REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION, MBOMBELA
(MAIN SEAT)

CASE NO's: 3261/2020,
1051/2021, 1063/2021, 299/2021, 300/2021, 579/2021, 581/2021

1. REPORTABLE: ~~YES~~/ NO
2. OF INTEREST TO OTHER JUDGES: YES/~~NO~~
3. REVISED.

22 June 2021 **[SIGNED]**

DATE SIGNATURE

In the matter between:

LAZARUS SINGWANE Applicant

and

MEDICAL SUPERENTENDENT OF THE MATSULU COMMMUNITY HEALTH CLINIC First Respondent

CHIEF EXECUTIVE OFFICER OF THE MATSULU COMMUNITY HEALTH CLINIC Second Respondent

MEC: MPUMALANGA DEPARTMENT OF HEALTH Third Respondent

(AND SIX OTHER APPLICATIONS UNDER SECTION 78 OF THE PAIA ACT)

This judgment was handed down electronically by circulation to the parties' legal representatives by email shall be releases to SAFLII. The date and time for hand-down is deemed to be 14:00 on 22 June 2021.

JUDGMENT

Roelofse AJ:

[1] This judgment concerns seven applications that were enrolled on the unopposed roll before me on 24 May 2021. I deal with all the applications in this judgment because the applications were all brought in terms of the provisions of section 78 of the Promotion of Access to Information Act, 2 of 2000 (*"PAIA"*). I reserved my judgment in the applications to have an opportunity to revisit the provisions of PAIA applications. This type of applications is often unopposed and dealt with on this court's unopposed roll. Often several such applications are on the courts unopposed roll on motion days.

[2] This judgment will show that, despite the Legislature's noble aim to provide a comprehensive procedure and system for access to information through PAIA, parties are already on a road to nowhere even before their applications reach the court. I hope that this judgment will cause the litigants and their legal practitioners to carefully consider the provisions of PAIA from the time the need for access to information arises.

[3] To communicate what I intend to communicate in this judgment, I have deemed it necessary to reproduce either in the main test of the judgment or in the endnote thereof the applicable text of PAIA. This, I hope, will do away with the need for those who wish to

read the judgment, to refer to the Act itself.

[4] I commence this judgment with some remarks over PAIA. Thereafter I proceed to refer to the provisions of PAIA insofar as they are relevant for purposes of deciding the applications. Finally, I deal with each of the applications and set out in why they are wanting of the provisions of PAIA.

Remarks in respect of PAIA

[5] Twenty-four years since the commencement of the Constitution of the Republic of South Africa Act, 1996 (*"the Constitution"*)[1], South Africans ought to know by now that access to information is a fundamental right. Section 32 of the Bill of Rights[2] provides:

> *"Access to information.*
>
> *(1) Everyone has the right of access to- (a) any information held by the state; and any information that is held by another person and that is required for the exercise or protection of any rights.*
>
> *(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state."*

[6] In Brümmer v Minister for Social Development and Others[3], the Constitutional Court explained the importance of the constitutional right of access to information held by the state as follows:

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

Apart from this, access to information is fundamental to the realisation of the rights guaranteed in the Bill of Rights. For example, access to information is crucial to the right to freedom of expression which includes freedom of the press and other media and freedom to receive or impart information or ideas. . . . Access to information is crucial to accurate reporting and thus to imparting accurate information to the public."(Citations omitted.)

[7] PAIA was promulgated in pursuit of sub-section (2) of section 32 of the Constitution.[4]

[8] The purpose of PAIA is:

"To give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith."

[9] The objects of PAIA are set out in section 9 of PAIA:

"(a) to give effect to the constitutional right of access to—

(i) any information held by the State; and

(ii) any information that is held by another person and that is required for the exercise or protection of any rights;

(b) to give effect to that right—

(i) subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance; and

(ii) in a manner which balances that right with any other rights, including the rights in the Bill or Rights in Chapter 2 of the Constitution;

(c) to give effect to the constitutional obligations of the State of promoting a human rights culture and social justice, by including public bodies in the definition of

"requester", allowing them, amongst others, to access information from private bodies upon compliance with the four requirements in this Act, including an additional obligation for certain public bodies in certain instances to act in the public interest;

(d) to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible; and

(e) generally, to promote transparency, accountability and effective governance of all public and private bodies by, including, but not limited to, empowering and educating everyone—

(i) to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;

(ii) to understand the functions and operation of public bodies; and

(iii) to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights."

[10] PAIA applies to records held by public bodies and private bodies regardless of when the record came into existence.[5]

[11] I specifically refer to some of the definitions contained in section 1 of PAIA insofar as they are relevant for purposes of this judgment:

a. "application" *means an application to a court in terms of section 78;*

b. "head" *of, or in relation to, a private body means—*
- *in the case of a natural person, that natural person or any person duly authorised by that natural person;*
- *in the case of a partnership, any partner of the partnership or any person duly authorised by the partnership;*
- *in the case of a juristic person—*
  - *the chief executive officer of equivalent officer of the juristic person or any person duly authorised by that officer; or*
  - *the person who is acting as such or any person duly authorised by such acting person;*

c. "information officer" of, or in relation to, a public body—

- *in the case of a national department, provincial administration or organisational component—*
  - *mentioned in Column 1 of Schedule 1 or 3 to the Public Service Act, 1994 (Proclamation 103 of 1994), means the officer who is the incumbent of the post bearing the designation mentioned in Column 2 of the said Schedule 1 or 3 opposite the name of the relevant national department, provincial administration or organisational component or the person who is acting as such; or*
  - *not so mentioned, means the Director-General, head, executive director or equivalent officer, respectively, of that national department, provincial administration or organisational component, respectively, or the person who is acting as such;*
- *in the case of a municipality, means the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), or the person who is acting as such; or*

- *in the case of any other public body, means the chief executive officer, or equivalent officer, of that public body or the person who is acting as such;*

d. "private body" *means*—

- *a natural person who carries or has carried on any trade, business or profession, but only in such capacity;*
- *a partnership which carries or has carried on any trade, business or profession; or*
- *any former or existing juristic person,*
- *but excludes a public body;*

(e) "public body" *means*—

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere or government; or

(b) any other functionary or institution when—

- *exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or*

- *exercising a public power or performing a public function in terms of any legislation;*

(f) "relevant authority"*, in relation to*—

- *a public body referred to in paragraph (a) of the definition of "public body" in the national sphere of government, means—*
  - *in the case of the Office of Presidency, the person designated in writing by the President; or*
  - *in any other case, the Minister responsible for that public body or the person designated in writing by that Minister;*
  - *a public body referred to in paragraph (a) of the definition of "public body" in the provincial sphere or government, means—*
    - *in the case of the Office of a Premier, the person designated in writing by the Premier; or*
    - *in any other case, the member of the Executive Council responsible for that public body or the person designated in writing by that member; or*
  - *a municipality, means—*
    - *the mayor;*
    - *the speaker; or*
    - *any other person, designated in writing by the Municipal Council of that municipality;*

(g) "request for access", *in relation to—*
- *a public body, means a request for access to a record of a public body in terms of section 11; or*
- *a private body, means a request for access to a record of a private body in terms of section 50;*

[12] The legislature deemed it so important that everyone would know their right of access to information, the manner in which access is to be obtained, where access is to be obtained, what to do if access is refused or in the event of a failure to respond to the request for information, and the requester's remedies thereafter in relation to the request that Section 10 of PAIA provides that the Human Rights Commission must, within three years after the commencement of this section, compile in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wished to exercise any right contemplated in this Act. Clearly this was intended to make PAIA and its provisions readily available to the public in a manner that could be easily understood. The Human Rights Commission did so.[6]

[13] Sections 11 and 50 of PAIA gives effect to the Constitutional Right of access to information held by public and private bodies respectively. Section 11[7] reinforces the right of access to information held by public bodies. Section 50 reinforces the right of access to information held by private bodies.[8]

[14] Chapter 3[9] of PAIA deals with the manner of access to information is obtained. It provides for aspects such as delegation, the form of requests, duty to assist requesters, the transfer of requests, the preservation of records, fees, records that cannot be found or that do not exist, the deferral of access, the extension of period to deal with request and the forms of access.

[15] Section 14 of PAIA provides for a manual on the functions of and the index of records held by public body. The section sets out detail of what must be contained in a public body's manual. Sub-section (1) provides that within six months after the commencement of section 14 or the coming into existence of a public body, the information officer of the public body concerned must compile a manual in at least three official languages. Section 14(1)(b) provides that the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of the body and of every designated information officer of the body.

[16] Sections 18(1) and 53(1) prescribes the formal and procedural requirements for a request.

[17] Section 18 prescribes the form of requests for access to information to public bodies. Sub-section (1) of section 18 provides:

> *"A request for access must be made in the prescribed form to the information officer of the public body concerned at his or her address or fax number or electronic mail address."*

[18] Section 53 prescribes the form of requests for access to information in respect of private bodies. Sub-section (1) of section 53 provides:

> *"A request for access to a record of a private body must be made in the prescribed form to the private body concerned at its address, fax number or electronic mail address."*

[19] As will appear later in this judgment, sections 25, 27, 50 and 58 bear particular prominence.

[20] Section 25 provides as follows:

> *"Decision on request and notice thereof*
>
> *(1) Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part[10] apply, the information officer to whom the request is made or transferred, must, as soon as reasonably possible, but in any event within 30 days, after the request is received—*
>
> > *(a) decide in accordance with this Act whether to grant the request; and*
> >
> > *(b) notify the requester of the decision and, if the requester stated, as contemplated in section 18(2)(e), that he or she wished to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.*
>
> *(2) If the request for access is granted, the notice in terms of subsection (1)(b) must state—*
>
> > *(a) the access fee (if any) to be paid upon access;*
> >
> > *(b) the form in which access will be given; and*
> >
> > *(c) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the access fee to be paid or the form of access granted, and the procedure (including the period) for lodging the internal appeal or application as the case may be.*
>
> *(3) If the request for access is refused, the notice in terms of subsection (1)(b) must—*

(a) state adequate reasons for the refusal, including the provisions of PAIA relied upon;

(b) exclude, from such reasons, any reference to the content of the record; and

(c) state that the requester may lodge an internal appeal or an application with a court, as the case may be, against the refusal of the request, and the procedure (including the period) for lodging the internal appeal or application, as the case may be."

[21] Section 27 provides:

"Deemed refusal of request

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

[22] Section 50 provides:

"Right of access to records of private bodies

(1) A requester must be given access to a record of a private body if—

(a) that record is required for the exercise or protection of any rights;

(b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and

(c) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

(2) In addition to the requirements referred to in subsection (1), when a public body, referred to in paragraph (a) or (b)(i) of the definition of "public body" in section 1, requests access to a record of a private body for the exercise or protection of any rights, other than its rights, it must be acting in the public interest.

(3) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester or the person on whose behalf the request is made."

[23] Section 58 provides:

> *"Deemed refusal of request*
>
> *If the head of a private body fails to give the decision on a request for access to the requester concerned within the period contemplated in section 56(1), the head of the private body is, for the purpose of this Act, regarded as having refused the request."*

[24] Chapter 4 of PAIA[11] provides for the refusal of requests. As the applications before me were founded upon deemed refusal as contemplated in section 27 and 58, I need not venture into the issue of refusal of the request for the other reasons provided for in PAIA.

[25] Section 51 provides for the manual of a private body. Sub-section (1) provides that within six months after the commencement of this section or the coming into existence of the private body concerned, the head of a private body must compile a manual containing information that is prescribed. Section 51(1)(a) provides that the postal and street address, phone and fax number and, if available, electronic mail address of the head of the body.

[26] PAIA provides for a right to an internal appeal if a requester of access to information held by certain public bodies is aggrieved by either a failure by the information officer of a public body to respond to a request for information or if the request is refused or deemed to have been refused. No internal appeal lies against a decision of a private body.

[27] Section 74 of PAIA provides for the right of appeal. Section 74 only refers to a requester and third party in relation to public bodies as defined in under paragraph (a) of the definition of "public body" in section 1 of PAIA, that is administrations in the national, provincial and local spheres of government.

[28] Section 75 of PAIA provides for the manner of internal appeal, and appeal fees.

[29] Section 76 of PAIA provides for notice of the appeal to, and representations by other interested persons.

[30] Section 77 of PAIA provides for the decision on internal appeal and notice thereof.

[31] An internal appeal must be delivered or sent to the information officer of the public body concerned at his or her address, fax number or electronic mail address (section 75(1)(b).

[32] The provisions of section 77 of PAIA sets out what must be done by the relevant authority after the appeal is delivered. Sub-sections (2), (4), (5) and (6) of section 77 provide:

> *"(2) When deciding on the internal appeal the relevant authority may confirm the decision appealed against or substitute a new decision for it.*
>
> *(4) The relevant authority must, immediately after the decision on an internal appeal—*
>
> *(a) give notice of the decision to—*
>
> *(i) the appellant;*
>
> *(ii) every third party informed as required by section 76(1); and*
>
> *(iii) the requester notified as required by section 76(7); and*
>
> *(b) if reasonably possible, inform the appellant about the decision in any other manner stated in terms of section 75(1)(d).*
>
> *(5) The notice in terms of subsection (4)(a) must—*
>
> *(a) state adequate reasons for the decision, including the provision of this Act relied upon;*
>
> *(b) exclude, from such reasons, any reference to the content of the record;*
>
> *(c) state that the appellant, third party or requester, as the case may be, may lodge an application with a court against the decision on internal appeal—*

(i) within 60 days; or

(ii) if notice to a third party is required by subsection (4)(a)(ii), within 30 days after notice is given, and the procedure for lodging the application; and

(d) if the relevant authority decides on internal appeal to grant a request for access and notice to a third party—

(i) is not required by subsection (4)(a)(ii), that access to the record will forthwith be given; or

(ii) is so required, that access to the record will be given after the expiry of the applicable period for lodging an application with a court against the decision on internal appeal referred to in paragraph (c), unless that application is lodged before the end of that applicable period.

(6) If the relevant authority decides on internal appeal to grant a request for access and notice to a third party—

(a) is not required by subsection (4)(a)(ii), the information officer of the body must forthwith give the requester concerned access to the record concerned; or

(b) is so required, the information officer must, after the expiry of 30 days after the notice is given to every third party concerned, give the requester access to the record concerned, unless an application with a court is lodged against the decision on internal appeal before the end of the period contemplated in subsection (5)(c)(ii) for lodging that application."

[33] With the relevant provisions of PAIA dealt with above, it is now time to turn to the provision that caused me to be seized with the applications, namely sections 78 and 79 of PAIA. Section 78 of PAIA gives a remedy to an aggrieved requester while section 79 provides for the procedure.

[34] Section 78 of PAIA provides:

"(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester—

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75(2);

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1—

(i) to refuse a request for access; or

(ii) taken in terms of section 22, 26(1) or 29(3); or

(d) aggrieved by a decision of the head of a private body—

(i) to refuse a request for access; or

(ii) taken in terms of section 54, 57(1) or 60,

may, by way of an application, within 180 days apply to a court for appropriate relief in terms of section 82.

(3) A third party—

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1 to grant a request for access; or

(c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body,

(c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body, may, by way of an application, within 180 days apply to a court for appropriate relief in terms of section 82."

[35] Section 79 of PAIA sets the procedural requirements an an application to court in terms of section 78:

"*Procedure*

(1) The Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must before 28 February 2009, subject to the approval of the Minister, make rules of procedure for—

(a) a court in respect of applications in terms of section 78; and
(b) a court to receive representations ex parte referred to in section 80(3)(a).

(2) .....

[36] Rules of Procedure for Application to Court in terms of PAIA was promulgated in GNR.965 of 9 October 2009 (Government Gazette No. 32622) (*"the Rules"*). The full text of the Rules is recorded in the endnote[12].

[37] The form that is set out in the Annexure to the Rules is also reproduced in the endnote for ease of reference.[13]

[38] Section 82 provides for the decisions of the court in applications under section 78 of PAIA:

"Decision on application

The court hearing an application may grant any order that is just and equitable, including orders—

(a) confirming, amending or setting aside the decision which is the subject of the application concerned;

(b) requiring from the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order;

(c) granting an interdict, interim or specific relief, a declaratory order or compensation;

(d) as to costs; or

(e) condoning non-compliance with the 180 day period within which to bring an application, where the interests of justice so require."

[39] It cannot be gainsaid that, when considering the provisions of PAIA:

> *"[7] It is demonstrably clear from the provisions of PAIA that the legislature has gone to great lengths in codifying a user friendly legislative road map for applications under PAIA. This road map starts when an initial application for access to information is made to an information officer long before a court application in terms of section 78 of PAIA is made or even conceptualised. It is evident from PAIA that the legislature had in mind an uncomplicated and inexpensive procedure in which a request for information is made and access thereto is given administratively, a court application being the exception rather than the rule.*
>
> *[8] However, the life experience of ordinary South Africans, at least within the area of jurisdiction of this Division, has shown that requests for access to information, constitutional as they are, are regarded with disdain and are consequently ignored. This attitude by state functionaries has resulted in ordinary South Africans having to resort to the courts, burdening court rolls with court applications which are largely unopposed. This burdens the fiscus with unnecessary costs orders in circumstances where scarce resources are severely challenged by competing needs. The time may have arrived for costs orders in deserving cases to be made against the respective officials who unnecessarily force ordinary citizens, many of whom may be poor, to go to court to enforce a right that is enshrined in the Constitution and incontestable."*[14]

The applications

[40] I now turn to the applications that were before me.

[41] After having considered the relevant provisions of PAIA against the applications that were before me, I was of the preliminary view that applications that did not comply with the provisions of PAIA or the Rules or both.

[42] Having regard to what was decided and ordered in Paul v MEC where the applications were dismissed for want of compliance with the provisions of PAIA, I caused a directive to be sent to the applicants' attorneys as follows:

> *"1. The applicants in [the respective cases] are hereby directed to furnish heads of argument setting out why the applications should not be dismissed for want of compliance with the provisions of section 78 of PAIA read with GNR.965 of 9 October 2009: Rules of Procedure for Application to Court in terms of PAIA (Government Gazette No. 32622);*
>
> *2. The applicants are directed to deliver the heads of argument to this court's registrar by email by no later than 16:00 on Friday, 21 May 2021."*

[43] The applicants' legal practitioners delivered heads of argument as directed. They also appeared at the virtual hearing of the applications. I allowed them to make submissions.

The Singwane application (Case Number: 3261/20)

[44] In this application, the applicant is a brother of a deceased who passed away after allegedly being treated at the Matsulu Community Clinic in Kaapmuiden. The applicant's attorney requested the deceased's medical records by completing the form prescribed by PAIA. No information was forthcoming. The attorney lodged an internal appeal by submitting the prescribed form. No decision was forthcoming. This led to the application being launched.

[45] The request for information form and the appeal form were sent to a host of email addresses. No evidence was presented as to the identities or designation of the persons to whom the forms were sent.

[46] The respondents were cited as: the Medical Superintendent of the Matsulu Community Health Clinic; the Chief Executive Officer of the Matsulu Community Health Clinic and the MEC of the Mpumalanga Department of Health.

[47] The applicant's attorney deposed to the founding affidavit in the application.

[48] The application was served upon an employee at the MEC's office, the State Attorney and an employee of the clinic. It is important to note that the sheriff's return records that there is no information officer at the clinic.

[49] In the notice of motion, the applicant sought the medical records and costs to be paid on an attorney and client scale by the respondents.

The Mnisi application (Case Number: 1051/2021)

[50] In this application, the applicant was allegedly injured in a motor vehicle accident and allegedly suffered serious injuries. The applicant was treated at the Kiaat private hospital in Mbombela.

[51] The respondents were cited as the hospital manager of the Kiaat Hospitaal and the administration and buildings manager of the Kiaat Private Hospital.

[52] The applicant's attorney sent a partly completed RAF1 form[15]. In paragraph 5 of the founding affidavit the applicant's attorney alleges as follows:

> *"The applicant's attorney preceded with a request to obtain the completed RAF1 from the First Respondent. The request in terms of the Promotion of Access to Information Act 2 of 2000 and supporting documents were emailed to the first respondents place of business on 8 November 2019 and is attached hereto marked Annexure "B".*

[53] The "Annexure B" referred to in the quoted paragraph is an email to which a letter

requesting information as well as the RAF1 from and documents setting out proof of the authority of the attorney were attached. Same was sent to an email address which seems to belong to the Kiaat Private Hospital.

[54] The Kiaat Private Hospital was requested to complete the medical information on the RAF1 form. It failed to do so.

[55] In the notice of motion, the applicant sought the completion of the RAF1 form and costs against both respondents jointly and severally.

The Mbatha application (Case Number: 1063/2021)

[56] In the Mbatha application, the applicant intends to institute action on behalf of her minor child pursuant injuries the child allegedly suffered during birth at the Themba Hospital. The applicant's attorney requested the minor's medical records by completing the form prescribed by PAIA. No information was forthcoming. The attorney lodged an internal appeal by submitting the prescribed form. No decision was forthcoming. This led to the application being launched.

[57] The request for information form and the appeal form were sent to a host of email addresses. No evidence was presented as to the relevant information officer or the identities or designation of the persons to whom the forms were sent.

[58] The respondents were cited as: The Deputy Information Officer of the Themba Hospital and the MEC: Mpumalanga Department of Health.

[59] In the notice of motion, the applicant sought the medical records and costs to be

paid by the respondents on an attorney and client scale.

[60] The applicant's attorney deposed to the founding affidavit in the application.

[61] The application was served upon an employee of the Themba Hospital and an employee at the MEC's office.

The Ndlovu application (Case Number: 299/2021)

[62] In the Ndlovu application, the applicant intends to institute action on behalf of her minor child who was allegedly born with defects in the Themba Hospital. The applicant's attorney requested the minor's medical records by completing the form prescribed by PAIA. No information was forthcoming. The attorney lodged an internal appeal by submitting the prescribed form. No decision was forthcoming. This led to the application being launched.

[63] The request for information form and the appeal form were sent to a host of email addresses. No evidence was presented as to the relevant information officer or the identities or designation of the persons to whom the forms were sent.

[64] The respondents were cited as: The Deputy Information Officer of the Themba Hospital and the MEC: Mpumalanga Department of Health.

[65] The applicant's attorney deposed to the founding affidavit in the application.

[66] The application was served upon the Deputy Information officer of the Themba Hospital and an employee at the MEC's office.

[67] In the notice of motion, the applicant sought the medical records and costs to be paid on an attorney and client scale.

The Bhiya application (Case Number: 300/2021)

[68] In the Bhiya application, the applicant intends to institute action on behalf of her minor child who was allegedly born with defects at the Themba Hospital. The applicant's attorney requested the minor's medical records by completing the form prescribed by PAIA. No information was forthcoming. The attorney lodged an internal appeal by submitting the prescribed form. No decision was forthcoming. This led to the application being launched.

[69] The request for information form and the appeal form were sent to a host of email addresses. No evidence was presented as to the relevant information officer or the identities or designation of the persons to whom the forms were sent.

[70] The respondents were cited as: The Deputy Information Officer of the Themba Hospital and the MEC: Mpumalanga Department of Health.

[71] The applicant's attorney deposed to the founding affidavit in the application.

[72] The application was served upon the Deputy Information officer of the Themba Hospital and an employee at the MEC's office.

The Mdluli application (Case Number: 579/2021)

[73] In the Mdluli application, the applicant intends to institute action arising from injuries he has allegedly sustained in a motor vehicle accident. Accident was reported at the Siyabuswa Police Station. The applicant's attorney requested the accident report by completing the form prescribed in PAIA.

[74] The applicant attached to his affidavit what appears to be an extract from the SAPS Access to Information Manual setting out the contact details of the SAPS at National Level. and the Siyabuswa Police Station. The form requesting access to information was sent to the information officer of the Siyabuswa Police Station as well as the information officer of the National office of the SAPS. It was sent by email, fax and by registered post to the addresses indicated in the manual.

[75] No decision was forthcoming. This led to an appeal by the applicant, completed in the prescribed form and sent to the national information officer of the SAPS. The appeal was sent by email, fax and registered post to the national information officer of the SAPS, as appears from the information manual.

[76] No decision was forthcoming on the appeal. The applicant relies on the deeming provisions for launching the application.

[77] The notice of motion contained the following prayers:

> *"1. The first Respondent's dismissal of Applicant's internal appeal against the third respondent's refusal to access information dated 9 January 2021 is hereby reviewed and set aside.*
>
> *2. The Third respondent's refusal to grant access to information date 26 May 2020 is hereby reviewed and set aside.*
>
> *3. That the third respondents be and are hereby ordered to, within 10 business days*

of service of this order:

(i) To finish Applicant's Attorneys, Sibanyoni Attorneys, with the complete copies of police docket under Siyabushwa cas number 340/08/2017 and accident report number 02/08/2017, within ten (10) days of the court order; and

(ii) The Respondents be and are hereby ordered to pay the costs of the application, jointly and severally, one paying and the other be absolved, on the Attorney and own Client Scale.

3. Further and/ or alternative relief."

[78] The respondents were cited as: The Minister of Police, the National Information Officer and the Deputy Information Officer of the Siyabuswa Police Station.

[79] The applicant's attorney deposed to the founding affidavit in the application. In paragraph eight of the founding affidavit, the applicant's attorney sets out as follows:

> *"The application is a review in nature. This is a review application in terms of Promotion of Access to Information Act 2 of 2000 (hereinafter called the "the PAIA"). In this application, the applicant approaches the honorable court to review and set aside the refusal of applicant's request to access information and the subsequent dismissal of applicants internal appeal against such refusal."*

[80] The application was served upon the State Attorney, a person employed at the legal department of the National Deputy Information Officer of the SAPS and upon Captain Makinda, the deputy information officer of the Siyabuswa police station.

The Prinsloo application (Case Number: 581/21)

[81] In the Prinsloo application, the applicant was allegedly injured by a vehicle while he was on duty at his place of employment. The Compensation fund has compensated

him, but the applicant now apparently needs a letter or certificate from the Compensation Fund reflecting how much he was paid by the Compensation fund. According to the applicant's attorney (who deposed to the founding affidavit), the absence of confirmation of what amount the applicant was paid prevents his Road Accident Fund claim from being finalized.

[82] The applicant attached to his affidavit the prescribed "Request for Access to Record of Public Body" form. The form was sent under the applicant's attorney's cover letter to the Compensation fund's deputy information officer per email. The email address to which the letter was sent is recorded as Vuyo.Mafata@labour.gov.za.

[83] The deponent also attaches to his founding affidavit what appears to be an extract from the Department of Labor's information manual. Only one page was attached. On that page the contact details of the information officer appears. The information officer is recorded as 'Thobile Lamati' who is the Director-General of the department. This person's postal address, contact numbers and email address is given. The email address is recorded as Thobile.Lamati@labour.gov.za.

[84] No decision was forthcoming. This led to an appeal by the applicant, completed in the prescribed form and sent to the same person as to who the request for access to information was sent at the same email address.

[85] No decision was forthcoming on the appeal. The applicant relies on the deeming provisions for launching the application.

[86] The notice of motion contained similar prayers to the ones in the Mdluli application.

[87] The respondents were cited as: The Minister of Employment and Labour, the National Deputy Information Officer and the Deputy Information Officer of the Comoensation [sic] Fund.

[88] The applicant's attorney deposed to the founding affidavit in the application. Paragraph 8 of the founding affidavit contains the same allegation as in paragraph 5 of the Mdluli application.

[89] The application was served upon the State Attorney, a registry clerk of the Information officer of the department of labour and employment and the legal clerk of the at employed at the legal department of the National Deputy Information Officer.

Discussion

[90] All the applications were brought under the provisions of section 78 of PAIA after the requests for access to information were not reacted to at all and no decision was given by the public and private bodies.

[91] The applicants for access to information requested from public bodies relied upon the deeming provisions in section 27 and 77(7)[16] of PAIA. The applicant for information held by the private body relied upon section 58[17] of PAIA.

[92] Rule 3(1) provides that an application under PAIA must be brought on notice of motion that must correspond substantially in accordance with the form set out in the Annexure to the Rules, addressed to the information officer or the head of a private body, as the case may be. Compliance with the Rule is set in peremptory terms. From this Rule,

it is clear that:

a. Applications under section 78 of PAIA must be brought on notice of motion;
b. The notice of motion must substantially correspond with the Annexure to the Rules;
c. The application must be addressed to the information officer in the case of a request for information from a public body and in the case of a private body, the head of the private body;

[93] Save for the Prinsloo and Mdluli applications, none of the other applications substantially complied with the Annexure to the Rules in that:

a. The respective notices of motion did not include the words "IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT No. 2 OF 2000" appearing in the Annexure; and

b. No reference is made to paragraph (iii) of the Annexure which sets out as follows:

> *"In default of your complying with rule 3 (5) of the Promotion of Access to Information Rules, the applicant may request the clerk of the court or the registrar as the case may be, to place the application before the Court for an order in terms of section 82 (b) of PAIA."*

[94] I am of the view that the Rules' inclusion of the specific words *"IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT No. 2 OF 2000"* in the Annexure is for good reason. It is clearly intended to immediately make it clear to whomever the notice of motion is delivered to that the application pertains to access to information in terms of PAIA.

[95] With regards to the second defect identified above, the purpose of the inclusion of these words are important within the whole scheme of PAIA. Rule 3(5) provides as follows:

> *"The information officer or head of a private body, as the case may be, must—*
>
> *(a) immediately after receipt of the application, notify, in writing, all other persons affected, of the application and attach a copy of the application to such notice; and*
>
> *(b) within 15 days after receipt of the application—*
>
> > *(i) file with the clerk of the court or the registrar, as the case may be, two true copies of the request and the notification sent to the requester in terms of section 25 (1) (b) of PAIA;*
> >
> > *(ii) notify the applicant in writing that the requirements of subparagraph (i) have been complied with; and*
> >
> > *(ii) serve on the applicant a true copy of the reasons, if they have not yet been provided.*

[96] Rule 3(5) is cast in peremptory terms. It must be complied with, and the information officer of a public body or head of a private body must comply with its provisions. In addition, he or she must act immediately.

[97] Sub-rule 3(5)(a) serves to protect the interests of persons who may have an interest in the disclosure of the information. This is important because once they have notice of the application, they may want to exercise their rights to the extent that they have not already done so.[18]They may have no knowledge of the request and the notice of the application provided for in this sub-rule may be the first time they receive notice of the request.

[98] Section 25 of PAIA provides for a decision on the request and notice thereof. Yet again, sub-rule 3(5)(a) serves important purposes. Clearly the purpose is to notify the court and the applicant of the decision on the request, and it gives notice thereof. In my view, it

serves three purposes; Firstly, it gives the public or private body an opportunity to either consider or reconsider the request. It might nudge the bodies to react to the request if they have not already done so or to find the request if they have not already become aware of the request. Secondly, it serves to give notice of the decision if the bodies have not done so already or if the decision for some or other reason did not come to the notice of the applicant. Thirdly, it obliges the body concerned to serve the applicant with the reason/s if same has not yet been provided. For obvious reasons, service of the reason/s for the refusal of the request will inform the applicant's further prosecution of the matter.

[99] In terms of Sub-rule (6) of Rule 3, the applicant may request the clerk of the court or registrar to place the application before the court for an order in terms of section 82 (*b*) of PAIA. In terms of section 82(b), the court may order the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order. This would, in the context of sub-rule (6) of Rule 3, mean that the court may order compliance with the provisions of sub-rule (5).

[100] Rule 3(1) provides that all applications in terms of section 78 of PAIA must be addressed to the information officer concerned. It therefore follows that in all PAIA applications, the relevant information officer must be cited. Who the relevant information officer is, is clearly defined under the definition of "information officer" in section 1 of PAIA. It is not enough to simply direct the request or application or appeal to "the information officer". Each body has a post filled by a person designated as its information officer. So for instance, according to the definition, the information officer of the Mpumalanga Department of Health is the Head of the Department of Health.[19] That is the person to whom the request or the appeal or the application must be directed. The public body's information manual must show the identity of the person who must receive the

request or appeal or address or the application and his/her contact details.

[101] Neither PAIA nor the Rules expressly state who should be cited as the respondent/s in the application. For a determination of that issue, the provisions of sections 74(1) and 78 read with section 82 must be analysed.

[102] Section 74 provides for a right of appeal by the requester to the relevant authority against a decision of the information officer of a public body referred to in paragraph (a) of the definition of "public body" in section 1 of PAIA: to refuse a request for access; or taken in terms of section 22, 26(1) or 29(3). A third party may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of "public body" in section 1 to grant a request for access.

[103] Section 78(1) and 78(2) sets out the jurisdictional requirements for an approach court for relief in terms of section 82.

[104] In terms of section 78(1), a requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

[105] In terms of the provisions of section 78(2) a requester: that has been unsuccessful in an internal appeal to the relevant authority of a public body; or is aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75(2); or is aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of "public body" in section 1: to refuse

a request for access; or taken in terms of section 22, 26(1) or 29(3); or aggrieved by a decision of the head of a private body: to refuse a request for access; or taken in terms of section 54, 57(1) or 60. These requesters may, by way of an application, within 180 days apply to a court for appropriate relief in terms of section 82.

[106] It is apparent from the reading of the immediately preceding provisions that PAIA differentiates between requesters that is aggrieved by the different public bodies defined in terms of paragraphs (a) and (b) of the definition of a public body in section 1 of PAIA.

[107] Requesters for access to information held by public bodies defined in paragraph (a) of the definition of "public body" in section 1 of PAIA (or third parties) must appeal before they may approach court whereas requesters of access to information held by public bodies as defined in paragraph (b) of the definition of "pubic body" in section 1 of PAIA need not first appeal the decision of the information officer before they approach court under section 78.

[108] One therefore has to turn to the definition of a "pubic body" in section 1 of PAIA to determine whether the internal appeal procedure provided for must first be exhausted.

[109] A public body under paragraph (a) of the definition is any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere or government. A public body under paragraph (b) of the definition is any other functionary or institution when: exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or exercising a public power or performing a public function in terms of any legislation.

[110] In instances where an appeal lies, the appeal must be delivered or sent to the information officer of the public body concerned at his or her address, fax number or electronic mail address.[1] The appeal lies to the relevant authority.[2]

[111] "Relevant authority" is only defined in section 1 of PAIA in relation to a public body as defined in paragraph (a) of the definition of a "public body" in section 1 of PAIA – i.e any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere or government. There is no "relevant authority" for public bodies as defined in paragraph (b) of the definition of "public body" because no appeal lies against a decision of such a public body.

[112] Who should then be the respondent in an application in terms of sections 78(1) to 78(2)(b)? It is the relevant authority's decision that is challenged. In addition, section 82 provides for relief, not only against information officers – it also provides for relief against relevant authorities. In the case of an application in terms of sections 78(1) to 78(2)(b), it is the relevant authority's decision that is challenged. It follows that the relevant authority has a direct and substantial interest in the proceedings and must be joined in the proceedings. Whether the relevant information officer has to be joined as a respondent because the appeal must be delivered or sent to the information officer of the public body concerned at his or her address, fax number or electronic mail address I do not decide. In my view, a failure to join the information officer in an application in terms of sections 78(1) to 78(2)(b) will not constitute a non-joinder.

[113] In my view, in the absence of an express provision in PAIA that the relevant authority must be cited as respondent, the common law rules pertaining to the joinder of

[1] Section 75(1)(b).
[2] Section 74(1).

parties apply. In this regard, it was said as follows in Morudi and Others v NC Housing Services and Development Co Limited and Others [2018] ZACC 32 at paras 29 and 30:

> *"[29]. Surely, that makes each potential shareholder listed in annexure "M" to have a direct and substantial interest in the outcome of the dispute. More specifically, a determination of who the shareholders were, and in what proportion, would have a direct impact on the individual rights of each potential shareholder; it could even be prejudicial to those rights. That made them necessary parties and they were thus entitled to joinder of necessity. Brand JA writing for a unanimous Court in Cape Bar Council said:*
>
> > *"It has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned. The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one." (References omitted.)*
>
> *[30] In Amalgamated Engineering, Fagan AJA states:*
>
> > *"Indeed it seems clear to me that the Court has consistently refrained from dealing with issues in which a third party may have a direct and substantial interest without either having that party joined in the suit or, if the circumstances of the case admit of such a course, taking other adequate steps to ensure that its judgment will not prejudicially affect that party's interests." (References omitted.)*

[114] In Paul v MEC, the following was said at paras. 32 and 33:

> *"[32] What immediately becomes clear from the correct reading of PAIA and the rules is that at no stage does a requester have to communicate with the relevant appeal authority. When the request for access is made it is made to the information officer. When the appeal against refusal, actual or deemed refusal, is made that appeal is sent to the information officer. Finally when the section 78 court application is ultimately launched there is only one respondent and it is still the information officer in terms of subrules 3 (5) and (6) of the PAIA rules.*
>
> *[33] I pause here to emphasize that the whole scheme of PAIA is such that there is no basis for citing the relevant appeal authority in the court application in terms of*

section 78. By the same token any relief sought against the relevant appeal authority is inappropriate and should ordinarily result in the dismissal of the application in all cases where the internal appeal was not sent to the information officer. However, in my view, if proper procedure is complied with when the request is made and the internal appeal is sent to the information officer to whom the request for access was made, the court may not dismiss the application simply because the appeal authority is also cited and some form of relief against him or her, which is obviously incompetent is sought. In this event the court can always refuse to grant that particular relief and make an appropriate order for costs."

[115] It is with the utmost hesitation and with the greatest of respect that I must differ from the view of the court in Paul v MEC. In my view, the relevant authority as defined in section 1 of PAIA is a necessary party to the proceedings in all applications contemplated in sections 78(1) to 78(2)(b) of PAIA. In applications under sections 78(2)(c) to (d), the information officer is the only person that must be joined for the issue of an internal appeal does not arise.

[116] The applications before me (save for the Mnisi and the Prinsloo applications) pertained to a decision of public bodies contemplated in paragraph (a) of the definition of "public body" in section 1 of PAIA. In the Singwane application, information was sought from the Matsulu Community Health Clinic. The relevant authority is the Mpumalanga MEC for the Department of Health and she was the only the respondent that had to be joined. Same applies to the Mbatha, Ndlovu, Biya and Singwane applications. In the Mdluli application, information was sought from the Siyabuswa Police Station. The Minister of Police, as the relevant authority as defined in section 1 of PAIA was the only respondent that had to be joined.

Other defects in the applications

[117] Save for the Prinsloo and Mdluli applications, no evidence or corroboration was

presented as to the identity of the information officer of the relevant public body or the head of the private body. In addition, no evidence was presented as to the contact details of the information officers or the head of the private body. Without this crucial evidence, it is impossible for the court to determine whether the request was properly addressed and delivered, if the appeals were properly addressed and delivered and whether the applications were properly addressed and served.

[118] The only way the court will most likely be able to determine if a request or appeal is properly addressed or delivered is to have regard to the information manual of the body concerned. Without at least an extract from an information manual, the court will not be able to make a finding in this regard. So, for instance, save for the Mdluli application, the request for access to information and the appeal were sent to a host of email addresses, none of which the court was able to verify as being the contact details of the relevant information officer or head of the private body.

[119] In the Prinsloo application, the letter to which the request and the appeal were appended, were addressed to the Deputy Information Officer of the Compensation fund with an email address appearing on the letter. The letter was sent as an attachment per email to another email address than the one appearing on the letter. An extract which appears to be from the information manual of the Compensation Fund was attached to the papers. In that document, the information officer's email as indicated is different from the email addresses to where the request and appeal were sent. I can therefore not find that in the Prinsloo application that the request or the appeal was properly addressed.

[120] It follows that, because service of the application must be effected upon the relevant information officer or head of the private body, without corroborated evidence over the identity, location and contact detail of the information officer or the head of the private body, the court is unable to make a finding in respect of proper service of the application.

This applies to the Mnisi application.

[121] MEC v Paul, the following was said at paras. 11 and 13 to 15:

> *"[11] I turn now to deal with some of the procedural requirements prescribed by PAIA. As simple a matter as whether the correct request in the prescribed form was sent to the correct information officer at the correct address can easily turn into a complicated argument in court that does not bring the requester any closer to accessing the required record and increases, unnecessarily, the costs of litigation. These features may well limit access to justice, a constitutional imperative. In order to reduce the occurrence of such barriers the legislature imposed certain obligations on public bodies to direct their information officers to make available clear guidelines to members of the public on how the information they hold is to be availed to requesters.*
>
> *Recently Mbenenge JP had occasion to consider the provisions of section 14 of PAIA in Makhambi v MEC for Health, Eastern Cape and Another8 and stated that:*
>
> > *'[14] The section must be read together with section 16, which provides:*
> > *'The Director General of the national department responsible for government communications and information services must at that department's cost ensure the publication of the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of every public body in every telephone directory issued for general use by the public as are prescribed.'*
> >
> > *[15] Upon a proper reading of these sections it is the manual of a public body contemplated in section 14 that sheds light regarding, inter alia, the address to which a request and, where applicable, an appeal should be sent; the functionary to whom the request should be made and a description of remedies available to an aggrieved requester before court proceedings can be instituted. All these facts gleaned from the manual must be alleged in the affidavit filed in support of an application challenging the refusal and/or failure to consider and make a decision on a request for access to information. Needless to say the address used to request the information from the information officer must be that referred to in the manual. It would also perfect the cause of action for the applicant to annex the relevant pages of the manual. In this way, it would not be left to a judge to trawl the manual or telephone directory to verify the correctness of the address and the addressee. It is not hard to envisage a situation where a public body has not complied with section 14 and has thus not compiled a manual. In that event, it should be available to the aggrieved person to seek a mandamus compelling the public body concerned to compile the manual."*
>
> *[14] I agree with the sentiments of the learned Judge President in this regard. However, a*

few remarks are apposite. Firstly, an applicant's cause of action in these circumstances does not become perfect on the annexation of the relevant pages of the manual. All that the annexation does is to make it easy for a judge to verify the information contained in the founding affidavits. In the absence of those pages a judge hearing the application does not have to trawl the manual or the telephone directory to verify the correctness of the address and the addressee. The proceedings under PAIA are no different from other civil proceedings and are founded on our adversarial adjudication system. It is not the duty of a judge to verify the correctness of the information alleged in the founding affidavit. All that is necessary is that "[a]ll these facts gleaned from the manual must be alleged in the affidavit filed in support of an application challenging the refusal and/or failure to consider and make a decision on a request for access to information."

"[15] It has never been a requirement in our law to annex pages of departmental documents where proper reference is made to them in an affidavit. Were that to be insisted upon not only would there be a substantial increase in litigation costs, PAIA applications would become unnecessarily cumbersome. Furthermore, it would change the texture of PAIA applications when compared to other ordinary applications. Our adversarial system requires a respondent to resist an application, if so advised, and to point out to the presiding judge that there has been non compliance with the manual and therefore with PAIA. In the end each case should be determined on its own merits and an application should not be refused merely because the relevant pages of the manual are not annexed in circumstances in which the relevant pages or clauses of the manual have been clearly referenced or quoted."

I respectfully agree that the aforesaid approach is the one to be followed.

[122] In the Mnisi application (the only application against a private body), the information was not requested in terms of PAIA. As will be recalled, the respondents were required to complete the RAF1 form. The orders that were sought were that the court order the respondents to complete the RAF1 forms. This application is therefore fatally defective for lack of compliance with the procedural requirements in PAIA.

[123] In the Mdluli and Prinsloo applications, the applicants seek that the court review and set aside the refusal of their appeals and the refusal to furnish the information that was requested.[20] The notices of motion also seek interdicts compelling the public body to furnish the information that is sought. Having regard to section 82 of PAIA, the court is

entitled to set aside the decision which is the subject of the application concerned[21], to require from the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order[22] and to grant an interdict, interim or specific relief, a declaratory order or compensation.[23]

[124] The Mdluli and Prinsloo applications' aim is to obtain the information that was requested. The failure by the public body to furnish the information and to decide the appeal are both founded upon the deeming provisions in sections 27 and 77(7) of PAIA. In my view, the relief that may be granted by the court in terms of the provisions of section 82(b) and (c) is enough. Prayer 1 of the notices of motion were therefore entirely unnecessary.

[125] In addition, in the Mdluli application, the information sought is held at the Siyabuswa police station. Siyabuswa falls under the jurisdiction of the Local Seat of the Mpumalanga High Court.[3] This court does not have jurisdiction to entertain the application.

[126] In the Prinsloo application, the information is held by the Compensation Commissioner who is cited at an address in Pretoria. This court does not have jurisdiction to hear the application.

Conclusion

[127] I may have explored the relevant provisions of PAIA too extensively for purposes of deciding the applications. I purposefully did so. Litigants and their legal practitioners

[3] Schedule B to Notice 1 of 2017 (Government Gazette 1 September 2017.

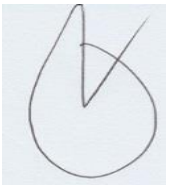
may find guidance in what is set out in this judgment when consideration is given launch and prosecute applications to court in terms of PAIA.

[128] I need not dismiss the applications. Rather, I have concluded that the applications should be struck from the roll due to their non-compliance with the procedures prescribed by PAIA. Due to the defects in the applications, they could not even proceed to the merits part of the enquiry. None of the respondents opposed the applications. No order of costs is made.

In the premises, the following order is made:

1. The applications under case numbers 3261/2020, 1051/2021, 1063/2021, 299/2021, 300/2021, 579/2021 and 581/2021 are struck from the roll.

2. No cost orders are made.



Roelofse AJ

Acting Judge of the High Court

DATE OF HEARING: 24 May 2021

DATE OF JUDGMENT: 22 June 2021

APPEARANCES:

Singwane application (Case Number: 3261/20)

Mnisi application (Case Number: 1051/2021)

Mbatha application (Case Number: 1063/2021)

Ndlovu application (Case Number: 299/2021)

Adv Lindhoudt instructed by Van Zyl le Roux Attorneys

Mdluli application (Case Number: 579/2021)

Prinsloo application (Case Number: 581/21)

Mr. TJ Sibanyoni

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 14:00 on 22 June 2021.

[1] The Constitution was promulgated on 18 December 1996 and commenced on 4 February 1997.

[2] Under Chapter 2 of the Constitution). Section 7(1) provides that the Bill of Rights *"…. is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom."*

[3] [2009] ZACC 21; 2009 (6) SA 323 (CC); 2009 (11) BCLR 1075 (CC).

[4] The Act commenced on 9 March 2001 except ss 10, 14, 16 and 51 which commenced on 15 February 2002. In President of the Republic of South Africa & others v M & G Media (Ltd) 2012 (2) SA 50 (CC) para 9 the following was said:

> "As is evident from its long title, PAIA was enacted ―[t]o give effect to the constitutional right of access to any information held by the State‖. And the formulation of section 11 casts the exercise of this right in peremptory terms – the requester be given access to the report so long as the request complies with the

procedures outlined in the Act and the record requested is not protected from disclosure by one of the exemptions set forth therein. Under our law, therefore, the disclosure of information is the rule and exemption from disclosure is the exception." (References omitted).

Also see: Competition Commission of South Africa v Standard Bank of South Africa Limited; Competition Commission of South Africa v Standard Bank of South Africa Limited; Competition Commission of South Africa v Waco Africa (Pty) Limited and Others (CCT158/18; CCT179/18; CT218/18) [2020] ZACC 2; 2020 (4) BCLR 429 (CC) (20 February 2020) at para 10 where the following was said:

> "Against the backdrop of secrecy that epitomised the apartheid state,10 section 32 of the Constitution constitutes an essential element of the constitutional guarantee of an open and democratic society which requires that the exercise of public power be transparent and justified. The preamble to PAIA notes: "[T]he system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations."

[5] Section 3 of the Act.

[6] The guide can be found in all the official languages on the internet at:

https://www.sahrc.org.za/home/21/files/Section%2010%20guide%202014.pdf

[7] Under Part 2 of the Act:

"11. Right of access to records of public bodies

(1) A requester must be given access to a record of a public body if—

(a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and

(b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

(2) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester.

(3) A requester's right of access contemplated in subsection (1) is, subject to this Act, not affected by—

(a) any reasons the requester gives for requesting access; or

(b) the information officer's belief as to what the requester's reasons are for requesting access."

[8] "50. Right of access to records of private bodies

(a) A requester must be given access to a record of a private body if—

(a) that record is required for the exercise or protection of any rights;

(b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and

(c) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

(2) In addition to the requirements referred to in subsection (1), when a public body, referred to in paragraph (a) or (b)(i) of the definition of "public body" in section 1, requests access to a record of a private body for the exercise or protection of any rights, other than its rights, it must be acting in the public interest.

(3) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester or the person on whose behalf the request is made."

[9] Sections 17 to 28.

[10] Chapter 5 (sections 47 to 49) deals with third party notifications and intervention. It pertains to information held by a public body. Section 47(1) provides that the information officer of a public body considering a request for access to a record that might be a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1) must take all reasonable steps to inform a third party to whom or which the record relates of the request. Sub-sections (2) to (4) of section 47 sets out the time for giving notice to third parties and the manner in which notice must be given. Sections 34(1), 35(1), 36(1), 37(1) and 43(1) deals with the mandatory protection of the information of third parties. It sets out the classes of persons entitled to protection and the nature of the protected information.

[11] Sections 33 to 46.

[12] **GNR.965 of 9 October 2009: Rules of Procedure for Application to Court in terms of the Act**

(*Government Gazette* No. 32622)

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

The Rules Board for Courts of Law has under section 79 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), made the rules in the schedule.

SCHEDULE

1. Definitions.—In these rules—

(*a*)

any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned; and

(*b*)

any word or expression to which a meaning has been assigned in the rules governing the procedures of the court in which an application in terms of these rules is brought, shall bear the meaning so assigned, and unless the context otherwise indicates—

"Act" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

"clerk of the court" means a clerk and assistant clerk of the court appointed under section 13 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

"decision" means a decision in respect of which an application in terms of section 78 of the Act is brought;

"deliver" means serve copies on all parties and file the original with the registrar or clerk of the court as the case might be; and

"registrar" means a registrar and assistant registrar appointed under section 34 of the Supreme Court Act, 1959 (Act No. 59 of 1959) or a registrar appointed under any law not yet repealed by a competent authority and in force, immediately before the commencement of the Constitution of the Republic of South Africa, 1996, in any area which forms part of the national territory.

2. Procedure in an application to court in terms of the Act.—(1) The procedure prescribed in these rules must be followed in all applications contemplated in section 78 of the Act.

(2) Unless as otherwise provided for in these rules, the rules governing the procedures in the court to which an application in terms of these rules is brought shall apply with appropriate changes, unless otherwise directed by the court.

3. Applications.—(1) An application contemplated in section 78 of the Act must be brought on notice of motion that must correspond substantially in accordance with the form set out in the Annexure to these rules, addressed to the information officer or the head of a private body, as the case may be.

(2) The notice of motion must—

(*a*) set out an address within eight kilometres of the court to which the application is brought, where the applicant will accept notice and service of all process;

(*b*) call upon the respondent—

(i) to give notice, within 15 days after receipt of the application, of his or her intention to oppose the application, which notice shall also contain an address within eight kilometres of the court to which the application is brought where notice and service of documents will be accepted; and

(ii) to file any answering affidavit within 15 days after service of the notice of intention to oppose the application; and

(*c*) inform the respondent that—

(i) if no notice to oppose the application is delivered in terms of subrule (2) (*b*) (i); or

(ii) if notice of intention to oppose has been delivered but no answering affidavit is delivered in terms of subrule (2) (*b*) (ii), the matter will be placed on the roll for hearing without further notice.

(3) The notice of motion referred to in sub-rule (1) must be supported by an affidavit and be accompanied by true copies of all documents upon which the applicant intends to rely.

(4) The affidavit referred to in subrule (3) must—

(*a*) set out the facts and circumstances upon which the application is based;

(*b*) state whether the internal appeal procedure contemplated in section 74 of the Act has been exhausted and if so, provide particulars of the manner in which and date upon which the internal appeal procedure was exhausted and if not, the reasons for failing to exhaust such procedure; and

(*c*) explain the relevance of each document upon which the applicant intends to rely.

(5) The information officer or head of a private body, as the case may be, must—

(*a*) immediately after receipt of the application, notify, in writing, all other persons affected, of the application and attach a copy of the application to such notice; and

(*b*) within 15 days after receipt of the application—

(i) file with the clerk of the court or the registrar, as the case may be, two true copies of the request and the notification sent to the requester in terms of section 25 (1) (*b*) of the Act;

(ii) notify the applicant in writing that the requirements of subparagraph (i) have been complied with; and

(iii) serve on the applicant a true copy of the reasons, if they have not yet been provided.

(6) The applicant may, if the information officer or head of a private body as the case may be, fails to comply with the provisions of subrule (4), request the clerk of the court or the registrar as the case may be, in writing, to place the application before the court for an order in terms of section 82 (*b*) of the Act.

4. Representations.—(1) Representations contemplated in section 80 (3) (*a*) of the Act must be—

(*a*) made under oath in writing, and supported by documentary proof, where applicable; and

(*b*) filed with the clerk of the court or the registrar as the case may be, at least five days before the date of the hearing of the application.

(2) The court receiving the representations referred to in subrule (1) shall take the steps that it may deem appropriate to bring the representations to the attention of the parties to the application.

5. Court fees.—Any application in terms of these rules shall be subject to the payment of the court fees applicable in the court in which the application is brought, unless waived by the court at its discretion on such grounds as it deems appropriate.

6. Short title.—These rules may be called the Promotion of Access to Information Rules.

7. Commencement.—These rules come into operation on **16 November 2009.**

[13] **ANNEXURE TO THE PROMOTION OF ACCESS TO INFORMATION RULES PROMOTION OF ACCESS TO INFORMATION RULES**

NOTICE OF MOTION

IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT No. 2 OF 2000

IN THE

COURT

HELD AT

CASE NO.

In the matter between:

Applicant

(Full name)

and

Respondent

(Full name)

TAKE NOTICE THAT

(the applicant)

intends to apply for the following order:

and that the accompanying affidavit of

and

the documents referred to in rule 3 (3) (*a*) will be used in support thereof.

TAKE NOTICE further that the applicant has appointed

(provide an address within eight kilometres of the court at which the applicant will accept notice and service of all process in these proceedings).

Notice:

(i) Notice of intention to oppose this application must be given within 15 days after receipt hereof and must contain an address within eight kilometres of the court to which the application is brought, where notice and service of documents will be accepted.

(ii) Answering affidavits, if any, must be filed within 15 days after service of the notice of intention to oppose the application.

(iii) In default of your complying with rule 3 (5) of the Promotion of Access to Information Rules, the applicant may request the clerk of the court or the registrar as the case may be, to place the application before the Court for an order in terms of section 82 (*b*) of the Act.

(iv) In default of your delivering a notice of intention to oppose, the matter will without further notice, be placed on the roll for hearing after the expiry of the period mentioned in paragraph (i) above, on a date fixed by the clerk of the court or the registrar as the case may be.

SIGNED at

this

day of

Applicant/Applicant's legal representative

Address

Respondent:

To: (1) (Address)

(2) The Clerk of the Court or the Registrar of abovementioned court

[14] Paul v MEC for Health, Eastern Cape Provincial Government and Others ; Mbobo v MEC for Health, Eastern Cape Provincial Government and Others; Ncumani v MEC for Health, Eastern Cape Province and Others [2019] 3 All SA 879 (ECM), at paras. 7 and 8. The court was specially constituted by two judges of the Eastern Cape Division of the High Court for purposes of considering applications in terms of section 78 of PAIA.

[15] A claim form for the lodging of a claim in terms of the Road Accident Fund Act, 1996.

[16] Which provides as follows:

> *"If the relevant authority fails to give notice of the decision on an internal appeal to the appellant within the period contemplated in subsection (3), that authority is, for the purposes of this Act, regarded as having dismissed the internal appeal."*

[17] Which provides as follows:

> *"If the head of a private body fails to give the decision on a request for access to the requester concerned within the period contemplated in section 56(1), the head of the private body is, for the purpose of this Act, regarded as having refused the request." No internal appeal is provided for in the case of private bodies.*

[18] Upon receipt of a notification of the request for information in terms of Chapter 5 of PAIA (THIRD PARTY NOTIFICATION AND INTERVENTION as provided for in sections 47 to 49 of PAIA.

[19] Section 39 of 30 of 2007. See the definition of "information officer" in section 1 of PAIA.
[20] Prayers 1 and 2 of the notice of the respective notices of motion.

[21] Section 82(a).

[22] Section 82(b).

[23] Section 82(c).