



INFORMATION REGULATOR (SOUTH AFRICA)

Ensuring protection of your personal information
and effective access to information

FORM H ENFORCEMENT NOTICE

(In terms of section 77J of Promotion of Access to Information Act 2 of 2000, as amended)

REF NO:	CI 24/25 & CI 392/24
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To: Mr. Lesiba A. Malotana
Head of Gauteng Department of Health
Gauteng Department of Health
45 Commissioner Street
Johannesburg
E-mail: Arnold.Malotana@gauteng.gov.za

Dear Mr. Malotana

NAME OF COMPLAINANT	Jeffrey Wicks
NAME OF THE RESPONDENT (PUBLIC BODY)	Gauteng Province – Department of Health

- 1. BE PLEASED TO TAKE NOTICE** that the Information Regulator (Regulator), after having considered the report of the Enforcement Committee, hereby makes the following orders:

The Audit Reports Records

- 1.1 The Information Officer of the department is hereby directed, in terms of section 77J(1)(b) of PAIA, to -

- 1.2 Grant access to all reports and any relevant annexures or addenda generated by the internal control team, as recorded in the Complainant's Form 2, dated 17 July 2023, including any report that was previously disclosed. The Information Officer of the Gauteng Department of Health ("the Department") is directed to fully comply with the Settlement Certificate dated 30 July 2024.
- 1.3 The disclosure of the reports should be accompanied by **an index page or cover page**, containing a number allocated to, description of, and date of, each report disclosed by the Department. The index will enable the requester to reconcile the records which were previously disclosed and those which were not disclosed.
- 1.4 In the event that the requested report(s) that cannot be found or do not exist, the Information Officer of the Department must depose to an affidavit comprising of the following:
- 1.4.1 Full account of steps taken to find, and/or to establish the existence of all reports (the search).
- (ii) All communications with every person who conducted the search.
- (iii) Confirmatory affidavit(s) of the persons who conducted the search.
- (iv) An affidavit from the Department's spokesperson, Mr. Motalatale Modiba providing:
- (a) detailed explanation of, amongst other things, the basis and the context, of the statements made regarding "**performed random audits across facilities**", "**the scope of audits...**", and "**some of the findings made in various facilities...**" all contained in an email of 20 July 2022; and
- (b) produce supporting documents (if any) in confirmation of the same.

2. Disclose all records to the Complainant (in electronic format) **within 15 days** from the date of the issue of an Enforcement Notice.
3. Deliver all affidavits and supporting documents referred to in terms of paragraph 1.3 of this recommendation (in electronic format) to the Complainant, **within 15 days** from the date of the issue of an Enforcement Notice.

The Mamelodi Hospital Records

4. The Information Officer of the Gauteng Department of Health (“the Department”) is hereby directed, in terms of section 77J(1)(b) of PAIA, to –

4.1 Grant access to a schedule of payments made to suppliers/service providers of Mamelodi Hospital, where transactions/payments are valued between R300 000.00 and R499 999.00, between the period of 1 January 2020 to 1 June 2023. The Information Officer of the Department is directed to fully comply with the Settlement Certificate dated 30 July 2024.

4.2 The disclosure of the records must include the records as specified in the Complainant’s Form 2, dated 17 July 2023, and the records must include records in respect of already disclosed purchase order numbers. Further, this disclosure must be accompanied by **a cover page and/or an index** stating the nature of records disclosed.

4.3 In the event that the requested records and/or purchase orders cannot be found or do not exist, the Information Officer of the Department must depose an affidavit containing the following:

- (i) Full account of all steps taken to find, and/or to establish the existence (“the search”) of all relevant requested records and/or purchase orders not disclosed to date.
- (ii) All communications with every person who conducted the search(s).
- (iii) Confirmatory affidavit(s) of the person who conducted the search(s).

5. Disclose all records to the Complainant (in electronic format) **within 15 days** from the date of the issue of this Enforcement Notice.
6. Deliver all affidavits and supporting documents referred to in terms of paragraph 1.3 of this recommendation (in electronic format) to the Complainant, **within 30 days** from the date of the issue of this Enforcement Notice.

INTRODUCTION

7. The complainant is Mr. Jeffrey Wicks, who is referred to herein as the Requester, later referred to as the Complainant, in line with the stages of the process of the investigation.
8. The Gauteng Department of Health, which is referred to herein as either the Department or the department.
 - a. The Complainant lodged two complaints with the Information Regulator (“the Regulator”) in terms of section 77A(2)(c) of the **Promotion of Access to Information Act, 2 of 2000** (“PAIA”) pursuant to the deemed refusal of access to records by the department. The prescribed complaint form (Form 5) is dated 11 March 2024. The division within the Regulator that was seized with the matter is referred to as the PAIA Division.
9. The broader context provided by the Complainant to the PAIA Division is that this matter relates to the investigation into the assassination of Ms. Babita Deokaran, the then Chief Director of Financial Accounting of the Department, who was investigating allegations of widespread fraud and corruption in the Department.

BACKGROUND

Requested Records

10. On 17 July 2023 the Requester submitted the following two requests for access to the following records held by the Department:

10.1 “A *schedule of payments made to suppliers/service providers of Mamelodi Hospital, where transactions/payments are valued between R300 000.00 and R499 999.00, between the period of 1 January 2020 and 1 June 2023. This Schedule should be produced in a readable alxs format and should include: A description of a good/service, the name of the supplier/service provider. **Purchase order number**, quantity where applicable, unit price, where applicable, total paid in Rands, and payment processing date.*

Outside of this schedule, for each of these payments/transactions, copies of the following documents submitted by the winning bidder:

*SBD4, B-BEE certificate, SBD 8, SBD 9, company registration document, copy of shareholder certificate, Certified copy of ID documents of the Directors or Members, and **clearly labelled with the associated purchase order number.**”¹ (“the Mamelodi Hospital Records”) (own emphasis); and*

10.1. “**All reports** and any relevant annexures or addenda generated by the internal control team, including but not limited to **institutional audits**, as part of the function of Chief Directorate: Audit and Compliance for the Gauteng Department of Health, during the period of January 1, 2020, until January 1, 2023. (“the Audit Reports Records”) (own emphasis)

11. Both the Mamelodi Hospital Records and Audit Reports Records are referred to herein as the “**Requested Records.**”

¹ Page 9 of the Bundle

Deemed Refusal of Requests and Appeals

12. On 19 July 2023, the Requester requested the Department to acknowledge receipt of the Requested Records and, Mr. Lesiba Malotana, the Acting Head of the Department (“the Information Officer”), acknowledged receipt. On the same date, the Requester requested directions in respect of fees and, according to the Requester, no response was received.
13. The Requester was in regular contact with the offices of the Information Officer of the Department. On 14 August 2023, the Requester sent correspondence to the Department, reminding that a response regarding the Requested Records will fall due in three days. He requested that the Information Officer revert to him.
14. The Records were due on 18 August 2023 as contemplated in section 25(1) of PAIA, and the Requester submitted that he received no response. On 19 September 2023 the Requester submitted an internal appeal in respect of the records in terms of section 75(1) of PAIA. The Requester stated that the appeal was due to be finalised on 19 October 2023, in line with section 77(3)(a) of PAIA. Again, the Requester stated that no response was received from Mr. Malotana or any official from the Department.
15. It is noted that the conduct of the Department in failing to respond to the requested records amounts to deemed refusal in terms of section 27 (the request stage) and considered dismissed in terms of section 77(7) of PAIA (appeal stage).
16. The factual matrix provided by the Requester is not disputed by the Department. It appears that at that stage of the process, the Requester approached the Regulator to lodge his complaint.

Complaints and Settlement Certificate

17. The Complainant lodged his complaint with the PAIA Division which commenced with the investigation of the matter from March 2024.
18. The PAIA Division sent a letter dated 22 April 2024 to the Department, informing it of the complaint and its intention to conduct a pre- investigation.

19. A reference number CI 24/25 was allocated to the matter, and the PAIA Division started to interact with the Department.
20. The PAIA Division in its submissions referred to section 77F of PAIA, which enabled it to facilitate settlement processes and noted that it had observed cooperation on the part of the Department, following their issuance of the notice of intention to investigate the complaint.
21. The PAIA Division's facilitation of the settlement process resulted in a Settlement Agreement being concluded between the Complainant and the Department on 30 July 2024 and consequently, a Settlement Certificate was accordingly issued. The Settlement Certificate states the following:
 - 21.1. *"That the Information Officer of the department has granted the Complainant access to the requested records, subject to the redaction of certain personal information of the natural person, such as the identity number, ID Copy, residential address and cell phone number; and*
 - 21.2. *That the requested records will be disclosed to the Complainant within 30 days of this Settlement Certificate."* (own emphasis)
22. What follows from this phase of the process is the implementation or lack of implementation of the Settlement Certificate.

Post Settlement Certificate

23. On or about 12 September 2024 the Complainant, through his legal representatives, sent a letter to the PAIA Division and stated the following:
 - 23.1. *"The Complainant has now had an opportunity to go through the material provided by the Department.*
 - 23.2. *In respect of the audit report, none of the reports that were requested had been disclosed to Mr. Wicks despite the fact that four months have now lapsed.*

- 23.3. *It appears to the Complainant that the Department had not disclosed certain purchase orders related to contracts that directly implicate the actors that were the subject matter of Ms. Deokaran's investigation.*
- 23.4. *Evidence obtained by Mr. Wicks following the death of Ms. Deokaran shows that certain purchase orders, the existence of which can be proven by Mr. Wicks with reference to evidence in his possession, were not disclosed by the Department. We attached hereto as annexure D, a sample of such purchase orders identifying the number of the relevant purchase order and the parties to whom contracts were awarded in each case.*
- 23.5. *Self-evidently, we are not in a position to describe the full ambit of the department's non-compliance with respect to the purchase orders, since information related to contracts under R500 000.00 that are awarded by government departments to service providers is not presently made public...If such information was available to us, there would have been little need for a PAIA request in the first place."*
24. The PAIA Division, after having been informed of the Department's non-compliance with the Settlement Certificate, interacted with the Department and this resulted in the PAIA Division advising the Complainant to lodge a new complaint. The Complainant did as advised and reference number CI 392/24 was allocated ("the Second Complaint").
25. The Regulator concurs with the Enforcement Committee that, after having considered the Requests in this matter, it finds that there was no basis for a new complaint to be lodged, for the simple reason that the Settlement Certificate stipulates that failure to comply with the Settlement Certificate may result in the matter being referred to the Enforcement Committee.
26. However, the Second Complaint marked the beginning of another investigation process and during March 2025 the PAIA Division started asking the Complainant specific questions about:

- 26.1. Certain purchase orders related to contracts directly implicate the actors.
- 26.2. Clarity on which internal audit report has not been released/that the Complainant is referring to.
27. On 5 March 2025, the Complainant sent a letter to the PAIA Division², stating that:
- 27.1. It is astonishing that the Department could not easily identify (i) a purchase order when the exact number of purchase order and (ii) the identity of the contracting party was made available to it.
- 27.2. No audit report was disclosed by the Department.
28. Further, the Complainant stated that it is known to them that such reports (audit reports) do exist. The Complainant attached a copy of an audit report that the Department failed to disclose.
29. The Complainant stated that the Department's contempt of the Settlement Agreement goes further and an article authored by him was attached to the letter dated 5 March 2025, and the following paragraph is quoted:

*“According to [Gauteng department of health] spokesperson Motalatale Modiba, the internal team “**performed random audits across facilities**”. The findings, he said, identified weaknesses in supply chain management systems and controls, which were being addressed. [Emphasis supplied]”*

30. Further, the content of the aforementioned letter stated that the Complainant submitted a list of questions for the Department, inviting comments and the following paragraph is quoted as being part of the response from Mr. Modiba of the Department:

*“The scope of **the audits** included amongst other things testing whether procurement was made using Central Suppliers Database systems on goods and services, orders are placed in line with supply chain management procurement delegations, delivery*

² Bundle pg. 27

notes are aligned to resources procured, random checks on procured goods and services, checking whether institutions have a demand plan and goods are procured in line with that plan and whether the relevant committees such as the quotation adjudication committees are in place.

Recommendations were made out of the internal audit process and based on the risk exposure which allowed for the strengthening control measures within facilities with the aim of improving business operations and address shortfalls within the system. [Emphasis supplied]"

31. The Complainant stated that the Department is on record stating that multiple audit reports of this nature do exist. The Complainant attached a copy of a report which, according to the Complainant, the Department would have been required to disclose in terms of the Settlement Certificate.³
32. During March 2025, the Complainant expressed the recalcitrance, and the willful and alarming disregard of the constitutional obligations on the part of the Department. Further, the Complainant noted what it considered to be the Department's willful and alarming disregard of constitutional obligation. At that stage of the process, the Complainant persisted that the matter be referred to the Enforcement Committee for consideration, directing the Department to comply with the Settlement Certificate.
33. Further, the Complainant requested that the Enforcement Committee issue an order containing structural measures which will enable the Regulator to monitor the Department's compliance with order(s). It cannot be that at this stage; a further settlement proposal is still being pursued.

³The Bundle, page 36

⁴ Page 82 of the Bundle

34. A letter from the Department dated 25 March 2025 (Head of Department) ⁴, was sent to the PAIA Division stating that:

34.1. The Department has fully complied with the Complainant's request for information and the assertion that the Department has not complied with the request is incorrect.

34.2. The subsequent request of the Complainant differs from the original request, and in this regard the Department referred to his (Complainant) subsequent correspondence, which the Department quoted as follows:

"Specifically, the audit report request and certain purchase orders related to contracts that directly implicated individuals under investigations as part of Ms. Deokaran's"

35. The Department reiterated that it has fully complied with the initial request and the terms of the Settlement Certificate.

36. On 30 April 2025⁵ the Complainant responded to the content of the Department's letter dated 25 March 2025 and stated and/or raised, amongst other things, the following:

36.1. The highwater mark of the Department's response is that there has somehow been a new request. According to the Complainant, this is incorrect.

36.2. On 15 April 2025, the Department emailed the Complainant a single report which happened to be not the report already in possession of the Complainant. The Complainant stated that it is self-evident that the Department has not complied with the Settlement Certificate.

⁵ Page 112 of the Bundle

- 36.3. The Complainant (through his legal representative) provided proof of the Department's non-compliance with the request in the form of specific order numbers, evidencing transactions at Mamelodi Hospital that fall within the mentioned date range. No records were disclosed in respect of those specific purchase order numbers.
- 36.4. Whether the PAIA Division has specifically investigated and queried the specific purchase orders that were attached to this complaint as Annexure A8.
37. It appears from the records that the PAIA Division continued to engage the Complainant on 11 June 2025 regarding the Department granting permission to the PAIA Division to release the purchase order numbers to the Complainant.⁶ Further, the PAIA Division informed the Complainant that the purchase orders are the only information received from the Department and have not received any response about the report.
38. On 25 June 2025 the Complainant responded⁷ to the forementioned PAIA Division's email and stated that he confirmed the receipt of the attachments (the purchase orders) and stated that the Complainant does not accept the records sent as constituting the requested records and persisted that the entirety of the complaint has not been addressed by the PAIA Division. According to the Complainant, a list of purchase orders was only provided to the PAIA Division for purposes of demonstrating the Department's non-compliance. Those were not the requested records.
39. Further, the Complainant made the point that the Department's subsequent supply to the PAIA Division of the attachments (the purchase orders) demonstrates beyond shadow of doubt that the Department failed to disclose records that were part of the Settlement Agreement.
40. For purposes of completing the version of the Complainant on the issue of the purchase orders, he submitted in a letter dated 26 August 2025 which was shared with the Department that the purchase orders, were the exact purchase orders that the

⁶ Page 116 of the Bundle

⁷ Page 117 of the Bundle

Complainant had in his possession.⁸

41. Furthermore, at this point, the Complainant continued to state that it could not be understood that reference is still being made to a single “report” when there is evidence supplied to the PAIA Division referring to multiple audits and reference is made to the Department’s own spokesperson.
42. On or about 4 August 2025, the Information Officer of the Department submitted an affidavit⁹ to the PAIA Division stating the following:
 - 42.1 The Information Officer of the Department submitted the requested information to the Complainant and the PAIA Division.
 - 42.2 The Department has submitted a schedule of payments reflecting all transactions and disbursements ranging between R300 000.00 and R499 999.00 made to suppliers and/or service providers at Mamelodi Hospital during the period 1 January 2020 to 1 June 2023.
 - 42.3 The information is inclusive of purchase order, CDS reports, and company related information as requested.
 - 42.4 He confirmed that only one report falls within the scope and timeframe of the request.
 - 42.5 He referred to a letter from the Internal Control Unit of the Department and advised that no internal investigations were conducted on the basis of the late Ms. Deokaran’s disclosures, as the SIU assumed responsibility for the related investigations.
43. The Complainant, through his legal representatives, sent a letter dated 26 August 2025 to the Chairperson of the Regulator and stated his frustration with the manner in which the process is handled by the PAIA Division and what the Complainant referred to as,

⁸ Par 30, pages 93 to 95 of the Bundle

⁹ Page 87 of the Bundle

the Department's blatant non-compliance with its constitutional and legislative obligations.

44. Further, the Complainant submitted in the aforementioned letter that he has no idea as to the full extent of the Department's non-compliance because no journalist, or any member of the public, can have knowledge of the exact extent of the records of expenditure held by a government department. This captures, in our view, the essence of the Complainant's grave concern.
45. The PAIA Division submitted an internal memorandum dated 12 September 2025 and the purpose of it was to state its version of events in the handling of the matter and to seek guidance on the matter.
46. The essence of the PAIA Division's submissions is that:
 - 46.1. Notwithstanding the Department's statement indicating that multiple audit reports would be carried out by its offices, it has confirmed that only one audit was concluded during the period indicated in the PAIA request (01 January 2020 – 01 January 2023), and such report was provided to the Complainant.
 - 46.2. On the issue of purchase orders, the PAIA Division referred to the Complainant's version that purchase orders released by the Department were only a sample of the Department's non-compliance. According to the PAIA Division, the Complainant is requested to provide sufficient particulars to enable an official from the department to identify the record or records requested. The PAIA Division submitted that the Complainant should be more specific with the outstanding records, not only providing sample purchase orders.

LEGAL FRAMEWORK

*Right of Access to **any** information held by the State*

47. The **Constitution of the Republic of South Africa, Act 106 of 1996** ("the Constitution") guarantees everyone's right of access to **any** information held by the

state.¹⁰ This basic right finds its expression and implementation in PAIA, more specifically in section 11(1).

48. Further, PAIA states in section 11(3) that a requester's right of access to information contemplated in sub-section (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.

49. The Constitutional Court in ***Brummer v Minister of Social Development and Others***¹¹ eloquently stated the role of this constitutional right 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.”*
(own emphasis)

50. Further, the Constitutional Court in ***President of the Republic of South Africa and Others v M & G Media Ltd (“M & G case”)***¹² stated the following, which summaries the essence of right of access to information:

“[9] As is evident from its long title, PAIA was enacted'(t) to give effect to the constitutional right of access to any information held by the State'. And the formulation of s 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

¹⁰ Constitution sec. 32(1)(a)

¹¹ [2009] ZACC 21; 2009 (6) SA 323 (CC); 2009 (11) BCLR 1075 (CC).

¹² 2012 (2) SA 50 (CC)

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.**

[10] 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. The right to receive or impart information or ideas, for example, is dependent on it. In a democratic society such as our own, the effective exercise of the right to vote also depends on the right of access to information. **For without access to information, the ability of citizens to make responsible political decisions and participate meaningfully in public life is undermined.**" (own emphasis)

51. The Court provided guiding principles on how to approach matters of this nature. In **Smuts N.O. and Others v Members of the Executive Council: Eastern Cape Department of Economic Development, Environmental Affairs and Tourism and Others**¹³, the court identified the following three fundamental principles:

*"Importantly, three fundamental principles may be distilled following a purposive interpretation of the Constitutional right to access to information, read with PAIA. Firstly, **access to information is the norm**, and PAIA must be interpreted to promote this objective. Exemption from disclosure is an exception. As is evident from the wording of s 11, the exercise of the right has been formulated in peremptory terms once there has been compliance with formalities and should there be no basis for refusal. Secondly, **withholding information is permitted only in instances described in PAIA**. These exemptions and grounds of refusal must be narrowly construed because they involve limitation of a Constitutional right. While access may be denied where it is clearly justified, doubts should typically be resolved in favour of disclosure, and a discretion exercised accordingly. Thirdly, **the burden of justifying a limitation of a right falls on the party wishing to do so, and not on the right- holder.** This is to be discharged on a balance of probabilities by providing evidence that the record in question falls within the description of the ground of*

¹³ (1199/2021) [2022] ZAECMKHC 42 (26 July 2022)

refusal that is claimed.”¹⁴

ANALYSIS OF FACTS

Compliance with constitutional duties

52. The Complainant initiated two processes for the request of access to records on or about 17 July 2023. He was in regular contact with the Department during the process. On or about 17 August 2023, the Complainant reminded the Department that the Requested Records are due in three days. On the facts before us, the Department failed to respond in terms of section 25(1)(a) of PAIA. This conduct of the Department resulted in what is referred to as deemed refusal as contemplated in section 27.
53. Subsequently, the Complainant lodged internal appeal in terms of section 75(1) of PAIA. The Department failed to respond. It goes without saying that the Department, through its Information Officer, is under a constitutional duty to provide access to the Requested Records, unless the Department can prove that those records falls under the grounds of refusal as stipulated in Chapter 4 of PAIA.¹⁵ This conduct of the Department, in our view, does not auger well and therefore not acceptable.
54. The failure of the Department to comply with its constitutional duties left the Complainant with no option but to approach the PAIA Division on March 2024. The PAIA Division interacted with the Department and solicited responses on the Request Records. Further, the PAIA Division facilitated a settlement process between the parties, and this culminated in the conclusion of a Settlement Agreement on 30 July 2024, as contained in the Settlement Certificate. This should have marked the end of the matter, but for the reasons that will become apparent hereunder, the process remained incomplete.
55. As stated earlier in this report, the Information Officer of the Department agreed to grant access to the Requested Records, and such access should have been granted **within 30 days** from the date of the Settlement Certificate.

¹⁴ @par 15

¹⁵ Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Service and Others [2023] ZACC 13, paragraph 53

56. On or about 12 September 2024, the Complainant informed the PAIA Division that he had an opportunity to go through the materials released by the Department, the latter has not disclosed: (i) the requested reports; and (ii) certain purchase orders. It is our observation from this submission of the Complainant that there were certain records that were disclosed and received by the Complainant before September 2024. We shall consider each Request for Records.

The Audit Reports Records

57. The Complainant's submissions show that the Department did not disclose any Audit Report within 30 days from the date of the Settlement Certificate. The Department did not refute the Complainant's submissions in this regard. This conduct demonstrates failure on the Department's part to comply with the Settlement Certificate. It is trite that the privity and sanctity of contract entails that contractual obligations must be honoured when the parties have entered into the contractual agreement freely and voluntarily.¹⁶ The Department blatantly disregarded the requirements of the Settlement Certificate and therefore acted unlawfully.

58. Further, in a letter dated 25 March 2025, the Information Officer of the Department stated more than once that he has fully complied with the request for records and consequently complied with the requirements of the Settlement Certificate. Furthermore, the Information Officer indicated in the same letter that the assertion to the contrary is incorrect.

59. After having persisted that it has complied with the Settlement Certificate, the Department electronically mailed a single report to the Complainant on 15 April 2025. This conduct demonstrates that the submissions by the Department on 25 March 2025 that it had fully complied with terms of the Settlement Certificate, is not correct.

60. For the reasons stated herein, the Regulator agrees with the Enforcement Committee that the assertion by the Complainant is self-evident that the Department did not comply

¹⁶ Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd (183/17) [2017] ZASCA 176 (1 December 2017), at par 23

with the Settlement Certificate. No Audit Reports Records were disclosed within 30 days as provided for in the Settlement Certificate. In fact, a single report emerged more than seven months later, without explanation from the Department. This conduct falls short of compliance with the Settlement Certificate and the Department's constitutional duty.

61. Further, on or about 25 March 2025, before the Department disclosed a single report on 15 April 2025, the Complainant, through his legal representatives, sent correspondence which stated the following:

*“....., it is known to us that such reports exist. We attach hereto as **CD3** a copy of such a report. At the very least, this report clearly would have been required to be disclosed in terms of the settlement agreement. It was not.”*

62. It is the version of the Complainant that the single report which was disclosed by the Department on 15 April 2025 is not the report that the Complainant sent to the PAIA Division marked as “**annexure CD3**”. This point is well established. In addition to the aforesaid, it is of serious concern that the Department appears to have taken no effort to respond to the existence of, or explain, the report marked “**annexure CD3**” and its non-disclosure to date.

63. Further, the Complainant referred to, and quoted, a news article he authored which referred to the spokesperson of the Department, Mr. Motalatale Modiba stating that the internal team “performed random audits across facilities”. There is no response or explanation from the Department on this aspect.

64. Furthermore, the Complainant referred to the response of the Department to a list of questions and that response quoted earlier in this report refers to: (i) scope of audits; (ii) institutions; (iii) relevant committees; and (iv) facilities. It is the contention of the Complainant that the Department is on record stating that multiple audit reports of this nature do exist. This contention is specifically not challenged by the Department.

65. On 4 August 2025 the Information Officer of the Department deposed to an affidavit which, in essence states, in respect of the Audit Reports Requests, that the Department (i) has submitted the information requested by the Complainant; (ii) only one report

(internal audit report) falls within the scope and the timeframe of the request; (iii) no internal investigations were conducted on the basis of the late Ms. Babita Deokaran's disclosures; and (iv) the Special Investigation Unit (SIU) has assumed responsibility for related investigation.

66. The Information Officer stated under oath that there is only one report that falls within the scope and timeframe of the request. It is devoid of responses to, or explanations of, statements made by the spokesperson of the Department, Mr. Modiba, that the Audit and Compliance was assigned to "performed random audits across facilities". Further, no response is provided by the Department on why there is reference to scope of audits. The Regulator is not able to place more weight on the affidavit without more facts to controvert the contention of the Complainant that the Department is on record stating that multiple audits exist.
67. The question before the Enforcement Committee was whether the Department provided sufficient information to conclude, on a balance of probabilities, that there is only one Audit Report, and no multiple audit reports exist. The Enforcement Committee found that the content of the affidavit of the Information Officer does not provide sufficient explanation to counter the submissions by the Complainant, which the Regulator agrees with. Further, what is startling is the lack of response to what appears to be an audit report sent by the Complainant to the PAIA Division on 25 March 2025, to demonstrate the Department's non-disclosure. This does not assist the Department, in the absence of more being stated.

The Mamelodi Hospital Records

68. The version of the Complainant is that the Department has not disclosed certain purchase orders related to contracts that directly implicate the actors that were the subject matter of Ms. Deokaran's investigation. The Complainant submitted, for purpose of demonstrating the Department's non-compliance with the Settlement Certificate, **annexure D**¹⁷ attached to the Complainant's legal representative's letter to the PAIA Division, dated 12 September 2024.¹⁸

¹⁷ Annexure D appears to be marked Annexure CD2 at page 35 of the Bundle

¹⁸ Page 99 of the Bundle

69. **Annexure D**, according to the Complainant, is a sample of such purchase orders identifying the number of the relevant purchase orders and the parties to whom contracts were awarded in each case. This version of the Complainant remains uncontroverted. Therefore, the Regulator concurs with the Enforcement Committee that the Department did not comply with the terms of the Settlement Certificate, as it required it to disclose the records within 30 days of the Settlement Certificate.
70. Further, the Complainant submitted that the purchase orders which the PAIA Division disclosed to him on 11 June 2025 were exactly the purchase orders which the Complainant *already* had in his possession. The Complainant contends that these purchase orders were earlier used as samples by him to demonstrate the Department's non-compliance in this regard. This version of the Complainant is not controverted by the Department.
71. The Regulator agrees with the Enforcement Committee that the submissions made by the Department on 25 March 2025 do not justify non-compliance with the Settlement Certificate.
72. The submissions by the Complainant together with the conduct of the Department as reflected on record cast serious doubts on whether the Department has complied with the Settlement Certificate.
73. The Department, after having been afforded an opportunity at various stages of the investigation by the PAIA Division, and consideration process by the Enforcement Committee, failed to demonstrate that it had complied with the Settlement Certificate dated 30 July 2024.

CONCLUSION

74. The Complainant has complied with the procedural requirements prescribed in PAIA relating to the request for access to the records held by the department.

75. The Department failed to comply with its constitutional duties contained in PAIA as it repeatedly failed to respond to the Complainant's two Request for Records dated 17 July 2023, including the appeal process.
76. The contention by the Department on or about 25 March 2025, that it has complied with the Settlement Certificate dated 30 July 2024, is incorrect.
77. The Department failed to provide any explanation regarding its failure to disclose any audit report in respect of the Audit Reports Records within 30 days from the date of the Settlement Certificate.
78. The Department failed to provide any explanation regarding its non-disclosure of all records in respect of the Mamelodi Hospital Records within 30 days from the date of the Settlement Certificate, including failure to disclose all purchase orders in terms of Request Form 2.
79. The Department failed to provide an explanation in any way for the non-disclosure of the audit report furnished by the Complainant to the PAIA Division which, according to the Complainant, serves as evidence of non-disclosure.
80. The Department failed to provide any response or explanation to the statements made by the Spokesperson of the Department regarding the content of the email/correspondence to the Complainant dated 20 July 2022.
81. The affidavit of the Information Officer of the Department dated 4 August 2025 does not contain sufficient details and explanations on submissions raised by the Complainant.
82. Therefore, the Complainant is entitled to have access to the Requested Records.

83. COMPLIANCE PERIOD

The Information Officer is hereby directed to comply with this Enforcement Notice **within 31 days** from the date of receipt of this Notice.

84. REVIEW OF THE DECISION OF THE INFORMATION REGULATOR

Please be advised that the Information Officer has the right to apply to a Court with jurisdiction for appropriate relief, in terms of section 82 of PAIA, should he or she be aggrieved by a decision of the Regulator in this Notice.

The Information Officer is required to notify the Regulator, within 10 working days of receipt of this notice, about his or her intention to apply to a court for appropriate relief in terms of section 82 of PAIA.

The application, in terms of section 82 of PAIA, must be brought to a Court having jurisdiction for appropriate relief within a period of 180 days from date of receipt of this Notice.

85. CONSEQUENCES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

Please note that the Information Officer who fails to comply with this Enforcement Notice is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three years or to both such a fine and such imprisonment.

DATED at JOHANNESBURG on 08 JUNE 2026.



ADV. PANSY TLAKULA
CHAIRPERSON: INFORMATION REGULATOR