



EXHIBIT KK 2.1

AFFIDAVIT & ANNEXURES

OF

**KOBUS DEMEYER
ROELOFSE**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**


2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214 to 0651
Email: inquiries@sastatecapture.org.za
Website: www.sastatecapture.org.za

INDEX: EXHIBIT KK 2.1

Description	Pages
Affidavit of Kobus Demeyer Roelofse	001 to 072
Annexure "KDR01"	073 to 081
Annexure "KDR02"	082 to 102
Annexure "KDR03"	103 to 106
Annexure "KDR04"	107 to 111
Annexure "KDR05"	112 to 136
Annexure "KDR06"	137 to 138
Annexure "KDR07"	139 to 152
Annexure "KDR08"	153 to 155
Annexure "KDR09"	156 to 158
Annexure "KDR10"	159 to 160
Annexure "KDR11"	161 to 163
Annexure "KDR12"	164 to 187

Description	Pages
Annexure “KDR13”	188 to 189
Annexure “KDR14”	190 to 192
Annexure “KDR15”	193 to 194
Annexure “KDR16”	195 to 198
Annexure “KDR17”	199 to 200
Annexure “KDR18”	201 to 203
Annexure “KDR19”	204 to 205
Annexure “KDR20”	206 to 209
Annexure “KDR21”	210 to 261
Annexure “KDR22”	262 to 265
Annexure “KDR23”	266 to 268
Annexure “KDR24”	269 to 271
Annexure “KDR25”	272 to 275
Annexure “KDR26”	276 to 323
Annexure “KDR27”	324 to 326
Annexure “KDR28”	327 to 334
Annexure “KDR29”	335 to 337
Annexure “KDR30”	338 to 342
Annexure “KDR31”	343 to 345
Annexure “KDR32”	346 to 349
Annexure “KDR33”	350 to 353
Annexure “KDR34”	354 to 357
Annexure “KDR35”	358 to 360
Annexure “KDR36”	361 to 362
Annexure “KDR37”	363 to 369
Annexure “KDR38”	370 to 371

Description	Pages
Annexure “KDR39”	372 to 378
Annexure “KDR40”	379 to 388
Annexure “KDR41”	389 to 401
Annexure “KDR42”	402 to 422
Annexure “KDR43”	423 to 424
Annexure “KDR44”	425 to 426
Annexure “KDR45”	427 to 428
Annexure “KDR46”	429 to 431
Annexure “KDR47”	432 to 434
Annexure “KDR48”	435 to 438
Annexure “KDR49”	439 to 446
Annexure “KDR50”	447 to 460
Annexure “KDR51”	461 to 465
Annexure “KDR52”	466 to 471



**AFFIDAVIT BY
KOBUS DEMEYER
ROELOFSE TO THE
COMMISSION OF INQUIRY
INTO ALLEGATIONS OF
STATE CAPTURE**

Contents

<u>A.</u>	<u>MY CAREER IN THE SOUTH AFRICAN POLICE.....</u>	<u>4</u>
a.	Overview.....	5
<u>B.</u>	<u>THE PURPOSE OF THE AFFIDAVIT.....</u>	<u>6</u>
<u>C.</u>	<u>TIME FRAMES AND EXTENT OF THE INVESTIGATION.....</u>	<u>7</u>
<u>D.</u>	<u>CONCEPTS EXPLAINED</u>	<u>7</u>
I.	The Secret Services Account (“SSA”).....	8
II.	Regulatory framework for CI and SSA.....	9
III.	The classification of documentation	9
IV.	Levels of classification.....	10
V.	Ranks within SAPS	12
<u>E.</u>	<u>MY FRUSTRATION IN SECURING CLASSIFIED DOCUMENTATION.....</u>	<u>13</u>
<u>F.</u>	<u>THE MDLULI VOSLOORUS CASE: MY ASSIGNMENT TO THE INVESTIGATION.....</u>	<u>13</u>
<u>G.</u>	<u>THE SSA INVESTIGATION.....</u>	<u>15</u>
b.	The role of Colonel Barnard in purchasing the BMW for General Mdluli.....	17
<u>H.</u>	<u>OBTAINING CLASSIFIED DOCUMENTATION RELEVANT TO THE INVESTIGATION.....</u>	<u>18</u>
<u>I.</u>	<u>COLONEL NAIDOO: INTERFERENCE BY GENERAL LAZARUS.....</u>	<u>19</u>
<u>J.</u>	<u>INVESTIGATIONS: INFORMATION SUPPLIED BY COLONEL NAIDOO</u>	<u>22</u>
I.	One Stop Travel and Tours, Durban: Flight Arrangements [Late 2009 – October 2011].....	23
II.	Joe Marques: New World Motors – Procurement of Vehicles	26
III.	General Solomon Lazarus: Promotions and Appointments of family and friends to CI	29
IV.	General Lazarus: Abuse of safe house.....	30
V.	General Lazarus: Abuse of SSA – Purchasing of vehicles	30
a.	General Mdluli.....	31
b.	General Manoko Nchwe.....	31
VI.	General Lazarus: Use of SSA to fund Upgrades to private premises.....	33
a.	General Mdluli.....	33
b.	Lieutenant General Manoko Nchwe	33
c.	The then Minister of Police Nathi Mthethwa.....	33

VII.	General Lazarus: Mr Panaganath (aka Timmy) Marimuthu	34
a.	Payments as a Source.....	35
b.	Appointment of family and friends	35
c.	Rental of Properties.....	37
VIII.	General Lazarus: Mr John Appalsami of Daez Trading cc – Safe Houses	37
a.	Clearwater Estate	38
b.	Gordon Villas	38
c.	Morgan Ridge	38
d.	Office Accommodation.....	38
IX.	General Lazarus: Authorized trips abroad for General Mdluli and family	39
a.	Trip to China	39
b.	Trip to Singapore	40
X.	General Mdluli: Promotions and Appointments of family and friends to CI	40
<u>K.</u>	<u>ATLANTIS MOTORS</u>	<u>41</u>
<u>L.</u>	<u>EVENTS FROM MARCH 2012.....</u>	<u>43</u>
a.	Disciplinary and criminal proceedings and referral to the Inspector General Of Intelligence (“IGI”).....	43
<u>M.</u>	<u>THE SPECIALISED COMMERCIAL CRIMES UNIT (“SCCU”) CRIMINAL PROCEEDINGS: GENERAL MDLULI AND COLONEL BARNARD</u>	<u>45</u>
<u>N.</u>	<u>GENERAL MDLULI’S ACTIONS TO FRUSTRATE THE INVESTIGATIONS</u>	<u>50</u>
<u>O.</u>	<u>THE CONTINUATION OF THE NON-COOPERATION OF THE SAPS MANAGEMENT</u>	<u>51</u>
b.	Mail and Guardian Report.....	51
<u>P.</u>	<u>ATTEMPTS TO DECLASSIFY DOCUMENTS</u>	<u>53</u>
<u>Q.</u>	<u>GENERAL NTLEMEZA</u>	<u>64</u>
c.	General Ntlemeza and Mdluli Vosloorus case	64
<u>R.</u>	<u>PERSONS WHO ASSISTED AND THOSE WHO OBSTRUCTED THE INVESTIGATION</u>	<u>68</u>
<u>S.</u>	<u>IN CONCLUSION</u>	<u>70</u>

I, the undersigned,

KOBUS DEMEYER ROELOFSE

do hereby state under oath that:

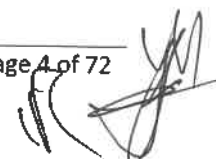
1. All facts stated herein are, unless the context indicates otherwise, within my own personal knowledge and are to the best of my belief both true and correct.
2. I am a Colonel in the South African Police Service (“SAPS”) and employed at the Directorate for Priority Crimes Investigations (the “DPCI”), Western Cape.
3. Investigators of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (“the Commission”) approached me to give evidence at the hearings regarding the wilful interference by both members of the SAPS and National Prosecuting Authority (“NPA”).
4. I give this evidence freely and voluntarily. I have not been offered any incentive or reward to depose to this affidavit.

A. MY CAREER IN THE SOUTH AFRICAN POLICE

5. I joined the SAPS in 1986. My career as a member within the SAPS and the Directorate of Special Operations (the “DSO”) is illustrated below:

Table 1: Career of Colonel Roelofse

YEAR	UNIT
1986 – 1987	<i>Section Leader: Unit 19 Public Order Policing</i>
1987 – 1988	<i>Crime Prevention – Tactical Cape Town</i>
1988 – 1990	<i>Shift Commander: Radio Control Cape Town</i>
1990 – 1995	<i>Group Commander: Intelligence Gathering & Coordination</i>




1995 – 1996	<i>Group Commander: Serious and Violent Crime: Information Coordination: Gangs</i>
1996 – 1998	<i>Group Commander: Investigations: Taxi Violence</i>
1998 – 2000	<i>Team Leader: Investigations Religious Extremism/Counter Terrorism: PAGAD</i>
2000 – 2009	<i>Senior Special investigator: (Team Leader) Investigations</i>
	<ul style="list-style-type: none"> • <i>Religious Extremism/Counter Terrorism: PAGAD</i>
	<ul style="list-style-type: none"> • <i>Fraud & Corruption - Parliament</i>
	<ul style="list-style-type: none"> • <i>Fraud & Corruption – Local Government - Paarl</i>
	<ul style="list-style-type: none"> • <i>Fraud & Corruption - Pyramid Scheme - Fidentia</i>
2009 - 2010	<i>Lead Investigator: Major Case Investigations: Directorate for Priority Crime Investigation (DPCI) - South African Police Service</i>
	<ul style="list-style-type: none"> • <i>Fraud & Corruption - Pyramid Scheme - Fidentia</i>
	<ul style="list-style-type: none"> • <i>Fraud & Corruption – Local Government - Paarl</i>
2010 to date	<p><i>Section Commander: Major Case Investigations: Anti-Corruption Task Team (“ACTT”) Directorate for Priority Crime Investigation (“DPCI”) - South African Police Service</i></p> <p><i>(During this period I was periodically tasked to lead investigations outside the Western Cape for lengthy periods at a time)</i></p>
	<ul style="list-style-type: none"> • <i>Fraud & Corruption: Crime Intelligence</i>
	<ul style="list-style-type: none"> • <i>Fraud & Corruption: South African Social Security Agency (SASSA)</i>
	<ul style="list-style-type: none"> • <i>Fraud & Corruption: ICT Environment: South African Police Service & State Information Agency State Information Technology Agency (SITA)</i>

a. Overview

6. I have previously testified before an Enquiry in terms of section 12(6) of the National Prosecuting Authority Act, 1998 (Act no. 32 of 1998) (“**the Mokgoro Commission of Enquiry**”) into the fitness of Advocates Nomgcobo Jiba and Laurence Mrwebi. Part of the evidence which I gave at that enquiry is dealt with in this affidavit.

B. THE PURPOSE OF THE AFFIDAVIT

7. The purpose of this affidavit is to place before the Commission evidence relating to my investigation into the illegal activities of a number of highly placed officers in the Crime Intelligence (“CI”) Department of the SAPS. My initial investigation concerned a murder matter where a very senior officer was implicated. This investigation led into a further investigation regarding the looting of the SAPS Secret Services Account (“SSA”) [“the SSA Looting Investigation”].
8. I also want to make it clear that I do not have a view on either the guilt or innocence of the individuals mentioned in this affidavit as that is the function of a court of law if and when such evidence is presented at a trial. My affidavit seeks to point out in broad terms the seriousness of the various allegations but more importantly the failure of the SAPS/NPA Management to act to address this situation.
9. I also deal with the attempts made to frustrate and hamper the investigations I was involved in by senior officials within the SAPS and the NPA. I am of the view that by doing so, these officials made themselves perpetrators to obstructing the course of justice and defeating the ends of justice.
10. The transactions that I deal with in my affidavit either originate or were facilitated by the “operational unit” that Major General Solomon Lazarus (“General Lazarus”), Chief Financial Officer of the SSA, established within the SSA. General Lazarus provided the final financial authority for these transactions. He was instrumental in the appointment of certain individuals within this “operational unit” which enabled him to manipulate financial transactions to the benefit of himself and others.
11. During the period of July 2009 and November 2011:
 - 11.1 Lieutenant General Richard Naggie Mdluli (“General Mdluli”) was the Divisional Commissioner, CI;
 - 11.2 General Lazarus was the Chief Financial Officer of the SSA; and



- 11.3 Colonel Heine Johannes Barnard (“Colonel Barnard”), the Section Commander, Supply Chain Management, CI, Pretoria was a procurement officer for Company X.
- 11.4 Company X is a front company that is a registered trading entity which forms part of a clandestine operation that is set up and funded through the SSA and operated by members from CI. Although the full details of Company X are known to me, it is not in the public interest to make known the actual name of the company.

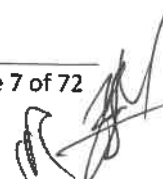
C. TIME FRAMES AND EXTENT OF THE INVESTIGATION

12. I have deposed to various affidavits during the course of the investigation into the alleged criminal conduct of members of CI. The purpose of this affidavit is to consolidate the main sequence of events since March 2011 to date. In doing so I rely on affidavits submitted by witnesses and myself together with supporting documentation as part of my investigations. The information obtained and the quantity of exhibits seized during my investigation comprises of thousands of documents and are too voluminous to attach to this affidavit.

Where I refer to specific evidence in affidavits, exhibits or annexures, I am in possession of such documentation. Unless attached to my affidavit, I will make the documents available to the Commission on request. Some of the matters are however still the subject of possible pending criminal proceedings. I will therefore not go into specific detail in certain instances, unless specifically requested by the Commission to do so.


D. CONCEPTS EXPLAINED

13. Before turning to the facts of my evidence, I explain the following concepts (1) The Secret Service Account; (2) the Regulatory Framework for CI and SSA; (3) the Classification of Documentation; (4) Levels of Classification; and (5) Ranks within the SAPS.



I. The Secret Services Account ("SSA")

14. The SSA that my evidence concerns is specifically the annual funding received from National Treasury which is budgeted and allocated to CI.
15. According to the SAPS Annual report 2017/2018, the purpose of CI is to *"manage crime intelligence and analyse crime information and provide technical support for investigations and crime prevention operations"*. The strategic objectives of CI include inter alia the following:
- *"To gather crime intelligence, in support of the prevention, combating and investigation of crime.*
 - *To collate, evaluate, analyse, coordinate and disseminate intelligence for the purpose of tactical, operational and strategic utilisation.*
 - *To supply intelligence products, relating to national strategic intelligence to the National Intelligence.*
 - *To institute counter-intelligence measures within the South African Police Service.*
 - *To prevent and fight crime through enhanced international cooperation and innovation on police and security matters."*
16. The functioning of all crime intelligence gathering activities of the South African Police Service is largely dependent upon the recruitment and utilization of informants. The SSA supplies the funding to obtain and maintain the recruitment and utilization of informants which in turn supplies the information to obtain the above strategic objectives.
17. Simply put, the SSA is a financial management system in the SAPS that is funded and utilised by CI structures for, *inter-alia*, the payment of Agents, renting of safe houses, purchasing of assets and the covering of costs and expenses for covert operations. Similarly, the State Security Agency and Military Intelligence operate a comparable system.



18. The SSA is not audited in the same manner as the SAPS open account, designed for use in everyday police operations and functions. This is done to protect covert operations and not to expose certain individuals, projects or operations.

II. Regulatory framework for CI and SSA

19. The regulatory framework applicable to the functioning of CI and the SSA is *inter alia*:

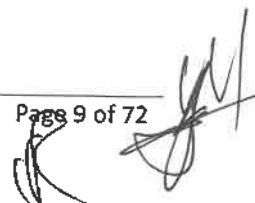
- South African Police Service Act, 1995 (Act No. 68 of 1995)
- The Public Finance Management Act, 1999
- Secret Services Act, 1978 (Act No. 56 of 1978)
- Policy Directives and Procedures for Crime Intelligence Gathering

III. The classification of documentation

20. The classification of documentation in South Africa is governed by the Minimum Information Security Standards (“MISS”) document. Although the document is classified as “Restricted”, it is available on the internet. The document comprises of 84 pages and is not attached to this affidavit.
21. There are numerous reasons for the classification of documents by State Institutions, including the SAPS. These classifications are to protect the contents of the documents from unauthorised exposure.
22. Paragraph 3.4 of the MISS document records that:

“3.4 The classifications mentioned above are described below.

Note: Security measures are not intended and should not be applied to cover up maladministration, corruption, criminal actions, etc, or to protect individuals/officials involved in such cases”.



IV. Levels of classification

23. All information relating to official matters which require the application of security measures (exempted from unauthorised disclosure) must be classified. The different types of classification are "Restricted", "Confidential", "Secret" or "Top Secret".
24. Persons must have the appropriate security clearance in order to access the aligned level of classification. The classification of information is subjective. The declassification of information can only be authorised by the author of the document containing the classified information or by the National Commissioner of SAPS.
25. The MISS document defines the various categories as follows:

3.4.1 Restricted

Definition: RESTRICTED is that classification allocated to all information that may be used by malicious/opposing/hostile elements to hamper activities or inconvenience an institution or an individual

Test: Intelligence/information must be classified as RESTRICTED when the compromise thereof could hamper or cause an inconvenience to the individual or institution.

Explanation: RESTRICTED is used when the compromise of information can cause inconvenience to a person or institution, but cannot hold a threat of damage. However, compromise of such information can frustrate everyday activities.

3.4.2 Confidential Definition: The classification CONFIDENTIAL should be limited to information that may be used by malicious/opposing/hostile elements to harm the objectives and functions of an individual and/or institution.

Test: Intelligence/information must be classified CONFIDENTIAL when compromise thereof can lead:

- to the frustration of the effective functioning of information or operational systems;*

- undue damage to the integrity and/or reputation of individuals; and
- the disruption of ordered administration within an institution; and
- adverse effect on the non-operational relations between institutions.

Explanation: CONFIDENTIAL is used when compromise of information results in:

- undue damage to the integrity of a person or institution, but not entailing a threat of serious damage. The compromise of such information, however, can frustrate everyday functions, lead to an inconvenience and bring about wasting of funds;
- the inhibition of systems, the periodical disruption of administration (eg logistical problems, delayed personnel administration, financial relapses, etc) that inconvenience the institution, but can be overcome; and
- the orderly, routine co-operation between institutions and/or individuals being harmed or delayed, but not bringing functions to a halt.

3.4.3 Secret Definition: *SECRET is the classification given to information that may be used by malicious/opposing/hostile elements to disrupt the objectives and functions of an institution and/or state.*

Test: Intelligence/information must be classified as SECRET when the compromise thereof:

- can disrupt the effective execution of information or operational planning and/or plans;
- can disrupt the effective functioning of an institution;
- can damage operational relations between institutions;
- diplomatic relations between states;
- can endanger a person's life.

Explanation: SECRET is used when the compromise of information:

- can result in the disruption of the planning and fulfilling of tasks, ie the objectives of a state or institution in such a way that it cannot properly fulfil its normal functions; and
- can disrupt the operational co-operation between institutions in such a way that it threatens the functioning of one or more of these institutions.

3.4.4 Top Secret Definition: *TOP SECRET is the classification given to information that can be used by malicious/opposing/hostile elements to neutralise the objectives and functions of institutions and/or state.*

Test: Intelligence/information must be classified TOP SECRET when the compromise thereof:

- can disrupt the effective execution of information or operational planning and/or plans;
- can seriously damage operational relations between institutions;
- can lead to the discontinuation of diplomatic relations between states; and
- can result in the declaration of war.

Explanation: TOP SECRET is used when the compromise of information results in:

- the functions of a state and/or institution being brought to a halt by disciplinary measures, sanctions, boycotts or mass action;
- the severing of relations between states; and
- a declaration of war".

V. Ranks within SAPS

26. I attach as **annexure KDR01** a list of the ranks allocated to officials within SAPS with effect 01 April 2010.

E. MY FRUSTRATION IN SECURING CLASSIFIED DOCUMENTATION

27. In my investigation it became evident that the classification of documentation was utilised precisely to cover up maladministration, corruption, criminal actions, etc, or to protect individuals/officials involved in such cases.
- 27.1 In my view, many of the classified documents were incorrectly classified in that the information contained in such documents did not warrant the high level of classification.
- 27.2 From May 2012 to date (that is a period of more than 7 years), the management of SAPS and CI have frustrated the declassification of documents which, in my view, has been tantamount to refusing to supply the declassified documents to me. This concerns both documents that I have requested be declassified and documents that are already in my possession awaiting declassification.
28. To place the undermentioned CI investigation into context I briefly deal with the initial reason for my involvement in the SSA Looting investigation.

F. THE MDLULI VOSLOORUS CASE: MY ASSIGNMENT TO THE INVESTIGATION

29. On 21 March 2011, I was requested to form part of a team that was assigned to investigate a criminal case against General Mdluli and three others. At the time Lieutenant General Anwa Dramat ("**General Dramat**") was the National Head: Directorate of Priority Crimes Investigation ("**DPCI**" – also known as the "**Hawks**").
30. On 21 March 2011, I attended a meeting at the Provincial Headquarters of SAPS in Cape Town. I was called to the meeting by my immediate superior at the time the Provincial Head: DPCI, Western Cape, Major General Yoliswa Matakata ("**General Matakata**"). Present at the meeting was General Matakata, the Provincial Head:

DPCI, Gauteng Major General Shadrack Sibiya ("**General Sibiya**"), the Provincial Commissioner: Gauteng Province, Lieutenant General Mzwandile Petros ("**General Petros**"), Lieutenant Colonel Piet Viljoen ("**Lieutenant Colonel Viljoen**"), DPCI Western Cape and myself.

31. During the abovementioned meeting Lieutenant Colonel Viljoen and I were given a briefing by General Sibiya regarding a murder investigation that was being conducted in the Gauteng Province by members of the DPCI Gauteng office. First, according to General Sibiya, the investigating officers were allegedly intimidated by the individuals under investigation and could not continue with the investigation. Therefore, there was a need to appoint investigators from another province to take over the investigation. Secondly, he wanted to ensure that the investigation remained objective.
32. On 31 March 2011, General Mdluli, who at that stage was the Divisional Commissioner of CI within the SAPS, was arrested and appeared in the Boksburg Magistrate Court on a charge of murder and other charges ranging from Intimidation, Kidnapping, Assault (Grievous Bodily Harm) and Defeating the ends of Justice ("**the Mdluli Vosloorus case**").
33. On 07 April 2011, General Mdluli was granted bail and his case was postponed to 30 September 2011 for further investigation and the allocation of a High Court date.
34. On 30 September 2011, the case was postponed to 14 February 2012 for trial in the Johannesburg High Court.
35. On 14 February 2012, the murder and related charges were provisionally withdrawn against General Mdluli and three others on the instruction of the Director of Public Prosecution ("**DPP**") for South Gauteng, Advocate Andrew Chauke. The matter was referred to the Boksburg Magistrate Court for an inquest to be held.
36. The decision to refer the matter for an inquest was challenged by Freedom Under Law ("**FUL**"). Following the judgement handed down on 17 April 2014 in *National Director of Public Prosecutions and others v Freedom Under Law* 2014 (4) SA 298

(SCA) Advocate Chauke, re-instated charges against General Mdluli and one other but did not include charges relating to murder and attempted murder.

G. THE SSA INVESTIGATION

37. After the arrest of General Mdluli, some members of CI approached Lieutenant Colonel Viljoen and me with information regarding alleged crimes committed by members working at CI. These members did not want to speak openly and were fearful of General Mdluli and other high-ranking officers within CI.
38. Colonel Jacobus Johannes Hendrik Roos ("**Colonel Roos**")
- 38.1 We received a file from Colonel Roos from CI who was appointed as an Internal Auditor within CI. The file contained claims with supporting documentation relating to inter alia a cleaning company and repairs done to state motor vehicles in 2004. It was clear from the documents attached to the report that fraudulent quotes had been obtained in order to favour specific service providers. After reporting these incidents to Commissioner Mulangi Mphego ("**General Mphego**") the then Head of CI, Colonel Roos was stopped and not allowed to continue with his investigation.
- 38.2 This was not the only instance where Colonel Roos uncovered fraud and brought it to the attention of senior management within CI, without success.
- 38.3 Colonel Roos was assigned to Internal Audit at CI and mandated to audit the SSA. The functions of internal auditors are described in the South African Police Service's policy and delegation document in terms of the SSA.
- 38.4 Shortly after General Mdluli's appointment on 01 July 2009, he specifically wanted an investigation in respect of the SSA and the conduct of General Lazarus. A copy of Colonel Roos' affidavit is attached as **annexure KDR02**.
- 38.5 Colonel Roos describes at length in his affidavit the interference he was subjected to whilst trying to investigate matters of an alleged criminal nature.

This included the investigation into LLVS Trading Services and General Lazarus who was appointed as Head: SSA as mandated by General Mdluli (**“the Investigation into Lazarus”**).

38.5.1 On 29 July 2009 Colonel Roos states that he received a written instruction from General Mdluli to conduct this investigation.

38.5.2 Colonel Roos presented General Mdluli with two (2) progress reports detailing his investigation. The first report is undated and the second report is dated 26 August 2009.

38.5.3 Colonel Roos alleges that he was obstructed by General Lazarus in the course of his investigation which in turn led to him (Colonel Roos) approaching General Mdluli for assistance. General Mdluli requested Colonel Roos to draft a letter which granted Colonel Roos and his team “unrestricted” access to information pertaining to the investigation. Colonel Roos presented a draft letter dated 15 September 2009 to General Mdluli, which he refused to sign. Thereafter the investigation was stopped.

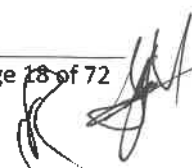
39. In November 2009, General Lazarus facilitated a trip abroad for General Mdluli and his wife, Ms Theresa Lyons (**“Ms Lyons”**), to Singapore. Shortly thereafter he facilitated another trip abroad for General Mdluli and his ex-wife, Ms Vusiwane Lilly Mdluli (**“Ms VL Mdluli”**), to China.
40. On 03 December 2009, General Mdluli stopped the Investigation into the conduct of General Lazarus. At that point, Colonel Roos had already provided General Mdluli two (2) information notes in respect of his investigative progress. This instruction was given to Colonel Roos by General Mdluli during a meeting at CI Head Office with General Lazarus in attendance.

b. The role of Colonel Barnard in purchasing the BMW for General Mdluli

41. About April 2011, Lieutenant Colonel Viljoen and I were able to establish that during approximately April 2010 Colonel Barnard approached Leo Haese BMW in Pretoria informing them that he was interested in buying a 5 series BMW. He wanted to trade in a 7 series BMW on the 5 series BMW. One of Colonel Barnard's functions was to purchase vehicles for CI through Company X. Colonel Barnard approached Leo Haese BMW Pretoria as a representative of Company X.
42. The trade in vehicle was a personal motor vehicle that belonged to General Mdluli and he had a settlement amount of R560,526.01 outstanding on his hire purchase through BMW Financing.
43. In essence, the deal that was negotiated between Leo Haese BMW Pretoria and Colonel Barnard entailed that Colonel Barnard (through Company X) had to buy two (2) vehicles from them in order to finance the shortfall on the trade in vehicle that belonged to General Mdluli. Colonel Barnard reported directly to General Lazarus who in turn reported to General Mdluli.
44. General Mdluli and Colonel Barnard were since arrested on charges of fraud and corruption. They appeared in the Serious Commercial Crimes Court, Pretoria. The charges were thereafter withdrawn on 14 December 2011. This was the original Silverton CAS155-07-2011 case docket.
45. I have testified before the Mokgoro Enquiry into the fitness of Advocate Nomgcobo Jiba and Advocate Lawrence Sithembiso Mrwebi to respectively hold office of the Deputy National Director of Public Prosecutions and Special Director of Public Prosecutions. My testimony related mainly to the withdrawal of the charges and the failure to prosecute General Mdluli and Colonel Barnard regarding this investigation.

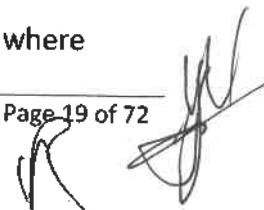
H. OBTAINING CLASSIFIED DOCUMENTATION RELEVANT TO THE INVESTIGATION

46. Pursuant to the Mdluli Vosloorus case, the subsequent purchasing of the BMW for General Mdluli and information regarding various additional allegations of criminal conduct within CI, Lieutenant Colonel Viljoen applied for search and seizure warrants in respect of two (2) covert CI premises at which documents relating to the SSA Looting Investigation was reasonably suspected to be kept.
47. On 06 September 2011, the search and seizure warrants were duly authorized.
48. Due to the sensitivity of the matter General Dramat was requested to intervene and facilitate compliance with the said search and seizure warrants without compromising the covert premises in question.
49. On 13 September 2011, General Dramat called a meeting at OR Tambo International Airport which was attended by him, General Sibiya, Lieutenant General Seswantsho Godfrey Lebeya ("**General Lebeya**"), Major General Vele Simon Matshatshe ("**General Matshatshe**"), Lieutenant Colonel Viljoen and me. An agreement was reached at the meeting that the search and seizure warrant will not be executed and that a person will be appointed to facilitate the process.
50. After the meeting, Major General M Hankel ("**General Hankel**") was appointed to facilitate the search and seizure execution process on behalf of CI. Brigadier Nicolaas Van Graan ("**Brigadier Van Graan**") from Legal Services, Head Office was requested to monitor the process.
51. Based on the information that members of my team and I received, I requested from CI *inter alia* all files pertaining to the appointment of family members of General Mdluli. General Hankel facilitated the process. I received seven agent files.



I. COLONEL NAIDOO: INTERFERENCE BY GENERAL LAZARUS

52. On 18 October 2011, I interviewed Lieutenant Colonel Dhanajaya Gangulu Naidoo ("Colonel Naidoo") regarding alleged fraud and corruption irregularities at CI. I specifically interviewed him regarding his handling of the agents in the seven files obtained as it was clear from the files in my possession that he was the responsible person. I also interviewed him regarding a trip to Singapore. I confronted him with documentation which I had received from CI. Colonel Naidoo worked for and directly reported to General Lazarus within the SSA office.
53. Colonel Naidoo informed me that he was handling the seven (7) agents which are all related to General Mdluli through family relationships. Colonel Naidoo made certain admissions to me during the interview. Colonel Naidoo informed me that General Mdluli and General Lazarus at CI requested him to handle these seven agents. These seven agents were appointed in the beginning of 2010 during a recruitment drive by CI to employ agents in the fight against crime. None of them have any experience in either the gathering of crime intelligence or covert operations. Some of them had been paid out of the SSA to compensate for the shortfall on their income as members of SAPS which arose due to their promotions.
54. Colonel Naidoo did their administration in respect of the salaries they received and the vehicles which they drove. They however did not report to him in respect of their duties. Colonel Naidoo informed me that they were appointed after General Mdluli provided General Lazarus with a list of his family members.
55. On 19 October 2011 after he had spoken to me, Colonel Naidoo decided to assist in the investigation and he confided in Colonel Barnard as he trusted Colonel Barnard. Colonel Naidoo informed me that Colonel Barnard however broke that trust because he informed General Lazarus on the same day that Colonel Naidoo had spoken to me; and that he had admitted to submitting false claims on behalf of himself and others.
56. On the same day, FM08 ("FM08"), General Lazarus and FM09 ("FM09") requested Colonel Naidoo to accompany them. He was taken to General Lazarus's house where



he was interrogated. He was confronted with the fact that he was working with the DPCI and they wanted to know what he had told the DPCI. FM10 ("FM10") joined them at General Lazarus' house. Colonel Naidoo denied the allegations put to him during the interrogation.

57. FM10 said that his contact at the Hawks informed him that Colonel Naidoo admitted to certain things and that he is now on the side of the DPCI. Colonel Naidoo stated that he again denied the allegation and that he was able to deflect the suspicion. The conversation turned to a general topic up to the point where Westville Travel air tickets were discussed and FM08 said that General Hankel requested certain documentation from him regarding the air tickets. FM10 told FM08 that he must try and destroy all the records pertaining to the air tickets.
58. On 20 October 2011, Colonel Naidoo informed me that on the same evening that he was taken to General Lazarus' house he heard them discussing the placement of a newspaper article relating to General Dramat and General Sibiya. He stated that General Lazarus wanted to use sources within the media (journalists paid by CI) to write a story in order to take the focus away from them. This according to Colonel Naidoo is a strategy employed to cast suspicion on those they perceived to be a threat. General Lazarus viewed General Dramat, as Head of the DPCI, as the force behind the investigation into CI.
59. On 23 October 2011, a newspaper article was published in the Sunday Times. General Mdluli made representations to the National Prosecuting Authority ("NPA") in which General Lazarus used this newspaper article to cast suspicion on General Dramat and the investigating team. The newspaper article is attached as **annexure KDR03**.
- 59.1 I later became aware that the Sunday Times published a further article on 13 October 2011 continuing to implicate General Dramat in the "*rendition scandal*". See **annexure KDR04**.
60. On 24 October 2011, Colonel Naidoo was again fetched at his home and taken to General Lazarus' office where he was subjected to intimidation. This time Colonel



Barnard, FM07 ("FM07") and FM10 were present. That same evening, I placed Colonel Naidoo and his family into the Witness Protection Program ("WPP").

61. General Lazarus had the authority to release funds from the SSA. He was able to control funds being paid to sources and contact persons. Reporters are used to publish and withhold articles to drive a certain narrative. According to Colonel Naidoo, these reporters are paid from the SSA. I am also aware that General Lazarus used funds from the SSA to directly appoint defence lawyers to represent him after the search warrants were issued in respect of the two (2) CI offices which were eventually not executed by agreement. The proper procedure that ought to have been followed was to contact the SAPS legal services to appoint lawyers through the State Attorneys' offices. In my view, there was no legal basis to challenge the search warrants.
62. I have also been informed that General Lazarus has approached the chairperson of the Joint Standing Committee on Intelligence, Cecil Burgess ("Mr Burgess") on various occasions without notifying his Acting Divisional Commissioner of these visits. General Lazarus was apparently trying to convince Mr Burgess that my investigation compromised national security. A letter from Mr Burgess stating that General Hankel must be removed from the investigation was sent to the Acting Divisional Commissioner of CI. I have had sight of that letter.
63. As part of the investigation Lieutenant Colonel Viljoen and I also obtained various search and seizure warrants relating to some of the entities implicated in the SSA Looting Investigation. As part of my application in respect of the premises in Gauteng, I indicated that I wanted to seize IT equipment such as computers, hard drives, memory sticks, etc. I requested the Technical Support Unit ("TSU") within CI that deals with the forensic investigation of electronic equipment to assist with the search and seizure operations. I have subsequently been informed that the TSU falls under the direct command of General Lazarus. General Lazarus was in fact informed of my intended search by the commander of TSU, Pretoria as he is required to do so.

64. Incidents relating to processes followed and interference that I experienced during the course of the investigation up the end of February 2012 is detailed in my report attached as annexure KDR05.

J. INVESTIGATIONS: INFORMATION SUPPLIED BY COLONEL NAIDOO

65. Before I carry on from March 2012, I deal with some aspects of investigations that arose from information provided to me by Colonel Naidoo during October/November 2011:

- One Stop Travel and Tours, Durban: Flight Arrangements
- Joe Marques: New World Motors – Procurement of Vehicles
- General Solomon Lazarus: Promotions and Appointments of family and friends to CI
- General Lazarus: Abuse of safe house
- General Lazarus: Abuse of SSA – Purchasing of vehicles
 - *General Mdluli*
 - *General Manoko Nchwe*
- General Lazarus: Use of SSA to fund Upgrades to private premises
 - *General Mdluli*
 - *General Manoko Nchwe*
 - *The then Minister of Police Nathi Mthethwa*
- General Lazarus: Mr Panaganath (aka Timmy) Marimuthu, a business person in Kwa-Zulu Natal
 - *Payment as source*
 - *Appointment of family and friends*
 - *Rental of Properties*
- General Lazarus: Mr John Appalsami of Daez Trading cc – Safe Houses
 - *Clearwater Estate*
 - *Gordon Villa*
 - *Morgan Ridge*

- *Office Accommodation*
- General Lazarus: Authorized trips abroad for General Mdluli and family
 - *Trip to China*
 - *Trip to Singapore*
- General Mdluli: Promotions and Appointments of family and friends to CI

66. During late 2011 or early 2012, I briefed Lieutenant General Lesetja Joel Mothiba ("**General Mothiba**"), the National Head of Detectives at the time, and Brigadier De Villiers Odendaal ("**Brigadier Odendaal**"), National Office: Legal Services, in Cape Town about the information that Colonel Naidoo provided to me. The information mainly concerned the provinces of Kwa-Zulu Natal, Gauteng and the Western Cape. A decision was taken that the disciplinary investigations into those allegations would be dealt with by General Mothiba. A few weeks after, General Mothiba informed that they will investigate the allegations concerning Kwa-Zulu Natal. In this regard, Brigadier Simon Madonsela ("**Brigadier Madonsela**") and Captain Ramesh Heeralal ("**Captain Heeralal**") were appointed to conduct disciplinary and criminal investigations.

1. One Stop Travel and Tours, Durban: Flight Arrangements [Late 2009 – October 2011]

67. Colonel Naidoo informed me that he had on several occasions arranged for General Mdluli's wife, Ms Lyons and their two children, to fly up to Johannesburg to visit him. Although the visits were of a private nature, the flights were paid for out of the SSA. The SSA may be utilized to pay for air tickets in as far as it is for agents and informers on official business, but not for private matters. Flights for General Mdluli were also paid out of the SSA and these flights were also private in nature, according to Colonel Naidoo. General Mdluli was not allowed to travel utilizing SSA funds as his flights should have been financed through the SAPS open budget.

68. According to Colonel Naidoo, General Mdluli and his family were not the only unauthorized people to travel on air tickets bought with SSA funds. Colonel Naidoo also reported that General Lazarus used funds from the SSA to pay for flights and accommodation for pastors from the African Dream Centre, a church General Lazarus

belongs to. I have confirmed this allegation as I have found several instances where these individuals' travel arrangements had been paid for by Company X, utilising the SSA.

69. In order to make a flight or accommodation booking, Colonel Naidoo explained that he contacted Mahesh Parekh ("**Mr Parekh**"), a travel consultant with a company called Westville Travel ("**Westville Travel**") situated in Westville, Durban. No paperwork was required. The parent company to Westville Travel was One Stop Travel and Tours ("**One Stop Travel and Tours**") also situated at Westville, Durban. Colonel Naidoo would give Mr Parekh the name of the individual and request an air ticket or accommodation which Mr Parekh would arrange through One Stop Travel and Tours. One Stop Travel and Tours would invoice Westville Travel for the service which would in turn invoice Company X for the same service at an inflated price.
70. General Hankel provided me with a list of remittance advices for air travel from Westville Travel. These remittance advices showed that:
- 70.1 An invoice from Westville Travel containing the number of passengers, the travel route and the banking details of One Stop Travel and Tours (not Westville Travel) was addressed to Company X.
- 70.1.1 The inflated invoice created by Parekh resulted in a credit to Company X in the general ledger of One Stop Travel and Tours.
- 70.2 Attached to the remittance advices was a key which identified the actual passenger.
- 70.3 Payment was then made by Company X from the SSA based on the documents presented. General Lazarus approved the payments in his capacity as the Chief Financial Officer of the SSA.
71. According to the general ledger of Company X, more than R1million has been paid to One Stop Travel and Tours since March 2010 for air tickets. There was also bookings for air tickets dating back as early as March 2009 which were paid out of the SSA.

72. Colonel Naidoo also informed me that it had come to his attention that plans were being made to destroy the records of Westville Travel and One Stop Travel and Tours because it implicated some of his colleagues within CI.
73. On 25 October 2011, a search and seizure warrant had been duly authorized. This led to the premises of Westville Travel being searched on the same date. It was clear that Mr Parekh, who was managing the branch that was searched, knew that a search was going to take place. He was the only person at the premises when I arrived. He in fact had copies of all of the invoices that I required, already printed out. He had a copy for himself and a copy for me available. I enquired from him as to who informed him that I was going to come to search his premises whereupon he informed me it was a FM08 from CI.
74. I also obtained an affidavit from Mr Parekh in which he stated the following when I enquired about interference: *"Between 19 and 20 October 2011 I received a call from FM08. He told me that personnel from Johannesburg or Pretoria would be coming down to Durban to pick up invoices from [Company X] and keep them ready. He also told me to add the name of the travellers to the invoices before I print it. I had to give these invoices to the personnel from Johannesburg or Pretoria. FM08 also requested me to not reflect the names of the following passengers on the invoices, FM01, Senthumule Mashhudu, Darren Lazarus, Sandra Lazarus. I did not get round to doing that"*. I do not attach a copy of his affidavit but I will make it available to the Commission if required to do so.
75. After perusing and comparing the invoices seized from Mr Parekh with the invoices received from General Hankel, it became clear that the identities of the passengers were deliberately withheld in order to hide the identity of a specific passenger. It also became clear that the majority of flights were undertaken by General Mdluli, General Lazarus and Mr Marimuthu, which at times included their families. I deal with Mr Marimuthu later in my affidavit.
76. I was also able to establish that cheque payments from Company X paid to One Stop Travel and Tours from April 2010 to 25 October 2011 amounted to R1,168,531. The



total amount paid to One Stop Travel and Tours (as per their worksheets) in respect of General Mdluli, General Lazarus and Mr Marimuthu regarding services rendered over the same period is as follows:

• General Mdluli (R190,919) and family (R116,000)	= R306,919
• General Lazarus (R131,626) and family (R28,498)	= R160,124
• Mr Marimuthu (R148,421) and family (R66,710)	= R215,131
Total	= R682,174

77. The total amount of R682,174 amounts to more than half the total amount paid by Company X to One Stop Travel and Tours in the sum of R1,168,531.
78. General Mdluli also made use of the normal SAPS open budget for his official travel arrangements. In this regard, more than R700,000 was paid towards expenses relating to air travel for General Mdluli during the period July 2009 to March 2011.
79. Various senior police officials like Major General Hilda Senthumule (“**General Senthumule**”), the Head of Security and Counter Intelligence in CI, and General Matshatshe, the Acting Head of CI at the time, together with their families were also flown to Durban to attend church with Mr Marimuthu and General Lazarus. These travels were also paid for by Company X with the use of SSA monies.
80. General Lazarus was subjected to a disciplinary hearing and found guilty on charges that he misrepresented to CI as to who had paid for the air tickets.

II. Joe Marques: New World Motors – Procurement of Vehicles

81. CI uses the SSA to fund the procurement of vehicles. Colonel Barnard oversees this process as Section Commander, Supply Chain Management. Colonel Barnard could however only buy a vehicle after General Lazarus had signed the approval for the procurement of such a vehicle. A secret register number gets allocated to this vehicle hence the referral to the vehicles as SR vehicles (“**SR vehicles**”).
82. Colonel Naidoo informed me that when SR vehicles are due for replacement the vehicles get sold through a closed tender process. A closed tender process is

normally used for this purpose in the CI environment due to security concerns. As far as I can recall, there were 5 bidders in total. All the bidders are pre-selected, two of which share directors/members who are family members of Mr Joe Marques (“Mr Marques”) from New World Motors (“NWM”). Colonel Naidoo indicated that the closed tender process is a sham as Colonel Barnard and General Lazarus informs Mr Marques beforehand of the tender amounts from the other bidders. Mr Marques would then adjust his bid to be just higher than that of the other bidders. He would then be awarded the tender and buy the vehicles. At the end of 2011, Mr Marques had approximately eighty (80) vehicles registered in his name and/or NWM that were bought from Company X through the closed tender process.

83. Most of the vehicles sold through the closed tender process were still in a good condition and only needed minor repairs. Company X would then procure some of these vehicles at an inflated cash price from Mr Marques and/or NWM using funds from the SSA.
- 83.1 According to Colonel Naidoo, some of the cash surplus derived from the sale of the vehicles at an inflated cash price would be used to supplement or pay for any shortfall for repayment due by members who receive advance payments for work-related expenses. In other words, Mr Marques would supply the difference of monies so that the members can repay any monies that are due to SSA. Colonel Barnard facilitated this process. Colonel Naidoo informed that he had on numerous occasions collected monies from Mr Marques for this purpose.
- 83.2 Colonel Naidoo also indicated that Mr Marques would provide, *inter alia*, FM08, FM09, FM07 and himself with fraudulent invoices to generate cash to be used to cover the shortfall in respect of other unaccounted for expenses.
- 83.3 I have received SR vehicle files in respect of General Mdluli’s family. I have since had the opportunity to peruse documentation received from CI through General Hankel. Amongst the documents in the SR vehicle files I was able to identify two (2) invoices from NWM to Company X relating to the replacement of windscreens.



- 83.4 On 23 September 2011, I requested some of the members on my team to visit the premises of NWM as to enquire whether or not NWM replaced windscreens. The members did not identify themselves as police officials. They were informed by staff at NWM that they do not replace windscreens. It was also obvious from their observation that the premises did not have the facility to undertake such repairs. The premises consist of a house and a fairly large yard at the back that appears to be used as a scrap yard. This was done approximately one (1) month before I spoke to Colonel Naidoo regarding NWM.
84. Members of CI were also able to buy SR vehicles back from NWM in their private capacity. This should not have happened. These vehicles were apparently acquired at the same rate that Mr Marques would have paid for it through the closed tender process, which was below market value.
85. Shortly after 23 September 2011, I requested from General Hankel the financial statements (turnover) relating to the total trade between Company X and NWM for the financial years 2010/2011 and 2011/2012. I wanted to establish whether the trade between Company X and NWM was of any significance, as that would be a good indicator as to whether or not to pursue this line of enquiry. General Hankel informed me on the following day that he had spoken to General Lazarus regarding my request and that General Lazarus informed him that I am not entitled to the information relating to NWM due to "*National Security issues*". This incident clearly indicated the ridiculous position I found myself in, in that I had to enquire from a suspect (General Lazarus) whether or not I could get access to documentation needed to either prove or disprove his and others involvement in this allegation.
86. Based on Colonel Naidoo's information and General Lazarus' response, I requested a search and seizure warrant for the premises of NWM which I executed on 11 November 2011. It is clear from the documentation uncovered that NWM had been in business with Company X since at least the late 1990's. It is also clear from the documents that have been perused that the majority of business conducted by NWM was with Company X.



87. Colonel Naidoo also informed me that a family member of Mr Marques was appointed as a Captain within CI. I confirmed his appointment with General Hankel.

iii. General Solomon Lazarus: Promotions and Appointments of family and friends to CI

88. Colonel Naidoo informed me about his relationship with General Lazarus and alleged acts of criminality, which included fraud and corruption, that he and General Lazarus had been involved in.

89. General Lazarus is married to Colonel Naidoo's mother's cousin. Colonel Naidoo got to know General Lazarus through playing volley ball in the late 1990's. They used to play in the same league in Tongaat. Colonel Naidoo was promoted from being a Warrant Officer to the rank of Lieutenant Colonel by General Lazarus through a covert advertisement process (250 posts) in 2010. He was not the only member of CI who got promoted in such a way. Various other close confidants and family members of General Lazarus also got either promoted or appointed in senior positions without following due process. General Lazarus was also intimately involved in the appointment of family and friends whereas he should have recused himself from the process.

90. The following family and friends of General Lazarus were appointed within the CI agent program without following due process:

Table 2: Appointments: General Lazarus in SAPS CI

RELATIONSHIP	STATUS	DATE OF APPOINTMENT IN RANK	RANK	LEVEL	DATE OF PROMOTION / APPOINTMENT IN RANK	RANK	LEVEL
FM01	Active		Civilian		01 June 2010	Warrant Officer	7
FM02	Discharged on 10 June 2018		Civilian		01 March 2010	Captain	8
FM03	Active		Civilian		22 June 2010	Captain	8
FM04	Active		Civilian		01 March 2010	Lieutenant Colonel	10
FM05	Active		Civilian		22 March 2011	Secretary	5
FM06	Active	01 March 2001	Admin Clerk	6	15 February 2010	Captain	8
FM07	Active	01 August 2005	Captain	8	01 March 2010	Colonel	12

FM08	Active	12 February 2010	Captain	8	01 June 2010	Lieutenant Colonel	10
FM09	Active	12 February 2010	Lieutenant Colonel	10	01 August 2010	Colonel	12
FM10	Active	01 April 2006	Superintendent	10	01 March 2010	Colonel	12
FM10	Active	01 March 2010	Colonel	12	01 September 2017	Maj General	14
FM11	Active	01 March 2009	Superintendent	10	01 April 2010	Lieutenant Colonel	10
FM12	Active	01 February 2006	Admin Clerk	7	12 February 2010	Lieutenant Colonel	10

IV. General Lazarus: Abuse of safe house

91. Colonel Naidoo stated that, during 2005 and 2006, General Lazarus and his family stayed in a safe house (premises rented through the SSA to hide to the identity of the occupier) situated in Emerald Estates, Greenstone, Johannesburg, for just over a year while his own house was being renovated. The rental amounted to R6,000 per month and according to Colonel Naidoo he was responsible for paying the rent out of the SSA.
92. These premises were rented only for the period that General Lazarus and his family made use of it and it was exclusively furnished from monies out of the SSA. After the lease period had expired, the furniture was written off. The furniture was still in excellent condition, and Colonel Naidoo and General Lazarus took some of the furniture for themselves. According to Colonel Naidoo, General Lazarus took various items including mirrors, coffee tables and lamps.
93. I have been provided with documentation from CI confirming the rental of the premises as a safe house funded through the SSA.

V. General Lazarus: Abuse of SSA – Purchasing of vehicles

94. According to Colonel Naidoo, General Lazarus used his position as Head of the SSA to “buy” influence from senior police and other government officials. He used this influence to fend off any attempt to have the SSA investigated.

94.1 We discovered about May 2011, separate and before we spoke to Colonel Naidoo, that General Lazarus used funds from the SSA to procure vehicles for senior managers within CI.

94.2 Senior managers were allowed to choose a vehicle to the value of approximately R500,000 which General Lazarus funded out of the SSA, despite them already receiving a vehicle allowance as part of their remuneration package. They therefore received an additional financial advantage to which they are not entitled. This placed them in a very difficult situation when trying to act against General Lazarus.

a. General Mdluli

95. We discovered that General Lazarus approved payment for the following vehicles for General Mdluli's use during his tenure as Head of CI from 01 July 2009 until 31 March 2011:

Table 3: Vehicles provided to General Mdluli

VEHICLE	VALUE
Mercedes Benz E Class Sedan E 350 CDI	R826 780
Mercedes Benz E 350 CDI	R636 950
BMW 530D Sedan	R706 150
Mercedes Benz ML 350	R373 850
Lexus	R610 000

96. The cost of the abovementioned vehicles amounted to R3,153,730. This does not include the vehicles that were acquired for General Mdluli's family who were appointed without due process, which I discuss below, which they received as operatives in the agent program.

b. General Manoko Nchwe

97. General Manoko Nchwe ("General Nchwe"), as the Head: Human Resource Management, SAPS, received a white Q5 Audi with registration number ZNF 971 GP from General Lazarus, which was bought with funds from the SSA in the amount of

R557,079.96. I have confirmed that the vehicle was registered in her name since 13 August 2010. Colonel Naidoo delivered the vehicle to her. According to Colonel Naidoo, the vehicle was given to her after she and General Lazarus had a difference of opinion regarding the "250" appointments within CI, which included the appointment of family and friends of *inter alia* General Lazarus, General Mdluli and Mr Marimuthu. I deal with the appointment of family and friends of General Mdluli and Mr Marimuthu later in this affidavit.

98. The motivation attached to support the acquisition of this vehicle states as follows: *"There are time vehicles are being procured for the various operations without applications reason being that these vehicles are being used in highly sensitive operations. These vehicles are utilized by agents. This happens during the course of the year when the need arises."* I have the supporting documentation of this vehicle.
99. According to my knowledge, General Nchwe was never a member of CI or in the agent program, and neither did she undertake *"highly sensitive operations"*.
100. The motivation in support of the acquisition of the vehicle indicates a misrepresentation to the Auditor General of South Africa (*"AGSA"*) and to the accounting officer, which in this instance is the National Commissioner.
101. Furthermore, the vehicle was registered on the CI asset register as an A4 Audi in order for the AGSA not to pick up the anomaly. The procurement of a luxury vehicle such as a Q5 Audi would have raised questions from the AGSA.
102. General Nchwe's was confronted with disciplinary proceedings in respect of this vehicle. The day before she was to be served with a notice of intention to suspend her, she resigned from the SAPS.
103. During the course of our investigation, I can confirm that this incident did indeed take place.

VI. General Lazarus: Use of SSA to fund Upgrades to private premises

a. General Mdluli

104. Colonel Naidoo also informed that General Mdluli's house received a comprehensive security upgrade funded from the SSA to the value of R190,735 to which he was not entitled.

105. I have the various claim forms detailing the transaction.

b. Lieutenant General Manoko Nchwe

106. Colonel Naidoo also informed that General Nchwe's house received a security upgrade funded from the SSA to the value of approximately R40,000 to which she was not entitled.

107. During the course of our investigation, I can confirm that this incident did indeed take place.

c. The then Minister of Police Nathi Mthethwa

108. Colonel Naidoo also informed me that security renovations had been undertaken at the private residence of the then Minister of Police Nathi Mthethwa ("**Minister Mthethwa**") at Kwa-Mbonambi in Kwa-Zulu Natal. A risk assessment was done on 31 May 2010 on the premises on the instruction of General Mdluli.

109. Colonel Naidoo submitted claims to the value of R195 581.45 on 14 September 2010 (R70 738.60), 13 December 2010 (R57 146.30) and 31 January 2011 (R67 696.55), through the SSA in order to pay for the renovations done on the premises. General Lazarus approved all the claims. It is not known whether Minister Mthethwa knew that the funding came from the SSA. I have received these claims as part of the documents I requested from General Hankel.

110. Colonel Naidoo also had copies of the claims in his safe at his office. I was able to retrieve the copies of the claims from his safe. According to Colonel Naidoo, General

Lazarus requested him to make copies of the claims after it became apparent that General Bheki Cele (“General Cele”), the then Commissioner of the SAPS and Minister Mthethwa had lost trust in each other. According to Colonel Naidoo, the documents were to be given to General Cele to ensure that Minister Mthethwa could not act against him.

111. This is an example of an investigation which was never finalised due to SAPS failure to assist in providing important investigative documents.

VII. General Lazarus: Mr Panaganath (aka Timmy) Marimuthu

112. During late 2010, CI went through a restructuring phase.

113. According to Colonel Naidoo:

- 113.1 As part of the restructuring, General Lazarus, as the CFO, wanted to retain and augment an operational capability within CI which fell outside his mandate. This was contrary to the working methodology within CI because his unit, being the SSA, is considered to be an operational support unit.
- 113.2 General Lazarus had to ensure an operational capability in order to generate funds from the SSA. The funds were generated by FM09, Colonel Narandra Harripersad Singh (now deceased) (“Colonel NH Singh”), FM08, FM10, FM07 and himself through *inter alia*, the submission of a variety of fraudulent claims.
- 113.3 General Lazarus needed the support of General Cele, so General Lazarus approached Mr Marimuthu to assist him by introducing him to General Cele. According to my information, Mr Marimuthu had a close relationship with General Cele which started whilst he (General Cele) was the Member of the Executive Committee (“MEC”) for Transport in Kwa-Zulu Natal. Colonel Naidoo states that Mr Marimuthu facilitated a series of meetings in which General Cele agreed to restructuring proposals made by General Lazarus in respect of CI. Colonel Naidoo also alleges that General Cele was paid in cash to secure his support in relation to General Lazarus’ restructuring proposal allowing operational capability.

113.4 Mr Marimuthu also received some benefits from this relationship, as Mr Marimuthu was registered as a contact person/informer to CI and was paid large sums of money to influence General Cele to support General Lazarus. Colonel Naidoo also indicated that he personally paid R50,000 to Mr Marimuthu on one such an occasion.

113.5 FM08 was Mr Marimuthu's main handler.

a. Payments as a Source

114. As part of my investigation, I received various claim application forms from *inter alia* FM08. One of those claim application forms dated 11 August 2011 motivates for a payment of R50,000 to be paid to SRXXXXXX. Attached to this claim application form is a motivation dated 08 August 2011 seeking authority for monthly remuneration for SRXXXXXX in the amount of R50,000. The document is signed by both FM08 (applicant) and General Lazarus (approval) on 11 August 2011. The documentation will be attached as **annexure KDR06**, if and when it is declassified. I understand that the Commission has requested the SAPS to declassify the documentation.

115. My understanding of the motivation document requires Mr Marimuthu to act as "agent of influence" which falls outside the purview of the mandate of CI. The information that I received from Colonel Naidoo also corroborates Mr Marimuthu's appointment.

b. Appointment of family and friends

116. Colonel Naidoo indicated that the following family members and friends of Mr Marimuthu were also appointed within CI as reward for his influence:

Table 4: Appointments: Mr Marimuthu in SAPS CI

RELATIONSHIP	STATUS	DATE OF APPOINTMENT IN RANK	RANK	LEVEL	DATE OF PROMOTION / APPOINTMENT IN RANK	RANK	LEVEL
FM13	Active		Civilian		01 February 2011	Colonel	12
FM14	Resigned on 4 July 2016		Civilian		01 January 2011	Lieutenant Colonel	10

FM15	Active		Civilian		01 January 2011	Lieutenant Colonel	10
FM16	Retired on 31 October 2014	01 July 1999	Superintendent	10	01 January 2011	Colonel	12
FM17	Retired on 31 March 2013	23 May 2003	Constable	5	01 February 2011	Captain	8
FM18	Active		Civilian		22 March 2011	Admin Clerk	3
FM19	Resigned on 31 December 2015		Civilian		30 March 2011	Admin Clerk	3
FM20	Active	01 August 2010	Warrant Officer	7	01 October 2010	Captain	8
FM21	Retired on 31 March 2017		Civilian		01 January 2011	Lieutenant Colonel	10
FM22	Active		Civilian		01 January 2011	Warrant Officer	7
FM23	Active		Civilian		01 January 2011	Captain	8

117. According to Colonel Naidoo these individuals did not do any intelligence gathering work for CI despite being employed by CI.
118. When appointed as an agent or recruited as a source, the intelligence gathered must be recorded and given to his/her handler. It is the handler's duty to update the production file of the agent or the source. General Hankel confirmed the appointment of some of the individuals listed in the table above. I then requested their production files and was informed by General Hankel that no files existed because General Lazarus had given an instruction that it was not necessary to maintain production files for these individuals.
119. As a result of the investigation into the appointment of family and friends within CI, I became aware of allegations of sexual misconduct against Mr Marimuthu by a female individual who worked for CI. Based on the evidence that I have seen, Mr Marimuthu was instrumental in her appointment to CI. I was informed that the same sexual misconduct allegation was made to the Inspector General of Intelligence about early 2012. The consensus at the time was that this serious allegation had to be investigated. I was placed in possession of an affidavit made by the female individual concerning the allegations. The investigation into the allegations against Mr Marimuthu was stopped.

120. Brigadier Madonsela provided me with copies of several affidavits that confirms allegations including:

120.1 nepotism in relation to Mr Marimuthu,

120.2 the leading role that Mr Marimuthu played in the appointment of family and friends into CI,

120.3 blatant non-compliance with selection and recruitment procedures within SAPS,

120.4 the infiltration of Mr Marimuthu and *other role players involved in fraud, corruption and other crimes in the KZN legislature and KZN province,*

120.5 sexual exploitation by Mr Marimuthu of an CI employee.

121. Copies of the affidavits are in my possession and will be made available to the Commission if necessary. I do not attach these affidavits due to the possible exposure of agents whose names are mentioned therein and not in the public interest.

122. Brigadier Madonsela's investigation into Mr Marimuthu's activities was stopped. As far as I know, it was never concluded.

c. Rental of Properties

123. I was able to establish, following information received from Colonel Naidoo that more than four properties belonging to Mr Marimuthu were rented by CI as safe houses. Colonel Naidoo informed that Mr Marimuthu received inflated rentals up to R250,000 per month for these properties.

VIII. General Lazarus: Mr John Appalsami of Daez Trading cc – Safe Houses

124. Colonel Naidoo provided me with information regarding a close corporation called Daez Trading cc with registration number 2008/038456/23 registered to Mr John Appalsami ("**John Appalsami**") as a member. Mr Appalsami is a friend of General Lazarus. He acted as "a middle man" in respect of various premises leased as safe

houses by CI through Daez Trading. He also benefitted through the Atlantis Motors "*Barut account*", an aspect with which I deal later in my affidavit.

125. General Lazarus was the person who approved the following transactions that we investigated:

a. Clearwater Estate

125.1 During November 2010, CI leased a safe house situated at Clearwater Estate, Boksburg, through Daez Trading. The monthly rental was R20,000. General Mdluli had the exclusive use of this safe house since it was leased during November 2010. There was no valid reason for the exclusive use of the safe house. As far as I am aware, the rental was still being paid in November 2011 despite the premises not been utilized by CI since the arrest of General Mdluli in April 2011.

b. Gordon Villas

125.2 General Mdluli owned premises called Gordon Villas in Gordons Bay. CI rented this property, through Daez Trading, as a safe house from General Mdluli until the end of September 2011. Colonel Naidoo informed me that he paid the monthly rental for this property in cash to General Mdluli.

c. Morgan Ridge

125.3 Ms CL Dicks, the daughter of Mr Marques of NWM, leased a property situated in Morgan Ridge, Boksburg to CI, through Daez Trading, as a safe house. According to Colonel Naidoo, the monthly rental was inflated by R2,000 which was divided between General Lazarus and himself.

d. Office Accommodation

125.4 CI also leased, through Daez Trading, office accommodation for asset and loss management. I can confirm that FM28 ("*FM28*") and FM27 ("*FM27*"), who are family members of General Mdluli were employed by CI at this office. According to

Colonel Naidoo, the monthly rental was inflated. I am not in position to verify whether such inflation did take place.

126. I confirmed the rental agreements for these properties and have received some of the original documentation from CI.

IX. General Lazarus: Authorized trips abroad for General Mdluli and family

a. Trip to China

127. On 06 November 2009, General Mdluli and Ms VL Mdluli (at the time) flew Business Class and departed from OR Tambo International Airport to Hong Kong International Airport and returned from Hong Kong International Airport on 14 November 2009 and arrived at OR Tambo International Airport on 15 November 2009. According to Colonel Naidoo, General Mdluli informed him that the Mdluli family were visiting their daughter, Busiswe Mdluli, in China. I was able to establish that Busiswe Mdluli was indeed studying in China at the time. This was also confirmed by General Mdluli during his testimony at his bail application. I have obtained the itinerary for the trip which confirms that the trip did in fact take place.
128. The total cost of this trip abroad amounted to R110,000 of which R60,000 was funded via the SSA. A further R50,000 was allegedly donated by Atlantis Motors via the "*Barut account*". The motivation provided for the funds to be utilized from the SSA indicates that General Mdluli went over to China in his official capacity. I was however able to confirm from leave documents submitted by General Mdluli, substantiated by an affidavit from the leave clerk, that General Mdluli took vacation leave for the period in question. General Mdluli also did not inform General Dramat, his immediate commander at the time, of his intention to undertake an official trip abroad. This is confirmed by General Dramat through the submission of an affidavit. Further to that, no application was made via the office of the National Commissioner and/or the Minister's office as per standing instructions and regulations for General Mdluli to undertake an official trip abroad.

129. I have also been able to establish that Busiswe Mdluli's travel arrangements were arranged through Westville Travel. According the Department of Home Affairs Travelers Record System, Busiswe Mdluli departed from South Africa to China on 29 August 2009 and returned from China to South Africa 30 January 2010.

b. Trip to Singapore

130. The second trip abroad relates to an official trip to Singapore from 21 November 2009 to 28 November 2009, 6 days after returning from China. In this instance General Mdluli's wife, Ms Lyons accompanied him. She was not a member of the SAPS at the time and worked as a clerk at the Department of Home Affairs. The travel cost in respect of Ms Lyons was funded through the SSA, and her flight ticket was upgraded from Economy to Business Class at a total cost of R46,809.

131. Both of the China and Singapore Trips have been investigated and a comprehensive charge sheet has been drawn up. The matter was withdrawn against General Mdluli, General Lazarus and Colonel Barnard on 06 July 2015 because until now the SAPS have not declassified the necessary documentation which would allow the state to use the documents in court proceedings. I deal with this later in my affidavit.

X. General Mdluli: Promotions and Appointments of family and friends to CI

132. The following relatives of General Mdluli were appointed within the CI agent program without following due process:

Table 5: Appointments: General Mdluli in SAPS CI

RELATIONSHIP	STATUS	DATE OF APPOINTMENT IN RANK	RANK	LEVEL	DATE OF PROMOTION / APPOINTMENT IN RANK	RANK	LEVEL
FM24	Active	01 July 2009	Chief Admin Clerk at DHA	7	01 July 2010	Colonel	12
FM25	Active	01 April 2006	Constable	5	01 June 2010	Lieutenant Colonel	10
FM26	Active	01 November 2007	Admin Clerk	5	01 March 2010	Captain	8
FM27	Active	01 March 2009	Constable	5	01 May 2010	Lieutenant Colonel	10
FM28	Retired on 31	22 May 2006	Admin Clerk	4	01 March 2010	Admin Clerk with Colonel	4

	<i>December 2018</i>					<i>benefits</i>	
<i>FM29</i>	<i>Active</i>		<i>Civilian</i>		<i>01 June 2010</i>	<i>Warrant Officer</i>	<i>8</i>

K. ATLANTIS MOTORS

133. As our investigation progressed into the affairs of CI, I became aware of possible further alleged criminality involving Atlantis Motors and CI.
134. I approached Mr Jan Venter (“Mr Venter”), the dealer principal at Atlantis Motors situated at c/o Heuwel and Lenchen Streets, Centurion. Mr Venter stated that he started doing business with Company X as early as 1994. During this time, he became aware of the role Company X played within the CI environment. He further stated that Colonel Barnard approached him in 2006/2007 with an idea to create an alternative account which could be operated outside the ambit of the SSA to which he had agreed. At the time, Mr Venter agreed to the idea because he thought he could play a part in combatting crime by assisting CI. Subsequently he realised that it was not being used as envisaged but to the benefit of certain officials.
135. The “scheme” developed between Mr Venter and Colonel Barnard can essentially be described as the creation of a credit of a “provisional” account called the BARUT account “BARUT account” in the books of Atlantis Motors. The credit was generated by allocating an amount from the profit of the sale of vehicles purchased by CI from Atlantis Motors and accounted for in the BARUT account via a journal entry, as stated by Mr Venter.
136. Mr Venter, through Atlantis Motors, would then make payments to third parties on instruction from Colonel Barnard accounted for against the BARUT account.
137. Financial records detailing these transactions are only available from 08 April 2008. On that day an amount of R175,045.15 was reflected as a credit on the BARUT account. In the period 08 April 2008 to 19 October 2012, an additional amount of R1,527,601.61 was allocated in credit to the BARUT account. The amount of

R1,659,923.08 was paid to third parties via Electronic Funds Transfer out of the BARUT account during that same period.

138. The BARUT account was funded from transactions between Atlantis Motors and Company X. The total value of sales was in excess of R69,000,000 over a four (4) year period.
139. Discounts were given to General Lazarus and other CI members on the purchase of their private vehicles. The difference between the purchase price and the discounted price was funded through this BARUT account.
140. My investigations established that payments from the BARUT account to third parties included:
 - 140.1 A total amount of R465,000 was transferred to NWM. This confirms Colonel Naidoo's assertion that General Lazarus had to create cash in order to cover *inter alia* the shortfalls in the SSA account.
 - 140.2 On 09 May 2008, an amount of R143,621.78 was paid to a Wesbank Vehicle Finance account in settlement of a vehicle registered in the name of Ms Ranjeni Munusami, a journalist. This amount reflected as received on the same date in the Wesbank Vehicle Finance account held in the name of Ranjeni Munusami. This amount was debited against the Atlantis Motors Barut account on 30 July 2008.
141. General Lazarus and Colonel Barnard have been charged with fraud and corruption insofar as this matter relates to their personal benefit. Judgment is reserved at the Pretoria Regional Court for 21 November 2019.
142. This BARUT account was operated outside the purview of the Auditor General's oversight which allowed for the abuse of the funds within this account.
143. The only investigations that we have been in a position to finalise from the CI criminal investigation relate to:
 - 143.1 The trips to China and Singapore;

143.2 Atlantis Motors; and

143.3 The appointment of the Mdluli family.

144. The rest of the investigations from the CI criminal investigation have not been concluded because after the removal of General Hankel during on or about 22 November 2011, our investigating team did not receive any further cooperation from SAPS management to do so. General Hankel has deposed to an affidavit, which is sixty seven (67) pages (including annexures) and has not been attached to my affidavit. It has however been made available to the Commission's investigators.

L. EVENTS FROM MARCH 2012

a. Disciplinary and criminal proceedings and referral to the Inspector General Of Intelligence ("IGI")

145. On 29 February 2012, Lieutenant General Julius Molefe ("**General Molefe**") instructed the halting of all disciplinary matters relating to General Lazarus and General Mdluli. He also instructed that all documents relating to the disciplinary matters be handed to the IGI. The documentation was forwarded to the IGI for consideration. Thereafter, the IGI informed the SAPS that the mandate to investigate either criminal or departmental matters lay with the SAPS and not the IGI. All documents were returned to the SAPS for further investigation and to institute appropriate disciplinary action. According to my knowledge, no further departmental investigations took place against any members of CI implicated in alleged misconduct, with the exception of General Lazarus and Colonel Barnard. General Lazarus was dismissed. I do not know the outcome of the disciplinary proceedings against Colonel Barnard.
146. Brigadier Madonsela and Captain Heeralal were tasked with the investigation of the appointment of 250 individuals within CI. This is the same process that was used to appoint family members of General Mdluli, General Lazarus and Mr Marimuthu.

- 146.1 I have copies of fourteen (14) criminal case dockets opened by Captain Heeralal regarding these appointments.
- 146.2 The criminal case dockets relate to the non-disclosure of criminal convictions and civil judgments by applicants for employment. The National Commissioner is empowered to condone a disclosure of a criminal conviction or a civil judgment to favour the employment of an applicant. I am not aware of any prior condonation by the National Commissioner regarding these appointments.
- 146.3 The criminal case dockets have been closed on the SAPS criminal administration system as "undetected (2)", "withdrawn (1)" and "False (11)". As far as I could establish, not one of the case dockets were submitted to the NPA for a decision which should have been the process followed. The reasons for the closure of the criminal case dockets are irregular and untrue because the documents supporting the allegations are available in the dockets.
- 146.4 One of the appointments and promotions that took place was that of Mr Nkosana Ximba (resigned from the SAPS on 06 April 2018) who was promoted from Constable (Level 4) to Colonel (Level 12) in this process. He did not disclose his criminal conviction or his civil judgment in his application. His sister, Ms Nonhlanhla Portia Mdlalose, was also appointed in this process without experience necessary to perform as a Level 5 Administration Clerk. She also did not disclose her criminal conviction.
- 146.5 I know that this investigation of Brigadier Madonsela and Captain Heeralal was stopped but I do not know by whom.

M. THE SPECIALISED COMMERCIAL CRIMES UNIT ("SCCU") CRIMINAL PROCEEDINGS: GENERAL MDLULI AND COLONEL BARNARD


147. On 17 November 2011, General Mdluli made representations directly to Advocate Laurence Mrwebi ("**Advocate Mrwebi**") the Head: Specialised Commercial Crime Unit, Pretoria ("**SCCU**") at the time.
148. On 4 December 2011, Advocate Mrwebi, in response to General Mdluli's representations, drafted a memorandum in which he states that even if the criminal matter contained "*evidence or not, it is my view, not important for my decision in this matter*". He further stated that the SAPS do not have the mandate to investigate the matter as it falls within the mandate of the Office of the IGI and any investigation into this matter could be unlawful.
149. Advocate Mrwebi decided to withdraw the charges of fraud and corruption against General Mdluli and Colonel Barnard. A copy of the memorandum is attached as **annexure KDR07**.
150. I am in possession of a copy of General Mdluli's representations. I do not attach it but allude to two issues flowing from it. First, I cannot find any reference in the representations regarding the claim that only the IGI had the authority to investigate criminal conduct within CI. Secondly, seven (7) of the ten (10) page representation deals with a so-called plot against General Mdluli. In my view, Advocate Mrwebi's decision not to prosecute was not based on the facts of the matter before him but rather on a baseless assumption that the Office of the IGI would be the appropriate institution to deal with the matter.
151. After receiving the decision from Advocate Mrwebi, I requested that the SAPS formally refer the principal reason for the decision made by Advocate Mrwebi to the IGI to establish whether the Inspector General concurred. This was done via an undated and unsigned letter from the Office of the Acting National Commissioner of Police, Lieutenant General Nhlanhla Mkhwanazi ("**General Mkhwanazi**"). The document is attached as **annexure KDR08**.

152. On 02 March 2012 I submitted a report to the Commander, Anti-Corruption Task Team which deals with the interference experienced in the investigation relating to the activities within CI. A copy of my report is attached to this affidavit as **annexure KDR05**. This report eventually led to legal proceedings instituted by Freedom Under Law (“FUL”) in relation to the withdrawal of charges against General Mdluli and others.
153. On 19 March 2012, the IGI responded to General Mkhwanazi’s letter (referred to as dated 22 February 2012). The IGI advised that the reasoning followed by the NPA is fundamentally wrong and that the SAPS must refer the matter back to the NPA. A copy of the letter is attached to this affidavit as **annexure KDR09**.
154. On 20 March 2012, a meeting took place between Advocate Jay Govender, Legal Advisor from the Office of the IGI, and Advocate Mrwebi. I am not privy to the discussion that took place. I do know that that was the first time Advocate Mrwebi discussed the reason for his decision not to prosecute with the IGI.
155. On 23 March 2012, I requested, through the office of General Dramat, to refer the matter back to the Office of the Acting National Director of Prosecutions (“NDPP”), Advocate Nomgcobo Jiba (“**Advocate Jiba**”), and the SCCU for a decision following the opinion of the IGI. A copy of this letter is attached as **annexure KDR10** without the annexure refer to therein.
156. On 30 March 2012, Advocate Mrwebi, and not Advocate Jiba, responded. Advocate Mrwebi stated that the Office of the IGI does not have the powers to review a decision of the NPA, that he stood by his decision to withdraw the charges and that he regarded the matter as finalised. A copy of this letter is attached as **annexure KDR11**.
157. Advocate Mrwebi’s letter is not addressed to Advocate Jiba but only to General Dramat, Advocate Glynnis Breytenbach (“**Advocate Breytenbach**”), Regional Head: SCCU, Pretoria and Advocate S Mzinyathi (“**Advocate Mzinyathi**”), Director of Public Prosecutions, North Gauteng. It is therefore unclear whether Advocate Jiba was



informed of his response. Advocate Jiba did not respond to General Dramat's letter of 23 March 2012.

158. I was furnished with a copy of an internal memorandum dated 13 April 2012 prepared by Advocate Breytenbach and Advocate Jan Ferreira ("**Advocate Ferreira**"), Deputy Director, SCCU, Pretoria, both from the SCCU, Pretoria [**"the Breytenbach/Ferreira Memorandum"**]. The memorandum is addressed to Advocate Jiba, Advocate Mrwebi and others. It requests Advocate Jiba to review the decision of Advocate Mrwebi and to allow them to re-enrol the matter. A copy of this internal memorandum is attached to this affidavit as **annexure KDR12**.
159. On 23 April 2012, the Office of General Dramat, on my request, wrote to Advocate Jiba again requesting her decision 'as the ultimate authority in respect of the consideration of a prosecution'. A copy of this document is attached as **annexure KDR13**.
160. On 26 April 2012, Advocate Mrwebi responded to the Breytenbach/Ferreira Memorandum. His letter, *inter alia*, accused the SAPS of illegally obtaining documentation from CI and stated that it is a "*known fact that the AGSA examined the information containing the alleged criminal transaction by General Mdluli and Colonel Barnard, and based on rules governing the secret service account found nothing untoward with the transaction*". He goes further to state that the "*necessary report in this regard was given to the Joint Standing Committee on Intelligence (JSCI) and as such to Parliament*".
- 160.1 During May 2012, I had a meeting with Ms Alice Muller ("**Ms Muller**"), Corporate Executive and others from the Office of the AGSA. I enquired about the statement made by Advocate Mrwebi regarding the AGSA's involvement. The AGSA denied making a finding as the transaction (trade-in of General Mdluli's BMW) was never placed before the Office of the AGSA to audit. They also denied that such a report was tabled at the JSCI. This was later confirmed in writing in letters exchanged between the AGSA and myself. Copies of those letters dated 11 July 2012 and 25 July 2012 respectively are attached as **annexures KDR14 and KDR15**.



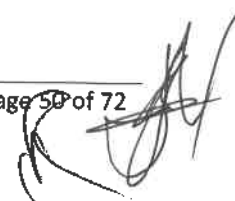
- 160.2 I am not aware of any senior SAPS management that had discussions with Advocate Mrwebi apart from General Mdluli and General Lazarus. General Lazarus was suspended pending an internal disciplinary hearing to matters related to the abuse of the SSA and was summarily dismissed. General Lazarus is also the subject of a criminal investigation which relates to criminal abuse of the SSA.
- 160.3 A copy of Advocate Mrwebi's letter dated 26 April 2012 is attached as **annexure KDR16**.
161. On 04 May 2012, Ms Jackie Lepinka, Manager Executive Support to the National Director of Public Prosecutions responded to General Dramat's follow-up letter dated 23 April 2012. The letter states that *"the matter was attended to by Adv L Mrwebi in his capacity as the Head of Special Commercial Crimes Unit (SCCU) as the subject matter falls within his area of jurisdiction"*. This letter is attached as **annexure KDR17**.
162. On 11 May 2012, Minister Mthethwa, appointed a task team headed by the Chief State Law Adviser, Mr Enver Daniels, to investigate General Mdluli's allegations that there was a so-called plot against him.
- 162.1 On 05 July 2012, the SAPS media centre released a press statement stating that that there is no substance to General Mdluli's claims of a conspiracy. The task team, apart from clearing the alleged conspirators, also found that the source who gave General Mdluli his information could not corroborate it. The so-called source is FM09 stationed at CI and a close confidant of General Lazarus and General Mdluli. I am of the opinion that this plot was fabricated to use as part of General Mdluli's representations made to Advocate Mrwebi and to the SAPS. I did not have sight of the task team report.
163. On 07 June 2012, General Dramat again appealed to Advocate Jiba to urgently review the decision made by Advocate Mrwebi on the General Mdluli matter. A copy of General Dramat's letter is attached as **annexure KDR18**.
164. On 02 August 2012, General Dramat sent a letter to Advocate Jiba thanking her for the meeting held on 01 August 2012. General Dramat indicated that the concerns

raised in his letter dated 07 June 2012 were “sufficiently resolved”. A copy of the letter is attached as **annexure KDR19**.

165. On 10 August 2012, I wrote to Advocate Ferreira from the SCCU to inform him of a meeting between General Dramat and Advocate Jiba that took place on 01 August 2012 and to seek clarity on the current position. General Dramat had informed me that during his meeting with Advocate Jiba, she indicated that, according to her, the matter (Silverton CAS 155-07-2011: Criminal matter against General Mdluli and Colonel Barnard) was only provisionally withdrawn and that the matter was to be placed back on the court roll as soon as the additional investigation had been finalised. A copy of my letter is attached as **annexure KDR20**.
166. The original case docket Silverton CAS 155-07-2011 has since included allegations made by Colonel Naidoo and formed one investigation. This is what I refer to as the CI criminal investigation.
167. In my view, Advocate Mrwebi never intended for this matter to be “provisionally” withdrawn. His actions and memorandums which he authored attest to that. It was only when he realized that his decision is being continuously challenged, specifically the court challenge brought by FUL in May 2012 that he changed his stance and announced that he only intended to withdraw the matter as certain investigations were still outstanding. This was however not included as a reason in his original reasons for withdrawing the matter. His changed position became evident in his testimony at the Advocate Breytenbach disciplinary hearing. At the disciplinary hearing, Advocate Mrwebi informed to the effect that he never intended to stop the investigation but merely meant that there was certain investigation outstanding which needed to first be finalised before placing matter back on the court roll.
168. I refer to paragraphs 514 to 678 of the Unabridged report dated 01 April 2019 in respect of the findings made after the ENQUIRY IN TERMS OF SECTION 12(6) OF THE NATIONAL PROSECUTING AUTHORITY ACT 32 OF 1998 (“the Mokgoro Commission”). An extract from these pages is filed as **annexure KDR21**.

N. GENERAL MDLULI'S ACTIONS TO FRUSTRATE THE INVESTIGATIONS

169. On 31 March 2012, the SAPS lifted General Mdluli's suspension and he continued with his duties as Divisional Commissioner: Crime Intelligence. I was informed by members of CI that General Mdluli set in motion a drive to identify those CI members who had assisted me in this investigation. The result thereof is that more than twenty (20) members of CI were transferred within days after his re-appointment.
170. On 4 April 2012, General Mdluli released a circular to all CI members, for signature, warning them not to *"disclose classified information to the media and other persons or bodies not authorised to receive such information"*. This circular, together with the transfer of members, led to a situation where members of CI were no longer willing to assist me even to assist in supplying affidavits relating to chain of evidence testimony. General Mdluli's actions are not only tantamount to intimidation but also obstructing a lawful criminal investigation. A copy of the circular is attached as **annexure KDR22**.
- 170.1 To illustrate my point, I will refer to a specific incident involving Colonel Nelson (**"Colonel Nelson"**). Colonel Nelson was appointed to replace General Hankel after he was transferred for assisting the investigation. Colonel Nelson fulfilled the coordination role between CI and me.
- 170.2 On 04 May 2012, I contacted Colonel Nelson to get access to documentation which I needed in my CI criminal investigation. I informed him to discuss my request with General Mdluli. I suspected that General Mdluli might not want to disclose any information. I informed Colonel Nelson that if General Mdluli refused the information, General Mdluli must indicate the reason for refusal in writing.
- 170.3 On 06 May 2012, Colonel Nelson informed me that General Mdluli wanted a letter from me confirming that I was continuing with the investigation against him.



- 170.4 I referred his request to General Dramat and a decision was taken not to respond. I found myself again in a position where I had to request a suspect in the investigation for documentation that might implicate him in criminality.
- 170.5 On 07 May 2012, General Mdluli addressed a letter to General Mkhwanazi and General Dramat under the heading "*SOLICITING OF INFORMATION FROM CRIME INTELLIGENCE: COLONEL REOLOFSE*" in which he accuses me of 'unethical conduct', 'unethical and unfounded behaviour', and 'bad intentions'. The document is attached as **annexure KDR23**.
- 170.6 On that same day Nelson was transferred to another division, in which he has no experience, within CI.

O. THE CONTINUATION OF THE NON-COOPERATION OF THE SAPS

MANAGEMENT

171. I have not been able to retrieve any documentation from CI since 19 March 2012 (after the finding of the IGI). I believe that this is as a direct result of General Mdluli's actions.
172. On 28 May 2012, General Mdluli was re-suspended, after submitting representations as to why he should not be suspended.
173. I tried to get the assistance of the then Acting Divisional Commissioner: Crime Intelligence Major General Chris Ngcobo ("**General Ngcobo**"). On 05 July 2012, I tried to re-schedule a meeting arranged for 04 July 2012 which was cancelled without providing reasons. I sent a follow-up written request on 10 July 2012 calling for a meeting after trying several times to secure a meeting through his staff.
- b. Mail and Guardian Report*
174. Towards the end of July 2012, I was provided with an e-mail media enquiry dated 11 July 2012 sent by Sam Sole ("**Mr Sole**"), a reporter of the Mail and Guardian

Newspaper, to Mr Sweli Mnisi, the spokesperson for the Minister of Police at the time, and Major General Nonkululeko Mbatha, Head of Communication, SAPS. This media enquiry indicates to me that the SAPS Management was aware of the allegations against members within CI. They were also aware that I and 12 others are accused of placing the entire police service at risk. To date, I have not been approached by anyone to verify the allegations made in the e-mail. A copy of the e-mail is attached as **annexure KDR24**.

175. On 14 May 2013, I received an email from General Dramat's Acting Staff Officer asking my assistance to compile a report as requested in the trailing email authored by 'General Mkhwanazi' on 14 May 2013 addressed to senior management in the SAPS. From the contents of General Mkhwanazi's email, the then National Commissioner, General Riah Phiyega ("**General Phiyega**") required the compilation of a consolidated report in respect of the various topics raised in the email. It is clear to me that the SAPS senior management had knowledge of and a clear understanding of the seriousness of various allegations including the murder investigation, irregular appointments within CI and allegations against senior officials from CI. A copy of the email trail is attached as **annexure KDR25**. I did respond to the request. I do not know if General Dramat submitted a report. I have not seen the report that General Mkhwanazi had to compile.
176. I kept in contact with Mrs Muller from the office of the AGSA. On 02 February 2015, I was provided with SSA Audit Reports for the financial years 2004 to 2012, as part of the CI criminal investigation.
- 176.1 The SAPS / CI Management responses to the audit queries raised by the AGSA in 2012 are that they stated that they cannot comment as the matters are being investigated by the DPCI and as such *sub judice*. The responses are disingenuous as management knew that the investigation into the transactions in question could not continue due to the lack of cooperation from the very management hiding behind the DPCI investigation. A copy of the AGSA 2012 report is attached as **annexure KR26**.



P. ATTEMPTS TO DECLASSIFY DOCUMENTS

177. In my experience of the CI investigation, there has been a pattern of interference by General Mdluli and Advocate Mrwebi. The allegations of alleged criminality within CI that have been investigated thus far do not include information regarding any project detail which could jeopardise the projects. It deals mainly with the fraudulent procurement of assets via the SSA and the appointment of family members as Agents without them having the required skills to be appointed in the first place. This investigation is limited to a few individuals who form part of the procurement process and management within CI.
178. On numerous occasions, I asked General Dramat to secure CI management's cooperation in firstly, making CI members available to assist in the investigation; and secondly, to ensure the declassification of the required documents. Various written requests have been forwarded via the Office of General Dramat. I also asked General Dramat to approach the National Commissioner to assist.
- 178.1 On 07 March 2013, General Dramat forwarded a request for assistance to the previous Acting Divisional Commissioner of Crime Intelligence, General Ngcobo. Even though this request did not deal with the declassification of classified documents it requested the assistance of members. In support, I attach a copy of General Dramat's letter as **annexure KDR27**.
- 178.2 In March 2013, I prepared a draft letter for Brigadier Kubi Moodley ("**Brigadier Moodley**"), the then Acting National Head, Anti-Corruption, DPCI regarding the declassification of classified documents. I cannot recall the exact date of the letter which I am informed was sent by Brigadier Moodley to General Dramat. A copy of my draft letter is attached as **annexure KDR28**. The request was intended to be forwarded from the Office of General Dramat to CI.
- 178.3 On 12 March 2013, General Ngcobo addressed a letter of response to General Dramat in which he indicated concerns about media leakages, that under the

circumstances he could not cooperate, and that he would take the matter up with the National Commissioner. The document is attached as **annexure KDR29**.

178.4 On 22 March 2013, I sent an Information Note to General Dramat which dealt with the letter of General Ngcobo. A copy of my Information Note is attached as **annexure KDR30**.

178.5 On 06 August 2013, Senior State Advocate Rita Viljoen ("**Advocate Viljoen**"), who was the prosecutor in the criminal matter that included all the allegations made by Colonel Naidoo, addressed a letter at my request to General Ngcobo in an effort to obtain the assistance of members and for the declassification of classified documents. A copy of Advocate Viljoen's request is attached and marked **annexure KDR31**.

178.6 On 17 October 2013, I addressed and provided an Information Note to General Dramat and Brigadier Moodley regarding the lack of assistance. I attach my Information Note as **annexure KDR32** and draw attention to paragraphs 9 to 11.

178.7 During February/March 2014, General Dramat requested in writing a meeting with Lieutenant General Bongwiwe Zulu ("**General Zulu**") in an effort to resolve the declassification of documents and non-cooperation of CI members. General Zulu replaced General Ngcobo when he was suspended. I do not know whether or not this meeting did in fact take place.

178.8 On 9 March 2014, General Dramat sent the following to General Zulu via two separate emails:

178.8.1 His letter addressed dated 7 March 2014 which enclosed a copy of Advocate Viljoen's letter dated 6 March 2013. See **annexure KDR33**; and

178.8.2 His letter addressed also dated 7 March 2014 which requests permission to interview a list of CI members. See **annexure KDR34**.

179. General Zulu did not respond.

180. In September 2014, after receiving no response from CI, I consulted with General Dramat and informed him that I had completed a draft affidavit in which I sought to obtain a subpoena in terms of Section 205 of the Criminal Procedure Act No. 51 of 1977 in order to ensure cooperation from CI. General Dramat provided me with the above correspondence which his office had forwarded to CI in an attempt to secure their assistance. He requested me to allow him one last chance to secure the cooperation of the various role-players.
181. On 23 September 2014, General Dramat again forwarded his letter dated 07 March 2014 to General Zulu. I attach a copy of the enclosing email as **annexure KDR35**.
182. In the middle of October 2014, I contacted Brigadier Van Graan requesting his assistance as the legal adviser to both the DPCI and CI. At that point I still had not received any feedback. I explained to him the seriousness of the situation and provided him with a copy of my draft affidavit as mentioned above. He indicated that he would try to facilitate the process so as to avoid embarrassment to all parties concerned.
183. On 30 October 2014, I was informed through the Office of General Dramat that General Zulu had indicated in writing that DPCI does not need to request permission to conduct a criminal investigation. She did not address the request about the declassification of the classified documents. See **annexure KDR36**.
184. After providing General Zulu's letter to CI members whose assistance was required for the criminal investigation, I was able to secure their cooperation and to obtain various affidavits. All of the CI members are appointed in terms the South African Police Services Act 68 of 1995.
185. In January 2015, I again contacted Brigadier Van Graan requesting his assistance. He informed me that he no longer acted as the legal adviser to the DPCI and CI but was still willing to facilitate the declassification of the documents.
186. On 23 January 2015, I attended a meeting with Brigadier Magesi Adolf Ntuli ("**Brigadier Ntuli**") from CI and Brigadier Van Graan in Pretoria. The Supreme Court of



Appeal judgment delivered on 17 April 2014 confirmed the setting aside of Advocate Mrwebi's decision to withdraw the fraud and corruption charges. I explained to Brigadier Ntuli that I needed certain classified documents declassified to support the prosecution. I gave Brigadier Ntuli a copy of my letter dated 23 January 2015 explaining the reason for the declassification request and for additional documents to be declassified ("**my 23 January 2015 Letter**"). A copy of this letter is attached as **annexure KDR37**.

187. In early February 2015, CI informed me that my request will not be attended to. CI wanted to know how and why I had gained access to classified documents. This response from CI was not expected because during September 2011, DPCI and CI agreed on the handing over of documents required which relate to the CI criminal investigation.
188. I then contacted Brigadier Dennis Chili ("**Brigadier Chili**"), the Legal Officer at CI, for assistance who was apparently dealing with this matter. He indicated that he foresaw no problem but that I had to transmit my request via the Office of the Acting National Head: DPCI, who at the time was General Mthandazo Berning Ntlemeza ("**General Ntlemeza**").
189. In early February 2015, I sent my 23 January 2015 Letter to Brigadier Moodley, my immediate superior, requesting that it be forwarded to General Ntlemeza, under his signature. Brigadier Moodley informed me that he had done so.
190. On 16 February 2015, I had an impromptu meeting with General Zulu and General Ntlemeza in Pretoria. I told them about the numerous written requests for declassification.
- 190.1 General Zulu acknowledged receipt of a request but indicated that such a request should come from the Office of General Ntlemeza. General Ntlemeza informed General Zulu that he would facilitate such a request through his office.
- 190.2 General Zulu also informed me that it was only the National Commissioner who could declassify the documents. I informed General Zulu that I knew the process

to be followed when requesting the declassification and that I had stated as much in my request to Brigadier Ntuli on 23 January 2015. I also explained that I had approached her office not to immediately declassify the documents but to start a process in which a risk assessment can be done in order to assist her to apply her mind.

- 190.3 I left the meeting under the impression that the reason for the declassification request had been clarified and that the request would be dealt with.
191. On 10 March 2015, the NDPP informed General Mdluli and Colonel Barnard that they will appear in the SCCC on 1 April 2015.
192. In March 2015, Brigadier Moodley requested me to provide him with a report explaining who had given me the mandate/authority to investigate the CI criminal investigation. Brigadier Moodley informed me that General Ntlemeza requested the information. I was not provided with a reason for the request.
193. On 19 March 2015, I provided a draft letter of response to Brigadier Moodley for his signature to send to General Ntlemeza which addressed the mandate/authority to investigate the CI criminal investigation. I attach a copy of the email and letter as **annexure KDR38** and **KDR39**. Brigadier Moodley told me that he sent the letter to General Ntlemeza.
194. On 30 March 2015, I sent an email to Brigadier Moodley requesting feedback. Brigadier Moodley informed me that he was awaiting feedback. At the time, I had to attend to two matters that were due in court on 01 April 2015 and 02 April 2015 respectively. The one matter related to the pending prosecutions of Colonel Barnard and General Lazarus which was already before court. The other related to the re-enrolment of the General Mdluli matter on 01 April 2015.
195. On 01 April 2015, I requested Brigadier Moodley to re-submit my 23 January 2015 Letter to General Ntlemeza to ensure that his office would forward the request for assistance to CI. Brigadier Moodley informed me that it was sent. I do not know whether or not this request was forwarded by General Ntlemeza to CI.

196. On 28 April 2015, I requested a meeting between the NPA, General Ntlemeza and myself to discuss the re-enrolment of the Mdluli/Barnard criminal matter. I did not receive any feedback. The proposed meeting never took place.
197. In May 2015, Brigadier Van Graan contacted me and informed that his Legal Office had received correspondence from General Zulu regarding my request to declassify the documents which he then forwarded to me on 14 May 2015. A copy of the correspondence is attached as **annexure KDR40**. It appears from the correspondence that:
- 197.1 General PC (Flip) Jacobs ("**General Jacobs**"), Head: Operational Legal Support at the Division: Legal and Policy Services, were informed that officials investigating the matter decided to approach his (General Jacobs) office and ignore the requests from CI; and
- 197.2 General Zulu informed General Ntlemeza that if I want to request documents from CI, I need to do so through his office and that I need to explain how I came into possession of the documents to be declassified.
198. On 15 May 2015, Advocate Arno Rossouw ("**Advocate Rossouw**"), one of the prosecutors in the General Mdluli matter, informed me that the NDPP, Mr Mxolisi Nxasana ("**Mr Nxasana**"), had written a letter to the National Commissioner of the SAPS at the time, General Rhiya Phiyega. Mr Nxasana requested General Phiyega's assistance to declassify the documents had to be provided to the accused defence council by no later than 20 May 2015, the next court appearance date. See **annexure KDR41**.
199. On 18 May 2015, Brigadier Moodley informed me that he had to attend a meeting with General Phiyega regarding the request by the NDPP. Brigadier Moodley asked me to compile a report setting out first, how the documents came into my possession and secondly, provide General Phiyega with copies of the classified documents in order for her to apply her mind to the request. The original documents would then be supplied once she has made her decision.

200. On 08 June 2015, I provided Brigadier Moodley with my report and copies of the classified documents, as requested. My report was prepared for General Phiyega under cover of enclosing letters. I attach these documents as **annexure KDR42**.
- 200.1 On 10 June 2015, Major General PR Vuma ("**General Vuma**") at the Office of the National Commissioner received the documents. See **annexure KDR43**.
- 200.2 On 19 June 2015, I had to arrange for the collection of the documents from the office of the National Commissioner because there was an issue with the authority of the person who delivered the documents which General Vuma received.
201. On 01 July 2015, the report and copies of the classified documents were re-submitted to the office of the National Commissioner. A signed cover letter by General Ntlemeza dated 01 July 2015 was attached to the re-submission. See **annexure KDR44**. The cover letter raised concerns in paragraph 2 about my possession of the documents and my security clearance.
- 201.1 The information in this paragraph is completely untrue.
- 201.2 My "Top Secret" security clearance was granted on 19 August 2010 and was valid until 15 August 2015.
202. On 06 July 2015, the Mdluli/Barnard criminal case was struck from the court roll. By this time, General Lazarus was also added as an accused. The Magistrate in his judgement stated that the case can only be place back on the court roll once the classified documents are declassified.
203. On the same date of 06 July 2015, I emailed Brigadier Moodley which sets out my disappointment in how the matter was handled by the SAPS Management. See **annexure KDR45**.
204. During this period, Major General Zintle Mnonopi ("**General Mnonopi**") was appointed within the DPCI as the National Head: Corruption. Brigadier Moodley and I briefed her shortly after her appointment regarding the investigation into the alleged

criminal conduct of certain CI members. She was shocked and expressed an eagerness to assist in the investigation where she could.

205. On 12 July 2015, I received an email with a letter dated 10 July 2015 attached, from Advocate Rossouw. The letter was authored by the new NDPP, Advocate Shaun Abrahams ("**Advocate Abrahams**"), and addressed to General Ntlemeza requesting a meeting on 13 July 2015 at 14h00 to discuss the declassification of the documents which were in my possession. A copy of Advocate Abrahams' letter is attached as **annexure KDR46**.
206. On 13 July 2015, I was summonsed to attend a meeting at 11h00 convened by General Ntlemeza at the DPCI Head Office in Silverton. The meeting was attended by General Ntlemeza, General Mnonopi, Brigadier Moodley and a person unknown to me. Before the meeting started, I was handed a document that I had to sign which stated that I may not divulge any classified information. This is sometimes done when a group discussion takes place in respect of the merits of an investigation. It is done to safeguard the integrity of the investigation. I realised after the conclusion of the meeting that there was no reason for me to sign a document like that which I did.
- At the meeting:
- 206.1 General Ntlemeza instructed me to not investigate the matter any further because the matter was struck off the court roil. I understood "the matter" to mean the CI criminal investigation which included the original Mdluli/Barnard criminal matter;
- 206.2 General Ntlemeza instructed me to not engage with the NPA on the matter;
- 206.3 General Ntlemeza appointed Brigadier Moodley as the chief investigating officer for the matter I am instructed to stop investigating;
- 206.4 General Ntlemeza informed that he will attend the 14h00 meeting later that day alone; and
- 206.5 General Ntlemeza tried to intimidate me by raising a lunch that I supposedly had with General Jacobs that needed to be investigated.

207. On 15 July 2015, I emailed Brigadier Moodley an account of what happened at the meeting on 13 July 2015. See **annexure KDR47**.
208. On 16 July 2015, I was informed through an email of Advocate Rossouw about a full briefing to be given to Advocate Abrahams on 22 July 2015 regarding the declassification of documents. Advocate Abrahams requested the presence of the investigating officer. I never received any communication from General Ntlemeza's office regarding this briefing and therefore did not attend.
209. On 17 July 2015, the SAPS received a media enquiry regarding the withdrawal of charges against General Mdluli and others on 6 July 2015. The journalist in question was Mr Barry Bateman ("Mr Bateman").
210. On 20 July 2015, that same media enquiry was sent to me from the office of General Mnonopi for response by 14h00 on the same day. I responded on the same day. A copy of the email which includes my responses is attached as **annexure KDR48**. I do not know if the media enquiry was published and why I was asked to respond. I also do not know whether my responses to the media enquiry were ever released to Bateman.
211. As far as I can remember, it was during July 2015 that General Ntlemeza transferred Brigadier Moodley.
- 211.1 The investigation did not continue during the time that General Ntlemeza was the National Head of the DPCI.
- 211.2 I had and still have custody of all the relevant documents, apart from the documents that I handed to Brigadier Moodley. I was never asked by anyone to supply any documentation for any investigation to continue.
- 211.3 General Ntlemeza had effectively stopped any continuation or progress in respect of not only this investigation, but all other investigations regarding the alleged abuse of CI funds.

212. General Ntlemeza was dismissed on or about 15 September 2017. This was after the Supreme Court of Appeal (“SCA”) upheld an earlier ruling of the North Gauteng High Court which found that the then Minister of Police, Mr Nkosinathi Phiyayinkosi Thamsanqa Nhleko (“**Minister Nhleko**”) acted irrationally and unlawfully appointing General Ntlemeza as the Head: DPCI and therefore sets it aside.
213. On 14 June 2017, Advocate Rossouw emailed me requesting an urgent meeting. His email attached various letters which informed that:
- 213.1 Advocate Abrahams requested the assistance of the new Acting National Commissioner of the SAPS, Lieutenant General J Khomotso Phahlane (“**General Phahlane**”), appointed on or about 15 October 2015, in getting documents needed as evidence in the CI criminal investigation declassified;
- 213.2 General Phahlane agreed in writing to assist Advocate Abrahams and agreed to the setting up of a process to declassify the documents;
- 213.3 Advocate Abrahams informed General Phahlane that he will inform the prosecutor of the decision to set up a process to declassify the documents;
- 213.4 A copy of these letters is attached as **annexure KDR49** which I forwarded to General Matakata.
214. On or about 01 June 2017 General Phahlane was relieved of his duties as the Acting National Commissioner.
215. Since August 2017, I have been assisting the Independent Police Investigative Directorate (“**IPID**”) in respect of the corruption investigations that they were conducting within the SAPS and specifically within CI, as part of a joint task team. In this regard the IPID tried to assist in getting the relevant documents that was needed in the CI criminal investigation declassified. I was informed that the IPID had experienced the same difficulties in getting documents that was allegedly used in the commission of criminality declassified.



216. On 22 August 2017, Advocate Rossouw emailed a request for my assistance in obtaining feedback from the SAPS for a request from the IPID on 18 August 2017 to “declassify classified documents”. The IPID request was addressed to the Acting National Commissioner, General Mothiba, appointed in this position on or about 02 June 2017. I highlight that on 21 August 2017, General Jacobs concurred with the approach of Advocate Abrahams by stating that *inter alia* he was “in favour of declassification of the documents and as far back in Gen Dramat’s time the issue had been cleared with the Office of the IG”. I attach a copy of these documents as **annexure KDR50**. I attended to the request by contacting Brigadier Van Graan to ask for feedback for relay to Advocate Rossouw.
217. Between 24 August 2017 and 11 January 2018, numerous emails between Brigadier Van Graan, Advocate Rossouw and me have been exchanged in an effort to get the relevant documents declassified. These emails will be made available to the Commission if so requested.
218. No response from General Mothiba was forthcoming despite meetings held with the new acting Divisional Commissioner of CI on 06 September 2017 and General Mothiba on 6 November 2017 by Brigadier Van Graan and General Sally Khan.
219. On 22 November 2017, the new National Commissioner Lieutenant General Khehla John Sitole (“**General Sitole**”) was appointed. Various requests to get the documents in question declassified have again been made but also to no avail. This matter regarding the declassification of documents was also raised in Parliament, but to no avail, despite General Sitole’s assurances to do so before the Standing Committee on Public Accounts (“**SCOPA**”).
220. On 30 November 2017, Brigadier Van Graan prepared a new memorandum to General Sitole in respect of the declassification of documents. I am not aware if General Sitole responded or not.
221. As far as I am aware, none of the documents or information sought to be declassified impacts on any current or past projects. The information impacts on the procurement processes of specific assets within CI and therefore would not



compromise methodology, assets and/or agents apart from those specified. This would include two (2) vehicles already identified as part of the original criminal matter against General Mdluli and Colonel Barnard and the irregular appointment of the friends and family of General Mdluli, General Lazarus and Mr Marimuthu as “agents”.

Q. GENERAL NTLEMEZA

222. On 23 December 2014, General Dramat was relieved of his duties by Minister Nhleko. General Ntlemeza was appointed to act in his place on or about 23 December 2014.
223. One of the first things General Ntlemeza did was set up a meeting in Cape Town on or about Christmas 2014 to appoint someone from the SAPS to head up the Anti-Corruption Task Team (“ACTT”), a unit that I was heading at the time. This unit was tasked with very sensitive investigations which included allegations of serious acts of corruption. It was clear to me that General Ntlemeza wanted to have control over sensitive, and at times, politically sensitive cases.
224. General Ntlemeza made a comment at that meeting to the effect that if anyone wanted to challenge his decisions he would suspend them and if they wanted to take him on he would get his “SC” (Senior Counsel) to fight their “SC” until that person run out of funds. He went further to state that even if that person was successful in challenging his decision, he would in any event transfer that person out of the DPCI. I was rather taken aback by his comments as it raised some obviously serious legal and ethical issues.

c. General Ntlemeza and Mdluli Vosloorus case

225. At that stage I knew that any investigation into General Mdluli would become very difficult. The above meeting was not the first time that I had encountered General Ntlemeza. I had met him during the Mdluli Vosloorus case.

- 225.1 On 10 July 2009, a newspaper article appeared in the Sowetan Newspaper implicating General Mdluli in the murder of Mr Oupa Ramogibe (“**Mr Ramogibe**”) during 1999. This article resulted in an information note regarding the murder being sent to the then Divisional Commissioner: Detective Services, General Lalla (“**General Lalla**”). General Lalla then informed General Dramat.
- 225.2 On 28 August 2009, the information note was assigned to General Lebeya to investigate. As part of his investigation, General Lebeya spoke to members of Mr Ramogibe’s family. During the preliminary investigation, General Lebeya became aware of a parallel investigation being conducted by General Ntlemeza.
- 225.3 General Lebeya informed General Dramat that General Ntlemeza would be continuing with the investigation as he thought that General Ntlemeza was also investigating the murder of Mr Ramogibe. General Lebeya gave the details of a witness (Ramogibe family member) to General Ntlemeza under the impression that General Ntlemeza would continue with the murder investigation.
- 225.3.1 At the time, General Lebeya was not aware that on 21 July 2009 General Mdluli instructed General Ntlemeza, through his Provincial Commissioner, to investigate the “*irregular*” conduct by members of the SAPS stationed at CI for investigating the murder of Mr Ramogibe and General Mdluli’s alleged involvement. From my investigations, General Mdluli suspected the CI members who were investigating him of trying to oust him as the Divisional Head of CI.
- 225.3.2 On 11 August 2009, General Ntlemeza received a full briefing from General Mdluli regarding the terms of reference of his investigation.
- 225.3.3 General Ntlemeza finalized his report on 14 January 2010 (“**the Ntlemeza Report**”). The report is attached as **annexure KDR51**. General Lebeya later obtained a copy of the Ntlemeza report from General Mdluli.
- 225.3.4 In summary of the key points, the Ntlemeza report states *inter alia*:
- (1) It was clear from his investigation that a plot existed to prevent General Mdluli from being appointed as the CI Divisional Commissioner. General

Ntlemeza also accused Provincial Commissioner S Khumalo ("**General Khumalo**"), now deceased, of being behind the plot. General Ntlemeza also identified Warrant Officer Magabe ("**Warrant Officer Magabe**") and Warrant Officer Thomas Mzamane Rekhotso ("**Warrant Officer Rekhotso**") assisting General Khumalo in this alleged plot.

- (2) General Ntlemeza had spoken to the sister of the deceased, Ms Linah Ntsekiseng Ramogibe ("**Ms Linah Ramogibe**") and that *"according to her the matter was investigated and no member of the South African Police was connected to the murder"*. General Ntlemeza continued to state that the sister of the deceased had said that *"according to the family the matter was already put to rest"*.
- (3) In General Ntlemeza's view *"there was a plot to stop the appointment of Commissioner General Mdluli but the people i.e. the family of the said suspect/deceased could not co-operate with Inspector Magabe and Inspector Rekhotso hence the solution was to take it to the News papers"*.
- (4) General Ntlemeza obtained an affidavit from Colonel Marthinus Gysbert Botha ("**Colonel Botha**") who stated that the allegations relating to the murder of the deceased and the involvement of General Mdluli were investigated and that he (Colonel Botha) could not find *"any witnesses to give any evidence or statements to proof these allegations"*.
- (5) General Ntlemeza concluded first, that Warrant Officer Magabe and Warrant Officer Rekhotso were to be transferred from *"Crime Intelligence to Uniform branch to avoid further embarrassment pending the outcome of the final enquiry"* and secondly, that both Warrant Officer Magabe and Warrant Officer Rekhotso *"be charged departmental for misusing state owned vehicles"*.

225.4 On 11 November 2010, General Mdluli addressed a letter to the then President of the Republic of South Africa, the Minister of Police, the Minister of State Security, the National Commissioner and the IGI with a heading *"Victimisation and Abuse of*

State Resources against the Divisional Commissioner: Crime Intelligence" in which he details the investigations against him and "humbly request that a decision be taken to resolve this issue and if needs be to appoint an independent person to address these so called loyalists and their associates...". This letter is attached as **annexure KDR52** which I received during his bail application discussed below.

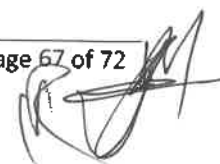
225.5 On 31 March 2011, General Mdluli was arrested on charges relating to the murder of Mr Ramogibe. General Mdluli attached a copy of the Ntlemeza Report to his bail application during April 2011 at the Boksburg Magistrate's Court. I received a copy of the Ntlemeza Report as the investigating officer of this case.

225.6 As a result of testimony presented at the bail application, I followed up on the Ntlemeza Report. My investigations found that:

225.6.1 On interviewing Colonel Botha, he informed me that he was never the investigating officer in this matter. In a later affidavit, Colonel Botha stated that he made a mistake by creating the impression that he was the investigating officer. He in fact only relayed what was told to him by the then investigating officer. Colonel Botha had no insight into the docket. He also stated that he did not know the reason for providing General Ntlemeza with an affidavit. He was only informed him that someone at Head Office wanted the affidavit. The previous investigating officer was never approached by General Ntlemeza for an affidavit.

225.6.2 It also became clear from the affidavit of Ms Linah Ramogibe that she stated the exact opposite to what General Ntlemeza claimed she had said. She told me that she contacted General Lebeya and informed him that she refused to talk to General Ntlemeza as he was only interested in his version of events.

225.6.3 I deposed to an affidavit in opposition of General Mdluli's bail application in which I addressed the above points at paragraphs 55 and 56 of my affidavit. I do not attach a copy of my affidavit but it is available to the Commission if needed.



225.7 It is my view that the Ntlemeza Report was drafted to convince the reader that there is no substance in the murder allegations against General Mdluli.

R. PERSONS WHO ASSISTED AND THOSE WHO OBSTRUCTED THE INVESTIGATION

226. I would like to shed some light as to what had happened to some of the individuals mentioned in this affidavit. As part of this exercise I am going to distinguish between those individuals within the SAPS who tried to assist in this investigation and those who actively opposed the investigation in the table below.

Table 6: Consequences of the actions of individuals on their careers

NAME	CONTEXT	REMARKS
<i>Lieutenant General A Dramat</i>	<i>Suspended in December 2014 and subsequently left the employ of SAPS</i>	<i>Assisted actively to facilitate the investigation</i>
<i>Major General S Sibiya</i>	<i>Suspended in January 2015 and subsequently left the employ of SAPS</i>	<i>Assisted actively to facilitate the investigation</i>
<i>Lieutenant General M Petros</i>	<i>His term as the Provincial Commissioner in the Gauteng Province was not renewed</i>	<i>Assisted actively to facilitate the investigation</i>
<i>Colonel JJH Roos</i>	<i>He was transferred from CI to Pretoria Central SAPS</i>	<i>Assisted actively to facilitate the investigation</i>
<i>Major General M Hankel</i>	<i>Transferred in December 2011 to National Inspectorate, now known as Management Intervention</i>	<i>Assisted actively to facilitate the investigation</i>
<i>Lieutenant Colonel Dhanajaya Naidoo</i>	<i>In the Witness Protection Program since 2011</i>	<i>Assisted actively to facilitate the investigation</i>
<i>Brigadier K Moodley</i>	<i>Transferred by Ntlemeza in 2015 until his re-deployment within the DPCI in July 2018</i>	<i>Assisted actively to facilitate the investigation</i>
<i>Lieutenant General G Lebeya</i>	<i>Was involved in litigation with SAPS since 2014 until his settlement in May 2016. Was re-appointment as the National Head:</i>	<i>Assisted actively to facilitate the investigation</i>

NAME	CONTEXT	REMARKS
	<i>DPCI in June 2018</i>	
<i>Major General VS Matshatshe</i>	<i>Transferred in December 2011 to National Inspectorate, now known as Management Intervention until his retirement</i>	<i>Assisted actively to facilitate the investigation</i>
<i>Lieutenant General RN Mdluli</i>	<i>No disciplinary action taken since 2011 up until his retirement in 2018</i>	<i>Assisted actively to obstruct the investigation</i>
<i>Major General S Lazarus</i>	<i>Disciplinary action was taken and he was dismissed. Also standing trial at the Pretoria Regional Court in respect of alleged personal financial gain received from the Atlantis Motors "provisional account"</i>	<i>Assisted actively to obstruct the investigation</i>
<i>Colonel HJ Colonel Barnard</i>	<i>I am not aware of any disciplinary action taken. Still currently employed at CI. Also standing trial at the Pretoria Regional Court in respect of alleged personal financial gain received from the Atlantis Motors "provisional account".</i>	<i>Assisted actively to obstruct the investigation</i>
<i>FM08</i>	<i>No disciplinary action was taken. Still currently employed at CI.</i>	<i>Assisted actively to obstruct the investigation</i>
<i>FM09</i>	<i>No disciplinary action was taken. Still currently employed at CI.</i>	<i>Assisted actively to obstruct the investigation</i>
<i>FM10</i>	<i>No disciplinary action was taken. Still currently employed at CI. He was subsequently promoted from Colonel to Major General by General Mothiba</i>	<i>Assisted actively to obstruct the investigation</i>
<i>FM07</i>	<i>No disciplinary action was taken. Still currently employed at CI.</i>	<i>Assisted actively to obstruct the investigation</i>
<i>Colonel NH Singh</i>	<i>No disciplinary action was taken.</i>	<i>Assisted actively to obstruct the investigation</i>

S. IN CONCLUSION

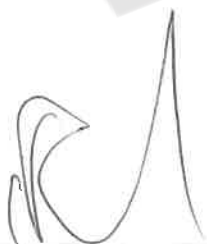
227. Many of the investigations were never finalised due to SAPS failure to assist in providing important investigative documents.
228. Status of current finalised criminal investigations:
- 228.1 Mdluli Vosloorus case [Vosloorus CAS 340-2-1999]: Judgement was delivered on 29 July 2019. General Mdluli was convicted on twelve (12) of the fourteen (14) charges levelled against him and co-accused.
- 228.2 General Lazarus / Colonel Barnard case (which concerned the personal benefit that they received from the purchase of vehicles from Atlantis Motors) [Lyttelton CAS 432-11-2011]: This case is pending and postponed for judgment on 21 November 2019.
- 228.3 CI criminal investigations under [Silverton CAS 155-07-2011] that need to be re-enrolled:
- 228.3.1 General Lazarus / General Mdluli / Colonel Barnard (which concerned the trips to China and Singapore).
- 228.3.2 General Lazarus / General Mdluli / Colonel Barnard (which concerned the personal benefit that General Mdluli received from Atlantis Motors):
- 228.3.3 General Lazarus / General Mdluli / Colonel Barnard (which concerned the appointment of the Mdluli family and friends).
229. When an important function such as CI, within the SAPS is criminally abused, irreparable damage is being done to the economy of South Africa. The abuse of SSA funds inevitably will lead to a shortage of funding in respect of actual intelligence work. I have been approached by numerous unit heads within CI complaining about the lack of funds to carry out their duties. This has far reaching consequences in the fight against crime.

230. The investigation into the alleged criminal conduct of members within CI has always been difficult due to the secrecy that surrounds their work. It is now apparent that even members within CI that wanted to investigate matters relating to the above mentioned individuals were not able to do it.
231. These alleged acts of criminality have been reported to senior management and not only within CI but also within the broader structures of the SAPS. This was done as early as 2004. In terms of Section 34 (1) of the Prevention and Combating Corrupt Activities Act, No 12 of 2004 senior management must report acts of corruption when it comes to their knowledge and ensuring its effective investigation. This has not happened.
232. I want to re-iterate that knowledge of the serious allegations and the implications thereof within CI were known to the SAPS senior management.
233. They include the following senior members within the SAPS whom I briefed in person, and who as far as I know elected not to do anything regarding the abuse of state funds: Major General C Ngcobo, Major General B Ntlemeza, Brigadier MA Ntuli and Major General Mnonopi. In fact, General Ntlemeza did his best to stop any investigation into this matter and he was successful in doing so.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.



KOBUS DEMEYER ROELOFSE



I certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn to before me and the deponent's signature was placed thereon in my presence at Centurion on this the 29th day of August 2019 at 19 h 50.


: Colonel
Jean Jacques Martins

South African Police Service
463 Prieska Street
Erasmuskloof
Pretoria



SOUTH AFRICAN POLICE SERVICE
MANAGEMENT INTERVENTION
HEAD OFFICE: PRETORIA
2019 -08- 27
INTERVENTION AND ORGANISATIONAL
PERFORMANCE ANALYSIS
SUID-AFRIKAANSE POLISIEDIENS

ANNEXURE KDR01



NEW RANK STRUCTURE FOR THE SOUTH AFRICAN POLICE SERVICE



[Handwritten signature]

CURRENT		NEW		POST TITLE	Management Level	Officer Category
POLICE RANK		POLICE RANK				
National Commissioner	National Commissioner	General	National Commissioner	National Commissioner	Senior Management	Commissioned Officers
Deputy National Commissioner	Deputy National Commissioner	Lieutenant General	Deputy National Commissioner	Deputy National Commissioner		
Divisional Commissioner	Divisional Commissioner	Lieutenant General	Divisional Commissioner	Divisional Commissioner		
Provincial Commissioner	Provincial Commissioner	Lieutenant General	Provincial Commissioner	Provincial Commissioner		
Assistant Commissioner	Assistant Commissioner	Major General	Eg. DPC / Component Head	Eg. DPC / Component Head	Middle Management	Commissioned Officers
Director	Director	Brigadier				
Senior Superintendent	Senior Superintendent	Colonel				
Superintendent	Superintendent	Lieutenant Colonel			Junior Management	Commissioned Officers
Captain	Captain	Major				
		Captain			Operational	Non-comm Officers
		Lieutenant				
Inspector	Inspector	Warrant Officer				
Sergeant	Sergeant	Sergeant			Operational	Non-comm Officers
Constable	Constable	Constable				

[Handwritten signatures]

NEW RANK INSIGNIA - SENIOR MANAGEMENT COMMISSIONED OFFICERS



CURRENT

NATIONAL COMMISSIONER



DEPUTY NATIONAL COMMISSIONER



NEW

GENERAL



LIEUTENANT GENERAL



NEW RANK INSIGNIA - SENIOR MANAGEMENT COMMISSIONED OFFICERS



CURRENT

DIVISIONAL / PROVINCIAL COMMISSIONER



ASSISTANT COMMISSIONER



NEW

LIEUTENANT GENERAL



MAJOR GENERAL



NEW RANK INSIGNIA - SENIOR MANAGEMENT COMMISSIONED OFFICERS

CURRENT

DIRECTOR



NEW

BRIGADIER



Handwritten signature or initials

NEW RANK INSIGNIA - MIDDLE MANAGEMENT COMMISSIONED OFFICERS



CURRENT

SENIOR SUPERINTENDENT



SUPERINTENDENT



NEW

COLONEL



LIEUTENANT COLONEL



MAJOR



Handwritten initials/signature.

NEW RANK INSIGNIA - JUNIOR MANAGEMENT COMMISSIONED OFFICERS

CURRENT

CAPTAIN



NEW

CAPTAIN



LIEUTENANT



NEW RANK INSIGNIA - OPERATIONAL NON-COMMISSIONED OFFICERS



CURRENT

INSPECTOR



SERGEANT



CONSTABLE



NEW

WARRANT OFFICER



SERGEANT



CONSTABLE



ANNEXURE KDR02



Jacobus Johannes Hendrik Roos states under oath in English:

1

I am a Colonel with persal Nr 0424150-9, and is working at SAPS: Crime Intelligence, Head Office with tel 012- 360 1131 and cellular phone nr 082 559 6890

I was the Head of Internal Audit during the period 2003 to 2008, and was working at Internal Audit until July 2010 after which I was appointed to establish a new section namely Inspection and Evaluation Services. During my time at Internal Audit it was my duty to conduct audits at the Secret Services Account. These audits had been conducted at Crime Intelligence Head Office and offices in the provinces.

2

Part of the approved audit plan for 2004 was to conduct an audit at the SSA advance office at Crime Intelligence Head Office. The audit was conducted in October 2004 and I had found certain discrepancies. There was a company named L.L.V.S. Trading and Services who were providing cleaning services to undercover offices being used by Crime Intelligence. This company was owned by a Colonel who was working at Crime Intelligence and in charge of an undercover office. As the Head of Internal Audit it was my duty to follow up on these discrepancies and in doing so it became clear that there is possible fraud being committed. In the same audit I also found fraud being committed with the repairs done to SR vehicles, as cover quoting had been used to ensure that a certain service provider are repairing our SR vehicles. I had also decided to discuss the matter with Gerhard Steyn, who at that time was in charge of the office of the Auditor General responsible for auditing the SSA. I also asked him to keep quiet until I finalized the audit.

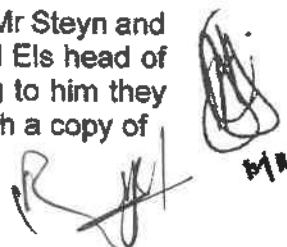
3

The evidence that I had gathered regarding the fraud convinced me to discuss the matter with the legal officer of Crime Intelligence, Brig (Adv) Van Vuuren, who requested me to provide him with a document so that he can give me a legal opinion on the matter. During this time I was called to the office of Asst Comm Mphego of CI and he wanted to know what I am busy with. He was very angry and when I informed him what I had found he instructed me to immediately stop it and to provide him with a report the next day. He was also upset because I had asked Brig Van Vuuren for a legal opinion.

Although I tried to explain to him that there were still matters that needed to be followed up he chased me out of his office. I then received the legal opinion dated 2004-10-21 from Brig Van Vuuren. Due to the fact that Asst Comm Mphego wanted the report the next day Brig Van Vuuren had only provided me with a legal opinion on L.L.V.S. Trading and Services. I then compiled an information note dated 2004-10-22 and handed it to Asst Comm Mphego with the obtained legal opinion. I was instructed by Asst Comm Mphego not to discuss or hand over any documentation regarding the matter to any other persons.

4

After leaving the office of Asst Comm Mphego I discussed the issue with Mr Steyn and he said that he was approached by Div Comm Lalla of CI and Maj Genl Els head of CIG at CI Head Office who questioned him about the matter. According to him they wanted to know what I was busy with. I then also provided Mr Steyn with a copy of

Handwritten signature and initials in the bottom right corner of the page.

the information note and legal opinion that had been handed to Asst Comm Mphego. He said that he will also report the matter to his managers to be investigated by the Office of the Auditor General.

5

During the above period after handing over the information note to Asst Comm Mphego I was again called to his office and I took Lt Col Groenewald of Internal Audit with me. On our arrival I was surprised to find Col Malaza (suspect) and another person who I don't know with Comm Mphego. During this meeting Comm Mphego discussed the possible fraud and informed Col Malaza that he is implicated. Col Malaza gave the impression that he doesn't understand what is going on. I then wanted to intervene and put the correct facts to him but Comm Mphego interrupted me and said Groenewald and I must excuse ourselves and we then left the office.

6

I cannot record the exact date but it was in November 2004 when I received a call on my cell phone from a Brigadier of the Commercial Branch in Johannesburg. He told me that he had received the document regarding the fraud and it is clear that there is enough evidence to investigate and charged all members involved. He also stated that he will send the documents to Commercial Crime in Pretoria who will do the investigation. I informed him that I didn't send the documents to him as I had only reported the matter to Asst Comm Mphego. I was never contacted again but a few days later I was called to the office of Asst Comm Mphego. On my arrival Asst Comm Mphego, Maj Gen Lazarus (then director) and Brig Van Vuuren were already there. Asst Comm Mphego was very angry and made certain threats towards me as he was under the impression that I was the one who reported the matter to Commercial Crime. I tried to defend myself but he wasn't interested in what I had to say. He also told me that I don't want to listen and he will now end my career. Brig Van Vuuren then informed Asst Comm Mphego that he had reported the matter to Head Office and he then left the office. I was also instructed to leave the office.

7

This matter was never again discussed with me and I was also never contacted by any person who was investigating the matter. It however came to my attention that Col Malaza had apparently resigned from SAPS. Shocking evidence gathered during the investigation that I was conducting on instruction of Lt Genl Mdluli in 2009 however revealed that Col Malaza never resigned but was placed in the undercover agent program. It was also found that he was already found guilty on charges of fraud, forgery and uttering in the Pretoria Magistrates Court on another case while working at Crime Intelligence. Evidence obtained during the investigation in 2009 also revealed that the fraud of LLVS Trading and Services had not been stopped by Management after it had been reported by me in the information note dated 2004-10-22 to Asst Comm Mphego.

8

During 2009 Lieutenant General RN Mdluli was appointed as the Divisional Commissioner for Crime Intelligence. In July 2009 I was contacted by Colonel Odendaal and he informed me that Lt Genl Mdluli had asked him to arrange a meeting with me. The meeting took place in a hotel room in Pretoria and I met Lt Genl Mdluli with Col Odendaal and Col Ntuli. It was the first time I met Lt Genl Mdluli and he wanted me to give him information about the fraudulent activities which had been taking place at Crime Intelligence. He said that he want to clean the place and will charged all corrupt members. He specific mentioned the name of Maj Genl Lazarus.

Handwritten signature and initials, possibly 'RJA' and 'MI'.

could see that Lt Genl Mdluli was serious about the investigation and I believed him when he was telling us that he will clean CI of all corrupt members

9

In a next meeting with the same members, this time taking place in his office at Erasmuskloof Lt Genl Mdluli handed over a letter to me instructing us to investigate certain cases of fraud as been discussed. He appointed me as the team leader and the letter was dated 2009-07-29. (Annexure 1).

10

The first case as agreed with Lt Genl Mdluli was an investigation into the company L.L.V.S. Trading and Services. The fraud committed by this company was already reported by me in 2004 to Asst Comm Mphego but nothing had been done. Lt Genl Mdluli was provided with a report on our findings regarding this investigation. (Annexure 2)

Several meetings took place between the investigating team and LT Genl Mdluli and in one of these meetings he instructed us to go to Limpopo. He said that he received information that there is a member who wants to give information regarding fraud and corruption. He approved our itineraries (Annexure 3) and the member was debriefed and made several serious allegations regarding fraud with SSA money, and implicated senior members such as Major General Lazarus. Another member in Gauteng was also debriefed and certain information collaborated with the information received in Limpopo and Genl Mdluli was handed an information note dated 2009-08-26 regarding the information (Annexure 4).

11

In order for the investigation team to follow up on the allegations made by the two members it was necessary to obtain certain documents from the SSA. I had instructed Lt Col Adams, who was part of the investigation team to obtain these documents It was however not possible to get access to these documents as Lt Col Nel, who was working at the advance office at Erasmuskloof denied us access to the documents. According to her it was on instruction of Major General Lazarus. After several unsuccessful attempts I approached Genl Mdluli and he instructed me to draft a letter for his signature that will give us unrestricted access to all documents and information needed. The letter dated 2009-09-15 (Annexure 5) had been compiled by me but when I approached him he didn't want to sign the letter and he acted strange and was not as helpful and friendly as before. In the following days it was not possible to get meetings with Genl Mdluli and we could not continue with our investigation, although there were several cases that needed to be investigated. There was no contact between us and Genl Mdluli and I heard that he went overseas with Major General Lazarus and Col Barnard and other members. These were the main suspects in our investigation and I could not believe it.

12

During November 2009 I was contacted by Col Odendaal and he informed me that he and Col Ntuli wanted me to join them as they are going to see Genl Dramat who is the head of the Hawks. I was informed that they are not happy with the sudden attitude change of Genl Mdluli and the fact that the investigation was stopped. I refused to be part of such action as I was appointed by Genl Mdluli and is not reporting to the head

of the Hawks. I know that such meeting took place on 2009-11-26 during the time Genl Mdluli was overseas.

13

I was instructed to attend a meeting at the office of Genl Mdluli on 2009-12-03. On my arrival the following persons were present Col Odendal, Col Ntuli, Brig Mokoshane and Major Genl Mabasa. Genl Mabasa was the Provincial Head of CI in Gauteng and Brig Mogoshane was also from Gauteng CI. We were told to wait in the board room of Genl Mdluli and after a while Genl Mdluli came out of his office with Major Genl Lazarus and Brig Van Vuuren.

Genl Mdluli was very angry and wanted to know why we went to Genl Dramat and who gave permission for that. I informed him that I was not part of such meeting but knew the others went. They then had to explain their actions and I was very upset as Genl Lazarus was sitting there looking at us and smiling.

My surprise was even bigger when Genl Lazarus started confronting us because of our audacity to investigate him. According to him we were pathetic investigators. Genl Mdluli didn't intervene and I asked him why we are being humiliated by the person he as the general had instructed us to investigate. I noticed a Genl Mdluli that I haven't met before. He was clearly irritated by us and I could see that he is suddenly now big friends with Genl Lazarus and Brig Van Vuuren.

Genl Mdluli said that the organization (SAPS) is bigger than any individual person we are investigating and we must stop the investigation. We were then informed to leave the meeting. The investigation was never again discussed and was stopped.

14

I continued with my normal auditing duties until July 2010 when I was removed from Internal Audit against my will. This was done just after I had again discovered fraud and corruption at UTE (Universal Technical Enterprises).

During May and June 2010 we were conducting an audit at UTE (Universal Technical Enterprises) one of the front companies being used by CI. As the section head for financial and compliance audit I was overall in control of the two audit teams. The one audit was performed on the standing advance office and the other on creditors and suppliers. Lt Col Adams was the team leader for the audit at the advance office and Lt Col Shwatlhedi for the other audit. We had a problem with the audit of Lt Col Shwatlhedi as he was removed from the audit and had to go to the Eastern Cape. I am not aware of what his taskings were. I took control of the audit team and became involved in the actual auditing activities. During the verification of tax invoices I came across payments being made to a company Hills Fitment Centre in KZN. I was suspicious about the fact that they had used different tax invoices and after obtaining more tax invoices it became clear to me that fraud are being committed as cover quoting had been discovered. The amounts paid out for repairs done to vehicles had been extremely high, and payments of between R100 000-00 and R120 000-00 per vehicle for one year was impossible. I started gathering and obtaining more information and documents of this company as I was now sure that fraud are being committed.

We were still busy with the audit when I was told to stop the audit and not to compile a report. This instruction came from Brig Steyn the head of Internal Audit and the audit was stopped and only one report regarding the advance office had been compiled.

Handwritten signatures and initials at the bottom right of the page, including a large signature and the initials 'MM'.

Brig Steyn came to my office and handed a letter to me dated 2010-06-14 which had been signed by Genl Mdluli. The letter was about the establishment of an inspection capability at Crime Intelligence and I was appointed to head up this new section. Since this date I had been removed from Internal Audit and could not conduct any audits at the SSA.

That is all that I declare.

I know and understand the contents of this declaration.
I have no objection in taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.


JH Roos

Colonel

PLACE:

Pretoria

DATE:

6 November 2013

TIME:

14:45

I certify that the above statement was noted down by me and that the deponent has acknowledged that he knows and understands the contents of this statement. This statement was sworn to before me and the deponents signature placed thereon in my presence at Pretoria on 2013-11-06

MARIL McLEAN

Dlwo

74 Watermeyer Street

Silverton

Pretoria



CONFIDENTIAL

Deputy Director of National Commission for Merit and Capacity Building
2009/07/29

MdluliRichard@saps.org.za

26/18/2

Divisional Commissioner Mdluli

360 1410

347 0487

2009-07-29

The Team Leader
Financial Auditor
Crime Intelligence
Head Office

Att. Senior Superintendent Roos

ALLEGED OFFENCE : CORRUPTION AND FRAUD

1. Attached are the copies of Secret Service Account for investigation and further auditing.
2. Your auditing and investigation must include the informer files, safe houses, receipts of purchases and invoices within the Secret Service Account at Kwa Zulu Natal, Limpopo, Head Office and Northern Cape.
3. You will be assisted by three officers whom you will meet on 2009-08-03 at 08:15.

Kind regards.

[Signature]
: DIVISIONAL COMMISSIONER
CRIME INTELLIGENCE: SOUTH AFRICAN POLICE SERVICE
RN MDLULI (SOE)
ALLEGED OFFENCE OF CORRUPTION AND FRAUD 000-0720-00

CONFIDENTIAL

Deputy Director of National Commission for Merit and Capacity Building
but not from 04/20/09
2
Mr. Commissioner
[Signature]

~~CONFIDENTIAL~~

*Declassified
on request
of National
Commissioner
Bug
0422392*

**SPECIAL REPORT: SERVICES PROVIDED BY L.L.V.S. TRADING & SERVICES:
CRIME INTELLIGENCE: HEAD OFFICE**

1. INTRODUCTION:

The task team conducted a preliminary investigation into the activities of L.L.V.S. Trading and Services. The company provided cleaning services during 2004, 2005 and 2006 to various undercover premisses used by the Division: Crime Intelligence. The fraudulent activities had already been reported to Management (Assistant Commissioner Mphego) on 2004-10-22 but no action steps had been taken against the perpetrators and L.L.V.S. Trading and Services had been allowed to continue with their services, although enough prima facie evidence that fraud, forgery and uttering had been committed existed.

The definition of fraud is as follows: **Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.**

According to the evidence and documentation as discovered and followed up in the investigation it is evident that there is prima facie evidence of fraud having been committed by various role players within Crime Intelligence.

2. DETAIL OF INVESTIGATION:

2.1. As already mentioned in the introduction the details of the fraudulent activities had already been reported to Asst Comm Mphego on 2004-10-22 (see information note as Annexure A) as well as a legal opinion obtained from Dir Van Vuuren that concur with the findings of the original audit that there is prima facie evidence of fraud having been committed. The task team only focused on obtaining additional information that had not been stated in the information note of 2004-10-22.

2.2. The following evidence had been obtained as further proof that fraud had been committed with the providing of cleaning services from L.L.V.S. Trading & Services.

~~CONFIDENTIAL~~

*De-classified
on request of
National Commissioner
Bug
0422392*

Dir
By 7
at 22394-2

De-classified
on instruction
of National
Commissioner

CONFIDENTIAL

- * Records and confirmation had been obtained from D.T.I. that persal number 70642630 Snr Supt V.S. Malaza was a director of the company L.L.V.S. Trading & Services at the time when the application and quotations were handed in and approved for the providing of services to SR 33341 (Drugs and Vehicle related crime Group 2). Snr Supt Malaza and his wife L.L. Malaza was the directors of the company and he only resigned on 2004-05-06. The application dated 2004-04-15 had been approved on 2004-04-16 by the Head: Secret Services Account: Asst Com S.Lazarus. (Attached as annexure B).
- * a Statement had been obtained from M.G.J. van der Merwe that the quotation from Africlean had been a false quotation and had not been given by the company (Attached as annexure C).
- * a Statement had also been obtained from D.Verwey that the quotation of Mr Clean had not been given by them and is false (Attached as annexure D).
- * D.T.I. confirmed that there is no company with the name Maumakwe Cleaning Sevice.
- * The company Multi Cleaning Services (PTY) LTD does not exist anymore and the owner Mr J. Cherry unfortunately passed away on 2006-05-19. The other director Mr. K.A. Mangwane could not be traced up to date. The owner Mr Cherry had already confirmed on 2004-10-11 that the quotation had not been given by him and does not even look the same.
- * The original claim applications (SR017) regarding payments made to L.L.V.S. Trading & Services for the premisses SR 33314, SR375560 and SR 366129 had been obtained and are kept in safe custody. The claims had also been used to calculate the amounts involved in the payments made to the said company. The exact amounts involved will be detailed in the report.

2.3. It is clear that, as already mentioned in the original information note to Asst Comm Mphego as well as the legal opinion obtained from Dir. Van Vuuren that there is enough evidence that all involved quotations obtained were false. Snr

CONFIDENTIAL

By 7
at 22394-2
De-classified on
instruction of National
Commissioner

Declassified
on instruction of
National Commission
 CONFIDENTIAL
By Mr van

Supt Malaza and his wife as the owners of L.L.V.S.Trading & Services had gained financially by providing these cleaning services to Crime Intelligence. It is also the opinion of the task team that there will be more members involved who had gained financially, therefore that no steps had been taken by Management to stop these fraudulent activities after it had been discovered and reported in October 2004. The services to SR 33341, where Snr Supt Malaza was also the Commander had continued until 2006-07-12.

- 2.4. The total amount which had been paid out to L.L.V.S. Trading and Services for providing of cleaning services had been R265 250-00 and had Management taken action after it had been reported in October 2004 the amount would only have been R73 000-00. The State had lost another R192 250-00 because Management had decided not to stop these activities and blatantly disregard their obligations to comply with the Prevention and Corrupt activities Act 2004 (Act no 12 of 2004) and the Public Finance Management Act (Act 1 of 1999) especially chapter 10 which deals with financial misconduct.

L.L.V.S Trading and Services provided cleaning services to the following undercover offices: SR 33341- Drugs and Vehicles Group 2; SR 375560- National Undercover and Network Operations and SR 366129- Undercover office. The details of payments made for the providing of the cleaning services are as follows:

SR Number	Starting date	Ending date	Commander	Monthly payment	Amount in Nov 2004	Total amount
33341	2004-04	2006-07	Snr Supt V.S Malaza	R5250-00	R31500-00	R131250-00
375560	2004-09	2006-02	Snr Supt J. Takoorsadh	R6500-00 R5000-00	R19500-00	R84500-00
366129	2004-08	2005-04	Snr Supt M.O. Nemutanzhela	R5500-00	R22000-00	R49500-00
Total					R73000-00	R265250-00

Declassified
 CONFIDENTIAL
on instruction of
National Commission
By Mr van
 6
Mr van
Mr van

Declassified
~~CONFIDENTIAL~~

- 2.5. Snr Supt Malaza was the commander of SR 33341- Drugs and Vehicles Group 2 and although he knew that he was busy with fraudulent activities he not only recommended the original application dated 2004-04-15, but even approved the claim applications for the payment of twenty (20) monthly payments made to his own company. It was found that the new commander of SR 33341 Snr Supt Nelson approved the last four (4) payment for the period 2006-03 to 2006-07.

It was further found that Snr Supt Malaza had been taken into the Undercover Agent program for the period 2006-02-01 to 2008-04-01. It is at this stage unclear as to what he was doing for this period and he is currently according to records working at Covert Collections in Kwa Zulu Natal.

Shocking evidence revealed that Snr Supt Malaza was already found guilty on charges of fraud, forgery and uttering on 2005-09-01. He was sentenced on 2005-12-15 as follows * Fraud- R50 000-00 or 3 years imprisonment * Forgery and uttering- community service section 276i (h) and 3 years suspended for 5 years. See case number 719/8/2003 Jhb Central. It is at this stage unclear if a departmental hearing had been held and if so what was the ruling. (Attached as annexure E).

3. **CAUSE AND EFFECT:**

If all the facts are taken into account it is clear that certain senior managers at Crime Intelligence had protected Snr Supt Malaza and other members involved in this case. These senior managers include Asst Com Mphego and Asst Com Lazarus. The possibility that more individuals had gained financially out of these corrupt activities cannot be over looked.

Another serious factor that need to be pointed out is the fact that the Office of the Auditor General had also been informed in October 2004 by Internal Audit of the corrupt activities and a copy of the information note which had been handed to Dir van Vuuren as well as the legal opinion obtained had been handed over to Dir Steyn, at that stage in command of the Office of the Auditor General. As independent auditor it was his duty to report the matter to the Auditor Generals

~~CONFIDENTIAL~~

Page 4 of 6

De - classified
By Snr Com

[Handwritten signature]
[Handwritten initials]

De-Annibal

*By Buy NK Uman
04223942*

CONFIDENTIAL

Office to be investigated. It appears that it was not done and that there had been an conspiracy between him and Crime Intelligence management to cover up the case.

4.

RECOMMENDATIONS:

Management had already been informed in October 2004 and was aware of the fraudulent activities taking place and no criminal charges had been brought against all perpetrators. The matter is even worse due to the fact that Management had not even instituted steps to stop these services being delivered but continue for almost another two (2) years to defraud the State. The Office of the Auditor General had never taken any steps to report or stop these activities and issued their final year end audit reports as if nothing was wrong.

Taking into consideration the Prevention and Combating of Corrupt Activities Act, 2004 (Act no 12 of 2004) and the PFMA it is important that this case and circumstances in which it had been committed be reported as a matter of urge to the Audit Committee and the Office of the National Commissioner.

It is also necessary that, in order to comply with the above Acts, as well as to circular 3/3/9 dated 2008-12-01 from the office of the National Commissioner where it is stated that it is a concern to Management that SAPS members are involved in corrupt and criminal activities and that all such activities be reported for criminal investigation, that it be reported to the Commercial Crime Unit for further investigation.

It is also recommended that immediate action steps be taken against all members involved.

It is of necessity that a full investigation now be lodged and that all members involved in the original applications be questioned in order to establish who was responsible for the fraudulent quotations. As the investigation continues

CONFIDENTIAL

De-Annibal

*By Buy NK Uman
04223942*

Declassified
By Brig Nhleko
422394-2

~~CONFIDENTIAL~~

it will also come clear who benefitted financially from the R265 250-00 that had been paid out.

It must also be determined if Dir Steyn had reported the matter to the Auditor Generals Office while he was in charge there and if not his actions must be seen as part of the coverup and the Prevention and Combating of Corrupt Activities Act, 2004 (Act no 12 of 2004) is also applicable to him.

The loss to the State could have been R73 000-00 but due to the fact that Management and the Office of the Auditor General had blatantly neglect to take action a further amount of R192 250-00 had been paid out to L.L.V.S Trading and Services.

In the present economic climate the SAPS cannot afford this type of corruption to become a facilitator for crime and dishonesty, merely because it is convenient not to bring the culprits to justice. The laws of the country and its tax payers demands from State departments the enforcing of ethics that are built on the cornerstones of justice and fairness to all.

SNR
SUPERINTENDENT
CRIME INTELLIGENCE: SOUTH AFRICAN POLICE SERVICE
THE TASK TEAM LEADER
JJH ROOS

~~CONFIDENTIAL~~

Page 6 of 6

Declassified
By Brig Nhleko
422394-2

SUID-AFRIKAANSE POLISIEDIENS
REISPLAN



SOUTH AFRICAN POLICE SERVICE
ITINERARY

'n Reisplan moet altyd voltooi word wanneer 'n beampte 'n reis onderneem waarty die een of ander finansiële uitgawe vir die Staat betrokke is, of waar 'n beampte vir langer as 24 uur van sy of haar standplaas afwesig sal wees of verplaas is. Indien die ruimte op die reisplan nie voldoende is nie, moet daar op 'n aparte folio voortgegaan word. Hierdie folio moet deur die goedkeurende gesag, geteken word en aan die reisplan geheg word.

An Itinerary is always completed whenever an official undertakes a journey and expenditure for the State is involved, or if an official will be absent for longer than 24 hours from his or her station or has been transferred. If there is insufficient space on the Itinerary, please use an additional folio. This folio must be attached to the Itinerary and signed by the applicant and the approving authority.

Persal No/Persal No 0424150-9 Rang/Rank S/SUPT Naam/Name J.JH ROOS
 Komponent/Component CRIME INTELLIGENCE Subkomponent/Subcomponent INTERNAL AUDIT

Besonderhede Van Reis/Details of Journey

Leër/Saak/ Projekkodeverwysing 26/18/2 Doel Van Reis DN COMM MDLULI TASKING
 File/Case/Project Code Reference

Van PRETORIA Datum/Date 2009/08/20 Na/To LIMPOPO PROVINCE Datum/Date 2009/08/20
 From LIMPOPO PROVINCE Datum/Date 2009/08/20 Na/To PRETORIA Datum/Date 2009/08/20

*Privaat/Private *Selfonderhoudend/Self-supporting	* Hotelaanblyf Hotel Cost Etes/Meals R. <u>35.00</u>	* Staatsakkommodasie(Plek) State Accommodation(Place)
* Lugvervoer Air Transport	* Busvervoer Bus Transport	* Trein Rail
* Ampel/Finansiële/gesub vervoer Official/finance/subs transp SAP/req No SAP/req No	* Staatsgarage Government Garage Tipe Voertuig Kind of Vehicle Rekwisiisie No Requisition No Koste Cost R.	* Verhuuringsmaatskappy Rental Company * Privaat Vervoer Private Transport Tipe Voertuig Type of Vehicle Koste Cost R.
* Parkering/Parking	* Parkering/Parking	* Parkering/Parking
* Verbytoelae/Subsistance Allowance	dae/days @ R.	p/d = R.
* Verminderde Verbytoelae/Reduced Subsistance Allowance	dae/days @ R.	p/d = R.
Dagtoelae (Werklike Uitgawes)/Daily Allowance (Actual Expenditure) dae/days @ R. p/d = R.		
* Addisioneel (Spesifiseer)/Additional (Specify)		

082 559 6890

[Signature]
Aanvaarding Van Aansoekter/Signature of Applicant

Adres en kontak tel no gedurende reis
Address and contact tel no during journey

Finansiële Magtiging/Financial Authorization

Verantwoordelikeid/Responsibility	Doelwit/Objective
Finansiële magtigingsverwysing	Totale Uitgawes
Financial Authorization Reference	Total Expenditure
Fondse Besikikbaar/Funds Available	
Fondse nie Besikikbaar nie/Funds not Available	
Finansiële Diens/Financial Services	

Opmerkinge/Remarks
APPROVED!
NOT APPROVED

[Signature]
BEN MDLULI
DIVISIONAL SUPERVISOR/INCHARGE

Skrap wat nie van toepassing is nie/Delete if not applicable

= Instruksie op agterkant van vorm/Instruction on reverse of form

[Handwritten marks and signatures]

SUID-AFRIKAANSE POLISIEDIENS
REISPLAN



SOUTH AFRICAN POLICE SERVICE
ITINERARY

'n Reisplan moet te alle tye voltooi word wanneer 'n beampte 'n reis onderneem waarty die een of ander finansiële uitgawe vir die Staat betrokke is, of waar 'n beampte vir langer as 24 uur van sy of haar standplaas afwesig sal wees of verplaas is. Indien die ruimte op die reisplan nie voldoende is nie, moet daar op 'n aparte foto voortgegaan word. Hierdie foto moet deur die goedkeurende gesag, geteken word en aan die reisplan geheg word.

An Itinerary is always completed whenever an official undertakes a journey and expenditure for the State is involved, or if an official will be absent for longer than 24 hours from his or her station or has been transferred. If there is insufficient space on the itinerary, please use an additional foto. This foto must be attached to the itinerary and signed by the applicant and the approving authority.

Persal No/Persal No 04039025 Rang/Rank S/Supt Naam/Name JW ODENDAAL
 Komponent/Component Prov. Comm GUTENG Subkomponent/Subcomponent

Besonderthede Van Reis/Details of Journey

Leër/Saak-/ Projekkodeverwysing 26/18/2 Doel Van Reis Div Comm MOLULI TASKING
 File/Cas/Project Code Reference

#Van PRETORIA Datum/Date 2009/08/20 Na/To LIMPOPO PROVINCE Datum/Date 2009/08/20
 From LIMPOPO PROVINCE Datum/Date 2009/08/20 Na/To PRETORIA Datum/Date 2009/08/20
 Van PRETORIA Datum/Date Datum/Date Na/To Datum/Date

* Privaat/Private * Selfonderhoudend/Self-supporting	* Hotelkoste Hotel Cost Eles/Meals R <u>35.00</u> Wesgoed/Laundry R	* Staats-akkommodasie(Plek) State Accommodation(Place)
* Lugvervoer Air Transport R	* Busvervoer Bus Transport R	* Trein Rail R
* Amp/finans/gesub vervoer Official/finance/subs transp SAP/rog No SAP/reg No	* Staatsgarage Government Garage Tipe Voertuig Kind of Vehicle Rekwisisie No Requisition No Koste Cost R	* Veruuringsmaatskappy Rental Company * Privaat Vervoer Private Transport Tipe Voertuig Type of Vehicle Koste Cost R
* Parkering/Parking R	* Parkering/Parking R	* Parkering/Parking R
* Verbyhoelae/Subsistence Allowance daer/days @ R p/d = R		
* Verminderde Verbyhoelae/Reduced Subsistence Allowance daer/days @ R p/d = R		
* Dagtoelae (Werdike Uitgawes)/Daily Allowance (Actual Expenditure) daer/days @ R p/d = R		
* Addisioneel (Spesifiseer)/Additional (Specify)		

082 822 6454

Adres en kontak tel no gedurende reis
Address and contact tel no during journey

Handtekening Van Aansoekers/Signature of Applicant

Finansiële Magtiging/Financial Authorization

Verantwoordelikeid/Responsibility Finansiële magtigingsverwysing Financial Authorization Reference	Doelwit/Objective Totale Uitgawes Total Expenditure
Fondse Besikikbaar/Funds Available Fondse nie Besikikbaar nie/Funds not Available	Finansiële Diens/Financial Services

Opmerking/Remarks
APPROVED/NOT APPROVED

[Signature]
R. MDLULI
DIVISIONAL COMMISSIONER
CRIME INTELLIGENCE

Skrap wat nie van toepassing is nie/Delete if not applicable

Instruksie op agterkant van vorm/Instruction on reverse of form

MAN

[Handwritten marks]

ANNEX 4.

INFORMATION NOTE**FROM : The Task Team****TO : Div Comm RN Mdluli****DATE : 2009-08-26****SUBJECT : Meeting held with Capt MM Manganye and Insp MD Sefafe**

1. As instructed a meeting was set up with Capt MM Manganye in Polokwane on 2009-08-19 and the following members of the task team had met with her, Snr Supt Roos, Snr Supt Odendaal and Supt Adams.
2. Capt Manganye handed over several documents as well as certain computerized reports which she had extracted from the Capfin system. The following issues had been discussed:
 - 2.1. Capt Manganye gave details regarding the fraudulent claims which had been handed in by Capt SJ Motaung and the reasons that led to her being moved from SSA Head Office to SSA Prov Office Limpopo. She informed us that Capt Motaung had handed in false receipts for fuel and although admitting it to Asst Comm Lazarus he decided not to charge him. According to her she and the other three members that worked at the advance office did receive money from time to time from various members but only small amounts and it was given to them to buy food. She denied that they had received money because they knew and helped Capt Motaung or any other member to commit fraud with claims. According to her they had been forced by Asst Comm Lazarus, Snr Supt Heine and Snr Supt Chan Goolam to admit being part of the fraudulent activities. They at the end agreed to pay back three thousand rand each at installments of R200-00 p/m. Asst Comm Lazarus however forced them to sign standing advance applications to the amount of R3000-00. They never received any money from the advances being signed and another R3000-00 was deducted from their salaries last month. The members had given statements to Asst Comm Lazarus but no copies had been handed over to the task team

She also referred to the fraud case of Const Gounden and denied that she ever received any money from him and although he indicated her to be involved in the fraud she denied that she is part of it. She also informed the team that she was at various occasions chased out of the office of Asst Comm Lazarus when she went to him regarding claims which according to her was incorrect and possibly fraudulent. He instructed them not to query any claims and if it is approved they must pay it out. According to her he even instructed them in front of other members not to come to him with any claims and that they are not allowed to even read the motivations on the claims, they must just pay it out. These remarks were made after all the personnel had been called together with his promotion to Asst Comm. She was even sent away on various occasions by Supt Nel and Supt Harmse, her supervisors at the advance office

Handwritten signature and initials, possibly 'R. J.' or similar, located at the bottom right of the page.

when she experienced problems with claims because they also informed her that the instructions from Asst Comm Lazarus is that they are not allowed to ask any questions about claims. She said that the actions of Asst Comm Lazarus forced them not to question any claims although it looked suspicious.

- 2.2. A copy of claim 36410 to the amount of R52 231-68 dated 2008-07-14 had been handed to us. According to her it is a fraudulent claim which had been handed in by Snr Supt Barnard and approved by Asst Comm Lazarus. She also informed us that Asst Comm Lazarus had asked her if she had a copy of the claim and she told him no. He told her that he and Snr Supt Barnard will be in big trouble if the claim come to light.

The claim was according to the motivation for repairs done to the vehicle of a contact person and was done by New World Motors. According to the tax invoice it was not only repairs which had been paid for but also tyres (R13680-00), mag rims (R7000-00) and a radio (R3000-00). No details regarding the vehicle or owner is reflected on the claim and tax invoice.

Capt Manganye said that it is a concern to her that the invoice numbers of New World Motors always follow on each other although there is sometimes weeks between the dates that services are being received from them.

As proof to this Insp Sefafe handed over another invoice with number 256 dated 2008-05-26 to the amount of R 7778-75. According to reports extracted from the Capfin system this invoice was handed in with claim 36305. It was evident that the invoice numbers followed on each other. **Annexure A**

Supt Adams tried to get the original claims on Friday the 21th and again on Tuesday the 25 th after instructions from the Div Comm but Supt Nel at the advance office refused to hand it over and said that Asst Comm Lazarus gave an instruction that no documents must be handed over to us without his written approval. According to her he must first be informed why we need the claims and he will then decide if we can get it.

- 2.3. Capt Manganye handed over a computerized printout of claims which had been handed in by Supt Trollope, the staff officer of Asst Comm Mphego. According to her there are some irregularities with these claims. These claims had all been paid out for expenses of the front company EMB Solutions. The amounts claimed are exceptionally high and according to reports extracted from the Capfin System these claims had most of the time being paid out for salaries of consultants, bank chargers, rent, water and lights, research costs, fuel, lawyer fees, legend building etc. These claims had been paid out for the period 2008-07-25 to 2009-07-21 (1 year) and the total amount for the twelve (12) claims is an incredible R2 756 579-45. **Annexure B.**

These claims had been paid out from responsibility 0506 and had been captured by Supt Harmse at Asst Comm Lazarus office. It is unclear at this stage where the original claims are kept.

2.4. Capt Manganye also handed over various printouts of claims and rewards which had been paid out from Resp 0007 regarding certain "friends" of Asst Comm Lazarus. These members are all working in KZN but Asst Comm Lazarus had given them permission to hand their claims in at SSA Head Office. According to her he is also approving most of the claims. The printouts for the following members had been handed over IM Vanker ,GN Veerasamy, BP Madondo and FG Dube. **Annexure C.**

2.4.1. A follow-up had been done on the above members claims history and according to reports extracted from the Capfin system the following amounts had been claimed and paid out for claims and rewards for the period 2008-01-01 to 2009-08-20 **Annexure D.**

* Persal nr 06222013 I.M Vanker **R3 005 130**

* Persal nr 70642885 GN Veerasamy **R599 077-00**

* Persal nr 04767066 BP Madondo **R1 451 549-00**

* Persal nr 61658758 FG Dube **R1 760-520-00**

It was also found that payments are done from various responsibility offices ea 0007,0014,0066, 0507 and 0718.

0007 SSA Head Office Erasmuskloof
0014 Technical Support Unit, Head Office
0066 Undercover KZN
0718 Provincial Office SSA KZN
0507 SSA Head Office Irene

2.4.2 The above members also used the advance office at Asst Comm Lazarus office in Irene to submit claims for reward payments. For the period 2008-10-31 to 2009-06-17 (8 months) an amount of R2 197 500-00 had been paid out. These payments stopped on 2009-06-17. **Annexure E.**

2.5. Capt Manganye also informed the task team that there might also be an irregularity regarding a claim which had been paid out for the amount of R 50 000-00 and the money was used to buy a Rolex watch for the previous Divisional Commissioner Lalla. She could not hand over any documents as proof.

2.6. A computerized printout regarding claim 23996 to the amount of R200 000-00 had been handed over by Insp Sefafe. The claimant was Asst Comm WJ Els and the claim was paid out for legend building for SR 470783. According to Insp Sefafe there is problems with the claim. As already mentioned it was not possible for the task team to obtain the claim because Asst Comm Lazarus refused us access. According to report 3.6.11 extracted from the Capfin system other claims had been paid out ea. Claim 25987 for R115 000-00 and claim 28325 for R240 000-00 for operational entertainment .**Annexure F.**

3. **With regard to the LLVS Trading and Services investigation statements had been obtained from the following persons :**

- 3.1. Snr Supt Takoorparsadh stated that he received all the quotations from Snr Supt Malaza.
- 3.2. Supt AS Govender stated that he received the quotations from the clerk ME Kgwale who worked with him at the safe premisses. On request from Snr Supt Odendaal he said that she left the office after being promoted. It was however established that the lady passed away in Nov 2007.
- 3.3. Snr Supt NR Thilivhali stated that he received the quotations from Dir MO Nemutanzhela.
- 3.4. Dir Van Vuuren was approached by Snr Supt Odendaal on 2009-08-20 regarding the legal opinion that he had provided on the Malaza matter. During the interview a statement was requested from Dir Van Vuuren but he only provided an information note addressed to the Div Commissioner

Snr Supt Odendaal discussed various issues with Dir Van Vuuren and the remarks that Dir Van Vuuren had made then towards Snr Supt Odendaal was unfortunately changed when stated in the information note. **Annexure G.**

- 3.4.1. Dir Van Vuuren told Snr Supt Odendaal that he was called in by Comm Mphego regarding this matter where he met Snr Supt Roos and a third person possible Asst Comm Lazarus (a Director by then). In his information note dated 2009-08-24 in paragraph 5 he refer that Snr Supt Odendaal confirm to him that it was indeed Asst Comm Lazarus that was the third person in the meeting. He now says that he is not personally sure it was him.
- 3.4.2. Regarding paragraph 7 of the information note he mentioned to Snr Supt Odendaal during their meeting that Asst Comm Els possibly draft the legal opinion with regards to Snr Supt Malaza pending departmental case for perusal. He now indicated that he cant remember who did it. Snr Supt Malaza allegedly took his discharge before the matter was finalized.
- 3.4.3. Paragraph 8 of his information note mentioned that he saw Malaza at Crime Intelligence Erasmuskloof and later somebody who he cant remember said that he is in the agent program. During his discussion with Snr Supt Odendaal he however said that Asst Comm Els informed him that he was recruited to the agent program.

4. **FINDINGS AND RECOMMENDATIONS:**

- 4.1. It is clear that Asst Comm Lazarus is not executing his duties as Chief Financial Officer in a proper manner. He blatantly disregard the prescripts of the Preventing and Corrupt Activities Act, 2004 (Act no 2 of 2004) and the Public Finance Management Act as he is not instituting criminal charges against members who had committed fraud although it had been reported to him. The following cases serves as examples:

* The fraudulent receipts handed in by persal number 7040313-9 Capt SJ Motaung

Handwritten signature and initials in the bottom right corner of the page.

with the possible assistance of the four members working at the advance office.

* The possible fraud cases as reported by Internal Audit against the following members persal number 7040313-9 Capt SJ Motaung (again), persal number 7081380-9 Insp M Mzisa, persal number 0173171-8 Supt AS Govender, persal number 0513302-5 Supt FD Khoza and persal number 0438755-4 Sgt GL Stoltz. See special audit report 23/3/11/154.

In circular 3/3/9 dated 2008-12-01 from the office of the National Commissioner it is stated that it is a concern to Management that Saps members are involved in corrupt and criminal activities and that all such activities must be reported and investigated.

- 4.2. As already mentioned in this information note the task team had been denied access on the last two occasions when they tried to get hold of claim applications from Resp 0007. These claims are needed for the finalization of the tasking as received from the Div. Comm. Supt Nel on both occasions informed us that Asst Comm Lazarus instructed her not to give us access unless we applied in writing to him.
5. It is therefor recommended that steps be taken in order to assure the task team unconditionally access to all needed documents, informer files and claim and advance applications and any other information needed.
6. It is further recommended that as a matter of urge a senior detective, preferably from the "HAWKS" be appointed to finalized the case of LLVS Trading and Services and a criminal case immediately be registered.
7. The cases as referred to in par 4.1 also be handed over for criminal investigation.
8. It is further recommended that independent auditors be appointed to audit the following Responsibility offices:
 - Resp 0507 SSA National Office
 - Resp 0506 EMB Solutions
 - Resp 0007 SSA Head Office
 - Resp 0505 Van Vuuren Attorneys SA
 - Resp 0014 TSU Head Office
 - Resp 0718 KZN Provincial Office
 - Resp 0066 Under Cover Special Operations

G.P.S. 002-0222

SAP 21

SUID-AFRIKAANSE POLISIEDIENS**SOUTH AFRICAN POLICE SERVICE**

Privaatsak/Private Bag X 302 PRETORIA 0001
 Posbus/Poet Office Box

Verwysing Reference	26/18/2
Navrae Enquiries	Dlv Com Mdluli
Telefoon Telephone	012 - 360 1410
Faksnommer Fax number	012 - 347 0487

2009-09-15

- A. The Team Leader
 Task Team
 Crime Intelligence
 Head Office
- B. All Component Heads
 Crime Intelligence
 Head Office
- C. All Provincial Heads
 Crime Intelligence
- Att: Snr Supt Roos

TASKINGS/INVESTIGATIONS: CRIME INTELLIGENCE

- The following officers are being granted unrestricted access to all informer files, agent files, safe houses, receipts of purchases, invoices, standing advance and claim applications, reward payments and all other related documents and payments from the Secret Services Account: Crime Intelligence. This arrangement includes all Head Office components and all offices in the provinces. These members are Snr Supt Roos, Snr Supt Ntuli, Snr Supt Odendaal and Supt Adams.
- You are hereby instructed to comply with the above and your co operation in this regard is appreciated.

Kind regards

DIVISIONAL COMMISSIONER
CRIME INTELLIGENCE: SOUTH AFRICAN POLICE SERVICE
RM MDLULI

M 07

ANNEXURE KDR03



BREAKING NEWS

'KU KLUX' THUG AWARDED R350 000 BY SA COURT P5

Sunday Times

www.timeslive.co.za THE PAPER FOR THE PEOPLE

OCTOBER 23 2011 | R16.00 INC. VAT

Bombora P14.95, Dubai AHD 29.00, Lesotho R14.95, Namibia NS27.95, Swaziland R15.50



LERATO TSHABALALA
What whites need to know about blacks
LIFESTYLE MAGAZINE

GADDAFI'S LAST DAYS
PAGE 13



RUGBY AND WAR
REVIEW



Shocking fate of suspects in alleged rendition deal with Zim cops

SENT TO DIE

Hawks and SA police arresting suspects and sending them over the border to be murdered

SPECIAL REPORT BY INVESTIGATION STAFF

South African officials to the Hawks and SA Police Service are conducting illegal "renditions" with their Zimbabwean counterparts — by arresting "suspects" and illegally sending them across the Beit Bridge border to be murdered.

CAUGHT AND KILLED



Hussain Biboy, 26, suspect of shooting a policeman in Zimbabwe, was "renditioned" across the border by the Hawks and then murdered, apparently by Zimbabwean police.

They denied a "rendition" operation led by officers reporting to Hawks boss Anura Kumari and Gauteng police commissioner Lieutenant-General Mzwandile Poto. Rendition is the illegal kidnapping and transfer of a person from one country to another.

by the police, that he claimed they were properly "deported". He was unable to produce any documentary proof of this.

In just one case, the Sunday Times has obtained that Zimbabwean Witness Ndeya, 28, who was suspected of abducting a policeman in that country, was "renditioned" by the Hawks and then murdered, apparently by Zimbabwean police.

The court rejects both of Amnesty's Orlando police station confirmed that Ndeya was arrested, along with his mother and two friends, for being "illegal immigrants" on November 3 last year.

In a separate report, the Hawks and SA Police Service are conducting illegal "renditions" with their Zimbabwean counterparts — by arresting "suspects" and illegally sending them across the Beit Bridge border to be murdered.

Ernest yesterday confirmed that at least three individuals identified by the Sunday Times as having been "renditioned" to a grisly fate in Zimbabwe were, in fact, taken across the border

FIVE RUNNERS KILLED BY THIS CAR



SOLLY MASHUMBELO

This is the mangled car that moved down the potholes — five of whom are dead — in a horror crash early yesterday.

PHOTO: KEVIN AUTHORIZED

shortly after dawn on the corner of O'Connell and Levee roads in Makhanda, Johannesburg. The driver was detained at the scene after he tried to walk away from the wreckage.

PHOTO: KEVIN AUTHORIZED

arrived on the scene they found the runners scattered across the road. Morose Molekoti, Director of Operations, Green Hills, Eric Hale and Muzibane Dintoko were declared dead on the scene while Khayesha Schegolev was rushed to a nearby hospital.

PHOTO: KEVIN AUTHORIZED

running water. Sifiso Maba and Vusi Mntsheni, escaped the fatal accident because they were late for the early morning run.

PHOTO: KEVIN AUTHORIZED

broken leg and arm. Their bodies were badly damaged. It was so disturbing.

Yehuma said, "As soon as you were stopped, prior to the operation they said they are going to kill us but mentioning a policeman [and] they'll start by chopping off our hands and feet."

was arrested in Diepkloof and "renditioned" to Zimbabwe, where, sources say, he was killed by police after breaking his hand while trying to escape.

handed over to his immigration official from Zimbabwe. His spokesman, Nicholas Pheko, said, "No police did see anything, but we people to authorities without any immigration official present, because that would constitute rendition."

of what happened to them in Zimbabwe. It is not our mandate to do follow-ups on deportees.

General Poto said, "I don't know [Ndeya], and I'm not in a position to answer this."

Writing in REVIEW today



Julius Malema
The political leadership is scared of capital and white people!

Mondli Makhanya
Zuma knows how the numbers game worked for him and how it can undo him!

Phylicia Oppelt
These transformed citizens all had roles to play in the death of the rainbow nation!



Lindiwe Mazibuko
Faith in parliament will be built by what we do, not what we say we do!

Redi Tihabi
Zuma's affinity for secrecy and sweeping pertinent issues under the carpet is unbecoming!

PLUS

Ben Trovato
The census is going well. Would you prefer to be raped, murdered or robbed? Doesn't matter. Just make it quick!



open Sundays
10am - 2pm

bank while you shop
now in 111 major shopping malls

Thanks to the great response from our clients, we opened another 27 branches from 10am - 2pm on Sundays.

CAPITEC BANK
Simplify the simplest experience.

24h Client Care Centre 0800 10 20 40 or www.capitec.co.za
A registered credit provider, NCR Reg. No. NDRCP19 Capitec Bank Limited Reg. No. 1900000565/06

SENT TO DIE

Hawks and SA police arresting suspects and sending them over the border to be murdered

Sunday Times · 23 Oct 2011 · SPECIAL REPORT BY INVESTIGATION STAFF

SENIOR officials in the Hawks and SA Police Service are conducting illegal “renditions” with their Zimbabwean counterparts — by arresting “suspects” and illegally sending them across the Beit Bridge border to be murdered.

Explosive intelligence reports — listing at least three deaths — are understood to be in the possession of Minister of Police Nathi Mthethwa.

They detail a “renditions” operation led by officers reporting to Hawks boss Anwa Dramat and Gauteng police commissioner Lieutenant-general Mzwandile Petros.

Rendition is the illegal kidnapping and transfer of a prisoner from one country to another. Dramat yesterday confirmed that at least three individuals identified by the Sunday Times as having been “renditioned” to a grisly fate in Zimbabwe were, in fact, taken across the border by the police. But he claimed they were properly “deported”. He was unable to provide any documentary proof of this.

In just one case, the Sunday Times has evidence that Zimbabwean Witness Ndeya, 26, who was suspected of shooting a policeman in that country, was “renditioned” by the Hawks and then murdered, apparently by Zimbabwean police.

The occurrence book at Soweto’s Orlando police station confirmed that Ndeya was arrested, along with his nephew and two friends, for being “illegal immigrants” on November 5 last year.

But, unlike other illegal immigrants sent to Lindela detention centre, police records show the four men were discharged at 11.55am on November 8 and driven to the Beit Bridge border by police.

In a sworn statement by one of the four, Shepard Tshuma, he named General Shadrack Sibiyi and Captain Cowboy Maluleke as having arrested them.

The Zimbabwean police met their South African counterparts at the border and, according to Tshuma, “told us that we are under arrest for the murder of police officers”.

Tshuma and Ndeya were detained at a Bulawayo police station before the former was released a week later.

A few days later, Tshuma said, the Zimbabwean police told the family “that Witness Ndeya was killed by other police officers”.

Ndeya’s death certificate confirmed he died at “Hippo Valley Farm” in Bulawayo on November 20, with the cause of death listed as “multiple gunshot wounds”.

Tshuma, along with the other two surviving “renditioned” suspects, are now hiding in South Africa, after allegedly being threatened by Maluleke.

This week, the Sunday Times met the three at a secret location. They said they feared being “deported and murdered”.

Tshuma said: "As soon as we were handed over to the policeman, they said they are going to kill us for murdering a policeman [and] they'll start by chopping off our hands and feet."

The Sunday Times is aware of several other individuals who have also been renditioned to Zimbabwe.

In another case, intelligence reports say Pritchard Tshuma, 24, was arrested in November last year for "murder and robbery" in Alexandra in Johannesburg and "deported" to Zimbabwe. He has since gone missing.

Another man, Gordon Dube, was arrested in Diepsloot and "renditioned" to Zimbabwe, where, sources say, he was killed by police after first having his hands chopped off.

Dramat confirmed that Ndeya, Dube and Tshuma were "all arrested as illegal immigrants" and were "deported".

But he denied these were illegal renditions, saying everyone "followed protocol", whereby deported individuals must be handed over to an immigration official from Zimbabwe.

His spokesman, McIntosh Polela, said: "At no point did we simply hand over people to authorities without [an immigration official present], because that would constitute rendition."

This, however, is contradicted by Tshuma's statement. He said: "We passed the SA side of the border, and we parked the car inside . . . I saw five African

'They said they are going to kill us for murdering a policeman [and] they'll start by chopping off our hands and feet'

males jumping out from their cars, and they introduced themselves as Zimbabwe police officers . . . [who] told us we were under arrest for [the] murder of police officers."

Such behaviour is a contravention of the Immigration Act and flouts a "special dispensation" by the government at the time that prevented Zimbabweans from being deported from South Africa.

The high court also recently ruled that authorities "acted unlawfully" in extraditing someone without guaranteeing they would not face death.

Dramat said: "We are not aware of what happened to them in Zimbabwe. It is not our mandate to do follow-ups on deported [people]."

Zimbabwean police spokesman Oliver Mandipaka said he "can't confirm or deny that Ndeya was arrested or killed".

General Sibiya, who agreed to meet the Sunday Times, but later cancelled, said: "I don't know [Ndeya, and] I'm not in a position to sanction this."

General Petros said he "did not sanction, neither did [I have] knowledge of any illegal renditions".

Captain Maluleke refused to answer questions.

ANNEXURE KDR04





THE UNFAIR SEX Beauty's ugly truth Page 23

OUR HEROES Meet the Nation's Greatest Page 6

UP, UP AND AWAY What you pay for government travel Page 14

VALUE FRIDGE FLEET 1 ton to 12 ton REFRIGERATED VEHICLES CREDIT CARDS ACCEPTED 0860 7000 46

Monday Times

OCTOBER 13 2013 | R26.00 Inc./VAT | www.timeslive.co.za THE PAPER FOR THE PEOPLE Subscriptions: P94.95, Daily AED 26.00, Local P94.95, Namibia 1447.65, Swaziland 106.50 LOTTO RESULTS PAGE 2

Hawks boss fingered in rendition scandal

Dramat to be interrogated over claims that he facilitated illegal deportation of men who were tortured and killed in Zimbabwe

TELEVISION OF STEPHAN HOFSTÄTTER

WARNING: New documents put Hawks boss's explanation of General Adria Duval's role in the deaths of a rendition scandal in which Zimbabweans were arrested in South Africa and sent across the border to be tortured and killed.

Internal police memos and a sworn statement by a senior border police official at Bell Bridge in Limpopo allege that he facilitated the illegal deportations.

President Jacob Zuma is expected to be presented with evidence this week that could result in an arrest warrant being issued for Duval, one of South Africa's top cops.

Revelation is the alleged kidnapping and transfer of a prisoner from one country to another.

The Sunday Times understands that Duval has agreed to present himself for questioning to investigators from the Independent Police Investigative Directorate (IPID) on Tuesday.

A decision will be made after this meeting whether to arrest him and six others, including General Havela boss Mphahlele, financial Shadokwa Sibaya and the Hawks' Colonel Leshe Mankwe for their alleged role in the renditions.

The investigation was sparked by a Sunday Times expose in October 2011 that detailed how a team led by Sibaya and Mankwe arrested four Zimbabweans in Limpopo township, near Johannesburg, who were suspected of killing Chief Superintendent Lawrence Dlamini in Bulawayo, Zimbabwe.

A paper trail seen by the Sunday Times shows that Willem Nkomo, his member Shepherd Nene and their friends Ndlovu and Sibiya were arrested at a road police station in Soweto before being driven to Bell Bridge on November 2, 2010.

Sibaya and Nkomo were dropped off before reaching the border, but Nkomo and Sibiya were handed over to Zimbabwean police days later. Nkomo's whereabouts have since been revealed to his relatives at Dlamini's inquest, a death certificate shows. Sibaya was released and is now in hiding in South Africa, along with Sibanda and Ndlovu.

Sibaya said in a sworn statement to the IPID investigators that he was never involved in



ANKWA DRAMA

any operation where suspects were arrested and deported to Zimbabwe. "I do not even know the suspect's whereabouts," he said. However, he and Mankwe are implicated directly in sworn statements made by rendition survivors and fellow police officers.

The Sunday Times is aware of several other Zimbabweans who are allegedly the subject of rendition by the same Hawks team, including:

• Psychiatric Tabwana, arrested in November 2010 in Alexandria township, who has since disappeared.

• Gordon Dube, arrested in November 2010 and believed to have died in custody, and

• John Nene, arrested in November 2010 and believed to have died in custody. A relative was informed a month later that he had died in police custody from a severe beating and related wounds.

An internal investigation headed by Duval cleared Sibaya, Mankwe and other Hawks officials of any wrongdoing in a report last year to Police Minister Sibusiso Moyo. Duval said Zimbabwean citizens arrested in South Africa were

arrested by South African police and extradited through formal court processes. Those here illegally arrested across borders in Zimbabwe were handed to Duval's officers for deportation.

Duval's officers suspected that Mphahlele, Sibaya and Sibanda were planning to arrest Nkomo in South Africa, but when they could not be linked to any criminal cases, they were handed to border officials for lawful deportation, Duval said in the report.

However, new documents seen by the Sunday Times suggest that Duval played a central role in facilitating their alleged rendition. Police memos reveal that Duval held a meeting August 2010 with senior officers in Zimbabwe to discuss "mutual assistance" in apprehending "high-wanted Zimbabwean criminals" involved in cross-border crimes.

Sources close to the investigation said Duval held secret meetings with Zimbabwean police officials in South Africa and Zimbabwe shortly before the alleged renditions. They claim the Hawks are withholding more documents allegedly implicating their boss in the scandal, including travel claims for his trips to Zimbabwe and Limpopo, where he is believed to have met the Zimbabwean officials.

A sworn statement by a Cape Town-based Zimbabwean activist, Bulu Hwange, posted directly implicates Duval.

Mankwe said that in December 2010 a copy of Zimbabwean police officials driving Mankwe to Limpopo arrested at Bell Bridge, headed by a Superintendent Nene, a detective from a homicide unit in Durban, who said he was on his way to meet Mankwe in Pretoria.

Nene claimed he had made prior arrangements with Duval to hand down Zimbabwean cop-killer suspects in South Africa with the Hawks' help. When Mankwe protested, Nene gave him Duval's cell phone number and his name in call the Hawks' boss. Mankwe said Duval told him he was aware of the visit by the Zimbabwean and should "let them come".

Two weeks later, on November 2, Nene returned to Bell Bridge with the Hawks' Colonel Mankwe, who showed him home office deportation documents for two Zimbabwean cop-killer suspects, Nene and Sibaya. The border policeman

Ri-Ri Rolls In



Singing sensation Rihanna arrives at OR Tambo International Airport in Johannesburg yesterday ahead of tonight's concert at the FNB Stadium. The Grammy Award-winning singer, who is due to perform in Cape Town on Wednesday, was welcomed by scores of fans. See Page 3

Guards' comfort a factor in Nkandla upgrade

CAPITUS NGOSAMA

TURKIE Work Minister Turhan Nergiz says the R200-million upgrade to President Jacob Zuma's Nkandla home was made at the party to save its bodyguards in real estate deals. Nergiz, in an interview with the Sunday Times this week, said there previously had been no plan for Zuma's bodyguards in Akop when the president visited Nkandla. Instead, they were forced to drive 75km to Ishabane.

The president's security had to drop him off and then go and sleep in a tent, Nergiz said. "If they had had to sleep in their cars, that not only posed a security risk, but what about those workers' wages?" he asks.

He also depicted the construction of two buildings at Nkandla. "The president lives when he goes to Nkandla."

Nergiz said the material probably cost only R22-million, but the security upgrade. The remaining R178-million was used for operational upgrades.

These operational upgrades, he said, involved the departments that were responsible for ensuring the president's safety, such as the police, defence force and other security personnel, including the President's own emergency team.

Part of it went to the bodies which were created by the departments and the personal of defence and the police. Hence you have those intelligence units.

"These are for that personnel. They are for the president. All we have done for the president is a security upgrade," he said.

Nergiz is embroiled in a storm over the release of the report into the Nkandla upgrade, which he has classified under a 1996 cabinet directive.

The report found that officials at the Department of Public Works had colluded with contractors to inflate costs, paying the final price for R200-million.

The public protector, Thuli Madonsela, said the Special Investigating Unit are engaged in separate probes to determine who was responsible for the cost-overrun, her investigation says. After several weeks and an alleged attempt by the security cluster ministers to get Madonsela to drop her investigation into Nkandla, Nergiz finally released and related the report to her.

Parliament's military joint standing committee on intelligence, which meets behind closed doors, is also scrutinising the report.

Nergiz said he would be guided by the committee in terms of what to do with it.

"The decision of that parliamentary committee, whatever they say, we will implement. If they say it's fine to the public, we will do that because they (the committee) have to report to parliament," he said.

On Tuesday the High Court in Cape Town ruled that an application by the Democratic Alliance to force Nergiz to make the report public, was illegal and would be heard in February. Nergiz said he would abide by the court order.

Advertisement for Capitec Bank. Text: 'if you can't bank after 3:30pm, #AskWhy'. Hours: 8am - 5pm, Monday to Friday; 8am - 1pm, Saturday; 9am - 1pm, Sunday (selected branches). #AskWhy to simplify banking. Follow #AskWhy on Twitter or visit askwhy.co.za. CAPITEC BANK. Simplicity is the ultimate sophistication.

Hawks boss fingered in rendition scandal

Dramat to be interrogated over claims that he facilitated illegal deportation of men who were tortured and killed in Zimbabwe

Sunday Times · 13 Oct 2013 · MZILIKAZI wa AFRIKA and STEPHAN HOFSTATTER

DAMNING new documents put Hawks boss Lieutenant-General Anwa Dramat at the centre of a rendition scandal in which Zimbabweans were arrested in South Africa and sent across the border to be tortured and killed.

Internal police memos and a sworn statement by a senior border police official at Beit Bridge in Limpopo allege that he facilitated the illegal deportations.

President Jacob Zuma is expected to be presented with evidence this week that could result in an arrest warrant being issued for Dramat, one of South Africa's top cops.

Rendition is the illegal kidnapping and transfer of a prisoner from one country to another. The Sunday Times understands that Dramat has agreed to present himself for interrogation to investigators from the Independent Police Investigative Directorate (IPID) on Tuesday.

A decision will be made after this meeting whether to arrest him and six others, including Gauteng Hawks boss Major General Shadrack Sibiya and the Hawks's Colonel Leslie "Cowboy" Maluleke, for their alleged role in the renditions.

The investigation was sparked by a Sunday Times exposé in October 2011 that detailed how a team led by Sibiya and Maluleke arrested four Zimbabweans in Diepsloot township, near Johannesburg, who were suspected of killing Chief Superintendent Lawrence Chatiboko in Bulawayo, Zimbabwe.

A paper trail seen by the Sunday Times shows that Witness Ndeya, his nephew Shepherd Tshuma and their friends Nelson Ndlovu and Maqhawe Sibanda were detained at Orlando police station in Soweto before being driven to Beit Bridge on November 8 2010.

Sibanda and Ndlovu were dropped off before reaching the border, but Ndeya and Tshuma were handed over to Zimbabwean police. Days later, Ndeya's bullet-riddled body was released to his relatives at Bulawayo mortuary, a death certificate shows. Tshuma was released and is now in hiding in South Africa, along with Sibanda and Ndlovu.

Sibiya said in a sworn statement to the IPID investigators that he was never involved in any operation where suspects were arrested and deported to Zimbabwe. "I do not even know the suspects mentioned," he said. However, he and Maluleke are implicated directly in sworn statements made by rendition survivors and fellow police officers.

The Sunday Times is aware of several other Zimbabweans who are allegedly the subject of rendition by the same Hawks team, including:

Prichard Tshuma, arrested

A decision will be made after this meeting whether to arrest him and six others . . . for their alleged role in the renditions

in November 2010 in Alexandra township, who has since disappeared;

Gordon Dube, arrested in Diepsloot in 2010 and believed to have died in custody; and

John Nyoni, arrested in Diepsloot on January 26 2011. A relative was informed a month later that he had died in police custody from a severe beating and gunshot wounds.

An internal investigation headed by Dramat cleared Sibiya, Maluleke and other Hawks officials of any wrongdoing. In a report last year to Police Minister Nathi Mthethwa, Dramat said Zimbabwean crime suspects in South Africa were arrested by South African police and extradited through formal court processes. Those here illegally without arrest warrants in Zimbabwe were handed to home affairs for deportation.

Dramat's officers suspected that Ndeya, Tshuma, Ndlovu and Sibanda were planning armed robberies in South Africa, but when they could not be linked to any criminal cases they were handed to home affairs for lawful deportation, Dramat said in the report.

However, new documents seen by the Sunday Times suggest that Dramat played a central role in facilitating their alleged rendition. Police memos reveal that Dramat held a meeting in August 2010 with his counterpart in Zimbabwe to discuss "mutual assistance" in apprehending "most-wanted Zimbabwean criminals involved in cross-border crimes".

Sources close to the investigation said Dramat held more meetings with Zimbabwean police officials in South Africa and Zimbabwe shortly before the alleged renditions. They claim the Hawks are withholding more documents allegedly incriminating their boss in the scandal, including travel claims for his trips to Zimbabwe and Limpopo, where he is believed to have met the Zimbabwean officials.

A sworn statement by a Lieutenant-Colonel Madilonga at Beit Bridge border post directly implicates Dramat.

Madilonga said that in October 2010 a convoy of Zimbabwean police officials driving Mitsubishi Tritons arrived at Beit Bridge, headed by a Superintendent Ncube, a detective from a homicide unit in Harare, who said he was on his way to meet Dramat in Pretoria.

Ncube claimed he had made prior arrangements with Dramat to hunt down Zimbabwean cop-killer suspects in South Africa with the Hawks boss's help. When Madilonga protested, Ncube gave him Dramat's cellphone number and told him to call the Hawks boss. Madilonga said Dramat told him he was aware of the visit by the Zimbabweans and should "let them come".

Two weeks later, on November 8, Ncube returned to Beit Bridge with the Hawks's Colonel Maluleke, who showed him home affairs deportation documents for two Zimbabwean cop-killer suspects, Ndeya and Tshuma. The border policeman climbed into Maluleke's sedan, which was followed by another sedan driven by Ncube and carrying Ndeya and Tshuma.

"We never stopped at the border and no documents were stamped for the purpose of deportation," Madilonga said in his statement.

Once in Zimbabwe, they were surrounded by Zimbabwean police, who pulled Ndeya and Tshuma out of the sedan and showed no interest in the home affairs documents, said Madilonga, who claimed Maluleke warned him the operation was "top secret".



Madilonga said that in 2012, once the IPID's investigation was in full swing, Maluleke called to ask him to make a "cover-up" statement.

Investigators now believe that the deportation documents used were fraudulent. Sworn statements by home affairs officials indicate that the detention warrants dated 2010 had been discontinued in 2008, and that illegal immigrants are taken to the department's Lindela deportation facility, not directly to Beit Bridge, with the necessary documents.

"The members of SAPS are not entitled to deport people themselves and it is illegal to do so," the acting deputy director of home affairs at Lindela, Job Jackson, said in a sworn statement.

Sibiya blamed faction fighting between the police's Hawks and crime intelligence divisions. "I don't know anything about this thing. I was not involved and I have never been involved. Crime intelligence is behind this whole thing — I don't know why."

He said the investigation had dragged on for three years. "I'm challenging IPID: let's go to court on Monday."

Maluleke said the allegations were planted by crime intelligence officials unhappy with the Hawks' role in arresting former crime intelligence head Richard Mdluli. "They were in the Mdluli camp, so when he got arrested, they decided whoever was involved in arresting Mdluli, we must take them down," he said.

Maluleke insisted that his unit had done nothing illegal in arresting and handing over the Zimbabweans. "They are Zimbabweans and belong in Zimbabwe. We arrested and removed criminals from South Africa who are terrorising our community," he said.

IPID spokesman Moses Dlamini declined to confirm or deny if Dramat, Sibiya and Maluleke were suspects in the case. Asked why the case had not gone to trial yet, he said:

"I'm not going to get into a debate with [Sibiya]. Our investigation is not three years old — it's been just over a year. It's at quite an advanced stage. That's all I'm prepared to say."

Dramat said he was "not prepared to talk about it or comment" on the case.



ANNEXURE KDR05



South African Police Service*Suid-Afrikaanse Polisiediens*

Private Bag x1500, Silverton, 0127

Fax No: (012) 846 4400

Your reference :	Silverton CAS 155/07/2011	ANTI-CORRUPTION TASK TEAM
	Lyttleton CAS 432/11/2011	DIRECTORATE FOR PRIORITY CRIME
	Vosloorus CAS 340/02/1999	INVESTIGATION
My reference :	19/1/1	SILVERTON
Enquiries :	Col K Roelofse	0127
Tel :	(012) 843 8583	
	082 778 5661	

2012-03-02

The Commander
ANTI-CORRUPTION TASK TEAM

FACTUAL REPORT: PROGRESS ON CRIMINAL INVESTIGATIONS: SILVERTON CAS 155/07/2011, LYTTLETON CAS 432/11/2011 AND VOSLOORUS CAS 340/02/1999: ANTI-CORRUPTION TASK TEAM (ACTT)

1. This report is in response to a letter dated **29 February 2012** by your office. It seeks to address the issues raised by you regarding this investigation. It further seeks to highlight the interference experienced from within the South African Police Services (SAPS) as well as actions regarded as interference National Prosecuting Authority (NPA). It will also seek to highlight the lack of cooperation/assistance from other government departments.
2. The report will further seek to highlight the sequence of events since **18 March 2011** as to put the development of the entire investigation into context. This needs to be done in light of the allegations that the investigation into alleged criminal activities of certain members of Crime Intelligence (CI) is based on hidden agendas and ulterior motives.

3. The following documents are attached to this report highlighting *inter alia* and in more detail, the progress in respect of the investigations done and contributions by related parties to protect the integrity of the investigations:
- Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **18 April 2011**
 - Information Note addressed to Major General S Sibiya dated **20 April 2011**
 - Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **18 June 2011**
 - Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **07 July 2011**
 - Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **11 August 2011**
 - Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **26 October 2011**
 - Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **05 December 2011**
 - Information Note addressed to the acting National Commissioner, Lieutenant General Mkhwanazi dated **23 February 2012**
 - Draft letter (not dated) addressed to the Office of the Inspector General of Intelligence compiled by Brigadier F van Graan on request of Colonel K Roelofse
 - Draft report compiled by Major General Jacobs and Colonel K Roelofse on instruction from the acting National Commissioner, Lieutenant General Mkhwanazi on **26 January 2012**. The purpose of the report was to show the sequence of events leading up to the referral of the investigation to the Office of the Inspector General of Intelligence. It also included an opinion on the jurisdiction, in terms of law, the SAPS have in respect of the investigation.
 - Draft letter (author and date unknown) compiled on instruction of the acting National Commissioner, Lieutenant General Mkhwanazi referring the matter to the Office of the Inspector General of Intelligence.



- Report dated **04 December 2012** compiled by Advocate L Mrwebi in response to the representations made by Lieutenant General Mdluli with regards to Silverton CAS 155/07/2011
4. Issues arising from your letter, specifically paragraph 4, are not addressed under each specific bullet point but are covered in the context of the report.
 5. The report does however not address the primary elements of investigations still outstanding and estimated time needed to conclude the cases as set out in paragraph 4.
 6. At this point it is very difficult to address both these issues due to factors outside the control of the investigative process. The debriefing of the witness (as referred to later in the report) within the Witness Protection Program has not been concluded which means that further criminal conduct might still come to light. Investigations into alleged criminality by members/informers of/from CI within Kwazulu-Natal have not even begun yet and as such the scope of such an investigation is not even known.

BACKGROUND

7. On **18 March 2011** a request was received from Deputy National Commissioner, Lieutenant General A Dramat that Colonel KD Roelofse and Lieutenant Colonel P Viljoen must avail themselves to assist in an investigation in Gauteng that was conducted by Major General S Sibiya. **Vosloorus CAS 340/02/1999** refers.
8. During a briefing session attended by Lieutenant General M Petros, Major General Z Matakata and Major General S Sibiya, Colonel KD Roelofse and Lieutenant Colonel P Viljoen on **21 March 2011** it came to light that a murder investigation was conducted in which a Lieutenant General Mdluli and three (3) other persons were implicated. It was also stated that the then investigation team, under the command of Major General S Sibiya, were



threatened and were unable to continue with the said investigation. Therefore an independent investigative team was needed to proceed with the investigation.

9. This meeting resulted in Colonel KD Roelofse and Lieutenant Colonel P Viljoen being requested to continue with the said investigation.

SEQUENCE OF EVENTS

10. On **31 March 2011** Richard Naggie Mdluli was arrested at Boksburg Magistrate Court for murder as well as other charges that range from intimidation, kidnapping, assault with the intent to cause grievous bodily harm and defeating the ends of justice. The court hearing (bail) against Lieutenant General Mdluli started on **07 April 2011**. After the conclusion of the bail hearing on **20 April 2011** in which Lieutenant General Mdluli and his co-accuse were granted bail, the case was postponed to **30 September 2011** for further investigation and the determination of a High Court date. On **30 September 2011** this matter was postponed to **10 April 2012** for trial in the High Court, Johannesburg.
11. This matter was provisionally withdrawn on **14 February 2012** in the High Court, Johannesburg. This was done after a decision was taken by the National Prosecuting Authority (NPA) to withdraw the matter and institute a formal inquest. The formal inquest is to be held at Boksburg Magistrates Court on **10 April 2012**.
12. At the time of his arrest Lieutenant General Mdluli was the national head of Crime Intelligence within the SAPS.
13. After the arrest of Lieutenant General Mdluli, some members of Crime Intelligence (CI) came forward with information regarding alleged crimes committed by members working at Crime Intelligence. On **18 April 2011** an information note was compiled regarding some of the information obtained during the murder investigation. It is clear from this information



note that additional information regarding alleged criminality within CI had to be investigated further.

14. Further to the information mentioned above the investigative team have had the opportunity to follow up on the information that was uncovered during the investigation into the above mentioned murder incident. The investigative team discovered two vehicles registered in the name of Theresa Lyons, namely a blue 330D BMW with registration number CF 165358 and a black ML 350 CDI with registration number CF 171881. In this regard it must be mentioned that she is married to Lieutenant General Mdluli.

FACTS IN RESPECT OF SILVERTON CAS 155/07/2011

15. In approximately **April 2010** a Colonel HJ Barnard, Head Procurement, Crime Intelligence, Pretoria approached Leo Haese Pretoria informing them that he was interested in buying a 5 series BMW and that he wanted to trade in a 7 series BMW on the 5 series BMW. One of Barnard's functions is to buy vehicles for Crime Intelligence through a front company Universal Technical Enterprises (UTE). He therefore approached Leo Haese Pretoria as a representative of UTE. UTE is funded through the Secret Services Account (SSA).
16. The trade in vehicle belonged to Lieutenant General Mdluli and he had a settlement amount of R560 526.01 outstanding on his hire purchase through BMW Financing.
17. Leo Haese Pretoria could only offer Lieutenant General Mdluli R470 000.00 for his vehicle. This accounted for a deficit of R90 526.01 that Lieutenant General Mdluli had to settle.
18. In essence the deal that was negotiated between Leo Haese Pretoria and Barnard entailed that Barnard (through UTE) had to buy two (2) vehicles from them in order to finance the shortfall on the trade in vehicle that belonged to Lieutenant General Mdluli. This deal also included a payment from Atlantis Nissan on 02 June 2010 to cover the shortfall between the



sale of the 3 series BMW in June 2010 and the 5 series BMW in August 2010 to UTE which amounted to R48 213.01.

19. The shortfall between the cover price of R470 000.00 and preferred settlement amount R512 313.00 was covered with a discount and trading assistance of R42 313.00 which was generated by the sale of the 3 series BMW.
20. Together with the discount and trading assistance of R42 313.00 Leo Haese Pretoria also received a payment from Atlantis Nissan on 02 June 2010 for R48 213.01. The amount of R90 526.01 that was generated through discount and trading assistance allowed for the full and final settlement of the settlement amount of R560 526.01 in respect of the trade in vehicle.
21. On 26 August 2010 Leo Haese Pretoria sold a 530d BMW Sedan to Barnard of UTE. The total cost to UTE amounted to R706 150.00. The discount that UTE was entitled to amounted to R31 500.00. This amount was paid back to Atlantis Nissan as per their previous agreement.
22. Through the above-mentioned actions Lieutenant General Mdluli fraudulently benefited an amount of R90 526.01. This amount was owed to the state as the trade in assistance and discount should have accrued to the 3 and 5 series BMW's.
23. It also became apparent that there never was a need for Barnard to buy the 3 series BMW but he only did so to contribute to Lieutenant General Mdluli's settlement amount. Subsequent to the sale of this specific vehicle it was registered to Theresa Lyons in August 2010 for her exclusive use. She got married to Lieutenant General Mdluli on **19 February 2011** and continued to use it up until it was confiscated on **15 April 2011**.



CONTINUATION OF THE SEQUENCE OF EVENTS

24. Information notes dated **18 June 2011** and **10 July 2011** set out the facts as described above and were handed to Lieutenant General Dramat. On **11 July 2011** a case docket was registered in respect of the above-mentioned incident.
25. As stated earlier in this document the investigative team were also approached by various individuals regarding alleged irregularities by senior members within CI. Due to the fact that the investigation into the murder neared completion more time was available to concentrate on the reports that were received from these various individuals.
26. In this respect the investigative team was able compile a file regarding some of the allegations made by members working at CI. This file was handed to Lieutenant General Dramat on **17 August 2011** with the request that it be handed to the Office of the Inspector General of Intelligence. A memo dated **11 August 2011** was attached to the file. This was handed to the Inspector General of Intelligence personally on **18 August 2011**.
27. On **25 August 2011** a report in terms of regulation 12 was handed to Lieutenant General Lebeya in respect of Silverton CAS 155/07/2011. The report is not attached but is available on request.
28. Applications for warrants of arrest and search warrants in respect of the case docket, Silverton CAS 155/07/2011 was prepared and handed to the National Prosecuting Authority (NPA) on **02 September 2011** for decision. On the same day the case docket was handed to the relevant senior magistrate at Pretoria Magistrates Court for consideration and decision.
29. The warrants of arrest and search warrants were duly signed by the relevant senior magistrate on **06 September 2011**. The said warrants of arrest and search warrants were obtained from the Pretoria Magistrates Court on the same date.



30. Due to the sensitivity of the matter Lieutenant General Dramat was requested to intervene and facilitate compliance with the said search and seizure warrants without compromising the covert premises in question. This intervention took place and a meeting was held on **13 September 2011** which was attended by Lieutenant General Dramat, Lieutenant General Lebeya, Major General Sibeya, Major General Matshatshe, Colonel KD Roelofse and Lieutenant Colonel P Viljoen. An agreement was reached as how best to comply with the search and seizure warrant.
31. Major General Hankel was appointed to facilitate the process on behalf of Crime Intelligence. Brigadier F van Graan from Legal Services, Head Office was requested to monitor the process. The first meeting was held on **14 September 2011**. It was clear from the meeting that CI wanted to deviate from the agreement that was reached on **13 September 2011** in that they wanted a list of documents as per the search and seizure warrants with the view of supplying the documents at a later stage.
32. The matter was then referred back to Lieutenant General Dramat in order for him to intervene. The original agreement was only acknowledged on 21 September 2011 by CI, after the intervention.
33. On **16 September 2011** the National Director of Public Prosecution Adv Semilane requested to be briefed on this matter due to a request by the Office of the Inspector General of Intelligence. The nature of the request is not known. Advocate Willie Hofmeyer and the Director of Public Prosecution of North Gauteng, Advocate S Mzinyathi was briefed by Advocate C Smith (prosecutor in this matter) and Colonel KD Roelofse, which in turn briefed Advocate Semilane.
34. After the briefing session the National Director of Public Prosecution, Adv Semilane stated that the warrants of arrests and search warrants was duly obtained and had to be executed by the South African Police Services.



35. On **20 September 2011** the investigative team were informed by Lieutenant General Dramat that he was informed in writing by the Office of the Inspector General of Intelligence that they will not be attending to the report given to them on **18 August 2011** as a report of this nature can only be referred to through the office of the Minister of Police.
36. On **20 September 2011** Lieutenant General Mdluli was brought before the Specialized Commercial Crimes Court, Pretoria. Lieutenant General Mdluli was granted bail and the case was postponed to **14 December 2011**.
37. On **21 September 2011** Major General Hankel facilitated the process as agreed upon earlier and various documents, as requested, were handed over to the investigation team. To limit any exposure only Colonel K Roelofse accompanied Major General Hankel to the covert premises in question. Brigadier F van Graan not only assisted in this process but accompanied Major General Hankel and Colonel K Roelofse.
38. On **04 October 2011** Colonel Barnard was also arrested and brought before the Specialized Commercial Crimes Court, Pretoria in respect of Silverton CAS 155/07/2011. Barnard was granted bail and the case was also postponed to **14 December 2011**.
39. On **18 October 2011** a member of CI was interviewed regarding certain of the above mentioned allegations as well as allegations made in the attached information notes. He made certain allegations in respect of criminality within CI and an affidavit was obtained. The allegations made by this member have far reaching consequences if proved to be true. He was placed within the Witness Protection Program on **21 October 2011**.
40. The witness was made available to Major General Hankel due to the serious nature of the allegations made by him. As part of the investigation certain documentation was requested that the witness referred to in his affidavit. These documents on face value seem to corroborate the allegations made by the witness.



41. On **24 October 2011** the Office of the Inspector General of Intelligence requested copies of the search and seizure warrants issued in respect of case docket, Silverton CAS 155/07/2011. This was supplied to them on that day.
42. On **30 October 2011** Colonel K Roelofse was approached by Major General Sibiya regarding the investigation into this matter and more specifically the investigation into the alleged criminal abuse of the secret service account. Major General Sibiya informed Colonel K Roelofse that he had been taken to task by certain Generals within the SAPS, by allowing this investigation to continue beyond the scope of the murder investigation.
43. According to Major General Sibiya he was accused of having no control over the investigative team. Colonel K Roelofse informed Major General Sibiya that he reports to Lieutenant General A Dramat regarding the investigation and that any instruction regarding the termination of the investigation must be in writing and addressed to Lieutenant General A Dramat.
44. On **31 October 2011** Major General Hankel, Major General De Kock, Major General Jacobs and Brigadier F Van Graan went to see the Inspector General of Intelligence as to inform her of the situation developing at CI relating to the Secret Service Account.
45. On **02 November 2011** a meeting was held with the representatives of the Auditor Generals' Office. They were briefed regarding the allegations of criminal conduct. They were also requested to form part of the investigation in respect of these allegations. The investigative team was informed on **15 November 2011** that they do not wish to be part of the investigation.
46. The information provided by the witness as mentioned above and other evidence discovered during the investigation were relayed to the Office of the Inspector General of Intelligence, on their request, via a report dated **03 November 2011**. The report with the heading "**Report to the Inspector General of Intelligence on the matter of alleged mal-administration and crimes committed in respect of the Secret Services Account (SAA) of**



the Crime Intelligence Division of the South African Police Service" was signed by Major General Hankel and Major General De Kock on **03 November 2011**. The report was handed to the Office of the Inspector General of Intelligence on **03 November 2011** as well as to the acting Commissioner of the South African Police Service, Lieutenant General Mkhwanazi. A copy of this report is available if required.

47. On **08 November 2011** a request was made to the investigation team to obtain the case docket, Silverton CAS 155/07/2011 by a member of the NPA not involved in the investigation. The request was not entertained. This was followed up with a further request dated **10 November 2011**. This was also not entertained.
48. On **15 November 2011** a further case docket was opened at Lyttleton SAPS. Lyttleton CAS 432/11/2011 refers. This case docket was opened in respect of the investigation done regarding the allegations made by the member from CI who was admitted into the Witness Protection Program. The details of this matter are dealt with in the attached reports.
49. In response to the interference experienced, Colonel K Roelofse approached Advocate G Nel, the prosecutor designated by the Director of Public Prosecution, Gauteng North, Advocate S Mzinyathi in respect of Lyttleton CAS 432/11/2011 with the view to obtain a warrant of arrest for Major General Lazarus. In this regard an affidavit dated **16 November 2011** was compiled by Colonel Roelofse in which he sets out the basis of his application. The basis for the application is largely based on the lack of intervention by SAPS to preserve the integrity of the investigation. Repeated requests to intervene to ensure the integrity of the investigation were ignored and that led to the application for a warrant of arrest.
50. A representation dated **17 November 2011** (Thursday) by Lieutenant General Mdluli was handed (by hand) to Advocate L Mwrebi for consideration in respect of the case docket, Silverton CAS 155/07/2011. The representations contained the affidavit of Lieutenant Colonel P Viljoen which formed the basis of the application for the search and seizure warrants and warrants of arrest. Lieutenant General Mdluli based his representation firstly



on the assumption that according to him there is a conspiracy against him which constitutes an unfair prosecution and secondly that the criminal case against him is weak.

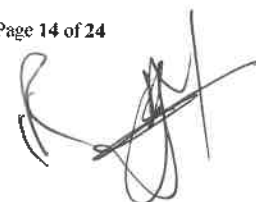
51. On **21 November 2011** (Monday) Advocate L Mwrebi forwarded Lieutenant General Mdluli's representations to Advocate G Breytenbach for consideration.
52. Lieutenant General Mdluli also handed on **21 November 2011** representations with regards to his disciplinary hearing to his employer (SAPS). In this representation he states that any investigation into the matter without involving the Office of the Inspector General of Intelligence would be unlawful.
53. On **22 November 2011** (Tuesday) Advocate C Smith (prosecutor in this matter) responded to the representations made by Lieutenant General Mdluli. This was then presented to Advocate G Breytenbach, Advocate Smith's supervisor. Smith, in his report to Advocate Mwrebi, made it clear that the matter cannot be withdrawn due to strength of the state's case. In fact he stated he is considering adding a new charge.
54. On **24 November 2011** (Thursday) Advocate C Smith's response to Lieutenant General Mdluli's representations was forwarded to Advocate L Mwrebi. A copy of Advocate C Smith's response is available.
55. On **28 November 2011** (Monday) Advocate Mwrebi informed Advocate Smith that he is not satisfied with his response to Lieutenant General Mdluli's representations. He then requested access to the actual docket.
56. The original docket was delivered to Advocate Smith on **28 November 2011**.
57. On **28 November 2011** the acting Divisional Commissioner of Crime Intelligence, Major General Matshatshe, Major General M Hankel and Major General Hslatswayo was temporarily transferred from CI to another division within the SAPS. Major General Lazarus was also given a notice of suspension on the same date.

Two handwritten signatures in black ink, one appearing to be a stylized 'R' and the other a more complex signature.

58. A memorandum from Advocate L Mwrebi dated **04 December 2011** (Sunday) instructs Advocate C Smith to withdraw the case against Lieutenant General Mdluli and Barnard. Barnard did not submit representations to the DDP.
59. Major General Lazarus's suspension came into effect on **05 December 2011**.
60. On **06 December 2011** the investigation team was informed that the matter against Lieutenant General Mdluli and Colonel Barnard was withdrawn. No reason for the withdrawal was given.
61. On **07 December 2011** a copy of the memorandum dated **04 December 2011** as compiled by Advocate L Mwrebi, was received by this office. Advocate L Mwrebi, in his memorandum indicates that he concurs with Lieutenant General Mdluli that the criminal case is indeed weak. He further states that even if the criminal matter was strong the SAPS do not have the mandate to investigate the matter as it falls within the mandate of the Office of the Inspector General of Intelligence and any investigation into this matter could be unlawful. He concludes that **"whether there was evidence or not, is in my view, not important for my decision in the matter"**.
62. The basis on which Advocate L Mwrebi took his decision did not form part of this representation but did in fact form part of the representations presented to the SAPS with regards to the instituting of disciplinary action by the employer. It is therefore unclear whether he received both representations and by mistake responded to the wrong representation.
63. On **08 December 2011** a meeting was held between Advocate Louw, Advocate Breytenbach, Advocate Smith, Major General Jacobs and Brigadier van Graan regarding the decision made by Advocate L Mwrebi. It was established that Advocate L Mwrebi already informed Lieutenant General Mdluli of his decision prior to him informing the prosecutor, Advocate Smith. Neither was the SAPS consulted in the decision made by Advocate L Mwrebi.



64. On the same date Advocate Breytenbach, Advocate S Mzinyathi and Brigadier van Graan went to the Office of the Inspector General of Intelligence in respect of the memorandum by Advocate L Mwrebi dated **04 December 2011**. A meeting with Advocate J Govender took place to seek clarity regarding the role the Office of the Inspector General of Intelligence in respect of this investigation. During this meeting Advocate J Govender again reiterated that the Office of the Inspector General of Intelligence is not mandated to conduct do criminal investigations.
65. On **09 December 2011** Advocate Breytenbach and Advocate S Mzinyathi went to see Advocate L Mwrebi in respect of his decision in the Mdluli matter. Advocate L Mwrebi refused to reconsider his decision. Advocate Breytenbach however indicated to Colonel Roelofse that an agreement was reached between the above-mentioned parties that the matter be provisionally withdrawn.
66. On **14 December 2011** the matter gets provisionally withdrawn against Lieutenant General Mdluli and Barnard in the Specialized Commercial Crimes Court, Pretoria.
67. On **14 December 2011** Colonel Roelofse met with Advocate Breytenbach in order to consider the various options open in respect of the investigation. It was decided to approach the Office of the Inspector General of Intelligence and the Office of the Auditor General in an attempt to include them in the investigation. Advocate Breytenbach had at that stage spoken to Advocate J Govender on various occasions. In each instance it was made clear that the Inspector General of Intelligence does not have the capacity and/or the mandate to do a criminal investigation.
68. Colonel K Roelofse also spoke to Advocate J Govender on **10 January 2012** in which she reiterated and confirmed the position of the Inspector General of Intelligence. She further added that the SAPS must make a formal request to the Inspector General of Intelligence regarding assistance in this matter. She also added that Advocate L Mwrebi did not consult with the Office of the Inspector General of Intelligence prior to him withdrawing the matter against Lieutenant General Mdluli and Colonel H Barnard.



69. On **12 January 2012** Colonel K Roelofse also spoke to Carl Dibetso from the Office of the Inspector General. He advised that the Inspector General of Intelligence does not have the capacity and/or the mandate to investigate criminal matters. The responsibility to investigate crime still lies with the SAPS. He also advised that the SAPS, through the office acting National Commissioner of the SAPS, Lieutenant General Mkwanaasi, must make a formal request to the Inspector General of Intelligence regarding assistance in this matter.
70. Also on **12 January 2012** Colonel Roelofse met with Brigadier van Graan and advised him of Govender and Dibetso viewpoint on this matter. Brigadier van Graan was requested to draft such a request in order to get clarity on the situation.
71. On **25 January 2012** the acting National Commissioner of the SAPS, Lieutenant General Mkwanaasi, requested a meeting regarding the investigation into the alleged criminal conduct of certain members of CI. Lieutenant General Mkwanaasi was informed of the above-mentioned request emanating from the Office of the Inspector General of Intelligence. A decision was taken that such a formal request will be forwarded to the Office of the Inspector General of Intelligence via the office of Lieutenant General Mkwanaasi.
72. It was further agreed upon that the investigation regarding Silverton CAS 155/07/2011 and Lyttleton CAS 432/11/2011 would continue. Lieutenant General Mkwanaasi however did not want to the investigation to be discussed with the NPA and he indicated his objection to involving the NPA in the matter. He further instructed Colonel K Roelofse not to open any further case dockets. He instructed that any additional investigations must be referred to Lieutenant General Lebeya after which a decision will be made whether to open a criminal case docket or not. Lieutenant General Mkwanaasi did however indicate that disciplinary action must continue against members implicated in any alleged irregularities.
73. On **06 February 2012** Colonel K Roelofse made arrangements to interview two (2) members of CI regarding the allegations made by the CI member as referred to earlier in this report. The CI members were represented by the same attorney representing Barnard in his criminal matter. She enquired as to why the investigation into these matters are continuing

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom right of the page.

as Lieutenant General Mdluli's attorney is in possession of a letter from Advocate L Mwrebi informing them that the withdrawal of charges in this matter (Silverton CAS 155/07/2011) is final and not provisional as stated in during the withdrawal of the matter on **14 December 2011**. Advocate G Breytenbach was contacted and she confirmed that a letter to that effect was indeed send to the attorney representing Lieutenant General Mdluli. This letter was never presented to the investigative team.

74. On **13 February 2012** Colonel KD Roelofse was informed by Lieutenant General A Dramat to immediately halt the investigations in respect of Silverton CAS 155/07/2011 and Lyttleton CAS 432/11/2011. Lieutenant General Mkwanaasi gave this instruction to Lieutenant General A Dramat on **08 February 2012**. Colonel K Roelofse was further instructed not to hand over the relevant case dockets to the NPA. This instruction was apparently given pending the outcome of the formal request to the Office of the Inspector General of Intelligence. Colonel K Roelofse was further informed that Lieutenant General Mkwanaasi requested that the original case dockets (Silverton CAS 155/07/2011 and Lyttleton CAS 432/11/2011) be delivered to his office. The reason for this instruction was not clear.
75. Lieutenant General A Dramat also received an instruction from Lieutenant General Mkwanaasi to remove Colonel K Roelofse and the members working with him from the investigation into Vosloorus CAS 340/02/1999 as the investigation does not fall within the mandate of the DPCI. This instruction was also relayed to Colonel K Roelofse on **13 February 2012**.
76. On **27 February 2012** Lieutenant General Mkwanaasi had a meeting with the Inspector General of Intelligence regarding these matters. Lieutenant General A Dramat was not requested to attend the meeting and no feedback had been received regarding the outcome of this meeting.
77. Copies of the original case dockets (Silverton CAS 155/07/2011 and Lyttleton CAS 432/11/2011) were delivered to the office of Lieutenant General Mkwanaasi on **29 February 2012**. Up to date no written instruction from Lieutenant General Mkwanaasi has been



received regarding the discontinuing of the investigations into these matters and/or the handing over of the original case dockets to his office.

78. On **29 February 2012** Lieutenant General Molefe instructed the halting of all disciplinary matters relating to Major General Lazarus and Lieutenant General Mdluli. He also instructed that all documents relating to the disciplinary matter to be handed to the Office of the Inspector General of Intelligence. The same reasoning apparently applies in that all investigations will be halted pending the outcome of the decision of the Office of the Inspector General of Intelligence.
79. The question whether the SAPS had the mandate instituting departmental disciplinary hearings with relation to the question of national security was raised by Lieutenant General Mdluli as part of his representations dated **21 November 2011** against the instituting of said procedures. His representation was dismissed by the employer.

INTERFERENCE

80. As mentioned above a member of CI decided to assist in the investigation. On **19 October 2011** he decided to speak to Barnard. He trusted Barnard and took him into his confidence. Barnard however broke that trust and informed Major General Lazarus on the same day that the member has spoken to the investigation team and that he admitted to submitting false claims on behalf of others and himself.
81. On the same day this member was requested by V Singh, Major General Lazarus and DA Naidoo to accompany them. He was taken to Major General Lazarus's house where he was interrogated. He was confronted with the fact that he was working with the DPCI and they wanted to know what he told them. Khan joined them at Major General Lazarus's house. The member denied the allegations.
82. The member states that they then had a general conversation until such time Khan said that his contact at the Hawks informed him that the member admitted to certain things and that



he is now on the side of the DPCI. The conversation turned to a general topic up to the point where Westville Travel air tickets were discussed. V Singh said that Hankel requested certain documentation from him regarding the air tickets. Khan told V Singh that he must try and destroy all the records pertaining to the air tickets.

83. The next day the member was again fetched at his home and taken to Major General Lazarus's office where he was subjected to intimidation. This time Barnard, Vanker and Khan was present. Due to these actions the member and his family were placed into the Witness Protection Program.
84. In an affidavit obtained from a witness he states the following when the investigative team enquired about interference: **"Between 19 and 20 October 2011 I received a call from Singh. He told me that personnel from Johannesburg or Pretoria would be coming down to Durban to pick up invoices from UTE and keep them ready. He also told me to add the name of the travellers to the invoices before I print it. I had to give these invoices to the personnel from Johannesburg or Pretoria. Singh also requested me to not reflect the names of the following passengers on the invoices, Abigail Lazarus, Senthumule Mashudu, Darren Lazarus, Sandra Lazarus. I did not get round to doing that"**.
85. The investigating team have also been informed on **10 October 2011** by the member that on the same evening that he was taken to Major General Lazarus's house he heard them discussing the placement of a news paper article relating to Lieutenant General Dramat and Major General Sibiya. He stated that the Major General Lazarus wanted to use sources within the media (journalists paid by CI) to write a story in order to take the focus away from them. This according to the member this is a strategy employed to cast suspicion on those they perceived to be a threat.
86. This news paper article was published in the Sunday Times on **23 October 2011**. Lieutenant General Mdluli has made representations to the National Prosecuting Authority earlier that month and uses the above mentioned article to cast suspicion on Lieutenant General Dramat and the investigating team.



87. As stated earlier, CI and the DPCI came to an agreement as to how best to deal with this investigation. The investigative team also stated that Hankel was appointed to facilitate and to assist the investigation on behalf of CI. As part of this process the investigative team requested various documents from CI and Hankel facilitated the process. The investigative team requested that the custodian of the specific documents required, deliver it in person. As most of these members' falls under the direct command of Major General Lazarus they were requested by him to report him as to what was requested. This happened on numerous occasions.
88. As part of the investigation the investigative team also obtained various search and seizure warrants. As part of an application in respect of premises in Gauteng the investigative team indicated that they would want to seize computers (hard drives, memory sticks, ect). The investigative team requested the Technical Support Unit (TSU), a unit within SAPS that deals with the forensic investigation of electronic equipment, to assist with search and seizure operations. They have subsequently been informed that the TSU falls under the direct command of Major General Lazarus. Major General Lazarus was in fact informed of the intended search by the commander of TSU, Pretoria as he is required to do so.
89. The premises searched are directly linked to the ongoing investigation in respect of fraud and/or corruption in which Major General Lazarus is also allegedly implicated. The most recent searches took place on **11 November 2011** and **12 November 2011**. The investigative team have confiscated a suspects' cell phone as part of the search and was able to determine that various "sms" messages between him (079 528 1696) and an cell phone 084 645 7220 were send in which they discuss a way of identifying the whereabouts of Naidoo that the investigative team placed within the witness protection program. The investigative team later determined that the cell number 084 645 7220 belonged to Avril Sahadew who is related to Eugene Sahadew. Eugene Sahadew in turn is a member of CI and a nephew to Major General Lazarus.
90. Major General Lazarus has the authority to release funds from the SSA and in this regard he is able to control funds being paid to sources and contact persons. The use of reporters to



publish and or withhold articles has already been discussed earlier in this report. According to Naidoo these reporters are paid from the SSA. The investigative team is also aware that Major General Lazarus used funds from the SSA to appoint defence lawyers to represent him after search warrants were issued in respect of two (2) CI offices.

91. The investigative team has also been informed that Major General Lazarus has approached the chairperson of the Joint Standing Committee on Intelligence, Cecil Burgess on various occasions without notifying his acting divisional head of these visits. Major General Lazarus is trying to convince Burgess that this investigation compromises national security. A letter from Burgess stating that Hankel must be removed from the investigation was sent to the acting divisional commissioner of CI. The investigative team has had insight to that letter.
92. As stated above that in response to the interference by members of CI, Colonel K Roelofse approached Advocate G Nel in respect of Lyttleton CAS 432/11/2011 with the view to obtain a warrant of arrest for Major General Lazarus. An affidavit dated **16 November 2011** was compiled by Colonel Roelofse in which he sets out the basis of his application. The basis for the application is largely based on the lack of intervention by SAPS to preserve the integrity of the investigation. Repeated requests to intervene to ensure the integrity of the investigation were ignored and that led to the application for a warrant of arrest.
93. Just after the submission of the affidavit to the NPA for consideration but prior to the issuing of an arrest warrant, Major General Lazarus was given a notice of suspension by the SAPS. This effectively took away the basis for the application and it was therefore abandoned.
94. The investigative team would submit that Major General Lazarus' efforts to influence Burgess constitute interference with a criminal investigation. In fact just the opposite is true in that the actions of the above-mentioned members of CI are actually compromising national security and if not investigate properly will have a lasting effect on the failure of the SAPS to combat crime.

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom right of the page.

CONCLUSION

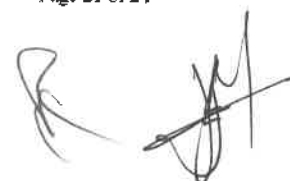
95. This investigation falls within the mandate of the SAPS and more particularly within the ambit of the DPCI. In this regard see the **South African Police Service Amendment Act, Act No. 57 of 2008**.
96. In an email written by Advocate J Govender she explains the function of the Office of the Inspector General of Intelligence. This email is incorporated in the combined draft report compiled by Major General Jacobs and Colonel K Roelofse. The contents of the email read as follows and speaks for itself:

“The Inspector-General (IG) has a constitutional mandate (section 210) of monitoring the activities of the Services. The Oversight Act provides for the IG to oversee the intelligence and counter - intelligence activities only of the Services. Her functions are set out in section 7(7) of the Oversight Act and is limited to these activities .i.e. the operations of the Services. The AG has the financial oversight mandate and not the IG.

Section 2 of the Oversight Act provides for the JSCI to perform the oversight functions over the operational functions and financial management of the Services. Of note is section 3 (a) which states that the AG must provide the JSCI with an audit report. This clearly includes an audit of the Secret Services Account.

The IG is mandated to conduct investigations within the parameters of the Oversight Act and must provide reports on these investigations which must include findings and recommendations. These reports are provided to the Ministers concerned. The IG does not conduct court driven investigations and information obtained by the IG during the oversight investigations cannot be used in a criminal prosecution.

Should the IG uncover criminality during an investigation a recommendation can be made for criminal investigation and information obtained by the IG will not be released to the



police for this purpose. The police will have to conduct their own independent investigation.

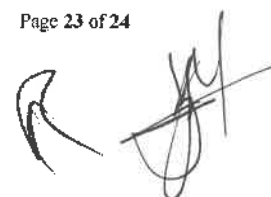
The provisions of the Secret Services Account fall outside the mandate of the IG. To suggest that only the IG may investigate this matter is absurd and a clear misinterpretation of the mandate of the IG.

The IG cannot get involved in criminal investigations being conducted by the police. To so do can be construed as obstructing the course of justice as the IG does not have to mandate to conduct criminal investigations for possible prosecution. In addition a disciplinary matter is an internal process over which we do not have a mandate. Our involvement thus far was to ensure that legitimate operations of the CI during the Hawks investigation was not compromised."

97. The documentation attached to this report clearly indicates that the investigation complies with the requirements as set out in **Section 17 D of the Act** as well as **Section 16 of the South African Police Service Act No. 68 of 1995**.
98. Your attention is drawn to **Section 17 F of the said Act**. It is clear that the notion of a multi disciplinary approach is enshrined in the Act and according to subsections one (1) through to three (3) the Head of the Directorate request secondment to assist in an investigation to which the National Commissioner shall comply. It would appear from these subsections that the Head of the Directorate need to request the National Commissioner to facilitate the secondment of personnel to assist in this investigation.
99. Your attention is further drawn to **Section 17 K of the said Act**. At this stage a retired judge has not been appointed as required by the Act. As such no recourse exists in which a member of the DPCI can report complaints as stated in **subsection 17 L (4) (b) of the Act**.



100. It is submitted that the level of interference with respect to this investigation has already reached a level which necessitates the use of a complaints mechanism. Without a complaints mechanism the integrity of the investigation cannot be maintained. The question arises as to what would be the next step in ensuring that due process takes its course.
101. In terms of **Section 34(1) of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004**, a “person in a position of authority, (Public Officer on an SMS level) who knows or ought reasonably to have known or who suspects that any other person has committed corruption or theft, fraud, extortion, forgery or uttering of a forged document involving an amount of R100 000.00 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official”. Failure to do so constitutes a criminal offence in terms of section 34(2) of the act.
102. Major General M Hankel was advised not to lay a compliant in terms of **Section 34(1) of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004** as it was felt that it was the responsibility of the acting Divisional Commissioner, Major General Matshatshe to assume the responsibility.
103. Up to date no complaint was lodged as per **Section 34(1) of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004**. It is submitted that “persons in a position of authority” to which these allegations were made known and elected not to act in a manner a prescribed by law are actually in breach of the Act.
104. The **South African Police Service Amendment Act, Act No. 57 of 2008** is still valid and after perusing the proposed amendments to the Act, as prescribed by the Constitutional Court in the Glenister Judgement, it is clear that the current sections and subsections referred to in this report is not negatively affected by it but is enforced by it.



105. This report can be converted into an affidavit as the contents herein are true and correct and the majority of the points rose falls within the personal knowledge of the author of this report.

**COLONEL
ANTI-CORRUPTION TASK TEAM: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
K ROELOFSE**

Date: 2012-03-02



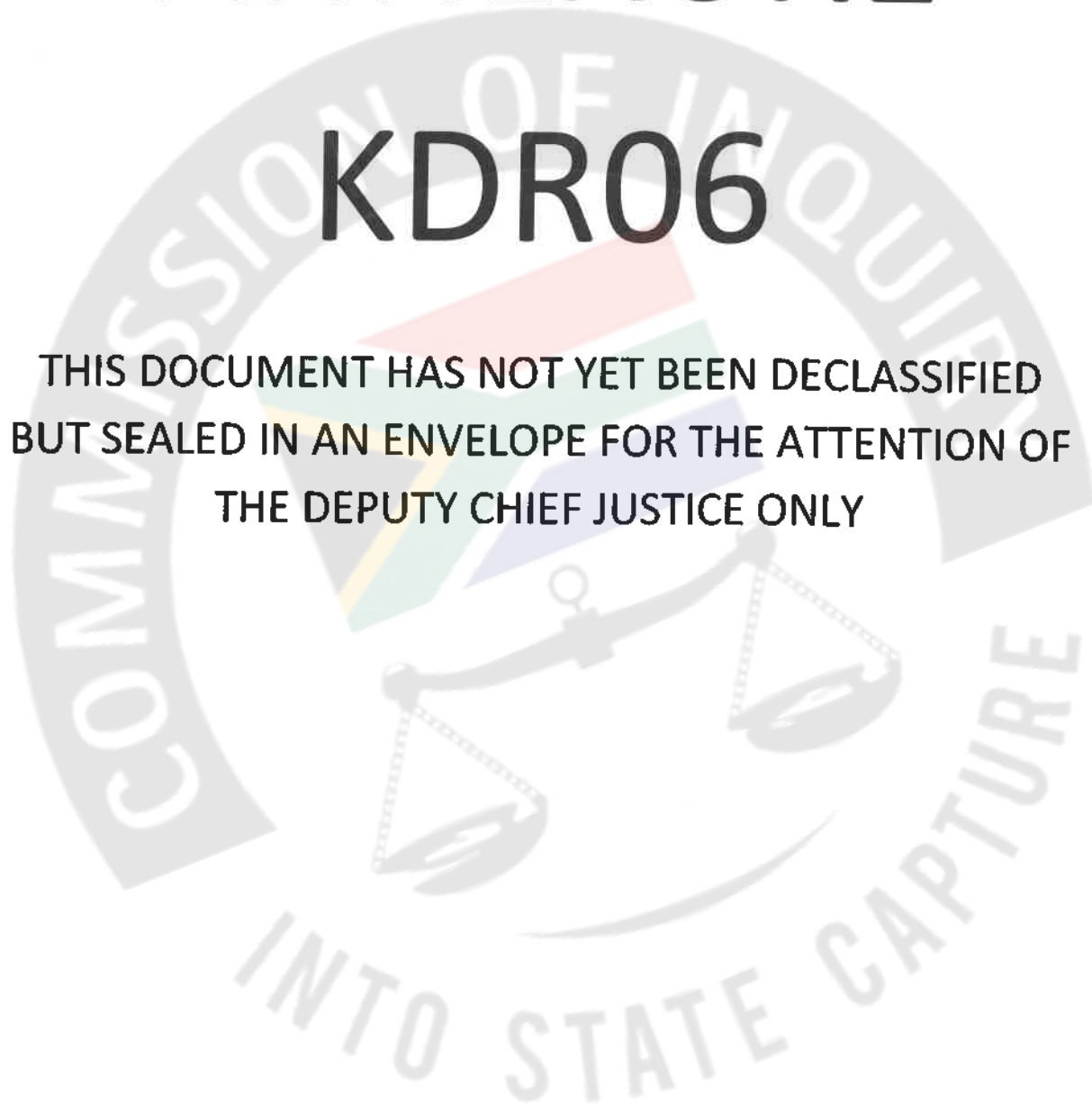
ANNEXURE KDR06



ANNEXURE

KDR06

THIS DOCUMENT HAS NOT YET BEEN DECLASSIFIED
BUT SEALED IN AN ENVELOPE FOR THE ATTENTION OF
THE DEPUTY CHIEF JUSTICE ONLY



A handwritten signature in black ink is located in the bottom right corner of the page.

ANNEXURE KDR07



Specialised Commercial Crime Unit



The National Prosecuting Authority of South Africa
Igunya Jikelele Labantshisi bofzentzi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

HEAD OFFICE

Tel: +27 12 845 6702

Fax: +27 12 845 6686

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue

Weavind Park
Silverton
Pretoria
0184

P/Bag X752
Pretoria
0001
South Africa

Email:

ndomana@npa.gov.za

www.npa.gov.za

CONFIDENTIAL

INTERNAL MEMORANDUM

TO: ADV S. MZINYATHI
DIRECTOR OF PUBLIC PROSECUTIONS
NORTH GAUTENG

CC: ADV GLYNISS BRYTENBACH
THE REGIONAL HEAD: SCCU: PRETORIA

FROM: ADV LS MRWEBI
SPECIAL DIRECTOR: SCCU

DATE: 04 DECEMBER 2011

SUBJECT: CONSULTATIVE NOTE IN TERMS OF SECTION
24(3) OF THE NATIONAL PROSECUTING
AUTHORITY ACT, 32 OF 1998 (NPA ACT) ON
THE REPRESENTATIONS OF LT GENERAL
MDLULI CASE NO 111//137/2011.

INTRODUCTION

1.

As required by section 24(3) of the NPA Act I have consulted with the Director of Public Prosecutions (DPP) North Gauteng on the matter with the purpose of conveying my views on the matter. Essentially my views related to the process that was followed in dealing with the matter particularly in view of the fact that the

Justice in our society, so that people can live in freedom and security



matter fell squarely within the mandate of the Inspector-General in terms of the Intelligence Services Oversight Act, 40 of 1994. I noted that it is only the Inspector General who, by law, is authorised to have full access to the Crime Intelligence documents and information and thus who can give a complete view of the matter as the investigations can never be complete without access to such documents and information. In my view the process followed in this matter is possibly illegal as being in contravention of the said provisions of the Intelligence Services Oversight Act, 40 of 1994.

2.

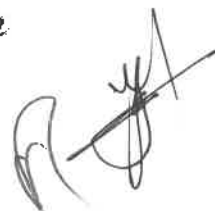
Representations were received by the office of the Head: Specialised Commercial Crime Unit (SCCU) from the attorneys Messrs Maluleke, Seriti, Makume, Matlala Incorporated on behalf of Lt-General Mdluli (Mdluli). The representations are for the withdrawal of the criminal case against their client based on the grounds that the institution of an investigation and prosecution against him is an abuse of the criminal justice system; constitutes a gross abuse of power and authority and that their client will not receive a fair trial.

The purpose of this document therefore is to deal with and record a decision on the matter. It is the further aim that the document shall serve as a consultative document with the Director of Public Prosecutions, North Gauteng as required by section 24(3) of the NPA Act.

BACKGROUND

3.

According to the affidavit of Lt-Colonel Peter Janse Viljoen (Viljoen); the investigator in the matter, he is part of a team that is investigating matters against Mdluli and other persons. The main case against Mdluli and these other person is a murder case under Voorslorus CAS 340/02/1999.



4.

According to Viljoen; after the arrest of Mdluli in connection with the abovementioned case, "certain members of the Crime Intelligence elected to provide the investigating team with information which alleged further criminal activity by Crime Intelligence personnel". The information provided; included allegations against Mdluli and a colonel Barnard.

5

The investigations into the matter commenced on 14 April 2011 based on the information provided by members of Crime Intelligence. On 1 August 2011 Adv Smith of the SCCU, Pretoria applied for a warrant for the arrest of Mdluli on the charges of Fraud/Theft. The application was authorised by the magistrate on 6 September 2011. Apparently the application for the arrest of Mdluli was based on the affidavit of Viljoen which outlines without much detail how Colonel Barnard entered into some transactions in connection with cars for Crime Intelligence. These transactions were apparently illegal and were the basis of the charges against Mdluli.

6.

On 21 September 2011 Mdluli was arrested and appeared at the SCCU court under case number 111/137/11 where he was released on bail and the case was postponed to 14 December 2011 for further investigations.

7.

After receipt of representations as aforesaid, on 21 November 2011 I directed correspondence to the Regional Head of SCCU, Pretoria to be provided with a report as well as the docket on the matter. No report and neither was the docket provided as requested instead I was provided with an unhelpful commentary by

3



Adv Smith on the contents of the representations themselves. The covering letter of the Regional Head was equally unhelpful as her comment was simply that the matter must proceed in court.

8.

Later on 28 November 2011 I wrote a further correspondence to the Regional Head of SCCU, Pretoria requesting a motivated report on the matter in order to enable me to meaningfully respond to the representations. The report was received on 4 December 2011.

BASIS FOR THE REQUEST TO WITHDRAW THE CHARGES

9.

The request to withdraw the charges is based firstly on the allegations of abuse of the criminal justice system. A number of instances to support this allegation are stated and witness statements are attached. The main thrust of the representations in this regard seems to be that the charges against Mdluli were brought for an ulterior motive to achieve an illegal result which was to ensure that Mdluli is dismissed from his position based on this case. It is alleged that there is no substance in both cases and that the motivation is to get rid of Mdluli from the police under the guise of criminal and administrative processes. Statements of witnesses are attached to support this contention. Reference is made to certain developments around the case such as arresting Mdluli for the purpose of investigation; peculiarities with regard to the warrant of arrest which indicate that the arrest was not really necessary, the involvement of the same persons in investigating the case against Mdluli instead of independent persons as well as the circumstances leading to the arrest of Mdluli where it took almost two months

to arrest him since the issue of the warrant of arrest something which, as alleged, indicates that there was no genuine need to arrest him.

10.

The second leg of the representations relates to allegations of possible unfairness of trial in the circumstances where it is clear that the police are trying to fabricate the evidence against Mdluli. This allegation seems to suggest that there is no evidence of any wrongdoing by Mdluli because the person responsible for entering into the transactions was Colonel Barnard and that if there was any criminality in the said transactions he would be the only one that may explain. It appears that it is alleged that on the basis of Viljoen's affidavit there is no evidence implicating Mdluli except for the conclusions drawn by Barnard that Mdluli and Barnard conspired. It is alleged that the arrest of Barnard was a tactical manoeuvre to pressurise him to implicate Mdluli.

THE PROSECUTOR'S REPORT AND DOCKET

11.

The prosecutor's report strictly speaking does not add any value to what is already contained in the representations. The focus of the analysis of the evidence and the charges relates to the short fall which it is alleged is the basis of the charges of fraud and corruption.

12.

The perusal of the docket also does not seem to have any further information for the purposes of this matter save for the information relating the transactions in question and other irrelevant documentation. Of note is the fact that in the docket



the role of Lt –General Mdluli does not appear and this fact makes one wonder what the basis of his arrest was, despite the fact that the transactions appear to have been made to benefit him. Gert Roelof Strydom of Leo Haese, Pretoria explains exactly how the transactions were negotiated between the sales person and Barnard. What also appears in the docket is the fact that there was loan agreement entered between Mdluli and one Jan Venter of Atlantis Nissan to the tune of R50 000.00.

ANALYSIS AND CONCLUSION

13.

The representations in the first part suggest that the investigation and prosecution of Mdluli in the matter is for an ulterior purpose. In this regard and without expressing any opinion whether this be true or not, I think our law is very clear in this regard as the courts have stated that the motive behind a prosecution is irrelevant and as such an improper or ulterior motive does not affect the prosecution against any person. Such prosecution will be wrongful, if in addition, there are no reasonable and probable grounds for such prosecution. I refer in this regard to the case of the NDPP v. Zuma –SCA 573/08- [Para.37-38].

14.

The second part/basis of the representations which relates to fairness of the trial is the one that seems to suggest that there were no reasonable and probable grounds for such prosecution against Mdluli. In my view this is the part that merits closer attention. Clearly from the affidavit of Viljoen which was used as the basis for the warrant of arrest as well as in the docket there is no evidence against Mdluli. The only thing one finds is the opinion expressed by Viljoen in his affidavit that: "The inference is irresistible that Barnard and Mdluli conspired

6
R [Signature]

to use this money to cover Mdluli's debt. This in itself amounts to fraud and theft"

15.

Other than this unsubstantiated opinion of Viljoen there is no evidence that links Mdluli to the crime. This aspect calls into question how the magistrate must have been persuaded by the prosecutor to grant the application for the warrant to arrest of Mdluli in the first place. This, however, may be subject of a separate inquiry which I need not go into at this stage.

16.

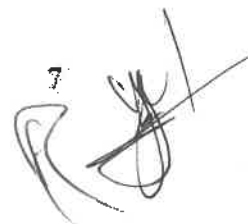
The evidence in the docket as well as the report of the prosecutor do not seem to help in the matter either. This state of affairs leaves one with a number of questions about how both the investigator and the prosecution handled the matter. As matters stand, there was clearly no reasonable and probable ground for any prosecution in the matter particularly against Mdluli.

17.

However, because of the view I hold of the matter, I do not propose to traverse the merits of the case and the other questions any further. Whether there was evidence in the matter or not, is in my view, not important for my decision in the matter. The proposition which I allude to below, should alone and without any further ado, be dispositive of the matter.

18.

Mdluli and Barnard are members of the of the Crime Intelligence Division of the South African Police Service which is part of the intelligence structures of the

7


country and as such their conduct and activities are subject to the laws, regulations, policies and procedures governing the intelligence community. Of importance for the present purpose is the Intelligence Services Oversight Act, 40 of 1994 (the Act). The Act in section 7 thereof establishes the office of the Inspector-General and defines its functions.

19.

In terms of section 7(7) (cA) of the Act, the Inspector-General in relation to the Services has a function;

"to receive and investigate complaints from members of the public and members of the Services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies referred to in paragraph (a), the commission of an offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and improper enrichment of any person through an act or omission of any member".

20.

It will be noted that, the offences for which Mdluli is charged fall squarely within the mandate of the Inspector-General as quoted above.

21.

Naturally there were practical and policy considerations why the Inspector – General should be the one charged with investigation in circumstances of the case. These generally include considerations of State security as well as the

secrecy of the nature of the work of the intelligence community, the need to preserve such secrecy and the need to ensure controlled access to their information and documents which the ordinary police cannot have.

22.

Clearly any investigator who has any clue about the working methods of the intelligence community must have realised that any investigation that had to do with procedures and policies of the intelligence community would not be complete unless there is full access to the necessary information and documentation in their possession. Only the Inspector-General would have such access. Any investigation of the kind as in the present case would be futile without the involvement of the Inspector-General, as the transactions which Mdluli is charged with can only be explained in terms of the internal applicable procedures, policies, processes and systems which the ordinary investigator has no access to. One may ask why the police failed to execute the search warrants.

23.

The investigator and the prosecutor in this matter should have appreciated and realised this difficulty when police could not serve the search warrant, which according to the Regional Head was prepared after discussion with the National Director of Public Prosecutions. However, it appears they did not and neither did the Regional Head.

24.

The Act in section 8 (1) (i) provides that regulations regarding the procedure for the lodging and investigation of complaints shall be made by the Minister with the concurrence of the Joint Standing Committee on Intelligence.



25.

In effect what the investigator should have done on receipt of the information referred to in his affidavit where "certain members of the Crime Intelligence elected to provide the investigating team with information which alleged further criminal activity by Crime Intelligence personnel", was to refer these certain members to the Inspector- General who would have investigated the matter and advised if there was any reason to pursue criminal investigations, for example.

26.

I am afraid that, on the face of it, it appears that the manner the investigators went about dealing with this matter assisted by the members of the National Prosecuting Authority may possibly be in breach of the security legislation. However, as it appears that everybody concerned in this matter must have committed a bona fide error of law in this regard, it is not too late to remedy the situation by referring the matter to the Inspector-General in terms of section 7 of the Act.

27.

Accordingly, and based on the above, prosecution of the matter cannot continue. The investigator must advise these "certain members" of the Crime Intelligence to refer their complaint to the Inspector-General for consideration and any subsequent steps will be guided by what the Inspector-General advises.

28.

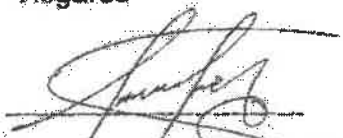
The prosecutor is accordingly instructed to withdraw the charges against both Lt-General Mdluli and Colonel Barnard immediately.



29.

The lawyers of Lt-General Mdluli will be advised accordingly.

Regards



ADVOCATE L.S. MRWEBI

SPECIAL DIRECTOR: COMMERCIAL CRIME UNIT

PRETORIA

DATE: 04 DECEMBER 2011



Specialised Commercial Crime Unit



The National Prosecuting Authority of South Africa
Igunya Jikelele Lebatshetshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

HEAD OFFICE

Tel : +27 12 845 8702

Fax: +27 12 845 6686

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Silverton
Pretoria
0184

P/Bag X752
Pretoria
0001
South Africa

Email:

lnngomana@npa.gov.za

www.npa.gov.za

INTERNAL MEMORANDUM

TO: ADV GLYNISS BRYTENBACH
THE REGIONAL HEAD: SCCU: PRETORIA

CC: ADV S. MZINYATHI
DIRECTOR OF PUBLIC PROSECUTIONS
NORTH GAUTENG

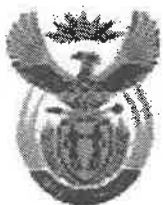
FROM: ADV LS MRWEBI
SPECIAL DIRECTOR: SCCU

DATE: 04 DECEMBER 2011

SUBJECT: DECISION REGARDING THE
REPRESENTATIONS OF LT-GENERAL MDLULI
CASE NO 111/137/1

The abovementioned matter refers.

I refer to the attached consultative note in terms of section 24 (3) of the National Prosecuting Authority Act, 32 of 1998 to the Director of Public Prosecutions, North Gauteng and which was copied to your office.



Justice in our society, so that people can live in freedom and security

For reasons stated in the said note, the charges against Lt-General Mdiuli and Colonel Barnard must be withdrawn immediately.

This office must be advised of the results of the proceedings for purposes of monitoring.

Regards



ADVOCATE L.S. MRWEBI
SPECIAL DIRECTOR: COMMERCIAL CRIME UNIT
PRETORIA
DATE: 04 DECEMBER 2011



ANNEXURE KDR08



De-classified on

By Mr [Signature]
04223942

Inspector of National Commission

CONFIDENTIAL

South African Police Service



Suid-Afrikaanse Polisiediens

Private Bag

X94

Fax No: 012 393 1715

Privaatsak

Faks No:

Your reference/U verwysing:

THE NATIONAL COMMISSIONER
DIE NASIONALE KOMMISSARIS
PRETORIA
0001

My reference/My verwysing: CAS 155/07/2011

Enquiries/Navrae: Lt Gen NS Mkhwanazi

Tel: 012 3931514

Advocate FD Radebe
Inspector General of Intelligence

Dear Advocate Radebe

SILVERTON CAS 155/07/2011: INVESTIGATION BY THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION: LIEUTENANT GENERAL RN MDLULI: CRIME INTELLIGENCE DIVISION OF THE SOUTH AFRICAN POLICE SERVICE

As you are aware, the Directorate for Priority Crime Investigation (DPCI) of the South African Police Service (SAPS) had been investigating Lieutenant General Mdluli and Colonel Barnard at the Crime Intelligence Division of the SAPS since July 2011 for alleged fraud and corruption.

Briefings pertaining to the criminal investigation were made at the Joint Standing Committee on Intelligence and your own office was also briefed by senior officers of Crime Intelligence on 31 October 2011.

From the onset of the criminal investigation, attention was given to possible concerns which the intelligence community may have about the impact on, and the exposure of sources of intelligence, the risk of exposure of covert vehicles and premises and intelligence methodology.

On 14 December 2011, the fraud and corruption charges against Lieutenant General Mdluli and his co-accused, Colonel Barnard, were provisionally withdrawn in the Specialised Commercial Crime Court, Pretoria, following representations

CONFIDENTIAL

[Signature]

De-classified on
Inspector of National Commission
[Signature]

De-classified on instruction of National Commission

~~CONFIDENTIAL~~

*Commissioner
Buy the team
04223942*

made to the National Prosecuting Authority. It is understood that the Special Director who took the decision relating to the provisional withdrawal of the criminal matter against Lieutenant General Mdluli and Col Barnard, indicated that the matter can only be investigated by the Inspector General of Intelligence, and that the matter should be referred to the Inspector General of Intelligence for investigation. We are also cognizant of the fact that you have previously indicated that your Office does not perform criminal investigations, which are the constitutional mandate of the South African Police Service. A copy of the letter reflecting the decision of the Special Director relating to the withdrawal of the matter is attached for your information.

It must be mentioned that an investigation in respect of Major General Lazarus, which may raise the same concerns as in the Mdluli matter has also been finalized and it is proposed that we also engage on that matter in the same fashion as is proposed in respect of the Mdluli matter.

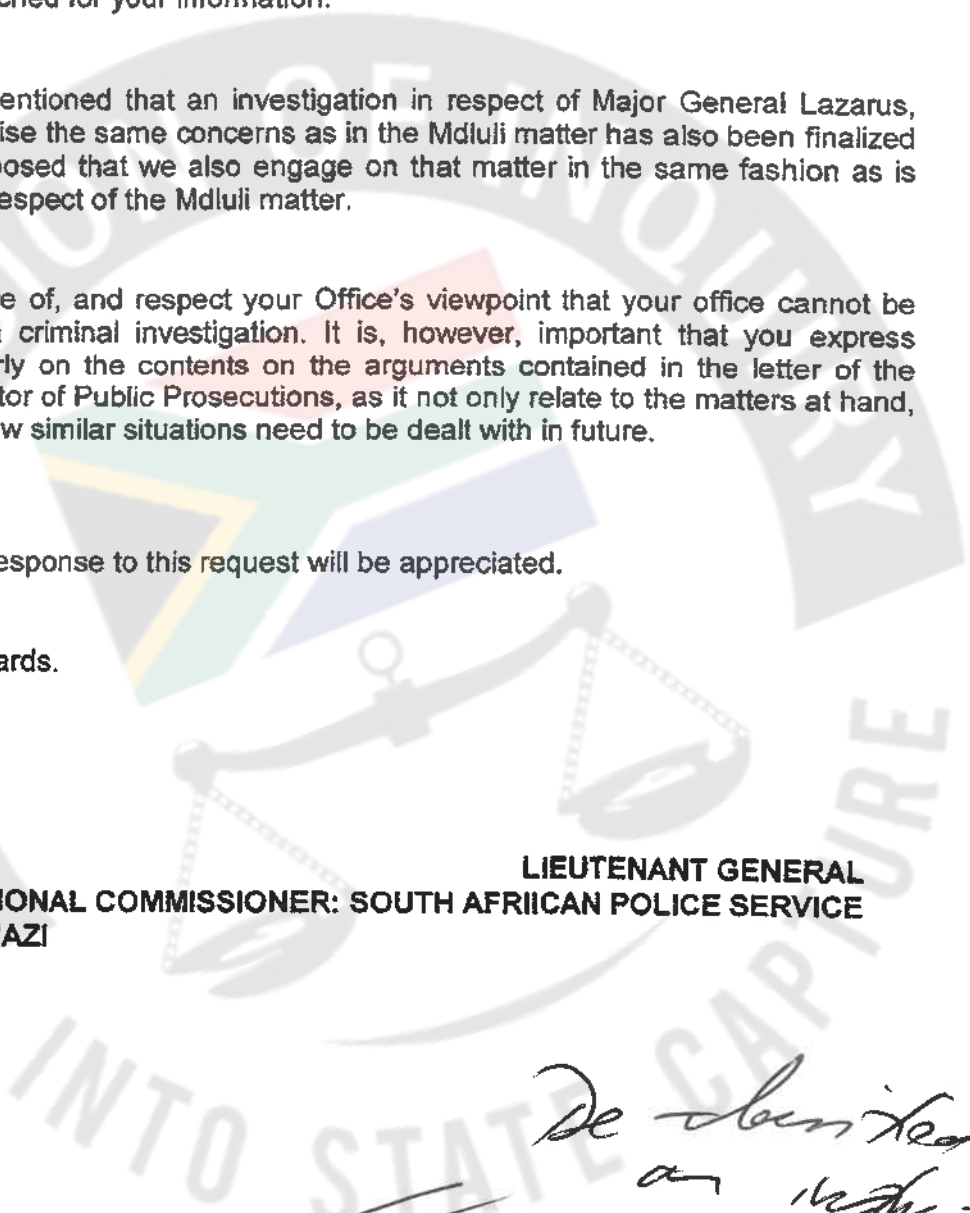
We are aware of, and respect your Office's viewpoint that your office cannot be involved in a criminal investigation. It is, however, important that you express yourself clearly on the contents on the arguments contained in the letter of the Special Director of Public Prosecutions, as it not only relate to the matters at hand, but also to how similar situations need to be dealt with in future.

Your urgent response to this request will be appreciated.

With kind regards.

**LIEUTENANT GENERAL
ACTING NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
NS MKHWANAZI**

Date:



~~CONFIDENTIAL~~

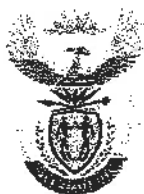
De-classified on instruction of National Commission

*Buy the team
04223942*

ANNEXURE KDR09



CONFIDENTIAL



intelligence

Office of the Inspector-General of Intelligence
REPUBLIC OF SOUTH AFRICA

PO Box 1175, MENLYN PARK, 0077 Bgare, Cnr Atterbury & Lois Street, MENLYN
Tel: (012) 367 0844/47, Fax: (012) 367 0920

OIGI/IG10/1/2/5/1

19 March 2012

Lt Gen NS Mkhwanazi
Acting National Commissioner: SAPS
Private bag X92
Pretoria

Fax: (012) 393 1715

Dear Sir

SILVERTON CAS 155/07/2011: INVESTIGATION BY THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION: LIEUTENANT GENERAL RN MDLULI: CRIME INTELLIGENCE DIVISION OF THE SOUTH AFRICAN POLICE SERVICE

1. We refer to your letter of the 22 February 2012 wherein you requested an opinion on the reasons advanced by the National Prosecuting Authority for the withdrawal of the criminal charges against Lt General Mdluli.
2. In response to the Memorandum of Adv Mrwebi of the 4 December 2011 we advise as follows:
 - 2.1 The Inspector- General of Intelligence (IGI) derives her mandate from the Constitution of the Republic of South Africa, 1996 and the Intelligence Services Oversight Act, 1994 (Act 40 of 1994) which provides for the monitoring of the intelligence and counter- intelligence activities of the Intelligence Services;
 - 2.2 Any investigation conducted by the Inspector-General is for the purposes of intelligence oversight which must result in a report containing findings and recommendations;
 - 2.3 The mandate of the IGI does not extend to criminal investigations which are court driven and neither can IGI assist the police in conducting criminal investigations. The mandate of criminal investigations rests solely with the Police;

CONFIDENTIAL



As such we are the opinion the reasons advanced by the NPA in support of the withdrawal of the criminal charges are inaccurate and legally flawed. We therefore recommend that this matter be referred back to the NPA for the institution of the criminal charges.

I trust you find this in order and thank you.



Ambassador Adv FD Radebe
Inspector-General of Intelligence



CONFIDENTIAL



ANNEXURE KDR10



South African Police Service

Swid-Afrikaanse Polisdiens

Private Bag 1500, Silverton, 0127

Fax No: (012) 846 4400

Our reference

THE DEPUTY NATIONAL COMMISSIONER

My reference

1/1/14

DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION

Our officer

Lieutenant General A Dramat

SOUTH AFRICAN POLICE SERVICE

At

(012) 846 4001

PRETORIA

A. Advocate Jiba
Acting National Director of Public Prosecutions
23 Estlake Avenue
SILVERTON


B. Special Commercial Crimes Unit
NATIONAL PROSECUTING AUTHORITY
GAUTENG NORTH

**SILVERTON CAS 155/07/2011: INVESTIGATION BY THE DIRECTORATE FOR PRIORITY
CRIME INVESTIGATION: LIEUTENANT GENERAL RN MDLULI: CRIME INTELLIGENCE
DIVISION OF THE SOUTH AFRICA POLICE SERVICE**

- A.1. With reference to the memorandum of Adv Mrwebi regarding the ongoing investigation by the Directorate for Priority Crime Investigation (DPCI) into Silverton CAS 155/07/2011 concerning Lieutenant-General RN Mdluli, Division Crime Intelligence.
2. Attached is the response received from the Office of the Inspector General of Intelligence and a copy of the criminal investigation docket, Silverton CAS 155/07/2011 for your decision.

B.1 Copy for your information.

Kind regards,


**LIEUTENANT GENERAL
HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
DEPUTY NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
A DRAMAT**

Date: 2012-03-23



ANNEXURE KDR11



Specialised Commercial Crime Unit



The National Prosecuting Authority of South Africa
Inyanga Jikelele Loheliso-ndaba bolizwazi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

HEAD OFFICE

Tel: +27 12 345 6702

Fax: +27 12 345 6386

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue

Weavind Park

Silverton

Pretoria

0184

P/Bag X152

Pretoria

0001

South Africa

Email:

fmndiko@npa.gov.za

www.npa.gov.za

Ref 10/1/2011-1-2011

CONFIDENTIAL

TO: LT GENERAL DRAMAT
HEAD DIRECTORATE OF PRIORITY CRIME
INVESTIGATION

CC: ADV G BREYTENBACH
REGIONAL HEAD: SCCU PRETORIA

ADV S MZINYATHI
DIRECTOR OF PUBLIC PROSECUTIONS
NORTH GAUTENG

FROM: ADV LS MIRWEBI
SPECIAL DIRECTOR: SCCU

DATE: 30 MARCH 2012

SUBJECT: SILVERTON CAS 155/07/2011; INVESTIGATIONS
AGAINST LT- GENERAL RN MDLULI

1

Your letter 1/1/14 dated 23 March 2012 and the attachment thereto dated 19 March 2012 refer.

2

I wish to advise that the office of the Inspector General of Intelligence (the IGI) has no oversight functions and powers of review with regard to prosecutorial decisions. I also wish to

Justice in our society, so that people can live in freedom and security

remind that the NPA is an independent institution and prosecutorial decisions are its sole prerogative.

3.

The view of the IG, following your solicitation of her opinion on the NPA decision on the matter, based on a document which the police or anybody else were not even legally entitled to possess, is for your consumption and does not affect the decision taken on the matter.

4.

The NPA took a principled and considered decision on this matter without fear favour or prejudice, as it is required to do in terms of the law. That decision stands and this matter is closed.

5.

Docket SILVERTON CAS 155/07/2011 is returned herewith.

Regards



ADVOCATE L.S.MRWEBI

SPECIAL DIRECTOR: COMMERCIAL CRIME UNIT

DATE: 30 MARCH 2012



ANNEXURE KDR12



"GB31"
541



**The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika**

INTERNAL MEMORANDUM

CONFIDENTIAL

TO: ADV N JIBA, ACTING NDPP

**FROM: G BREYTENBACH
JM FERREIRA**

**AND TO: ADV MRWEBI, DR RAMAITE SC, MR HOFMEYR, ADV
MOKHATLA AND ADV MZINYATHI**

SUBJECT: THE STATE v RN MDLULI and H BARNARD

DATE: 13 APRIL 2012

INTRODUCTION.

1. As you are aware, Adv Mrwebi, the Special Director and Head of the SCCU (hereinafter

CONFIDENTIAL

[Handwritten signatures and initials]

542

CONFIDENTIAL

the SDPP), has given an instruction that the prosecution (fraud and corruption) against Richard Mdluli and Hein Barnard, both attached to the SAPS Crime Intelligence division, be withdrawn. This was initially a provisional withdrawal, pending the finalisation of certain investigation, but has now become a final decision.

2. We (as the two lead prosecutors in the matter and part of the SGOU Pretoria Management) hold the view that this instruction was in fact erroneous and in law illegal and, based on the available evidence in the police case docket, also wrong. Below we set out our reasons for this view.
3. The original representations filed with the SDPP by the legal representative of the Mr Mdluli requested a withdrawal of the matter on the basis that *"the institution of an investigation and prosecution against him is an abuse of the criminal justice system; constitutes a gross abuse of power and authority and that their client will not receive a fair trial"*¹ However, only two paragraphs of the entire representations, consisting of 47 paragraphs by Mdluli² had any reference to; or bearing on, the corruption and fraud charges.
4. Yet the main reason then provided by the SDPP why the *"prosecution of the matter cannot continue"* is based on an alleged *"breach of the security legislation."*³ Something that was clearly not part of the representations by Mdluli. We have been unable to define the source of this aspect, since it did not arise from the representations. In fact the

CONFIDENTIAL

¹ See paragraph 2, page 2 of the attached memo by adv Mrwebi dated 4 December 2011.

² See copy of the representations dated 26 October 2011 attached hereto.

³ See paragraph 26 and 27, page 10 of the attached memo by adv Mrwebi dated 4 December 2011.

543

CONFIDENTIAL

SDPP stated that "whether there was evidence or not, is in my view, not important for my decision in the matter..."⁴ The main reason for his decision as on 4 December 2011 was, in our respectful view, the erroneous reasoning that SAPF could not investigate members of the intelligence community, but such a proposition, with respect, merely has to be stated to be rejected.

5. The crux of this matter is that a senior police official entered into a contract with a motor dealer (Leo Haese) to sell his luxury private vehicle and received an unlawful gratification from another motor dealer (Atlantis Nissan) as well as from that same dealer.
6. The unlawful gratification is aimed at ensuring that he is able to sell his vehicle, due to the value his vehicle being less than the outstanding balance still owed on it, without this gratification he would have suffered a loss. One of the motor dealers making this unlawful gratification is in a contractual relationship with the SAPF and obviously wants to stay in the good books of Mdluli.
7. The practical effect of the SDPP's decision is to smother serious other allegations of abuse of State funds which funds were public funds earmarked for the combating of crime in the execution of government's strategic object, that was abused for the personal benefit of Mdluli.
8. It is submitted, with respect, that it is specifically not the intention of this memorandum to attack the personal integrity of the SDPP, and nothing set out herein should be construed as an attack, personal or otherwise, against the SDPP. Rather it should be

CONFIDENTIAL

⁴ See paragraph 17, page 7 of the attached memo by adv Mrwebi dated 4 December 2011.



3

566

CONFIDENTIAL

viewed as a professional difference of opinion that requires resolution.

9. We would argue that there was no empowering provision in the NPA Act that gave the SDPP the power to take the decision to withdraw the prosecution.⁵ Even if this argument is wrong it is argued that the SDPP ought to have considered recusing himself in line with paragraph 4.4.6 of the Public Service Code of Conduct.⁶
10. The original decision to enrol the matter was taken by this office under the control and direction of the DPP North Gauteng, to whom we reported at the time. The decision was taken in the normal course, based upon the available evidence in the docket. Adv Mzinyathi supported this decision fully, and it is our understanding that he still holds the view that there exists a *prima facie* case which should be prosecuted. It should be mentioned that the then NDPP, adv Meme Simelane, was also fully aware and supportive of this case and consulted; through adv Mzinyathi and Mr Hofmeyr, with one of the prosecutors and two of the investigators on the matter, at the Soweto Hotel in Kliptown in September 2011, specifically regarding warrants for search and seizure obtained in the normal course, to search the offices of crime intelligence. Adv Simelane

CONFIDENTIAL

⁵ *Anardable Medicines Trust & others v Minister of Health & others* 2006 (3) SA 247 (CC) (2005 (6) BCLR 229) at para 49:

"It entails that both the Legislature and the Executive "are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law". In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power."

⁶ Paragraph 4.4.6 describes the obligation to immediately recuse him/herself from any official action when his/her objectivity might be questioned as follows:

"An employee will recuse himself or herself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee. Whenever employees feel that they cannot remain objective in performing their work or making a decision, or when other people might have reason to believe that they are not able to remain objective because of some kind of external involvement, they must immediately withdraw from such activities in order to protect the fair, honest and trustworthy image of the public service" (own emphasis)

565

CONFIDENTIAL

at the time expressed the view that the warrants in question should be executed.

THE WITHDRAWAL OF THE CASE AGAINST MDLULI AND BARNARD.

11. The charges then pending against Richard Mdluli and Hein Barnard were fraud and/or corruption (new evidence has in the interim come to light and would require investigation) and it is unclear why Mdluli (and Barnard) are not treated in the same way as any other policemen accused of corruption - all JCPS matters are dealt with in the same fashion and in the same court by the SCCU, the unit charged with the prosecution of JCPS matters.

12. The impression has now unfortunately been created, whether correctly or incorrectly, that Mdluli (and Barnard) are being treated differently and preferentially because of who they are (and who they know). Attention should, with respect, be paid to what the High Court said regarding corruption and white-collar crime in general, in the matter of *S v Yengeni*:⁷

"[59] Our country's highest Court has described this variation of so-called white-collar crime in the following words:

[1] Corruption and maladministration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the J advancement of human rights and freedoms. They are the antithesis of the

CONFIDENTIAL

⁷ 2006 (1) SACR 405 (T) at para 59

5

546

CONFIDENTIAL

open, accountable, democratic government required by the Constitution. If allowed to go unchecked and unpunished they will pose a serious threat to our democratic State.'

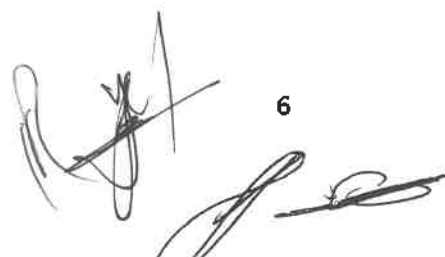
Per Chaskalson P (as he then was) in South African Association of Personal Injury Lawyers v Heath and Others 2001 (1) SA 883 (CC) (2001 (1) BCLR 77)."

13. This prosecution is of national importance, therefore the following words by Bertelsmann, J should be heeded: *"If these facts were to lead to the public perception that the National Prosecuting Authority was open to political deal-making and was inclined to grant preferential treatment to dishonest and corrupt politicians, it would have extremely grave consequences for the credibility of the entire legal system. Any suggestion of favouritism toward politically well-connected criminals on the part of the Authority should therefore be rooted out immediately."*⁸
14. We hold the view that the instruction to withdraw the case against the two accused was bad in law, and in fact illegal. We chose not to attack it at the time it was given, not for reasons of agreeing with the decision, since it was clear that we did not, but so as to not ventilate in open court the lack of cohesion in the NPA and the sharply differing views held by the DPP North Gauteng and the SDPP of the SCCU (and the view of the SCCU Pretoria) at a time when the NDPP had just left office. In any event, the agreement at that time was a provisional withdrawal with a distinct intention of re-enrolling the matter once the concerns of the SDPP had been addressed. It has now transpired that the

CONFIDENTIAL

⁸ S v Yengeni *supra* at para 70

6



547

CONFIDENTIAL

SDPP views the matter as closed.

15. We submit that we cannot pay only lip service to the fight against corruption. Decisions to prosecute or not to prosecute should only be made on the available evidence, without fear, favour or prejudice subject to the Constitution and the law.⁹ Each prosecutor, when taking the requisite oath of office, is in any event enjoined to do just that, and we find ourselves in a position now where our conscience and professional ethics dictates that we request you to reconsider the decision taken in this matter.
16. What follows herein is an application for an internal review of the decision by the SDPP not to institute criminal proceedings in this matter and also to review the lawfulness of that decision. The decision overruled the original decision of this office (and by implication, that of the DPP North Gauteng) to institute criminal proceedings against Mdluli and Barnard.
17. We firmly hold the view that there is a *prima facie* case against both Mdluli and Barnard made out in the police case docket and for the reasons set out below we are of the view that the constitutional right to lawful, procedurally fair administrative action has been violated. Any exercise of public power should be fair, transparent and well motivated. The decision to withdraw the prosecution, with respect, fails on all three grounds.
18. We therefore request you to review the decision by the SDPP and to allow us to re-enrol

CONFIDENTIAL

⁹ NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS v ZUMA 2009 (1) SACR 361 (SCA) 2009 (1) SACR p361 at 34:

"The Act requires members of the prosecuting authority to serve 'impartially' and exercise, carry out or perform their powers, duties and functions 'in good faith and without fear, favour or prejudice' and subject only to the Constitution and the law (s 32(1)(a))"

568

CONFIDENTIAL

the matter as soon as is reasonably possible.¹⁰

NEW EVIDENCE DISCLOSED

19. New evidence has surfaced which implicates Mdluli (and possibly others) in the possible commission of further offences.¹¹ These offences were not part of the original docket, but should be properly investigated. They are extremely serious in nature and deserving of proper investigation on a prosecutor guided investigation model. However, the decision by the SDPP has had the practical effect of bringing the original investigation to an end. This matter has and continues to bring the NPA into disrepute.
20. Your attention is respectfully drawn to the constitutional obligation that any criminal investigation should follow all reasonable lines of enquiry and the premature closure of a matter will effectively mean that this office is denied the opportunity to fulfil its constitutional mandate of ascertaining the truth without fear, favour or prejudice.

CONFIDENTIAL

¹⁰ *PKOLI v PRESIDENT OF REPUBLIC OF SOUTH AFRICA AND OTHERS* 2010 (1) SA 400 (GNP) at p. 306.

"In *R v Rieker* the principle was stated thus: 'The public prosecutor has a wider task than counsel or attorney for a client. He represents the State, the community at large and the interests of justice generally.' Mr Budlender for the amicus curiae referred to a number of foreign law authorities from which it appears that similar principles of prosecutorial independence apply in Canada, in the United States of America, in the United Kingdom and in Namibia.

"The rule of law requires that, subject to any immunity or exemption provided by law, the criminal law of the land should apply to all alike. . . . the maintenance of public confidence in the administration of justice requires that it be, and be seen to be, even-handed."

¹¹ In the Hankel report which did not feature at all in this case or the docket and came to our attention for the first time when it was placed on the webpage of the Mail & Guardian newspaper. The content thereof is therefore public knowledge.



549

CONFIDENTIAL

THE LEGALITY OF THE WITHDRAWAL INSTRUCTION.

21. Our argument on the illegality of the instruction is based on the following:

- 21.1. All matters involving members of SAPF have traditionally been referred to the relevant DPP for an instruction on whether to prosecute or not.¹² That has never been changed and as such the primary responsibility (and jurisdiction) for deciding to institute prosecutions against members of the SAPF rests with the relevant DPP or his delegate.
- 21.2. At the time the instruction was given the prosecutors at the SCCU reported directly to the DPP North Gauteng and not the SDPP. As such, all cases they were involved in, more specifically those involving members of SAPF, were instituted for and on behalf of the DPP North Gauteng and not of the SDPP.
- 21.3. At the time the prosecution was instituted this case was therefore instituted for and on behalf of the DPP North Gauteng, who had jurisdiction to deal with the matter as he saw fit, through his prosecutors at the SCCU.
- 21.4. The primary jurisdiction in any area falls within the jurisdiction of the DPP for that region and any Special Director of Public Prosecutions envisaging a prosecution (of his own SCCU case) in the area of that DPP **must** do so in consultation with that DPP. Importantly, the DPP does not have to consult **any person** (including any Special Director of Public Prosecutions) before conducting prosecutions in his own area of jurisdiction.

CONFIDENTIAL

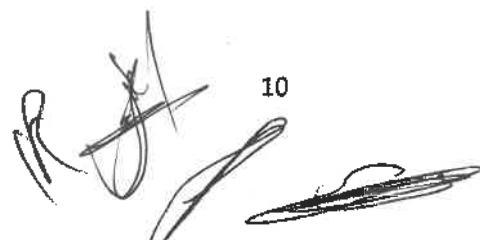
¹² As per Part 8 of the Prosecution Policy directives.

9

550

CONFIDENTIAL

- 21.5. The requirements for consultation as envisaged in section 24(3) of the NPA Act are therefore clearly only relevant in circumstances where the SDPP (or his staff) contemplate a prosecution in the area of jurisdiction of a DPP, and are certainly not meant for a scenario where the relevant DPP is busy with his "own case" in his own area of jurisdiction. It limits the rights of the SDPP in the area of jurisdiction of the relevant DPP but is certainly not meant to limit the rights of a DPP in his own area of jurisdiction.
- 21.6. The instruction of the SDPP to withdraw the matter while the DPP North Gauteng was seized with it (through the SCCU Pretoria) therefore constituted an erroneous exercise of power, as he cannot dictate to the DPP North Gauteng what to do with cases he (the DPP) is dealing with; just as the DPP North Gauteng cannot dictate to any other DPP what they should do; in their own area of jurisdiction, with cases they are dealing with.
- 21.7. The SDPP's instruction amounted to interference in the autonomy and jurisdiction of the DPP North Gauteng. As the SDPP is neither a Deputy National Director of Public Prosecutions nor the National Director of Public Prosecutions he cannot interfere in the autonomy and jurisdiction of any DPP. Nor can the requirement of consultation be construed to mean anything less than consensus between the relevant DPP and the SDPP. This is so because the parties hold the same rank, and the DPP has the advantage of original jurisdiction in his own area of jurisdiction. Therefore, if there is no consensus, it follows that the matter will require the attention of the NDPP or

CONFIDENTIAL

551

CONFIDENTIAL

at least of a DNDPP, since the parties are unable to overrule each other.

21.8. The SDPP's proclamation does not ordinarily include corruption and in any event, the SDPP furthermore only took over the responsibility of the SCCU prosecutors as from 1 April 2012. He could therefore potentially only claim the Mdluli case as "his case" as from 1 April 2012.

22. It is submitted that any decision of an administrative nature made, proposed to be made or required to be made; as the case may be, should be made under an empowering provision. Reliance in this case on section 24 (3) of the NBA Act unfortunately fails as it does not assist the SDPP.

23. However, even if one could think away the clear position set out above, the question still remains as to whether, on the merits, the decision to withdraw was the correct decision.

SAPS OR THE INSPECTOR GENERAL.

24. The reason provided by the SDPP was that the SAPS could not investigate the case as it falls within the area of jurisdiction of the Inspector General for the Intelligence Services. The Inspector General has now conclusively dealt with this argument.¹³ However, even without her opinion, one has merely to consider the following to see that this argument, with respect, was erroneous from the outset.

CONFIDENTIAL

¹³ See attached letter by the Inspector- General to the Acting National Police Commissioner dated 19 March 2012 attached hereto.

552

CONFIDENTIAL

- 24.1. The case against Mdluli and Barnard is one of Corruption and / or Fraud.¹⁴ These offences do not fall exclusively within the realm of the Intelligence Services Oversight Act, 40 of 1994, but are offences clearly within the mandate of the SAPS. Corruption is such a sensitive issue that the Glenister judgement specifically required amendments to the Police Act to ensure sufficient independence of the DPCI.
- 24.2. Section 205¹⁵ of the Constitution and section 13¹⁶ of the SAPS Act gives the power to investigate criminal conduct. The Inspector-General has as little right to investigate shoplifting offences or murder cases as it has the power to investigate Mdluli and Barnard for fraud and/or corruption.
- 24.3. The functions of the Inspector-General with regards to criminal conduct on the

CONFIDENTIAL

¹⁴ See attached draft charge sheet.

¹⁵ **205 Police service**

- (1) The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government.
- (2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.
- (3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

¹⁶ **13 Members**

- (1) Subject to the Constitution and with due regard to the fundamental rights of every person, a member may exercise such powers and shall perform such duties and functions as are by law conferred on or assigned to a police official.
- (2) Where a member becomes aware that a prescribed offence has been committed, he or she shall inform his or her commanding officer thereof as soon as possible.
- (3) (a) A member who is obliged to perform an official duty, shall, with due regard to his or her powers, duties and functions, perform such duty in a manner that is reasonable in the circumstances.
(b) Where a member who performs an official duty is authorised by law to use force, he or she may use only the minimum force which is reasonable in the circumstances.
- (4) Every member shall be competent to serve or execute any summons, warrant or other process whether directed to him or her or to any other member.

554

CONFIDENTIAL

Investigations the specific mandate to deal with inter alia "any offence contemplated in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004¹⁸.

24.7. The Inspector-General does not conduct court driven investigations, nor does her office have any capability (or mandate) to conduct criminal investigations (which this clearly is) and it is clear that the Inspector-General has never referred a criminal case to the NPA, simply because the NPA's cases emanate from the South African Police.

24.8. Any competent court of law may in terms of the Criminal Procedure Act give the SAPS the authority to search and seize *inter alia* documents, which in this

CONFIDENTIAL

¹⁸ CHAPTER 6
ORGANISED CRIME AND PUBLIC ORDER POLICING UNIT (ss 16-17)
16 National prevention and investigation of crime

- (a)
- (i)
- (ii)
- (b) (i)
- (ii) or
- (iii)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)

[Para. (a) substituted by s. 2 (a) of Act 57 of 2008.]

(iA) in respect of the commission of any alleged offence mentioned in the Schedule; or
[Para. (iA) inserted by s. 2 (c) of Act 57 of 2008.]

(j)

555

CONFIDENTIAL

case did in fact happen.

UNWARRANTED ATTACK ON STATE OFFICIALS.

25. In the last 12 years of the NPA's existence it has become clear that the favoured strategy of criminal accused, more particularly the guilty ones, has been not to attack the case against them but the integrity of the prosecutors and blame them for being part of some conspiracy.
26. This case is no exception. It is, however, disturbing that the SDPP, *inter alia*, makes unfounded allegations of some "persuasion"¹⁹ by the prosecutor (applying for the warrant of arrest) of the Magistrate issuing it, with no shred of evidence to lay the basis for such an allegation. This was done without consultation with the prosecutor, investigators and/or their supervisors.
27. It is respectfully submitted that the senior management of the NPA should, in particular, be circumspect and cautious in dealing with accusations of this nature from accused and their legal representatives. They should not easily be entertained without evidence of wrongdoing, let alone be promoted.

CONFIDENTIAL

¹⁹ See paragraph 15, page 7 of the attached memo by adv Mrwebi dated 4 December 2011.

556

CONFIDENTIAL**CONCERNS ABOUT THE DECISION.**

28. There is clearly concern that the SDPP prejudged the matter in that:

28.1. The original representation made to the SDPP²⁰ on behalf of Mdluli did not deal with the merits of the case against him at all and therefore this office in its response²¹ also did not deal extensively with the merits in its answer. The decision therefore seems to have very little to do with the merits of the case. It is not understood why these representations were sent to the SDPP, and not to the DPP North Gauteng, who was seized with the matter.

28.2. Paragraph 9 of the SDPP's memo²² deals with the murder case, not the fraud and or corruption case. As stated in the memo by the Regional Head, through adv Smith, there are no peculiarities regarding the warrant of arrest. What is of great concern is that most, if not virtually all of the representations of Mdluli, deals with the murder charge against him. Only paragraph 45 and 46 has any reference to the charges of corruption and/or fraud.

28.3. It is in our view clear that nothing of any importance was presented to the SDPP in the representations by Mdluli concerning the corruption and fraud case for him to consider in favour of Mdluli.

CONFIDENTIAL

²⁰ See copy of the representations dated 26 October 2011 attached hereto.

²¹ See a copy of this office response attached hereto.

²² See paragraph 9 page 4 of the attached memo by adv Mrwebi dated 4 December 2011

CONFIDENTIAL

- 28.4. The application for the warrant of arrest was with the authorising magistrate from 1 September to 6 September 2011, which is a clear indication that the magistrate did not make a hasty decision on the matter. The fact that the SDPP seems to imply that there was some "persuasion" between the Magistrate and the prosecutor is disturbing, more so since not a shred of evidence exists to even remotely substantiate such conjecture.²³
- 28.5. The evidence contained in the docket was sufficient to convince an *independent judicial officer* to issue a warrant for the arrest of Mdluli and Barnard. The content of the case docket indicates that Mdluli *prima facie* benefitted in a corrupt manner from a transaction where he traded in his own private BMW vehicle. Barnard, although involved in this transaction, in no way benefitted financially. These transactions are not "*apparently illegal*"²⁴ they were *in fact* illegal and constitute corruption and/or fraud. The benefit/money Mdluli received is clearly an unlawful and unapproved gratification.
- 28.6. In paragraph 10 of the SDPP's memo, it is stated that the police are "trying to fabricate evidence". There is simply no evidence of this in the corruption docket and in fact no evidence was fabricated against Mdluli. Any allegation by Mdluli of such alleged fabrication was also clearly not made with reference to the corruption case.
- 28.7. We believe paragraph 17 of the SDPP's memo is key, where he states:

CONFIDENTIAL

²³ See paragraph 15, page 7 of the attached memo by adv Mrwebi dated 4 December 2011.

²⁴ See paragraph 5, page 3 of the attached memo by adv Mrwebi dated 4 December 2011.

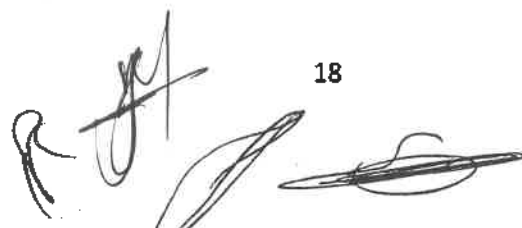
558

CONFIDENTIAL

28.8. "However, because of the view I hold in the matter". Without alleging anything we are of the view that based on the various allegations of the involvement of both Mdluli and the SDPP (whether unfounded or otherwise) in the Selebi saga; which is well documented, that the SDPP (for his own protection) should have recused himself from any decision making in this matter. That would certainly have been the most prudent course of action under the circumstances. It is not suggested by us that the SDPP is in any way biased or influenced, but that there is a perception that this may be so cannot be denied, and this has a negative impact on the case and the image of the NPA, and has the potential to taint the integrity of the process, whether it is factually so or not.

LEGAL EFFECT OF THE DECISION.

29. The direct external legal effect of this decision has an immediate impact on society's right to expect just administrative action. It is reiterated that the decision by the SDPP has an immediate impact on civil society. It is not purely an internal matter of departmental administration. The matter is a high profile one, and continues to be the subject of public speculation and debate.
30. We submit that it is not even necessary for you to determine whether the decision by the SDPP is correct or not, you should instead ask the question whether the decision is justifiable. If you can find no convincing reasons that the decision was reasonable then it should be overturned.

CONFIDENTIAL

559

CONFIDENTIAL

31. It is respectfully submitted that you should do an enquiry into the justifiability and should direct your attention to the soundness of the process by which the decision was taken. In this regard it is argued that the decision by the SDPP is unjustifiable, in that:

31.1. He has not considered all the serious objections to the decision taken and he has not provided any answers which plausibly meet them,

31.2. There was no proper consideration of all the serious alternatives to the decision taken. The alternatives have not been disregarded for plausible reasons.

31.3. There is no rational connection between the facts as contained in the case docket and the decision taken.

NPA POLICY CONSIDERATIONS

32. On the evidence available²⁵ and provided there is a reasonable prospect of a successful prosecution in the case of both Mdluli and Barnard; there is therefore reasonable and probable cause for their prosecution. Even if you disagree with our submission that the SDPP had no right to take the decision he did, we submit that the exercise of his discretion was fatally flawed.

CONFIDENTIAL

²⁵ An electronic copy of the docket will be made available. It should however be remembered that an independent judicial officer in Pretoria authorised the warrants of arrest against both accused. Another independent judicial officer in Kuilsrivier authorised a warrant for search and seizure both on the evidence in an affidavit by one of the investigating officers.

560

CONFIDENTIAL

33. It is respectfully submitted that there can only be one correct decision in this matter and that is that Mdluli and Barnard should be prosecuted. There are no other factors that militate against the institution of a prosecution in this case where a *prima facie* case is clearly made out. The NPA needs to act in line with its own prosecution policy which states that:

*"In deciding whether or not to institute criminal proceedings against an accused person, prosecutors must assess whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution. There must indeed be a reasonable prospect of a conviction, otherwise the prosecution should not be commenced or continued."*²⁶

34. Once an assessment has been made that there is a reasonable prospect of a successful prosecution the policy dictates that:

*"Once a prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of a conviction, a prosecution should normally follow, unless public interest demands otherwise."*²⁷

35. In our view the Constitution requires that the administration of justice should be conducted in accordance with the fundamental principles of justice and rationality and any departure from those principles should be viewed in a serious light.

36. It must also be considered that any decision by the NPA could be subjected to a review²⁸

CONFIDENTIAL

²⁶ Prosecution Policy par 4 (a)

²⁷ Prosecution Policy par 4 (c)

²⁸ *Democratic Alliance v The Acting National Director of Public Prosecutions* (288/11) [2012] ZASCA 15 (20 March 2012)

561

CONFIDENTIAL

and that the NPA as an organisation should make decisions that are not only objectively correct but which would withstand the scrutiny of such review²⁹ by our courts. It is contended that the instruction by the SDPP will not withstand judicial scrutiny if challenged and should therefore be reviewed by you.

37. It is contended that the public interest demands that Mdluli and Barnard be prosecuted in open court lest the NPA be accused of only paying lip service to the government's declared war against corruption, or risk the impression that such war on corruption is completely dependent on who you are and who you know³⁰.

THE CASE AGAINST MDLULI.

38. From the affidavits and documentary evidence in the docket, the following facts can be proven:

38.1. Mdluli was the owner of a BMW 7 series which was his own, private vehicle. (Venter par 4, Visser par 4 Annexure NV 01, 02, 03 and 06.)

38.2. Mdluli wanted to sell this vehicle but the value of the vehicle was considerably less than the outstanding amount he owed on the vehicle. (Visser par 4 Annexure NV 01, NV 03)

CONFIDENTIAL

²⁹ "Before us it was conceded on behalf of the first and third respondents that a decision to discontinue a prosecution was subject to a rule of law review. That concession in my view was rightly made. As recently as 1 December 2011, in *Democratic Alliance v President of the Republic of South Africa & others* 2012 (1) SA 417 (SCA) this Court noted that the office of the NDPP was integral to the rule of law and to our success as a democracy. In that case this Court stated emphatically that the exercise of public power, even if it does not constitute administrative action, must comply with the Constitution. The Constitutional Court has repeatedly emphasised this point." See *DA v ANDPP* supra par 27.

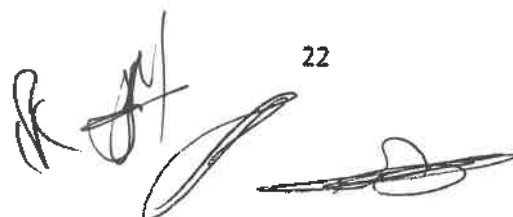
³⁰ *DA v ANDPP* supra at para 31: "Put simply, it means that each of the arms of government and every citizen, institution or other recognised legal entity, are all bound by and equal before the law. Put differently, it means that none of us is above the law. It is a concept that we, as a nation, must cherish, nurture and protect. We must be intent on ensuring that it is ingrained in the national psyche. It is our best guarantee against tyranny, now and in the future."

562

CONFIDENTIAL

- 38.3. Atlantis Nissan then "loaned" an amount of R50 000.00 to Mdluli, however the cheque made out on 2 June 2010 is for the amount of R48 213.01. (Venter par 6 Annexure JV 01, JV 02 and JV 13) Atlantis Nissan is the biggest provider of "covert" vehicles for the SAPF. Covert vehicles are bought for the use of Crime Intelligence, of which Mdluli was, and presently still is the head.
- 38.4. This cheque was made out to Leo Haese BMW and was handed to Leo Haese BMW who in turn gave out a receipt. (Visser Annexure NV 13.)
- 38.5. Two BMW vehicles were bought by SAPS through accused Barnard. (Strydom Annexure GRJS 05 and GRJS 10)
- 38.6. The discount and trade in assistance of R 42 313.00 created by the purchasing of the BMW 3 series together with an amount of R48 213.01 was utilised to make up the difference between the trade in price of Mdluli's 7 series and the settlement amount owed on the 7 series. (Strydom par 11 and 12, Visser Annexure NV 04)
- 38.7. The discount on the 5 series purchased by SAPF amounted to R31 500.00 and was paid at the request of Barnard to Atlantis Nissan instead of in fact reducing the purchasing price of the 5 series. (Strydom par 13 Annexure GRJS 10 and 11)
- 38.8. Payment of the R48 213.01 amounted to an unlawful gratification even if it

CONFIDENTIAL



563

CONFIDENTIAL

was a bona fide "loan" which it could clearly never be. Utilisation of the R42 313.00 to cover the shortfall on Mdluli's vehicle also amounts to an unlawful gratification.

39. This is not the sum total of the evidence, but enough to show at the very least that Mdluli received an unlawful gratification when he traded in his own private vehicle. This gratification in the first instance is the R48 213.01 paid to Leo Haese by Atlantis Nissan. Mdluli furthermore benefitted when the discount and trade in assistance created by the purchase of the 5 series and 3 series for the SAPS were utilised to benefit Mdluli on the shortfall created by him selling his 7 series to Leo Haese BMW. This is also an unlawful gratification to which he was not entitled as it had to go to the benefit of the SAPF not Mdluli.

40. The documentary evidence is more than sufficient to prove the corruption and typically witnesses will be called to hand in these documents and to corroborate the documentary evidence.

41. From these facts it should be clear that this case have nothing to do with *"...the transactions which Mdluli is charged with can only be explained in terms of the internal applicable procedures, policies, processes and systems..."*³¹ but plain criminality not conducted in a covert manner but rather blatantly.

CONFIDENTIAL

³¹ See paragraph 22, page 9 of the attached memo by adv Mrwebi dated 4 December 2011.

564

CONFIDENTIAL

CONCLUSION.

42. We await the decision of the Acting NDPP in this regard, but wish to place on record that this action has not been taken lightly. It was a difficult decision to take to escalate the matter to your office, bearing in mind that Adv Mrwebi is the Head of the SCCU and we acknowledge him as such. We again reiterate that this should not be construed as a personal attack, nor is our disagreement with his decision intended as a personal slight or insult. We sincerely hold the view that the decision is, for the reasons set out, a wrong one. Our professional ethics dictate that we pursue the matter to its logical conclusion, which may include, of necessity, taking further steps if there is no agreement between us. Again, this is a statement of an intended course of action not taken lightly, and should not be construed as an attack or threat against any individual.




CONFIDENTIAL





ANNEXURE KDR13



South African Police Service  Suid-Afrikaanse Polisie

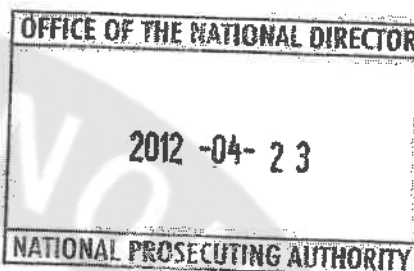
Private Bag X1500, Silverton, 0127

Fax No: (012) 846 4400

Your reference :
 My reference : CAS 155/07/2011
 Enquiries : Lieutenant General A Dramat
 Tel : (012) 846 4001

THE DEPUTY NATIONAL COMMISSIONER
 DIRECTORATE FOR PRIORITY CRIME
 INVESTIGATION
 SOUTH AFRICAN POLICE SERVICE

Advocate Jiba
 Acting National Director of Public Prosecutions
 23 Westlake Avenue
 SILVERTON



**SILVERTON CAS 155/07/2011: INVESTIGATION AGAINST
 LIEUTENANT GENERAL MDLULI**

You will recall that I have submitted a request, dated 23 March 2012, with the relevant case docket to you, as addressee A, in your capacity as the Acting Director for Public Prosecutions, for your decision. This was following the response from the Inspector General of Intelligence on the initial decision of the Special Director, Advocate Mrwebi, to have the charges against Lieutenant General Mdluli and Colonel Barnard withdrawn.

Thereafter I received a response, again from Advocate Mrwebi, that the matter is finalized and that he abides by his decision. In the circumstances I will appreciate a decision on the matter by you, as the ultimate authority in respect of the consideration of a prosecution.

Kind regards,



**LIEUTENANT GENERAL
 HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
 DEPUTY NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
 A DRAMAT**

Date: 2012-04-23



ANNEXURE KDR14



29

South African Police Service*Suid-Afrikaanse Polisie*

Private Bag x1500, Silverton, 0127

Fax No: (012) 846 4400

Your reference : Silverton CAS 155/07/2011
Lyttelton CAS 432/11/2011
Veslourus CAS 340/02/1999ANTI-CORRUPTION TASK TEAM
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION
SILVERTON
0127My reference : 19/1/1
Enquiries : Col K Roelofse
Tel : (012) 843 8583
082 778 5661

2012-07-11

Auditor General
Lefika House
300 Model Street
Brooklyn
Pretoria

Attention: Alice Muller

SILVERTON CAS 155-07-2011: FRAUD AND CORRUPTION

1. A meeting took place during early May 2012 between Alice Muller, Corné Myburg, Yaasir Haffejee and I regarding the South African Police Service investigation into alleged criminal activities pertaining to the abuse of the Secret Services Account by members of Crime Intelligence.
2. At the meeting you were made aware of the contents of an internal memorandum authored by Advocate L Mrwebi, a Special Director at the Specialised Commercial Crime Unit, on 26 April 2012. You were specifically referred to the second paragraph on page three (3) of said document.

Received 12/07/12

30

3. According to Advocate L Mrwebi "It is a known fact that the Auditor General (AG) examined the information containing the alleged criminal transaction by Mdluli and Barnard, and based on the rules governing the secret services account found nothing untoward with the transaction. The necessary report in this regard was given to the Joint Standing Committee of Intelligence (JSCI) and as such to parliament." I am attaching the internal memorandum authored by Advocate L Mrwebi dated 26 April 2012.
4. You indicated at the time that your office did not examine the alleged criminal transaction and by definition did not come to a conclusion that "nothing untoward" had happened.
5. Would you be so kind as to confirm in writing that the situation set in the preceding paragraph is indeed correct?
6. I would also want you to indicate, after our meeting, whether your office has been requested to investigate the transaction pertaining to this incident and if so, the outcome of the investigation. If not, I hereby wish to refer the matter to your office for an independent assessment of the transaction which forms the basis of the criminal investigation.

Kind Regards

ANTI-CORRUPTION TASK TEAM: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
K ROELOUSE

COLONEL

Date: 2012-07-11



ANNEXURE KDR15





[Handwritten signature]

AUDITOR-GENERAL
SOUTH AFRICA

Colonel K Roelofse
South African Police Service
Silverton
0127

25 July 2012

Reference: Silverton CAS 155-07-2011

Dear Sir,

Silverton CAS 155-07-2011: Fraud and Corruption

The purpose of this communication is to inform you that the Auditor-General of South Africa did not examine the alleged criminal transaction, nor reach the relevant conclusion as set out in your letter to us dated 11 July 2012.

Yours sincerely

[Handwritten signature of Alice Muller]

Alice Muller
Corporate Executive

Enquiries: Yaasir Haffejee
Telephone: (012) 426 2366
Email: yaasirh@agsa.co.za



[Handwritten signatures]

ANNEXURE KDR16



Specialised Commercial Crime Unit



The National Prosecuting Authority of South Africa
Igunya Jikelele Labetsutshisi loMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

HEAD OFFICE

Ref 10/1/2/2-1-2011

Tel : +27 12 845 6702

Fax: +27 12 845 6686

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue

Weavind Park

Silverton

Pretoria

0184

P/Bag X752

Pretoria

0001

South Africa

Email:

ngomana@nqa.gov.za

www.nqa.gov.za

CONFIDENTIAL

INTERNAL MEMORANDUM

**TO: ADV G BREYTENBACH
REGIONAL HEAD: SCCU PRETORIA**

**ADV JAN FERREIRA
SCCU PRETORIA**

**CC: ADV S. MZINYATHI
DIRECTOR OF PUBLIC PROSECUTIONS;
NORTH GAUTENG**

**FROM: ADV LS MRWEBI
SPECIAL DIRECTOR: SCCU**

DATE: 26 APRIL 2012

**SUBJECT: THE STATE VERSUS RN MDLULI and H
BARNARD.**

I confirm that on 23 APRIL 2012 you delivered to my office a document on the abovementioned matter.

The said document was directed to the Acting NDPP and also copied to Dr Ramaite, Mr Hofmeyr, Adv Mokhatla, Adv Mzinyathi and myself.

Justice in our society, so that people can live in freedom and security



Let me advise that I have taken note of the contents of the document.

I wish to advise further that, in as much as I am committed to the fight against ~~crime and corruption as well as the rule of law generally, I will not allow or~~ consciously become party to any situation where the NPA, the SCCU or any other component of the NPA for that matter is being used or abused for any purpose unconnected with promotion or advancement of the interests of justice or the rule of law under any guise be it through the purported exercise of investigative powers by the police or purported of exercise of prosecutorial functions by prosecutors.

In this case a distinction has naturally to be drawn between acts of maladministration and acts of criminality. As the NPA we are only concerned with the latter as the former is the subject of other suitably qualified and relevant functionaries of the state.

Since the initial decision it must be accepted, unless we choose to be deliberately ignorant in this regard and of course as it appears to be the case in your document, that nothing has changed in the so called case against Mdluli and Barnard. On the contrary the obvious illegal actions on the part of the police in accessing classified/privileged information and placing same, through certain newspapers, in the public domain contrary to the applicable laws makes the case for the state even more suspicious.

Having been provided with further information on the matter and having been privy to other classified, confidential and high level discussions with police management, I am concerned that our actions in the matter may be interpreted, justifiable so, as amounting to serious abuse of the legal process and as being motivated by ulterior purposes.

Handwritten signature and initials, possibly 'R' and 'S', with a large diagonal stroke through them.

The above view/conclusion is in addition to considerations of absence of admissible evidence, and a situation where any evidence that may have been admissible has been compromised.

~~It is a known fact that the Auditor General (AG) examined the information~~ containing the alleged criminal transaction by Mdluli and Barnard, and based on the rules governing the secret service account found nothing untoward with the transaction. The necessary report in this regard was given to the Joint Standing Committee on Intelligence (JSCI) and as such to Parliament. Are the police and prosecutors now questioning the integrity of these institutions? I do not think we have that authority and in any event if we want to go that route we have to do it in a legal and proper manner.

It is my considered view that it will therefore not be in the interests of justice for the NPA to be further involved in this matter. I once again emphasise that the Inspector-General is the appropriate functionary to handle the matter. This is so in view of the classified and privileged nature of the information involved in the matter and the fact that the AG, JSCI and Parliament have already considered that matter in terms of section 3 of the Intelligence Services Oversight Act, 40 of 1994.

I will advise the Acting National Director accordingly.

Regards



ADVOCATE L.S.MRWEBI

SPECIAL DIRECTOR: COMMERCIAL CRIME UNIT

DATE: 26 APRIL 2012



ANNEXURE KDR17



Office of the National Director of Public Prosecutions



NATIONAL PROSECUTING AUTHORITY
South Africa

Ref: 01/2012/andpp
Enq: Jlepinka
Email: Jlepinka@npa.gov.za

04 May 2012

Lt General A Dramat
Promat Building
16 Creswell Street
SILVERTON
2000

Victoria & Griffiths
Mxenge Building
Westlake Avenue
Weavind Park
Silverton

P/Bag X752
Pretoria
0001

Tel: (012) 845-6000
Fax: (012) 804 9529
www.npa.gov.za

Dear Lt General Dramat

**SILVERTON CAS 155/07/2011: INVESTIGATION AGAINST LIEUTENANT
GENERAL MDLULI**

1. The above matter refers to your correspondence dated 23 April 2012.
2. Please be advised the matter was attended to by Adv L Mrwebi in his capacity as the Head of Special Commercial Crimes Unit (SCCU) as the subject matter falls within his area of jurisdiction.
3. I trust that the above is in order.

Kind regards


J Lepinka
J LEPINKA

MANAGER EXECUTIVE SUPPORT TO THE
NATIONAL DIRECTOR OF PUBLIC PROSECUTONS



ANNEXURE KDR18



WJ *ju* *Jetai* *just computer - ju*
SA
 South African Police Service  Suid-Afrikaanse Polisie diens

Private Bag X1500, Silverton, 0127 Fax No: (012) 846 4400

Your reference :
 My reference : 1/1/1/4
 Enquiries : Lieutenant General A Dramat
 Tel : (012) 846 4001

THE DEPUTY NATIONAL COMMISSIONER
 DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
 SOUTH AFRICAN POLICE SERVICE
 PRETORIA

Advocate Jiba
 Acting National Director of Public Prosecutions
 23 Westlake Avenue
 SILVERTON

OFFICE OF THE NATIONAL DIRECTOR
 2012 -06- 0 8
 NATIONAL PROSECUTING AUTHORITY

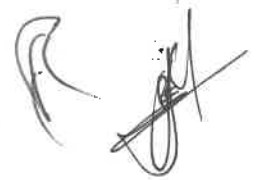
Dear Advocate Jiba

**SILVERTON CAS 155/07/2011: INVESTIGATION AGAINST
 LIEUTENANT GENERAL RN MDLULI**

I have submitted a request, dated 23 March 2012, to you as Acting National Director of Public Prosecutions, for your decision in the above matter. You will recall that Advocate Mwrebi instructed the withdrawal of the matter against Lieutenant General Mdluli and indicated that only the Inspector General of Intelligence has the mandate to investigate the matter. This was despite the fact that before the decision was made, the South African Police Service visited the Inspector General and that it was indicated by the Inspector General that the South African Police Service could continue with the matter and that the Inspector General has no mandate to investigate criminal matters.

After the initial decision was made, by Advocate Mwrebi, the Inspector General of Intelligence once again indicated that, from her perspective, the matter could proceed. The present investigation of the Inspector General into the matter only relates to the mandate of the Inspector General and is not a criminal investigation.

On the 23rd of April 2012, I once again sent a letter to your office, in which it was clearly stated that your decision on the matter, as Acting National Director of Public Prosecutions is required. In view of the continued negative publicity on the matter and especially the fact that both the prosecutor and the Director of Public Prosecutions in Pretoria were in favour of and did not foresee any problems with the prosecution of Lieutenant General Mdluli, it is regarded as of the utmost importance that your decision on the matter, be obtained. In other words a review of Advocate Mwrebi's decision is urgently required in the interest of the administration of law, the interest of the South African Police Service and especially in the public interest.



My last correspondence on the matter, in which I also appealed for your decision on the matter, was replied to by the Manager: Executive Support: Ms Lepinka of your office, only informing me that Advocate Mwrebi dealt with the matter.

An urgent appeal is once again made to you to urgently review the decision of Advocate Mwrebi and to give your decision, in your capacity as Acting National Director of Public Prosecutions on the matter.

Your assistance in this matter and urgent response will be appreciated.

With kind regards



**LIEUTENANT GENERAL
HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
DEPUTY NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
A DRAMAT**

Date: 2012-06-07

*Matter was resolved under General Dramat
understanding to send a letter withdrawing his
request, since he sent the letter without
knowledge of the facts.*

[Signature]
11/07/2012



ANNEXURE KDR19



Handwritten notes at the top of the page, including "Police Service" and "South African Police Service".

Address	23 Westlake Avenue, N27	Post No.	2012 08 03
Reference No.	1/1/14	THE DEPUTY NATIONAL COMMISSIONER OF	
Subject	Lieutenant General A Dramat	DIRECTORATE FOR PRIORITY CRIME	
Phone	(012) 846 4001	INVESTIGATION	
		SOUTH AFRICAN POLICE SERVICE	

Advocate Jiba
 Acting National Director of Public Prosecutions
 23 Westlake Avenue
 SILVERTON

OFFICE OF
 2012-08-03
 NATIONAL SECURITY

**SILVERTON CAS 155/07/2011: INVESTIGATION AGAINST
 LIEUTENANT GENERAL RN MDLULI**

My letter dated 2012-06-07 refers. Thank you for the meeting on 2012-08-01 on the above matter.

The meeting sufficiently resolved all the concerns raised in my letter. I have taken note of shortcomings identified during our meeting, and have instructed the investigating officer to obtain instructions/guidance from the prosecutor.

I would like to thank you for your response to the issues raised and the manner in which they have been addressed.

Kind regards,

Handwritten signature of A. Dramat

**LIEUTENANT GENERAL
 HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
 DEPUTY NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
 A DRAMAT**

Date: 2012-08-02

Handwritten signature at the bottom right of the page.

ANNEXURE KDR20



32

South African Police Service



Suid-Afrikaanse Polisie

Private Bag x1500, Silverton, 0127

Fax No: (012) 846 4400

Your reference : Silverton CAS 155/07/2011
 My reference : 19/1/1
 Enquiries : Col K Roelofse
 Tel : (012) 843 8583
 082 499 7958

ANTI-CORRUPTION TASK TEAM
 DIRECTORATE FOR PRIORITY CRIME
 INVESTIGATION
 SILVERTON
 0127
 2012-08-10

ADVOCATE J FERREIRA
 SPECIALISED COMMERCIAL CRIME UNIT
 NATIONAL PROSECUTING AUTHORITY
 PRETORIA

PROSECUTION: SILVERTON CAS 155/07/2011: ANTI-CORRUPTION TASK TEAM (ACT)

1. A meeting was held between the acting National Director for Public Prosecution Advocate N Jiba and the Head: Directorate for Priority Crimes Investigations, Lieutenant General A Dramat on 01 August 2012 to discuss a request to review of the decision not to prosecute made by Advocate L Mrwebi, a Special Director at the Specialised Commercial Crime Unit, in terms of Silverton CAS 155/07/2011 on 04 December 2011.
2. I was informed on 01 August 2012 by Lieutenant General A Dramat that Advocate N Jiba is of the view that the matter against Lieutenant General Mdluli and Colonel H Barnard, accuse in the matter, was only provisionally withdrawn on 14 December 2011 due to the fact that some investigation had not been finalised.
3. I was further informed that I had to provide the case docket to the relevant prosecutor with the view of finalising the investigation. Thereafter the matter must be placed back on the court roll.

SECRET

Page 1 of 3

DECLASSIFIED

ROELOFSE
COL.

~~SECRET~~

DECLASSIFIED

KODLOFSE
CA.

4. I have handed said docket (Silverton CAS 155/08/2011) to your office on a previous occasion.
5. In light of above I await your response as to what is still needed to place the matter back on the court roll.
6. Apart from approaching and establishing the mandate of the Office of the Inspector General of Intelligence and the Office of the Auditor General in relation to this investigation, I am not aware of any other issues that need investigation.
7. Both the Offices of the Inspector General of Intelligence and the Auditor General have been approached. I have received a written response from the Office of the Inspector General of Intelligence dated 19 March 2012 (attached). In it the Inspector General of Intelligence refers the matter back to the South African Police Services ("SAPS") for investigation and advised the National Prosecuting Authority ("NPA") to place the matter back on to the court roll. I was also advised by the Office of the Auditor General that the mandate to investigate alleged criminal conduct lies within the mandate of the SAPS.
8. I have also received and perused an internal memorandum dated 26 April 2012 (attached), authored by Advocate L Mrwebi. This internal memorandum was addressed to Advocate's S Mzinyathi, G Breytenbach and J Ferreira and was written in response to a request from Advocate's G Breytenbach and J Ferreira dated 13 April 2012 to Advocate M Jiba to review the decision made by Advocate L Mrwebi not to prosecute in this matter.
9. I have discussed said internal memorandum dated 26 April 2012 with the Office of the Auditor General and more specifically the second paragraph on page three (3) of said document.

SECRET

K ROELOFSE

COLONEL

10. According to Advocate L Mrwebi "it is a known fact that the Auditor General (AG) examined the information containing the alleged criminal transaction by Mdluli and Barnard, and based on the rules governing the secret services account found nothing untoward with the transaction. The necessary report in this regard was given to the Joint Standing Committee of Intelligence (JSCI) and as such to parliament." I requested a written response from the Office of the Auditor General with regards to the above mentioned statement made by Advocate L Mrwebi.
11. I have received a written response from the Office of the Auditor General dated 25 July 2012 (attached) pertaining specifically to the identified portion within the Mrwebi internal memorandum dated 26 April 2012. The response contradicts Advocate L Mrwebi's stated version of events.
12. If Advocate L Mrwebi was advised that the Office of the Auditor General did investigate this matter it would be imperative to know who advised him that "it is a known fact that the Auditor General (AG) examined the information containing the alleged criminal transaction by Mdluli and Barnard".
13. If he had been advised of this and given documentation to this effect during "high level discussions with police management" it would be of paramount importance to have sight of such documentation as it is clear from the letter of the Office of the Auditor General dated 25 July 2012 that this matter was never investigated by that office.

ANTI-CORRUPTION TASK TEAM: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
K ROELOFSE

COLONEL

Date: 2012-08-10

ANNEXURE KDR21



ENQUIRY IN TERMS OF SECTION 12(6) OF THE NATIONAL PROSECUTING AUTHORITY ACT 32 OF 1998

UNABRIDGED VERSION

1 APRIL 2019



TABLE OF CONTENTS

TABLE OF CONTENTS	2
LIST OF WITNESSES	5
LIST OF ABBREVIATIONS	10
1. INTRODUCTION	12
1.1. <i>Establishment of the Enquiry</i>	12
1.2. <i>The Terms of Reference</i>	14
1.3. <i>Rules of the procedure</i>	17
1.4. <i>Invitation to submit evidence and the need for cross-examination</i>	20
1.5. <i>The structure of the report</i>	20
2. THE PROSECUTING AUTHORITY: IT'S LEGAL FRAMEWORK	22
3. THE STRUCTURE OF THE NPA	30
3.1. <i>Roles and functions</i>	31
3.2. <i>The National Director of Public Prosecutions</i>	34
4. THE APPOINTMENT AND ELEVATION OF JIBA AND MRWEBI	41
4.1. <i>Nomgcobo Jiba</i>	41
4.2. <i>Lawrence Sithembiso Mrwebi</i>	42
5. THE ALLEGATIONS AND THE EVIDENCE	43
5.1. <i>The case law</i>	44
5.1.1. <i>National Director of Public Prosecutions and Others v Freedom Under Law 2014 (1) SA 254 (GNP) ("FUL HC")</i>	44

5.1.2.	<i>National Director of Public Prosecutions and Others v Freedom Under Law 2014 (4) SA 298 (SCA) delivered on 17 April 2014 ("FUL SCA")</i>	54
5.1.3.	<i>Booyesen v Acting National Director of Public Prosecutions and Others [2014] 2 ALL SA 319 (KZD) delivered on 26 February 2014</i>	57
5.1.4.	<i>Zuma v Democratic Alliance [2014] 4 All SA 35 (SCA) delivered on 28 August 2014 ("Spy Tapes 2")</i>	66
5.1.5.	<i>General Council of the Bar of South Africa v Jiba & Others 2017 (2) SA 122 (GP)</i>	73
5.1.6.	<i>Jiba and Another v General Council of the Bar of South Africa and Another; Mrwebi v General Council of the Bar of South Africa 2019 (1) SA 130 (SCA) (10 July 2018)</i>	85
5.1.7.	<i>Freedom Under Law v National Director of Public Prosecutions & Others 2018 (1) SACR 436 (GP)</i>	92
5.2.	<i>Evidence surrounding the cases</i>	96
5.2.1.	Booyesen.....	96
5.2.2.	Mdluli	143
5.2.3.	The Spy Tapes	216
5.2.4.	GCB.....	227
5.3.	<i>Other evidence and allegations</i>	258
5.3.1.	Issues and allegations preceding appointment	258
5.3.2.	Selebi Saga	270
5.3.3.	OECD and MacAdam.....	279
5.3.4.	State Capture	286
5.3.5.	Plane Ticket.....	288
5.3.6.	NPA under Nxasana	290
5.3.7.	Third parties.....	304
6.	AN EVALUATION OF THE EVIDENCE	306
6.1.	<i>Jiba</i>	307
6.1.1.	FUL HC and FUL SCA	307
6.1.2.	Spy Tapes 2.....	308
6.1.3.	GCB HC and SCA	309
6.1.4.	General comments on the cases relating to Jiba	310

6.1.5.	Evidence related to the cases	311
6.1.6.	Other evidence	315
6.2.	<i>Mrwebi</i>	318
6.2.1.	FUL HC, FUL SCA, GCB HC and GCB SCA.....	318
6.2.2.	Evidence related to other matters.....	323
6.2.3.	Other evidence	324
7.	FINDINGS AND RECOMMENDATIONS.....	325
7.1.	<i>Jiba</i>	327
7.2.	<i>Mrwebi</i>	331
7.3.	<i>Recommendations</i>	335
8.	CONCLUDING REMARKS	335
8.1.	<i>Implications for the NPA</i>	335
8.2.	<i>Avoiding a recurrence</i>	337
8.3.	<i>Presidential timelines</i>	339
8.4.	<i>Acknowledgements</i>	343
	ANNEXURE: CHRONOLOGY OF EVENTS.....	344

512. Mrwebi accepted that there was more than just the affidavit of the investigating officer, Viljoen, in the docket.
513. It was put to Mrwebi that it was irrefutable that the BMW 7 series was owned by Mdluli; and improbable that it was traded in without his knowledge; and that a shortfall was covered from a loan and from state funds. It was unlikely that Mdluli was not involved in the settlement of the financing of his car, and he signed the acknowledgement of debt. Thus, there was enough evidence in the docket to show that Mdluli obtained a benefit from the purchase of the two new BMWs and the trade in of his personal BMW. Mrwebi completely disagreed. In re-examination he said that the test was not one of probabilities but beyond reasonable doubt, yet what was being established at that juncture was a prima facie case.

The consultative note of 4 December 2011

514. Mrwebi prepared a memorandum and a consultative note, dated 4 December 2011, setting out his reasons (the consultative note) and sent them to both Mzinyathi and Breytenbach.²³³ The covering memorandum attached to the consultative note instructs that *“the charges against Lt-General Mdluli and Colonel Barnard must be withdrawn immediately”*. The *“only reason”* advanced in the consultative note for the withdrawal was that the charges *“fell within the exclusive preserve of the”* IGI in terms of section 7(7) (cA) of the Intelligence Services Oversight Act 40 of 1994 (*“the ISO Act”*), and because Mrwebi held this view he stated that the merits need not be traversed because *“whether there was evidence in the matter or not, is in my view, not important for my decision in the matter”*. He regarded the absence of the IGI to be *“dispositive”* of the matter.
515. Mrwebi alleged that the memorandum and consultative note and the subsequent letter to Mdluli’s attorneys were incorrectly dated and were actually prepared on

²³³ Murphy J characterised him as being *“determined to withdraw the fraud and corruption charges against Mdluli”*.

5 December 2011 after his meeting with Mzinyathi.²³⁴ As to the date, Mrwebi's evidence was as follows:

"This is the error, I think we continue to make. When you create a document, if you do not have a letterhead, sometimes you take a letterhead from an existing document, then you remove certain, certain information that is not relevant. Sometimes it happens that you forget to remove all the information. That is how that document was created. But another thing that I may add maybe is this. The 4th was a Sunday, I was not at work on Sunday. So though no work, or no document could have been sent to somebody on a Sunday, and the error in that date of the 4th was because of how this document was used as a pro-forma for the letters and other documents that I was supposed to prepare."

516. Despite giving the answer that it was an error, and that he had cut and pasted the letterhead from an older document and omitted to change the date at the beginning and end of the document, the same date appears on page 4 paragraph 8 of the consultative note itself where it is stated that:

"Later on 28 November 2011 I wrote a further correspondence to the Regional Head of SCCU; Pretoria requesting a motivated report on the matter on order to enable me to meaningfully respond to the presentation. The report was received on 4 December 2011."

517. When asked to comment on this Mrwebi said:

"Chairperson I see that but I do not know how it could have been the 4th because the 4th was a Sunday you know."

518. Mrwebi could not provide an explanation when it was impressed upon him that it was not possible for him to have a document dated 4 December 2011 since his evidence

²³⁴ Murphy J said that "while there is some doubt about this" not much turned on it and he would accept that the note was written on 5 December 2011. FUL HC, para [42].

was that he did not prepare the documents on that day because it was a Sunday and he claimed that he did not do work on a Sunday. He simply agreed that the proposition was correct and restated his point thus:

“Chairperson that is also why I could not understand, I could not explain because I explained it to the extent that this is how we do it but the point is, factually I was not in the office on Sunday, I did not work on Sunday.”

519. He further pointed out in his Handover report to Nxasana (at para 2.8) that “During the week of 28 November 2011, I worked on the matter up to and including the weekend of 4 December 2011”.

520. If that date is correct, Mrwebi took and conveyed the decision before he consulted with Mzinyathi on 5 December 2011.

521. At paragraph 1 of the consultative note Mrwebi stated that “[a]s required by section 24(3) of the NPA Act I have consulted with” Mzinyathi, “with the purpose of conveying my views on the matter”, summarising as follows:

*“Essentially my views **related to the process that was followed in dealing with the matter particularly in view of the fact that the matter fell squarely within the mandate of the Inspector-General in terms of the Intelligence Services Oversight Act, 40 of 1994. I noted that it is only the Inspector General who, by law, is authorised to have full access to the Crime Intelligence documents and information and thus who can give a complete view of the matter as the investigations can never be complete without access to such documents and information. In my view the process followed is possibly illegal as being in contravention of the said provisions of the Intelligence Services Oversight Act, 40 of 1994.”** (our emphasis)*



522. This distinguishes Mrwebi from Jordaan. Clearly Mrwebi laboured under no misapprehension that there had to be consultation under section 24(3) of the NPA Act, irrespective of the position under Jordaan.²³⁵
523. This perpetuated the position adopted by Mdluli in his submissions to SAPS and the disciplinary proceedings held on 21 November 2011 that any investigation without the IGI's involvement would be unlawful. As a matter of law, Mrwebi is incorrect in relation to the mandate of the IGI, who can access classified documents and that the ISO Act had been contravened in the process followed. Not having had any discussions with any member of SAPS involved in the process, it is astonishing that Mrwebi reached that conclusion.
524. Paragraph 11 records that *"the prosecutor's report, strictly speaking, does not add any value to what is already contained in the representations."* One only has to compare the representations that barely mention the charges with the prosecutor's report setting out the contents of the docket to know that this allegation is without substance. Mrwebi expresses the view that the docket does not detail the role of Mdluli, placing doubt on the basis of his arrest despite the fact that the transactions appear to be for his benefit. It involved his motor vehicle and that there was evidence of a loan agreement concluded between him and Atlantis Nissan. Mrwebi concluded that there were no reasonable and probable grounds for prosecuting Mdluli, as there was no evidence against Mdluli.
525. Paragraph 17 of the consultative note states that "[w]hether there was evidence in the matter or not, **is in my view, not important for my decision in the matter.** The proposition which I allude to below, should alone and without any further ado, be dispositive of the matter."
526. Mrwebi disputed that his view was not based on the merits of the matter. He said that he had gone through the merits and concluded in paragraph 16 that there were

²³⁵ In paragraph 2 of his note, Mrwebi stated that the purpose of the consultative note was to "deal with and record a decision on the matter", with the further aim to "serve as a consultative document with the Director of Public Prosecutions, North Gauteng as required by section 24(3) of the NPA Act".

no reasonable prospects then stated in paragraph 17 “*I do not propose to traverse the merits of the case and the other questions any further*” which implies that he had traversed the merits (which was not the case) but that this other issue was “*dipositive*” of the matter.

527. Mrwebi denied that paragraph 16, which referred to questions he had about how the investigator and prosecution handled the matter, was intended to cast aspersions on the prosecutors. He was robust so that the message was understood. He had said that the way they had handled it was a possible breach of the security legislation (para 26) because this was his concern. Mrwebi conceded that section 7(7)(cA) of the ISO Act did not preclude SAPS investigating crime, but that going to the IGI would be the easiest.
528. Mrwebi also conceded that the only affidavit he referred to in the consultative note was that of Viljoen and that it was commonplace for the i/o to depose to the affidavit and sum up the docket when applying for warrants of arrest. However, given the approach Mrwebi adopted, he called into question the *bona fides* of both the prosecutor and magistrate in relation to the warrant of arrest that had been obtained.
529. Mrwebi laboured under the misapprehension that the investigator and the prosecutor had failed to execute the search warrant.²³⁶ In cross examination he conceded that in light of Roelofse’s evidence that the search warrant was served by agreement, he was wrong in his averments in this regard.
530. The provisions of section 7(7)(c)(a) of the ISO Act trumped the Constitution - Mrwebi testified to this effect when he indicated that the criminal investigation should be deferred until the IGI completed an investigation and “*advised if there was any reason to pursue criminal investigations*”, his language was not “*strictly correct*”. He had meant that the manner they obtained their evidence must be beyond reproach and everything must be done properly.

²³⁶ There is also no section 8(1)(i) in the ISO Act as Mrwebi suggested in para 24 of his consultative note.

531. Mrwebi advises that the prosecution “cannot continue” and the investigator should advise the members of the CI that made the complaint against Mdluli to ***“refer their complaint to the Inspector-General for consideration and any subsequent steps will be guided by what the Inspector-General advises”***. He also indicated that the i/o assisted by members of the NPA “possibly”, albeit in good faith, breached security legislation. The only section that he could identify in cross-examination as having been breached is section 7(7)(cA) of the ISO Act.
532. In suggesting that members of CI not report “*corrupt activities*”, Mrwebi disregarded section 3 of the Corruption Act that required such reporting to SAPS.
533. Mrwebi instructed that the charges be withdrawn immediately and himself advised Mdluli’s attorneys of the withdrawal in a letter dated 4 December 2011, though he testified that it was sent during the afternoon of 5 December 2011. Charges were also withdrawn against Barnard.
534. Mrwebi had in fact, by the time this had reached Mzinyathi and Breytenbach, already informed Mdluli’s attorneys of the withdrawal. Neither Mzinyathi nor Breytenbach was aware that he had done so until 9 December 2011.
535. Mrwebi did not take this decision in consultation with Mzinyathi as required in terms of section 24(3) of the NPA Act. He also did not consult SAPS or even the prosecutor as to the contents of the consultative note which neither reflected Mdluli’s representations, nor the prosecutor’s views.
536. It was suggested to Ferreira under cross examination that there was no prosecution directive or code of conduct that set out how a person in Mrwebi’s position should tabulate his reasons when coming to a decision. The Directives provide:



"B. Reasons for decisions

1. *Prosecutors should record the reason/s for declining to prosecute a matter in the docket.*
2. *Prosecutors are often requested by complainants, family members of deceased persons, accused persons or legal representatives to furnish reasons for the exercise of their prosecutorial discretion (especially in the case where the decision was not to institute criminal proceedings). Only requests emanating from persons with a legitimate interest in the matter should be entertained. With reference to media enquiries see Part 47.*
3. *In the interest of transparency and accountability - and in accordance with section 33(2) of the Constitution - reasons should as a rule be given upon request.*
4. *The nature and detail of the reasons given will depend upon the circumstances of each case, although in general the ratio, rather than specific detail (e.g. the evaluation of a particular witness's evidence or credibility), should be given. Prosecutors should be careful not to infringe the rights of anyone when providing such reasons.*
5. *Typical reasons for a decision not to prosecute may be the following:*
 - (a) *The State would not be able to prove that the accused person had the necessary intention to commit the offence in question.*
 - (b) *The State would not be able to disprove the defence of the accused person (e.g. self-defence, alibi, criminal incapacity or ignorance of the law).*



(c) *The complainant is a single witness. However, there are several defence witnesses who corroborate the version of the accused person.*

6. *Reasons as to why criminal proceedings are to be proceeded with, or why particular charges are formulated, should also be handled with care in order not to cause embarrassment or unnecessary debate. The following is an example of reasons for proceeding with criminal proceedings: "Although the complainant has requested the withdrawal of the charge, the case is too serious".*

7. *In the case of high profile or contentious matters, prosecutors should consult the relevant Control Prosecutor, Senior Public Prosecutor or DPP.* (emphasis added)

537. We note that Mrwebi recorded no reasons in the docket, and in fact when Breytenbach shared the consultative note (and its reasons) with the i/o and IGI, Mrwebi threatened disciplinary proceedings.

538. In the provision of reasons, the evidence should be evaluated and dealt with in systematic manner. Mrwebi had not dealt with the actual evidence that was in the docket. Reasons given must be rational, comply with the Constitution and prosecutors must always act within the principles of legality.

539. According to Breytenbach it was "evident from these documents that Mrwebi had already taken a decision to withdraw the charges against Mdluli (and not only provisionally) when these memos were written."



Meeting on 5 December 2011 between Mrwebi and Mzinyathi

540. The trite legal principles insofar as they relate to the meaning of *"in consultation with"* have already been set out earlier. These existed at the time Mrwebi made his decision in 2011.
541. The meeting that took place between Mrwebi and Mzinyathi was not lengthy. There was no discussion of the merits in any great detail. Mrwebi had brought along the proclamation of his appointment and further indicated that the matter required further research.
542. In Mrwebi's view, he was consulting Mzinyathi. He testified that he did this as a courtesy because *"[c]onsultation was never done in the NPA."* He felt that he should at least do the consultation the way he thought was sufficient at that point in time. This appears to be contradicted by the consultative note which sufficiently refers to section 24(3) of the NPA Act as well as Mzinyathi's email of 8 December 2011 wherein he specifically recorded that Mrwebi had alluded that a SD needed to consult with a DPP in terms of the NPA Act.
543. The consultation was indeed perfunctory – Mrwebi says that he did not discuss the merits *"in any detail"* with Mzinyathi but had reference to the facts *"by way of background."* Mrwebi told Mzinyathi that he was *"busy with this matter of Mdluli"*, and was still doing research which he was hoping to finish before the end of that day. Mrwebi testified that he did that and then prepared the consultative note *"recording the fact that I consulted Mzinyathi"* and then drafted a letter to Mdluli's lawyers.
544. Mrwebi's interpretation of what is meant by *"in consultation with"* was that all that was required was that he consult with Mzinyathi on the withdrawal of the prosecution of Mdluli and that notwithstanding the absence of consensus between the two, Mrwebi's decision would take precedence. However, in cross-examination Mrwebi conceded that

he “got it wrong” when it came to consultation. He said that he had come to accept this after Murphy J’s judgment (**FUL HC**).

545. Prior to the **FUL HC** judgment the matter had been considered at NPA EXCO level and all senior management, save for apparently Mrwebi, agreed with what the term “in consultation with” meant. The BF memo made it clear what section 24(3) of the NPA required, it had been raised with Mrwebi in cross-examination in the Breytenbach disciplinary hearing and categorised as trite law. Mrwebi’s version that there was a historical practice that consensus was not required, while supported by Jiba, does not accord with the evidence of Hofmeyr, Mokhatla or Mzinyathi. The latter referred to the fact that Mrwebi would not be moved from his understanding of the legal requirements of section 24(3).
546. On Mrwebi’s version, inasmuch as the decision to withdraw the prosecution was regarded as provisional, had Mrwebi applied his mind to the legal arguments raised about the insufficiency of his consultation with Mzinyathi, the prosecution against Mdluli should have been reinstated and a proper consultation process to obtain consensus, should have been embarked upon.
547. When Nxasana enquired from Mrwebi specifically what his interpretation of “in consultation with” meant, he responded that the SCA set aside the decision of the SD to withdraw the prosecution of Mdluli “on a mere technicality”, stating:

“It is the first time that the NPA was confronted with a situation of dealing with and applying the provisions of this section. It is, as it were, an uncharted territory where no precedent exists and where, unfortunately the Supreme Court of Appeal did not attempt to provide any guidance in this regard. With respect, in my view, section 24(3) is a meaningless and useless provision if read and understood within the scheme and purpose of the NPA Act as a whole.”



548. Murphy J held that

"In light of the contemporaneous evidence, Mrwebi's averment in the answering affidavit that he consulted and reached agreement with Mzinyathi before taking the decision is equally untenable and incredible to a degree that it too falls to be rejected."²³⁷

549. Further Murphy J concluded that

"58. Mrwebi's reference to "my decision" in his answering affidavit implies that he believed the decision to withdraw the charges against Mdluli was his decision and one made prior to the meeting of 9 December 2011 without the concurrence of Mzinyathi. His use of the term "closed" in the letter to Dramat, albeit a few months later, supports Mzinyathi's evidence that Mrwebi viewed himself as functus officio, was unwilling to re-instate the charges and that the decision was presented to him as a fait accompli. The subsequent agreement to categorise the withdrawal of charges as "provisional" was a concession to his concerns, which did not alter Mrwebi's prior unilateral decision and instruction that the charges should be withdrawn. Mrwebi's own evidence thus supports a finding that the decision to withdraw the fraud and corruption charges was taken by him alone before the meeting of 5 December 2001, and prior to his writing of the consultative note, without the concurrence of Mzinyathi."

550. After having concluded that the decision could be reviewed **FUL HC** made the following findings:

"154. The evidence, extensively analysed above, shows that Mrwebi did not consult with Mzinyathi before taking the decision to withdraw the charges, let alone obtain his concurrence. By the time he met Mzinyathi he had formed a fixed, pre-determined view and was not open to persuasion never mind willing to submit

²³⁷ Mzinyathi explained this in the subsequent matter brought against him by the General Council of the Bar.

to disagreement. Both he and Mzinyathi confirmed under oath in the Breytenbach disciplinary proceedings that the decision to withdraw was a *fait accompli* by the time Mrwebi raised it with Mzinyathi. Under cross examination by counsel for Breytenbach, Mrwebi conceded that he had taken the decision to withdraw the charges before he wrote the consultative note. It is evident from both Mzinyathi's email of 8 December 2011 and his testimony that Mrwebi did not seek Mzinyathi's concurrence because he believed he was *functus officio*.

155. Mrwebi did not claim in his answering affidavit that Mzinyathi assented to the withdrawal of the charges at the 5 December 2011 meeting. He hardly could because Mzinyathi repeatedly confirmed that he did not support the withdrawal of the fraud and corruption charges against Mdluli. It is clear from the contemporaneous correspondence and his evidence in the disciplinary proceedings that Mzinyathi wished the case to continue. Mzinyathi's changed version of the position he took in the meeting of 9 December 2011, set out in his belatedly filed confirmatory affidavit, for the reasons stated, is not credible or reliable."

Meeting of 9 December 2011: Mzinyathi, Mrwebi and Breytenbach

551. On receiving the consultative note Breytenbach went to see Mzinyathi. She was aware that he shared her view that there was a case against Mdluli to be answered. He was the DPP who had jurisdiction over the matter and it could not be withdrawn without his "final say" and she was not aware that he had been consulted.
552. After considering the docket Mzinyathi confirmed that there was a *prima facie* case and the prosecution should continue.
553. On 8 December 2011 Mzinyathi, Breytenbach and Brig Van Graan went to see Adv Jay Govender ("Govender"), the legal advisor to the IGI. Govender indicated that the IGI had no mandate to investigate criminal matters.

554. Mzinyathi sends an email on 8 December 2011 to Mrwebi in which he makes it clear that he did not agree with Mrwebi and the latter had no mandate to instruct prosecutors in the DPP's office, irrespective of Mzinyathi's views on the matter. (It may also be apposite at this juncture to point out that at no stage did Jordaan in his evidence indicate that he had done so.) Mzinyathi made it clear that he did not support the withdrawal of the charges.
555. The meeting commenced on 9 December 2011 with Mrwebi stating, "*colleagues I presume you are here to test my powers*".
556. Mzinyathi and Breytenbach told Mrwebi that they did not agree with his decision, that he had no authority to take the decision and there was no consensus and that Mrwebi had not consulted him or Breytenbach. Mrwebi's stance initially was that his meeting with Mzinyathi on 5 December 2011 was a consultation and that he was *functus officio* and could not change his decision. Breytenbach noted that she recalled saying to him "you are mad" whilst Mzinyathi sought to reason with him tactfully. When he advised them that he had already informed Mdluli's attorney that the charges would be withdrawn, this was the first time that Breytenbach and Mzinyathi were made aware of the fact.
557. To avoid the NPA facing embarrassment if the prosecutor informed the Court that the DPP had instructed the opposite to the SD, Mzinyathi and Breytenbach agreed to the matter being withdrawn on a provisional basis to sort out the impasse.
558. Breytenbach's understanding of what was required before the matter could be re-enrolled was (1) confirmation needed to be obtained from the IGI as to her role and the impasse between Mzinyathi and Mrwebi had to be resolved. In the absence of the letter to Mdluli's attorneys, there would have been no grounds upon which to withdraw the matter. In this regard Mzinyathi agreed with her.

559. Breytenbach stated that they had every intention of re-enrolling the matter as soon as the impasse was sorted out and the issues that Mrwebi had about the involvement of the IGI had been sorted out.
560. Mrwebi's version of the meeting was that Mzinyathi indicated that he and Breytenbach did not agree with Mrwebi's decision to withdraw the charges against Mdluli.
561. Mrwebi indicated that the letter he had sent to Mdluli's attorneys was the reason for the debate at the meeting on 9 December 2011, because Breytenbach and Mzinyathi did not agree with his decision and then he "*had come to their view*".
562. They then "*went to the merits of the matter*". Mrwebi's view was that they had to be "*sensitive*" to the "*security environment*". The transactions were conducted in the name of front companies – they did not know how these were recorded. The problem was that Mdluli was not implicated. Mrwebi testified that he thought that at some point they might have to consider using his co-accused against Mdluli.
563. In relation to the unauthorised gratification, Mrwebi said that he had asked Breytenbach and Mzinyathi whether there was evidence that Mdluli had not been given permission or granted an exemption. One could not even formulate an allegation without that information. There were only a limited number of people with access to that information: the IGI and the AG. Breytenbach had suggested asking for a forensic audit report.
564. When giving evidence at Breytenbach's disciplinary enquiry, Mrwebi identified what the matters were that were identified for further investigation as SAPS approaching the IGI either to investigate or to direct SAPS where to investigate. Breytenbach was to approach the police to do the necessary.
565. The provisional withdrawal was a "*retraction*" of Mrwebi's position that he was *functus officio*. Mrwebi said that when a matter is withdrawn, it means that "*should the police*



continue with their investigation and find new evidence that matter could be reinstated at any time.” In effect there is no difference in law between the withdrawal on 6 December 2011 and on 9 December 2011 if such is the case.

566. Mzinyathi in his affidavit indicated that arising from the meeting: (1) the matter had to be provisionally withdrawn; (2) Breytenbach was requested to ask SAPS to continue with the investigation with the assistance of the IGI; and (3) once the investigations were finalised Breytenbach could re-enrol the case.

567. The prosecutor provisionally withdrew the charges on 14 December 2011.

568. Mokhatla had been informed by Mrwebi that the Mdluli matter had been provisionally withdrawn and that he had met with Mzinyathi and Breytenbach. She was further told by Mrwebi that Breytenbach had been given 2 weeks to investigate and revert. However, before the expiry of this period, the FUL application was served on the NPA. At that point she had not been aware that Mrwebi had already written to Mdluli’s attorney withdrawing the matter. This he had already relayed to her. Whist Mrwebi denied this, it was not put to Mokhatla in cross-examination.

569. Roelofse indicated that:

“As far as I am concerned Mrwebi never intended for this matter to be provisionally withdrawn. His actions and memorandums which he authored attest to that. It was only when he realised that his decision is being continuously challenged that he changed his stance and announced that he only intended to withdraw the matter as certain investigation were still outstanding. If one reads his reasons for the withdrawal of the matter that was never mentioned. His changed position became evident in his testimony in the Breytenbach disciplinary hearing.”



Further instructions to Breytenbach of 9 December meeting

570. Murphy J concluded that Mrwebi's own interpretation of events bore out the finding that the decision was made without the concurrence of Mzinyathi:

"[56]In his answering affidavit, Mrwebi described the purpose of the visit by Breytenbach and Mzinyathi to his office on 9 December 2011 as being "to discuss their concerns that they do not agree with my decision". After discussing the evidentiary issues, according to Mrwebi, they agreed with his position that the case against Mdluli was defective, had been enrolled prematurely and could be reinstated at any time. Breytenbach, he said, agreed to pursue the matter and would come back to him with further evidence. Breytenbach failed to pursue the matter diligently and did not come back to him. He then considered the matter "closed", as he stated in a letter to General Dramat of the Hawks, on 30 March 2012. The court, on the basis of this account, is asked to accept that the reason the prosecution has not been re-instated is that Breytenbach failed in her duty to obtain additional evidence and report back, as she had promised at the meeting of 9 December 2011.

571. Moreover:

"156. Hence, Mrwebi's claim in paragraphs 27-29 of his answering affidavit that Mzinyathi and Breytenbach agreed on 9 December 2011 that the case against Mdluli was defective and should only proceed with the assistance of IGI and the Auditor General is both irrelevant and improbable. It is irrelevant because Mrwebi by that time on his own admission had already taken the decision to withdraw the charges, without obtaining the consent of the DPP, North Gauteng. It is improbable for the same reasons, and also because it is in conflict with the contemporaneous and subsequent documents prepared by Breytenbach and Mzinyathi, with their conduct and with their testimony on the course of events. On the basis of that evidence it is clear that Mrwebi took the decision to withdraw the fraud and

corruption charges without first securing the DPP's consent, which is a jurisdictional prerequisite under the NPA Act. His decision was unlawful for want of jurisdiction and must be set aside for that reason alone in accordance with the principle of legality."

572. Murphy J concluded:

"59. Had Mrwebi genuinely been willing to pursue the charges after 9 December 2011, one would have expected him to have acted more effectively. He justified his supine stance on the basis that Breytenbach had not come back to him with additional evidence to cure the defects in the case. He implied that had she done her job, the charges would have been re-instated."

573. Breytenbach's evidence was that Mrwebi did not give her any instructions on 9 December 2011 to investigate further. He was not in a position to do so as she reported to Mzinyathi and he was also at the meeting. At no stage did Breytenbach relay to Ferreira that further investigations were required by Mrwebi.

574. She testified that had she been charged with tasks at that meeting, she would have done her very best to ensure that they were completed as quickly as possible so that the matter could be enrolled as quickly as possible. It was her view that this was an important matter for a number of reasons. The matter was taken up with the IGI who confirmed that it was not part of their mandate.

575. Breytenbach was asked to comment on the following statement by Mzinyathi, in his confirmatory affidavit in the **FUL SCA** matter had said that *"we agreed that the matter should be provisionally withdrawn so that the investigating officers can work with the office of the inspector general of intelligence to conduct further investigations"*. She said that *"in broad strokes"* they were saying the same thing but that was not how she recalled it.



576. Ferreira submits that the allegation that Breytenbach was instructed by Mrwebi to give further guidance to SAPS after the withdrawal of the Mdluli case and neglected to do so is refuted by the following:

576.1. The consultative note of 4 December 2011 states that **whether there is evidence or not is not important for the decision to withdraw**, the reason for the decision was that the matter was in the exclusive preserve of the IGI;

576.2. The handwritten note of Mrwebi dated 5 December 2011 states that the police had no mandate and was "*Nolle at this stage*". "*Nolle*" refers to "*Nolle Prosequi*", which means decline to prosecute as there is no or insufficient evidence that a crime was committed.

576.3. The letter from Mrwebi to Dramat dated 30 March 2012 indicating that the "*decision stands and that this matter is closed*".

576.4. In the memorandum of 26 April 2012 Mrwebi referred to his response to Breytenbach dated 26 April 2012 to the BF memo and stated at page 3:

*"It is my considered view that it will therefore **not be in the interest of justice for the NPA to be further involved in the matter**. I once again emphasised that the Inspector -General is the appropriate functionary to handle the matter."*

577. This approach appeared to be premised on the "*classified and privileged nature of the information*", allegedly premised on a view that the AG had already considered the transactions.

578. Moreover, an ongoing investigation was not substantiated by any evidence. Breytenbach had been suspended by Jiba on 30 April 2012 and had in her detailed affidavit in the Labour Court proceedings, dated 1 June 2013, made it plain that "*she had been frustrated by Advocate Mrwebi in her endeavour to prosecute General Mdluli.*" Further Mrwebi did not name any person who was seized with the investigation or produce any

documentary evidence of anything happening between January to August 2012, other than Breytenbach.

579. According to Mrwebi, this was a high profile matter. Mrwebi did not have an obligation to keep track of progress, he did not get involved, only received reports. He did not view the suspension of the regional head (who was charged with overseeing the investigation) on his recommendation as exceptional circumstances which required him to follow up on the progress.
580. When asked why he took no steps between April and the request to Mokhatla in August, Mrwebi said that he had no reasons to believe that the *“prosecutors or anybody else is not doing anything about this matter”*. He only understood this after Dramat so advised.
581. Mrwebi did not feel that Ferreira was owed an explanation why he was taken off the case because he had information that *“they”* were meeting outside parties and giving information which made Mrwebi uncomfortable. He had information which implied that Ferreira was leaking information in the matter, but did not ask him about this. Mrwebi conceded that he could not blame Ferreira and that there was no reason to attribute ulterior motives to him.

The Breytenbach/Ferreira BF memo and Mrwebi response of 26 April 2012

582. Breytenbach/Ferreira opposed the withdrawal of the charges against Mdluli and co-authored a 24-page memorandum dated 13 April 2012 (*“the BF memo”*), addressed to Jiba requesting that she review Mrwebi's decision to withdraw charges against Mdluli. They indicated that what had been a provisional withdrawal had now become a final withdrawal.
583. The BF memo sparked off the letter dated 30 March 2012 from Mrwebi to Dramat wherein he states: *“The NPA took a principled and considered decision on this matter*

without fear, favour or prejudice, as it is required to do in terms of the law. That decision stands and this matter is closed.”

584. Breytenbach understood “closed” in Mrwebi’s letter of 30 March 2011 to mean precisely that and regarded it to be contrary to what had been agreed on 9 December 2011. The BF memo regarded the decision to withdraw as irrational in that it was based on a mistake of law and despite the IGI confirming its position, Mrwebi remained steadfast. For that reason, Breytenbach was of the view that Mrwebi was protecting Mdluli.
585. In cross examination, it was put to Breytenbach that it was not Mrwebi’s intention in his letter of 30 March 2012 to say that prosecution would not continue at all anymore, but that what he had in mind was that the debate about the IGI, and who must investigate, was closed. Breytenbach disputed this, she said that any reasonable person on a reasonable reading of that letter would understand that that was not what Mrwebi had written. Further, the letter was not capable of being read to sustain Mrwebi’s version that the reference to investigation was not a police investigation but an investigation of the paper trail in respect of confidential or classified documents.
586. The BF memo was unprecedented. *Ex facie* the BF memo was in addition sent to the other DNDPPs, Mrwebi and Mzinyathi on the assumption that it would be discussed with senior management. This was not so.
587. It was delivered to Mzinyathi, Mrwebi and Jiba. Jiba was not in office and it was left there on either 23 or 24 April 2012. Mrwebi undertook to provide it to the persons on the list but they gave it to Hofmeyr. Mrwebi denied that he gave this undertaking but may have said he would give it to Ramaite. Mokhatla never received it.
588. Jiba discussed the BF memo with no one other than Mrwebi and based on what he told her did nothing further about it. Her evidence was that as she had been told the matter

was provisionally withdrawn no further steps needed to be taken. Other than Mrwebi's memo dated 26 April 2012 there was no other response to the BF memo.

589. The BF memo dealt with the merits of the Mdluli matter comprehensively, inter alia,

589.1. Mrwebi had taken a final decision to withdraw the charges against both Mdluli and Barnard. Mdluli's representations did not deal with the merits and so the decision to withdraw had very little to do with the merits. The representations dealt with the murder charge. There was nothing of importance raised in connection with the fraud and corruption charges. In fact, only two paragraphs dealt with these charges. Further, the charges were withdrawn against both accused, without any representations from Barnard, in respect of whom Mzinyathi was not consulted.

589.2. The two lead prosecutors at the SCCU Pretoria regarded this instruction to be erroneous, illegal and wrong in relation to the evidence in the docket. In particular, that the decision to withdraw was premised on SAPS not having the power to investigate members of the intelligence community, even although this had not been raised in the representations received. Similarly, that there was an alleged breach of security legislation, and that the offences fall within the mandate of the ISO Act. Not only had this also not been raised but it was not correct as confirmed by the IGI.

589.3. Why the representations had been sent to Mrwebi, the SD, and not Mzinyathi, the DPP, North Gauteng, who was seized with the matter.

589.4. Mzinyathi at all material times was of the view that there was a *prima facie* case and Mrwebi did not have the power to take the decision to withdraw the prosecution. As both were at DPP level, and as Mzinyathi had original jurisdiction, Mrwebi could not lawfully withdraw the matter. Moreover, section 24(3) applied where a SD contemplated a prosecution in the area of a DPP and hence it had to be taken "*in consultation with*" the DPP.

- 589.5. The withdrawal had been provisional (in order to avoid airing the dissent which emerged between Mrwebi and Mzinyathi in public).
- 589.6. New evidence has surfaced implicating Mdluli in the commission of further offences and the effect of Mrwebi's stance had resulted in the criminal investigation coming to an end.
- 589.7. The magistrate had issued the warrant of arrest based on evidence in the docket. There was no evidence to substantiate Mrwebi's conclusion that the prosecutor persuaded the magistrate. There was no basis for Mrwebi's conclusion that SAPS had fabricated evidence, nor was there any fabricated evidence.
- 589.8. Mrwebi should have recused himself based on the allegations of the involvement of Mdluli and Mrwebi in the "Selebi saga".
- 589.9. The withdrawal did not comply with prosecutorial policy considerations.
- 589.10. The merits of the case against Mdluli and the evidence in the docket, making it clear that the information relayed was not the only documentation at the disposal of the prosecutors. Moreover that there was a case of unlawful gratification that required answering.
590. Finally, Breytenbach/Ferreira made it clear in the last paragraph that they await a response from the Acting NDPP.

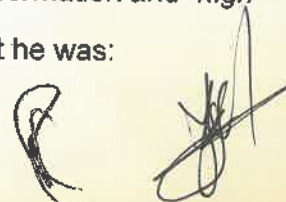
591. Murphy J noted:²³⁸

"63. The memo is a credible indication that the decisions were indeed brought to the attention of the Acting NDPP for consideration. The NDPP in her answering affidavit, though not dealing directly with the memo, maintained that the decisions to withdraw charges had not come to her office for consideration "in terms of

²³⁸ FULHC, para 63.

the regulatory framework". Be that as it may, the memo leaves no doubt that Breytenbach did not consider the case against Mdluli to be "defective".

592. Mrwebi responded in a memo dated 26 April 2012. He suggested that the NPA was being *"used or abused"* for purposes unconnected to the interest of justice or the rule of law and drew a distinction between what he referred to as acts of maladministration and acts of criminality. He concluded that if they continued to insist that nothing had changed, then they were being *"deliberately ignorant"* because the police had been engaging in *"obvious illegal actions"* by *"accessing classified / privileged information"* and placing it in the public domain. He regarded this to be contrary to applicable laws – though none are identified – and indicates that this makes the state's case *"even more suspicious"*. Mrwebi added that he had been provided with further information on the matter and had been privy to *"other classified, confidential and high-level discussion[s] with police management"*. He expressed concern that the prosecution would justifiably be seen as an abuse of legal process and motivated by ulterior purposes. Mrwebi indicated that he expressed this *"view/conclusion"* in addition to considerations that the evidence was either inadmissible or that its admissibility had been compromised.
593. Ferreira denied that the police (or prosecutors) were in breach of any security legislation as alleged by Mrwebi. He testified that a police officer investigating the crime, Roelofse, went to another police officer who gave him certain documentation. They were both appointed in terms of the same Act and the document never left the hands of the police. Roelofse had the necessary power to access the documents required. The documents in the docket had been voluntarily handed over from one police department to another. The prosecutors remained steadfast that the case was about acts of criminal corruption and not maladministration.
594. Neither Ferreira nor Breytenbach knew who or what Mrwebi was referring to and they had not been apprised as to the *"other classified and confidential"* information and *"high level discussions with police management"*. Roelofse points out that he was:



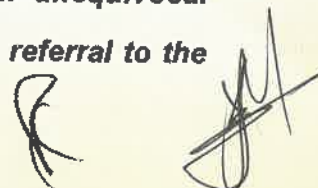
"not aware of any senior SAPS management that had discussions with Mrwebi apart from Mdluli and Major General S Lazarus (hereinafter referred to as "Lazarus"), Head: Secret Services Account, Crime Intelligence. Lazarus is currently suspended pending an internal disciplinary hearing to matters related to the abuse of the secret service account (hereinafter referred to as "SSA"). Lazarus is also the subject of a criminal investigation which relates to criminal abuse of the SSA."

595. Mrwebi concludes that it *"will therefore not be in the interests of justice for the NPA to be further involved in this matter"*, and again indicated that the IGI is the appropriate functionary to handle the matter in light of the classified and privileged information and given that the *"AG, JSCI and Parliament have already considered that matter in terms of section 3"* of the ISO Act.

596. It was put to Breytenbach that prosecutors have different opinions and that Mrwebi was convinced that the evidence needed to prove the case would be *"under lock and key as part of the intelligence community"* and that was where the IGI came into it. Breytenbach differed *"very strongly"* with this view.

597. Murphy J held:

*"175. As discussed earlier, in his reasons filed pursuant to Rule 53 and in his answering papers, Mrwebi took a different tack. He there claimed that there was insufficient evidence to support a successful prosecution against Mdluli and that he referred the matter to the IGI so that she could investigate or facilitate access to the privileged documentation required. **The withdrawal of the charges, he said, was merely provisional, to allow for further investigation to take place. This version is at odds with the contemporaneous reasons Mrwebi gave for his decision, and the evidence of Breytenbach and Mzinyathi in the disciplinary proceedings. Even if the charges were supposedly provisionally withdrawn in court, Mrwebi's pronouncements at the time evinced an unequivocal intention to stop proceedings altogether. He considered the referral to the***



IGI as “dispositive”; and in his letter of 30 March 2012 to General Dramat he referred to the matter as “closed”. In the circumstances, his new version is implausible and probably invented after the fact, in what FUL submits was “a last-ditch attempt to explain his otherwise indefensible approach”. But even if the decision was in fact “provisional”, its qualification as such does not save it from illegality, irrationality and unreasonableness. A provisional decision which languishes for two years without any noticeable action to alter its status may be inferred to have acquired a more permanent character.”

5.2.2.7. Inspector-General power

Legal framework

598. SAPS are constitutionally mandated to investigate crime and they are empowered under section 205 of the Criminal Procedure Act 51 of 1977 (“the CPA”) to subpoena evidence from any person. As a matter of law SAPS should not require the “go-ahead” of any other state organ as a precursor to embarking on a criminal investigation. Thus, a criminal investigation being pursued, without the involvement of the IGI, cannot per se be regarded as unlawful.
599. In terms of section 1 of the National Strategic Intelligence Act 39 of 1994 (“the NSI Act”) certain information, including “crime intelligence” constitutes “intelligence” and is exempt from disclosure. The Minimum Information Security Standard (“MISS”) refers to “sensitive information which in the national interest, is held by, is produced in, or is under the control of the State, or which concerns the State and which must by reasons of its sensitive nature, be exempted from disclosure and must enjoy protection against compromise”.



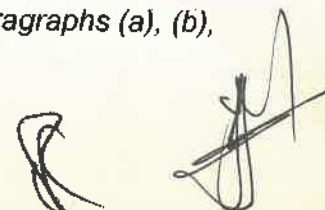
600. However, clause 3.4 of the MISS, provides that:

“Security measures are not intended and should not be applied to cover up maladministration, corruption, criminal actions, etc, or to protect individuals/ officials involved in such cases.”

601. Under section 7 of ISO Act the functions of the IGI are:

- “(a) to monitor compliance by any Service with the Constitution, applicable laws and relevant policies on intelligence and counter-intelligence;*
- (b) to review the intelligence and counter-intelligence activities of any Service;*
- (c) to perform all functions designated to him or her by the President or any Minister responsible for a Service;*
- (cA) to receive and investigate complaints from members of the public and members of the Services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies referred to in paragraph (a), the commission of an offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and improper enrichment of any person through an act or omission of any member;²³⁹*
- (d) to submit the certificates contemplated in subsection (11) (c) to the relevant Ministers;*
- (e) to submit reports to the Committee pursuant to section 3 (1) (f); and*
- (f) to submit reports to every Minister responsible for a Service pursuant to the performance of functions contemplated in paragraphs (a), (b),*

²³⁹ Section 7(7)(cA) is the only provision of the ISO Act on which Mrwebi placed any reliance.



(c) and (cA): Provided that where the Inspector-General performs functions designated to him or her by the President, he or she shall report to the President."

Pre-December 2011

602. When asked under cross-examination to identify the provision in the ISO Act that led him to believe that the IGI could actually provide him with such documentation, Mrwebi referred to section 7(7)(cA). He was further asked where in the ISO Act the IGI was permitted to declassify documentation – he said that he had at no stage said that the IGI would declassify the documents, only provide access to documents.
603. Mrwebi accepted that one could only obtain that documentation from the author and the National Commissioner of Police. He said that his approach was that the IGI could “*just go and look*” to say whether it was possible to declassify it and then “*give it to whoever is supposed to do that*”. Mrwebi did not know under which provision the IGI would be authorised to tell SAPS about classified documents, but he mentioned that the IGI could access all the documents, make a determination in respect of a document and give it to the author (SAPS). Mrwebi did not seek any other legal advice either from LAD or externally, because he regarded the law to be clear. Mrwebi accepted this was an inference that he drew from the ISO Act.
604. The i/o had engaged with the IGI during the investigation. A file setting out the allegations was handed to the IGI on 18 August 2011. In response, the IGI had informed Dramat on 20 September 2011 that they would not be attending to a report, and that a report of this nature could only be referred to SAPS. Mrwebi did not dispute this. Copies of search warrants were also given to the IGI.
605. Further, Roelofse reported that Majors General Hankel, De Kok, Jacobs and Brigadier van Graan briefed the IGI of the situation developing at CI relating to the SSA. Also, Breytenbach had on a number of occasions spoken to Govender at the IGI. She

indicated that the IGI office did not have the capacity nor the mandate to do a criminal investigation. This was again confirmed at a meeting held in December 2011. It is that the IGI is not mandated to conduct criminal investigations. The details of this meeting were relayed to Mrwebi at the meeting held with Mzinyathi and Breytenbach on 9 December 2011.

606. A report dated 3 November 2011 advising the IGI of the evidence discovered during the investigation was prepared by Major General Hankel and Major General De Kok. It was given both the IGI as well as to the Commissioner of SAPS, L-G Mkhwanazi.
607. Significantly, Lazarus approached the chairperson of the Joint Standing Committee of Intelligence ("JSCI") trying to persuade him that the investigation compromised national security. Mrwebi denied that this was an attempt to stop the investigation.
608. As already indicated the *"only reason"* by Mrwebi for the decision to withdraw in his consultative note of 4 December 2011 was that the charges against Mdluli *"fall within the exclusive preserve of the"* IGI in terms of section 7(7)(cA) of the ISO Act. Mrwebi testified that it was his view that the matter fell squarely within the mandate of the IGI.
609. In the consultative note discussed above, Mrwebi stated that the main issue was the fact that SAPS did not have a mandate in the matter. Ferreira understood Mrwebi's consultative note to state that Mrwebi did not believe that SAPS were entitled to investigate the Mdluli charges and that the IGI should be dealing with the case and not SAPS. This was confirmed for Ferreira in the handwritten note from Mrwebi dated 5 December 2011.
610. After the withdrawal on 14 December 2011 it was decided that the IGI and AG would again be approached. At Court, Roelofse went to the IGI and AG again to try and include them in the investigation, as requested by Mrwebi. At a meeting on 10 January 2012 between Roelofse and Govender he is advised that Mrwebi did not consult with the IGI



prior to the decision to withdraw the charges and a formal request should be made to the IGI regarding assistance. He was told the same at a subsequent meeting.

611. Breytenbach had met with Gen Jacobs and Brig Van Graan (*“Van Graan”*) on 8 December 2011 and it was apparent that Mrwebi had not consulted with SAPS regarding his decision. They had in turn met with Adv Jay Govender (*“Govender”*), the legal advisor to the IGI, who advised that in their view the IGI did not have any mandate to undertake criminal investigations.

612. A letter was then sent from the Acting National Commissioner of Police, Lt-Gen Mkhwanazi, to the IGI, dated 22 February 2012. The IGI responded to Mkhwanazi on 19 March 2012 advising that the reasoning followed by the NPA *“is fundamentally wrong”* and SAPS should refer the matter back to the NPA.

“The mandate of the IGI does not extend to criminal investigations which are court driven and neither can the IGI assist the police in conducting criminal investigations. The mandate of criminal investigations rests solely with the police. As such, we are of the opinion the reasons advanced by the NPA in support of the withdrawal of the criminal charges are inaccurate and legally flawed. We therefore recommend that this matter be referred back to the NPA for the institution of the criminal charges.”

613. Mrwebi explained his position, more importantly, that they did not have evidence linking Mdluli to the crime. He took Govender through the matter intensively. Mrwebi said it was clear to him that the information he was giving was new to her.

614. Mrwebi testified that he told Govender that the reason that matter should go to the IGI was because in terms of the ISO Act was *“best suited”* to get the documents. She then jumped to say that *“we do not do criminal investigation.”* Mrwebi knew that but said he was referring to the IGI’s internal investigation. The IGI did not need a warrant, in terms of section 7(7)(cA) of the ISO Act. Govender told him that there was such a provision, but that the IGI wanted to move away from doing investigations and that in line with

international best practice, they were amending the law accordingly. She conceded that they were currently busy with an investigation.

615. Mrwebi indicated to her that there were problems and it would be easier and quicker for the IGI to investigate for internal purposes and “*give that information to the police or suggest whatever.*” Mrwebi got the sense that the IGI wanted to keep the matter on the roll. He indicated that he could not be party to that when he knew there was no case. He regarded it as acting contrary to the law and amounting to an abuse of process which he was not prepared to do. Mrwebi left on that note.
616. It emerged during Mrwebi’s cross-examination that he met with Govender on 20 March 2012. That meeting was at the request of Govender. Govender called this meeting to explain the provisions of the ISO Act to Mrwebi and the IGI’s mandate. She indicated to him that the mandate of the IGI was to conduct oversight investigations and not criminal investigations; the latter falling within the purview of SAPS. The reason for this explanation was to dispel the flawed interpretation of the oversight mandate by Mrwebi as set out in his consultative note to Mzinyathi, dated 4 December 2011.
617. A dispute of fact arose, in relation to what Mrwebi during cross-examination indicated, transpired at that meeting, resulting in Govender filing an affidavit dated 21 February 2019 before the Enquiry. In this affidavit she denied Mrwebi’s account and stated that at no stage did Mrwebi discuss the evidence against Mdluli intensively or otherwise with her as he indicated he had done during his cross-examination. She regarded this to be a “*blatant distortion of the truth*” and moreover that this information would not have been pertinent to the reason for the meeting. Mrwebi had also under cross-examination indicated that Govender had represented to him that the legislation governing the IGI was in the process of being amended to exclude investigations. Govender “*vehemently denied*” that she had said so as this would have been anomalous as by its very nature the mandate of the IGI is to monitor the activities of the Intelligence Service through investigation and it is the manner in which it discharges its complaints mandates. To date



the relevant legislation has not been amended since 2011. Although Mrwebi testified that Govender had disclosed confidentially to him all kinds of other matters which he did not specify, Govender was clear in her affidavit that *"no other matters outside the purpose of the meeting were discussed"*.

618. This was not his evidence during the Breytenbach disciplinary enquiry where he indicated that he was not able to take matters up with the IGI Mrwebi indicated during cross-examination that he disagreed with the view expressed in the IGI. When pressed as to why he had not done so he testified as follows:

ADV TRENGROVE: *I see. Did you take it up with them?*

ADV MRWEBI: *Well Sir, it's unfortunately I could not take I up with them, I did not take it up with them.*

ADV TRENGROVE: *Why not?*

ADV MRWEBI: *Because you know, I think I had a difference with the lady, the legal advisor to the IG who apparently drafted and signed, and drafted this letter on behalf of the IG.*

ADV TRENGROVE: *Mr Mrwebi, that is not an answer.*

ADV MRWEBI: *Yes.*

ADV TRENGROVE: *Why did you not take it up with the IGI?*

ADV MRWEBI: *Sir, you know before this letter was written I had a meeting with that lady.*

ADV TRENGROVE: *With whom?*

ADV MRWEBI: *With the legal advisor to the IG where we discussed this matter and agreed to differ, and agreed to differ and unfortunately you know we ended on a very, very, very ... We could not agree you know, there was disagreement*

because at a certain point in time she requested me to do certain things in terms of ensuring, at least, I must at least ensure that the case is reinstated, even if ... I also mentioned the problems with her you know, so we could not agree on a number of things. I knew what her view was, so there was no point to take it any further with her you know?

ADV TRENGROVE: *Was there anybody else who shared your view? Any lawyer who shared your view?*

ADV MRWEBI: *I do not know, I do not know because I did not consult with anybody else.*

619. On being apprised of IGI's letter of 19 March 2012, which was provided to Jiba under cover of a letter dated 23 March 2012 (and which she indicated she had not received) but which was also delivered to Mrwebi by Breytenbach, Mrwebi responded in a letter dated 30 March 2012 to Dramat as follows: Mrwebi acknowledged that the IGI had no oversight functions and powers of review with regard to prosecutorial decisions in relation to which the NPA had sole prerogative. He expressed umbrage at the fact that his consultative note, dated 4 December 2011, had been provided to the IGI and SAPS as it had only been for NPA consumption and Mrwebi indicated that *"The NPA took a principled and considered decision on this matter without fear, favour or prejudice, as it is required to do in terms of the law. That decision stands and the matter is closed."*

620. We digress for a moment to point out that Mzinyathi under cross-examination before this Enquiry made it clear that the decision taken in relation to the withdrawal of charges was not a principled or considered decision, but an expedient one, given that Mrwebi had already at that junction informed Mdluli's attorneys that the matter would be withdrawn. Breytenbach subsequently advised Mrwebi that she had provided a copy of his consultative note to Moodley, the superior officer of the i/o. Despite threatening disciplinary action against her, Mrwebi took no such steps.

621. Dramat then sent a copy of the IGI letter to the SCCU. Breytenbach took a copy to Mrwebi after running it by Mzinyathi. Rather than dealing with the substance of the letter it appears that Mrwebi reprimanded her for having provided a confidential document to SAPS. She responded that she had given a copy to Moodley, the superior officer to the investigating officer, Roelofse.

622. It was put to Mrwebi that in Govender's version there was no discussion of the merits and that this was inconsistent with Mrwebi's version at the disciplinary enquiry. Mrwebi disputed this. Further there was no discussion of amendments to the legislation. Mrwebi said that that was fair enough, but *"we said all those things"*.

623. On 29 March 2012 the IGI sent a letter to Jiba referring to her letter dated 19 March 2012 to Mkhwanazi, which had been forwarded to Jiba, placing the following on record:

"• my statutory mandate is that of the execution of intelligence oversight resulting in findings and recommendations;

• as such this precludes me from making decisions on the institution of criminal proceedings which remains the sole mandate of the National Prosecuting Authority;

• the letter should not be construed as directing the NPA to institute criminal proceedings against Lt General Mdluli as this would amount to usurping your functions. It was merely a recommendation flowing from the reason advanced by the NPA for the withdrawal of the charges.

The Intelligence Services Oversight Act, 1994 (Act 40 of 1994) governs the disclosure of information in the possession of the Inspector-General and as such wish to place on record that office bears no knowledge of the media publications regarding the decision concerning Lt-General Mdluli."



624. In cross-examination, Jiba said that she did not recall this "*particular letter*" only the later one that resulted in her meeting with Dramat. There is no indication that any steps were taken pursuant to this letter.
625. Mrwebi testified that he was angry when he got the letter from the IGI dated 19 March viewing it as them giving him instructions. He expected the IGI to continue with investigations as agreed and tell him that the matter is ready. Mrwebi said that when he said the matter was "*closed*", he was referring to "*the discussion about the Inspector General Issue*". The decision he was referring to that stood was "[*t*]o continue to investigate further and then place the matter on the roll when ready".
626. However, at that stage there was no doubt that the IGI was not going to investigate or assist. On Mrwebi's understanding that only the IGI had the mandate to conduct such an investigation and that no investigation could take place without the IGI, in effect it meant that with the IGI's refusal there was no point in keeping the case open.
627. In response to a question whether she considered the merits and agreed that the IGI and/or AG should be approached, Jiba recalled that she had spoken to Commissioner Phiyega about a problem relating to documents in the CI environment, but the explanation that she gave was too long for Jiba's understanding.

5.2.2.8. Auditor-General (AG)

628. In November 2011 the AG's office was briefed. They were requested to form part of the investigation but declined.
629. After receipt of the BF memo, Mrwebi addressed a memo dated 26 April 2012, to Breytenbach, Ferreira and Mzinyathi. He stated that it was a known fact that the AG had examined the information containing the alleged criminal transaction by Mdluli and Barnard and found nothing untoward about the transaction. Breytenbach was not aware of the AG having examined the information or any "*known fact*" of the AG being involved.



630. Further, in relation to Mrwebi's allegation that the AG had examined the information containing the transaction by Mdluli and Barnard, Roelofse testified that he met with Alice Muller ("*Muller*") and others from the AG's office during May 2012 and showed them a copy of the 26 April 2012 memo. They denied making such a finding as the transaction was never placed before the AG to audit. They also denied that such a report was tabled at the JSCI.

631. On 11 July 2012 Roelofse wrote to Muller referring to the meeting in May 2012 stating:

"At that meeting you were made aware of the contents of an internal memorandum authored by Advocate L. Mrwebi, a Special Director at the Specialised Commercial Crime Unit) on 26 April 2012. You were specifically referred to the second paragraph on page three (3) of the said document.

According to Advocate L Mrwebi "it is a known fact that the Auditor General (AG) examined the information containing the alleged criminal transaction by Mdluli and Barnard, and based on the rules governing the secret services account found nothing untoward with the transaction. The necessary report in this regard was given to the Joint Standing Committee of Intelligence and (JSCI) and as such to parliament". I am attaching the internal memorandum authored by Advocate L Mrwebi dated 26 April 2012.

You indicated at the time that your office did not examine the alleged criminal transaction and by definition did not come to a conclusion that "nothing untoward" has happened.

Would you be so kind as to confirm in writing that the situation set in the preceding paragraph is indeed correct?

I would also want you to indicate, after our meeting, whether your office has been requested to investigate the transaction pertaining to this incident and if so, the outcome of the investigation. If not I hereby wish to refer the matter to your office



for an independent assessment of the transaction which form the basis of the criminal investigation.”

632. Roelofse held a follow up meeting on 12 July 2012. Haffajee, the senior manager, again stated that the relevant transaction was never placed before the AG to audit. Roelofse received a written response dated 25 July 2012 confirming the verbal response previously received. This letter stated:

“The purpose of this communication is to inform you that the Auditor-General of South Africa did not examine the alleged criminal transaction, nor reach the relevant conclusion as set out in your letter to us dated 11 July 2012.”

633. Mrwebi furnished reasons in the **FUL HC**. The document headed “*Brief reasons for the withdrawal of charges proffered against Lieutenant General Mdluli and another*” (“*FUL Brief reasons*”) indicated that without the report from the AG and without knowing the extent of compliance with CI procedures, a *prima facie* case could not be made out.
634. Ferreira testified that he had attended a meeting at the AG with the prosecutors appointed by Nxasana, and the AG’s office informed them that they had never investigated the transaction and never made a finding that there was nothing untoward about the transaction. They had added that, had the transaction been brought to their attention, they would have arranged a management query and raised a red flag. At the time the decision was made by Mrwebi there was nothing in the docket that stated that the AG found anything untoward.

5.2.2.9. Review – Dramat

635. Roelofse reported to Dramat in respect of the **Mdluli** case. Dramat stated that he knew there was a *prima facie* case against Mdluli.



636. After Mrwebi's decision, Roelofse obtained the written clarification from the IGI that her office did not have jurisdiction and the matter fell within the remit of SAPS and the NPA. (This was what Roelofse and Breytenbach assumed would satisfy Mrwebi.)
637. On 23 March 2012 Dramat, referred the matter back to the office of Jiba (Acting NDPP) and the SCCU, Pretoria. He attached the correspondence from the IGI dated 19 March 2012 "*for your [her] decision*" and copied it to the SCCU for information purposes.
638. Roelofse testified that it was clear from Mrwebi's response that he had not foreseen that SAPS would refer the decision to the IGI, especially because Mrwebi had not consulted with the IGI prior to making his decision to withdraw the charges.
639. Mrwebi testified that after he wrote to Dramat on 30 March 2012, he became "*a bit concerned with*" the strong language in the letter and felt a bit of remorse. He made an appointment to see Dramat, which he did on 1 April 2012. He apologised to Dramat and explained that he had been angered by his prosecutors delivering the letter to him. As an aside Mrwebi explained to the Enquiry that what had angered him was when Breytenbach and Ferreira delivered the letter to him they gave him a "*sort of ultimatum*" about what the backlash from the media would be.
640. Mrwebi testified that he and Dramat discussed the matter generally and during this discussion, Dramat, without "prompting" said "you know Adv Mwrebi, the problem is that the Auditor-General looked into this account and did not find any fault with it, that would be the difficulty in the matter". Mrwebi responded that maybe the AG had not zoomed into that particular transaction. If he did so, maybe he would find something. Dramat testified that he said this, that his "struggle" had always been to get the matter properly investigated and so he would not have said that the matter was found in order by another body. Dramat also denied that he had told Mrwebi that the expenses in the account included the transactions and had been reviewed and audited by the AG and



subsequently considered by the JSCI. Dramat confirmed that he told Justice Yacoob the same when he was interviewed by the Judge in 2015.

641. Mrwebi agreed that the AG's report on the SSA is not in the public domain. In order to get access to the report it would have to be declassified.

642. At Breytenbach's disciplinary enquiry Mrwebi had testified that a senior official from CI gave him the information about the AG report. It was put to Mrwebi that the information had thus not come from Dramat. He denied this and said that he met with CI in April 2012. We deal with this meeting below. It was pointed out that Mrwebi's own evidence was that the information about the AG was given to him in January 2012 by the CI visitors. Mrwebi again said that the CI visitors came in April 2012.

643. Dramat requested that Jiba reviews Mrwebi's decision stating:

"You will recall that I have submitted a request, dated 23 March 2012, with the relevant case docket to you, as addressee A, in your capacity as Acting Director of Public Prosecutions, for your decision. This was following the response from the Inspector General of Intelligence on the initial decision of the Special Director. Mrwebi, to have the charges against Lieutenant General Mdluli and Col Barnard withdrawn.

Thereafter I received a response, again from Advocate Mrwebi that the matter is finalized and that he abides by his decision. In the circumstances I will appreciate a decision on the matter by you, as the ultimate authority in respect of the consideration of a prosecution."

644. On 4 May 2012, the Office of the NDPP responded via a letter signed by J Lepinka ("Lepinka"), the Office Manager within the Office of the NDPP indicating that the matter is being dealt with by Mrwebi.



645. On 7 June 2012 Dramat again wrote to Jiba, requesting a decision, referring to the IGI and making no reference to the AG.

646. Dramat referred to his previous letters, indicating:

"[a] review of Advocate Mrwebi's decision is urgently required in the interest of the administration of law, the interest of the South African Police Service and especially in the public interest.

My last correspondence on the matter, in which I also appealed for your decision on the matter, was replied to by the Manager: Executive Support: Ms Lepinka of your office, only informing me that Advocate Mrwebi dealt with the matter.

An urgent appeal if once again made to you to urgently review the decision of Advocate Mrwebi and to give your decision, in your capacity as Acting National Director of Public Prosecutions on the matter."

647. Dramat received no response to his letters from Jiba directly. A meeting with Dramat, Jiba, Mrwebi and Mokhatla occurred on 1 August 2012. Ferreira was not informed of the meeting and no one else involved in the prosecution was there. It was a short meeting at which Dramat was asked whether the case had not been closed. Thereafter Mrwebi instructed that Ferreira be removed and other prosecutors be appointed.

648. Ferreira had remained the prosecutor until he was removed by Mokhatla on Mrwebi's instruction in August 2012. Apart from the letter of 26 April 2012, Mrwebi did not contact him once about the matter. This in circumstances where they had worked together for a long time and knew each other well, and where Mrwebi must have realised the importance of the case, involving the head of CI. It was Ferreira's evidence that:

"Now not once during April to August did he communicate with me or to the head of my unit Advocate Mokhatla at that time and say the people must now start doing

their job, they must act quickly they must do this, they must do that and they must report back to me so that I can make a decision.”

649. Jiba testified that she had never seen that letter. She testified that on the documents system in place, Ms Lepinka would just refer the documentation to the unit dealing with the matter.
650. Jiba did not recall receiving either letter of 23 March 2012 or 23 April 2012. Both are however referred to in Dramat's June letter which resulted in the August meeting with Dramat. Jiba did not recall whether she had consulted Motimele about the letter.
651. Jiba said that when she met with Dramat she had told him that they met in many meetings and he should have told her he was experiencing this kind of a problem. It is not clear whether Jiba had realised after receiving the June letter that there was missing correspondence or realised that mail that should have been reaching her, were not.
652. After the meeting, on 2 August 2012, Dramat wrote to Jiba noting that the meeting had *“sufficiently resolved all the concerns raised in”* his letter of 7 June 2012. He confirmed that he had instructed the i/o to obtain instructions or guidance from the prosecutor.

5.2.2.10. Roelofse Confirmatory Affidavit

653. Early in September 2013, Roelofse was asked to sign an affidavit, confirming Mrwebi's supplementary affidavit in the **FUL HC** matter. He testified that he had received an email from Sebelemetsa of the State Attorney's office requiring him to sign a confirmatory affidavit. He refused to sign, as he had not been provided with any affidavit to confirm, and he was not prepared to confirm a draft affidavit. Roelofse asked for the signed version so that he could know what Mrwebi was going to say *“at the end of the day”*.



654. Roelofse also indicated that he had issues with the draft affidavit that was sent to him because he felt that it contained “inaccuracies” and that “the full picture was not placed before the court”. He stated as follows:

“I have contacted our legal services with regards to this matter. I have informed them of your request. I also informed Brig van Graan from legal services that I am not in a position to confirm the correctness of Adv Mrwebi averments in as much as it pertains to myself.

I can however confirm that this investigation did continue in September 2012 after various requests from SAPS to re-institute a criminal investigation.

I was advised that under the circumstances where I cannot confirm the correctness of Adv Mrwebi’s averments accept (sic) to confirm that the investigation into this matter did continue in September 2012 I should not do so.

I have also noticed that in the draft affidavit of Adv Mrwebi that was forwarded to me he also refers to an earlier affidavit by himself. As I do not know what is contained in that affidavit I can likewise not confirm the correctness of that affidavit.

I have furthermore not seen the affidavit to which Adv Mrwebi is responding. It is difficult to judge his comments if I lack the context in which it is made.”

655. Mrwebi responded to Sebelemetsa, copied to Roelofse, on 11 September 2013 as follows:

“I thought Colonel Roelofse was being requested only to confirm that the investigations are continuing and nothing more. What is the purpose of everything else he talks about in his response? The reason I am asking is because he seems to be placing inaccurate information in the public domain, for example, about requests to re-institute criminal investigations thus inadvertently contradicting the existing legal and policy framework. I just need to say that we need to exercise



great caution about what we place in the public domain as it might lead to some unintended consequences.”

656. Roelofse then replied to Mrwebi:

“I did not want to respond to your email but your accusation that “he seems to be placing inaccurate information in the public domain” cannot be left unanswered. That would be tantamount to agreeing with you.

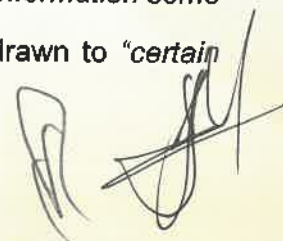
I am not placing any inaccurate information in the public domain. I making this comment as I presume you are referring to what I was willing to state in my confirmatory affidavit. I believe that all relevant facts be placed before the court.”

657. Even though Roelofse never signed the confirmatory affidavit, the affidavit filed by Mrwebi in **FUL HC** reflects that it is accompanied by a confirmatory affidavit from Roelofse and an unsigned confirmatory affidavit in Roelofse’s name forms part of the **FUL HC** record. We do not know whether the court was apprised that there is no signed confirmatory and/or Roelofse refused to provide one.

658. Given the dates of the email exchange and Mrwebi’s affidavit which was deposed to on 9 September 2013, it is apparent that Mrwebi had referred to Roelofse in paragraphs 57, 58, 78 and 81. In this regard, Mrwebi indicated that premised on Roelofse’s assessment of the matter at 2 March 2012 there were still investigations outstanding and thus the matter ought not to have been placed on the roll prematurely is not the position which Roelofse testified to before the Enquiry.

5.2.2.11. Representations which were made but kept secret by Mrwebi

659. Mrwebi testified at Breytenbach’s disciplinary enquiry that after withdrawing the charges and before 26 April 2012, he received representations from members of CI. In the context of those representations, he was referred to *“lots of classified information some of which was already in the public domain”* and his attention was drawn to *“certain*



dangers” around the things that were happening”. He was also told that a certain prosecutor (Y) was going to front companies and threatening them that if they did not co-operate their businesses would be closed. Further, one of the officials who visited Mrwebi was a senior official from CI who gave him the information about the AG report. Mrwebi then briefed a senior official at the Hawks about this information. When this section of the transcript was put to Mrwebi in cross-examination, he said that it was “some of the background”.

660. It was put to Mrwebi that the information regarding the AG had not come from Dramat. He denied this and said that he met with CI in April 2012. Mrwebi’s own evidence at the disciplinary hearing was that the information about the AG was given to him in January 2012 by a senior official of the CI (who happened to be “a *chief financial something*”).
661. He said his difficulty was that his “visitors” came in mid-April 2012.
662. Mrwebi had not told Mzinyathi or Breytenbach about the visit from senior CI officials. He did not go back to prosecutor Y because he had no way to verify the information. He testified that it was not Breytenbach, Ferreira or Smith. He also did not apprise the NDPP of the allegations that were being made against prosecutor Y.
663. Mrwebi later confirmed that the reference at paragraph 12 in his reasons for the decision in the record of the FUL matter signed in July 2012 pointing to the “*known fact*” that the transactions had been audited by the AG came from his visitors and that he “*verified it from other officials*”. The other officials he referred to might have been the National Commissioner who he met to raise his concerns about being the subject of surveillance.
664. Mrwebi confirmed that he was told what he captured in paragraph 12 of the reasons for decision:

“These representations clearly show that the expenses were incurred and reviewed and audited by the AG which we have already dealt with, that the Crime Intelligence documents were illegally accessed by police investigation. That various members and persons such as suppliers to Crime Intelligence were subjected to threats, intimidation and that they implicate Lieutenant General Mdluli and that Mdluli’s allegations of an ulterior motive and abuse find independent verification in these presentations.”

665. Mrwebi did not independently verify any of this information. He was referred to representations from Etta Szyndralewicz Attorneys (“Szyndralewicz”) dated 31 May 2012 addressed to both him and Jiba, which were delivered by hand. These were made on behalf of Major General Moodley (“Moodley”), Major General Lazarus (“Lazarus”), Colonel Vanker (“Vanker”), Colonel Barnard (“Barnard”), Colonel Singh (“Singh”) and Lieutenant Shaik (“Shaik”). Mrwebi said that he was not sure if these were the representations that he received, but confirmed that the name was familiar. Lazarus was a senior financial official at CI, who has subsequently been dismissed, Barnard was the co-accused in the Mdluli case.
666. The representations refer specifically to “our representations handed to Adv LS Mrwebi during a meeting held at the office of the National Prosecuting Authority during or about February 2012”. Mrwebi did not recall a meeting in February, and said the representations were given to him in April. The letter continues that Mrwebi had written a reply dated 8 March 2012. Mrwebi said he did recall receiving representations but kept them in his safe. It was put to Mrwebi by the ELs that the letter from Szyndralewicz attorneys came from his safe. He said that he did not know. The representatives wanted Mrwebi’s office to make a “security conscious decision” on matters being pursued by Roelofse, Acting National Commissioner, SAPS together with his investigation team and Adv Gerrie Nel (“Nel”) from the NPA. The representators appear to labour under the impression that as a consequence of the February representations and whatever reply they received from

Mrwebi on 8 March 2012 that the investigations by SAPS members would have stopped but on the contrary it had in fact "intensified".

667. Mrwebi did recall having a discussion on the investigations "encroaching on National Security" techniques which will ultimately be exposed which in turn will cause an embarrassment to the Republic of South Africa on an International Level. It appears that the seriousness of the matter was explained in detail to Mrwebi in that meeting.
668. Mrwebi was then taken to a document entitled "Mdluli timelines". He confirmed that his handwriting appeared on the document. The Mdluli timelines referred to representations from Szyndralewicz attorneys and Adv Killian on 23 February 2012. This is consistent with what is reflected in the representations. Mrwebi confirmed the name of the attorney and said that he was not so sure of the name of the counsel.
669. Attached to the letter from Szyndralewicz attorneys is Annexure "GSL1", ostensibly the representations made to Mrwebi in February 2012. These representations refer to the representations which had been made on behalf of Mdluli, presumably those that were made in 2011. It states further that "Despite the fact that instructions were given to withdraw criminal charges" against Mdluli and Barnard, "the investigation had continued unabated". It is also noted that the purpose of the representations was to protect members from being investigated. Mrwebi agreed that they were making representations to him to prevent CI members from being subjected to investigation.
670. The representations further stated as follows:
- "That the uninformed, the likes of Colonel Roelofse, are now acting out of control when they discover, what seems to them on the face of it, as a crime, but in truth are necessary methods to successfully execute the mandate held by the Intelligence Services, is clear.*

The danger that this uncontrolled, uninformed investigation is posing, will be divulged to the reader hereof in person, with sensitive information that will not form part of these written representations."

671. At page 35 of Annexure "GSL1", it is stated that:

"The accounting officer therefore being the divisional commissioner has authority over the functioning of the account in terms of policy, (the account being the secret service account) all expenses therefore were undertaken and assessed in terms of the policy in place, reviewed and audited by the Auditor General were produced, discussed and tabled at the joints. There were no negative resolutions from the GSCI and resultantly there is no basis for any investigation to be continued at this point in time".

672. It is further motivated that the intelligence environment is unique and that normal departmental policies and practices could not be applied to the secret service account. Finally, in the conclusion, the reader of the representations (being Mrwebi) was implored to take the necessary and requires steps "to put the final stop" to the investigation and request the return of all unlawfully seized documents.

673. Mrwebi testified that what he recalled vividly was that the visitors came to his office in April 2012. His own file with his own notes would remind him. He did not recall if he advised Jiba of the representations, but he had not discussed them with her. He agreed that it was an obvious attempt to influence a decision to prosecute, but said he did not know what the outcome of the representations was.

674. Mrwebi conceded that some of the information in his letter of 26 April 2012 was informed by the information from the secret representations.

675. He denied that he could only have gotten the information about the AG from his “secret visitors” but said that he got it from them “as well”. He had accepted that the AG had found nothing untoward in the SSA based on what they had told him.
676. When asked whether it concerned him that people who were the subject of the investigations within CI were coming to him secretly to tell him that these investigations must be stopped, Mwrebi said “no”. He added that fortunately he had not given any instruction to back off. He had not discussed the representations with any of the concerned prosecutors or the i/o. He conceded that the “entire submission” from the visitors was “all just allegations”.
677. Jiba testified that she was not aware of Mrwebi’s meeting with members of CI. Although the correspondence dated 31 May 2012 was addressed to her and Mrwebi, she had no recollection of having receiving the correspondence and the substance did not ring a bell. Jiba had only become aware that there were investigations into CI when Viljoen and Bekker had briefed them. Jiba had told them to meet and work together.
678. In cross examination Jiba was asked if the way the Mendelow complaint was handled was appropriate. She agreed that in the case of a formal complaint being made, it was. She was asked if Mrwebi’s decision not to inform her about the complaints from senior members of CI about a prosecutor was in order. Her response was that Mrwebi had a right to exercise his own discretion on how he chose to deal with the matter.

5.2.3. The Spy Tapes

5.2.3.1. The pleadings in the application to compel

679. The affidavit on behalf of the NDPP was deposed to by Jiba as the first respondent in the matter. She instructed the State Attorney to send the letter of 12 April 2012. The relevant paragraphs of that letter state as follows:



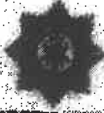
ANNEXURE KDR22



KDR 10

146

South African Police Service



South African Police Service

Private Bag X 301, Pretoria

dlp@police.org.za

YOUR REFERENCE

MY REFERENCE CP/12/1

ENQUIRES

Lieutenant General RIN Ndlovu

TEL

(012) 330 1400

FAX

(012) 347 8801

THE DIVISIONAL COMMISSIONER

CRIME INTELLIGENCE

NCAD OFFICE

0001

A. All Component Heads
CRIME INTELLIGENCE

B. All Provincial Heads
CRIME INTELLIGENCE

DISCLOSURE OF CLASSIFIED INFORMATION: CRIME INTELLIGENCE

- A-B 1. This office has observed the growing tendency within Crime Intelligence of disclosing classified information to the media and other persons or bodies who are not authorised to receive such information.
- 2. It is an offence in terms of Section 4 (1) and 4 (2) of the Protection of Information Act, No 64 of 1982 to disclose classified information to the media and other persons or bodies who are not authorised to receive such information.
- 3. Crime intelligence officials are hereby warned and instructed not to disclose classified information in contravention of Section 4 of the Protection of Information Act and the MISS document.
- 4. In instances where the media, other persons or bodies request classified information, such requests should be forwarded to the office of the Divisional Commissioner: Crime Intelligence for further handling.
- 5. Failure to comply with this instruction will result in the institution of Disciplinary proceedings and criminal prosecution.

CONFIDENTIAL

2019/02/01

De-classified on verbal authority of the National Commissioner given to LT Gen Khan, after recommendation by Crime Intelligence

[Handwritten signature]
BAG NT
van Gaar.

[Handwritten initials]

DISCLOSURE OF CLASSIFIED INFORMATION: CRIME INTELLIGENCE

- 6. Kindly bring the contents of this instruction to the attention of all members serving under your command.
- 7. Members serving under your command must sign the attached certificate which you must return to this office on or before the 30th of April 2012.

[Signature]
 LIEUTENANT GENERAL
 REGIONAL COMMISSIONER: CRIME INTELLIGENCE
 (FOR INTELLIGENCE)

Date: 2012-04-04



[Signature]
 6/1/12
 N.K. van
 Cuman

~~CONFIDENTIAL~~ 2012/02/01
 Declassified on behalf
 authority of National Commission
 re to Lt Gen Khan, after
 recommendation by Crime
 Intelligence.

CERTIFICATE

(PERSONAL NUMBER) (RANK) (NAME)

HEREBY CONFIRM THAT I HAVE BEEN INSTRUCTED NOT TO DISCLOSE CLASSIFIED INFORMATION TO THE MEDIA AND OTHER PERSONS OR BODIES WHO ARE NOT AUTHORIZED TO RECEIVE SUCH INFORMATION.

I WAS ALSO INFORMED THAT FAILURE TO COMPLY WITH THIS INSTRUCTION WILL RESULT IN THE INSTITUTION OF DISCIPLINARY PROCEEDINGS AS WELL AS CRIMINAL PROSECUTION AGAINST ME.

SIGNATURE OF EMPLOYEE

FULL NAMES

DATE

Belgadiet
NP van
Green

~~CONFIDENTIAL~~

2019/02/01

Declassified on behalf authority of National Commission to CT Gov Khan, after recommendation by Centre Intelligence

ANNEXURE KDR23



Declassified on instruction of National Commissioner

South African Police Service

CONFIDENTIAL

South African Police Service

X 301, Pretoria

012 301 1000

BACKGROUND

REF: 4/142

SOURCE: Lieutenant General RN Mduli

TEL: (012) 360 1408

FAX: (012) 347 8661

THE DIVISIONAL COMMISSIONER
CRIME AND SECURITY PROTECTION
INTELLIGENCE SERVICES

HEAD OFFICE

012

*Mr. G. van
Brig
012 394 2
-2*

A. The Deputy National Commissioner
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

B. The Acting National Commissioner
SOUTH AFRICAN POLICE SERVICE

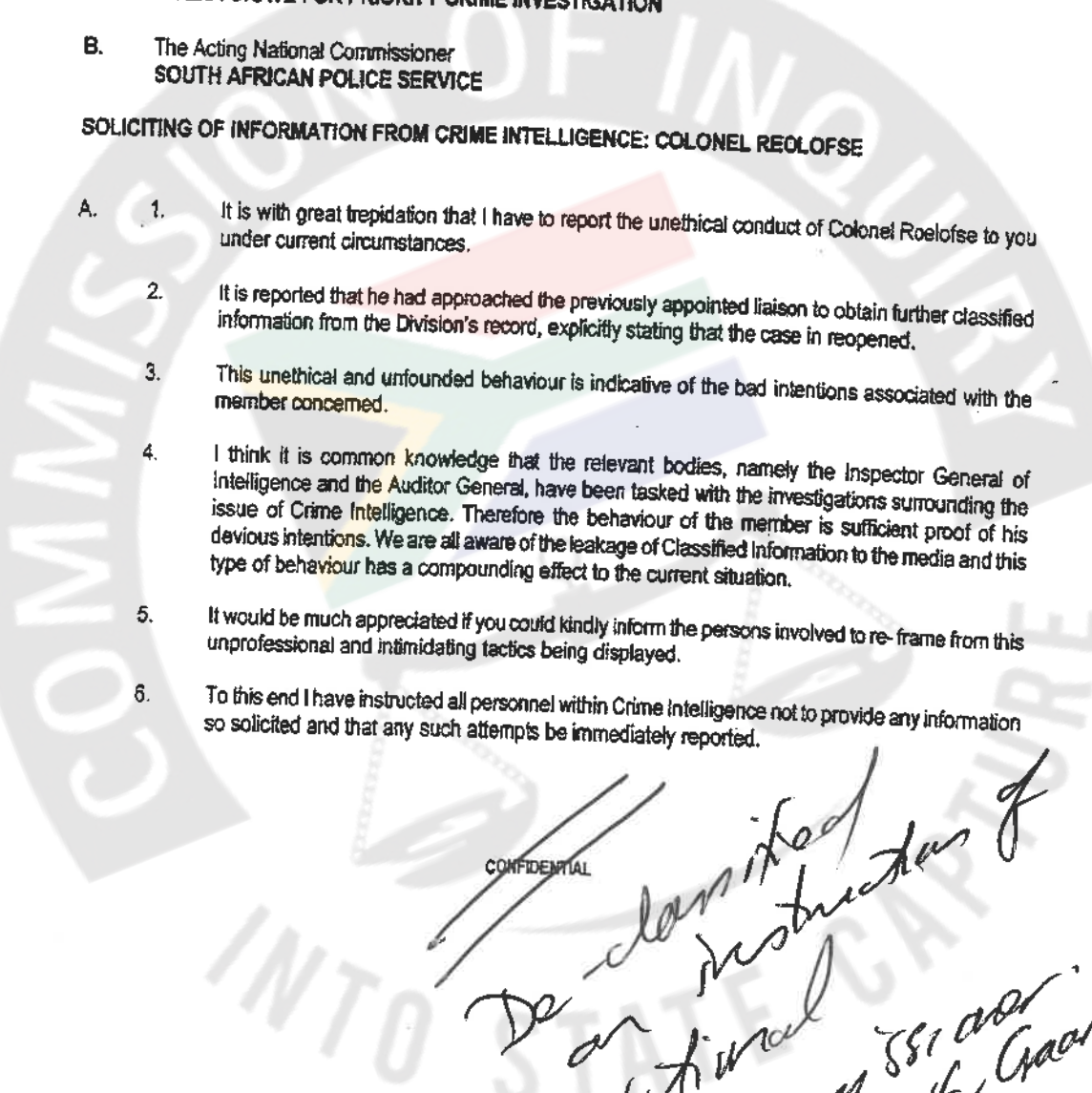
SOLICITING OF INFORMATION FROM CRIME INTELLIGENCE: COLONEL ROELOFSE

- A. 1. It is with great trepidation that I have to report the unethical conduct of Colonel Roelofse to you under current circumstances.
2. It is reported that he had approached the previously appointed liaison to obtain further classified information from the Division's record, explicitly stating that the case is reopened.
3. This unethical and unfounded behaviour is indicative of the bad intentions associated with the member concerned.
4. I think it is common knowledge that the relevant bodies, namely the Inspector General of Intelligence and the Auditor General, have been tasked with the investigations surrounding the issue of Crime Intelligence. Therefore the behaviour of the member is sufficient proof of his devious intentions. We are all aware of the leakage of Classified Information to the media and this type of behaviour has a compounding effect to the current situation.
5. It would be much appreciated if you could kindly inform the persons involved to re-frame from this unprofessional and intimidating tactics being displayed.
6. To this end I have instructed all personnel within Crime Intelligence not to provide any information so solicited and that any such attempts be immediately reported.

CONFIDENTIAL

Declassified on instruction of National Commissioner

*Mr. Nfu Gnan
Brig.
012 394 2
-2*



CONFIDENTIAL

SOLICITING OF INFORMATION FROM CRIME INTELLIGENCE: COLONEL REOLOFSE

B. 1. Copy for your information.

Buy
Buy
De-classified
on instruction
of National
Commissioner
0223942

[Signature]
PROVINCIAL COMMISSIONER: CRIME AND SECURITY PROTECTION INTELLIGENCE SERVICES
RN MDLULI(SOE)

LIEUTENANT GENERAL

Date 2012-05-07



CONFIDENTIAL

De-classified on
instruction of
National
Commissioner

Buy
0223942

[Signature]

ANNEXURE KDR24



From: Sam Sole [mailto:samsole@intekom.co.za]
 Sent: 11 July 2012 04:45 PM
 To: Mnisi Zweli
 Cc: Mbatha N - Major General
 Subject: Task Team and related matters

Dear Zweli & Gen Mbatha,

We have had sight of an intelligence report that we believe to have been drafted by or on behalf of Gen Richard Mdluli. It contains a number of allegations similar to those that formed the basis of the appointment of the Task Team. There are allegations about a) Gen Mark Hankel b) the Minister c) Gen Nhlanhla Mkhwanazi. It is our belief that this document was brought to the attention of the ministerial Task Team. The document is titled "Extensive Intelligence Report - SR 14/2/1 - Security Threat to the State". It is not dated but appears to have been drafted in June 2012. Our understanding is that the document was used for a verbal briefing to the minister and possibly to the IGI.

It makes the following allegations:

- 1) Senior police managers are being targeted through various means, including "unhappy officers, media as well as NGOs"
- 2) Drastic steps are required or the country will land up in "a chaos situation"
- 3) The minister had been targeted for a media campaign about the wall built around his KwaMbonambi house.
- 4) General Mkhwanazi was part of this campaign against the minister and had roped in Gen Hankel to help "dig dirt"
- 5) Hankel had also been used to investigate Mdluli and is using an electronic surveillance grabber 655-2 that he had obtained with the assistance of Mossad.
- 6) Mkhwanazi and Hankel want to "intensify the campaign about the alleged love relationship" between the minister and the KZN provincial commissioner.
- 7) Mkhwanazi and Hankel are also investigating the purchase of a new vehicle driven by Philisiwe Buthelezi, who is alleged to have a romantic relationship with the minister.
- 8) Instructions have been given to investigate Gen Ngcobo of VIP protection and Gen Dladla of the Presidential Protection Unit to give Gen Mkhwanazi and Gen Masemola control over those units. Both men are being surveilled, including by means of Gen Hankel's grabber. Other specific taskings in this regard were given to Gen Mothiba, Brig Madonsela and Brig Odendaal (of the legal department).
- 9) The document reports on two meetings held by Gen Mkhwanazi with crime intelligence management.
- 10) At a meeting in Cape Town, Gen van Vuuren was not present, supposedly because he was sick. Gen Mkhwanazi is alleged to have stated that Gen van Vuuren was like those friends of politicians who commit crimes and get convicted and sentenced and thereafter claim they are dying so they can be released but after three months they can be found playing golf.
- 11) Gen Mkhwanazi further stated that Gen Lazarus spent millions building a wall at the minister's house while the Deputy President was staying with his girlfriend in a house that has no guard room or wall.
- 12) Gen Mkhwanazi told members he was "not a comrade" but a policeman and he did "not expect anyone to go to Luthuli house because he was not commanded from there."
- 13) A similar meeting was held with crime intelligence operational staff at the Pretoria Police college. Gen Mkhwanazi is alleged to have accused members of being corrupt and some were murderers.
- 14) He said some members were comrades who were pushing political agendas and were busy running to Luthuli house and being managed from Luthuli house.
- 15) He said he knew who was running to the minister's at night to push political agendas and he has a team that is surveilling those members.
- 16) He claimed crime intelligence had corrupted the minister by building the wall with Secret Service money.
- 17) He said an ML Mercedes Benz was bought for the minister but was disowned when the car was found in Cape Town and he tried to find out whose car it was. He decided to take the car for his own use though his intelligence was that the car was bought for the minister.
- 18) He said that crime intelligence has R300 and this is what is used to corrupt the politicians and some of the generals. This money is "vanishing by the sea and going straight to Durban."
- 19) Some members told the General he was demoralising them by saying they were all guilty of wrong things.
- 20) the document states that 13 people have been identified as involved in placing the entire police service at risk:
 Mkhwanazi
 Gen Lebeya
 Gen Dramat
 Gen Masemola
 Gen Mothiba
 Gen Hankel
 Gen Sibiya
 Brig Madonsela
 Brig Odendaal
 Brig Khumalo
 Col Roelofse
 Lt Col Viljoen
 W/O McLean
- 21) The document accuses Col Roelofse of leaking documents to organisations outside of the police.



22) The document alleges the strategy of the above members is to use media to destabilise the SAPS.

23) The document alleges that Gerrie Nel is receiving state documents from the abovementioned members and supplying them to Adriaan Basson of City Press.

Questions for the Minister and SAPS management:

- a) Are you aware of this document or the allegations it contains. If so, when and how did you become so aware?
- b) Was the document or the allegations it contains placed before the Task Team?
- c) Are you aware if the document or its contents were communicated by Gen Mdluli to anyone? If so, what are the details.
- d) Was the origin and accuracy of the allegations probed by the Task Team or by anyone else? If so, what was the outcome?
- e) Please respond to any of the allegations listed in 1 to 23 if you so wish.

please come back to me by noon tomorrow, Thursday 12 July.

Many thanks
Sam Sole
Mail & Guardian
082 418 8944



ANNEXURE KDR25



Fw: Investigation at the Division Crime Intelligence

From: Roelofse Kobus - Colonel (RoelofseK@saps.gov.za)
To: kobus.roelofse@yahoo.com
Date: Tuesday, May 14, 2013, 1:27 PM GMT+2

----- Original Message -----

From: DPCI:Head
Sent: Tuesday, May 14, 2013 01:04 PM
To: Dramat Anwa - Lieutenant General
Cc: Roelofse Kobus - Colonel
Subject: FW: Investigation at the Division Crime Intelligence

Comm,

This is from Gen Mkhwanazi, he called earlier wanting to talk to you.

Col Roelofse: can you assist with the report as indicated below.

Thank you

Pumla N Mphothulo: Acting Staff Officer
Office of the National Head: Directorate for Priority Crime Investigation
Promat Building, no 1 Cresswell Road, Silverton
South African Police Service
Tel: 012 846 4001
Fax: 012 846 4400
Fax to email: 086 9800197

-----Original Message-----

From: Mkhwanazi NS - Lieutenant General
Sent: 14 May 2013 12:30 PM
To: Lebeya SG - Lieutenant General; DPCI:Head; Mazibuko Nkrumah - Lieutenant General; Molefe Julius - Lieutenant General; DNC: Operational Services : Masemola SF - Lieutenant General
Subject: FW: Investigation at the Division Crime Intelligence

Good day Generals,

The National Commissioner would like to have a clear understanding regarding all investigations (departmental and criminal) affecting members and/or employees of the Division Crime Intelligence as well as all other issues that appeared on the news including but not limited to;

- the background information on Lt-Gen Mdluli's murder and corruption cases,
- the background information on other corruption cases e.g. the case against Major General Lazarus etc,
- the background information about the appointment of investigators for all criminal investigations,
- the background information against the registration of each disciplinary case or departmental enquiry, (this includes the appointment of external people to investigate and preside over departmental matters),
- the background information regarding the alleged irregular appointments that were made at CI which were mentioned in the news,
- the background information which necessitated the appointment of the Commission by the Minister which involved Lt-Gen Dramat, Lt-Gen Lebeya and Lt-Gen Petros, and
- anything relevant to share some light on the CI related issue.

LtGen Lebeya,



I hereby request that you finish me with everything related to your involvement at Crime Intelligence. Your report should address the following;

- all relevant documents available including letter/s which appointed you to conduct or facilitate investigations. The letters should include the terms of references,
- a report regarding your investigation of alleged irregular appointments,
- a report regarding your investigation or the knowledge thereof against the Murder case involving Lt-Gen Mdluli,
- your involvement with criminal investigation or facilitation thereof (DPCI and/or Detective Service),
- your involvement with the appointment of Lt-Gen Mothiba and his team to conduct investigation at CI (include terms of reference given to them as well as your comments on the report compiled by Lt-Gen Mothiba in this regard),
- your involvement with the commission which was suctioned by the Minister including the outcome thereof,
- Lt-Gen Mdluli's report whereby he accused you and other General for plotting against him, and
- any other relevant matter which might assist the National Commissioner to have a detailed understanding of the history behind the Management Intervention at the Division Crime Intelligence.

LtGeneral Dramat,

I also request that you give me a report stating your involvement at CI including the following;

- background information about DPCI involvement with the murder case against Lt-Gen Mdluli (why and how was the case re-registered because it was an old case, who were the original investigators and why were they changed, what informed you to select those who replaced the original detectives),
- background information about the registration of a corruption case against Lt-Gen Mdluli, Maj-Gen Lazarus and others,
- background information and progress report concerning Lt-Gen Mdluli cases (include all correspondences between yourself, Inspector General of Intelligence and NDPP which resulted to the withdrawal of both cases),
- what action/s did you take concerning the release of a classified report to Freedom Under Law especially because the author thereof was one of your members,
- your involvement with the commission which was suctioned by the Minister including the outcome thereof,
- any other relevant information which might assist to clarify your involvement on the investigation supra.

Lieutenant General Mazibuko,

I would like to request that you provide me a report stating the following;

- a report about the alleged irregular appointments at CI which was on the news (include the policy which is used to appoint at CI if different from the rest of the Service),
- the reasons and the procedure followed to appoint external people to investigate and preside over CI matters i.e Lt-Gen Mdluli and Maj-Gen Lazarus disciplinary cases,

Lieutenant General Molefe,

May you please give me a report on;

- all related legal opinions which you gave to management since the arrest of LtGen Mdluli,
- your role in the departmental investigations including the appointments of outside people to investigate and preside over departmental matters in this regards,
- what was our argument in a matter involving Freedom Under Law especially because it seems that the SAPS classified report was used to challenge the SAPS in this regard, and
- anything that you think is necessary to be brought to the attention of the National Commissioner.

Lieutenant General Masemola,

Please provide a report on your experience during the period when you were in-charge of CI. Your report should include the following;

- identified irregularities involving the former Lt-Gen Nchwe, Lt-Gen Mdluli, Maj-Gen Lazarus, Maj-Gen Moodley, Brigadier Ndlovu and other members (your report should include all relevant documents in this regard),
- what was the outcome of the departmental steps you took against members whom you gave notices of suspension or transfers eg Colonel Ximba and Lieutenant Colonel Mthunzi etc,
- anything which in your opinion will assist the National Commissioner to better understand the challenges within CI.

Generals, can I request that you make your reports available to me at least on/or before this coming Thursday 16 May 2013 because I would like to consolidated them and submit to the National Commissioner before I commence with my leave which starts on Monday next week.

Your speedy response will be appreciated,

Regards,

NS MKHWANAZI: LIEUTENANT GENERAL
SOUTH AFRICAN POLICE SERVICE
0827826384



A handwritten signature or set of initials in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of letters and flourishes.

ANNEXURE KDR26





AUDITOR-GENERAL
SOUTH AFRICA

Mr P Pedlar
Acting Secretary
Commission of Inquiry into State Capture
2nd Floor
Hillside House
17 Empire Road
Parktown
Johannesburg

3 May 2019

Ref: RF12/General

Dear Mr Pedlar

Judicial Commission of inquiry into state capture, corruption and fraud in the public sector including organs of state (the "Commission") - Request for further declassification of the 2011/12 management report in respect of the Secret Services Account

The above matter and your request on even date for further declassification of the 2011/12 management report in respect of the Secret Services Account (the "SSA") have reference.

The 2011/12 management report previously presented to the Hawks was "declassified for intended purposes only". The intended purpose at the time related to criminal proceedings anticipated by the Hawks. I considered your request for further declassification and hereby inform the Commission that I extended the declassification of the 2011/12 SSA management report for the following purposes --

1. Presentation of the management report in the hearings conducted by the Commission.
2. Any subsequent criminal proceedings instituted as a result of the hearings conducted by the Commission.

I trust that the above will meet your expectations.

Yours sincerely

[Signature]
07/05/2019
Kimi Makwetu

Auditor-General of South Africa

Enquiries: Alice Muller
Telephone: 082 824 1351
Email: alice@agsa.co.za

[Signature]

INDEX2011/12

	DESCRIPTION	
1	Engagement letter	
2	Interim management report	
3	Final Management report	
4	Management Representation Letter	
5	Accounting officer report	Could not be provided as it was classified.



A handwritten signature in black ink, located in the bottom right corner of the page.



AUDITOR - GENERAL

The Accounting Officer
Secret Services Account
Private Bag X302
Pretoria
0001

16 September 2011

Reference: 21151REG11/12

Dear General

AUDIT ENGAGEMENT LETTER**Introduction**

1. The financial statements and report on predetermined objectives of the Secret Services Account are subject to auditing by the Auditor-General of South Africa (AGSA) in terms of section 188 of the Constitution of the Republic of South Africa, 1996, read with sections 4, 15 and 20 of the Public Audit Act of South Africa (PAA), section 3 of the Secret Services Act, 1978 (Act No.56 of 1978) and section 40(2) of the Public Finance Management Act of South Africa (PFMA).
2. The purpose of this letter is to outline:
 - the terms of the audit engagement as well as the nature and limitations of the annual audit
 - the respective responsibilities of the auditor and the accounting officer in the audit.

Objectives of the annual audit

3. The objectives of the audit are:
 - to express an independent opinion on the financial statements prepared in accordance with the modified cash framework as determined by the National Treasury and applicable laws and regulations.
 - to report on whether the report on predetermined objectives is reliable, accurate and complete, based on predetermined criteria
 - to report on matters relevant to compliance with applicable laws and regulations relating to financial matters, and
 - to report on internal control (financial management) deficiencies

Auditing standards applied when conducting the annual audit

4. We will conduct our audit in accordance with the International Standards on Auditing (ISAs) read with *General Notice 1111 of 2010*, issued in *Government Gazette No. 33872 of 15 December 2010*. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements and report on predetermined objectives are free from material misstatements.

Level of Audit Assurance

5. Due to the sensitive nature of certain transactions and the circumstances under which they are incurred and recorded, as well as the circumstances under which the assets and services are procured and utilised at the South African Police Service: Secret Services Account, information relating to these expenditure, will not be obtained, and this will contribute to the lower level audit assurance, in comparison with ordinary audits. This matter contributes to the qualified opinion expressed in the report to date.

Planning and performing the audit

6. Our audit involves performing procedures to obtain audit evidence about the amounts and disclosures presented in the financial statements and report on predetermined objectives as well as compliance with applicable laws and regulations related to financial matters, financial management and other related matters. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements and report on predetermined objectives, whether due to fraud or error, and generally include:
- evaluating whether all accounting policies are appropriate, in terms of the applicable financial reporting framework, and are applied consistently
 - determining significant risks of material misstatement, whether due to fraud or error
 - evaluating the information systems used to record and report financial and non-financial information
 - verifying samples of transactions and account balances
 - evaluating the reasonableness of accounting estimates and judgements made by management
 - confirming year-end balances
 - performing analyses to identify anomalies in reported data
 - determining whether all financial statement disclosures are adequate
 - determining whether information supplied is relevant, reliable, comparable and understandable
 - evaluating the overall fair presentation of the financial statements
 - considering whether the financial statements, after adjustments, are consistent with the auditor's understanding of the entity and its environment
7. We do not examine every transaction, nor do we guarantee complete accuracy of the financial statements or the report on predetermined objectives, or compliance with all applicable legislation.
8. Because of the test nature and other inherent limitations of an audit, together with the inherent limitations of internal control, there is an unavoidable risk that some, even material, misstatements may not be detected, even though the audit is properly planned and performed in accordance with the ISAs.
9. We evaluate the overall adequacy of the presentation of information in the financial statements and the manner in which the predetermined objectives are reported. We also read other information accompanying the financial statements to identify whether there are material inconsistencies between the audited financial statements and the report on predetermined objectives.
10. In making our risk assessments, we consider internal control relevant to the entity's preparation of the financial statements, and its report in predetermined objectives, in

order to design audit procedures that are appropriate in the circumstances, but not for the purposes of expressing an opinion on the effectiveness of internal control.

11. We will communicate to you, in writing, any significant deficiencies in internal control relevant to the audit of the financial statements, the report on predetermined objectives and noncompliance with laws and regulations that we have identified during the audit. We will also include in the audit report reference to the deficiencies that may have resulted in a qualified, adverse or disclaimer of our audit opinion.

Material misstatements

12. Misstatements identified during the audit are either as a result of:

- a difference between the amount, classification, presentation or disclosure of a reported financial statement amount and the amount, classification, presentation or disclosure that is required for the item to be in accordance with the applicable financial reporting framework laws and regulations.
- or
- a limitation on the scope of the audit. This occurs when we are unable to apply our audit procedures to a selected item that we consider necessary for the purposes of our audit due to the requested information not having been submitted.

13. Misstatements can arise from fraud or error. In evaluating misstatements we will also consider the nature, cause and circumstances of their occurrence.

14. When misstatements are detected, we will request management to examine the class of transactions, account balance or disclosure and correct the misstatements or to confirm that they are unable to supply the missing documentation.

Reports arising from the annual audit

15. The reports arising from the annual audit are:

- the auditor's report on the financial statements and other legal and regulatory requirements, covering the report on predetermined objectives, compliance with laws and regulations and internal control (financial management).
- the management report provided to the accounting officer.

Auditor's report

16. In order to form our audit opinion, we conclude on whether we have obtained reasonable assurance about whether the financial statements are free from material misstatement due to fraud or error. This conclusion takes into account whether sufficient appropriate audit evidence has been obtained and whether uncorrected misstatements are material, individually or in aggregate.

17. The audit report arising from the annual audit contains, inter alia:

- an opinion as to whether the financial statements, in all material respects, fairly present the financial position, results of operations and cash flows of the Secret Services Account, in accordance with the modified cash basis basis of accounting as determined by the National Treasury and in the manner required by the PFMA.
- a basis for a qualified/adverse/disclaimer of opinion paragraphs, as appropriate, that describe the matters giving rise to the modifications of the auditor's opinion
- (an) emphasis of matter paragraph(s) when, in the auditor's judgement, it is necessary to draw the user's attention to a matter which is appropriately presented or disclosed in the financial statements but which is fundamental to the user's understanding of the financial statements (this does not impact on the audit opinion)

- (an) additional matter paragraph(s) that is relevant to the user's understanding of the auditor's responsibilities or the auditor's report (this does not impact on the audit opinion).
 - other legal and regulatory requirements which incorporates audit findings on whether the reported performance against pre-determined objectives is reliable, accurate and complete based on predetermined criteria; findings on compliance with key laws and regulations; and an assessment on the status of internal control as it pertains to the matters included in the audit report.
18. The auditor's opinion does not:
- provide a guarantee of absolute accuracy in the financial statements and report on predetermined objectives
 - express a view on the adequacy of the Account's information and internal control systems or the effectiveness and efficiency with which the accounting officer has conducted [its/his/her] affairs
 - guarantee the Account's full compliance with all applicable laws and legislation
 - provide absolute assurance on the achievement of the Account's performance objectives
 - provide assurance that all internal controls necessary to address risks over financial and performance reporting have been implemented
 - provide an opinion or view on the possible outcome of any investigations in progress, irrespective of who is conducting the investigation
 - guarantee the Account's future viability.

Management report to the accounting officer

19. The management report is provided to the accounting officer and communicates any matters that came to our attention during the audit which, in our opinion, are relevant to the Account. These findings will be presented as follows:
- Significant findings from the audit of the financial statements
 - Significant findings from the audit of the report on predetermined objectives
 - Significant findings from the audit of compliance with key laws and regulations as they pertain to financial matters
 - Significant findings concerning the systems of internal control
 - Significant findings from specific focus areas
 - Information on other audits conducted other than on the financial statements
 - Detailed audit findings rated as follows:
 - Matters affecting the auditor's report
 - Other important matters
 - Administrative matters
20. The report will include the auditor's recommendations on how the matters reported should be addressed. Management will be requested to indicate agreement with the facts of the findings as well as to comment on how the matter will be rectified and the anticipated date by which such action would have been completed. The accounting officer remains responsible for all comments submitted. The accounting officer should

ensure that the appropriate senior officials are available to provide the required responses within the agreed time frames.

21. The report will be issued at least at the conclusion of the audit or at such intervals during the audit as may be appropriate in the circumstances.

Other communication with those charged with governance and management

22. In addition to the audit report and the management report, it will be necessary to communicate other matters with those charged with governance and management, which may include persons in the Account's governance structure other than the accounting officer and management, such as the audit committee.
23. The form, timing and general content of this communication will depend on the circumstances, and may include:
- gaining an understanding of the Account and its environment
 - gaining an understanding of the Account's objectives and strategies and the related risks that may result in the misstatement of the financial statements and the performance report
 - discussing the audit strategy
 - regular discussions on the status of key controls relating to financial reporting, compliance with laws and regulations and performance of predetermined objectives
 - discussion of audit findings and required action to address them
24. Although most of this communication will be initiated by the auditor, communication from those charged with governance will also be required. Such two-way communication is important in developing an understanding of the matters related to the audit and a constructive working relationship. To this end we will require that those charged with governance make themselves available at the times agreed with the auditor to provide and discuss information relevant to the audit.

Our independence

25. It is essential that we remain independent of the Account. This involves being, and appearing to be, free of any interest that might be deemed incompatible with integrity, objectivity and independence. In this regard we have a code of conduct as prescribed by section (3)(b) of the PAA, which governs our professional conduct.
26. To protect our independence, specific limitations are placed on us in accepting engagements with the Account other than the annual audit. We may accept certain types of other engagements, subject to the requirements of the auditing standards and section 5(1)(a) of the PAA. Furthermore, we cannot be involved in any management decisions or assist management and those charged with governance with the discharge of their statutory responsibilities.
27. Any such other engagements will be the subject of a separate written engagement letter.

Responsibilities of management and those charged with governance

General responsibilities

28. Our audit will be conducted on the basis that management and those charged with governance acknowledge and understand their responsibilities for, amongst others, the matters set out below.



29. The responsibility for the preparation of financial statements that present the financial position, financial performance and cash flows of the Account in accordance with the modified cash basis of accounting, as determined by the National Treasury, is that of the accounting officer with the assistance of management.
30. The responsibility for the preparation of the report on predetermined objectives that accurately, completely and reliably reports on actual achievements indicators and targets, in accordance with:
- applicable laws and regulations
 - the framework for the managing of programme report on predetermined objectives, issued by the National Treasury
 - relevant frameworks, circulars and guidance issued by the National Treasury and the Presidency regarding the planning, management, monitoring and reporting of report on predetermined objectives.
31. The responsibility for designing, implementing and maintaining internal control relevant to the preparation of financial statements and report on predetermined objectives that is free from material misstatement; effectiveness and efficiency of operations; and compliance with applicable legislation. The systems of financial and risk management and internal control should provide reasonable assurance that adopted policies and prescribed procedures are adhered to for the prevention and detection of errors and irregularities, including fraud and illegal acts. They should also provide for the regular monitoring of performance against objectives, and ensure that waste is minimised and business is conducted with due regard to probity.
32. Disclosing known instances of noncompliance or suspected noncompliance with laws and regulations, of which the effects should be considered when preparing financial statements and the performance report.
33. Disclosing all matters concerning any risk, allegation or instances of fraud.
34. Accounting for and disclosing related party relationships and transactions.
35. The accounting officer is also responsible to provide us with:
- all information, such as records and documentation, and other matters that are relevant to the preparation and fair presentation of the financial statements and the report on predetermined objectives
 - any additional information that the auditor may request from management and those charged with governance
 - unrestricted access to those within the entity from whom we determine it necessary to obtain evidence.

Specific responsibilities

36. The accounting officer has specific responsibilities relating to the preparation of the financial statements and report on predetermined objectives and in respect of financial management and accountability matters. These specific responsibilities are set out in the attachment to this letter. We assume that the accounting officer is familiar with those responsibilities and, where necessary, has obtained advice on them.



Representation letter

37. As part of our normal audit procedures, we will request written confirmation of representations that we have received during the course of our audit and of the responsibilities of management and those charged with governance as outlined above. Failure to provide the auditors with the requested representation letter or inconsistencies between its content and other audit evidence may impact on the audit opinion.
38. Where management has refused to correct some, or all, of the misstatements communicated, management will be requested to make a representation concerning the reasons for not making the corrections.

General matters**Statutory reporting deadlines, submission of information for audit and correction of material misstatements**

39. In order to meet the statutory reporting deadlines, we are dependent on receiving the financial statements and report on predetermined objectives within two months after the end of the financial year, that is, by 31 May. These statements and information must:
- comply with all applicable laws and regulations
 - comply in full with the applicable financial reporting framework as prescribed by the National Treasury
 - be supported by complete evidential information.
40. During the audit, information will be requested by the auditor which will be used in arriving at the conclusions on which the audit opinion will be based. If this information is not received within the agreed time period of five (5) days from the date of the request, the lack thereof will be reported as a misstatement of the financial statements and report on predetermined objectives.
41. Audit findings concerning identified misstatements will be communicated during the course of the audit. Submission of a response to these communiqués whether it be comments, information or documentation in support of correcting entries, will be required within five (5) days of the date of the communication of the finding.
42. The draft annual report and all other information that is to be issued with the financial statements should be submitted by no later than 31 May in order for us to determine any inconsistencies with the audited financial statements and report on predetermined objectives. If this information is not received as agreed it may have a significant impact on the audit due to additional time that will be required to review events subsequent to the date of the auditor's report.
43. We will complete the annual audit and submit the final audit report to the accounting officer within two months of receipt of the financial statements and the report on predetermined objectives, unless that is not practicable due to the condition of the financial statements and report on predetermined objectives or for some other reason beyond our control. In these circumstances, a suitable date/timetable, to be agreed to by all parties, will be determined.
44. We look forward to full cooperation from your staff as contemplated by section 15 of the PAA.

Working papers

45. The working papers produced in conducting the audit are the confidential property of the AGSA and are not available for inspection.



Fees

46. Our fees are based on the time spent on your affairs by our managers and staff plus out-of-pocket expenses. Time may be spent on the audit at your premises or our premises as necessary. Individual hourly rates vary according to the experience and skills required and the responsibility involved. Our fees will be billed mid-month and at month end during the course of the audit and settlement is due within 30 days of date of invoice. Where the fees due are not paid at the end of this period, interest will be charged and legal proceedings may be implemented to collect amounts outstanding.

Liaison

47. The content of this letter and the accompanying document may be used by the AGSA as the basis for a relationship survey after completion of the audit process.
48. If you have any questions about the annual audit generally, or have any concerns about the quality of service you receive, you should contact [Lerato Madileng: 083 621 9942] as soon as possible.

Staff accommodation and resources

49. Section 19 of the PAA requires you to render reasonable assistance to the AGSA or the authorised auditors performing this audit. You are further required to accede free of charge all reasonable requests of the AGSA or authorised auditors to facilitate the expeditious completion of the audit, including the provision of suitable office accommodation and parking at your premises, logistical support and access to office equipment. Please ensure that the authorised auditors are made aware of any security and administrative arrangements with which they should comply.

Acknowledgement of the terms of the engagement

50. This letter will remain effective until a new audit engagement letter is issued. We would be grateful if you could confirm your agreement to the terms of this letter and acknowledge your responsibilities as the accounting officer by signing the enclosed copy.
51. If you require any further information, or wish to discuss the terms of the audit engagement further before replying, please do not hesitate to contact me.

Yours sincerely,



Corné Myburgh
Business Executive: National D

Enquiries: Elaine Green
Telephone: (012) 450 2007
Fax: 086 509 5804
Email: elaineg@agsa.co.za



Acknowledgement

The terms of this audit engagement are acknowledged and agreed by the Chief Financial officer on behalf of the Secret Services Account.

.....
Signed

.....
Name and position

.....
Date



A handwritten signature in black ink is located in the bottom right corner of the page. The signature is stylized and appears to consist of several overlapping loops and lines.

ANNEXURE TO THE AUDIT ENGAGEMENT LETTER

RESPONSIBILITIES OF THE ACCOUNTING OFFICER AND THE AUDITOR IN RESPECT OF THE FINANCIAL STATEMENTS AND REPORT ON PREDETERMINED OBJECTIVES

Responsibilities of the accounting officer/authority in respect of the financial statements and report on predetermined objectives	Responsibilities of the auditor in respect of the financial statements and report on predetermined objectives
<p>The accounting officer is required by the PFMA to prepare financial statements that comply with the applicable financial reporting framework and to report on performance against predetermined objectives.</p>	<p>Our responsibilities are to conduct an annual audit and to form an opinion on whether the Account's financial statements comply with the applicable financial reporting framework.</p>
<p>The financial statements and report on predetermined objectives must fairly present the financial position of the Account's operations and cash flows as well as service performance achievements.</p>	<p>We form an opinion on whether these financial statements fairly present the Account's financial position and the results of the Account's operations and cash flows.</p>
<p>The accounting officer must also ensure that any accompanying information in the annual report is consistent with that reported in the audited financial statements and report on predetermined objectives.</p>	<p>We conclude on material shortcomings in the process, systems and procedures of reporting against predetermined objectives that come to our attention during the audit and that may impact on public interest.</p>
<p>The accounting officer is required by the PFMA to prepare the financial statements and report on predetermined objectives and furnish them for auditing within two months of balance date, that is, by 31 May. It is normal practice for accounting officers/ authority to set their own timetable in order to comply with statutory reporting deadlines.</p>	<p>We will also review other accompanying information to the financial statements and report on predetermined objectives to identify whether there are material inconsistencies with the audited financial statements and report on predetermined objectives.</p>
	<p>As part of our audit, we will ask the accounting officer for written confirmation concerning representations made to us in connection with the financial statements and report on predetermined objectives. In particular, we will seek confirmation that:</p> <ul style="list-style-type: none"> • the adoption of the going concern assumption is appropriate • all applicable legislative, regulatory and contractual requirements have been complied with • all material transactions have been included in the financial statements • all actual achievements against predetermined objectives, indicators and targets have been included in the annual performance report. • uncorrected misstatements noted during the audit are immaterial to the financial



Responsibilities of the accounting officer/authority in respect of the financial statements and report on predetermined objectives	Responsibilities of the auditor in respect of the financial statements and report on predetermined objectives
	<p>statements and report on predetermined objectives.</p> <p>Any representation made does not in any way reduce our responsibility to perform appropriate audit procedures and make enquiries.</p>

Responsibilities in respect of the information systems

Responsibilities of the accounting officer in respect of the financial statements and report on predetermined objectives	Responsibilities of the auditor in respect of the financial statements and report on predetermined objectives
<p>The accounting officer is responsible for maintaining records that:</p> <ul style="list-style-type: none"> • correctly record and explain the transactions of the Account • enable the Account to monitor the resources, activities and entities under its control • enable the financial position of the Account to be determined with reasonable accuracy at any time • enable the accounting officer to prepare financial statements and report on predetermined objectives that comply with the PFMA and other applicable legislation and allow the financial statements and report on predetermined objectives to be readily and properly audited. 	<p>We will examine whether the Account kept proper accounting and report on predetermined objectives records.</p> <p>We will perform sufficient tests to obtain reasonable audit assurance as to whether the underlying records are reliable and adequate as a basis for the preparation of the financial statements and report on predetermined objectives.</p> <p>Where, in our opinion, the records are not sufficiently reliable or accurate to enable the preparation of the financial statements and report on predetermined objectives and we are unable to obtain the evidence we require by other means, we will need to consider the impact on our audit report.</p>

Responsibilities in respect of information and internal control systems

Responsibilities of the accounting officer/authority in respect of the financial statements and report on predetermined objectives	Responsibilities of the auditor in respect of the financial statements and report on predetermined objectives
<p>The accounting officer is responsible for establishing and maintaining information and internal control systems, supported by written policies and procedures, designed to provide reasonable assurance as to the integrity and reliability of financial and non-financial reporting.</p>	<p>The annual audit is not designed to identify all significant weaknesses in the Account's information and internal control systems. We review the accounting and internal control systems only to the extent required to enable us to express an opinion on the financial statements and to report on report on predetermined objectives.</p> <p>We will report to the accounting officer separately any deficiencies in the Account's information and internal control systems, provided that they come to our attention and we consider them to be of relevance to the</p>



Responsibilities of the accounting officer/authority in respect of the financial statements and report on predetermined objectives	Responsibilities of the auditor in respect of the financial statements and report on predetermined objectives
	Account. Our management report will provide constructive recommendations to assist you and your management team in addressing any deficiencies in the Account's information and internal control systems.

Responsibilities in respect of the prevention and detection of fraud and error

Responsibilities of the accounting officer/authority in respect of the financial statements and report on predetermined objectives	Responsibilities of the auditor in respect of the financial statements and report on predetermined objectives
<p>The accounting officer is responsible for the prevention and detection of fraud and error through the application of internal control systems (appropriate to the size of the Account), supported by written policies and procedures.</p> <p>In the event of identified, suspected or alleged fraud, the [accounting officer/authority] has to deal with the matter as set out in the PFMA. The auditor should be informed immediately of any identified, suspected or alleged fraud.</p>	<p>We will design our audit to obtain reasonable, but not absolute, assurance of detecting fraud or error that would have a material effect on the financial statements and report on predetermined objectives.</p> <p>Although we will review the accounting and internal control systems only to the extent required for us to express an opinion on the financial statements and to report on report on predetermined objectives, we will:</p> <ul style="list-style-type: none"> • assess the effectiveness of internal control systems and procedures by which fraud and error are prevented and detected within the Account • report to the accounting officer] deficiencies in internal control systems and procedures related to monitoring the prevention and detection of fraud and error, provided that the weaknesses come to our notice and we consider them to be of relevance to the Account. <p>As part of our audit, we will ask the accounting officer for written confirmation that the Account has disclosed to us all known instances of fraud or suspected fraud affecting it.</p> <p>If we become aware of the possible existence of fraud – whether through the application of audit procedures, advice from the Account's management or any other means – it is our responsibility to communicate this to the accounting officer with the expectation that action will be taken in compliance with the Account's fraud prevention policy.</p>

Responsibilities in respect of compliance with laws and regulations

Responsibilities of the accounting officer in respect of the financial statements and report on predetermined objectives	Responsibilities of the auditor in respect of the financial statements and report on predetermined objectives
<p>The accounting officer is responsible for ensuring that systems, policies and procedures (appropriate to the size of the Account) are in operation that will ensure that all applicable legislative, regulatory and contractual requirements that apply to the activities and functions of the Account are complied with. Such systems, policies and procedures should be documented.</p>	<p>We will assess during the course of the audit whether the Account has systems, policies and procedures in operation (to the extent that such systems, policies and procedures are appropriate given the size of the Account) to ensure compliance with those legislative, regulatory and contractual requirements that we consider to be material.</p> <p>We will specifically perform audit tests to assess whether the Account has complied with the following legislation, as applicable:</p> <ul style="list-style-type: none"> • PFMA • Secret Services Act <p>The way in which instances of non-compliance that come to our attention are reported will depend on their significance. All significant instances of non-compliance will be reported to the accounting officer and included in the audit report.</p> <p>We will also report to the accounting officer deficiencies that we observe in internal control systems, policies and procedures relating to monitoring compliance with laws, regulations and contractual requirements, where relevant.</p>

Responsibilities in respect of establishing and maintaining appropriate standards of conduct and personal integrity

Responsibilities of the accounting officer in respect of the financial statements and report on predetermined objectives	Responsibilities of the auditor in respect of the financial statements and report on predetermined objectives
<p>The accounting officer should at all times take all practicable steps to ensure that members and employees of the Account maintain high standards of conduct and personal integrity. The Account's expected standards of conduct and personal integrity should preferably be documented in a code of conduct and, where applicable, be supported by policies and procedures.</p>	<p>During the audit, we will consider whether the accounting officer maintains high standards of conduct and personal integrity. Specifically, we will remain alert to significant instances where members and employees of the Account may not have acted in accordance with the standards of conduct and personal integrity that are expected of them.</p>

Responsibilities in respect of conflict of interest and related parties

Responsibilities of the accounting officer in respect of the financial statements and report on predetermined objectives	Responsibilities of the auditor in respect of the financial statements and report on predetermined objectives
<p>The accounting officer should have policies</p>	<p>In order to help determine whether members</p>

Responsibilities of the accounting officer in respect of the financial statements and report on predetermined objectives	Responsibilities of the auditor in respect of the financial statements and report on predetermined objectives
<p>and procedures in operation to ensure that members of the Account carry out their duties free from bias. In particular, the accounting officer must comply with the requirements of the PFMA.</p> <p>The accounting officer should maintain a full and complete record of related parties and their interests. It is the responsibility of the accounting officer to record and disclose related party transactions in the financial statements in accordance with generally recognised accounting practice.</p>	<p>have carried out their duties free from bias, we will review information provided by the accounting officer that identifies related parties and will be alert to other material related party transactions. For related party transactions that come to our attention, we will check that the accounting officer has complied with any statutory requirements relating to conflicts of interest and whether these transactions have been properly recorded and disclosed in the financial statements.</p>



[Handwritten signature]

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

Brigadier Obert Nemutanzhela
Acting Chief Financial Officer: Crime Intelligence
SAPS Secret Services Account
Private Bag X302
Pretoria
0001

Reference: 2511510REG11/12

28/May/2012

Dear Brigadier O.Nemutanzhela

**1ST DRAFT INTERIM REPORT ON THE REGULARITY AUDIT AND AUDIT OF
PREDETERMINED OBJECTIVES OF THE SAPS: CI FOR THE YEAR ENDING 31 MARCH 2012**

INTRODUCTION

1. This management report includes audit findings arising from the audit of the financial statements, reporting on predetermined objectives and compliance with laws and regulations for the year ended 31 March 2012 which were communicated to management and includes their response to these findings. The report also includes information on the internal control deficiencies that were identified. Addressing these deficiencies will assist in ensuring an improvement in the audit outcomes. We therefore give the Department **5 days** to respond on the findings. After that we shall issue a final interim letter that will be discussed with the Divisional Commissioner/National Commissioner.

AUDITOR'S RESPONSIBILITY

2. As required by section 188 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), section 4 of the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA) and, section 3 of the Secret Service Act (Act 56 of 1978), our responsibility is to express an opinion on the financial statements and to report on findings relating to our audit of the report on predetermined objectives and compliance with material matters in laws and regulations applicable to the entity. Our engagement letter sets out our responsibilities in detail. These include the following:
 - Performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements, the report on predetermined objectives and compliance with laws and regulations applicable to the entity. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the financial statements, the report on predetermined objectives and material non-compliance with laws and regulations.
 - Considering internal controls relevant to the entity's preparation and fair presentation of the financial statements, the report on predetermined objectives and compliance with laws and regulations.
 - Evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management.

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

- Evaluating the appropriateness of systems and processes that ensure the accuracy and completeness of the financial statements, the report on predetermined objectives and compliance with laws and regulations.
3. Because of the test nature and other inherent limitations of an audit, we do not guarantee the completeness and accuracy of the financial statements or the report on predetermined objectives or compliance with all applicable laws and regulations.
 4. Having formed an opinion on the financial statements, we may include additional communication in the auditor's report that does not have an effect on the auditor's opinion. These may include:
 - An emphasis of matter paragraph to draw users' attention to a matter presented or disclosed in the financial statements which is of such importance that it is fundamental to their understanding of the financial statements.
 - an additional matter paragraph to draw users' attention to any matter, other than those presented or disclosed in the financial statements, that is relevant to users' understanding of the audit, the auditor's responsibilities or the auditor's report.

RESPONSIBILITY OF THE ACCOUNTING OFFICER

5. The accounting officer responsibilities are set out in detail in the engagement letter. These include the following:
 - The preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework.
 - Planning, monitoring of and reporting on performance against predetermined objectives.
 - Review and monitoring of compliance with laws and regulations and disclosing known instances of non-compliance or suspected non-compliance with laws and regulations.
 - Designing, implementing and maintaining proper record keeping and internal controls necessary to enable the preparation of financial statements and the report on predetermined objectives that are free from material misstatement whether due to fraud or error, and compliance with laws and regulations.
 - Designing and implementing formal controls over IT systems to ensure the reliability of the systems and the availability, accuracy and protection of information.
 - Implementing appropriate risk management activities to ensure that regular risk assessments are conducted.
 - Disclosing all matters concerning any risk, allegation or instance of fraud.
 - Accounting for and disclosing related-party relationships and transactions.
 - Providing access to all information that is relevant to the preparation of the financial statements and performance information, such as records and documents...

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

APPRECIATION

6. We would like to express our appreciation for the courtesy extended and assistance rendered by the staff of SAPS CI during the audit.

Yours sincerely

Lerato H Madifeng (RGA)

Manager: National D

Enquiries: Edward Khashana/ Thabo Ditshego

Cell: 079 812 8748 / 076 322 3145

Email: edwardk@aqsa.co.za / thabod@aqsa.co.za



DECLASSIFIED FOR
INTENDED PURPOSE ONLY

2. Informer 606529 - Related party transactions ^{EX.60}

Requirement

PFMA section 40(1) (a), states the following:

The accounting officer for a department, trading entity or constitutional institution---

Must keep full and proper record of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards.

Furthermore, the Internal Control Policy defines Backstopping as follows:

The provision of an appropriate protective cover or disguise in order to verify or deflect possible inquiries, investigations and/or other actions by the syndicate which may compromise the credibility of the cover. A protective cover or disguise requires an amalgamation of fact and fiction enabling an operative, organisation or institution to act whilst avoiding identification, investigation and exploitation by the syndicate.

Nature

PART A:

We noted that all payments amounting to R 299 157.8 were made to SR 606529 and approved by the previous Chief Financial Officer Major-General S.Lazarus; the following information was not submitted for audit purposes:

1. Evidence that the SR 606529's handler was aware/not aware that his informer had family members working for the SAPS CI.
2. Evidence of all Intelligence Information Reports (IIR's) that were submitted by SR 606529.
3. Total amount of expenditure incurred by the Department for remuneration of SR 606529.
4. Evidence that the CFO was aware/not aware that SR 606529's family members are working for SAPS CI.
5. Name of officials who approved the recruitment of SR 606529.

PART B

We have noted that informer SR 606529 has family members who are employed at SAPS CI as special agents and the department could not provide us with documentary evidence that the special agents (who are related to SR 606529) were producing IIR's or assisting the SAPS CI in achieving its mandate:

Name of Official	Rank	Persal no	Agent	Province	Relationship with SR 606529
N.Moodley	Colonel	71916261	PA 31	KZN	Wife
S.Rhedi (maiden surname Marimuthi)	Lt. Colonel	71916300	PA 32	KZN	Daughter
V. Redhi	Lt. Colonel	71916318	PA 29	KZN	Son-In-Law

Impact

Possible non compliance with laws and regulations could lead to:

DECLASSIFIED FOR
INTENDED PURPOSE ONLY
Secret

All monies paid to the informer and his family members being regarded as fruitless and wasteful expenditure, as there were no reports that both the informer and the agents were providing to the Institution.

Internal control deficiency

Leadership

Lack of monitoring by management to ensure that recruitments of informers and agents are made in a bona fide manner.

Lack of monitoring from the Commander of Covert Collection to ensure that all informers and agents are paid rewards as per their productivity.

Lack of policy in place to disclose related party transactions.

Recommendation

Management should monitor controls by:

- Ensuring that the recruitment of informers and agents is done in accordance with the policies and procedures governing agent recruitment, in order to assist the department in achieving its constitutional mandate.
- The Department should encourage members to disclose if they are aware that one of their family members is in the agent programme. This will assist in ensuring that:
 - Good governance is practiced in the recruitment of agents.
 - Users of financial statements will also have assurance that the recruitment process for agents is fair and transparent and the selection is conducted in a manner which ensures that individuals with capabilities and skills are recruited for clandestine activities.

Management response

PART A and B:

Management takes note of the finding and recommendations, this matter is still under sub judice and the office of the AG will be made aware of the outcome once the investigation has been concluded.

As for the related party transactions, this office is still in the process of developing a policy and the policy will include what the department regards as a related party. Going forward the department will have a full disclosure of all related party transactions in the financial statements.

Auditor's response

The disclosure of related party transactions is not only limited to the AFS guideline, the matter will be reported in the audit report, due to the fact that the department does not have a policy and database to ensure complete disclosure of related party transactions.

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

3. Agents related to SAPS CI members EX.93

Requirement

Section 38(1) (a) read together with chapter 2 and 3 of the Treasury Regulations, states that:

The accounting officer for a department, trading entity or constitutional institution must ensure that that department, trading entity or constitutional institution has and maintains:

Effective, efficient and transparent systems of financial and risk management and internal control;

Nature

Due to the fact that the Department does not have a system that allows handlers to declare interest to identify if agents are related to members of SAPS CI Agents were identified to be related to members of the SAPS CI:

NO	Agent no	Handler	Province
1	PA 3	Captain Pali	Head Office
2	PA 6	LT Col DG Naidoo	Head Office
3	PA 7	LT Col DG Naidoo	Head Office
4	PA 8	LT Col DG Naidoo	Head Office
5	PA 10	LT Col DG Naidoo	Head Office
6	PA 11	WO R Stevens	Head Office
7	PA 15	LT Col DG Naidoo	Head Office
8	PA 16	WO R Stevens	Head Office
9	PA 17	WO R Stevens	Head Office
10	PA 22	Capt Pali	Head Office
11	PA 25	WO R Stevens	Head Office
12	PA 35	LT Col DG Naidoo	Head Office
13	PA 36	F Khan	Head Office
14	PA 48	Col Shaik	Head Office

Internal control deficiency

Governance

The manager responsible for the Agent programme did not ensure that the recruitment of agents is fair and transparent as there were no declarations of interest forms completed by Agents.

Recommendation

The manager responsible for the Agent programme should ensure compliance with all applicable Laws and Regulations by:

Ensuring that if there is an agent who is recruited and is related to a member of SAPS CI the following applies:

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

- If there is a possible conflict of interest, such is immediately declared and disclosed.
- Treat all possible recruitments equitably, irrespective of whether the Agent is related to a member of SAPS CI.
- Recruitment of Agents should be based on skills and knowledge.

Management response

Management takes note of the finding and the recommendations and will also like to make the AG aware that this matter is still under investigation and when it has been finalised; our office will submit a copy of the outcomes of the investigations.

Auditor's response

The matter will be reported in the audit report under related party transaction qualification paragraph.



DECLASSIFIED FOR
INTENDED PURPOSE ONLY

Irregular, Fruitless and Wasteful Expenditure

4. Irregular, Fruitless and Wasteful expenditure EX.78

Requirement

Public Finance Management Act and Treasury Regulations states:

PFMA Sec 38(1) (c) (ii):

The accounting officer should take effective steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct

TR 9.1.1:

The accounting officer of an institution must exercise all reasonable care to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent processes of financial and risk management.

PFMA Sec 38(1) (g):

The accounting officer must on discovery of any unauthorized, irregular or fruitless and wasteful expenditure, immediately report the particulars to the relevant treasury and where irregular expenditure related to procurement the relevant tender board should be informed as well.

PFMA Sec 38(1) (h) (iii):

The accounting officer must take appropriate disciplinary steps against any official who makes or permits unauthorized expenditure, irregular or fruitless and wasteful expenditure

TR 9.1.2:

Officials discovering unauthorised, fruitless and wasteful and irregular expenditure should report it to the accounting officer. For departments these expenditures should be reported in the monthly report. Irregular expenditure incurred by a department in contravention of tender procedures must also be brought to the notice of relevant tender board or procurement authority, whichever applicable.

TR 9.1.3:

When an accounting officer determines the appropriateness of disciplinary steps against an official in terms of section 38(1) (g) of the Act, the accounting officer must take into account

- a) The circumstances of the transgression;
- b) The extent of the expenditure involved; and
- c) The nature and seriousness of the transgression.

TR 9.1.5

The amount of the unauthorised, irregular, fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the institution.

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

Nature

The Department does not have policies and procedures to identify unauthorised, irregular and fruitless and wasteful expenditure as required by PFMA section 38(1) (c) (iii). I am therefore unable to confirm whether all unauthorised, irregular and fruitless and wasteful expenditure was recorded.

The Department did not include particulars of irregular expenditure in the notes to the financial statements as required by section 40(3) (i) of the PFMA. The Department made payments in contravention of the supply chain management requirements which were not included in irregular expenditure, resulting in irregular expenditure being understated by R 47 061 309.67

The following represents a breakdown of how the above amounts are computed

	Amount (R)
140 Vehicles Purchased	35,291,437
Security upgrading - Mdluli	230,666
Capital assets	11,126,637
Operational expenditure	412,570
Total	47,061,310

The Department did not include particulars of unauthorised expenditure in the notes to the financial statements as required by section 40(3) (i) of the PFMA. The Department made payments not in accordance with the purpose of the vote which were not included in unauthorised expenditure, resulting in unauthorised expenditure being understated by R 4 988 761.

The following represents a breakdown of how the above amounts are computed

	Amount (R)
Mercedes Benz	373,850
Wall constructed for the Minister	194,882
Cost of vehicles transferred	2,814,061
Westville Travel	1,008,463
Security upgrading and Audi Q5	597,506
Total	4,988,762

Impact

Unauthorised expenditure not disclosed in the financial statements.

Possible non compliance with PFMA and Treasury Regulations could lead to the financial statements not being a true reflection of the state of affairs for SAPS CI.

Internal control deficiency

Financial/performance management

SAPS CI does not have a policy in place to ensure that pertinent information is identified and captured to support financial and performance reporting.



DECLASSIFIED FOR
~~Secret~~
INTENDED PURPOSE ONLY

The Chief Financial Officer did not review the financial statements to ensure that amounts and information presented or disclosed is accurate and complete.

Recommendation

Management should ensure compliance with PFMA by:

- Including all pertinent information in the financial statements in order to achieve fair presentation.
- Reviewing financial statements and supporting schedules before they are submitted for audit.
- Disclosing all identified irregular and unauthorised expenditure in the financial statements.
- Developing and implementing a policy that will ensure that all fruitless and wasteful, irregular and unauthorised expenditure is identified and completely recorded in the financial statements.

Management response

Management takes note of the finding and will like to bring the AGSA to light that the department is reviewing some of the old policies and also developing new policies to ensure compliance with PFMA and Treasury Regulations, the policy mentioned is one of the policies that are being developed

Auditor's response

Management comments noted and matter will be reported as a qualification in the audit report, due to the fact that the amount of Irregular, unauthorised and fruitless and wasteful expenditure identified by the AGSA is material.

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

5. Air tickets expenses for family members of SAPS CI members paid from the Secret Account EX.134

Requirement

Public Finance Management Act 45(a)-(c) states the following:

An official in a department, trading entity or constitutional institution—

must ensure that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official;

Is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;

Must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;

Nature

Travel expenditure amounting to R 9 468 98.50 was incurred by SAPS CI for travelling expenditure of family members of officials employed by SAPS CI, the following is a breakdown of expenditure per family:

<u>Passenger</u>	<u>Amount R</u>	<u>Transaction</u>
Marimuthu		
Loven Marimuthu	10,894.25	5
Marimuthu Munsamy	4,225.00	3
Panganathan Marimuthu	150,480.75	60
Marimuthu Total	165,600.00	68.00
Abigial Lazarus	2,557.00	1
Darren Lazarus	3,653.00	3
Sandra Lazarus	22,288.00	7
Lazarus Total	28,498.00	11.00
Mdluli		
Dorah Mdluli	7,124.00	2
Uys Mdluli	5,518.00	1
Mdluli Total	12,642.00	3.00
Moodley		
Deenadayalin Moodley	21,738.00	9
Khimona Moodley	1,574.00	2
Krisnha Moodley	7,187.00	5
Mr/s Moodley	6,067.00	1
Nyanasgrie Moodley	2,614.00	1
Pavashen Moodley	885.00	1
Moodley Total	40,065.00	19.00
Naidoo		
Ashley Naidoo	885.00	1
Jason Naidoo	599.00	1

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

Naidoo Total	1,484.00	2.00
Singh		
Vivian Singh	4,269.50	1
Wayne Singh	3,138.00	1
Singh Total	7,407.50	2.00
Lyons		
Evelyn Lyons	14,179.50	4
Jeanine Lyons	5,239.00	1
Richard Lyons	11,431.50	4
Tracey Lyons	12,355.50	4
Lyons Total	43,205.50	13.00
Matshashe		
Nomsathelma Matshashe	3,785.00	1
Rofhina Matshashe	3,785.00	1
Matshashe Total	7,570.00	2.00
Chetty		
Bahal Chetty	6,380.00	4
Strinivasan Chetty	1,278.00	1
Subramoney Chetty	4,447.00	1
Chetty Total	12,105.00	6.00
Rolobile		
Amanda Rolobile	998.00	1
Vuyokazi Rolobile	2,022.00	1
Rolobile Total	3,020.00	2.00
Soobramoney		
Beverly+Liam Soobramoney	4,194.00	1
Kogilambal Subramoney	1,576.00	1
Mahesh Subramoney	1,793.00	1
Mark Soobramoney	1,827.00	1
Ralandren Subramoney	2,780.00	1
Sanjana Subramoney	1,793.00	1
Sheryl Subramoney	1,793.00	1
Soobramoney Total	15,756.00	7.00
Total		R337,353.00

DECLASSIFIED FOR
~~Secret~~
 INTENDED PURPOSE ONLY

The following is the total air travel expenditure incurred by SAPSCI officials, we are unable to verify that the travel made were official/private:

<u>Passenger</u>	<u>Amount</u>	<u>Transaction</u>
Paramanundhan Marimuthu	3,704.00	3
Solomon Lazarus	133,772.00	37
Richard Mdluli	192,209.00	35
Vusisiwe Mdluli	15,381.00	7
Neermala Moodley	69,300.00	25
Devendran Naidoo	49,641.00	23
Dhanajaya Naidoo	15,684.00	8
Narendra Singh	21,564.00	15
Vivek Singh	32,593.00	16
Teresa Lyons	49,224.50	15
Velesi Matshashe	20,158.00	6
Sharen Subramoney	6,315.00	4
Total		R609,545.50

Impact

Family members of key personnel of SAPS CI benefitting from the Secret Account.

Unauthorised expenditure might be incurred because expenditure incurred does not relate to the mandate of the organisation.

Internal control deficiency

Governance

The Accounting Officer did not put measures in place to ensure that senior personnel of SAPS CI do not abuse the Secret Fund to benefit their family members.

Recommendation

All expenditure that was paid from the Secret Account to finance the trips for family members must be recovered from the respective members.

The department should put controls in place to ensure that all travel undertaken, are for the purpose of the SAPS CI.

DECLASSIFIED FOR
~~Secret~~
INTENDED PURPOSE ONLY

In circumstances whereby members need to travel with their family members, authorisation from the Accounting Officer should be requested – (this should only happen in exceptional cases, whereby a member cannot travel without the family members and each case should be treated according to its own special needs).

Management response

The information requested is part of the current investigation and is sub judice.

Auditor's response

The auditee has not disclosed this amount as unauthorised expenditure. Consequently a qualification in respect of the understatement of unauthorised expenditure will be raised in the audit report.



DECLASSIFIED FOR
INTENDED PURPOSE ONLY
Secret

6. Mercedes Benz ML 350 CDI

Requirement

Public Finance Management Act, section 40(1) states the following:

- (1) The accounting officer for a department, trading entity or constitutional institution—
- (a) Must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards;
- (b) Must prepare financial statements for each financial year in accordance with generally recognized accounting practice;

Section 38(1) (d) and (h) (i)-(ii) of the PFMA states the following:

The accounting officer for a department, trading entity or constitutional institution—

- (d) Is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities, of the department, trading entity or constitutional institution;
- (h) Must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who—
- (i) Contravenes or fails to comply with a provision of this Act;
- (ii) Commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution.

Nature

Discount EX.45

On 10 March 2010 a vehicle model : Mercedes Benz ML 350 CDI was purchased by SAPS CI from NMI Durban South Motors (Pty)Ltd. SAPS CI received a discount of R38 000 from the supplier and we noted that the discount was not disclosed in the financial statements for 2010/11 financial year.

Trade-in of the vehicle EX.46

We noted that SAPS CI traded-in a vehicle (SR 3661) amounting to R375 000, which acted as a deposit for a purchase of a Mercedes Benz ML 350. The current Internal Control Policy and the Delegations of Authority (including Public Finance Management Act and Treasury Regulations) does not make provision for government department to have State vehicles to be traded-in for purchase of new cars.

According to the documents inspected, the instruction to trade-in the SR 3661 vehicle was granted by the CFO.

Usage of the ML 350 CDI purchased EX.47

According to the motivation approved for purchase of the Mercedes Benz ML 350 CDI, the following is indicated:



DECLASSIFIED FOR
~~Secret~~
 INTENDED PURPOSE ONLY

"Due to the restructuring of Crime Intelligence, there was an additional staff to the Organisation. Also a new Unit for Operations Intelligence for the East Rand was formed which is based in Kempton Park. The Divisional Commissioner also made changes to the Office. It must be brought to your attention due to the staff and changes, the need for Safe House premises, vehicles, laptops, desktops, printers, cameras, cell phones, furniture and other equipment that is required for the smooth running of the operations".

According to the documents inspected it was not evident that the vehicle was purchased for covert operations as instances were identified where the vehicle was used to drive VIP's, the following serves as an example:

<u>Person utilising the car</u>	<u>Description of the claim</u>	<u>Claim Captured by</u>	<u>Claim no</u>	<u>Date of the claim</u>	<u>Amount R</u>
It is utilised by the Divisional Commissioner in Cape Town during the months: Dec 2010, Jan-March 2011	Km/petrol and toll fees claim	C.Strydom	9824	2011/04/18	8 359.00
The vehicle was used for transportation of VIP's (names not mentioned in the claim) for March-June 2010	Km/petrol and toll fees claim	C.Z Beukes	1680	2010/06/28	10 757.30
The vehicle travelled in the town: Pongola, Ermelo, Route 21, Heidelberg, Tugela and Wilge toll plaza					
Vehicle used for VIP transportation for : Oct-Nov 2010	Km/petrol and toll fees claim	C.Strydom	9096	2010/11/26	800.08
Vehicle used for travelling from PTA-Durban (name of users not specified)	Km/petrol and toll fees claim	C.Strydom	1281	2010/03/17	1 688.75
The vehicle was used by G.Nieuwoudt for briefing and debriefing of informers	Km/petrol and toll fees claim	C.Z Beukes	2488	2010/11/16	1 103.60
Total					22 708.73

Management did not provide us with the following information,

1. The names of the VIP's that were transported on the above-mentioned dates.
2. The reason why the Mercedes Benz ML 350 CDI was purchased?
3. Name of the Official who authorised the purchase of this vehicle.

Impact

Possible non compliance with Treasury Regulations and PFMA which could lead in the following:

Overpayment of vehicles bought due to non disclosure of discounts received from suppliers.

Irregular or unauthorised expenditure being incurred.

Internal control deficiency

Leadership

Lack of monitoring by management to ensure that all discounts are accounted for and approved by the relevant official.

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

Lack of monitoring by management to ensure that all approval is granted from Treasury to allow for trade-in of vehicles.

Lack of monitoring of payments by the Chief Financial Officer to ensure that all expenditure incurred by SAPS CI is in accordance with the requirements of the Secret Account Act.

Recommendation

Management should monitor controls by:

- Ensuring that all discounts are accounted for in order to ensure that the financial statements of SAPS CI comply with the Departmental framework on preparation of financial statements.

Department should apply the 3E's concept (Economical, Efficiency and Effectiveness) when purchasing goods/services by encouraging discounts for early payments and also promote accountability for discounts received, by alerting members that they should inform the CFO's office of any discounts received, this will ensure that all discounts received by the Department are accounted for in the financial statements.

Management should disclose unauthorised expenditure in the financial statements as we could not obtain evidence that the vehicle was bought for clandestine activities.

Management response

The information requested is part of the current investigation and is sub judice.

Auditor's response

The auditee has not disclosed this amount as unauthorised expenditure. Consequently a qualification in respect of the understatement of unauthorised expenditure will be raised in the audit report.

COMMISSION OF INQUIRY

INTO STATE CAPTURE



DECLASSIFIED FOR
INTENDED PURPOSE ONLY
~~Secret~~

7. Secret Account used to pay rental fees for employees EX.135

Requirement

The legal mandate for the South African Police Service to utilize funds made available for secret services and expenses in connection with such services for the purposes of the recruitment, handling and management of sources/informants is prescribed by the Secret Services Act, 1978 (No. 56 of 1978) hereafter referred to as the Secret Services Act.

Nature

During October 2006, the former Divisional Commissioner, General Lalla approved that the CFO could rent a house and that the payments will be covered by the Secret Account.

According to the affidavits made, it was indicated that the house was furnished with state money and the furniture was not returned to the Department after the CFO moved out, instead the furniture was shared amongst some of the SAPS CI members.

The following is a breakdown of the rental costs and other costs incurred for renting a house for the CFO:

<u>File Description</u>	<u>Trans No</u>	<u>Advance no</u>	<u>Claim No</u>	<u>Motivation</u>	<u>Checked and approved by</u>	<u>Date of approval</u>	<u>Signed for receipt</u>	<u>SCOA Description</u>	<u>SCOA Amount</u>
Safe house Lazarus	0014 003354		3354	Funds were utilised to pay for rental deposit (R6500) and advance rent (R6500) i.r.o SR457442 safe premises. Rental is for the period November 2006	S Lazarus	26-Oct-06	Insp Naidoo	Financial Aid Rental Parking	13,000.00
Safe house Lazarus	0014 003428	0014003206	3428	Funds were utilised to pay for rental of premises SR457442 for the rental of December 2006. Attached documentation refers	Could not make out the signature and the name. Signature looks like that of S Lazarus	01-Dec-06	Insp Naidoo	Rental	6,500.00
Safe house Lazarus	0014 003546	0014003263	3546	Funds utilised to pay for rental of safe premises SR457442 for the period January 2007. Attached documentation refers	S Lazarus	03-Jan-07	Insp Naidoo	Rental	6,500.00

DECLASSIFIED FOR
INTENDED PURPOSE ONLY
Secret

Safe house Lazarus	0014 003600	0014003344	3600	Funds were utilised to pay for rental of safe premises SR457442 for the period February 2007. Attached documentation refers	M Venter	30-Jan-07	Insp Naidoo	Rental	6,500.00
Safe house Lazarus	0014 003653	none	3653	Funds was utilised to pay for rental of premises i.r.o SR457442 for the period March 2007. Attached documentation refers.	H Barnard	26-Feb-07	Insp Naidoo	Rental	6,500.00
Safe house Lazarus	0014 003753	0014003519	3753	Funds utilised to pay for rental of safe premises SR457442 for the month of April 2007. Attached authority refers	H Barnard	26-Mar-07	Insp Naidoo	Rental	6,500.00
Safe house Lazarus	0014 003856	0014003613	3856	Funds were utilised to pay for rental of safe premises SR457442 for the period May 2007. Attached authority refers	S Lazarus	02-May-07	Insp Naidoo	Rental	6,500.00
Safe house Lazarus	0014 003957	0014003709	3957	Funds were utilised to pay for rental of safe premises SR457442 for the period June 2007. Attached authority refers.	H Barnard	01-Jun-07	Insp Naidoo	Rental	6,500.00
Safe house Lazarus	0014 004032	0014003791	4032	Funds utilised to pay for rental of safe premises SR457442 for the month of July 2007. Attached deposit and authority refers	H Barnard	29-Jun-07	Insp Naidoo	Rental	6,500.00

DECLASSIFIED FOR
SECRET
 INTENDED PURPOSE ONLY

Safe house Lazarus	0014 004142	0014003903	4142	Funds utilised to pay for rental of safe premises SR457442 for the period August 2007. Attached deposit and authority refers	S Lazarus	08-Aug-07	Insp Naidoo	Rental	6,500.00
Safe house Lazarus	0014 004220	0014003985	4220	Funds were utilised to pay for rental of safe premises SR457442 for the month of September 2007. Attached documentation refers.	Could not make out the signature and the name. Signature looks like that of S Lazarus	30-Aug-07	Insp Naidoo	Rental	7,500.00
Safe house Lazarus	0014 004339	0014004067	4339	Funds were utilised to pay for rental of safe premises SR457442 for the month of October 2007. Attached documentation refers.	H Barnard	04-Oct-07	Insp Naidoo	Rental	6,500.00
Safe house Lazarus	0014 004452	0014004173	4452	Funds utilised to pay for rental of safe premises SR457442 for the months of November and December 2007. Attached documentation refers	H Barnard	29-Oct-07	Insp Naidoo	Rental	13,000.00
Safe house Lazarus	0014 004143	0014003904	4143	Funds were utilised to pay water and electricity bill i.r.o SR457442 for the period June/July 2007. Attached documentation refers	S Lazarus	08-Aug-07	Insp Naidoo	Water and Lights	1,699.15
Safe house Lazarus	0014 003598	0014003329	3598	Funds were utilised to pay for water and electricity i.r.o SR457442 for the month of November 2006. Attached documentation refers	M Venter	25-Jan-07	Insp Naidoo	Water and Lights	557.40



[Handwritten signature]

DECLASSIFIED FOR
~~SECRET~~
 INTENDED PURPOSE ONLY

Safe house Lazarus	0014 003654	None	3654	Funds were utilised to pay water and electricity bill i.r.o SR457442 for the period December 2006. Attached documentation refers	H Barnard	26-Feb-07	Insp Naidoo	Water and Lights	524.55
Safe house Lazarus	0014 003657	0014003614	3857	Funds were utilised to pay water and electricity account for safe premises SR457442 for the period January 2007. Attached receipt and authority refers	S Lazarus	02-May-07	Insp Naidoo	Water and Lights	454.00
Safe house Lazarus	0014 004033	0014003792	4033	Funds utilised to pay water and electricity bill i.r.o safe premises SR457442 for the period March/May 2007. Attached deposit refers	H Barnard	29-Jun-07	Insp Naidoo	Water and Lights	2,104.90
Safe house Lazarus	0014 004453	0014004175	4453	Funds utilised to pay water and electricity account i.r.o SR457442 for the period Aug/Sept 2007. Attached documentation refers	H Barnard	29-Oct-07	Insp Naidoo	Water and Lights	1,987.30
Safe house Lazarus	0014 003392	-	3392	Funds was utilised to pay service provider for installation of DSTV at safe premises SR457442	S Lazarus	15-Nov-11	Insp Naidoo	Not allocated on the form	-
Safe house Lazarus	0014 003427	0014003207	3427	Funds were utilised to pay annual subscription of DSTV fees i.r.o. SR457442. Attached authority refers	Could not make out the signature and the name. Signature looks like that of S Lazarus	01-Dec-06	Insp Naidoo	Not allocated on the form	-

DECLASSIFIED FOR
INTENDED PURPOSE ONLY
Secret

Safe house Lazarus	0014 003599	0014003330	3599	Funds were utilised to pay start payment of annual subscription fees for DSTV i.r.o SR457442. Attached documentation refers	M Venter	25-Jan-07	Insp Naidoo	Day-to-day maintenance	600.00
Safe house Lazarus	0014 003958	0014003612	3958	Funds were utilised to pay annual DSTV subscription i.r.o SR457442. Attached authority and deposit refers	H Barnard	04-Jun-07	Insp Naidoo	Not allocated on the form	-
Safe house Lazarus	0014 004851	0014004446	4851	Funds were utilised to pay outstanding fees for DSTV i.r.o SR457442. Lease has ended and DSTV has since been disconnected. Above amount was outstanding and therefore had to be settled.	MO Nemutanzhela	19-Feb-08	Insp Naidoo	Day-to-day maintenance	241.20
Safe house Lazarus	0014 003303	0014003115	3303	Funds were utilised to pay for the manufacture and installation of blinds at safe premises SR457442. Attached documentation refers	S Lazarus	01-Nov-06	Insp Naidoo	Day-to-day maintenance	5,518.55
Safe house Lazarus	0014 003393	none	3393	Funds were utilised to pay for automation of garage door at safe premise SR457442 due to security reasons. Amount was paid by Landlord and had to be reimbursed. Attached deposit slip refers	S Lazarus	20-Nov-06	Insp Naidoo	Day-to-day maintenance	2,650.00

DECLASSIFIED FOR
INTENDED PURPOSE ONLY
Secret

Safe house Lazarus	0014 004488	none	4488	Funds were utilised to purchase items to carry out renovations at SR457442 as well as to pay for casual labour and packaging material	H Barnard	09-Nov-07	Insp Naidoo	Day-to-day maintenance	2,604.62
Safe house Lazarus		0007022629	28884	Funds were utilised to pay for garden services i.r.o SR457442 for the period April - December 2007 at R250.00 per month. Attached deposit slips refers	S Lazarus	23-Oct-07	not signed	Day-to-day maintenance	2,250.00
Safe house Lazarus	0014 003390	none	3390	Funds were utilised to purchase consumables for safe premises (SR457442). Attached authority (Div Comm.) and receipts refers	S Lazarus	15-Nov-06	Insp Naidoo	Not allocated on the form	.
Safe house Lazarus	0014 003391	none	3391	Funds were utilised to purchase consumables for safe premises (SR457442). Div Comm. approval. Attached receipt and approval refers	H Barnard	13-Nov-06	Insp Naidoo	Non Expendable Stock	5,226.70
Total									124,918.37

Impact

Non compliance with PFMA, Treasury Regulations and Secret Account Act could result in:

Unauthorised expenditure being incurred because expenditure incurred does not relate to the mandate of the organisation.

Internal control deficiency

Governance

The Accounting Officer did not put measures in place to ensure that the secret fund is only used for the purposes intended.

DECLASSIFIED FOR
~~Secret~~
INTENDED PURPOSE ONLY

Recommendation

The Accounting Officer should implement controls to ensure that the Secret Account is only used for the intended purposes.

All expenditure that was paid from the Secret Account for purposes other than mandated transactions should be identified and disclosed as unauthorised expenditure.

Management response

Please note the information requested is part of the current investigation/enquiries and is sub judice.

Auditor's response

The auditee has not disclosed this amount as unauthorised expenditure. Consequently a qualification in respect of the understatement of unauthorised expenditure will be raised in the audit report.



DECLASSIFIED FOR
INTENDED PURPOSE ONLY
Secret

8. General Nchwe : Security upgradings and Audi Q5

Requirement

In terms of the Secret Services Account Act, 1978 (Act No. 56 of 1978) **secret service** means that part of the functions of a Department of State which, in the opinion of the President or the responsible Executive Deputy President or Minister, is of such a nature that it is in the national interest that the performance thereof is not directly or indirectly made known, and which is funded from the account under section 2 (3).

According to section 2(3) (a) The Minister of State Expenditure may, at the request of any other Minister, and in such manner and subject to such conditions as he may after consultation with such other Minister determine, make available to a Department of State for which such other Minister is responsible, moneys in the account for utilization for secret services." And section 2(3) (b) states that "Subject to the provisions of sections 3A (8) or (9) and 3B, any moneys so made available shall be utilized for secret services and for expenses in connection therewith.

Section 38(1) (b) of the PFMA states the following:

The accounting officer for a department, trading entity or constitutional institution—

Is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution.

Nature

Security upgradings and Audi Q5 EX.169

Part A – Security upgradings:

An amount of R40 425.90 for an alarm installation at General Nchwe's residence was paid from the SAPS CI account instead of from the SAPS Open account.

Part B – Audit Q5:

SAPS CI purchased an Audi Q5 (3.0 TDI) valued at R557 079.96 for General Nchwe on 02 August 2010.

We could not obtain evidence that the security upgradings and Audi Q5 paid from the secret account were for clandestine activities as the department did not provide us with the following:

1. The reason why a vehicle was purchased for General Nchwe who was employed at SAPS Open account.
2. Name of the official who approved the purchase of the Audi Q5.

No threat analysis/risk assessment conducted EX.170

There is no documentary evidence that General Nchwe reported a threat/security risk to SAPS CI as required by the MISS policy to support the security upgrade.

Supply chain processes not followed EX.168

An alarm system was installed at General Nchwe's residence on 23 August 2010, the Head of Supply Chain in SAPS CI approved the following without obtaining three quotations.

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

Secret

<u>No</u>	<u>Description</u>	<u>Supplier</u>	<u>Amount</u>
1	Installation of alarm systems-218	Incredible Security cc	R40 425.9

Impact

Possible non compliance with the Secret Service Account Act and Public Finance Management Act might result in:

Unauthorised expenditure being incurred because the alarm installation and the vehicle are not for the activities of SAPS CI.

Non compliance with the Minimum Information Security Standards (MISS) as there was no threat analysis/risk assessment conducted by Counter-Intelligence members.

Internal control deficiency

Governance

Lack of monitoring of controls by the Accounting Officer to ensure that all goods/services bought from the Secret Account are used for the purposes of the Secret Account and proper supply chain management processes are followed for all purchases

Lack of monitoring by the Chief Financial Officer to ensure that all payments made in respect of security upgradings are accompanied by a threat analysis report compiled by Counter-Intelligence.

Recommendation

The Accounting Officer should ensure compliance with the Secret Service Account Act and the Public Finance Management Act by:

- Requesting the Chief Financial Officer and the Divisional Commissioner to prepare quarterly monitoring tracking report which indicates that all goods/services bought with the funds from the Secret Service Account Act are used for clandestine activities.
- An amount of R 597 505.86 should be disclosed in the financial statements as unauthorised expenditure.
- Ensuring that all payments that relate to security upgradings are accompanied by a threat analysis / risk assessment conducted by Counter-Intelligence.

Management response

The matter is sub judice and this office is thus not in a position to provide a response. When the Hawks are done with the investigation this Office will make the report available to the AGSA.

Auditor's response

The auditee has not disclosed this amount as unauthorised expenditure resulting in unauthorized expenditure being understated.

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

9. Minister-Wall

Requirement

Chapter 3, paragraph 1.1 of the Minimum Information Security Standards (MISS), states the following:

The Head of every institution bears overall responsibility for the provision and maintenance of security in his/her institution, under all circumstances.

Nature

Funds to build the wall EX.50

On the 30 May 2010, the Divisional Commissioner tasked a team to do a security assessment of the residence of the Minister of Police, the results of the assessments indicated some security risks that had to be addressed, and the following weaknesses were identified in respect of financing the costs of the risks identified:

1. There is no documentary evidence to indicate that approval was obtained from Department of Public Works (DPW) as required in terms of annexure E to the ministerial handbook.
2. The Secret Service funds were used to finance the expenditure (in respect to risks identified), this is in contravention with the Secret Service Account Act, and such expenditure should be financed by DPW and the respective individual as specified in the ministerial handbook.

No construction company contracted to do the wall EX.51

SAPS CI did not invite competitive bids for the building of the Minister's wall, we also noted that there was no construction company awarded a tender to build the wall and we noted that the CFO approved the expenditure as opposed to the National Commissioner as required by Treasury Practise Note.

Impact

Possible non compliance with Secret Account Act, which could result in:

Unauthorised expenditure being incurred - as the funds were not supposed to be from the SAPS CI account.

Internal control deficiency

Governance

Lack of monitoring of activities and approval of payments/expenditure to ensure compliance with the Secret Account Act and other financial prescripts.

Lack of monitoring by the Supply Chain Management Unit to ensure that all purchases are done in accordance with the requirements of Treasury Regulations 16A.

Recommendation

Management should ensure compliance with the Secret Account Act by:

- Ensuring that all expenditure incurred at SAPS CI is in accordance with the requirements of the Secret Account Act.

DECLASSIFIED FOR
INTENDED PURPOSE ONLY

- Unauthorised expenditure should be disclosed in the AFS in relation to the abovementioned transaction.
- Supply chain management unit should develop controls to ensure that all purchases comply with Treasury Regulations.

Management response

The information requested is part of the current investigation and is sub judice.

Auditor's response

The auditee has not disclosed this amount as unauthorised expenditure. Consequently a qualification in respect of the understatement of unauthorised expenditure will be raised in the audit report.



A handwritten signature or set of initials in black ink, located in the bottom right corner of the page.



DECLASSIFIED FOR
INTENDED PURPOSE ONLY

10. Security upgradings (Gen.R.Mdluli)'s residence EX.167

Requirement

National Treasury Practise Note 8 of 2007 states the following:

ABOVE THE TRANSACTION VALUE OF R10 000 BUT NOT EXCEEDING R 500 000 (INCLUDED)

Accounting officers / authorities should invite and accept written price quotations for requirements up to an estimated value of R500 000 from as many suppliers as possible, that are registered on the list of prospective suppliers.

Where no suitable suppliers are available from the list of prospective suppliers, written price quotations may be obtained from other possible suppliers.

If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the accounting officer / authority or his / her delegate.

Nature

Even though the security upgradings at General R.Mdluli's private premises (25 Kudu Street, Dawn Park) complied with the MISS policy, proper supply chain processes were not followed for the purchase of the following devices to be used for security upgradings:

Date	Qty	Description	Supplier	Unit Price	Subtotal
23/06/2010	1	Install supply electric fencing	Spiralog Investments PTY Ltd	10 575	10 575
	1	Install supply alarm system - parameter beams		14 700	14 700
	1	Install supply 2-3 intercom system		8 833	8 833
	1	Install supply 16ch CCTV system		61 400	61 400
24/05/2010	6	Supply and install 6 outdoor beams		1 860	11 160
	8	4 Button remote		160	1 280
	4	Receivers		240	960
	2	LED lights		50	100
	1	Labour and wiring		1 200	1 200
24/05/2010	1	Energiser 8 jules		3 800	3 800
	1	Brackets		2 350	2 350
	1	Braided wire		650	650
	1	Signage		300	300
	1	Stays		175	175
	1	Hooks/Springs/Ferrels/Bolts		800	800
	1	Labour and wiring		2 500	2 500
24/05/2010	1	16 ch Pentaplex		16 250	16 250
	4	19" LCD Monitor		1 500	6 000
	2	1.5 Terabyte hard drive		1 500	3 000

DECLASSIFIED FOR
INTENDED PURPOSE ONLY
Secret

	1	18 way power supply	950	950
	10	C3508C infra red,3.5-8mm vari focal, bullet camera	1 450	14 500
	14	Reticulation points	750	10 500
	1	Installation, commissioning and training	5 500	5 500
	1	Video distributor convertor for additional monitors	1 200	1 200
	1	Remote dial up	2 000	2 000
	1	Consumables	1 500	1 500
	1	8 channel DVR08HA	8 750	8 750
	3	19" LCD Monitor	1 500	4 500
	1	1 Terabyte hard drive	1 300	1 300
	1	9 way power supply	750	750
	1	VGA Convertor	1 250	1 250
	7	C3508C infrared,3.5-88mm vari focal	1 450	10 150
	9	Reticulation points	750	6 750
	1	Installation, commissioning and training	3 000	3 000
	1	Video distributor convertor for additional monitors	1 200	1 200
24/05/2010	1	Remote dial up	2 000	2 000
				0
				0
	2	BPT Targa entry panel	950	1 900
	3	BTP Multifunction lynea handset	400	1 200
	1	BTP Power supply non inter communicating	1197	1 197
	2	BTP Mounting plate with rainshield TARGA	200	400
	2	BTP / Commax gooseneck – grey	368	736
	2	20 core comms cable	700	1 400
	1	Consumables	500	500
24/05/2010	1	Labour	1 500	1 500
Total			169 958	230 666

We also noted that the expenditure for the security upgradings was approved by an official of the lower rank to that of the Divisional Commissioner and it is not clear why the cost was carried by SAPS CI instead of SAPS open account.

Impact

Possible non compliance with Treasury Practise Notes on Supply Chain Management.

Unauthorised expenditure being incurred as the cost was incorrectly paid by SAPS CI.

Internal control deficiency

Governance

The Accounting Officer did not ensure that departmental policies are in line/consistent with Treasury Regulations.

DECLASSIFIED FOR
INTENDED PURPOSE ONLY
Secret

The Accounting Officer did not put controls in place to ensure that all goods/services procured comply with Practise Note 8 of 2007/08.

Recommendation

The Accounting Officer should ensure compliance with Practise Note 8 of 2007/08 by:

- Ensuring that the procurement of goods and services comply with Treasury requirements.
- The Accounting Officer should disclose an amount of R 230 666.00 as unauthorized expenditure.
- The SAPS CI together with SAPS open account should formulate and implement a directive/policy that will govern the security upgradings for the Divisional Commissioners.

Management response

The matter is sub judice and this office is thus not in a position to provide a response, when the Hawks are done with the investigation this Office will make the report available to the AGSA.

Auditor's response

The amount was not disclosed as unauthorised expenditure and the finding will be included in the audit report.



Handwritten initials and a signature are present in the bottom right corner of the page.

ANNEXURE KDR27



South African Police Service  Suid-Afrikaanse Polisie diens

Private Bag X1508, Silverton, 0127

Fax No: (012) 846 4400

My reference: 26/162/2

THE NATIONAL HEAD

Enquires: Brig Moodley

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

Tel: (012) 843 8848

SOUTH AFRICAN POLICE SERVICE

E-mail: dnci.head@saps.gov.za

The Acting Divisional Commissioner
Crime Intelligence and Protection Services
HEAD OFFICE

REQUEST FOR ASSISTANCE IN SECURING THE AVAILABILITY OF MEMBERS IN AN INVESTIGATION: SILVERTON CAS 165/07/2011 FRAUD & THEFT AND LYTTTELTON 432/11/2011 CORRUPTION, FRAUD & THEFT

1. This office has been in contact with Brigadier Skosana Crime Intelligence, Head Office. He was appointed as the dedicated contact person in respect of this investigation. He has however requested that we address this request to interview members through your office.
2. We are making a request for the granting of permission to interview members within the Crime Intelligence division with the view of obtaining affidavits from them.
3. This is due to the following reasons:
 - The members mentioned below are regarded as possible witnesses in this investigation and their involvement relates mainly to the role they played in the handling of exhibits.
 - Three (3) of the witnesses mentioned below will be interviewed on procedural aspects and their expertise in their various fields.
4. The suggested dates for interviews with regard to members are as follows:

NO	NAME	RANK	PERSAL	CELLPHONE	DATE
1	Riekert	Lt-Colonel	Unknown		11/03/2013
2	JG Furstenburg	Lt-Colonel	Unknown	0827756580	11/03/2013
3	[REDACTED]	Colonel	Unknown	[REDACTED]	12/03/2013
4	M. Kitching	Colonel	Unknown	[REDACTED]	12/03/2013
5	R. Govender	Colonel	Unknown	[REDACTED]	13/03/2013
6	Grobelaar	Colonel	Unknown	[REDACTED]	13/03/2013
7	IG Steyn	Brigadier	Unknown	[REDACTED]	14/03/2013
8	[REDACTED]	Lt-Colonel	Unknown	[REDACTED]	14/03/2013
9	G. Mahway	W/Officer	Unknown	[REDACTED]	15/03/2013
10	A. Krishnedutt	Colonel	Unknown	[REDACTED]	15/03/2013
11	N. Naidoo	Colonel	Unknown	[REDACTED]	18/03/2013
12	MO. Nmutanzhela	Brigadier	Unknown	[REDACTED]	18/03/2013

R 

- 5. Interviews with Head Office personnel shall be held at the Anti-Corruption Task team offices in Rentmeester Building, Pretoria, and all the interviews will commence at 09:00.
- 6. Due to all the various rumours and innuendo attributed to this investigation, I feel it is necessary to stress that the members mentioned above are not regarded as suspects and/or possible suspects. Their participation in this matter flows from the position they held at the time of the investigation and their testimony is regarded as formal in nature.

Kind regards,



NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
A DRAMAT

LIEUTENANT GENERAL

Date: 2013-03-07



ANNEXURE KDR28



South African Police Service



PREPARED APPLICATION
IN MARCH 2013 PER
ERIC MOODLEY
Suid-Afrikaanse Polisie

Private Bag x1500, Silverton, 0127

Fax No: (012) 846 4400

Your reference :
My reference : 26/102/2 over
Enquiries : Brig Moodley
Tel : 082 778 418

ANTI-CORRUPTION TASK TEAM
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
SILVERTON
0127

A. The Deputy National Commissioner
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

APPLICATION FOR DECLASSIFICATION OF DOCUMENTS: SILVERTON CAS 155-07-2011

1. Reclassification of documents in terms of the Minimum Information Security Standard (Miss) document lays down a minimum standard for the handling of classified information in all government institutions, which states that security measures are not to be applied to cover up maladministration, corruption, criminal actions, or to protect individuals/officials involved in such cases.
2. According to chapter 4 (par.1.2) of the Miss document, the responsibility for the grading and re-grading of classified documents rests with the institution where the document originates from. This function rests with the author or head of the institution or his/her delegate.
3. It is requested that the National Commissioner declassify the following documents listed below in order to facilitate the use of these documents in open court, in the matter of State vs. RN Mdluli and HJ Barnard in respect of Silverton Case 155-07-2011.
4. The documents in question were allegedly created to facilitate the committing of an offence/s and presented facts to internal auditors and the Auditor General which were not entirely accurate. Had they knew the true nature of the expenditure they would have been able to identify the offence/s.
5. The documents in question will also not endanger any current or past project and/or agents and only relates to the actual procurement of certain items. The declassification of the said documents might have a financial effect as it would mean the two (2) vehicles in question will not be suitable for covert work. The vehicles can however be utilised in any other capacity. The "safe house" in Gordons Bay is no longer in use and therefore poses no risk to any current or past project and/or agents.

6. The author/s cannot be approached since some are implicated in this matter and as far as could be established, the authority to classify/de-classify documents has not been delegated to another official below the National Commissioner.
7. Should the National Commissioner approve, it is recommended that the word 'Declassified' be written on the front of every document, against a date stamp and the signature of the National Commissioner.
8. It is also recommended that these documents be declassified in light thereof that the accused who were employees of Crime Intelligence do not use the grounds of classified information as a line of defence in open court.

Yours sincerely

K. ROELOFSE



EXHIBIT No.	TYPE OF DOCUMENT	ACTION
06	REMITTANCE ADVICE	Declassify
	ABSA CHEQUE dated 2010-06-02	Declassify
	SCHEDULE DOCUMENT No 1930	Declassify
	CAPFIN DOCUMENT	Declassify
	NEW VEHICLE TAX INVOICE No 10002368	Declassify
	PURCHASE ORDER A00 2446	Declassify
	PURCHASE ORDER A00 2446	Declassify
	PURCHASE ORDER A00 2446	Declassify
	MESSEGE CONFIRMATION REPORT FOR PURCHASE ORDER A00 2446	Declassify
	LEO HAESE PROPOSAL LETTER FOR BMW 330D 3 PAGES	Declassify
	PROCUREMENT OF VEHICLE FORM FOR BMW330D	Only the information relating SR 3741 which is highlighted
	CAPFIN DOCUMENTS PRINT OUTS 6 PAGES	Declassify
	VEHICLE APPLICATION LETTER 3 PAGES	Declassify

EXHIBIT No.	TYPE OF DOCUMENT	MOTIVATION
14	REMITTANCE ADVICE	Declassify
	ABSA CHEQUE dated 2010-09-06	Declassify
	SCHEDULE DOCUMENT No 2067	Declassify
	CAPFIN DOCUMENT	Declassify
	NEW VEHICLE TAX INVOICE No 10002559	Declassify
	PURCHASE ORDER A00 2381	Declassify
	PURCHASE ORDER A00 2381	Declassify
	PURCHASE ORDER A00 2381	Declassify
	LEO HAESE PROPOSAL LETTER FOR BMW 530D 3 PAGES	Declassify
	PROCUREMENT OF VEHICLE FORM FOR BMW 530D	Only the information relating SR 38023741 which is highlighted
	E-MAIL PRINT OUT	Declassify
	APPLICATION LETTER FOR PROCUREMENT OF BMW 530D	Declassify
	CAPFIN DOCUMENTS PRINT OUTS 7 PAGES	Declassify

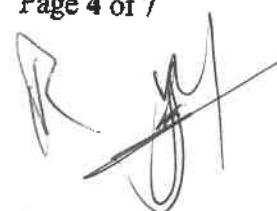
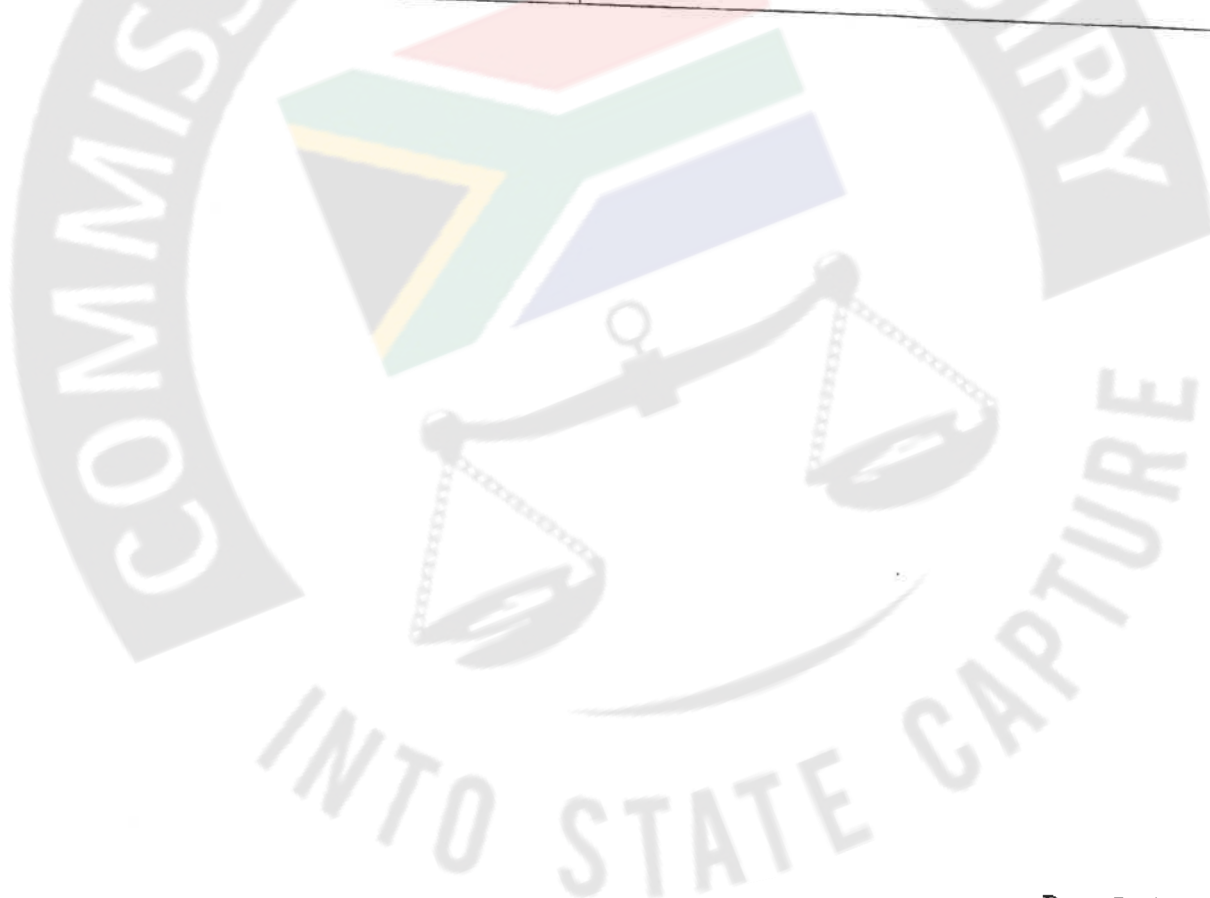


EXHIBIT No.	TYPE OF DOCUMENT	MOTIVATION
414	LEASE AGREEMENT DOCUMENT 4 PAGES	Declassify
	CAPFIN DOCUMENTS 4 PAGES	Declassify
	LETTER OF APPLICATION TO ENTER INTO LEASE AGREEMENT: 3 PAGES SIGNED	Declassify
	APPROVAL LETTER FOR COVERT PREMISES 2 PAGES	Declassify
	LETTER OF APPLICATION TO ENTER INTO LEASE AGREEMENT: 3 PAGES UNSIGNED	Declassify
	CAPFIN DOCUMENTS: 2 PAGES	Declassify
	LETTER TO SUPPLY CHAIN MANAGEMENT, SILVERTON	Declassify



[Handwritten signature]

SINGAPORE AND CHINA TRIPS		
EXHIBIT No.	TYPE OF DOCUMENT:	MOTIVATION
1416	CLAIM FORM - No 0507 934 TO CHINA	Declassify
4973	CLAIM FORM - No 0507 1123 TO CHINA & SINGAPORE	Declassify
1887	CLAIM FORM - No 0507 1029 TO SINGAPORE	Declassify
376	CLAIM FORM - No 0507 978 TO SINGAPORE	Declassify
1422	CLAIM FORM - No 0507 1045 TO SINGAPORE	Declassify
4972	CLAIM FORM - No 935 TO SINGAPORE	Declassify
348	CLAIM FORM - No 14 47758	Declassify
1886	CLAIM FORM - No 1026 TO SINGAPORE	Declassify
4971	CLAIM FORM - No 0007 7744 TO SINGAPORE	Declassify
1417	CLAIM FORM - No 0507 936	Declassify

EXHIBIT No.	TYPE OF DOCUMENT	MOTIVATION
	CLAIM FORM - No 0507008374, SECURITY UPGRADES	Declassify entire claim form

THE COMMANDER: OPERATIONAL TEAM: ANTI-CORRUPTION TASK TEAM (ACTT): BRIGADIER
K MOODLEY

Date: 2013- -



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

Small vertical text on the right margin, likely a page number or reference code.

ANNEXURE KDR29





South African Police Service

South African Police Service

Private Bag X 301, Pretoria

divcomin.ci@saps.org.za

YOUR REFERENCE

THE DIVISIONAL COMMISSIONER

MY REFERENCE 25/102/2

CRIME INTELLIGENCE & PROTECTION SERVICE

ENQUIRIES Major General Ngcobo

HEAD OFFICE

TEL: (012) 360 1410

0901

FAX: (012) 347 8661

The National Head
Directorate for Priority Crime Investigation
SOUTH AFRICA POLICE SERVICE

REQUEST FOR ASSISTANCE IN SECURING THE AVAILABILITY OF MEMBERS IN AN INVESTIGATION: SILVERTON CAS 155/07/2011 FRAUD AND THEFT AND LYTTELTON CAS 432/11/2011 CORRUPTION, FRAUD AND THEFT

1. Your letter dated the 7th of March 2013 is hereby acknowledged.
2. Since the commencement of the investigation in this Division by various Task Teams and the Directorate for Priority Crime Investigations, this Division has experienced a number of leakages of classified information to the media which has resulted in the exposure of intelligence assets and operational methodology of the Division.
3. Therefore this office is currently consulting the office of the National Commissioner on the request.

CONFIDENTIAL

De-classified as instructed by national Commissioner

[Signature]

[Signature]

0422394-2

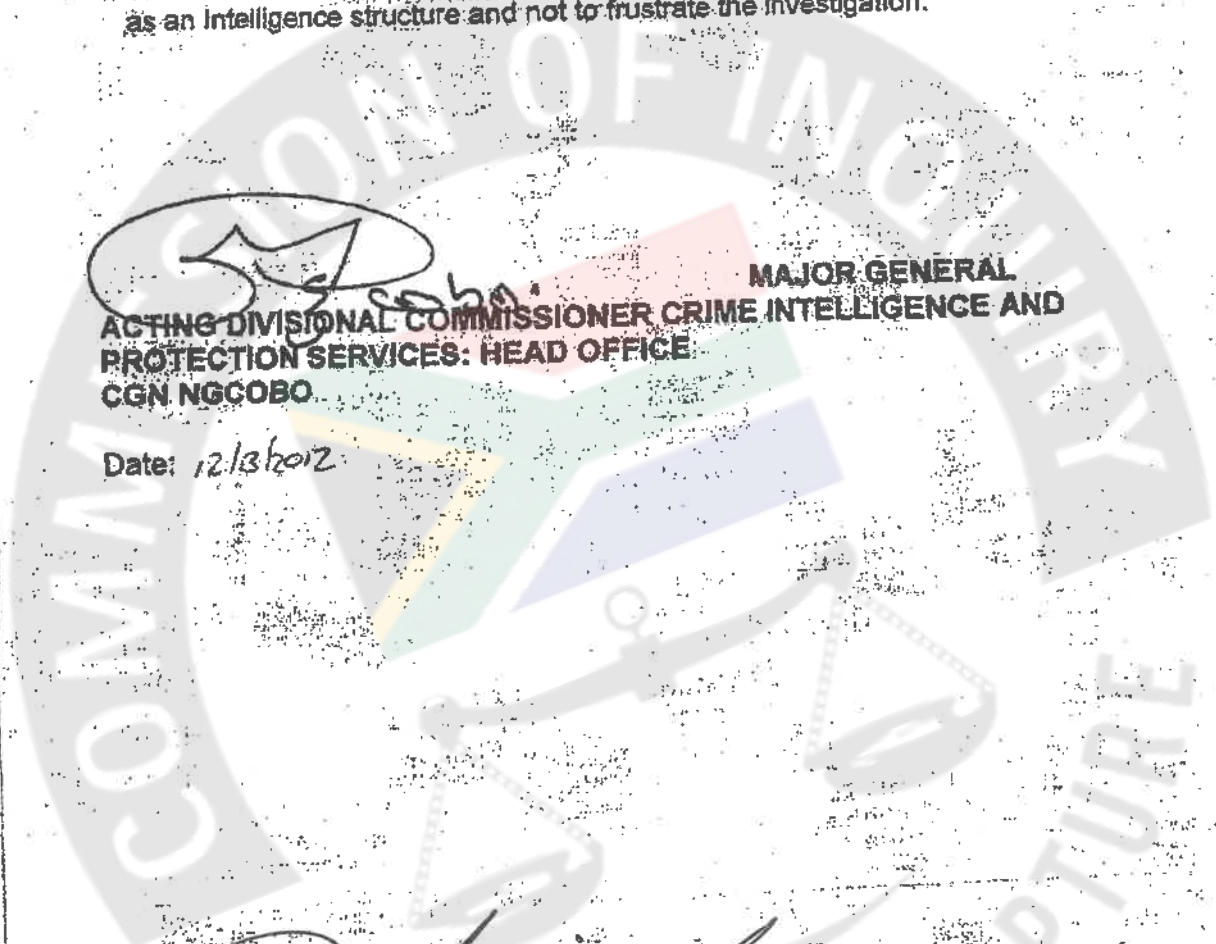
REQUEST FOR ASSISTANCE IN SECURING THE AVAILABILITY OF MEMBERS IN AN INVESTIGATION: SILVERTON CAS 155/07/2011 FRAUD AND THEFT AND LYTTTELTON CAS 432/11/2011 CORRUPTION, FRAUD AND THEFT

4. This decision has been taken to protect and maintain the credibility of Division as an Intelligence structure and not to frustrate the investigation.



**MAJOR GENERAL
ACTING DIVISIONAL COMMISSIONER CRIME INTELLIGENCE AND
PROTECTION SERVICES: HEAD OFFICE
CGN NGCOBO**

Date: 12/13/2012



*Declassified as instructed
of National
Commission*

CONFIDENTIAL

*Boiy
NA
0422897*



ANNEXURE KDR30



**SOUTH AFRICAN POLICE SERVICE****INFORMATION NOTE**

**TO: DEPUTY NATIONAL COMMISSIONER
LT/GENERAL A.DRAMAT
PRETORIA**

**FROM: COLONEL K.D.ROELOFSE
DPCI
WESTERN CAPE**

DATE: 2013-03-22

**RE: REQUEST FOR ASSISTANCE IN SECURING THE AVAILABILITY
OF MEMBERS IN AN INVESTIGATION: SILVERTON CAS
155/07/2011 (FRAUD AND THEFT) AND LITTELTON CAS
432/11/2011 (FRAUD, THEFT AND CORRUPTION)**

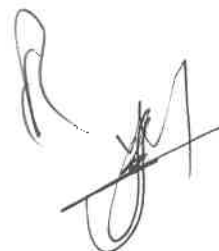
1. I have perused a letter dated 13 March 2013 by the acting Divisional Commissioner, Crime Intelligence and Protection Services, Major General Ngcobo. This letter is in response to a request by this office dated 07 March 2013 to interview certain members of Crime Intelligence (CI) with the view of obtaining affidavits from them.
2. As stated clearly in our correspondence the members mentioned are regarded as witnesses in a criminal matter. They were responsible for the handing over of exhibits to me as part of the criminal investigation.

3. Coupled with this request a further request was forwarded to the office of the National Commissioner to declassify certain documentation which is needed in the above mentioned criminal matters.
4. Having perused the letter from acting Divisional Commissioner, Crime Intelligence and Protection Services, Major General Ngcobo I am not certain exactly what he is alleging in respect of this investigation.
5. I cannot speak on behalf of any other person and/or task team. I can however state without any reservation that this office is not and was not responsible for any leakage to the media.
6. The documents received from Crime Intelligence are stored in a secure environment to which access is limited. The only other persons allowed access to the classified documents were members from the office of the Auditor General and the office of the Inspector General of Intelligence.
7. It is however important that one must keep in mind that when dealing with a criminal matter certain information will become public knowledge due to the nature of our criminal justice system. Once a matter is before court it is in the public domain and the media have access.
8. This would include ex-parte applications to obtain inter alia search and seizure warrants as a copy of such an application must be left with the Magistrate dealing with the matter. Such applications can therefore be accessed by outside parties. The affidavit attached to such an application is detailed and a complete background which led to the application itself will form part of the affidavit.
9. Apart from two (2) vehicles (as per Silverton Cas 155/07/2011), I am not aware of any other asset that has been "exposed". In terms of those vehicles we did inform the management of Crime Intelligence at the time to redeploy said vehicles prior to placing the matter on the court roll.
10. The problem with such vague allegations as stated in Major General Ngcobo's letter is that it could be used to conceal the fact that certain



members within Crime Intelligence do not want to assist due to their own agendas.

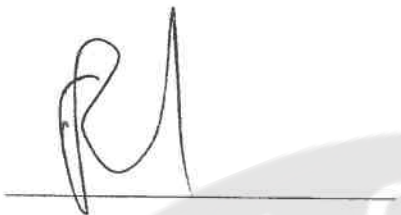
11. I cannot comment on the exposure of operational methodology as I do not know what specifically Major General Ngcobo is referring to.
12. The fact that the media is reporting on some of the issues that are currently under investigating is also a source of concern for us as it hampers the investigation and places unnecessary pressure on current and future witnesses.
13. I have stated on numerous occasions that we would like to conduct our investigation with the assistance of Crime Intelligence. I have submitted several written requests for documents that I need in the criminal matter. I have yet to receive said documents. I have not made an issue out of this but it would seem that the cooperation I seek to established came to nothing.
14. What is of further concern is that this specific issue (cooperation of witnesses within Crime Intelligence) was given as one of the reasons as to why Advocate Mwrebi (Head: Specialized commercial Crimes Court) stopped the investigation into Silverton Cas 155/07/2011. This was done after consultation with Major General Lazarus in the beginning of 2012. It is important to note that the majority of members I require worked with him during the relevant period under investigation.
15. In this light I would also like to state that it must be kept in mind that in term of section 192 of the Criminal Procedural Act, 51 of 1977 that the members I require to testify are both competent and compellable witnesses.
16. I would want to reiterate that we need the assistance of Crime Intelligence in this matter. I have always been in favour of keeping Crime Intelligence abreast of the situation. This would include their participation in the investigation to limit the exposure of assets and methodology. Without their assistance in this regard it is very difficult to ensure that assets and



methodology are not compromised. They have been given the opportunity to be part of the investigation but have yet to participate.

17. I hope you find this in order.

INFORMATION NOTE COMPILED BY COLONEL K.D.ROELOFSE
CELLULAR: 082 499 7958



CCIP- ARMOEDIGERDE

HAWKS

TO INTEGRATE YOUR PRIORITY CRIME INVESTIGATION



ANNEXURE KDR31



Specialised Commercial Crime Unit



The National Prosecuting Authority of South Africa
Igonyu Jikelele Labeshutshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

Tel. : (012) 401 0442
Fax. : (012) 322 9204
E-Mail: rviljoen@npa.gov.za
Enquiries: C.M. Viljoen

6 August 2013

PRETORIA

Tel: +27 12 401 0420
Fax: +27 12 322 9204

228 Visagie Street
Pretoria

P/Bag X297
Pretoria
0001
South Africa

www.npa.gov.za

Per Hand: Major-General Ngcobo

Head Office Crime Intelligence
Pretoria

Divisional Commissioner Major-General Ngcobo

Request: Declassification of documents and assistance with witness statements; Silverton Cas 155/07/2011.

Dear Sir

The members mentioned below are regarded as possible witnesses in this investigation and their involvement relates mainly to the role they played in the handling of exhibits.

WITNESSES:

NO	NAME	RANK
1	JG Furtsenbur 9	Lt-Colonel
2	[REDACTED]	[REDACTED]
3	P Naidoo	Colonel

It is necessary to stress the members mentioned above are not regarded as suspects and/or possible suspects. Their participation in this matter flows from the position they held at the time of the investigation and their testimony is regarded as formal in nature.

DECLASSIFICATION OF DOCUMENTS:

The documents mentioned below will be relied upon as evidence in this matter. It is therefore essential that said documents be declassified for the use thereof in a court of law.



- SR 3741 (documents relating to the procurement of vehicle)
- SR 3802 (documents relating to the procurement of vehicle)
- Claim number : 0507000934
- Claim number : 0507000935
- Claim number : 0507000936
- Claim number : 0507001123
- Policy document by National Commissioner JS Selebi, signed on the 27th of May in Pretoria at 03.32 hrs
- Utilization of SR vehicles: senior management: security intelligence: crime intelligence (reference 22/7/1 dated 2009/08/17 signed by Div.Comm.Mdluli)
- Use of official state vehicle by senior officials (mms and sms) reference SR 22/8/1 dated 2009/07/17 signed by Div. Comm. Mdluli

It is necessary to stress the members mentioned above are not regarded as suspects and/or possible suspects. Their participation in this matter flows from the position they held at the time of the investigation and their testimony is regarded as formal in nature.

Hope you find this in order.

Kind Regards



C.M. Viljoen
Senior State Advocate
SPECIALISED COMMERCIAL CRIME UNIT: PRETORIA

Guided by the Constitution, we in the National Prosecuting Authority ensure justice for the victims of crime by prosecuting without fear favour or prejudice and by working with our partners and the public to solve and prevent crime



ANNEXURE KDR32





SOUTH AFRICAN POLICE SERVICE
INFORMATION NOTE

**TO: HEAD: ANTI CORRUPTION TASK TEAM
BRIGADIER K MOODLEY
PRETORIA**

**TO: DEPUTY NATIONAL COMMISSIONER
LT/GENERAL A.DRAMAT
PRETORIA**

**FROM: COLONEL K.D.ROELOFSE
DPCI
WESTERN CAPE**

DATE: 2013-10-17

**RE: INVESTIGATIONS: LYTTTELTON CAS 432-11-2011 (FRAUD
AND/OR THEFT AND/OR CORRUPTION) AND SILVERTON CAS
155-07-2011 (FRAUD AND/OR THEFT AND/OR CORRUPTION);
DIVISIONAL COMMISSIONER MDLULI AND OTHERS.**

1. Meeting with Lieutenant General Dramat on 2013-10-17 refers.
2. Pursuant to our meeting this morning I am now, in writing, requesting your intervention and assistance with the following as describe below.
3. I am not going to address the background with respect to this investigation as you are well aware of it. You are also aware that I have asked for your assistance on numerous occasions in securing cooperation between

myself and Crime Intelligence with regards to this investigation. This you have provided in as far you could and I am grateful for the assistance. It would however seem that we are not successful in our endeavours.

4. I approached Major General Ngcobo, just after his appointment as the Acting Head: Crime Intelligence, with the view to secure his cooperation in this investigation. My first correspondence was via an email dated 2012-07-05. I did not receive any response to this email and subsequent requests to meet with Major General Ngcobo were also unsuccessful. I then forwarded a sms to him in late September 2012 which then resulted in a meeting dated 2012-10-02. During the meeting that took place he assured me that he will assist and appointed Brigadier Skosana as the liaison officer. I was asked to put any request in writing to ensure prompt cooperation. I duly complied and forwarded various requests to Brigadier Skosana. These requests pre-dated the appointment of Major General Ngcobo and were merely repeated. This has also been ignored.
5. On 2013-02-13 I again tried to secure the cooperation of Crime Intelligence by means of a letter in which I request their assistance in making available members in an attempt to obtain witness statements from them.
6. This request was ignored and it has led me to request your assistance in this matter. In this regard I requested your office to facilitate a written request addressed to Major General Ngcobo. This was done on 2013-03-07.
7. The response from Major General Ngcobo dated 2013-03-12 indicated that he will not make members available. He indicated that he has escalated the request to the office of the national Commissioner and that he currently in consultation with said office.
8. In response to this letter I provided you with a letter dated 2013-03-22 in which I again explained my position. I went further and addressed the concerns raised by major General Ngcobo.



9. I then requested that you facilitate a meeting between Major General Ngcobo, you and I. This meeting took place on 24 July 2013 at your office. During this meeting Major General Ngcobo indicated that he is finding it difficult to fulfil his mandate as he receives requests from this office to assist with the investigation and then receives communications from Lieutenant General Mdluli and Major General Lazarus urging him not to assist in the investigation.

10. Major General Ngcobo was informed by me that if I cannot secure his cooperation I have but two options open to me to pursue. This would entail approaching Judge Moosa in terms of his appointment to investigate matters relating to DPCI investigations and/or seek subpoenas via the courts to secure cooperation from members.

11. I however wish to avoid both and therefore request your assistance to facilitate my request directly to the National Commissioner. This situation cannot continue and needs to be resolved. If I escalate the matter I would have to furnish reasons and what steps I took to ensure the investigation continues.

12. At this point I can categorically state that I have not received any cooperation from Crime Intelligence since the re-employment of Major General Hankel late in 2011.

SOUTH AFRICAN POLICE SERVICE

HAWKS

DEPARTMENT FOR PROBABILITY CRIME INVESTIGATIONS



ANNEXURE KDR33



DPCI:Head

From: DPCI:Head
Sent: 09 March 2014 03:16 PM
To: Divisional Commissioner : Crime Intelligence
Cc: Zulu Bongiwe - Major General
Subject: REQUEST FOR DICLASSIFICATION OF DOCUMENTS AND ASSISTANCE WITH WITNESS STATEMENTS: SILVERTON CAS 155/07/2011
Attachments: Image (267).tif

Good afternoon General,

Kindly receive the attached request for your assistance from the DPCI.

Thank you

Pumla Mphothulo: Acting Staff officer
Office of the National Head: Directorate for Priority Crime Investigation
Promat Building, no 1 Cresswell Road, Silverton
South African Police Service
Tel: 012 846 4001
Fax: 012 846 4400
Fax to email: 086 9800197

HAWKS

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION



A handwritten signature in black ink, located in the bottom right corner of the page. The signature is cursive and appears to be the name of the sender, Pumla Mphothulo.

South African Police Service

Suid-Afrikaanse Polisiediens

Private Bag X1500, SILVERTON, 0127

Fax No: (012) 846 4400

My reference	: Silverton CAS 155/07/2011	THE NATIONAL HEAD
Enquiries	: Lt Gen Dramat	DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
Tel	: (012) 846 4001	PRETORIA
E-mail	: <u>dpci.head@saps.gov.za</u>	

The Acting Divisional Commissioner
Crime Intelligence and Protection Services
HEAD OFFICE

REQUEST FOR DECLASSIFICATION OF DOCUMENTS AND ASSISTANCE WITH WITNESS STATEMENTS: SILVERTON CAS 155/07/2011

1. The Directorate for Priority Crime Investigation (DPCI) is currently investigating the above case.
2. Enclosed is a request letter from Advocate R Viljoen from the National Prosecuting Authority, re Silverton CAS 155/07/2011.
3. Your assistance in this regard is appreciated.

Kind regards,



**NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
A DRAMAT**

**LIEUTENANT GENERAL
A DRAMAT**

Date: 2014-03-07



Crime Unit

The National Prosecuting Authority of South Africa
 Igqokele Loketsheleli loMzantsi Afrika
 Die Nasionale Vervolgingsagans van Suid-Afrika

Tel. : (012) 401 0442
 Fax. : (012) 322 9204
 E-Mail: rviljoen@npa.gov.za
 Enquiries: C.M. Viljoen

6 August 2013

PRETORIA

Tel: +27 12 401 0420
 Fax: +27 12 322 9204

228 Visagie Street
 Pretoria

P/Bag X297
 Pretoria
 0001
 South Africa

www.npa.gov.za

Per Hand: Major-General Ngcobo

Head Office Crime Intelligence
 Pretoria

Divisional Commissioner Major-General Ngcobo

Request: Declassification of documents and assistance with witness statements; Silverton Cas 155/07/2011.

Dear Sir

The members mentioned below are regarded as possible witnesses in this investigation and their involvement relates mainly to the role they played in the handling of exhibits.

WITNESSES:

NO	NAME	RANK
1	JG Furtzenbu 19	Lt-Colonel
2	[REDACTED]	[REDACTED]
3	P Naidoo	Colonel

It is necessary to stress the members mentioned above are not regarded as suspects and/or possible suspects. Their participation in this matter flows from the position they held at the time of the investigation and their testimony is regarded as formal in nature.

DECLASSIFICATION OF DOCUMENTS:

The documents mentioned below will be relied upon as evidence in this matter. It is therefore essential that said documents be declassified for the use thereof in a court of law.



ANNEXURE KDR34



DPCI:Head

From: DPCI:Head
Sent: 09 March 2014 03:18 PM
To: Divisional Commissioner : Crime Intelligence
Cc: Zulu Bongiwe - Major General
Subject: REQUEST FOR ASSISTANCE IN SECURING THE AVAILABILITY OF MEMBERS IN AN INVESTIGATION: SILVERTON CAS 155/07/2011 AND LYTTLETON 432/11/2011
Attachments: Image (268).tif

Good afternoon General,

Kindly receive the attached request for assistance from the DPCI.

Thank you

Pumla Mphothulo: Acting Staff officer
Office of the National Head: Directorate for Priority Crime Investigation
Promat Building, no 1 Cresswell Road, Silverton
South African Police Service
Tel: 012 846 4001
Fax: 012 846 4400
Fax to email: 086 9800197

HAWKS

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION



A handwritten signature in black ink is located in the bottom right corner of the page. The signature is stylized and appears to be the name of the sender, Pumla Mphothulo.

South African Police Service Suid-Afrikaanse Polisiediens

Private Bag X1560, Silverton, 0127

Fax No: (012) 846 4400

My reference: 28/102/2

THE NATIONAL HEAD

Enquiries: Brig Moodley

DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION

Tel: (012) 843 8848

SOUTH AFRICAN POLICE SERVICE

E-mail: dpci.head@saps.gov.za

The Acting Divisional Commissioner
Crime Intelligence and Protection Services
HEAD OFFICE

REQUEST FOR ASSISTANCE IN SECURING THE AVAILABILITY OF MEMBERS IN AN INVESTIGATION: SILVERTON CAS 155/07/2011 FRAUD & THEFT AND LYTTTELTON 432/11/2011 CORRUPTION, FRAUD & THEFT

1. The Directorate for Priority Crime Investigation (DPCI) is currently investigating the above cases.
2. In order to assist with the investigation, the DPCI is making a request to grant permission to interview members within the Crime Intelligence division with the view of obtaining affidavits from them.
3. This is due to the following reasons:
 - The members mentioned below are regarded as possible witnesses in this investigation and their involvement relates mainly to the role they played in the handling of exhibits.
 - Three (3) of the witnesses mentioned below will be interviewed on procedural aspects and their expertise in their various fields.
4. The suggested dates for interviews with regard to members are as follows:

NO	NAME	RANK	PERSAL	CELLPHONE	DATE
1	Riekert	Lt-Colonel	Unknown		11/03/2013
2	JG.Furstenburg	Lt-Colonel	Unknown		11/03/2013
3			Unknown		12/03/2013
4	M.Kitching	Colonel	Unknown		12/03/2013
5	R.Govender	Colonel	Unknown		13/03/2013
6	Grobbelaar	Colonel	Unknown		13/03/2013
7	JG Steyn	Brigadier	Unknown		14/03/2013
8			Unknown		14/03/2013
9	G.Mahwayi	W/Officer	Unknown		15/03/2013
10	A.Krishnadutt.	Colonel	Unknown		15/03/2013
11	N.Naidoo	Colonel	Unknown		18/03/2013
12	MO.Nemutanzhela	Brigadier	Unknown		18/03/2013

REQUEST FOR ASSISTANCE IN SECURING THE AVAILABILITY OF MEMBERS IN AN INVESTIGATION: SILVERTON CAS 155/07/2011 FRAUD & THEFT AND LYTTTELTON 432/11/2011 CORRUPTION, FRAUD & THEFT

5. Interviews with Head Office personnel shall be held at the Anti-Corruption Task team offices in Rentmeester Building, Pretoria, and all the interviews will commence at 09:00.
6. Due to all the various rumours and innuendo attributed to this investigation, I feel it is necessary to stress that the members mentioned above are not regarded as suspects and/or possible suspects. Their participation in this matter flows from the position they held at the time of the investigation and their testimony is regarded as formal in nature.

Kind regards,


**NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
A DRAMAT**

LIEUTENANT GENERAL

Date: 2014-03-07





ANNEXURE KDR35



DPCI:Head

From: DPCI:Head
Sent: 23 September 2014 04:12 PM
To: Zulu Bongiwe - Major General
Cc: Divisional Commissioner : Crime Intelligence
Subject: REQUEST FOR ASSISTANCE IN SECURING AVAILABILITY OF MEMBERS AND THE REQUEST TO DECLASSIFY OF DOCUMENTS AND ASSISTANCE WITH WITNESS STATEMENTS

Attachments: REQUEST FOR ASSISTANCE IN SECURING THE AVAILABILITY OF MEMBERS IN AN INVESTIGATION: SILVERTON CAS 155/07/2011 AND LYTTLETON 432/11/2011 ; REQUEST FOR DICLASSIFICATION OF DOCUMENTS AND ASSISTANCE WITH WITNESS STATEMENTS: SILVERTON CAS 155/07/2011; List of documents to be declassified - CI.tiff

Good afternoon General,

The attached previous correspondence which was previously sent to your office bear reference.

The investigation into the allegations regarding the applicable documents has been completed, however the aspect of obtaining of affidavits relating to the chain evidence by members is delaying the finalisation of the investigation.

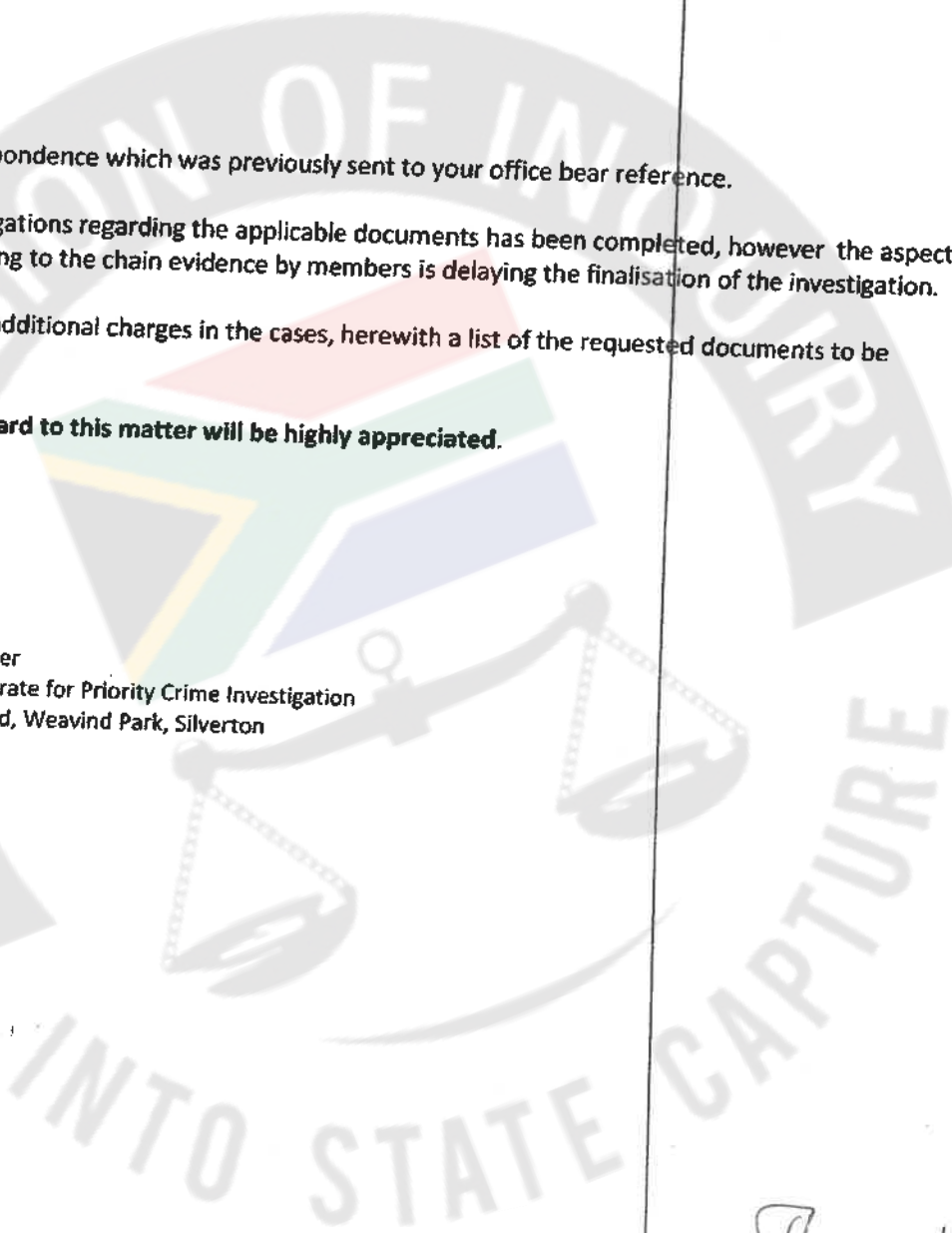
Due to the new evidence and additional charges in the cases, herewith a list of the requested documents to be declassified.


Your urgent response with regard to this matter will be highly appreciated.

Thank you

Pumla Mphothulo: Acting Staff officer
 Office of the National Head: Directorate for Priority Crime Investigation
 Promat Building, no 1 Cresswell Road, Weavind Park, Silverton
 South African Police Service
 Tel: 012 846 4001
 Fax: 012 846 4400
 Fax to email: 086 9800197

HAWKS



South African Police Service  Suid-Afrikaanse Polisie

Reference No: 155/072011	Page No: 10/10
My reference: Silverton CAS 155/072011	THE NATIONAL HEAD
Enclosure: Lt Gen Dramat	DIRECTORATE FOR PRIORITY CRIME SERVICES HEAD OFFICE
Tel: (012) 946 4001	PRETORIA
Email: gen.dramat@saps.gov.za	

The Acting Divisional Commissioner
Crime Intelligence and Protection Services
HEAD OFFICE

**REQUEST FOR DECLASSIFICATION OF DOCUMENTS AND ASSISTANCE WITH
WITNESS STATEMENTS: SILVERTON CAS 155/072011**

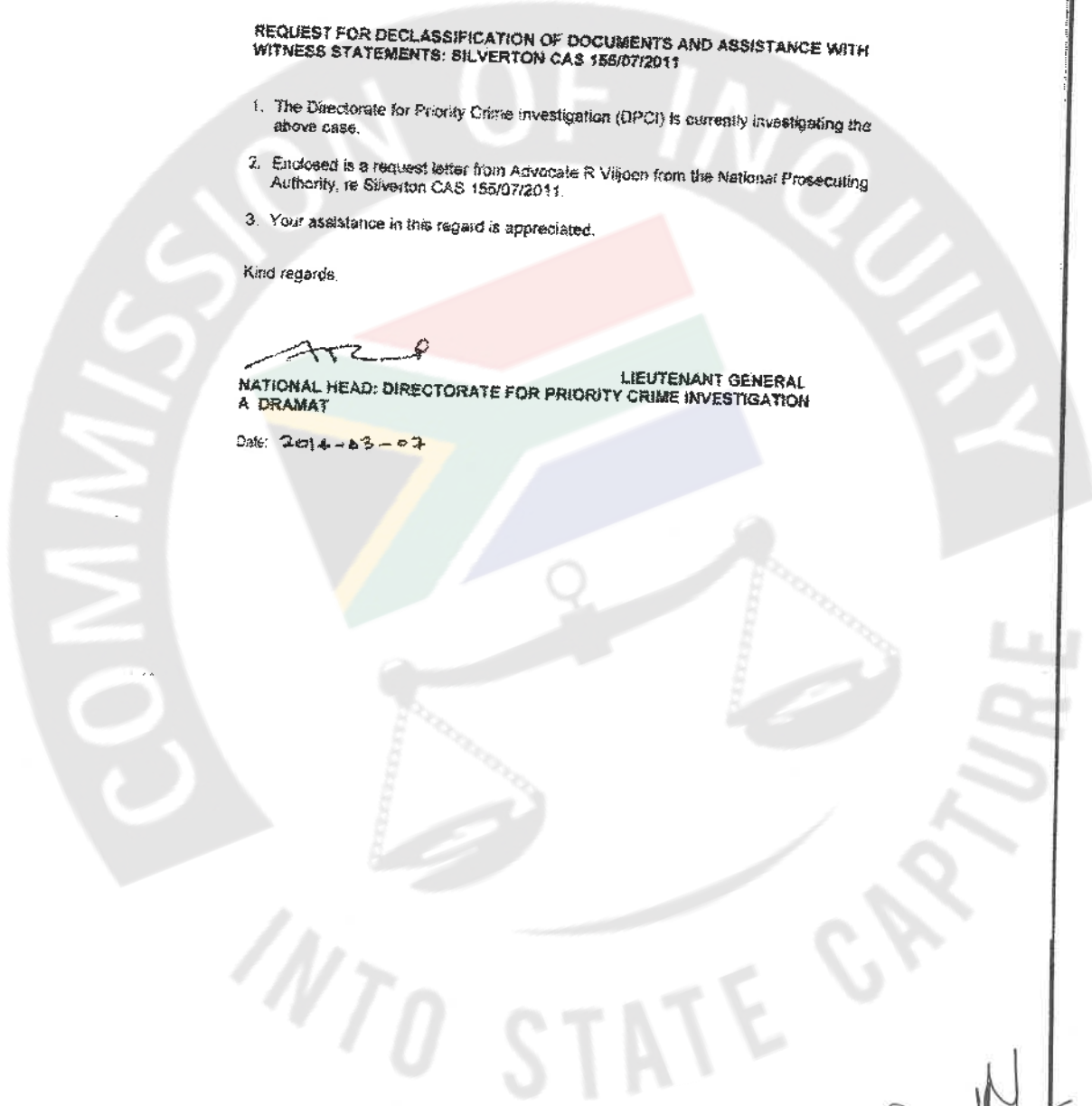
1. The Directorate for Priority Crime Investigation (DPCI) is currently investigating the above case.
2. Enclosed is a request letter from Advocate R Viljoen from the National Prosecuting Authority, re Silverton CAS 155/072011.
3. Your assistance in this regard is appreciated.

Kind regards,



**NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
A DRAMAT**

Date: 2014-03-07



ANNEXURE KDR36





South African Police Service

South African Police Service

Private Bag X 501, Pretoria

divcomm.ci@saps.org.za

YOUR REFERENCE

THE DIVISIONAL COMMISSIONER

MY REFERENCE **26/102/2**

CRIME INTELLIGENCE

ENQUIRIES **Major Gen (Dr) BM Zulu**

HEAD OFFICE

TEL: **Col Chibi**
(012) 360 1410

0001

FAX: **(012) 347 8661**

**The National Head
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

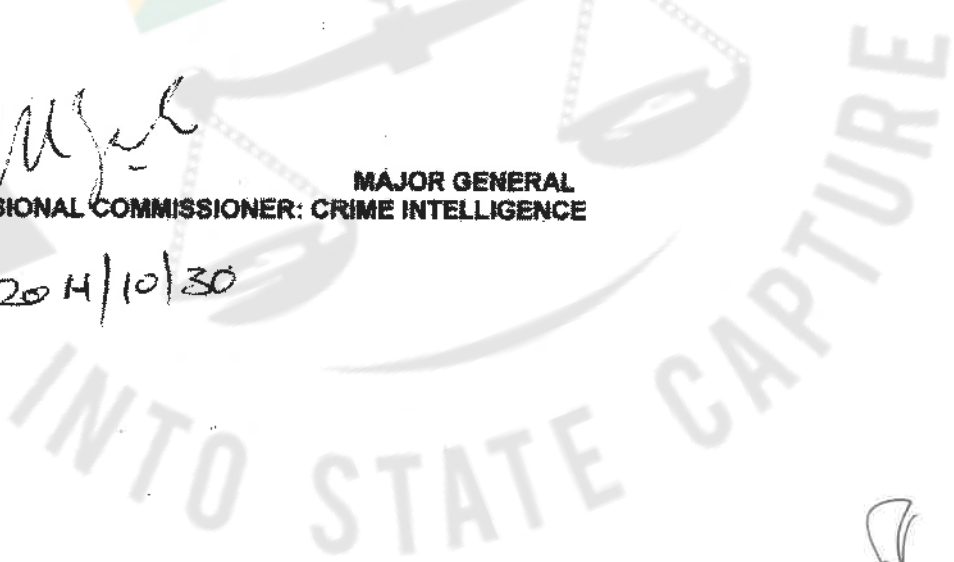
Att: Brigadier Moodley

**REQUEST FOR ASSISTANCE IN SECURING THE AVAILABILITY OF MEMBERS IN AN
INVESTIGATION: SILVERTON CAS 155/07/2011 FRAUD AND THEFT AND LYTTELTON
CAS 432/11/2011 CORRUPTION, FRAUD AND THEFT**

1. The above matter refers.
2. Please take note that it is not necessary for you to request permission from this office to conduct your criminal investigation in these matters.
3. During your investigation you must however guard against the unauthorized disclosure of classified information.
4. Hoping that you will find this in order.

**MAJOR GENERAL
ACTING DIVISIONAL COMMISSIONER: CRIME INTELLIGENCE
DR BM ZULU**

DATE: **2014/10/30**



ANNEXURE KDR37



South African Police Service*Suid-Afrikaanse Polisie*

Private Bag x1500, Silverton, 0127

Fax No: (012) 846 4400

My reference : COL. ROELOFSE
 Enquiries : (012) 843 0145
 Tel : 0824725857

ANTI-CORRUPTION TASK TEAM SECRETARIAT
 PRIORITY CRIME MANAGEMENT CENTRE
 DIRECTORATE FOR PRIORITY CRIME
 INVESTIGATION
 SILVERTON
 0127

23 January 2015

The Head: Division Crime Intelligence
 Crime Intelligence
 Pretoria

Attention: Brig Ntuli

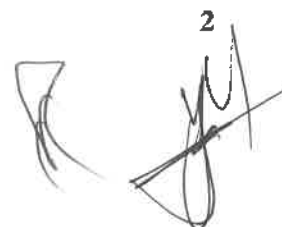
**APPLICATION FOR THE DECLASSIFICATION OF DOCUMENTS AND INTERVIEWING OF WITNESSES
 ATTACHED TO CRIME INTELLIGENCE: SILVERTON CAS 155-07-2011 AND LYTTTELTON CAS 342-11-
 2011**

1. My numerous previous correspondences on this matter refer.
2. I do not wish to elaborate on the history of this matter as it is common cause between the various parties suffice to say that Lieutenant General Zulu committed herself in writing to assist in this matter. In this regard I am attaching copies of letters by Lieutenant General A Dramat and Lieutenant General Zulu for your convenience.
3. Following the letter of Lieutenant General Zulu various interviews were held with witnesses that were converted into affidavits. Your cooperation in this regard is highly appreciated.
4. In the spirit of cooperation this office would therefore like to make use of this opportunity and provide you with detail of further assistance that is required.
5. This office is aware that the declassification of documents lies with either the author of a classified document or the National Commissioner of Police. For obvious reasons the authors

Page 1

of the various documents referred to in this letter cannot be ask to declassify same. An application in this regard would be forwarded to the Office of the National Commissioner of Police in due course.

6. However prior to such an application this office would appreciate your assistance in determining the impact the declassification of said documents would have, if any. The documentation in question relates to the acquisition of two (2) vehicles in 2010 and the subsequent claims that accompanied those vehicles. The second set of documents relates to travel claims submitted through the secret service account by certain from CI members.
7. In determining your assessment I need to stress that the reclassification of documents in terms of the Minimum Information Security Standard (Miss) document lays down a minimum standard for the handling of classified information in all government institutions, which states that security measures are not to be applied to cover up maladministration, corruption, criminal actions, or to protect individuals/officials involved in such cases.
8. Secondly, in terms of access to witnesses within Crime Intelligence this office would like to interview the following members namely Brigadier Steyn, Lieutenant Colonel M Nel and L Prinsloo.
9. To put the above-mentioned request into context it is important to state that the National Prosecuting Authority (NPA) are considering criminal charges with respect to the following events that relates directly to CI:
 - The trade-in by Lieutenant General RN Mdluli ("Mdluli") on 2010-05-31 of his personal vehicle, a 2009 BMW 730 D with registration number XWT 151 GP, for a 2010 BMW 330d Sedan with engine number 21537366 and a 2010 BMW 530d Sedan with engine number 23567507, in order to generate a discount to finance a shortfall on his finance contract with BMW finance, South Africa in the amount of R90 526.01.



- A trip to Singapore undertaken by Lieutenant General RN Mdluli from 2009-10-09 to 2009-10-16 where some of the expenses incurred were paid from the secret service account.
- A trip to China undertaken by Lieutenant General RN Mdluli and VL Mdluli between 2009-11-06 and 2009-11-14.
- A trip to Singapore undertaken by Lieutenant General RN Mdluli, Major General Lazarus, Colonel Barnard, Inspector G Mahwayi, Teresa Lyons, [REDACTED] and M Venter from 2009-11-21 to 2009-11-28.

10. In addition to the above the National Prosecuting Authority (NPA) are considering instituting criminal charges relating to the appointment of Lieutenant Colonel [REDACTED] [REDACTED] [REDACTED], [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]

11. In order for the NPA to make an informed decision they need access to the following documents:

- Applications to CI in terms of which the individuals were appointed if any (job application)
- Interviews prior to appointment held with the individuals that were appointed if any
- Appointment letters
- Any other information relating to the appointment of the above mentioned individuals not mentioned

12. The documents together with an assessment regarding the risk involved "surfacing" the members in question are needed for the NPA to make an informed decision regarding prosecution or not.

Your sincere

K. ROELOFSE

DECLASSIFICATION

- A17 – Biographical data for potential agents [REDACTED]
- A22 – Utilization of SR vehicles
- Auditor General Management Report year ending 31 March 2011

BMW

- EXHIBIT 6 - REMITTANCE ADVICE - SR 3741 (vehicle purchase file)
- EXHIBIT 47 - COPY OF CLAIM 2025
- EXHIBIT 48 - COPY OF CLAIM 2283
- EXHIBIT 49 - COPY OF CLAIM 2171
- EXHIBIT 50 - COPY OF CLAIM 2418
- EXHIBIT 51 - COPY OF CLAIM 2902
- EXHIBIT 52 - COPY OF CLAIM 2942
- EXHIBIT 53 - COPY OF CLAIM 3056
- EXHIBIT 54 - COPY OF CLAIM 3294
- EXHIBIT 14 - REMITTANCE ADVICE - SR 3802 (vehicle purchase file)
- EXHIBIT 22 - COPY OF CLAIM 10383
- EXHIBIT 108 - COPY OF CLAIM 2797
- EXHIBIT 109 - COPY OF CLAIM 2966
- EXHIBIT 110 - COPY OF CLAIM 2967
- EXHIBIT 111 - COPY OF CLAIM 3113
- EXHIBIT 112 - COPY OF CLAIM 3384
- EXHIBIT 136 - COPY OF CLAIM 10823
- EXHIBIT 137 - COPY OF CLAIM 10923
- EXHIBIT 138 - COPY OF CLAIM 10999
- EXHIBIT 139 - COPY OF CLAIM 11182
- EXHIBIT 140 - COPY OF CLAIM 11412
- EXHIBIT 141 – COPY OF CLAIM 11567

CR 4



CHINA

- EXHIBIT 1417: COPY OF CLAIM 936: CHINA TRIP: MDLULI
- EXHIBIT 1416: COPY OF CLAIM 934: CHINA TRIP: MDLULI

SINGAPORE

- EXHIBIT 4973 - COPY OF CLAIM 1123 - MDLULI'S FLIGHT TO CHINA
- CI SAPS POLICY AND DELEGATIONS
- EXHIBIT 348: COPY OF CLAIM 47758: TRAVELLERS RECORD SYSTEM
- EXHIBIT 1886: COPY OF CLAIM 1026: ACCOMMODATION VENTER
- EXHIBIT 376: COPY OF CLAIM 978: ACCOMMODATION NAIDOO
- EXHIBIT 1887: COPY OF CLAIM 1029: DAILY ALLOWENCE VENTER
- EXHIBIT 1422: COPY OF CLAIM 1045: DAILY ALLOWENCE NAIDOO
- EXHIBIT 4972 - COPY OF CLAIM 935 - MDLULI'S EXPENSES: SINGAPORE
- EXHIBIT 4973 - COPY OF CLAIM 1123 - MDLULI'S EXPENSES: SINGAPORE/CHINA
- EXHIBIT NUMBER 4971: CLAIM NUMBER 7744

Additional documentation required

The State is currently considering further charges relating to the alleged irregular appointment of the following individuals:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



The following documentation is required in this respect:

- Applications to CI in terms of which the individuals were appointed if any (job application)
- Interviews prior to appointment held with the individuals that were appointed if any
- Appointment letters
- Any other information relating to the appointment of the above mentioned individuals not mentioned



6


ANNEXURE KDR38



Office Outlook Web Access | Type here to search | This Folder | Address Book | Options | Log Off

Mail | Reply | Reply to All | Forward | Move | Delete | Junk | Close

SILVERTON CAS 155-07-2011 AND VOSLOORUS CAS 342-02-1999
 Roelofse Kobus - Colonel

Sent: 19 March 2015 15:39
To: Moodley Kubandran - Brigadier
Cc: Segabutla Mosale; Mclean M - Warrant Officer
Attachments: Progress report 20150318.doc (85 KB) [Open as Web Page]

Hi Brig

Draft memo regarding the above-mentioned. I have tried to draft the memo as if it comes from your office. Let me know if there are any changes to be made. I will ask Mark McLean to give annexure A, B and C to you as mentioned in the memo.

I would also like to make a formal request to brief Major General Nhlameza regarding this matter. He needs to understand the essence of the matter and that it is purely related to alleged criminal activities. One cannot continuously rehash the same issues over and over again.

Regards
 Kobus

Ps.
 Mosale, I do not know whether the Brigadier's email is still giving problems. Would you kindly make sure that he receives this email. Thank you for being the best go-between email station ever.

Connected to Microsoft Exchange



2015/04/29 11:10

ANNEXURE KDR39



South African Police Service



Suid-Afrikaanse Polisdiens

Private Bag	x1500, Silverton, 0127	Fax No:	(012) 846 4400
My reference	: COL. ROELOFSE <i>Brig. M. M. M. M.</i>	ANTI-CORRUPTION TASK TEAM SECRET	
Enquiries	: (012) 843 0145	PRIORITY CRIME MANAGEMENT CENTRE	
Tel	: 0824725657	DIRECTORATE FOR PRIORITY CRIME	
		INVESTIGATION	
		SILVERTON	
		0127	

03 February 2015

NATIONAL HEAD.

The Head: Division Crime Intelligence
 Crime Intelligence
 Pretoria

Attention: Brig Ntuli

APPLICATION FOR THE DECLASSIFICATION OF DOCUMENTS AND INTERVIEWING OF WITNESSES
ATTACHED TO CRIME INTELLIGENCE: SILVERTON CAS 155-07-2011 AND LYTTTELTON CAS 342-11-
2011

1. My ~~numerous~~ previous correspondences on this matter refer.
2. I do not wish to elaborate on the history of this matter as it is common cause between the various parties suffice to say that Lieutenant General Zulu committed herself in writing to assist in this matter. In this regard I am attaching copies of letters by Lieutenant General A Dramat and Lieutenant General Zulu for your convenience. (*ANNEXURE A1, A2*)
3. Following the letter of Lieutenant General Zulu various interviews were held with witnesses that were converted into affidavits. Your cooperation in this regard is highly appreciated.
4. In the spirit of cooperation this office would therefore like to make use of this opportunity and provide you with detail of further assistance that is required.
5. This office is aware that the declassification of documents lies with either the author of a classified document or the National Commissioner of Police. For obvious reasons the authors

Page 1

ASKED

of the various documents referred to in this letter cannot be ask to declassify same. An application in this regard would be forwarded to the Office of the National Commissioner of Police in due course.

6. However prior to such an application this office would appreciate your assistance in determining the impact the declassification of said documents would have, if any. The documentation in question relates to the acquisition of two (2) vehicles in 2010 and the subsequent claims that accompanied those vehicles. The second set of documents relates to travel claims submitted through the secret service account by certain ^{members} from CI members.
7. In determining your assessment I need to stress that the reclassification of documents in terms of the Minimum Information Security Standard (Miss) document lays down a minimum standard for the handling of classified information in all government institutions, which states that security measures are not to be applied to cover up maladministration, corruption, criminal actions, or to protect individuals/officials involved in such cases.
8. Secondly, in terms of access to witnesses within Crime Intelligence this office would like to interview the following members namely Brigadier Steyn, Lieutenant Colonel M Nel and L Prinsloo.
9. To put the above-mentioned request into context it is important to state that the National Prosecuting Authority (NPA) are considering criminal charges with respect to the following events that relates directly to CI:
 - The trade-in by Lieutenant General RN Mdluli ("Mdluli") on 2010-05-31 of his personal vehicle, a 2009 BMW 730 D with registration number XWT 151 GP, for a 2010 BMW 330d Sedan with engine number 21537366 and a 2010 BMW 530d Sedan with engine number 23567507, in order to generate a discount to finance a shortfall on his finance contract with BMW finance, South Africa in the amount of R90 526.01.

- A trip to Singapore undertaken by Lieutenant General RN Mdluli from 2009-10-09 to 2009-10-16 where some of the expenses incurred were paid from the secret service account.
- A trip to China undertaken by Lieutenant General RN Mdluli and VL Mdluli between 2009-11-06 and 2009-11-14.
- A trip to Singapore undertaken by Lieutenant General RN Mdluli, Major General Lazarus, Colonel Barnard, Inspector G Mahwayl, Teresa Lyons, DG Naidoo and M Venter from 2009-11-21 to 2009-11-28.

10. In addition to the above the National Prosecuting Authority (NPA) are considering instituting criminal charges relating to the appointment of Lieutenant Colonel [REDACTED] Warrant Officer [REDACTED] Sergeant [REDACTED] Captain [REDACTED] Colonel [REDACTED] and Lieutenant [REDACTED]

11. In order for the NPA to make an informed decision they need access to the following documents:

- Applications to CI in terms of which the individuals were appointed if any (job application)
- Interviews prior to appointment held with the individuals that were appointed if any
- Appointment letters
- Any other information relating to the appointment of the above mentioned individuals not mentioned

12. The documents together with an assessment regarding the risk involved "surfacing" the members in question are needed for the NPA to make an informed decision regarding prosecution or not.

Yours sincerely

K. ROELOFSE

3


DECLASSIFICATION

- A17 – Biographical data for potential agents [REDACTED]
- A22 – Utilization of SR vehicles
- Auditor General Management Report year ending 31 March 2011

BMW

- EXHIBIT 6 - REMITTANCE ADVICE - SR 3741 (vehicle purchase file)
- EXHIBIT 47 - COPY OF CLAIM 2025
- EXHIBIT 48 - COPY OF CLAIM 2283
- EXHIBIT 49 - COPY OF CLAIM 2171
- EXHIBIT 50 - COPY OF CLAIM 2418
- EXHIBIT 51 - COPY OF CLAIM 2902
- EXHIBIT 52 - COPY OF CLAIM 2942
- EXHIBIT 53 - COPY OF CLAIM 3056
- EXHIBIT 54 - COPY OF CLAIM 3294
- EXHIBIT 14 - REMITTANCE ADVICE - SR 3802 (vehicle purchase file)
- EXHIBIT 22 - COPY OF CLAIM 10383
- EXHIBIT 108 - COPY OF CLAIM 2797
- EXHIBIT 109 - COPY OF CLAIM 2966
- EXHIBIT 110 - COPY OF CLAIM 2967
- EXHIBIT 111 - COPY OF CLAIM 3113
- EXHIBIT 112 - COPY OF CLAIM 3384
- EXHIBIT 136 - COPY OF CLAIM 10823
- EXHIBIT 137 - COPY OF CLAIM 10923
- EXHIBIT 138 - COPY OF CLAIM 10999
- EXHIBIT 139 - COPY OF CLAIM 11182
- EXHIBIT 140 - COPY OF CLAIM 11412
- EXHIBIT 141 – COPY OF CLAIM 11567

CHINA

- EXHIBIT 1417: COPY OF CLAIM 936: CHINA TRIP: MDLULI
- EXHIBIT 1416: COPY OF CLAIM 934: CHINA TRIP: MDLULI

SINGAPORE

- EXHIBIT 4973 - COPY OF CLAIM 1123 - MDLULI'S FLIGHT TO CHINA
- CI SAPS POLICY AND DELEGATIONS
- EXHIBIT 348: COPY OF CLAIM 47758: TRAVELLERS RECORD SYSTEM
- EXHIBIT 1886: COPY OF CLAIM 1026: ACCOMMODATION VENTER
- EXHIBIT 376: COPY OF CLAIM 978: ACCOMMODATION NAIDOO
- EXHIBIT 1887: COPY OF CLAIM 1029: DAILY ALLOWENCE VENTER
- EXHIBIT 1422: COPY OF CLAIM 1045: DAILY ALLOWENCE NAIDOO
- EXHIBIT 4972 - COPY OF CLAIM 935 - MDLULI'S EXPENSES: SINGAPORE
- EXHIBIT 4973 - COPY OF CLAIM 1123 - MDLULI'S EXPENSES: SINGAPORE/CHINA
- EXHIBIT NUMBER 4971: CLAIM NUMBER 7744

Additional documentation required

The State is currently considering further charges relating to the alleged irregular appointment of the following individuals:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[Handwritten signature]

The following documentation is required in this respect:

- Applications to CI in terms of which the individuals were appointed if any (job application)
- Interviews prior to appointment held with the individuals that were appointed if any
- Appointment letters
- Any other information relating to the appointment of the above mentioned individuals not mentioned



A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of initials and a surname.

ANNEXURE KDR40



18(a)

Roelofse Kobus - Colonel

From: Spiess Irene
Sent: 14 May 2015 07:54
To: Roelofse Kobus - Colonel
Subject: FW: DOCUMENTS: BRIGADIER NF VAN GRAAN
Attachments: 0866207542-12052015-124052-0123937126.pdf

From: Human Irene
Sent: 12 May 2015 02:53 PM
To: Roelofse Kobus - Colonel
Subject: DOCUMENTS: BRIGADIER NF VAN GRAAN

Dear Colonel Roelofse

Herewith attached documentation as requested.

Regards

Irene Spiess

Senior Secretary for Brigadier NF van Graan:

Crime Operations, National Crime Investigations

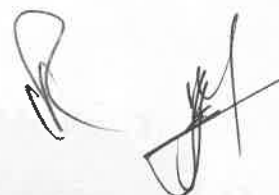
**Presidia Building 225
c/o Paul Kruger & Pretorius Street
3rd Floor
Room no: 338
PRETORIA
0001**

Tel: (012) 393 7050

Fax: (012) 293 7126

Fax to mail: 086 6207 542 / 086 6038 508

HumanIrene@saps.gov.za



South African Police Service



Suid-Afrikaanse Polisie

Private Bag x1500, Silverton, 0127

Fax No: (012) 846 4400

My reference : COL. ROELOFSE
Enquiries : (012) 843 0145
Tel : 0824725667

ANTI-CORRUPTION TASK TEAM SECRETARIAT
PRIORITY CRIME MANAGEMENT CENTRE
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION
SILVERTON
0127

23 January 2015

The Head: Counter Intelligence
Crime Intelligence
Pretoria

Attention: Brig Ntuli

APPLICATION FOR DECLASSIFICATION OF DOCUMENTS: SILVERTON CAS 155-07-2011

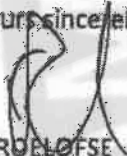
1. My numerous previous correspondences on this matter refer.
2. I do not wish to elaborate on the history of this matter as it is common cause between the various parties suffice to say that Lieutenant General Zulu committed herself in writing to assist in this matter. I attach a copy of her letter for your convenience.
3. I therefore again refer to my motivated request send to your office. For your convenience I have repeated the request below.
4. Reclassification of documents in terms of the Minimum Information Security Standard (Miss) document lays down a minimum standard for the handling of classified information in all government institutions, which states that security measures are not to be applied to cover up maladministration, corruption, criminal actions, or to protect individuals/officials involved in such cases.
5. According to chapter 4 (par.1.2) of the Miss document, the responsibility for the grading and re-grading of classified documents rests with the institution where the document originates from. This function rests with the author or head of the institution or his/her delegate.
6. It is requested that the National Commissioner declassify the following documents listed below in order to facilitate the use of these documents in open court, in the matter of State vs. RN Mdluli and HJ Barnard in respect of Silverton Case 155-07-2011 and Lyttelton CAS 432-11-2011.

Page 1

HNNK945 11

7. The documents in question were allegedly created to facilitate the committing of an offence/s and presented facts to internal auditors and the Auditor General which were not entirely accurate. Had they knew the true nature of the expenditure they would have been able to identify the offence/s.
8. The documents in question will also not endanger any current or past project and/or agents and only relates to the actual procurement of certain items. The declassification of the said documents might have a financial effect as it would mean the two (2) vehicles in question will not be suitable for covert work. The vehicles can however be utilised in any other capacity.
9. The author/s cannot be approached since some are implicated in this matter and as far as could be established, the authority to classify/de-classify documents has not been delegated to another official below the National Commissioner.
10. Should the National Commissioner approves, it is recommended that the word 'Declassified' be written on the front of every document, against a date stamp and the signature of the National Commissioner.
11. It is also recommended that these documents be declassified in light thereof that the accused who were employees of Crime Intelligence do not use the grounds of classified information as a line of defence in open court.
12. Attached please find a list of documents to be declassified the names of CI members who needs supply affidavits relating to chain of evidence.

Yours sincerely



COLONEL

K. RDELOFSE



ANNEXURE 'A'

DECLASSIFICATION

- A17 - Biographical data for potential agents - [REDACTED]
- A22 - Utilization of SR vehicles
- Auditor General Management Report year ending 31 March 2011

BMW

- EXHIBIT 6 - REMITTANCE ADVICE [REDACTED] (vehicle purchase file)
- EXHIBIT 47 - COPY OF CLAIM 2025
- EXHIBIT 48 - COPY OF CLAIM 2283
- EXHIBIT 49 - COPY OF CLAIM 2171
- EXHIBIT 50 - COPY OF CLAIM 2418
- EXHIBIT 51 - COPY OF CLAIM 2902
- EXHIBIT 52 - COPY OF CLAIM 2942
- EXHIBIT 53 - COPY OF CLAIM 3056
- EXHIBIT 54 - COPY OF CLAIM 3294
- EXHIBIT 14 - REMITTANCE ADVICE [REDACTED] (vehicle purchase file)
- EXHIBIT 22 - COPY OF CLAIM 10383
- EXHIBIT 108 - COPY OF CLAIM 2797
- EXHIBIT 109 - COPY OF CLAIM 2966
- EXHIBIT 110 - COPY OF CLAIM 2967
- EXHIBIT 111 - COPY OF CLAIM 3113
- EXHIBIT 112 - COPY OF CLAIM 3384
- EXHIBIT 136 - COPY OF CLAIM 10823
- EXHIBIT 137 - COPY OF CLAIM 10923
- EXHIBIT 138 - COPY OF CLAIM 10999
- EXHIBIT 139 - COPY OF CLAIM 11182
- EXHIBIT 140 - COPY OF CLAIM 11412
- EXHIBIT 141 - COPY OF CLAIM 11567

3

ANNEXURE "A"

CHINA

- EXHIBIT 1417: COPY OF CLAIM 936: CHINA TRIP: MDLULI
- EXHIBIT 1416: COPY OF CLAIM 934: CHINA TRIP: MDLULI

SINGAPORE

- EXHIBIT 4973 - COPY OF CLAIM 1123 - MDLULI'S FLIGHT TO CHINA
- CI SAPS POLICY AND DELEGATIONS
- EXHIBIT 348: COPY OF CLAIM 47758: TRAVELLERS RECORD SYSTEM
- EXHIBIT 1886: COPY OF CLAIM 1026: ACCOMMODATION VENTER
- EXHIBIT 376: COPY OF CLAIM 978: ACCOMMODATION NAIDOO
- EXHIBIT 1887: COPY OF CLAIM 1029: DAILY ALLOWENCE VENTER
- EXHIBIT 1422: COPY OF CLAIM 1045: DAILY ALLOWENCE NAIDOO
- EXHIBIT 4972 - COPY OF CLAIM 935 - MDLULI'S EXPENSES: SINGAPORE
- EXHIBIT 4973 - COPY OF CLAIM 1123 - MDLULI'S EXPENSES: SINGAPORE/CHINA
- EXHIBIT NUMBER 4971: CLAIM NUMBER 7744

Additional documentation required

The State is currently considering further charges relating to the alleged irregular appointment of the following individuals:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The following documentation is required in this respect:

- Applications to CI in terms of which the individuals were appointed if any (job application)
- Interviews prior to appointment held with the individuals that were appointed if any
- Appointment letters

4
[Signature]

ANNEXURE "A"

- Any other information relating to the appointment of the above mentioned individuals not mentioned

Affidavits from the following members:

- L Prinsloo
- Magda Nel
- Brigadier Steyn
- Colonel M Kizhing



ANNEXURE B

South African Police Service



South African Police Service

Private Bag X 301, Pretoria

divcomm.ci@saps.org.za

YOUR REFERENCE

THE DIVISIONAL COMMISSIONER

MY REFERENCE

26/10212

CRIME INTELLIGENCE

ENQUIRIES

Lt Gen (Dr) EM Zulu
Brig DD Chilli

HEAD OFFICE

TEL:

(012) 360 1410 / 1392

0001

FAX:

(012) 347 8661

The National Head
Directorate for Priority Crime Investigation
SOUTH AFRICAN POLICE SERVICE

APPLICATION FOR DECLASSIFICATION OF DOCUMENTS: SILVERTON GAS
155/07/2011

1. A letter dated the 23rd of January 2015 by Colonel Roelofse to the Head Counter Intelligence applying for the declassification of certain documents which were obtained from Division: Crime Intelligence has been noted.
2. Please take note that such a request must come from the Head of the Directorate for Priority Crime Investigation and should be directed to the Divisional Commissioner of Crime Intelligence.
3. Please take further note that the request for declassification must indicate how the documents came into the possession of the Directorate for Priority Crime Investigation.
4. Hoping that you will find this in order.

[Signature]
ACTING DIVISIONAL COMMISSIONER: CRIME INTELLIGENCE
DR EM ZULU

DATE: 2015/02/19

[Signature]

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatleak X301 PRETORIA 0001
Private Bag X301 PRETORIA 0001

Verwysing Reference	26/102/2
Navrae Enquiries	Lieutenant General (Dr) Zulu Brigadier Chili
Telefoon Telephone	012 360 1410 012 360 1392
Faksnommer Fax number	012 347 8661 012 347 1505

OFFICE OF THE DIVISIONAL COMMISSIONER
CRIME INTELLIGENCE
PRETORIA
0001

- A. The Executive Legal Officer
South African Police Service
Private Bag X94
PRETORIA
0001
Attention: Major General Jacobs
- B. The National Commissioner
South African Police Service
Private Bag X94
PRETORIA
0001

**REQUEST FOR A MEETING BETWEEN THE ACTING DIVISIONAL COMMISSIONER
OF CRIME INTELLIGENCE AND THE PROSECUTING AUTHORITY:
DECLASSIFICATION OF DOCUMENTS**

- A.
1. Your telephonic conversation with Major General Tshika requesting a meeting between the Acting Divisional Commissioner of Crime Intelligence and the Prosecuting Authority regarding the declassification of documents refers.
 2. Colonel Roelofse of the Directorate for Priority Crime Investigation wrote a letter to Crime Intelligence dated the 23rd of January 2015 applying for the declassification of documents relating to Silverton Cas 155/07/2011, see annexure "A".
 3. Crime Intelligence responded to this letter and advised that this request should come from the National Head of the Directorate for Priority Crime Investigation and that it should be directed to the Divisional Commissioner of Crime Intelligence, see annexure "B".
 4. The Directorate for Priority Crime Investigation was also requested to indicate in the request for declassification how these documents came into its possession.
 5. The officials investigating this matter however decided to approach your office and ignored the requests from Crime Intelligence.

REQUEST FOR A MEETING BETWEEN THE ACTING DIVISIONAL COMMISSIONER OF CRIME INTELLIGENCE AND THE PROSECUTING AUTHORITY: DECLASSIFICATION OF DOCUMENTS

- 6. These officials are well aware of what is expected of them to have the documents declassified by the National Commissioner of the South African Police Service.
- 7. Hoping that you will find this in order.

- B. 1. Copy for your information.

Respectfully

[Handwritten Signature]
 ACTING DIVISIONAL COMMISSIONER: CRIME INTELLIGENCE
 DR BM ZULU

LIEUTENANT GENERAL

Date: 2015/05/05

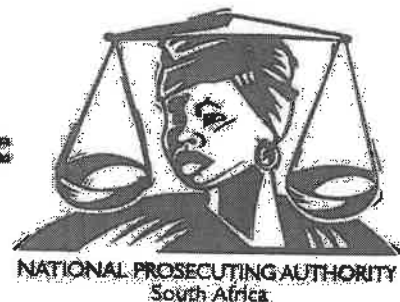


[Handwritten Signature]

ANNEXURE KDR41



URGENT
Office of the
National Director of Public
Prosecutions



The National Commissioner of Police
 South African Police Service

PRETORIA

0001

Victoria & Griffiths
 Mxenge Building
 123 Westlake Avenue
 Weavind Park
 Silverton

P/Bag X752
 Pretoria
 0001

Tel: (012) 845 - 6000
 Fax: (012) 804 - 9529
 www.npa.gov.za

Dear Ms. Phiyega

**THE STATE versus RICHARD NAGGIE MDLULI AND HEINE
 JOHANNES BARNARD**

**SPECIALISED COMMERCIAL CRIME COURT CASE
 NUMBER: 111/00137/2011**

**REQUEST FOR THE DECLASSIFICATION OF DOCUMENTS:
 SILVERTON CAS 155/07/2001**

1. I approach you in the spirit of section 41(1)(h) of the
 Constitution of the Republic of South Africa, 1996, which
 provides as follows:

*"All spheres of government and all organs of state within
 each sphere must... co-operate with one another in mutual
 trust and good faith by -*

- (i) fostering friendly relations;*
- (ii) assisting and supporting one another;*
- (iii) informing one another of, and consulting one
 another on, matters of common interest;*
- (iv) co-ordinating their actions and legislation with one
 another;*
- (v) adhering to agreed procedures; and*

Justice in our society so that people can live in freedom and security.



(vi) *avoiding legal proceedings against one another.*"

2. The above-mentioned case was reinstated on the Specialised Commercial Crime Court roll in Pretoria on 1 April 2015. This is in accordance with the order of the Supreme Court of Appeal in National Director of Public Prosecutions and Others v Freedom Under Law 2014 (4) SA 298 (SCA). The case has been postponed to 20 May 2015, which is a provisional date.
3. The accused are to stand trial on several criminal charges, including fraud, theft, contravention of section 6 of the Prevention of Organised Crime Act 121 of 1998 (acquisition, possession or use of proceeds of unlawful activities), offences in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004, and defeating or obstructing the administration of justice.
4. These charges pertain *inter alia* to the following events that relate directly to the Crime Intelligence Division (CI) of the South African Police Service:
 - 4.1 The trade-in by Lieutenant General RN Mdluli on 2010-05-31 of his personal vehicle, a 2009 BMW 730 D with registration number XWT 151 GP, on the purchase of a new BMW 330d Sedan and a new BMW 530d Sedan by CI in order to generate a discount and trading assistance to finance a shortfall on his personal finance contract with BMW finance, South Africa in the amount of R90,526.01.
 - 4.2 A trip to Singapore undertaken by Lieutenant General RN Mdluli from 2009-10-09 to 2009-10-16, where personal expenses incurred were paid from the secret service account.

- 4.3 A trip to China undertaken by Lieutenant General RN Mdluli and VL Mdluli between 2009-11-06 and 2009-11-14, where personal expenses incurred were paid from the secret service account.
- 4.4 A trip to Singapore undertaken by Lieutenant General RN Mdluli, Major General Lazarus, Colonel Barnard, Inspector G Mahwayi, Teresa Lyons, DG Naidoo and M Venter from 2009-11-21 to 2009-11-28, where personal expenses incurred were paid from the secret service account.
- 4.5 The holding of a private interest by Lieutenant General RN Mdluli in lease agreements entered into with a front company of CI.
5. In proving the above-mentioned charges, the prosecution at trial intends relying *inter alia* on the documents mentioned in Annexure "A" hereto as evidence in the case. These documents form part of the case docket: Silverton CAS 155/07/2001.
6. The documents have been classified by CI seemingly in terms of Chapter 4 of the Minimum Information Security Standards document (MISS), approved by Cabinet on 4 December 1996.
7. The investigating officer of the case, Colonel KD Roelofse of the Directorate for Priority Crimes Investigations – Commercial Crimes Unit (DPCI), has access to the documents in his capacity as investigating officer and due to the fact that he has top secret security clearance.



8. If necessary, the prosecution will endeavour to formally tender the classified documents as evidence at trial *in camera* in terms of section 153(1) of the Criminal Procedure Act 51 of 1977, that is if the trial court before whom the criminal proceedings are pending deems it in the interests of the security of the State or of good order that such should take place behind closed doors.
9. Nevertheless, the defence of the accused has indicated that, in preparing for trial, they require a copy of all such documents which have been classified, before the trial commences. However, by reason thereof that the defence does not have security clearance to be in lawful possession of the documents concerned, the defence is not authorised to be furnished with a copy of the documents unless the documents are reclassified, i.e. declassified.
10. It is my understanding that there is no reasonable risk that the declassification and disclosure for official purposes might constitute a breach of State secrets, methods of police investigation, and the identity of informers. The accused were either the authors and/or had access to these documents in the execution of their duties as police officials. The NPA supports, in terms of Shabalala and Others v Attorney-General of Transvaal and Another 1995 (2) SACR 761 (CC), the request of the accused for access to documents in the police docket and it is submitted that this request cannot be denied merely on the grounds that such contents are classified.
11. In terms of para 1.4.2 under Chapter 4 of the MISS document, classified documents can only be reclassified upon oral or written authorisation from the author, the head of the institution concerned or his or her delegate(s). Such



authorisation must also be indicated on the relevant document when it is reclassified.

12. The previous prosecutor, Ms. CM Viljoen, sent a letter dated 6 August 2013 to Major-General Ngcobo, the then Divisional Commissioner of Crime Intelligence, requesting the declassification of the documents concerned. On 17 October 2013, the investigating officer of the case, Colonel Roelofse, submitted a memorandum to Lieutenant-General A Dramat, wherein he was informed that there had been no response to the letter dated 6 August 2013 from Ms. Viljoen for the declassification of the documents. Colonel Roelofse accordingly requested in the memorandum that the request for declassification be escalated to the Office of the National Commissioner. On 9 March 2014, the request for declassification from Ms. Viljoen was again submitted by Lieutenant General Dramat to the then Acting Divisional Commissioner of Crime Intelligence, Major-General Bongwiwe Zulu. On 23 September 2014, Colonel Roelofse again requested Lieutenant General Dramat to approach Major-General Zulu for the declassification. This was done per an e-mail communication of the same date by Lieutenant General Dramat to Major-General Zulu. A letter dated 30 October 2014 was received from Major-General Zulu where it was stated that it is not necessary for the Directorate for Priority Crime Investigation to request permission from her office to conduct their criminal investigation in the case, but cautioned that they must however guard against the unauthorized disclosure of classified information.

13. On 23 January 2015, the investigating officer of the case, Colonel Roelofse, submitted a file to Brigadier Ntuli of Counter Intelligence at Crime Intelligence, containing copies of the cover pages of each document that needs to be

declassified. In the accompanying letter by Colonel Roelofse for declassification, it was intimated that the documents need to be declassified by the National Commissioner, but that before your office is approached, a risk assessment must be conducted pertaining to the possible impact of the declassification of the said documents.

14. On 14 May 2015, Colonel Roelofse received a copy of a letter dated 19 February 2015 which was addressed by the Acting Divisional Commissioner of Crime Intelligence, Lieutenant General Zulu, to the National Head of the Directorate for Priority Crime Investigation. It is stated therein that the contents of Colonel Roelofse's letter dated 23 January 2015, as aforesaid, are noted, but that the request for declassification of the documents "must come from the Head of the Directorate for Priority Crime Investigation and should be directed to the Divisional Commissioner of Crime Intelligence." It was further stated that such request for declassification "must indicate how the documents came into the possession of the Directorate for Priority Crime Investigation."
15. Moreover, on 1 April 2015, Colonel Roelofse submitted a memorandum to Brigadier Moodley, Acting Head of Serious Corruption at the Directorate for Priority Crime Investigation, wherein a request was again lodged for declassification of the documents together with a setting out of the history pertaining to all previous attempts and correspondence sent for declassification. Brigadier Moodley has not received any feedback thereon.
16. It is clear from the afore-going that neither the investigating officer nor the prosecution is any closer to reaching a suitable resolution on the declassification of the documents.



17. It needs further to be mentioned, that for obvious reasons, the authors of the various documents referred to in this letter cannot be approached to declassify same.
18. In the circumstances and to enable the accused to prepare for trial, I'm requesting your urgent intervention in the declassification of the relevant documentation as listed in Annexure "A" hereto.
19. It ought, moreover, to be pertinently considered that the following note is emphasised in para 3.4 under Chapter 2 of the MISS document:
- "Security measures are not intended and should not be applied to cover up maladministration, corruption, criminal actions, etc, or to protect individuals/officials involved in such cases."*
20. Kindly take note that a copy of the classified documents would need to be provided to the defence by no later than the next court appearance date, namely 20 May 2015.
21. I would thus appreciate it if you could advise me as a matter of urgency as to the decision taken on the above-mentioned request for declassification.
22. The investigating officer, Colonel Roelofse, can provide access to the relevant official delegated to declassify the documents as per Annexure "A".

Yours faithfully,

Mr Mxolisi Nxasana

National Director of Public Prosecutions

Date: 14/05/2015



A handwritten signature in black ink is located in the bottom right corner of the page. The signature is stylized and appears to be written in a cursive or semi-cursive script.

Annexure "A"

DECLASSIFICATION

- A17 – Biographical data for potential agent [REDACTED]
- A22 – Utilization of SR vehicles
- Auditor General Management Report year ending 31 March 2011

BMW

- EXHIBIT 6 - REMITTANCE ADVICE – A00 2446 / SR 3741 (vehicle purchase file)
- EXHIBIT 47 - CLAIM 0507002025
- EXHIBIT 48 - CLAIM 0507002283
- EXHIBIT 49 - CLAIM 0507002171
- EXHIBIT 50 - CLAIM 0507002418
- EXHIBIT 51 - CLAIM 0507002902
- EXHIBIT 52 - CLAIM 0507002942
- EXHIBIT 53 - CLAIM 0507003056
- EXHIBIT 54 - CLAIM 0507003294
- EXHIBIT 14 - REMITTANCE ADVICE – A002381 / SR 3802 (vehicle purchase file)
- EXHIBIT 22 - CLAIM 0014010383
- EXHIBIT 108 - CLAIM 0507002797
- EXHIBIT 109 - CLAIM 0507002966
- EXHIBIT 110 - CLAIM 0507002967
- EXHIBIT 111 - CLAIM 0507003113
- EXHIBIT 112 - CLAIM 0507003384
- EXHIBIT 136 - CLAIM 0507010823
- EXHIBIT 136 - CLAIM 0507007824
- EXHIBIT 136 - CLAIM 0507007844
- EXHIBIT 137 - CLAIM 0587010923
- EXHIBIT 137 - CLAIM 0587007892
- EXHIBIT 137 - CLAIM 0587007987



- EXHIBIT 138 - CLAIM 0587010999
- EXHIBIT 138 - CLAIM 0587007987
- EXHIBIT 139 - CLAIM 0587011182
- EXHIBIT 139 - CLAIM 0587008089
- EXHIBIT 139 - CLAIM 0587008141
- EXHIBIT 140 - CLAIM 0587011412
- EXHIBIT 140 - CLAIM 0587008185
- EXHIBIT 140 - CLAIM 0587008284
- EXHIBIT 140 - CLAIM 0587008271
- EXHIBIT 141 - CLAIM 0587011567
- EXHIBIT 141 - CLAIM 0587008350
- EXHIBIT 141 - CLAIM 0587008404

CHINA

- EXHIBIT 1417 - CLAIM 0507000936
- EXHIBIT 1416 - CLAIM 0507000934
- EXHIBIT 4972 - CLAIM 0507000935

SINGAPORE

- EXHIBIT 4973 - CLAIM 0507001123
- CI-SAPS POLICY AND DELEGATIONS AS SIGNED BY COMMISSIONER J SELEBI
- EXHIBIT 348 - CLAIM 0014047758
- EXHIBIT 1886: CLAIM 0507001026
- EXHIBIT 376: CLAIM 0507000978
- EXHIBIT 1887: CLAIM 0507001029
- EXHIBIT 1422: CLAIM 0507001045
- EXHIBIT 4973 - CLAIM 0507001123





[Handwritten signature]

RENTALS

- SR 563692
- SR 572047

Additional documentation requested by the Investigating Officer

The State is also prosecuting on further charges relating to the alleged irregular appointment of the following individuals:

- SA 86
- PA 35
- SA 90
- SA 79
- SA 78
- SA 92
- SA 80

The following documentation was requested in this respect:

- Applications to CI in terms of which the individuals were appointed if any (job application)
- Interviews prior to appointment held with the individuals that were appointed if any
- Appointment letters
- Any other information relating to the appointment of the above mentioned individuals not mentioned

Declassification of all the aforementioned documents relating to SA 86, PA35, SA 90, SA 79, SA 78, SA 92 AND SA 80 is requested

All advances submitted by DG Naidoo during the month of May 2010 were requested by the Investigating Officer. The declassification of same is requested

4


ANNEXURE KDR42



South African Police Service  Suid-Afrikaanse Polisiediens

Private Bag X1500, SILVERTON, 0127

Fax No: (012) 846 4400

Your reference : 26/18/2 THE NATIONAL HEAD
 Enquiries : Maj. Gen B. M Ntlemeza DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
 Telephone no : 012 846 4323 SOUTH AFRICAN POLICE SERVICE
 E-mail : dpciheadj@saps.gov.za

The National Commissioner
 South African Police Service
 P/Bag X 97
PRETORIA

**DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155/07/2011
 (FRAUD, THEFT AND/OR CORRUPTION) AND LYTTTELTON CAS
 432/11/2011(FRAUD, THEFT AND/OR CORRUPTION)**

1. Please see attached report investigator Colonel K Roelofse regarding above mentioned declassification of classified documents.

Kind regards,

Original Signed MAJOR GENERAL
ACTING HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
B. M NTLEMEZA

Date: 2015/06/09



South African Police Service*Suid-Afrikaanse Polisie*

Private Bag x1500, Silverton, 0127

Fax No: (012) 843 0170

My reference : HEAD:ANTI CORRUPTION INVESTIGATION
 Enquiries : BRIG K MOODLEY DIRECTORATE FOR PRIORITY CRIME
 (012) 843 8833 INVESTIGATION
 Tel : 082 778 0418 SILVERTON
 0127

NATIONAL HEAD

DIRECTORATE FOR PRIORITY CRIME

INVESTIGATION

SILVERTON

0127

DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011 (FRAUD, THEFT AND/OR CORRUPTION) AND LYTTTELTON CAS 432-11-2011 (FRAUD, THEFT AND/OR CORRUPTION)

1. Please see attached report from investigator Colonel K Roelofse regarding above mentioned declassification of classified documents.

BRIGADIER

K MOODLEY: ACTING HEAD ANTI CORRUPTION INVESTIGATION

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

DATE: 2015/06/08

South African Police Service*Suid-Afrikaanse Polisie*

Private Bag x1500, Silverton, 0127

Fax No: (012) 846 4400

My reference :
 Enquiries : COL. ROELOFSE
 (012) 843 0145
 Tel : 0824725657

INVESTIGATOR: ANTI-CORRUPTION TASK TEAM
 DIRECTORATE FOR PRIORITY CRIME
 INVESTIGATION
 SILVERTON
 0127

08 June 2015

ACTING HEAD: SERIOUS CORRUPTION
 DIRECTORATE FOR PRIORITY CRIME
 INVESTIGATION
 SILVERTON
 0127

DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011 (FRAUD, THEFT AND/OR CORRUPTION) AND LYTTTELTON CAS 432-11-2011 (FRAUD, THEFT AND/OR CORRUPTION)

1. Our previous correspondence regarding Silverton CAS 155-07-2011 and Lyttelton CAS 432-11-2011 refers.
2. On 18 March 2011 a request was received from Deputy National Commissioner, Lieutenant General A Dramat that Colonel KD Roelofse and Lieutenant Colonel P Viljoen must avail themselves to assist in an investigation in Gauteng that was conducted by Major General S Sibiyi. Vosloorus CAS 340/02/1999 refers.
3. During a briefing session attended by Lieutenant General M Petros, Major General Z Matakata and Major General S Sibiyi, Colonel KD Roelofse and Lieutenant Colonel P Viljoen on 21 March 2011 it came to light that a murder investigation was conducted in which a

~~CONFIDENTIAL~~

DE-CLASSIFIED
 ON 2019-04-03

Page 1


 COLONEL
 K D ROELOFSE

~~CONFIDENTIAL~~

Lieutenant General Mdluli and three (3) other persons were implicated. It was also stated that the then investigation team, under the command of Major General S Sibiya, were threatened and were unable to continue with the said investigation. Therefore an independent investigative team was needed to proceed with the investigation.

4. This meeting resulted in Colonel KD Roelofse and Lieutenant Colonel P Viljoen being requested to continue with the said investigation.
5. On 31 March 2011 Lieutenant General Richard Naggie Mdluli was arrested at Boksburg Magistrate Court for murder as well as other charges that range from intimidation, kidnapping, assault with the intent to cause grievous bodily harm and defeating the ends of justice. The court hearing (bail) against Lieutenant General Mdluli started on 07 April 2011. After the conclusion of the bail hearing on 20 April 2011 in which Lieutenant General Mdluli and his co-accused were granted bail, the case was postponed to 30 September 2011 for further investigation and the determination of a High Court date. On 30 September 2011 this matter was postponed to 10 April 2012 for trial in the High Court, Johannesburg.
6. This matter was provisionally withdrawn on 14 February 2012 in the High Court, Johannesburg. This was done after a decision was taken by the National Prosecuting Authority (NPA) to withdraw the matter and institute a formal inquest. The formal inquest was held at Boksburg Magistrates Court on 10 April 2012.
7. At the time of his arrest Lieutenant General Mdluli was the national head of Crime Intelligence within the SAPS.
8. After the arrest of Lieutenant General Mdluli, some members of Crime Intelligence (CI) came forward with information regarding alleged crimes committed by members working at Crime

~~CONFIDENTIAL~~

DECLASSIFIED

2


COLONEL
K D ROELOFSE

~~CONFIDENTIAL~~

intelligence. On **18 April 2011** an information note was compiled regarding some of the information obtained during the murder investigation.

9. The information received as referred to above together with the investigation in terms of Vosloorus CAS 340-02-1999 (Murder and various other charges) resulted in an application and granting of a search and seizure warrant in respect of 14 Impala Street, Ruwari, Brackenfell.
10. Lieutenant General Mdluli is the registered owner of said dwelling. Various items were seized during the search and seizure on **15 April 2011** which included inter alia a 2010 BMW 330d Sedan with engine number 21537366 and registration number CF165 358. This vehicle was registered in the name of T Lyons with identity number 810108 0215 088.
11. A BMW delivery note dated 31 May 2010 and a Leo Haese Pretoria New Vehicle Tax Invoice (10002368) dated 02 June 2010 was found inside the above-mentioned vehicle.
12. The Leo Haese Pretoria New Vehicle Tax Invoice (10002368) dated 02 June 2010 indicated that a 2009 BMW 730 D with registration number XWT 151 GP was traded-inn as part of the purchase package of the 2010 BMW 330d Sedan with engine number 21537366 and registration number CF165 358.
13. On further investigation it was established that the 2010 BMW 330d Sedan with engine number 21537366 and registration number CF165 358 was indeed bought with State funds via UTE for CI.
14. This office was able to establish that Lieutenant General Mdluli was the registered owner of the 2009 BMW 730 D with registration number XWT 151 GP as indicated on the Leo Haese Pretoria New Vehicle Tax Invoice (10002368) dated 02 June 2010.

~~CONFIDENTIAL~~

DECLASSIFIED

3

COLONEL
K D ROELOFSE


~~CONFIDENTIAL~~

15. The investigating team made contact with Leo Haese Pretoria and was referred to Visser who was the salesperson that dealt with this transaction. Visser confirmed to that the discount that was generated through the sale of the 2010 BMW 330d Sedan with engine number 21537366 and registration number CF165 358 had been used to cover the shortfall on the trade-in value of the 2009 BMW 730 D with registration number XWT 151 GP.
16. In this regard a further case docket was opened as per Silverton CAS 155/07/2011 (Fraud and/or Corruption).
17. Lieutenant General A Dramat was kept abreast of the investigation via information notes.
18. As stated earlier in this document the investigative team was also approached by various individuals regarding alleged irregularities by senior members within CI. Due to the fact that the investigation into the murder neared completion more time was available to concentrate on the reports that were received from these individuals.
19. In this respect the investigative team was able to compile a file regarding some of the allegations made by members working at CI. This file was handed to Lieutenant General Dramat on **17 August 2011** with the request that it be handed to the Office of the Inspector General of Intelligence. A memo dated **11 August 2011** was attached to the file. This was handed to the Inspector General of Intelligence personally on **18 August 2011**.
20. Application for warrants of arrest and search warrants in respect of the case docket, Silverton CAS 155/07/2011 was prepared and handed to the National Prosecuting Authority (NPA) on **02 September 2011** for decision. On the same day the case docket was handed to the relevant senior magistrate at Pretoria Magistrates Court for consideration and decision.
21. The warrants of arrest and search warrants were duly signed by the relevant senior magistrate on **06 September 2011**. The said warrants of arrest and search warrants were obtained from the Pretoria Magistrates Court on the same date.

~~CONFIDENTIAL~~

DECLASSIFIED

4


COLONEL
K D ROELOFSE

~~CONFIDENTIAL~~

22. Due to the sensitivity of the matter Lieutenant General Dramat was requested to intervene and facilitate compliance with the said search and seizure warrants without compromising the covert premises in question. This intervention took place and a meeting was held on **13 September 2011** which was attended by Lieutenant General Dramat, Lieutenant General Lebeya, Major General Sibiya, Major General Matshatshe, Colonel KD Roelofse and Lieutenant Colonel P Viljoen. An agreement was reached as how best to comply with the search and seizure warrant.
23. Major General Hankel was appointed to facilitate the process on behalf of Crime Intelligence. Brigadier F van Graan from Legal Services, Head Office was requested to monitor the process.
24. On **16 September 2011** the National Director of Public Prosecution Adv Semilane requested to be briefed on this matter due to a request by the Office of the Inspector General of Intelligence. The nature of the request is not known. Advocate Willie Hofmeyer and the Director of Public Prosecution of North Gauteng, Advocate S Mzinyathi was briefed by Advocate C Smith (prosecutor in this matter) and Colonel KD Roelofse, which in turn briefed Advocate Semilane.
25. After the briefing session the National Director of Public Prosecution, Adv Semilane stated that the warrants of arrests and search warrants was duly obtained and had to be executed by the South African Police Services.
26. On **20 September 2011** the investigative team were informed by Lieutenant General Dramat that he was informed in writing by the Office of the Inspector General of Intelligence that they will not be attending to the report given to them on **18 August 2011** as a report of this nature can only be referred to through the office of the Minister of Police.
27. On **20 September 2011** Lieutenant General Mdluli was brought before the Specialized Commercial Crimes Court, Pretoria. Lieutenant General Mdluli was granted bail and the case was postponed to **14 December 2011**.

~~CONFIDENTIAL~~

DECLASSIFIED

5



COLONEL
K D ROELOFSE

~~CONFIDENTIAL~~


28. On **21 September 2011** Major General Hankel facilitated the process as agreed upon earlier and various documents, as requested, were handed over to the investigation team. To limit any exposure only Colonel K Roelofse accompanied Major General Hankel to the covert premises in question. Brigadier F van Graan not only assisted in this process but accompanied Major General Hankel and Colonel K Roelofse.
29. On **04 October 2011** Colonel Barnard was also arrested and brought before the Specialized Commercial Crimes Court, Pretoria in respect of Silverton CAS 155/07/2011. Barnard was granted bail and the case was also postponed to **14 December 2011**.
30. On **18 October 2011** a member of CI was interviewed regarding certain of the above mentioned allegations as well as allegations made in the various information notes supplied to Lieutenant General Dramat. He was placed within the Witness Protection Program on **21 October 2011**.
31. The witness was made available to Major General Hankel due to the serious nature of the allegations made by him. As part of the investigation certain documentation was requested that the witness referred to in his affidavit. These documents on face value seem to corroborate the allegations made by the witness.
32. On **24 October 2011** the Office of the Inspector General of Intelligence requested copies of the search and seizure warrants issued in respect of case docket, Silverton CAS 155/07/2011. This was supplied to them on that day.
33. The then senior management at Crime Intelligence was kept abreast of the investigation at all times through Major General M Hankel. In this regard Major General Matshatshe under his reference Silverton CAS 155/07/2011 dated **28 October 2011** and C26/102/1/164 dated **29 October 2011** gave permission to Major General M Hankel to do what he deems necessary to assist with the investigation. Major General M Hankel has submitted an affidavit in this matter wherein he inter alia highlights exactly this particular issue.

~~CONFIDENTIAL~~

DECLASSIFIED

6




COLONEL
K D ROELOFSE

~~CONFIDENTIAL~~


34. On 30 October 2011 Colonel K Roelofse was approached by Major General Sibiya regarding the investigation into this matter and more specifically the investigation into the alleged criminal abuse of the secret service account. Major General Sibiya informed Colonel K Roelofse that he had been taken to task by certain Generals within the SAPS, by allowing this investigation to continue beyond the scope of the murder investigation.
35. On 31 October 2011 Major General Hankel, Major General De Kock, Major General Jacobs and Brigadier F Van Graan went to see the Inspector General of Intelligence as to inform her of the situation developing at CI relating to the Secret Service Account.
36. On 02 November 2011 a meeting was held with the representatives of the Auditor Generals' Office. They were briefed regarding the allegations of criminal conduct. They were also requested to form part of the investigation in respect of these allegations. The investigative team was informed on 15 November 2011 that they (Auditor General) do not wish to be part of the investigation.
37. The information provided by the witness as mentioned above and other evidence discovered during the investigation were relayed to the Office of the Inspector General of Intelligence, on their request, via a report dated 03 November 2011. The report with the heading "Report to the Inspector General of Intelligence on the matter of alleged mal-administration and crimes committed in respect of the Secret Services Account (SAA) of the Crime Intelligence Division of the South African Police Service" was signed by Major General Hankel and Major General De Kock on 03 November 2011. The report was handed to the Office of the Inspector General of Intelligence on 03 November 2011 as well as to the Acting National Commissioner of the South African Police Service, Lieutenant General Mkhwanazi.
38. On 15 November 2011 a further case docket was opened at Lyttelton SAPS. Lyttelton CAS 432/11/2011 refers. This case docket was opened in respect of the investigation done regarding the allegations made by the member from CI who was admitted into the Witness Protection Program.

~~CONFIDENTIAL~~

DECLASSIFIED

7




COLONEL
K D ROELOFSE

~~CONFIDENTIAL~~

39. On 06 December 2011 the investigation team was informed that the matter against Lieutenant General Mdluli and Colonel Barnard was to be withdrawn. No reason was given for the withdrawal.
40. On 08 December 2011 a meeting was held between Advocate Louw, Advocate Breytenbach, Advocate Smith, Major General Jacobs and Brigadier van Graan regarding the decision made by Advocate L Mwrebi.
41. On the same date Advocate Breytenbach, Advocate S Mzinyathi and Brigadier van Graan went to the Office of the Inspector General of Intelligence in respect of the memorandum by Advocate L Mwrebi dated 04 December 2011. A meeting with Advocate J Govender, legal adviser to the Inspector General, took place to seek clarity regarding the role the Office of the Inspector General of Intelligence in respect of this investigation. During this meeting Advocate J Govender again reiterated that the Office of the Inspector General of Intelligence is not mandated to conduct criminal investigations.
42. On 14 December 2011 the matter was provisionally withdrawn against Lieutenant General Mdluli and Barnard in the Specialized Commercial Crimes Court, Pretoria.
43. Colonel K Roelofse spoke to Advocate J Govender on 10 January 2012 in which she reiterated and confirmed the position of the Inspector General of Intelligence. She further added that the SAPS must make a formal request to the Inspector General of Intelligence regarding assistance in this matter. She also added that Advocate L Mwrebi did not consult with the Office of the Inspector General of Intelligence prior to him withdrawing the matter against Lieutenant General Mdluli and Colonel H Barnard.
44. On 12 January 2012 Colonel K Roelofse also spoke to Carl Dibetso from the Office of the Inspector General. He advised that the Inspector General of Intelligence does not have the capacity and/or the mandate to investigate criminal matters. The responsibility to investigate crime still lies with the SAPS. He also advised that the SAPS, through the office of the Acting

~~CONFIDENTIAL~~

DECLASSIFIED

8



 COLONEL
 K D ROELOFSE

~~CONFIDENTIAL~~

National Commissioner of the SAPS, Lieutenant General Mkwanaasi, must make a formal request to the Inspector General of Intelligence regarding assistance in this matter.

45. Also on 12 January 2012 Colonel Roelofse met with Brigadier van Graan and advised him of Govender and Dibetso's viewpoint on this matter. Brigadier van Graan was requested to draft such a request in order to get clarity on the situation.
46. On 25 January 2012 the Acting National Commissioner of the SAPS, Lieutenant General Mkwanaasi, requested a meeting regarding the investigation into the alleged criminal conduct of certain members of CI. Lieutenant General Mkwanaasi was informed of the above-mentioned request emanating from the Office of the Inspector General of Intelligence. A decision was taken that such a formal request will be forwarded to the Office of the Inspector General of Intelligence via the office of Lieutenant General Mkwanaasi.
47. It was further agreed upon that the investigation regarding Silverton CAS 155/07/2011 and Lyttelton CAS 432/11/2011 would continue. Lieutenant General Mkwanaasi however did not want to the investigation to be discussed with the NPA and he indicated his objection to involving the NPA in the matter.
48. On 13 February 2012 Colonel KD Roelofse was informed by Lieutenant General A Dramat to immediately halt the investigations in respect of Silverton CAS 155/07/2011 and Lyttelton CAS 432/11/2011. Lieutenant General Mkwanaasi gave this instruction to Lieutenant General A Dramat on 08 February 2012. Colonel K Roelofse was further instructed not to hand over the relevant case dockets to the NPA.
49. On 27 February 2012 Lieutenant General Mkwanaasi had a meeting with the Inspector General of Intelligence regarding these matters. Lieutenant General A Dramat was not requested to attend the meeting and no feedback had been received regarding the outcome of this meeting.

~~CONFIDENTIAL~~

DECLASSIFIED

9



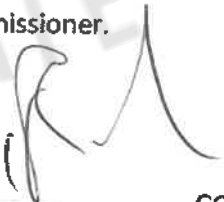
COLONEL
K D ROELOFSE

~~CONFIDENTIAL~~

50. On 19 March 2012 the Inspector General of Intelligence informed Lieutenant General Mkwanaasi that the "mandate of the IG does not extend to criminal investigations which are court driven and neither can the IG assist the police in conducting criminal investigations. The mandate of criminal investigation rest solely with the police".
51. Thereafter the criminal investigation into these matters continued.
52. The request for the declassification of certain classified documents flows from the abovementioned investigation.
53. The documents in question were allegedly created to facilitate the committing of offences and presented facts to internal auditors and the Auditor General which were not accurate. Had the South African Police Service and the Auditor General knew the true nature of the expenditure they would have been able to identify the offences.
54. The documents in question will also not endanger any current or past project and/or agents and only relates to the actual procurement of certain items apart from the agents specifically refer to below. The declassification of the said documents might have a small financial effect as it would mean the two (2) vehicles in question will not be suitable for covert work. The vehicles can however be utilised in any other capacity.
55. It is clear from the breakdown below that the classified documents mentioned indicate alleged personal gain to the accused via the secret service account. As such no current and/or past project could be compromised.
56. The author/s cannot be approached since some are implicated in this matter. Others are witnesses in this matter. It would therefore also not be advisable to request same from them. As far as could be established, the authority to classify/de-classify documents has not been delegated to another official below the National Commissioner.

~~CONFIDENTIAL~~

DECLASSIFIED


 COLONEL
 K D ROELOFSE

10



~~CONFIDENTIAL~~

57. It is also recommended that these documents be declassified in light thereof that the accused who were employees of Crime Intelligence do not use that fact as a ground for the dismissal of some of the charges against them.
58. In determining your assessment we need to stress that the reclassification of documents in terms of the Minimum Information Security Standard (Miss) document lays down a minimum standard for the handling of classified information in all government institutions, which states that security measures are not to be applied to cover up maladministration, corruption, criminal actions, or to protect individuals/officials involved in such cases.
59. To put the above-mentioned request into context it is important to state that the National Prosecuting Authority (NPA) have instituted criminal charges with respect to the following events that relates directly to CI:
- The trade-in by Lieutenant General RN Mdluli ("Mdluli") on 2010-05-31 of his personal vehicle, a 2009 BMW 730 D with registration number XWT 151 GP, for a 2010 BMW 330d Sedan with engine number 21537366 and a 2010 BMW 530d Sedan with engine number 23567507, in order to generate a discount to finance a shortfall on his finance contract with BMW finance, South Africa in the amount of R90 526.01
 - A trip to Singapore undertaken by Lieutenant General RN Mdluli from 2009-10-09 to 2009-10-16 where some of the expenses incurred were paid from the secret service account
 - A trip to China undertaken by Lieutenant General RN Mdluli and VL Mdluli between 2009-11-06 and 2009-11-14
 - A trip to Singapore undertaken by Lieutenant General RN Mdluli, Major General Lazarus, Colonel Barnard, Inspector G Mahwayi, Teresa Lyons, DG Naidoo and M Venter from 2009-11-21 to 2009-11-28
 - Rental of SR 563692 and SR 572047

~~CONFIDENTIAL~~

DECLASSIFIED


COLONEL
K D ROELOFSE

~~CONFIDENTIAL~~

60. The following documents of which the originals (except the CI policy document, T Lyons biographical data and utilisation of SR vehicles) are in the possession of the investigating officer and needs to be declassified in this regard:

CLAIM NUMBER/ ORDER NUMBER	CLAIM AMOUNT	MOTIVATION RECORDED ON CLAIM FORM	ALLEGATION OF ACTUAL EXPENSES AS SUPPORTED VIA AFFIDAVITS UNDER OATH
SR 3741 A00 2446 (2010 BMW 330d)	R 487, 313.00	"Vehicle will be utilized by members on operational protector, which is a specifically designed to address the threat of religious extremism and human trafficking and the application of counter terrorism techniques and methodology. The motivation is dated 21 June 2010 and submitted by V Singh.	Lieutenant General RN Mdluli traded in his personal vehicle, a 2009 BMW 730 D with registration number XWT 151 GP on a 2010 BMW 330d and a 2010 BMW 530d, in order to generate a discount to finance a shortfall on his finance contract with BMW finance, South Africa in the amount of R90 526.01. This vehicle was also never used as per the application submitted for the purchase thereof. The application is also dated after the purchase was completed. This transaction was also never declared to the SAPS and/or the Auditor General.
SR 3741 0507002025 0507002283 0507002171 0507002418 0507002902 0507002942 0507003056 0507003294		Expenses in respect of SR 3741 that relates the running cost of said vehicle (fuel, registration, toll fees)	
SR 3802 A00 2446 (2010 BMW 530d)	R 706, 150.00	"Application is hereby requested for the procurement of a BMW 5 series for the Divisional Commissioner's office. The vehicle will be solely used by this office for movement of the Divisional Commissioner within Gauteng Region". Document is not	Lieutenant General RN Mdluli traded in his personal vehicle, a 2009 BMW 730 D with registration number XWT 151 GP on a 2010 BMW 330d and a 2010 BMW 530d, in order to generate a discount to finance a shortfall on his finance contract with BMW finance, South Africa in the amount of R90 526.01.

~~CONFIDENTIAL~~

DECLASSIFIED

12



K D ROELOFSE COLONEL

~~CONFIDENTIAL~~

		dated.	This vehicle was delivered in September 2011 and in March 2012 Lieutenant General RN Mdluli stopped utilising this vehicle. This transaction was also never declared to the SAPS and/or the Auditor General.
SR 3802 0014010383 0507002797 0507002966 0507002967 0507003113 0507003384 0507010823 0507007824 0507007844 0587010923 0587007892 0587007987 0587010999 0587007987 0587011182 0587008039 0587008141 0587011412 0587008185 0587008284 0587008271 0587011567 0587008350 0587008404		Expenses in respect of SR 3802 that relates the running cost of said vehicle (fuel, registration, toll fees)	
0507000935	R 21,099.66	"Expense for Divisional Commissioner Mdluli's journey abroad Singapore. Visit was for Legend Building visiting foreign law enforcement".	The receipts attached to the claim relate to inter alia the purchase of clothing, electronic equipment, luggage, jewellery and other personal items. It is clear from the claim that none of the items mentioned was recorded in the CI asset register and is of a private nature. An additional claim, claim 11244 through the "open account" was also submitted by Lieutenant General Mdluli regarding his expenses on this trip.

~~CONFIDENTIAL~~

Declassified

13

R J

COLONEL
K D ROELOFSE

~~CONFIDENTIAL~~

0507000934	R 43,411.00	"Funds utilised to pay for air ticket for Div Comm Mdluli who travelled to China to establish links with law enforcement agency as well as contact person".	It is alleged that Lieutenant General Mdluli, together with his wife, V Mdluli, visited their daughter in China. Lieutenant General Mdluli was on leave at the time of this visit. No approval from either the National Commissioner of Police and/or Minister was found. It is also alleged that the funds to pay for the expenses of V Mdluli was provided by a CI service provider.
0507000936	R 10,000.00	"Funds utilised by Div Comm Mdluli for entertainment and Legend Building while visiting foreign law enforcement agency and contact persons".	It is alleged that Lieutenant General Mdluli, together with his wife, V Mdluli, visited their daughter in China. Lieutenant General Mdluli was on leave at the time of this visit. No approval from either the National Commissioner of Police and/or Minister was found. It is also alleged that the funds to pay for the expenses of V Mdluli was provided by a CI service provider. The funds were in actual fact used to buy clothing and one item of electronic equipment.
0014047758	R 69,567.00	"The above amount was used for Legend Building"	Lieutenant General Mdluli and three others obtained authorization from the National Commissioner of Police and Minister to travel abroad. It is alleged that T Lyons, the then girlfriend of Lieutenant General Mdluli, accompanied the group as a "contact person". This was funded through the secret services account. Even though the Auditor General queried the expense the relationship between Lyons and Lieutenant General Mdluli was never disclosed. Naldoo in an affidavit denies that there was a legitimate reason for Col M Venter, Lyons and himself to accompany this group as they had no role to play.
0507000978	R 22,365.60	"Funds utilised for accommodation, entertainment and gifts while undertaking	Lieutenant General Mdluli and three others obtained authorization from the National Commissioner of Police

~~CONFIDENTIAL~~

DECLASSIFIED

14

R J


 COLONEL
 K D ROELOFSE

~~CONFIDENTIAL~~

		official trip to Singapore to purchase electronic equipment".	and Minister to travel abroad. It is alleged that Lt Col DG Naidoo accompanied the group as part of legend building. Naidoo in an affidavit denies that there was a legitimate reason for Col M Venter, Lyons and himself to accompany this group as they had no role to play.
0507001026	R 17,343.05	"Accommodation expenditure for the Stanford in relation to visit to Singapore from Friday 20/11 - Sunday 29/11. In terms of Divisional Commissioner's request for Legend Building purposes".	Lieutenant General Mdluli and three others obtained authorization from the National Commissioner of Police and Minister to travel abroad. It is alleged that Col M Venter accompanied the group as part of legend building. Naidoo in an affidavit denies that there was a legitimate reason for Col M Venter, Lyons and himself to accompany this group as they had no role to play.
0507001029	R 4,000.00	"Daily allowance paid for trip to Singapore that has been covered by the SSA for the purpose of Legend Building. The normal allowance is 133 Singapore dollars p.d. With the exchange rate averaging P5-65 per Singapore dollar the total amount for 9 days amounts to R6763. Considering some of the expenditure has been covered an amount of R4000 has been authorised by the CFO"	Lieutenant General Mdluli and three others obtained authorization from the National Commissioner of Police and Minister to travel abroad. It is alleged that Col M Venter accompanied the group as part of legend building. Naidoo in an affidavit denies that there was a legitimate reason for Col M Venter, Lyons and himself to accompany this group as they had no role to play.
0507001045	R 4,000.00	"Daily allowance paid for trip to Singapore that has been covered by the SSA for the purpose of Legend Building. The normal allowance is 133 Singapore dollars p.d. With the exchange rate averaging P5-65 per Singapore dollar the total amount for 9 days amounts to R6763. Considering some of the expenditure has been covered an amount of R4000 has been authorised by the CFO"	Lieutenant General Mdluli and three others obtained authorization from the National Commissioner of Police and Minister to travel abroad. It is alleged that Col M Venter accompanied the group as part of legend building. Naidoo in an affidavit denies that there was a legitimate reason for Col M Venter, Lyons and himself to accompany this group as they had no role to play.

~~CONFIDENTIAL~~

DECLASSIFIED

15



 COLONEL
 K D ROELOFSE

~~CONFIDENTIAL~~

0507001123	R 15,809.50	"For the Divisional Commissioner Mdluli's journey abroad. Visit was for Legend Building in China and Singapore"	This claim relates to two visits abroad by Lieutenant General Mdluli (Singapore and China). The claim submitted is in respect of accommodation (China), entertainment (China), meals (China) and clothing (Singapore).
SR 563692	R 19,950.00 x 12 months	"APPLICATION FOR AUTHORITY TO ENTER INTO A LEASE AGREEMENT: FACILITY MANAGEMENT: COVERT INTELLIGENCESUPPORT Application is hereby made for new premises which will be utilised by the Divisional Commissioner, Crime Intelligence for strategic planning with the Component Heads".	It is alleged that the premises was also used by Lieutenant General Mdluli in his personal capacity in that he utilised the residence to reside in and also to accommodate his family (wife and children) from Cape Town when they visited him in Johannesburg.
SR 572047	R 9,690.00 x 36 months	"APPLICATION FOR AUTHORITY TO ENTER INTO A LEASE AGREEMENT: COVERT OPERATIONAL INTELLIGENCE EAST RAND: WESTERN CAPE The premises will be utilised by intelligence operatives in accordance with their current legend, the said premises will be utilised as an office to conduct all administrative work, i.e. writing up informant files completing of SR forms for monies, as well as the planning of all undercover operations".	Lieutenant General Mdluli is the registered owner of this property. This fact was not disclosed to the SAPS or the Auditor General. It is further alleged that the premises was never used as stated in the application. This property is part of a duplex facility and therefore not conducive to the intended purpose. The property was furthermore furnished by CI as a residence and not an office. It is further alleged that the property was in fact only used twice as accommodation.
		Copy of CI SAPS POLICY AND DELEGATIONS AS SIGNED BY COMMISSIONER J SELEBI	The document will be used to show how the accused in this matter allowed expenditure contrary to CI's own policy document and "delegations"
		Copy of Theresa Lyons Biographical data for potential agents	This application is dated after she was already appointed in the CI agent programme
		Copy of Utilization of SR vehicles	This document was compiled and distributed by Lieutenant General Mdluli and clearly set out the guidelines with respect to the use of

~~CONFIDENTIAL~~

DECLASSIFIED

16



 COLONEL
 K D ROELOFSE

~~CONFIDENTIAL~~

			CI vehicles by senior management. This document will be used to show that the accused in this matter did not adhere to their own guidelines as to the use of state vehicles.
--	--	--	--

61. In addition to the above the National Prosecuting Authority (NPA) has also instituted criminal charges relating to:

- The appointment of SA 86, PA 35, SA 90, SA 79, SA 78, SA 92 and SA 80
- The misappropriation of R30 000.00 from the secret service account to partially finance the purchase of a private residence by Lieutenant General RN Mdluli in May 2010

62. The following documents are needed in this regard with respect to SA 86, PA 35, SA 90, SA 79, SA 78, SA 92 and SA 80:

- Applications to CI in terms of which the individuals were appointed if any (Job application)
- Interviews prior to appointment held with the individuals that were appointed if any
- Appointment letters
- Any other information relating to the appointment of the above mentioned individuals not mentioned
- All advances submitted by DG Naidoo during May 2010
- All advances relating to claims 0507000935, 0507000934, 0507000936, 0014047758, 0507000978, 0507001026, 0507001029, 0507001045 and 0507001123

63. It is understood that SA 86, PA 35, SA 90 and SA 92 are still within the agent programme but are currently not active in any project. It is further understood that SA 79, SA 78 and SA 80 is no longer within the agent programme. It would be appreciated if the documents referred to in paragraph 62 be declassified prior to the handing over of same.

~~CONFIDENTIAL~~

DECLASSIFIED

17

K D ROELOFSE COLONEL

~~CONFIDENTIAL~~

64. The documents in question were obtained through different events and/or sources. The key attached to each document in respect of which declassification is required indicates from whom it was received, where it was obtained (if not a covert premises) and the date obtained.

65. The matter is due to appear before the Specialized Commercial Crimes Court, Pretoria on 06 July 2015 on which date this specific issue needs to be addressed. Your urgent attention with regard to this matter would be highly appreciated.

Hope you find this in order.

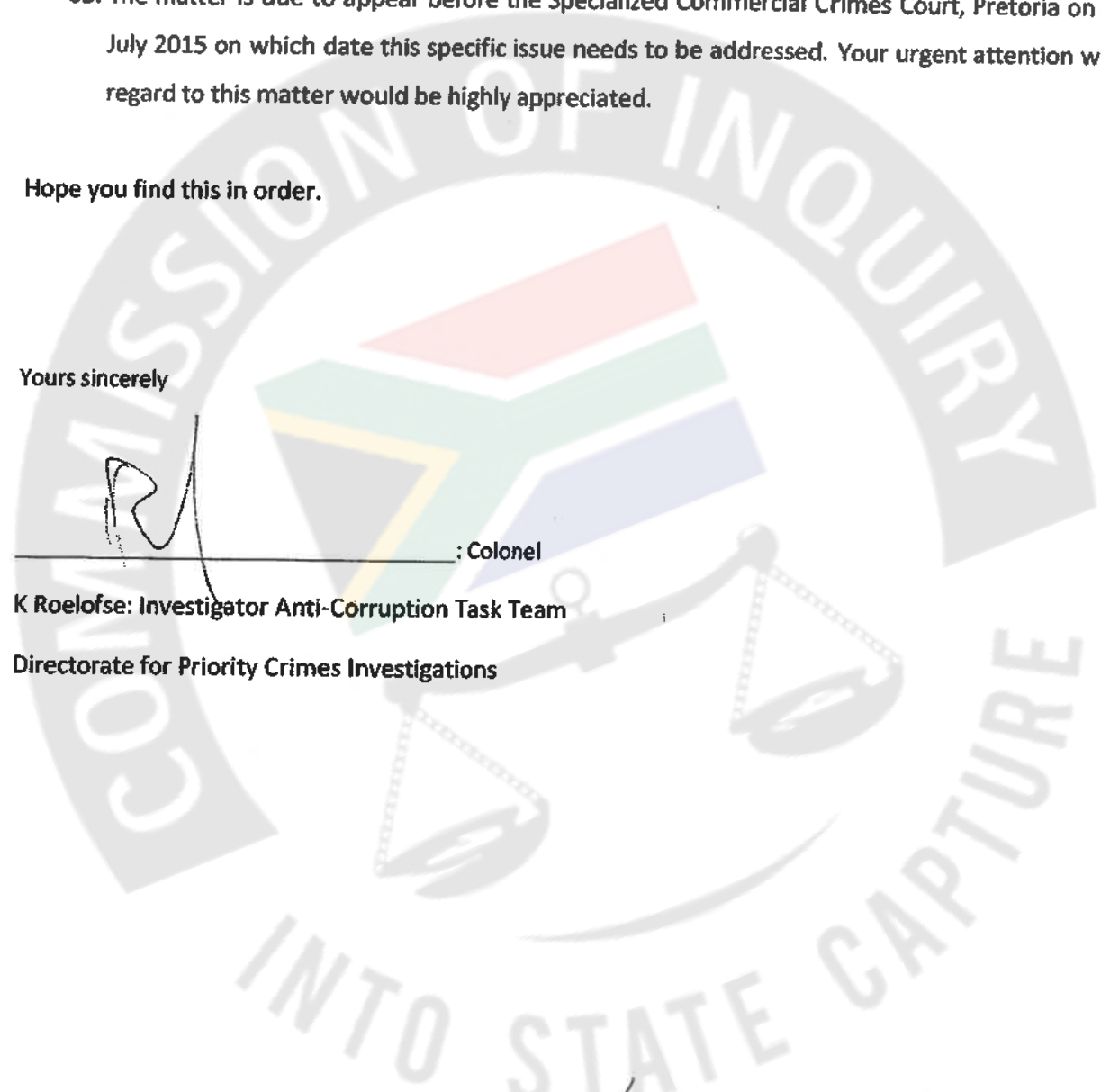
Yours sincerely



: Colonel

K Roelofse: Investigator Anti-Corruption Task Team


Directorate for Priority Crimes Investigations



~~CONFIDENTIAL~~

DECLASSIFIED




K D ROELOFSE COLONEL

ANNEXURE KDR43



South African Police Service



Suid-Afrikaanse Polisie

Private Bag x1500, Silverton, 0127

Fax No: (012) 846 4400

Your reference : 26/18/2
 My reference : Silverton CAS 155-07-2011
 Enquiries : W/O McLEAN
 Tel : (012) 843 0146
 079 526 5645

ANTI-CORRUPTION TASK TEAM SECRETARIAT
 PRIORITY CRIME MANAGEMENT CENTRE
 DIRECTORATE FOR PRIORITY CRIME
 INVESTIGATION
 SILVERTON
 0127
 10 June 2015

The National Commissioner
 South African Police Service (SAPS)
 P/Bag X 97
 Pretoria
 0001

Att: Major General PR Vuma (DR)

DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155/07/2011 (FRAUD, THEFT AND/ OR CORRUPTION) AND LYTTTELTON CAS 432/11/2011 (FRAUD, THEFT AND/ OR CORRUPTION)

1. I hereby acknowledge receipt of the following:
 - a) Application letter for declassification of Silverton CAS 155/07/2011 and Lyttelton CAS 432/11/2011.
 - b) File 1 and File 2 of documents to be classified.
2. I hope you will find the abovementioned items in order as per request.

Yours Sincerely

M McLean: W/O

W/O McLean
 W/O

SIGNATURE OF RECIPIENT

MAJOR GENERAL
 EXECUTIVE OFFICE MANAGER: OFFICE OF NATCONM
 (DR) PR VUMA
 NAME AND SURNAME OF RECIPIENT

10 JUN 2015
 DATE AND TIME RECEIVED

ANNEXURE KDR44



South African Police Service South*South African Police Service*

Private Bag X1500

Fax No: 012 846 4400

My reference : 26/18/2
 Enquiries : Maj Gen Ntlemeza
 Telephone number: 012 846 4004
 Email : dpcihead@saps.gov.za

OFFICE OF THE NATIONAL HEAD
 DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
 SILVERTON

0127

The National Commissioner
 South African Police Service
 P/Bag X97
PRETORIA

**DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155/07/2011
 (FRAUD, THEFT AND/OR CORRUPTION) AND LYTTTELTON CAS
 432/11/2011(FRAUD, THEFT AND/OR CORRUPTION)**

1. Please find the attached report of the investigator Colonel K Roelofse regarding above mentioned declassification of classified documents.
2. However, this office is concerned as to the circumstances that prevailed in the manner in which the possessor, i.e. the Investigating Officer could have been allowed/given access to the classified information albeit the fact that he never had a valid security clearance at the moment and at this current juncture.
3. Kindly acknowledge receipt on duplicate hereof.

Kind regards

B.M. Ntlemeza
 ACTING HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
 B.M. NTLEMEZA

MAJOR GENERAL
 DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

Date: 2016-07-01

ANNEXURE KDR45



Office Outlook Web Access Type here to search This Folder Address Book Options Log Off

Mail Reply Reply to All Forward Move Delete Junk Close

Deleted Items
Drafts [8]
Inbox (33)
Junk E-mail [2]
Sent Items

Click to view all folders
Manage Folders...

Silverton CAS 155-07-2011
Roelofse Kobus - Colonel

Sent: 06 July 2015 14:41
To: Moodley Kubandran - Brigadier

Dear Brigadier Moodley

I have carefully considered my email below before forwarding it to you. I also wish to reiterate that I appreciate the difficult situation you find yourself in. I further wish state that whatever I allude to in my email does not include you. As far as I am concerned you have tried your utmost to help and resolve the situation.

The above-mentioned matter had been struck of the court roll today.

The defense in this matter has successfully argued that the accuse cannot prepare their case without access to all the documents. In this regard the defense referred to the classified documents not yet handed to the accuse.

The Magistrate in his judgement stated that the case can only be place back on the court roll once the classified documents are declassified.

In this regard I would like to refer you the numerous attempts, since 2012, made by myself and the NPA to get same declassified. I would further like to refer you to a memorandum I compiled for Major General Nthlemeza, at his requested, in which I set out all the attempts made to get the above-mentioned documents declassified. I have not received feedback with respect to this.

On 15 May 2015 the then NDPP intervened and requested the Nat Comm to declassify the documents mentioned above as it is needed as exhibits for court. On 06 June 2015 I submitted a comprehensive report to yourself regarding the request for declassification. I understood this was required after attending a meeting with the Nat Comm. This meeting was in response to the request of the NDPP. This report was handed to the Office of the Nat Comm on 10 June 2015.

In this regard I need to point out that the report to the Nat Comm went out under my signature. I was informed that you were instructed to just provide a cover letter in respect of my request. I further would like to point out that the Nat Head for the DPCI attached an unsigned cover letter to the application in question. I do not mind signing the request for declassification but I cannot help to think that I do not have the support of the acting Nat Head of the DPCI.

On 19 June 2015 I was requested to fetch the application in question. I was then informed that neither the request of the NDPP nor the covering letter of the Nat Head of the DPCI was signed. In light thereof I was informed that Nat Comm indicated that she would not attend to the request.

In light thereof I re-submitted my application to Nat Comm via the office of the Nat Head of the DPCI on 01 July 2015. I received my application back from the office of the Nat Head of the DPCI on the same date. Attached to it was a signed cover letter by Major General Nthlemeza. Major General Nthlemeza states the following in paragraph two (2) of his covering letter: "However, this office is concerned as to the circumstances that prevailed in the manner in which the possessor, i.e. the Investigating Officer could have been allowed/given access to the classified information albeit the fact that he never had a valid security clearance at the moment and at this current juncture."

He thus states in his cover letter that I am illegally in possession of said documents as I do not have clearance. This information is blatantly wrong and it is clear that the intention is to cast doubt not only on myself but also the processes followed during the investigation. I was never requested to supply the status of my security clearance. This cover letter would have placed me in a very precarious position if it had indeed went through to the Nat Comm. I still have a valid security clearance.

This kind of "mistake" could also have an impact on the actual matter before court. If Major General Nthlemeza did read my various reports as requested by him he would have knowledge as to how I came into possession of said documents.

This has now to be rectified and I am still awaiting a covering letter form the office of the Nat Head of the DPCI.

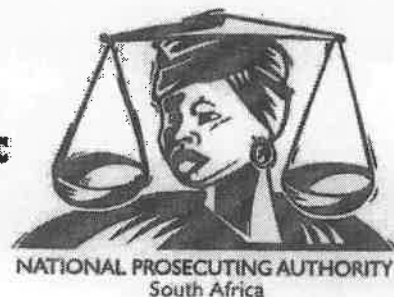
I pointed out on numerous occasions that the effect of the non declassification of said documents will lead to the case being struck of the court roll or to an application against the SAPS to force them to declassify same. We have now the embarrassing situation where the case was indeed struck of the court roll.

Under the circumstances I am at a cross roads as to what I need to do next.

ANNEXURE KDR46



**Office of the
National Director of Public
Prosecutions**



Major-General Ntsemeza

A5 Promat Building

1 Cresswell Road

Silverton

Pretoria

0186

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Silverton

P/Bag X752
Pretoria
0001

Tel: (012) 845 - 6000
Fax: (012) 804 - 9529
www.npa.gov.za

Dear Major-General

**THE STATE versus RICHARD NAGGIE MDLULI AND TWO
OTHERS**

SILVERTON CAS 155/07/2001

1. Our telephonic discussion in this regard has reference.
2. I have requested the prosecution team to brief me on the aforementioned matter, including the issue pertaining to the declassification of documentation.
3. The meeting is scheduled for Monday, 13 July 2015 at 14:00 at my office.
4. I deem it prudent that you are represented at this meeting.
5. As such, your presence as well as that of the Investigating Officer Col Roelofse would be highly appreciated.



Justice in our society so that people can live in freedom and security

- 6. I have been advised that the contentious classified documents are in the safe keeping of the Investigating Officer.

- 7. For purposes of the meeting it will be informative for the Investigating Officer to have the classified documents available at the meeting.

Yours faithfully,



ADV SHAUN ABRAHAMS

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

DATE: 10/07/2015



ANNEXURE KDR47



157(c)

Roelofse Kobus - Colonel

From: Roelofse Kobus - Colonel
Sent: 15 July 2015 17:38
To: Moodley Kubandran - Brigadier

Dear Brigadier Moodley

Meeting with Major General Ntlembeza on 2015-07-13 at 11h00 refers.

I am writing this email to make sure that I understand what was decided/instructed at said meeting.

The meeting in question was attended by Major General Ntlembeza, Major General Mnonopi, Brigadier Moodley and myself and it related to the following investigations: Silverton CAS 155-07-2011, Lyttelton CAS 432-11-2011 (CI investigation) and Vosloorus CAS 342-02-1999 (kidnapping, assault).

The above mentioned meeting was called as a result of a meeting that was scheduled to take place on 2015-07-13 (14h00) with the National Director of Public Prosecutions (NDPP), Adv S Abrahams. The meeting was scheduled by the NDPP re Silverton CAS 155-07-2011 (declassification of classified documents) between him, Major General Ntlembeza and myself. As you are aware of Brigadier, you and Major General Mnonopi were also requested to attend.

The following instructions were issued regarding the above mentioned investigations at the meeting with Major General Ntlembeza on 2015-07-13 at 11h00:

Lyttelton CAS 432-011-2011 and Vosloorus CAS 342-02-1999:

The situation stays the same. I am the investigating officer and must continue with the matters. I will also be able to draw on resources (members) in respect of the investigations as before.

Silverton CAS 155-07-2011:

The following instructions were given during the meeting:

- Brigadier as far as I understand you are appointed as the Chief Investigating Officer. I am still the investigating officer and you can enlist my help whenever you want to. Exactly what this entails I am unclear of.
- Due to the fact that the matter was struck off the court roll I am instructed not to investigate the matter any further. I also cannot travel to Pretoria in respect of this investigation.
- I am also instructed not to engage the NPA (prosecutors) on this matter. I would assume the same would apply to you Brigadier.
- Major General Ntlembeza would meet the NDPP alone on 2015-07-13 (14h00).
- Major General Ntlembeza will inform the NDPP to appoint new prosecutors in this matter.
- I am instructed to hand over all classified documents that need to be declassified to you Brigadier in respect this investigation. No instruction was given to you Brigadier as to what you need to do with said classified documents as far as I am aware of.
- Brigadier, you can enlist the services of forensics (disputed documents) if you so choose. I not sure what exactly is alleged by this remark.

As you are aware Brigadier I requested on two (2) occasions clarity regarding the instructions relating to Silverton CAS 155-07-2011 during the meeting. What I have relayed above is my best recollection of the instructions issued.

I would also like make use of this opportunity to get clarity on the other classified documents in my possession which does not relate to Silverton CAS 155-07-2011 directly but also would on the face of some of these documents seem to suggest prima facie evidence of alleged fraud/theft/corruption.



This would include inter alia the following:

- Minister's wall
- Nchwe's Audi Q5 and security upgrades at her private residence
- Mdluli's security upgrades at his private residence
- Westville Travel

As yet no decision has been made on these matters. These matters and others were investigated but not yet handed to the NPA. We need further documentation from CI which is not forthcoming. As a result thereof we are at an impasse.

Lastly I wish to be formerly advice of the allegation that I had lunch/supper with one "Faan" and Major General Jacobs on 2015-07-08.

Major General Ntlemenza made the allegation during the above mentioned meeting in a manner which would suggest that I was involved in some kind transgression. In this regard he referred to Brigadier Chilli at CI who needs to provide him with an affidavit in this regard.

I do not know what the intention is of such a threat.

Firstly I did not have lunch with the individuals as mentioned. I think the last time I saw Major General Jacobs was about two (2) years ago.

Secondly if I did see him and had lunch with him what would be the transgression? Surely the transgression cannot lie with whom I have lunch.

Thirdly if that is not the transgression, I would like to be advice of what I am accused of. In the same vain I would expect that Major General Jacobs be advice of same.

I am giving notice that I intend to take this matter further as it is the third incident I am being falsely accused of in less than four (4) months. In this regard I refer to the "rendition" saga and the accusation that I illegally obtained classified information (and is by definition illegally in possession thereof) due to the fact that I did not have security clearance.

Regards

Kobus Roelofse



ANNEXURE KDR48



Roelofse Kobus - Colonel

18(d)

From: Roelofse Kobus - Colonel
Sent: 20 July 2015 10:07
To: WC:DPCI Secretary
Subject: RE: Media Query: Mdluli and the classified documents

Dear General Matakata

See my email below. I have responded to this media query on 2015-07-17 at 16h22 after receiving it at 14h45 on even date.

Dear Major General B Ntlemeza, Major General Minonopi, Brigadier Moodley and Brigadier Mulaudzi

The following in relation to the questions asked (my comment is beneath the comment/question by Bateman):

I understand that police management allege that the documents can't be declassified because they were stolen from Crime Intelligence. I understand that there is an issue of whether the documents in the IO's possession are the originals or copies of the supposedly stolen documents.

I cannot answer on behalf police management as to the allegation that the classified documents were "stolen". Whoever made the allegation should answer same. I can state categorically that the classified documents were not "stolen" and were obtained legally.

I did have the original classified documents since November 2012 but I handed same to Brigadier Moodley on 2015-07-15 on instruction of Major General Ntlemeza.

Note point 34 - former NDPP Simelane confirmed that the warrants were properly obtained and ordered that they be executed.

It is indeed true that Adv Simelane (NDPP at the time) confirmed that the warrants were properly obtained (issued by a senior magistrate) and that they be executed after receiving a briefing.

Note point 37: Collection of the documents was facilitated by Maj Gen Hankel.

The collection of documents was indeed facilitated by Major General Hankel.

What exactly is the dispute related to the documents?

At this point I do not know what the dispute is regarding the classified documents. The only thing in question as far as I am concerned is whether the National Commissioner is going to declassify the documents or not. If the dispute relates to the documents being "stolen" then those making the accusation should be asked.

Are the police and NPA working on a legal solution to have the documents ready to be submitted - or are you targeting the IO?

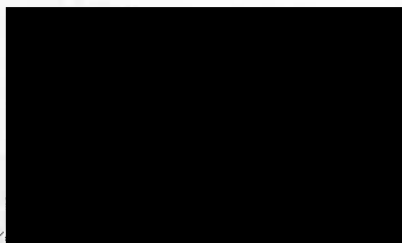
I do not know what the position is regarding the NPA/SAPS seeking a legal solution but I would want to believe that that is the case. I do not know whether I am targeted or not by management. I do know that I received very little management assistance in this investigation since 2012.

Has a criminal case been opened in respect of the stolen documents? Please confirm the case number in relation to alleged theft of these documents and provide details of what the case entails (just the basics in terms of SAPS comms protocol.)



As stated above whoever made the allegation should answer. I am not aware of such a docket. I would think that if such an allegation had been made and a docket had been opened I surely would have been approached by now as a suspect or a witness in the matter.

Please can you confirm whether the following people, as per the charge sheet, are still employed by the the SAPS...



(Apologies that I don't have all their names immediately available. I'll have them for you by Friday if you need them.)

I cannot comment as I do not know whether they are still in the employ of the SAPS.

Are all of these people still being furnished with official SAPS vehicles?

I do not know.

Is the SAPS still renting Unit 4, Gordon Villas for use by Crime Intelligence?

I do not know. The original lease agreement was for 3 years starting in 2010. I would presume that the lease agreement has lapsed.

Is the SAPS still renting a house in Clearwater Estate, Boksburg, for the personal use of Richard Mdluli?

I do not know. The original lease agreement was for 1 year with an option to renew after one year, starting in 2010. I would presume that this lease agreement also lapsed.

I do not have an email address for Major General Mnonopi. It would be appreciated if the email can be forwarded to her.

I hope you find this in order.

Kobus Roelofse

From: WC:DPCI Secretary
 Sent: 20 July 2015 09:04
 To: Roelofse Kobus - Colonel
 Subject: FW: Media Query: Mdluli and the classified documents

Col Roelofse

Please see attached email for urgent attention.

The Provincial Head requests that the response be forwarded to this office by 14:00 this afternoon.

Regards,

Tandie Sonandzi | DPCI Secretary, Cape Town (South Africa) | 021 918 3180 C 071 481 2788 F 021 918 3306 E
 SonandziT@saps.gov.za <mailto:SonandziT@saps.gov.za>
 4th Floor, Old SARS Building, AJ West Street, Bellville 7535 [cid:image002.jpg@01D0C2C9.FD8C4DB0]
 "A good head and a good heart are always a formidable combination" – Nelson Mandela

From: Segabutla Mosale
Sent: 17 July 2015 03:47 PM
To: Matakata Yolisa - Major General
Cc: Mnonopi Zintle - Major General
Subject: Media Query: Mdluli and the classified documents

Good Day General,

By direction of General Mnonopi, please see attached. The General requests that you call her on 082 441 9084 to discuss the attached.

Regards,

Mosale Segabutla
Directorate for Priority Crime Investigation
Tel: 012 843 8848
Cell: 071 351 7448
Fax: 012 843 0170
SEGABUTLAM@SAPS.GOV.ZA<mailto:SEGABUTLAM@SAPS.GOV.ZA>
[cid:image001.jpg@01DOC0A7.C225E840]
Jeremiah 29:11



ANNEXURE KDR49



Roelofse Kobus - Colonel

18(f)

From: Arno Rossouw (AJ) <ajrossouw@npa.gov.za>
Sent: 14 June 2017 16:26
To: Roelofse Kobus - Colonel
Cc: Paul J. Louw
Subject: FW: S v Mdluli & Others
Attachments: 20170613134844361.pdf

Dear Colonel Roelofse,

Kindly take note of the attached correspondence.

We need to meet as a matter of urgency to discuss the matter and set up the meeting as directed by the Acting Commissioner.

Kind regards,

-----Original Message-----

From: George D. Baloyi
Sent: Wednesday, 14 June 2017 3:54 PM
To: Arno Rossouw (AJ) <ajrossouw@npa.gov.za>
Subject: FW: S v Mdluli & Others

Dear advocate Rossouw

Please see the attached letter from the then Acting National Police Commissioner dated 17 May 2017. Please liaise with the designated member at Crime intelligence with a view to declassifying the documents, and give me feedback.

Regards
 George Baloyi

-----Original Message-----

From: Sibongile Mzinyathi
Sent: 14 June 2017 09:33 AM
To: George D. Baloyi
Cc: Helena Zwart (H); Pfanani Malova (PG); Lizzie M. Maphutha; Torie Pretorius (JP); Malini Govender
Subject: FW: S v Mdluli & Others

Adv Baloyi

Please find attached hereto correspondence from the NDPP in connection with the above-mentioned matter. The matter is handled by Adv Arno Rossouw in the Pretoria DPP office. This is forwarded to you for your attention and feedback.

Kind regards

S Mzinyathi



-----Original Message-----

From: Helena Zwart (H)

Sent: Tuesday, June 13, 2017 2:43 PM

To: Sibongile Mzinyathi <smzinyathi@npa.gov.za>

Cc: Pfanani Malova (PG) <pemalova@npa.gov.za>; Lizzie M. Maphutha <lmaphutha@npa.gov.za>

Subject: S v Mdluli & Others

Dear Adv Mzinyathi

For your attention, please.

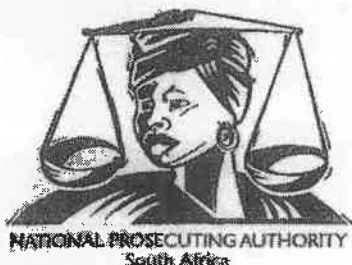
Kind regards

Helena

Confidentiality and Disclaimer

This e-mail transmission, including the attachments (hereinafter collectively referred to as this e-mail) contains information that is confidential and subject to legal privilege intended only for use by the individual or entity to which it is originally addressed. Access by anyone else is unauthorised. If you are not the intended recipient or a person responsible for delivering this e-mail to the intended recipient, be advised that you have received this e-mail in error and you must delete this e-mail in its entirety immediately. Any unauthorised disclosure, dissemination, reliance, use, interception, alteration, tampering or any other form of corruption of this e-mail or any part hereof is strictly forbidden. E-mails cannot be guaranteed to be secure or free of errors or viruses. As such, NPA advise you to carry out your own virus checks, as neither NPA nor the sender accept any liability whatsoever, arising from this e-mail or for any consequence of its use or storage. No stated, tacit or implied view, opinion, advice or position of the sender necessarily represents that of the NPA. If verification of this e-mail is required, please request a hard-copy version on an official letterhead of the NPA. Copyright in this e-mail is and remains vested in the NPA and/or in the sender. NPA fully reserves the right, without notice, to monitor outgoing and incoming e-mail and other transmissions or communications on, in, through or by means of its e-mail and telecommunications systems.

The National Prosecuting Authority of South Africa



**OFFICE OF THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS**

Victoria & Griffiths Mkenge Building,
123 Westlake Avenue, Weaverind Park, Silverton,
Pretoria, 0001

Private Bag X752, Pretoria, 0001

Contact number: 012 845 6758

Email: ndpp@npa.gov.za
www.npa.gov.za

Your ref: 3/976
Maj Gen MA Makhele

23 May 2017

Lt Gen JK Phahlane
Acting National Commissioner: South African Police Service
Private Bag X94
PRETORIA
0001

Fax: (012) 393 7063

Dear Lieutenant General

**REQUEST FOR DECLASSIFICATION OF DOCUMENTS: SILVERTON
CAS 155/07/2011: S v RICHARD NAGGIE MDLULI & HEINE JOHANNES
BARNARD: SPECIALISED COMMERCIAL CRIMES COURT CASE
NUMBER 111/00137/2011**

1. Receipt of your letter, dated 17 May 2017, is hereby acknowledged and the contents thereof noted.
2. The prosecutor in the matter will be informed of your decision and requested to liaise with the relevant officials as suggested.
3. Your assistance in this regard is highly appreciated.

Yours sincerely

ADV. S.K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 24-05-2017

South African Police Service



Suid-Afrikaanse Polisie

Private Bag
Privaatsak X94Fax No: (012) 383 7063
Faks No:

Your reference/My Verwysing :

THE NATIONAL COMMISSIONER
DIE NATIONALE KOMMISSARIS
PRETORIA
0001

My reference/My Verwysing : 39/6

Enquiries/Navrae : Maj Gen MA Makhole

Tel : (012) 3801410

Advocate S Abrahams
National Director of Publication Prosecutions
Private Bag X752
PRETORIA
0001

Dear Advocate Abrahams

**REQUEST FOR DECLASSIFICATION OF DOCUMENTS: SILVERTON CAS
155/07/2011; S V RICHARD NAGGIE MDLULI AND HEINE JOHANNES BARNARD;
SPECIALISED COMMERCIAL CRIMES COURT CASE NUMBER 111/00137/2011**

Your unnumbered letter dated 19 February 2017, relating to the above matter, has reference.

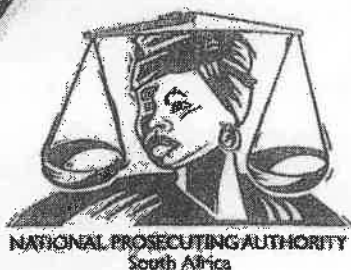
The South African Police Service is willing to assist in having the documents relevant to this case declassified for purposes of criminal prosecution.

It is proposed that the investigating officer of the Directorate for Priority Crime Investigation (DPCI) meet jointly with the relevant prosecutor in the matter as well as a member of the Crime Intelligence Division designated by the Acting Divisional Commissioner: Crime Intelligence, Major General Makhole, in order to verify that the documents in question would not compromise any ongoing investigation or operation. Upon such verification by that team, the documents may be declassified.

With kind regards


ACTING NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
JK PHAHLANE

Date: 2017-05-17



**OFFICE OF THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS**

Victoria & Griffiths Mxenge Building,
123 Westlake Avenue, Weaving Park, Silverton,
Pretoria, 0001

Private Bag X752, Pretoria, 0001

Contact number: 012 845 6758
Email: ndpp@npp.gov.za
www.npp.gov.za

19 January 2017

Lt General Khomotso Phahlane
Acting National Commissioner
South African Police Service
Private Bag X94
PRETORIA
0001

E-mail: PhahlaneK@saps.gov.za

Dear General Phahlane

S v RICHARD NAGGIE MDLULI & HEINE JOHANNES BARNARD

**SPECIALISED COMMERCIAL CRIMES COURT
CASE NUMBER 111/00137/2011**

**REQUEST FOR THE DECLASSIFICATION OF DOCUMENTS
SILVERTON CAS 155/07/2011**

1. Our various discussions, as well as those between myself and National Commissioner Riah Phiyega prior to her suspension, on the issue of the declassification of the documents seized under Silverton CAS 155/07/2011 refer.
2. The uncertainty around the declassification of the documents in question has been long outstanding. I would like us to bring this to finality as soon as practically possible.
3. Kindly urgently advise me of your position around the matter.

Yours sincerely


ADV SK ABRAHAMS

NDPP

DATE: 19-02-2017





**OFFICE OF THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS**

Victoria & Griffiths Mbenge Building
123 Westlake Avenue, Weavind Park Silverton,
Pretoria, 0001

Private Bag X252, Pretoria, 0001

Contact number: 012 845 6758

Email: ndpp@npa.gov.za
www.npa.gov.za

INTERNAL MEMORANDUM

TO: ADV. SIBONGILE MZINYATHI
ACTING DNDPP & HEAD: NPS

FROM: ADV. S.K. ABRAHAMS
NDPP

SUBJECT: *S v MDLULI & OTHERS: SILVERTON CAS 155/07/2011*

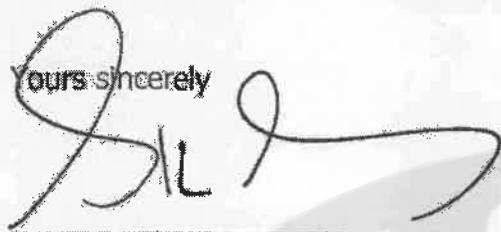
DATE: 12 JUNE 2017

Dear Adv Mzinyathi

1. Kindly find attached hereto self-explanatory letters, dated 19 January 2017 and 23 May 2017 from me, addressed to the Acting National Commissioner: South African Police Service and a letter dated 17 May 2017 from the latter, addressed to me relating to the declassification of documents in relation to the above matter.
2. The matter was prosecuted in the Specialised Commercial Crimes Court, Pretoria prior to being struck from the court roll on 6 July 2015.
3. The letters referred to in para 1 *supra* are the outcome of engagements between the Acting National Commissioner of Police and I in pursuance of bringing finality to the unresolved issue of the declassification of specific documents in the above matter.

4. Kindly bring the contents hereof to the attention of the Acting DPP: North Gauteng and the Acting Head of the Specialised Commercial Crimes Unit.
5. I have taken the liberty of forwarding copies of this communique together with the relevant attachments to the Acting National Commissioner of Police, the Acting Head of the Directorate for Priority Crime Investigation as well as the Acting Divisional Commissioner: Crime Intelligence for their information.

Yours sincerely



ADV. S.K. ABRAHAMS

NDPP

DATE: 14 - 06 - 2017



ANNEXURE KDR50



18 (K)

Roelofse Kobus - Colonel

From: Arno Rossouw (AJ) <ajrossouw@npa.gov.za>
Sent: 22 August 2017 19:38
To: Roelofse Kobus - Colonel
Subject: Fwd: REQUEST FOR DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011

Kobus help asb met terugvoer?

Sent from my iPhone

Begin forwarded message:

From: "George D. Baloyi" <gdbaloyi@npa.gov.za>
Date: 22 August 2017 at 6:46:19 PM SAST
To: "Arno Rossouw (AJ)" <ajrossouw@npa.gov.za>
Subject: FW: REQUEST FOR DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011

Hallo Arno

The trailing e-mails refer, kindly furnish a report dealing with aspects raised therein, including adv Mzinyathi's enquiry, and forward your response to me tomorrow.

Regards
 George

From: Sibongile Mzinyathi [mailto:smzinyathi@npa.gov.za]
Sent: 22 August 2017 06:43 PM
To: George D. Baloyi; Lizzie M. Maphutha
Cc: Pfanani Malova (PG); Helena Zwart (H)
Subject: FW: REQUEST FOR DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011

Adv Baloyi

Please see the email exchange below, and refer to the conversation we had last week when I asked you to make some enquiries from Arno. This is for your attention and urgent feedback. I also need clarity with regard to whether the matter is now with IPID and no longer with the Hawks.

Kind regards

S Mzinyathi

From: Helena Zwart (H) <hzwart@npa.gov.za>
Date: 22/08/2017 10:37 Africa/Johannesburg
To: Sibongile Mzinyathi <smzinyathi@npa.gov.za>
Cc: Pfanani Malova (PG) <pgmalova@npa.gov.za>

Subject: FW: REQUEST FOR DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011

Dear Adv Mzinyathi

Please note that the NDPP has requested me to refer this to you.

Kind regards

Helena

From: Shaun SK. Abrahams
Sent: 21 August 2017 11:29 PM
To: Helena Zwart (H) <hzwart@npa.gov.za>
Cc: Sibongile Mzinyathi <smzinyathi@npa.gov.za>
Subject: Re: REQUEST FOR DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011

Dear Helena

Please refer this to Adv Mzinyathi.

He has copies of all the correspondence hereon.

Sincerely,

From: "hzwart@npa.gov.za" <hzwart@npa.gov.za>
Date: Monday, 21 August 2017 at 12:10 PM
To: Shaun Abrahams <skabrahams@npa.gov.za>
Subject: FW: REQUEST FOR DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011

NDPP, FYI.

From: Jacobs PC- Major General [mailto:jacobspc@saps.gov.za]
Sent: 21 August 2017 09:08 AM
To: Divisional Commissioner : Legal & Policy Services : PA <Moodleylennine@saps.gov.za>; Helena Zwart (H) <hzwart@npa.gov.za>; National Commissioner: EOM <natcomm_eom@saps.gov.za>
Cc: Immelman Rene - Colonel <ImmelmanR@saps.gov.za>; Divisional Commissioner : Legal & Policy Services : Staff Officer Lt Col Munyuku <diycomm.legal.so@saps.gov.za>; Harmse Carina - Captain <HarmseC2@saps.org.za>; Erasmus Benita <ErasmusB@saps.org.za>; van Graan Nicolaas - Brigadier <vanGraanN@saps.gov.za>
Subject: Re: REQUEST FOR DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011

Dear All

The NPA requested the previous Acting NatComm for declassification of Mdluli documents. A response was submitted to the NPA that it is proposed that a team consisting of the Prosecutor, the Investigating officer and Crime Intelligence look at the docket and advise the Acting NatComm on declassification. I am not aware of any feedback from the NPA's office after this. It seems as if IPID is now seized with the matter whereas DPCI previously dealt with it.

I am in favour of declassification of the documents and so far back in Gen Dramat's time the issue had been cleared with the Office of the IG.

I propose that we follow up with NPA on existing process and ask person in possession of docket to produce original documents for declassification.

The matter had been drawn out too long and needs to come to finality.

I direct this to NPA's office as well so that we can move with speed on this matter.

Kind regards

Flip Jacobs

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: "Divisional Commissioner : Legal & Policy Services : PA"

<MoodleyJennine@saps.gov.za>

Date: 2017/08/21 08:44 (GMT+02:00)

To: Jacobs PC - Major General <jacobspc@saps.gov.za>

Cc: Immelman Rene - Colonel <ImmelmanR@saps.gov.za>, "Divisional Commissioner : Legal & Policy Services : Staff Officer Lt Col Munyuku"

<dlvecomm.legal.so@saps.gov.za>, Harmse Carina - Captain <HarmseC2@saps.org.za>,

Erasmus Benita <ErasmusB@saps.org.za>

Subject: FW: REQUEST FOR DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011

Good Morning General

Herewith please find attached document for your attention.

Kind Regards

PA: Jennine Moodley

Divisional Commissioner: Legal and Policy Services

Tel No: 012 393 7036

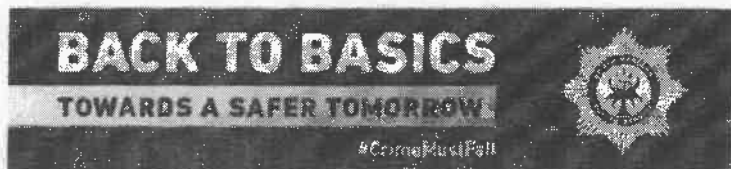
Fax No: 012 393 7206

255 Paul Kruger Street

Presidia Building

Pretoria

0001



From: National Commissioner: Staff Officer
Sent: 21 August 2017 08:17 AM
To: Khan Sally - Lieutenant General (Adv); Divisional Commissioner : Legal & Policy Services : Staff Officer Lt Col Munyuku
Cc: National Commissioner: EOM
Subject: REQUEST FOR DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011

URGENT! URGENT!! URGENT!!!

The Divisional Commissioner
Legal and Policy Services

Good Morning Lt Gen S Khan

1. The appended communication refers
2. By the direction of the acting **National Commissioner, Lt Gen LJ Mothiba**, kindly find herein attached a request from the Office of the Executive Director: IPID for your **immediate attention and finalisation**.
3. Thanking your good office in advance for the assistance.

Kind regards

Tumelo Nkhahle | Lt Colonel

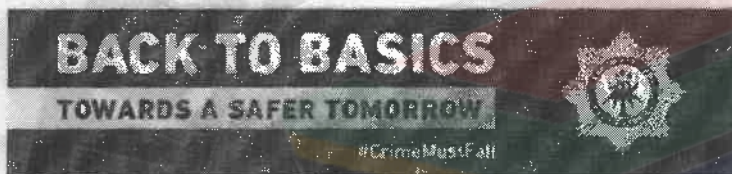
Staff Officer | National Commissioner: Lt Gen LJ Mothiba



Office of the National Commissioner | South African Police Service

Tel: (Office: 012-393-1585 | Fax: 011-871-5969 | Cell: 082-776-4289)

E-mail: * NatCommsO@saps.gov.za



Confidentiality and Disclaimer

This e-mail transmission, including the attachments (hereinafter collectively referred to as this e-mail) contains information that is confidential and subject to legal privilege intended only for use by the individual or entity to which it is originally addressed. Access by anyone else is unauthorised. If you are not the intended recipient or a person responsible for delivering this e-mail to the intended recipient, be advised that you have received this e-mail in error and you must delete this e-mail in its entirety immediately. Any unauthorised disclosure, dissemination, reliance, use, interception, alteration, tampering or any other form of corruption of this e-mail or any part hereof is strictly forbidden. E-mails cannot be guaranteed to be secure or free of errors or viruses. As such, NPA advise you to carry out your own virus checks, as neither NPA nor the sender accept any liability whatsoever, arising from this e-mail or for any consequence of its use or storage. No stated, tacit or implied view, opinion, advice or position of the sender necessarily represents that of the NPA. If verification of this e-mail is required, please request a hard-copy version on an official letterhead of the NPA. Copyright in this e-mail is and remains vested in the NPA and/or in the sender. NPA fully reserves the right, without notice, to monitor outgoing and incoming e-mail and other transmissions or communications on, in, through or by means of its e-mail and telecommunications systems.

The National Prosecuting Authority of South Africa

COPY



INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Private Bag X941, PRETORIA, 0001, City Forum Building, 144 Mediba Street, PRETORIA
Tel: (012) 399 0000, Fax: (012) 326 0020, Email: complaints@ipid.gov.za

L T General Mothiba
Acting National Commissioner
Wachthuis
229 Pretorius Street
Pretoria



By Hand

REQUEST FOR DECLASSIFICATION OF CLASSIFIED DOCUMENTS: SILVERTON CAS 155-07-2011 (FRAUD, THEFT AND/OR CORRUPTION) AND LYTTTELTON CAS 432-11-2011 (FRAUD, THEFT AND/OR CORRUPTION) IN TERMS OF SECTION 29(2)(c) AND 24(3) OF IPID ACT 1 OF 2011.

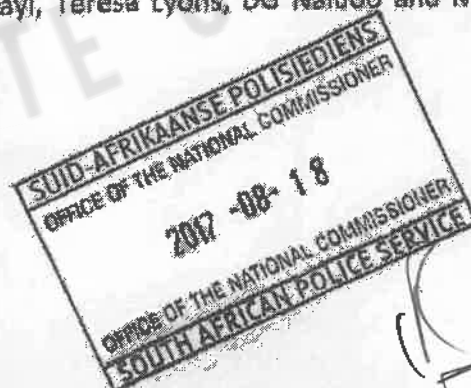
1. INTRODUCTION

The Independent Police Investigative Directorate and the Inspector General of Intelligence are conducting joint investigations on the above matters. Members of the DPCI who were involved in the initial investigation have been roped into the joint investigation.

2. BACKGROUND

- 2.1 The request for the declassification of certain classified documents flows from the abovementioned investigation.
- 2.2 The documents in question were allegedly created to facilitate the committing of offences and presented facts to internal auditors and the Auditor General which were not accurate. Had the South African Police Service's and the Auditor General know the true nature of the expenditure they would have been able to identify the offences.
- 2.3 The documents in question will also not endanger any current or past project and/or agents and only relates to the actual procurement of certain items apart from the agents specifically refer to below. The declassification of the said documents might have a small financial effect as it would mean the two (2) vehicles in question will not be suitable for covert work. The vehicles can however be utilised in any other capacity.

- 2.4 It is clear from the breakdown below that the classified documents mentioned indicate alleged personal gain to the accused via the secret service account. As such no current and/or past project could be compromised.
- 2.5 It is also recommended that these documents be declassified in light thereof that the accused who were employees of Crime Intelligence do not use that fact as a ground for the dismissal of some of the charges against them.
- 2.6 In determining your assessment we need to stress that the reclassification of documents in terms of the Minimum Information Security Standard (Miss) document lays down a minimum standard for the handling of classified information in all government institutions, which states that security measures are not to be applied to cover up maladministration, corruption, criminal actions, or to protect individuals/officials involved in such cases.
- 2.7 To put the above-mentioned request into context it is important to state that the National Prosecuting Authority (NPA) have instituted criminal charges with respect to the following events that relates directly to CI:
- The trade-in by Lieutenant General RN Mdluli ("Mdluli") on 2010-05-31 of his personal vehicle, a 2009 BMW 730 D with registration number XWT 151 GP, for a 2010 BMW 330d Sedan with engine number 21537366 and a 2010 BMW 530d Sedan with engine number 23567507, in order to generate a discount to finance a shortfall on his finance contract with BMW finance, South Africa in the amount of R90 526.01
 - A trip to Singapore undertaken by Lieutenant General RN Mdluli from 2009-10-09 to 2009-10-16 where some of the expenses incurred were paid from the secret service account
 - A trip to China undertaken by Lieutenant General RN Mdluli and VL Mdluli between 2009-11-06 and 2009-11-14
 - A trip to Singapore undertaken by Lieutenant General RN Mdluli, Major General Lazarus, Colonel Barnard, Inspector G Mahwayi, Teresa Lyons, DG Naidoo and M Venter from 2009-11-21 to 2009-11-28
 - Rental of SR 563692 and SR 572047



3. DOCUMENTS TO BE DECLASSIFIED

3.1 Below are documents that need to be declassified to enable IPID and IG to conclude the investigation.

CLAIM NUMBER/ ORDER NUMBER	CLAIM AMOUNT	MOTIVATION RECORDED ON CLAIM FORM	ALLEGATION OF ACTUAL EXPENCES AS SUPPORTED VIA AFFIDAVITS UNDER OATH.
SR 3741 A00 2446 (2010 BMW 330d)	R 487, 313.00	"Vehicle will be utilized by members on operational protector, which is a specifically designed to address the threat of religious extremism and human trafficking and the application of counter terrorism techniques and methodology. The motivation is dated 21 June 2010 and submitted by V Singh.	Lieutenant General RN Mdluli traded in his personal vehicle, a 2009 BMW 730 D with registration number XWT 151 GP on a 2010 BMW 330d and a 2010 BMW 530d, in order to generate a discount to finance a shortfall on his finance contract with BMW finance, South Africa in the amount of R90 526.01. This vehicle was also never used as per the application submitted for the purchase thereof. The application is also dated after the purchase was completed. This transaction was also never declared to the SAPS and/or the Auditor General.
SR 3741 0507002025 0507002283 0507002171 0507002418 0507002902 0507002942 0507003056 0507003294		Expenses in respect of SR 3741 that relates the running cost of said vehicle (fuel, registration, toll fees)	
SR 3802 A00 2446 (2010 BMW 530d)	R 706, 150.00	"Application is hereby requested for the procurement of a BMW 5 series for the Divisional Commissioner's office. The vehicle will be solely used by this office for movement of the Divisional Commissioner within Gauteng Region". Document is not dated.	Lieutenant General RN Mdluli traded in his personal vehicle, a 2009 BMW 730 D with registration number XWT 151 GP on a 2010 BMW 330d and a 2010 BMW 530d, in order to generate a discount to finance a shortfall on his finance contract with BMW finance, South Africa in the amount of R90 526.01. This vehicle was delivered in

SUID-AFRIKAANSE POLISIEDIENERS
 OFFICE OF THE NATIONAL COMMISSIONER
 2017-08-18
 OFFICE OF THE NATIONAL COMMISSIONER
 SOUTH AFRICAN POLICE SERVICE

			September 2011 and in March 2012 Lieutenant General RN Mdluli stopped utilising this vehicle. This transaction was also never declared to the SAPS and/or the Auditor General.
SR 3802 0014010383 0507002797 0507002966 0507002967 0507003113 0507003384 0507010823 0507007824 0507007844 0587010923 0587007892 0587007987 0587010999 0587007987 0587011182 0587008039 0587008141 0587011412 0587008185 0587008284 0587008271 0587011567 0587008350 0587008404		Expenses in respect of SR 3802 that relates the running cost of said vehicle (fuel, registration, toll fees)	
0507000935	R 21,099.65	"Expense for Divisional Commissioner Mdluli's journey abroad Singapore. Visit was for Legend Building visiting foreign law enforcement".	The receipts attached to the claim relate to inter alia the purchase of clothing, electronic equipment, luggage, jewellery and other personal items. It is clear from the claim that none of the items mentioned was recorded in the CI asset register and is of a private nature. An additional claim, claim 11244 through the "open account" was also submitted by Lieutenant General Mdluli regarding his expenses on this trip.
0507000934	R 43,411.00	"Funds utilised to pay for air ticket for Div Comm Mdluli who travelled to China to establish links with law enforcement agency as well as contact person".	It is alleged that Lieutenant General Mdluli, together with his wife, V Mdluli, visited their daughter in China. Lieutenant General Mdluli was on leave at the time of this visit. No approval from either the National Commissioner of Police and/or Minister was found. It is also alleged that the funds to pay for the

SUID-AFRIKAANSE POLISIEDIENS
OFFICE OF THE NATIONAL COMMISSIONER
2017-08-18
OFFICE OF THE NATIONAL COMMISSIONER
SOUTH AFRICAN POLICE/SER

			expenses of V Mdluli was provided by a CI service provider.
0507000936	R 10,000.00	"Funds utilised by Div Comm Mdluli for entertainment and Legend Building while visiting foreign law enforcement agency and contact persons".	It is alleged that Lieutenant General Mdluli, together with his wife, V Mdluli, visited their daughter in China. Lieutenant General Mdluli was on leave at the time of this visit. No approval from either the National Commissioner of Police and/or Minister was found. It is also alleged that the funds to pay for the expenses of V Mdluli was provided by a CI service provider. The funds were in actual fact used to buy clothing and one item of electronic equipment.
0014047758	R 69,567.00	"The above amount was used for Legend Building"	Lieutenant General Mdluli and three others obtained authorization from the National Commissioner of Police and Minister to travel abroad. It is alleged that T Lyons, the then girlfriend of Lieutenant General Mdluli, accompanied the group as a "contact person". This was funded through the secret services account. Even though the Auditor General queried the expense the relationship between Lyons and Lieutenant General Mdluli was never disclosed. Naidoo in an affidavit denies that there was a legitimate reason for Col M Venter, Lyons and himself to accompanied this group as they had no role to play.
0507000978	R 22,365.60	"Funds utilised for accommodation, entertainment and gifts while undertaking official trip to Singapore to purchase electronic equipment".	Lieutenant General Mdluli and three others obtained authorization from the National Commissioner of Police and Minister to travel abroad. It is alleged that Lt Col DG Naidoo accompanied the group as part of legend building. Naidoo in an affidavit denies that there was a legitimate reason for Col M Venter, Lyons and himself to accompanied this group as they had no role to play.
0507001026	R 17,343.05	"Accommodation expenditure for the Stanford in relation to visit to Singapore from Friday 20/11 - Sunday 29/11. In terms	Lieutenant General Mdluli and others obtained authorization from the National Commissioner of Police and Minister to travel abroad. It is

SOUTH AFRICAN POLICE SERVICE
 OFFICE OF THE NATIONAL COMMISSIONER
 2017-08-18
 OFFICE OF THE NATIONAL COMMISSIONER
 SOUTH AFRICAN POLICE SERVICE

		of Divisional Commissioner's request for Legend Building purposes".	alleged that Col M Venter accompanied the group as part of legend building. Naidoo in an affidavit denies that there was a legitimate reason for Col M Venter, Lyons and himself to accompanied this group as they had no role to play.
0507001029	R 4,000.00	"Daily allowance paid for trip to Singapore that has been covered by the SSA for the purpose of Legend Building. The normal allowance is 133 Singapore dollars p.d. With the exchange rate averaging P5-65 per Singapore dollar the total amount for 9 days amounts to R6763. Considering some of the expenditure has been covered an amount of R4000 has been authorised by the CFO"	Lieutenant General Mdluli and three others obtained authorization from the National Commissioner of Police and Minister to travel abroad. It is alleged that Col M Venter accompanied the group as part of legend building. Naidoo in an affidavit denies that there was a legitimate reason for Col M Venter, Lyons and himself to accompanied this group as they had no role to play.
0507001045	R 4,000.00	"Daily allowance paid for trip to Singapore that has been covered by the SSA for the purpose of Legend Building. The normal allowance is 133 Singapore dollars p.d. With the exchange rate averaging P5-65 per Singapore dollar the total amount for 9 days amounts to R6763. Considering some of the expenditure has been covered an amount of R4000 has been authorised by the CFO"	Lieutenant General Mdluli and three others obtained authorization from the National Commissioner of Police and Minister to travel abroad. It is alleged that Col M Venter accompanied the group as part of legend building. Naidoo in an affidavit denies that there was a legitimate reason for Col M Venter, Lyons and himself to accompanied this group as they had no role to play.
0507001123	R 15,809.50	"For the Divisional Commissioner Mdluli's journey abroad. Visit was for Legend Building in China and Singapore"	This claim relates to two visits abroad by Lieutenant General Mdluli (Singapore and China). The claim submitted is in respect of accommodation (China), entertainment (China), meals (China) and clothing (Singapore).
SR 563692	R 19,950.00 x 12 months	"APPLICATION FOR AUTHORITY TO ENTER INTO A LEASE AGREEMENT: FACILITY MANAGEMENT: COVERT INTELLIGENCE SUPPORT Application is hereby made for new premises which will be utilised by the Divisional Commissioner, Crime Intelligence for strategic planning with the Component Heads"	It is alleged that the premises was also used by Lieutenant General Mdluli in his personal capacity that he utilised the premises to reside in and accommodate his family and children from Cape Town when they visited him in Johannesburg. 2017

OFFICE OF THE NATIONAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
2017

SR 572047	R 9,690.00 x 36 months	<p>"APPLICATION FOR AUTHORITY TO ENTER INTO A LEASE AGREEMENT: COVERT OPERATIONAL INTELLIGENCE EAST RAND: WESTERN CAPE</p> <p>The premises will be utilised by intelligence operatives in accordance with their current legend, the said premises will be utilised as an office to conduct all administrative work, i.e. writing up Informant files completing of SR forms for monies, as well as the planning of all undercover operations".</p>	<p>Lieutenant General Mdluli is the registered owner of this property. This fact was not disclosed to the SAPS or the Auditor General, it is further alleged that the premises was never used as stated in the application. This property is part of a duplex facility and therefore not conducive to the intended purpose. The property was furthermore furnished by CI as a residence and not an office. It is further alleged that the property was in fact only used twice as accommodation.</p>
		Copy of CI SAPS POLICY AND DELEGATIONS AS SIGNED BY COMMISSIONER J SELEBI	The document will be used to show how the accused in this matter allowed expenditure contrary to CI's own policy document and "delegations"
		Copy of Theresa Lyons Biographical data for potential agents	This application is dated after she was already appointed in the CI agent programme
		Copy of Utilization of SR vehicles	This document was compiled and distributed by Lieutenant General Mdluli and clearly set out the guidelines with respect to the use of CI vehicles by senior management. This document will be used to show that the accused in this matter did not adhere to their own guidelines as to the use of state vehicles.

3.2 In addition to the above the National Prosecuting Authority (NPA) has also instituted criminal charges relating to:

- The appointment of SA 86, PA 35, SA 90, SA 79, SA 78, SA 92 and SA 80
- The misappropriation of R30 000.00 from the secret service account to partially finance the purchase of a private residence by Lieutenant General RN Mdluli in May 2010.

3.3 The following documents are needed in this regard with respect to SA 86, PA 35, SA 90, SA 78, SA 92 and SA 80:

- Applications to CI in terms of which the individuals



application)

- Interviews prior to appointment held with the individuals that were appointed if any
- Appointment letters
- Any other information relating to the appointment of the above mentioned individuals not mentioned
- All advances submitted by DG Naidoo during May 2010
- All advances relating to claims 0507000935, 0507000934, 0507000936, 0014047758, 0507000978, 0507001026, 0507001029, 0507001045 and 0507001123

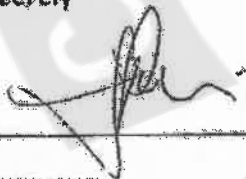
3.4 It is understood that SA 86, PA 35, SA 90 and SA 92 are still within the agent programme but are currently not active in any project. It is further understood that SA 79, SA 78 and SA 80 is no longer within the agent programme. It would be appreciated if the documents referred to in paragraph 3.3 be declassified prior to the handing over of same.

4. CONCLUSION

It would be appreciated if the above documents can be urgently declassified and handed over to IPID for investigation in terms of section 29(2)(c) and 24(3) in terms of IPID Act.

Hope you find this in order.

Yours sincerely



MR R J MCBRIDE
EXECUTIVE DIRECTOR

DATE: 18/08/2017




ANNEXURE KDR51



ANNEXURE KDR 01

South African Police Service Suid-Afrikaanse Polisie Diens

INFORMATION NOTE

TO : The Divisional Commissioner
South African Police Service
Crime Intelligence
PRETORIA

FROM : The Deputy Provincial Commissioner
South African Police Service
Limpopo Province

DATE : 2010-01-14 **Ref :** 26/102/2

FINAL REPORT : ALLEGED IRREGULARITIES : MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE - CRIME INTELLIGENCE.

1 BACKGROUND

- 1.1 On the 21st July 2009, Deputy Provincial Commissioner B. M Ntfermeza was mandated by the Divisional Commissioner-Crime Intelligence through his Provincial Commissioner to investigate some irregularities within the Crime Intelligence environment in Gauteng.
- 1.2 On the 11th of August 2009, a full briefing was given to the Deputy Provincial Commissioner by the Divisional Commissioner- Crime Intelligence with terms of reference inclusively. Supporting documentation was also supplied on that particular day.

2 METHODOLOGY

- 2.1 During August 2009, an investigation into the matter was started. Statements were obtained from various members from the Crime Intelligence environment and, that some of them were interviewed individually.
- 2.2 No force or any coerciveness was ever used during such interviews everything conducted was done through the commanders of the members and everything was done amicably without any objection. The Provincial Head of Crime Intelligence, Gauteng, was also briefed of the investigation and that he co-operated fully whenever there was a need to call any member under his command including the external stakeholders within his environment.
- 2.3 The Crime Intelligence- Head Office was also approached to assist in getting some of the information and some of the documents which were needed in order to prove some of the activities which led to the irregularities within the Crime Intelligence environment.
- 2.4 The following statements were obtained from various members of the South African Police Service, documents inclusively. These are as follows:

R [Signature] KR 14/01/10

- 2.4.1 The Sowetan News Paper Clip dated 10-07-2009 which is the main cause of this investigation is affixed as per annexure "A"
- 2.4.2 An Intelligence documents from **S/Supt S. J Monymorathoe** are affixed as per annexure "B"
- 2.4.3 Report made by **S/Supt Ntuli** of Counter Intelligence is affixed as per annexure "C"
- 2.4.4 Statement from **Director Britz** is affixed as per annexure "D"
- 2.4.5 Statement from **S/Supt Ntuli** is affixed as pre annexure "E"
- 2.4.6 Statements from **Inspector Arends** is affixed as per annexure "F"
- 2.4.7 Statement from **Inspector Mbede** is affixed as per annexure "G"
- 2.4.8 Statement from **Inspector Rekhotso** is affixed as per annexure "H"
- 2.4.9 Statement from **Capt. Leonard Dalixelo** the commander of **Inspector Magabe** who refused to submit his statement and who also went to SAPU to complain as indicated in the attached letter from SAPU dated 07-12-2009 is affixed as per annexure "I"
- 2.4.10 Statement from **S/Supt Botha** is affixed as per annexure "J"
- 2.4.11 The intelligence report from **S/Supt Ntuli**, Bill or contacts / smses from the source and surveillance report are affixed as per annexure "K"

3 COMMENTS

- 3.1 From the statements obtained, the reports received, as well as the interviews conducted with various people, it is clear that there was a plot within the Crime Intelligence environment to prevent Divisional Commissioner Mdluli who was then the Deputy Provincial Commissioner of Gauteng from being appointed as the Head of Crime Intelligence of the South African Police Service.
- 3.2 The plotters according to the evidence, gathered and they even tried to go back to the Police station where Commissioner Mdluli was working as the Head of Detective looking for an old case where a certain suspect was killed by an unknown person whilst taken out for pointing out.
- 3.3 The plotters even opted to use the state resources to achieve their goal, for example, they tasked some members from the Head Office of Crime Intelligence. Those members who were tasked were even given BMW's so that they could be motivated when gathering the evidence from the family of the said suspect because the information needed was so urgent since the date for the short-listing for the Divisional Commissioner's post was nearer.
- 3.4 The main person who was behind this plot was **Commissioner Khumalo** who was the former Provincial Commissioner of Mpumalanga and the members from Crime Intelligence Head Office as reflected in **Inspector Rekhotso's** statement where members like "**Moses**" **nickname Njamme** were also mentioned as members from Head Office who were accompanied by **Inspector Magabe** and **Inspector Rekhotso** to go and see the family of the said suspect.
- 3.5 One could ask a question as to who approved or gave authority to **Moses** from Head Office

to use the BMW if some of the plotters were not there? The involvement or mentioning of **Commissioner Khumalo** in this plot cannot be easily disputed because he has on several times directed sms's to the people who were doing or attending to the taskings and at times when you read these sms's you could come to the conclusion that he was worried about the time frame of the coming appointment of Commissioner Mdluli because at times he became impatient when the people tasked delayed to give feed-back to him.

- 3.6 The Intelligence report and affidavits from the witness also clearly shows that **Commissioner Khumalo** was really involved and it is clear that he was also connected with the Head Office of Crime Intelligence and this is supported by the usage of those BMW's, the question is who approved for them? The Intelligence reports as well as sources timeously mentioned Commissioner Khumalo.
- 3.7 It is also clear that **Commissioner Khumalo** tasked the two Inspectors i.e **Inspector Magabe** and **Rekhotso** but it was unfortunate because their commanders were not informed or even aware of such tasking but the one **Rekhotso** did see the BMW's in his place of work being driven by the members he could not identify or even know but **Inspector Rekhotso** accompanied them to the family of the said suspect (deceased) and forcing to get information they wanted. **Inspector Magabe** and **Rekhotso** went to Vosloorus Police Station to get the Case docket from **Inspector Mbede** who was used unaware by them and that he could not be able to assist them and that he eventually referred them to other members.
- 3.8 It is further clear that **Inspector Magabe** and **Inspector Rekhotso** were the main players of this plot who were fully tasked by **Commissioner Khumalo** and Crime Intelligence Head Office but it was unfortunate because the appointment went ahead despite their actions which were aimed at stopping it hence the appearance of the Sowetan News Paper article dated 10-07-2009 his statement but **Inspector Magabe** refused to make his statement and that he became violent to such an extent that he even requested the presence of his labour union representative i.e SAPU and that proved that he knew about the plot as stated by the witnesses during this investigation.
- 3.9 It is true that there was indeed a case where a person was killed during the pointing out in Vosloorus, during the time that Commissioner Mdluli was a Detective Commander and, that matter was investigated at the Former Germiston Area Commissioner's office by S/Supt Botha and it was finalised without mentioning any wrong by the member who booked the said suspect to the scene or pointing out areas or anything wrong against Commissioner Mdluli who was a Commander thereof. The affidavit of S/Supt Botha is clear and self explanatory and that according to him the matter was investigated and finalized as required.
- 3.10 The sister of the said suspect (deceased) was also interviewed and confirmed that some members came to her home and interviewed her mother about the death of her brother. She further stated that according to her the matter was investigated and no member of the South African Police was connected with murder. She further stated that according to family the matter was already to put on rest but she was shocked when they saw the Sowetan News Paper immediately those members contacted the family (mother).
- 3.11 *In view* of the above explanation, it is now my own deduction that there was a plot to stop the appointment of Commissioner Mdluli but the people i.e the family of the said suspect /deceased could not co-operate with **Inspector Magabe** and **Inspector Rekhotso** hence the solution was to take it to the News Papers.

- 3.12 It cannot be disputed that the state owned property was also misused when the above mentioned members were going up and down trying to destroy Commissioner Mditshi.
- 3.13 Both *Inspector Magabe & Inspector Rekhoto* are a risk in the Crime Intelligence environment. They took taskings which were not known by their commanders, so it is clear that they can even be used by enemies to disrupt the intelligent activities. They can even be used by criminals to supply them with information without their commanders know. The two inspectors are not at all suitable to be in the Crime Intelligence, actually they pose a serious danger to this country.
- 3.14 The involvement of *Commissioner Khumalo* is also another serious issue, how can a senior officer plot against another senior officer, but, be that as it may, I will not dwell more on his action because he is no longer a member of the South African Police Service and furthermore, he did not achieve his noble goal.

4. RECOMMENDATION

- 4.1 It is recommended that *Inspector Magabe* and *Inspector Rekhoto* be immediately transferred from Crime Intelligence to Uniform branch to avoid further embarrassment pending the outcome of the final enquiry.
- 4.2 It is further recommended that both inspectors be charged departmental for misusing state owned vehicles. Further, *Moses*, who is mentioned by *Inspector Rekhoto* as stationed in Crime Intelligence office, must be dealt with accordingly.


ASST.COMM
 DEPUTY PROVINCIAL COMMISSIONER : POLICING
 LIMPOPO PROVINCE
 B. M NTLEMEZA





ANNEXURE KDR52



ANWENRE "KORREK" E-1-5

TOP SECRET

S.A.P. 000 0000

SAP 01

SUID-AFRIKAANSE POLISIEDIENERS



SOUTH AFRICAN POLICE SERVICE

Privatebag/Private Bag X 301 PRETORIA 0001
Post/Post Office Box

Reference	3-1-1
Enclosures	Div Comm Memo's
Telephone	(012) 360 1410
Fax number	(012) 347 0487

DIVISIONAL COMMISSIONER

CRIME INTELLIGENCE

HEAD OFFICE

PRETORIA

0001

2010-11-11

- A: THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
 B: THE MINISTER OF POLICE
 C: THE MINISTER OF STATE SECURITY
 D: THE NATIONAL COMMISSIONER
 E: THE INSPECTOR GENERAL OF INTELLIGENCE

**VICTIMISATION AND ABUSE OF STATE RESOURCES AGAINST THE
 DIVISIONAL COMMISSIONER: CRIME INTELLIGENCE**

- A-E 1. On 2009-07-01 I was appointed by the Minister of Police and the Cabinet as Divisional Commissioner of Crime Intelligence.
2. Immediately thereafter there was a newspaper article in the Sowetan in which my name was tainted surrounding a love triangle, see report entitled "ALLEGED IRREGULARITIES

TOP SECRET

Declassified
Warrant-Gen
2011-03-14
Rum

TOP SECRET

MEMBERS OF SAPS CRIME INTELLIGENCE" which is attached as Annexure A.

3. I got information that junior members of Crime Intelligence were assigned by the then Provincial Commissioner Africa Khumalo to gather intelligence against me regarding the "love triangle" allegations as referred to in the attached report entitled "ALLEGED IRREGULARITIES MEMBERS OF SAPS CRIME INTELLIGENCE".
4. This was done prior to my appointment in order to prevent me from becoming Divisional Commissioner of Crime Intelligence and one of the main reasons was that I have not been involved in the "struggle".
5. Major General Ntiemenza was requested through Lieutenant General Sengani to investigate all these allegations. Major General Ntiemenza finalized his report and in doing so made certain recommendations. The copy of the report was handed to Deputy National Commissioner Dramat. I then handed the report to Major General Mabasa to deal with the disciplinary hearing. This was subsequently removed from Crime Intelligence.
6. It later emerged that Inspector Rikhotso and Inspector Makgabe together with a peddler called "Chantel" were working for the late Africa Khumalo against me. Colonel Botha who conducted the investigation into the alleged "love triangle" in 1999 had submitted a detailed statement in the report, which is entitled, "ALLEGED IRREGULARITIES MEMBERS OF SAPS CRIME INTELLIGENCE".
7. I must categorically point out that I was never involved in this "love triangle". When Major General Sibiya from the Hawks was appointed, Chantel went to him with the same allegations. This was then handed over to Divisional Commissioner Lebeya. However by this time I have already provided

TOP SECRET

Declassified
Gen
R *min*

TOP SECRET

Divisional Commissioner Labeya with the report by Major General Mlamenza.


8. I subsequently learnt that this matter was now being investigated for the third time. I also learnt from reliable sources that my cellphone is being listened to by other state agencies that have been tasked to do so by some of our senior managers. This is, on something which I was exonerated on two previous occasions. And yet there are two of my senior members who competed with me for this position who go around stating that they will ensure that I be removed from this post of Divisional Commissioner: Crime Intelligence.

These are the very same members that were involved in negative campaigning at the ANC Conference in Polokwane during 2007. They were in the camp of the Former President and are now trying to take control of the intelligence environment within the Police by devious tactics. This is exasperated by the fact that on 2010-11-10 Warrant Officer Dlomo was approached by three whites, one of them requested Warrant Officer Dlomo to reconsider his statement that he made in 1999. This change would positively incriminate Colonel Ximba and me. They have subsequently made a further appointment with Warrant Officer Dlomo on 2010-11-16. They however wanted to know his (Dlomo's) relationship with Colonel Ximba and asked why he was called Killer. My relationship with Colonel Ximba is on a professional level, both politically and work related. There is no friend relationship as suggested.

9. Colonel Ximba is an active member of the ANC and during the struggle was a leader of one of the Self Defence Units under MKVA. He was also a bodyguard for Mrs Winnie Mandela and former Minister Steve Tswete. I worked closely with them during the apartheid era especially during the riots. Colonel Ximba also played an important role in the Polokwane

TOP SECRET



Declassified
 2011-03-14


TOP SECRET

Conference and also during the President's trying times with his engagement with the NPA. He was appointed in the Police during the time of the former National Commissioner, Jackie Selebi.

10. It is worrying that after dealing with the Mphogo issue we still have to deal with, supposedly our people who are senior officers in an intelligence environment that are still fighting person agendas. The question now arises, what and how do they want to use the intelligence environment to affect the 2012 build up to ANC conference. With this in mind I have for the past few months tightened on expenditures, especially remuneration for sources with a view to ensuring that funds are not abused for ulterior motives related to the 2012 build up to the ANC conference. Do they want to follow the Mphogo style and try and derail the ANC. I have requested an independent body to investigate these individuals with a view to uncovering their plots. These senior "loyal" members were also active with the interceptions on Minister Cwele's wife. It is important to note that member of the erstwhile Scorpions are involved in these activities against me.

11. I will be failing in my responsibilities if I do not mention that both the Joint Standing Committee on Intelligence and The Inspector General of Intelligence have commended me on my performance and stated that a marked difference have been noticed from the time of my appointment. I find it very disturbing and embarrassed to find that I have been investigated for no apparent reason, especially when initiated by persons who have proven themselves to be disloyal.

12. I must also at this stage state that although I might not have gone outside and actively involved in the struggle, I was active in many other areas. I was, and am still, a loyal ANC member.

TOP SECRET

Declassified
 2014 03-14
 Ruma

TOP SECRET

13. Given the above and my frustrations I humbly request that a decision be taken to resolve this issue and if needs be to appoint an independent person to address these so called loyalists and their associates. It would be much appreciated if attention can also be given to the fact that my calls are being monitored.

Kind regards

[Handwritten Signature]
DIVISIONAL COMMISSIONER: CRIME INTELLIGENCE
RN MDLULI (SOE)

LEIUTENANT GENERAL



TOP SECRET

[Handwritten Signature]

Declassified
[Handwritten Signature]
2014-03-14 *Rum*