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*FOR THE ATTENTION OF THE MINISTER and OF THE CHIEF INFORMATION
OFFICER OF DEPARTMENT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT*

*Re: Internal Appeal Pursuant to the Promotion of Access to Information, 2000 Act
2 of 2000 (PAIA): Re the late Mr Ahmed TIMOL*

1. I am the nephew of Ahmed Timol who was killed in police detention on 27 October 1971. A 1972 inquest ruled that Timol had committed suicide and that nobody was responsible for his death.
2. During the Ahmed Timol 2017 inquest, apartheid-era Security Branch Officer Joao Rodrigues was subpoenaed to testify. He was represented by Mr. Ben Minnaar from the Office of the State Attorney's Office and Fanus Coetzee. Judge Billy Mothle ruled that

Re: Internal Appeal Pursuant to the Promotion of Access to Information, 2000 Act 2 of 2000 (PAIA):

Re the late Mr Ahmed TIMOL

Ahmed Timol did not commit suicide, but was murdered in police detention. Rodrigues was to be charged for his role in the murder of Timol.

3. The purpose of the Promotion of Access to Information Act, 2 of 2000 (“**PAIA**”) is to promote the right of access to information, to foster a culture of transparency and accountability in South Africa, and to encourage an open democracy where individuals from all walks of life are empowered to engage with government and participate in decisions which affect their lives.
4. I submitted a PAIA Application to the Department of Justice & Constitutional Development (the DOJ&CD) on 20th May 2019 (see attached) requesting access to the following records:
 - a. Costs incurred by the State / State Attorney in the High Court of South Africa for the re-Opened inquest of Ahmed Timol – Case Number: IQ01/2017;
 - b. Costs incurred by the State / State Attorney in the High Court of South Africa for the criminal case against Rodrigues – Case number: SS106/2018; and
 - c. Costs incurred by the State / State Attorney in the High Court of South Africa for the 342A Application in the matter between Joao Rodrigues and the National Director of Public Prosecutions & Others – Case number: 76755/18.
5. In terms of the PAIA, a PAIA request must be responded to by the public or private body within 30 days after receipt. The DOJ&CD failed to respond timeously to my request. After numerous follow up email correspondence, including with the National Director of Public Prosecutions, I eventually received a decision from the DOJ & CD only on the 14th November 2019 (see attached) granting access to “*the reply from the Office of the Chief*”

Litigation Officer” (“**the decision**”). This was approximately five months after the expiry of the prescribed period.

6. The decision attached a single record comprising a memo from the Office of the State Attorney Office (“**the memo**”) stating the following:

Kindly note that in our records the legal fees paid in all the cases amounts to date the amount of R 3, 585, 205.929 (Three million five hundred and eighty-five thousand two hundred and five rand ninety-two cents). The amount comprises of legal fees of private attorney, junior and senior legal counsel.

The amount cannot be broken down as to who was paid was as that might encroach on private individuals, but it only suffices that it is in the public interest to disclose costs incurred by the State Attorneys but same cannot be said in disclosing specifically financial status of individuals who didn't give consent. Further see Ben Minnaar Attorneys memo marked 'R'

7. Despite my repeated requests I have been refused access to the memo authored by Ben Minnaar Attorneys attached to the memo marked “R”. Moreover, the DOJ&CD has refused to provide a full breakdown of costs incurred by the State for representing Mr. Rodrigues. In terms of section 74 of PAIA, I hereby lodge an internal appeal to the Minister of Justice and Constitutional Development requesting a full breakdown of costs incurred, including that of Mr. Minnaar, in response to the feedback that I have received from the DOJ&CD. Kindly see attached Form B.

3

Re: Internal Appeal Pursuant to the Promotion of Access to Information, 2000 Act 2 of 2000 (PAIA):

Re the late Mr Ahmed TIMOL

8. The refusal of the DOJ&CD to my initial request is incorrect for at least the following reasons.
9. First, the decision held that I was entitled to disclosure of the memo. It follows as a necessary consequence that the entire memo (including its annexures) have to be disclosed. Once the decision was taken in my favour the information officer of the DOJ&CD was rendered *functus officio*. It is thus not open to the DOJ&CD to now attempt to disregard the decision and refuse access to Ben Minnaar Attorneys' memo. Notwithstanding this, and despite numerous requests, the DOJ&CD has simply refused to comply with its own decision. I attach various emails evidencing my efforts and the DOJ&CD's responses.
10. Second, I wish to bring to your attention that Mr. Minnaar of Ben Minnaar Attorneys was formerly employed by the Office of the State Attorney. He was employed by the State Attorney's throughout the 2017 Timol Inquest and remained in its employ sometime after the conclusion of the inquest whereafter he entered private practice under the name of Ben Minnaar Attorneys. He was then appointed to represent Mr. Rodrigues in the criminal case that commenced on 30th July 2018, as well as Mr. Rodrigues' application for a permanent stay of prosecution. Therefore, during a material period Mr Minnaar was in the employ of the State Attorney and cannot to rely on the rights of private persons in sections 36 or 37 of PAIA for this period. The decision itself acknowledges that I am entitled to "*disclose costs incurred by the State Attorneys*". There is thus no basis to refuse to disclose the costs incurred during this period.
11. Third, while it is true that Mr Ben Minnaar subsequently left the employ of the State Attorney for private practice, the legal services he and Advocates Jaap Cilliers SC and Fanus Coetzee are rendering to Mr Rodrigues are being paid by the State. It is common

4

Re: Internal Appeal Pursuant to the Promotion of Access to Information, 2000 Act 2 of 2000 (PAIA):

Re the late Mr Ahmed TIMOL

cause that the State has borne these costs and paid the invoices delivered by Mr Rodrigues' legal representatives. The invoices and the records contained therein now comprise information that vests in the hands of the State and it is therefore not open to the DOJ&CD to rely on sections 36 or 37 of PAIA.

12. I submit that I have complied with all of the procedural requirements in PAIA contemplated in section 11(1)(a) of PAIA. I am accordingly entitled to access the records I requested unless the records were duly refused in terms of a ground set out in Chapter 4 of PAIA. However, for the reasons set out above, I submit that the DOJ&CD has failed to demonstrate the existence of any ground of refusal set out in Chapter 4. It follows that I am entitled to the records requested.

13. In any event, even if the DOJ&CD's is entitled to rely on sections 36 and 37 of PAIA, then I submit that these grounds of refusal are subject to the public interest override in section 46 of PAIA. My uncle's story and Mr Rodrigues' involvement have captured the public eye and are widely reported in the media. This represents a greater struggle for accountability, truth and transitional justice in South Africa. Given that Mr Rodrigues' costs are being footed by the South African public they have a right to know the extent of these costs and how they were incurred. Therefore, I submit that even if a ground of refusal can be established then the public interest override in section 45 of PAIA must apply and the records I have requested must be provided.

14. In terms of PAIA, an internal appeal must be filed by the requester within 60 days of receiving the refusal for the original PAIA request. This was not done within the allocated 60 days as I have been following up with numerous email correspondences with the

5
Re: Internal Appeal Pursuant to the Promotion of Access to Information, 2000 Act 2 of 2000 (PAIA):

Re the late Mr Ahmed TIMOL

DOJ&CD in a reasonable and non-confrontational way seeking an honest response from DOJ&CD. I attach various emails evidencing my efforts. Further, it took the DOJ&CD a significant time period (five months after the expiry of the prescribed period) to respond to my initial PAIA request. Further, I submit that my PAIA request enjoys strong prospects of success for the reasons I have set out above. In the circumstances, I submit that there is good cause to permit the late lodging of this internal appeal in terms of section 75(2)(a) of PAIA.

15. Your response in writing is appreciated.

Kind Regards

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