
ANNEXURE "X" - COMPLAINT IN TERMS OF SECTION 77A

1. The Organisation Undoing Tax Abuse ("OUTA") hereby lodges a complaint in terms of section 77A of the Promotion of Access to Information Act, 2000 ("PAIA") against Construction Education and Training Authority ("CETA") for a deemed refusal in terms of section 27 of PAIA and a deemed dismissal of the internal appeal in terms of section 77(7) of PAIA.
2. For ease of reference, the chronology of OUTA's request for access to information is follows:
 - 2.1. **11 December 2023** – OUTA submitted its request for access to information (Form 2). A copy of OUTA's request is attached hereto and marked "**Annexure A1**".
 - 2.2. The 30 ("thirty") day period set out in section 25(1) of the Promotion of Access to Information Act, 2000 ("PAIA") lapsed and no response was received by OUTA from CETA.
 - 2.3. **24 January 2024** – OUTA wrote a courtesy letter to CETA informing them that their failure to respond to OUTA's request has been deemed as a refusal in accordance with section 27 of PAIA. However, in the spirit of collegiality OUTA gave CETA a further 7 ("seven") days to respond to its request before proceeding with an internal appeal. A copy of OUTA's letter is attached hereto and marked "**Annexure B1**".
 - 2.4. The 7 ("seven") day period lapsed, and no response was received from CETA.
 - 2.5. **09 February 2024** - OUTA submitted an internal appeal to CETA based on a deemed refusal. A copy of OUTA's internal appeal is attached hereto marked "**Annexure C1**".
 - 2.6. The 30 ("thirty") day period for CETA to make its decision on OUTA's internal appeal has since lapsed and to date, no response has been received by OUTA.

REASONS FOR REFERRING THE COMPLAINT TO THE INFORMATION REGULATOR

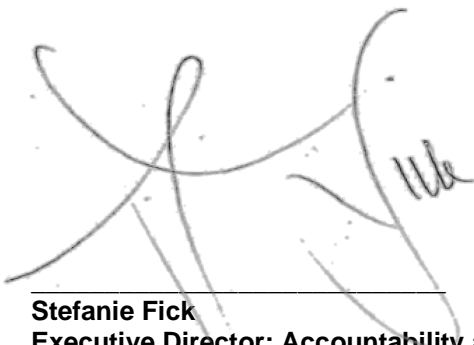
3. DEEMED REFUSAL AND DEEMED DISMISSAL BASED ON SECTIONS 27 AND 77 RESPECTIVELY.



- 3.1. As highlighted above, OUTA submitted a PAIA request to CETA in terms of section 18(1) of PAIA and no response was received from CETA.
 - 3.2. In the premise, CETA's non response was deemed as a refusal in accordance with section 27 of PAIA.
 - 3.3. OUTA proceeded to submit an internal appeal in terms of section 74 of PAIA and again, no response was received from CETA.
 - 3.4. In the premise, CETA's non response is deemed as a dismissal in terms of Section 77(7) of PAIA.
 - 3.5. According to section 11(1) of PAIA, a requestor must be given access to a record of a public body if the requestor has complied with all the procedural requirements prescribed by PAIA and access to the record is not refused on any ground listed in Chapter 4 of PAIA.
 - 3.6. It is OUTA's submission that OUTA has complied with all the procurement requirements as set out in section 11(1) and as a result should be granted access to the records.
4. OUTA'S PAIA REQUEST FALLS UNDER SECTION 46 OF PAIA
- 4.1. It is the law that if one or more of the requirements set out in section 46 are present, then despite the fact that disclosure could be validly refused in terms of sections 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 of PAIA, the information officer of a public body must still grant a request for access to a record of the body contemplated.
 - 4.2. It is OUTA's submission that this matter may also fall under section 46 of PAIA. The requirements for the granting of access under section 46 are the following:
 - 4.2.1. If the disclosure of the record would reveal evidence of a substantial breach of the law or an imminent and serious public safety or environmental risk; and
 - 4.2.2. Where the public interest in the disclosure clearly outweighs the harm contemplated in the section relied upon to refuse access.
 - 4.3. The PAIA request that OUTA submitted to CETA pertains to a tender with reference number: Bid No: 013-2017/2018, that CETA awarded to a company called Grayson Reed for the provision of biometric system for leaner attendance administration on 22 June 2018.



- 4.4. In 2017, Services Sector Education and Training Authority (Services SETA) awarded a similar tender to the same company, Grayson Reed, for payment of stipends to learners and management of a biometric learner attendance monitoring system, Tender PROC T434. In 2022, OUTA investigated that tender and OUTA's investigation revealed serious maladministration and corruption at Services SETA. OUTA's investigations also revealed a well-established network of individuals and companies who assisted each other in obtaining tenders not only at Services SETA but also at other SETAs and other organs in the Department of Higher Education, Science and Innovation.
- 4.5. OUTA therefore wishes to evaluate the legality of the agreement between CETA and Greyson Reed as it is of public interest. However, OUTA will only be able to do so upon the production of the records referred to in its request.
- 4.6. This matter falls rightfully under the provisions of section 46 as the production of the records in question would reveal whether or not CETA complied with procurement processes as set out in the Public Finance Management Act, 1999 (PFMA).
- 4.7. It is for this reason, that OUTA wishes to be granted access to the records in question, as such records will prove pivotal in determining whether the PFMA and/or other relevant legislation has been contravened.
5. We therefore seek the Information Regulator's reconsideration and guidance in line with Chapter 1A of Part 4 of PAIA (sections 77A to 77K).



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