

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

The new address is:  
33 Hoofd Street  
Braampark Forum 3  
Braamfontein  
2198

Postal address remains as:  
Private Bag X 2700  
Houghton  
2041

New Telephone number  
011 877-3600  
Fax numbers: 011 403-0682.



**SOUTH AFRICAN HUMAN RIGHTS COMMISSION  
COMPLAINT FORM**

For office use only

Province:		City/Town:		Reference No	
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- Please write clearly and use CAPITAL LETTERS. If there is not enough space on this form for your answer, please use a separate page and send it to us together with this form.
- If there is more than one person who would like to send a complaint to us, each person must complete a separate form

**PART A: YOUR DETAILS**

**1. Name and surname**

ANTHONY BRINK

**2. ID number**

5902255116081

**3. Race (information required for statistical purposes only)**

WHITE

**4. Gender (information required for statistical purposes only)**

MALE

**5. Address and contact numbers**

36 PEARSON STREET, ESHOWE 3815, KZN

anthonybrink.sa@gmail.com

083 779 4174

**PART B: DETAILS OF PERSON ON WHOSE BEHALF YOU COMPLETE FORM (PERSON OR ORGANISATION)**

6–11

N/A

**PART C: THE COMPLAINT**

**12. Date**

From 6 March 2019, continuing.

**13. Is it still happening**

Yes.

**14. Where did it happen**

At the office of the Judicial Service Commission, 188 14th Road, Noordwyk, Midrand, Gauteng.

**15. If you know, which right(s) in the Bill of Rights was/ were violated or is/are being violated**

Section 32(1)(a).

**16. If you know, the full name(s) and surname(s) of person(s), association, organisation or organ of state who violated these rights, please tell us**

Nelson Phakola, deputy information officer of the Judicial Service Commission.

**17. Where can we contact them**

At the Judicial Service Commission at the above address.

Its telephone number is 010 493 2500. His email address is [nphakola@judiciary.org.za](mailto:nphakola@judiciary.org.za).

**18. If you do not know his/her/its/their names, please tell us anything you do know about him/her/it/them**

N/A

**19. Did anybody see or hear what happened (only people who actually saw or heard what happened, not people who heard about it from someone else)**

N/A

**20. In your own words, tell us exactly what happened (include all information but be as brief as possible)**

See annexure.

**21. Have you reported the matter to anyone else**

No.

**22. Were any steps taken by the person/association/organisation/organ of state to resolve the matter**

N/A

**23. What outcome do you propose or expect from this complaint (tell us what you would like to achieve with this complaint and the relief sought)**

I expect the SAHRC to achieve compliance with a duly made request for access to certain of the Judicial Service Commission's records, filed under section 18 of the Promotion of Access to Information Act 2 of 2000, in the exercise of my fundamental civil right to information held by the state. In successfully prevailing on the respondent to furnish me with the requested records, the SAHRC will have discharged the special responsibility imposed on it by section 184(1) of the Constitution to '(a) promote respect for human rights and a culture of human rights' and '(b) promote the protection, development and attainment of human rights'.

**24. Do you need an interpreter when attending any proceedings, investigations or hearing at our offices**

No.

**25. Can we use your name in news reports or letters we write regarding this matter/complaint**

Yes.

**26. Please tell us how you heard about the South African Human Rights Commission (e g radio advert, newspaper, poster, from a friend, etc)**

As an advocate of the High Court of South Africa for over three-and-a-half decades, I'm obviously well aware of the SAHRC as one of our Chapter 9 institutions.



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Signature/mark of complainant

10July 2019

Copy of ID annexed.

## ANNEXURE

1. This is a complaint against Nelson Phakola ('the respondent'), who identifies himself as deputy information officer ('DIO') of the Judicial Service Commission ('JSC'). My complaint is that by silently failing to respond to a request for access to certain specified JSC records, which I duly made under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA'), the respondent has violated my fundamental civil right to public information, entrenched and guaranteed by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution: 'Everyone has the right of access to ... any information held by the state'.
2. Directly relevant to this complaint, section 184(2) of the Constitution charges the SAHRC with the responsibilities '(a) to investigate and to report on the observance of human rights' and '(b) to take steps to secure appropriate redress where human rights have been violated'. More specifically in relation to information transparency in our open democracy, section 83(3) of PAIA empowers the SAHRC to '(b) monitor the implementation of this Act; c) if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act; [and] (d) recommend to a public or private body that the body make such changes in the manner in which it administers this Act as the Commission considers advisable'.
3. In short, these Constitutional and statutory provisions explicitly enable the SAHRC to act in 'securing rights', as the SAHRC's website puts it, to public body information.
4. Section 18(1) of PAIA provides that 'A request for access must be made in the prescribed form to the information officer of the public body concerned at his or her address or fax number or electronic mail address.' Because the JSC hasn't published a PAIA manual in compliance with section 14 (at least there's none on its website), I didn't know at the time who the JSC's information officer was, so I emailed my records request to JSC Secretary Lynette Bios on 6 March 2019. (I hadn't yet deduced from the definition of 'information officer' in section 1 that he's JSC chairperson Chief Justice Mogoeng Mogoeng.) I copied my request to the JSC's Sello Chiloane, incorrectly believing at the time, from his previous communication with me, that he's the JSC's DIO. Copies of my request and its covering email are bundled and annexed marked 'A'.
5. Since PAIA requests for records held by organs of state are routinely handled by DIOs, I followed up by enquiring of Chiloane when I might expect the notice prescribed by section 22(1)

stating the amount of the request fee; and I repeated my request for the JSC's bank details so I could pay it by EFT. A copy of my enquiry is annexed marked 'B'. Chiloane didn't reply.

6. After making numerous fruitless telephone calls to the JSC to follow up further, I was eventually told by the receptionist that the JSC's DIO is the respondent. Acting on this advice, I wrote to ask his intentions on 23 April. Copies of my letter to him and its covering email are bundled and annexed marked 'C'.

7. On 24 April the respondent assured me of a response. A copy of his email is annexed marked 'D'.

8. The respondent failed to honour his undertaking, and I've heard nothing since.

9. The respondent's breach of section 22(1) by failing to notify me of the request fee prescribed by that section, and also of the JSC's bank details that I requested, has prevented me from paying this fee.

10. Conforming with the 'unresponsive culture in public and private bodies' which characterized the apartheid state, as PAIA's Preamble puts it, the respondent's uncommunicativeness has left me perilously uncertain, to my considerable prejudice.

11. I don't know whether to conclude that that he's still waiting for payment of the request fee, or whether he means me to understand from his silence that he's tacitly refused my request.

12. Section 22(1) prescribes that a request fee must be paid before an information officer responds to a PAIA request. So should I bring an application under section 78 to the High Court at Pietermaritzburg, per the definition of 'court' in section 1, for a mandatory interdict under section 82 compelling the respondent's compliance with my request, on the basis that his failure to respond to my request with the 30 days allowed by section 25 is a deemed refusal under section 27, he may contend in his answering papers that my claim is premature, inasmuch as I haven't yet paid the prescribed request fee and that for this reason he hasn't responded to my request.

13. If, on the other hand, the respondent has indeed tacitly refused my request, then I'm hampered in suing to compel his compliance with it because I don't know on what ground(s) listed in Part 4 of Chapter 2 of PAIA, 'Grounds for Refusal', he's relying on. If he states his ground(s), and he satisfies me that it's/they're sound, I'll abandon my claim to the requested records and drop the matter, thus avoid unnecessary and, for the JSC, costly litigation. (Of

course, if I find his ground(s) unsound, I'll most definitely sue – unless under section 83(3)(d) the SAHRC succeeds in persuading him to reverse himself, start respecting the Constitution, and belatedly comply with my request.)

14. From the contextual notes I provided with my PAIA request, it's clear that the matter in regard to which I've requested the records concerns a matter of the most extraordinary public interest; and indeed the records may found a review application against the JSC. The reluctance of the JSC to open its books is notorious from the Constitutional Court judgment in *Helen Suzman Foundation v Judicial Service Commission* [2018] ZACC 8, in which the JSC was compelled to discover the records of its 'private deliberations' in judicial appointments. The instant matter, and the JSC's handling of it, is shaping up to eclipse the Hlophe JP scandal, and threatens the integrity and reputation of the South African judiciary with its most serious crisis to date. The respondent's due compliance with my request is accordingly extremely important.

15. The JSC's non-compliance with section 14 in failing to publish a PAIA manual leads me to doubt its compliance with section 17 as well – having regard also the fact that on 22 January 2018, the DIO of the Department of Justice and Correctional Services issued the JSC with a section 20 notice in which she transferred (mistakenly, she later agreed) a PAIA request I'd made for certain departmental records, addressing the notice to 'Mr Nelson Phakola [,] Deputy Information Officer[,] Office of the Chief Justice'. The Office of the Chief Justice and the Judicial Service Commission chaired by the Chief Justice are different state organs, and seems unlikely that the respondent holds two delegations, one as DIO of the Office of the Chief Justice and another as DIO of the JSC.

16. Whereas subsection (3) provides that 'The information officer of a public body may delegate a power or duty conferred or imposed on that information officer by this Act to a deputy information officer of that public body', subsection 6(a) requires very specifically that 'Any delegation in terms of subsection (3) ... must be in writing'.

17. Should I sue the respondent to compel his compliance with my PAIA request, and challenge him in my founding affidavit to put up with his answering affidavit his written delegation as DIO under section 17(6)(a), he may concede that in fact he holds no such written delegation, notwithstanding that he bills himself as DIO in his correspondence. In such event, I won't be able to press my claim against him to comply with my request, because if he's not a duly delegated DIO, and therefore wasn't duly authorised under the Act to deal with my request, I can't claim any mandatory relief against him under section 82.

18. The five critical questions the respondent needs asking are:
- 18.1. Does the respondent confirm that the JSC has never published a PAIA manual under section 14? If it has, can he produce it?
  - 18.2. Has he been duly delegated as DIO in writing under section 17(6)? If so, can he produce his written delegation to vouch this?
  - 18.3. Is he still waiting for me to pay the request fee prescribed prescribed by section 22(1), or did he mean to tacitly refuse to respond to my PAIA request under section 27 by going quiet on me after promising to 'revert back to [me] soon'?
  - 18.4. If he hasn't refused my request, why hasn't he issued me with a section 22(1) notice? Does he mean to waive the fee (as the SAHRC once did on receiving a PAIA request from me)? If not, how much is the fee, and what are the JSC's bank details so I can pay it by EFT?
  - 18.5. If indeed he has tacitly refused my records request, then on what ground(s) contemplated by Chapter Four in Part Two of the Act, namely sections 34–45, does he rely to justify having done so?
19. I need to know soon, because the clock is ticking on my 180 days allowed by section 78 within which to apply to court for orders compelling the respondent's compliance with my PAIA request and declaring that as DIO of the JSC, chaired by none other than the Chief Justice, he has violated the Constitution and my fundamental civil right to public information, by unlawfully failing to grant me access to the JSC records I duly requested.

**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 (if any): R .....

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

**A. Particulars of public body**

Judicial Service Commission

188 14th Road, Noordwyk, Midrand, Gauteng

By email, under section 18(1):

To Secretary Lynette Bios

And to Deputy Information Officer Sello Chiloane

**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.*

Full names and surname : Anthony Robin Brink

Identity number : 5902255116081

Postal address : 36 Pearson Street, Eshowe 3815, KwaZulu-Natal

Fax number : N/A

Telephone number : 083 779 4174

E-mail address : anthonybrink.sa@gmail.com

**C. Particulars of person on whose behalf request is made:**

N/A

**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.*

NOTE: Contextual notes to Parts One and Two of this section are annexed hereto.

**PART ONE**

1. The record of the decision to dispose of the requester's (Brink's) (a) eight gross misconduct complaints to the Commission against Mlambo JP (ref: JSC 533/17), and (b), Brink's further gross misconduct complaints, arising from Mlambo JP's response to them, made in his invited comments on his response, merely under section 17 of the Judicial Service Commission Act 9 of 1944 governing 'serious, non-impeachable complaints'.
2. In addition to item 1 above, the rest of the documents in case file JSC 533/17 kept by the Commission in Brink's complaints against Mlambo JP, i.e. the complete contents of the file, including any and all annotations on its cover – but excluding Brink's complaints; Mlambo JP's response to them; and Brink's invited comments on his response, all of which latter documents Brink already has in his possession.
3. All email records archived on the Commission's email server from 1 June 2017 to the date on which this records request is complied with, responsive to a search on 'Brink' and/or 'Mlambo' and/or '533/17'.
4. The Commission's annual reports to Parliament for 2017 and 2018 made under section 6 of the said Act.
5. The Judicial Conduct Committee's six-monthly reports to the Commission in 2017 and 2018 made under section 10(2) of the said Act.

PART TWO

6. The terms of reference of the Tribunal appointed under section 16 of the said Act to investigate and report on the complaints to the Commission made against Hlophe JP.
7. Mlambo JP's nomination of attorney Noxolo Maduba for appointment to the said tribunal in 2012/2013. (*Note: Only the part of the record reflecting the identity of Mlambo JP as the person who nominated Maduba for appointment is required; the text of his commendation of her in the nomination, i.e. its contents, hit by section 12 of PAIA, may be redacted.*)
8. Maduba's letter of appointment to the said Tribunal in or about February 2013.
9. Hlophe JP's (and/or other) subsequent objection(s) to her appointment.
10. Maduba's response, if any, to the objection(s).
11. Maduba's letter of resignation from the Tribunal.

**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.*

On advice under section 22(1) of the amount of the request fee to be paid and of the Commission's bank account details, the fee will be paid by EFT.

**F. Form of access to record**

*Mark the appropriate box with an "X".*  
*(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 written or printed form -**

X	copies of records		inspection of record
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<b>2. If record consists of visual images - N/A</b>			
<b>3. If record consists of recorded words or information which can be reproduced in sound - N/A</b>			
<b>4. If record is held on computer or in an electronic form -</b>			
<input type="checkbox"/>	printed copy of record	<input type="checkbox"/>	printed copy of information derived from the record*
<input type="checkbox"/>		<input checked="" type="checkbox"/>	X copies in computer readable form – to be emailed as file attachments.

### 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?

By email.

Signed at Eshowe on 6 March 2019



SIGNATURE OF REQUESTER

## CONTEXTUAL NOTES

*The law is a web for small flies, the big ones burst through.*

Anacharsis (6th Century BC) quoted by Plutarch (c. 46–120 AD)  
Jonathan Swift (1667–1745) and Honoré Balzac (1799-1850)  
made the same observation.

## AD PART ONE

Over the period June–July 2017, the requester ('Brink') lodged eight gross misconduct complaints with the Commission against Legal Aid SA ('LASA') Board chairperson Dunstan Mlambo JP, head of the Gauteng Division of the High Court,<sup>1</sup> and, as requested, resubmitted them in November 2017 in a single indexed and paginated bundle.<sup>2</sup> All complaints complied with section 14 of the Judicial Service Commission Act 9 of 1944 ('the Act').

Brink's exceptionally serious complaints, all finely particularized and founded on supporting documents, indicted Mlambo JP's:

- subornation of perjury committed on his instructions in an answering affidavit deposed to on his behalf by his de facto attorney, LASA Legal Executive Thembile Mtati, opposing Brink's application under section 25 of the Supreme Court Act 59 of 1959 for leave to subpoena him for cross-examination on his capital misconduct (outlined below), which perjury comprised an elaborate, malicious fabrication contrived to defame Brink and devastate his credibility in court, and thereby pervert the judicial

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<sup>1</sup> Further complaints will follow upon LASA's surrender under court order of records it has illegally refused, for which Brink has sued under section 78 of PAIA. His applications to compel access, both in the Eshowe Magistrate's Court and the High Court at Pietermaritzburg, are pending. His three High Court applications have been set down for argument in ten days time, on 15 March 2019. An application to compel full and proper compliance with LASA's settlement agreement concluded in February 2016, on capitulating to five PAIA applications brought there, will be set down after disposal of the High Court cases.

<sup>2</sup> The bundle is accessible in this Dropbox folder online: .....

decision of the application – i.e. perjurious defamation to defeat the ends of justice;<sup>3</sup>

- repeated and persistent collusion in and connivance at LASA CEO and information officer Vidhu Vedalankar’s clearly illegal and unconstitutional repeated blanket refusals to comply with requests for information Brink duly made under section 18 of the Promotion of Access to Information Act 2 of 2000 (‘PAIA’) in 2010, with the corrupt object of perpetuating a mendacious cover-up of recruitment corruption in which he, Mlambo JP, was centrally involved (see below), by suppressing documentary evidence exposing it (disgorged many years later, after protracted illegal obstruction, by suing for it under section 78 of PAIA);
- lying and false reporting to the Justice Minister and to the Justice Portfolio Committee of the National Assembly on multiple scores – in the latter case crimes under sections 17(2)(d) and (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 – in a secret (‘confidential’) false report he made ‘Re: Adv Anthony Brink’ to pervert enquiries they had separately and independently instituted at Brink’s instance – in the latter case to corruptly defeat the National Assembly’s constitutional oversight responsibility over LASA imposed by section 55(2)(b)(ii) of the Constitution – namely enquiries into:
  - § Vedalankar’s clearly false budgetary insufficiency excuse (contradicted and refuted by LASA’s own financial records, finally disgorged with PAIA many years later, after first being refused), concocted on 18 October 2010 in response to a searching PAIA request by Brink in August 2010 (repeatedly refused) probing the silent, unrecorded, unauthorised, illegal abortion of Brink’s recruitment to LASA’s top legal professional post in KwaZulu-Natal, namely its still vacant, still

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<sup>3</sup> Mentioned below, Mlambo JP resorted to exactly the same kind of false and malicious defamation of Brink to discredit his misconduct complaints against him to the Commission.

budgeted, still funded Senior Litigator post at Pietermaritzburg,<sup>4</sup> after his successful interview and recommendation for the post on 12 November 2009 by a selection panel of LASA's most senior lawyers in the region; at which interviews the panel disqualified and rejected Mlambo JP's judicial friend, Ngcamu AJ (as he used to be) – whom Mlambo JP had repeatedly over a period of about six years got appointed to act as a fellow judge on the Labour Court bench headed by him at the time, and who was then back at the side-bar<sup>5</sup> – for the reasons that he had no right of appearance in the High Court and had zero litigation experience on his feet there;

§ repeated clearly illegal and unconstitutional blanket refusals to comply with Brink's PAIA requests in 2010 probing the propriety and legality of the abortion of his recruitment, under cover of the said false financial insufficiency excuse eventually fed him eleven months later under rising pressure to account, in which reports to the Minister and to the Portfolio Committee Mlambo JP falsely and mendaciously alleged full, timeous, and due compliance with Brink's PAIA requests, whereas in truth and in fact, as Mlambo JP knew full well from Brink's repeated petitions to him for his intervention in the exercise of his fiduciary duty to LASA to ensure statutory and constitutional compliance by its management executives, Brink's requests had been totally refused: both of them obviously illegally and unconstitutionally, and the first unlawfully out of time as well.

Which lying financial insufficiency excuse (contradicted and refuted by LASA's own records, later disgorged with PAIA) Mlambo JP mendaciously

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<sup>4</sup> In *Zungu v Premier of the Province of KwaZulu-Natal and Others* [2018] ZACC 1 (22 January 2018, the Constitutional Court observed that allowing a budgeted post to be 'left vacant' constitutes a 'breach of the provisions of the Public Finance Management Act (PFMA) which preclude ... leaving the position ... vacant.' That is, the abortion of Brink's recruitment was also illegal under the PFMA.

<sup>5</sup> According to a media report, the Commission had rejected his application for a permanent appointment as a judge on account of his failure to disclose misconduct convictions by the Law Society.

repeated to the Minister and to the Portfolio Committee in his 'confidential' reports to falsely put down Brink's true complaints to them and to successfully pervert their enquiries into the obviously irregular and unlawful abortion of Brink's recruitment – also, to the same corrupt end, mendaciously advancing a novel false logistical/practical excuse (contradicted and refuted by LASA's own records), invented to patch a hole in the original financial excuse that exposed it as obviously false.<sup>6</sup>

In short, Brink charged Mlambo JP with 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Act, eminently warranting his suspension and removal from office under section 177(3) and section 177(1)(a) of the Constitution.

The fact that Mlambo JP was required to respond to Brink's complaints shows that (a) they were found not to be 'frivolous or lacking in substance', per section 15(d), and peremptorily subject to summary dismissal under section 15(2), and that contrariwise they were found to make out serious prima facie answerable cases on all counts; and (b) that Mlambo JP's misconduct complained of was found to 'fall within the parameters of any of the grounds set out in section 14(4)', per section 15(1), namely 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution' (section 14(4)(a)); a 'wilful ... breach of the Code of Judicial Conduct' (section 14(4)(b)); or 'other wilful ... conduct ... incompatible with or unbecoming the holding of judicial office' (section 14(4)(e)).

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<sup>6</sup> A few months after Mlambo JP's false and mendacious secret report to the Portfolio Committee in June 2011 had been thoroughly exposed and refuted in legal pleadings by Brink filed in July and October 2011, National Operations Executive Brain Nair abandoned the two absolutely false and mendacious financial and false logistical/practical excuses that Mlambo JP gave the Minister and the Portfolio Committee for Brink's non-appointment, and replaced them in his 'Report to Board' in November 2011 with new, totally different, also absolutely false and mendacious excuses (contradicted and refuted by LASA's own records) namely 'recruitment challenges' and the alleged professional incompetence of and non-delivery by LASA's incumbent six Senior Litigators. In other words, the discredited and refuted lies that Mlambo JP told the Minister and the Portfolio Committee to pervert their enquiries were dropped and substituted with other lies. Indeed, after Brink exposed and refuted the lying false logistical/practical excuse advanced to the Minister and to the Portfolio Committee, it was expressly retracted on affidavit by Mtati, Nair confirming, as 'an error', 'palpably an error'.

In his response to Brink's complaints addressed to the Chief Justice, Mlambo JP massively compounded his gross misconduct by falsely and maliciously defaming Brink as a racist,<sup>7</sup> and by telling him several other objectively demonstrable lies.

On 11 February 2019, during a telephone call received from Commission secretary Lynette Bios about a different matter, Brink enquired about the status of his complaints against Mlambo JP, to which she responded that it had been decided to deal with them under section 17.

Section 17 governs the disposal of 'serious, non-impeachable complaints' only.

If the secretary's information to Brink that his eight capital complaints against Mlambo JP, profoundly aggravated by his dishonest response to them, are to be dealt with merely under section 17 was correct, it means that the judge who took this decision reckons Mlambo JP's extraordinarily grave misconduct, including his crimes, detailed and documented in Brink's complaints, and disclosed in his response to them, was not gross misconduct contemplated by section 14(4)(a) of the Act and section 177(1) of the Constitution.

It means – in ludicrous contradistinction – that whereas Motata J's conduct in driving drunk, crashing his car into a wall, racially abusing the owner of the wall, and then at trial calling him a racist and falsely denying his intoxication, was duly found by the Judicial Conduct Tribunal chaired by Jappie JP to be impeachable gross misconduct, Mlambo JP's subornation of perjury to falsely defame and discredit Brink so as to pervert an application for leave to subpoena him for cross-examination on his misconduct; his repeated collusion in and connivance at LASA information officer Vidhu Vedalankar's persistent illegal and unconstitutional blanket refusals to

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<sup>7</sup> In his invited comments on Mlambo JP's response, Brink mentioned that his late life-partner was African. His current lady partner is Indian.

comply with Brink's PAIA requests, so as to suppress evidence of recruitment corruption in which he was centrally involved; his lying and false reporting to pervert ministerial and parliamentary enquiries into this illegal, unethical, and unconstitutional conduct; and then his false and malicious smearing of Brink as a racist in his response to Brink's complaints, and his other many clearly false allegations made in his response to counter Brink's complaints, is merely 'serious' criminal and other egregious misconduct – but it is 'non-impeachable', per the heading of section 17, in the opinion of the judge who decided to proceed against Mlambo JP only under section 17; and that all this extreme misconduct charged and documented by Brink, and further disclosed in Mlambo JP's response, warrants no higher a sanction than an apology, reprimand, warning, compensation order, counselling, training, or other appropriate corrective measure, under section 17(8) – besides impeachment – to which range of puny penalties 'remedial action will be limited' under section 17(1)(a).

Even a child can see that the decision to sweep Mlambo JP's aggravated criminal and other capital misconduct under the carpet in this manner doesn't come close to meeting the rationality requirement for valid and lawful administrative action, and won't survive public exposure and judicial review.

Brink's reason for making this request under PAIA for access to the Commission's records specified in Part A – albeit that section 11(3) of PAIA holds his reason to be irrelevant to the Commission's information officer's decision whether to grant it or not – is to investigate the circumstances in which the obviously grossly irregular, indefensible, insupportable decision was made to deal only under section 17 with Brink's plainly impeachable capital misconduct complaints against Mlambo JP, profoundly aggravated by his response to them, with the transparent aim of ensuring that under section 17(8) he escapes justice with a slap on the wrist; and to establish the identity of his friend of his on the JSC who imagines that Brink's capital

charges are going to be quietly disposed of in this unlawful manner, and that his identity and his attempt to protect his friend like this aren't going to be very publicly ventilated and exposed to anti-corruption and Constitution watchdog NGOs and the national newspapers.

Having regard to the stunning double standards being applied, the decision to proceed against Mlambo JP under section 17 only, *yokuthi uvele udonswe ngendlebe*, will undoubtedly interest Hlophe JP facing impeachment by a Tribunal under section 16.

## AD PART TWO

A former Free State Provincial Executive of LASA has alleged to Brink that Mlambo JP used his influence to secure the appointment in February 2013 of former LASA Bloemfontein Justice Centre Executive Noxolo Maduba to the Tribunal established to investigate and report on the complaints to the Commission made against Hlophe JP; and that after the latter objected to her appointment, she resigned it.

Whether this information is correct remains to be determined. Commission deputy information officer Sello Chiloane vaguely recalled it in a telephone call he made to Brink on 14 November 2016.

If it's true, the significance of Mlambo JP's agency in achieving Maduba's appointment, his special motivation for doing so, and why it was grossly inappropriate and unethical in the particular circumstances, is not relevant to state here, but will be detailed in an ethics complaint to the Commission upon delivery of the documents requested in Part Two and of another

document for which Brink has sued LASA in the High Court at Pietermaritzburg.<sup>8</sup>

Brink is not seeking access to any record contemplated in section 12(d) of PAIA, namely ‘a record referred to in paragraph (gg) of the definition of “administrative action” in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000),<sup>[9]</sup> regarding the nomination, selection or appointment of ... any ... person by the Judicial Service Commission’. That is, Brink is not seeking access to any record revealing *the specifics of the nomination* nor the *reasons the Commission decided to select and appoint Maduba*, i.e. information bearing on the decision-making process, which is protected by section 12 – only confirmation of the fact that Mlambo JP nominated her, and some records generated subsequent to her appointment, and therefore not hit by section 12, concerning her resignation and the reasons for it.

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<sup>8</sup> The application, case 11187/16P, is set down for argument on 15 March 2019, along with two similar PAIA applications, cases 14224/17P and 5239/18P.

<sup>9</sup> Section 1 of PAJA, ‘Definitions’, provides:

‘In this Act, unless the context indicates otherwise- “administrative action” means any decision taken, or any failure to take a decision, by-

(a) an organ of state, when-

(i) exercising a power 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; or

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect, but does not include-

...

(gg) a decision relating to any aspect regarding the nomination, selection or appointment of a judicial officer or any other person, by the Judicial Service Commission in terms of any law’.



Anthony Brink &lt;anthonybrink.sa@gmail.com&gt;



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**Request for access to records under PAIA**

1 message

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**Anthony Brink** <anthonybrink.sa@gmail.com>  
To: Lynette Bios <lbios@judiciary.org.za>  
Cc: Sello Chiloane <Chiloane@concourt.org.za>

6 March 2019 at 15:42

Dear Ms Bios

I attach a PAIA request for the Commission's information officer's or deputy information officer's response as soon as reasonably possible (per the Act) please.

Yours sincerely

Anthony Brink

Cc: DIO Sello Chiloane

**JSC PAIA request 6 March 2019.pdf**

74K



Anthony Brink &lt;anthonybrink.sa@gmail.com&gt;

B

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**Brink's PAIA request: Your non-compliance with section 22(1)**

1 message

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**Anthony Brink** <anthonybrink.sa@gmail.com>  
To: Sello Chiloane <Chiloane@concourt.org.za>  
Cc: Lynette Bios <lbios@judiciary.org.za>

12 March 2019 at 11:00

Sello Chiloane  
DIO JSC

Dear Mr Chiloane

Added postscript: Wrong, it was six days not ten.

My PAIA request was delivered a whole ten days ago.

Please advise me what's holding up your information officer's compliance with section 22(1):

"The information officer of a public body to whom a request for access is made, must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing the request."

I need to know the amount of the request fee and the Commission's bank details so I can pay it by EFT.

Yours sincerely

ANTHONY BRINK

36 Pearson Street  
Eshowe, KwaZulu-Natal  
23 April 2019

Nelson Phakola  
Information Officer, Judicial Service Commission  
By email: [nphakola@judiciary.org.za](mailto:nphakola@judiciary.org.za)

Cc: Sello Chiloane, Deputy Information Officer, Judicial Service Commission  
Lynette Bios, Secretary to the Judicial Service Commission  
By email: [schiloane@judiciary.org.za](mailto:schiloane@judiciary.org.za); [chiloane@concourt.org.za](mailto:chiloane@concourt.org.za);  
[lbios@judiciary.org.za](mailto:lbios@judiciary.org.za)

Dear Mr Phakola

#### FAILURE TO COMPLY WITH PAIA

On 6 March 2019, I delivered a request under section 18 of the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act') for access to certain records held by the Judicial Service Commission ('JSC'), in the exercise of my fundamental right to public information in our open democracy, guaranteed by section 32(1)(a) of the Bill of Rights in Chapter 2 of the Constitution. A copy of my request and proof of delivery can be accessed in this Dropbox folder: <http://bit.ly/2IBq5Ek>.

Section 18(1) of the Act prescribes that 'A request for access must be made in the prescribed form to the information officer of the public body concerned at his or her address or fax number or electronic mail address.'

My request took the prescribed form, but I was unable to email it directly to you as required, because I didn't then know that you were the JSC's information officer, much less did I know your email address. The reason I didn't know these things was your and your predecessors' failures to publish and update a PAIA manual providing your contact information to requesters like me.

Section 14 of the Act prescribes:

#### 14 Manual on functions of, and index of records held by, public body

- (1) Within six months after the commencement of this section or the coming into existence of a public body, the information officer of the

public body concerned must compile in at least three official languages a manual containing–

- (a) a description of its structure and functions;
- (b) the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of the body and of every deputy information officer of the body designated in terms of section 17 (1);

*[et seq: subsections (c) to (i)]*

- (2) A public body must, if necessary, update and publish its manual referred to in subsection (1) at intervals of not more than one year.

So serious is this legal obligation on you that subsection (3) of section 90 of the Act, ‘Offences’, renders it a crime not to comply with it:

- (3) An information officer who wilfully or in a grossly negligent manner fails to comply with the provisions of section 14 commits an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding two years.

The result of your and your predecessors’ failures, in the two decades since PAIA was enacted, to publish and update a PAIA manual providing this information to requesters like me was that I was constrained to email my request to JSC deputy information officer (‘DIO’) Sello Chiloane, with whom I’d previously engaged in that capacity, copying it to JSC secretary Lynette Bios.

Section 22 of the Act prescribes:

- (1) The information officer of a public body to whom a request for access is made, must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing the request.

Under ‘Fees’ in section ‘E’ of the prescribed request form, I stated accordingly:

On advice under section 22(1) of the amount of the request fee to be paid and of the Commission’s bank account details, the fee will be paid by EFT.

Not having been notified of the request fee, in breach of section 22(1), I emailed DIO Chiloane a reminder on 12 March, again copied to JSC secretary Bios.

My reminder, again seeking the amount of the request fee and the JSC's bank details, was ignored.

Several days later I followed up by telephoning the JSC, asking to speak with DIO Chiloane. Receptionist Zolisa told me he was in a meeting and unavailable.

My repeated subsequent attempts to reach him were similarly unsuccessful. My calls to his telephone extension number, given me by the receptionist, always went unanswered.

On 29 March, I asked the receptionist whether she might be able to find out for me the JSC's information officer's name and contact details, and after enquiring she provided me with your name, telephone extension number and email address.

Again, my repeated attempts thereafter to reach you via your telephone extension number failed, my calls always going unanswered.

The '30 days' maximum that section 25(1) of the Act allows for a response to my request has meanwhile silently come and gone.

Section 27, 'Deemed refusal of request', provides:

If an information officer fails to give the decision on a request for access to the requester concerned within the period contemplated in section 25 (1), the information officer is, for the purposes of this Act, regarded as having refused the request.

If I haven't heard from you in the next ten days, I'll conclude under section 27 that your intention is indeed to mutely refuse my request in contempt of my fundamental right to public body information, and I'll proceed under the Act to enforce it.

Please give this matter your urgent attention. It's extraordinarily serious.

Yours sincerely



ADV ANTHONY BRINK

anthonybrink.sa@gmail.com | 083 779 4174



Anthony Brink &lt;anthonybrink.sa@gmail.com&gt;



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**Unanswered PAIA request**

1 message

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**Anthony Brink** <anthonybrink.sa@gmail.com>

23 April 2019 at 14:28

To: [nphakola@judiciary.org.za](mailto:nphakola@judiciary.org.za)Cc: [schiloane@judiciary.org.za](mailto:schiloane@judiciary.org.za), [Sello Chiloane <chiloane@concourt.org.za>](mailto:Sello Chiloane@concourt.org.za), [Lynette Bios <lbios@judiciary.org.za>](mailto:Lynette Bios@judiciary.org.za)

Dear Mr Phakola  
I attach an important letter for your immediate attention please.  
Yours sincerely  
Adv AR Brink

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 **Phakola 23 April 2019.pdf**  
30K



Anthony Brink &lt;anthonybrink.sa@gmail.com&gt;

D

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**Unanswered PAIA request**

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**Nelson Phakola** <nphakola@judiciary.org.za>  
To: Anthony Brink <anthonybrink.sa@gmail.com>  
Cc: Sello Chiloane <schiloane@judiciary.org.za>, "Sello Chiloane (Concourt)" <chiloane@concourt.org.za>, Lynette Bios <lbios@judiciary.org.za>

24 April 2019 at 14:49

Dear Adv. Brink

Receipt of your below email is acknowledged and I will revert back to you soon.

Regards

Nelson Phakola  
Deputy Information Officer

**From:** Anthony Brink [mailto:[anthonybrink.sa@gmail.com](mailto:anthonybrink.sa@gmail.com)]  
**Sent:** Tuesday, April 23, 2019 2:28 PM  
**To:** Nelson Phakola <[nphakola@judiciary.org.za](mailto:nphakola@judiciary.org.za)>  
**Cc:** Sello Chiloane <[schiloane@judiciary.org.za](mailto:schiloane@judiciary.org.za)>; Sello Chiloane (Concourt) <[chiloane@concourt.org.za](mailto:chiloane@concourt.org.za)>; Lynette Bios <[lbios@judiciary.org.za](mailto:lbios@judiciary.org.za)>  
**Subject:** Unanswered PAIA request

Dear Mr Phakola

I attach an important letter for your immediate attention please.

Yours sincerely  
Adv AR Brink

1

I.D.No. 590225 5116 08 1



S.A.BURGER/S.A.CITIZEN

VAN/SURNAME

BRINK

VOORNAME/FORENAMES

ANTHONY ROBIN

GEBOORTEDISTRIK OF-LAND/  
DISTRICT OR COUNTRY OF BIRTH

SOUTH AFRICA

GEBOORTEDATUM/  
DATE OF BIRTH

1959-02-25



DATUM UITGEREIK  
DATE ISSUED

1999-04-07

UITGEREIK OP GESAG VAN DIE  
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BINNELANDSE SAKE

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DIRECTOR-GENERAL:  
HOME AFFAIRS