



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

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Mr Senkhu Maimane
South African History Archives
Po Box 31719
BRAAMFONTEIN
2017

Dear Mr Maimane,

**SECTION 74 OF THE ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000):
NOTICE OF INTERNAL APPEAL: SOUTH AFRICAN HISTORY ARCHIVES:
NATIONAL KEY POINTS**

Your Notice of Internal Appeal, dated 18 December 2012, has reference to the matter.

After due consideration of the internal appeal against the decision of the Service to refuse access to the requested records, I have decided —

1. with regard to the first part of the appeal relating to the words "Property Nkandla" in the subject line of the e-mail message dated 2012-11-16 sent to you, that **the Service did apply its mind to the matter and did not assume that the records are requested in relation to "Property Nkandla" and that a mere typing error was made;**
2. **to dismiss the appeal in terms of section 38(a), section 38(b)(i)(aa) and section 45(1)(b) of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000), (hereinafter referred to as the "Act"), with regard to the second part of the appeal relating to a list of all the places or areas which had been declared National Key Points or Complexes; and**
3. **to dismiss the appeal, with regard to the third part of your appeal relating to bank statements of the special account for the safeguarding of National Key Points established in accordance with section 3B of the National Key Points Act for the period 2010 to 2012 and to inform you that Service does not have a special account for the safeguarding of the National Key Points.**

The reasons for the decisions are as follows:

1. The words "Property Nkandla" which is in the subject line of the e-mail message dated 2012-11-16 to you, was a mere typing error when the National Deputy Information Officer submitted the decision of the line manager to you. In the heading of the letter self, the words do not appear. The fact that the line manager, Section Head: National Key Points and Strategic Installations, after consultation with legal Services, made the decision to refuse access to the requested records, and only submit the decision to the National Deputy Information Officer to enable her to notify you of such decision, is further proof that the line manager or the Service did apply his mind to the matter and did not assume that the records are requested in relation to "Property Nkandla". The National Deputy Information Officer only informed you of such decision and she merely made a typing error.
2. The Service correctly refused access to the requested records in terms of section 38(a) and section 38(b)(i)(aa) of the Act. However, the Service should also have relied on section 45(1)(b) of the Act for refusal of access to the requested records.
3. *Section 38(a) and section 38(b)(i)(aa) of the Act provides as follows:*
"Mandatory protection of safety of individuals, and protection of property
38. The information officer of a public body —
 - (a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual; or*
 - (b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair —*
 - (i) the security of —*
 - (aa) a building, structure or system, including, but not limited to, a computer or communication system;"*
4. It is agreed that to provide access to the requested records, will impact negatively on and jeopardize the operational strategy and tactics used to ensure security at the relevant property or safety of an individual (eg if a person plans, intends or tries to harm the relevant individual or to prejudice or impair the security of the building, access to this information may prejudice the effectiveness of those methods, techniques or procedures used to ensure the safety of such individuals and/or the building – a person who intends to harm the relevant individual may with ease harm the relevant individual if he or she has access to such information, or he or she may with ease determine the strategies and tactics used for such protection and then use the information to do such harm). If a person wants to cause such harm, the fact that certain places are National Key Points or critical places, will be an aid to such culprits in such plans.
5. The National Key Points include different places or areas which are extremely important and its loss, damage, disruption or immobilization may prejudice the

Republic or its safety and it is in the public's interest that they be secured and that such declaration as a National Key Point not be publicly advertised. Such "critical" places or areas are very likely to become "soft spots or targets" for the enemy or a person that intends to harm the Republic or endanger the life or physical safety of an individual at or from such place or area. Knowledge of exactly which places or areas are declared as such points, are highly likely to prejudice or impair the security of such places or areas when such knowledge is used by persons who intend to do such harm to such building, structure or system.

Places or areas which are National Key Points include places or areas such as:

- (1) Banks;
- (2) Munitions Industries;
- (3) Petro Chemical Industries;
- (4) Water Supply;
- (5) Electricity;
- (6) Communications;
- (7) Transport Air;
- (8) Government Institutions;
- (9) Data Processing;
- (10) Research; or
- (11) Technology Information Systems.

6. It must be noted that there is 200 places or areas which have been declared as National Key Points. The majority of these places or areas is not government owned and therefore there are personal information (ie the name of the place or area qualifies as "the address of the individual" or that he or she is the owner of such place or area) of numerous third parties involved in the request. The fact that a place or area is the property of a certain person qualifies as personal information of such person.

The Service should therefore also have refused access to the requested records in terms of section 45(1)(b) of the Act. Personal information of third parties is contained in the requested record (ie a list of all National key Points or Complexes). In order for the Service to adhere to the provisions of section 47 of the Act (ie the work involved in processing and notifying third parties of the request of access to a record contemplated in section 34(1) of the Act, and afford them 21 days to grant or refuse such access with reasons), will substantially and unreasonably divert the resources of the Service.

7. The Act defines "personal information" as follows:
"personal information" means information about an identifiable individual, including, but not limited to -
- (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or

- mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;*
- (b) *information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;*
 - (c) *any identifying number, symbol or other particular assigned to the individual;*
 - (d) *the address, fingerprints or blood type of the individual;*
 - (e) *the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;*
 - (f) *correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;*
 - (g) *the views or opinions of another individual about the individual;*
 - (h) *the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and*
 - (i) *the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual, but excludes information about an individual who has been dead for more than 20 years;'*

8. Section 34 of the Act provides as follows:

"Mandatory protection of privacy of third party who is natural person

34. (1) *Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.*
- (2) *A record may not be refused in terms of subsection (1) insofar as it consists of information-*
- (a) *about an individual who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned;*
 - (b) *that was given to the public body by the individual to whom it relates and the individual was informed by or on behalf of the public body, before it is given, that the information belongs to a class of information that would or might be made available to the public;*
 - (c) *already publicly available;*
 - (d) *about an individual's physical or mental health, or well-being, who is under the care of the requester and who is-*
 - (i) *under the age of 18 years; or*

- (ii) *incapable of understanding the nature of the request, and if giving access would be in the individual's best interests;*
- (e) *about an individual who is deceased and the requester is-*
 - (i) *the individual's next of kin; or*
 - (ii) *making the request with the written consent of the individual's next of kin; or*
- (f) *about an individual who is or was an official of a public body and which relates to the position or functions of the individual, including, but not limited to-*
 - (i) *the fact that the individual is or was an official of that public body;*
 - (ii) *the title, work address, work phone number and other similar particulars of the individual;*
 - (iii) *the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; and*
 - (iv) *the name of the individual on a record prepared by the individual in the course of employment."*

9. Section 45(1)(b) of the Act provides as follows:
"Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources
 45. *The information officer of a public body may refuse a request for access to a record of the body if-*
- (a) *...; or*
 - (b) *the work involved in processing the request would substantially and unreasonably divert the resources of the public body."*

10. Section 47 of the Act provides as follows:
"Notice to third parties
 47. (1) *The information officer of a public body considering a request for access to a record that might be a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1) must take all reasonable steps to inform a third party to whom or which the record relates of the request.*
- (2) *The information officer must inform a third party in terms of subsection (1)-*
- (a) *as soon as reasonably possible, but in any event, within 21 days after that request is received or transferred; and*
 - (b) *by the fastest means reasonably possible.*
- (3) *When informing a third party in terms of subsection (1), the information officer must-*
- (a) *state that he or she is considering a request for access to a record that might be a record contemplated in section 34(1),*


- 35(1), 36(1), 37(1) or 43(1), as the case may be, and describe the content of the record;
- (b) furnish the name of the requester;
 - (c) describe the provisions of section 34(1), 35(1), 36(1), 37(1) or 43(1), as the case may be;
 - (d) in any case where the information officer believes that the provisions of section 46 might apply, describe those provisions, specify which of the circumstances referred to in section 46(a) in the opinion of the information officer might apply and state the reasons why he or she is of the opinion that section 46 might apply; and
 - (e) state that the third party may, within 21 days after the third party is informed-
 - (i) make written or oral representations to the information officer why the request for access should be refused; or
 - (ii) give written consent for the disclosure of the record to the requester.
- (4) *If a third party is not informed orally of a request for access in terms of subsection (1), the information officer must give a written notice stating the matters referred to in subsection (3) to the third party."*

11. In general employees of the Service are not used to secure the National Key Points. However, in terms of the Constitution and the South African Police Service Act, VIP's must be protected by the Service. As these persons are mostly at some of these National Key Points, members of the VIP Protection Unit are safeguarding such persons and subsequently certain places where such persons are. There is not a separate account or budget in the Service for this safeguarding or protection provided by these members. Such members resort under the Personal Protection Unit or VIP Protection Unit.

You should have been informed that the Service does not have a special account for the safeguarding of the National Key Points and a statement to this effect should have been provided in terms of section 23 of the Act.

If you are aggrieved by the decision taken on the internal appeal, you may, within 180 days [as decided in the Constitutional Court Case, *Brümmer v Minister for Social Development and Others 2009 (11) BCLR 1075 (CC)*] lodge an application with a court against the decision on the internal appeal.

With kind regards

 (acting)
 EN Mthethwa
 Minister of Police
 Date: 28/2/13