

Original

THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case number: 36297/22

In the matter between:

SAKELIGA NPC

Applicant

and

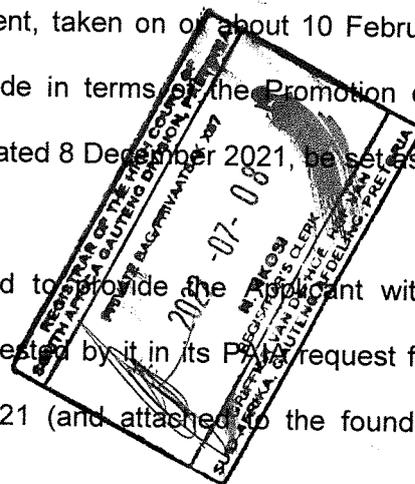
AUDITOR-GENERAL SOUTH AFRICA

Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA	
PRIVATE BAG, PRIVAATSAK X07	
NOTICE OF MOTION 2022 -07- 07	
N. NKOSI REGISTRAR'S CLERK	
GRFFIER VAN DIE HOE, HOF VAN SUID-APRIKA, GAUTENG AFDELING, PRETORIA	

KINDLY TAKE NOTICE that the abovementioned Applicant intends to make application to this Honourable Court for an order in the following terms:

1. That the decision of the Respondent, taken on or about 10 February 2022, to refuse the Applicant's request made in terms of the Promotion of Access to Information Act, 2 of 2000 (PAIA) dated 8 December 2021, be set aside;
2. That the Respondent be ordered to provide the Applicant with all of the documents and/or information requested by it in its PAIA request for access to information dated 8 December 2021 (and attached to the founding affidavit,



marked as annexure X5) within 30 days of the date of the order or as otherwise directed by the court;

3. That the failure by the Respondent to make all of her reports public, alternatively to make available the documents and/or information requested by the Applicant as set out in its PAIA request for access to information dated 8 December 2021, be declared to be unlawful, and inconsistent with the Constitution of the Republic of South Africa, 1996 ("Constitution") including sections 1(a), 1(c), 7, 33, 41, 195 (1) (f), 195 (1) (g), 181 (2), and 188 of the Constitution, and further that an order be granted that all reports by the Respondent on the accounts, financial statements and financial management of all municipalities must be made public;
4. That, in the alternative to paragraph 3 above, an appropriate order be granted in terms of section 172 of the Constitution that is just and equitable, and which has a remedial effect alleviating the Constitutional infringements, concerns and/or invalidities underlying this application;
5. That the costs of the application be paid by the Respondent.
6. Further and/or alternative relief.

TAKE FURTHER NOTICE that the founding affidavit of **TOBIAS VIVIAN ALBERTS** together with the annexures thereto, shall be used in support of the application.

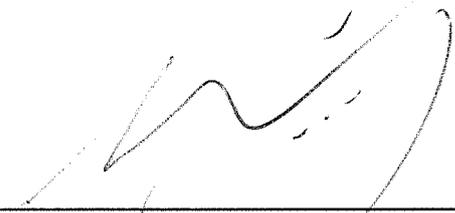
TAKE NOTICE FURTHER that the applicant appoints the address of its attorney of record, set out hereunder, as the address where the applicant shall receive notice of all process in this application.

TAKE NOTICE FURTHER that if you intend to oppose this application you are required to:

- (a) deliver a written notice of your intention to oppose this application within 15 (fifteen) Court days of receipt hereof, which notice shall be directed to the to the applicant's attorney of record and the Registrar of this Court;
- (b) file your answering affidavit, if any, within 15 (fifteen) Court days after you have delivered your written notice of your intention to oppose this application; and
- (c) in your notice of intention to oppose this application, provide an address as envisaged in Rule 6(5)(b) of the Uniform Rules of Court at which you shall accept notice of all process in this application.

TAKE FURTHER NOTICE THAT if no such notice of intention to oppose be given, the application will be made on 17 OCTOBER 2022 at 10h00 or as soon thereafter as counsel may be heard.

SIGNED AT PRETORIA ON 7 JULY 2022.



KRIEK WASSENAAR & VENTER INC
ATTORNEYS FOR THE APPLICANT
THIRD FLOOR, HB FORUM BUILDING
13 STAMVRUG STREET
VAL DE GRACE
PRETORIA

TEL: 012 803 4719

EMAIL: peter@kriekprok.co.za

REF: P Wassenaar / QB0920

TO: **THE REGISTRAR OF THE HIGH COURT**
PRETORIA

AND TO: **AUDITOR-GENERAL OF SOUTH AFRICA**
THE RESPONDENT
LYNNWOOD BRIDGE OFFICE PARK
4 DAVENTRY STREET
LYNNWOOD MANOR
PRETORIA

(BY SHERIFF)

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: 36297/22

In the matter between:

SAKELIGA NPC

Applicant

and

AUDITOR-GENERAL SOUTH AFRICA

Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

TOBIAS VIVIAN ALBERTS

declare under oath that:

1. I am an adult male and the Legal Officer of the applicant.
2. I am duly authorised to depose to this affidavit on behalf of the applicant.



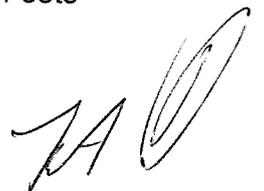
3. Save where the contrary is expressly stated or appears from the context, the facts and allegations set forth herein fall within my personal knowledge and are, to the best of my knowledge, both true and correct.
4. To the extent that information does not fall within my personal knowledge, I will attempt to obtain confirmatory affidavits, if possible to do so. To the extent that I am unable to confirm those allegations by confirmatory affidavit, I pray that the Court admits those allegations as evidence in terms of section 3 of the Law of Evidence Amendment Act, No.45 of 1988.
5. Where I make legal submissions herein, I do so on the strength of legal advice received, which advice I accept as both correct and good in law.
6. The applicant has appointed Pèter Wassenaar ["*Wassenaar*"] of Kriek Wassenaar & Venter Inc. ["*KWV*"] as its attorney of record, with instructions to institute and prosecute this application.

THE APPLICANT

7. The applicant is Sakeliga NPC, a non-profit company duly registered and incorporated in terms of the statutes of the Republic of South Africa under registration number 2012/043725/08, with its principal place of business at Building A, 5th Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

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8. The applicant is a business-interest organisation with a supporter and donor base of more than 11 000 businesspeople, companies and business organisations and a network of more than 40 000 subscribers in South Africa.
9. The applicant was established in the year 2011 and was incorporated and registered as a non-profit company in terms of the Companies Act, No. 71 of 2008, in the year 2012.
10. The applicant's main objective is the protection of constitutional rights, constitutional order, the rule of law, free-market principles, and a just and sustainable business environment within the Republic of South Africa.
11. To this extent, the applicant lobbies to promote a free market and economic prosperity and to create a favourable business environment in the interest of its supporters as well as in the interest of the common good. In order to give effect to its main object, it also provides *ad hoc* assistance to its supporters and the public at large, which support includes legal support where appropriate. This application falls within that category of support.
12. Further, to achieve the applicant's objectives and to perform its functions and mandate, as an ancillary object, is *inter alia* to act in the interest of its supporters and members of the public to protect their business and other constitutional rights.
13. The aforesaid is also evident from an extract of the applicant's memorandum of incorporation which I attach as annexure X1. I deem it apposite to draw the Court's attention to clause 4 of the memorandum of incorporation which sets



out in more detail the objects, ancillary objects as well as the powers of the applicant.

14. I do not attach a full copy of the memorandum of incorporation to these papers, because it will make these papers unnecessarily prolix and voluminous, but I request the Court to have regard to the content of X1. The applicant will make its full memorandum of incorporation available to the Court or any of the respondents who request it.

THE RESPONDENT

15. The respondent is the Auditor-General of South Africa, a Chapter 9 institution of public administration, established in terms of section 181 of the Constitution and exercising those functions provided for in sections 188 and 189 of the Constitution, read with the Public Audit Act 25 of 2004, as the supreme audit institution of South Africa and intended to strengthen the country's democracy by enabling oversight, accountability, and governance in the public sector.
16. The incumbent Auditor-General of South Africa is Tsakani Maluleke.
17. The head office of the Auditor-General of South Africa is situated at 4 Daventry Street, Lynnwood Bridge Office Park, Lynnwood Manor, Pretoria.
18. As a Chapter 9 institution, the Constitution provides that,
 - 18.1. in terms of section 181(2), the AGSA is independent, and subject only to the Constitution and the law, and must be impartial and must



exercise her powers and perform her functions without fear, favour, or prejudice;

- 18.2. in terms of section 181(3), an obligation is placed on other organs of state to assist and protect the AGSA to ensure its independence, impartiality, dignity, and effectiveness; in terms of section 181(4), persons or organs of state are prohibited from interfering with the functioning of the AGSA; and
 - 18.3. in terms of section 181(5), the AGSA is accountable to the National Assembly and is required to report to it on the fulfilment of their mandate annually at least.
19. In terms of s 4(1) of the Public Audit Act, the Auditor-General must audit and report on the accounts, financial statements, and financial management of the organs of state listed therein and any other institution or accounting entity required by legislation to be audited by the Auditor-General.
 20. Section 4(2) of the Public Audit Act provides that the Auditor-General must audit and report on certain consolidated financial statements of the national government, provincial governments, and municipalities.
 21. In emphasising the independence of the Auditor-General as a Chapter 9 institution, I am advised that the Supreme Court of Appeal has interpreted the role of the Auditor-General as not being to administer or to implement the policies of the executive, but to independently audit and report on the use of public funds and resources.

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22. The nature of this institutional function of the Auditor-General is central to this application and I will return to it below.

REFERENCING

23. For ease of reference and continuity in what follows, where I refer to:
- 23.1. "*Sakeliga*", I am referring to the applicant;
 - 23.2. "AGSA", I am referring to the respondent as an institution;
 - 23.3. "A-G", I am referring to the incumbent holder of the office of Auditor-General of South Africa;
 - 23.4. "*the PAA*", I am referring to the Public Audit Act 25 of 2004;
 - 23.5. "*PAIA*", I am referring to the Promotion of Access to Information Act 2 of 2000;
 - 23.6. "*the PAIA Rules*", I am referring to the Promotion of Access to Information Rules and Administrative Review Rules, 2019;
 - 23.7. "*the MFMA*", I am referring to the Local Government Municipal Finance Management Act 56 of 2003;
 - 23.8. "*the Systems Act*", I am referring to the Local Government Municipal Systems Act 32 of 2000.



NATURE OF THE APPLICATION.

24. This is an application brought in terms of Section 78, read with Section 82 of PAIA and the PAIA Rules to compel compliance by the AGSA with a PAIA request for information.
25. Sakeliga also seeks declaratory relief in terms of section 172(1)(a) of the Constitution, in relation to the AGSA's failure to make certain reports drafted as a result of the audit process public.

LOCUS STANDI

26. Sakeliga is a *requester* as contemplated in Section 1 of PAIA and therefore has *locus standi* to launch this application in terms of Section 78 of PAIA.
27. It is also a matter of public interest that public office bearers, such as the AGSA, act within the scope and ambit of the Constitution and comply with their obligations under PAIA.
28. In the premise, the applicant brings this application:
 - 28.1. in its own interest (as contemplated in section 38(a) of the Constitution).
 - 28.2. in the public interest (as contemplated in section 38(d) of the Constitution); and/or



- 28.3. in the interest of its members (as contemplated in section 38(e) of the Constitution).

JURISDICTION

29. The Court has jurisdiction to adjudicate this application by virtue of the fact that the AGSA's head office is situated within the Court's area of territorial jurisdiction.

PURPOSE

30. As stated, this is an application brought in terms of section 78 of PAIA, seeking the following relief as contemplated in section 82 of PAIA:
- 30.1. That the decision of the AGSA, taken on or about 10 February 2022 to refuse Sakeliga's PAIA request be set aside;
- 30.2. That the AGSA be ordered to provide Sakeliga with all of the documents and/or information requested by it in its request for access to information dated 8 December 2021 (and attached to the founding affidavit, marked as annexure X5) within 30 days of the date of the order or as otherwise directed by the court;
- 30.3. That the failure by the AGSA to make all of her reports public, alternatively to make available the documents and/or information requested by Sakeliga as set out in paragraph 30.2 above, be declared to be unlawful, and inconsistent with the Constitution, including sections 1(a), 1(c), 7, 33, 41, 195 (1) (f), 195 (1) (g), 181



(2), and 188 of the Constitution, and further that an order be granted that all reports by the AGSA on the accounts, financial statements and financial management of all municipalities must be made public;

30.4. That, in the alternative to paragraphs 30.3 above, an appropriate order be granted in terms of section 172 of the Constitution that is just and equitable, and which has a remedial effect alleviating the Constitutional infringements, concerns and/or invalidities underlying this application.

30.5. That the costs of the application be paid by the AGSA.

BACKGROUND TO THE PAIA REQUEST

31. While the background and basis for the PAIA request at issue in this application is not strictly relevant or determinative of the application on its merits, I deem it prudent to briefly give the Court some contextual background to the PAIA request.

32. As I have already mentioned, the AGSA's audit and reporting functions in respect of organs of state arise from the Constitution, read with sections 4 and 20 of the PAA.

33. Relevant to the present application is the exercise of those audit and reporting functions in respect of municipalities, particularly under-performing municipalities of which Sakeliga has identified 154.

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34. On behalf of its members and the broader public interest, especially those conducting business in and residing in the 154 municipalities listed in Sakeliga's PAIA request, Sakeliga is seeking solutions to widespread municipal failure and dereliction of constitutional duties on municipal governance. Failures in municipal governance and especially financial management have a direct impact on the rights and interests of persons who conduct business in and/or reside in problematic and under-performing municipalities.
35. It is therefore imperative that institutions of public administration, such as the AGSA, make available information relevant to the constitutional failures of organs of state, such as under-performing municipalities.
36. As I will demonstrate below, the AGSA is in a unique constitutional and legislative position which obligates it to independently audit the performance of municipalities and to report on that performance.
37. Chapter 12 of the MFMA regulates the financial reporting and auditing obligations of municipalities.
38. Section 121(1) of the MFMA requires that every municipality and every municipal entity must for each financial year prepare an annual report in accordance with the further provisions of chapter 12.
39. Section 121(2) prescribes that the purpose of the annual report required by section 121(1) is to provide a record of the activities and budgetary performance of the municipality during the reporting period and, most

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importantly, to promote accountability to the local community for the decisions made throughout the year by the municipality.

40. There is no secrecy intended in respect of these annual reports and it is the accountability purpose expressly provided for which Sakeliga seeks to pursue for its members and the broader public who are based in under-performing municipalities.
41. Section 121(3) of the MFMA prescribes that the annual report required by section 121(1) *must* include, *inter alia*, the following:
 - 41.1. the annual financial statements of the municipality, and in addition, if section 122 (2) applies, consolidated annual financial statements, as submitted to the Auditor-General for audit in terms of section 126(1);
 - 41.2. the Auditor-General's audit report in terms of section 126(3) on those financial statements; and
 - 41.3. the Auditor-General's audit report in terms of section 45(b) of the Systems Act.
42. Under section 126(3), the Auditor-General must audit the municipality's financial statements and submit an audit report on those statements to the accounting officer of the municipality or entity within three months of receipt of the statements.



43. These section 126(3) audit reports on a municipality's financial statements are publicly available on the AGSA's website and are, objectively viewed, a largely sterilised, high-level, and abridged reporting on the financial performance of a municipality, without delving into the specific underlying causes of underperformance and the risk factors present in individual municipalities. They demonstrate the effect and not the cause of underperformance.
44. Turning to the Systems Act, Chapter 6 thereof deals with municipal performance management. In my submission, independent evaluation of performance management takes one closer to the root cause of underperformance in municipalities.
45. Pertinently, section 38 of the Systems Act requires each municipality to establish a performance management system, while section 40 requires that municipality to establish mechanisms to monitor and review its performance management system.
46. Section 41 provides as follows:
- (1) *A municipality must in terms of its performance management system and in accordance with any regulations and guidelines that may be prescribed-*
- (a) *set appropriate key performance indicators as a yardstick for measuring performance, including outcomes and impact, with regard to the municipality's development priorities and objectives set out in its integrated development plan;*

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- (b) *set measurable performance targets with regard to each of those development priorities and objectives;*
 - (c) *with regard to each of those development priorities and objectives and against the key performance indicators and targets set in terms of paragraphs (a) and (b)-*
 - (i) monitor performance; and*
 - (ii) measure and review performance at least once per year;*
 - (d) *take steps to improve performance with regard to those development priorities and objectives where performance targets are not met; and*
 - (e) *establish a process of regular reporting to-*
 - (i) the council, other political structures, political office bearers and staff of the municipality; and*
 - (ii) the public and appropriate organs of state.*
- (2) *The system applied by a municipality in compliance with subsection (1) (c) must be devised in such a way that it may serve as an early warning indicator of underperformance.*



47. However impressive these prescripts may sound, absent independent evaluation, these *systems* offer little guarantees to the public. Without oversight, they are no better than a student marking their own homework.
48. Therefore, section 45 of the Systems Act, as referred to in section 121(3) of the MFMA, provides that the results of performance measurements in terms of section 41(1)(c) must be audited as part of the municipality's internal auditing processes, and annually by the Auditor-General.
49. It is this process of audited performance management review, as required by the aforesaid provisions of the MFMA and the Systems Act, which result in the production of the management reports which form the subject matter of Sakeliga's PAIA request.
50. These management reports are then required to form part of a municipality's annual report required by section 121(1) of the MFMA, in terms of section 121(3)(d) of the MFMA.
51. These management reports are essentially a *deep dive* evaluation of the underlying performance of a municipality, which leads to section 126(3) audit reports.
52. I am advised that, on a reading of the legislation referred to above, these management reports are not intended to be withheld from public scrutiny by virtue of the accountability purpose which underlies the production of these management reports as provided for in section 121(2) of the MFMA.

53. However, despite the aforesaid provisions, neither is publicly available.
54. Sakeliga has recently come into possession of such municipal management reports. As it is not the purpose of this application to draw attention to any underperforming municipality, I will speak to the general nature and content of the management reports.
55. However, should the AGSA dispute the character of the management reports and how they differ from those reports that the AGSA makes public from time to time, as described below, Sakeliga reserves the right to make discovery of those reports under Uniform Rule 35 and to refer to the particular reports in reply.
56. Each management report includes:
- 56.1. an executive summary; and
 - 56.2. detailed audit findings report.
57. As I have referred to above, Chapter 6 of the Systems Act requires municipalities to establish, implement and report on performance management systems.
58. In executing its functions under section 4 and section 20 of the PAA, the AGSA evaluates the reported performance information against the overall criteria of usefulness and reliability to determine whether the performance information was presented in accordance with the National Treasury's annual reporting

principles and whether the reported performance was consistent with the planned development priority.

59. The AGSA further determines whether performance indicators and targets were well defined, verifiable, specific, measurable, time-bound, and relevant as required by the National Treasury's Framework for managing programme performance information (FMPPi).
60. The management reports produced in the execution of this assessment, therefore, address independent opinions by the office of the AGSA on a municipality's performance, compliance with legislation, internal controls, and emerging risks.
61. Each management report also includes, where applicable, findings on a municipality's performance in, *inter alia*, the following specific focus areas:
 - 61.1. Procurement and contract management;
 - 61.2. Water and sanitation;
 - 61.3. Road infrastructure;
 - 61.4. Environmental management; and
 - 61.5. Public participation.
62. It is also important to note that the management reports created by the A-G's office, are municipality and issue-specific. It refers to specific problems that the

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audit team picked up during the audit process. It refers to specific problems with specific tenders and infrastructure projects.

63. I submit that, given the scope of independent evaluation conducted in their production, the importance of these management reports to a system of effective, transparent, accountable, and coherent government, as required by section 41(1) and 165(1) of the Constitution, cannot be under-stated.

64. In terms of Section 152 of the Constitution, it is the objects of local government to:

64.1. provide democratic and accountable government for local communities;

64.2. ensure the provision of services to communities in a sustainable manner;

64.3. to promote social and economic development;

64.4. to promote a safe and healthy environment; and

64.5. encourage the involvement of communities and community organisations in the matters of local government.

65. Municipalities are obligated, within their financial and administrative capacity, to strive to achieve those objects.

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66. Corresponding with that obligation, is the right of the citizenry to access information for the purposes of scrutinising the performance of municipalities alongside their constitutional obligations, in order to:

66.1. hold elected officials accountable for their performance in public office;

66.2. maintain accountable, responsive, and transparent governance; and

66.3. where necessary, vindicate the rights of individuals and businesses negatively affected by the failures of local governments to comply with their constitutional obligations.

67. However, despite strong legislation and a clear constitutional mandate to ensure service delivery, municipalities across South Africa's local government structure are in crisis.

68. The A-G herself with the release of her annual report for the financial period of 2020/2021, in a press release on 15 June 2022 (attached hereto as annexure X2), stated that:

68.1. *"The lack of improvement in municipal outcomes is an indictment on the entire local government accountability ecosystem, which failed to act and arrest the decline that continued to be characterised by service delivery challenges in municipalities."*

- 68.2. *"Active citizenry is crucial to ensure that the needs of communities are heard and acted on, and that municipal leaders are held accountable for their actions. We call on all citizens to always take part in the public participation processes for determining and reviewing the MFMA 2020-21 audit outcomes on local government integrated development plan, and in ward committees; to get involved in community organisations; and to use the available channels to report any indicators of abuse, mismanagement, fraud and service delivery failures,"*
- 68.3. *"[The A-G] says some municipalities improved their audit outcomes, just to regress again in later years. Overall, only 61 municipalities had a better audit outcome in 2020-21 than in 2016-17, with 56 now having a worse audit outcome."*
- 68.4. *"[The A-G] states that it is encouraging to see the slight increase in the number of clean audits – 27 municipalities were able to maintain their clean audit status throughout the administration, while 14 achieved a clean audit for the first time and six lost their clean audit status. However, clean audit outcomes continue to represent less than a fifth of the local government budget."*
- 68.5. *"[The A-G] says the financial position of 28% of South Africa's municipalities is so dire that there is significant doubt about whether they will be able to continue operating in the near future. This effectively means that such municipalities do not have enough revenue to cover their expenditure; they owe more money than they have; and they can*



no longer pay salaries and other obligations as they fall due, or maintain infrastructure assets such as roads and provide water and other basic services. Many of these municipalities have been in this dire financial position multiple times over the course of the administration."

68.6. *"In 2020-21, there were 25 municipalities that received disclaimed audit opinions – the worst audit opinion possible. This is almost 10% of all municipalities in the country. Only Gauteng and the Western Cape did not have municipalities with disclaimed opinions during this period. Most of the municipalities that repeatedly received disclaimed opinions are in North West."*

68.7. *"A disclaimed opinion is the worst audit opinion a municipality can receive, as it means that the municipality could not provide auditors with evidence for most of the amounts and disclosures in its financial statements. Therefore, the AGSA could not express an opinion on the credibility of these financial statements or determine what was done with the funds the municipality received for the year towards service delivery."*

68.8. *"Rather than a technical audit matter, a disclaimed opinion is a confirmation of dysfunction in the management of the municipality, with a devastating impact on the lives of the residents living in these municipal areas as they are robbed of service delivery."*

68.9. *"After inspecting some of the wastewater treatment works and landfill sites controlled by municipalities, our experts identified poor or ineffective environmental management, limited environmental*



monitoring and enforcement, as well as defective management and delivery of wastewater and solid waste services at municipalities."

68.10. ***"Our role and mandate as the country's supreme audit institution is to audit every municipality and municipal entity, report on what we found and share the insights to strengthen transparency and enable accountability."*** [Own emphasis]

68.11. "This report is therefore not intended only for local government leaders; it is equally important for national and provincial leadership and community organisations."

69. The A-G's consolidated general report on local government audit outcomes for the period of 2020/2021, continues the dire state of affairs in local government. In order not to burden these papers, I will only attach extracts of the relevant parts referred to below as annexure X3:

69.1. According to the A-G, only 28% of all municipalities have "good" record keeping systems in place, with 30% of municipalities marked as "intervention required";

69.2. 52% of all municipalities are marked as "intervention required" with reference to their review and monitoring of compliance matters;

69.3. 27% of municipalities could not properly account for their assets because of a lack of asset registers;



- 69.4. 27% of municipalities did not report all irregular expenditure in their financial statements;
- 69.5. 25% of municipalities did not have adequate documentation to support expenditure reported;
- 69.6. Municipalities in general spend more than R5.31 billion on external consultants per year, with 70% of municipalities having to rely on external consultants in order to conduct financial and compliance related work;
- 69.7. According to the report, municipalities could only recover an estimated 36% (R109.64 billion) of own revenue. Municipalities as a whole wrote off R41.28 billion rand of debt over the period.
- 69.8. Municipalities owe Eskom an astounding amount of R25.37 billion and the waterboards R13.29 billion.
- 69.9. The mismanagement of funds is made clear by the following statement found in the report *"By year-end, almost half of all municipalities (47%) owed creditors more money than they had available in the bank, as municipalities continued to spend money they did not have. The total deficit in local government amounted to R6,63 billion and the expenditure of 55 municipalities (26%) exceeded their revenue at yearend. As a result, municipalities were using the next year's budget to cover the current year's expenditure. This is evident from the fact that current liabilities were more than 50% of the 2021-22 budget at*



29% of municipalities. This means that the 2021-22 budget will pay for spending that had already taken place in 2020-21 and prior financial years."

69.10. Only 11% of municipalities have sufficient supply chain management control and compliance with legislation. 63% of municipalities (a whopping 145 municipalities) have "material findings" marked in this regard;

69.11. The A-G report also paints a dire picture in respect of municipalities' ability to deal with irregular expenditure, unauthorised expenditure, and fruitless and wasteful expenditure. According to the report, *"At the 2020-21 year-end, the balance of irregular expenditure that had accumulated over many years and had not been dealt with totalled R119,07 billion, unauthorised expenditure stood at R86,46 billion, while fruitless and wasteful expenditure amounted to R11,04 billion."* Municipalities, according to the report, have yet to address or take steps to recover 89% (R97.96 billion) of the total outstanding amount.

70. The A-G's reports confirm a dire situation at a local government level.

71. The current A-G in her press release and report, correctly recognises the urgent and important role that the public has to play in what is in many towns across the country, becoming nothing less than a governance and service delivery crisis. The public and organisations like Sakeliga have a constitutional role to play in staving off further mismanagement, collapse, and decay but cannot do so without proper information about the root causes of collapse and decay.



72. Time is of the essence, and current and future efforts to prevent further decay are reliant on the availability of reliable information that demonstrates not only a summarised version of the current state of affairs but clear information regarding the root causes.
73. The information the A-G gathers during her audit, especially the information in her management reports to municipalities, is a lot more specific as to the problems in each municipality. It contains information usually only known to local government officials and not easily obtainable by the public. The public can only help solve the problems facing collapsing local government, if they have the information needed. The public can only benefit from knowing what is happening in their municipalities.
74. The management reports compiled by the A-G shine a light on not only general financial problems but also big issues. It strikes at the heart of the A-G's function as a Chapter 9 institution and the principle of a transparent and accountable government. It is a necessary audit process of the A-G to which the public has a right to the information and a clear legitimate expectation that these audits and management reports will continue with the same vigour and specificity as in the past.
75. The disclosure of the records sought by Sakeliga in its PAIA request, especially the management reports, are clearly of significant constitutional importance and in the public interest.

THE PAIA REQUEST



76. In December 2021, Wassenaar procured a copy of the AGSA's manual published in terms of section 14 of PAIA ["the AGSA's PAIA manual"]. A copy of the AGSA's PAIA manual is attached hereto as annexure X4.
77. In terms of the AGSA's PAIA manual:
- 77.1. the A-G is the AGSA's information officer; and
- 77.2. the deputy A-G is the AGSA's deputy information officer.
78. Section 1 of the AGSA's PAIA manual provides contact details by which Sakeliga could deliver its PAIA request by e-mail to the information officer and deputy information officers at paia-popi@agsa.co.za or physically at one of the AGSA regional offices.
79. A request for access to information from the AGSA is submitted in terms of the guidelines contained in appendix A to the AGSA's PAIA manual, which provides as follows:

Persons who wish to request access to information in records held by the AGSA must complete the form in appendix B, submit the completed form to the information officer or a deputy information officer, and pay the prescribed fee (if any). The form may be submitted in person, by ordinary mail or electronically to an address provided in section 1 of this manual. The public is advised to—



(a) *provide as much information as possible when submitting a request to expedite the search for the requested record or information held by the AGSA*

(b) *keep full records of any request submitted as well as an acknowledgement of receipt issued by the AGSA.*

80. Section 6 on page 12 of the AGSA's PAIA manual provides that:

The AGSA does not have internal appeal procedures for Paia requests. As such, the information officer's decision is final. A requester who is aggrieved by the information officers' decision to refuse a request for access or taken in terms of sections 22, 26(1) or 29(3) of Paia, is entitled, within 180 days of being notified of such a decision, to apply to a court for appropriate relief in terms of section 82 of Paia.

81. On or about 8 December 2021, Wassenaar prepared a PAIA request to the AGSA which incorporates an additional annexure "A", specifying the information being requested from the AGSA.

82. The information sought from the AGSA is defined as follows in annexure A to the PAIA request:

2. *All entity specific management reports and/or management letters that deal with and report on all findings, adverse and material findings, roots causes and recommendations to senior management and the municipal managers, which includes but is not limited to all executive*

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summaries and detail finding reports, for each of the Target Entities issued by the AGSA for each of the following financial years ending:

2.1 2015;

2.2 2016;

2.3 2017;

2.4 2018;

2.5 2019;

2.6 2020;

2.7 2021.

3. *All entity specific annual performance reports, annual compliance reports and assessments relating to each of the Target Entities issued or received by the AGSA for each of the Target Entities for each of the following municipal financial years ending:*

3.1 2015;

3.2 2016;

3.3 2017;

3.4 2018;

3.5 2019;

3.6 2020;



3.7 2021.

4. *All entities specific non-compliance reports, advisories, communications, memoranda, findings and/or reports relating to any material or adverse irregularities and/or findings made by the AGSA, in addition to its annual audit report and/or the management reports stated in paragraphs 2 and 4 above, for each of the specific Target Entities for each of the municipal financial years ending:*

4.1 2015;

4.2 2016;

4.3 2017;

4.4 2018;

4.5 2019;

4.6 2020;

4.7 2021.

83. Annexure A to the PAIA request further defines the term "Target Entities", as referred to in the paragraphs quoted above, to mean the 154 listed municipalities contained in Schedule One to Annexure A.

84. A full copy of the PAIA request as well as proof of transmission on 8 December 2021 to the e-mail address identified in the AGSA's PAIA manual are attached hereto as annexures X5 and X6 respectively.

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85. On 9 December 2021, receipt of the PAIA request was acknowledged by Jonathan Mukwevho, whose email signature describes him as an "*Archival Consultant • Information and Knowledge Management • Auditor-General of South Africa*". A copy of this email is attached as annexure X7.
86. On 10 January 2022, a further email was received from Jonathan Mukwevho, a copy of which is attached as annexure X8 and wherein an extension of 30 days is sought by the AGSA to respond to the PAIA request.
87. On 11 January 2022, Wassenaar responded by agreeing to an extension of the period to 10 February 2022, in an email attached as annexure X9.
88. On 2 February 2022, the following transpired:
- 88.1. KVV was contacted telephonically that morning by Solly Segooa, the Chief Risk Officer of the AGSA, to request a meeting between Wassenaar, Segooa, the A-G and myself. Segooa spoke to Melissa Jansen van Vuuren of KVV who indicated to him that she would convey his request to Wassenaar, which she did;
- 88.2. At 17:33, Yumna Omar Ismail, whose email signature describes her as a "*Portfolio Manager • Chief Risk Office • Auditor-General of South Africa*", addressed an email to Melissa Jansen van Vuuren of KVV proposing that the aforesaid meeting take place on 8 February 2022. A copy of this email is attached as annexure X10;

88.3. At 20:33, Solly Segooa addressed a further email to Melissa Jansen van Vuuren of KVV, attaching a letter addressed to Wassenaar in respect of the meeting proposed for 8 February 2022. Copies of the email and the letter attached thereto are attached as annexures X11 and X12 respectively.

88.4. The letter transmitted by Segooa to Jansen van Vuuren states as follows:

1. *I refer to the above matter and the Auditor-General's request to address the leadership of Sakeliga NPC (your client).*
2. *We are grateful for the opportunity to engage your client on 8 February 2022. I am confident that this will be an appropriate platform to share with your client the intricacies of our audit machinery and how this ties back to the role that we play as the external auditor of government. The Auditor-General and her team similarly look forward to gain a better understanding of the intent of your application for access to our management reports.*
3. *In light of the above, I request your indulgence to discuss a reasonable and realistic date for our formal response to your application at the upcoming meeting. Your favourable response by Friday, 4 February 2022 will be greatly appreciated.*

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89. On 3 February 2022 Wassenaar agreed to the meeting proposed for 8 February 2022 in a letter addressed to AGSA in response to the emails and letter referred to above. A copy of this letter is attached as annexure X13.
90. However, in the aforesaid letter Wassenaar poignantly clarified that AGSA is bound to the provisions of PAIA and that Sakeliga is not required by PAIA to disclose the reasons for its request as intimated by Segooa in his letter of 2 February 2022.
91. The meeting took place virtually on 8 February 2022.
92. Although the meeting was informative in respect of the information publicly accessible from the AGSA through its website, it did not advance the purpose of ultimately obtaining access to the management reports requested in the PAIA request.
93. Consequently, on 9 February 2022, Wassenaar addressed a further letter to AGSA, a copy of which is attached as annexure X14, wherein he sought a formal response from the A-G to the PAIA request.

THE REFUSAL OF THE PAIA REQUEST

94. On 10 February 2022, the A-G addressed a letter to Sakeliga, care of KWW, refusing the PAIA request. A copy of the letter is attached as annexure X15.
95. While the letter itself is somewhat more extensive and should be considered in its entirety, the refusal is essentially premised on the following reasoning:

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- 95.1. Sakeliga seeks access to the *management reports* prepared by the AGSA for the target entity municipalities;
- 95.2. The *management reports* are prepared pursuant to the AGSA's section 4(1) functions;
- 95.3. The *management reports* fall within the ambit of Section 44(1)(a)(i) of PAIA because they contain opinions, advice, and recommendations pursuant to a statutory duty;
- 95.4. The *management reports* fall within the ambit of Section 44(1)(b)(i) of PAIA because the A-G is of the opinion that disclosure of the reports could reasonably be expected to frustrate the deliberative process between the AGSA and the Target Entity by inhibiting the candid communication of advice and recommendations and the discussion and deliberation on the auditing issues identified in the relevant reports;
- 95.5. The request is manifestly excessive, within the contemplation of Section 45, because the reports are sought for a period of seven years; and
- 95.6. The public interest in disclosing the management reports does not clearly outweigh harm which would ensue if the reports were disclosed, as contemplated by Section 46 of PAIA.

APPLICATION IN TERMS OF PAIA



96. As I referred to above, AGSA's PAIA manual does not make provision for an internal appeal and provides, in section 6 thereof, that the information officer's decision is final and that an aggrieved requester is entitled to apply to a court for appropriate relief in terms of PAIA.

97. Therefore, pursuant to her refusal of the PAIA request on 10 February 2022, Sakeliga is accordingly entitled to approach this Court for relief as a requester in terms of Section 78 read with 82 of PAIA, having no internal remedies to pursue.

SUBMISSIONS ON THE REFUSAL OF THE PAIA REQUEST

98. Although I have already demonstrated that management reports are produced as a function of accountability and, therefore, should be made public, in this section I briefly wish to address the refusal of the PAIA request with reference to:

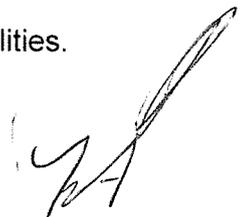
98.1. the constitutional obligation of disclosure; and

98.2. the flawed reasoning employed in the A-G's refusal.

The constitutional obligation to disclose

99. The AGSA is a Chapter 9 institution as provided for in Section 181, read with 188 and 189 of the Constitution.

100. Section 188(1)(b) obliges the AGSA to "*audit and report on the accounts, financial statements and financial management*" of, *inter alia*, all municipalities.



101. Under Section 188(3), the AGSA must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation.
102. Most importantly, under Section 188(3), **all reports** must be made public.
103. Immediately there is a tension between the AGSA's refusal of the PAIA request and Section 188(3) of the Constitution.
104. In fact, there is pre-existing tension between the fact that the route of a PAIA request had to be followed in the first place and section 188(3) of the Constitution. Were the reports made public as section 188(3) requires, it would not have been necessary to lodge a PAIA request and a *fortiori* approach this Court for relief upon refusal.
105. I have already demonstrated above that the management reports are produced pursuant to the AGSA's obligations under the MFMA and the Systems Act in the furtherance of an accountability purpose under Section 121(2) of the MFMA.
106. Further to this, Section 188(3) is an unqualified obligation, which would be subject only to lawful limitations (i.e. limitations imposed by Section 12 of PAIA which are not applicable here).
107. As the powers and functions of the AGSA are prescribed by the PAA, as envisaged by Section 188(4) of the Constitution, it is relevant to briefly mention the following provisions of the PAA:



- 107.1. Section 4(1), referred to by the AGSA in her refusal, provides that, as a constitutional function, the AGSA must audit and report on the accounts, financial statements, and financial management of, *inter alia*, all municipalities.
- 107.2. Therefore, on her own version, the AGSA prepares *management reports* pursuant to the AGSA's obligation under Section 188(1)(b) of the Constitution.
- 107.3. It follows then that *management reports* are reports within the contemplation of Section 188(3) of the Constitution, which must be made public.
- 107.4. Although this was not raised by the AGSA, it is worth considering that the PAA expressly provides for disclosure of matters which involve *unauthorised expenditure, irregular expenditure, or fruitless and wasteful expenditure*, irrespective of confidentiality.
- 107.5. Section 20(1) provides that:
- The Auditor General must in respect of each audit referred to in section 11 prepare a report on the audit.*
- 107.6. The performance audit conducted under section 45 of the Systems Act thus must, in terms of section 20(1), result in the preparation of a report which I have referred to above as the management reports and which are understood by the A-G as such.

107.7. Section 20(2) then provides that:

An audit report must reflect such opinions and statements as may be required by any legislation applicable to the auditee which is the subject of the audit, and must reflect an opinion, conclusion or findings on

- (a) the financial statements of the auditee in accordance with the applicable financial reporting framework and legislation;*
- (b) compliance with any applicable legislation relating to financial matters, financial management and other related matters; and*
- (c) reported performance of the auditee against its predetermined objectives.*

107.8. Section 20(4) also provides that:

An audit report may contain recommendations to address any matter raised in subsection (2).

108. The PAA thus contemplates, on its own terms under Sections 20, that an audit report may contain recommendations to the auditee and yet, under Section 188(3) of the Constitution, must be made public.

109. Therefore, that fact that the management reports contain opinions, advice and recommendations pursuant to a statutory duty is entirely consistent with the Constitutional and statutory powers and obligations of the AGSA.



110. It should never have been necessary for the applicant to request the management reports by way of PAIA, as they were constitutionally required to be made public in the first place.

Flawed reasoning employed in the refusal

Section 44(1)(a) of PAIA

111. The A-G's refusal of the request based on section 44 of PAIA is misplaced and deals selectively with the requirements for exercising a discretionary refusal under section 44(1) of PAIA.

112. The A-G's refusal letter reads in this respect:

"The management reports fall within the ambit of that section [section 44] because they contain opinions, advice and recommendations pursuant to a statutory duty."

113. The A-G, however, fails to consider an important requirement in section 44(1) of PAIA. It is not enough for records to constitute the body's opinion, advice, reports, or recommendations. Such records must have been prepared or obtained "for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law" (section 44(1) of PAIA).

114. Without admitting that the records requested are opinions, advice, reports or recommendations as envisaged in section 44 of PAIA, I submit that they were

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not prepared or obtained to assist in formulating a policy or make a decision in the exercise of a power or performance of duty conferred or imposed by law.

115. The AGSA is not a consultant or advisor for municipalities. The management reports are not prepared to assist with the formulation of a municipality's policy. The management reports are prepared to report on deviations or non-compliance with policies that have already been formulated and implemented. More importantly, they are prepared as part of the AGSA's oversight activities as a Chapter 9 institution.

116. The A-G's refusal based on section 44(1)(a) is improper.

Section 44(1)(b) of PAIA

117. In her refusal letter, the A-G further contends that the provision of the management reports would inhibit discussions between the AGSA and the municipalities and that the discretionary exclusion ground in section 44(1)(b) of PAIA is applicable.

118. The A-G essentially contends that the disclosure of the management reports could reasonably be expected to frustrate the deliberative process between the AGSA and the municipalities by inhibiting the candid communication of advice and recommendations and the discussion and deliberation on the auditing issues identified in the relevant reports.

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119. The A-G does not explain why or how the disclosure of the management reports would have this effect. The applicant denies that disclosure would have this effect.
120. In any event, the AGSA has a constitutional duty to identify audit issues at municipalities and candidly and accurately convey these issues in the management reports. The AGSA also has a constitutional duty to publish the management reports.
121. In turn, municipalities have a constitutional and statutory duty, including in terms of section 19(1)(a) of the PAA, to cooperate with the AGSA in preparing the management reports.
122. The simple reality is that the AGSA and municipalities must comply with their constitutional and statutory duties to cooperate towards accountable and transparent government, regardless of whether the management reports are disclosed or not.

Section 45 of PAIA

- 122.1. The A-G further asserts in her refusal letter that the applicant's request is "manifestly excessive and therefore vexatious" and providing the information requested would substantially and unreasonably divert the resources of the AGSA.
123. No reasons are provided for these assertions, and they are denied.

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124. That a request is excessive, which is denied, does not render it "therefore vexatious". Vexatiousness is dealt with in sub-section 45(a) of PAIA. Excessiveness is dealt with as a separate ground of exclusion in sub-section 45(b) of PAIA. The A-G conflates the two sub-sections.

125. It seems that the A-G's refusal letter takes a broad approach, citing as many grounds of exclusions as possible, and even conflating them with the hope of convincing the applicant that the refusal was lawful by virtue of some or other ground of exclusion being applicable. This approach is contrary to section 25(3)(a) of PAIA, which requires that a notice of refusal must state adequate reasons for refusal, including the provisions of PAIA relied upon. An attempt to concatenate so many grounds of refusal as possible is not commensurate with properly providing adequate reasons for refusal at the hand of provisions of PAIA.

126. The refusal under section 45 is improper.

Section 46 of PAIA

127. The AGSA refused the request on the strength of Sections 44 and 45 of PAIA.

128. Sections 44 and 45 fall within Chapter 4 of PAIA.

129. Section 44(1) and Section 45 operate as discretionary grounds for refusal, by using "*may*" contrary to, for example, Section 43, which provides for mandatory refusal through the use of "*must*".



130. Section 33(1), which commences Chapter 4, sets out the two categories, the *must v may* categories, and adds that the power to refuse access in each of them is exercisable '*unless the provisions of s 46 apply*'.
131. Section 46, in turn, contains an obligation to make disclosure where the specified criteria are met.
132. I am advised that disclosure is not optional or discretionary if the criteria if Section 46 is applicable and an obligation to permit access arises.
133. Section 46 provides as follows under the heading *mandatory disclosure in public interest*:

Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34 (1), 36 (1), 37 (1) (a) or (b) , 38 (a) or (b) , 39 (1) (a) or (b) , 40, 41 (1) (a) or (b) , 42 (1) or (3), 43 (1) or (2), 44 (1) or (2) or 45, if-

- (a) *the disclosure of the record would reveal evidence of-*
- (i) *a substantial contravention of, or failure to comply with, the law; or*
- (ii) *an imminent and serious public safety or environmental risk; and*
- (b) *the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.*

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134. I am advised that Chapter 4, must be judicially interpreted to the effect that, *in all situations where access must or may be refused, there is an obligation to afford access where the record contains certain types of evidence and the public interest in disclosure outweighs the harm that could conceivably follow from disclosure.*
135. I am further advised that the test applied to Section 46 is framed as a fact-sensitive balancing of the harm that would accrue from permitting disclosure of the record, and the public interest in its disclosure.
136. Importantly, this enquiry must be undertaken by the functionary concerned.
137. It appears, from paragraph 13 onwards of the AGSA's letter of 10 February 2022, that the AGSA considered Section 46 in refusing the PAIA application.
138. In this regard, the AGSA states that

"...all relevant information concerning the financial affairs of the Target Entities which might be in the public interest to disclose are contained in the publicly available audit reports provided by the AGSA in terms of section 21 of the Public Audit Act. In weighing up the balance between the public interest in the disclosure of the management reports and the interests of the AGSA which are protected by the provisions of the Public Audit Act and PAIA, identified above, it is my opinion that the public interest in disclosing the management reports does not clearly outweigh harm which would ensue if the reports were disclosed."

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139. It is my submission that this approach is incorrect, for four reasons:

139.1. Firstly, it assumes a relevance test in the application of Section 46.

It is not relevant for the purposes of Section 46 whether the information concerned is "*relevant*" or "*might be in the public interest to disclose*". That is not the test; and

139.2. Secondly, it fails to account for the first leg of the actual enquiry, which is whether the management reports reveal *substantial contraventions of, or failures to comply with, the law* by the target Municipalities or *an imminent and serious public safety or environmental risk*;

139.3. Thirdly, it fails to properly weigh "*public interest in the disclosure*" against "*the harm contemplated in the provision in question*". Although the AGSA pays lip service to this second leg of the enquiry, her failure to determine whether the request falls within either of the categories provided for in Section 46(a)(i) or (ii) by applying the incorrect test, renders her application of the second limb of Section 46 fatally defective. On this basis alone, the decision should be set aside.

139.4. Fourthly, it pre-judges for which reasons the requester seeks access to the records and makes a determination of what "*might be*" in the public interest, with reference to other records than the records in question. Section 46 focuses on the actual records in



question – not some other records which, from the perspective of the AGSA, might also reveal substantial contraventions of the law.

140. I have already demonstrated above that the management reports, by their very nature, reveal *substantial contraventions of, or failures to comply with, the law* by the target Municipalities or *an imminent and serious public safety or environmental risk* in respect of *inter alia* water and sanitation, road infrastructure and environmental management.
141. The A-G fails to demonstrate that she engaged at all with those failures and risks which are addressed in the management reports, when she made a determination under section 46 of PAIA.
142. I am advised that it is incumbent on the AGSA to apply Section 46 to the request properly. The A-G's failure to do so means her decision to refuse the request cannot stand on that basis.

CONCLUSION

143. It is impossible to hold accountable municipal governments that are allowed to operate in secrecy, hiding their failings and underperformance from the citizenry to which they are elected and appointed to serve.
144. As stated in Section 9 thereof, PAIA itself exists, *inter alia*, "to promote transparency, accountability and effective governance of all public and private bodies by, including, but not limited to, empowering and educating everyone to

effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.

145. I suggest that it goes without saying that enabling public scrutiny of municipal governance and, in particular, aspects of performance management by municipalities in the execution of their constitutional mandate, fall squarely within the purpose of PAIA.
146. This is particularly so where both the Constitution itself and the relevant legislation provides for disclosure and enhancement of accountability.
147. It will be for the AGSA to demonstrate to this Court that there is a sustainable basis to assert that no person outside of the municipal administration itself shall know how and to what degree the municipality is failing in the execution of its constitutional obligations and the management of its performance *vis-à-vis* the public, and who is responsible for failure
148. It will further be for the AGSA to demonstrate to this Court that there is a sustainable basis to deny access to the reports produced by the office, despite the unequivocal provisions of section 188(3) of the Constitution and the legislative provisions enacted to enhance accountability through disclosure.
149. I submit that the A-G's position is entirely unsustainable in a country founded on the ideal of a democratic and open society, wherein all spheres or government and organs of state must secure the well-being of the people of the Republic; provide effective, transparent, accountable, and coherent



government for the Republic as a whole; and abide by the Constitution in the interest of the Republic and its people.

150. It would thus defeat the constitutional spirit and purpose of the PAIA to allow the A-G to become the keeper of the deepest, darkest secrets of delinquent municipalities at the expense of the rights and interests of the South African public.

151. These rights include enjoying access to information about *inter alia* substantial contraventions of the law by public office bearers and imminent and serious public safety or environmental risks.

152. Sakeliga is asserting its constitutional rights in terms of sections 32, 33 and 41 of the Constitution through the provisions of section 78 of PAIA, acting both in the interest of its members and the public interest.

153. In the result, it is my submission that:

153.1. The AGSA has a specific duty in terms of the Constitution to make public all management reports of municipalities.

153.2. The information sought in the PAIA request is information which the Constitution and the relevant legislation requires the AGSA to disclose; and

153.3. There is no basis under either section 44 or 45 of PAIA to withhold the information sought in the PAIA request, alternatively disclosure is mandatory in the public interest as provided for in section 46 of PAIA.

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154. In the light of the aforementioned I request the Court to grant the prayers as sought in the Notice of Motion.

DATED AT PRETORIA ON THIS 6TH DAY OF JULY 2022.



TOBIAS VIVIAN ALBERTS

The deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn to before me at Pretoria on this the 6th day of July 2022, the regulations contained in Government Notice No.R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

JOHANNES JACOBUS VAN DER MERWE
Commissioner of Oaths
HB Forum
13 Stamvrug Street
Val De Grace
Ex Officio Practising Attorney
Republic of South Africa

Extract of memorandum of incorporation



SAKELIGA

teenstrydigheid effektiewelik aan te spreek, en

- 3.3.3. Die aksies neem wat binne hul uitsluitlike diskresie nodig is om die oortreding, botsing en/of teenstrydigheid aan te spreek, wat insluit maar nie beperk is tot die voorstel van wysigings tot die Akte en die belê van 'n spesiale Ledevergadering ten einde daardie wysigings goed te keur.

4. DOELSTELLINGS EN MAGTE VAN DIE MAATSKAPPY

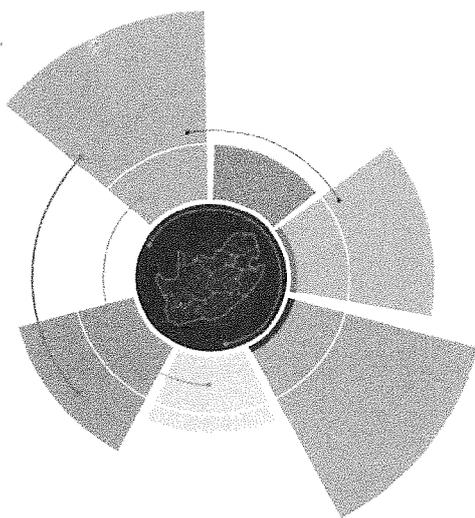
- 4.1. Ter nakoming van artikel 1 van bylaag 1 tot die Wet, verklaar die Maatskappy hiermee die volgende hoofdoelstellings:
- 4.1.1. Die bevordering van konstitusionele orde, vryemarkbeginsels en 'n kapitaalkragtige, regverdige, en volhoubare sake-omgewing in die Republiek;
 - 4.1.2. Die skepping van 'n selfstandige sakegemeenskap in die Republiek;
 - 4.1.3. Die behoud van eiendomsreg, holisties gesien, ooreenkomstig die Grondwet van die Republiek;
 - 4.1.4. Om, sonder inperking, bydraes en skenkings te doen tot die Helpende Hand Beursfonds en/of die Solidariteit Helpende Hand NPC;
 - 4.1.5. Om kollektief namens Lede, ondersteuners en die publiek met Owerhede te onderhandel en verhoudinge met Owerhede asook plaaslike, nasionale en internasionale instansies en persone te beding te einde die doelstellings van die Maatskappy te bevorder;
- 4.2. Die Maatskappy verklaar hiermee die volgende aanvullende doelstellings, maar sonder inperking van die algemene aard van die Maatskappy hoofdoelstellings:
- 4.2.1. Om as 'n openbare sakewaghond wat fokus op die regte en belange van sy Lede, ondersteuners en lede van die publiek in die algemeen, op te tree;
 - 4.2.2. Om ondersoek in te stel oor gevalle waar die regte van Lede, ondersteuners asook die publiek oor die algemeen, geskend en/of ingeperk word, en om waar nodig ook op te tree ten einde daardie regte te beskerm of te bevorder.
- 4.3. Die volgende magte word ook, sonder inperking van die algemene magte van die Maatskappy soos uitgeoefen Direksie kragtens die Wet, aan die Maatskappy verleen:
- 4.3.1. Om deur selfregulering en privaat institusionele infrastruktuur 'n alternatiewe

Extract of memorandum of incorporation



SAKELIGA

- sake-omgewing te skep waarbinne ekonomiese aktiwiteit voortgesit kan word;
- 4.3.2. Om die Maatskappy se Lede, ondersteuners en lede van die publiek in die uitoefen van hul belange en regte, hetsy op plaaslike, nasionale of internasionale vlak, by te staan, te adviseer, te ondersteun en/of te verteenwoordig.
 - 4.3.3. Om die publiek oor die algemeen by te staan met die bevordering van hul regte op 'n plaaslike, nasionale en internasionale vlak;
 - 4.3.4. Om 'n vrye, onafhanklike en goedgunstige sake-omgewing in die Republiek te beskerm, stimuleer en waar nodig te skep;
 - 4.3.5. Om regsgedinge in te stel, daartoe toe te tree, om sake te opponeer en/of te verdedig, om as *amicus curiae* in sake op te tree, deel te neem aan appèlle, hersienings, en om voor enige Owerheid te verskyn, submissies te maak, te argumenteer, op te tree, teen te staan en/of te ondersteun.
 - 4.3.6. Om met die Owerhede, politieke partye, lede van die sakewêreld, die media asook enige ander lid van die publiek te kommunikeer, te onderhandel, in te debat te tree en om ook waar nodige daardie persone en/of instansies te voorsien met voorstelle, vertoë, submissies, verslae, argument en/of inligting.
 - 4.3.7. Om navorsing ter bevordering van hierdie doelstellings te doen asook om inligting in te samel, statistiek op te bou, te verwerk en te publiseer;
 - 4.3.8. Om onafhanklike regsadvies oor enige saak wat enige doelstelling van hierdie Akte raak, te bekom en waar nodig om ook regsverteenvoordiging aan te stel om die Maatskappy te verteenwoordig in die bevordering van hierdie doelstellings.
 - 4.3.9. Om met ander organisasies of persone met soortgelyke doelstellings te onderhandel, ooreenkomste te sluit, projekte te hardloop, sake te bevorder, befondsing te voorsien, befondsing te ontvang, ondersteuning te bied en/of te affilieer.
 - 4.3.10. Om deel te neem in die bestuur, beheer of aktiwiteite van enige ander organisasie wat soortgelyke doelstellings as die van die Maatskappy het en om in hulle te belê, belange te bekom en/of om vennootskappe of samewerkingsooreenkomste met hulle aan te gaan.
 - 4.3.11. Om enige persoon of organisasie te vergoed vir hul dienste gelewer aan of



AUDITOR-GENERAL
SOUTH AFRICA

MEDIA RELEASE

15 June 2022

Auditor-General calls on municipal leaders to transform local government to improve people's lives

PRETORIA – Auditor-general (AG) Tsakani Maluleke called on all role players in the local government accountability ecosystem to diligently play their part to ensure accountability for government spending, and for improving service delivery and quality of life for South Africa's citizens.

The AG made this call while launching the [2020-21 consolidated general report](#) on the local government audit outcomes.

Her office's latest report reflects on the audit outcomes over the five-year term of the previous local government administration, and she says the trends in the report demonstrate that the fourth administration (2016-17) left municipalities in a worse financial position than when they took office.

"The lack of improvement in municipal outcomes is an indictment on the entire local government accountability ecosystem, which failed to act and arrest the decline that continued to be characterised by service delivery challenges in municipalities," says Maluleke.

Therefore, the report "presents a not-to-be-missed opportunity for the new administration to address the already reported audit findings," and she called on all role players involved in local

government to "heed our call to action to transform local government and improve people's lives".

Unheeded calls result in undesirable audit outcomes

The AG reports that, over the term of the previous administration, the national audit office was consistent in its messages about the progressive and sustainable improvements required to prevent accountability failures and how such failures should be dealt with.

Among other matters, the AGSA had emphasised the need to strengthen basic financial and performance management disciplines, and to safeguard and maintain municipal infrastructure to prevent mismanagement, transgressions, non-performance, fraud and financial loss.

"Unfortunately, these issues persist," the AG notes. "Our message was always directed at the leadership, imploring them to turn the tide in local government – the theme of our 2019-20 general report was, *Ethical and accountable leadership should drive the required change.*"

A renewed call for a culture shift

Maluleke says local government now has new political leaders, "elected by communities to represent their interests and address their pressing need for services, economic opportunities, and a safe and healthy living environment".

"Following the 2021 municipal elections, new councils were formed, with a new electoral mandate. It is now time to activate the accountability ecosystem to shift the culture in local government towards performance, integrity, transparency and accountability. This can be achieved through courageous, ethical, accountable, capable and citizen-centric leadership.

"Such a culture should be a shared vision for all involved in local government. We urge all role players to fulfil their designated roles and to play their part effectively to the betterment of people's lives," she says. These role players include mayors, municipal councils, municipal public accounts committees, audit committees, provincial leadership, premiers, members of the executive council (MECs) of Cooperative Governance and Traditional Affairs (Cogta) and Finance, coordinating national ministries of Cogta and Finance, provincial legislatures, Parliament, citizens and community organisations.

"Active citizenry is crucial to ensure that the needs of communities are heard and acted on, and that municipal leaders are held accountable for their actions. We call on all citizens to always take part in the public participation processes for determining and reviewing the

integrated development plan, and in ward committees; to get involved in community organisations; and to use the available channels to report any indicators of abuse, mismanagement, fraud and service delivery failures," says Maluleke.

In the 2020-21 general report, we renew our call that "*capable leaders should demonstrate change by strengthening transparency and accountability*".

State of local government

Overall audit outcomes (See page 8 of the report)

The AGSA's audit outcomes are based on the audits we perform on the quality of financial statements and performance reports, and on compliance with key legislation. Maluleke says some municipalities improved their audit outcomes, just to regress again in later years. Overall, only 61 municipalities had a better audit outcome in 2020-21 than in 2016-17, with 56 now having a worse audit outcome.

She states that it is encouraging to see the slight increase in the number of clean audits – 27 municipalities were able to maintain their clean audit status throughout the administration, while 14 achieved a clean audit for the first time and six lost their clean audit status. However, clean audit outcomes continue to represent less than a fifth of the local government budget.

"A clean audit outcome is not always an indicator of good service delivery and does not always directly correlate to the lived experience of all the communities in a municipal area," explains Maluleke. "However, we have seen that municipalities that have the controls and systems in place to plan, measure, monitor and account for their finances and performance, and to stay within the rules, often also have a solid foundation for service delivery that will benefit their communities. This provides these municipalities with opportunities to shift their focus to ensuring the delivery of services for the benefit of all their residents."

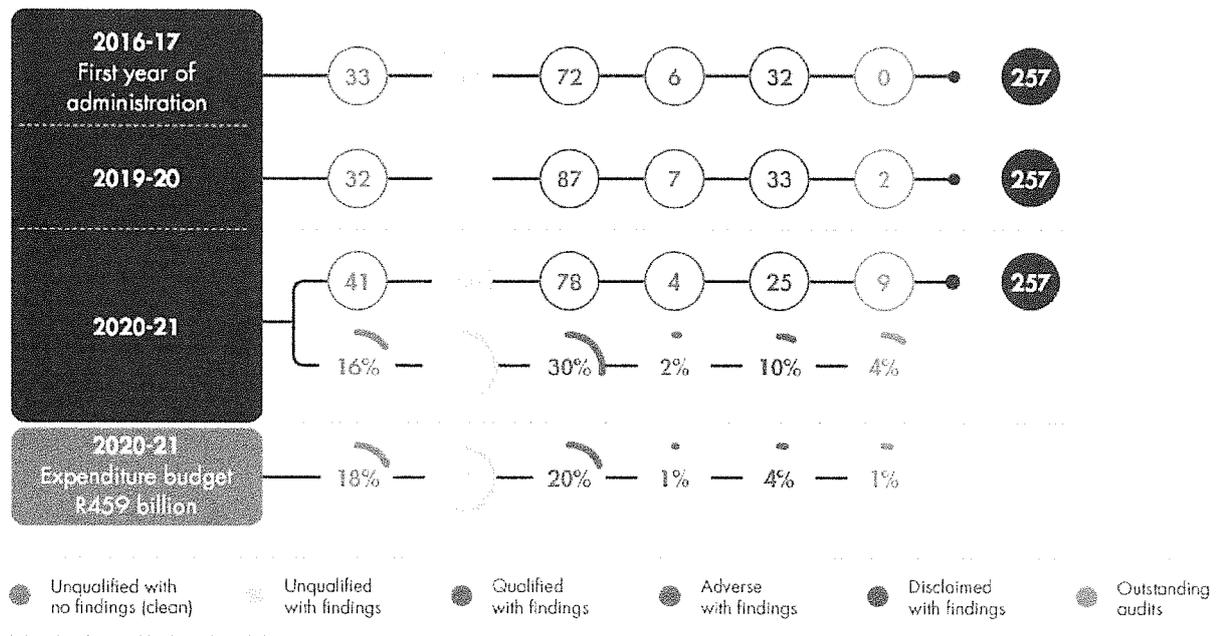
For example, Senqu – a small, rural Eastern Cape municipality – has received a clean audit for five consecutive financial years, and reports show that the municipality has used its firm controls and systems to benefit its community through effective service delivery. Western Cape municipalities such as the Cape Winelands and West Coast have also achieved this outcome for the past five years.



"A clean audit should not be undermined or underestimated; it is an important foundation to achieve for a municipality to deliver much-needed services to their communities and spend scarce public resources prudently to improve their lived experiences," emphasises Maluleke.

The graphic below shows the overall audit outcomes and movement since the 2016-17 financial year.

Audit outcomes- municipalities



Despite the improvement in the number clean audits, the AG says that the substance of the outcomes indicates that local government still has a long way to go before we can celebrate improvements. The vast majority of unqualified audit opinions are only achieved after the auditee was given an opportunity to correct the annual financial statements that were submitted for auditing, which is not sustainable. This means that internal controls and financial management disciplines are still lacking. There are also still municipalities with disclaimed audit opinions, while municipal financial health continues to deteriorate and service delivery is declining.

Material irregularities (See page 22 of the report)

The audit office has recorded successes and has made an impact in implementing our enhanced powers. Through our expanded mandate, and especially the issuing of material

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irregularities (MIs), we have enriched our insights and strengthened our ability to influence and enforce performance, accountability, transparency and integrity in local government. In this regard, we recorded a number of notable successes, including the following.

We issued MIs on matters relating to actual or potential financial loss, as well as those causing substantial harm to institutions and their entities, and those causing substantial harm to communities. For 81% of these matters, municipalities had not taken any action until we issued the MI notifications to them.

On MIs with financial loss, our notifications led to the successful correction of municipal billing systems, which led to an increase in revenue; prevention of further financial losses; improved municipal systems; improved controls; and safeguarding of assets. In some cases, accounting officers responded to our MIs by stopping supplier contracts where money was being lost or where there was the potential for fraud, instituting criminal investigations by the relevant state agencies and disciplining municipal officials where that was required.

For example, at the City of Tshwane (Gauteng) assets worth R3,9 million were stolen and vandalised at the Bavianspoort wastewater treatment plant. Of this, R174 716 has since been recovered. The matter was reported to the South African Police Service and the perpetrators were arrested, prosecuted and sentenced.

Nelson Mandela Bay (Eastern Cape) was losing millions of rands because it was not billing customers for services. Through the MI, the municipality is now billing correctly and collecting much-needed revenue. In addition, in 2018-19 the metro was not charging interest on long-outstanding debts for customers who had entered into long-term payment arrangements, resulting in financial loss of R11,2 million. The matter was resolved and, following the MI notification, and from February 2020 the municipality has been charging interest, thereby preventing further financial loss.

In another effort to prevent further financial loss, we issued an MI to King Sabata Dalindyebo (Eastern Cape) for interest incurred due to late payments to Eskom and the South African Revenue Service. In response, the accounting officer included cost-containment targets in the performance agreements of managers and directors, and ring-fenced electricity income to pay only electricity expenses. The municipality also implemented a revenue recovery plan.

Emalahleni (Mpumalanga) did not pay one of its suppliers on time, resulting in interest of R8,59 million being charged. The municipal manager engaged with the supplier, which led to the interest being reversed and loss being prevented. Controls were also put in place to ensure the supplier was paid on time to avoid further interest charges.

Rustenburg (North West) entered into a contract for the provision of automated fleet and fuel management solutions in June 2018. The scope of work was extended during the price negotiation and items that were not part of the competitive bidding process were included at higher than market-related prices. Disciplinary steps were taken against the responsible officials, who either resigned or were dismissed. The contract with the service provider was terminated in August 2019 based on a high court order, to prevent further financial loss. The matter was also referred to the Hawks and legal action was instituted against the supplier to recover the financial loss.

In the 2021-21 financial year, we issued MIs against repeatedly disclaimed municipalities. These MIs were causing substantial harm to the institutions. Since then, our impact has been felt, with firm actions having been taken. We noted that investigations have been performed or were underway to determine the root causes for the lack of records, registers and reconciliations. Accounting officers have now developed action plans – or are in the process of doing so – to address the root causes, and financial recovery plans are receiving attention from municipalities, the national government and provincial government.

In Umzinyathi District (KwaZulu-Natal), we issued an MI notification at one of the repeatedly disclaimed municipalities. The MI related to the failure of the municipal manager (as accounting officer) to ensure that there was adequate record-keeping, which had resulted in the prior year's audit findings. The accounting officer worked on internal capacity building and corrected internal controls. As a result, the audit opinion improved from a repeat disclaimer to a qualified audit opinion.

In the past year, we also, for the first time, raised MIs where significant weaknesses in infrastructure and environmental management resulted in pollution that caused harm to the general public.

“We are convinced that by implementing our enhanced powers and being deliberate in raising these MIs, we can encourage corrective action and enforce accountability. In this regard, the successful resolution of the MI is when further financial loss is prevented, the loss is



recovered, the harm is effectively addressed and consequences are effected against implicated officials," says Maluleke.

There are 29 MI notifications that were not appropriately addressed.

Matjhabeng (Free State) paid an estimated R7,2 million between April 2017 and June 2019 for the construction of an attenuation (flood-protection) dam on the Nyakallong stormwater system after it had been certified as complete. However, a site visit by our team confirmed that the attenuation dam had not been built, resulting in overpayments on the project. The matter was referred to the Hawks for investigation in June 2021.

The AG included recommendations on 25 MIs in the audit reports of 20 municipalities at which the responses to the MIs were too slow or it was clear that the MIs were not being attended to with the required seriousness. The recommendations cover the steps that should be taken to recover the money, prevent further losses and harm, and effect consequences for the transgressions.

We issued remedial action for three of the MIs at Ngaka Modiri Molema (North West). If these MIs are not appropriately dealt with, the AG will issue a certificate of debt.

A detailed report on the MIs is on page 46 of the report and on our website.

Financial reporting (See page 16 of the report)

Financial statements are a key instrument for accountability. The municipal council uses financial statements to call the municipal manager to account and to make financial and related service delivery decisions. Creditors, banks and ratings agencies use them to determine how much risk there is in extending debt to a municipality, and the public uses them to see how well the municipality is using the rates and taxes collected to provide services.

Financial reporting consultants have become a permanent feature in municipalities' processes, and the annual cost of consultants doubled over the term of the previous administration, with the financial reporting cost of consultants totalling R1,26 billion in 2020-21. Financial reporting consultants cost local government R5,31 billion over the term of the previous administration, and 70% of municipalities used consultants for every year of the term.

Maluleke states that the expected benefits of using consultants to enable quality financial statements were not always realised. The financial statements submitted for auditing by



121 (59%) of the municipalities that used consultants had material errors. Even after corrections, 41% received modified audit opinions.

When combining the money spent on finance units and consultants at municipalities, it is clear that financial reporting carried a substantial price tag in 2020-21, coming to just over R11,67 billion. Internal audit units and audit committees also reviewed the prepared financial statements, while national and provincial coordinating departments deployed specialist advisors to support finance units and provided tools to help ensure that financial reporting was credible.

However, Maluleke notes that "despite the resources and support municipalities have available for financial management and reporting, the key financial management controls were not adequate to prevent material misstatements or major mistakes in the financial statements submitted for auditing".

Financial health (See page 20 of the report)

The AG reports that local government finances remain under severe pressure due to non-payment by municipal debtors, poor budgeting practices and ineffective financial management.

She says the financial position of 28% of South Africa's municipalities is so dire that there is significant doubt about whether they will be able to continue operating in the near future. This effectively means that such municipalities do not have enough revenue to cover their expenditure; they owe more money than they have; and they can no longer pay salaries and other obligations as they fall due, or maintain infrastructure assets such as roads and provide water and other basic services. Many of these municipalities have been in this dire financial position multiple times over the course of the administration.

The AGSA's assessment of the financial health of 230 municipalities and 18 municipal entities based on their financial statements revealed increasing indicators of a collapse in local government finances and continued deterioration over the term of the administration.

Maluleke paints a picture of municipalities often depending on the money they receive from the national government (in the form of an equitable share) to stay afloat. In 2020-21, this amounted to R80,26 billion, up from R67,83 billion in the previous year.



Metros

The financial health of metros is particularly concerning, as they serve the largest segment of the population and account for more than half of the local government expenditure budget.

The City of Tshwane (Gauteng), City of Johannesburg (Gauteng), City of Ekurhuleni (Gauteng), City of Cape Town (Western Cape) and Nelson Mandela Bay (Eastern Cape) were all downgraded to below investment grade by 30 June 2021.

"The downgrades put pressure on some of the metros to raise funding for capital expenditure, and they had to use internal savings from operational budgets to fund shortfalls. Most of the metros were put on review for further downgrades by the credit-rating agencies, meaning that they could plunge deeper into sub-investment territory if economic conditions worsen.

"Although some of these metros have cash reserves, its further use to make up revenue shortfalls will reduce the metros' capacity to meet future debt obligations as they fall due," cautions the AG.

She adds that while the economic downturn does affect revenue collection, "municipalities do not always play their part either". Not all revenue owed is billed and poor debt-collection practices are common. In addition to highlighting these concerns through audit findings, the AGSA also issued MI notifications where municipalities were suffering material financial losses as a result of revenue owed not being billed or debt not being collected.

Service delivery

Planning and reporting *(See page 30 of the report)*

Most municipalities had inadequate systems to collate and report on their performance information, and officials did not understand or could not apply the performance management and reporting requirements.

There is a correlation between a good performance management system and service delivery, which weakens if the incorrect performance measures and targets are managed.

Many municipalities had no material findings on performance information because they corrected material errors identified during the audit process. This indicates weak and inconsistent monitoring controls over performance management processes and systems.



To develop a fully representative integrated development plan, each municipality is required to embark on a public participation programme for the performance planning process and give communities the opportunity to influence the strategic course and direction of the municipality. The intent of public participation was not consistently realised, as some metros did not include all required and relevant targets and, where these were included, the set targets were not achieved.

Four metros have consistently submitted poor performance reports since the start of the administration, namely Buffalo City, City of Johannesburg, Mangaung and Nelson Mandela Bay.

The National Treasury introduced common indicators for reporting and planning on which all metros should report from 2018-19, but implementation has been slow, with only City of Ekurhuleni and eThekweni having fully implemented the requirements. The other six metros are phasing in the implementation because they do not have the required systems and processes in place to report on all the required indicators.

Maluleke says that "weaknesses in metro performance planning and reporting not only affect service delivery and reliable reporting, but reduce the council's ability to monitor and make meaningful contributions to the fulfilment of the promises made to communities in the integrated development plan".

Impact – municipalities with disclaimed audit opinions

In 2020-21, there were 25 municipalities that received disclaimed audit opinions – the worst audit opinion possible. This is almost 10% of all municipalities in the country. Only Gauteng and the Western Cape did not have municipalities with disclaimed opinions during this period. Most of the municipalities that repeatedly received disclaimed opinions are in North West.

A disclaimed opinion is the worst audit opinion a municipality can receive, as it means that the municipality could not provide auditors with evidence for most of the amounts and disclosures in its financial statements. Therefore, the AGSA could not express an opinion on the credibility of these financial statements or determine what was done with the funds the municipality received for the year towards service delivery.

Says Maluleke, "In spite of all our messages, as well as initiatives by national and provincial government, and even municipalities being placed under administration / provincial intervention, there was little improvement over the term of the previous administration. Only

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18 municipalities improved from previously disclaimed opinions, while 17 regressed to disclaimed outcomes over the period. Eight municipalities that received disclaimed opinions in the first year of the administration are still disclaimed. Repeatedly disclaimed opinions should not be tolerated as they indicate a lack of stewardship over public funds. Rather than a technical audit matter, a disclaimed opinion is a confirmation of dysfunction in the management of the municipality, with a devastating impact on the lives of the residents living in these municipal areas as they are robbed of service delivery."

In her office's 2019-20 general report, Maluleke told the story of the 10 municipalities (Maluti-A-Phofung, Masilonyana, Tokologo, Govan Mbeki, !Kheis, Joe Morolong, Lekwa Teemane, Madibeng, Mamusa and Ramotshere Moiloa) that had received disclaimed audit opinions for years. The latest report shows that these municipalities have still not improved.

She says that at most of these municipalities, the auditors observed leadership instability (both at political and administrative level), poor oversight by councils, significant financial health problems, protests and strikes, a lack of consequences, and interventions that were not effective.

One of the key matters that plague the disclaimed municipalities is the lack of proper asset registers and records, which limited the AGSA's ability to confirm that the values and information disclosed on municipal infrastructure assets in the financial statements of most of these municipalities were correct.

The AG says this is not only related to financial statements. "It means that these municipalities could not properly account for the existence and state of their infrastructure assets, which should be used to provide water, sanitation, electricity, refuse removal and roads to communities."

"Our audits of key water, sanitation and roads infrastructure projects funded by conditional grants found that half of these municipalities struggled with project management, resulting in delays in project completion, overspending on contract amounts and contractors being paid for substandard work. These municipalities already struggle financially and cannot afford to waste the limited resources available to manage basic service delivery initiatives. Poor project management was largely due to a lack of technical skills and to vacancies in the technical departments and in positions responsible for signing off on work done in the project management units."

In addition, these municipalities' poor management of infrastructure has affected service delivery and the lived experience of citizens within their area, and they must therefore pay careful attention to these deficiencies and address them with urgency.

Some of these municipalities have been issued with MIs for causing substantial harm to the institution.

In our 2019-20 general report, we shared our concern that disclaimed municipalities receive funding from national government through an equitable share and conditional grants, but that the lack of proper records makes it difficult to confirm what had been done with this money since it was received and reconcile this with what was left in the bank account at year-end. This year, we did additional work in this area. We noted that six municipalities did not use unique identifiers such as payment descriptions and descriptive references for bank payments to enable meaningful matching and analysis between the bank statements and the financial system. This will make it difficult for these municipalities to perform bank reconciliations, which are an important internal control to detect payments of which municipalities may be unaware. In such cases, fraudulent activities could go undetected, and funds meant for service delivery could be misappropriated without being picked up.

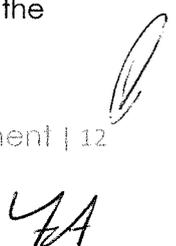
At four of these municipalities, we did further analysis and could trace between 67% and 89% of the expenditure recorded in the financial system to bank statements. The R6,03 billion spent by these municipalities was used for employee costs, bulk purchases, payments to service providers, and statutory and other payments. Payments to service providers pose the biggest risk for fraud, as the lack of supporting documents mean that we could not confirm whether municipalities had actually received the goods and services they had paid for.

See page 37 in the report for the service delivery impact – municipalities with disclaimed audit opinions.

Infrastructure assets

Findings on infrastructure

Municipal infrastructure plays a key role in supporting service delivery. A lack of the infrastructure required to provide basic services, combined with inadequate maintenance not only negatively affect service delivery, but often also caused harm to communities and the



environment. We reported on weaknesses in infrastructure projects and inadequate maintenance and management of infrastructure throughout the term of the previous administration.

Maluleke also notes that communities could be negatively affected by municipalities not properly maintaining the infrastructure and managing the environment for which they are responsible.

"After inspecting some of the wastewater treatment works and landfill sites controlled by municipalities, our experts identified poor or ineffective environmental management, limited environmental monitoring and enforcement, as well as defective management and delivery of wastewater and solid waste services at municipalities.

"When these sites are not properly operated, there is a significant likelihood that both service delivery and the environment could be negatively affected. This is the case when untreated sewage is discharged into water sources or refuse is illegally dumped or not properly compacted and treated at suitable sites," the AG warns.

See page 41-432 in the report for the impact of infrastructure neglect on service delivery

Conclusion

The new administration must instil a culture of performance, accountability, transparency and integrity

"As the national audit office, we have a vision, shared by many, for this new administration to make significant strides towards instilling in local government a culture of performance, accountability, transparency and integrity. This is what the Constitution envisaged – municipalities that perform by delivering services and that are transparent about their level of performance and how municipal finances are managed. This, in turn, will enable these municipalities to be accountable to the communities they serve. Above all, communities want to see their elected representatives and municipal officials act with integrity, including being honest, ethical and incorruptible, and complying with legislation.

"Our role and mandate as the country's supreme audit institution is to audit every municipality and municipal entity, report on what we found and share the insights to strengthen transparency and enable accountability. It is not mere compliance for us, but a genuine effort to ensure improvement and enforce accountability where it is lacking. This is especially

significant if one considers that municipalities and municipal entities were responsible for an estimated expenditure budget of R509 billion in 2020-21.

"This report is therefore not intended only for local government leaders; it is equally important for national and provincial leadership and community organisations. We have engaged with critical stakeholders in the accountability ecosystem and called upon them to be effective and deliberate in executing their mandates in order to transform local government and improve service delivery to citizens. We will monitor the implementation, effectiveness and impact of the commitments made by various leaders over the term of the new administration," concludes Maluleke.

End.

Issued by: Auditor-General of South Africa

Contact: Africa Boso • (012) 422 9880 • Africab@agsa.co.za



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Media note: The *Consolidated general report on the audit outcomes of local government* is available on www.agsa.co.za.

About the AGSA: The AGSA is the country's supreme audit institution. It is the only institution that, by law, has to audit and report on how government is spending taxpayers' money. This has been the focus of the AGSA since its inception in 1911.



AUDITOR-GENERAL
SOUTH AFRICA



Consolidated general report on local government audit outcomes

MFMA 2020-21

These material irregularities emerged in areas that were not complex, but in which auditees should have basic disciplines and processes in place – to procure at the best price, to pay only for what was received and derive the intended benefit from the money spent, to make payments on time, to recover revenue owed to the state, to safeguard assets and investments, to prevent fraud, and to comply with legislation.

Poor record keeping and financial management disciplines also resulted in substantial harm to municipalities that have repeatedly received disclaimed audit opinions, as this affected their ability to deliver services to communities in a financially sustainable manner. In the past year, we also for the first time raised material irregularities where significant weaknesses in infrastructure and environmental management resulted in pollution that caused harm to the general public.

In section 2.9, we share the status of the material irregularities and how we have used our enforcement mandate, while section 3 includes recommendations to the new councils on their role. Throughout this report, we also provide examples of the material irregularities we have identified, their impact and whose responsibility they are.

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2.2 Financial reporting

The municipal council uses financial statements to call the municipal manager to account and to make financial and related service delivery decisions.

Creditors, banks and rating agencies use them to determine how much risk there is in extending debt to a municipality, and the public uses them to see how well the municipality is using the rates and taxes collected to provide services. Financial statements are a key instrument for accountability.

Financial reporting does not only happen at the end of the year but also takes place during the year in the

form of quarterly reports to councils and treasuries. These reports are used for decision making and to monitor spending, revenue generation and the use of conditional grants.

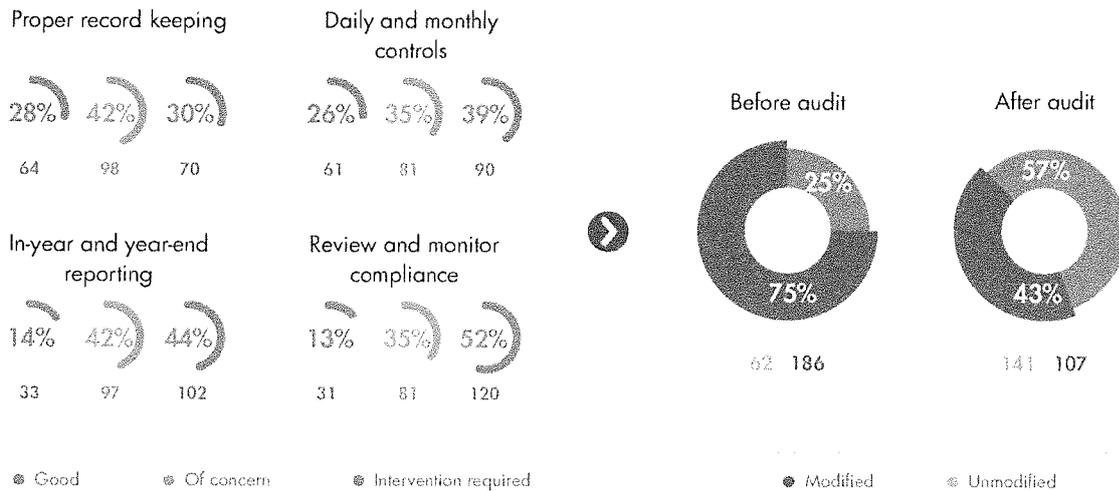
Municipal managers are responsible for credible and reliable in-year financial reports and for quality year-end financial statements that can be relied upon by the users of such financial statements. Municipal managers are supported by finance units led by chief financial officers, internal audit units and audit committees, consultants, and coordinating departments.

Overall, the average vacancy rate of the finance unit at municipalities was 20%, while chief financial officers were in their position for an average of 45 months. The salary cost for finance units totalled R10,41 billion in 2020-21. Internal audit units at 93% of municipalities and audit committees at 96% of municipalities reviewed the prepared financial statements, while national and provincial coordinating departments deployed specialist advisors to support finance units and provided tools to help ensure that financial reporting was credible. In addition, local municipalities can ask district municipalities to provide additional support for financial reporting. Financial reporting consultants have become permanent features in municipalities' financial reporting processes, with the cost of these consultants amounting to R1,26 billion in 2020-21. The cost of consultants doubled over the term of the previous administration.

When combining the money spent on finance units and consultants, it is clear that financial reporting carried a substantial price tag in 2020-21 of just over R11,67 billion.

Despite all of these resources and support, the key management controls of municipalities were not adequate to prevent material misstatements in the financial statements.

Status of key financial management controls and quality of financial statements before and after auditing



Despite us reporting shortcomings and providing recommendations over the years as well as numerous and costly national and provincial initiatives and interventions, the poor status of key financial management controls shows that municipalities have not yet mastered financial reporting – 75% of municipalities were not able to submit quality financial statements for auditing.

If we had not identified the material misstatements and allowed for corrections, only a quarter of municipalities would have produced financial statements that were reliable enough for the council and other decision makers to use. In total, 79 municipalities (32%) relied on the external audit process to identify misstatements, which allowed them to obtain an unqualified audit opinion. But this resulted in increased audit fees – a situation that could have been avoided.

The following were the main areas misstated in the financial statements of those municipalities with modified opinions (in other words, those with qualified, adverse or disclaimed opinions):

- » **Receivables (27%):** Municipalities did not know the correct amount due to them (receivables) and whether they were still entitled to receive the amounts due. In some cases, the value of the receivables recorded was not accurate.

- » **Property, infrastructure and equipment (27%):** Municipalities could not properly account for their assets because asset registers were not updated with assets purchased, under construction, disposed of, stolen or vandalised. In some cases, the value of the assets recorded was incorrect despite the use of consultants.
- » **Irregular expenditure (27%):** Municipalities did not report all irregular expenditure that should have been reported in their financial statements. In some cases, the amount of the irregular expenditure reported was incorrect.
- » **Revenue (27%):** Municipalities did not have adequate documentation to support the revenue billed; and not all of the revenue that should have been billed to residents for services rendered had been billed. In some cases, amounts billed for services rendered were recorded incorrectly.
- » **Expenditure (25%):** Municipalities did not have adequate documentation to support the expenditure reported. In some cases, they did not record all the expenditure that should have been recorded.

The poor quality of the financial statements submitted for auditing does not bode well for the credibility of municipalities' in-year financial reporting, as it means that decisions, analyses and monitoring could be based on unreliable information.

The ineffective use of consultants for financial reporting

Financial reporting consultants cost local government R5,31 billion over the term of the previous administration and 70% of municipalities used consultants for every year of the term.

The National Treasury issued a circular to municipalities in 2016 dealing with cost containment, requiring municipal managers to only appoint consultants if a gap analysis confirmed that the requisite skills or resources are not available to perform the work. It also reminded municipalities of the legislated requirements to closely monitor contracts and the importance of transferring skills. The responsibility for the effective use of financial reporting consultants lies with the municipal manager and the chief financial officer.

In 2020-21, only 7% of municipalities used consultants to bridge a vacancy gap and 62% appointed consultants to provide skills that the finance unit did not have. The remaining 31% used consultants because of both a lack of skills and a vacancy gap. The inability of these municipalities to master credible financial reporting means that they appoint consultants year

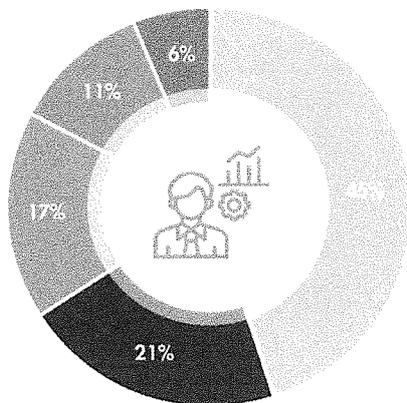
after year without ensuring that skills are transferred to municipal staff; hence, what was intended to be a short-term solution, continues indefinitely. In total, 79% of municipalities reappointed consultants used in the previous year.

Most of the 2020-21 consultant costs of R1,26 billion were used for asset management services (34%), followed by the preparation or review of financial statements (27%), and tax services (27%). Consultants appointed for asset management services were rarely used for complex accounting matters, but rather for basics such as the recording and valuation of assets, which are the fundamentals of good asset management.

The expected benefits of using consultants to enable quality financial statements were not always apparent. The financial statements submitted for auditing by 121 (59%) of the municipalities that used consultants had material misstatements in the areas in which the consultants did work. Even after corrections, 41% had modified opinions, including three municipalities with adverse opinions and 18 with disclaimed opinions. We share our observations on the use of financial reporting consultants at municipalities with disclaimed opinions in section 2.7.

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Reasons consultants were not effective



- Inadequate / lack of records and documentation 6
- Poor project management 26
- Work of consultants not adequately reviewed 20
- Consultants appointed too late 13
- Consultants did not deliver 7

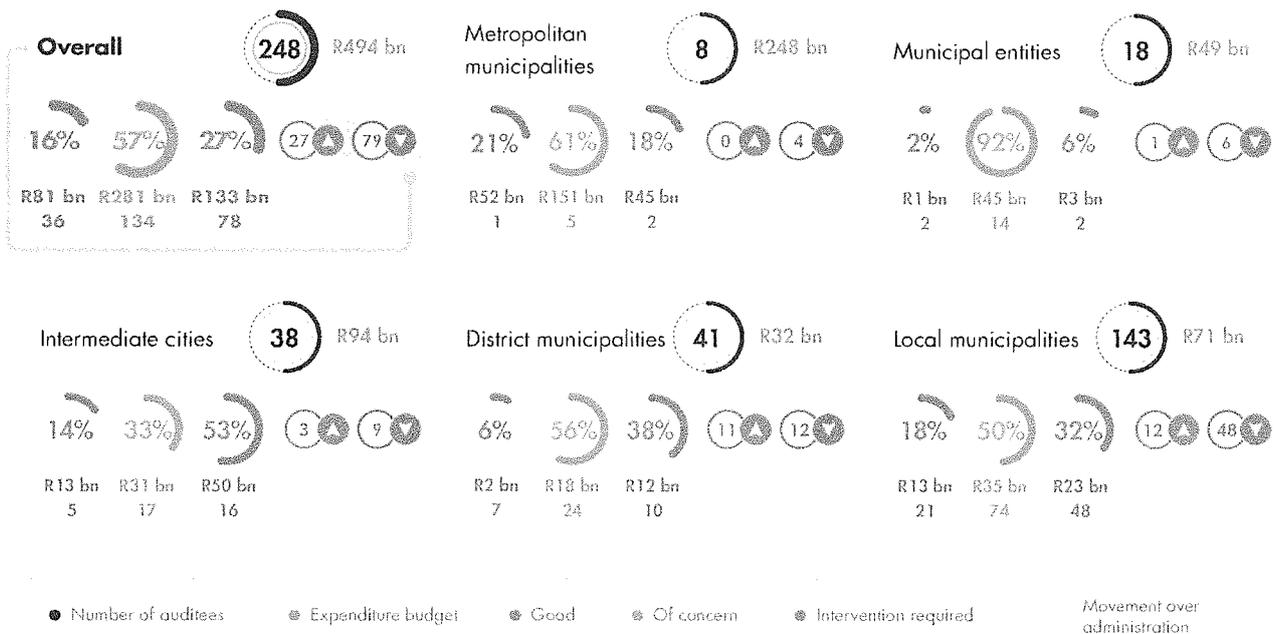
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2.3 Financial health

Municipalities cannot continue to operate and provide services if financial health concerns remain. Yet local government finances remain under severe pressure due to non-payment by municipal debtors, poor budgeting practices, and ineffective financial management.

Our assessment of the financial health of 230 municipalities and 18 municipal entities based on their financial statements showed increasing indicators of a collapse in local government finances and continued deterioration over the term of the previous administration. At 22 municipalities and one municipal entity, the financial statements were not even reliable enough for us to analyse because of disclaimed or adverse audit opinions.

Status of financial health – overall and breakdown per municipal category



The financial health of metros is particularly concerning, as they serve the largest segment of the population and account for more than half of the local government expenditure budget.

METROS

The City of Tshwane (Gauteng), City of Johannesburg (Gauteng), City of Ekurhuleni (Gauteng), City of Cape Town (Western Cape) and Nelson Mandela Bay (Eastern Cape) were all downgraded to below investment grade by 30 June 2021. The downgrades put pressure on some of the metros to raise funding for capital expenditure, and they had to use internal savings from operational budgets to fund shortfalls. Most of the metros were put on review for further downgrades by the credit-rating agencies, meaning that they could plunge deeper into sub-investment territory if economic conditions worsen.

As cash strapped consumers fall behind on paying municipal rates and taxes, credit-rating agencies are flagging an increased concern around the likelihood of metros being unable to meet their debt payments or source cash from capital markets to meet future obligations due to falling revenues. The debt of metros that is unlikely to be recovered in full ranged from 53% to 88%. Although some of these metros have cash reserves, its further use to make up revenue shortfalls will reduce the metros' capacity to meet future debt obligations as they fall due.

SECTION 02

The main source of revenue for most municipalities is the rates and taxes paid by property owners and consumers of municipal services (what we call 'own revenue'). The problem with own revenue is that municipal consumers (including government institutions) are not paying what they owe – this has been a trend for many years and has been made even worse by the economic downturn caused by the covid-19 pandemic. This means that while a municipality's revenue might look healthy on paper, the money does not reach the bank.

We estimate that only 36% (R109,64 billion) of own revenue was recoverable, and it took municipalities an average of 213 days to collect amounts due to them. In 2020-21 alone, municipalities wrote off R41,28 billion in debt because it was never paid to them.

Municipalities therefore often depend on the money they receive from national government in the form of an equitable share to stay afloat. This amounted to R80,26 billion in 2020-21, which is a substantial increase from the previous year's R67,83 billion.

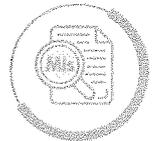
While the economic downturn does affect revenue collection, municipalities do not always play their part either. Not all revenue owed is billed and poor debt collection practices are common. In addition to highlighting these concerns through audit findings, we also issued material irregularity notifications where municipalities were suffering material financial losses as a result of revenue owed not being billed or debt not being collected.

Material irregularities: revenue management

- » Buffalo City (Eastern Cape) did not bill a number of customers for water services provided during 2019-20, resulting in a likely financial loss of R9,6 million. This was caused by a number of control deficiencies, including a lack of integrated processes and systems between the municipality's directorates as well as delays in updating systems and registers that linked water meters per property. The deficiencies were addressed and billing commenced from 2020-21. The municipal manager also launched an investigation to identify the responsible officials and institute disciplinary action.
- » Money owed to the City of Matlosana (North West) by the fresh produce market was not collected due to a lack of internal controls. Investigations performed by the municipality identified the officials responsible for the transgressions, resulting in disciplinary processes, dismissals and potential legal action to recover the losses. The likely financial loss since 2017-18 adds up to R43,3 million.

With limited cash in the bank, municipalities prioritise the payment of salaries and councillor remuneration, which totalled R113,66 billion in 2021 – 60% of the estimated recoverable own revenue and equitable share allocation. They then use what is left to pay municipal suppliers, including Eskom and the water boards, which are essential for the supply of basic services. At some municipalities, returns and payments to the South African Revenue Service are also delayed, and there are even municipalities that do not transfer their employees' contributions to their pension funds.

Despite the requirement that creditors be paid within 30 days, 85% of municipalities took longer than 30 days to pay their creditors and just over half (51%) took much longer than 90 days to do so. On average, it took municipalities 240 days to pay their creditors, compared to 139 days in 2016-17. The late payments affect the cash flow of local government suppliers, which is in sharp contrast with the objectives of stimulating the economy and supporting especially smaller businesses. Due to these late payments, suppliers and contractors stop delivering to municipalities, resulting in projects not being completed and performance objectives not being achieved.



Eskom and the water boards are in the difficult situation of being required to continue delivering services despite non-payment. The arrears (including interest) payable to Eskom and the water boards by municipalities amounted to R25,37 billion and R13,29 billion, respectively.

The directors' report included in the Eskom annual financial statements for the year ended 31 March 2021 states the following:

- » The top 20 defaulting municipalities constitute 81% of total gross municipal overdue debt.
- » A total of 43 active payment agreements were in place with defaulting municipalities at year-end; however, only 10 of these agreements were being honoured and the interruption of supply remains a last resort. Eskom has been interdicted from interrupting supply to various defaulting municipalities.
- » Eskom lost two appeals to interrupt supply to two municipalities as the Supreme Court of Appeal concluded that the dire situation these municipalities faced obliged the national and provincial governments to intervene, in terms of the Constitution.

Further adding to these financial woes, is local government losing billions of rand each year because of interest and penalties. In 2020-21 alone, the fruitless

and wasteful expenditure resulting from interest and penalties totalled R1,22 billion. We issued material irregularity notifications where municipalities were suffering material financial losses as a result of such interest and penalties.

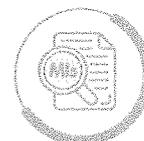
While we acknowledge that many municipalities are in financial distress, they do collect money for electricity services and receive funding from national government to subsidise electricity for indigents, but the Eskom accounts remain unpaid because these funds are used for other purposes. To influence an improvement in municipal policies, processes and arrangements with Eskom, we issued 22 material irregularities on interest payments (financial losses) as a result of non-payment of Eskom accounts. In response, some municipalities such as Newcastle (KwaZulu-Natal) and Emthanjeni (Northern Cape) entered into repayment agreements with Eskom, while others such as King Sabata Dalindyebo (Eastern Cape) ring-fenced electricity revenue to pay only Eskom. Some municipalities undertook projects to replace faulty electricity meters, including Letsemong (Free State); correct debtors accounts, including Mpošana (KwaZulu-Natal); and review indigent registers, including Thaba Chweu (Mpumalanga). Some municipalities, such as Madibeng (North West), even settled the whole amount.

Material irregularities: interest and penalties

- » Ntabankulu (Eastern Cape) did not make payments to a pension fund as instructed by a court judgement, resulting in interest of R5,3 million.
- » Matjhabeng (Free State) did not pay over employee pay-as-you-earn deductions within seven days after the end of the month to which they relate, as required by the Income Tax Act, resulting in penalties of R1,9 million and interest of R0,6 million.

Despite the limited money available, we still find that municipalities do not diligently and carefully manage their funds. An indicator of the poor management of funds is the R1,96 billion in fruitless and wasteful expenditure incurred by 193 municipalities in 2020-21. Over the term of the previous administration, R14,13 billion in expenditure was fruitless and wasteful.

In 2020-21, 64% of municipalities incurred unauthorised expenditure totalling R20,45 billion, of which R13,25 billion was for non-cash items (we explain what this is in the next paragraph). This means that municipalities spent money that the council had not provided for in the approved budget or the spending did not meet the conditions of a particular grant.



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Municipalities' budgets make provision for items that do not involve actual cash inflow or outflow. These 'non-cash items' include accounting entries such as reducing the value at which assets are reflected in the financial statements (asset impairments) and providing for other types of potential financial losses. This is not actual expenditure, but rather an accounting requirement that lets municipalities assess the true value of their assets (such as equipment or debtors). Municipalities must correctly budget for these non-cash items to show their true financial state and plan for the inevitable replacement of assets. The unauthorised expenditure related to non-cash items was caused by poor budget management.

By year-end, almost half of all municipalities (47%) owed creditors more money than they had available in the bank, as municipalities continued to spend money they did not have. The total deficit in local government amounted to R6,63 billion and the expenditure of 55 municipalities (26%) exceeded their revenue at year-end. As a result, municipalities were using the next year's budget to cover the current year's expenditure. This is evident from the fact that current liabilities were more than 50% of the 2021-22 budget at 29% of municipalities. This means that the 2021-22 budget will pay for spending that had already taken place in 2020-21 and prior financial years. In all likelihood, the cycle will

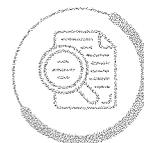
continue unless municipalities receive additional revenue, which is highly doubtful given the prevailing economic conditions and the overall economic outlook.

Municipalities should ensure that they are able to deliver services based on available resources, but they continue to promise a level of service delivery and projects they cannot fund, and to submit budgets to the council that balance but are effectively based on money that they will not be able to bring in (unfunded budgets). As a result, the spiral of non-delivery continues, the impact of which is felt directly by the communities and businesses the municipalities serve – particularly when it comes to inadequate access to basic services and the lack of economic development. This also places pressure on the country's finances overall, which we can ill afford. Municipalities must be prudent with the limited resources available and make the right choices to prioritise the communities they serve. Most importantly, municipalities need to develop and implement sustainable strategies to remain financially viable and ensure continuing service delivery.

It is encouraging that when communities raise their concerns about some of the financially distressed municipalities that struggle to deliver services to residents, national or provincial government intervenes by, among others, developing credible financial recovery plans.

In May 2021, the finance minister responded to issues raised by the community and placed Lekwa (Mpumalanga) under intervention through section 139(7) of the Constitution. A financial recovery plan was prepared by the National Treasury and approved by the finance minister in October 2021. The detailed plan included timelines for each planned activity, which was divided into three phases: the rescue phase, primarily focusing on restoring the cash position of the municipality; the stabilisation phase, expanding on the financial indicators to be monitored and emphasising key governance and institutional issues to be addressed simultaneously; and the sustainability phase, to ensure that indicators are developed to give effect to the long-term financial sustainability of the municipality. This approach was designed to ensure that financial recovery is not only achieved but also – more importantly – that progress is institutionalised and sustained within the municipality. We are already seeing some promising signs that the plan is being implemented and is having a positive impact. The plan will also go a long way in responding to the material irregularity we raised at this municipality in response to its repeatedly disclaimed opinion.

Such credible strategies should be replicated at other struggling municipalities as part of bigger institutional building processes to ensure that municipalities are properly equipped to sustainably address financial management and governance weaknesses. The National Treasury and provincial treasuries are well positioned to support municipalities with their financial recovery strategies through capacity building programmes.



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2.8 Procurement and payment transgressions and risks

Fair and competitive procurement processes enable local government to get the best value for the limited funds available and give suppliers fair and equitable access to government business. When work has been awarded to suppliers, the contracts must be actively managed to ensure that these suppliers deliver at the right time, price and quality before any payments are made. Such requirements are not only standard financial management practices, they are also included in the Municipal Finance Management Act – which makes municipal managers responsible for ensuring that the required processes and controls are implemented.

In local government, failures in these areas often affect communities directly if contractors are not performing, poor-quality goods are provided, and money is lost through overpricing or paying for goods or services not received. The procurement and payment process is also where the risk of fraud is highest.

To mitigate the risks arising from public procurement, we pay particular attention in our audits to procurement and contract management. The risk of fraud and the mismanagement of funds was significantly heightened under the covid-19 conditions and, as a result, this was a key focus of our real-time covid-19 audits.

Our key findings from the covid-19 audits included deficiencies in the procurement and contract management processes for personal protective equipment and infrastructure projects, as well as inadequate controls to ensure that payments were made only for goods and services that were delivered at the right time, price and quality. We were particularly concerned about unfairness in the awarding of government business and that sufficient care was not taken to protect against overpricing, as we identified a number of instances where municipalities paid excessive prices for goods and services. We also identified a number of fraud indicators.

We shared our data on potential fraud in local government with the Fusion Centre in October 2021 for further analyses and steps to be taken – as was the

case with the information we had previously provided on national and provincial government.

Our real-time covid-19 audits were hampered by payment and procurement documentation not being provided for auditing. This is a recurring theme in local government, where our ability to audit is often limited by claims that documents are missing or by a lack of response to our requests. In 2020-21, we were unable to audit R1,22 billion worth of contracts because of limitations on the audit of awards selected for testing (meaning that the relevant information was missing or incomplete).

Our findings and recommendations on procurement and payments and the four material irregularities we issued where material financial losses were suffered as a result are still being addressed by the affected municipalities.

Status of compliance with supply chain management legislation



Compliance with supply chain management legislation improved slightly over the term of the previous administration, but remains low.

Uncompetitive and unfair procurement processes and inadequate contract management were still common. We reported findings (54% of which were material) on uncompetitive and unfair procurement processes at 79% of municipalities and contract management findings (35% of which were material) at 42% of municipalities.

At some municipalities, uncompetitive and unfair procurement processes resulted in (or is likely to result in) financial losses as the goods and services procured could have been obtained at a lower price or a contractor was appointed who could not deliver. We notified the municipal managers of these material irregularities.

2.9 Accountability and consequences

Over the past few years, we have made continued calls for accountability. But what does this actually mean? There are two components to accountability:

- » Firstly, those who take actions or make decisions must take responsibility for these actions and decisions.
- » Secondly, those who do wrong (transgress), do nothing (fail to act) or perform poorly should face consequences.

Instituting consequences against officials responsible for non-compliance helps municipalities to recover losses incurred by those officials and deter other officials from contravening legislation. In this way, municipalities demonstrate their commitment to prudent financial management practices. However, 60% of municipalities did not comply with legislation on effecting consequences. At 54% of municipalities, the non-compliance was material.

The most common findings involved irregular, unauthorised, and fruitless and wasteful expenditure not being investigated. This means that the municipalities

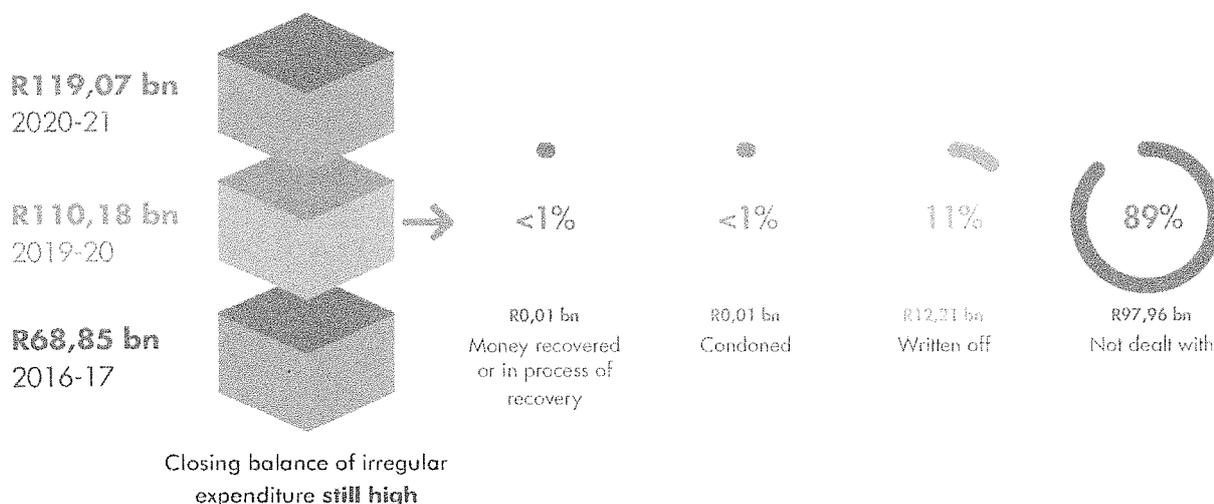
did not take sufficient steps to recover, write off, approve or condone such expenditure. In total, 51% of municipalities did not investigate the previous year's irregular expenditure, 42% did not do so for unauthorised expenditure, and 41% failed to do so for fruitless and wasteful expenditure.

As a result, the year-end balances of these types of unwanted expenditure continue to grow. At the 2020/21 year-end, the balance of irregular expenditure that had accumulated over many years and had not been dealt with totalled R119,07 billion, unauthorised expenditure stood at R86,46 billion, while fruitless and wasteful expenditure amounted to R11,04 billion.

The Municipal Finance Management Act requires councils to objectively and diligently investigate such expenditure. Neither councils (through their municipal public accounts committees) nor treasuries should write off or condone such expenditure without making sure that no losses had been suffered or that any losses suffered cannot be recovered.

Taking irregular expenditure as an example, very little had been done by the 2020/21 year-end about the 2019/20 year-end balance of R110,18 billion.

How councils dealt with prior year irregular expenditure



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The first step the council must take is to investigate the non-compliance – why did it happen, who is responsible, was money lost, and – if money was lost – can that money be recovered? These investigations were not performed at more than half of the municipalities. Where action was taken, it was mostly to write off the irregular expenditure. This means that the council considered the matter to be resolved, yet we identified instances where these investigations were not appropriately performed. Investigations also very seldom found any officials liable.

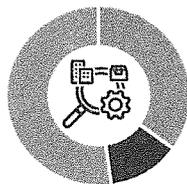
If these matters continue to be ignored or such expenditure is written off without proper consideration, the accountability process envisaged in the Municipal Finance Management Act (through identifying and disclosing irregular, unauthorised, and fruitless and wasteful expenditure) is not functioning as intended.

One would also expect accountability to come into play where there have been allegations of financial and supply chain misconduct and fraud. We audited 78 municipalities to see whether this was the case and found the following:

- » At 51% of municipalities, investigations took longer than three months to complete.
- » At 14% of municipalities, allegations were not investigated.
- » At 5% of municipalities, sanctions were not imposed or recommendations were not implemented based on completed investigations.

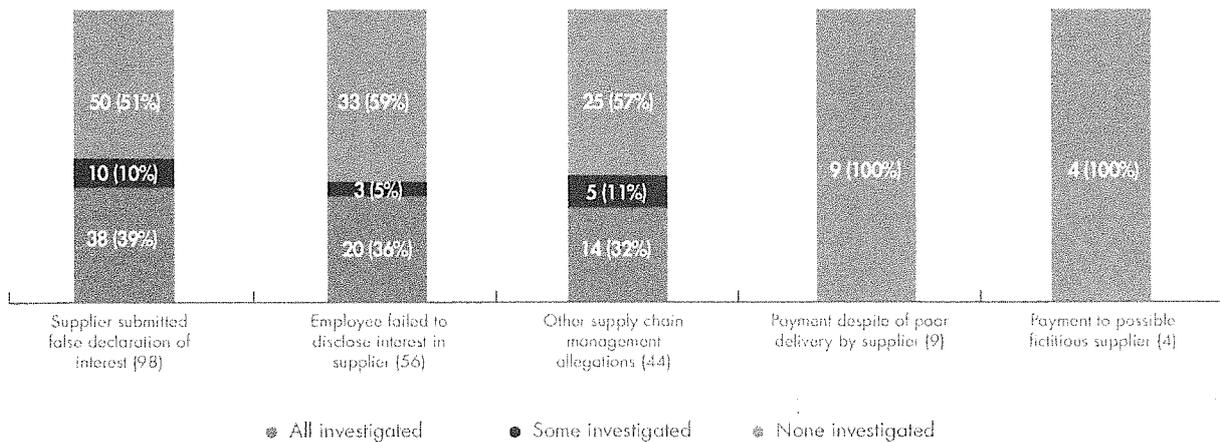
Every year, we also report indicators of possible fraud or improper conduct in supply chain management processes and recommend that management further investigate these matters. In 2019-20, we reported such indicators at 128 municipalities for follow-up.

Status of investigations into fraud or improper conduct in supply chain management processes



45 (35%) municipalities investigated **all** of the findings reported
16 (13%) municipalities investigated **some** of the findings reported
67 (52%) municipalities investigated **none** of the findings reported

Of the 61 municipalities that investigated some or all findings, **39 (64%)** satisfactorily resolved these investigations, while **36%** did not (e.g. the investigation recommended that contracts in which employees failed to declare their interest be cancelled, but the municipality did not do so)



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AUDITOR - GENERAL
SOUTH AFRICA

Auditing to build public confidence

Manual on how to access information from the Auditor-General of South Africa

Prepared in terms of section 14 of the Promotion of Access to Information Act 2 of 2000

MA

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Introduction

The right of access to information is entrenched in section 32 of the Constitution of the Republic of South Africa, 1996 (the Constitution). Section 32(1)(a) of the Constitution provides that everyone has the right of access to any information held by the state. The Promotion of Access to Information Act 2 of 2000 (Paia) was enacted, in accordance with section 32(2) of the Constitution, to give effect to section 32(1) of the Constitution.

The purpose of Paia is to promote transparency, accountability and effective governance by empowering and educating the public on:

- understanding and exercising their right to access information;
- understanding the functions and operations of public bodies;
- effectively scrutinising and participating in decision-making by public bodies that affects their rights;
- ensuring that the state promotes a human rights culture and social justice; and
- encouraging voluntary and mandatory mechanisms or procedures that give effect to the right to information in a speedy and inexpensive manner.

Paia provides, among other things, that any person can request records from a public body without having to provide a reason for the request. Public bodies currently have 30 calendar days to respond to such a request.

The Auditor-General of South Africa (AGSA) embraces this opportunity to incorporate the Paia guidelines into its policies and procedures. This manual on how to access information from the AGSA provides information on how to submit a request for information held by the AGSA. It also contains a description of the organisation's structure and functions, and the availability of its records as a public body. A form for requests for access to information held in the AGSA's records is attached as appendix B to this manual.

This manual is compiled as a statutory requirement in compliance with section 14 of the Paia, which sets out what information it must contain. It is intended to explain to people, both internal and external to the organisation, how they can access the records held by the AGSA to protect their rights as enshrined in the Constitution.

This manual is also available in Afrikaans, Sesotho and isiZulu. Any person may request a copy of this manual in any of the three languages.

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Structure and functions of the AGSA

Constitutional functions of the AGSA

The AGSA has a constitutional mandate and, as the supreme audit institution of South Africa, exists to strengthen the country's democracy by enabling oversight, accountability and governance in the public sector, thereby building public confidence. Section 188 (1) of the Constitution, read with section 4(1) of the Public Audit Act 25 of 2004 (PAA), places a specific responsibility on AGSA, namely, to audit and report on the accounts, financial statements and financial management of–

- all national and provincial state departments and administrations;
- all constitutional institutions;
- the administration of Parliament and of each provincial legislature;
- all municipalities;
- all municipal entities; and
- any other institution or accounting entity required by national or provincial legislation to be audited by the AGSA.

The Constitution also allows the AGSA to audit and report on the accounts, financial statements and financial management of:

- any institution funded from the National Revenue Fund or a provincial revenue fund or by a municipality; and
- any institution that is authorised in terms of any law to receive money for a public purpose.

In addition to the requirements of the Constitution, the AGSA must, among other things, perform the duties specified in the PAA and other legislation. In terms of section 13(3)(b) of the PAA, the AGSA may issue directives on the standards for auditing. These directives are issued from time to time in the form of a notice in the *Government Gazette*.

The Constitution entrenches the AGSA's independence by directing that the AGSA is subject only to the Constitution and the law. The Constitution requires the AGSA to be impartial and to exercise its powers and perform its functions without fear, favour or prejudice.

The AGSA is accountable to the National Assembly and must report on its activities and the performance of its functions to the National Assembly at least once a year.

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Management structure of the AGSA

The management structure of the AGSA is accessible on [here](#)

The narrative of the management structure of the AGSA is as follows:

Roles	Responsibilities
Auditor-general	<p>The auditor-general has overall control of and is accountable for their administration.</p> <p>There is an executive serving in the office of the auditor-general.</p>
Deputy auditor-general (DAG)	<p>The DAG is:</p> <ul style="list-style-type: none"> • the head of the administration who must perform the function of the office in accordance with the direction of the auditor-general • responsible for the management of the administration, including the organisation, control and management of all staff. <p>The head of audit:national, head of audit: provincial, head of specialised audits, chief people officer and chief financial officer, chief technology officer and chief risk officer report to the DAG.</p> <p>The following business units report directly to the DAG:</p> <ul style="list-style-type: none"> • Communication • Strategy • Corporate Secretariat
Head of audit:national	<p>The head of audit:national is responsible for regularity audit at national level and audit support.</p> <ul style="list-style-type: none"> • Audit business units: National A–F and audit support (Technical Audit Support; Reporting and Methodology; Institutional Co-operation and Audit Risk Intelligence) report to various head of portfolios who, in turn, report to the head of audit: national
Head of audit:provincial	<p>The head of audit:provincial is responsible for regularity audit at provincial level.</p> <ul style="list-style-type: none"> • Audit business units: nine provincial offices (Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West and Western Cape) report to various head of portfolios who, in turn, report to the head of audit:provincial.
Head of specialised audits	<ul style="list-style-type: none"> • Specialised audit services: Performance Audit, Information System Audit, Investigations and Integration and Innovation all report to the head of specialised audits

Chief financial officer	<p>The following business units report directly to the chief financial officer:</p> <ul style="list-style-type: none"> • Procurement • Finance • Information Knowledge Management • Strategic Audit Projects
Chief people officer	<p>The following business units report directly to the chief people officer:</p> <ul style="list-style-type: none"> • Business Support and Operations • People and Organisational Effectiveness
Chief technology officer	<p>The following business units report directly to the chief people officer:</p> <ul style="list-style-type: none"> • Information and Communication Technology • Digital Transformation
Chief risk officer	<p>The following business units report directly to the chief people officer:</p> <ul style="list-style-type: none"> • Quality Control • Corporate Legal • Risk & Ethics

1. Contact details

The contact details of the information officer and deputy information officer/s of the AGSA as well as the physical addresses for all AGSA regional offices are provided below.

Table 1: contact details of the information officer and deputy information officers

Telephone	(012) 426 8000	Postal address	Street address
Email	paia-popi@agsa.co.za	PO Box 446 Pretoria, 0001	Lynwood Bridge Office Park 4 Daventry Road Lynwood Manor 0081

Table 2: regional AGSA physical addresses

Province	Street address
Eastern Cape	69 Frere Road Vincent East London 5247
Free State	ABSA Forum Building 2nd Floor 19 Donald Murray Avenue Brandwag, Bloemfontein
Gauteng	Waverley Office Park 39 Scott Street, Waverley Johannesburg
KwaZulu-Natal	460 Town Bush Road Block B Cascades Pietermaritzburg
Limpopo	32 Dimitri Crescent Platinum Park Bendor X 68 Polokwane

Mpumalanga	12 Nel Street Nelspruit
North-West	124 Kock Street Rustenburg
Northern Cape	Block 1, Montrio Corporate Park 10 Oliver Road Monuments Heights Kimberley 8300
Western Cape	19 Park Lane Century City Cape Town

A requester may physically deliver a request for a record in the AGSA regional offices as listed in table 2.

2. Section 10 guide

The South African Human Rights Commission (SAHRC) has, in terms of section 10 of PAIA, compiled a guide on how to use PAIA. This guide is available at the offices of the SAHRC and at the offices of the AGSA.

Any queries relating to the guide should be directed to the SAHRC at:

The South African Human Rights Commission
PAIA Unit
Research and Documentation Department
Private address: Private Bag 2700
Houghton
2041

Telephone: (011) 484 8300
Fax: (011) 484 0582
Website: www.sahrc.org.za
Email: paia@sahrc.org.za

3. Access to records held by the AGSA and fees payable

Certain records are automatically available without a person having to request them through Paia (see paragraph 4.1 of this manual).

Other records maintained by the AGSA must be requested from the information officer in terms of the guidelines provided in appendix A to this manual.

Where the records requested do not contain personal information of the requester, Paia stipulates that a request fee is payable by the requester before the request can be dealt with. A further access fee is payable before access to the relevant records is granted.

4. Records held by the AGSA

4.1. Information available automatically

The following records and information are available without having to request access in terms of Paia and are disclosed on the AGSA's website (<http://www.agsa.co.za>):

a) Information available upon log in:

- (If you do not have login details to access this information you are advised to follow the Paia process. Only identified external stakeholders can access the AGSA information via extranet).
- Audit guidelines FAQs
- Handy guides
- Public audit manual
- Technical memos
- Training material
- Working papers – dormant entity audits
- Working papers – reasonable assurance
- Working papers – small audits

b) Information available at no cost to the public as part of citizen engagement:

- Annual reports of the AGSA
- Budget and strategic plans of the AGSA
- Corporate communication publications
- General reports on national and provincial audit outcomes
- General reports on local government audit outcomes
- Special audit reports (performance audits and investigations reports)

- Speeches
- Public awareness
- Directive in the Government Gazette
- Reporting and good practice.

4.2. Information not available automatically

In addition to the information referred to in paragraph 4.1, the AGSA holds information and records generated in performing its business activities that are not automatically available.

The AGSA holds records generated through either its core functions or supporting functions in pursuance of its mandate.

These core and support functions generate substantive records that relate specifically to the outputs of the AGSA's business activities.

The categories of records generated in the AGSA are classified in terms of the approved records classification system or file plan.

Certain records are acquired in the course of the AGSA's work and in certain instances records are received from multiple levels of governmental bodies in accordance with legislation such as the PAA.

The AGSA reserves the right to transfer requests for records to relevant bodies where these bodies were the primary holders or generators of the information requested, or where the AGSA no longer has possession of such records. The AGSA also reserves the right to create new categories of records where this is necessary. This manual will be updated to reflect changes in categories of records accordingly. See table 3 for the categories of information and records generated in the AGSA.

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Table 3: categories of information and records generated in AGSA

CATEGORY A – DOCUMENTATION GENERATED BY SUPPORTING FUNCTIONS
<p>1. Legislation and legal administration</p> <p>Documents such as acts, bills, regulations, white papers, etc., as well as legal opinions and interpretations.</p>
<p>2. Organisation and control</p> <p>Documents related to determining the AGSA's goals and objectives, such as strategic planning, control systems, meetings, transformation, security, risk management, etc.</p>
<p>3. Information services</p> <p>Documents related to providing and managing the AGSA's information resources, such as library, records management, information management, knowledge management, information technology, etc.</p>
<p>4. Internal and external communication</p> <p>Documents related to the systematic planning, implementation, monitoring and revision of publication and marketing strategy.</p>
<p>5. Financial management and procurement</p> <p>Documents related to raising, allocating, using and accounting for the AGSA's financial resources, such as planning, budgeting, accounting, analysis and reporting, as well as those related to acquiring, maintaining and managing consumable assets.</p>
<p>6. Human capital</p> <p>Documents related to human resource matters, such as organisational development, conditions of service, recruitment, performance management, training, etc.</p>
<p>7. Facilities management</p> <p>Documents related to administering travel arrangements and providing transport, as well as those related to planning, designing and managing buildings, grounds, and postal and telecommunication services.</p>
<p>8. International and national relations</p> <p>All functions related to national and international relations, such as agreements and statutes.</p>
CATEGORY B – DOCUMENTATION GENERATED BY CORE FUNCTIONS
<p>9. Auditing</p> <p>Documents related to regularity auditing, performance auditing, investigations, information system auditing, audit research and development, and quality control.</p>

5. Consultation and representations

The auditor-general, in consultation with the oversight mechanism, determines the standards to be applied in performing audits, the nature and scope of such audits, and the procedures for handling complaints when performing such audits.

Complaints against the AGSA in terms of section 13(1)(c) of the PAA should be addressed in writing to:

Senior Manager: Complaints: Auditor-General of South Africa
Physical address: 300 Middel Street, Nieuw Muckleneuk, Pretoria
PO box 446, Pretoria, 0001
Email: Ethics@agsa.co.za

More importantly, the auditor-general may issue specific directives or notices in terms of the PAA. Any enquiry related to such a directive or notice should be addressed to the following office:

Business Executive: Audit Research and Development, Auditor-General of South Africa
Telephone: 012 426 8000
Fax: 012 426 8333
Email: ARDsupport@agsa.co.za

6. Remedies if the AGSA does not comply with Paia

The AGSA does not have internal appeal procedures for Paia requests. As such, the information officer's decision is final. A requester who is aggrieved by the information officers' decision to refuse a request for access or taken in terms of sections 22, 26(1) or 29(3) of Paia, is entitled, within 180 days of being notified of such a decision, to apply to a court for appropriate relief in terms of section 82 of Paia.



Appendix A: guidelines on submitting a request for access to information held by the AGSA

Information officer and deputy information officers appointed in terms of section 17(1) of PAIA

The auditor-general is the AGSA's information officer, while the deputy auditor-general (DAG) is designated and appointed as deputy information officer. Both 'auditor-general' and 'DAG' refer to the position and not the incumbent. Their respective contact details are recorded in section 1 of this manual.

Persons who wish to request access to information in records held by the AGSA must complete the form in appendix B, submit the completed form to the information officer or a deputy information officer, and pay the prescribed fee (if any). The form may be submitted in person, by ordinary mail or electronically to an address provided in section 1 of this manual. The public is advised to—

- (a) provide as much information as possible when submitting a request to expedite the search for the requested record or information held by the AGSA
- (b) keep full records of any request submitted as well as an acknowledgement of receipt issued by the AGSA.



A handwritten signature in black ink, appearing to be 'J. A. ...', located at the bottom right of the page.

Appendix B: request for access to records held by the AGSA

Request for access to records of a public body

In terms of section 18(1) of the Promotion of Access to Information Act 2 of 2000 (Regulation 2).

FOR OFFICIAL USE

Reference number		
Request received by (information officer / deputy information officer)	Name and surname	
	Rank	
on (date)	at (place)	
Request fee (if any)		
Deposit (if any)		
Access fee		
Signature (information officer / deputy information officer)		

A. Particulars of public body

--	--

B. Particulars of person requesting access to the record

- (a) The particulars of the person who requests access to the record must be recorded below.
 (b) Furnish an address and/or fax number in the Republic to which information must be sent.

Full names and surname		
Postal address		
Identity number	Telephone	
Email	Fax	

Capacity in which the request is made if it is made on behalf of another person



7A

C. Particulars of person on whose behalf request is made

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

Full names and surname	
Identity number	

D. Particulars of record

(a) Provide full particulars of the record or the information to which access are requested, including the reference number if it is known to you, to enable the record to be located.

(b) If the space provided is inadequate, please continue on a separate folio and attach it to this form.

The requester must sign all the additional folios.

Description of record or relevant part of the record or of information requested

Reference number, if available	
--------------------------------	--

Any further particulars of the record or information requested

E. Fees

(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid. The fee payable is prescribed in Part II of Notice 187 in the *Government Gazette* of 15 February 2002.

(b) You will be notified of the amount required to be paid as the request fee.

(c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare the record.

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

Any further particulars of the record or information requested



YA

F. Form of access to record

If you are prevented by a disability from reading, viewing or listening to the record in the form of access provided for in 1 to 4 hereunder, describe your disability and indicate in which form the record is required.

Disability	Form in which record is required

Notes:

- (a) Compliance with your request for access in the specified form depends on the form in which the record is available.
- (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed whether access will be granted in another form.
- (c) The fee payable for access to a record, if any, will be determined partly by the form in which access is requested.

Mark the appropriate box with an "X".

1. If the record is in written or printed form

Copy of record *

inspection of record

2. If the record consists of visual images (this includes photographs, slides, video recordings, computer-generated images and sketches)

View the images

Copy of the image

Transcription of the images*



3. If the record consists of recorded words or information which can be reproduced in sound

Listen to the soundtrack (audio cassette) Transcription of soundtrack* (stiffy or compact disc)

4. If the record is stored on computer or in an electronic or machine-readable format

Printed copy of record* Printed copy of information derived from record*
Copy in computer-readable form* (stiffy or compact disc)

*If you requested a copy or transcript of a record (above), do you want the copy or transcription to be posted to you? A postal fee is payable.

Yes

No

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available. In which language would you prefer to receive the record?

G. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved or denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you like to be informed of the decision regarding your request for access to a record?

Signed _____ at _____ (place) this _____ day
of _____ (month) _____ (year)

Signature

Signature of requester/person on whose behalf
request is made

A handwritten signature in black ink, appearing to be 'FA' with a large loop at the end.

FORM 2
REQUEST FOR ACCESS TO RECORD
[Regulation 7]

NOTE:

- 1. Proof of identity must be attached by the requester.
- 2. If requests made on behalf of another person, proof of such authorisation, must be attached to this form.

TO: The Information Officer
 Lynwood Bridge Office Park PO Box 446
 4 Daventry Road Pretoria
 Lynwood Manor 0001
 0081
 (Address)

E-mail address: paia-popi@agsa.co.za NkululoN@agsa.co.za

Fax number: _____

Mark with an "X"

- Request is made in my own name Request is made on behalf of another person.

PERSONAL INFORMATION	
Full Names	Pèter Johannes Wassenaar
Identity Number	8701255120086
Capacity in which request is made (when made on behalf of another person)	Attorney of record for Sakeliga NPC. See Power of Attorney Attached.
Postal Address	3rd Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria, 0184
Street Address	3rd Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria, 0184
E-mail Address	peter@kriekprok.co.za / rohann@kriekprok.co.za
Contact Numbers	Tel. (B): 012 803 4719 Facsimile: _____
	Cellular: 012 803 4719
Full names of person on whose behalf request is made (if applicable):	Sakeliga NPC
Identity Number	NPC Reg No: 2012/04375/08
Postal Address	Building A, 5th Floor, Loftus Park, 416 Kirkness Road, Arcadia, Pretoria

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Street Address	Building A, 5th Floor, Loftus Park, 416 Kirkness Road, Arcadia, Pretoria, 0007		
E-mail Address	t.alberts@sakeliga.co.za		
Contact Numbers	Tel. (B)	012 880 1951	Facsimile
	Cellular	012 880 1951	
PARTICULARS OF RECORD REQUESTED			
<i>Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed.)</i>			
Description of record or relevant part of the record:	See annexure A		
Reference number, if available	See annexure A		
Any further particulars of record			
TYPE OF RECORD <i>(Mark the applicable box with an "X")</i>			
Record is in written or printed form			X
Record comprises virtual images <i>(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)</i>			X
Record consists of recorded words or information which can be reproduced in sound			X
Record is held on a computer or in an electronic, or machine-readable form			X

FORM OF ACCESS <i>(Mark the applicable box with an "X")</i>	
Printed copy of record <i>(including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)</i>	
Written or printed transcription of virtual images <i>(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)</i>	
Transcription of soundtrack <i>(written or printed document)</i>	X
Copy of record on flash drive <i>(including virtual images and soundtracks)</i>	
Copy of record on compact disc drive <i>(including virtual images and soundtracks)</i>	
Copy of record saved on cloud storage server	X

MANNER OF ACCESS <i>(Mark the applicable box with an "X")</i>	
Personal inspection of record at registered address of public/private body <i>(including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)</i>	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format <i>(including transcriptions)</i>	
E-mail of information <i>(including soundtracks if possible)</i>	X
Cloud share/file transfer	X
Preferred language <i>(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available)</i>	

PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED	
<i>If the provided space is inadequate, please continue on a separate page and attach it to this Form. The requester must sign all the additional pages.</i>	
Indicate which right is to be exercised or protected	Constitutional right to access to records held by public office bearers.

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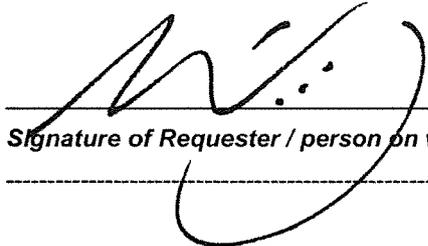
Explain why the record requested is required for the exercise or protection of the aforementioned right:	Constitutional right to access to records held by public office
	bearers.

FEES	
a)	A request fee must be paid before the request will be considered.
b)	You will be notified of the amount of the access fee to be paid.
c)	The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
d)	If you qualify for exemption of the payment of any fee, please state the reason for exemption
Reason	

You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication (Please specify)
		peter@kriekprok.co.za & rohann@kriekprok.co.za

Signed at PRETORIA this 6th day of December 20 21



 Signature of Requester / person on whose behalf request is made

FOR OFFICIAL USE

Reference number:	
Request received by: (State Rank, Name And Surname of Information Officer)	
Date received:	
Access fees:	
Deposit (if any):	

 Signature of Information Officer



ANNEXURE A – INFORMATION REQUESTED IN TERMS OF PAIA

- 1 Abbreviations and definitions used in this annexure:
 - 1.1 **AGSA** means the Auditor-General of South Africa;
 - 1.2 **MFMA** means the Local Government Municipal Finance Management Act 56 of 2003;
 - 1.3 **PAIA** means the Promotion of Access to Information Act 2 of 2000;
 - 1.4 **Target Entities** means all of the listed municipalities contained in Schedule One to this Annexure A.

DOCUMENTS REQUESTED

- 2 All entity specific management reports and/or management letters that deal with and report on all findings, adverse and material findings, root causes and recommendations to senior management and the municipal managers, which includes but is not limited to all executive summaries and detail finding reports, for each of the Target Entities issued by the AGSA for each of the following municipal financial years ending:
 - 2.1 2015;
 - 2.2 2016;
 - 2.3 2017;

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2.4 2018;

2.5 2019;

2.6 2020;

2.7 2021.

- 3 All entity specific annual performance reports, annual compliance reports and assessments relating to each of the Target Entities issued or received by the AGSA for each of the Target Entities for each of the following municipal financial years ending:

3.1 2015;

3.2 2016;

3.3 2017;

3.4 2018;

3.5 2019;

3.6 2020;

3.7 2021.

- 4 All entities specific non-compliance reports, advisories, communications, memoranda, findings and/or reports relating to any material or adverse irregularities and/or findings made by the AGSA, in addition to its annual audit report and/or the management reports stated in paragraphs 2 and 4 above, for

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each of the specific Target Entities for each of the municipal financial years ending:

4.1 2015;

4.2 2016;

4.3 2017;

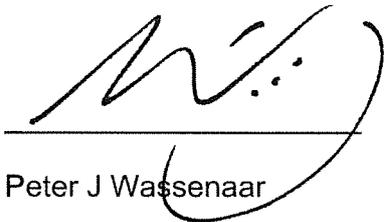
4.4 2018;

4.5 2019;

4.6 2020;

4.7 2021.

SIGNED at PRETORIA on 8 DECEMBER 2021.



Peter J Wassenaar

Kriek Wassenaar & Venter Inc.

Attorneys acting for Sakeliga NPC (the requester)



SCHEDULE 1**TARGET ENTITIES**

Nr	Province	Municipality
1	NW	Naledi
2	NW	JB Marks
3	NW	Moretele
4	NW	Kgetlengriver
5	NW	Mamusa
6	NW	Rustenburg
7	NW	Maquassi Hills
8	NW	Madibeng
9	NW	Greater Taung
10	NW	Ditsobotla
11	NW	Tswaing
12	NW	Ratlou
13	NW	Lekwa Teemane
14	NW	Kagisano-Molopo
15	NW	Mahikeng
16	NW	Ramotshere Moiloa
17	EC	Great Kei
18	EC	Amahlati
19	EC	Mnquma
20	EC	Mbhashe
21	EC	Intsika Yethu
22	EC	Emalahleni
23	EC	Sakhisizwe
24	EC	Enoch Mgijima
25	EC	Walter Sisulu
26	EC	Ngqushwa
27	EC	Mbizana
28	EC	Ntabankulu
29	EC	Engcobo
30	EC	Port St. Johns
31	EC	Raymond Mhlaba
32	EC	Nyandeni
33	EC	Umzimvubu
34	EC	Ingquza Hill
35	EC	King Sabata Dalindyebo
36	EC	Sundays River Valley
37	EC	Elundini
38	EC	Inxuba Yethemba
39	EC	Makana
40	EC	Matatiele
41	EC	Dr Beyers Naudé
42	EC	Mhlontlo
43	FS	Ngwathe
44	FS	Phumelela
45	FS	Nala
46	FS	Metsimaholo
47	FS	Mantsopa
48	FS	Mangaung

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49	FS	Mafube
50	FS	Nketoana
51	FS	Tswelopele
52	FS	Matjhabeng
53	FS	Moqhaka
54	FS	Mohokare
55	FS	Kopanong
56	FS	Masilonyana
57	FS	Maluti-A-Phofung
58	FS	Tokologo
59	FS	Letsemeng
60	FS	Spons
61	GT	Rand West City
62	KZN	Alfred Duma
63	KZN	Dr Nkosazana Dlamini Zuma
64	KZN	Kwadukuza
65	KZN	Mkhambathini
66	KZN	Umngeni
67	KZN	Greater Kokstad
68	KZN	Abaqulusi
69	KZN	Endumeni
70	KZN	Okhahlamba
71	KZN	Ray Nkonyeni
72	KZN	Umzumbe
73	KZN	uMzimkhulu
74	KZN	Ubuhlebezwe
75	KZN	Ndwedwe
76	KZN	Mfolozi
77	KZN	Dannhauser
78	KZN	eMadlangeni
79	KZN	Richmond
80	KZN	Mandeni
81	KZN	Mthonjaneni
82	KZN	Msinga
83	KZN	Umuziwabantu
84	KZN	uMdoni
85	KZN	Newcastle
86	KZN	Inkosi Langalibalele
87	KZN	Nkandla
88	KZN	Ulundi
89	KZN	Mpofana
90	KZN	uMshwathi
91	KZN	uPhongolo
92	KZN	eDumbe
93	KZN	Umvoti
94	KZN	uMhlabuyalingana
95	KZN	Mtubatuba
96	KZN	Jozini
97	KZN	Maphumulo
98	KZN	Nquthu
99	KZN	Nongoma
100	KZN	Big 5 Hlabisa



101	KZN	Impendle
102	LIM	Thulamela
103	LIM	Modimolle-Mookgophong
104	LIM	Mogalakwena
105	LIM	Maruleng
106	LIM	Ephraim Mogale
107	LIM	Molemole
108	LIM	Greater Giyani
109	LIM	Makhudutamaga
110	LIM	Musina
111	LIM	Greater Tzaneen
112	LIM	Blouberg
113	LIM	Collins Chabane
114	LIM	Ba-Phalaborwa
115	LIM	Lepelle Nkumpi
116	LIM	Fetakgomo Tubatse
117	LIM	Makhado
118	LIM	Elias Motsoaledi
119	LIM	Greater Letaba
120	MP	Emalaheni
121	MP	Dr JS Moroka
122	MP	City of Mbombela
123	MP	Bushbuckridge
124	MP	Dipaleseng
125	MP	Msukaligwa
126	MP	Mkhondo
127	MP	Govan Mbeki
128	MP	Lekwa
129	MP	Thaba Chweu
130	MP	Emakhazeni
131	MP	Nkomazi
132	NC	Emthanjeni
133	NC	Phokwane
134	NC	Magareng
135	NC	Thembelihle
136	NC	Umsobomvu
137	NC	Hantam
138	NC	Ga-Segonyana
139	NC	Karoo Hoogland
140	NC	Kamiesberg
141	NC	Siyancuma
142	NC	Kai !Garib
143	NC	Renosterberg
144	NC	!Kheis
145	NC	Siyathemba
146	NC	Joe Morolong
147	NC	Kgatelopele
148	NC	Dikgatlong
149	NC	Ubuntu
150	WC	Matzikama
151	WC	Beaufort West
152	WC	Kannaland

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153	WC	Cederberg
154	WC	Laingsburg

*ms
PA.*

POWER OF ATTORNEY

I, the undersigned

TOBIAS VIVIAN ALBERTS

ID: 9701165040084

In my capacity as duly authorised

LEGAL OFFICER

of

SAKELIGA NPC

REG: 2012/04375/08

do hereby appoint and nominate,

KRIEK WASSENAAR & VENTER INC

and /or their appointed agents / correspondents /nominees

with full power of substitution, to be Sakeliga's lawful attorney with full power and authority for Sakeliga and in Sakeliga's name, and for Sakeliga's account and benefit in the matter of and/or relating to:

PAIA- Auditor-General of South Africa (AGSA)

In the event that I act in a representative capacity, any reference to myself will by implication refer to the principal and/or organisation which I represent as indicated above and as the context requires.

Sakeliga's attorneys will in terms of this power of attorney be able to:

- 1. Receive and handle moneys:** To demand, sue for and recover, and give discharges for all moneys, securities for all sums of money, debts, stocks, shares and property now or hereafter belonging to Sakeliga, whether solely or jointly with any other person or persons.
- 2. To institute legal proceedings or to defend:** To defend any civil action brought against Sakeliga or to institute action and/or proceedings in any High Court or Magistrates Court, tribunal, forum, panel, or Arbitration Institution. This will include but not be limited to the institution and/or defending of any action and/or application brought by and/or against Sakeliga, including but not limited to PAIA requests, Constitutional matters, public interest litigation, PAJA reviews, general litigation, interdicts, urgent applications, debt collection, civil claims, delictual matters, contractual matters, enrichment matters, liquidations, sequestrations and/or any other proceeding for the protection and/or enforcement and/or confirmation of any right or duty. The power to represent Sakeliga is a general power of attorney.
- 3. To negotiate, discuss, consider and settle:** To negotiate, discuss, consider, and settle any matter on behalf of Sakeliga with any party and to provide Sakeliga with advice. To receive, request, demand and consider any documentation, processes, submissions, lodgments, records, contracts, agreements and/or applications on Sakeliga's behalf.



KRIEK WASSENAAR & VENTER INC
Prokureurs • Advokateadvokates • Attorneys • Advokates

DIRECTORS: J Kriek, PJ Wassenaar Reg: 2012/030418/21
Third Floor, HB Forum, 13 Stamvrug Street, Val De Grace, Pretoria
(t) (012) 803 4719 (f) (086 596 8516 (e) peter@kriekprok.co.za

TV ALBERTS (Dec 3, 2021 11:50 GMT+2)

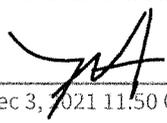
Document version date: 2021/12/01

4. **To settle accounts:** To dispute, negotiate, litigate, settle, compromise or submit to arbitration all accounts, claims and disputes between Sakeliga and any other person or persons;
5. **To act with other persons:** To investigate, negotiate, receive and give out any information, documentation, or data of any form or sort on Sakeliga's behalf and to act and communicate with any authority, entity, person, attorney, advocate or third party;
6. **To draft, receive and sign documentation:** To be able to draft, receive, peruse, consider, sign and give out any documentation that he/she considers relevant or necessary to give effect to the attorney's mandate;
7. **To appoint experts:** To approach, consult and appoint any expert witnesses, to acquire expert reports and testimony and to accrue costs and make payments on Sakeliga's behalf in that regard;
8. **To institute alternative dispute resolution proceedings:** To institute, make use of or request any alternative dispute resolution proceeding including but not limited to arbitration and/or mediation proceedings;
9. **To appoint assessors and agents:** To appoint any assessors, agents and/or tracing agents to assist, do work and give advice on Sakeliga's behalf. I also give authority to pay and settle all accounts in this regard;
10. **To appoint advocates and legal advisors:** To appoint any advocate and/or legal advisor to assist, give opinion and handle matters on Sakeliga's behalf. Sakeliga also gives authority to pay and settle all accounts in this regard;
11. **General power to act:** To do all that is necessary to finalise any matter and to act on Sakeliga's behalf in any manner that he/she considers necessary and in doing so. To generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, and fully and effectively, for all intents and purposes, as Sakeliga might or could do if personally present and acting herein /hereby ratifying, allowing and confirming and promising and agreeing tot ratify, allow and confirm all and whatsoever the said Attorneys and Agents shall lawfully do, or cause to be done, by virtue of this mandate.

AND

Ratification: I hereby ratify and agree to ratify everything which my Attorney or his/her substitute or substitutes or agent or agents appointed by the Attorney under this power of attorney shall do or purport to do by virtue of this power of attorney.

This done and signed at PRETORIA on 03/12/2021


TV ALBERTS (Dec 3, 2021 11:50 GMT+2)

(signed) obo SAKELIGA NPC


JMA

SAKELIGA NPC
REG: 2012/043725/08

DELEGATION OF AUTHORITY

I the undersigned

PIETER JACOBUS LE ROUX

hereby in terms of paragraph 5 of the resolution of the Sakeliga NPC board of directors dated 26 November 2019, delegate to **TOBIAS VIVIAN ("TIAN") ALBERTS**, the following powers and authority:

- 1) the authority to authorise the Company to institute, defend and / or to participate in any legal proceedings, which includes but is not limited to appeals and/or reviews of any matter, and/or the right to have the Company appear, argue, act, support and/or oppose any matter before any State authority or judicial body, as is set out in the Company's objectives – which power and authority is limited only in terms of paragraph 4) below .
- 2) the authority to represent the Company in all matters referred to in paragraph 1) above, and to sign any document on behalf of and in the name of the Company as its lawful representative.
- 3) the authority to incur costs on behalf of the Company and to appoint, instruct and direct attorneys, experts and/or consultants to assist the Company with any matters relating to paragraph 1) above.
- 4) This delegation of authority is limited to matters pertaining to requests, legal processes, and litigation in terms of and/or as a consequence of the Promotion of Access to Information Act 2 of 2000.

Signed at Pretoria on 17 May 2021



PIETER JACOBUS LE ROUX – CEO



1

I.D. No. 970116 5040 084



S.A.CITIZEN

SURNAME
ALBERTS



FORENAMES
TOBIAS VIVIAN

COUNTRY OF BIRTH
SOUTH AFRICA



DATE OF BIRTH
1997-01-16

DATE ISSUED
2014-01-23



ISSUED BY AUTHORITY OF
THE DIRECTOR-GENERAL
HOME AFFAIRS



PA

X6

Rohann Eloff

From: Rohann Eloff
Sent: Wednesday, 08 December 2021 14:56
To: paia-popi@agsa.co.za; NkululoN@agsa.co.za
Cc: Elbie Swanepoel
Subject: PAIA REQUEST: SAKELIGA NPC/AGSA
Attachments: PAIA Request - AGSA 20211208.pdf

Tracking:	Recipient	Delivery
	paia-popi@agsa.co.za	
	NkululoN@agsa.co.za	
	Elbie Swanepoel	Delivered: 2021/12/08 14:57

Good day

The above matter refers.

Kindly find attached hereto our client's PAIA request for access to information.

Kindly confirm receipt and lodging of same.

Yours faithfully

(Kindly take note that our offices will be closed from 15 December 2021 until 5 January 2022)



Rohann Eloff

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) [\(+27\) 12 803 4719](tel:+27128034719) • (f) [\(+27\) 86 596 8797](tel:+27865968797)

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KRIEK WASSENAAR & VENTER ING
PROKUREUR / ADVOCATEN / ATTORNEYS / ANWYLSERS

FA

X7

Elbie Swanepoel

From: Jonathan Mukwevho <JonathanM@agsa.co.za>
Sent: 09 December 2021 13:55
To: Peter Wassenaar
Cc: Nkululo Nocha; Walter Bhengu (SM); Rohann Eloff
Subject: RE: PAIA REQUEST: SAKELIGA NPC/AGSA

Good day Mr Wassenaar,

This correspondence serves to acknowledge receipt of your request. Please note that your request will be attended to by the relevant person.

Kind regards,

Jonathan Mukwevho

—
Archival Consultant • Information and Knowledge Management • Auditor-General of South Africa
Tel: +27(0)12 426 8097 • Mobile: +27(0)73 111 1507 • Email: Jonathanm@agsa.co.za

Auditing to build public confidence

From: Rohann Eloff <rohann@kriekprok.co.za>
Sent: Wednesday, 08 December 2021 14:56
To: PAIA-POPI <PAIA-POPI@agsa.co.za>; Nkululo Nocha <NkululoN@agsa.co.za>
Cc: Elbie Swanepoel <elbie@kriekprok.co.za>
Subject: PAIA REQUEST: SAKELIGA NPC/AGSA

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Good day

The above matter refers.

Kindly find attached hereto our client's PAIA request for access to information.

Kindly confirm receipt and lodging of same.

Yours faithfully

(Kindly take note that our offices will be closed from 15 December 2021 until 5 January 2022)



Rohann Eloff
Kriek Wassenaar & Venter Ing
Kandidaatprokureur / Candidate Attorney

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A handwritten signature in black ink, appearing to be 'M.A.' followed by a large, stylized flourish or initial.

X8

Rohann Eloff

From: Jonathan Mukwevho <JonathanM@agsa.co.za>
Sent: Monday, 10 January 2022 13:23
To: Peter Wassenaar
Cc: Nkululo Nocha; Rohann Eloff
Subject: RE: PAIA REQUEST: SAKELIGA NPC/AGSA

Good day Mr Wassenaar,

Request for extension of period to deal with request in terms of section 26 (1)(c) of the Promotion of Access to Information Act.

We are kindly requesting extension in advance to deal with your request for access to records/information, once for a period of not more than 30 days, due to the consultation that is currently taking place among affected business units by this request. As soon the consultation is completed, we will respond accordingly. This is exacerbated by the earlier closure of the office for holidays and re-opening today, 10 January 2022.

Warmest regards,

Jonathan Mukwevho

Archival Consultant • Information and Knowledge Management • Auditor-General of South Africa
Tel: +27(0)12 426 8097 • Mobile: +27(0)73 111 1507 • Email: Jonathanm@agsa.co.za

Auditing to build public confidence

From: Jonathan Mukwevho
Sent: Thursday, 09 December 2021 13:55
To: peter@kriekprok.co.za
Cc: Nkululo Nocha <NkululoN@agsa.co.za>; Walter Bhengu (SM) <WalterB@agsa.co.za>; rohann@kriekprok.co.za
Subject: RE: PAIA REQUEST: SAKELIGA NPC/AGSA

Good day Mr Wassenaar,

This correspondence serves to acknowledge receipt of your request. Please note that your request will be attended to by the relevant person.

Kind regards,

Jonathan Mukwevho



Archival Consultant • Information and Knowledge Management • Auditor-General of South Africa

Tel: +27(0)12 426 8097 • Mobile: +27(0)73 111 1507 • Email: Jonathanm@agsa.co.za

Auditing to build public confidence

From: Rohann Eloff <rohann@kriekprok.co.za>
Sent: Wednesday, 08 December 2021 14:56
To: PAIA-POPI <PAIA-POPI@agsa.co.za>; Nkululo Nocha <NkululoN@agsa.co.za>
Cc: Elbie Swanepoel <elbie@kriekprok.co.za>
Subject: PAIA REQUEST: SAKELIGA NPC/AGSA

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Good day

The above matter refers.

Kindly find attached hereto our client's PAIA request for access to information.

Kindly confirm receipt and lodging of same.

Yours faithfully

(Kindly take note that our offices will be closed from 15 December 2021 until 5 January 2022)



Rohann Eloff

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

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x9

Elbie Swanepoel

From: Peter Wassenaar
Sent: 11 January 2022 09:45
To: Jonathan Mukwevho
Cc: Nkululo Nocha; Rohann Eloff
Subject: RE: PAIA REQUEST: SAKELIGA NPC/AGSA

Good day Mr Mukwevho

We are happy to indulge an extension subject to a decision being communicated by the end of the extension period, which would be 10 February 2022.

Please feel free to contact me or Mr Rohann Eloff (rohan@kriekprok.co.za) to discuss.

We accept electronic service of all documentation requested.

Yours faithfully / Die uwe



Pèter Wassenaar
Kriek Wassenaar & Venter Ing
Direkteur / Director

- (t) (+27) 12 803 4719 (c) 0829204474
- (a) Third Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
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KRIEK WASSENAAR & VENTER
Prokurators • Advokate • Anblyers • Advokate • Anblyers

From: Jonathan Mukwevho <JonathanM@agsa.co.za>
Sent: Monday, 10 January 2022 13:36
To: Peter Wassenaar <peter@kriekprok.co.za>
Cc: Nkululo Nocha <NkululoN@agsa.co.za>; Rohann Eloff <rohan@kriekprok.co.za>
Subject: RE: PAIA REQUEST: SAKELIGA NPC/AGSA

Good day Mr Wassenaar,

Request for extension of period to deal with request in terms of section 26 (1)(c) of the Promotion of Access to Information Act.

We are kindly requesting extension to deal with your request for access to records/information, once for a period of not more than 30 days, due to the consultation that is currently taking place among affected business units by this request. As soon the consultation is completed, we will respond accordingly. This is exacerbated by the earlier closure of the office for holidays and re-opening today, 10 January 2022.

Warmest regards,

Jonathan Mukwevho

Archival Consultant • Information and Knowledge Management • Auditor-General of South Africa
Tel: +27(0)12 426 8097 • Mobile: +27(0)73 111 1507 • Email: Jonathanm@agsa.co.za

Auditing to build public confidence

From: Jonathan Mukwevho

Sent: Thursday, 09 December 2021 13:55

To: peter@kriekprok.co.za

Cc: Nkululo Nocha <NkululoN@agsa.co.za>; Walter Bhengu (SM) <WalterB@agsa.co.za>; rohann@kriekprok.co.za

Subject: RE: PAIA REQUEST: SAKELIGA NPC/AGSA

Good day Mr Wassenaar,

This correspondence serves to acknowledge receipt of your request. Please note that your request will be attended to by the relevant person.

Kind regards,

Jonathan Mukwevho

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Tel: +27(0)12 426 8097 • Mobile: +27(0)73 111 1507 • Email: Jonathanm@agsa.co.za

Auditing to build public confidence

From: Rohann Eloff <rohann@kriekprok.co.za>

Sent: Wednesday, 08 December 2021 14:56

To: PAIA-POPI <PAIA-POPI@agsa.co.za>; Nkululo Nocha <NkululoN@agsa.co.za>

Cc: Elbie Swanepoel <elbie@kriekprok.co.za>

Subject: PAIA REQUEST: SAKELIGA NPC/AGSA

Some people who received this message don't often get email from rohann@kriekprok.co.za. [Learn why this is important](#)

The above matter refers.

Kindly find attached hereto our client's PAIA request for access to information.

Kindly confirm receipt and lodging of same.

Yours faithfully



(Kindly take note that our offices will be closed from 15 December 2021 until 5 January 2022)



Rohann Eloff

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

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KRIEK WASSENAAR & VENTER ING

Melissa Jansen van Vuuren

From: Yumna Omar <YUMNAO@agsa.co.za>
Sent: Wednesday, 02 February 2022 17:33
To: Melissa Jansen van Vuuren
Cc: Solly Segooa (CRO); Marissa Bezuidenhout (BUL); Tiny Laka (EA)
Subject: Meeting between Peter and AGSA

Importance: High

Hi Melissa

I hope you are well.

My way of introduction, my name is Yumna, and I am the Portfolio Manager in the office of the CRO, Solly Segooa.

Solly had called Mr Peter Wassenaar this morning, informing him that a meeting needs to be scheduled between Peter, Solly, Ms Tsakani Maluleke who is the Auditor General and Marissa Bezuidenhout who is the Business Unit Leader for Corporate Legal Services.

Peter had asked Solly that his office contact you with availability for a meeting. We have come back with availability on 8th February between 12 and 3pm for a 1.5 hour meeting.

Please kindly confirm Peters availability, and I will then send through the meeting invite.

*Kind Regards,
Yumna Omar Ismail*

Portfolio Manager • Chief Risk Office • Auditor-General of South Africa
Tel: +27(0)12 426 8000 • Fax: +27(0)12 426 8000 • Cell: +27(0)72 490 1373 • Email: Yumnao@agsa.co.za

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XII

Melissa Jansen van Vuuren

From: Yumna Omar <YUMNAO@agsa.co.za>
Sent: Wednesday, 02 February 2022 20:33
To: Melissa Jansen van Vuuren
Cc: Solly Segooa (CRO); Marissa Bezuidenhout (BUL); Tiny Laka (EA)
Subject: RE: Meeting between Peter and AGSA
Attachments: Letter to Sakeliga - Signed.pdf

Importance: High

Hi Melissa

I hope you are well.

Please find attached letter requesting the presence of the leadership of Sakeliga, as well a Mr Peter Wassenaar at the meeting on 8th February (once you confirm that this date is suitable as per my previous email).

I look forward to hearing back from you.

Best Regards
Solly

From: Yumna Omar
Sent: Wednesday, 02 February 2022 17:33
To: melissa@kriekprok.co.za
Cc: Solly Segooa (CRO) <SollyS@agsa.co.za>; Marissa Bezuidenhout (BUL) <Marissab@agsa.co.za>; Tiny Laka (EA) <TinyL@agsa.co.za>
Subject: Meeting between Peter and AGSA
Importance: High

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Peter had asked Solly that his office contact you with availability for a meeting. We have come back with availability on 8th February between 12 and 3pm for a 1.5 hour meeting.

Please kindly confirm Peters availability, and I will then send through the meeting invite.

*Kind Regards,
Yumna Omar Ismail*

Portfolio Manager • Chief Risk Office • Auditor-General of South Africa
Tel: +27(0)12 426 8000 • Fax: +27(0)12 426 8000 • Cell: +27(0)72 490 1373 • Email: Yumnao@agsa.co.za

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<http://www.agsa.co.za/About/EmailDisclaimer.aspx>. The Disclaimer is deemed to form part of the content of this email in terms of Section 11 of the Electronic Communications and Transactions Act, 25 of 2002. If you cannot access the Disclaimer, please request a copy thereof by sending an email to disclaimer@agsa.co.za

X12



AUDITOR - GENERAL
SOUTH AFRICA

Sakeliga NPC
C/o Peter Wassenaar
Third Floor HB Forum Building
13 Stamvrug Street
Val De Grace
Pretoria

Per e-mail : peter@kriekprok.co.za
: rohann@kriekprok.co.za

2 February 2022

Dear Mr. Wassenaar

Upcoming engagement between the Auditor-General of South Africa and Sakeliga NPC

1. I refer to the above matter and the Auditor-General's request to address the leadership of Sakeliga NPC (your client).
2. We are grateful for the opportunity to engage your client on 8 February 2022. I am confident that this will be an appropriate platform to share with your client the intricacies of our audit machinery and how this ties back to the role that we play as the external auditor of government. The Auditor-General and her team similarly look forward to gain a better understanding of the intent of your application for access to our management reports.
3. In light of the above, I request your indulgence to discuss a reasonable and realistic date for our formal response to your application at the upcoming meeting. Your favourable response by Friday, 4 February 2022 will be greatly appreciated.

Yours sincerely

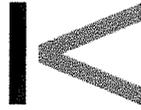
Solly Segooa
Chief Risk Officer
Auditor-General South Africa

Enquiries: Marissa Bezuidenhout
Telephone: (012) 426 8050
Email: marissab@agsa.co.za

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Auditor-General of South Africa
www.agsa.co.za

X13



KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our Ref: PJ Wassenaar/es/QB0920

Your ref:

3 February 2022

**AUDITOR-GENERAL OF SOUTH AFRICA
LYNWOOD BRIDGE OFFICE PARK
4 DAVENTRY ROAD
LYNNWOOD MANOR**

By e-mail: Yumnao@agsa.co.za
SollyS@agsa.co.za
Marissab@agsa.co.za
TinyL@agsa.co.za
JonathanM@agsa.co.za
NkululoN@agsa.co.za
WalterB@agsa.co.za

Sir/Madam

PAIA REQUEST: SAKELIGA NPC / AGSA

1. We refer to your letter of 2 February 2022.
2. We place on record that your offices did not speak to writer on 2 February 2022. Our offices also did not give any undertakings for a meeting as alluded to in your letter of 2 February 2022. Your offices spoke to our Ms Melissa Jansen van Vuuren who only confirmed that she would relay the request to writer.
3. However, we have discussed your letter with our client. Our client is willing to meet with the office of the AGSA on 8 February 2022 at 12h00. We are available for both an in-person, alternatively, a virtual Teams meeting. Kindly advise which you would prefer.
4. Please do keep in mind that your organisation is a public entity regulated by PAIA. PAIA legislation does not require that our client disclose its intentions or reasons for a request. We reserve all of our client's rights and will insist on a decision in terms of PAIA, whether a meeting

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Direkteure/ Directors: Johan Kriek (B Proc, LLM), Péter Johannes Wassenaar (LLB)
Bygestaan deur/assisted by Tertia Johanna Wassenaar (LLB), Kayla Dames (LLB);
Konsultante / Consultants: Catherina Elizabeth Pienaar (BA, BCur, LLB, LLM, PhD), Sylvia Adriana Venter (LLB)
• Reg: 2012/030418/21
Docdate 20220103

is held on 8 February 2022 or not. Our client is willing to consider any proposals regarding the delivery of records, subject to a decision on the request being communicated in terms of PAIA.

5. We await your response by no later than close of offices on 4 February 2022.

Yours faithfully,



KRIEK WASSENAAR & VENTER ING
PÉTER WASSENAAR – DIREKTEUR / DIRECTOR
(f) 086 596 8516
(e) peter@kriekprok.co.za

Elektronies geteken
Electronically signed



X14



KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our Ref: PJ Wassenaar/es/QB0920

Your ref:

9 February 2022

**AUDITOR-GENERAL OF SOUTH AFRICA
LYNWOOD BRIDGE OFFICE PARK
4 DAVENTRY ROAD
LYNNWOOD MANOR**

By e-mail: Yumnao@agsa.co.za
SollyS@agsa.co.za
Marissab@agsa.co.za
TinyL@agsa.co.za
JonathanM@agsa.co.za
NkululoN@agsa.co.za
WalterB@agsa.co.za

Sir/Madam

PAIA REQUEST: SAKELIGA NPC / AGSA

1. We refer to our meeting on 8 February 2022.
2. Our client has specifically instructed us to thank you for requesting the meeting. We also thank Mr Segooa for his efforts in preparing his presentation.
3. We have discussed the matter with our client. Our client has noted the public records available on your website. Our PAIA request does not require any formal disclosure of records that are already publicly available. In terms of PAIA, your offices need only to direct a request to the publicly available records (if such records form fall within the ambit of our request).
4. Our client's PAIA request is however aimed at records that the office of the AGSA has not published. Our client persists with its request for the disclosure of the requested records.
5. Our offices understand that a substantial body of records has been requested. We are more than willing to discuss and negotiate a timeline for delivering the records on receipt of your decision. In terms of PAIA, your decision is now due on 10 February 2022.

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Konsultante / Consultants: Catherina Elizabeth Pienaar (BA, BCur, LLB, LLM, PhD), Sylvia Adriana Venter (LLB)

• Reg: 2012/030418/21

Docdate 20220103



6. We welcome an open dialogue between the parties regarding the matter. However, as a matter of procedure, our client requires a decision in order to ensure that both parties have legal certainty on the outcome of the request. Please feel free to contact the writer if you wish to discuss any part of the matter.
7. Writer indicated at the meeting that we do not require any printed or bundled records. Our client has indicated that we will accept electronic delivery of records in our PAIA request.
8. We await your response and decision.

Yours faithfully,



KRIEK WASSENAAR & VENTER ING
PÉTER WASSENAAR – DIREKTEUR / DIRECTOR
(f) 086 596 8516
(e) peter@kriekprok.co.za

Elektronies geteken
Electronically signed





Sakeliga NPC
c/o Peter Wassenaar
3rd Floor HB Forum Building
13 Stamvrug Street
Val De Grace
Pretoria

Per e-mail: peter@kriekprok.co.za

10 February 2022

Dear Mr Wassenaar

Sakeliga NPC request for access to records in terms of Promotion of Access to Information Act

1. The request for access to the Auditor-General's records made by you on behalf of your client, Sakeliga NPC, on 6 December 2021 refers ("your request").

2. In your request you seek access to the records of:

"All entity specific management reports and/or management letters that deal with and report on all findings, adverse and material findings, root causes and recommendations to senior management and the municipal managers, which include but is not limited to all executive summaries and detail finding reports for each of the Target Entities issued by the AGSA for each of the following municipal financial years ending:"

The years in respect of which the documents are requested are 2015 to 2021.

3. Furthermore, and in respect of the same years, access is sought in respect of *"all entity specific annual performance reports, annual compliance reports and assessments relating to each of the Target Entities issued or received by the AGSA for each of the Target Entities ..."*.

4. Finally, and again in respect of the years mentioned above, you request access to *“all entity specific non-compliance reports, advisories, communications, memoranda, findings and/or reports relating to any material or adverse irregularities and/or findings made by the AGSA, in addition to its annual audit report and/or the management reports stated in paragraphs 2 and 4 above, for each of the specific target entities ...”*.

5. I understand from your letter of 9 February 2022 that you do not seek access to reports published by the Auditor-General South Africa (AGSA), which are in the public domain. That would include audit reports submitted by the AGSA in terms of section 21 of the Public Audit Act, 2004 (*“the Public Audit Act”*). Furthermore, I understand from your letter of 9 February and the meeting held with you on 8 February that what you seek is access to the management reports provided by the AGSA to the municipalities identified in Schedule 1 to your requests, numbering 154 in total.

6. For the sake of clarity, I point out that there are no *“specific non-compliance reports, advisories, communications, memorandum, findings and/or reports relating to any material or adverse irregularities and/or findings made by the AGSA”* in addition to its annual audit reports or management reports provided in respect of each of the Target Entities. The issue of whether or not a Target Entity has complied with its accounting duties in terms of the Municipal Finance Management Act, 2003 is addressed in the audit reports delivered by the AGSA in terms of section 21 of the Public Audit Act. In short, the records which you seek consist either of the audit reports prepared by the AGSA pursuant to its constitutional functions in terms of section 4(1) of the Public Audit Act, prepared in terms of section 20(1) of that Act and submitted in terms of section 21 thereof or the management reports submitted by the AGSA to the Target Entities, also pursuant to its section 4(1) functions.

A handwritten signature in black ink, appearing to be the initials 'A. D.' followed by a stylized flourish.

7. Accordingly, in what follows I will deal only with the management reports which are provided by the AGSA to the Target Entities.

8. I hereby refuse your request for access to the management reports for the reasons which follow.

Section 44

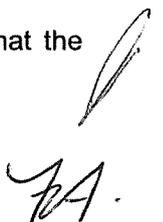
9. Section 44(1) (a) (i) of the Promotion of Access to Information Act, 2000 (“PAIA”) entitles the information officer of a public body to refuse a request for access to a record of the body if the record contains, *inter alia*, an opinion, advice, report or recommendation obtained or prepared in the performance of a duty conferred or imposed by law. The management reports fall within the ambit of that section because they contain opinions, advice and recommendations pursuant to a statutory duty.

10. In addition, the information officer of a public body may refuse a request for access to a record of the body in terms of section 44(1)(b)(i) if the disclosure of the record could reasonably be expected to frustrate the deliberative process between the AGSA and the Target Entity by inhibiting the candid communication of advice and recommendations and the discussion and deliberation on the auditing issues identified in the relevant reports. The provision of the management reports will in my opinion would inhibit discussions between the AGSA and the Target Entities.

11. In conclusion, on this aspect therefore, I hereby refuse to provide access to the management reports on the grounds identified above.

Section 45 of PAIA

12. As already indicated, the request relates to the production of management reports in respect of 154 Target Entities spanning a period of seven years. Section 45 of PAIA provides that the

A handwritten signature in black ink, appearing to be 'PA', is located in the bottom right corner of the page.

information officer of a public body may refuse a request for access to a record of the body if the request is manifestly frivolous or vexatious or if the work involved in processing the request would substantially and unreasonably divert the resources of the public body. In my opinion, the request is manifestly excessive and therefore vexatious and providing the information requested would substantially and unreasonably divert the resources of the AGSA. The request is therefore declined in terms of section 45 of PAIA.

Section 46

13. Section 46 provides that despite any other provision of Chapter 4, the information officer of a public body must grant a request for access to a record of the body contemplated *inter alia* in section 44(1) or 45 if the disclosure of the record would reveal evidence of a substantial contravention of or failure to comply with the law and the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

14. In the present case, all relevant information concerning the financial affairs of the Target Entities which might be in the public interest to disclose are contained in the publicly available audit reports provided by the AGSA in terms of section 21 of the Public Audit Act. In weighing up the balance between the public interest in the disclosure of the management reports and the interests of the AGSA which are protected by the provisions of the Public Audit Act and PAIA, identified above, it is my opinion that the public interest in disclosing the management reports does not clearly outweigh harm which would ensue if the reports were disclosed.

15. In this regard, I point out that the published audit reports comprise the authoritative and final opinion of the AGSA concerning the compliance or non-compliance by the Target Entities with their obligations under the Municipal Finance Management Act. Those reports are therefore more accurate and more authoritative than the management reports sent by the AGSA to the Target Entities in order to assist them in complying with their statutory duties.

A handwritten signature in black ink, appearing to be the initials 'JA' followed by a stylized flourish.

16. It is important to note that the AGSA is a Chapter 9 institution which discharges the functions identified in section 4 of the Public Audit Act to advance not only the objective of fiscal discipline and fiscal compliance by the audited entities but also to promote transparency in the functioning of those entities. The production of the management reports sought would interfere with the performance of my constitutional duties because it would discourage audited entities from engaging in a full frank and comprehensive discussion with the AGSA of the weaknesses, whether real or perceived, in the financial management of the Target Entities.

Conclusion

17. For the reasons set out above, I hereby refuse to provide access to the management reports sought in your request.

Yours sincerely



Tsakani Maluleke
Auditor-General

Enquiries: Thandi Mavundla
Telephone: (012) 426 8000
Email: thandimav@agsa.co.za

