



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

[REPORTABLE]

Case no: A145/2025

In the matter between:

**RAYMOND JOSEPH
NATHAN GEFFEN
GROUNDUP NEWS NPC**

First appellant
Second appellant
Third appellant

and

**THE HEAD, DEPARTMENT OF SOCIAL DEVELOPMENT
GAUTENG**

Respondent

Coram: SHER J et HOLDERNESS J

Heard: 5 September 2025

Summary: Administrative law- Promotion of Access to Information Act 2 of 2000 ('PAIA'). Appeal against the grant of a limited order of disclosure made in an application in terms of sections 78 and 82. Requirements for reliance on s 36(1)(b) as a ground for refusal of disclosure and the public interest override in terms of s 46(b), discussed. Where an applicant's request for information from a public body complies with the procedural requirements of the Act it must be granted disclosure of such information, unless the holder thereof discharges the onus of showing that its refusal to disclose is justified in terms of a valid ground for refusal set out in Chp 4 of Part 2 of PAIA. To resist disclosure in terms of s 36(1)(b) it is necessary for the holder to show not only that the information constitutes financial or commercial information of a third party, but also that its disclosure would be likely to cause harm to the commercial or financial interests of the third party. In *casu* not shown that the disclosure of bank account

details of third-party, non-profit organizations which received social grants from the State, constituted such information. Held that in any event, in terms of s 46(b) public interest in the disclosure of such information clearly outweighed the harm contemplated by s 36(1)(b). Magistrate held to have erred in not granting the orders sought for the general disclosure of information and appeal accordingly upheld.

ORDER

On appeal from: The Magistrate's Court, Wynberg.

1. The appeal is upheld with costs.
2. The order which was made by the magistrate of Wynberg on 7 November 2024 in case no.12060/2024 is set aside and replaced with the following:
 - '1. The respondent is directed to provide the applicants, within 30 days from date of this order being served on her, with a copy of all documents and information which is in the possession of the Gauteng Department of Social Development ('the GDSD'), pertaining to grants and grant recipients for each of the financial years between and including 2014 and 2024, including but not limited to information relating to:
 - 1.1 All grant transfers made by the GDSD to The Beauty Hub Academy non-profit organization ('NPO');
 - 1.2 All service-level agreements (including all Transfer Payment Agreements) between the GDSD and The Beauty Hub Academy NPO;
 - 1.3 All budget documentation related to grant transfers made by the GDSD to all NPOs;
 - 1.4 A list of all transfers of grants made by the GDSD to NPOs.
 2. The respondent shall be liable for the costs of the application.'

JUDGMENT DELIVERED (VIA EMAIL) ON 5 DECEMBER 2025

SHER J (HOLDERNESS J concurring):

1. This is an appeal against an order which was made by the magistrate of Wynberg, in an application which was brought in terms of the Promotion of Access to Information Act¹ ('the Act'), whereby the appellants sought certain declaratory relief and a directive that the respondent, the head of the Department of Social Development in Gauteng, should supply them with all documents and information in her possession pertaining to social grants that were paid out to non-profit organisations ('NPOs'), over the 10 year period between 2014 and 2024. Even though the application was not opposed the appellants were only partially successful, as the magistrate granted them only a limited order of disclosure.
2. The application was brought by the 1st appellant, Mr Raymond Joseph, a leading freelance journalist who won several prestigious awards for investigative journalism in 2021 and 2022,² for a series of articles which he wrote under the aegis of the 3rd appellant, the owner of the online news portal GroundUp, in which he exposed wholesale corruption in grant funding at the National Lotteries Commission.

The relevant facts and circumstances

3. The background which gave rise to the application before the magistrate is as follows. In April 2023 the Gauteng Department of Social Development ('the GDSD') made known that it intended making drastic budget cuts, in the order of approximately R418 million (which were later reduced to R233 million), to social grant funding it provided to non-governmental organizations who supplied social services to indigent, disabled and vulnerable persons. Approximately 450 such NPO's, which operated community care, health and drug rehabilitation centres and homeless shelters, were reliant on the funding to sustain their activities.
4. In December 2023 Mr Joseph received a tipoff from confidential sources that despite these budget cuts, grants to certain NPOs were not being reduced. He

¹ Act 2 of 2000.

² Including the Nat Nakasa, Vodacom Journalist of the Year and Taco Kuiper Investigative Journalism Awards.

was commissioned by the 2nd appellant, the editor of GroundUp, to conduct an investigation, from which it appeared to him that the GDSD was not complying with the terms of the Social Development Sector Funding Policy, published by the National Department of Social Development in 2023.³

5. In two articles he wrote, which were published by GroundUp early in 2024, Mr Joseph noted that in contrast to numerous other NPOs whose funding had been slashed, two of them, The Beauty Hub Academy NPO (which offers training in hairdressing and beauty therapy) and Daracorp (which trains small-scale farmers), had together received almost R114 million in social grant funding, of which some R56 million had been paid out in the financial year that the budget cuts were made. The extraordinarily large grants, made notwithstanding the implementation of severe budget cuts, raised Mr Joseph's suspicions as to possible malfeasance or irregularity.
6. Pursuant to the articles 3rd appellant assembled a team of journalists, which included Mr Joseph, to investigate the GDSD social grant system in depth. On 28 March 2024 Mr Joseph lodged an application with the GDSD's information officer, in which he requested that he be provided with a copy of all documents and information in its possession pertaining to grant transfers made by it to, and service level agreements concluded with, The Beauty Hub Academy NPO, as well as all documents and information pertaining to the departmental budgets for social grant transfers to NPOs in the financial years 2014 to 2024, together with a list of the transfers that were made in those years.
7. On 9 May 2024 he received a letter from the respondent in which he was curtly informed, without any reasons being provided, that after careful consideration the Department had 'elected' to decline his request. He was of the view that the letter did not constitute a valid notice of refusal of his request because, contrary to certain provisions⁴ of the Act it did not set out adequate reasons for the refusal and did not state that an appeal could be lodged against it, either internally or to the Information Regulator. Consequently, he warned that in the event that the 3rd respondent did not comply with the Act by 17 May 2024, he would lodge a complaint against her with the Information Regulator.

³ Following its review of the previous Policy on Financial Awards to Service Providers, which was introduced in 2004.

⁴ Sections 25(3)(a) and (c).

8. On 20 May 2024 he received a response from the then acting head of the GDSD, in which he was informed that his request had been declined in terms of s 36(1)(b) of the Act, on the basis that if the information he sought was provided there was a risk it would expose financial and commercial information i.e. the 'banking details etc' (sic) of NPOs which were funded by the Department over the period concerned. However, if he believed that his request had been refused 'unjustifiably' he was at liberty to submit an internal appeal against it within 60 days. On 3 June 2024 he duly filed an appeal. In terms of the Act⁵ the Department was required to provide him with a decision on it within 30 days, but, although it acknowledged receipt thereof it never did so. In the circumstances the appeal is to be regarded as having been dismissed.⁶
9. On 20 July 2024 Mr Joseph, supported by the 2nd and 3rd appellants, made application to the Wynberg Magistrate's Court in terms of ss 78 and 82 of the Act, for an order declaring the department's refusal of his request and its deemed dismissal of his appeal, to be unlawful, and directing it to supply him with the information he had requested. The application was not opposed.
10. After hearing argument the magistrate handed down a judgment in which she held that the appellants had made out a case for the relief which they sought. But, despite this, and despite noting that the application was not opposed and the only version before her was that which was put up by the appellants and that she should consequently 'let' the Constitution and the Act 'take effect', she held that a limited disclosure order should be granted, directing the respondent to only provide the appellants with the documents and information requested by them in relation to The Beauty Hub Academy NPO. She refused the relief sought in respect of the general body of NPOs who had received funding from the respondent, on the basis that the request which was made in this regard, in terms of paragraphs 3.1.3-3.1.4 of the notice of motion, lacked 'specifics', which, she held, were 'important', as there was a statutory obligation on the Department to notify the NPOs concerned of the request.

The legal principles

⁵ Section 77(3)(a).

⁶ Section 77(7).

11. As is evident from its preamble and objects clause⁷ and as was confirmed in *SA History Archive Trust*,⁸ the Act was passed to give effect to the constitutional right⁹ of access to information which, *inter alia*, is held by the State.¹⁰ The Act recognises that the right is not an unfettered one and is subject to justifiable limitations aimed at the 'reasonable' protection of privacy, commercial confidentiality and 'effective, efficient and good governance'.¹¹
12. In *M & G Media*¹² the Constitutional Court noted that the right aims to give effect to our founding constitutional values of 'accountability, responsiveness and openness'. In this regard, in its preamble the Act recognises that our previous system of government was marked by a 'secretive and unresponsive culture' in public bodies which often led to an abuse of power and human rights violations, and in contrast to this the Act aims to foster a culture of transparency and accountability, and to promote the establishment of a society in which people have effective access to information, with a view to enabling them to express and protect their rights. To this end, in *Brummer*¹³ the CC held that one of the basic principles governing public administration was transparency, which should be fostered by providing the public with 'timely, accessible and accurate' information. These sentiments are echoed¹⁴ in the objects which the Act aims to achieve, which include promoting transparency, accountability, and effective governance, by establishing mechanisms and procedures which enable access

⁷ Section 9(a)(i).

⁸ *SA History Archive Trust v SARB & Ano* 2020 (6) SA 127 (SCA) para 6.

⁹ Section 32(1) of the Constitution.

¹⁰ As well as to any information held by a private body or person, insofar as it may be required for the exercise or protection of any right.

¹¹ Section 9(b)(i). Thus, unless the 'public safety', 'public interest' or 'disclosure of a substantial contravention of the law' overrides in s 46(a) and (b) apply, certain information which is held by a 'public body' i.e. by a department of state, is either not subject to disclosure or its disclosure may, in defined instances, be refused. This includes information the disclosure of which could reasonably be expected to endanger the life or physical safety of a person (s 38(a)) or 'unreasonably' disclose their personal information (s 34(1)) or which is confidential to them (s 37(1)), or which contains trade secrets or 'financial, commercial, scientific, or technical' information of a 3rd party (s 36(1)(a)-(b)). Certain taxpayer records held by the SA Revenue Services (s 35(1)), and information pertaining to the prevention, detection, investigation and prosecution of criminal offences (s 39 (1)), as well as information the disclosure of which is likely to prejudice the defence, security and international relations of SA (ss 41(1)-(2)) or to materially jeopardize its economic interests and policies or its financial welfare or commercial activities (ss 42(1)-(2)), may in certain instances also be refused.

¹² *President of the Republic of SA v M & G Media Ltd* [2011] ZACC 32; 2012 (2) SA 50 (CC) para 10.

¹³ *Brummer v Minister for Social Development* [2009] ZACC 21; 2009 (6) SA 323 (CC) para 62; confirmed in *Arena Holdings (Pty) Ltd t/a Financial Mail & Ors v SARS & Ors* [2023] ZACC 13; 2023 (5) SA 319 (CC) para 65.

¹⁴ Sections 9(d)-(e).

to be obtained to records which are held by the State, as 'swiftly, inexpensively and effortlessly' as is reasonably possible.

13. The constitutional right of access to information in turn, the CC has held,¹⁵ is crucial to the constitutional right to freedom of expression,¹⁶ which includes freedom of the press and other media, who play a vital role in our democracy by informing the public how government is run.¹⁷
14. Section 11 of the Act provides that a person who requests information which is held by a public body must be given access to it, if they have complied with the procedural requirements stipulated and access is not refused in terms of any ground for refusal contemplated in Chapter 4 of Part 2 of the Act. These grounds are set out in sections 34 to 44 of Chapter 4. The ground of refusal on which the respondent sought to rely is that set out in s 36(1)(b). In *SA History Archive Trust*¹⁸ the SCA confirmed that in light of the wording of s 11 the 'default position' is that access to information which is held by public bodies must be given, unless a valid ground of refusal exists in terms of the provisions of Chapter 4. Consequently disclosure is the rule and exemption from it the exception.
15. As a result, as also provided for in the Act,¹⁹ the onus lies on the holder who refuses to disclose information which is in its possession, to show that the ground of refusal it seeks to rely on falls within the purview of one or other of the statutory exemptions in Chapter 4, by laying out a proper factual and legal basis for it.²⁰ There is no onus on the requester to show that the information which it seeks does *not* fall within the exclusionary terms of the statutory provision the holder seeks to rely on.

An assessment

(a) Ad the Sector Funding Policy

16. In its introductory paragraphs the Sector Funding Policy recorded that its overarching goal was to facilitate the provision of integrated, comprehensive and sustainable social development services to people who needed them,

¹⁵ *Brummer* n 13 para 63.

¹⁶ Section 16 of the Constitution.

¹⁷ *Brummer*, id.

¹⁸ Note 8 para 6, with reference to *M & G Media* n 12 para 9.

¹⁹ Section 81(3)(a).

²⁰ *M & G* n 12 para 15; *BHP Billiton PLC Inc v De Lange* 2013 (3) SA 571 (SCA) para 25.

especially those who were most vulnerable, by setting parameters for the budgeting and equitable distribution of funds to entities who provide such services in partnership with government.

17. In the preamble to Chapter 9 it noted that, previously, transfers to NPOs and other entities had not been managed transparently, and the purpose of its review of the previous policy²¹ was therefore to ensure accountability for the allocation and use of public funds. Thus it considered the publication of information relating to grant transfers to be an 'essential mechanism' for improving transparency and accountability.
18. To this end, a 'complete' database of all 'TPA's' i.e. 'transfer payment agreements' which were entered into with NPOs and other entities, was to be kept by each provincial departmental website,²² which database was to be 'open to the public'. National and provincial 'DSDs' (Departments of Social Development) were also required to publish, on their respective websites, information pertaining both to forthcoming grant transfers for the following financial year,²³ as well as in respect of those made in the past.²⁴
19. In this regard each department was required to publish, annually, the names of each NPO or 'other entity' to whom forthcoming transfers were to be made and the services provided by and amounts to be allocated to them, as well as the total grant allocations which were to be made per municipality and per category, programme and project of social welfare service. In similar vein, in relation to past transfers national and provincial DSDs were required to publish similar particulars, within 30 days from the end of each quarter, including the names of NPOs, the nature of the services rendered by and the 'budgeted allocations' made to them, as well as details pertaining to 'transfer payments' made to them, including the dates and amounts of the payments, and whether there had been any deviation from the agreed payment schedule.²⁵ Within 3 months from the end of each financial year the national and provincial DSDs were also to publish a reconciliation for each NPO or entity, which reflected the transfers paid over to them during that year, together with an account of how those transfers were

²¹ *Vide* n 3.

²² Clause 9.2.1 of the Sector Funding Policy.

²³ *Id.*, clause 9.2.2.

²⁴ *Id.*, clause 9.2.3.

²⁵ *Id.*

expended i.e. utilized, and particulars as to any unspent or recouped amounts.²⁶

20. The stated purposes of publishing this information were to inform communities 'what public funds' i.e. how much social grant funding, NPOs and other entities would be receiving, before the start of each successive financial year,²⁷ to keep NPOS and the general public 'updated' regarding the ongoing payment of social grant transfers, and to enable the national DSD to monitor compliance by each provincial DSD with the transfer payment arrangements stipulated in the Policy.²⁸
21. In addition, to enable the national DSD to monitor compliance with the Policy an annual analysis was to be carried out (of the level at which provincial governments had funded their DSDs, allocated their social services budgets and complied with the funding standards set out in the Policy), which was to be published on the national DSD website. In addition, every 5 years there was to be a review of departmental compliance with the Policy, with recommendations as to how it could be revised and how each province could strengthen its implementation, which was also to be published by the national DSD.
22. At the end of Chapter 9 it was reiterated that the purpose of publishing all this information was to ensure transparency and accountability in the use of transfer payments and the management of social grant processes, and to enable the national DSD to monitor provincial departmental compliance.²⁹
23. From the foregoing, it will be apparent that the Policy encourages transparency and requires the publication of a large amount of information pertaining to the payment of social grants, and the information which was requested by Mr Joseph was information which would, and should, have been kept by the GDSD as part of this, and a lot of it should also have been published on its website, at least since 2023. Thus, in summary, the GDSD was obliged in terms of the Sector Funding Policy to publish, for every following year from 2023, its annual budget of intended grant allocations to each and every NPO or other entity, and to publish at the end of each quarter, details as to past

²⁶ Clause 9.2.4.

²⁷ Clause 9.2.2.

²⁸ Clause 9.2.3.

²⁹ Clause 9.2.4.

'transfer payments' i.e. payments of grants made to them. But even before 2023 the GDSD would have prepared budgets for social grant expenditure, so that it could account to the national DSD and the provincial legislature.

24. Therefore, the request for information pertaining to all grant transfers made to NPOs between 2014 and 2024 was a valid and competent one, as was the request for all 'budget documentation' for that period. As far as the request for copies of all 'service level' agreements between The Beauty Hub Academy NPO and the GDSD is concerned, I understand this to be a request for what the Policy refers to as 'TPAs' i.e. transfer payment agreements, as it would otherwise not make sense, seeing that neither of the parties render a service to the other.

(b) The law applied

25. In the circumstances, given that on the face of it the request for the information that was sought was proper i.e. procedurally in order and in compliance with the requirements of the Act, the GDSD was obliged to provide it, unless it could legitimately refuse to do so on the grounds set out in s 36(1)(b).
26. Section 36(1)(b) provides that the information officer of a public body must refuse a request for access to a record if it contains financial, commercial, scientific or technical information³⁰ of a 3rd party. However, there is a caveat to the exercise of this power: the request can only be refused if the disclosure of such information 'would be likely to cause harm to the commercial or financial interests' of the 3rd party. And, as previously pointed out, the onus to show the likelihood of such harm eventuating rested on the GDSD.
27. In *Transnet*,³¹ the SCA contrasted the degree of proof that is required for a successful reliance on s 36(1)(b), with that required for reliance on s 36(1)(c), which applies where the information sought is refused on the grounds that it is confidential i.e. was supplied in confidence by a 3rd party. Whereas the former provides that a public body may refuse a request for access to information if its disclosure 'would be likely' to cause harm to a 3rd party's commercial or financial interests, the latter allows for refusal if it 'could reasonably be expected' that disclosure would put the 3rd party at a disadvantage in contractual or other

³⁰ Other than trade secrets, which are dealt with in s 36(1)(a).

³¹ *Transnet Ltd & Ano v SA Metal Machinery Co (Pty) Ltd* 2006 (6) SA 285 (SCA).

negotiations, or would prejudice it in commercial competition. The SCA held³² that the difference between the harm which is to be shown for the respective subsections is not to be measured by degrees of probability, as both involve a result that is probable, objectively considered. Instead, it is to be measured by 'degrees of expectation'. In matters involving s 36(1)(b) it must be shown that the harm 'is likely' to occur or is 'indeed expected', whereas in matters involving a reliance on s 36(1)(c) it must be shown that the harm envisaged is a consequence that 'could reasonably be expected' i.e. that reasonable grounds exist for such an expectation.³³ In *Billiton*³⁴ this was said to mean that whereas in the case of the former it must be shown that the harm will be likely to occur, in the case of the latter it need only be shown that the harm could reasonably be expected to occur.

28. In his notice of appeal and subsequent application to the magistrate, Mr Joseph contended that the GDSD's blanket refusal of disclosure did not properly fall within the terms of section 36 because³⁵ it could not refuse to disclose the financial or commercial information of NPO's insofar as such information was already publicly available. In this regard NPOs were required to file annual financial statements (in which the receipt of funds from the GDSD would be shown as income), and the bank account details of many of them (including The Beauty Hub Academy NPO), were openly displayed on their websites. Furthermore, even if such details were not publicly displayed or available, in terms of s 46(b) the respondent could not refuse to disclose them as they were part of the general body of information requested, and public interest in its disclosure clearly outweighed the harm contemplated.³⁶ The respondent never countered these submissions.
29. In my view, the ground which was advanced for the refusal to disclose was a spurious one. I say this for the following reasons. In the first place, I would not expect that the bank account details of NPOs and other entities eligible to receive social grant funding, would ordinarily be contained in annual budgets which are prepared for the purpose of disclosing the intended allocations which

³² Id, para 42.

³³ Id.

³⁴ Note 20 para 28.

³⁵ In terms of s 36(2)(a).

³⁶ Section 46(b).

are to be made to them for each following year. Nor, as I see it, would bank account details be provided in the quarterly publication of past payments that were made in years gone by. In this regard the Policy stipulates only that the names of the NPOs or other entities and the 'allocations' to be made or already made i.e. the amounts to be paid or already paid to them, need to be disclosed, and in the latter case, the dates when they were paid over.³⁷ In similar vein, I do not expect that the bank account details of NPOs and other entities who receive social grant funding would appear in the annual reconciliations pertaining to grant payments, which are published by the provincial and national DSDs.

30. Secondly, whilst it is likely that bank account details would be contained in TPAs (the transfer payment agreements which are entered into by provincial DSDs with NPOs and other entities), because the Policy expressly provides³⁸ that TPAs must be published on departmental websites, in a database which 'must' be open to the public, these details would be publicly available to anyone who accessed the GDSD database. I would also imagine that, as many of the NPOs and other entities in the sector also rely on outside donor funding to support themselves, they would openly publish their bank account details and make them freely available, so that anyone could donate funds to them.
31. But thirdly, and in any event, even if the bank account details of NPOs and other entities who receive social grant funding are not generally available to the public, in my view the public interest in their disclosure outweighs any possible harm which might accompany it, and therefore in terms of s 46(b) of the Act the GDSD was obliged to disclose them. To ensure that DSDs, NPOs and other entities involved in the transfer, receipt and disbursement of social grants are properly held accountable it is vital that there be full transparency as to the flow of funds between them. To this end it is only where the bank account details of the recipients of such funds (which are derived from taxpayers), are made available, that they can be scrutinized in order to ascertain whether they properly made their way to those in distress and were not diverted or siphoned off, or fell prey to parasitic 'rent-seekers', as they are commonly known.

³⁷ Clauses 9.2.2 and 9.2.3.

³⁸ Clause 9.2.1.

Ensuring that details of the bank accounts into which social grants are to be paid in terms of TPAs, may be disclosed on request, will act as a safeguard against those who may be tempted to loot them.

32. In the fourth place, the GDSD failed to discharge the onus of showing that the disclosure of the bank account details of NPOs or other entities was likely to cause harm to their commercial or financial interests, as it was required to do in terms of s 36(1)(b). Merely making such an averment in its letter of refusal was not sufficient. As the case law indicates, it was required to show, on some factual and properly motivated basis, why the simple disclosure of such details in respect of NPOs or other entities was likely to cause harm to them of the type envisaged by the section viz harm to their commercial and/or financial interests. The GDSD offered absolutely nothing in this regard. Considering that entities who receive social grant funding are commonly non-profit organizations who exist principally to provide social services to those in need, I cannot see how their 'commercial or financial' interests, insofar they have any, would be affected in any adverse way were their bank account details to be disclosed.
33. That brings me to the application before the magistrate. Given the deemed refusal of the appellants' appeal they were entitled, in terms of s 78(1), to make application to a court with the necessary jurisdiction³⁹ for 'appropriate relief' in terms of s 82. Section 82 provides⁴⁰ that the court hearing such an application may grant any order that is 'just and equitable', including an order 1) confirming, amending or setting aside the decision which is the subject of the application 2) requiring from the information officer or relevant authority of a public body to take such action as the court may consider necessary 3) granting an interdict, interim or specific relief, a declarator or compensation, or 4) an order as to costs.
34. As is evident, the magistrate granted an order for part of the relief which was sought viz that in respect of The Beauty Hub Academy NPO and refused the remainder, on the basis that the orders the appellants sought lacked 'specifics' which were 'important', as there was a statutory obligation on the GDSD to notify 3rd parties of the request.

³⁹ As Mr Joseph was domiciled and resident in the area of jurisdiction of the Wynberg magistrate's court, it had the necessary jurisdiction to hear his application -*vide* the definition of 'court' in s 1 of the Act.

⁴⁰ Section 82(a)-(d).

35. What the magistrate was alluding to, presumably, when making these remarks, was the obligation which rests on the information officer of a public body, in terms of s 47(1), when receiving a request for access to information which might be of the kind contemplated in certain of the sections which provide for the refusal of disclosure, in Chapter 4 of Part 2 of the Act.⁴¹ Included amongst these is section 36(1), the provision relied upon by the GDSD.
36. In terms of s 47(1), upon receiving such a request the information officer must take all reasonable steps to inform 3rd parties (to whom the information relates) thereof, no later than 21 days after receiving it. In doing so the information officer must inform them of the name of the requester of the information and the relevant provision in Chapter 4 which may apply to it i.e. which may protect it from disclosure. The officer must consequently also inform the 3rd parties that they may make written or oral representations as to why the request should be refused, and they may give written consent for the disclosure thereof. In addition, s 47(1)(d) provides that in any case where the information officer 'believes' that the provisions of s 46 might be applicable, he/she must provide reasons to the 3rd parties for why he/she is of this opinion and must specify which of the circumstances referred to in s 46 are involved. In this regard s 46 provides that, notwithstanding the terms of any other provision in Chapter 4, the information officer of a public body must grant access to a record contemplated in one of the exclusionary provisions listed (which includes s 36(1)), if the disclosure thereof would reveal evidence of a substantial contravention or failure to comply with the law,⁴² or an imminent and serious public safety or environmental risk,⁴³ or the public interest in the disclosure clearly outweighs the harm contemplated by the provision concerned.⁴⁴
37. In *SA History Archive*⁴⁵ the SCA held that the provisions of s 47 are 'triggered' when a request is received concerning a record which might fall within the terms of a provision such as s 36(1), and the holder of the information which is contained in such a record is then compelled to take the steps outlined in s 47.

⁴¹ To wit ss 34(1), 35(1), 36(1), 37(1) and 43(1).

⁴² Section 46(a)(i).

⁴³ Section 46(a)(ii).

⁴⁴ Section 46(b).

⁴⁵ Note 8 para 9.

38. There are a few obvious points to make arising from this. Firstly, there is no statutory obligation on a requester to inform the information officer of a public body, of the identity of any 3rd party in respect of whom information is sought which might be protected from disclosure in terms of one or other of the exclusionary provisions of Chapter 4, nor is the requester obliged to inform the holder that the information may fall under any such provision(s). In this regard the legislature has only placed obligations on the holder of the information. There are understandable reasons for why this is so: the requester will often not know the identity of any affected 3rd party/parties until the information which is sought is disclosed. Likewise, the requester may often not know whether the information which they seek is of the kind referred to in any of the exclusionary provisions of Chapter 4, especially when their request is framed in wide and far-ranging terms, which are as broad and general as possible, with a view to gathering as much information in the net, as possible. Thus, by way of example, a requester may not know that information which it seeks was supplied in confidence to the holder thereof and its disclosure may therefore constitute an action for breach of a duty of confidence which the holder owes to the 3rd party,⁴⁶ or that the disclosure could reasonably be expected to put the 3rd party at a disadvantage in contractual or other negotiations, or commercial competition, it may be involved in.⁴⁷
39. Secondly, given the statutory obligation which rests on a holder to notify affected 3rd parties of the request and their right to make representations in respect of it, the holder can, and must, only decide whether or not to grant it after properly taking into account, or, as the Act puts it 'after giving due regard to',⁴⁸ any representations that are made by the 3rd party/parties, and must duly notify them of his/her decision in this regard.⁴⁹
40. It seems to me that the magistrate failed to appreciate the implications of the points I have referred to, which are as follows. Firstly, there was no obligation on Mr Joseph or the appellants to provide 'specifics' of the 3rd parties in respect of whom they made their request for information, and insofar as the GDSD's

⁴⁶ Sections 37(1)(a)-(b).

⁴⁷ Sections 36(1)(c)(i)-(ii).

⁴⁸ Section 49(1)(a).

⁴⁹ Section 49(1)(b).

information officer was genuinely of the view that there were 3rd parties i.e. NPOs or other entities whose bank details should possibly not be disclosed (on the grounds that if they were their commercial and/or financial interests might be effected), he should already have identified them in his database, for him to have such an apprehension. Thus, the information officer did not need any 'specifics' from Mr Joseph as to the identity of any 3rd parties who might possibly be affected by the request, as he knew who they might be. Secondly, by the time when the GDSD's information officer decided to refuse Mr Joseph's request he should have complied with his obligation to inform affected 3rd parties thereof and should have had regard for any representations which they may have made as to whether the information pertaining to them should be disclosed or not, as he could not make his decision without giving them such an opportunity and without considering their representations. But once he made his decision there was no longer any duty on him to do so.

41. As is evident, there is no indication in the papers that, after receiving Mr Joseph's request for information the GDSD's information officer notified any 3rd party NPO which might be affected, thereof, and of their right to make representations. There is also no indication whether, if this was done, any representations were made by any NPO or other entity. In this regard the letter of refusal was entirely silent. It did not even state that the decision to refuse disclosure was made after having regard for any representations that were made. Given these circumstances, the only inference that can reasonably be drawn is that the request was simply refused on the basis of the convenient excuse that if disclosure was granted bank account details of certain NPOs might be revealed, and this was not a genuine reason for refusal, and there was no compliance with the peremptory provisions of ss 47(1)-(3) as to notification to affected 3rd parties, and no representations were made by any of them.
42. Thus, in short, the magistrate misdirected herself materially in refusing the request for information in respect of the general body of NPOs and other entities who received funding, on the grounds that she did.

Conclusion

43. In the result, and for the foregoing reasons, the order which the magistrate made cannot stand and must be substituted with one directing the respondent to disclose all of the information which was requested.

44. As far as costs are concerned, I was informed that, in the best traditions of the Bar, the appellants' counsel had acted *pro bono* in the appeal. However, insofar as costs were incurred by the appellants in making use of the services of attorneys to prosecute the appeal, the respondent should be liable for them.
45. I make an order as follows:
- 45.1 The appeal is upheld with costs.
- 45.2 The order which was made by the magistrate of Wynberg on 7 November 2024 in case no.12060/2024 is set aside and replaced with the following order:
- '1. The respondent is directed to provide the applicants, within 30 days from date of this order being served on her, with a copy of all documents and information which is in the possession of the Gauteng Department of Social Development ('the GDSD'), pertaining to grants and grant recipients for each of the financial years between and including 2014 and 2024, including but not limited to information relating to:
- 1.1 All grant transfers made by the GDSD to The Beauty Hub Academy non-profit organization ('NPO');
 - 1.2 All service-level agreements (including all Transfer Payment Agreements) between the GDSD and The Beauty Hub Academy NPO;
 - 1.3 All budget documentation related to grant transfers made by the GDSD to all NPOs;
 - 1.4 A list of all transfers of grants made by the GDSD to all NPOs.

44. As far as costs are concerned, I was informed that, in the best traditions of the Bar, the appellants' counsel had acted *pro bono* in the appeal. However, insofar as costs were incurred by the appellants in making use of the services of attorneys to prosecute the appeal, the respondent should be liable for them.
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- 45.1 The appeal is upheld with costs.
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- 1.1 All grant transfers made by the GDSD to The Beauty Hub Academy non-profit organization ('NPO');
- 1.2 All service-level agreements (including all Transfer Payment Agreements) between the GDSD and The Beauty Hub Academy NPO;
- 1.3 All budget documentation related to grant transfers made by the GDSD to all NPOs;
- 1.4 A list of all transfers of grants made by the GDSD to all NPOs.
2. The respondent shall be liable for the costs of the application.'



M SHER

Judge of the High Court

2. The respondent shall be liable for the costs of the application.'

M SHER
Judge of the High Court

I agree.


M HOLDERNESS
Judge of the High Court

Appearances:

Appellants' counsel: M De Beer

Appellants' attorneys: Lionel Murray Schwormstedt & Louw (Cape Town)

Respondents: No appearance