

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 7954/2021

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC

APPLICANT

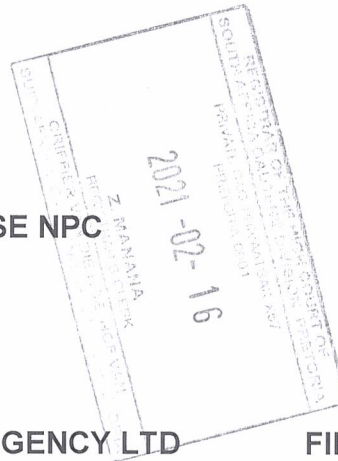
and

SOUTH AFRICAN NATIONAL ROAD AGENCY LTD

FIRST RESPONDENT

SKHUMBUZO MACOZOMA N.O.
(in his capacity as Information Officer)

SECOND RESPONDENT



NOTICE OF MOTION

TAKE NOTICE THAT Organisation Undoing Tax Abuse NPC, (hereafter “the Applicant”) intends applying to this Court an order:

1. Setting aside the deemed refusal by the First Respondent and/or Second Respondent of the Applicant’s request for access to the records requested in its request for information in terms of the PAIA and dated 25th August 2020, (“the request”);

2. Directing the First Respondent to provide the requested records to the Applicant within 15 (fifteen) days of the granting of this order;
3. Directing the First Respondent to pay the costs of this application;
4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying founding affidavit of **STEFANIE FICK** and the annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that the Applicant has appointed, **JENNINGS INCORPORATED** of the address below as the address at which it will accept notice and service of all further process in these proceedings.

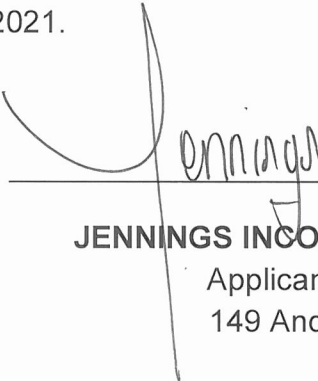
TAKE NOTICE FURTHER that if you intend opposing this application you are required:-

(a) to notify the Applicant's attorney in writing on or before the 18 March 2021;

(b) and within fifteen days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and further that you are required to appoint in such notification an address referred to in rule 6(5) (b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the a date to be allocated by the Registrar of the above honourable court at 10:00 a.m. or as soon thereafter as counsel may be heard.

DATED at PRETORIA on the 15TH day of February 2021.



JENNINGS INCORPORATED

Applicant's attorneys

149 Anderson Street

Brooklyn

Pretoria

Tel: 012 110 4442

Email: andri@jinc.co.za

Ref: A JENNINGS/OUT010

TO : **THE REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

AND TO : **SOUTH AFRICAN NATIONAL ROAD AGENCY LTD**
First Respondent
48 Tambotie Avenue
Val de Grace
Pretoria
0184

AND TO : **SKHUMBUZO MACOZOMA**
Second Respondent
48 Tambotie Avenue
Val de Grace
Pretoria
0184

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 7954/2021

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ORGANISATION UNDOING TAX ABUSE NPC

APPLICANT

And

SOUTH AFRICAN NATIONAL ROAD AGENCY LTD

FIRST RESPONDENT

SKHUMBUZO MACOZOMA N.O.

(in his capacity as Information Officer of SANRAL)

SECOND RESPONDENT

FOUNDING AFFIDAVIT

I,

STEFANIE FICK

hereby make the following statements under oath:

- 1 I am the Executive Director of the Applicant's Accountability Division and am duly authorised to bring this application on behalf of the Applicant. In this regard, I attach as **ANNEXURE "SF1"**, a resolution authorising the institution of these proceedings.



- 2 The facts contained herein are unless the contrary appears from the context, within my personal knowledge and are true and correct.
- 3 Where necessary, I will refer to the relevant individuals who will support me in deposing to this affidavit, also in respect of the merits of this application, with which I will deal more fully hereunder.
- 4 To the extent that I rely on facts, statements, documents, and/or reports made by third parties, I do so based on the belief that same is true and correct. To the extent necessary, I annex copies or extracts of those documents to this affidavit.
- 5 Where I make legal submissions, I do so based on the advice of the Applicant's legal representatives, which advice I choose to accept.

PARTIES

- 6 The applicant is the Organisation Undoing Tax Abuse, (hereafter "OUTA"), a non-profit company, duly incorporated in terms of the law of the Republic of South Africa, with its registered address at Unit 4, Boskruin Village Office Park, Cnr President Fouché and Hawken Road, Bromhof, Gauteng.
- 7 The first respondent is the South African National Road Agency Limited ("SANRAL"), a public company with registration number 1998/009584/06 and registered in terms of the Company Laws of Republic of South Africa and established in terms of the South African National Roads Agency Limited and



National Roads Act, 1998 ("the SANRAL Act"), with its principal place of business situated at 48 Tambotie Avenue, Val de Grace, Pretoria.

- 8 SANRAL is a public body as defined in section 1 of Promotion of Access to Information Act, 2000, (hereafter "PAIA"), on the basis that it exercises a public power or performs a public function in terms of, inter alia, the SANRAL Act.
- 9 The second respondent is Skhumbuzo Macomoza, ("Mr. Macomoza"), an adult male, whose full and further particulars are unknown to the Applicant, who is cited in his official capacity as the Chief Executive Officer and thus Information Officer of SANRAL, with his place of employment at 48 Tambotie Avenue, Val de Grace, Pretoria. Mr. Macozoma is cited herein for any legal interest he may have as the Information Officer of SANRAL.

THE NATURE OF THIS APPLICATION AND THE RELIEF SOUGHT

- 10 This is an application brought in terms of section 78(2) (c) read with section 82 of PAIA. In this application OUTA seeks the following relief:
 - 10.1 An order setting aside the SANRAL's refusal to grant OUTA access to the information requested;
 - 10.2 Directing SANRAL to supply OUTA with a copy of the records requested in OUTA's request for access to information dated 8th June 2020 within fifteen (15) days of service of the court order.



JURISDICTION

- 11 I am advised that this court has jurisdiction to hear this application by virtue of the definition of "court" in section 1 of PAIA which provides that 'court' includes the High Court within whose area of jurisdiction the decision of the information officer has been taken, or the public body concerned had its principal place of administration or business or the requester concerned is domiciled or ordinarily resident.

STRUCTURE OF THE AFFIDAVIT

- 12 The structure of this affidavit is as follows:
- 12.1 An overview and objectives of OUTA;
 - 12.2 The factual background to this application;
 - 12.3 OUTA's request;
 - 12.4 The deemed refusal by SANRAL to grant access to the records;
 - 12.5 The applicability or otherwise of internal appeal proceedings;
 - 12.6 The importance of the right of access to information and the role of PAIA in giving effect to the constitutional right;
 - 12.7 The basis upon which the deemed – refusal should be set aside;



12.8 Conclusion.

OVERVIEW AND OBJECTIVES OF THE APPLICANT

- 13 OUTA is a civil action organisation (civil society) that through its various methodologies aims to hold the government to account by challenging the abuse of authority, challenging irrational policy and legislation as well as engaging with the community and authorities in resolving issues about administration and service delivery within all spheres of government.

FACTUAL BACKGROUND

- 14 SANRAL received a loan of R7 billion from the Brics National Development Bank ("NDB"). The loan is payable over a period of fifteen years. The purpose of the loan is unclear and SANRAL refused to disclose the details of the terms.
- 15 OUTA intends to establish whether this loan was used to further fund the concessionaire agreements. OUTA intends to establish whether the loan amounts were allocated and used to fund the concessionaire agreements in relation to the concessionaire tolled routes (N3TC, Bakwena and TRAC).
- 16 To the best of OUTA's knowledge, the concessionaires have been awarded contracts to maintain toll roads and levy tolls for those roads in order for it to be self-sufficient. As the agreement entered into between SANRAL and in this instance, TRAC, is within the public interest, OUTA further wishes to establish whether TRAC is generating revenue in terms of the concessionaire agreement



that disproportionately exceeds the actual costs related to maintaining the toll roads. Should this be the case, SANRAL may potentially be in contravention of the Public Finance Management Act, 1999 ("PFMA") in its persistence in keeping the agreement "alive".

- 17 In addition, OUTA intends establishing whether the abovementioned loan is going towards the GFIP bonds (e-tolled roads) or other SANRAL's managed toll roads which are supposed to be self-funding. OUTA will only be in a position to do so when the requested information is furnished.
- 18 I have been advised by my legal representatives that this application need not illustrate the merits of the information sought by OUTA, hence a brief summary of the relevant circumstances that lead to OUTA's request is sufficient for purposes of this application.
- 19 The disclosure of the records sought is not subjected to OUTA identifying the right it wishes to exercise or protect that falls outside the ambit of section 32 of the Constitution and effectively outside of PAIA. OUTA is also not required to provide an explanation of why the requested records are required for the exercise or protection of that right, save that the records fall with the public interest and that the relevant provisions as contemplated by PAIA has been complied with.

THE REQUEST

- 20 OUTA submitted its Request for Access to Information in terms of section 18(1) of PAIA ("the request") on 25th August 2020 and by means of e-mail. I annex hereto



copies of the covering letter, the request and the e-mail by means of which the request was sent marked "SF2", "SF3" and "SF4" respectively.

- 21 The particulars of records requested are contained in the annexure attached to "SF3" and marked "ANNEXURE X" therein.

SANRAL'S REFUSAL TO OUTA'S REQUEST

- 22 In terms of section 25(1)(a) of PAIA the Information Officer, (hereafter "the I.O."), of SANRAL was required to decide on the request within 30 days after having received the request.
- 23 The Court would note from paragraph (c) of the definition of 'Information Officer' in PAIA that an Information officer is defined as meaning the chief executive officer, or equivalent officer of that public body or the person acting as such.
- 24 In this regard I refer the Court to a letter sent from Mr. Macomoza to OUTA. Although the letter was addressed to OUTA in relation to a different request for information in terms of PAIA, its relevance will be demonstrated in the paragraphs below. A copy of the letter dated 29th July 2020 is annexed hereto marked "SF5".
- 25 The Court would note from "SF5" that Mr. Macomoza not only acted as the I.O. of SANRAL at that time but that, in addition, he is reflected as the chief executive officer of SANRAL on the letterhead of SANRAL which would mean that he is in fact and in law the Information Officer of SANRAL.



- 26 The Court would further note from the content of “SF2” as well as “SF4” that the request was sent to the e-mail address of macomozas@nra.co.za which is the e-mail address of Mr. Macomoza.
- 27 In the premise, OUTA submits that, at all relevant times, the I.O. of SANRAL was Mr. Macomoza and that he was required, as the I.O. of SANRAL, to respond to the request by no later than the 24th September 2020 as required in terms of section 25(1)(a) of PAIA.
- 28 The I.O. of SANRAL failed to respond to the request on the 24th September 2020.
- 29 As a result of the failure of the I.O. of SANRAL to respond to the request in terms of section 25(1) of PAIA, the I.O. of SANRAL is regarded in terms of section 27 of PAIA as having refused the request, (hereafter “SANRAL’s deemed refusal”).
- 30 SANRAL’s deemed refusal was not a decision arrived at in terms of section 25(3)(a) of PAIA and the refusal stands to be set aside on that ground alone.

INTERNAL APPEAL PROCEEDINGS

- 31 The rules made in terms of section 79 of PAIA, (“the PAIA rules”), more particularly Rule 3 (2) of the PAIA rules requires that an affidavit in support of an application in terms of section 82 of PAIA should state whether the Internal Appeal procedures contemplated in section 74 of PAIA are applicable.
- 32 In the paragraphs below I set out the basis upon which OUTA contends that the



Internal Appeal procedures are not applicable.

INTERNAL APPEAL PROCEDURES ARE NOT APPLICABLE

- 33 Section 78 of PAIA makes it clear that a requester referred to in section 74 of PAIA is bound to exhaust the internal appeal procedure provided for in section 74 of PAIA before approaching court on application in terms of section 82. The material portion of section 78(1) of PAIA provides as follows:-

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

- 34 Section 74 (1)(a) of PAIA is not applicable to all requesters. Upon proper construction of section 74(1)(a) it is clear that the ‘public body’ referred to in section 74(1)(a) of PAIA is a ‘public body’ as defined in paragraph (a) of the definition ‘public body’. Paragraph (a) of ‘public body’ is defined as follows:-

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

- 35 A ‘public body’ as contemplated in paragraph (b) of the definition is reproduced below:-

“ ‘public body’ means-

...



(b) any other functionary or institution when-

...

(ii) exercising a public power or performing a public function in terms of any legislation.

36 SANRAL is a public company registered in accordance with the company laws of the Republic of South Africa and it is established in terms of the SANRAL Act.

37 Accordingly, I submit that SANRAL is a 'public body' as contemplated in paragraph (b) of the definition in that it is a functionary or institution which exercises a public power or performs a public function in terms of, *inter alia*, the SANRAL Act.

38 As a result, it is submitted that OUTA is not obligated to exhaust any internal appeal procedure as provided for in section 74 of PAIA.

THE IMPORTANCE OF THE RIGHT OF ACCESS TO INFORMATION AND THE ROLE OF PAIA IN GIVING EFFECT TO THE CONSTITUTIONAL RIGHT.

39 PAIA is the national legislation envisaged in section 32(2) of the Constitution. It was enacted to give effect to access to information and to promote the values of openness, transparency, accountability, and good governance – principles foundational to the Constitution.

40 I am advised and submit that:



- 40.1 In terms of PAIA, public bodies are under a duty to provide access to a requested record, or part of it, unless refusal to the request is permitted or required on one or more of the grounds listed in PAIA; and
- 40.2 Everyone's request for access to information in terms of PAIA is an invocation of section 32 right in the Constitution and entitles the requester to access to the requested record, or part thereof if that requestor complies with all the procedural and statutory requirements set out in the statute unless there is a valid ground of refusal which the private or public body may rely on.
- 40.3 The Constitutional Court has repeatedly made clear that the right of access to information is fundamental to the realization of the rights guaranteed in the Bill of Rights.
- 41 Section 11 of PAIA provides that OUTA must be given access to a record held by a public body (such as SANRAL) if the request complies with all procedural requirements in terms of PAIA and access is not refused in terms of any ground of refusal set out under that Act.
- 42 SANRAL has accordingly failed to give effect to their constitutional obligations under PAIA.



THE BASIS UPON WHICH THE DEEMED REFUSAL SHOULD BE SET ASIDE:

- 43 Section 25(3) of PAIA states that the notice in terms of which the requested access is refused, must state adequate reasons for the refusal, including the provisions of PAIA relied upon.
- 44 SANRAL's deemed refusal does not meet the peremptory requirements of section 25 of PAIA on the basis that it fails to state adequate reasons for the refusal, including the provisions of PAIA, relied upon.
- 45 SANRAL's deemed refusal was not a decision arrived at in terms of section 25(3)(a) of PAIA and the refusal stands to be set aside on that ground alone.
- 46 Section 11 of PAIA provides that OUTA must be given access to a record held by a public body (such as SANRAL) if the request complies with all procedural requirements in terms of PAIA and access is not refused in terms of any ground of refusal set out under that Act.

CONCLUSION

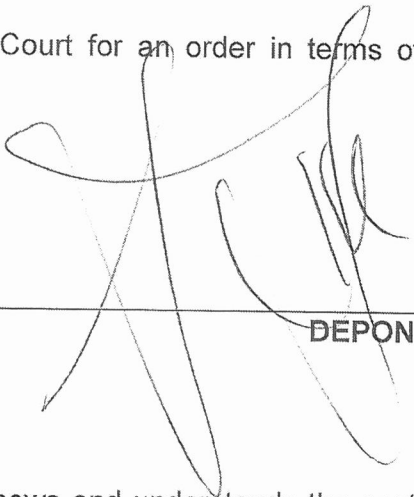
47 For all the reasons set out in this affidavit, I am advised and submit that:

47.1 OUTA's request complies with all procedural requirements of PAIA and SANRAL's refusal is not based on any ground of refusal set out in PAIA;
and

Two handwritten signatures in black ink, one on the left and one on the right, located at the bottom right of the page.

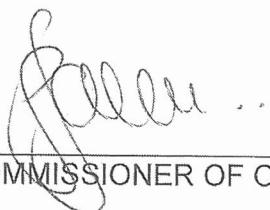
47.2 SANRAL's deemed refusal was not a decision arrived at in terms of section 25(3)(a) of PAIA and the refusal stands to be set aside.

48 In the circumstances, I ask the Honourable Court for an order in terms of the notice of motion.



DEPONENT

The Deponent has acknowledged to me that she knows and understands the contents of this affidavit, that she does not have any objection to taking the oath, and that she considers it to be binding on her conscience, and which affidavit was signed and sworn to or before me at **Johannesburg** on this 10th day of February 2021, the regulations contained in Government Gazette Notice No. R1258 of July 1972 as amended by Regulation No. 1648 dated 19 August 1977, by GN R1428 of July 1980 and by GN R774 of 23 April 1982, having been complied with.



COMMISSIONER OF OATHS

Full names: LEANA FICK

Designation and area: PRACTISING ADVOCATE OF THE HIGH COURT (N7103751)

Street address: THE CHAMBERS, 3RD FLOOR,
3 PROTEA PLACE

SANDOWN
(011) 715 5800

0828571063

ADV L FIGX

"OF,"

RESOLUTION No 2020/017

Of the Executive Committee

The Executive Committee of the Organisation Undoing Tax Abuse ("OUTA") has discussed and resolved that:

- Stefanie Fick, in her capacity as the Executive Director of the Accountability Division, is hereby authorised to institute legal proceedings in the project TR 1712 – 016 (C): SANRAL – Concessionaires Investigation (TRAC) against the South African Roads Agency Ltd ("SANRAL") on behalf of OUTA; and,
- The scope of such authorisation includes, but is not limited to, the deposing to any affidavit so required by the relevant rules of court applicable to such legal proceedings.

Approved by the Executive Committee on this 30th day of November 2020.



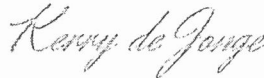
Wayne Duvenage



Stefanie Fick



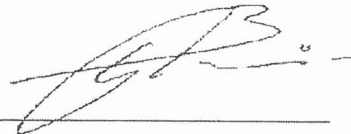
Julius Kleynhans



Kerry de Jonge

Samantha van Nispen

Samantha Van Nispen



Greig Morrison



"VF2"

25 August 2020

Attention: The Information / Deputy Information Officer
The South African National Roads Agency Limited
48 Tambotie Avenue
Val de Grace
Pretoria
0184

Email: info@nra.co.za
macozomas@nra.co.za
alli@nra.co.za
motaungh@nra.co.za

Dear Sir/Madam,

**REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF
ACCESS TO INFORMATION ACT, 2000 ("PAIA") – FORM A
OUR REF: TR 1712-016**

1. We refer to the above.
2. The Organisation Undoing Tax Abuse ("OUTA") is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority, in particular the abuse of taxpayers' money.
3. Kindly find attached hereto our request for access to information in terms of section 18(1) of the PAIA.
4. Kindly note that we tender any cost occasioned by our request.
5. Kindly contact our Mr Brendan Slade at brendan.slade@outa.co.za in the event of any queries.
6. We trust that you find the above in order and look forward to receiving your response.
7. Kindly acknowledge receipt of this letter.

ORGANISATION UNDOING TAX ABUSE NPC

Reg No.: 2012/064213/08

Directors: W Duvenage (CEO), Adv. S Fick

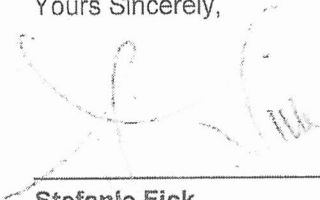
Non-Executive Directors: F Adam (Chair), P Majazi, W Modisapodi, LP Pauwen, T Pillay Van Graan, Dr H Volmink

Address: O'Keeffe & Swartz Building, 318 Oak Avenue, Randburg, Gauteng

Contacts: 087 170 0639 • info@outa.co.za • www.outa.co.za

OUTA

Yours Sincerely,



Stefanie Fick
Executive Director of the Accountability Division
OUTA – Organisation Undoing Tax Abuse
Email: stefanie.fick@outa.co.za



"JF3"

J750



REPUBLIC OF SOUTH AFRICA

FORM A
REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY
(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))
[Regulation 6]

FOR DEPARTMENTAL USE

Reference number:

Request received by (state rank,
name and surname of information officer/deputy information officer) on (date)
at (place).

Request fee (if any): R

Deposit (if any): R

Access fee: R

.....
SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Information Officer/Deputy Information Officer

THE SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED
48 TAMBOTIE AVENUE
VAL DE GRACE
PRETORIA
0184

FORM A: REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be given below.
(b) The address and/or fax number in the Republic to which the information is to be sent, must be given.
(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: STEFANIE FICK

Identity number:

7	4	0	1	1	9	0	0	1	4	0	8	7
---	---	---	---	---	---	---	---	---	---	---	---	---

Postal address: N/A

Telephone number: (087) 170 0639 Fax number: (.....) N/A

E-mail address: stefanie.fick@outa.co.za

Capacity in which request is made, when made on behalf of another person:

EXECUTIVE DIRECTOR OF THE ACCOUNTABILITY DIVISION - THE ORGANISATION UNDOING TAX ABUSE (OUTA)

C. Particulars of person on whose behalf request is made

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

Full names and surname: THE ORGANISATION UNDOING TAX ABUSE

Identity number:

--	--	--	--	--	--	--	--	--	--	--	--	--

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
(b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1. Description of record or relevant part of the record:

SEE ATTACHED HERETO "ANNEXURE X"

FORM A: REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

2. Reference number, if available: N/A

3. Any further particulars of record:

SEE ATTACHED HERETO "ANNEXURE X"

E. Fees

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees:

N/A

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

Disability: <u>N/A</u>	Form in which record is required:
Mark the appropriate box with an X.	ELECTRONIC
NOTES:	
(a) Compliance with your request for access in the specified form may depend on the form in which the record is available.	
(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.	
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.	

1. If the record is in written or printed form:					
X	copy of record*		inspection of record		
2. If record consists of visual images - (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.):					
	view the images	X	copy of the images*		transcription of the images*

FORM A: REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

3. If record consists of recorded words or information which can be reproduced in sound:						
	listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)			
4. If record is held on computer or in an electronic or machine-readable form:						
	printed copy of record*		printed copy of information derived from the record*	X	copy in computer readable form* (stiffy or compact disc)	

*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.	YES	NO	X
Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.			
In which language would you prefer the record? ENGLISH			

G. Notice of decision regarding request for access

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

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

ELECTRONICALLY - EMAIL

Signed at ROODEPOORT this day 25TH of AUGUST year 2020

.....
SIGNATURE OF REQUESTER /
PERSON ON WHOSE BEHALF REQUEST IS MADE



“ANNEXURE X”

Information sought:

Information relating to the upgrade of the N4 route from the Solomon Mahlangu Drive Interchange towards the Maputo Port (Mozambique), as specified below:

PART A:

1. A copy of the Concession Contract, for a portion of National Route N4 (toll route) running from the City of Tshwane towards to the Maputo Port, entered into between the South African National Road Agency Limited (“SANRAL”) and Trans African Concessions (“TRAC”), hereinafter referred to as the “TRAC Concession Contract”;
2. A copy of all Annexures and Addenda to the TRAC Concession Contract;
3. A copy of all Amendments and Addenda (if any) to the TRAC Concession Contract;
4. A copy of all Operation and Maintenance contracts entered into between the Concessionaire and the O&M Contractors, relating to the TRAC Concession Contract;
5. A copy of the Operational and Maintenance Manual pertaining to the TRAC Concession Contract;
6. A copy of the contracts entered into with the Independent Engineer(s), pertaining to the TRAC Concession Contract;
7. A copy of all the Independent Engineer(s) Reports submitted to SANRAL, pertaining to the TRAC Concession Contract;
8. A copy of all Construction Work contracts entered into by the Concessionaire relating to the TRAC Concession Contract;

Two handwritten signatures in black ink, one on the left and one on the right, positioned at the bottom right of the page.

9. A copy of all "Performance Certificates" issued, relating to the Construction Works contracts entered into by the Concessionaire (as referred to in item 8, above);
10. A copy of all "Taking Over certificates" that have been issued in terms of the TRAC Concession Contract;

PART B:

1. Copies of TRAC's complete financial statements for each fiscal year, submitted to SANRAL in terms of the TRAC Concession Contract (as from 1999/2000 financial year to present);
2. Copies of all reconciliations of TRAC's Profit & Loss Accounts, together with their proposed budgets for each fiscal year, submitted to SANRAL, from 1999/2000 fiscal year to present in terms of the TRAC Concession Contract;
3. Copies of all Annual Reports submitted to SANRAL, pertaining to the TRAC Concession Contract (as from the 1999/2000 financial year to present), issued by TRAC's appointed auditors, certifying that the computation of the Highway Usage Fee for the previous year was correctly calculated; and
4. Copies of the lists, submitted to SANRAL in terms of the TRAC Concession Contract (as from 1999 to present), of TRAC's lenders and creditors to which TRAC owes a sum in excess of the equivalent of R10 000 000 (ten million Rand), including the amounts due to each of them.



"JF4"

Andri Jennings

From: Brendan Slade <brendan.slade@outa.co.za>
Sent: 25 August 2020 01:20 PM
To: info@nra.co.za; macozomas@nra.co.za; alli@nra.co.za; motaungh@nra.co.za
Cc: stefanie.fick@outa.co.za; 'Andrea Korff'
Subject: OUTA - REQUEST FOR ACCESS TO INFORMATION IN TERMS PAIA - OUR REF: TR 1712-016
Attachments: COVER LETTER_25 AUGUST 2020.pdf; 25_8_2020 PAIA_TRAC.pdf; ANNEXURE X.pdf

Good day,

1. We refer to the above and attach hereto OUTA's request for access to information in terms of the Promotion of Access to Information Act, 2000.
2. Kindly acknowledge receipt.

Kind Regards,



Brendan Slade
 Legal Project Manager
Email: brendan.slade@outa.co.za
Tel: 087 170 0639
Mobile: +27 83 298 7520
Web: www.outa.co.za



"JF5"

Reference: #6389037
Date: 29 July 2020
E-mail: lcuwik@nra.co.za

Fax Number: +27 (0) 12 844 8200
Direct line: +27 (0) 12 844 8001
Website: www.nra.co.za



ORGANISATION UNDOING TAX ABUSE NPC
O'KEEFFE & Swartz Building,
318 Oak Avenue,
Randburg

Per email: andrea.korff@outa.co.za

Attention: Andrea Korff

**RE: REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF
ACCESS TO INFORMATION ACT, 2000 ("PAIA")**

1. We refer to your request for access to information in terms of section 13(1) of the PAIA (Ref TR17121-D16/A).
2. Section 36 of the PAIA places a mandatory obligation upon SANRAL to protect the commercial information of third parties.
3. Consequently, SANRAL sought Bakwena's approval for the release of third-party information.
4. Bakwena has confirmed that OUTA has been notified of the information that ought to be provided for purposes of evaluating the right that OUTA seeks to exercise or protect in terms of section 53(2)(d) of the PAIA read together with section 32 of the Constitution of South Africa, 1996.
5. A copy of Bakwena's notification to OUTA is attached hereto as Annexure A.
6. To date OUTA has not submitted the information that would facilitate the evaluation of the right that it seeks to protect or exercise in law.
7. In these circumstances, we have been advised by Bakwena to not consider your PAIA request.

Yours Faithfully

SKHUMBUZO MACOZOMA
CHIEF EXECUTIVE OFFICER

Head Office 48 Tambotie Avenue, Val de Grace, Pretoria, 0184 | PO Box 415, Pretoria, South Africa, 0001 | Telephone +27 (0) 12 844 8000 Fax +27 (0) 12 844 8200
Email Info@sanral.co.za | Visit us at www.sanral.co.za

Directors: Mr T Mhambi (Chairperson), Mr S Macozoma (CEO), Mr R Haswell, Ms L Madlala, Mr T Matosa, Mr P Mohan, Ms A Halstead | Company Secretary: Ms A Mathew

Reg. No. 1998/009584/30. An agency of the Department of Transport.

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Bakwena Toll Services (Pty) Ltd. (Bakwena Toll) is a subsidiary of the Transnet Group of Companies. The Transnet Group of Companies is a public entity established in terms of the Public Entities Act 1995. The Transnet Group of Companies is a member of the Transnet Group of Companies, which is a public entity established in terms of the Public Entities Act 1995. The Transnet Group of Companies is a member of the Transnet Group of Companies, which is a public entity established in terms of the Public Entities Act 1995.

Organisation Undoing Tax Abuse

21st December 2016

PO BOX 2627

Northridge

2162

Attention - Mr Brendan Slade

Per Email: brs@undoingtaxabuse.org

Dear Sir,

Re: Request for Access to Information in terms of the Promotion of Access to Information Act 2 of 2000 - Form C (Section 53(1))

1. We refer to your request for access to information in terms of Section 53(1) of the Promotion of Access to Information Act 2 of 2000 ("the Act") dated 23 November 2016 ("PAIA Request")
2. In terms of section 53(2)(d) of the Act read together with section 32 of the Constitution of South Africa Act 108 of 1996, you are required to identify the right you seek to exercise or protect, provide an explanation of why the requested record is required and how it will assist you in exercising or protecting that right.
3. Your PAIA Request fails to identify the right you seek to exercise or protect, and moreover, fails to provide an explanation as to why each item listed (items 1 – 71) in Annexure "A", Part A and B, of your PAIA Request is required and how it will assist you
4. In addition, given the generic nature of your PAIA Request, we are unable to ascertain what information you seek as well as to whom it relates or what the information may contain. The nature of your PAIA Request, and in particular the manner of the items listed therein, does not provide us with the details required to consider which third parties the information may relate to

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5. In the circumstances, your PAIA Request does not comply with the provisions of the Act and is consequently defective.
6. Having said that, in order for us to be in a position to consider any request for access to information, the right you intend to exercise or protect must be clearly identified in respect of each of the listed items of information to which you require access as well as how it will assist you in the exercise and protection of such right.
7. In addition, we would also require you to provide us with details of the information listed in your Annexure "A" and explain why any of the information requested therein is required to "justify the relationship between SANRAL" to OUTA's members. As your PAIA Request stands it appears to be vexatious. To this end, an ideological and abstract interest in the information does not pass muster for purposes of the Act.
8. Consequently, we are unable to consider your PAIA Request.

Yours faithfully



Graeme Blewitt
Chief Executive Officer

For and behalf of BAKWENA PLATINUM CORRIDOR CONCESSIONAIRE (PTY) LTD