IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE:~~YES~~/**NO**
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/**NO**
(3) REVISED

DATE: **17 August 2023**

SIGNATURE: _____

Case No. 10009/22

In the matter between:

THE HEALTH JUSTICE INITIATIVE **APPLICANT**

and

THE MINISTER OF HEALTH **FIRST RESPONDENT**

THE INFORMATION OFFICER, **SECOND RESPONDENT**
NATIONAL DEPARTMENT OF HEALTH

Coram: Millar J

Heard on: 26 July 2023

Delivered: 17 August 2023 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 10H00 on 17 August 2023.

Summary: Application for access to Covid 19 vaccine records – request refused on the basis of confidentiality, ostensible prejudice to future commercial dealings and no public interest considerations – none of the basis are meritorious – respondents ordered to grant access to records requested.

JUDGMENT

MILLAR J

[1] The Covid-19 pandemic was unprecedented in its global impact. The people of South Africa were not spared.

[2] In this application, it is not in issue between the parties that *"[v]accines play a pivotal role in mitigating the consequences of Covid-19, by preventing death and controlling the spread of the virus. They are a central element of the global – and also the South African – response to Covid-19, prompting a worldwide effort to immunize billions of people. The Organisation for Economic Co-operation and Development ("OECD") has emphasised the importance, to trust in the vaccination programme, of governments demonstrating their ability to procure vaccines and to develop effective and inclusive roll-out plans. It recommends that such plans should be open to public scrutiny and require proactive disclosure of information."*

or that

"*South Africa has procured, and secured options for future procurement, of millions of doses of vaccines – through direct purchase agreements with vaccine manufacturers or their licensees; through the Covax Facility and by way of donations. As of 13 February 2022, 30 559 431 vaccines have been administered in South Africa. Those vaccines have been procured at great cost: the 2021 National Budget alone allocated an amount of R10-billion for the purchase of Covid-19 vaccines."*

THE PROMOTION OF ACCESS TO INFORMATION ACT

[3] The present proceedings are brought by the applicant (HJI) in terms of the Promotion of Access to Information Act[1] (PAIA) for access[2] to copies of documents relating to the negotiation and conclusion of agreements by the respondents, the Minister of Health, and The National Department of Health (NDOH) for the supply of the Covid19 vaccines.

[4] PAIA is the means whereby effect is given to *"the constitutional right to access information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights.*"[3]

[5] This application is not a review of the refusal of the NDOH to furnish the requested documents but rather a reconsideration *de novo* of the request.[4]

[6] The terms of those agreements have not been made available to the public notwithstanding a request that they are.

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1 2 of 2000.

2 *Brummer v Minister of Social Development and Others* 2009 (6) SA 323 (CC) at paras [62] to [63] in which the Court said "*access to information is crucial to the right of freedom of expression which includes freedom of the press and other media and freedom to receive or impart information or ideas."*

3 The part of the preamble to PAIA relevant in this matter.

4 *President of the Republic of South Africa and Others v M & G Media Ltd* 2012 (2) SA 50 (CC) at paras [13] – [14].

[7] On 19 July 2021 a request was submitted to the National Department of Health in terms of section 18(1) of PAIA[5] for access to the following information:

> *"Covid-19 Vaccine Contracts:*
>
> *1A.) Copies of all Covid-19 vaccine procurement contracts, and Memoranda of Understanding, and agreements including with the following parties and/or duly authorised licensed representative/s of:*
>
> - *Janssen Pharmaceuticals / Johnson & Johnson.*
> - *Aspen Pharmacare.*
> - *Pfizer.*
> - *Serum Institute of India / Cipla.*
> - *Sinovac/Coronavac*
> - *Any other vaccine manufacturer / licensee.*
> - *The African Union Vaccine Access Task Team (AU AVATT).*
> - *'COVAX' (with the Global Vaccine Alliance – GAVI /other)*
> - *The Solidarity Fund.*
>
> *1B.) Copies of all Covid-19 vaccine negotiation meeting outcomes and/or minutes, and correspondence, including with the following parties and/or duly authorised licensed representative/s of:*
>
> - *Janssen Pharmaceuticals / Johnson & Johnson.*
> - *Aspen Pharmacare.*
> - *Pfizer.*
> - *Serum Institute of India / Cipla.*
> - *Sinovac/Coronavac.*
> - *Any other vaccine manufacturer / licensee.*
> - *The AU AVATT.*

[5] The section provides that the request must be made in a prescribed form and that certain particulars which include *inter alia* sufficient details of the documents requested to enable the identification of those documents.

- *'COVAX' (with the Global Vaccine Alliance – GAVI /other).*
- *The Solidarity Fund."*

[8] The request was acknowledged, and HJI informed that it would be made available to the other parties to the documents inviting them, if they so wished, to make representations on whether they could be made available.[6] By 13 September 2021 notwithstanding agreement to the extension of time for a response, no response had been received. On 15 September 2021, the applicant submitted an internal appeal to the second respondent on the grounds of deemed refusal. No response was received to the internal appeal.

[9] On 8 December 2021, the applicant addressed letters to local offices or representatives of pharmaceutical manufacturers whose vaccines had been approved for domestic use (namely, Janssen Pharmaceuticals, Pfizer South Africa, Serum Institute of India Pvt Ltd, and Gavi, the Vaccine Alliance) with the following request:

> *"[P]lease advise us which entity in the group was the NDOH's counterparty to the negotiations and any ultimate agreement(s) and provide us with a South African address at which we may serve the application on them."*

[10] On 7 January 2022, Pfizer SA replied by email to the applicant's request and informed the applicant that: *"the information you request is itself confidential and protected from disclosure and cannot be provided."* None of the other entities to whom the request had been made on 8 December 2021 responded.

[11] On 11 January 2022, the respondents replied by email to the applicant and stated that: "[A]s per confidential agreements, the National Department of Health is not at liberty to divulge such details/the information." On 18 February 2022 the present proceedings were launched.

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[6] Sections 47 and 48 of PAIA.

[12] The NDOH couched its' reasons for refusing to disclose what was sought in the following terms:

> *"38. I must mention that the procurement contracts, were negotiated in good faith and in the best interests of the country under the prevailing circumstances. The department had signed the agreements, which contained confidentiality clauses regarding nondisclosure of the procurement agreements. I have mentioned in the previous paragraphs that there was an intense competition between the countries to procure vaccines for their citizens.*
>
> *39. The vaccine manufacturers equally have negotiated in good faith and signed a non-disclosure clause in the agreements. The agreements signed with the manufacturers mentioned in the paragraph above contained confidentiality clauses. These clauses prohibit any disclosure to the procurements without the consent of other manufacturers. Any disclosure will constitute a breach of the agreement.*
>
> *40. If the NDoH provides access to these contracts, the department will be in breach of the terms of the confidentiality clauses, and the disclosure will prejudice the respondents and the vaccine manufacturers in future engagements as contemplated in sections (1)(c)(i)(ii) and of the PAIA.*
>
> *41. I submit with respect that there is no basis to suggest that disclosure of the agreements would reveal evidence a substantial contravention of, or failure to comply with, the law: or an imminent and serious public safety or environmental risk: and that the public interest in the disclosure of the record clearly outweighs the harm as contemplated in section 46 of PAIA."*

[13] When access to a requested record is refused, it is in terms of section 25(3)(a) of PAIA necessary for the party refusing access to "*state adequate reasons for the refusal, including the provisions of this Act relied upon.*"

[14] What then are "*adequate reasons*"?

[15] In *CCII Systems (Pty) Ltd v Fakie and Others NNO*[7] it was held:

> *"In my view, and because of the onus created in s 81, it will be necessary for the information officer to identify documents which he wants to withhold. A description of his entitlement to protection is to be given, one would imagine, as in the case of a discovery affidavit in which privilege is claimed in respect of some documents. The question of severability may come into play. Paragraphs may be blocked out or annexures or portions may be detached."*

[16] In *President of the Republic of South Africa and Others v M & G Media Ltd* [8] it was held that:

> *"The affidavits that have been filed by the appellants are reminiscent of affidavits that were customarily filed in cases of that kind [during apartheid]. In the main they assert conclusions that have been reached by the deponents, with no evidential basis to support them, in the apparent expectation that their conclusions put an end to the matter. That is not how things work under the Act. The Act requires a court to be satisfied that secrecy is justified and that calls for a proper evidential basis to justify the secrecy."*

[17] In *South African History Archive Trust v South African Reserve Bank and Another*[9] the court observed:

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7 2003 (2) 325 (T) at para [16].

8 2011 (2) SA 1 (SCA) para [19]. When the same matter came before the Constitutional Court, footnote 2 supra, at para [24] this view was supported when the court held "*The recitation of the statutory language of the exemptions claimed is not sufficient for the state to show that the record in question falls within the exemptions claimed. Nor are mere ipse dixit affidavits proffered by the state. The affidavits for the state must provide sufficient information to bring the record within the exemption claimed."*

9 2020 (6) SA 127 (SCA) at para [36]. See also *Centre for Applied Legal Studies v Acting National Commissioner: Department of Correctional Services and Others* (37578/15) an unreported judgment of Rabie J handed down on 5 February 2020 in the Gauteng High Court, Pretoria, at para [24] in which the same observation was made.

> *"Some comment must be made on the overall approach taken by the SARB. I think it is fair to say that the answering affirmation is long on stock phrases which merely repeat parts of this chapter of PAIA. The affirmation falls woefully short on fact, detail or proper application of the provisions of PAIA."*

[18] In the present instance, neither the existence of the specific documents nor indeed the parties to them were disclosed. The refusal was a blanket one with no basis laid for it other than the repeated referral to "*confidentiality*" and "*non-disclosure*".

[19] Against this background, there are four issues for consideration:

[19.1] Firstly, whether there is a material non-joinder of interested parties.

[19.2] Secondly, whether the refusal of the NDOH to make the documents requested available on the grounds that they are precluded from doing so because of the confidentiality clauses contained in the agreements.

[19.3] Thirdly, whether the disclosure would prejudice future procurement/commercial interests, and

[19.4] Finally, whether there is no adequate public interest reason to compel the disclosure of the requested documents.

[20] I propose dealing with each of these in turn.

THE NON-JOINDER

[21] It was argued on behalf of the respondents that the parties with whom they had contracted, had a direct and substantial interest in the matter and that in consequence of their non-joinder, the application was stillborn.

[22] In support of this I was referred to the *Bowring NO v Vrededorp Properties CC and Another*[10] in which it was held that "*the enquiry relating to non-joinder remains one of substance rather than form*" and that "[t]he substantial test is whether the party that is alleged to be a necessary party for purposes of joinder has a legal interest in the subject-matter of the litigation, which may be affected prejudicially by the judgment of the Court in the proceedings concerned."

[23] In the present instance section 47(1) of PAIA[11] imposed upon the NDOH, the obligation to *"take all reasonable steps to inform a third party to whom or which the record relates of the request.*" It is not in issue in the present matter that this was done by the NDOH. Extensions of time were agreed between HJI and the respondents for this very purpose. Furthermore, HJI went further and sought to independently ascertain the identity of the third parties but was rebuffed.[12]

[24] There is nothing before this court to indicate whether or not the third parties made representations to the NDOH in terms of section 48(1)[13] of PAIA, pursuant to being notified of the request in terms of section 47(1) or in terms of

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[10] 2007 (5) SA 391 (SCA) at para [21].

[11] Section 47(1) which provides *"The information officer of a public body considering a request for access to a record that might be a record contemplated in section 34(1), 35 (1), 36 (1), 37 (1) or 43 (1) must take all reasonable steps to inform a third party to whom or which the record relates of the request."*

[12] By the NDOH and Pfizer SA (the only manufacturer of those to whom requests had been addressed who responded).

[13] *"(1) A third party that is informed in terms of section 47 (1) of a request for access, may, within 21 days after the third party has been Informed (a) make written or oral representations to the information officer concerned why the request should be refused or (b) give written consent for the disclosure of the record to the requester concerned."*

section 48(2)[14] once they received the request for the identity of the third parties from HJI. It can be accepted that the third parties were aware of the request and made the advertant decision to associate themselves with the refusal of access to the information and documents and even to the disclosure of their identities.

[25] In the present matter, it is neither a matter of public record nor was it disclosed to HJI, despite their request to both the respondents and ostensible parties with whom the respondents had negotiated and contracted, the identities of the specific parties.[15]

[26] It seems to me to be somewhat obvious that if the identity of another relevant party is withheld and the consequence is the obviation of service of legal process upon that party, it does not behoove the party who withheld the identity to then raise the non-joinder of the unidentified party as a defence to the claim against it.

[27] Such conduct is self-serving and indicative of the "*secretive and unresponsive culture in public and private bodies*" referred to in the preamble to PAIA. It is contrary to the purpose for which PAIA was enacted and is to be deprecated. There is no merit in this defence and it must fail.

CONFIDENTIALITY

[28] It was argued on behalf of the respondents that the refusal to grant access to the records and the requested information was justifiable under the circumstances.

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[14] *"(2) A third party that obtains knowledge about a request for access other than in terms of section 47 (1) may (a) make written or oral representations to the information officer concerned why the request should be refused or (b) give written consent for the disclosure of the record to the requester concerned."*

[15] Supra paras [6] – [11].

[29] I was also referred to *Earthlife Africa v Eskom Holdings Ltd*[16] in which it was found in that case that "*the information and documentation requested by the applicant constitutes confidential information and trade secrets which are protected from disclosure."* This finding is however of no assistance. The finding was made on the facts of the matter and on the evidence of a specific witness. [17]

[30] The argument, so it went, was that the inclusion of the confidentiality clause in the agreements was to protect the interests of the parties to the agreement. The information contained in the agreement was said to have been given in confidence.[18]

[31] In the present matter, the precise terms of each of the confidentiality clauses was also not disclosed. Absent this disclosure, it was argued for HJI that since it was not alleged that the confidentiality clauses applied to either the negotiations, the minutes, correspondence or for that matter, any of the other agreements besides the final agreements that were concluded, it was not open to the respondents to claim confidentiality in respect of those items.

[32] Furthermore, while the parties with whom the respondents contracted are commercial entities with specifically commercial interests, the respondents are constitutionally obliged to act in an accountable and transparent manner. This is trite.[19]

[33] It is not open to the respondents to conclude agreements which include a confidentiality clause and then seek to rely on the confidentiality clause to circumvent their obligations of accountability and transparency.

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16 (04/27514) [2005] ZAGPHC 129 at para [72].

17 Ibid .The quote to which I was referred was prefaced with: "*Having regard to the evidence of Dr Lennon"*. This appears to have been overlooked by the respondents.

18 I was referred to *Coco v AN Clark (Engineers) Ltd* [1968] F.S.R. 415 (01 July 1968) in regard to the obligations that may attribute to the recipient of confidential information, but that case is distinguishable from the present case in that in that case there was no written contract as in the present case.

19 See for example, sections 195(1) and 217(1) of the Constitution.

[34] In this regard, in *Transnet Ltd and Another v SA Metal Machinery Co (Pty) Ltd*[20] it was held:

> *"To my mind the overriding consideration here is that the appellant, being an organ of State, is bound by a constitutional obligation to conduct its operations transparently and accountably. Once it enters into a commercial agreement of a public character like the one in issue (disclosure of the details of which does not involve any risk, for example, to State security or the safety of the public) the imperative of transparency and accountability entitles members of the public, in whose interest an organ of State operates, to know what expenditure such an agreement entails."*
>
> and
>
> *"Parties cannot circumvent the terms of the Act by resorting to a confidentiality clause."*

[35] It was argued for HJI that even in the face of a confidentiality clause, the non-confidential portions of the documents ought to have been disclosed. This is particularly so since at least some of the information, which was contained in the documentation sought, but at the very least the import of what may have been agreed to was publicly disclosed by the Minister of Finance to Parliament's Portfolio Committee on Health as well as the citizenry.[21]

[36] It seems somewhat obvious, in the context of public procurement but in particular in the present instance, that just because there is a confidentiality clause, does not mean that the information and documentation can be withheld on that basis alone. In *De Lange and Another v Eskom Holdings Ltd and*

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[20] 2006 (6) SA 285 (SCA) at paras 55 to 56.

[21] The Minister of Health informed the Parliamentary Portfolio Committee on Health on 14 April 2021 that "*As Government, we have found ourselves in the precarious position of having to choose between saving our citizen's lives and risking putting the country's assets into private companies' hands*".

Others[22], it was held that in regard to reliance on a confidentiality clause to withhold disclosure, more was required:

> "*[D]etails as to the nature of this confidence, whether it arises from the agreements themselves or some other basis, what aspects of the agreements the duty of confidence covers, and whether the duty of confidence contains any exceptions, for example, in relation to disclosures required by law or pursuant to a court order."*

[37] It has not been suggested by the respondents that were this court to order the furnishing of the information and documentation sought in spite of the confidentiality clause, that this would have any adverse consequence, such as a claim for damages for breach of contract,[23] for either the respondents or for that matter any of the parties with whom they contracted.

[38] For the reasons set out above, I find that the respondents have failed to show that the information and documentation sought falls within the ambit of the exemption in section 37(1)(a) of PAIA.

PREJUDICE TO FUTURE ENGAGEMENTS / COMMERCIAL PREJUDICE

[39] It was argued on behalf of the respondents that the disclosure of the information sought would cause harm to the commercial interests of the Republic. This argument was said to encompass *"its future contractual relationships with the manufacturers, suppliers of vaccines and other countries who are signatories to the agreements and other international pharmaceutical companies".*

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[22] 2012 (1) SA 280 (GSJ) at para [128]; [2012] 1 ALL SA 543 (GSJ) at para [128].

[23] *Transnet Ltd and Another v SA Metal Machinery Co (Pty) Ltd* at para 57; *SA Airlink (Pty) Ltd v Mpumalanga Tourism and Parks Agency and Others* (2013) 3 (SA) 112 (GSJ) at para [23] in which it was stated: "*a party relying on this provision [the confidentiality clause] must show that harm is not simply possible, but probable. In the circumstances, the third respondent has not put up any reasons that justify the refusal of access to the records. Furthermore, Comair will not, therefore, suffer any damages should there be such disclosure as it is bound by its decision not to oppose this application."*

[40] The argument then proceeded on the assertion that "*the manufacturers and suppliers would be reluctant to engage with the South African government in confidence because the government may be compelled by third parties to disclose information provided to it in confidence."*

[41] The high-water mark of this argument was that *"South Africa was not the only country that agreed to have confidentiality clauses in the agreements with pharmaceutical companies."*

[42] While it is permissible for the disclosure of information and documentation to be withheld in the event that it would put a third party at a disadvantage in contractual or other negotiations,[24] or would cause prejudice in commercial competition,[25] it is necessary for the respondents to show that disclosure would in fact result in a disadvantage or, alternatively, prejudice in commercial competition.

[43] There is nothing before this court to indicate that there would be any disadvantage in future negotiations or commercial prejudice to the Republic or to any of the other parties to the contracts concerned were the information and documentation to be disclosed. This basis for refusing disclosure is without any merit.

NO ADEQUATE PUBLIC INTEREST

[44] The respondents argued that there is no basis for the application of the public interest override provided for in section 46 of PAIA.[26] I was referred to *Centre*

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[24] Section 36(1)(c)(i) of PAIA.

[25] Section 36(1)(c)(ii) of PAIA.

[26] Section 46 of PAIA provides for the *"Mandatory disclosure in the public interest – Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34(1), 36(1), 37(1)(a) or (b), 38(a) or (b), 39(1)(a) or (b), 40, 41(1)(a) or (b), 42(1) or (3), 43(1) or (2), 44(1) or (2) or 45, if –*
(a) The disclosure of the record would reveal evidence of –
(i)a substantial contravention of, or failure to comply with, the law; or
(ii)an imminent and serious public safety or environmental risk; and

for Social Accountability v Secretary of Parliament[27] as authority for the proposition that there is an onus on HJI to show on a balance of probability that the disclosure would reveal evidence of either a substantial contravention of or failure to comply with the law, imminent or serious public safety or environmental risk or that the public interest in the disclosure would clearly outweigh the harm. It was argued that HJI failed to demonstrate any of these.

[45] I am unable to find that this is so – in *Centre for Social Accountability v Secretary of Parliament*, the court specifically stated that *"[i]n order to give effect to the constitutional right of access to information held by the State, qualified only by the limitation clause 36 of the Constitution and other rights, the restrictive wording used by section 46 of the AIA [PAIA] must be read subject to section 81 of PAIA."*[28]

[46] The onus to demonstrate why access to a record should not be given is borne by the party refusing access. Bearing in mind that access to any of the information and documentation sought by HJI has been refused by the respondents, section 46 of PAIA ought not to be read or applied to create an insuperable barrier to the exercise of its right of access[29] and certainly not to place an onus on HJI.

[47] The grounds advanced by HJI for the application of the public interest override were that:

> *"42.1 The Department admits to having bound itself to confidentiality clauses, which the HJI submits are at odds with its obligations under sections 195 and 217 of the Constitution, and which are otherwise contra bonos mores;*

(b) the public interest in the disclosure of the record clearly outweighs the harm in the provision in question."

[27] 2011 (5) SA 279 (ECG) at paras [92] and [94].

[28] Ibid. para [92] and supra footnote 5.

[29] In this regard it too relied on *Centre for Social Accountability v Secretary of Parliament and Others* at para [90].

42.2 Media reports suggest that the Department procured vaccines at differential and inflated prices (again, in beach of its obligations under section 217 of the Constitution); and

42.3 The vaccine procurement agreements contain unreasonable and inequitable terms, including in relation to indemnification; prohibitions on export, on-ward sale and donation; and non-refundability of down-payments. Indeed, the Department has admitted as much. It is, we submit, unlawful for the Department to enter into contracts on unreasonable and unenforceable terms, and then to seek to shield them from disclosure and potential challenge."

[48] While the circumstances under which the respondents negotiated the vaccine procurement contracts and concluded those contracts, is what may fairly be described as an emergency situation, this does not preclude their disclosure in the public interest.

[49] The public interest considerations argued for HJI[30] were:

[49.1] The records sought are necessary to understand the basis and terms upon which the department negotiated and procured Covid-19 vaccines. Besides the initial immediate term financial obligations of the NDOH, there may be terms that will bind the NDOH and through them the citizenry into the future and beyond the pandemic for which they were negotiated, and which is now over.

[49.2] Non-disclosure of any of the records sought means that a shroud of secrecy is placed over the entire negotiation, procurement, and payment process – the very mischief which our Constitution and legislation such as PAIA seeks to address.

[49.3] Non-disclosure to HJI means non-disclosure to the public at large. If the records are not made available, then it will simply not be possible to

[30] Set out eloquently and succinctly in the heads of argument filed and to which I have made liberal reference.

ascertain whether the mandatory disclosure contemplated in section 46 of PAIA is of application and if this is so, then this is tantamount to the ousting of the court's jurisdiction and oversight function in respect of the vaccine procurement agreements.

[49.4] The NDOH reports to Parliament suggesting that some or all of the vaccine manufacturers / suppliers insisted that government provide them with far-reaching indemnities, and establish a vaccine injury fund, failing which vaccines would not be supplied seems to me to be grotesque having regard to the context within which they were negotiated. This context was that of both a national and international emergency and at a time where across the globe and including within South Africa many lives were being lost to the pandemic on a daily basis.

[49.5] Every single one of the over 30 million South Africans who received one or more doses of one or other of the vaccines as well as those who chose not to, nevertheless have paid and may continue to pay through the fiscus for what was negotiated by the NDOH – the obligations may well be continuing but until such time as there has been full access granted to the records concerned, this cannot be ascertained.

[50] It is, in my view, self-evident, that there is a public interest in the disclosure of the records.

[51] In summary, I find that there is no merit in the arguments on the part of the respondents that the information and records sought should not be disclosed in consequence of:

[51.1] material non-joinder of affected parties;

[51.2] confidentiality clauses which are alleged to be contained in the contracts in question;

[51.3] the present or future commercial interests of the Republic preclude disclosure of the records and lastly,

[51.4] There is no basis upon which there should be mandatory disclosure in the public interest.

COSTS

[52] It is customary for the costs of litigation to follow the result unless argument to the contrary is presented. In the present matter, I am not persuaded that HJI as the successful party ought not to be awarded its costs. On consideration of the matter as a whole, had HJI sought a special order for costs, I would have granted it.

[53] Furthermore, the matter is clearly one of significant importance, both to the litigants but also to society at large. Both HJI and the respondents engaged the services of more than one counsel – a wise and reasonable precaution in the circumstances. It is for this reason that I intend to make the order for costs that I do.

ORDER

[54] In the circumstances, it is ordered:

[54.1] The refusal by the respondents to grant access by the applicant to the records referred to in paragraph 52.3 (subparagraphs included) is set aside.

[54.2] The first alternatively second respondent is directed to supply to the applicant, within 10 (ten) days of the service of this order upon them, copies of the documents mentioned in paragraph 52.3 hereunder:

[54.3] Covid-19 Vaccine Contracts:

[54.3.1] Copies of all Covid-19 vaccine procurement contracts, and Memoranda of Understanding, and agreements including but not limited to the following parties, their subsidiaries and/or duly authorised licensed representative/s of:

[54.3.1.1] Janssen Pharmaceuticals / Johnson & Johnson.

[54.3.1.2] Aspen Pharmacare.

[54.3.1.3] Pfizer.

[54.3.1.4] Serum Institute of India / Cipla.

[54.3.1.5] Sinovac/Coronavac.

[54.3.1.6] Any other vaccine manufacturer / licensee.

[54.3.1.7] The African Union Vaccine Access Task Team (AU AVATT).

[54.3.1.8] ‘COVAX’ (with the Global Vaccine Alliance – GAVI /other).

[54.3.1.9] The Solidarity Fund.

[54.3.2] Copies of all Covid-19 vaccine negotiation meeting outcomes and/or minutes, and correspondence, including

with the following parties, their subsidiaries and/or duly authorised licensed representative/s of:

[54.3.2.1] Janssen Pharmaceuticals / Johnson & Johnson.

[54.3.2.2] Aspen Pharmacare.

[54.3.2.3] Pfizer.

[54.3.2.4] Serum Institute of India / Cipla.

[54.3.2.5] Sinovac/Coronavac.

[54.3.2.6] Any other vaccine manufacturer / licensee.

[54.3.2.7] The AU AVATT.

[54.3.2.8] 'COVAX' (with the Global Vaccine Alliance – GAVI /other).

[54.3.2.9] The Solidarity Fund.

[54.4] The first and second respondents are ordered to pay the costs of the application of the applicant on the scale as between party and party which costs are to include the costs consequent upon the employment of two counsel.

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A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	26 JULY 2023
JUDGMENT DELIVERED ON:	17 AUGUST 2023
COUNSEL FOR THE APPLICANT:	ADV. I GOODMAN ADV. S MABUNDA

	ADV. N SOEKOE
INSTRUCTED BY:	POWER SINGH INC.
REFERENCE:	MS. T DAVIS
COUNSEL FOR THE FIRST RESPONDENT:	ADV. M PHASWANE
	ADV. N JANUARY
INSTRUCTED BY:	THE STATE ATTORNEY,PRETORIA
REFERENCE:	MS. N QONGQO