

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

Case No: 2023-022575

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED. NO

.....
SIGNATURE

DATE: 11 March 2024

In the matter between:

THE SOUTH AFRICAN AGRI INITIATIVE NPC

Applicant

and

THE NATIONAL COMMISSIONER,
THE SOUTH AFRICAN REVENUE SERVICE

1st Respondent

THE MINISTER OF SAFETY AND SECURITY

2nd Respondent

JUDGEMENT

MOOKI J

- 1 The applicant seeks relief that the respondents be obliged to produce a record pertaining to media statements by the South African Police Service (SAPS) concerning the destruction of firearms. Relief is sought in terms of the Promotion of Access to Information Act, 2 of 2000 (“the Act”).
- 2 The SAPS issued media statements on 8 July 2021 and 10 March 2022, essentially stating the following:

PRETORIA - The South African Police Service (SAPS) has today, destroyed 24,901 firearms which include firearms voluntarily handed over during the previous two firearms amnesty periods as well as those that were either confiscated by or surrendered to the State. The destruction took place at Cape Gate Steel in Vanderbijlpark, Gauteng.

About half of the firearms that have been destroyed were handed in during the 2019/2020 and the 2020/2021 Firearms Amnesty periods. This Amnesty firearms were also subjected to IBIS testing and there were no positive hits nor firearm applications linked to them.

[...]

3 The media statement for 10 March 2022 recorded that 26 002 firearms were dealt with as those in the 8 July 2021 statement.

4 This is the background to the application. The applicant made its first request for information on 7 February 2022, as follows:

“... The purpose of this letter is to request the SAPS to furnish our client with records and/or ballistic reports for each destructed (sic) firearm which substantiated the claim that all of the 24,901 (Twenty-Four Thousand Nine Hundred and One) firearms which was (sic) destroyed on 8 July 2021 were subjected to IBIS testing, which in turn returned no positive hits nor firearm application linked to them.”

5 The request was refused on 25 May 2022, because the request “relates to confidential information, and protection of certain other confidential information, of the third party.” The applicant launched an internal appeal on 24 June 2022, contending, amongst others, that the applicant “merely seeks proof that the firearms were indeed tested and that no firearms which returned positive hits or firearm applications linked to them were destroyed.” The applicant further mentioned that its application could not be refused on the grounds that information is already publicly available.

6 The applicant succeeded in its internal appeal on 5 July 2022. Colonel A Crooks, the National Deputy Information Officer: PAIA of the SAPS, instructed the Sub- Section Commander: Registration Services, to provide the requested material.

- 7 Colonel Crooks recorded that "... but it is still agreed that a copy of proof that the firearms were indeed tested and that no firearms which returned positive hits or firearm applications linked to them were destroyed, may be provided to the appellant/requester but with personal information of individuals (e.g. numbers of firearms, names, addresses, etc.) concealed first."
- 8 The SAPS never supplied the applicant with information pertaining to the first request, notwithstanding a successful internal appeal.
- 9 The applicant made a further request on 3 July 2022. This request was in relation to a media statement that 26 002 firearms were destroyed on 10 March 2022. The SAPS did not respond to the request. The applicant considered the silence a deemed refusal of its request and launched an internal appeal.
- 10 Colonel Crooks instructed the Sub- Section Commander: Registration Services on 18 August 2022 to consider the appeal. The Sub- Section Commander: Registration Services advised the applicant on 27 September 2022 that the applicant had been granted access.
- 11 The SAPS have equally not provided the applicant with access to information sought in the second request.
- 12 The applicant invited the respondents to make a statement in terms of section 23 (1) of the Act, confirming that the requested records did not exist. The invitation was made on 30 January 2023. The respondents did not respond to the invitation.

- 13 The SAPS objects to the relief sought by the applicant. Col Crooks deposed to the affidavit opposing the relief sought by the applicant.
- 14 The respondents raised the following objections:
- 14.1 The applicant did not make its application within 180 days as required in section 78 (2) of the Act.
- 14.2 The order sought by the applicant is academic, hypothetical and abstract.
- 14.3 The applicant did not file a notice in terms of Rule 41A of the Uniform Rules of Court.
- 14.4 The applicant had not exhausted all available remedies.
- 15 The respondents contend that the applicant did not comply with the 180 day rule because the respondents granted the first request on 5 July 2022, alternatively, 4 August 2022 and granted the second request on 27 September 2022. The respondents contend that the application ought to have been made by 17 February 2023. The application was made on 14 March 2023.
- 16 The respondents contend that the applicant has been provided information sought in paragraphs 1.1 and 1.2 of the notice of motion in the form of the two media statements, a “destruction certificate”, and the Government Gazette; rendering the relief sought having become academic.

- 17 The respondents further contended that the applicant's non-compliance with Rule 41A rendered the application defective and bad in law.
- 18 The respondents contend that the applicant's request is non-specific and that the relief sought may result in the respondents not understanding the terms of the order and information sought by the applicant. This complaint has no substance.
- 19 Col Crooks, when considering the applicant's internal appeal, was aware that the applicant "merely seeks proof that the firearms were indeed tested and that no firearms which returned positive hits or firearm applications linked to them were destroyed." Col Crooks also instructed the Sub-Section Commander: Registration Services that "... but it is still agreed that a copy of proof that the firearms were indeed tested and that no firearms which returned positive hits or firearm applications linked to them were destroyed, may be provided to the appellant/requester but with personal information of individuals (e.g. numbers of firearms, names, addresses, etc.) concealed first."
- 20 Col Crooks cannot be earnest, in the answering affidavit, in contending that the applicant was non-specific as to information requested from the respondents. Col Crooks did not, in approving the internal appeals, suggest that the requests were academic, hypothetical, or abstract.
- 21 The respondents also maintain that they provided the applicant with the requested information in the form of the media statement, the Government Gazette and the destruction certificate. The first observation is that the

respondents cannot, in the same breath, say the applicant's request is imprecise; whilst, simultaneously, saying the applicant has been given the requested information. This is more so because the respondents do not plead these contentions in the alternative.

22 None of the media statement, the Government Gazette or the destruction certificate referenced by the respondents provide proof that the firearms were tested and that no firearms which returned positive hits or firearm applications linked to them were destroyed. This is the request made by the applicant.

23 The respondents say it would be a protracted process to collate individual certificates in relation to destroyed firearms, because individual files are located in every province. There is, in addition, the risk of infringing individual rights of privacy and confidentiality. The respondents further invited the applicant to specify firearms which are of concern to the applicant and that information pertaining to those firearms would then be made available to the applicant.

24 It is not permitted of the respondents to say, in the application, that the requested information is not to be made available because it would result in a protracted process. This is because the respondents did not aver an impediment to producing the requested information, given that the applicant's internal appeal succeeded. The respondents have always been in control of information requested by the applicant, including when Col Crooks stated that "[...] it is still agreed that a copy of proof that the firearms were indeed tested and that no firearms which returned positive

hits or firearm applications linked to them were destroyed, may be provided to the appellant/requester but with personal information of individuals (e.g. numbers of firearms, names, addresses, etc.) concealed first.”

25 It is similarly not open to respondents to raise privacy concerns in their opposition to the application. Col Crooks, as the SAPS’ National Deputy Information Officer, did not raise privacy concerns when he allowed the applicant’s internal appeals. He was satisfied that personal information in the requested material could be redacted before providing the applicant with the requested information.

26 The respondents did not persist with their defence on Rule 41A. I therefore do not make any determination on this point. The respondents also did not persist with the contention that the applicant did not exhaust all internal remedies.

27 The applicant sought condonation in relation to its application. This was in response to the point taken in the answering affidavit that the applicant did not seek relief within 180 days as provided for in section 78(2) of the Act.

28 The applicant does not require condonation. The requirement in terms of section 78(2) pertains to the making of an application following refusal of a request. That is not the case in relation to the applicant.

29 The applicant addressed several correspondences to respondents requesting compliance with the direction that the requested information be made available. The applicant went to the extent of inviting the

respondents to confirm, in terms of section 23(1) of Act, that the respondents did not have records requested by the applicant. The applicant became obliged to approach the court for relief once it became clear that the respondents were not going to comply with the outcome of the internal appeal.

30 The application succeeds.

31 I make the following order:

(1) Respondents are ordered to provide the following information and records to the applicant within 30 days from the date of this order:

a. Information which substantiates the claim by the first Respondent did that all 24 901 firearms which were destroyed on 8 July, 2021 where subject to Integrated Ballistics Identification Systems (“IBIS”) testing, which returned no positive confirmation for involvement in the commission of any offence, nor any firearm applications linked to this firearms;

b. Information which substantiates the claim by the first Respondent did that all 26 002 firearms which were destroyed on 10 March, 2022 where subject to IBIS testing, which returned no positive confirmation for involvement in the commission of any offence, nor any firearm applications linked to this firearms;

(2) The respondents are ordered to pay costs, jointly and severally, the one paying the other to be absolved.

Omphemetse Mooki

Judge of the High Court

Heard on: 5 February 2024

Delivered on: 11 March 2024

For the Applicant: D Groenewald

Instructed by: Hurter Spies Inc.

For the Respondents: M G Senyatsi

Instructed by: The State Attorney, Pretoria