

**Constitutional Litigation Unit**

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PBO No. 930003292  
NPO No. 023-004



04 December 2017

**For the attention of:**

Selebaleng Mashike  
State Security Agency: PAIA Unit  
PO Box 1037  
Menlyn  
0077

*By email:* [paia@ssa.org.za](mailto:paia@ssa.org.za)

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Dear Sir/Madam

**RE: APPEAL AGAINST DEEMED REFUSAL OF ACCESS TO  
INFORMATION REQUEST IN TERMS OF THE PROMOTION OF ACCESS  
TO INFORMATION ACT 2 OF 2000**

1. I am an attorney at the Legal Resources Centre (LRC), a non-profit organization and registered law clinic acting in the public interest, with offices in Johannesburg, Cape Town, Durban and Grahamstown. I submit this appeal in the course and scope of my employment at the LRC.
2. This appeal relates to the request lodged by Avani Singh on behalf of the Legal Resources Centre which request was acknowledged by Sekebaleng Mashike on the 13<sup>th</sup> of June 2017, a copy of which is attached hereto as Annexure A.
3. Alternatively, the appeal relates to the request transferred to the State Security Agency by the Department of International Relations and Cooperation on the 3<sup>rd</sup> of August 2017, the substance of which is identical.
4. The information requested in both the original request and transferred request was as follows:

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National Office:  
Cape Town:  
Durban:  
Grahamstown:  
Johannesburg:  
Constitutional Litigation Unit:

J Love (National Director), T Wegerif (Deputy National Director), K Reinecke (Director: Finance), EJ Broster  
S Dess (Director), A Andrews, S Keharovitz, WR Kerfoot, C Mathiso, M Mudarikwa, EL Roos, HJ Smith  
S Samuel (Director), E Deochand, TC Mhense, A Turpin  
C McConnachie (Director), UK Jolobe, S Sephton  
N Fakir (Director), AF Ashton, ZP Khumalo, KS Kropman, LJD Lmacher, APN Mehlo, SP Mkhize  
SG Magardie (Director), MJ Bishop, G Bizos SC, C du Toit, NMR Kekana, LK Sityo, ER Webber, WC Wicomb

- 4.1 All agreements, memoranda of understanding and/or other arrangements with foreign countries concerning the sharing between South Africa and/or its agencies and any other country and/or its agencies of information and intelligence.
- 4.2 All policies, guidelines, opinions, reports and memoranda concerning:
- 4.2.1 The circumstances in which South Africa may share information and intelligence with another country and/or its agencies.
  - 4.2.2 Any limitations on the sharing of information and intelligence with other countries and/or its agencies.
  - 4.2.3 The circumstances in which South Africa and/or its agencies may request or otherwise acquire from another country and/or its agencies information and intelligence.
  - 4.2.4 Any limitations on the acquisition (whether by request or otherwise) of information and intelligence from another country and/or its agencies.
  - 4.2.5 Any limitations on South Africa's retention, use, or dissemination of information and intelligence requested or otherwise acquired from another country and/or its agencies, including the use of such data or data derived from it in civil, criminal, administrative, or other proceedings.
  - 4.2.6 The circumstances, if any, in which South Africa and/or its agencies may request or otherwise acquire information and intelligence from another country.
- 4.3 Any request for any order or direction sought in terms of the Regulation of Interception of Communications and Provision of Communication- Related Information Act 70 of 2002, including but not limited to section 16 thereof, relating to the LRC and/or any of its members, and any order or direction obtained in terms thereof.
5. Please find enclosed a copy of Form B as contemplated in the Promotion of Access to Information Act lodging an appeal against a deemed refusal of an access to information request in terms of section 27 of the same Act. The grounds upon which the appeal rests are detailed in Addendum A. Additional information concerning the appeal is contained in Addendum B.
6. Should you require any further information, please contact us at [mosima@lrc.org.za](mailto:mosima@lrc.org.za) / [tsanga@lrc.org.za](mailto:tsanga@lrc.org.za) / [shireen@lrc.org.za](mailto:shireen@lrc.org.za). I look forward to hearing from you.
7. All rights are reserved.

Yours Faithfully,



**Legal Resources Centre**  
**Per: Mosima Kekana**



REPUBLIC OF SOUTH AFRICA

**FORM B**  
**NOTICE OF INTERNAL APPEAL**  
 (Section 75 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))  
 [Regulation 8]

STATE YOUR REFERENCE NUMBER: .....

**A. Particulars of public body**

The Information Officer/Deputy Information Officer:

Selebaleng Mashike

State Security Agency: PAIA Unit

**B. Particulars of requester/third party who lodges the internal appeal**

- (a) The particulars of the person who lodge the internal appeal must be given below.  
 (b) Proof of the capacity in which appeal is lodged, if applicable, must be attached.  
 (c) If the appellant is a third person and not the person who originally requested the information, the particulars of the requester must be given at C below.

Full names and surname: Mosima Kekana

Identity number: [REDACTED]

Postal address: 16th Floor Bram Fischer Towers, 20 Albert Street, Marshalltown, Johannesburg

Telephone number: (011) 3869831 Fax number: (011) 8384876

E-mail address: mosima@lrc.org.za

Capacity in which an internal appeal on behalf of another person is lodged: Attorney at the Legal Resources Centre

**C. Particulars of requester**

This section must be completed ONLY if a third party (other than the requester) lodges the internal appeal.

Full names and surname: Avani Singh

Identity number: 

**D. The decision against which the internal appeal is lodged**

Mark the decision against which the internal appeal is lodged with an X in the appropriate box:

X	Refusal of request for access
	Decision regarding fees prescribed in terms of section 22 of the Act
	Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act
	Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
	Decision to grant request for access

**E. Grounds for appeal**

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

State the grounds on which the internal appeal is based:

See Addendum A  
 .....  
 .....  
 .....  
 .....

State any other information that may be relevant in considering the appeal:

See Addendum B  
 .....  
 .....  
 .....  
 .....

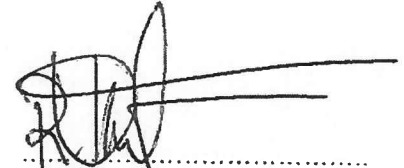
F. Notice of decision on appeal

You will be notified in writing of the decision on your internal appeal. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

State the manner: Email

Particulars of manner: mosima@lrc.org.za ; tsanga@lrc.org.za ; shireen@lrc.org.za

Signed at Johannesburg this day 4th of December year 2017



SIGNATURE OF APPELLANT

**FOR DEPARTMENTAL USE:**

**OFFICIAL RECORD OF INTERNAL APPEAL:**

Appeal received on ..... (date) by .....

..... (state rank, name and surname of information officer/deputy information officer).

Appeal accompanied by the reasons for the information officer's/deputy information officer's decision and, where applicable, the particulars of any third party to whom or which the record relates, submitted by the information officer/deputy information officer on ..... (date) to the relevant authority.

OUTCOME OF APPEAL: .....

DECISION OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER CONFIRMED/NEW DECISION SUBSTITUTED

NEW DECISION: .....

DATE RELEVANT AUTHORITY .....

RECEIVED BY THE INFORMATION OFFICER/DEPUTY INFORMATION OFFICER FROM THE RELEVANT AUTHORITY ON (date): .....

**Addendum A: Section E of Form B - Appeal against deemed refusal for access to information of public body**

**Appeal submitted by Mosima Kekana (Attorney, Legal Resources Centre)**

1. This addendum relates to Section E of Form B and provides the grounds upon which the appeal is based.
2. I am an attorney at the Legal Resources Centre (LRC), a non-profit organisation and registered law clinic acting in the interest of the public, with offices in Johannesburg, Cape Town, Durban and Grahamstown. I submit this appeal in the course and scope of my employment at the LRC.
3. I submit that I am lawfully entitled to the information sought both in terms of Section 32(1) of the Constitution and Promotion of Access to Information Act 2 of 2000 (hereinafter referred to as PAIA). The deemed refusal by the State Security Agency undermines the values of accountability, openness and responsiveness articulated as South Africa's founding values under section 1(d) of the Constitution.
4. It is submitted that there are no justifiable grounds of refusal as contemplated under PAIA and in any event none has been relied upon, as the request has not been responded to leading to the deemed refusal.
5. I submit that the public interest in the disclosure of the requested information overrides the harm contemplated in section 46 of PAIA.
6. Furthermore, considering section 5 of PAIA, the provisions of PAIA apply to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of a record, and is materially inconsistent with an object or provision of PAIA.
7. If the record is in the possession of another public body, the State Security Agency is obliged to transfer this request to the information officer of that public body as soon as reasonably possible, and at most within 14 days after receiving this request.
8. Considering the contents of Addendum B, with the request having been transferred from the Department of Justice and Constitutional Development to the Department of International Relations and Cooperation and finally to the State Security Agency, it is submitted that there is no other public body which could hold the information requested and in any event the timeframes for transfer have lapsed.

**Addendum B: Section E of Form B - Appeal against deemed refusal for access to information of public body**

**Appeal submitted by Mosima Kekana (Attorney, Legal Resources Centre)**

1. This addendum relates to Section E of Form B and provides information relevant to consideration of the appeal.
2. I am an attorney at the Legal Resources Centre (LRC), a non-profit organisation and registered law clinic acting in the public interest, with offices in Johannesburg, Cape Town, Durban and Grahamstown. I submit this additional information relevant to the appeal in the course and scope of my employment at the LRC.
3. The original request was submitted by Avani Singh Attorney Legal Resources Centre, to both the State Security Agency and Department of Justice and Constitutional Development on 13 June 2017. An enquiry was submitted to the State Security Agency requesting an update on the status of the original request and transferred request on 13 October 2017 and is attached as Annexure B.
4. Subsequently, the State Security Agency, per Selebaleng Mashike, acknowledged receipt of the request. However, on 15 June 2017 the Department of Justice and Correctional Services, per Ms N D Louw Deputy Information Officer, transferred the request to the Department of International Relations and Cooperation. A copy of the transfer letter is attached hereto as Annexure C.
5. The Department of International Relations and Cooperation then transferred the request to the State Security Agency on 3 August 2017. A copy of which is attached hereto as Annexure D.
6. The protracted series of transfers and absence of responses to enquiries about the status of the request has led to the delay in lodging the appeal. We submit therefore that these circumstances justify the condonation of the late lodging of the appeal.
7. Alternatively, I submit that the appeal must be taken as relating to the transferred request of 3 August 2017, meaning that it is within the 60 timeframe.

Signed at Johannesburg the 4<sup>th</sup> December 2017.



**Mosima Kekana | Attorney  
Legal Resources Centre**