IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER 2023-132918

SAKELIGA NPC	Applicant
and	
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	1ST Respondent
THE NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	2ND Respondent
THE DIRECTOR GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	3RD Respondent
THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT COOPERATIVE GOVERNANCE	4TH Respondent
THEMBI NKADIMENG	5TH Respondent
MBULELO TSHANGANA	6TH Respondent
THINAVHUYO SKOSANA	7TH Respondent
NKOSAZANA CLARICE DLAMINI-ZUMA	8TH Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	9TH Respondent

FIRST TO SEVENTH RESPONDENTS' ANSWERING AFFIDAVIT

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I, the undersigned,

MBULELO TSHANGANA

do hereby make oath and state as set out below.

A. INTRODUCTION

1. I am the current Director-General ("**DG**") of Cooperative Governance (**"DCoG"** or the **"first respondent"**), with address at 87 Hamilton Street, Arcadia, Pretoria, Gauteng. Before this office was held by Thembi Nkadimeng ("Minister Nkadimeng") or the fifth respondent, this office was previously held by Minister Dr Nkosazana Clarice Dlamini Zuma ("Minister Dlamini Zuma" or the "eighth respondent"). No relief is sought against Minister Dlamini Zuma, who is cited as the eighth respondent herein.

2. I have had occasion to consider the applicant's request for information of 15 December 2020, the unopposed PAIA application against Minister Dlamini Zuma and her administration as well as the default order of 9 November 2022.

3. In the light of the above, and in my role as the incumbent DCoG DG, I am authorised to depose to this affidavit on behalf of the respondents since the application concerns CoGTA's alleged failure to comply with a court order. I have also been delegated by the sixth and seventh respondents to oppose

this application as it relates to them being cited in their personal capacities. Their confirmatory affidavits are filed evenly with this affidavit.

4. The contents of this affidavit fall within my personal knowledge, save where otherwise stated or the contrary appears from the context.

4.1. Such content is to the best of my knowledge and belief both true and correct.

4.2. Where I refer to facts that do not fall within my personal knowledge, I annex the necessary confirmatory affidavits.

4.3. Furthermore, where I make averments not directly within my knowledge, I do so based on information made available to me or which has been ascertained from the persons whose names I disclose. I verily believe such information to be true and correct. To the extent that reliance is placed on any hearsay evidence, I submit that it is in the interests of justice for it to be admitted in terms of section 3(1) of the Law of Evidence Amendment Act 45 of 1988.

5. Where I make legal submissions in this affidavit, I do so on the advice of the respondents' legal representatives, which advice I accept as correct.

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B. THE PARTIES CITED AND RELIEF SOUGHT

6. The applicant, Sakeliga NPC (**"Sakeliga"** or the **"applicant"**) seeks, *inter alia*, a declaration order of civil contempt, coupled with an order for the imprisonment of former Minister, the Honourable Thembi Nkadimeng.

7. At the time of deposing to this affidavit CoGTA had no Minister, since it ceased to have a Minister when the President was sworn in on 19 June 2024. The President will in due course appoint an executive authority, but until then I am the designated official responsible for DCoG's day to day administration, and I depose to this affidavit in that capacity. Reference to CoGTA's current administration is thus to me in my capacity as DG and DCoG's incumbent Information Officer, Thinavhuyo Skosana (the fourth respondent). To the extent that averments are made in defence of former Minister Nkadimeng in both her official and personal capacities, she has authorised me to do so and her confirmatory affidavit is filed evenly with this affidavit.

8. The administration is also cited in our personal capacities as the fifth, sixth, and seventh respondents, respectively. In terms of prayer 4 of the Notice of Motion the applicant seeks an order that we are committed to prison. As I show in this affidavit no case has been made for an order that the fifth, sixth and seventh respondents are sentenced to imprisonment.

9. Moreover, no case is made in the founding affidavit on the extent that we are alleged, in our personal capacities, to have wilfully failed to comply with an

order of this court. We are blandly cited without more, in our personal capacities – as the fifth to seventh respondents – for the sole reason that an order of imprisonment is issued against us. The significance of this material misdirection will become apparent in due course.

10. The applicant also cites the erstwhile Minister, Minister Dlamini Zuma in this application. Whilst the applicant contends that no costs order is sought against Minister Dlamini Zuma, it is apparent from the Notice of Motion that no substantive relief is sought against her too. The same applies to the ninth applicant, the President of the Republic of South Africa – the Notice of Motion seeks no relief against the President. This is so notwithstanding the fact that the order of 9 November 2022, which the applicant seeks to enforce was directed against Minister Dlamini Zuma and the President, not Minister Nkadimeng, me or the incumbent Information Officer.

11. The order was issued in terms of an unopposed application for access to information issued out of this Court under case number 39370/2021. The Notice of Motion to that application, which the applicant attached to the founding affidavit cites the following respondents:

    11.1. The Minister of Cooperative Governance and Traditional Affairs as the first respondent;

    11.2. The National Department of Cooperative Governance as the second respondent;

11.3. The DG of CoGTA as the third respondent;

11.4. CoGTA's Information Officer as the fourth respondent; and

11.5. The President of the Republic of South Africa as the fifth respondent.

12. However, the parties are described differently in the founding affidavit, as follows:

11.1 "*The first respondent is the National Minister of Cooperative Governance and Traditional Affairs, currently Dr Nkosazana Clarice Dlamini Zuma*, who is cited *herein as the nominal head of the National Department of Cooperative Governance and Traditional Affairs.*"

11.2 "*The second respondent is the National Department of Cooperative Governance and Traditional Affairs.*"

11.3 "*The third respondent is the Information Officer in the National Department of Cooperative Governance and Traditional Affairs, an office currently held by Ms Avril Williamson in her capacity as the appointed information officer of the second respondent in terms of the Promotion of Access to Information Act, No. 2 of 2000.*"

11.4 "*The fourth respondent is the President of the Republic of South Africa in his capacity as the head of the national executive and head of the Cabinet in terms of the Constitution 1996*".

11.5 The Director-General is not cited as a party in the affidavit. The specific citations and designations appear in paragraphs 14 to 17, respectively, of the founding affidavit to the unopposed application.

13. It is trite that in motion proceedings the affidavits constitute both the pleadings and the evidence. The court order of 9 November 2022 must therefore be interpreted and understood in terms of the pleadings and the evidence given under oath by the Chief Executive Officer of the applicant on 4 August 2021.

14. The applicant did not attach the said affidavit to the papers in the contempt application. For ease of reference, I attach it hereto as **"MT1".** What it shows is that no case has been made out for the relief sought in the contempt application against the current respondents.

15. While the affidavit seeks no relief against the President, in his capacity as the **fourth respondent**, prayer 3 of the 9 November 2022 order grants the applicant relief against him. It provides that:

"The First, Second, Third and Fourth Respondents are ordered to comply with the Applicant's PAIA request for information within 30 days of the date of this order and to provide the Applicant with all of the documents and/or information requested therein as is in their possession and/or under their control."

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16. This is not without consequence. The first consequence is that no order was granted against the Director-General in the unopposed application. This is because the relief sought in the founding affidavit was only against the Minister, the Department, the Information Officer and the President:- the first, second, third and fourth respondents. The order only compels these parties, not the Director-General to comply with the applicant's PAIA request. As a result, the contempt order sought against the office of the Director-General is fatally flawed because no relief was granted against the Director-General in the order which the applicant seeks to enforce through the contempt application.

17. The second consequence is that the applicant did not seek, and the court did not grant any order against Minister Nkadimeng, and the current Information Officer. The same applies to the current Director-General. Rather the order of 9 November 2022 was against the previous Minister, Minister Dlamini-Zuma and her administration, and to the extent that the order compels compliance with the applicant's PAIA request of 15 December 2020, it is only Minister Dlamini Zuma and her administration, including the erstwhile Information Officer, who are required to do so, and who are able to comply with its terms.

18. The order compels Minister Dlamini Zuma and her administration to provide *"[a]ll records, reasons, reports, findings, deliberations, communications, memoranda and/or further documentation* ***relied upon by the Minister of***

Cooperative Governance in making the following decisions and/or taking the following steps..."

19. The steps listed are of course the thirteen extensions of the state of disaster and the seven occasions when the Regulations issued under the Disaster Management Act were amended. It is Minister Dlamini Zuma, and perhaps the former Information Officer, Ms Williamson, who have direct knowledge of the record relied on in declaring and extending the state of disaster and amending the Regulations. Neither my administration nor I have such direct knowledge. Thus, no personal obligation can be attributed to us in our official capacities to give effect to the order of 9 November 2022.

20. Yet, the applicant approaches this court on the premise that we, in our official capacities, failed to give effect to 9 November 2022 order. In addition to the contempt order, the applicant seeks three new orders, not granted in the order of 9 November 2022.

21. Insofar as it pertains to the new relief, outside the framework of the contempt application, the applicant seeks orders that this court direct Minister Nkadimeng and the current administration to:

"3.1 ensure that all documents and/or information provided are properly sorted and collated when delivered to the applicants and/or their attorneys; and

3.2 ensure that all documents and/or information provided clearly indicate to which paragraph or sub-paragraph of the applicant's request for information of 15 December 2020 in terms of the Promotion of Access to Information Act 2 of 2000 ["PAIA request for information"] relate; and

3.3 thereafter deliver an affidavit to this Court and the applicants that no further documents and/or records falling within the ambit of the applicant's PAIA request for information are in the first to fourth respondent's possession and/or under their control."

22. We cannot give effect to these prayers. We have no direct knowledge of the documents relied on in the declaration and extension of the state of disaster and the amendment of the Regulations. Therefore, we cannot sort and collate them, number them appropriately, and declare under oath that there are no further documents to be disclosed. This information is within the sole remit of Minister Dlamini-Zuma, and Ms Williamson, and it is these officials who, in their official capacities were personally responsible for the implementation of the order, not the current administration.

23. In her capacity as the former Minister, Minister Nkadimeng, myself and the current Information Officer, have no personal or direct knowledge of the documents relied upon by Minister Dlamini-Zuma when she made the decisions and took the actions referred to. This is a central component of the 9 November 2022 order, since it must be read together with the December 2020 PAIA request, to which it gives effect.

24. Notwithstanding the material role of the previous administration, the 9 November 2022 order grants no relief against Ms Williamson, and she is not cited in the current application. The order directs, among others, the Minister Dlamini Zuma, the previous Information Officer and the President to give effect to the applicant's 15 December 2020 PAIA request. While the Minister Dlamini Zuma and the President are cited in this application, no relief is sought against them.

25. In the premises, the application for contempt must fail for citing the incorrect parties, and not seeking relief against the parties against whom the order of 9 November 2022 operates.

26. This application must also fail because, according to Minister Dlamini Zuma, she complied with the order as she furnished the applicant with the PAIA record that was requested on 15 December 2020 and which she was ordered to produce in terms of the 9 November 2022 court order. In these circumstances, the previous executive authority and her administration cannot be said to be in contempt of court.

C. OVERVIEW OF RESPONDENTS' OPPOSITION TO THE APPLICATION

27. In addition to what I have stated above, there are several reasons why this application is fundamentally flawed:

27.1. There was no order granted against Minister Nkadimeng, me in my capacity as DG, and the current Information Officer, Mr Thinavhuyo Skosana.

27.2. As stated above, the order was granted against the 1st, 2nd, 3rd, and 4th respondents, namely, Minister Dlamini Zuma, the Department of CoGTA, Ms Avril Williams in her capacity as Information Officer and the President of the Republic of South Africa in case 39370/2021. They were ordered to comply with the Applicant's PAIA request for information within 30 days of the 9th of November 2022 and to provide the Applicant with all of the documents and/or information requested as is in their possession and/or under their control.

27.3. The documents and/or information requested were all records, reasons, reports, findings, deliberations, communications, memoranda and/or further documentation **relied upon by Minister Dlamini-Zuma in making certain decisions and taking certain steps.**

27.4. As stated above, Minister Dlamini Zuma maintains that she and her department complied with the order by furnishing the requested record.

27.5. Apart from accepting what Minister Dlamini Zuma has said and done, which we believe to be true, Minister Nkadimeng, myself and Mr

Skosana do not have direct or personal knowledge of the documents and/or information upon which Minister Dlamini Zuma relied when she made the said decisions and took the said steps.

27.6. Consequently, there can be no question of us not complying with an order that was not granted against us.

27.7. It follows that we cannot be held to be in contempt of the said order.

27.8. In the premises, this application is totally misconceived.

27.9. For completeness' sake, I wish to deal with the requirements for contempt of court.

26.10 It is trite that an applicant for this type of relief must prove the following:

26.10.1 The existence of a court order;

26.10.2 Service or notice thereof;

26.10.3 Non-compliance with the terms of the order; and

26.10.4 Wilfulness and *mala fides* beyond reasonable doubt.

The existence of the order and service or notice thereof.

27 Although it has been granted against other parties, as stated above, the order exists, and on 1 June 2023, our current administration and were given notice thereof as per the letter attached to the founding affidavit at "**SA31**". As I demonstrate, this is the only requirement that has been complied with.

Compliance with the order

28 According to her, former Minister Dlamini-Zuma implemented the order by furnishing the applicant with the record of her decisions on no less than three occasions:

28.10 First, the record was delivered to the applicant's attorneys on 22 December 2022.

28.11 Secondly, it was also uploaded on Caselines on 22 December 2022 when the offices of the applicant's attorneys were closed and physical delivery was not possible.

28.12 Thirdly, an updated record and index were served on both 6 and 11 January 2023. The applicant's only objection at the time was that the documents furnished are in the public domain. But this was in any event without merit since the record furnished by the previous administration, on my perusal and inspection thereof, also

comprised the minutes of various meetings that were not in the public domain and the progress reports from organs of state, as well as certain contributions of the National Joint Operational and Intelligence Structure ("Natjoints").

29 To be clear, the order sought is not premised on an alleged failure to comply with the order of 9 November 2022. Minister Dlamini Zuma and the previous administration gave effect thereto as I have set out above. Her confirmatory affidavit and that of DCoG's previous Information Officer, Avril Williamson, will be filed evenly with this affidavit or before the hearing of this matter.

30 Rather, the order sought is premised on the applicant's subjective view of the sufficiency of the record furnished. There are two material, incontrovertible facts that simply cannot be disputed. First, a record was furnished. Secondly, the information it consisted of was collated on the basis of the applicant's PAIA request. This alone means that the contempt application must fail.

31 The fact that there is a dispute on the sufficiency of the record can never form the subject matter of contempt proceedings. The applicant haplessly fails in discharging the onus that the order was not complied with. On this score, the applicant asserts only that it seeks access to *"every scrap of paper generated, reviewed, considered, received, and/or relied upon by the Minister and her Department during the formulation of her 2020 Disaster Management Act Regulations"*.

32 But it fails to set out the basis for its contention that the order was not complied with, citing only the fact that the documents furnished were already in the public domain and extracted from litigation pending against the Minister and the Department at the time.

33 This is legally irrelevant. If the applicant's case is that the record does not meet the terms of the order it is the applicant's responsibility to record with sufficient clarity the nature and extent of the alleged deficiency and to request information specific to the "*records, reports, findings, deliberations, communications, memoranda, and/or further documentation*", in its PAIA request. In other words, it has to accurately identify all the documents upon which Minister Dlamini Zuma actually relied in making her decisions and, more importantly, identify all such documents that she has wilfully not furnished. This, it has not done.

34 It is vitally important to appreciate that the PAIA request of 15 December 2020 and the Court Order of 9 November 2022 refer to historical events, circumstances and documents, namely, all "*records, reasons, reports, findings, deliberations, communications, memoranda and/ or further documentation*", relied upon by Minister Dlamini Zuma and her administration in making certain decisions and taking certain steps during 2020. These steps include the extension of the state of disaster and the amendment of the Regulations. Minister Nkadimeng and her administration were not in CoGTA's employ in any capacity at this time and have no insight

into the documents relied on and their role and relevance in the decisions of the erstwhile administration. But what I can positively state, is that upon taking office in March 2023 and acquainting myself with the history of the matter, I discovered that, in compliance with the order of 9 November 2022, a record had been furnished by the former administration on three separate occasions.

35 What is clear from this application is the broad and ambiguous nature of the PAIA request. Save to contend that the documents have not been properly collated, the only ground alleged for the respondents' contempt, is the so-called deficiency of the record, on account of the public nature of the documents and its extraction from litigation proceedings. But the genesis of the record furnished bears no relevance to the question of compliance with the court order. The further documents sought are broadly "*every scrap of paper*", followed by broad demands for inter-departmental documents and other correspondence relating to the management of COVID-19. But as I show in this affidavit, these documents were generated by Cabinet, the National Disaster Management Centre and the National Coronavirus Command Council, and comprise records of Cabinet, which are exempt from PAIA in terms of section 12(a) of the Act.

36 In any event, the court order compels CoGTA to furnish the record called for in terms of the 15 December 2020 PAIA request as given effect to by the said order. As stated above, the former Minister and her administration

did so. PAIA requires only that the record, regardless of its form or medium comprise information "*in the possession or under the control of that public or private body*", "whether or not it was created by the body in question". The record furnished to the applicant by Minister Dlamini Zuma, the former Director-General ("DG") and Information Officer ("IO") was information in CoGTA's possession and under its control and, as appears from the index to the record furnished, consisted of documents in the CoGTA's Minister and Department's possession when the Minister exercised her powers to declare the state of disaster, extend it seven times and amend the Regulations governing the state of disaster accordingly.

37 It is perhaps appropriate to record at this stage that former Minister Dlamini-Zuma was also faced with a similar request for access to information from Member of Parliament, Advocate Glynnis Breytenbach. That PAIA request is attached hereto and marked as "**MT2**". As is apparent therefrom, the request mirrors the applicant's request. The index to that record is attached as "**MT3**" hereto, and the sufficiency of that record was never called into question. Since the record is voluminous, to avoid prolixity, it will be uploaded onto Caselines as an independent section. For the sake of completion, I also attach as "**MT4**" the index to the record furnished in implementing the 9 November 2022 order, and that record too will be loaded onto Caselines.

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38 It is also necessary that I set out at this stage the role of the CoGTA Minister and the Department in the declaration of the state of disaster, its extension and the amendment of the Regulations governing the state of disaster. To make the point, I must go into some history of how the COVID-19 pandemic was managed by the National Executive, which is a matter of public record.

39 The first case of COVID-19 in South Africa was confirmed on 5 March 2020. About a week later the World Health Organisation declared the outbreak of COVID-19 to be a pandemic. By 15 March 2020, the number of cases in South Africa had risen to about 40. On that day, the head of the National Disaster Management Centre ("the NDMC") issued a notice in terms of section 23(1)(b) of the Disaster Management Act 57 of 2002 ("DMA") in which he classified the pandemic as a national disaster.

40 The effect of this classification was, in terms of section 23(8) of the DMA, to place the primary responsibility for coordinating and managing the disaster on the National Executive.

41 On the same day, and as a result of the classification of the pandemic as a national disaster, the CoGTA Minister, having been designated by the President as the responsible Minister in terms of section 3 of the DMA, and in pursuance of a cabinet decision, declared a national state of disaster in terms of section 27(1) of the DMA.

42 On that day too, the National Coronavirus Command Council ("NCCC") was established as a cabinet committee that would devote itself exclusively to dealing with the pandemic. It consisted of the President and 19 Ministers. On 20 March 2020, the NCCC was expanded to include the entire cabinet. It is important to note that, although the whole of Cabinet sat on the NCCC, it is not *qua* the NCCC, a decision-making body. Rather, it coordinated, facilitated and implemented the national government's response to COVID-19. The facilitation role included enabling the Minister of CoGTA to consult relevant Ministers, for the purposes of section 27 of the DMA and more generally.

43 On 18 March 2020, the CoGTA Minister promulgated the first regulations in terms of the DMA. The regulations were based on various sources of information from different government departments as communicated by their executive authorities.

44 Under the banner of the NCCC, the Cabinet met on each occasion that it was necessary to determine whether to place the country under lockdown, to extend (or relax) the state of disaster or amend the Regulations governing the state of disaster. The Cabinet 'sitting in committee as the NCCC' decided these matters. The cabinet decisions were then given effect to by the Minister of CoGTA. The state of disaster was extended seven times and the Regulations amended thirteen times.

45 Thus, the declaration of the state of disaster was made after Cabinet had deliberated on the matter and decided to exercise its powers under section 26(1) of the DMA. The deliberations, minutes, and the presentation at the meetings of the NCCC constitute cabinet records to which PAIA does not apply, as is clear from section 12(a) of the PAIA Act. In addition to that they have also been classified as secret and as a result cannot be disclosed to the applicant.

46 I am advised that all these meetings, the presentations made thereat, the minutes they generated, the communications, emails and all other documents emanating from these meetings are records of either Cabinet or one of the Cabinet committees established to implement the decisions made. As such they have not been disclosed to the applicant falling as they do under the exclusion in section 12(a) of PAIA.

47 It is important to note that once the NCCC made a decision or recommendation, drafters were engaged to implement the decision, be it to extend the state of disaster or amend the Regulations. These amendments were then sent to the CoGTA Minister for her to give effect thereto under the DMA. But the extensions and amendments were only carried out pursuant to a decision by the Cabinet, and the production of a Cabinet Memorandum authorising such decision. It was only once the Cabinet Memorandum was written and signed that the CoGTA Minister

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exercised her powers either extending the state of disaster or amending and publishing the Regulations.

48 Thus, when the CoGTA Minister declared the state of disaster, extended it, and amended and published the Regulations, she was implementing decisions taken by the Cabinet at the NCCC. It was simply that the CoGTA Minister performed the *ex-officio* function of regularising the decisions made under the prescripts of the DMA as the Cabinet member responsible for the administration of the DMA.

49 These 'facets' of information were prepared for the NCCC by bodies such as the Ministerial Advisory Committee, the Forum of South African Directors-General (**"FOSAD"**), and the Natjoints. The Natjoints specifically created a management committee with workstreams to empower the NCCC to make decisions at their meetings. The reports were multi-faceted, covering the impact of the virus on the economic, health, legal and education sectors, among others. The information was sensitive and only disclosed to the NCCC either directly by the Natjoints or through FOSAD, which, given the nature of the pandemic had begun to function as a sub-committee of the NCCC. In the end, the goal that was achieved was that the Natjoints and the DGs through FOSAD would make recommendations to the NCCC, with the deliberations and recommendations emanating from the parallel workstreams established. The reports and recommendations from Natjoints and the DGs were collated by the Secretary of the Natjoints,

who prepared a business case for the attention of FOSAD, and the single business case was in turn presented by the Chair of Chairs to FOSAD.

50 Once the DGs deliberated on the business case it would receive the attention of the NCCC. All the information that came into workstreams through the Natjoints and FOSAD and eventually packaged and presented to the NCCC was managed by the South African Police Services (**"SAPS"**) given its confidential and sensitive nature. As part of this process, the information that was selected to be made publicly available were the Ministerial Advisories from the Department of Health because these statistics, preventative measures and precautionary advice were central to managing the impact of COVID-19 and mitigating the spread of the disease.

51 As I understand, the Ministerial Advisories are not only public information but have also been made available to the applicant. The remaining documents discussed in the passages above, which informed whether to extend the state of disaster or amend the regulations are however Cabinet records subject to the exclusion in section 12(a) of PAIA.

52 In acquainting myself with the history of the matter, it became apparent that when PAIA applications of the current nature first arose, with the Breytenbach request being among the first, it was based on the misconception that the records are held by CoGTA, and the decisions made that of the CoGTA Minister. But this is not the case. All the

information that the CoGTA Minister had at her disposal, and that could be shared with a public body such as the applicant is as set out in the index to the Breytenbach record and the index to the record furnished to the applicant in December 2022 and January 2023. Notably, the Breytenbach record did not lead to any further litigation regarding alleged non-compliance or contempt proceedings.

53 I am also reliably advised by Mr Jurgens Dyssel from the National Disaster Management Centre's Policy and Legislation Unit on the reasons for the format in which the record was furnished. His confirmatory affidavit will be filed evenly with this affidavit or before the hearing of this application. He records that particularising the documents provided proved close to impossible because those responsible for the compilation of records were stuck in meetings almost every day from March 2020 to December 2020. There was a morass of paper and without clarity on the nature of the "*records, reasons, reports, findings, deliberations, communications, memoranda and/ or further documentation*", the best that could be done was to furnish the applicant with the information that could be disclosed and, of course, information that was in CoGTA's possession or under its control. These documents are as reflected in the indices set out above and attached to this affidavit.

54 To the extent that what was sought related to confidential documents, such as Cabinet records, these could not be disclosed. The information made

available by the former IO was information that she and indeed the rest of the administration had access to. The IO and other administrative officials were not privy to the NCCC meetings and were certainly not furnished with the information that was given to the NCCC. The only officials who had access to confidential information were the Secretariat of Cabinet, the Inter-Ministerial Committee, and of course, the Natjoints and FOSAD. The information so collated became a record of Cabinet, and in the end, what was furnished to the applicant was the information that could be publicly disclosed and was in the possession and under the control of CoGTA.

55 Given the coordinated way COVID-19 was managed, there may be other information that can be publicly disclosed. But CoGTA has acquitted itself in discharging the order by furnishing all the information at its disposal. If the applicant contends otherwise, it is the applicant who must be clear on what else in its view is needed in the implementation of the order.

56 Thus, I am advised that the previous administration acted in terms of the wording of the applicant's request by providing all the information upon which the CoGTA Minister relied. The request was anything but a model of clarity on the precise nature of what was sought. It is the applicant's responsibility to create such clarity, not CoGTA's. Furthermore, information on the declaration of the state of disaster, its extension and the amendment of the Regulations all fell within the framework of submissions to Cabinet. They were classified and shared on a need-to-know basis with relevant

officials only, and, as I have indicated, ultimately what the former CoGTA Minister made available, as I understand, comprised what she could make available and what was at her disposal. The application falls dismally short of establishing otherwise.

57 Finally, it is important to note that the national state of disaster which had been declared on 15 March 2020 was terminated by Minister Dlamini- uma on 4 April 2022. The said termination was published in Government Gazette No. 46197 under GN R. 19988. A copy thereof is attached hereto and is marked "**MT5**".

No wilful or *mala fide* intent not to implement the order.

58 It is clear from the above that the order has been complied with. But even if this were not the case, and the applicant succeeds in establishing the preliminary requirements for contempt, a high threshold is set for the grant of such an order. The breach of the November 2020 order must not only be deliberate, but non-compliance therewith must be both wilful and *mala fide*. Furthermore, where, as in this case, committal for contempt is sought, the evidentiary threshold to establish the offence is the criminal standard of proof beyond reasonable doubt.

59 So, where the order exists, was served on the alleged contemnor and non-compliance shown, wilfulness and *mala fides* is presumed. But I am advised that where wilfulness and *mala fides* are presumed, the contemnor

must discharge an evidentiary burden on a balance of probabilities showing that the non-compliance was neither wilful nor *mala fide*.

60 But even where this is not the case, i.e. where the requirements have been shown, committal is not the only appropriate remedy. This honourable court has the discretion to grant a civil remedy other than committal. But where committal is specifically sought and against officials in their personal and representative capacities, I am advised that the applicant for contempt must identify the obligations imposed by the court order on the individuals so cited and in their different capacities, and what is more, they must be joined in the litigation.

61 In this case, the applicant has not identified the obligations imposed on us as current CoGTA officials by the court order. I am advised that this is necessary because it is a key element of contempt that the official in question must personally deliberately defy the court order. Stated differently, the fifth to seventh respondents must be personally responsible for the implementation of the obligations imposed by the order.

62 I am advised further that the Constitutional Court has held where, as in this case, a public official is cited for contempt in her or his personal capacity, it is the official herself or himself that must have wilfully and maliciously failed to comply with the order, not the structures for which such official is

responsible. It is self-evident that the applicant's complaint is not against us. It cannot be, since we had not been appointed when the order was granted and therefore, the order was not directed at us personally. Rather, the relief sought is against the offices we occupy, the structures for which we are responsible, against which a contempt order cannot issue.

63 Thus, the prevailing and oft-cited principle is that there is no basis in our law for orders of contempt to be made against officials of public bodies who are not personally responsible for the wilful default of the order that lies at the heart of the contempt proceedings.

64 This is compounded by the fact that the 9 November order in any event grants no relief against the office of the DG, and thus no contempt application can issue against the DG. The order also grants substantive relief against the President in directing that he give effect to the order applicant's December 2020 PAIA request, but no case was made out for an order against him in the founding affidavit to the unopposed application, and no relief was sought against him as appears from that application. Finally, the executive authority personally responsible for the implementation of the order is cited in this application, but no relief is sought against her. Together, all of these deficiencies are fatal to any contempt order being issued.

65 Therefore, the application must fail. The order was handed down in November 2022. It was made in terms of a PAIA application issued against

Minister Dlamini Zuma (in her capacity as the then CoGTA Minister); Ms Williamson, DCoG's erstwhile Information Officer, at the time and the President. At best, it imposed obligations on those officials that were responsible for the implementation of the order. But, as I have indicated, I am advised that they have carried out their obligations under the order and furnished a record to the applicant.

66 Minister Nkadimeng only took office on 7 March 2023. I was appointed on 1 May 2023 and the current IO on 15 August 2023. The appointment dates are all known to the applicant because this is recorded in its founding affidavit (see paragraphs 13 to 21 thereof). The order could simply not have created obligations for us as officials personally since we had not been appointed when the order was taken.

67 Moreover, when regard is had to the terms of the order, the following material facts must considered:

67.10 The order reviewed and set aside Minister Dlamini Zuma's decision of 26 June 2021 refusing the applicant access to information in terms of its PAIA request of 15 December 2020. But, when Minister Nkadimeng and this administration was appointed, this decision had already been made, a court order issued setting it aside in November 2022, and steps taken by Minister Dlamini- uma to implement the order in December 2022 and January 2023. Thus, the current administration incurred no official responsibility personally in respect

of the applicant's 15 December 2020 PAIA request, which underpinned the November 2022 order.

67.11 The order further set aside the erstwhile Information Officer's decision of 25 February 2021 refusing the applicant's 15 December 2020 PAIA request. The same criticisms as set out above apply here. The current Information Officer played no official role personally in the former Information Officer's said decision of 25 February 2021. It was not his decision that was set aside and the November 2022 court order created no obligations on him to implement upon the setting aside of the decision of February 2021.

67.12 Finally, the order required, among others, Minister Dlamini Zuma, the National Department of Cooperative Governance, and the former IO to comply with the applicant's PAIA request. On its terms these officials were personally responsible for giving effect to the applicant's PAIA request of 15 December 2020, not me, Minister Nkadimeng or the current IO. As stated above, the order was implemented by the previous administration when the record was furnished. To the extent that it may even be relevant, what the applicant complains of is the sufficiency of the record, a baseless ground for contempt.

68 Thus, the application is ill advised for seeking a declaration of contempt against officials who bore no responsibility for the implementation of the

November 2022 order. It is also procedurally incompetent seeking as it does, in the form of a structural order, three new orders against the respondents premised on the November 2022 order in circumstances where that order neither expressly provides for nor contemplates the new orders sought.

69 If the new orders rely for their provenance on the November 2022 order, the applicant must at least plead how they form part of the order, and why they can form the basis of a contempt application. No such attempt is made, and on this basis, prayers 3.1, 3.2, and 3.3 of the Notice of Motion must be dismissed. In short, a case must at least be made out how the new orders sought relate to the implementation of the November 2022 order and more significantly, how this administration and its officials are personally responsible for the implementation of the structural order said to be allied to the contempt order.

70 To the extent that prayers 3.1, 3.2 and 3.3 are not linked to the contempt order and committal sought, the applicant must at least make out a case for the relief it seeks. The applicant's case falls hopelessly short of creating a basis in fact or law for the three new prayers.

71 On this basis the relief sought in prayers 3.1, 3.2 and 3.3 falls to be dismissed.

72 Based on all the above grounds the application should be dismissed.

73 Since the chronology of the material facts leading to the grant of the default order are not in dispute, it is not necessary to repeat what those facts are. Instead, the facts as contended for by DCoG fall to be dealt with in the next section dealing with the *seriatim* response to the applicant's founding affidavit. It is to that section that I now turn.

D. *SERIATIM* RESPONSE

74 Hereinbelow, I respond *seriatim* to the founding affidavit. Anything not specifically addressed should be taken as being denied.

Ad paras 1 – 4

75 Save to deny the truth of the allegations contained in this affidavit and that the applicant has made a case to rely on hearsay evidence, the remaining content of these paragraphs are noted.

Ad paras 5 and 6

76 I have no knowledge of the contents of these paragraphs, but in any event deny that the legal advice relied on by the applicant is correct or that the applicant has made out a case for the relief sought in its Notice of Motion.

Ad paras 7 – 12

77 I note the contents of these paragraphs.

Ad paras 13 – 24

78 I admit the identity of the respondents as cited by the applicant. I assumed office on 7 March 2023. But, for the reasons explained above, I deny that a case for contempt of court has been made out against them.

Ad para 25

79 I admit that the applicant issued an application on 6 August 2021 under case number 39370/2021, and that Minister Dlamini Zuma was the first respondent and DCoG was the second respondent therein.

80 I, however, deny that the rest of the allegations therein. In amplification of my denial, I refer to and repeat what I have stated in paragraphs 11.1 to 11.5, above.

81 I deny also that a case was made for contempt against the President in the unopposed application. While the order directs that he give effect to the applicant's PAIA request, the affidavit makes no case against the Presidency.

Ad para 26

82 I admit only that the Notice of Motion is what it purports to be. The list and description of the respondents appearing on the face of the Notice of

Motion do not accord in material respects with the description of the respondents in the founding affidavit.

83 In the circumstances, I submit that the applicant's decision not to attach the unopposed application under case number 39370/2021 was highly prejudicial to the respondents, impeding their ability to mount a proper defence. Since the application was unopposed the record was necessary to determine precisely who was cited, the relief sought, and the facts pleaded in support of the default order granted on 9 November 2020.

84 As it turns out, there is considerable confusion and contradiction in the applicant's case between the applicant's pleaded case and the evidence on which it seeks to rely.

85 As appears from "**MT6**" attached hereto the State Attorney requested access to the Caselines record of this matter. As appears from "**MT7**" access was only granted on 14 March 2024, with the applicant providing an unsatisfactory undertaking in paragraph 26 of the founding affidavit to upload the unopposed application *'in due course'*. The materiality of this submission will become clearer in the condonation application hereunder.

Ad paras 27 – 30

86 Having now perused the unopposed application, the default order of 9 November 2022, and the request for access to information of December

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2020 pertaining thereto, I admit the contents of these paragraphs as far as they go.

87 As stated hereinbefore, in mentioning the third respondent, the order is referring to the erstwhile Information Officer, and not to the Director-General, although that was one and the same human being. Furthermore, in mentioning the fourth respondent, the order is referring to the President. In both cases, this is in accordance with the pleaded case and the evidence on oath.

Ad paras 31 – 33

88 I deny the content of these paragraphs. I deny that the respondents have not complied with the November 2020 order. I deny that the court order was ignored, and I deny that the respondents refused to deliver a record. In amplification of this denial, I am advised that a record was furnished to the applicant on three occasions in compliance with the court order.

89 In further amplification of these denials, there may have been requests for compliance with the court order by the applicant, but these requests have no merit because, as I set out earlier in this affidavit, the order was complied with. And if it was not, it is the applicant who bears the onus of demonstrating in what respect the order was not implemented because it is the applicant who bears the onus of proving contempt of court.

90 Even after several requests, an unopposed application, and a comprehensive contempt application the applicant has still not set out with any measure of clarity, why the respondents are in contempt of the court order. This is because it is simply unable to do so. These facts do not exist, and I deny further that there is any basis for the relief sought in the Notice of Motion.

91 On closer consideration what this matter concerns is not that the respondents are in contempt of court, but the applicant's subjective view on the sufficiency of the record. Yet after all its efforts the applicant still cannot articulate precisely what information it seeks and how the respondents have not furnished that information in contempt of the November 2022 order.

92 Moreover, the applicant's request for a declaration of contempt coupled with committal is not substantiated in the founding papers through the introduction of concrete facts supporting these orders. Rather, the applicant complains only that the record furnished is extracted from documents in pending and finalised litigation and is already in the public domain. Even if that is the case, these characteristics do not deprive the record of two essential features, namely, that it is both a record as contemplated in section 1 of PAIA and issued in terms of the default order of 9 November 2022.

Ad para 34

93 I deny the applicant's restatement of the requirements for contempt of court. At the outset, the alleged contemnor must be a person against whom the order was made and, who therefore, has an obligation to comply with the order.

94 The applicant omits to mention that where committal is sought, as in this case, these requirements must be proved beyond a reasonable doubt, with the respondent bearing an evidentiary burden to rebut the inference of contempt on a balance of probabilities, where the other requirements have been met.

95 Furthermore, the applicant omits to mention that where officials are cited in their personal capacities, the application must be separately served on them; they must be personally responsible in their official capacity for that component of the order alleged not to be complied with and must personally be in wilful default.

96 The applicant omits to mention these criteria because it has not met them. It seeks to imprison officials, namely the fifth to seventh respondents for obligations that were meant to be carried out by different individuals, and not the fifth to seventh respondents personally, and moreover, where no order was ever granted against the office of the DG.

97 Most importantly, the application must fail because the applicant seeks a contempt declaration in respect of an order that was complied with.

Ad para 35

98 I deny the contents hereof. This is not the approach to any contempt application, particularly where a committal order is sought. The respondents have no onus to demonstrate that the order was complied with. I am advised that calling on the respondents to demonstrate compliance creates an unlawful reverse onus and is simply an incorrect statement of the law.

99 As I have said it is the applicant who must establish all the elements of contempt beyond a reasonable doubt because they seek a concomitant committal order. The respondents simply bear an evidentiary burden to rebut this inference on a balance of probabilities.

Ad para 36

100 I note the averment regarding "*attempts at enforcing the order*". I deny once again that the order was not complied with.

Ad paras 37 – 40

101 I admit that the applicant has standing to initiate these proceedings and that this court has jurisdiction to determine the matter. I however deny that a case has been made out to hold the respondents in contempt of court.

Ad para 41

102 I admit only that the PAIA request forming the subject matter of this application is dated 15 December 2020. That request was upheld by the 9 November 2022 order, which was given effect to and complied with (as set out above). For the reasons explained, the applicant has failed to show otherwise, and the remaining contents of this paragraph are denied.

Ad para 42

103 I admit that this was pleaded by the applicant as appears from the Caselines record of the unopposed application.

Ad para 43

104 I deny that the respondents ignored the order of 9 November 2022, and note the remaining contents of this paragraph. I am unable to provide any substantive comment thereon since I have no personal knowledge of the applicant's motivation for this litigation.

Ad para 44 and 45

105 Save to deny that the order was granted against the DG, I admit the rest of the contents of these paragraphs.

Ad para 46

106 I admit only the contents of the letter of 21 November 2022. I deny once again that the 9 November 2022 order was not complied with.

Ad para 47 and 48

107 Save to deny the first date, namely, 23 December 2023, I admit the rest of the contents of these paragraphs.

Ad para 49

108 I admit only the contents of the letter of 23 December 2022. I deny its inference that the Department had no intention to give effect to the 9 November 2022 order. There is simply no evidence to that effect.

109 I deny further that the 9 November 2022 order was not complied with because the record comprised public policy documents and reports as well as records attached to litigation files. There is no evidence that the record furnished is not a record as contemplated in section 1 of PAIA. Furthermore, the documents furnished formed part of the decisions made by the (then) CoGTA Minister and were in the Department's possession and under its control.

110 I deny also as alleged in the letter that *"[t]here should be no uncertainty from your client's side about the veracity and scope of the disclosure required by the court order."* As I have already indicated the request is overly broad, and as Mr Dyssel confirms, it was not possible to determine the exact nature and extent of the record sought. Further, the applicant has

also not taken any steps to identify with any measure of precision the exact deficiencies in the record and what is needed to correct those deficiencies.

111 Instead, what the applicant seeks, as appears from paragraph 7 of the letter of 23 December 2023 is the following:

111.10 Inter-departmental correspondence relating to the management of Covid-19. As I have already indicated this correspondence is a Cabinet record because it was generated by the Natjoints and FOSAD in preparation for a meeting with the NCCC. The NCCC as I explained was Cabinet sitting in a formation uniquely designed to deal with the impact of Covid-19. The documents are thus classified and fall under the exclusion in section 12(a) of PAIA.

111.11 The minutes of meetings. Incidentally, the applicant makes no reference to which minutes from what meetings. However, what is privileged are those minutes that form part of the Cabinet record. These cannot be disclosed.

111.12 Consultations with experts and industry. The policy documents developed, and research papers constitute part of consultations with 'experts and industry'. These were voluminous, but the Department gave the applicant those documents that were in its possession and under its control.

111.13 The advisory reports framing the regulations. These contain sensitive, classified information. They were not shared with officials on a need-to-know basis and formed part of the deliberations of the NCCC. Consequently, they are Cabinet records and cannot be disclosed.

112 I deny that the full record as constituted in terms of the November 2022 order, and the PAIA request of 15 December 2020 and as contemplated in section 1 of PAIA were not furnished.

Ad paras 50 and 51

113 I admit that the emails referred to were forwarded, but I deny the inference that there was any contempt.

Ad para 52

114 I admit the contents of this paragraph. I deny the inference however that the genesis of the record and the documents from which it was extracted constitutes contempt of the November 2022 order.

Ad para 53

115 I admit only that the contents of the letter of 6 January 2023 are what they purport to be. I deny the inference therein that the record was not complete simply because it included public participation documents and research

papers on particular issues. The applicant has simply not shown how this amounts to a failure to implement the November 2022 order.

116 I deny further that a basis has been laid for a contempt declaration because the record included portions of records from litigation proceedings. This bears no relevance to the underlying question this court is seized with, i.e. whether the 9 November 2022 order was not complied with, and if so – which is denied – whether the non-compliance was deliberate, wilful, *mala fide* and related to obligations that the first to fourth respondents had to personally execute under the order. None of these elements have been shown.

Ad paras 54 – 56

117 I admit the content of these paragraphs.

Ad para 57

118 I deny the contents hereof. There are no further records to disclose which are under the possession and control of the respondents, and which can lawfully be made available to the applicant. Any remaining records are classified, sensitive Cabinet records that are excluded from the application of PAIA.

Ad paras 58 – 60

119 I admit that the contents of the letter of 26 January 2023 are what they purport to be. I deny however that the respondents' election not to rescind the November 2022 order is relevant at all to this application.

120 I admit the letter of 5 February 2023, but similarly deny that the respondents' decision not to bring an urgent applicant is relevant to the determination of this application.

Ad paras 61 and 62

121 I admit the contents of these paragraphs.

Ad paras 63 – 65

122 I have no knowledge of the contents of these paragraphs. But I deny that they are relevant. Nevertheless, the applicant is put to the proof thereof.

Ad para 66

123 Again, I have no knowledge of what the applicant may or may not know. I admit however that I took office on 7 March 2023 and that Minister Dlamini-Zuma was appointed as Minister in the Presidency for Women, Youth and Persons with Disabilities.

124 I deny that Minister Dlamini-Zuma "stonewalled" the applicant. She and her administration complied with the order. They gave the applicant the

requested record and, through the State Attorney, advised the applicant on 23 February 2023 that she had complied with the order.

Ad para 67

125 I admit only that the contents of the letter of 1 June 2023 are what they purport to be. I admit further that the letter notified me of the court order, but again I deny that the previous administration did not comply with the court order, as alleged by the applicant in the 1 June 2023 letter.

126 I deny further that I can be held in contempt of court as alleged in paragraph 8 of the letter. The order imposed no obligations that I was required to personally implement in my official capacity. I was not appointed when the order was taken, but more significantly, the order was complied with.

Ad para 68

127 I have no knowledge as to the purpose of the letter of 1 June 2023. Furthermore, for the reasons explained above, I deny again that the order was not complied with and deny further that the applicant has made out a case for contempt of court.

128 While I admit that the order has not been reviewed, I deny that such an option is a correct statement of the law. It is trite that judgments and orders of the High Court cannot be set aside on review. In any event, this is irrelevant to whether a case for contempt has been made out.

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129 Further, in paragraph 6 of the 1 June 2023 letter, the applicant appears to concede that the respondents are not in contempt of court. The applicant communicated to the State Attorney that: "*your clients have attempted compliance with the Court Order by delivering four tranches of documents…*". There is simply no wilful and *mala fide* default to speak of, where there is an attempt to comply with the terms of a court order. For the reasons stated in this affidavit, the respondents contend that the order was complied with through the delivery of the documents. It is clear from the letter of 1 June 2023 that what the applicant essentially complains of is the sufficiency of the record, which complaint cannot serve as the basis for a declaration of contempt (or less so a committal for contempt).

130 The remaining contents are noted, but again I submit that a record was furnished by the previous administration and the court order was complied with.

Ad para 69

131 I admit the schedule referred to, and note the remaining contents hereof, which comprise legal processes. A substantive response from me is not required.

Ad para 70

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132 I do not know the purpose of the letter of 1 June 2023. In any event, I believe my predecessor when she maintains that she complied with the court order. The applicant is put to the proof of the contrary.

Ad paras 71 and 72

133 I admit the contents of these paragraphs. In any event, I do not deny that the order was brought to my attention and that of my administration.

Ad para 73

134 I admit the contents of this paragraph.

Ad para 74

135 I deny the contents of this paragraph for the reasons set out in this affidavit.

Ad para 75

136 I deny the contents of this paragraph. As stated above, the court order has to be interpreted in accordance with the applicant's pleaded case. For the reasons explained above, this was complied with.

Ad para 76.1

137 I deny the contents of this paragraph. There is no decree in the order as articulated herein.

Ad para 76.2

138 For the reasons and to the extent articulated above, I deny the contents of this paragraph. I reiterate that the court order was complied with.

Ad para 77

139 I deny that the order is clear and unambiguous. Nonetheless, I admit that it is enforceable and that is why the previous administration implemented the order. For reasons already stated above, I, however, deny that the order is enforceable against the DG, the IO and me.

140 Further, the applicant's contention that a partial record was served by the previous administration means, on its own, that there is no basis for this application because it negates any suggestion of wilful and *mala fide* non-compliance.

Ad para 78

141 I admit that Minister Dlamini-Zuma understood her obligations in terms of the court order to provide a record as contemplated in section 1 of PAIA and that the record was to be formulated based on the applicant's 15 December 2020 PAIA request. This is exactly what she did. But the order itself was overly broad, and it is incumbent on the applicant to show how it was not complied with. In doing so the applicant relies only on the sufficiency of the record, without clarifying in any respect what more is

required. To the extent that the applicant does identify further records sought, it demands documents that constitute classified Cabinet records that cannot be disclosed. Further, that the record is based on public documents is irrelevant because it does not negate three material facts: - first, that it is a record in terms of section 1 of PAIA; second that it was furnished in terms of the 9 November 2022 order and third, that it was formulated in terms of the 15 December 2020 PAIA request.

Ad para 79

142 To the extent that the applicant contends that the order operates against former Minister Nkadimeng, myself and the current IO, for reasons articulated earlier in this affidavit, I deny such contention. I also deny any inference that this includes the production of Cabinet records expressly excluded from the application of PAIA by section 12(a).

Ad para 80

143 I have no knowledge hereof, but on a careful perusal of the PAIA application it seeks information pertaining to the declaration of the state of disaster, the seven extensions, and the promulgation and amendment of the disaster management Regulations.

Ad para 81

144 I deny the contents hereof. I have already made submissions on the broad nature of the request.

Ad para 81.1 – 81.3

145 I note the contents hereof. This record has been furnished.

Ad paras 82 – 85

146 I deny that the terms of the order required categorisation and sorting of the record. I deny further that the record was not sorted. A comprehensive index to the record was furnished.

147 It is for the applicant to assess the record it sought, not the respondents.

148 In any event paragraphs 82 to 85 are the clearest concession by the applicant that the relevant respondents are not in contempt of court. The furnishing of the record, which the applicant does not dispute, negates any argument that the order was not complied with.

Ad para 86

149 I note the contents hereof, but place on record that where these documents are Cabinet records they cannot be disclosed.

Ad para 86.1 and 86.2

150 I deny that the applicant is entitled to these documents. I am advised that they are classified Cabinet records and not subject to PAIA as stipulated by section 12(a).

151 I am advised that these documents relate to meetings of the National Disaster Management Centre ("NMDC"), NATJOINTS and the National Joint Operations Centre. The outcome was communicated to the head of the NDMC, the former DG and the Minister Dlamini Zuma and were a critical component of the Cabinet meeting on 15 March 2020 where the NATJOINTS reports were received and a decision made to declare a state of disaster. This report, as presented to the Cabinet was classified by SAPS and following the meeting, the head of the NDMC signed the classification notice and the Minister declared a national state of disaster.

Ad para 86.3.1 and 86.3.11

152 I am not in possession of the said documents. I am therefore not in a position to produce them.

153 I notice that the applicant has duplicated the records referred to. (Paragraph 86.3.6 and 86.3.11).

154 In any event, insofar as the documents pertain to the meetings and deliberations leading to the declaration of the state of disaster are confidential cabinet records, they are subject to the exclusion in section

12(a) of PAIA. This information would be part of the Cabinet record and cannot be disclosed. I deny that in any event the applicant is entitled thereto.

Ad para 86.4

155 I am not in possession of the said documents. I am thus not in a position to produce them.

156 In any event, insofar as the documents pertain to the meetings and deliberations leading to the declaration of the state of disaster are confidential cabinet records, they are subject to the exclusion in section 12(a) of PAIA. This information would be part of the Cabinet record and cannot be disclosed. I deny that in any event the applicant is entitled thereto.

Ad para 87

157 Apart from referri9ng to a "*flurry of communication, consultation and deliberation with various state departments etc*" the applicant does not specify any particular documents.

158 Consequently, I do not know what documents are being referred to. I am thus not in a position to produce them.

159 Insofar as the documents pertain to the meetings and deliberations leading to the declaration of the state of disaster are confidential cabinet records, they are subject to the exclusion in section 12(a) of PAIA. This information would be part of the Cabinet record and cannot be disclosed. I deny that in any event the applicant is entitled thereto.

160 The documents which have been disclosed are those which may lawfully be disclosed. Those which have not been disclosed, are excluded in terms of section 12(a) of PAIA.

Ad para 88

161 I admit however that these documents form part of the record furnished to the applicant. I am advised that they were documents that first, could lawfully be disclosed and second were in the respondents' possession and under their control.

Ad paras 89 – 91

162 I deny the contents hereof. I am advised that the previous administration furnished the applicant with a record as required by section 1 of PAIA and applied the necessary exclusions under section 12(a).

163 The applicant cannot deny the fact that it was furnished with a record in terms of section 1 of PAIA based on its request of 15 December 2020.

164 Further, it is not for the respondents to explain to the court the existence of 11 records as alleged. It is for the applicant to demonstrate that the respondents are in contempt of court. Once again, for the reasons set out in this affidavit, the applicant has not discharged this onus.

Ad paras 92 and 93

165 I admit the contents of these paragraphs. Minister Dlamini Zuma lawfully carried out her functions under section 27 of the DMA in declaring and extending the state of disaster.

Ad para 94

166 I admit only that it is reasonable to assume that Minister Dlamini Zuma and the Department would have been obliged to obtain and evaluate pertinent information regarding the continuance of the national state of disaster and the extension thereof.

167 I deny the rest of the contents hereof.

168 Once again, Minister Dlamini Zuma furnished the applicant with a record under section 1 of PAIA and applied the section 12(a) exclusion.

Ad paras 95 and 96

169 I admit the contents of these paragraphs.

Ad para 97

170 I note the contents hereof. I reiterate that *"the numerous interactions between the previous Minister, her department, other state departments, other organs of state, non-government organisations, international bodies, stakeholders, experts, and consultants,"* are divisible between documents that fall within the section 12(a) exclusion and those that do not. Again, the respondents have furnished the applicant with the documents it was permissible to furnish. Other than seeking access to classified Cabinet records, the applicant fails to indicate with any precision the exact documents it seeks access to, preferring to identify in broad, generic terms what it believes it is entitled to. This is unhelpful.

171 Consequently, I submit that the requirements for contempt have not been met.

Ad para 98

172 I admit that the PAIA request refers to the 13 Regulations and the amendments thereto. The respondents persist that a full record was furnished in compliance with the court order as appears from the indices attached to this answering affidavit.

173 As repeatedly stated above, all the documents were furnished subject the exclusion of Cabinet records in terms of section 12(a) of PAIA.

174 I admit the Regulations cited in this paragraph.

Ad paras 99 to 104

175 The same criticisms cited above apply here. Some of the information comprises records of Cabinet, others have already been furnished and to the extent that any information is outstanding, it is the applicant who seeks a contempt order so it is the applicant who must identify precisely which documents have not been furnished, and how such conduct on the part of the fifth to seventh respondents satisfies the high threshold set for contempt. It has not done so.

Ad paras 105 and 106

176 I deny that categorisation is relevant to the implementation of the court order. I deny further that the applicant has even examined the documents furnished with the fastidiousness required before contempt proceedings can even be contemplated. This is apparent from the fact that when the record was furnished, which was voluminous in nature, the applicant wrote to the respondents less than 24 hours later proclaiming that it was insufficient.

177 The applicant notes that 99 records were delivered, expecting this court to reasonably accept that these could be reviewed in under 24 hours and a conclusion reached that the respondents were in contempt of court. This

is irrational. The reliance once again on the fact that the record formed part of litigation proceedings is irrelevant for the reasons already set out in this affidavit.

Ad paras 107 to 109

178 The applicant makes the notable concession here that the records furnished "*fall under the scope of the PAIA application.*" On this basis alone, I submit that the contempt application must be dismissed. I have made submissions how this application implicates only the applicant's subjective opinion on the sufficiency of the record, and that this cannot form the basis of a declaration of contempt of court. I persist with those submissions.

Ad paras 110 and 111

179 I note the contents hereof. I refer this Honourable Court to the index and the record, which speaks for itself.

Ad para 112 and 113

180 I deny that it is for the respondents to make submissions on whether the record complies with the court order. This is an onus that must be discharged by the applicant. It has failed to do so.

Ad para 114

181 I deny the contents of this paragraph. The respondents have never conceded that they did not comply with the court order. It has always been the respondents' case since the furnishing of the record that the order was complied with. That was also the final stance of the relevant respondents as per the letter from the State Attorney dated 23 February 2023, referred to by the applicant itself in paragraph 62 of the founding affidavit.

Ad paras 115 and 116

182 I deny that the respondents' election not to rescind the court order creates an obligation to disclose Cabinet records. This is plainly unlawful. Cabinet records are, as I indicated, excluded from the application of PAIA by section 12(a). When the former Minister elected not to rescind the order, the only obligation on her was to comply with the terms of the November 2022 order. That order did not and could not compel the disclosure of Cabinet records. Once again, all the records furnished to the applicants comprised permissible documents that were in the respondents' possession and under their control.

183 Furthermore, there is nothing strange or untoward about the stance adopted by the respondents. Clearly, the advice to seek rescission was given about 20 January 2023 before the respondents' new counsel had studied the voluminous record. Those efforts led to the said letter of 23 February 2023.

Ad paras 117 – 119

184 I deny the contents of these paragraphs. The order was complied with, and the applicant was furnished with a complete record. I deny further that the respondents are in contempt of court. The relevant respondents are indeed relying on the section 12(a) exclusion. I am advised that it is not necessary to have the order of 9 November 2022 rescinded in order to rely on the said exclusion. I am further advised that the legal position will be advanced at the hearing of this matter. The other allegations have been dealt with in the previous paragraph.

Ad para 120

185 The contents hereof are pure speculation. In any event, they are denied.

Ad para 121

186 I deny the contents hereof. Minister Nkadimeng's administration and Minister Nkadimeng have been cited in their personal and representative capacities, and their committal to prison sought. I need not prove anything, other than discharge an evidential burden if the applicant can indeed demonstrate contempt on the part of Minister Nkadimeng and her administration. No other obligations vest in me.

Ad para 122

187 I deny the contents hereof. Once again, the applicant's assertions will not change the concrete fact that the order was complied with.

Ad para 123

188 I deny the contents hereof. It is the applicant who must establish that a case has been made out for contempt of court. The applicant instead seeks to unlawfully reverse that onus by placing unlawful obligations on the respondents that simply do not exist.

Ad para 124 – 127

189 I deny the contents hereof. No case has been made out for the issue of a declaration of contempt of court and the applicant is not entitled to the relief sought.

E. CONCLUSION ON MERITS

190 In all the above circumstances, no case has been made for an order of contempt of court and the application should be dismissed with costs, including costs occasioned by the employment of three counsel on Scale C (in terms of Uniform Rule 67A).

F. CONDONATION FOR THE LATE FILING OF THE ANSWERING AFFIDAVIT

Reasons for Lateness and Degree of Lateness

191 After the applicant had been informed unequivocally on 23 February 2023 that the previous Minister had complied with the court order of 9 November 2022, this application was issued about ten months later on 13 December 2023. It was served on the respondents a month later on 11 January 2024. The respondents filed a notice of intention to oppose on 6 February 2024.

Based on these calculations the answering affidavit was due on 27 February 2024.

192 However, the application was not complete. It was self-evident that the applicant relied for its contempt order on its unopposed access to information application issued out of this court on 6 August 2021 under case number 39370/2021. The order of 9 November 2022, which forms the subject matter of this contempt application was issued pursuant to the unopposed application being set down for hearing.

193 In this application, the applicant makes material submissions on the liability of the respondents under the 9 November 2022 order referencing the relief it sought in the August 2021 application. However, the August 2021 application was not attached to the applicant's papers. Only the notice of motion was attached as "**SA5**", with the applicant undertaking in paragraph 26 of the founding affidavit to upload a complete copy of the application on Caselines "*if necessary*".

194 The complete application was indeed necessary since the November 2022 order, which the applicant alleges the respondents contravened is the subject matter of this application. But while the application may have existed on Caselines, neither my legal team nor I had access thereto.

195 When it became apparent that the applicant had no intention to upload or give the respondents access on Caselines to the unopposed application, I

instructed the State Attorney to request that they do so. The State Attorney sent an email to the applicant to this effect. The respondents' legal team was only granted access to the unopposed application on 14 March 2023, some three months after the contempt application was issued.

196 Thus, by all accounts, the complete contempt application was only served on the respondents on 14 March 2024. It is only from this date that a proper assessment could be made of the merits, including a determination whether the order was complied with and whether the contempt application should be opposed. The ten days to file the notice to oppose came to an end on 1 April 2024, but since a notice had already been served on 6 February 2024, the State Attorney did not file a further intention to oppose.

197 Based on these *dies* the answering affidavit was due on 22 April 2024 and given the urgency of the matter a consultation was arranged with the respondents and the legal team on 8 April 2024. Since the application purported to implicate the function of two administrations, the consultation was attended by the following senior officials:

197.10 Ms Kedibone Mhlaba, Senior Legal Admin Officer, DCoG;

197.11 Dr Elias Sithole, Head of National Disaster Management Centre;

197.12 Ms Banele Dumisa, Director: Litigation Services, DCoG;

197.13 Ms Kuselwa Ndwanya, Senior Administrative Officer, DCoG;

197.14 Mr Geofrey Mphaphuli, Principal State Law Advisor, Presidency;

197.15 Ms Matie, Deputy Director in the office of the Head of the National Disaster Management Centre;

197.16 Mr Jurgens Dyssel, National Disaster Management Centre, Policy, and Legislation Unit;

197.17 Ms Sonwabile Nkayitshana, Legislative Review and Support, DCoG; and

197.18 Ms Hazel Masiza, Chief Director and Head of Legal, DCoG.

198 After the meeting, Mr Dyssel needed to determine whether certain documents could indeed be classified as confidential Cabinet records. It was also necessary that, as the new administration, specific attention be paid to whether the order placed any personal obligations on us in our representative capacities.

199 We also had to familiarise ourselves with the voluminous record, which took quite some time given our additional official responsibilities. After satisfying ourselves that we could not be in contempt, and having instructed the legal team this affidavit was prepared.

SM RT

200 Since the complete application was only served on 14 March 2024, this affidavit was due on 22 April 2024. It was filed on Thursday, 30 May 2024 and is 29 days late.

201 It is my respectful submission that given the reasons for the lateness. The degree of lateness is not excessive.

The Prejudice to the Parties

202 Even if the degree of lateness is excessive, which is not the case, the respondents will be severely prejudiced if this affidavit is not admitted into evidence. They will be committed to prison on the strength of an unopposed application. This deprivation of our freedom in circumstances where a tenuous case for contempt has been made surely cannot be permitted to prevail. This palpable possibility exists because, as appears from "**MT8**" hereto, the applicant has set the matter down on the unopposed roll for 6 September 2024.

203 The applicant on the other hand will not suffer any prejudice. It will be required simply to remove the matter from the unopposed role and file its replying affidavit. None of its rights to engage robustly in this application have been impinged, and if there is indeed prejudice on its part, which is

SM RT

denied, it is not of the sort that cannot be cured by an appropriate costs order.

The Prospects of Success

204 Finally, I submit that we have made a strong case why, on legal grounds, none of the relevant respondents can be held in contempt. Furthermore, I submit that the requirements of contempt have not been met and no case has been made out for us, in our personal capacities to be committed to prison. These include that the order was not served on us in our personal capacities. It was only sent in terms of the letter of 1 June 2023 referring to our official capacities, and no attempt was made to identify those portions of the order that we are said individually not to have implemented. I further submit that the order was indeed complied with.

205 There are therefore strong prospects that this court will find that a record was indeed furnished by the previous administration, that the court order did not bind the fifth to seventh respondents in our personal capacities, and that the applicant has not demonstrated on the facts that we should be held in contempt and committed to prison.

G CONCLUSION TO CONDONATION APPLICATION

206 Based on the above, it is my respectful submission that the respondents have met the requirements for condonation and that this court should issue an order condoning the late filing of the answering affidavit.

DEPONENT

SIGNED and **SWORN** to before me at PRETORIA on this 12th day of July 2024, the deponent having acknowledged that she knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath and that she considers the oath to be binding on his conscience.

COMMISSIONER OF OATHS

REITUMETSE INNOCENTIA MMUTLOANE
Commissioner Of Oaths & Practicing Attorney
Mokgosi Mmutloane Attorneys Inc.
250 Pretorius Building,
5th Floor, Office 513, 250 Pretorius Street
Pretoria 0002.
Tel: 012 881 4451 | 068 430 0009
Certified True Copy of the Original

"MT1" A

000-1

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

9 November 202

On this 9th day of November 2022 before the Honourable Justice Lukhaimane AJ.

Case number: 39370/2021

In the matter between:

SAKELIGA NPC Applicant

and

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
2022 -11- 09
GD-PRET-005
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS First Respondent

THE NATIONAL DEPARTMENT COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS Second Respondent

THE DIRECTOR GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS Third Respondent

THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT COOPERATIVE GOVERNANCE Fourth Respondent

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Fifth Respondent

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her Secretary. The date of this Order is deemed to be **9 November 2022.**

DRAFT ORDER

HAVING heard counsel and having considered the matter, it is ordered that:

1 The First Respondent's decision of 26 June 2021 to refuse the Applicant's internal appeal against the Third Respondent's decision not to grant the Applicant's request for information of 15 December 2020 in terms of the Promotion of Access to Information Act 2 of 2000 ["PAIA request for information"] is reviewed and set aside;

2 The Third Respondent's decision of 25 February 2021 to not to grant the Applicant's PAIA request for information, dated 15 December 2020, is reviewed and set aside;

3 The First, Second, Third and Fourth Respondents are ordered to comply with the Applicant's PAIA request for information within 30 days of the date of this order and to provide the Applicant with all of the documents and/or information requested therein as is in their possession and/or under their control; and

4 The costs of the application be paid by the First Respondent.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
2022 -11- 09
GD-PRET-005
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

BY ORDER

Matter number: 90

Counsel for the Applicant: **Adv Miek Bester**
Email address: bester@lawcircle.co.za
Contact number: 083 6619257

Instructed by: **Kriek Wassenaar & Venter Attorneys**
Pretoria
Tel: 012 756 7566
Email: peter@kriekprok.co.za
Ref: PJ Wassenaar/QB0792

"MT2" B

J750

REPUBLIC OF SOUTH AFRICA

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 6]

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

The Information Officer/Deputy Information Officer

Department of Cooperative Governance Republic of South Africa
Information officer:
Ms Avril Williamson
Tel: 012 334 0518
Fax: 012 334 0603
E-mail: Avrilw@cogta.gov.za

Physical Address:
The Information Officer
Department of Cooperative Governance
87 Hamilton Street
Arcadia
Pretoria

Deputy Information officers
Tozi Faba - Tozi@cogta.gov.za; Tel: 012 334 0778
Fax: 012 334 0603
Themba Fosi - ThembaF@cogta.gov.za

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be given below.
(b) The address and/or fax number in the Republic to which the information is to be sent, must be given.
(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: Péter Johannes Wassenaar

Identity number:

8	7	0	1	2	5	5	1	2	0	0	8	6

Postal address: HB Forum Building, Floor 3, 13 Stamvrug Street, Val de Grace, Pretoria

Telephone number: (012) 803 4719 Fax number: (086) 596 8516

E-mail address: peter@kriekprok.co.za

Capacity in which request is made, when made on behalf of another person:

Attorney of record for Sakeliga NPC. Power of attorney attached

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: Sakeliga NPC - 2020/043725/08

Identity number:

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.
(b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1. Description of record or relevant part of the record:

Kindly refer to Annexure A attached hereto.

2. Reference number, if available: .....

3. Any further particulars of record:

Kindly refer to Annexure A attached hereto.

.....

.....

.....

.....

.....

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. (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees:

.....

.....

.....

.....

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

Disability: Form in which record is required:

Mark the appropriate box with an **X**.

NOTES:
(a) Compliance with your request for access in the specified form may depend 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	copy of record*		inspection of record		
2. If record consists of visual images - (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.):					
	view the images	X	copy of the images*		transcription of the images*

3. If record consists of recorded words or information which can be reproduced in sound:						
X	listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)			
4. If record is held on computer or in an electronic or machine-readable form:						
	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form* (stiffy or compact disc)	

*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.	YES	NO X
Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.		
In which language would you prefer the record? English/Afrikaans		

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 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 addressed to peter@kriekprok.co.za and rohann@kriekprok.co.za

Signed at Pretoria this day 15th of December year 2020

.....

SIGNATURE OF REQUESTER /
PERSON ON WHOSE BEHALF REQUEST IS MADE

ATTORNEY FOR SAKELIGA NPC
PETER WASSENAAR
KRIEK WASSENAAR & VENTER INC

"MT3"

PAIA ANNEXURE A

1. All records, reasons, reports, findings, deliberations, communications, memoranda and/or further documentation relied upon by the Minister of Cooperative Governance and Traditional Affairs ("COGTA") in making the following decisions and/or taking the following steps:

   1.1 The declaration in terms of section 27(1) of the Disaster Management Act 57 of 2002 ("DMA") in terms of which COGTA declared a national state of disaster *having recognised that special circumstances exist to warrant the declaration of a national state of disaster* (as published in the Government Gazette of 15 March 2020); and

   1.2 The extension of the declaration of a national state of disaster by COGTA as published in the Government Gazette on 5 June 2020, 13 July 2020, 15 August 2020, 14 September 2020, 14 October 2020, 15 November 2020 and 11 December 2020 (respectively).

   1.3 The lockdown regulations issued in terms of section 27(2) of the DMA, including but not limited to the following:

      1.3.1 Disaster Management Act, 2002: Regulations published on 18 March 2020 (GG43107);

      1.3.2 Disaster Management Act, 2002: Amendment regulations published on 25 March 2020 (GG43148);

      1.3.3 Disaster Management Act, 2002: Amendment regulations published on 2 April 2020 (GG43199);

1.3.4 Disaster Management Act, 2002: Amendment regulations published on 16 April 2020 (GG43232);

1.3.5 Disaster Management Act, 2002: Amendment regulations published on 20 April 2020 (GG43240);

1.3.6 Disaster Management Act, 2002: Amendment regulations published on 29 April 2020 (GG43258);

1.3.7 Disaster Management Act, 2002: Amendment regulations published on 28 May 2020 (GG43364);

1.3.8 Disaster Management Act, 2002: Amendment regulations published on 25 June 2020 (GG43476);

1.3.9 Disaster Management Act, 2002: Amendment regulations published on 12 July 2020 (GG43521);

1.3.10 Disaster Management Act, 2002: Amendment regulations published on 31 July 2020 (GG43577);

1.3.11 Disaster Management Act, 2002: Amendment regulations published on 17 Augustus 2020 (GG43620);

1.3.12 Disaster Management Act, 2002: Amendment regulations published on 18 September 2020 (GG43725);

1.3.13 Disaster Management Act, 2002: Amendment regulations published on 15 December 2020 (GG43997);

SIGNED AT PRETORIA ON 15 DECEMBER 2020

ATTORNEY FOR SAKÉLIGA NPC

PETER WASSENAAR

KRIEK WASSENAAR & VENTER INC

J750

REPUBLIC OF SOUTH AFRICA

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 6]

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

The Information Officer/Deputy Information Officer

Department of Cooperative Governance and Traditional Affairs

Director-General - Mr. DMG Mashitisho,

Sent by email to: DanM@cogta.gov.za (Copy to all Deputy Information Officers by email)

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be given below.
(b) The address and/or fax number in the Republic to which the information is to be sent, must be given.
(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: GLYNNIS BREYTENBACH

Identity number:

6	0	0	8	0	9	0	0	7	2	0	8	0

Postal address: .....

Telephone number: (+27) 763067850 Fax number: (.....) .....

E-mail address: glynis.breytenbach@gmail.com (Please CC: hvrprok@gmail.com)

Capacity in which request is made, when made on behalf of another person:

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: .....

Identity number:

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.
(b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1. Description of record or relevant part of the record:

SEE ANNEXURE "A" ATTACHED

2. Reference number, if available: .....

3. Any further particulars of record:

SEE ANNEXURE "A" ATTACHED

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.
(d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees:

MEMBER OF PARLIAMENT REQUIRING INFORMATION FOR OVERSIGHT PURPOSES IN THE NATIONAL INTEREST

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

Disability: N/A

Form in which record is required:

Mark the appropriate box with an **X**.

WRITTEN OR PRINTED

NOTES:
(a) Compliance with your request for access in the specified form may depend 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	copy of record*		inspection of record		
2. If record consists of visual images - (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.):					
	view the images	X	copy of the images*		transcription of the images*

3. If record consists of recorded words or information which can be reproduced in sound:						
X	listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)			
4. If record is held on computer or in an electronic or machine-readable form:						
	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form* (stiffy or compact disc)	

*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.	YES	NO X
Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.		
In which language would you prefer the record? ENGLISH		

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 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?

EMAIL TO glynis.breytenbach@gmail.com (CC TO hvrprok@gmail.com)

Signed at CAPE TOWN this day 8th of MAY year 2020

SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE

GLYNNIS BREYTENBACH MP

"MT3"

ANNEXURE A

1. A copy of the designation in terms of which the Minister of Cooperative Governance and Traditional Affairs("the Minister") was appointed in terms of Section 3 of the Disaster Management Act, Act 57 of 2002 ("the Act") to administer the Disaster Management Act, 57 of 2002.

2. Copies of the decisions and/or reports, together with a list of all the Constitutional and/or statutory provisions in terms of which the COVID19 National Command Council was constituted and terms of which it takes decisions and/or make recommendations to the Minister as designated in terms of section 3 of the Disaster Management Act, 57 of 2002.

3. Copies of all minutes and resolutions and/or recommendations made by the COVID-19 National Command Council ("the NATIONAL COMMAND COUNCIL").

4. The names and positions/designations of all members of the COVID-19 NATIONAL COMMAND COUNCIL and/or all correspondence pertaining to their respective appointments.

5. A copy of the designation in terms of which the Head of the National Disaster Management Centre, Dr. Mmaphaka Tau ("Dr.Tau) was appointed in terms of Section 10 of the Disaster Management Act, Act 57 of 2005 (or "the Act") to administer the Disaster Management Act, 57 of 2002.

6. Records of any on-site inspections conducted, copies of all presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models and/or expert reports and/or any other documentation upon which a decision was made by Dr.Tau to classify the COVID-19 pandemic as a national disaster, as contained in *Government Gazette No 43096, dated 15 March 2020, Notice 312 of 2020* in terms of section 23(2) of the Act.

7. Copies of documentation depicting the disaster risk analysis and/or assessment process that was followed prior to making the decision in terms of Section 23(2) of the Act.

8. Copies of all Minutes and/or any other records and attendance registers in respect of any or all meeting(s) held with interested and/or affected parties, including vulnerable communities and households (including physically isolated communities and female-headed households) as contemplated by the community-based disaster risk assessment.

9. Copies of correspondence and/or documents and/or reports containing the decision to classify the COVID-19 pandemic as a national disaster, including a copy of the register containing the prescribed particulars concerning the COVID-19 pandemic in terms of Section 23(1)(c) of the Act.

10. A copy of and/or copies of Service Level Agreement(s) concluded between the National Disaster Management Centre and (an) independent assessor(s), as contemplated in terms of section 23(2)(b) of the Act, if any.

11. In the event that (an) assessor(s) was / were enlisted in terms of Section 23(2)(b) of the Act, a copy of and/or copies of the Curriculum Vitae of the assessor(s) so enlisted.

12. A copy of Dr. Tau's Curriculum Vitae prior to his appointment Head, alternatively Acting Head, of the National Disaster Management Centre.

13. Copies of any requests directed to any organ of state and/or person in possession of information to provide such information as contemplated in Section 18 of the Act and copies of any communication directed to the Minister for the failure to comply with the request in terms of Section 18(1) of the Act.

14. Copies of all the records of advice and guidance given by the National Disaster Management Centre in terms of Section 22 of the Act.

15. Copies of all existing mutual assistance agreements and Memorandums of Understanding concluded between all national departments, provinces, municipalities, the private sector, non-governmental organisations, traditional leaders, technical experts and volunteers in disaster management as contemplated in Section 7(2)(f)(I) of the Act read together with a 1.4.3 contained in the National Disaster Management Framework published under in *Government Gazette No 27534, dated 29 April 2005, General Notice 654 of 2005*

16. Copies of any/or all minutes of meetings and/consultations held between the National Disaster Management Centre and all spheres of Government immediately prior to making a decision to classify the COVID-19 pandemic as a national disaster.

17. Copies of all reports submitted by all organs of state as contemplated in Section 24(4) – Section 24(8) of the Act and as required in *Government Gazette No 43096, dated 15 March 2020, Notice 312 of 2020*

18. Copies of all presentations, assessment reports or any other reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models and/or expert reports and/or any other documentation which the Minister was furnished with, considered and not adopted or accepted by, her and upon which a decision was made by the Minister to declare a national state of disaster, as contained in Government Gazette No.43096 dated 15 March 2020, Notice 313 of 2020.

19. Copies of the resolution to declare a national state of disaster following a special Cabinet meeting held on 15 March 2020.18.

20. Copies of all presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation which was furnished to the Minister, considered and not adopted or accepted by, her and upon which the regulations in terms of section 27(2) read

together with section 27(3) of the in Government Gazette No. 43107 dated 18 March 2020, Notice 318 of 2020 were premised.

21. Copies of the minutes of meetings and or the record of discussions in respect of all meetings held as well as copies of the attendance registers depicting the relevant Cabinet members with whom the Minister consulted with immediately prior to publishing the Regulations contained in Government Gazette No. 43107 dated 18 March 2020, Notice 318 of 2020.

22. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which the exercise of the authority to issue directives (issued after the publishing of the Regulations contained in Government Gazette No. 43107 dated 18 March 2020, Notice 318 of 2020) were premised by other members of the National Executive of Government.

23. Copies of the minutes of meetings held in respect of and copies of the signed resolution taken and or the record of decision-making to establish the "Command Council" as defined in the Government Gazette No. 43147 dated 25 March 2020, Notice 399 of 2020 as well as documentation reflecting the details of the members of the "Command Council" as defined.

24. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and upon which a decision was made by the Minister to publish amended regulations in terms of section 27(2) read together with section 27(3) of the Act by publishing Regulations under Government Notice no. 419 of Government Gazette No 43168 dated 26 March 2020 were premised.

25. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other

documentation furnished to, considered and not adopted or accepted by, and upon which the exercise of the authority to issue directives (issued after the publishing of the Regulations under Government Notice no. 419 of Government Gazette No 43168 dated 26 March 2020) were premised by other members of the National Executive of Government.

26. Copies of the minutes of meetings held and or copies of the record of discussion as well as copies of the attendance registers depicting the relevant Cabinet members with whom the Minister consulted with immediately prior to publishing the Regulations contained in Government Gazette No. 43618 dated 26 March 2020, Notice 419 of 2020.

27. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, an upon which a decision was made by the Minister to publish amended regulations in terms of section 27(2) read together with section 27(3) of the Act by publishing Regulations under Government Notice no. 432 of Government Gazette No 43184 dated 30 March 2020 were premised.

28. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which a decision was made by the Minister to amend the regulations in terms of section 27(2) read together with section 27(3) of the Act by publishing Regulations in Government Notice no. 446 of Government Gazette No 43199 dated 2 April 2020 were premised.

29. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which the exercise of the authority to issue directives (issued after the publishing of the Regulations under Government Notice no. 432 of Government Gazette No 43184

dated 30 March 2020 were premised by other members of the National Executive of Government.

30. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which the exercise of the authority to issue directives (issued after the publishing of the Regulations in Government Notice no. 446 of Government Gazette No 43199 dated 2 April 2020) were premised by other members of the National Executive of Government.

31. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which amendment/s of the regulations in terms of section 27(2) read together with section 27(3) of the Act in Government Notice no. 465 of Government Gazette No 43232 dated 16 April 2020 were premised.

32. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which the exercise of the authority to issue directives (issued after the publishing of the Regulations in terms of section 27(2) read together with section 27(3) of the Act in Government Notice no. 465 of Government Gazette No 43232 dated 16 April 2020) were premised by other members of the National Executive of Government.

33. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which a decision was made by the Minister to amend the regulations in terms of section 27(2) read together with section 27(3) of the Act by publishing Regulations

Government Notice no. 471 of Government Gazette No 43240 dated 20 April 2020 were premised.

34. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which the exercise of the authority to issue directives (issued after the publishing of the Regulations Government Notice no. 471 of Government Gazette No 43240 dated 20 April 2020) were premised by other members of the National Executive of Government.

35. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which a decision was made by the Minister to amend the regulations in terms of section 27(2) read together with section 27(3) of the Act by publishing Regulations Government Notice no. 398 of Government Gazette No 43148 dated 20 April 2020 were premised.

36. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which the exercise of the authority to issue directives (issued after the publishing of the Regulations Government Notice no. 398 of Government Gazette No 43148 dated 20 April 2020) were premised by other members of the National Executive of Government.

37. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and upon which the Alert Level 4 Lockdown

regulations in terms of section 27(2) read together with section 27(3) of the Disaster Management Act, 57 of 2002 in Government Notice no. 480 of Government Gazette No 43258 dated 29 April 2020 were premised.

38. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which the exercise of the authority to issue directives (issued after the publishing of the Regulations Government Notice no. 480 of Government Gazette No 43258 dated 29 April 2020) were premised by other members of the National Executive of Government

39. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation upon which the classification of the National Disaster in terms of section 23 of the Disaster Management Act, 57 of 2002, when it was pronounced was premised, together with the scales, models or other weighting method that was used to determine the level or scale of the disaster that culminated into the declaration of National Disaster on 15 March 2020.

40. Details of all or any other legislation that was considered to manage and curb the spread and/or effects of the COVID19 virus in accordance with section 27(3) of the Disaster Management Act, 57 of 2002.

41. A list of Constitutional or other statutory provisions of which the operation was limited, suspended or that have been superseded by the regulations issued in terms of Section 27(2) read together with section 27(3) of the Disaster Management Act, 57 of 2002 and copies of all or any presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation upon which the necessary extent thereof has been determined.

42. A full list of dates and times of the meetings of the COVID19 National Command Council since its establishment.

43. The minutes and or record of decision-making of the COVID19 National Command Council in respect of every meeting it has held since its establishment.

44. Full details as to all of the advisory memoranda and or advice in any other format than memoranda which the COVID19 National Command Council has given to the national executive.

45. All presentations, reports, best practices, recommendations, statistics, scientific/medical evidence, treaties, models or expert reports or any other documentation furnished to, considered and not adopted or accepted by, and upon which any and all of the decisions and or advice given to the national executive have been based by the COVID19 National Command Council.

46. Full details as to the record of decision-making by the COVID19 National Command Council in respect of each and every economic activity it advised the National Executive and or the Minister not to allow in Regulations Government Notice no. 480 of Government Gazette No 43258 dated 29 April 2020 and or any directives issued by any Minister subsequent to the aforesaid regulations, including the full and detailed reasons why such economic activities were advised to be prohibited.

47. Full details as to the record of decision-making by the Minister in respect of each and every economic activity she resolved not to allow in Regulations Government Notice no. 480 of Government Gazette No 43258 dated 29 April 2020 and or any directives issued by any Minister subsequent to the aforesaid regulations, including the full and detailed reasons why such economic activities were prohibited, irrespective of whether she resolved on the matter unilaterally or as part of any collective.

48. Full details of the record of decision-making by the Minister in respect of the limitations placed on the movement of people in Regulations Government Notice no. 480 of Government Gazette No 43258 dated 29 April 2020 and or any directives issued by any Minister subsequent to the aforesaid regulations, including the full and detailed reasons why these limitations were imposed, irrespective of whether she resolved on the matter unilaterally or as part of any collective.

49. Full details of the record of decision-making by the Minister in respect of the limitations placed on trade and retail as reflected in Regulations Government Notice no. 480 of Government Gazette No 43258 dated 29 April 2020 and or any directives issued by any Minister subsequent to the aforesaid regulations, including the full and detailed reasons why these limitations were imposed, irrespective of whether she resolved on the matter unilaterally or as part of any collective.

50. Full details of the record of decision-making by the Minister in respect of the limitations placed on the service sector of the economy as reflected in Regulations Government Notice no. 480 of Government Gazette No 43258 dated 29 April 2020 and or any directives issued by any Minister subsequent to the aforesaid regulations, including the full and detailed reasons why these limitations were imposed, irrespective of whether she resolved on the matter unilaterally or as part of any collective.

"MT4"

LIST OF MAC DOCUMENTS RELEASED

Key: *documents highlighted were located by counsel on the DoH website*

1. Public use of cloth face masks in SA (08/04/2020)
2. Switching from community screening and testing in Hotspots (18/05 /2020)
3. The path forward in the national covid-19 response: concurrently saving lives and livelihoods
4. Fumigation Tunnels (19/05/2020)
5. Modelling Advisory (19/05/2020)
6. Regulation on Sale of cars, footwear and emergency automobile repairs
7. Getting children back to school (26/06/2020)
8. Time to peak for Covid-19 (03/06/2020)
9. Prioritisation strategy for testing and suggested daily targets
10. Medical certificate of death (04/06/2020)
11. Asymptomatic infections (18/06/2020)
12. Use of dexamethasone (18/06/2020)
13. Use of antibody test (24/06/2020)
14. Decontamination question from NATJOINTS (06/07/2020)
15. Advisory on Taxi occupancy levels (09/07/2020)
16. Proposal to reduce isolation time from 14-8 days
17. Environmental cleaning and disinfection (20/07/2020)
18. Enhancing uptake of preventative measures (20/07/2020)
19. Keeping schools safe (20/07/2020)
20. Questions on actions to take to curb surge (21/07/2020)
21. Use of Favinpiravir in the Management of Covid-19 (22/07/2020)
22. Fitness industry reopening Framework (23/07/2020)
23. Making air travel safe (27/07/2020)
24. Serological testing (07/08/2020)
25. Proposals for Alert Level 2 (17/08/2020)

LIST OF MAC DOCUMENTS RELEASED

Key: *documents highlighted were located by counsel on the DoH website*

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24. Serological testing (07/08/2020)
25. Proposals for Alert Level 2 (17/08/2020)

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 39370/2021

In the matter between:

SAKELIGA NPC	Applicant
and	
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	First Respondent
THE NATIONAL DEPARTMENT IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Second Respondent
THE DIRECTOR GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent
THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT COOPERATIVE GOVERNANCE	Fourth Respondent
THE PRESIDENT: REPUBLIC OF SOUTH AFRICA	Fifth Respondent

INDEX (UPDATED)

NO.	ITEM	DELIVERED	PAGE NO.
1.	NICD-Coronavirus disease 2019 (COVID-19) caused by a Novel Coronavirus- Guidelines for case finding, diagnosis, management, and public health response in South Africa.	Yes	
2.	COVID-19 Theoretical elements of a risk reduction containment strategy.	Yes	
3.	President's letter of appointment to the national command council combating COVID-19.	Yes	
4.	Academy of Science SA on the implication of COVID-19.	Yes	
5.	National Department of Health, Standard operating procedures for preparedness and detection in South Africa.	Yes	
6.	Global Epidemiological Situation	Yes	
7.	Integrated National Response plan to COVID-19.	Yes	
8.	Internal legal opinion on the legal instruments applicable.	Yes	
9.	DoH regulations relating to the surveillance and the control of notifiable medical conditions.	Yes	
10.	Containment and preparedness plan for COVID-19.	Yes	
11.	Interim novel coronavirus disease (COVID-19) 72 hour preparedness and response plan Western Cape Department of Health.	Yes	

12.	Outbreak of novel coronavirus (COVID-19) update for March 2020-Department of Health.	Yes	
13.	Novel Coronavirus (COVID-19) provincial readiness checklist.	Yes	
14.	NDMC phase two quarantine.	Yes	
15.	Classification of a disaster and declaration of a state of disaster.	Yes	
16.	NDMC legal basis for control measures.	Yes	
17.	Containment of COVID-19 for schools and communities.	Yes	
18.	Provincial efforts to contain COVID-19.	Yes	
19.	Travel advisories.	Yes	
20.	Containment plan for COVID-19 March 2020	Yes	
21.	Progress update on the work regarding COVID-19 Pandemic.	Yes	
22.	COVID-19, National Consolidated Report.	Yes	
23.	NDMC Guidelines- contingency planning and arrangement.	Yes	
24.	Department of Defence disaster management report.	Yes	
25.	Department of Correctional Services quarterly performance report.	Yes	
26.	SAFER: prevention and reducing alcohol related harms.	Yes	
27.	Presentation by the Minister of CoGTA, 20 April 2020.	Yes	
28.	Minister of GOGTA media briefing – level 2 in line with Risk Adjusted Strategy.	Yes	

29.	Department of CoGTA, report on issues raised by sectors and the public in re: risk adjusted strategy	Yes	
30.	Intervention in response to COVID-19 SAPS	Yes	
31.	Fitness industry reopening framework.	Yes	
32.	NICD article on the second wave of infections.	Yes	
33.	A summary of Garden Route hospital admissions from March 2020- 18 December 2020.	Yes	
34.	Minutes, local municipalities (Sarah Baartmman District and Kouga).	Yes	
35.	VINPRO-Garden Route: Special COVID-19 Coordinating forum meeting.	Yes	
36.	Sentinel Trauma report Update WC Department Of Health.	Yes	
37.	Plan of action to mitigate a COVID-19 resurgence in SA.	Yes	
38.	The cost of harmful alcohol use in SA.	Yes	
39.	Draft Framework Public Consultation.	Yes	
40.	Ministerial Advisory Committee (MAC) Memoranda.	Yes	
41.	Alcohol recommendations.	Yes	
42.	Public submissions received	Yes	
43.	**Literature considered:** WHO: Global Tuberculosis report 2019 webpage.	Yes	
44.	CDC: Smoking and COPD	Yes	
45.	WHO: Tobacco and lung health -World No Tobacco Day 2019.	Yes	
46.	WHO: Report on the global tobacco epidemic 2017.	Yes	

47.	Statistics South Africa-Mid-year population estimates 2019.	Yes	
48.	Hua, C. Sex difference and smoking predisposition in patients with COVID-19.	Yes	
49.	CDC: Second hand Smoke (SHS) facts.	Yes	
50.	South African National Health Survey.	Yes	
51.	Global Tuberculosis Report	Yes	
52.	Smoking Cessation: A report of the Surgeon General.	Yes	
53.	Government Gazette No. 43258	Yes	
54.	Minutes of the extended PCC meeting – 28 February 2020	Yes	
55.	Minutes of the PCC meeting held via Video Conference – 04 April 2020	Yes	
56.	Minutes of the PCC meeting held via Video Conference – 18 April 2020	Yes	
57.	Minutes of the PCC meeting held via Video Conference – 16 May 2020	Yes	
58.	Minutes of the PCC meeting held via Video Conference – 17 June 2020	Yes	
59.	Minutes of the PCC meeting held via Video Conference – 09 July 2020	Yes	
60.	Minutes of the PCC meeting held via Video Conference – 15 August 2020	Yes	
61.	Minutes of the PCC meeting held via Video Conference – 15 September 2020	Yes	
62.	Minutes of the PCC meeting held via Video Conference – 02 December 2020	Yes	
63.	Minutes of the PCC meeting held via Video Conference – 13 December 2020	Yes	
64.	Minutes of the PCC meeting held via Video Conference – 28 December 2020	Yes	

65.	Medical Advisory Committee (MAC) Presentation – 16 June 2020	Not yet	
66.	MAC Presentation to the NCCCC – 5 July 2020	Not yet	
67.	MAC Presentation for Behaviour Change – 8 July 2020	Not yet	
68.	Update on the Covid-19 Epidemic in SA – 3 August 2020	Not yet	
69.	CAPRISA update on COVID-19 in SA – 25 August 2020	Not yet	
70.	Covid-19 Vaccines – 14 September 2020	Not yet	
71.	Presentation to the NCCC – 27 October 2020	Not yet	
72	COVID-19 Vaccines – 25 November 2020	Not yet	

SIGNED AT PRETORIA on this the **11th** day of **January 2023.**

THE STATE ATTORNEY: PRETORIA

Attorneys for the Respondents

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Pretoria

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OSebitso@justice.gov.za

REF:2433/21/Z71

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

AND TO:

KRIEK WASSENAAR & VENTER INC

Applicant's Attorney

Third Floor

HB Forum Building

13 Stamvrug Street

Val de Grace

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peter@kriekprok.co.za

REF: PJ Wassenaar/M Jansen van Vuuren/QB0792

"MTS"

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF CO-OPERATIVE GOVERNANCE

NO. R. 1988 **4 April 2022**

TERMINATION OF THE NATIONAL STATE OF DISASTER (COVID-19)

DISASTER MANAGEMENT ACT, 2002: (ACT NO. 57 OF 2002):

On 15 March 2020, I declared a national state of disaster (Covid-19) in terms of my powers under section 27(1)(*a*) of the Disaster Management Act, 2002 (the Act). This was extended in terms of section 27(5)(*c*) of the Act at one-month intervals to 15 April 2022.

I have, together with Cabinet, considered the current situation and the steps taken to augment existing legislation and contingency arrangements, and have decided to terminate the national state of disaster.

In determining precisely when each of the Regulations and Directions should be repealed, I have given consideration to, inter alia, the need for post-disaster recovery and rehabilitation, including the need to anticipate future disaster risk, reduce exposure, improve resilience, mitigate the effects of the disaster, create circumstances that will reduce the risks of a similar disaster and deal with the destructive and other effects of the disaster.

Therefore, I, Dr Nkosazana Dlamini Zuma, Minister of Cooperative Governance and Traditional Affairs, designated under section 3 of the Act, in terms of section 27(5)(*b*) of the Act hereby terminate the national state of disaster which I declared on 15 March 2020 as published in Government Gazette No. 43096 in Notice No.313 and which, in terms of section 27(5)(*c*) of the Act, I extended at one month intervals to 15 April 2022 and published in Government Gazette No. 46042 in Notice R. 1875.

(1) All regulations and directions made in terms of section 27(2) of the Act pursuant to the declaration of the national state of disaster to deal with Covid-19, are hereby repealed with immediate effect, save for the following:

(*a*) Regulation 67;

(*b*) Regulations 69;

(*c*) Regulations 75;

(*d*) Directions, as amended, issued in terms of Regulation 4(5) and (10), which provide for Social Relief of Distress Grant;

(*e*) Directions, as amended, issued in terms of Regulation 4(7)(*b*), which provide for the extension of the validity period of a learner's license, driving licence card, licence disc, professional driving permit and registration of a motor vehicle; and

(*f*) The Regulations in Chapter 8 and the Directions in terms thereof, which provide for the COVID-19 Vaccine Injury No-Fault Compensation Scheme.

(2) The Regulations and Directions referred to in subsection (1)(*a*) to (e) shall -

(*a*) not cease to operate or cease to be of force and effect due to the termination of the national state of disaster; and

(*b*) continue to operate and be of force and effect for a period of one month from today, whereupon they will automatically lapse.

(3) The Regulations and Directions referred to subsection (1)(*f*) shall -

(*a*) not cease to operate or cease to be of force and effect due to the termination of the national state of disaster; and

(*b*) continue to operate and be in force until terminated in terms of Regulation 100 of Chapter 8.

NC Zuma

DR NKOSAZANA DLAMINI ZUMA, MP

MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

DATE: 04.04.2022.

"MT6"

Office of the State Attorney
Pretoria

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03 MARCH 2024

Enquires: MS O SEBITSO
Email:OSebitso@justice.gov.za
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KRIEK WASSENAAR & VENTER INC
THIRD FLOOR
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13 STAMVRUG ROAD
VAL DE GRACE
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"WITHOUT PREJUDICE"

RE: SAKELIGA NPC // COGTA

CASE NO: 2023-132918

1. The above matter refers.

2. Kindly note that, in your founding affidavit, you indicated that you will undertake to upload the previous Notice of Motion that gave rise to order of contempt on case lines, as it is a huge file.

3. Further note that we are on a process of finalizing our Affidavit.

4. The facts and circumstances of the previous application, which has not been yet uploaded on case lines are relevant to this application.

5. We therefore request your good selves to load the said application on case lines.

O Sebitso

Ms Ontlametse Sebitso
FOR: STATE ATTORNEY (PRETORIA)

"MT 7"

RE: SAKELIGA NPC//COGTA - Message (HTML)

FILE MESSAGE

Ignore Junk Delete | Reply Reply All Forward | Meeting IM More | Move to: ? Team Email Reply & Delete To Manager Done Create New | Move Rules OneNote Actions | Mark Unread Categorize Follow Up | Translate | Find Related Select | Zoom

Delete Respond Quick Steps Move Tags Editing Zoom

Thu 2024-03-14 12:00 PM

Qonggo Nangamso <NaQonggo@justice.gov.za>

RE: SAKELIGA NPC//COGTA

To: Reghana Tulk; Sebitso Ontlametse; Thabang Samuel Lesita; Thabang Samuel Lesita Adiel Nacerodien

Cc: mtkmoerane@mandla.co.za

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Dear Counsel

We have invited you on caselines in this matter. You can now access the papers in the main application. You (counsel)all have access on this case .

We hope to hear from you soon.

Regards

Qonggo Nangamso

ALL
WHAT'S NEW
MAIL
ATTACHMENTS
MEETINGS

Fees Sakeliga v Minister of CoGTA 300923.pdf (53 KB) *Attached to: FW: Fees Sakeliga v Minister of CoGTA 300923*
Adv MTK Moerane SC CSD Registration Report 071223.pdf (459 KB) *Attached to: FW: Fees Sakeliga v Minister of CoGTA 300923*
Fees Sakeliga v Minister of CoGTA 300923.pdf (53 KB) *Attached to: FW: Fees Sakeliga v Minister of CoGTA 300923*
Adv MTK Moerane SC CSD Registration Report 071223.pdf (459 KB) *Attached to: FW: Fees Sakeliga v Minister of CoGTA 300923*

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"MT8"

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO.: 2023-132918

In the application between:

SAKELIGA NPC	**Applicant**
and	
THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	**First Respondent**
THE NATIONAL DEPARTMENT: COOPERATIVE GOVERNANCE	**Second Respondent**
THE DIRECTOR-GENERAL IN THE DEPARTMENT OF COOPERATIVE GOVERNANCE	**Third Respondent**
THE INFORMATION OFFICER: THE NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE	**Fourth Respondent**
THEMBI NKADIMENG	**Fifth Respondent**
MBULELO TSHANGANA	**Sixth Respondent**
THINAYHYO SKOSANA	**Seventh Respondent**
NKOSAZANA CLARICE DLAMINI ZUMA	**Eighth Respondent**
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	**Ninth Respondent**

NOTICE OF SET DOWN

PLEASE TAKE NOTICE that the abovementioned matter has, under the circumstances mentioned below, been set down on the unopposed motion roll for hearing on **6 SEPTEMBER 2024** at 10h00, or as soon as counsel for the applicant can be heard:

1) The applicant's application having been served to the first to seventh and ninth respondents on 30 January 2024;

2) The applicant's application having been served to the eight respondent on 16 February 2024;

3) The applicant's application having been served to the State Attorney on 11 January 2024;

4) The respondents having served their notice of intention to oppose the application on 8 February 2024;

5) The time for the first to ninth respondents to file an answering affidavit having expired on 29 February 2024; and

6) The respondents have failed to deliver an answering affidavit and has not given notice of an intention only to raise a question of law (rule 6(5)*(d)*(iii)) or a point *in limine*.

KINDLY NOTE in terms of practice directive 13.10.2 of the Gauteng, Pretoria Practice Manual of this Honourable Court, this application must be enrolled on the unopposed roll. In the event of such an application thereafter becoming opposed (for whatever reason), the application will not be postponed as a matter of course.

SIGNED at **PRETORIA** on **8 APRIL 2024**.

KRIEK WASSENAAR & VENTER INCORPORATED
ATTORNEYS FOR APPLICANT
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REF: M JANSEN VAN VUUREN/QB0792

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
PRETORIA

AND TO: **THE STATE ATTORNEY: PRETORIA**
ATTORNEYS FOR THE RESPONDENTS
SALU Building
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REF: 0061/24/Z71
Enq: Sebitso O (Ms)

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