied in confidence by a third party and the disclosure could reasonably be expected to prejudice the future supply of similar information, or information from the same source and it is in the public interest that similar information, or information from the same source, should continue to be supplied.**

2.26 Again, the PAIA decision gives no indication that all information about activities engaged in some 17 to 47 years ago was supplied in confidence and continues to be held in confidence many years later and that the relevant source continues to provide information of public interest and importance to the Department. In all of the circumstances, it seems likely that the continued ability to rely on this exemption has eroded so substantially over the years since 1997, that it is no longer appropriate to apply this exemption in the circumstances.

2.27 Again, the notice to third parties and request for consent procedure should also have been applied before this ground for refusal process was applied, and it does not appear that this process has been followed. Again, this reason stands alone as a basis for appeal against the PAIA decision.

2.28 **Finally**, in the PAIA decision, reference is made to the right of South Africans to have their dignity respected and protected under the Constitution of the Republic of South Africa (see section 10).

2.29 However, no reference is made to the countervailing constitutional right given to all South Africans, to access any information held by the state. The importance of that right has been considered in *Brummer v Minister for Social Development and Others* 2009 (6) SA 323 (CC) as follows:

*“The importance of this right.. 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 providing the public with timely, accessible and accurate information' ..."*

2.0 It is submitted that the PAIA decision has not undertaken an appropriate weighing of all counterbalancing factors for and against release of the information, particularly in relation to the constitutional rights that are raised by the PAIA request. That **weighing of all appropriate factors is sought as part of a new decision in response to this internal appeal.**

**3 Submission**

3.1 Section 11 of PAIA provides that a requester must be given access to a record of a public body if the requester complies with the procedural requirements in PAIA and access to the record is not refused in terms of any ground for refusal contemplated in Chapter 4 of PAIA.

3.2 SAHA has complied with the procedural requirements of PAIA and the Department has not offered any justifiable ground for refusal in Chapter 4 for refusing access to the requested records. The Department has therefore unlawfully refused access to the requested records.

3.3 Furthermore, there is no justifiable basis on which the Department could refuse access to the requested records.

3.4 SAHA therefore respectfully submits that the relevant authority should order that SAHA be given access to the requested records pursuant to section 77(2) of PAIA, which empowers the relevant authority to substitute the information officer's decision with a new decision.

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"CMK 42"

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Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, Pretoria, 0001 – Momentum Centre, 329 Pretorius Street, PRETORIA, 0001  
Tel: (012) 315 1730, Fax: (012) 357 8004  
Please quote our full reference number in all correspondence

Ref: 7/6/9 SAHA (Johnson K L)(3)  
Enq: Ms M Raswiswi  
E-mail: MRaswiswi@justice.gov.za

11 October 2013

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: foip@saha.org.za

<p>South Africa History Archive (SAHA) Freedom of Information Programme Records Released Under PAIA</p> <p>2013 -10- 22</p> <p>PAIA Request No: SAH-2013-205-0011</p> <p>Receiving Officer: Kathryn Johnson</p> <p>Signature: <i>K Johnson</i></p>
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Dear Ms Johnson

**APPLICATION FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000)**

Reference is made to your request to have access to records in terms of the Promotion of Access to Information Act, 2000 (Act 2, of 2000).

In terms of the provision of section 26 of PAIA, you are hereby notified that the 30 day period provided for within which to deal with a request for access to a record is extended for a further 30 day period for the following reasons:

*The request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the public body concerned.*

Please expect a further communication from our office in due course. Your favourable consideration in this regard will be highly appreciated.

I trust that you will find the above in order.

Regards

MM Raswiswi (Ms.)  
Deputy Information Officer

"CMK 43"

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**FORM B**  
**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: SAH-2013-DOJ-0011

**A. Particulars of public body**

The Information Officer/Deputy Information Officer: Marlyn Raswiswi  
Department of Justice and Constitutional Development  
Private Bag X81  
Pretoria  
0001

Tel. +27123151715  
Fax. +27123578004  
Email: [mraswiswi@justice.gov.za](mailto:mraswiswi@justice.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:** South African History Archive (SAHA)  
**Identity/Passport number:** Non-Profit Trust No. 2522/93  
**Postal address:** P.O.Box 31719, Braamfontein, 2017  
**Fax number:** +27866491491  
**Telephone number:** +27117182563  
**E-Mail Address:** foip@saha.org.za

Capacity in which an internal appeal on behalf of another person is lodged:

**C. Particulars of requester**

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

D dc

Identity number:

**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:

- X Refusal of request for access
- Decision regarding fees prescribed in terms of section 22 of the Act
- Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(l) of the Act
- Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
- 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:

1. On 17 September 2013 the South African History Archive (SAHA) made a request to the Department of State Security/State Security Agency (the requestee) for information under the Promotion of Access to Information Act, 2000 (PAIA). On 17 and 18 September 2013, the requestee's information officer, Ms Marlyn Raswisi confirmed receipt of the request on that date (and not on 13 September 2013) and requested request fees under PAIA. A copy of SAHA's PAIA request is attached to this appeal (dated 13 September 2013).
2. On 20 September 2013 the request fee was paid and this was notified to the requestee on 1 October 2013.
3. On 18 October 2013 a reminder email was sent seeking a response within 30 days of the date of submission of the PAIA request.
4. On 22 October 2013 the requestee issued a notice of extension of time (dated 11 October 2013) to respond to the PAIA request.
5. On 28 October, 27 November and 12 December 2013 further follow up reminder emails were sent by SAHA to the requestee seeking a response to the PAIA request.
6. The failure by the requestee to provide a decision on the PAIA request, despite multiple reminders from SAHA, constitutes a deemed refusal in accordance with section 27 of PAIA.
7. SAHA contests the refusal and submits this appeal.
8. Section 11 of PAIA provides that a requester must be given access to a record of a public body if the requester complies with the procedural requirements in PAIA and access to the record is not refused in terms of any ground for refusal contemplated in Chapter 4.
9. SAHA has complied with the procedural requirements of PAIA and the requestee has not offered any ground for refusal in Chapter 4 for refusing access to the requested

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- records. The requestee has therefore unlawfully refused access to the requested records.
10. Furthermore, there is no justifiable basis on which the requestee could refuse access to the requested records.
  11. SAHA therefore respectfully submits that the relevant authority should order that SAHA be given access to the requested records pursuant to section 77(2) of PAIA, which empowers the relevant authority to substitute the information officer's decision with a new decision.

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

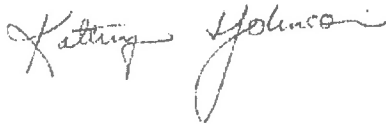
## F. Notice of decision on appeal

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:

Particulars of manner:

Signed at JOHANNESBURG this 22nd of January 2014.



SIGNATURE OF APPELLANT

Ms Kathryn Johnson  
Freedom of Information Programme  
South African History Archive (SAHA)

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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):

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"CMK 44(a)" 255



Department of Justice and Constitutional Development

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, PRETORIA, 0001 • Momentum Centre, 329 Pretorius Street, PRETORIA  
Tel (012) 315 1730, Fax (012) 357 8004

Ref: 7/6/9 SAHA (Johnson K L)(3)  
Enq: Ms MM Raswiswi  
E-mail: MRaswiswi@justice.gov.za

08 October 2013

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
E-mail: foip@saha.org.za

Dear Ms Johnson

**APPLICATION FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO 2 OF 2000)**

I refer to your request to have access to records held by the Department of Justice and Constitutional Development specified as:

*"all investigations and report made at any time into the export of uncut diamonds during the period 1992-1993 by the company 'De Beers' To assist in locating those records, these include records that were compiled in preparation of a briefing document on the matters to the Standing Committee on Public Accounts in 2007"*

Having carefully considered your application our decision is as follows:

The documents contain information that was supplied in strict confidence by various third parties. The information was supplied after their confidentiality was guaranteed, so we are unable to breach our undertaking.

Further, the nature of our work and the need to obtain information from various sources to enable us to carry out our function in the public interest may be jeopardised by the disclosure of information supplied in confidence. The request is therefore refused in terms of Section 37(1)(b) of the Promotion of Access to Information Act 2 of 2000.

The requested records contains trade secrets of third parties, its disclosure could reasonably be expected to cause harm to the commercial or financial interest of the third parties.

I refuse this request because it would constitute an unreasonable disclosure of highly confidential commercial or financial information of third parties in terms of Section 36(1)(a)(b) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

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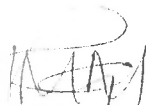
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For the reasons stated above, I therefore refuse your request. The above decision has been carefully considered in terms of the above mentioned Act.

Kindly be advised that you can lodge an internal appeal in terms of Section 74(1) of the Promotion of Access to Information Act, 2000 within 180 days of receipt against this decision to the Minister of Justice and Constitutional Development.

I trust you will find the above in order.

Yours sincerely



**MM Raswiswi (Ms)**  
**Deputy Information Officer**

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81/72589(E10)



Ms Kathryn Johnson  
South African History Archive (SAHA)  
P.O. Box 31719  
BRAAMFONTEIN  
2017

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"CMK 44(b)" 257





"CMK 45"

258

**Response: Claim against Deemed refusal - our ref SAH-2013-DOJ-0011//your ref 7/6/9 SAHA (Johnson KL)(3)**

Kathryn Johnson <kathryn@saha.org.za>  
To: Raswiswi Marlyn <MRaswiswi@justice.gov.za>  
Cc: FOIP <foip@saha.org.za>

Thu, Mar 13, 2014 at 2:19 PM

Dear Ms Marlyn Raswiswi

I am writing in relation to SAHA's PAIA Request sent to you on 18 September 2013 seeking investigations and reports into the export of uncut diamonds by de Beers in 1992-19993 (our ref SAH-2013-DOJ-0011//your ref 7/6/9 (Johnson KL)(3) (attached)).

As you would recall an internal appeal was submitted in relation to that request on 23 January 2014 (also attached).

In summary, you have written to me a letter received by me on 13 March 2014 dated 8 October 2013 in an envelope **postmarked 25 February 2014** (attached). This letter was not emailed to SAHA although my correspondence to you has been conducted entirely by email and that is SAHA's preferred method of communication. The letter notified SAHA of your decision to refuse to disclose documents in response to SAHA's request. That letter also notified SAHA of its right to make an internal appeal.

I confirm that at this stage SAHA takes the view that there has already been an internal appeal submitted on 23 January 2013, some four months (and well over 30 days after the PAIA request was made) and well before you sent a decision on the internal appeal which you have dated 8 October 2013 (but did not send until 25 February 2014).

I confirm that SAHA have assumed that your correspondence on that PAIA request is in response to SAHA's internal appeal and we will now consider SAHA's position in relation to litigation on SAHA's PAIA request regarding this request for information about de Beers.

As I have previously mentioned in other recent email correspondence to you, I cannot ignore that a reasonable inference from the fact that **this letter was not sent by your Department more than five months after it is dated**, is that this letter to SAHA was backdated by you to the date of 8 October 2013. The backdating of this letter in this way does not mean you are able to bypass the requirements of an internal appeal. The non-compliance with the internal appeal requirements will also be an issue we will consider, when considering litigation in relation to this matter.

Yours sincerely, Kathryn

Kathryn Johnson  
Freedom of Information Programme (FOIP)  
SOUTH AFRICAN HISTORY ARCHIVE (SAHA)




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Email: foip@saha.org.za

Web: www.foip.saha.org.za  
Twitter: @sahanews

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**3 attachments**

-  SAH-2013-DOJ-0011\_FormA\_20130913.pdf  
63K
-  SAH-2013-DOJ-0011\_itr\_DOJ\_FOIP\_20140313\_deny.pdf  
227K
-  SAH-2013-DOJ-0011\_Form\_B\_20140123.pdf  
234K

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"CMK 46(a)" 260



MINISTER  
JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
REPUBLIC OF SOUTH AFRICA

Private Bag X276, PRETORIA, 0001. Safu Building, C/O Thabo Sehume and Francis Beard Street, PRETORIA. Tel: (012) 406 4668  
Fax: (012) 406 4680. [www.doi.gov.za](http://www.doi.gov.za)

Private Bag X256, CAPE TOWN, 8000, 5<sup>th</sup> Floor, Room 510, 120 Plein Street, CAPE TOWN. Tel: (021) 467 1700, Fax: (021) 467 1730.  
[www.doi.gov.za](http://www.doi.gov.za)

*Please quote our full reference number in all correspondence*

Our reference: 3/29/4  
Enquiries: Ms T Ratshibvumo  
E-mail: [tratshibvumo@justice.gov.za](mailto:tratshibvumo@justice.gov.za)

Ms Kathryn Johnson  
South African History Archive (SAHA)  
P O Box 31719  
BRAAMFONTEIN  
2017

Tel: 011 718 2563  
Fax: 086 649 1491  
Email: [foip@saha.org.za](mailto:foip@saha.org.za)

Dear Ms Johnson

**INTERNAL APPEAL AGAINST REFUSAL OF REQUEST FOR ACCESS TO INFORMATION, IN ACCORDANCE WITH THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000)**

I refer to your appeal dated 23 January 2014 submitted on behalf of the South African History Archives (SAHA) against the decision of the Deputy Information Officer for the Department of Justice and Constitutional Development.

I have carefully considered all grounds on which you base your appeal and I am of the view that the Department of Justice and Constitutional Development is correct in refusing to grant your organisation access to the records requested.

You will appreciate that the documents requested by your Organisation are "all investigations and report made at any time into the export of uncut diamonds during the period 1992-1993 by the company 'De Beers'." Parts of these records contain details of alleged involvement of other individuals in unlawful activities. Public access to such records will be detrimental to those individual's physical safety, including of members of their families.

You will also note that the National Prosecuting Authority has not ruled out possibility of prosecuting apartheid era offenders and in their investigations they will be relying on the requested records and such further information which may be obtained from individuals on the basis of confidentiality.

I wish to assure you that the Department has, in refusing to grant you access to the records, complied with all statutory requirements, including third party notification.

*[Handwritten signature]*  
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The requested documents contains details of various categories of information, i.e. highly personal information about the third parties as well as information relating to unlawful activities perpetrated by other individuals.

The information relating to the other individuals implicated by various third parties is also not in the public domain. Such information has also not been tested and / or verified and its disclosure could be defamatory of them and infringe their dignity which is protectable under the Constitution. In view of these consideration and notwithstanding any need for disclosure, I refuse the request, first, because it would constitute an unreasonable disclosure of information in terms of Section 34 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

The disclosure of this document would be highly detrimental to the other individuals involved and could reasonably be expected to endanger their lives or physical safety and thirdly, the document in question was furnished to the Truth and Reconciliation Commission on a confidential basis and any disclosure thereof would be in breach of the conditions of confidentiality. For these reasons I am obliged to refuse the request for access to these documents in terms of Section 37(1)(a), 38(1) and 39(1)(b)(iii)(bd) thereof.

In considering the appeal for the request for access to these documents against the need for disclosure in the light of the factors already referred to, I am of the view that the disclosure of the De Beers investigation report would be highly unreasonable.

For the reasons stated above, I wish to inform you that you Organisation's appeal against the decision of the Deputy Information Officer of the Department of Justice and Constitutional development is hereby dismissed.

*J. Radebe*

Mr JT RADEBE, MP

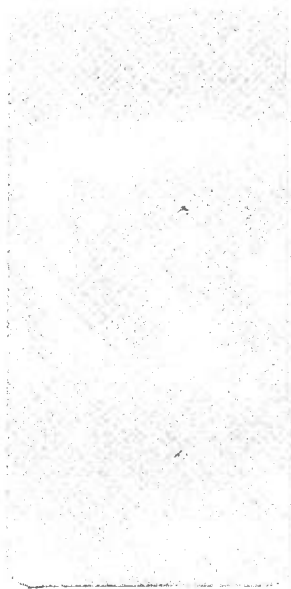
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

DATE: 05/05/14

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"CMK 46(b)"

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**Mail & Guardian**  
AFRICA'S BEST READ

"CMK 47"

- [Print friendly page](#)
- [See original article](#)

## Secret state: How the government spies on you

South Africa's intelligence agencies are routinely accessing citizens' private SMS, phone and email conversations ... illegally.

14 Oct 2011 00:00 [Heidi Swart](#)



Loots, a former undercover officer for the police's crime intelligence division (Madelene Cronjé, M&G).

The turmoil in the leadership of the State Security Agency has again cast a baleful light on the role and reach of the secret apparatus available to the government.

The reasons alleged for the departure of National Intelligence Agency director Gibson Njenje underline persistent concerns about the abuse of covert power: Njenje refused to stop spying on some of the president's friends—the controversial Guptas—and refused to start spying on some of his political enemies.

The role of surveillance in our politics recently is undeniable. Jacob Zuma would probably not be president if someone in crime intelligence had not leaked recordings of former Scorpions boss Leonard McCarthy to Zuma's lawyer.

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This week, as part of an occasional series on the Secret State, we explain the architecture of South Africa's spy agencies and take a closer look at the use and abuse of state surveillance.



State intelligence agencies can—and do—access citizens' private communications illegally. The *Mail & Guardian* has been told by well-placed sources that it is a common occurrence, especially in police crime intelligence (see "A police case in point" below).

The *M&G*'s informants included two former police crime intelligence agents and a former military intelligence operative.

A fourth source, who works for a state department, described how he used a contact at police crime intelligence to obtain detailed information of an individual's movements in and out of the country over seven months.

The source alleged that that it took crime intelligence less than 36 hours to source the information—without a judge's permission.

At another source, a former police detective, claimed to have acquired cellphone billing and ownership records through crime intelligence on numerous occasions without a judge's knowledge or approval, mainly to speed up investigations.

A sixth source asserted that she had obtained text messages and cellphone billing records that she needed for personal reasons through a contact at crime intelligence—again illegally.

No one is exempt from the South African government's all-seeing eye. It has the capacity to see your text messages, hear your cellphone conversations, pinpoint your location through your cellphone, access your personal cellular and land-line telephone records and read your emails.

Parliament's joint standing committee on intelligence revealed in its 2009/2010 report that, over a four-year period until the end of March last year, one of the state's eavesdropping centre had legally carried out three million interceptions—phone calls, text messages or emails.

Two specific laws provide for legal interceptions for reasons of security and crime prevention.

### Rica

The Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 (Rica), which came into effect in 2005, makes it illegal for any authority to intercept communication without the permission of a judge designated to rule specifically on all interception applications in South Africa.

The normal legal route for authorities to access private communication can be tedious and time consuming: a law enforcement agency such as the police has to accumulate enough evidence to convince the designated judge that tapping or bugging is necessary to address crime, protect public health and safety, or ensure national security.

When the judge is satisfied that an interception is justified, he or she issues what is legally known as an "interception direction".

With this direction in hand, law enforcement goes to the cellphone, telephone or internet service provider, which must comply with the judge's orders and is legally bound not to inform a customer of the

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impending eavesdropping.

### **Criminal Procedures Act**

Another way of accessing information related to communication is provided for in section 205 of the Criminal Procedures Act 51 of 1977, which allows a law enforcement agency to apply to a high court judge, a regional court magistrate or a magistrate to grant access to cellphone records, telephone records or information about billing and ownership of a cellphone.

It also provides for a person's whereabouts to be tracked through his or her cellphone. This information has to be provided by a telecommunications service provider, which cannot legally release such privileged customer information without being ordered to do so under section 205.

According to the latest report of the Rica judge, retired Judge Joshua Khumalo, there were 419 interception applications between April 2009 and March, of which 34 were refused. The majority, 325, came from the police, with the rest coming from the National Intelligence Agency.

Khumalo commented that, given the vast extent of electronic communication taking place, the number was not excessive. However, the relatively modest number of directions may mask a much larger eavesdropping footprint.

Complaints are also rare. Any member of the public can complain to the inspector general of intelligence if they suspect that the state is illegally intercepting their information.

According to the office of the inspector general of intelligence, only two complaints about surveillance were received during 2010 and four so far this year. Neither of the individuals who complained in 2010 were actually under surveillance, the inspector general claimed.

Included in this year's batch, the *M&G* understands, was a complaint by *Sunday Times* journalists Stephen Hofstatter and Mzilikazi wa Afrika. The inspector general found that Hofstatter was not bugged, but Wa Afrika was indeed—"pursuant to a judge's direction".

### **From the legal to the illegal**

Despite strict legislative provisions, those working in state intelligence agencies can access private communication at any time through bypassing the legal system. And you are unlikely to know about it, unless someone in an agency informs you.

This is possible, sources say, because of the huge number of interceptions that take place, the advanced technology involved and the lack of oversight in intelligence agencies.

### **Where it all happens**

The office for interception centres in Sandton houses the technology and expertise that enable the state to scrutinise ordinary citizen's private lives. In particular, cellphone and telephone conversations, text messages and data—emails and internet website addresses—are intercepted using these facilities, all supposedly within the bounds of Rica.

Established in terms of Rica, the office serves all the state's intelligence agencies and the National Prosecuting Authority. State intelligence agencies include the former National Intelligence Agency, now the domestic branch of the State Security Agency, and the former South Africa Secret Service, now the foreign branch, and the police and military crime intelligence divisions.

One source, who asked to remain anonymous, said that the sheer number of interceptions made it difficult for the designated judge to closely scrutinise them.

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“Hundreds of cellphones are being monitored. How will the judge know if any of them are monitored illegally, unless an investigation is done into every single monitored phone?”

The source said that, although a careful record was kept of all cellphones monitored by intelligence agencies via the office, it was difficult for an inspecting authority to detect illegal interceptions.

He said because of the advanced technology, one was unlikely to hear a click, hum or echo on a cellphone if someone was eavesdropping.

“You’re not going to know if they’re listening to you. Many people say there’s a click or an echo, but today’s technology doesn’t allow for that type of detection,” said the source.

In fact, the cellphone operators are obliged to make provision for a live feed via the office, making cellphone interception easy.

Even if you have it on good authority that a state intelligence agency is illegally intercepting your communications, it would be very hard to prove.

“They know how to cover their tracks,” explained another source. “There’s no way of proving that the interception was illegal.”

### **Finessing the legal route**

One way for law enforcement officers to listen in on the sly and make it appear legal is to falsify affidavits and evidence placed before the Rica judge. But this still leaves a paper trail that can be investigated and does not eliminate the long wait for a legal interception direction.

Sources said the quick and dirty method of intercepting illegally was to sneak a peek while no one was looking. Certain state surveillance projects run for years and involve intercepting the communication of a number of individuals.

So, if an agent wants to take a closer look at an individual but lacks the evidence required for a direction, the target is subsumed under an existing long-term surveillance project.

Under the pretence of suspecting the individual of being associated with the villains already under surveillance through the project, his or her communications are intercepted.

There is no specific direction, no case number and no paper trail marking the interception—and no judge has knowledge of the individual’s case.

Meanwhile, the investigating officer claims to be gathering evidence and assembling a case to present to the judge to legalise the interception.

Later it emerges that the targeted individual was not involved in the suspected malfeasance. The surveillance is dropped and he or she is forgotten—except that an embittered, soon-to-be ex-spouse knows what is in the individual’s bank account and what he or she has said on the phone to a divorce lawyer.

The intelligence sources said that one reason for illegal interception was to speed up investigations—the legal route takes time and wanting to bug a suspect based on a hunch would not convince the judge to issue a direction.

There is also a flow of information between state intelligence agencies and private investigators. If a

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private eye knows someone inside state intelligence, he or she can gain access to communications and phone records through that contact. And the deal can work both ways.

### **Outsourcing**

Another way in which the state can intercept communication illegally is by outsourcing to a private entity informally so that deniability is maintained. A private investigator obtains the information and passes it back to the state agency involved.

Private investigators can obtain such information by paying contacts at banks and telecommunications service providers. They can also intercept communication by bugging rooms—without obtaining entry warrants.

A bug is a hidden device that transmits conversations and other sounds. It can be a transmitter, sending signals to a recipient nearby, or can be based on cellphone technology. A bug can be located in a room in Cape Town while the eavesdropper dials in from London and listens to conversations in real time.

### **No permission required**

The National Communications Centre houses interception facilities that provide for the bulk monitoring of telecommunications, including conversations, emails, text messages and data, by state agencies.

In bulk interception all signals, regardless of who sends them, are intercepted, and thousands of signals can be intercepted simultaneously. These are then analysed to find intelligence relevant to security issues by using methods such as voice and word recognition technology.

However, intelligence sources said the centre's facilities were open to abuse and could be used to target individual numbers.

In 2005 an investigation of the then-National Intelligence Agency's use of the centre found that bulk interception facilities had been used illegally to intercept conversations of private citizens in South Africa.

Because the centre targets "foreign signals intelligence", this is interpreted as falling outside Rica and no judge's direction is required. But the centre's remit includes any foreign communication that "emanates from outside the borders of the republic, or passes through or ends in the republic".

is leaves an obvious loophole for the interception of the communication of South African citizens. At the moment there is no legislation governing the centre. This means that you can be bugged completely outside of the law, and without a judge's direction, if your communications involve a party in another country.

This week the South African Police Service vehemently denied involvement in illegal interceptions.

"The allegations made to the media are denied with the contempt it deserves. Interception is regulated by the Rica Act. The process is such that no illegal interception can occur due to the various 'fail safes' built in and is subject to full compliance audits and inspections by the office of the inspector general of intelligence.

"Any person with information or a perception that his or her communications are subject to 'illegal interception' by the SAPS is encouraged to lay a complaint with the office of the inspector general of intelligence, who is the competent authority to investigate such matters."

The inspector general's office said: "All complaints alleging illegal interceptions were fully investigated.

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In none of the complaints received did we find any unlawful interceptions.”

The State Security Agency had not commented at the time of going to print.

## A police case in point

Deon Loots is an former police officer. Dressed in shorts, running shoes and a T-shirt, he is the guy next door. It is a look he has spent years perfecting as a former undercover officer for the police’s crime intelligence division, which he left in 2001.

Loots agreed to meet with the *M&G* to discuss his experience of illegal interception. He claims to have experienced both sides of this double-edged sword—intercepting others’ communications and having his own privacy violated through the abuse of state facilities.

After leaving the police, he said, he maintained close ties with former colleagues at crime intelligence headquarters in Prieska Street, Erasmuskloof, in Pretoria.

These links were useful for his work as a private investigator. Loots claimed that he could approach a contact at this office at any time and request information about, or the communication of, whoever he was investigating. Such information was usually obtained illegally through state facilities, he said.

But things went sour. Loots claimed that, after a personal dispute, his contact had used the crime intelligence division’s facilities to intercept his cellphone communication and access his bank accounts to sabotage his business and financial endeavours.

He said he knew this because his former contact knew intimate details of his financial and legal affairs that he had not shared with her and which she could only have learned through state facilities.

But there is another reason why Loots was certain that his communication was being intercepted. As a former member of the intelligence community, he said, he was well aware that illegal interception was an everyday occurrence.

Loots said that he had complained to the police and its crime intelligence division without any result. He had also filed a complaint with the inspector general of intelligence, Faith Radebe, from whom he was awaiting a response.

At the time of going to print, Radebe’s office had not confirmed receiving Loots’s complaint.

\* Got a tip-off for us about this story? Email [amabhungane@mg.co.za](mailto:amabhungane@mg.co.za)



The *M&G* Centre for Investigative Journalism, a non-profit initiative to develop investigative journalism in the public interest, produced this story. All views are ours. See [www.amabhungane.co.za](http://www.amabhungane.co.za) for all our stories, activities and sources of funding.

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justice

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

Private Bag X81, Pretoria, 0001 – Tel: (012) 315 1730, Fax: (012) 357 8004  
Momentum Building – 329 Pretorius Street, Pretoria, 0001  
*Please quote our full reference number in all correspondence*

Our reference: 76/9 Allan K (8)  
Enquiries: Ms M Raswiswi  
E-mail: [MRaswiswi@justice.gov.za](mailto:MRaswiswi@justice.gov.za)

Attention: Ms K Allan  
Your ref: 0059/DOJ/ 2006  
Tel: 011 717 1941  
Fax: 011 717 1964  
E-mail: [sahas@library.wits.ac.za](mailto:sahas@library.wits.ac.za)

Date: 12 December 2006

Ms K Allan  
South African History Archives  
P. O. Box 31719  
BRAAMFONTEIN  
2017

Dear Ms Allan

**APPLICATION FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000).**

You are hereby informed that access to the requested information held by the Department of Justice and Constitutional Development specified by yourself as:

1. *All records relating to confidentially agreements, including such agreements, entered into between the Truth and Reconciliation Commission (TRC) and/ or the Department of Justice and individuals who made submissions or testified at hearings of the TRC was unsuccessful.*

A diligent search of the above mentioned records has been conducted and the information could not be located from the Department of Justice and Constitutional Development and the National Archives of South Africa. Reasonable steps have been taken to find the requested information and there are reasonable grounds for believing that this information does not exist.

Attached herewith please find an affidavit prepared for your attention and a letter from Dr Graham Dominy Chief Director, National Archives of South Africa the contents of which are self explanatory.

Regards

**M M RASWISWI (Ms)**  
**DEPUTY INFORMATION OFFICER**  
\* Annexure

Handwritten initials 'D' and 'K' at the bottom right of the page.

**AFFIDAVIT IN TERMS OF SECTION 23 OF THE PROMOTION OF ACCESS  
TO INFORMATION ACT, 2000 (ACT 2, OF 2000)**

---

I, the undersigned

**MUSHAATHAMA MARLYN RASWISWI**

do hereby make oath and say that:-

1. I am an adult female in the employ of the Department of Justice and Constitutional Development as Senior Legal Admin Officer: Promotion of Access to Information Unit operating business from Momentum Centre, 329 Pretorius Street, Pretoria, 0001, in my capacity as the Deputy Information Officer in terms of the Promotion of Access to Information Act 2, of 2000.
2. The facts contained herein are, unless the context indicates otherwise, within my personal knowledge and belief and are true and correct.
3. Kate Allan, has requested access to the following record in terms of section 18 (1) of the Promotion of Access to Information Act 2, of 2000 viz: -
  - 3.1 *All records relating to confidentially agreements, including such agreements, entered into between the Truth and Reconciliation Commission (TRC) and/ or the Department of Justice and individuals who made submissions or testified at hearings of the TRC.*
4. In terms of the provisions of section 23 reasonable steps have been taken to find the requested records. Despite such reasonable steps, there are reasonable grounds to believe that the record does not exist. It is, therefore, not possible to grant access to the record requested.
5. The following steps have been taken to find the requested records: -

I have instructed search from Dr Graham Dorniny Chief Director: National Archives of South Africa for records specified as:

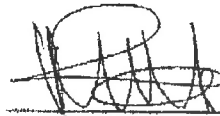
- 5.1 All records relating to confidentially agreements, including such agreements, entered into between the Truth and Reconciliation Commission (TRC) and/ or the Department of Justice and individuals who made submissions or testified at hearings of the TRC.

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- 6. A letter from Dr Graham Dominy Chief Director: National Archives of South Africa dealing with the matter is attached hereto.

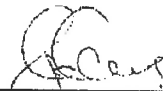


**DEPONENT: DEPUTY INFORMATION OFFICER**

I certify that the Deponent has acknowledged that he/she knows and understand the contents of this Affidavit, signed and sworn to before me at Pretoria

this 12 day of December 2006, and that the provisions

of the Regulations contained in Government Gazette R2477 of 16 November 1984, have been complied with.

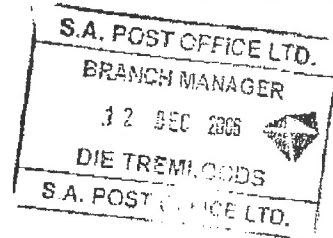


**COMMISSIONER OF OATHS**

Full names: JAKOB DE CUREN

Address: 314 SANDHURST STREET PRETORIA

Republic of South Africa





12/12 2006 13:30 FAX

DoJ&CD:PAIA

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DEPARTMENT OF ARTS AND CULTURE, SCIENCE  
REPUBLIC OF SOUTH AFRICA  
Private Bag X897, Pretoria, 0001, South Africa. Tel: (27-12) 337 8000 Fax: (27-12) 323 2720  
www.national.archives.gov.za

**NATIONAL ARCHIVES AND RECORDS SERVICE OF SOUTH AFRICA  
NASIONALE ARGIEF EN REKORDDIENS VAN SUID-AFRIKA  
DIKHAEFE TŠA BOSETŠHABA TŠA AFRIKA BORWA  
INQOLOBANE YOKUGCINA AMAGUGU KAZWELONKE ENINGIZIMU AFRIKA**

Private Bag/Privaatsak X236, PRETORIA 0001  
Fax/Faks: (012)324 2855

**TO: Ms M Raswiswi**

**Fax: (012) 357 8004**

Pages following (this one included): 10

**Date:** 1 December 2006

**Subject:** Kindly receive the following documents from Dr Dominy

**Message:**

Kind regards

Mmathapelo

*Handwritten signature and initials*





# arts and culture

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The Deputy Information Officer  
Department of Justice and Constitutional Development  
Private Bag x81  
PRETORIA  
0001

29 November 2006

FAX 012 357 8004

FOR ATTENTION: MS M RASWISWI

RESEARCH REQUEST ON BEHALF OF SAMA

1. I refer to your research request dated 21 November 2006 dealing with information on all records relating to confidentiality agreements between the TRC and / or the Department of Justice and individuals who made submissions or testified at the hearings of the TRC.
2. My staff have gone through various groups within the TRC records including the minutes of meetings held by the commissioners, but could not trace any record referred to in paragraph one.
3. They have also contacted various ex TRC officials including the chairperson of the Amnesty Committee and a previous legal adviser and were informed that no specific agreements or contracts were signed when individuals made statements or were asked to appear at a Section 29 hearing. In the appropriate instances the individual would be informed about section 29 of the Promotion of National Unity and Reconciliation Act (34 of 1995) that gives the Commission the right to decide if any information shall be made public or not.

REFERENCE: 12/11/3  
WEB ADDRESS:

ENQUIRER: G. Wagener  
E-MAIL: GERRIT.WAGENER@dac.gov.za

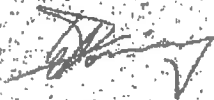
TELEPHONE: +27(0)12-323-5300

Department of Arts and Culture • Departement van Kuns en Kultuur • Umnyango wezoobuciko nemasiko  
Isidlo sizoobuciko nemasiko • Isiphondo eGqirha lw'Isidlo • Iinkqubo yoBoqobo lo Gqirha • Iisheya le Botsweyirini le Selo  
Uthixo loobuciko nemasiko • Inkqubo yoobuciko nemasiko • Umnyango wezoobuciko nemasiko • umnyango wezoobuciko nemasiko

*Handwritten signature: A de MM S*

4. Attached please find photocopies of a discussion document prepared for the Human Rights Violations Committee meeting, dated 24 May 1996 and also photocopies of the relevant pages of the minutes of the Commission meetings dated 1 July 1998 and 6 August 1998.

Regards



DR GRAHAM DOMINY  
NATIONAL ARCHIVIST



arts and culture

Department  
of Arts and Culture  
REPUBLIC OF SOUTH AFRICA

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**TRUTH AND RECONCILIATION COMMISSION**  
**INVESTIGATIVE UNIT**

**DISCUSSION DOCUMENT PREPARED FOR THE HUMAN  
RIGHTS VIOLATIONS COMMITTEE MEETING  
FRIDAY 24 MAY 1996, GAUTENG**

I was requested by the CEO to prepare a brief report / discussion document in respect of the issues to be discussed by the HRV Committee at its meeting on 24 May 1996. What follows is a collection of thoughts which may assist the Committee.

**HEARINGS**

Attached is a copy of a document prepared prior to the Commission meeting. The document represents an initial response to the issues and seeks to identify matters which the Committee may wish to consider.

I have considered the question of subpoenas further since drafting the above document and wish to outline my further thoughts as follows:-

Subpoenas

- (a) Section 29(1) c provides that "(t)he Commission may for the purposes of or in connection with the *conduct of an investigation* or the holding of a hearing, as the case may be - by notice in writing call upon any person to appear before the Commission and to give evidence or to answer questions relevant to the *subject matter of the hearing*;"
- (b) It will be observed that the section draws a clear distinction between a hearing and an investigation and contemplates the calling of a person to answer questions in connection with the subject matter of an investigation. Although the sub-section does not in terms refer to an investigation, it seems clear that what is contemplated is that the Commission may issue a subpoena for purposes of conducting an investigation.
- (c) Sub-section (5) provides that "(n)o person other than a member of staff of the Commission or any person required to produce any article or to give evidence shall be entitled or be permitted to attend any investigation conducted in terms of this section ....."
- (d) A hearing conducted in terms of this section is quite distinct from a hearing contemplated by section 14(1)(a)(ii) read with section 4(b) [ the public "victim" hearings which have been conducted thus far]. The hearing contemplated by section 29 is in the nature of an investigative inquiry.

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- (e) In terms of section 30(1) the Commission or Committee may determine the procedure to be followed in regard to an investigation or hearing.
- (f) On the basis of the above it appears that the Act specifically empowers the Commission to subpoena a witness for purposes of a (specific) investigation and to conduct the hearing of the evidence in camera.

The effect of the above is that the Commission is able to identify person which it wishes to subpoena for purposes of obtaining evidence or information concerning an investigation which is being conducted. In practical terms this means that it is possible to subpoena Joe Mamasela to attend an hearing of the Commission held in camera and there to give evidence and answer questions in regard to the activities of the Vlakplaas unit and its involvement in the murder of persons. In my view an investigation conducted in this manner will enable the Commission to gather evidence without the potential interference of perpetrators who may be identified during the course of the investigation. The "hearing", because it is not public and because it is in the nature of an investigative inquiry would therefore not have to be preceded by the issuing of a Section 30 notice.

The duty to issue a section 30 notice arises only once the Commission contemplates either a finding which may detrimentally affect the perpetrator or contemplates taking some or other action which may prejudicially affect the rights of a perpetrator. To my mind this is the only manner in which sense could be made of the provisions of section 30.

On the basis of this approach the Commission will be able to conduct proper investigation of matters where perpetrators are clearly unwilling to come forward.

Investigative inquiries such as those provided for by section 29 will also enable the Commission to apply pressure on perpetrators and may contribute to "flushing out" those who at this stage are not applying for amnesty.

A further issue, which would need attention, is the manner in which the investigative inquiries are conducted. It may be necessary to follow very strict guidelines during such inquiries so as to ensure that evidence gathered in this form is "admissible" in a subsequent public HRV hearing. We may wish to consider recording the proceedings on video so that the manner in which the evidence is elicited cannot be impeached by a named perpetrator.

#### Missing Files

As reported at the Commission meeting last week, we have received an "inventory" of files in the possession of the SAPS. We are presently examining and evaluating the material so as to enable us to report fully on what we have received. We are as yet unable to report meaningfully on the material received and will do so shortly via Commissioner Ntsebeza.

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It is clear however that there are missing files. The Committee needs to consider what approach it will adopt in this regard. I would propose that the Committee authorises and investigation which is ongoing and at some point in the future the Committee considers conducting a public hearing which deals with the destruction of documents for purposes of obscuring human rights violations.

#### Nodal Points

I have previously submitted proposals to Commissioner Ntsebeza regarding access to information. In the light of the undertaking by Minister Omar to grant access to NIA files and records, it is essential that a mechanism to facilitate the access be established as soon as possible.

I would urge the Committee to insist on open access rather than access based upon specific requests. It should be possible to obtain access to much of the information if we can obtain access to the NIA database and computer systems. The same would apply to Military Intelligence.

An agreement should be sought with Intelligence, the Military and the Police to obtain access to their databases by establishing a team of persons perhaps co-ordinated jointly by Research and Investigations who can cull information from the respective databases. It may be necessary to utilise expertise in the departments to assist with the process.

I would propose that the Committee, in preparation for a meeting with the Ministries and relevant authorities, tasks a group to formulate a proposal as to how information can be accessed to maximum effect. No doubt the question of access is one which will raise issues of security and this should be addressed in the proposal.

Glenn Goosen  
Director of Investigations  
24 May 1996

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TRUTH AND RECONCILIATION COMMISSION  
MEETING OF COMMISSION  
WEDNESDAY 1 JULY 1998  
CAPE TOWN

**PRESENT:** Archbishop Desmond Tutu (Chair), Dr Alex Boraine, Mrs Mary Burton, Rev Bongani Finca, Ms Sisi Khampepe, Mr Richard Lyster, Judge Hassen Mall, Rev Dr Khoza Mgojo, Ms Hlengiwe Mkhize, Mr Dumisa Ntsebeza, Dr Wendy Orr, Adv Denzil Potgieter SC, Dr Fazel Randera, Ms Glenda Wildschut

**APOLOGIES:** Mr Wynand Malan, Ms Yasmin Sooka

**IN ATTENDANCE:** Dr Biki Minyuku, Mr John Allen, Adv Martin Coetzee, Mr Thulani Grenville-Grey, Mr Willie Greyvenstein, Mr Wilson Magadla, Dr Ruben Richards, Prof Charles Villa-Vicencio

1. WELCOME AND OPENING REMARKS

- 1.1 The Chairperson, in welcoming everyone to the meeting, said that this was probably one of the last meetings of the full Commission. He urged everyone to be gentle both with themselves and with staff as the Commission moves towards closure.
- 1.2 MB was congratulated on the birth of a second grandchild and Judge Mall was congratulated on his 76<sup>th</sup> birthday.
- 1.3 The Chairperson congratulated DN and the Investigative Unit, especially Chandre Gould and Jerome Chaskalson, on the hard work put into the CEW hearing. He believed that this hearing had quietened even the most severe critics of the Commission. Professor Peter Folb was thanked for the outstanding voluntary work he did in relation to the hearing. It was agreed that the Chairperson would write to him.
- 1.4 The Chairperson reported that the Mtinkulu family had incurred high legal costs relating to the investigation of the death of their son. He proposed that individual Commissioners make a contribution of R500 each, which would greatly assist the family.
- 1.5 Mr Ernest Malgas, one of the first witnesses at a hearing, has died. The Chairperson proposed that the Commission consider a small gift which would be taken to the family by the Chairperson, ALB and BF.

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It was stressed that flexibility was important but the budget had to be adhered to. The R&RC was asked to liaise closely with the CEO.

- 7.3.6 TG-G said that there was a problem with the identification of victims through the amnesty process because of the paucity of information. More resources would be needed to trace these victims and/or their dependants. Suggestions included approaching political parties, using the media and approaching NGOs, the faith community etc. It was agreed that this was an administrative process and that TG-G should liaise with BM and JA in terms of what was possible.
- 7.3.7 BM said that he had indicated to HM and TG-G what resources and possibilities were available in terms of providing services to victims in the regions, particularly KZN and Gauteng. A meeting has been requested with the Minister of Justice to look at the possibility of setting up a Desk which could deal with the implementation of long-term policies.
- 7.3.8 In response to a question, WO said that the Committee assessed every returned application form. Where the address of the outgoing form was easily identifiable it was sent out but where the recipient was not immediately obvious the R&R Coordinator approached a Commissioner for assistance.
- 7.3.9 The Chairperson expressed appreciation to the R&RC and management for showing flexibility and creativity in dealing with problems.
- 7.4 Investigative Unit
- 7.4.1 LWM spoke to a tabled report.
- 7.4.2 Summaries of HRV investigations would continue to be written. On the return of Captain Fanie Molapo an audit would be conducted on the exhumations conducted to date, those outstanding where bodies have been identified and cases where further investigation was needed.
- 7.4.3 Someone from the University of Cape Town had looked at the documents from Paris relating to the Dulcie September case with a view to translating them.

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Without a contract being drawn up she had begun the translation work and had submitted an account for R5 000 for the translation of 10 documents. This would be taken further.

- 7.4.4 There were a few outstanding investigative cases such as the CBW hearing and the Machel and Helderberg cases. The transcripts of these hearings were awaited in order for the Unit to write its report for the Final Report.
- 7.4.5 There was discussion on requests for the exhumation of people who had been executed after a trial and a conviction in court. It was agreed that the Commission could not take on any more work but that consideration should be given to raising such issues under Recommendations in the Final Report.
- 7.4.6 It was agreed that the IU would link up with the HRVC in terms of notifying victims and/or their families of the results of investigations.
- 7.4.7 It was agreed that all information gathered by the TRC, including at S29 hearings, remains confidential until such time as the Commission decides otherwise.
- 7.4.8 The IU was thanked for all its extremely hard and dedicated work.

8. REGIONAL REPORTS

For information.

9. REPORT OF THE CEO

- 9.1 BM spoke to a tabled report.
- 9.2 After an evaluation of the budget it had proved possible to assist the R&RC with one Coordinator position or two positions at a lower salary level. The Committee had elected to approve the appointment of two administrators for Gauteng and KZN.
- 9.3 The Committee had expressed its concern at asking victims to open certified bank accounts in order to receive money, because of the difficulties this sometimes posed. BM suggested that alternatives such as Post Office accounts be considered.

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TRUTH AND RECONCILIATION COMMISSION  
MEETING OF COMMISSION  
THURSDAY 6 AUGUST 1998  
CAPE TOWN

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PRESENT : Archbishop Desmond Tutu (Chair), Dr Alex Boraine, Mrs Mary Burton, Mr Wynand Malan, Ms Hlengiwe Mkhize, Mr Dumisa Ntsebeza, Dr Wendy Orr, Adv Denzil Potgieter SC, Dr Fazel Randerá, Ms Yasmin Sooka

APOLOGIES : Ms Sisi Khampepe, Mr Richard Lyster

IN ATTENDANCE: Dr Biki Minyuku, Mr John Allen, Adv Martin Coetzee, Mr Thulani Grenville-Grey, Dr Ruben Richards, Mr Hanif Vally

1. WELCOME AND OPENING REMARKS

1.1 The Chairperson welcomed everyone to the meeting. He said that ALB would be late because he had an appointment with a neurosurgeon.

1.2 WM was congratulated on his daughter's graduation from Oxford University with a Bachelor of Civil Law degree.

1.3 The Chairperson reported that the Mail & Guardian had reached an out-of-court settlement with HM.

2. ATTENDANCE LIST

Circulated for signature

3. ANNOUNCEMENTS

3.1 Cell Phone Service

3.1.1 BM said that the tabled documentation was self-explanatory.

3.2 Resignation/Suspension/Long Leave of Commissioners

3.2.1 The Chairperson confirmed that should a Commissioner leave before 31 October, he/she should apply for long leave. Commissioners who leave after 31 October would be in suspension until recalled.

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It was agreed that BM would investigate the situation and report back to YS, MB and HM. WM cautioned against raising the issue of salaries but YS said that this had obviously become a large issue.

BM

- 7.3.6 RR pointed out that technically the Notification Unit did not exist. BM responded that the Information Unit had been asked to take on this responsibility until such time as funds became available, when a Notification Unit would be set up.
- 7.4 Investigative Unit
- 7.4.1 DN gave a verbal report.
- 7.4.2 He confirmed that all HRV investigations had closed and a report has been compiled and forwarded to the Research Department. A separate report on the Chemical and Biological Warfare hearing would be submitted as soon as possible.
- 7.4.3 Mr Wilson Magadia's contract would be extended by one month to enable him to wind up the work of the Unit, undertake an audit of all investigations carried out between October 1997 and July 1998 and to write a comprehensive report.
- 7.4.4 He raised the discovery of the remains of 12 bodies in a grave where 3 bodies were expected to be found. The IU was under pressure to follow this investigation through to closure. After discussion the meeting agreed that the Medico-Legal Unit in KZN would be approached for assistance.
- 7.4.5 RR said that a number of requests were being received for transcripts of S29 hearings and asked for a policy decision. YS said that this was a sensitive matter and all the transcripts needed to be scrutinised in terms of the naming of persons etc. She said that there were many ramifications and cautioned against a blanket policy on access. It was agreed that she, DP, DN and HV would meet to discuss the issue and draft a recommendation.

YS/DP  
DN/HV

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