

19 October 2021

Attention: The City of Cape Town Metropolitan Municipality:

To: Mr Richard Nel
Manager for the Water Quality Improvement Project
City of Cape Town Metropolitan Municipality

Per: E-mail: Richard.Nell@capetown.gov.za

And to: Mr Michael Webster
Office of the Executive Director:
Water and Waste Services

Per: E-mail: Michael.Webster@capetown.gov.za

And to: Alderman Dan Plato
Executive Mayor
City of Cape Town Metropolitan Municipality

Per: E-mail: dan.plato@capetown.gov.za

CC: Alderman Xanthea Limberg
Mayoral Committee Member: Water and Waste
City of Cape Town Metropolitan Municipality

Per: E-mail: Xanthea.Limberg@capetown.gov.za

CC: Mr Lungelo Mbandazayo
City Manager
City of Cape Town Metropolitan Municipality

Per: E-mail: Lungelo.Mbandazayo@capetown.gov.za

Good day Sir/s,

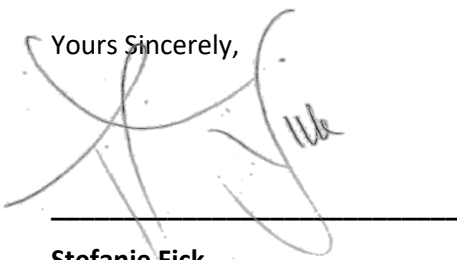
PUBLIC ACCESS AND DISCLOSURE OF WATER QUALITY DATA HELD BY THE CITY OF CAPE TOWN

1. The Organisation Undoing Tax Abuse (“OUTA”) is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation.
2. We write this letter to raise the issue of public access and disclosure of water quality data held by the City of Cape Town.

3. OUTA was approached by multiple sources alleging that the city insisted that they sign a Terms of Use Agreement or a Non-Disclosure Agreement when they requested the City access to water quality data. Once these agreements have been signed, the requestor may not share this data with any other interested party.
4. OUTA is of the opinion that the demand from the city is ludicrous and it does not promote transparency or accountability. In fact, it is not in-line with the South African legislative framework that regulates access to information held by a public body.
5. When assessing the legal landscape within the South African context, it is important to note the following sections of relevant legislation:
 - 5.1 Section 32(1) of the Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution), provides that everyone has the right of access to records or/ and information held by the state or any other person that is required for the exercise or protection of any right (like the right to human dignity).
 - 5.2 Furthermore, section 36(1) of the Constitution, the general requirements for the limitation of any right is that it may be limited only in terms of law of general application "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
 - 5.3 Section 46 of the Promotion of Access to Information Act (PAIA) provides that access to information must be granted if the disclosure of the record would reveal evidence of a substantial contravention of, or a failure to comply, with the law (like NEMA) and the public interest in the disclosure of the record outweighs the harm contemplated in the ground for refusal.
6. OUTA submits that a request to access water quality data held by the City of Cape Town, is of significant public interest and from the outset should not be refused or be subjected to the signing of a Terms of Use or Non-Disclosure Agreement.

7. Furthermore, OUTA is of the opinion that the limitation clause (Section 36(1) of the Constitution) is not applicable in these circumstances as this limitation is NOT reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
8. OUTA is of the view that the water quality data is not confidential information, nor does it contain trade secrets and therefore the disclosure thereof will far outweigh any potential harm that the city might suffer. In fact, one could argue that if the city does not disclose this information, the failure to disclose will result in a dereliction of duty.
9. Due to the significant public interest of the data, we believe that this data should be made readily available and in actual fact be published in the public domain on a regular basis.
10. Kindly advise whether the City does in fact require a requester to sign a Terms of Use or a Non-Disclosure Agreement when requesting access to water quality data held by the City and if so, kindly indicate which legislation the City relies on and the empowering provision.
11. Should you have any queries, kindly contact OUTA's Senior Legal Project Manager, Ms. Andrea van Heerden on andrea.korff@outa.co.za.
12. We trust that you find the above in order.

Yours Sincerely,



Stefanie Fick

Executive Director of the Accountability Division

OUTA – Organisation Undoing Tax Abuse

stefanie.fick@outa.co.za

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