

The Cottage
1 Boast Street
Eshowe 3815
14 September 2016

Your reference: 7/6/9 Brink A R

Deputy Information Officer Natalie-Dominique Louw
Department of Justice and Correctional Services
Momentum Centre
329 Pretorius Street
Pretoria

Per email: NLouw@justice.gov.za

Cc: WNdou@justice.gov.za; SBantjies@justice.gov.za;
ckok@justice.gov.za; paia@justice.gov.za

And to: chiloane@concourt.org.za

Dear Ms Louw

BRINK'S OVERDUE PAIA REQUEST FILED ON 1 AUGUST 2016

I refer to your letter dated 2 August 2016, signed on the 4th and emailed to me the next day, duly acknowledging receipt of my PAIA request made on the 2nd for access to certain specified records under the Department's control, and advising me that it had been transferred to the Judicial Service Commission under section 20.

You rightly stated as your reason given for referring my request that 'the subject matter is more closely connected with the functions of the Judicial Service Commission.'

Indeed so: the JSC probably has in its files all or most of the records I've requested, and JSC secretary Sello Chiloane, whom you mentioned in your letter with his contact details, is probably best placed to find and furnish them and to advise of any that don't exist, for the purpose of an affidavit under section 23.

I doubt, however, that the JSC is a public body with its own information officer under the Definitions contained in section 1 of PAIA, because there's no mention on the JSC's website of making PAIA requests directly to it; there's no PAIA manual published there, identifying any information officer and deputy information officer(s); and in the fifteen years since PAIA was enacted, the JSC has never filed an annual section 32 report with the SAHRC in regard to its handling of PAIA requests – not something a body headed by the Chief Justice would overlook.

So it seems clear to me that neither Secretary Chiloane, nor JSC chairperson Chief Justice Mogoeng, nor any other member or officer of the JSC is an information officer qualified to decide my PAIA requests under section 25(1)(a) of the Act.

In short, your very reasonable referral of my PAIA request to the JSC wasn't a transfer in the sense contemplated by section 20, as the JSC has no information officer to decide it, only a secretary to assist the Department locate and provide the records I've requested.

Which means that the decision whether or not to grant my request (having regard to the limited 'Grounds for Refusal of Access to Records' circumscribed by Part 2, Chapter 4, of the Act) falls to be made by the Department's information officer or one of its deputy information officers.

The 30 calendar days prescribed by section 25 (read with section 4 of the Interpretation Act 33 of 1957 on the reckoning of days in a statute), calculated from 2 August, for your grant or refusal of my PAIA request expired on the 1 September, and the Department's response is now a fortnight overdue.

I've no complaint about this for now, because I'm sure it wasn't intended that I should deem the silence as a mute refusal of my request as provided by section 26, and that I should proceed to lodge an internal appeal (section 74) and then apply to court to compel compliance with my request if it's dismissed (section 78). I'm sure it's just an oversight arising from the just mentioned misunderstanding of who must decide my request.

On this premise, and to regularise the situation, I consent under section 26(1)(e) to a further 30 days in which to respond, which, calculated from 2 September, takes us

to 3 October and provides the Department with a further couple of weeks within which to respond.

Looking forward to hearing from you.

And to my documents.

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. Brink', with a stylized, cursive script.

ADV ANTHONY BRINK

anthonybrink.sa@gmail.com

035 474 b0145

083 779 4174

Cc: PAIA Director and DIO Adv Witness Ndou and Mesdames Kok and Bantjies –
Department of Justice and Correctional Services, National Office, Pretoria

And to: JSC Secretary Sello Chiloane.