



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

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REFERENCE: 3/2/1(24/2013)

Mr S Maimane
South African History Archives
PO Box 31719
BRAAMFONTEIN
2017

Dear Mr Maimane,

**SECTION 74 OF THE ACCESS TO INFORMATION ACT, 2000 (ACT NO 2 OF 2000):
NOTICE OF INTERNAL APPEAL: SOUTH AFRICAN HISTORY ARCHIVES (SAHA):
POLICE MEMBERS: CRIMES**

Your Notice of Internal Appeal, dated 11 June 2013, has reference to the matter.

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

- **Dismiss the appeal** in terms of section 45(b) of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000), (hereinafter referred to as the "Act"), with reference to any and all records relating to (but not limited to) the total number of police officials or members who have been **convicted of crime that they are alleged to have committed before their appointment** from January 2007 to December 2012;
- **Upheld the appeal** with reference to any and all records relating to (but not limited to) the total number of police officers who —
 - **Are still on duty whilst under investigation as a result of crimes they are alleged to have committed** and the total number of police officers who have been convicted of crime that they are alleged to have committed after their appointment. On 28 July 2013 I have publicly announced the finding of the criminality audit, which I have tasked the management of the Service (working together with the Civilian Secretariat for Police) to conduct, in the Service. The audit covered any records up to

the beginning of 2012 and the audit established that **1448 members** have criminal offences. The process began two years ago and included auditing of all employees of the Service, those employed under the South African Police Service Act and Public Service Act;

Have been fired as a result of crimes they committed from January 2007 to December 2012. In addition to the numbers released in the audit, the information is as follows:

(i)	2007-2008	:	228
(ii)	2008-2009	:	366
(iii)	2009-2010	:	506
(iv)	2010-2011	:	520
(v)	2011-2012	:	532
(vi)	2012-2013	:	449 (as at end of February 2013)

The total number of police officials or members who have been fired as a result of crimes they committed from January 2007 to December 2012, is 2601;

Are currently suspended as a result of crimes they are alleged to have committed from January 2007 to December 2012. The total number is 151 as at the end of February 2013.

The reasons for my decision are as follows:

- It is agreed with you that the Service failed to respond to you and that the failure by the Service to provide a decision on the request constitutes a deemed refusal in accordance with section 27 of the Act.
- It is not clear what is meant by you when referring to "police officers". An "officer" is a commissioned officer appointed in terms of the South African Police Service Act, 1995 (Act No 68 of 1995) and who bears the rank of lieutenant or higher rank and is as such commissioned by the President. However, it seems that you are referring to police officials or members (ie all ranks).
- In Currie & Klaaren (paragraph 4.2 page 42 of Ian Currie & Jonathan Klaaren "The Resolve - KPMG Commentary on the Promotion of Access to Information Act (2002)"), the following regarding electronic data is stated:
"In our view, on a purposive interpretation of the Act, the concept of 'record' should be read to include data in electronic databases, even if not yet processed into a record. In principle, the Act requires public and private bodies to be sources of information but does not require them to act as researchers. A body is not required to act as a researcher if a request is made that involves the querying of a database and the retrieval and organization of the data it contains in a specific form or order. This is a routine function of databases and of retrieval software. Electronic data should therefore be regarded as qualifying as a record even if, technically speaking, it is not "information" but data."
 The following footnote 6 was also made on the same page:
"If a request requires something other than a routine query of a database, it could arguably be refused on the basis that it 'the work involved in processing the

request would substantially and unreasonably divert the resources of the public body”

- With reference to the part of the request for access to any and all records related to but not limited to the total number of police officials or members who have been convicted of crime they are alleged to have committed before their appointment from January 2007 to December 2012:

- The Recruitment section of the Service does not have the information on a data system. The files of 155 997 police officials will have to be perused by hand to ascertain such totals. The required information is not readily available. To obtain the information would be extremely time consuming and would necessitate the redeployment of police personnel to peruse and verify the information from every member's personnel file. The redeployment of personnel to carry out this task would not only place an extra burden on limited human and financial resources but would further be to the detriment of other essential duties or service delivery to the community. This will result in an unreasonable diversion of resources and is an enormous task.

The Service should have informed you that access is accordingly refused in terms of section 45(b) of the Act.

- In terms of Regulation 11 of the Regulations for the South African Police Service, a person who applies to be appointed as a member must have no previous criminal convictions and such person shall allow his or her fingerprints to be taken and allow background enquiries to be made. Each applicant's fingerprints are sent to the LCRC (Local Criminal Record Centre) where it is determined whether such person has a previous conviction or not. This requirement is strictly adhered to and may only be condoned by the National Commissioner in terms of this Regulation. This is only recommended provided the conviction was of a crime of a less serious nature (eg negligent driving). According to the Recruitment section there is only a few such cases and the information is not contained on a data system but on such member's file.

To obtain the information from LCRC will be extremely time consuming and would necessitate the redeployment of police personnel to peruse and verify the information which could only be as such verified by taking the members' fingerprints (ie of 155 997 police officials) and have them sent to LCRC to determine whether such person has been convicted of a crime before his or her appointment. Such verification is only done based on fingerprints.

- Section 45(b) of the Act provides as follows —

“... or substantial and unreasonable diversion of resources

45. The information officer of a public body may refuse a request for access to a record of the body if —

(a)

(b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.”

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

With kind regards


E N MTHETHWA

MINISTER OF POLICE

E N MTHETHWA, MP

DATE: 2013-08-13

