



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED. <i>yes</i>
<i>7/2/20</i>	<i>C. J. Mabie</i>
DATE	SIGNATURE

CASE NO: 37578/2015

In the matter between:

CENTRE FOR APPLIED LEGAL STUDIES

APPLICANT

and

ACTING NATIONAL COMMISSIONER:

IN THE DEPARTMENT OF CORRECTIONAL SERVICES 1ST RESPONDENT

THE MINISTER OF JUSTICE AND CORRECTIONAL

SERVICES

2ND RESPONDENT

G4S CORRECTION SERVICES (BLOEMFONTEIN)

PTY LTD

3RD RESPONDENT

JUDGMENT

1. This is an application for access to documents in terms of section 78 of the Promotion of Access to Information Act, 2 of 2000 ("PAIA").
2. During August 2014 the Centre for Applied Legal Studies made a request to the Department of Correctional Services ("the DCS") in terms of section 11 of PAIA which provides a right of access to documents held by public bodies, made in terms of section 18 of PAIA. The request was for access to two documents namely, firstly, the investigative report conducted by the DCS in the Mangaung Correction Centre following a series of incidents that took place in the Mangaung Correction Centre while that Centre was under the control of Bloemfontein Corrections Contract ("BCC") and G4S Corrections Services Bloemfontein (the third respondent). These alleged incidents took place in 2013 and preceded the takeover of the Mangaung Correction Centre by the

DCS in October 2013. The second document requested was the response of the BCC to the aforesaid report.

3. The DCS failed to give notice of the decision on the request within 30 days as required by section 25 of PAIA, and is this therefore regarded as having refused the request in accordance with section 27. The applicant lodged an internal appeal against the deemed refusal in terms of section 74 of PAIA. The DCS dismissed the applicant's internal appeal, relying on sections 44(1)(a)(i) and (b)(i) of PAIA.
4. It was submitted on behalf of the applicant that the deemed refusal as well as the dismissal of the internal appeal were unlawful. It was submitted that the DCS did not establish a justification for the refusal in terms of PAIA and that, in any event, there is an overriding public interest in the disclosure of the documents requested. Consequently the applicant applied for an order in the present application declaring unlawful and invalid the aforesaid deemed refusal as well as the dismissal of the internal appeal, and for an order directing the first and second respondents to supply the applicant with copies of the requested two reports within 15 days of the granting of the order. An order for costs was also sought.
5. Subsequent to launching this application, G4S Corrections Services Bloemfontein intervened as the third respondent. According to the court order joining the third respondent it had to file its answering affidavit by 31 January 2018. However, on 5 February 2018 G4S brought an application for this

matter to be heard *in camera*. That application was dismissed on 4 January 2019. The third respondent subsequently filed an answering affidavit.

6. The Mangaung Correctional Centre is a prison located in Bloemfontein. The prison is run as a public/private joint venture as contemplated in section 103 of the Correctional Services Act, Act 111 of 1998. During 2000 the BCC was contracted by the government to design, construct, operate, maintain and finance the prison in accordance with a concession contract. Thereafter BCC subcontracted its obligations to operate and maintain the prison, to the third respondent. The third respondent consequently runs the prison on a day-to-day basis.
7. It is not disputed that the third respondent falls within the definition of "public body" as provided for in section 1 of PAIA and that it is an organ of state for the purpose of its contractual functioning of operating and maintaining the prison and that it performs a public function in terms of national legislation.
8. The applicant is a civil society organisation and registered law clinic based at the School of Law at the University of the Witwatersrand. The applicant's vision, inter alia, relates to the respect for and protection and promotion of human rights by the State, corporations, individuals and other repositories of power. The applicant also provides professional legal representation to survivors of human rights abuses. The applicant has particular interest in issues concerning the rights of individuals in detention. The applicant, inter alia, houses a Rule of Law Programme which is concerned, amongst other

things, with penal reform and conditions of detention, including cruel, inhuman or degrading treatment and torture.

9. The applicant's application for access to the aforesaid documents was prompted by reports coming to their knowledge which related, inter alia, to alleged violations of the contract between the DCS and BCC, the Correctional Services Act as well as contraventions of the law including the Constitution and international law on conditions of detention and cruel, inhuman and degrading treatment and torture. The prison abuse claims were amplified by media reports. It is not in issue that the documents required by the applicant relate to these issues and according to the applicant it has strong evidence that the reports would reveal serious contraventions of domestic and international law provisions. It was for this reason that the applicant also alleged that the general "override provisions" contained in section 46 of PAIA find application. It is not necessary for present purposes to refer further to the information which prompted the request for information in terms of PAIA and the present application.
10. In response to the present application the first and second respondents initially gave notice of their intention to oppose the application. They, however, never filed an answering affidavit. At the hearing of this matter before this court Advocate Bester SC, on behalf of the first and second respondents indicated that an agreement was reached with the applicant shortly before the hearing in terms of which the first and second respondents indicated that they would

abide by the order of this court and that in respect of costs, the first and second respondents tendered the applicant's costs on an unopposed scale.

11. On behalf of the third respondent it was submitted by Advocate Liversage SC, with Advocate Richards, that the relief prayed for by the applicant should not be granted. No Heads of Argument were filed on behalf of the third respondent. At the hearing of the matter Advocate Liversage submitted that although no relief is claimed from the third respondent, the third respondent wishes to draw the court's attention to the fact that the requested records may contain information which may not be disclosed.
12. More particularly it was submitted that the names and "identifying markers" of the third respondent's employees, the inmates, doctors, nurses, health workers as well as blood sample markers on medical reports, witness signatures to incident reports, signatures of employees on any of the reports and police case numbers should not be made available as well as plans, photos and diagrams of the prison and portions thereof.
13. Advocate Liversage accordingly submitted that a draft order which was prepared by the third respondent should be made an order of court. According to the draft order a redacted version of the report shall be made available to the applicant. Furthermore, an order is made that should the applicant persist in seeking an unredacted report, it may file a supplementary affidavit setting out the grounds upon which such relief is sought. In such event the third

respondent is permitted, but not obliged, to file an answering affidavit to such a request. Furthermore that no order of costs be made.

14. It is necessary to briefly refer to the third respondent's answering affidavit in respect of the reasons why the report should not be disclosed to the applicant. From the affidavit it appears that the second document requested, namely, the response to the report of the DCS, was compiled by the third respondent. The report by the DCS required the BCC to provide it with clarification and information on certain possible breaches of the concession contract and the Correctional Services Act and more particularly whether certain actions and processes taken in respect of certain inmates, complied with that contract and the Act. The BCC requested the third respondent to respond to the issues raised by the DCS given the fact that the third respondent was responsible for the operation and maintenance of the prison. The response by the third respondent was provided to BCC which in turn submitted it to the DCS on 31 July 2014.
15. The third respondent stated that the response and supporting documentation submitted by the third respondent to the BCC, which is the second document referred to by the applicant, contains confidential information relating to certain issues mentioned by the third respondent. The third respondent submitted that the disclosure of such information might potentially adversely impact, not only on the persons mentioned in the responses, but also the safety and security of the inmates and employees at the prison and potentially the broader public.

The third respondent confirmed that the applicant had earlier indicated that the names and prisoner numbers of inmates be redacted.

16. The third respondent then proceeded to referred to sections 34, 36, 37, 38 and 39 of PAIA and in respect of each of these sections submitted that the report contains information envisaged by those sections.
17. The third respondent then stated that it had completed a redacted copy of the report sought by the applicant which may be delivered to the applicant upon this court so directing. It also offered to make available a redacted copy to the court for its perusal in order to establish whether the content which is redacted, was reasonably so redacted.
18. I shall now refer to the applicable legal principles. The purpose of PAIA is to give effect to the constitutional right of access to information. It establishes a regulatory framework in which the default position is disclosure and transparency. The constitutional right of access to information is governed by section 32 of the Constitution, which provides, in the relevant part: *"(1) Everyone has the right of access to—any information held by the state"*. Section 11 of PAIA gives effect to this constitutional right, and provides:

"(1) A requester must be given access to a record of a public body if—(a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and (b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part. [...]"

(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."

19. In **Brümmer v Minister for Social Development and Others** 2009 (6) SA 323 (CC), the Constitutional Court explained the importance of the constitutional right of access to information held by the state as follows:

"The importance of this right . . . in a country which is founded on values of accountability, responsiveness and openness, cannot be gainsaid. To give effect to these founding values, the public must have access to information held by the State. Indeed one of the basic values and principles governing public administration is transparency. And the Constitution demands that transparency 'must be fostered by providing the public with timely, accessible and accurate information'."

20. In **President of the Republic of South Africa v M&G Media** 2012 (2) SA 50 (CC) the Constitutional Court in paras 9-10 referred to the issue of access in terms of PAIA as follows:

"'[t]o give effect to the constitutional right of access to any information held by the State'. And the formulation of section 11 casts the exercise of this right in peremptory terms – the requester 'must' be given access to the report so long as the request complies with the procedures outlined in the Act and the record requested is not protected from disclosure by one of the exemptions set forth therein. Under our law, therefore, the disclosure of information is the rule and exemption from disclosure is the exception..."

The constitutional guarantee of the right of access to information held by the state gives effect to "accountability, responsiveness and openness" as founding values of

our constitutional democracy. It is impossible to hold accountable a government that operates in secrecy. The right of access to information is also crucial to the realisation of other rights in the Bill of Rights...”

21. Court proceedings under PAIA are governed by sections 78 to 82. Section 81 provides that proceedings under PAIA are civil proceedings and the rules of evidence applicable in civil proceedings apply. The burden of establishing that the refusal of access to information is justified under the provisions of PAIA rests on the State or any other party refusing access. Section 81 provides:

“(1) For the purposes of this Chapter proceedings on application in terms of section 78 are civil proceedings.

(2) The rules of evidence applicable in civil proceedings apply to proceedings on application in terms of section 78.

(3) The burden of establishing that—

(a) the refusal of a request for access; or

(b) any decision taken in terms of section 22, 26(1), 29(3), 54, 57(1) or 60, complies with the provisions of this Act rests on the party claiming that it so complies.”

22. The evidentiary burden to justify non-disclosure rests with the holder of information and not with the requester. The Constitutional Court in *President of the Republic of South Africa* at paras 22-25 held, in the relevant parts, as follows:

"[22] It is apparent from this comparative analysis of the standards applied by courts in other jurisdictions with legislation comparable to PAIA that the state may discharge its evidentiary burden only when it has shown that the record withheld falls within the exemptions claimed. Exemptions are construed narrowly and neither the mere *ipse dixit* of the information officer nor his or her recitation of the words of the statute is sufficient to discharge the burden borne by the state. ...

[23] In order to discharge its burden under PAIA, the state must provide evidence that the record in question falls within the description of the statutory exemption it seeks to claim. The proper approach to the question whether the state has discharged its burden under section 81 (3) of PAIA is therefore to ask whether the state has put forward sufficient evidence for a court to conclude that, on the probabilities, the information withheld falls within the exemption claimed.

[24] The recitation of the statutory language of the exemptions claimed is not sufficient for the state to show that the record in question falls within the exemptions claimed. Nor are mere *ipse dixit* affidavits proffered by the state. The affidavits for the state must provide sufficient information to bring the record within the exemption claimed. This recognises that access to information held by the state is important to promoting transparent and accountable government, and people's enjoyment of their rights under the Bill of Rights depends on such transparent and accountable government.

[25] Ultimately, the question whether the information put forward is sufficient to place the record within the ambit of the exemption claimed will be determined by the nature of the exemption. The question is not whether the best evidence to justify refusal has been provided, but whether the information provided is sufficient for a court to conclude, on the probabilities, that the record falls within the exemption claimed. If it does, then the state has discharged its burden under section 81 (3). If it does not, and the state has not given any indication that it is unable to discharge its burden because to do so would require it to reveal the very information for which protection from disclosure is sought, then the state has only itself to blame."

23. The DCS did not file an answering affidavit and did not oppose the application. Accordingly, the first and second respondents did not establish any grounds for the refusal of the applicant's request.
24. In deciding whether the third respondent has succeeded in discharging its burden under PAIA of proving on a balance of probabilities that the records fall within the exemptions claimed, I agree with the submissions on behalf of the applicant that the third respondent had failed to do so. The answering affidavit on behalf of the third respondent failed to provide evidence that the records in question fall within the description of the statutory exemptions it seeks to claim. The third respondent merely recited the statutory language of the exemptions claimed and provided no information as to why the record falls within the exemptions claimed. In respect of each of the sections relied upon the third respondent merely made the bald allegation that the report may contain evidence which is protected by the particular section without in any way trying to justify these conclusions.
25. I mentioned above that at the hearing of this matter it was submitted on behalf of the third respondent that this court should take a "judicial peek" at the redacted report in order to come to a conclusion. To take a so-called "judicial peek" is an exceptional procedure used by a court where the court determines, based on the justifications that are given for a refusal, that it must examine the record in order to make the decision. This process should only be undertaken

as a last resort or where absolutely necessary. See **A Company and Others v Commissioner, South African Revenue Service** 2014 (4) SA 549 (WCC).

26. I agree with the submission on behalf of the applicant that the third respondent failed to put forward a case that would justify this court to have regard to the reports requested. If this court were to do so, and due to the lack of evidence and justification put forward by the third respondent, it would simply mean that in reality the third respondent is expecting from this court to go in search of reasons for the protection of the information.
27. There is a further reason why the process proposed by the third respondent should be rejected. The third respondent is not offering the full reports to the court but merely its own redacted version thereof. To consider a redacted version of a report is an irrelevant and futile exercise for the simple reason that the reader would not know what had been excluded from the original report or in what manner the original report had been changed.
28. Furthermore, to offer, as was done in the proposed draft order, that the applicant may file a supplementary affidavit setting out the grounds upon which it is not satisfied with the redacted report, has the result of shifting the burden of proof onto the applicant. It seems clear that the attempt by the third respondent to foist a redacted version of the reports on the court and the applicant, is nothing more than an opportunistic attempt to overcome the failure by the third respondent to place a proper defence before the court by

way of its answering affidavit. This attitude had also clearly been the main cause of the delay in bringing this matter to finality.

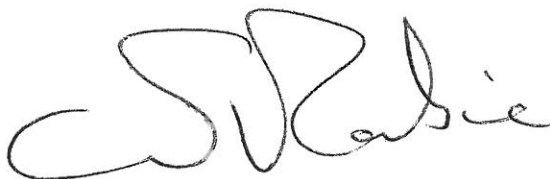
29. In the result the application should succeed and as far as costs are concerned, I agree with the submissions on behalf of the applicant that this court should mark its disapproval in the manner in which the third respondent had conducted this case by making a special order for costs. As far as the costs payable by the first and second respondents are concerned, I understood the agreement between the parties to have the effect that it may not be strictly necessary for me to make an order in this regard. I shall, however, do so *ex abundanti cautela*.

30. In the result, the following order is made:

1. The deemed refusal by the first respondent of the applicant's request for access to information as set out in the founding affidavit and its annexures and the dismissal by the second respondent of the applicant's internal appeal against the deemed refusal of its request for access to the record, is declared unlawful and invalid and is accordingly set aside.

2. The first and second respondents are ordered to supply the applicant with copies of the requested records within 15 days of the granting of this order.

3. The first and second respondents are ordered, jointly and severally, to pay the applicant's cost of the application on an unopposed basis, which order shall be jointly and severally with the relevant part of the cost order against the third respondent made in the following paragraph.
4. The third respondent is ordered to pay the applicant's costs of the application on an attorney and client scale.
5. All cost orders previously reserved are included in the cost order made in the previous paragraph.

A handwritten signature in black ink, appearing to read 'C.P. Rabie', with a stylized, cursive script.

C.P. RABIE

JUDGE OF THE HIGH COURT



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

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(3)	REVISED. <i>yes</i>
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APPLICANT

and

ACTING NATIONAL COMMISSIONER:

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THE MINISTER OF JUSTICE AND CORRECTIONAL

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G4S CORRECTION SERVICES (BLOEMFONTEIN)

PTY LTD

3RD RESPONDENT

JUDGMENT

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DCS in October 2013. The second document requested was the response of the BCC to the aforesaid report.

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4. It was submitted on behalf of the applicant that the deemed refusal as well as the dismissal of the internal appeal were unlawful. It was submitted that the DCS did not establish a justification for the refusal in terms of PAIA and that, in any event, there is an overriding public interest in the disclosure of the documents requested. Consequently the applicant applied for an order in the present application declaring unlawful and invalid the aforesaid deemed refusal as well as the dismissal of the internal appeal, and for an order directing the first and second respondents to supply the applicant with copies of the requested two reports within 15 days of the granting of the order. An order for costs was also sought.
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6. The Mangaung Correctional Centre is a prison located in Bloemfontein. The prison is run as a public/private joint venture as contemplated in section 103 of the Correctional Services Act, Act 111 of 1998. During 2000 the BCC was contracted by the government to design, construct, operate, maintain and finance the prison in accordance with a concession contract. Thereafter BCC subcontracted its obligations to operate and maintain the prison, to the third respondent. The third respondent consequently runs the prison on a day-to-day basis.
7. It is not disputed that the third respondent falls within the definition of "public body" as provided for in section 1 of PAIA and that it is an organ of state for the purpose of its contractual functioning of operating and maintaining the prison and that it performs a public function in terms of national legislation.
8. The applicant is a civil society organisation and registered law clinic based at the School of Law at the University of the Witwatersrand. The applicant's vision, *inter alia*, relates to the respect for and protection and promotion of human rights by the State, corporations, individuals and other repositories of power. The applicant also provides professional legal representation to survivors of human rights abuses. The applicant has particular interest in issues concerning the rights of individuals in detention. The applicant, *inter alia*, houses a Rule of Law Programme which is concerned, amongst other

things, with penal reform and conditions of detention, including cruel, inhuman or degrading treatment and torture.

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10. In response to the present application the first and second respondents initially gave notice of their intention to oppose the application. They, however, never filed an answering affidavit. At the hearing of this matter before this court Advocate Bester SC, on behalf of the first and second respondents indicated that an agreement was reached with the applicant shortly before the hearing in terms of which the first and second respondents indicated that they would

abide by the order of this court and that in respect of costs, the first and second respondents tendered the applicant's costs on an unopposed scale.

11. On behalf of the third respondent it was submitted by Advocate Liversage SC, with Advocate Richards, that the relief prayed for by the applicant should not be granted. No Heads of Argument were filed on behalf of the third respondent. At the hearing of the matter Advocate Liversage submitted that although no relief is claimed from the third respondent, the third respondent wishes to draw the court's attention to the fact that the requested records may contain information which may not be disclosed.
12. More particularly it was submitted that the names and "identifying markers" of the third respondent's employees, the inmates, doctors, nurses, health workers as well as blood sample markers on medical reports, witness signatures to incident reports, signatures of employees on any of the reports and police case numbers should not be made available as well as plans, photos and diagrams of the prison and portions thereof.
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respondent is permitted, but not obliged, to file an answering affidavit to such a request. Furthermore that no order of costs be made.

14. It is necessary to briefly refer to the third respondent's answering affidavit in respect of the reasons why the report should not be disclosed to the applicant. From the affidavit it appears that the second document requested, namely, the response to the report of the DCS, was compiled by the third respondent. The report by the DCS required the BCC to provide it with clarification and information on certain possible breaches of the concession contract and the Correctional Services Act and more particularly whether certain actions and processes taken in respect of certain inmates, complied with that contract and the Act. The BCC requested the third respondent to respond to the issues raised by the DCS given the fact that the third respondent was responsible for the operation and maintenance of the prison. The response by the third respondent was provided to BCC which in turn submitted it to the DCS on 31 July 2014.
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18. I shall now refer to the applicable legal principles. The purpose of PAIA is to give effect to the constitutional right of access to information. It establishes a regulatory framework in which the default position is disclosure and transparency. The constitutional right of access to information is governed by section 32 of the Constitution, which provides, in the relevant part: *“(1) Everyone has the right of access to—any information held by the state”*. Section 11 of PAIA gives effect to this constitutional right, and provides:

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(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."

19. In **Brümmer v Minister for Social Development and Others** 2009 (6) SA 323 (CC), the Constitutional Court explained the importance of the constitutional right of access to information held by the state as follows:

"The importance of this right . . . in a country which is founded on values of accountability, responsiveness and openness, cannot be gainsaid. To give effect to these founding values, the public must have access to information held by the State. Indeed one of the basic values and principles governing public administration is transparency. And the Constitution demands that transparency 'must be fostered by providing the public with timely, accessible and accurate information'."

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(2) The rules of evidence applicable in civil proceedings apply to proceedings on application in terms of section 78.

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(b) any decision taken in terms of section 22, 26(1), 29(3), 54, 57(1) or 60, complies with the provisions of this Act rests on the party claiming that it so complies.”

22. The evidentiary burden to justify non-disclosure rests with the holder of information and not with the requester. The Constitutional Court in *President of the Republic of South Africa* at paras 22-25 held, in the relevant parts, as follows:

"[22] It is apparent from this comparative analysis of the standards applied by courts in other jurisdictions with legislation comparable to PAIA that the state may discharge its evidentiary burden only when it has shown that the record withheld falls within the exemptions claimed. Exemptions are construed narrowly and neither the mere *ipse dixit* of the information officer nor his or her recitation of the words of the statute is sufficient to discharge the burden borne by the state. ...

[23] In order to discharge its burden under PAIA, the state must provide evidence that the record in question falls within the description of the statutory exemption it seeks to claim. The proper approach to the question whether the state has discharged its burden under section 81 (3) of PAIA is therefore to ask whether the state has put forward sufficient evidence for a court to conclude that, on the probabilities, the information withheld falls within the exemption claimed.

[24] The recitation of the statutory language of the exemptions claimed is not sufficient for the state to show that the record in question falls within the exemptions claimed. Nor are mere *ipse dixit* affidavits proffered by the state. The affidavits for the state must provide sufficient information to bring the record within the exemption claimed. This recognises that access to information held by the state is important to promoting transparent and accountable government, and people's enjoyment of their rights under the Bill of Rights depends on such transparent and accountable government.

[25] Ultimately, the question whether the information put forward is sufficient to place the record within the ambit of the exemption claimed will be determined by the nature of the exemption. The question is not whether the best evidence to justify refusal has been provided, but whether the information provided is sufficient for a court to conclude, on the probabilities, that the record falls within the exemption claimed. If it does, then the state has discharged its burden under section 81 (3). If it does not, and the state has not given any indication that it is unable to discharge its burden because to do so would require it to reveal the very information for which protection from disclosure is sought, then the state has only itself to blame."

23. The DCS did not file an answering affidavit and did not oppose the application. Accordingly, the first and second respondents did not establish any grounds for the refusal of the applicant's request.
24. In deciding whether the third respondent has succeeded in discharging its burden under PAIA of proving on a balance of probabilities that the records fall within the exemptions claimed, I agree with the submissions on behalf of the applicant that the third respondent had failed to do so. The answering affidavit on behalf of the third respondent failed to provide evidence that the records in question fall within the description of the statutory exemptions it seeks to claim. The third respondent merely recited the statutory language of the exemptions claimed and provided no information as to why the record falls within the exemptions claimed. In respect of each of the sections relied upon the third respondent merely made the bald allegation that the report may contain evidence which is protected by the particular section without in any way trying to justify these conclusions.
25. I mentioned above that at the hearing of this matter it was submitted on behalf of the third respondent that this court should take a "judicial peek" at the redacted report in order to come to a conclusion. To take a so-called "judicial peek" is an exceptional procedure used by a court where the court determines, based on the justifications that are given for a refusal, that it must examine the record in order to make the decision. This process should only be undertaken

as a last resort or where absolutely necessary. See **A Company and Others v Commissioner, South African Revenue Service** 2014 (4) SA 549 (WCC).

26. I agree with the submission on behalf of the applicant that the third respondent failed to put forward a case that would justify this court to have regard to the reports requested. If this court were to do so, and due to the lack of evidence and justification put forward by the third respondent, it would simply mean that in reality the third respondent is expecting from this court to go in search of reasons for the protection of the information.
27. There is a further reason why the process proposed by the third respondent should be rejected. The third respondent is not offering the full reports to the court but merely its own redacted version thereof. To consider a redacted version of a report is an irrelevant and futile exercise for the simple reason that the reader would not know what had been excluded from the original report or in what manner the original report had been changed.
28. Furthermore, to offer, as was done in the proposed draft order, that the applicant may file a supplementary affidavit setting out the grounds upon which it is not satisfied with the redacted report, has the result of shifting the burden of proof onto the applicant. It seems clear that the attempt by the third respondent to foist a redacted version of the reports on the court and the applicant, is nothing more than an opportunistic attempt to overcome the failure by the third respondent to place a proper defence before the court by

way of its answering affidavit. This attitude had also clearly been the main cause of the delay in bringing this matter to finality.

29. In the result the application should succeed and as far as costs are concerned, I agree with the submissions on behalf of the applicant that this court should mark its disapproval in the manner in which the third respondent had conducted this case by making a special order for costs. As far as the costs payable by the first and second respondents are concerned, I understood the agreement between the parties to have the effect that it may not be strictly necessary for me to make an order in this regard. I shall, however, do so *ex abundanti cautela*.

30. In the result, the following order is made:

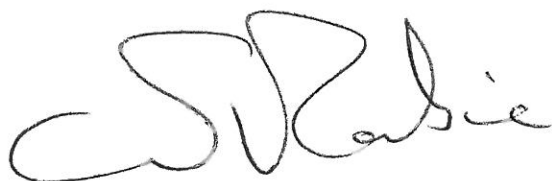
1. The deemed refusal by the first respondent of the applicant's request for access to information as set out in the founding affidavit and its annexures and the dismissal by the second respondent of the applicant's internal appeal against the deemed refusal of its request for access to the record, is declared unlawful and invalid and is accordingly set aside.

2. The first and second respondents are ordered to supply the applicant with copies of the requested records within 15 days of the granting of this order.

3. The first and second respondents are ordered, jointly and severally, to pay the applicant's cost of the application on an unopposed basis, which order shall be jointly and severally with the relevant part of the cost order against the third respondent made in the following paragraph.

4. The third respondent is ordered to pay the applicant's costs of the application on an attorney and client scale.

5. All cost orders previously reserved are included in the cost order made in the previous paragraph.

A handwritten signature in black ink, appearing to read 'C.P. Rabie', with a stylized, cursive script.

C.P. RABIE

JUDGE OF THE HIGH COURT