



CCII Systems (Pty) Ltd Registration No 90/05058/07

Communications
Computer Intelligence
Integration

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Your Ref. :
Our Ref. : sdp/letters

2002-01-31

The Auditor-General
Office of the Auditor-General
P.O. Box 446
Pretoria
0001

Attention : S.A. Fakie

Dear Sir

Internal Appeal against Decision of the Information Officer in terms of Section 74 of the Promotion of Access to Information Act No. 2 of 2000

We refer to your letter dated 18th January and received by us on the 21st January 2002 whereby you informed us of your decision to refuse our request for access to information.

We take cognisance of your recommendation that we should make an application to the High Court should we have sufficient grounds to disagree with your decision.

However, we advise that Section 78 (1) of the Promotion of Access to Information Act No. 2 of 2000 (the Act) stipulates that an applicant may only seek relief from a court after the internal appeal procedure provided for in Section 74 of the Act has been exhausted.

In the circumstances, please be advised that we do indeed have sufficient grounds to disagree with your decision and that we hereby lodge such an internal appeal in terms of Section 74 of the Act.

Our grounds for appeal are set out as required in the prescribed form which is attached hereto.

Directors : R.M. Young (Managing), A.R. Knight

Additionally, we bring to your attention the following points :

1. Refusal in terms of Section 45 (b) of the Act

We note, but do not accept, your statement that you “do not have the resources to go through the contents of documents”. There cannot possibly be so many documents in the AG’s audit files specific to CCII Systems’s allegations and complaints regarding the SDPs such that the resources of the Office of the Auditor-General of the Republic of South Africa are insufficient for this unchallenging task.

Furthermore and specifically, this reason cannot possibly be justified in the case of the drafts of the Joint Investigation Team’s (JIT) Report into the Strategic Defence Packages (SDPs) as there can only have been a finite number of drafts of finite length.

In any case, we do not hold the view that when the Legislature of the Republic promulgated the Promotion of Access to Information Act, that its provisions would be allowed to be frustrated on these grounds, as indeed is borne out by Section 46 (b) of the Act. Therefore, in order to remove this as a ground of refusal, we hereby tender the salary of a responsible employee from one of the big 5 firms of auditors to attend to this task.

2. Refusal in terms of Section 37 of the Act

In relation to the exemption in Section 37 of the Act which you cite, we refer you to the following provisions :

2.1 Section 37 (2) (b) stipulates that a record may not be refused if the third party concerned has consented in terms of Section 48 to its disclosure.

2.2 Sections 47 and 48, read in conjunction, require that the Information Officer considering a request for access to a record contemplated in terms of Section 37 (1), must take all reasonable steps to inform the third party of that request and to obtain the consent of that third party for disclosure.

We therefore ask you the question, did the Office of the Auditor-General take all reasonable steps as required by Section 47 (1) of the Act to seek the consent of the relevant third parties?

2.3 Section 46 (b) stipulates that despite any other provision contained in the Act, the Information Officer of a public body **must** grant access to a record of a body contemplated in Sections 37(1) (a) or (b) if the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question. It is our contention that, in relation to the draft reports, the public interest override provision favours the disclosure of these documents, especially in light of the repeated public utterances by yourself that no substantive changes were made to the Report of the Joint Investigation Team.

2.4 Section 28 of the Act stipulates that if a request for access is made to a public body which may or must be refused in terms of any provision of the Act, that every part of the record which does not contain any such information and that can reasonably be **severed**, despite any provisions of this Act, **must** be disclosed.

We advise that the request for the draft versions of the Joint Investigative Team Report can be reasonably severed from the request for the audit files and other correspondence. By allowing for the severability of information, it is clear that the legislature favours the prioritising of access to information.

2.5 We advise further that in terms of Section 89 of the Act, no criminal or civil liability can be attached to you for anything done in good faith in the exercise or performance of your duties.

3. Refusal in terms of Section 41(a) (*sic*) of the Act

In relation to your refusal in terms of Section 41(a) (*sic*), we refer you to the following provisions thereof:

- 3.1 Section 41 (1) states that the public body **may** refuse a request for access to a record of the body if it threatens the defence of the Republic. Firstly, we would like to point out that the wording of the section is such that the Information Officer “may” and **not** “must” refuse the documents.

Secondly, we contend that the request for the draft reports will not prejudice the defence of the Republic and thirdly, we note that there can be no defence-related secrets between the Office of the Auditor-General and the Office of the Public Protector.

- 3.2 Section 46 (b) of the Act also stipulates that, despite any other provision contained in the Act, that the Information Office of a public body must grant access to a record of a body contemplated in Sections 41 (1) (a) or (b) if the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question. It is our contention that the public interest override provision clearly favours the disclosure, at the very least, of the draft reports.

- 3.3 With reference to Paragraph 3.1 hereinabove, it is clear that in refusing our request for access in terms of Section 41, that no consideration was given to Section 28 which would permit the severability of documents. We re-iterate that we are not seeking documents that threaten the security of the Republic and should there be any such documents attached to the requested documents or correspondence, then we advise that we do not require such documents.

- 3.4 The provision in Section 89 in which no criminal or civil liability would be attached to you for anything done in good faith in the exercise or performance of your duties is also applicable here.

We find that in narrowly interpreting the aforementioned exemptions of the Promotion of Access to Information Act that were cited by you and upon which you rely, it is clear that you failed to apply your mind and/or that you exercised your discretion incorrectly as the provisions contained in and prioritised by Sections 28, 45, 46, 47 and 48 of the Act indeed favours the disclosure of information in order to foster a culture of transparency, good governance and accountability in public bodies.

In summary, we repeat our request for access to the following information held by the Office of the Auditor-General :

- Copies of each and every draft of the Joint Investigation Team’s Report into the Strategic Defence Packages (SDPs).
- Copies of all documents in the audit files specific to CCII Systems’s allegations and complaints, except those documents, parts of documents or annexures to documents that are relevant to the security of the Republic of South Africa.
- Copies of all documents in the audit files specific to CCII Systems’s allegations and complaints, except those documents, parts of documents or annexures to documents that have been provided to the JIT under legally valid confidentiality provisions and where no authorisation has been granted by the sources of such information for its disclosure to us in terms of this request, after having made the necessary request for such disclosure to the applicable sources.

Kindly be advised that we tender the appeal fee in the amount of R50,00.

If our appeal is not successful, kindly :

- state adequate reasons for your decision
- set out the procedure for lodging an application against your decision of the relevant authority.
- the identity of the relevant authority for such an appeal

Yours faithfully



Marlene Abreu
Legal Officer

Copy : Chairman of SCOPA, Dr Gavin Woods
Chairman of Audit Commission, Dr Pallo Jordan
Speaker of SA Parliament, Dr Frene Ginwala

FORM C

NOTICE OF INTERNAL APPEAL

(Section 75 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))
[Regulation 6]

**STATE YOUR REFERENCE
NUMBER: C²I² Systems / request
for info**

*NOTE: A person who lodges an internal appeal may have to pay an appeal fee.
If an appeal fee is payable, the decision of the internal appeal may be deferred until the fee is paid.*

A. Particulars of public body

The Information Officer/Deputy Information Officer:

S.A. Fakie
Office of the Auditor-General
P.O. Box 446
Pretoria
0001

B. Particulars of requester/third party who lodges the internal appeal

- (a) *The particulars of the person who is lodging the internal appeal, must be completed below.*
- (b) *Proof of the capacity in which appeal is lodged, if applicable, must be attached.*
- (c) *If the appellant is a third person and not the person who originally requested the information, the particulars of the requester must be stated at C below.*

Name of company: **CCII Systems (Pty) Ltd**

Registration number: **1990/005058/07**

Postal address: **P.O. Box 171
Rondebosch
7701**

Telephone number: **021 683 5490**

Fax number: **021 683 6365**

E-mail address: **ma@ccii.co.za**

Capacity in which an internal appeal on behalf of another person is lodged: _____

C. Particulars of requester

This section must be completed ONLY if a third party (other than the requester) is lodging the internal appeal.

Full names and surname: _____

Identity number: _____

D. The decision against which the internal appeal is lodged

Mark the decision against which the internal appeal is lodged with an "X" in the appropriate box:

X	Refusal of request for access.
	Decision regarding fees determined in terms of section 22 of the Act.
	Decision regarding the extension of the period within which request must be dealt with in terms of section 26(1) of the Act.
	Decision in terms of section 29(3) of the Act to refuse access in the form as requested by the requester.
	Decision to grant request for access.

E. Grounds for appeal

If the provided space is inadequate please continue on a separate folio and attach it to this form. You must sign all the additional folios.



State the grounds upon which the internal appeal is based:

1. Refusal in terms of Section 45 (b) of the Act

We note, but do not accept, your statement that you “do not have the resources to go through the contents of documents”. There cannot possibly be so many documents in the AG’s audit files specific to CCII Systems’s allegations and complaints regarding the SDPs such that the resources of the Office of the Auditor-General of the Republic of South Africa are insufficient for this unchallenging task.

Furthermore and specifically, this reason cannot possibly be justified in the case of the drafts of the Joint Investigation Team’s (JIT) Report into the Strategic Defence Packages (SDPs) as there can only have been a finite number of drafts of finite length.

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- 2.1 Section 37 (2) (b) stipulates that a record may not be refused if the third party concerned has consented in terms of Section 48 to its disclosure.
- 2.2 Sections 47 and 48, read in conjunction, require that the Information Officer considering a request for access to a record contemplated in terms of Section 37 (1), must take all reasonable steps to inform the third party of that request and to obtain the consent of that third party for disclosure.

We therefore ask you the question, did the Office of the Auditor-General take all reasonable steps as required by Section 47 (1) of the Act to seek the consent of the relevant third parties?

- 2.3 Section 46 (b) stipulates that despite any other provision contained in the Act, the Information Officer of a public body **must** grant access to a record of a body contemplated in Sections 37(1) (a) or (b) if the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question. It is our contention that, in relation to the draft reports, the public interest override provision favours the disclosure of these documents, especially in light of the repeated public utterances by yourself that no substantive changes were made to the Report of the Joint Investigation Team.

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- 3.3 With reference to Paragraph 3.1 hereinabove, it is clear that in refusing our request for access in terms of Section 41, that no consideration was given to Section 28 which would permit the severability of documents. We re-iterate that we are not seeking documents that threaten the security of the Republic and should there be any such documents attached to the requested documents or correspondence, then we advise that we do not require such documents.

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We find that in narrowly interpreting the aforementioned exemptions of the Promotion of Access to Information Act that were cited by you and upon which you rely, it is clear that you failed to apply your mind and/or that you exercised your discretion incorrectly as the provisions contained in and prioritised by Sections 28, 45, 46, 47 and 48 of the Act indeed favours the disclosure of information in order to foster a culture of transparency, good governance and accountability in public bodies.

State any other information that may be relevant in considering the appeal: _____

F. Notice of decision on appeal

You will be notified in writing of the decision on your internal appeal. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

State the manner: _____

Particulars of manner: _____

Signed at **Kenilworth** this **31st** day of **January 2002**


SIGNATURE OF APPELLANT

FOR DEPARTMENTAL USE:

OFFICIAL RECORD OF INTERNAL APPEAL:

Appeal received on _____ (date) by _____ (state rank, name and surname of information officer/deputy information officer).

Appeal accompanied by the reasons for the information officer/deputy information officer's decision and, where applicable, the particulars of any third party to whom or which the records, submitted by information officer/deputy information officer on _____ (date) to the relevant authority.

OUTCOME OF APPEAL:

DECISION OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER
CONFIRMED/SUBSTITUTED BY NEW DECISION

NEW DECISION: _____

DATE

RELEVANT AUTHORITY

DATE RECEIVED BY THE INFORMATION OFFICER/DEPUTY INFORMATION
OFFICER FROM THE RELEVANT AUTHORITY: _____

