



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

REPORTABLE

Case no: 1199/2021

In the matter between:

BOUDEWYN HOMBURG DE VRIES SMUTS N.O

First Applicant

RIAN ARNOLD DU TOIT N.O

Second Applicant

CORNELIUS JOHANNES VAN SCHALWYK N.O

Third Applicant

And

MEMBER OF THE EXECUTIVE COUNCIL:

First Respondent

**EASTERN CAPE DEPARTMENT OF ECONOMIC
DEVELOPMENT ENVIRONMENTAL AFFAIRS AND
TOURISM**

**INFORMATION OFFICER: EASTERN CAPE:
DEPARTMENT OF ECONOMIC DEVELOPMENT
ENVIRONMENTAL AFFAIRS AND TOURISM**

Second Respondent

**COUNCIL FOR THE ADVANCEMENT OF THE
SOUTH AFRICAN CONSTITUTION**

Amicus Curiae

JUDGMENT

Govindjee J

Background

[1] The applicant is the Landmark Foundation Trust ('the Foundation'), a conservation non-governmental organisation and registered charitable trust. The Foundation focuses on effective predator management methods in support of a healthy ecosystem and the conservation of endangered species. One of its projects centres on the rescue and conservation of leopards in the Western Cape, Northern Cape and Eastern Cape Provinces.

[2] The Threatened or Protected Species Regulations ('the TOPS Regulations')¹ lists leopards as 'vulnerable species', meaning that they are indigenous species facing a high risk of extinction in the wild in the medium-term future. Various activities relating to these species are restricted. This includes hunting, catching, capturing or killing any living specimen or translocating any specimen. Section 57 of the National Environmental Management: Biodiversity Act, 2004² ('NEMBA') prohibits any person from carrying out a 'restricted activity' involving a specimen of a listed threatened or protected species,³ without a permit issued in terms of chapter 7 of NEMBA.

[3] The first respondent is the 'issuing authority' responsible for deciding any application for such a permit. The Foundation requested the second respondent, as information officer ('IO') of the Eastern Cape Department: Economic Development, Environmental Affairs and Tourism ('the Department') to provide access to all applications received and permits issued by the Department to trap, kill, hunt or translocate any leopards in or from the Eastern Cape from 2017 to 3 December 2019. The request was made in terms of s 18 of the Promotion of Access to Information Act, 2000 ('PAIA').⁴ The information sought included: (a) the name of the applicant; (b) the kind of restricted activity applied for; (c) the location where the restricted activity will take place; (d) the details of the species involved; and, in the

¹ GNR 152 in GG29657 of 23 February 2007.

² Act 10 of 2004.

³ A 'listed threatened or protected species' is a critically endangered species, endangered species, vulnerable species or protected species specified as such in the list published in GN R151 in GG29657 of 23 February 2007 by the Minister of Environmental Affairs and Tourism ('the Minister') in terms of s 56 of NEMBA.

⁴ Act 2 of 2000.

case of translocation, (e) the location to which the animal is to be translocated and the identity of the party receiving the animal. The information requested was refused, also on appeal to the first respondent, on the premise that it would entail the unreasonable disclosure of personal information of third parties,⁵ and on an interpretation of s 34 of PAIA.

[4] The Foundation argues that there can be no reasonable expectation of privacy on the part of the third parties concerned when considering the nature of the information requested. Disclosure would, on that basis, not be unreasonable in the circumstances. Alternatively, it claims that the public interest override provided for in s 46 of PAIA is applicable, so that disclosure is mandatory.

[5] The Foundation approached this court in terms of s 78(2) of PAIA for appropriate relief and has the standing to do so. Section 82 of PAIA provides that the court hearing an application may grant any order that is just and equitable, including the following orders:

- (a) confirming, amending or setting aside the decision which is the subject of the application concerned;
- (b) requiring from the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order;
- (c) granting an interdict, interim or specific relief, a declaratory order or compensation;
- (d) as to costs ...'

The legal framework

[6] The Constitution of the Republic of South Africa, 1996 ('the Constitution') was adopted as the supreme law, in part, to lay the foundations for a democratic and open society.⁶ Section 1 of the Constitution provides that the country is founded on various values, including human dignity, the advancement of human rights and

⁵ The personal information contained in the issued permits was identified as follows in the answering affidavit: the name, identity number, residential and postal address of the applicant and the identity of the party from where the leopard are to be captured or controlled.

⁶ Preamble to the Constitution of the Republic of South Africa, 1996 ('the Constitution').

freedoms and a multi-party system of democratic government, ‘... to ensure accountability, responsiveness and openness’.

[7] The rights contained in the Bill of Rights affirm the democratic values of human dignity, equality and freedom. The state must respect, protect, promote and fulfil these rights.⁷ Various provisions of the Bill of Rights are relevant for present purposes, including the right to inherent dignity, the right to privacy, the right to a healthy environment and the right of access to information held by the state.⁸ All these rights may be limited by laws of general application to the extent that it is reasonable and justifiable to do so ‘in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors’.⁹

[8] Legislation has been enacted to give effect to these rights. For example, PAIA gives effect to the constitutional right of access to any information held by the state.¹⁰ It was enacted, in part, to foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information. As its preamble indicates, its purpose is to actively promote a society in which people have access to information to enable them to exercise and protect their rights more fully and effectively. The Protection of Personal Information Act, 2013¹¹ (‘POPIA’) recognises everyone’s right to privacy and promotes the protection of personal information processed by public and private bodies, amongst other purposes. It does so fully cognisant that the removal of unnecessary impediments to the free flow of information might facilitate economic and social progress within the framework of the information society.¹² POPIA’s preamble indicates that this approach is consonant with the constitutional values of democracy and openness. The National Environmental Management: Biodiversity Act, 2004¹³ (‘NEMBA’)

⁷ S 7 of the Constitution.

⁸ Ss 10, 14, 24 and 32 of the Constitution respectively.

⁹ S 36(1) of the Constitution. Five factors are specifically mentioned in this subsection, namely the nature of the right; the importance of the purpose of the limitation; the nature and extent of the limitation; the relation between the limitation and its purpose; and less restrictive means to achieve the purpose.

¹⁰ PAIA was enacted in compliance with the requirements of s 32(2) of the Constitution.

¹¹ Act 4 of 2013.

¹² Personal information is defined in POPIA to mean ‘information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person’ and various examples are provided in s 1 of POPIA to illustrate what is encompassed. The notion is also defined in s 1 of PAIA.

¹³ Act 10 of 2004.

provides for the management and conservation of South Africa's biodiversity within the framework of the National Environmental Management Act, 1998¹⁴ ('NEMA'), including the protection of species that warrant national protection. Legislation which gives effect to constitutional rights and provides mechanisms for their promotion and enforcement must be interpreted generously and purposively and with due attention to context.

The respondents' approach

[9] The respondents accept that the records in question relate to one aspect of the department's management and conservation of the leopard species. It is also accepted that the first applicant is a wildlife and environmental conservationist and researcher, generally regarded as an expert in human-wildlife conflict involving leopards. The Foundation advocates strongly against indiscriminate lethal control methods and is a vocal participant in policy and administrative issues affecting predator conservation, serving as an environmental watchdog in the public interest. There is also no dispute that the issuing of the relevant permits relates to aspects of the environment and that it implicates the right to a healthy environment, at least indirectly. The respondents also acknowledge that state management in conservation of threatened and protected species concerns a public interest element, underpinned by the Constitution and the statutory framework. To the extent that such management in conservation may be detrimentally affected by the administration of the TOPS permit system, this too involves a public interest dimension.

[10] The respondents deny that the public interest requires the disclosure of the records requested. The usefulness of providing the applicants with permits issued in the past, and the relationship between the issue of those permits, the information contained in applications and permits, and future administrative decisions, is questioned. There is no requirement for a public participation process in the regulations and this was inappropriate and unnecessary in the circumstances. It would be unfeasible, according to the respondents, for the department to engage in

¹⁴ Act 107 of 1998.

such an exercise every time it considered an application for a TOPS permit. The respondents go so far as to state that widespread publication of information regarding TOPS permits could result in the information being used by criminals for ulterior motives.

Access to information and the right to privacy

[11] 'Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizens ought to know what their government is doing.' (Justice P N Bhagwati, former Chief Justice, Supreme Court of India, 1981).

The right to access to information is directly related to the cultivation of an accountable, responsive, and open society, as promised by the founding provisions of the Constitution. One of the basic values and principles governing public administration is transparency, which 'must be fostered by providing the public with timely, accessible and accurate information'.¹⁵ As Currie and De Waal have noted, democracy is government by explanation and accountable government requires dissemination of information upon which actions and decisions are based.¹⁶

[12] Access to information is also inevitably linked to the realisation of other rights guaranteed in the Bill of Rights.¹⁷ In this instance, the information required is related to the constitutional right to a healthy environment. This right encompasses the broad notions of 'animal welfare' and 'conservation'.¹⁸ There are various reasons for this, including the relationship between animal protection, the environment, and human values.¹⁹ Animal welfare is related to questions of biodiversity and thereby connected with the constitutional right 'to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures ... that promote conservation; and secure ecologically sustainable

¹⁵ S 195(1)(g) of the Constitution. See *Brümmer v Minister for Social Development and Others* 2009 (6) SA 323 (CC) ('*Brümmer*') para 62.

¹⁶ I Currie and J de Waal *The Bill of Rights Handbook* (6th Ed) (Juta) p 692.

¹⁷ In *Brümmer*, for example, a journalist required information to ensure accurate reporting on a government tender that was the subject of pending litigation. The relationship between access to information and freedom of expression was emphasised: *Brümmer* supra fn 15 paras 3, 63.

¹⁸ See *NSPCA v Minister of Environmental Affairs and Others* 2020 (1) SA 249 (GP), citing *NSPCA v Minister of Justice and Constitutional Development and Others* 2017 (1) SACR 284 (CC) para 56.

¹⁹ *S v Lemthongthai* 2015 (1) SACR 353 (SCA). Also see the judgment of Navsa ADP in *Company Secretary, Arcelormittal SA v Environmental Justice* 2015 (1) SA 515 (SCA) ('*Arcelormittal*') para 1.

development and use of natural resources while promoting justifiable economic and social development.²⁰

[13] When interpreting PAIA, courts must prefer any reasonable interpretation of a provision that is consistent with the objects of this Act over any inconsistent alternative interpretation.²¹ The objects of PAIA include the following:²²

- To give effect to the constitutional right of access to any information held by the State;
- To give effect to that right subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance;
- To give effect to that right in a manner which balances that right with any other rights, including the rights in the Bill of Rights; and
- Generally, to promote transparency, accountability and effective governance of all public and private bodies, also by encouraging scrutiny and participation in decision-making by public bodies that affects rights.

[14] It has been suggested that transparency is a means towards the dual ends of promoting government accountability as well as public participation in government.²³ Section 11 of PAIA confirms the right to access to records of public bodies in the following terms:

‘(1) A requester must be given access to a record of a public body if –

(a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and

(b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

(2) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester.

(3) A requester’s right of access contemplated in subsection (1) is, subject to this Act, not affected by –

²⁰ See *NSPCA v Minister of Justice and Constitutional Development* 2017 (1) SACR 284 para 58, holding that animal welfare and animal conservation together reflect two intertwined values.

²¹ S 2 of PAIA.

²² S 9 of PAIA.

²³ E Mureinik ‘Reconsidering Review: Participation and Accountability’ (1993) *Acta Juridica* 35 as cited in Currie and De Waal op cit fn 16 at p699.

- (a) any reasons the requester gives for requesting access; or
- (b) the information officer's belief as to what the requester's reasons are for requesting access.'

[15] Importantly, three fundamental principles may be distilled following a purposive interpretation of the constitutional right to access to information, read with PAIA. Firstly, access to information is the norm and PAIA must be interpreted to promote this objective. Exemption from disclosure is the exception.²⁴ As is evident from the wording of s 11, the exercise of the right has been formulated in peremptory terms once there has been compliance with formalities and should there be no basis for refusal.²⁵ Secondly, withholding information is permitted only in instances described in PAIA. These exemptions and grounds of refusal must be narrowly construed because they involve limitation of a constitutional right. While access may be denied where it is clearly justified, doubts should typically be resolved in favour of disclosure, and a discretion exercised accordingly.²⁶ Thirdly, the burden of justifying a limitation of a right falls on the party wishing to do so, and not on the right-holder.²⁷ This is to be discharged on a balance of probabilities by providing evidence that the record in question falls within the description of the ground of refusal that is claimed.²⁸

[16] PAIA is, in other words, not merely legislation giving effect to the constitutional right of access to information. It is a law of general application that limits this right in the interests of privacy, commercial confidentiality and effective, efficient and good governance and in order to protect other rights. This is in accordance with s 32(2) of the Constitution, which provides that '[n]ational legislation ... may provide for reasonable measures to alleviate the administrative and financial burden on the state'. PAIA seeks to strike a balance with other competing rights, including the rights to privacy and dignity.²⁹

²⁴ *President of the Republic of South Africa v M&G Media* 2012 (2) SA 50 (CC) ('*M&G Media*') para 9.

²⁵ See *M&G Media* *ibid* para 9. There is no suggestion of non-compliance with any formalities in this instance.

²⁶ Currie and De Waal *op cit* fn 16 p 708.

²⁷ See s 81(3) of PAIA; *M&G Media* *supra* fn 24 para 13; Currie and De Waal *op cit* fn 16 p 709.

²⁸ *M&G Media* *supra* fn 24 paras 23, 32.

²⁹ *De Lange v Eskom Holdings* 2012 (1) SA 280 (GSJ) ('*De Lange*').

[17] The right to privacy is, in the words of Madlanga J, singularly important in South Africa's constitutional democracy. Invasion of an individual's privacy infringes the cognate right to dignity.³⁰ The unlawful disclosure of private facts about a person is one of the ways in which common law breach of privacy could occur.³¹ Unlawfulness in that sense is adjudged 'in the light of contemporary *boni mores* and the general sense of justice of the community as perceived by the Court'.³² Post-Constitution, it is accepted that the right to privacy lays along the *continuum* described by Ackermann J in *Bernstein*, linked to human dignity.³³ A very high level of protection is afforded to an individual's personal domain. There even exists an 'untouchable' sphere of human freedom that is beyond interference from any public authority. No justifiable limitation of this 'most intimate core of privacy' may occur. But this inviolable inner sanctum is construed narrowly. The examples provided in *Bernstein* are family life, sexual preference and home environment, to be shielded from erosion by any conflicting community rights. As a person enters relationships with persons outside this closest intimate sphere, their activities acquire a social dimension, the scope of personal space shrinks accordingly and their right to privacy becomes subject to limitation.³⁴ The level of justification for any limitation of the rights must be judged in the light of the circumstances of each case, including the nature and effect of the invasion of privacy.³⁵ The scope of the right to privacy cannot be defined without recognising that the content of the right is crystallised by mutual limitation: 'its scope is already delimited by the rights of the community as a whole (including its members)'.³⁶ The scope of a person's privacy extends only to those aspects in regard to which a legitimate expectation of privacy can be held.³⁷ The nature of privacy implicated by 'the right to privacy' relates only to the most

³⁰ *AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC and Others* [2021] ZACC 3; 2021 (4) BCLR 349 (CC); 2021 (3) SA 246 (CC) ('*AmaBhungane Centre for Investigative Journalism*') paras 27, 28.

³¹ *Financial Mail (Pty) Ltd and Others v Sage Holdings Ltd and Another* 1993 (2) SA 451 (A) at 462F.

³² *Ibid* at 462G.

³³ *Bernstein and Others v Bester and Others* 1996 (2) SA 751 (CC) ('*Bernstein*'). The concept of privacy has been described as 'amorphous' and 'elusive': at para 65. Also see *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* 2001 (1) SA 545 (CC) (*Hyundai*) para 18. On the foundational role of identity in the concept of privacy, see *Bernstein* para 65.

³⁴ *Bernstein* *ibid* paras 67, 77.

³⁵ *Hyundai* *supra* fn 33 para 18.

³⁶ *Bernstein* *supra* fn 33 para 79.

³⁷ *Ibid* para 75.

personal aspects of a person's existence; and not to every aspect within their personal knowledge and experience'.³⁸

[18] POPIA reflects contemporary *boni mores* and gives further expression to the appropriate balance to be struck. The processing of personal information by public bodies must take cognisance of the right to privacy. But this is subject to justifiable limitations that are aimed at protecting other rights and important interests and bearing in mind the need to remove unnecessary impediments to the free flow of information, including personal information.³⁹

[19] The right to privacy and the right to access to information are both constitutional rights. Both rights may be reasonably and justifiably limited. As indicated, and as *Mr Blumberg SC* for the applicants pointed out, PAIA and POPIA each promote both the rights and give expression to various limitations. There is no constitutional challenge to their provisos before this court.⁴⁰ The dispute requires determination in terms of the existing principles or rules of ordinary statutory law, properly interpreted with reference to the values contained in the Bill of Rights and through its prism.⁴¹ When interpreting the relevant provisions of PAIA and POPIA, the spirit, purport and objects of the Bill of Rights must be promoted.⁴² The South African context and the constitutional goals of a transitioned and transformed society based on democratic values, social justice and fundamental human rights must be appreciated.⁴³ Significantly, this has implications for instances where two or more interpretations of a legislative provision are possible. A court must prefer the reading of a statute that 'better' promotes the spirit, purport and objects of the Bill of Rights, even if neither interpretation would render the provision unconstitutional.⁴⁴

³⁸ *Ibid* para 79.

³⁹ Preamble to POPIA; S 2 of POPIA.

⁴⁰ See s 5 of PAIA: this Act applies to the exclusion of any provision of other legislation that (a) prohibits or restricts the disclosure of a record of a public body or private body; and (b) is materially inconsistent with an object, or a specific provision, of this Act.

⁴¹ On indirect application of the Bill of Rights, in general, see *Currie and De Waal op cit* fn 16 at pp56-57. Also see *Hyundai supra* fn 33 para 21.

⁴² S 39(2) of the Constitution.

⁴³ See *Hyundai supra* fn 33 para 21.

⁴⁴ See the judgment of Kroon AJ in *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another* 2009 (1) SA 337 (CC) ('*Wary Holdings*') paras 46 and 84. The judgment of Yacoob J in *Wary Holdings* makes the point that this principle only applies 'if the proviso is reasonably capable of having two meanings'.

[20] Specific limitations on the right of access to information emerge from the exemptions to disclosure contained in chapter 4 of PAIA, entitled 'Grounds for refusal of access to records'. The purpose of this chapter is to 'protect from disclosure certain information that, if disclosed, could cause material harm to, amongst other things: the defence, security and international relations of the Republic; the economic interests and financial welfare of the Republic and commercial activities of public bodies; and the formulation of policy and taking of decisions by public bodies in the exercise of powers or performance of duties conferred or imposed by law'.⁴⁵ Unless one of the specially enumerated grounds of refusal applies, information held by the state or public entity must be disclosed in further of the right to information.⁴⁶ If a request is refused, the IO must provide adequate reasons for this, with reference to the pertinent provisions of PAIA, thereby discharging the burden on the state created by s 81(3) of PAIA.⁴⁷ It is therefore crucial to determine if any justifiable ground for refusal is applicable. The only ground raised is that referred to in s 34 of PAIA. The question is whether the respondents have put forward sufficient evidence to conclude, on the probabilities, that the information withheld falls within the exemption claimed.⁴⁸

[21] Before considering that question, it must be noted that there are further statutory considerations applicable, in furtherance of the *audi alteram partem* principle.⁴⁹ Section 47(1) of PAIA provides that the IO of a public body considering a request for access to a record that might be a record contemplated in s 34(1), amongst other sections, must take all reasonable steps to inform a third party to whom the record relates of the request.⁵⁰ When doing so, the IO must, *inter alia*, state that they are considering such a request, describe the content of the record,

⁴⁵ See *M&G Media* supra fn 24 para 11.

⁴⁶ S 11(1) of PAIA. *M&G Media* supra fn 24 para 9. *De Lange* supra fn 29 para 35. This is so regardless of the reasons for which access is sought and irrespective of what the organ of state believes those reasons to be. The exceptions contained in chapter 4 of PAIA constitute a *numerus clausus* of circumstances in which access may or must be refused: see *SA History Archive Trust v SA Reserve Bank* 2020 (6) SA 127 (SCA) ('*SA History Archive Trust*') para 33.

⁴⁷ See *M&G Media* supra fn 24 para 11.

⁴⁸ *Ibid* para 23.

⁴⁹ See *SA History Archive Trust* supra fn 46 para 13. The one exception to this is contained in s 49(2) of PAIA.

⁵⁰ The IO must inform a third party of this as soon as reasonably possible, but in any event, within 21 days after the request is received, and by the fastest means reasonably possible: s 47(2) of PAIA.

furnish the name of the requester and highlight the possible application of s 46 of PAIA (mandatory disclosure in the public interest) if appropriate. The third party must be afforded 21 days to consent or make representations to the IO as to why the request for access should be refused.⁵¹ Those representations may be oral or in writing, or the third party may give consent for the disclosure of the record to the requester.⁵² The IO must then decide whether to grant access as soon as possible, but no later than 30 days after every third party has been informed in terms of s 47. The third party and requester must be notified of the decision.⁵³

The meaning of ‘unreasonable disclosure of information’ in s 34 of PAIA

[22] The crux of this dispute turns on the proper interpretation of s 34 of PAIA. An IO of a public body ‘must refuse a request for access to a record contemplated in section 34(1) ... unless the provisions of section 46 apply’.⁵⁴ Section 34(1) reads as follows:

‘Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.’

[23] It is common cause that s 34(2) finds no application in the present instance.⁵⁵ That being the case, a textual interpretation of the balance of s 34(1) suggests that an IO of a public body is given the power to refuse a request for access to a record of that body. To exercise that power, the IO must determine whether disclosure of the information involves ‘unreasonable’ disclosure of personal information about a

⁵¹ S 47(3) of PAIA. See paras 8-10.

⁵² S 48 of PAIA.

⁵³ S 49(1) of PAIA. Notification of refusal must state adequate reasons for this and inform the requester about the right to lodge an internal appeal, as well as the process for this: s 49(1)(c) read with s 25(3) of PAIA.

⁵⁴ S 33(1)(a) of PAIA.

⁵⁵ S 34(2) of PAIA reads as follows: ‘A record may not be refused in terms of subsection (1) insofar as it consists of information –

- a) about an individual who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned;
- b) that was given to the public body by the individual to whom it relates and the individual was informed by or on behalf of the public body, before it is given, that the information belongs to a class of information that would or might be made available to the public;
- c) already publicly available;
- d) ...
- e) ...
- f) ...’

third party. If the disclosure would involve unreasonable disclosure of personal information about a third party, the request for access to the record must be refused. The flip side of this enquiry would be the non-refusal of a request that did not involve the 'unreasonable' disclosure of such personal information.

[24] Considered purposively, this interpretation appears to give effect to the careful balance to be struck between the right of access to information and the right to privacy. Disclosure of a record of a public body that would involve dissemination of third-party personal information must be refused if the disclosure would be unreasonable. The right to access to information must prevail if disclosure of the personal information was reasonable in the circumstances. This is concordant with an 'open democratic society' founded on constitutional values such as human dignity, the advancement of human rights and freedoms, accountability, responsiveness and openness.⁵⁶

[25] The respondents advanced a different interpretation. They suggest that the effect of s 11 of POPIA is that objection, by a third party, to the distribution or dissemination of personal information results in an IO being prohibited from granting access. Considering POPIA's protection of personal information, s 33 of PAIA demands that an IO must refuse a request for access to a record contemplated in s 34(1) of that Act, unless the provisions of s 46, relating to mandatory disclosure in the public interest, apply. The IO had to make a decision on 'reasonableness' based on limited information.⁵⁷ Viewed from that perspective, it was argued that the IO's view that the disclosure of the personal information of the third party would be unreasonable was unassailable. A similar argument was advanced in respect of the first respondent's decision on appeal.

[26] There are various difficulties with this interpretation. It ignores the inclusion of the word 'unreasonable' in s 34(1) and the existence of s 34(2) of PAIA. It elevates the s 46 public interest override to the sole situation in which access to a record containing personal information about a third party should be granted. That

⁵⁶ Preamble and s 1 of the Constitution.

⁵⁷ The identity of the requester; a description of the record sought; the extent and nature of the personal information of third parties contained within the record; the representations and objections received from third parties whose personal information was contained within the record sought.

interpretation may have been appropriate had the word 'unreasonable' not appeared in s 34(1), and if s 34(2) had been omitted. In that case, s 33(1) and s 34(1), read together, would compel an IO to refuse a request for access to a record contemplated in s 34(1) purely if 'its disclosure would involve the disclosure of personal information about a third party', unless the provisions of s 46 applied. There would be no need for third parties to be notified and to make any representations, in terms of ss 47 and 48 of PAIA, as to why the request should be refused. Absurdly, it might even result in automatic refusal of a request in circumstances where the third party would have consented to disclosure. This would be because the request *must* then be refused when disclosure of the record would include personal information about a third party in circumstances where the public interest override was not triggered.

[27] It is apparent that the sections in question cannot be interpreted in a way that completely negates the inclusion of the word 'unreasonable'. The absence of any textual link between s 46 and the question of reasonableness adds to the difficulty in accepting the argument advanced. There is similarly nothing in ss 33 or 34 to support an interpretation that the only time that personal information about a third party may be reasonably disclosed is when the requirements of s 46 have been met. Not only would this conflict with a proper textual interpretation of PAIA, it would circumvent the purpose of the Act itself by only enabling disclosure of records containing *any* personal information in the limited circumstances contemplated in s 46 of PAIA. The consequences would be serious. The role and discretion of an IO would be watered down, the rationale for notification to third parties would be questionable and the requester seeking access to information held by a public body would inevitably have to satisfy the onerous s 46 requirements to obtain access simply because the record contained some personal information. The right to privacy would be elevated to such an extent that access to information held by a public body would likely become the exception, rather than the norm. The right to access to information would be diminished accordingly.

[28] The inclusion of the word 'unreasonable' in s 34(1) of PAIA changes the position completely and points the way to an interpretation of that Act that is

consistent with the underpinning constitutional right. The IO, who is a senior figure,⁵⁸ is tasked with fulfilment of a particular set of functions given the wording of chapter 4 of PAIA. They must consider a request for access to a record of a public body. They must determine whether disclosure of the record involves disclosure of personal information about a third party, or if any of the other grounds for refusal of access to records is applicable. When considering a request for access to a record that might be a record in s 34(1), all reasonable steps must be taken to inform a third party to whom the record relates of the request.⁵⁹ Due regard must be given to any representations made by a third party in terms of s 48.⁶⁰ Assuming that only s 34 is of relevance, the IO must decide whether the record consists of information enumerated in s 34(2). For example, a third party may have consented in writing to disclosure of their personal information to the requester. In that event, the record may not be refused. In cases where s 34(2) is inapplicable, a decision must be made whether the disclosure of information about a third party contained in the record requested would be reasonable or unreasonable. If the IO considers that disclosure would be unreasonable in the circumstances, the request for access to that record must be refused, unless the provisions of s 46 apply. The third party and requester must be notified of the decision.⁶¹ If the request for access is refused, the requester must be notified in compliance with the requirements of s 25(3) of PAIA, including the reasons which caused the records to fall within the ambit of s 34(1), and provided with information about the right to lodge an internal appeal.⁶²

[29] The interpretation proffered results in an outcome consistent with the objects of PAIA. It finds strong support in a recent decision of the SCA, a decision of this court and in academic writing. As will be demonstrated, it is also possible to read POPIA accordingly. In *SA History Archive Trust*, Gorven JA responded to the SA Reserve Bank's approach of relying upon the protection of personal information as a basis for refusing disclosure in terms of s 34(1), in the following terms:⁶³

⁵⁸ See s 1 of PAIA.

⁵⁹ S 47(1) of PAIA.

⁶⁰ S 49(1)(a) of PAIA.

⁶¹ S 49(1)(b) and (c) of PAIA.

⁶² S 49(1)(c) of PAIA. The discretion afforded to the IO in terms of chapter 4 of PAIA is further evinced by s 33(1)(b).

⁶³ *SA History Archive Trust* supra fn 46 paras 37, 46.

'But s 34(1) provides: ... It is clear that the prohibition requires that the disclosure of personal information would be *unreasonable*. Not all personal information is protected from disclosure. It depends on the facts. If an IO decides that the disclosure would be unreasonable, two aspects must be dealt with. First, it should be asserted that the disclosure would be *unreasonable*. Secondly, some facts which cause the records to fall within the ambit of the section should be put up in support. The SARB did neither ... in those circumstances, the SARB could not have recourse to s 34(1) ...

Finally, the SARB sought to invoke the provisions of s 46 to prevent access in respect of all the records sought ... [but] the 'public interest override' [only] relates to records which, in the present matter, are found to fall within the provisions of s 34(1) ... Only if one or more of these sections apply to a specific request does s 46 come into play. If none of them applies, there is no basis to refuse access and the two factors, including the "public interest override", need not be considered.' (Own emphasis).

[30] Similarly, this court considered the proper approach to interpretation of PAIA, and s 34 in particular, in *Centre for Social Accountability*.⁶⁴ In that matter, Alkema J considered s 34(1) independently from s 46 of PAIA, holding that the section had to be interpreted by having regard to the content of the constitutional rights to privacy and dignity, and their limitation.⁶⁵ The learned judge also noted that the interpretation of the subsection involved consideration of the definition of 'personal information' in s 1 of PAIA. Significantly, the focus was placed on the meaning of the words 'the unreasonable disclosure of personal information', as used in s 34(1) of PAIA.⁶⁶ The court applied a two-part test for establishing a reasonable expectation of privacy, linking this test to determining whether the information in question was protected by the constitutional right to privacy.⁶⁷ The point made, with direct reference to s 34(1) of PAIA, was the following:⁶⁸

' ... personal information which may be reasonably disclosed is not recognised by society as personal, and no longer enjoys the protection of the right to privacy under s 14 of the

⁶⁴ *Centre for Social Accountability v Secretary of Parliament* 2011 (5) SA 279 (ECG) ('*Centre for Social Accountability*').

⁶⁵ *Centre for Social Accountability* ibid para 61.

⁶⁶ *Centre for Social Accountability* ibid para 63 *et seq.*

⁶⁷ Firstly, the objector must establish a subjective expectation of privacy by establishing that the nature of the information is covered by the freedom of identity principle. Subjectively viewed, the information must be part of the inner sanctum of the private and personal life of the individual. Secondly, objectively assessed, society must recognise the individual's expectation of privacy as reasonable: *Centre for Social Accountability* ibid paras 72, 75. In applying the test, Alkema J appears to have in fact intended three steps, also considering the question of 'reasonableness' when gauging the individual's subjective expectation: para 74.

⁶⁸ *Centre for Social Accountability* ibid paras 74, 76.

Constitution. In this sense, such information falls outside the scope of protectable information, notwithstanding that such information may be personal in nature ... So, the starting point of an enquiry of this nature must always be to first determine whether the information, which is sought to be protected by the right to privacy, falls within the legal and constitutional realm of privacy. If not, then *caedit quaestio*, and the further question as to what stage it loses its protection does not arise.'

[31] Applying the two-stage test drawn from *Bernstein*, the court concluded that the respondents failed on both legs, and had not discharged 'the onus of proving that the information is either "personal information" or that its disclosure would be "unreasonable" within the meaning of these expressions in s 34(1).'⁶⁹

[32] As indicated, the relevant provisions of POPIA may be interpreted to accord with this reading of s 34. That Act makes it clear that the right to privacy includes a right to protection against the *unlawful* dissemination of personal information. A 'data subject' is defined in POPIA as the person to whom personal information relates. Data subjects enjoy the right to have their personal information processed in accordance with the conditions for the lawful processing of personal information.⁷⁰ This includes the right to object, on reasonable grounds relating to their particular situation to the processing of their personal information.⁷¹ 'Processing' is defined to include 'dissemination by means of transmission, distribution or making available in any other form ...'⁷² The eight conditions for the lawful processing of personal information, as referred to in chapter 3 of POPIA, are accountability; processing limitation; purpose specification; further processing limitation; information quality; openness; security safeguards; data subject participation.⁷³

⁶⁹ *Centre for Social Accountability* ibid para 81. In case it had erred, the court did go on to consider the public interest override: para 85. It also concluded that the expressions 'unreasonable disclosure' in s 34(1) and 'public interest' in s 46 were expressions of the same constitutional principle, namely the second stage of the legitimate expectation principle. This required society to reasonably and legitimately consider the information to be protectable: para 107.

⁷⁰ S 5 of POPIA.

⁷¹ S 5(d) read with s 11(3)(a) of POPIA.

⁷² S 1 of POPIA.

⁷³ See s 4(1) of POPIA. Although the date of commencement of the applicable sections of the chapter was 1 July 2020, nothing appears to turn on this.

[33] It is the duty of a 'responsible party' to ensure that there is compliance with these conditions, 'at the time of the determination of the purpose and means of the processing and during the processing itself'.⁷⁴ A 'responsible party' is defined to mean a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information.⁷⁵ The processing of personal information is not completely taboo. Section 9 of POPIA provides that personal information must be processed lawfully and in a reasonable manner that does not infringe the privacy of the data subject. Personal information may only be processed if, given the purpose for which it is processed, it is adequate, relevant and not excessive.⁷⁶ Section 11 of POPIA reads as follows:

'(1) Personal information may only be processed if –

- (a) the data subject ... consents to the processing;
- (b) processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is party;
- (c) processing complies with an obligation imposed by law on the responsible party;
- (d) processing protects a legitimate interest of the data subject;
- (e) processing is necessary for the proper performance of a public law duty by a public body; or
- (f) processing is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the information is supplied.

...

(3) A data subject may object, at any time, to the processing of personal information –

- (a) in terms of subsection 1(d) to (f), in the prescribed manner, on reasonable grounds relating to his, her or its particular situation, unless legislation provides for such processing

...

(4) If a data subject has objected to the processing of personal information in terms of subsection (3), the responsible party may no longer process the personal information.

[34] Section 11(4) must be read in the context of the section. Personal information must be lawfully processed in terms of POPIA and data subjects may indeed object to the dissemination of their personal information by a responsible party. But the objection must be based 'on reasonable grounds'. It seems apparent that section

⁷⁴ S 8 of POPIA.

⁷⁵ S 1 of POPIA.

⁷⁶ S 10 of POPIA.

11 of POPIA permits the processing of personal information, despite the objection of a data subject, if, for example, processing is necessary for the proper performance of a public law duty by a public body or processing is necessary for the pursuit of the legitimate interests of a third party to whom the information is supplied.⁷⁷ As with the analysis of PAIA, the crux of matter turns on the question of reasonableness, which requires evaluation by the responsible party. Section 11(4) can only be read to mean that a 'reasonable' objection by a data subject to the processing of their personal information will result in that information not being processed.

Have the respondents discharged the burden?

[35] The burden of establishing that a refusal of access to information is justified under the provisions of PAIA rests on the state or on any other party refusing access.⁷⁸ That burden must be discharged on a balance of probabilities.⁷⁹ In these proceedings, a court is not limited to reviewing the decisions of the IO or the officer who undertook the internal appeal. It decides the claim of exemption from disclosure afresh, engaging in a *de novo* reconsideration of the merits of the matter.⁸⁰ In exceptional cases, courts resort to taking a 'judicial peek' at the refused record, when the affidavits provided by the state are insufficient for a responsible *de novo* decision.⁸¹ Given the information requested and the approach advanced for refusal, there is no need to invoke the provisions of s 80 of PAIA to do so in this instance. In my view there is sufficient material presented to enable this court to make a responsible decision, on the probabilities, as to whether the record requested should continue to receive protection from disclosure.⁸²

[36] The decision in *M&G Media* confirms that it is for the party claiming that it has complied with the provisions of PAIA in refusing a request for access to demonstrate this on a balance of probabilities. It remains relevant that a constitutional right is implicated and that access to information disputes of this kind

⁷⁷ Ss 11(1)(e) and (f) of POPIA.

⁷⁸ S 81(3) of PAIA. See *M&G Media* supra fn 24 paras 13, 14.

⁷⁹ *Ibid.*

⁸⁰ *M&G Media* *ibid* para 14.

⁸¹ *M&G Media* *ibid* paras 39, 42 and 44 *et seq.*

⁸² See *M&G Media* *ibid* paras 48 and 49.

are not purely private in nature, given the potential public interest.⁸³ The refusal of access must itself be reasonable. The mere say-so of the IO or recitation of the words of PAIA to justify refusal has been held to be insufficient.⁸⁴ The party seeking to justify refusal of access is obliged to put forward sufficient evidence for a court to conclude, on the probabilities, that the information withheld falls within the exemption claimed. This approach flows directly from PAIA's purpose to give effect to the constitutional right to access to information.⁸⁵ The nature of the exemption claimed is also relevant in determining whether sufficient information has been provided to justify the refusal.⁸⁶

[37] The answering affidavit makes it clear that the department does not issue permits to kill or hunt leopards for recreational purposes. During the period in question, the department received 14 applications, other than from the applicants, relating to specific leopards and issued 11 permits.⁸⁷ Access was granted to the relevant documentation relating to the applicants themselves. The respondents rely on their interpretation of ss 33 and 34 to justify the refusal of the request for the balance of information. As indicated, their approach was founded on the constitutional right to privacy, the non-consent on the part of the affected third parties and the inapplicability of the s 46 grounds for disclosure.

[38] The subject matter of the application for access to information involved permits issued in relation to a vulnerable indigenous species facing a high risk of extinction in the medium-term. The application was brought by the Foundation for purposes of obtaining information relevant to the management and conservation of the leopard species. It is accepted that state management in conservation of threatened and protected species invokes a public interest dimension. The right of access to information is closely linked to the cultivation of an accountable, responsive and open society and to the realisation of other constitutional rights,

⁸³ See *M&G Media* ibid para 33 on the difference between ordinary civil proceedings and an access to information dispute.

⁸⁴ *M&G Media* ibid para 22.

⁸⁵ *M&G Media* ibid paras 23, 24.

⁸⁶ *M&G Media* ibid para 25. It is equally clear that the relevant material to be placed before a court in a s 78 application is not confined to the material placed before the IO at the time access was refused: *Transnet Ltd and Another v SA Metal Machinery Co (Pty) Ltd* 2006 (6) SA 285 (SCA) para 24.

⁸⁷ Para 34 of the answering affidavits, contrary to a subsequent paragraph of the answering papers, suggests that 11 applications were received and 14 permits issued.

including the right to a healthy environment. Animal welfare and conservation form part of this right. Access to information is the norm, rather than the exception.

[39] Applicants for permits seek to perform a restricted activity. Determinations whether to grant a permit application may affect the environment significantly.⁸⁸ A decision to issue or refuse a permit or to issue it subject to conditions, must be consistent with, for example, any applicable provisions of NEMBA, the national environmental management principles and the Promotion of Administrative Justice Act, 2000.⁸⁹ The national environmental management principles apply throughout the country to the actions of all organs of state that may significantly affect the environment.⁹⁰ These principles serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of NEMA or any statutory provision concerning the protection of the environment.⁹¹ The principles guide the interpretation, administration and implementation of NEMA, and any other law concerned with the protection or management of the environment.⁹² NEMA confirms that the environment is held in public trust for the people, that the beneficial use of environmental resources must serve the public interest and that the environment must be protected as the people's common heritage.⁹³ Importantly, one of the established principles accepts that 'decisions

⁸⁸ The NEMBA defines 'permit' to mean a permit issued in terms of chapter 7 of that Act. Restricted activities involving specimens of listed threatened or protected species are regulated by this chapter. A person may apply for a permit by lodging an application on the prescribed form and the issuing authority may make various decisions in terms of s 88 of NEMBA.

⁸⁹ Act 3 of 2000. See s 88(3) of NEMBA. The TOPS Regulations govern the issuing of a permit in further detail, including various matters to be considered before a permit application is granted or refused. This includes consideration of whether the restricted activity in respect of which the application is submitted is likely to have a negative impact on the survival of the relevant listed threatened or protected species, and any objections to the application: Regulation 10 of the TOPS Regulations. Regulation 19 specifies the information to be contained in the permit. Regulation 23 provides that an issuing authority must refuse a permit application for the transfer, transport or translocation of a specimen of a listed threatened or protected animal species to an extensive wildlife system in certain circumstances. A person who feels aggrieved by a decision taken under the TOPS Regulations enjoys a right of appeal: regulation 55(1) of the TOPS Regulations.

⁹⁰ S 2(1) of NEMA.

⁹¹ S 2(1)(c) of NEMA.

⁹² S 2(1)(e) of NEMA.

⁹³ S 2(1)(o) of NEMA. 'Environment' is defined to mean the surroundings within which humans exist, including any part or combination of the land, water, atmosphere, micro-organisms, plant and animal life and the inter-relationship among and between them, as well as the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being: s 1 of NEMA.

must be taken in an open and transparent manner, and access to information must be provided in accordance with the law'.⁹⁴

[40] Given the nature of a request for a permit to perform a restricted activity, and its potential impact on a vulnerable species, that application process has acquired a social dimension outside the private domain.⁹⁵ Consequently, it cannot be said that a reasonable expectation of privacy exists in relation to such an activity. Nor would contemporary *boni mores* accept any such expectation as objectively reasonable.⁹⁶

[41] That being the case, disclosure of the information in question does not involve the unreasonable disclosure of personal information about a third party. Disclosing the information, bearing in mind the broad environmentally-related purposes which underpin the request, is consistent with a society based on constitutional values such as accountability, responsiveness and openness. To borrow from the language in *Centre for Accountability*, the personal information contained in the applications and permits falls outside the legal realm of privacy, does not enjoy constitutional protection from disclosure and may be reasonably disclosed to the applicants in the circumstances. That also puts paid to any suggestion that the information should be disclosed in a redacted fashion. Put differently, the objection against disclosure cannot be said to be on reasonable grounds given the legitimate pursuit of information linked to conservation and management of a vulnerable species and the constitutional right to a healthy environment.

[42] On this basis, disseminating the information requested to the applicants, including the personal information contained therein, also cannot be unlawful in terms of POPIA. Any suggestion that making the information available to the applicants might result in further dissemination, so that there may be a greater poaching threat, is speculative. The burden has not been discharged on the

⁹⁴ S 2(1)(k) of NEMA.

⁹⁵ See *Bernstein* supra fn 33 para 85.

⁹⁶ *Ibid.* See *Centre for Social Accountability* supra fn 64 para 73. Also see *Arcelormittal* supra fn 19 para 82 on the principle that there is no room for secrecy when decisions impact on the environment and implicate the public interest.

probabilities, there is no need to consider the public interest override,⁹⁷ and the applicants are entitled to relief in terms of s 82 of PAIA.

[43] It might be added that there may be a simple way for an IO to address such issues in future. Section 34(2)(b) of PAIA contemplates the situation where individuals providing information to a public body are informed, before the information is provided, that this forms part of a class of information that would or might be made available to the public. In such situations, the IO may not refuse a request for access to a record containing such information.

Relief

[44] The court may grant any order that is just and equitable.⁹⁸ The amicus curiae submitted that the department's approach to considering and granting applications for permits was unconstitutional in that it excluded any form of public participation. It also suggested that information of the kind requested should automatically be made available, rather than requiring a PAIA application for access. This was different to the relief claimed by the applicants, who deliberately avoided a frontal challenge to the procedure followed by the department in determining TOPS applications, and who confined themselves to relief in terms of PAIA.

[45] The role of an amicus is to draw the attention of the court to relevant matters of law and fact to which attention would not otherwise be drawn.⁹⁹ In the recent decision in *AmaBhungane Centre for Investigative Journalism*,¹⁰⁰ Madlanga J, on behalf of the majority of the Constitutional Court, noted the following:

'[110] The third amicus ... contends that the High Court order is too narrow ... It urges us to amend the order to add that RICA is unconstitutional also to the extent that it fails to prescribe proper procedures to be followed ... Essentially, the third amicus is lodging its own appeal. Ordinarily (and I use this word guardedly), an amicus participates in proceedings to raise 'new contentions which may be useful to the Court' ... A court's task is

⁹⁷ See *De Lange* supra fn 29 para 137, citing I Currie and J Klaaren *Commentary on the Promotion of Access to Information Act* (2002) at p 108.

⁹⁸ S 82 of PAIA.

⁹⁹ *In re: Certain Amicus Curiae Applications; Minister of Health and Others v Treatment Action Campaign and Others* [2002] ZACC 13 para 5.

¹⁰⁰ *AmaBhungane Centre for Investigative Journalism* supra fn 30.

to determine the dispute presented to it by the parties. It stands to reason then that the assistance to it must relate to the determination of that dispute. Adding a different dispute – like an additional appeal – not litigated by the parties is not assistance with the dispute before the court. If anything, that amounts to burdening the court with something else to determine. That is not what rule 10 and the *In re Certain Amicus Curiae Applications* statement of law envisage.

[111] Therefore, it seems to me that it is not in the interests of justice to entertain the issue raised by the third amicus ...’

[46] As in *AmaBhungane Centre for Investigative Journalism*, the main issue raised by the amicus is of particular importance, highlighting the role of proper public participation in the TOPS permitting process and in environmental protection. Compelling as the argument may be, the parties understandably did not focus on the ins and outs of this issue, which is concerned with information sharing and public participation prior to the issue of a TOPS permit. The thrust of the parties’ dispute remained on the proper interpretation of the applicable legislation, and the tension between access to information and the protection of personal information. The consequence is that the parties did not fully ventilate the issue brought to the fore by the amicus. For example, the practicalities and difficulties of full public participation whenever a TOPS application is considered was not canvassed. Different forms of public participation, including creative and practically workable options that might be appropriate, were also not detailed by the parties. It is therefore not in the interests of justice to engage with the issues raised by the amicus in further detail, or to make a broad finding or declaratory order in this regard. As *Mr Nepgen*, for the respondents, argued, such an outcome could also have far-reaching implications and warrants comprehensive treatment.

[47] In *Paul*,¹⁰¹ the court highlighted subrules 3(5) and (6) of the PAIA Rules for Procedure for Application to Court in terms of the Act.¹⁰² It noted that the scheme of PAIA is such that there is no basis for citing the relevant appeal authority in a court application in terms of s 78, and that any relief sought against that authority should

¹⁰¹ *Paul v MEC for Health, Eastern Cape Provincial Government and Others and Related Matters* [2019] 3 All SA 879 (ECM) (*‘Paul’*).

¹⁰² GNR.1284 of 4 October 2019 (Government Gazette No. 42740).

not be granted. The focus must remain on the IO.¹⁰³ Following that decision, it is only necessary to set aside the decision of the second respondent and order that individual to grant access to the information contained in the PAIA request.

Costs

[48] The applicants have been successful in their application and are entitled to their costs. The matter involved a level of complexity given the interplay between PAIA and POPI in the context of NEMA, NEMBA and the Constitution. The respondents did not suggest otherwise. This complexity is sufficient to warrant the costs of two counsel.

Order

[49] The following order will issue:

1. The second respondent's decision, as conveyed to the applicants on or about 17 February 2020, to refuse the Landmark Foundation Trust's request for access to information made in terms of section 18 of the Promotion of Access to Information Act, 2000, on or about 19 September 2019 ('the PAIA request') is set aside.
2. The second respondent is directed to provide the Landmark Foundation Trust with access to the following records (as requested under the PAIA request) within fourteen days:
 - 2.1 All applications received and all permits issued by the Department of Economic Development and Environmental Affairs of the Eastern Cape Provincial Government to trap, kill, hunt or translocate any leopards in or from the Eastern Cape, in terms of the Threatened or Protected Species Regulations (GNR 152 in GG 29657 of 23 February 2007) from 2017 to 3 December 2019.

¹⁰³ *Paul supra* fn 101 paras 32, 33.

3. The second respondent shall be liable for the applicants' costs including the costs of two counsel.

A. GOVINDJEE
JUDGE OF THE HIGH COURT

Heard:10 JUNE 2022

Delivered:26 JULY 2022

Appearances:

Applicant's Counsel : Adv M Blumberg SC and Adv M Adhikari
Cape Bar

Instructed by : BDLS Attorneys
Attorneys for the Applicants
60 Second Avenue
Newton Park
Gqeberha
Email:karien@bdlsattorneys.co.za

C/O Wheeldon Rushmere & Cole
119 High Street
Makhanda
Tel: 046 622 7005
Email:meghan@wheeldon.co.za

Respondent's Counsel: Adv J Nepgen
Gqeberha

Instructed by : The State Attorney
Mrs Botha
Attorneys for the First and Second Respondents
29 Western Road
Central
Gqeberha
Tel: 060 983 9263/041 585 792
Email:Michel.botha@gmail.com

C/O Whitesides Attorneys
53 African Street
Email:barrow@whitesides.co.za
Makhanda

Amicus Curiae's Counsel: Adv AC Moorhouse
Gqeberha

Instructed by: Webber Wentzel Attorneys
Attorneys for Amicus Curiae
90 Rivonia Road, Sandton
Johannesburg,2196
Tel: 011 530 5238
Email:Odette.geldenhuis@webberwentzel.com

C/O Netteltons Attorneys
118A High Street
Makhanda
Tel: 046 622 7149
Email: ilze@netteltons.co.za

