

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

**CASE NO.**

In the matter between:

**SOUTH AFRICAN HISTORY ARCHIVE TRUST** Applicant

and

**SOUTH AFRICAN RESERVE BANK** First Respondent

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

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**CATHERINE MOIRA KENNEDY**

hereby make oath and state:

- 1 I am the director of the applicant, the South African History Archive Trust ("SAHA"). I am duly authorised to bring this application on behalf of SAHA. In this regard, I attach a copy of a resolution of the Trustees of the South African History Archive Trust marked "FA1".
- 2 The facts set out herein are within my personal knowledge, unless stated

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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 basis of the advice of SAHA's legal representatives.

**THE PARTIES**

3 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. It is situated at the Women's Jail, Constitution Hill, 1 Kotze Street, Braamfontein, Johannesburg. SAHA made the request for information that forms the subject matter of this application.

4 The first respondent is the **SOUTH AFRICAN RESERVE BANK** ("the Reserve Bank"), the central bank of the Republic of South Africa. It is established in terms of section 223 of the Constitution and is governed by the South African Reserve Bank Act 90 of 1989 ("the Reserve Bank Act"). Its head office is at 370 Helen Joseph Street, Pretoria. The Reserve Bank is responsible for, amongst other things, the protection of the value of the currency of the Republic in the interest of balanced and sustainable economic growth; assisting the South African government in the formulation and implementation of macro-economic policy, and informing the South African public about South African monetary policy and the South African economic situation.

5 The second respondent is the **GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK, LESETJA KGANYAGO**, who is cited in his official

capacity. He is the information officer of the Reserve Bank, in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA"). He is responsible for the records that were the subject of SAHA's request for information under PAIA.

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

- 6 SAHA brings this application in terms of section 78(2) read with section 82 of PAIA because the Reserve Bank has refused access to records requested by SAHA in terms of PAIA on 1 August 2014.
- 7 A copy of the request is attached marked "FA2".
- 8 The request was one of six different requests for information that SAHA made to the Reserve Bank on 1 August 2014 ("the 2014 requests"). It carried the SAHA reference SAH-2014-SRB-0007. All of the 2014 requests related primarily to abuses of the financial rand, corruption and foreign exchange transactions under apartheid, including loans and permissions for transfer of funds outside the country.
- 9 The request sought access to:

*"Copies of any and all records, or parts of records, of any evidence obtained by the bank at any time as part of investigations into any substantial contravention of, or failure to comply with the law in terms of significant fraud (including fraud*

through manipulation of the financial rand dual currency, foreign exchange or forging Eskom bonds), gold smuggling or smuggling of other precious metals from 1 January 1980 to 1 January 1995 in relation to the following persons:

- The late Mr Giovanni Guiseppe Mario Ricci (born 07/08/1929; ID# 2908075136186; last known address Bryanston/Midrand; died 16/07/2001)
- The late Mr Stephanus Petrus (Fanie) Botha (former Minister of Labour/Manpower, born 05/05/1922; ID# 220505027083; died in Pretoria, 04/09/2010)
- Brigadier Johann Philip Derk (Jan) Blaauw (born 14/10/1920 ID# 2010145028004; believed to be dead)
- Mr Paul Ekon (ID# 5905265017082)
- Mr Robert Oliver Hill (ID# 3907245021004, as involved in South African Reserve Bank v Torwood Properties (Pty) Ltd 626/94) [1996] ZASCA 104; 1997 (2) SA 169 (SCA) [1996] 4 All SA 494 (A); (25 September 1996)
- Mr Vito Roberto Palazzolo (also known as Mr Robert von Palace Kolbatschenko; born 31/07/1947; currently serving a prison sentence in Italy for Mafia association.)
- Mr Craig Michael Williamson (born 23/04/1949; ID# 4904235577003)

- Dr Wouter Basson (born 06/07/1950)

- 10 SAHA requested those records after consulting with 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 a book that will focus on procurement practices and public accountability during apartheid (an under-researched area of work). The records fall within the scope of information that SAHA routinely archives and makes available to the public.
  
- 11 SAHA had previously, in September 2013, made requests for information that were refused by the Reserve Bank ("the 2013 requests"). In refusing SAHA's 2013 requests, the Reserve Bank stated that SAHA had failed to include sufficient particulars pertaining to the information and entities referred to in the request to enable it to identify the precise records sought.
  
- 12 In making its 2014 requests, including the request at issue in the present application, SAHA attempted to frame its request in as clear and concise a manner as possible in order to assist the Reserve Bank to identify and source the relevant records. In this matter, SAHA sought access to records relating to eight named individuals, identified by their identity numbers and dates of birth and death, where relevant. The records requested were of evidence obtained by the Reserve Bank from investigations into substantial contraventions of or failure to comply with the law.

- 13 The records sought are those that would reveal evidence of:
- 13.1 significant fraud including fraud through manipulation of the financial rand dual currency, foreign exchange or forging Eskom bonds,
  - 13.2 gold smuggling; or
  - 13.3 smuggling of other precious metals.
- 14 I submit that the request is sufficiently clearly framed and focused to enable the Reserve Bank to give effect to its constitutional and statutory obligations to provide access to information.
- 15 The Reserve Bank initially failed to make a decision on the request within the time periods prescribed in PAIA. On 28 October 2015, it refused access to the records.
- 16 The Reserve Bank asserted that it had done a search of its records and was unable to find any records of the sort requested, in relation to the five individuals listed below. Dr J De Jager, the Deputy Information Officer of the Reserve Bank, made an affidavit in terms of section 23 of PAIA stating that the Reserve Bank was unable to locate any such records. Those five individuals are:
- 16.1 Mr Giovanni Giuseppe Ricci;
  - 16.2 Mr Stephanus Petrus Botha;

16.3 Mr Paul Ekon;

16.4 Mr Craig Michael Williamson; or

16.5 Dr Wouter Basson.

17 In respect of Brigadier Johann Philip Derk Blaauw, Mr Robert Oliver Hill and Mr Vito Palazzolo, the request for information was refused in terms of section 27 of PAIA. I deal with why there is no basis in law for such a refusal, below in this affidavit.

18 SAHA now brings this application in terms of section 78(2) read with section 82 of PAIA for an order:

18.1 declaring that the decision of the First and Second Respondents to refuse access to the records requested by SAHA in its request for information in terms of the PAIA, is unlawful and in conflict with the provisions of PAIA and the Constitution;

18.2 reviewing and setting aside the refusal by the First and Second Respondents of SAHA's request;

18.3 directing the Respondents to provide the requested records in respect of Brigadier Blaauw, Mr Ricci, Mr Botha and Mr Hill to the Applicant within 15 (fifteen) days of the granting of this order.

18.4 directing the Respondents to notify Mr Ekon, Mr Palazzolo, Mr Williamson and Dr Basson within 5 days of the date of this order, of the request, in accordance with section 47 of PAIA and thereafter

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to comply with the time periods and provisions in Chapter 5 of PAIA;  
and

18.5 directing the First and Second Respondents to pay the costs of this  
application.

**JURISDICTION**

19 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.

20 Section 82(2) of PAIA provides that the court hearing an application of the  
present sort 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*

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*(e) condoning non-compliance with the 180-day period within which to bring an application, where the interests of justice so require."*

- 21 Clause 6.3 of the Reserve Bank PAIA manual, which is compiled in terms of section 14 of PAIA, states that it does not provide for any internal appeal procedures. There are therefore no internal remedies that need to be exhausted before the institution of these proceedings. I attach a copy of Clause 6.3 of the manual marked "FA3".
- 22 I am advised and submit that accordingly, SAHA is entitled to bring this application in terms of section 78(2) read with section 82 of PAIA.
- 23 In this affidavit I address the following issues in turn:
- 23.1 An overview of the objectives and functions of SAHA;
  - 23.2 The constitutional right of access to information and the role of PAIA in this regard;
  - 23.3 The factual background to this application;
  - 23.4 The grounds on which Reserve Bank has refused to grant access to the records
  - 23.5 Why there is no basis in law for that refusal;
  - 23.6 The public interest in the disclosure of the records.

24 Before doing so, I point out that SAHA has, throughout its interactions with the Reserve Bank, attempted to avoid litigation, and to assist the Reserve Bank to make the records accessible. To this end,

24.1 SAHA decided to lodge a fresh request in light of the Reserve Bank's complaint that SAHA's 2013 requests were overbroad and unclear.

24.2 On 26 September 2014, SAHA wrote to the Reserve Bank stating that it was willing to send researchers to the Reserve Bank to inspect the records in order to assist the Reserve Bank in identifying the records requested and to enable SAHA further to narrow its requests if necessary. I attach a copy of this letter marked "FA4".

24.3 Although SAHA is not required by PAIA to provide reasons for its request for access to records of a public body such as the Reserve Bank, when asked to do so, it explained the nature of the work that SAHA does and why it had requested the specific records concerned. This is also clear from annexure FA3.

25 However, the Reserve Bank has failed to comply with its obligations under PAIA. There are no valid grounds for the refusal of SAHA's request. In the circumstances, SAHA has no other recourse but to approach this Court for relief.

## THE OBJECTIVES AND FUNCTIONS OF SAHA

- 26 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 "FA5".
- 27 SAHA is an independent NGO dedicated to documenting and providing access to archival holdings that relate to past and contemporary struggles for justice in South Africa. SAHA was established in the late 1980's 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. Further, 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.
- 28 SAHA launched its Freedom of Information Programme in 2001. It 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.
- 29 Since 2001, SAHA has made over 1800 requests for information from various government departments. It has made numerous applications to the High Court arising out of refusals of such requests. SAHA has also intervened as *amicus curiae* in a number of PAIA applications.

30 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 submission and monitoring of PAIA requests made by members of the PAIA Civil Society Network, a network of civil society organisations that collaborate to improve the implementation and usage of PAIA and create awareness about the Act. SAHA has also trained hundreds of activists, students, community members, NGO members, local government officials, attorneys and paralegals in the use of PAIA.

31 The request for access to the records concerned was made in this context.

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

32 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.*

*(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."*

33 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 which are foundational to the Constitution.

34 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 states 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"*.

35 Section 9(e) 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."*

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36 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. Section 11(1) of PAIA provides that a requester must be given access to a record held by a public body if the requester complies with all the procedural requirements in the Act and no valid ground for refusal in terms of Chapter 4 of PAIA is applicable. Notably, section 11(3) provides:

*“(3) A requester’s right of access contemplated in subsection*

*(1) is, subject to this Act, not affected by-*

*(a) any reasons the requester gives for requesting access; or*

*(b) the information officer’s belief as to what the requester’s reasons are for requesting access.”*

37 The Constitutional Court has made clear that the right of access to information is fundamental to the realisation of the other rights guaranteed by the Bill of Rights.

**THE RESERVE BANK IS A PUBLIC BODY FOR PURPOSES OF PAIA**

38 I am advised and submit that the Reserve Bank is a public body in terms of paragraph (b) of the definition of “*public body*” in section 1 of PAIA. A public body is defined in section 1 of PAIA as:

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*“(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or*

*(b) any other functionary or institution when-*

*(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or*

*(ii) exercising a public power or performing a public function in terms of any legislation”*

39 The Reserve Bank is established by the Constitution; it exercises its powers and performs its duties in terms of the Constitution; and it is governed by the South African Reserve Bank Act, in terms of which it exercises public power and performs a public function. Section 3 of the Act describes the primary objective of the Bank as being to *“protect the value of the currency of the Republic in the interest of balanced and sustainable economic growth in the Republic.”*

40 In the correspondence to which I refer below, the Reserve Bank refers to and relies on sections of PAIA that apply to public bodies.

**FACTUAL BACKGROUND**

41 As I have stated above, the request at issue in this application was made

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on 1 August 2014, together with certain other requests.

42 On 14 August 2014, the Reserve Bank's attorneys wrote to SAHA asserting that the requests were vexatious and an attempt to "intimidate" the Bank. The letter also asked for reasons why and the purpose for which SAHA sought the information. I attach this letter as "FA6".

43 SAHA's attorneys replied on 26 September 2014, stating that as the Reserve Bank is a public body in terms of PAIA, SAHA was not obliged to provide reasons for its request for information. However, in the spirit of collegiality, SAHA stated the reasons for which it sought the records. It also offered to send researchers to the Reserve Bank to inspect the records. I attach a copy of this letter marked "FA7".

44 In February 2015, SAHA made an application to this Court, in terms of PAIA, for access to a request it had made for information relating to investigations into abuses of the financial rand from its introduction in September 1985 until its abolition in March 1995. That application is pending.

45 On 27 July 2015, the Reserve Bank's attorneys wrote to LHR in relation to this matter ("FA8"). The Reserve Bank asserted:

45.1 The request was vague and ambiguous.

45.2 No definition of "substantial contraventions of the law" or "significant fraud" was provided in the request.



45.3 Therefore further particulars of the records requested were required.

45.4 Third parties had to be notified as required by PAIA.

45.5 The requests fell foul of section 18 of PAIA in that they do not precisely identify the records relevant to the request.

46 On 19 August 2015, SAHA's attorneys replied to the Reserve Bank's attorneys, addressing all of the matters raised by the Reserve Bank.

47 The letter pointed out the manner in which PAIA requires third party notification to take place. The letter noted that PAIA only requires, in sections 28 and 46, that *reasonable steps* be taken to notify a third party, failing which a decision must be made by the Reserve Bank. In relation to SAH-2014-SRB-0007, the letter also provided more information on Mr Oliver Hill, which SAHA had found through media reports.

48 In relation to the Reserve Bank's delay in accessing and perusing its records, the letter stated:

*"if the archival legislation is complied with, retrieval of records should not be very time consuming. Our client repeats its offer to assist in this regard."*

49 On 28 October 2015, in a letter from its attorneys ("FA9"), the Reserve Bank informed SAHA of its decision with regard to the request at issue in this application.

- 50 That letter distinguished between two groups of records requested, namely those relating to Mr Ricci, Mr Botha, Mr Ekon, Mr Williamson and Dr Basson ("the five individuals") and those relating to Brigadier Blaauw, Mr Hill and Mr Palazzolo ("the remaining individuals.")
- 51 In relation to the five individuals, the letter stated that the Reserve Bank had conducted a search of its records and had not located any records that matched the request. An affidavit to this effect by Dr Johan de Jager ("FA10") was subsequently furnished to SAHA.
- 52 Dr De Jager stated that the request was vague and without sufficient particulars to enable the Reserve Bank to identify the records without unreasonably diverting its resources. However, the Reserve Bank attempted to locate what it thought were the correct records.
- 53 In determining what precisely was requested, the Reserve Bank defined "*investigations into any substantial contravention of, or failure to comply with the law in terms of significant fraud*" to mean such records as

*"were entered into the register of investigations by the Investigations Division of the formerly known Exchange Control Department of the South African Reserve Bank, now the Financial Surveillance Department (FSD). In this regard, the aforementioned records consist of a register of investigations (both in hard copy format and for later investigations, in electronic format (Online Risk Management System));*

*relate specifically and directly to the parties specified in Part D of the requests; and*

*constitute formal investigations conducted by the FSD into allegations of "significant" fraud in respect of the parties listed in Part D of the requests as contemplated in the requests."*

54 Dr De Jager stated that the Reserve Bank took all reasonable steps to locate the investigation records as contemplated in section 23 of PAIA. He stated that *"these steps include extensive searches conducted by Mr Alexander Ellis, a specialist legal counsel for the Reserve Bank of the existing records of the FSB."* He stated further that Mr Ellis was unable to locate any entry in the records of the FSD that relates to any investigations by the FSD into the conduct of a series of companies, or the five individuals. It did not suggest that the Reserve Bank was not able to locate any records that matched the request in relation to the remaining individuals.

55 The affidavit of Mr Ellis ("FA11") sheds no light on the process used to search for the records, or whether he conducted these searches himself or with the assistance of other staff members.

56 I am advised and submit that this does not meet the requirements of section 23 of PAIA which provides:

*"The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in*

*question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.*

- 57 Neither Dr De Jager nor Mr Ellis provides any information of the precise steps taken to determine whether the records exist, nor do they indicate which individuals assisted Mr Ellis in his search, or disclose all communications with such individuals.
- 58 It seems very unlikely that that Mr Ellis - the specialist legal counsel of the Reserve Bank – personally conducted a search into approximately 20 companies and eight individuals without assistance from any other Reserve Bank employee. The affidavits of Dr De Jager and Mr Ellis therefore do not satisfy the requirements of section 23 of PAIA.
- 59 At various points during SAHA's engagement with the Reserve Bank, SAHA offered to send researchers to assist with the search for the records requested. This offer was not accepted by the Reserve Bank. If the Reserve Bank wished to comply with the request but was unsure of what was being requested, it had an open line of communication with SAHA through which it could have obtained the clarity it claims to have required. It chose not to do so.

#### **THE RESERVE BANK'S GROUNDS OF REFUSAL**

- 60 The grounds of refusal on which the Reserve Bank relies, as set out in its

attorneys' letter of 28 October 2015, are the following.

***"Disclosure is precluded by section 33 of the Reserve Bank Act"***

61 The Reserve Bank contends that disclosure is precluded by section 33 of the Reserve Bank Act. That section prohibits a director, officer or employee of the Reserve Bank from disclosing any information acquired during the course of his/her duties or the exercise of his/her functions, relating to the affairs of the Reserve Bank, a shareholder or client of the Reserve Bank.

***"Disclosure is precluded by section 37(1) of PAIA"***

62 The Reserve Bank relies further on section 37(1) of PAIA, which requires the information officer of a public body to refuse to disclose a record if disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

63 The Bank states that courts have consistently recognised the duty of confidentiality owed by banks towards their clients in relation to clients' banking affairs.

***"Disclosure is precluded by section 39(1)(b) of PAIA"***

64 The Reserve Bank relies further on section 39(1)(b) of PAIA. It provides that a request for information may be refused if the record contains

*"methods, techniques, procedures or guidelines for-*

*(aa) the prevention, detection, curtailment or investigation of a  
contravention or possible contravention of the law; or*

*...  
and the disclosure of those methods, techniques, procedures  
or guidelines could reasonably be expected to prejudice the  
effectiveness of those methods, techniques, procedures or  
guidelines or lead to the circumvention of the law or facilitate  
the commission of an offence."*

***"Disclosure is precluded by section 37(1)(b) of PAIA"***

65 The Reserve Bank further contends that the disclosure of the information could reasonably be expected to prejudice the future supply of similar information to the Reserve Bank by third parties (including informants) as contemplated in section 37(1)(b) of PAIA.

***"Unreasonable diversion of resources"***

66 The Reserve Bank further contends that it is entitled to refuse the request in terms of section 45(b) of PAIA, because it would be required unreasonably and substantially to divert its resources in order to consider thousands of documents pertaining to the remaining individuals, in order to ascertain the status of the documents and the details of third parties

whom it will have to consult.

***Section 34: protection of privacy of a third party who is a natural person***

67 Finally, the Reserve Bank relies on section 34 of PAIA, which deals with the unreasonable disclosure of personal information about a third party who is a natural person.

***The public interest override: section 46***

68 The Reserve Bank contends that the provisions of section 46, which create a "public interest override", do not apply to the request, because the public interest in disclosure does not clearly outweigh the harm contemplated by the provision of the information.

**RESPONSE TO THE GROUNDS OF REFUSAL**

69 I am advised and submit that there is no basis in law for the Reserve Bank's reliance on the grounds of refusal set out above.

***Section 33 of the Reserve Bank Act***

70 I submit that section 33 of the Reserve Bank Act is aimed at ensuring confidentiality that Reserve Bank directors, officers and employees maintain confidentiality in carrying out their duties. It is not a prohibition

directed at the Bank itself.

71 I am advised and submit that in any event, this provision, enacted in 1989, cannot and does not override PAIA, which gives effect to a constitutional right, and which governs the circumstances in which access to information must or may be granted to a requester.

72 In this regard, I point out that section 5 of PAIA provides:

*"This Act applies to the exclusion of any provision of other legislation that-*

*(a) prohibits or restricts the disclosure of a record of a public body or private body; and*

*(b) is materially inconsistent with an object, or a specific provision, of this Act."*

73 I submit that to the extent that section 33 of the Reserve Bank Act has the consequence for which the Reserve Bank contends, it is a provision that prohibits or restricts the disclosure of a record of the Reserve Bank, and it is materially inconsistent with the objects and provisions of PAIA. PAIA therefore applies to the exclusion of section 33.

74 The Reserve Bank appears to contend that if pre-PAIA legislation restricts disclosure and is materially inconsistent with the objects and provisions of PAIA, it overrides PAIA. I submit that precisely the opposite is the case.



**Section 37(1) of PAIA: protection of client confidential information**

75 I submit that the Reserve Bank's reliance on client confidentiality, on the basis of section 37(1) of PAIA, is fundamentally misconceived:

76 The Reserve Bank was the regulatory authority with regard to the financial rand. When it received applications and considered giving approvals, and when it monitored the financial rand system, it did not do so on behalf of the applicants for authorisation. It did so in its capacity as the regulatory authority. The records that it received were thus not received on behalf of "clients" of the Reserve Bank, and no question of client confidentiality can arise.

77 Similarly, when the Reserve Bank carried out its investigations into abuses of the financial rand, collecting evidence of such abuses, it was not doing so on behalf of a client of the Reserve Bank. The records that it obtained in the course of those investigations cannot be the subject of client confidentiality.

78 I submit that section 37(1)(a) of PAIA, dealing with potential actions for a breach of confidence, is simply of no application in this context. The Reserve Bank does not bear a general duty of confidence to third parties when it carries out its regulatory functions.

**Section 39(1)(b) of PAIA: disclosure of methods**

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- 79 Section 39(1)(b) of PAIA deals with the disclosure of methods, techniques and procedures or guidelines for the prevention, detection, curtailment or investigation of contraventions of the law.
- 80 I submit that a blanket and generalised reliance on this ground of refusal is insufficient to justify a refusal to disclose information. What is necessary is to identify which of the requested records (or classes of requested records) would result in disclosure of protected information, and what protected information would be disclosed.
- 81 If in answer the Reserve Bank provides some specificity with regard to this ground of refusal, I will then be able to deal with it.

***Section 37(1)(b) of PAIA: supply of information by third parties***

- 82 Section 37(1)(b) of PAIA deals with prejudice to the supply of information by third parties.
- 83 Again, I submit that a blanket and generalized reliance on this ground of refusal is insufficient to justify a refusal to disclose information. What is necessary is to identify the requested records (or classes of requested records) whose disclosure will prejudice the future supply of information, what is the nature of that supply of information, and why this consequence will follow disclosure.

- 84 If in answer the Reserve Bank provides some specificity with regard to this ground of refusal, I will then be able to deal with it.

***Diversion of resources***

- 85 Section 45(b) of PAIA provides that the information officer of a public body may refuse a request for access to a record of the body if *"the work involved in processing the request would substantially and unreasonably divert the resources of the public body"*.

- 86 SAHA has requested access to records relating to eight named individuals. The Reserve Bank must have organised its records in a manner that includes an indexing system that enables it efficiently to search for and identify, either electronically or manually, its dealings with and records relating to a particular individual. I invite the Reserve Bank to state whether this is the case.

- 87 The answer given by the Reserve Bank indicates that it has found relevant records relating to the remaining individuals.

- 88 In order to justify its refusal to disclose any of those records, the Reserve Bank relies on a generalized and unsubstantiated blanket assertion. It does not say how many relevant records it has identified relate to each of the remaining individuals. A generic assertion cannot provide a justification for a refusal to disclose. And the mere fact that a request may

involve a large number of records does not per se justify a refusal to disclose them.

89 I point out that this ground of justification contradicts the other grounds of refusal which have been put up. If the Reserve Bank has given sufficient consideration to the requested documents for it to be able to reach a responsible conclusion that they should not be disclosed for one of the statutory reasons, then it follows that the Bank has been able to consider the documents in question.

90 If the Reserve Bank has not been able to consider all of the relevant records relating to those individuals, that does not provide a lawful basis for refusing to provide those records that it has been able to consider.

91 I submit that to the extent that the Reserve Bank relies on section 45 of PAIA, this is without merit.

**Section 34 of PAIA: personal information of natural persons**

92 Section 34(1) of PAIA provides:

*"Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual."*

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93 There has plainly not been any attempt to inform the five individuals of the request. The Reserve Bank states that it has not attempted to inform the remaining individuals as required by section 47(1) of PAIA, because two of them (Brig Blaauw and Mr Hill) are believed to be deceased, and the third (Mr Palazzolo) is incarcerated outside South Africa.

94 I submit that a public body is not entitled to decline to attempt to inform a third party who may be affected (such as Mr Palazzolo), and then to rely on section 34(1) as a basis for refusing to disclose information about him.

95 But even assuming that the procedure followed by the Reserve Bank is permissible, I submit that it has provided no substantive answer as to why it should refuse to disclose the requested information, and particularly the information about the remaining individuals. I submit that section 34(1) does not authorise a blanket and unsubstantiated refusal, which has no apparent regard to the period that has elapsed since the events in question (in this instance more than twenty years), or to the relevance of the fact that the individual is deceased, or to the nature of the information in each of the documents (or even each class of documents) concerned.

96 Again, if in answer the Reserve Bank provides some specificity with regard to this ground of refusal, I will then be able to deal with it.

***No consideration of severance under section 28 of PAIA***

97 There is no suggestion that the Reserve Bank has ever considered

whether any part of a record can be released, as section 28 of PAIA requires it to do.

98 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. This is peremptory.

99 The Reserve Bank has effectively refused access not only to every one of the requested records, but also to every part of every one of the requested records.

100 I submit that it is inconceivable that every part of every one of the records is excluded by PAIA from disclosure. I invite the Reserve Bank, if it contends that this is the case, to produce evidence on affidavit by the person(s) who considered each of the requested records and concluded that no part of any one of them could or should be disclosed.

***The attempts by the Reserve Bank to avoid disclosing any part of any relevant document***

101 By their nature, the grounds of objection are fact-specific. They must relate to the particular content of each document and its parts, and they require the consideration of each document. The Reserve Bank however relies on generic and blanket objections that cannot conceivably apply to every part of every document requested. Its true objection is an objection

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in principle to disclosing any document that is under its control, or any part of any such document. This is simply inconsistent with PAIA.

## THE PUBLIC INTEREST OVERRIDE

102 In any event, even if one of the statutory grounds of refusal is relevant, which I deny, I am advised and submit that the public interest in the information clearly outweighs any interest advanced for refusing access to the records.

103 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.”*

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

105 The Reserve Bank has provided no reason why section 46 is not applicable. It has simply asserted that it is not applicable, by repeating the words of the section.

***The Public Interest in disclosure***

106 The contents of the records are of profound public interest and importance. They are relevant to past and contemporary struggles for justice in South Africa.

107 The Reserve Bank is with some certainty the only institution that holds at least some of the documents requested.

108 The right to truth is fundamental to challenging impunity, and is recognised in international law. I refer in this regard, for example, to resolution 2005/66 of the United Nations Commission on Human Rights (UNCHR) which "recognises the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights." The right to truth is essential to ensuring that all human rights violations, including economic crimes, are not repeated. The silence on economic crime during apartheid is a major stumbling block to the right to truth. Very little detail is publicly known of economic crime that took place in the final decades of apartheid. This is the result of the pervasive



culture of state secrecy at the time. There is a strong public interest in not perpetuating the results of that culture.

109 The named individuals either worked for the apartheid state, or allegedly provided services such as facilitating the circumvention of United Nations sanctions.

110 Until the mid-1990s, the movement of large sums of money abroad was illegal in the absence of approval from the Reserve Bank. Nevertheless, estimates of capital flight run to tens of billions of dollars, including through manipulation of the financial rand mechanism, through which different exchange rates applied to different types of transactions. In order to incentivise foreign investment, it could be made at the more favourable financial rand rate. In order to protect the rand from volatility, transfers of goods and services had to be done at the less favourable commercial rand rate. It is well known that this system was exploited through fraudulent "round tripping" of money, generating massive illicit profits. One estimate of the total value of the financial rand market had it as between R141 billion and R204 billion at year-end 1993,<sup>1</sup> or between about R450 billion and R650 billion at modern rand values.

111 At that time, there was a marked lack of transparency in corporate governance, such that share ownership arrangements, private transactions, indirect holdings, possible conflicts of interest, and even

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<sup>1</sup> Jonathan Garner, 1994, An analysis of the financial rand mechanism, *Centre for Research into Economics and Finance in South Africa*, Research Paper no. 9: iv.

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director remuneration were almost impossible to trace. Sanctions and boycotts produced a sense of siege, which encouraged stealth. Particularly where large and possibly strategic businesses were concerned, the state was willing to make available foreign exchange, to overlook a certain margin of tax avoidance, and to facilitate international expansion, all in conditions of utmost secrecy. There were however a handful of known cases of high-profile fraud related to the financial rand or other aspects of foreign exchange regulations. One of the best-known involved businessman Oliver Hill.<sup>2</sup> The Reserve Bank itself was suspected of irregular conduct in a number of such dealings. Its institutional culture of secrecy made it impossible to subject it to meaningful scrutiny.<sup>3</sup>

- 112 Releasing such information would allow researchers and the public to gain a better understanding of corruption under apartheid, and also demonstrate the need for the Reserve Bank's constitutionally required commitment to transparency and accountability. Further, many of the named individuals were senior officials in the apartheid state or had close ties to it. The illicit activities mentioned above, including fraud, smuggling and manipulation of foreign exchange and the financial rand, were carried out in many instances to support (overtly or covertly) the apartheid state, whose policies were a crime against humanity. The public has a right to know information that sheds light on how and by whom this state and

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<sup>2</sup> <http://mg.co.za/article/1996-10-18-judgment-day-for-king-of-roundtripping>.

<sup>3</sup> Hennie Van Vuuren, *Apartheid Grand Corruption* (1996) p 72.

system were supported.

113 I now provide some information on each of the named individuals. This information is derived from research undertaken by Mr Hennie van Vuuren, a participant in the Open Secrets project. Mr Van Vuuren does not have personal knowledge of this information, and the information is not submitted in order to prove its truth. Rather, it is submitted in order to show that there are serious allegations in the public domain that each of the named individuals was actively involved in contravening the law. Given the nature of the international transactions involved, disclosure of the requested information could expose a crime. An affidavit in this regard, deposed to by Mr Van Vuuren is attached marked "FA12".

***Giovanni Giuseppe Mario Ricci***

114 Mr Ricci was an Italian businessman who settled in the Seychelles in the mid 1970s, after living and doing business in Mexico, Haiti and Somalia, and leaving in his trail a fraud conviction in Italy in 1958 and a later charge in Switzerland of possessing counterfeit money – both of which he subsequently had expunged.<sup>4</sup> He became a friend and financial advisor to President Rene, as well as financier of Seychelles' single political party and the government itself. He was granted the sole rights to incorporate and administer offshore companies in the Seychelles, through a new entity called the Seychelles Trust Company. He appears to have become

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<sup>4</sup> Sunday Star, "Nat Superspy's Shadowy Boss", 1987

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an especially important intermediary for South Africa following South Africa's failed attempt to effect a coup in the Seychelles in 1981 – an attempt to replace President Rene with his predecessor. Ricci then partnered with South African spy, Craig Williamson, and established a company called GMR (named after Ricci's own initials). Williamson became MD of GMR South Africa. GMR's purpose was primarily to 'replace disinvestment'. Williamson and Ricci claimed that it was set up to break the capital boycott and trade sanctions by bringing foreign capital from an array of foreign businesses into South Africa, and facilitating the movement of boycotted goods through the Seychelles.<sup>5</sup>

#### ***Stephanus Petrus (Fanie) Botha***

115 Mr Botha was a senior cabinet Minister and from 1978 National Party Leader in the then Transvaal province. He was involved in the 1975 exchange agreement between with Israel and South Africa for uranium and tritium at which Jan Blaauw was also present. Following the 1978 South African election campaign, Botha was in debt to Volkskas bank to the value of R1,7 million.<sup>6</sup> Jan Blaauw assisted Botha financially, and claimed that he had been promised a lucrative diamond concession by Botha in return. The Israeli government, with whom Blaauw was conducting business at the time, was equally eager to ensure that Botha

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<sup>5</sup> Stephen Ellis, "Africa and International Corruption: The Strange Case of South Africa and the Seychelles", *African Affairs*, 95 (379), 1996, pg. 175

<sup>6</sup> Sasha Polakow-Suransky, *The Unspoken Alliance: Israel's Secret Relationship with Apartheid South Africa* (Cape Town: Jacana, 2010).

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was financially secure given that it thought he might become the future Minister of Defence. In 1983 this information was leaked to the media, and Botha resigned in the ensuing scandal.

**Brigadier Johann Philip Derk (Jan) Blaauw**

116 Brigadier Jan Blaauw (SADF, retired 1975) was at one stage part of the military. He subsequently started his own business.<sup>7</sup> From the 1970s he was engaged in the international arms trade, including with Israel in violation of the United Nations Arms embargo. He was present at a meeting in 1976 when Botha (then a senior cabinet member) concluded a deal with the Israeli government to provide the government with 500 tons of uranium (yellowcake) in return for thirty grams of tritium, a radioactive substance that thermonuclear weapons require to increase their explosive power.<sup>8</sup> Blaauw claimed that his old classmate Botha had promised him compensation in return for his sensitive services on behalf of the country. Botha claimed that Blaauw was attempting to extort him into granting him a lucrative diamond concession on the South African/Namibian coast.

117 I understand that Brig Blaauw is now deceased.

<sup>7</sup> Hengeveld, Richard and Rodenburg. J, *Embargo: Apartheid Oil Secrets Revealed*. Amsterdam University Press, 1995

<sup>8</sup> Sasha Polakow-Suransky, *The Unspoken Alliance: Israel's Secret Relationship with Apartheid South Africa* (Cape Town: Jacana, 2010).

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**Paul Ekon**

118 Mr Ekon was a millionaire socialite in South Africa in the 1990's. In 1996, it emerged that he was being investigated in a case of illegal possession of unwrought gold worth millions of Rand. This discovery led investigators to allege that he was part of an international illegal gold smuggling racket that had cost South Africa R250 million in a single year.<sup>9</sup> A Mr Willie Lotter, a close associate of Ekon, was prosecuted for gold smuggling activities, around that time. At the time, Mutual Legal Assistance (MLA) requests were made to Switzerland and possibly France, for information concerning the gold smuggling network.

**Robert Oliver Hill**

119 Mr Hill was a South African businessman who fled the country in 1988 to evade alleged foreign exchange fraud charges of R170 million. There were over 500 individual fraud charges, including those involving an alleged financial rand scam through the forgery of Eskom bonds.

**Vito Robert Palazzolo**

120 Mr Palazzolo was an Italian banker, who in 1984 in order to avoid extradition to face more serious charges in Italy, admitted to and was sentenced in Switzerland, for his role in money laundering for the Sicilian

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<sup>9</sup> <http://mg.co.za/article/1996-11-08-paul-ekon-under-scrutiny-for-gold-deal>

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mafia. The operation in which he was implicated was known as the New York "Pizza Connection", in which over a billion dollars' worth of heroin and cocaine was smuggled from Turkey, via Italy, to the United States in the late 1970s and early 1980s.<sup>10</sup> Palazzolo's South African connections at the time likely arose from the fact that his business dealings included the international trade in precious stones.<sup>11</sup> The Harms Commission of Inquiry into alleged unlawful acts of the security forces<sup>12</sup> was told that Palazzolo was in 1981 trying to source R300,000 from Swiss banks as payment for an undeclared consignment of diamonds.<sup>13</sup> While incarcerated, Palazzolo investigated the possibilities of relocating to South Africa, and was able to secure a Ciskei Passport through a National Party member of parliament, Peet de Pontes, and by making a donation of R20,000 in the form of a "personal contribution to charitable purposes" to the Ciskei President's People's Education Fund.<sup>14</sup>

121 It has been alleged in the media that Palazzolo found such an easy welcome in both the Ciskei and South Africa because of the Ciskei's importance as an intermediary in the movement of covert funds from South Africa, possibly especially in order to finance arms and nuclear

<sup>10</sup> <http://www.foxnews.com/world/2012/12/19/thailand-to-extradite-italian-implicated-in-pizza-connection-trial-for-alleged/>.

<sup>11</sup> <http://www.vrpalazzolo.com/court-documents/the-court-of-appeal-palermo-11th-july-2007-2/>.

<sup>12</sup> <http://www.sahistory.org.za/dated-event/harms-commission-terms-reference-are-laid-out>

<sup>13</sup> [http://www.noseweek.co.za/article.php?current\\_article=486](http://www.noseweek.co.za/article.php?current_article=486).

<sup>14</sup> <http://www.vrpalazzolo.com/court-documents/the-court-of-appeal-palermo-11th-july-2007-2/>; <http://www.vrpalazzolo.com/court-documents/palermo-draft-judgement-5th-july-2006-2/>, Business Day Jan 1989

programmes in secret collaboration with Israel.<sup>15</sup> According to media reports Palazzolo, through Papillon International (a company he and De Pontes set up), was to use his contacts, capital and expertise with illicit flows to help set up the Bank of Bisho for this purpose, as well as facilitate the trade of embargoed arms.<sup>16</sup> Finally, and particularly relevant to this request, the *Sunday Times* reported that Palazzolo was described in an internal Reserve Bank document of the time as a “highly exceptional case”, and that unnamed senior authorities had intervened to authorise the bending of exchange control rules in order to allow R14,5 million in Financial Rands to be released to him (the standard limit for immigrants was R100,000).<sup>17</sup>

122 A recent international investigation by a consortium of investigative journalists summarises the significance of Palazzolo to the criminal economy in South Africa as follows: “For the Mafia, South Africa has long proved to be a place where sanctuary can be found, where friends and family can easily shield a man from unwanted attention and provide a comfortable life. In the past 30 years, it has also become one of the most important foreign economies for the Cosa Nostra. The organisation deftly managed this country’s transition to democracy and, like other, more legitimate businesses, used it as a base from which to expand northwards...Much of that is the legacy of one man: Vito Roberto

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<sup>15</sup> [http://www.noseweek.co.za/article.php?current\\_article=486](http://www.noseweek.co.za/article.php?current_article=486).

<sup>16</sup> [http://www.noseweek.co.za/article.php?current\\_article=486](http://www.noseweek.co.za/article.php?current_article=486).

<sup>17</sup> “Palazzolo an exceptional case, said Reserve Bank”, *Sunday Times*, 1991.

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Palazzolo, aka Robert von Palace Kolbatschenko, for years the most valued banker of the Cosa Nostra and a resident of South Africa, with connections reaching deep into local business and politics."<sup>18</sup>

***Craig Michael Williamson***

123 Mr Williamson was a member of the security police and spy who engaged in a range of illegal activities for the apartheid state. He was granted amnesty by the Truth and Reconciliation Commission in 2000 for a range of violent offences, including the murder of Ruth First. In 1985 he was seconded to military intelligence, and publicly announced he was "moving into business".<sup>19</sup> This business was with Mario Ricci (discussed above), and was primarily directed towards busting the various international sanctions against South Africa at the time.<sup>20</sup> Mr Williamson was on record as stating that GMR was used to "avoid any inhibiting laws" preventing the import of goods to South Africa – hinting at least once that he was utilising Ricci's contacts with Italian oil companies in order to obtain oil shipments through the Seychelles (this was never proven).<sup>21</sup> It was confirmed by an official in the Seychelles, however, that Seychelles did become a crucial part of South Africa's sanctions busting network in the late 1980s as a

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<sup>18</sup> Giulio Rubino, Cecilia Anesi. Married to the Mob: The diamond boer and the honeytrap. Mail & Guardian. 17 April 2015

<http://mg.co.za/article/2015-04-16-married-to-the-mob-the-diamond-boer-and-the-honeytrap>

<sup>19</sup> Stephen Ellis, "Africa and International Corruption"

<sup>20</sup> Stephen Ellis, "Africa and International Corruption"

<sup>21</sup> Stephen Ellis, "Africa and International Corruption"

place that facilitated "paper transactions".<sup>22</sup>

**Wouter Basson**

124 Dr Basson is the former head of the Apartheid State's Chemical and Biological Weapons (CBW) programme. He was prosecuted and eventually acquitted of a range of crimes, including murder, drug trafficking, fraud and theft. The fraud and theft charges are particularly relevant to this request. The state's evidence used at trial showed that secret funds for a state project known as Project Coast (totaling millions of Rand) were used to purchase advanced CBW equipment that was never used, and may have been sold for private gain.<sup>23</sup> These funds also appeared to have been used to purchase "front homes" and trips on private jets, and otherwise fund a lavish lifestyle for individuals like Basson.<sup>24</sup>

125 I submit that there is a clear public interest in the disclosure of these records. Keeping this information secret is contrary to the public interest.

125.1 Very little is known of the nature and extent of corruption under apartheid. The public have a right to be informed of such practices.

125.2 The public have a limited understanding of the impact of such practices. Greed, venality and corruption arise from the activities

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<sup>22</sup> Stephen Ellis, "Africa and International Corruption"

<sup>23</sup> Apartheid Grand Corruption, 67

<sup>24</sup> Apartheid Grand Corruption, 67

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of networks that are found in all societies, throughout human history. South Africa is no exception in this regard. Where access to information concerning the nature and legacy of such networks under apartheid is denied, this limits the democratic transformation of the state and our society. South Africa is a newly democratic society grappling with the implementation of a Constitutional vision of transparency and accountability. Hidden histories serve the interests of the powerful and the connected, and undermine democratic consolidation. In the case of South Africa there are complex ties that bind the country's elite networks in politics and business. Greater transparency and access to information enable informed research to take place, and facilitate an informed public opinion. This helps us better to understand our present and ensure that criminal practices such as corruption do not continue to shape our future.

126 A nation that has understanding of its past is best placed to avoid repeating the mistakes of the past.

127 To the extent that there is any substance at all in the vague and generalised harm alleged by the Reserve Bank, it is clearly outweighed by the public interest in the disclosure of the requested documents. The information deals with events of great importance in our country's history. Serious allegations are already in the public domain. What is lacking is the evidence and the detail that the requested documents are likely to contain. It is in the public interest that the truth be established and made

known.

**SECTION 80 OF PAIA**

128 Section 80(1) of PAIA authorizes a court to take what has been termed "a judicial peek" at the documents in issue. 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."*

129 I submit that a "judicial peek" would be appropriate if there are any material disputes of fact as to what the records contain.

**CONCLUSION**

130 As I have pointed out, the Reserve Bank did not respond to the request within the time stipulated by PAIA. It was therefore deemed to have refused the request. Thereafter the Reserve Bank engaged with SAHA with regard to the request. On 28 October 2015 it actually refused the request.

131 I respectfully submit that to the extent that there has been non-compliance with the 180-day period for making an application to court, this should be

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condoned. SAHA engaged with the Reserve Bank during and after that 180-day period, in an attempt to avoid unnecessary litigation. The delay has been caused by the Reserve Bank's tardy responses to the request. I respectfully submit that it is in the interests of justice that the delay in making this application should be condoned, and SAHA asks for an order to this effect, to the extent necessary.

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

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

132.2 There is no justifiable basis for the refusal of access to the information requested.

133 In the circumstances, I ask this Honourable Court to make 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 FEBRUARY 2016. The Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

**COMMISSIONER OF OATHS**  
**Nomaswazi Malinga**  
Attorney  
ProBono.Org  
1st Floor West Wing  
Women's Jail  
Constitution Hill  
1 Kotze Street  
Braamfontein

**COMMISSIONER OF OATHS**  
Full names:  
Address:  
Capacity:



**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		28.11.14
ANTHONY MANION ID: 7604135132084		27/09/2014
MN NIEFTAGODIEN ID: 6410225158083		27/09/14

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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

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