

"AO,"

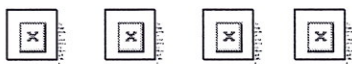
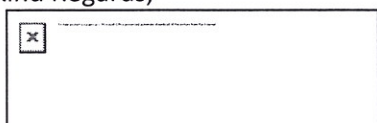
Andri Jennings

From: Brendan Slade <brendan.slade@outa.co.za>
Sent: 20 November 2020 02:20 PM
To: Andri Jennings; Irene Pienaar
Cc: 'stefanie.fick'
Subject: OUTA / SANRAL (PAIA - BAKWENA & TRAC)
Attachments: Letter to OUTA 191120.PDF; 07_10_2020_COVER LETTER.pdf; ANNEXURE_OUTA_3.2.pdf; ANNEXURE_OUTA_IA1.pdf; ANNEXURE_OUTA_IA2.pdf; ANNEXURE_OUTA_IA3.1.pdf

Good day Andri,

1. I trust you are well.
2. Kindly find attached hereto the response received by SANRAL's attorneys in relation to OUTA's PAIA requests. As per the letter, it is confirmed that SANRAL will not necessarily oppose the applications, but will consider same upon receipt. This letter deals with OUTA's BAKWENA and TRAC applications.
3. For all practical purposes and should we accept internal appeal procedures as moot as per SANRAL's version, the basis for both applications to approach the court is that of a deemed refusal, irrespective of the fact that OUTA lodged internal appeals. For condonation purposes, note that in the case of a deemed refusal, calculation of the 180 day period in terms of sec 78 is to be calculated from the day upon which the response was due. SANRAL misconstrues sec 74, implying that their PAIA Manual supersedes the act in relation to internal appeals.
4. Kindly proceed to finalise the notice of motion and founding papers for both BAKWENA and TRAC. For practical purposes it may be best to place the matters on the roll for the same day, but I will leave that in your capable hands.
5. In addition, I attach hereto the relevant PAIA request(s) in relation to TRAC, set out chronologically as per the cover letter attached. Kindly note that we will tend to the necessary resolution as we did with Bakwena.
6. Feel free to give me a call should you require any clarity.

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

Handwritten signature or initials.

DELIVERED BY EMAIL

Organisation Undoing Tax Abuse NPC

Attention: Advocate Stephanie Fick

Email: Stefanie.fick@outa.co.za

Brendan.slade@outa.co.za

Johannesburg Office

The Central

96 Rivonia Road

Sandton 2196 South Africa

Private Bag 10015

Sandton 2146

Docex 111 Sandton

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YOUR REFERENCE: TR1712-016
OUR REFERENCE: Ms S Moerane/SOUT3114.192/#7325767v1
DIRECT PHONE: +27 11 535 8128
DIRECT FAX: +27 11 535 8628
EMAIL ADDRESS: smoerane@werksmans.com

19 November 2020

Dear Sirs

REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000

- 1 We refer to the abovementioned matter and your email dated 21 October 2020.
- 2 We have now had the opportunity to properly consider the PAIA requests, as well as the purported internal appeals.
- 3 As you are aware, SANRAL has made a decision on the request dated 8 June 2020, and is deemed to have made a decision on the request dated 25 August 2020. In both matters, it is therefore *functus officio*.
- 4 While we note that OUTA has purported to lodge internal appeals in respect of both the abovementioned requests, no provision is made in the PAIA and in SANRAL's PAIA Manual for an internal appeal against SANRAL's decisions. In light of this, SANRAL will not make any decision on the purported internal appeals, as it is not empowered to do so.
- 5 It is therefore open to OUTA to institute a review application in terms of section 78 of PAIA against the decision(s).
- 6 We do not anticipate that SANRAL will oppose any relief OUTA seeks reviewing and setting aside its decision(s), however SANRAL will consider its position once it receives OUTA's application.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa

Directors D Hertz (Chairman) OL Abraham C Andropoulos JKOF Antunes RL Armstrong DA Arteiro T Bata LM Becker JD Behr AR Berman MNM Bhengu Z Blieden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman D Gewer JA Gobetz R Gogtkin ID Gouws GF Griessel N Harduth LD Hinxman J Hollesen MGH Honiball VR Hosiosky BB Hotz T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny R Killoran N Kirby HA Kotze S Krige PJ Krusche K Lalla P Le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Meiring H Michael SM Moerane C Moraitis PM Mosebo NPA Motsiri L Naidoo A Ngidi JJ Niemand BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdihin MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha LK Silbermann S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron PW Tindle SA Tom JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies **Consultant** DH Rabin



7 SANRAL's rights remain reserved.

Yours faithfully

Werksmans Attorneys

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

14₂

"AD3"

5 October 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
[louwk@nra.co.za](mailto:louwke@nra.co.za)
NgobeniS@nra.co.za
motaungh@nra.co.za
LindaS@nra.co.za

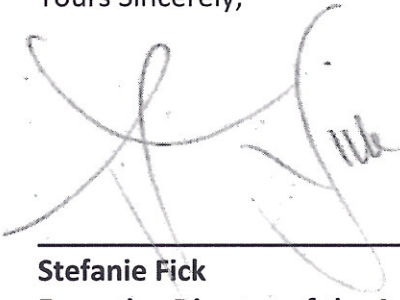
Dear Sir/Madam,

**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 notice of internal appeal (Form B) in terms of section 74(1) of PAIA in response to your deemed refusal to our request for access to information, as well as the relevant annexure thereto, marked **ANNEXURE "OUTA_IA1"** and **"OUTA_IA2"** respectively.
4. For ease of reference, we also attach hereto our request for access to information as submitted on 25 August 2020, marked **"OUTA_IA3"**.
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.

1/4

Yours Sincerely,



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



“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;



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.



GROUNDS FOR INTERNAL APPEAL

A BACKGROUND

1. The Organisation Undoing Tax Abuse ("OUTA") hereby lodges an internal appeal in terms of section 74(1) of the Promotion of Access to Information Act, 2000 ("PAIA") the South African National Roads Agency Ltd's ("SANRAL") to grant OUTA access to the records it requested in terms of a request for access to information, submitted on 25 August 2020.
2. Notwithstanding OUTA's request for access to information, SANRAL failed to provide OUTA with a formal response to the request as contemplated in section 25(1) of PAIA. Furthermore, SANRAL also failed to request an extension of this (seeking extension of an additional 30 days for consideration of OUTA's request) in terms of section 26 of PAIA. Accordingly, OUTA's internal appeal is justified in terms of section 74 of PAIA.
3. In terms of section 27 of PAIA, SANRAL failure to provide OUTA with a formal response may be deemed as a refusal to such request. SANRAL further failed to set out its grounds for refusal as contemplated in Chapter 4 of PAIA.
4. In terms of section 11(1) of PAIA, a requestor must be given access to a record of a public body if the requestor has complied with all procedural requirements prescribed by PAIA and access to the records is not refused on any ground as listed in Chapter 4 of PAIA.
5. OUTA further submits that it has substantially complied with all procedural requirements as stipulated in section 18 of PAIA, and such, it is entitled to be granted access to the records as requested.



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

[Handwritten signature]

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
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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:
 HEAD 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:

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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"



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: N/A	Form in which record is required: ELECTRONIC
Mark the appropriate box with an X .	
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)	<input checked="" type="checkbox"/>	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*	<input checked="" type="checkbox"/>	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	<input checked="" type="checkbox"/>
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						

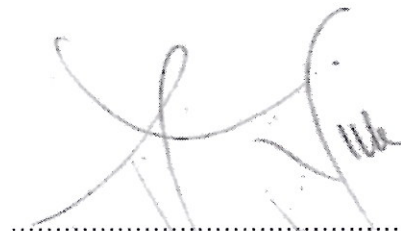
G. Notice of decision regarding request for access

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

