REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 38562/2017

DELETE WHICHEVER IS NOT APPLICABLE

1. REPORTABLE: YES / NO
2. OF INTEREST TO OTHER JUDGES: YES / NO
3. REVISED

DATE: 12/12/18 SIGNATURE:

In the matter between:

TREVOR ANDREW MANUEL Applicant

and

SAHARA COMPUTERS (PTY) LTD First Respondent

ASHU CHAWLA Second Respondent

JUDGMENT

WEINER, J

Introduction

[1] The applicant, Mr Trevor Andrew Manuel (Manuel), applies for access to information in terms of section 78(2) of the Promotion of Access to Information Act ('PAIA').[1] He believes that his personal information has been unlawfully obtained and disclosed, and that he has been subjected to unlawful surveillance. This belief arises from an article published by News24, Scorpio (the investigative unit at Daily Maverick) and the amaBhungane Centre for Investigative Journalism. It was titled *'#GuptaLeaks: Guptas spied on Manuel, Malema and bank bosses'* (the 'Article'). He states, however, that it is not clear who is responsible for this unlawful conduct. Thus, in terms of section 50 of PAIA, he requested access to certain records to identify the appropriate defendants in order to protect and exercise his constitutional right to privacy (the Section 50 request).

[2] It is common cause that prior to the filing of the answering affidavits, the respondents had failed to provide a proper response to Manuel's request, in terms of section 55 of PAIA. Manuel thus originally alleged that the respondents have disclosed no legitimate basis upon which to refuse access to the records. He therefore sought an order setting aside their refusals to provide the records and granting him access to those records.

[3] In the answering affidavits the respondents sought to respond to Manuel's request. The respondents contend that the documents sought by Manuel do not exist, and that if they exist, which is denied, they are not in their possession. Manuel contends that the version provided in the answering affidavits amounts to a refusal, in terms of PAIA, to provide access to the records.

[4] Manuel accordingly sought alternative relief. He conceded that, for the Court to order access, would not be appropriate, and would amount to a *brutem fulmen.* It was submitted that that he cannot show decisively that the documents are in the respondents' possession. However, he submits that the responses are evasive, and lack candour. He thus claims that the Court should order that the application be referred to oral evidence on the question of whether the records are, or ever have been, in the possession of the respondents.

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[1] Act 2 of 2000.

The #GuptaLeaks Article

[5] The Article claimed that Manuel, his wife, Maria Ramos ('Ramos') and various other persons named therein had been subject to unlawful surveillance, and that their personal details, including particulars of their travel arrangements, had been collected and disclosed to the respondents. The Article contained the following allegations:

(a) Emails and documents reveal that the Gupta family spied on various prominent South Africans, including Manuel and Ramos.

(b) At the centre of the emails is Mr Ashu Chawla ('Chawla') (the second respondent herein), the former Chief Executive Officer of Sahara.

(c) An Excel spreadsheet, which Chawla had authored, set out detailed information regarding in-bound and out-bound flights that Manuel and Ramos had taken.

(d) The emails and documents also revealed that Chawla was in communication with moles within the Department of Home Affairs (the 'DHA'), including one Mudley, who emailed his curriculum vitae to Rajesh 'Tony' Gupta, after which it was forwarded by Chawla to an advisor of the Minister of Home Affairs, Malusi Gigaba.

(e) Another DHA official, Mr Gideon Christians ('Christians'), was in contact with Chawla in 2014 and 2015 (which was the period during which Manuel's personal information was obtained and his movements monitored). The Article also alleges that Christians sent Chawla a spreadsheet containing the personal information of 51 South African officials posted to diplomatic missions.

[6] In the answering affidavits, Chawla baldly denied the allegations – including the specific claims that he and Christians were in contact during 2014 and 2015, and that Christians sent him a spreadsheet containing the personal information of 51 South African officials posted to diplomatic missions.

Application to introduce new evidence

[7] The matter was heard on 7 August 2018 and judgment was reserved. On 18 October 2018, Manuel applied for the admission of further evidence (the new evidence) through the filing of a further affidavit. The further affidavit related to the testimony from the Naturalisation Inquiry (the 'Inquiry') before the Portfolio Committee on Home Affairs held on 12 and 13 September 2018, and documentation submitted to the Inquiry by the Organisation Undoing Tax Abuse ('OUTA'). Manuel contends that this new evidence casts further doubt on the respondents' versions.

[8] The new evidence relates to that of Christians. He testified at the Inquiry that:

(a) He and Chawla had a 'friendly' ten-year relationship that began in 2008 while he was posted at the South African High Commission in New Delhi;

(b) This relationship included Christians suggesting to his brother that he use Chawla as a visa sponsor;

(c) He put Chawla in contact with coal purchasers for the possible sale of coal by Gupta entities; and

(d) He could not, however, remember providing Chawla with the intelligence report containing the confidential details of 51 officials on diplomatic missions.

[9] Manuel submits that emails, contained in the dossier submitted by OUTA to the Inquiry, confirm that he in fact did send the report to Chawla. Further email correspondence confirms that Christians fast-tracked and provided on-demand visas to employees of Sahara Computers (Pty) Ltd ('Sahara') and Gupta-owned ANN7.

[10] The respondents opposed the application to introduce new evidence. They filed submissions on 8 November 2018. The applicant responded thereto on 22 November 2018.

[11] Manuel thus alleges that the importance of this new evidence is three-fold:

(a) First, it demonstrates that Chawla, in denying that he was in contact with potential moles within the DHA, including Christians, has provided a misleading version to this Court under oath. The new evidence provides compelling grounds to doubt the correctness of Chawla's version, and thus provides direct support for Manuel's prayer for a referral to oral evidence.

(b) Second, the evidence illustrates the insufficiency of Sahara's and Chawla's search for the records, when they sought to comply with section 55 of PAIA. The new evidence makes it plain that when Chawla was employed by Sahara, he and Christians were communicating via email. Other than those email accounts on Sahara's server (which Manuel submits was not properly searched either) no other email accounts on other devices were sought; and

(c) Third, the evidence shows that, while he was employed at Sahara, Chawla was capable of obtaining access to Manuel's records, given his relationship with Christians and others.

[12] Manuel submits that the new evidence is material, and that no prejudice will be caused to the respondents by its admission at this stage. Manuel argues that the Court must consider the materiality of the evidence sought to be furnished in deciding whether such new evidence should be admitted.[2]

[13] Having regard to the decision to which I have come, in regard to the main application, I am of the view that:

(a) The new affidavits contain evidence that, for the purposes of this application, is speculative and does not take the matter much further;

(b) It has not been tested in cross-examination;

(c) The respondents have not had an opportunity to respond thereto;

(d) It is in the interests of justice that this matter be brought to finality, with no further affidavits being filed; and

(e) Such evidence can be tested, if necessary, at the time that the oral evidence is heard.

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[2] *Cohen NO v Nel and Another* 1975 (3) SA 963 (W) at 966H-967E.

[14] Accordingly, the application to introduce the new evidence is dismissed with costs.

Response to the Article

[15] The respondents did not, prior to filing their answering affidavits, challenge the facts in the Article, nor did they follow it up with any legal proceedings.

[16] Chawla and Sahara, in their answering affidavits, denied the allegations contained in the Article.

The PAIA Request

[17] On 27 July 2017, Manuel's attorneys addressed letters to both Sahara and Chawla. These letters set out Manuel's concerns regarding his personal safety and security, due to the unlawful surveillance and unauthorised possession of his personal information. Attached to the letter to Sahara was a formal PAIA request. A separate formal PAIA request was also addressed to Chawla, subsequent to the letter addressed to him.

[18] The PAIA requests sought the following records ('the Records'):

(a) The so called '#GuptaLeaks' cache of emails, including any other correspondence; source documentation; record; or surveillance relating to Manuel and/or his family (the '#GuptaLeaks Records');

(b) The Excel spreadsheet that was allegedly compiled by Chawla, the CEO of Sahara, containing the identity numbers and international flight details of Manuel and Ramos: including all source documentation and correspondence from which it was sourced (the Excel Spreadsheet records); and

(c) The name/s of any and all third parties, including any organs of state, who have provided Sahara, its employees and Chawla with Manuel's personal information, or who Sahara assisted in the surveillance of Manuel; and any documentation which evidences this information (the Surveillance records).

[Manuel would only be entitled to the documentation evidencing the information and not the names of third parties and/or organs of State as requested herein, unless same are contained in such records].

[19] The PAIA requests set out that the Records were required in order to protect and exercise Manuel's 'right to privacy as guaranteed in the Constitution', in that:

'Trevor Manuel and his family's personal identification and travel information has been disseminated on public and national platforms without their consent or knowledge. This information is essential to protecting their rights to privacy, and to protect their personal safety and security. To protect this right, it is essential that Mr Trevor Manuel exercises his right to access this information.'

[20] On 25 August 2017, Sahara's attorneys delivered a letter refusing access to the Records on various grounds, which will be dealt with below. On 5 October 2017, Chawla's attorneys, in a letter, similarly refused access to the Records.

The Legal Framework

[21] The right to access to information is contained in section 32 of the Constitution.[3] Section 32(2) provides that legislation must be enacted to give effect to this right. PAIA is the legislation which was enacted in terms of this subsection in order to give effect to the right. According to PAIA's preamble, it represents a break with a past characterised by a 'secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations...' and seeks to 'foster a culture of transparency and accountability in public and private bodies by giving effect to the right to access to information'.[4]

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[3] Section 32 of the Constitution provides as follows:
'**Access to information**
32. (1) Everyone has the right of access to—
(a) any information held by the state; and
(b) any information that is held by another person and that is required for the exercise or protection of any rights.
(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.'

[4] Preamble of PAIA.

[22] The objects of PAIA are to establish mechanisms to give effect to the right to access to information in a manner 'which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible'.[5]

[23] Section 50 of PAIA governs requests for access to information held by private bodies. It provides, in subsection (1):

> '(1) A requester must be given access to any record of a private body if–
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> (*a*) that record is required for the exercise or protection of any rights;
>
> (*b*) that person complies with the procedural requirements in this Act relating to a request for access to that record; and
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> (*c*) ....'

[24] Manuel seeks to exercise and protect his right to privacy as contained in section 14 of the Constitution.[6] Manuel contends that the right to privacy exists on a continuum. It begins with 'a wholly inviolable inner self, moving to a relatively impervious sanctum of the home and personal life and ending in a public realm where privacy would only remotely be implicated.'[7] As was held in *Bernstein and Others v Bester and Others NNO,* 'Privacy is acknowledged in the truly personal realm, but as a person moves into communal relations and activities such as business and social interaction, the scope of personal space shrinks accordingly.'[8] Manuel submits that the alleged intrusion strikes directly at personal and private aspects of his life.

[25] In terms of section 50 of PAIA, the record must be required for the exercise or protection of a right; the request must be procedurally compliant; and the information must not be of a kind described in Chapter 4 of PAIA. The respondents only challenge the first requirement. Other than the grounds set

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[5] Section 9 of PAIA.

[6] Section 14 of the Constitution provides as follows:

'**Privacy**

14. Everyone has the right to privacy, which includes the right not to have—
(a) their person or home searched;
(b) their property searched;
(c) their possessions seized; or
(d) the privacy of their communications infringed.'

[7] *Mistry v Interim Medical and Dental Council of South Africa and Others* 1998 (4) SA 1127 (CC) para 27.

[8] *Bernstein and Others v Bester and Others NNO* 1996 (2) SA at 789A.

out in section 50, the only other basis upon which a private body may legally refuse access to records is if those records are not in its possession or do not exist. This is the defence upon which the respondents base their opposition.

[26] It is, however, contended by Manuel that this ground cannot be invoked merely on the private body's say-so. In terms of section 55:

> (1) If-
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> *(a)* all reasonable steps have been taken to find a record requested; and
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> *(b)* there are reasonable grounds for believing that the record—
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> *(i)* is in the private body's possession but cannot be found; or
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> *(ii)* does not exist,
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> the head of a private body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.
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> (2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the head (of the private body).
>
> (3) For the purposes of this Act, the notice in terms of subsection (1) is to be regarded as a decision to refuse a request for access to the record concerned.
>
> (4) .....
>
> [Emphasis added]

The Respondents' Objections

[27] The respondents object to the provision of the Records on the following four grounds:

(a) Firstly, they claim that Manuel has failed to meet the requirement of establishing that the Records are required for the exercise or protection of a right. They state that he seeks the Records for the purpose of pre-litigation discovery, which is impermissible;

(b) Secondly, they allege that this application is unnecessary and irregular, in that Manuel has identified third parties in possession of the Records and has verified their authenticity;

(c) Thirdly, in their answering affidavits, the respondents claim that they are unable to find the Records; and

(d) Fourthly, Chawla claims that the PAIA request is incompetent against him in that he is not a 'private body' for purposes of section 50 of PAIA.

The Exercise or Protection of a Right

[28] In establishing that information is required for the exercise or protection of a right, Manuel is required to satisfy two distinct requirements. His counsel referred to various authorities in this regard. In summary, and based upon such authorities, the requisites are the following:

(a) Firstly, he must identify the right that he seeks to exercise or protect, and show that *prima facie*, he has established that he has such a right.[9] In respect of section 50(1)(*a*) of PAIA the word 'any' before the word 'right' has been held to mean that the broadest possible interpretation must be given to what qualifies as a right for purposes of the section.[10]

(b) Secondly, he must demonstrate how the information will assist in exercising or protecting the right in question.[11] He must thus establish a connection between the information requested and the right sought to be exercised or protected[12] and must '..."lay a proper foundation for why that document is reasonably 'required' for the exercise or protection of his or her rights"...'[13] As was held in *Unitas Hospital v Van Wyk*, while it does not suffice for Manuel simply to 'want' or 'desire' the Records, or state that they are merely 'useful' or 'relevant', he does not need to establish that

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[9] *Claase v Information Officer of South African Airways (Pty) Ltd* 2007 (5) SA 469 (SCA) para 8.

[10] *M&G Media Ltd and Others v 2010 FIFA World Cup Organising Committee South Africa Ltd and Another* 2011 (5) SA 163 (GSJ) para 334.

[11] *Cape Metropolitan Council v Metro Inspection Services (Western Cape) CC and Others* 2001 (3) SA 1013 (SCA) para 28.

[12] *M&G Media* (note 10 above) para 352.

[13] *Clutchco (Pty) Ltd v Davis* 2005 (3) SA 486 (SCA) para 12, quoting the headnote of *Le Roux v Direkteur-Generaal van Handel en Nywerheid* 1997 (4) SA 174 (T).

they are 'essential' or 'necessary'.[14] Instead, the information must provide Manuel with 'assistance' in the sense of 'substantial advantage or an element of need'.[15] This requirement, which is 'accommodating, flexible and in its application fact-bound',[16] means only that the information must be '…"reasonably" required in the circumstances'.[17]

[29] It is submitted by Manuel that the information contained in the Article amounts to a breach of his personal privacy rights. He contends that there is no public interest consideration applicable. He relies in this regard on the dictum in *Bernstein,* where the Constitutional Court, in dealing with the issue of privacy in the personal realm (as opposed to that of a person in the public and communal realm) found that the former did not involve a public interest element.[18]

[30] Manuel acknowledges that he might have various legal remedies by which he can exercise or protect his right to privacy. Some of the causes of action and/or remedies to which he refers include:

(a) The *actio iniuriarum*, which would enable Manuel to sue for damages for the violation of his right to privacy.

(b) If the person/s who violated such rights is/are within the employ of the state (which, according to the Article, might well be the case), Manuel may also have a remedy arising from a breach of a statutory duty.

(c) If the disclosure and the surveillance of Manuel's movements involved members of the Intelligence Services, he might have claims arising from certain statutes relating to the Intelligence Services.

(d) If these unlawful activities are ongoing, he would be entitled to interdictory relief to protect against the ongoing and future invasion of his privacy.

[31] Manuel submits that the Records would provide him with assistance in the sense of substantial advantage or an element of need. In the absence of the Records, he does not know who his defendant would be, or what cause of

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[14] *Unitas Hospital v Van Wyk* 2006 (4) SA 436 (SCA) paras 16-17.
[15] *Clutchco* (note 13 above) para 13.
[16] *My Vote Counts NPC v Speaker of the National Assembly* & Others 2016 (1) SA 132 (CC) para 31.
[17] *Clutchco* (note 13 above) para 13.
[18] *Bernstein* (note 8 above) para 67.

action he has against such defendants. With the Records, he will be able to formulate his cause of action and identify the defendants.

[32] The respondents claim that the applicant has not complied with the requirements of section 50. They rely on *Cape Metropolitan Council*, where it was held that:

> 'Information can only be required for the exercise or protection of a right if it will be of assistance in the exercise or protection of the right. It follows that, in order to make out a case for access to information...an applicant has to state what the right is that he wishes to exercise or protect, what the information is which is required and how that information would assist him in exercising or protecting that right.'[19]

[33] They contend that section 50 only protects rights prospectively; it does not serve to vindicate rights retrospectively. Section 50, however, refers to access to a record where 'that record is required for the exercise or protection of a right' [emphasis added]. This cannot refer only to prospective rights. A breach of these rights gives the applicant the right to claim damages, whether at common law or in terms of the Constitution. Vindication of a right by way of court proceedings is a way in which to exercise that right.[20] He is also able to seek interdictory relief.

[34] The respondents also submit that constitutional rights 'are not cognisable bases for damages claims'. As the applicant argues, such rights are given effect to by common law damages claims. See *Fose v Minister of Safety and Security,* where it was held that '[I]n many cases the common law will be broad enough to provide all the relief that would be "appropriate" for a breach of constitutional rights'.[21]

[35] In circumstances where such a remedy is not available, a breach of a constitutional right could give rise to a claim for constitutional damages.[22] However, a damages claim is not the only claim to which he may be entitled, as is set out above.

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[19] *Cape Metropolitan Council* (note 11 above) para 28.
[20] *Claase* (note 9 above) paras 3, 6, 7 and 11.
[21] *Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC) para 58*(b)*.
[22] *MEC for the Department of Welfare v Kate* 2006 (4) SA 478 (SCA) para 33.

[36] The respondents also submit that Manuel cannot show a breach of his rights as his identity number was available from public sources. Section 21 of the Identification Act specifically prohibits the publication or communication of any information contained in the population register or an identity card.[23] The applicant accordingly submits that it was unlawfully obtained and was seemingly obtained and shared for purposes of unlawful surveillance.

Pre-Litigation Discovery

[37] The respondents contend that the applicant is seeking pre-litigation discovery. They rely on *Mahaeeane v Anglogold Ashanti,* which facts they submit are similar to the facts of the present case.[24] In *Mahaeeane,* the Court refused the application under PAIA on the basis that the applicants were in a sufficiently well-informed position that they could institute proceedings against the respondents in order to vindicate their rights. The attempted use of PAIA to try and enhance the applicant's position was found to be impermissible.[25] The respondents submit that, not only has the applicant identified various potential causes of action, he has also identified various prospective defendants/respondents.

[38] However, the respondents overlook the distinction drawn in *Unitas.* In that case, the requester 'did not require the [record] to formulate her claim for purposes of instituting an action.'[26] She was well aware of who her defendant was; and the documents that she sought would have been available to her under the provisions of Rule 35 of the Uniform Rules of Court. The Court in *Unitas* thus specifically distinguished the case before it from a case such as the present and held expressly that '...it is legitimate to use s 50 to identify the right defendant'.[27]

[39] The applicant contends further that this distinction was confirmed in *Maheeane*, where the Court held that:

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[23] Identification Act 68 of 1997.
[24] *Mahaeeane v Anglogold Ashanti Ltd* 2017 (6) SA 382 (SCA).
[25] Ibid para 18.
[26] *Unitas* (note 14 above) para 19.
[27] Ibid para 22.

'....It is necessary to avoid the unwelcome spectre of applications under PAIA being brought to obtain premature discovery. It seems to me that a rule of thumb which will avoid this is to enquire whether, in the context of future litigation to exercise the right relied on, the records requested are reasonably required to formulate a claim. This seems to me to have been the implicit test applied in *Unitas Hospital*. If needed to formulate a claim, it can be said that they are reasonably required under s 50(1) of PAIA...'[28]

[40] Thus, Manuel submits that both *Unitas* and *Mahaeeane* confirm that PAIA is applicable where the requester seeks to identify the defendant and formulate the claim in relation to such defendant. It is submitted that Manuel's application falls into this second category. He does not require the Records to assess his prospects of success. He requires them in order to determine what precisely his cause of action is, and against whom it lies.

[41] The respondents contend such pre-litigation discovery is further prohibited by section 7 of PAIA.[29] This section provides that PAIA does not apply to records requested after the commencement of legal proceedings.

[42] The applicant argues that section 7(1)*(b)* makes it clear that the section only deals with litigation that has already commenced. Thus, read as a whole, section 7 provides that, where a record is sought after the commencement of proceedings, and it can be obtained through the rules of discovery, then the requester will not be entitled to rely on PAIA. In this case, Manuel seeks the Records before the commencement of any such civil proceedings.

[43] In considering section 50 together with section 7, Brand JA in *Unitas* held:

'....From the provisions of s 7 of PAIA, it is plain, in my view, that PAIA is not intended to have any impact on the discovery procedure in civil cases. Once court proceedings between the parties have commenced, the rules of discovery take over. In that event

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[28] *Mahaeeane* (note 24 above) para 20.

[29] **'7 Act not applying to records requested for criminal or civil proceedings after commencement of proceedings**

(1) This Act does not apply to a record of a public body or a private body if—
(a) that record is requested for the purpose of criminal or civil proceedings;
(b) so requested after the commencement of such criminal or civil proceedings, as the case may be; and
(c) the production of or access to that record for the purpose referred to in paragraph *(a)* is provided for in any other law.'

access to documents in possession of the litigating parties is governed by these rules. The provisions of PAIA no longer apply as between the parties....'[30]

[44] In my view, Manuel is entitled to use PAIA to establish who his defendants might be and/or what cause of action he has against them. He does not require the Records to assess his prospects of success, which would amount to pre-litigation discovery. Thus, the request is permitted under PAIA and does not amount to pre-litigation discovery.

Information available from other sources

[45] It is the respondents' view that the application is aimed at the wrong parties. The respondents contend that it is clear that the applicant possesses a wealth of information that would enable him to institute proceedings under the *actio iniuriarum* for damages arising from the alleged violations of his right to privacy. To the extent that the applicant might wish to institute other proceedings, he should seek access to the Records from the organs of state in question, to which he refers.

[46] The Article identifies persons, other than the respondents, as having potentially breached their statutory obligations, and the applicant's right to privacy. The respondents allege that Manuel already knows who has engaged in the allegedly unlawful disclosures.

[47] In this regard, the applicant contends that the respondents are mistaken both in fact and in law.

(a) In law, it is irrelevant that another party may also be in possession of the records that are sought. If an applicant satisfies the requirements of section 50 of PAIA, it is entitled to the records in the possession of a private body, without more. In dealing with the exclusions to PAIA referred to in section 7 of the Act, the Constitutional Court in *PFE International Inc (BVI) v IDC* held that the object of PAIA is to give effect to the right of access to information. Section 7 excludes the application of the Act. The

[30] *Unitas* (note 14 above) para 19.

section should be interpreted restrictively so as to limit the exclusion to circumstances contemplated in section 7 only and to ensure greater protection of the right.[31] Thus, other than the grounds set out in section 50, the only other basis upon which a private body may legally refuse access to records is if those records are not in its possession or do not exist. The respondents have not pointed to any provision of PAIA that suggests otherwise.

(b) Factually, Manuel does not know who passed on his confidential information unlawfully or who conducted surveillance of him and his family. He requires the Records to find this out.

[48] In my view, the first two objections have no merit. Manuel has, in my view, established that, in terms of section 50, access to the Records is required for the exercise or protection of a right; the Records would provide him with assistance or a substantial advantage or an element of need, specifically in regard to identifying the defendants and the causes of action. Having established the requisites, he is entitled to the relief provided by PAIA, unless the respondents can satisfy the requirements of section 55.

Section 55 of PAIA

[49] Section 55 requires a private body that claims that records do not exist or cannot be found to:

(a) go under oath to say that it is not possible to provide access to the record;

(b) provide a full account of all steps taken to find the record or determine whether it exists; and

(c) provide such an affidavit or affirmation in response to the initial PAIA request, in which case it is deemed to be a refusal.

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[31] *PFE International Inc (BVI) v Industrial Development Corporation of SA* 2013 (1) SA 1 (CC) para 18.

[50] A mere statement that a record cannot be found or does not exist does not suffice. Courts are required to scrutinise the private body's version on affidavit to determine whether its account is satisfactory.[32]

[51] Neither respondent deposed to an affidavit or affirmation in response to Manuel's PAIA request. Sahara premised its refusal by '[a]ssuming the existence of the alleged record'.

[52] Manuel refers to the chronology of the correspondence between the parties. This, he argues, demonstrates that the respondents are being disingenuous in their version contained in their answering affidavits, which they contend satisfies the requirements of section 55.

[53] The Article referred to the existence of the Excel spreadsheet prepared by Chawla. It provided details of communications between Chawla and officials in the DHA, and implied that he prepared the Excel spreadsheet with information obtained from those officials. The respondents have neither challenged nor attempted to explain the allegations in the Article. On the contrary:

(a) At no time prior to the filing of the answering affidavits, did the respondents challenge the contents of the article.

(b) Chawla, in his answering affidavit, baldly denied the contents of the Article and made no attempt to address the detail contained in it.

(c) Sahara pleaded ignorance and argued that the emails and other documents referred to in the Article were not attached to the founding affidavit.

(d) Sahara's first response to the request was a letter from Signature Litigation LLP on 3 August 2017. The letter did not contain responses to any of the requests. Instead, it requested further particulars. On 4 August 2017, Manuel's attorneys refused this request and demanded compliance with the PAIA request.

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[32] See *CCII Systems (Pty) Limited v Lekota NO* (23554/02) [2005] ZAGPHC 45 (15 April 2005) para 16.

(e) Sahara's subsequent response to the PAIA request, on 25 August 2017, was totally evasive. Of importance is the fact that they did not deny that the Excel spreadsheet and the other documents were in its possession.

(f) Chawla's response to the request, on 28 August 2017, was similarly evasive. Again, he did not deny that the documents existed or were in his possession.

(g) Following Chawla's initial refusal, Manuel's attorneys sent him a formal PAIA request on 5 September 2017. His attorneys responded to the formal request on 5 October 2017. It was as evasive as before. Again, the one thing that it did not say, was that Chawla knew nothing about the documents sought and that they were not in his possession.

[54] Thus, when this application was launched, despite having had sufficient opportunity to do so, the respondents had not disputed the contents of the Article, or denied knowledge or possession of the requested Records. They did not state whether they had ever had the documents in their possession, and/or if they no longer had them in their possession.

[55] It was only after the application was launched that both respondents, for the first time, sought to rely on section 55 in their answering affidavits, denying that the Records were in their possession and setting out the steps they had taken to find them. Chawla filed a supplementary affidavit in this regard as well.

[56] Manuel submits that, even in their answering affidavits and in Chawla's supplementary affidavit, the respondents' denials are deliberately evasive and self-evidently disingenuous.

[57] Sahara states that it caused one of its employees, a duly qualified IT expert, Jonathan Leong-Colom (Leong-Colom), to conduct an independent search for the relevant documents by searching its server, the results of which confirm that those documents are not in the possession of Sahara. This, they claim, confirms Sahara's version that the documents, as far as it is aware, do not exist. Sahara further alleges that it has utilised the uninterrupted and continuous use of its present server for at least the last five years. This means that if the Excel spreadsheet presently exists, and/or is in Sahara's possession, it would have been produced as part of the search.

[58] The search was conducted on all files stored on the server using the terms reflected in the founding affidavit. That search did not yield any results. Sahara claims that the search was extensive. The search included a server-network and local-server drive check across the server and included a search of the folders and subfolders and the contents therein. Nothing has been found.

[59] Sahara contends that Manuel cannot dispute the fact that it has undertaken a reasonable, thorough, and diligent search, and has discharged their obligations in terms of section 55 PAIA.

[60] Manuel contends that Sahara's answering affidavit is not satisfactory for the purposes of section 55. The following are material issues to be considered in this regard:

(a) Sahara's CEO, Mr Stephanus Nel ('Nel'), alleges that Sahara's IT administrator conducted a Windows Explorer search, entering various search terms taken from the redacted Excel spreadsheet attached to Manuel's founding affidavit. Nel states that the Records are no longer on the server. Manuel contends that it is not evident from the report and affidavit that received and archived emails, or deleted items, which might constitute a significant portion of the Records sought, would appear on such a search. Whilst Sahara contend that a search of its server would reveal all of these items, what is evident is that no other email accounts or documents on other devices were searched for.

(b) It is also not clear whether Sahara stores information anywhere other than on its servers. If it does, and the Records are stored in that way, then they would not have shown up in the search. Such documents may be available in hard copy. No such copies were searched for or requested from anyone within the organisation.

(c) Chawla's old business laptop, which he returned to Sahara when he left its employ, would have been an obvious place to search. However, from the report and affidavits filed by both respondents, it was not searched by Sahara (or by Chawla).

(d) The report and affidavit do not state whether Nel made inquiries within Sahara whether anybody knew about the Records.

(e) Sahara did not search for the Records in response to the PAIA request. This is apparent from the IT administrator's report which was dated 10 November 2017, only four days before the answering affidavit was filed – and long after the PAIA request was made.

[61] Chawla's affidavit similarly falls short of the section 55 requirements:

(a) Chawla claims to have conducted a search of his personal computer using the same keywords taken from the Excel spreadsheet.

(b) Despite acknowledging that he also used a business laptop, which he returned to Sahara at the end of February 2016, Chawla omits any reference to such laptop and provides no information about whether the Records were on his business laptop when he returned it to Sahara, or whether he made enquiries from anyone at Sahara to determine whether the Records are on that laptop.

(c) Having failed to do so, Manuel submits, it cannot be said that he has given a 'full account of all steps' to find the Records as is required by the section.

[62] Chawla contends that he has clearly satisfied the requirements. In his answering affidavit, he states:

'I must add that I have never been party to activities constituting the surveillance of the applicant or his family. I have had no contact with any third parties, be they organs of state or otherwise, concerning the personal information of the applicant or his family.'

[63] In his supplementary affidavit, Chawla adds that to the best of his knowledge and belief, he has 'never had "TM2" [the Excel Spreadsheet], or anything like it in [his] possession.' Chawla argues that there is no basis upon which to question his denial.

[64] Manuel, having received these responses in the answering affidavits, alleged in his replying affidavit that neither respondent had been open with the Court as to whether they ever had the Excel spreadsheet in their possession and, if so, where they obtained it, and why they did so. Chawla appears, for the first time, to have responded to this in his supplementary affidavit.

[65] Whilst the respondents' answers might superficially comply with section 55, many questions relating to the existence and possession of the Records remain

unanswered. This is more so when one has regard to the fact that the respondents have not previously challenged or seriously denied the contents of the Article, which was widely published, and, which, if false, clearly cried out for a response. The authorities dealing with the failure to respond to a letter are apposite, in this regard. In *McWilliams v First Consolidated Holdings (Pty) Ltd* Miller JA dealt as follows with a failure to respond to a letter:

> 'I accept that "quiescence is not necessarily acquiescence" (see *Collen v Rietfontein Engineering Works* 1948 (1) SA 413 (A) at 422) and that a party's failure to reply to a letter asserting the existence of an obligation owed by such party to the writer does not always justify an inference that the assertion was accepted as the truth. But in general, when according to ordinary commercial practice and human expectation firm repudiation of such an assertion would be the norm if it was not accepted as correct, such party's silence and inaction, unless satisfactorily explained, may be taken to constitute an admission by him of the truth of the assertion, or at least will be an important factor telling against him in the assessment of the probabilities and in the final determination of the dispute.'[33]

[66] The Article states that the Excel spreadsheet was prepared by Chawla, who received information from some named and unnamed officials from the DHA. This Excel spreadsheet and other related documents were prepared by him whilst in the employ of Sahara. In not previously challenging these allegations, questions remain as to the credibility of their belated answers in the answering affidavits. As set out above, this Court is required to scrutinise the private body's version on affidavit to determine whether it is satisfactory. Neither respondent made any attempt to address the detail contained in the Article or to deny that the Records existed, or were, or had been in their possession, in the letters addressed to Manuel's attorneys.

[67] The statement that the Records are not on the server, is not sufficient, for the reasons set out above. Accordingly, in my view the respondents' contentions set out in their answering and supplementary affidavits, do not comply with the requirements of section 55.

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[33] *McWilliams v First Consolidated Holdings (Pty) Ltd* 1982 (2) SA 1 (A) at 10E-F.

Is Chawla a private body for purposes of PAIA?

[68] Chawla alleges that PAIA does not apply to him as he is not a 'private body', or the 'head' of a 'private body', as envisaged in section 50.

[69] Despite being described in correspondence by his attorneys as 'the former CEO of Sahara Computers (Pty) Ltd', Chawla alleges for the first time in his supplementary affidavit that he was, in fact, the Chief Operating Officer of Sahara until 28 February 2016, and not its Chief Executive Officer.

[70] Section 1 defines a 'private body' as follows:

' "private body" means-

(a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity;

(b) ....; or

(c) any former or existing juristic person,

...'

[71] A 'head' of a private body is, in turn, defined as follows:

(a) ...

(b) ...

(c) in the case of a juristic person-

(i) the chief executive officer or equivalent officer of the juristic person or any person duly authorised by that officer; or

(ii) the person who is acting as such or any person duly authorised by such acting person' [emphasis added]

[72] Manuel submits that if one has regard to the right of access to information in section 32 of the Constitution, it applies to information held by 'any person'. He refers to the minority judgment of the Constitutional Court in *My Vote Counts NPC v Speaker of the National Assembly*, where it was stated that 'the word

"person" is plainly very wide' and 'includes any individual or association or community or group.'[34]

[73] He submits that in terms of section 2(1) of PAIA, a court must prefer any reasonable interpretation that accords with PAIA's objects over one that does not. One of the primary objects of PAIA, in terms of section 9(*a*)(*ii*), is to give effect to the constitutional right of access to 'any information that is held by another person and that is required for the exercise or protection of any rights.'

[74] Chawla argues that where a statute exists to vindicate a claimant's rights, they must rely on that statute and not the Constitution itself. While the Constitution will, quite obviously, be an issue to be considered in all proceedings before any court in South Africa, it cannot be relied upon directly where a specific statutory instrument is created in order to address an issue raised by a party. The only exception to this is if that statutory regime is itself challenged as being *ultra vires* the Constitution.[35]

[75] Chawla contends that the Constitutional Court's minority judgment in *My Vote Counts* upon which the applicant relies, makes the very point that PAIA is too narrow and, therefore, does not do enough to realise the purposes of section 32 of the Constitution.[36]

[76] Chawla contends that the use of the qualifying phrase 'but only in such capacity' contained in the definition of 'private body' in section 1 of PAIA indicates that such an individual is a private body for purposes of PAIA only insofar as the request in question pertains to him fulfilling his role, for example, as sole trader and in no other capacity.

[77] The minority judgment in *My Vote Counts* compared the scope of section 32 of the Constitution with the provisions of PAIA, found that 'PAIA's mechanisms and processes are inherently limited' and that its 'purpose is narrow'.[37] As set out in the judgment:

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[34] *My Vote Counts NPC v Speaker of the National Assembly and Others* 2016 (1) SA 132 (CC) para 105. Minority judgment of Cameron J (Moseneke DCJ, Froneman J and Jappie AJ concurring).

[35] *See Jordaan and Others v City of Tshwane Metropolitan Municipality and Others; City of Tshwane Metropolitan Municipality v New Ventures Consulting and Services (Pty) Limited and Others; Ekurhuleni Metropolitan Municipality v Livanos and Others* 2017 (6) SA 287 (CC).

[36] *My Vote Counts* (note 34 above) paras 94-108.

[37] Ibid para 94.

'.... The obligation s 32(2) imposed on Parliament was therefore to enact legislation to give effect to the right of access to information held by anyone else ("another person") that is required for the exercise or protection of any rights.

But PAIA ....defines "person" as meaning "a natural person or a juristic person".... its definition of "private body" is far narrower than the concept of "person" that informs the Bill of Rights. The definition encompasses any former or existing juristic person. But as far as natural persons are concerned, it is confined to those who carry on, or who have carried on any trade, business or profession, "but only in such capacity"....'[38]

[78] Manuel contends that in interpreting the definition of 'private body' under PAIA, it is incumbent upon the Court to do so in a manner that gives effect to the breadth of the constitutional entitlement to information held by 'any person'. He thus contends that there is no basis for the second respondent's 'restrictive interpretation of the definition of a "private body".'

[79] This, Chawla contends, is quite contrary to the minority judgment in *My Vote Counts* which makes it plain that, for the most part, PAIA is clear in its terms and stands to be interpreted in those terms – and indeed that there are many instances in which PAIA 'does not give access' or for which it 'doesn't appear to cater at all.'[39]

[80] However, it appears to me, that, even if one excludes Chawla from the definition of a 'natural person', Chawla and Sahara treated the situation as if Chawla was the CEO or an equivalent officer of Sahara. Only now do they contend that he was not. The definition of a 'head' of a juristic entity includes a 'chief executive officer or equivalent officer of the juristic person' or 'the person who is acting as such' [emphasis added].

[81] In my view, Chawla falls within the definition of 'head' of a private body and PAIA is therefore applicable to him.

Remedy and Costs

Primary relief

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[38] Ibid 106-107.
[39] Ibid para 108.

[82] Manuel submits that a proper case has been made out that he requires access to the Records in order to protect and exercise his right to privacy.

[83] Thus, he initially sought an order setting aside the respondents' refusals and directing them to provide him with access to the Records.

Alternative relief

[84] The main relief originally sought is no longer appropriate. The question is whether this Court is permitted to go behind the contents of the affidavit, and find that same are untruthful and thus order some other relief.

[85] As a result of fact that the initial relief became academic and would have amounted to a *brutem fulmen* if granted, Manuel seeks an order directing that the CEO of Sahara (being the deponent to its answering affidavit), Nel, the IT Administrator, Jonathan Leong-Colom (being the author of the report annexed to Nel's affidavit) and Chawla be required to give oral evidence, and be subjected to cross-examination, on the question of whether the Records are, or have ever been, in the respondents' possession.

[86] In this regard, section 82 of PAIA casts the forms of relief that may be ordered in the widest terms, permitting 'any order that is just and equitable'.

[87] The question that arises is whether this Court should go behind such affidavits and find them unsatisfactory and therefore non-compliant with PAIA and if so, whether a reference to oral evidence would constitute appropriate relief.

[88] In terms of Rule 6(5)(g) of the Uniform Rules of Court:

> 'Where an application cannot properly be decided on affidavit the court may ....direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact ....' [Emphasis added]

[89] This sub-rule does not only apply where there is a true dispute of fact on the papers. It also applies in circumstances where one party casts doubt on the relevant allegations of another.[40] Although not contradicted by direct evidence,

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[40] *Khumalo v Director-General of Co-Operation and Development and Others* 1991 (1) SA 158 (A) at168A-C.

those averments are thus in dispute, and 'cannot properly be decided on affidavit' in terms of the sub-rule.

[90] In order to accede to the applicant's request, it is useful to have regard to the authorities dealing with discovery, to see when a court is permitted to look behind the affidavit.

(a) The Court in *Richardson's Woolwasheries Ltd v Minister of Agriculture*, stated as follows:

'After a review of the authorities, O'Hagan J., said in *Marais v Lombard*, 1958 (4) SA 224G at p. 227 -

"What these cases establish, in my view, is that when a party making discovery has sworn an affidavit as to the irrelevancy of certain documents, the Court will not reject that affidavit unless a probability is shown to exist that the deponent is either mistaken or false in his assertion... The sources from which the Court may infer that a discovery affidavit is wanting in the respects mentioned ... [are] the pleadings in the action, the discovery affidavit itself, the documents referred to in such affidavit as well as admissions of the party evidenced elsewhere."

In my view this approach is also applicable when the possession as opposed to the relevance of a document is in issue.'[41]

(b) This view was confirmed by Meyer J in *Ntabiseng v MEC for Health Gauteng* in which he held:

'*In casu* a probability has not been shown to exist that the deponents to the respondents' affidavits are either mistaken or false in their assertions that the required documents cannot be found.... It would, therefore, amount to a *brutum fulmen* to grant to the applicant the relief she seeks in this interlocutory application.'[42]

(c) Thus, if this Court finds that the respondents' assertions were either made in error, or are false, notwithstanding the absence of a true dispute of fact, '*viva voce* evidence should be ordered if there are *reasonable* grounds for doubting the correctness of the allegations concerned.'[43] Moreover, where

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[41] *Richardson's Woolwasheries Ltd v Minister of Agriculture* 1971 (4) SA 62 (E) at 67C-E.
[42] *Ntabiseng v MEC for Health Gauteng* (Unreported Judgment Case No: 38426/14, handed down on 15 August 2018).
[43] *Moosa Bros & Sons (Pty) Ltd v Rajah* 1975 (4) SA 87 (D) at 93C-D, affirmed in *Khumalo* (note 40 above) at 167I-168A.

facts are within the peculiar knowledge of one party – that is an additional consideration requiring a court to carefully scrutinise those allegations. Kumbelen JA in *Moosa Bros* put it succinctly as follows:

'(a) As a matter of interpretation, there is nothing in the language of Rule 6(5)(*g*) which restricts the discretionary power of the Court to order the cross-examination of a deponent to cases in which a dispute of fact is shown to exist.

(b) The illustrations of "genuine" disputes of fact given in the *Room Hire* case at p. 1163 do not - and did not purport to - set out the circumstances in which *cross-examination* under the relevant Transvaal Rule of Court could be authorised. They *a fortiori* do not determine the circumstances in which such relief should be granted in terms of the present Rule 6(5)(*g*).

(c) Without attempting to lay down any precise rule, which may have the effect of limiting the wide discretion implicit in this Rule, in my view oral evidence in one or other form envisaged by the Rule should be allowed if there are reasonable grounds for doubting the correctness of the allegations concerned.

(d) In reaching a decision in this regard, facts peculiarly within the knowledge of an applicant, which for that reason cannot be directly contradicted or refuted by the opposite party, are to be carefully scrutinised.'[44] [Emphasis added]

[91] This view was confirmed and repeated by Scott JA in *Minister of Environmental Affairs and Tourism v Scenematic Fourteen (Pty) Ltd.*[45] Scott JA stated as follows:

[30] In the present case the facts in issue are, of course, peculiarly within the knowledge of the Minister and Moolla, and accordingly require careful scrutiny. But, in the absence of any other reason, and none has been advanced, what would have to be established is the existence of reasonable grounds for doubting the correctness of the allegations concerned before a referral for oral evidence would be justified. As emphasised by counsel for the appellant, this in effect means the existence of reasonable grounds for disbelieving the Minister and Moolla.'[46]

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[44] *Moosa Bros* (note 43 above) at 93E-A. See also *Roman Catholic Church (Klerksdorp Diocese) v Southern Life Association Ltd* 1992 (2) SA 807 (A) at 816H-I.

[45] *Minister of Environmental Affairs and Tourism and Another v Scenematic Fourteen (Pty) Ltd* 2005 (6) SA 182 (SCA).

[46] Ibid para 30.

[92] The respondents refer to *Administrator, Transvaal v Theletsane,* where the Appellate Division criticised the 'recent tendency' of courts to allow counsel for the applicant to present a case on the basis that the applicant is entitled to the relief on the papers, but then to apply in the alternative for the matter to be referred to evidence if the main argument should fail.[47]

[93] They contend that the proper approach for a referral to oral evidence was addressed in *Fakie NO v CCII Systems (Pty) Ltd* which stated as follows:

> 'That conflicting affidavits are not a suitable means for determining disputes of fact has been doctrine in this court for more than 80 years. Yet motion proceedings are quicker and cheaper than trial proceedings and, in the interests of justice, courts have been at pains to permit unvirtuous respondents to shelter behind patently implausible affidavit versions or bald denials. More than 60 years ago, this Court determined that a Judge should not allow a respondent to raise "fictitious" disputes of fact to delay the hearing of the matter or to deny the applicant its order. There had to be "a *bona fide* dispute of fact on a material matter". This means that an uncreditworthy denial, or palpably implausible version, can be rejected out of hand, without recourse to oral evidence. In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984 (3) SA 623 (A)], this Court extended the ambit of uncreditworthy denials. They now encompassed not merely those that fail to raise a real, genuine or *bona fide* dispute of fact, but also allegations or denials that are so far-fetched or clearly untenable that the Court is justified on rejecting them merely on the papers.
>
> Practice in this regard has become considerably more robust, and rightly so. If it were otherwise, most of the busy motion courts in the country might cease functioning. But the limits remain, and however robust a court may be inclined to be, a respondent's version can be rejected in motion proceedings only if it is "fictitious" or so far-fetched and clearly untenable that it can confidently be said, on the papers alone, that it is demonstrably and clearly unworthy of credence.'[48] [emphasis added]

[94] The respondents contend that their version is not so incredible that it can be rejected out of hand, nor does it create a fictitious dispute of fact. They submit that on the *Plascon-Evans* rule, it is the respondents' version that ought to be preferred and the applicant's request for a referral to oral evidence that ought to be rejected.

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[47] *Administrator, Transvaal and Others v Theletsane and Others* 1991 (2) SA 192 (A) at 200B-D.
[48] *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) paras 55-56.

[95] The respondents submit that the applicant is dissatisfied with the answers given and that it, thus, wants to conduct an examination by viva voce evidence.

[96] The respondents argue further that the Court should be less inclined to intervene on the applicant's behalf where no direct evidence exists to contradict the respondents' versions. The applicant, they contend, cannot succeed where he has failed to demonstrate reasonable grounds for doubting the veracity of the respondents' evidence.[49]

[97] The applicant contends that there is substantial reason to doubt the correctness of the respondents' version. Their evasiveness, lack of candour, and failure to deny the contents of the article and/or possession of the documents from the outset, provides justifiable grounds to doubt the credibility of their version. In addition, because the question of whether they have (or have ever had) possession of the records is peculiarly within their knowledge, their allegations require careful scrutiny.

[98] In my view, this case falls squarely within the parameters set out in *Moosa Bros* and *Scenematic*, referred to above.

[99] Therefore, the questions to be decided are:

(a) Whether the applicant established the requirements of section 50 of PAIA;

(b) Whether the PAIA request amounts to pre-litigation discovery;

(c) Whether the respondents' answering and supplementary affidavits amount to compliance with section 55 of PAIA;

(d) Whether this Court should go behind such affidavits and find them unsatisfactory and therefore non-compliant with PAIA;

(e) Whether Chawla falls under the definition of a 'private body' in terms of PAIA;

(f) What relief, if any, would be appropriate; and

(g) The question of costs.

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[49] *Khumalo* (note 40 above) at 168A-C.

[100] For the reasons stated above, I am of the view that in regard to:

(a) Questions (a) and (e) – the answer is in the affirmative;

(b) Question (b) -the request does not amount to pre-litigation discovery.

(c) Question (c) – the respondents' affidavits do not comply with section 55, and even if they amount to a partial answer, I find that I am entitled to go behind the affidavits, as I believe they are, at best, mistaken and, at worst, false.

(d) Question (f) – the alternative relief sought by the applicant is appropriate.

(e) Question (g) – costs will be reserved for decision by the Court hearing the oral evidence.

Accordingly, the following order is made:

1. The application is postponed to a date to be arranged with the Registrar for the hearing of oral evidence, in terms of Rule of Court 6(5)(g), on the issue as to whether the respondents currently have, or have ever had, the Records in their possession.

2. Mr Stephanus Nel and Mr Ashu Chawla are to be available at the adjourned hearing for examination and/or cross-examination.

3. Leave is granted to both parties to subpoena Mr Leong-Colom to attend the adjourned hearing.

4. Either party shall be entitled to call any other witness to give evidence, provided that, if such witness has not deposed to an affidavit in this matter, a summary of such witness' evidence is furnished to the other party 10 days prior to the hearing.

5. Costs are reserved for the court hearing the oral evidence.

S E WEINER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

Date of hearing:	7 August 2018
Application to introduce new evidence:	18 October 2018 (further submissions filed by parties on 8 November and 22 November 2018)
Date of judgment:	12 December 2018

Appearances:

Counsel for the Applicant:	Adv. W Trengove SC Adv. Michael Mbikiwa
Instructing Attorneys:	Cliffe Dekker Hofmeyer Inc.
Counsel for the First Respondent:	Adv. M R Hellens SC
Instructing Attorneys:	Van der Merwe and Van der Merwe Attorneys
Counsel for the Second Respondent:	Adv. JJ Meiring
Instructing Attorneys:	Vasco de Oliveira Inc.