



INFORMATION REGULATOR (SOUTH AFRICA)

*Ensuring protection of your personal information
and effective access to information*

Complaint Ref No.	CI 390/25
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PRE-INVESTIGATION REPORT

In terms of section 77E of the Promotion of Access to Information Act 2 of 2000

Complainant: Adv Anthony Brink

Public Body: Judicial Service Commission ('JSC')

THE NATURE OF THE COMPLAINT

Complaint made in terms of section 77A(2)(c)(i) of PAIA against Judicial Service Commission's deemed refusal of access to records in terms of section 27 of PAIA.

20/11/2025

EXECUTIVE SUMMARY

This is the Pre-investigation Report of the Information Regulator (“the Regulator”) issued in terms of section 77E of the Promotion of Access to Information Act 2 of 2000 (“PAIA”). The report communicates the Regulator’s decision on a complaint received following a preliminary investigation into the alleged refusal of access to the records in terms of section 27 held by the Judicial Service Commission (“the public body”).

The records in question relate to the complainant’s complaint against Portia Poyo-Dlwati JP (then ADJP) in November 2022 referred by the JCC chairperson for decision.

The complaint relates to the PAIA request (“the request”) for records in respect of which access was allegedly refused, in terms of section 27 of PAIA.

It is alleged that the information officer did not comply with the provision of section 25(1) of PAIA, which provides that the information officer (to whom the request is made) must respond, as soon as reasonably possible or within thirty (30) days, after the request is received. Failure to provide a decision to the requester within the said period is, in terms of section 27 of PAIA, deemed to be a refusal of access. The information officer failed to respond to the complainant’s request within the prescribed 30-day period and is therefore regarded as having refused the request. The prescribed period of 30 days lapsed on 22 October 2025.

The public body is exempted from having an internal appeal as it is not a public body described in paragraph (a) of the definition for ‘public body’ in section 1 of PAIA.

The complaint is made against a public body and the right(s) to be exercised or protected need not be disclosed when the request is made.

The complaint was lodged with the Regulator within the prescribed period of 180 days, referred to in section 77A(2) of PAIA. The complaint was submitted on the prescribed form.

Conclusion

The Regulator has decided to investigate the complaint to ascertain if the requester (the complainant herein) must be given access to a record of a public body in accordance with section 11(1) of PAIA.

PARTIES						
Name of the complainant	Adv Anthony Brink ("the complainant")					
Capacity of person/party lodging a complaint	Personal	<input checked="" type="checkbox"/>	Representative		Third party	
Type of the Body	Public Body	<input checked="" type="checkbox"/>	Private Body			
Name of the Body	Judicial Service Commission ('JSC') ("the public body")					
COMPLAINT						
Nature of the complaint	Deemed refusal of access in terms of section 27 of PAIA					
Date on which the complaint arose	23 October 2025					
Date on which the complaint was received	10 November 2025					
Name of the complainant	Adv Anthony Brink ("the complainant")					
Has the complaint passed the prerequisites stage.	Yes	<input checked="" type="checkbox"/>	No			
<i>NB: If the complaint did not pass the prerequisite stage, reject the complaint and close the file.</i>						

Brief description of the complaint

1. On 22 September 2025, the complainant submitted a PAIA request (“the request”) for access to information held by the public body.
2. The complainant requested the following records as per the “PAIA REQUEST ANNEXURE” to Form 2:
 - 2.1 *written delegation of deputy information officer responding to the request by the JSC’s information officer under section 17 of PAIA;*
 - 2.2 *The PAIA manual published by the JSC under section 14(1) of PAIA or the Justice Minister’s exemption from publishing it issued under section 14(5);*
 - 2.3 *Any record identifying the investigating judge on the JSC’s Judicial Conduct Committee (‘JCC’) to whom Brink’s complaint against Portia Poyo-Dlwati JP (then ADJP) in November 2022 (‘the complaint’) was referred by the JCC chairperson for decision (The complaint was lodged and acknowledged in the same month and allocated reference number JSC 1054/22. See illegal-aid.co.za/JSC/Poyo_Dlwati_ADJP);*
 - 2.4 *Any record vouching that Brink’s letter to JSC chairperson Mandisa Maya CJ in April 2025, protesting the JCC’s undue delay in resolving the complaint years later and entreating her intervention in expediting it, was forwarded to her or to the delegated chairperson of the JCC for her or his attention;*
 - 2.5 *Any record showing that the JSC- or JCC chairperson responded to Brink’s letter by directing the investigating judge handling the complaint to get a move on and resolve it at last;*
 - 2.6 *Any record reflecting the investigating judge’s response to the JSC- or JCC chairperson’s direction, if any, that the resolution of the complaint be expedited;*
 - 2.7 *Any record reflecting that the investigating judge sought Poyo Dlwati JP’s response to the complaint under section 17(3)(a) of the Judicial Service Commission Act;*

- 2.8 *Poyo Dlwati JP's response to the complaint, if she furnished it;*
- 2.9 *Maya CJ's reply to the Public Protector ('PP') after Brink complained to the latter about the JCC's failure to have resolved his complaint, even after his unacknowledged letter to her (Maya CJ), and the PP decided to refer the matter back to her for resolution;*
- 2.10 *After the PP referred the matter back to Maya CJ, the latter's communication with the JCC chairperson or investigating judge concerning his or her failure to resolve Brink's complaint;*
- 2.11 *Maya CJ's response to the PP's reproach on 16 September 2025 about the JSC's failure to act on the PP's referral of the matter, or even to acknowledge it;*
- 2.12 *Any record reflecting Maya CJ's response, if any, to the PP's reproach;*
- 2.13 *Maya CJ's delegation of Dunstan Mlambo DCJ as chairperson of the JCC under section 8(3) of the Judicial Service Commission Act;*
- 2.14 *The JCC's invitation to Basheer Waglay JP (ret.) under section 18(1)(b) of the Judicial Service Commission Act to submit representations to the JCC Appeal Committee on the merits of Brink's appeal case ahead of the Committee's consideration on 10 July 2025 of this appeal against JCC member Goliath DJP's dismissal of Brink's complaint against him (The JSC's file reference number is JSC533/17);*
- 2.15 *Waglay JP's representations to the JCC Appeal Committee in the said appeal case;*
- 2.16 *Apropos of the allegation by the Office of the Chief Justice ('OCJ') to Brink in the matter of his appeal against the dismissal of his misconduct complaint against Waglay CJ –*

'The Judicial Conduct Committee (Committee) postponed the appeal hearing to its next meeting scheduled for 30 October 2025. The Committee considered it necessary that certain facts be investigated before the matter could be finalised.'

– any record identifying what 'certain facts' the JCC Appeal Committee 'considered it necessary ... be investigated before the matter could be finalised'.' (The quoted allegation is made in the OCJ's notice dated 28 August 2025, refusing Brink's request

made under PAIA for any JSC record identifying the JCC Appeal Committee judges dealing with his said appeal. See illegal-aid.co.za/JSC/Waglay_JP/14.Refusal.pdf);

- 2.17 *Concerning the OCJ's just quoted allegation, all correspondence between the JCC Appeal Committee and Waglay JP or any other party in the Committee's investigation of those 'certain facts' to which the OCJ alluded;*
- 2.18 *The JSC's resolution, or the JSC chairperson's instruction, that the votes of JSC members be counted anonymously in disciplinary matters, and that no record be kept of the identities of who voted how;*
- 2.19 *Any record reflecting Judge Nana Makubela's official email address;*
- 2.20 *The JSC's enquiry, if any, addressed to the State Security Agency ('SSA') as to the identity/identities of the corrupt judge(s) suspected of having taken bribes in the implementation of the SSA's Project Justice, exposed at the State Capture Commission hearings;*
- 2.21 *The SSA's response, if any, to the JSC's said enquiry;*
- 2.22 *The SSA's report to the JSC, if any, at the conclusion of its investigation to determine which corrupt judges had been bribed during Project Justice;*
- 2.23 *The JSC's enquiry, if any, addressed to former SSA Director General Arthur Fraser, or to his counsel Advocate Muzi Sikhakhane SC, or to his attorney as to the identities of the corrupt judges to whom Sikhakhane SC was alluding when stating to the State Capture Commission on 16 November 2020 during his appearance on Fraser's behalf that the latter had 'secrets' about 'serious, very serious matters', 'things ... that relates to the judges ... what's been happening there', which he'd prefer not to disclose under his oath of confidentiality (Sikhakhane SC can be seen making this claim at 1 min 50 sec on in this video clip: corrupt-judges.co.za/Sikhakane_at_Zondo_Commission.mp4);*
- 2.24 *Fraser's or his lawyers' reply, if any, to the JSC's said enquiry (See ewn.co.za/2025/07/10/judiciary-demands-evidence-in-wake-ofmkhwanazis-corruption-allegations);*

- 2.25 *The JSC's demand of Lieutenant-General Nhlanhla Mkhwanazi of the South African Police Services that he substantiate his allegation made at his press conference on 6 July 2025 that 'members of the judiciary' were implicated in corruption;*
 - 2.26 *General Mkhwanazi's response, if any, to the JSC's demand; and*
 - 2.27 *If access to any record specified herein is refused, the most recent payslip of the person refusing access, reflecting his or her salary.*
3. It is alleged that the information officer of the public body did not comply with the provisions of section 25 of PAIA, which provides that the information officer of a public body (to whom the request is made) must, as soon as reasonably possible, but in any event within 30 days after the request is received, decide whether or not to grant the request and notify the requester of the decision. Failure to provide a decision to the requester within the said period is, in terms of section 27 of PAIA, deemed as a refusal of access.
 4. The prescribed 30 days within which the information officer of the public body should have taken a decision lapsed on 22 October 2025 and therefore the request is deemed to have been refused. The request is regarded as a deemed refusal of access to information in terms of section 27 of PAIA.
 5. The public body is exempted from having an internal appeal as it is not a public body described in paragraph (a) of the definition for 'public body' in section 1 of PAIA.

Sequence of events leading to the complaint to the Regulator

1. The complainant submitted the request to the public body on 22 September 2025, as per the **PAIA request form (Form 2) dated 22 September 2025** and as per the **proof of email transmission of 22 September 2025**.
2. On 25 September 2025 an official of the public body (Mbali Songca) acknowledged receipt of the request, as per the **e-mail transmission of 25 September 2025**.

3. On 11 October 2025, the public body responded that the complainant must re-submit the request to the Deputy Information Officers, Adv N Phakola and Adv N Lambley, as per **e-mail of 11 October 2025**.
4. The public body is in terms of section 27 of PAIA deemed to have refused the request for access to information.
5. The complainant then lodged the complaint with the Regulator on 10 November 2025, as per the **Form 5 dated 10 November 2025**.
6. On 19 November 2025, the Regulator issued a letter to the public body as notice of the complaint received against the public body, as per the **notification letter dated 19 November 2025**.

PRELIMINARY ISSUES TO BE CONSIDERED

Complaint submitted within the period of the prescribed 180 days	Yes	X	No	
Condonation Application: Not Applicable				
If you selected No above, please confirm if the complainant has lodged a condonation application?	Yes	N/A	No	N/A
If condonation application submitted, what is the degree of lateness?	N/A			
	N/A			
Prejudice to be suffered by the complainant	N/A			
Is the condonation application opposed?	N/A		No	N/A

If yes, what are the grounds for opposing the application?	N/A			
Is the condonation application granted? Reasons for refusal or granting the condonation application	Yes	N/A	No	N/A
	N/A			

Preliminary findings on the merits of the complaint

1. Based on the information before the Regulator, there is a *prima facie* case that the complainant met the minimum requirements prescribed in section 18(1) of PAIA, in that, the PAIA request form was duly submitted to the public body.
2. The thirty (30) day period prescribed in terms of PAIA for a decision in response to the respective requests and notice thereof by the information officer of the public body in terms of section 25 of PAIA, lapsed.
3. The internal appeal was lodged with the public body, however, the public body failed to respond to the internal appeal lodged by the complainant. In terms of section 77(7) of PAIA, the public body is regarded as having dismissed the appeal.
4. The complaint was submitted to the Regulator within the prescribed period of 180 days, referred to in section 77A(2) of PAIA.
5. The alleged failure by the information officer of the public body to respond and to disclose the requested records necessitates an investigation of this complaint to ascertain if the requester (the complainant herein) must be given access to a record of a public body in accordance with section 11(1) of PAIA.

REGULATOR'S DECISION ON THE COMPLAINT (In terms of section 77C of PAIA)			
Select	Decision	Reasons	
X	Investigate the complaint.	To ascertain if the requester (the complainant herein) must be given access to a record of a public body in accordance with section 11(1) of PAIA.	
	Refer the complaint to the Enforcement Committee.		
	Take no action on complaint.	The complaint has not been submitted within the period referred to in section 77A(2) of PAIA and there are no reasonable grounds to condone the late submission.	
		The complaint is frivolous or vexatious or is not made in good faith.	
		Having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.	

Ensuring protection of your personal information and effective access to information.

DocuSigned by:

Makgopa Madisa

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Adv. M. Makgopa-Madisa

ACTING EXECUTIVE: PAIA

Date: 03-Dec-2025 | 15:06 SAST

Prepared by: Mr. Moraka Serepa: Complaints & Investigations Officer: PAIA CI

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