

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG LOCAL DIVISION, JOHANNESBURG]

CASE NO: 36248/19

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC

Applicant

and:

**SERVICES SECTOR EDUCATION AND
TRAINING AUTHORITY**

First Respondent

GRAYSON REED CONSULTING (PTY) LTD

Second Respondent

FIRST RESPONDENT'S HEADS OF ARGUMENT

A. **INTRODUCTION**

1. This is an application in which the Applicant *inter-alia*, seeks an Order setting aside the decision of the deputy information officer of the First Respondent dated 22 March 2019, in which he refused access to items 5 to 18 of the Applicant's request for access to information dated 22 January 2019
2. The Applicant also seeks an Order directing the First Respondent to furnish the Applicant with a copy of all the records as out in its request for access for to information dated 22 January 2019 within 15 days of the date of the Order.

B. COMMON CAUSE ISSUES

3. The Applicant requested documents which pertained to a tender that was awarded to the Second Respondent in 2017. The First Respondent granted the Applicant access to some of the documents but refused the Applicant access to some of the documents which belonged to the Second Respondent.
4. The Applicant lodged an internal appeal of this decision and the appeal was not successful. Following the internal appeal decision, the Applicant launched the present application.

SUBMISSIONS IN SUPPORT OF THE FIRST RESPONDENT'S POSITION

5. As previously mentioned hereinabove, upon receipt of the Applicant's request for information, the First Respondent engaged the Second Respondent and requested the Second Respondent to either give a written consent for the disclosure of the documents or make written or oral representations to the First Respondent's information officer motivating why the request for access should be refused.
6. The Second Respondent complied with the First Respondent's request. The Second Respondent objected to the provision of the documents sought on the following reasons:
 - 6.1. The requested information contains its trade secrets;
 - 6.2. The information contains, amongst other things, their confidential, financial, commercial and technical information;

- 6.3. The disclosure thereof will cause serious harm to its commercial interest and the company as a whole;
 - 6.4. The disclosure would disadvantage the Second Respondent contractually and prejudice in its commercial competition;
 - 6.5. The disclosure thereof would compromise its ongoing execution by its obligations in terms of the contract and the project; and
 - 6.6. Disclosure may harm its relationship with its consortium, finance and technical partners.
7. As a result of the above reasons given by the Second Respondent, the First Respondent refused the Applicant's request for information pertaining to the Second Respondent. It, however, granted access to certain information requested by the Applicant.
 8. In effect, the Second Respondent strongly hold that the Applicant is not entitled to its confidential information which it seeks from the First Respondent insofar as it relates to it.
 9. The Promotion of Access to Information Act 2 of 2000 (*the PAIA*), makes it absolutely clear that the purpose of the legislation is to give effect to the Constitutional right of access to any information held by the State. However, such right of access may be limited to the extent that it is reasonable and justifiable in an open and democratic society.

10. Chapter Five of PAIA seeks to involve and protect third parties to whom certain requested information pertains.
11. Section 47 of the PAIA requires the information officer of first respondent to inform all third parties (to whom the requested tender information relates) of the request made by the applicant. These third parties are to be offered the opportunity to make representations to the information officer – either consenting to the disclosure of the information or setting out why the request for access to the information should be refused.
12. The First Respondent considered the written representations of the Second Respondent and made a decision to not disclose the information. The First Respondent considered and accepted the representations which were made by the Second Respondent. Such a decision was made with the full conspectus of information before the information officer of the First Respondent.
13. We may also mention that the decision to not disclose the Second Respondent's confidential information was also made giving consideration to the reasons why the Applicant requested the information.
14. The Applicant simply states that it requested the information to verify the veracity of the allegations of irregularities which had allegedly been brought to its attention by "several whistle blowers".
15. This on its own was not persuasive enough to the First Respondent's to simply disclose the Second Respondent's confidential information. In the present

circumstances, a tender was granted and information pertaining thereto was sought and refused and reasons for such a decision were given.

16. We may mention that the Applicant is incorrect in suspecting that there were irregularities in the granting of the tender. Either way, whether or not there is, the First Respondent ensured that it abided and supported the 'culture of justification' which is a cornerstone of our Constitutional democracy.
17. It is therefore, our respectful submission that the First Respondent followed the correct procedure in arriving at its decision to deny the Applicant access to the Second Respondent's confidential information.

C. CONCLUSION AND COSTS

18. It is accordingly submitted that the present application should be dismissed with costs.
19. We submit that the Honourable Court should exercise its discretion in favour of the First Respondent. We submit that the Respondent must pay costs on an attorney client scale which is warranted because the Applicant compelled the First Respondent to oppose the present application.

NDUMISO PEDRO VOYI

25 FEBRUARY 2021