

PRELIMINARY RULING DISCLOSURE OF INFORMATION

Panellist: Reza Slamang
Case No: GPBC 1638/2024
Ruling Date: 15 April 2025

In the **Matter** between:

Public Servants Association of South Africa obo Yoland Dempers
(Union / Applicant)

And

Department of Cultural Affairs and Sport - Western Cape Government
(Respondent)

DETAILS OF PROCEEDINGS AND REPRESENTATION:

1. The arbitration was held on 27 March 2025 at the Offices of the Department of the Premier – Western Cape Government.
2. The Applicant, Yoland Dempers, was represented by Aileen Mosetic from the Public Servants Association of South Africa (PSA), with Cheslyn Isreal attending as a PSA observer.
3. The Respondent, Department of Cultural Affairs and Sport – Western Cape Government, was represented by Mark Lewin, a Labour Relations official from the Department of the Premier.

PRELIMINARY ISSUE:

4. While proceedings remain part-heard, initial discussions revealed that the matter is not yet ripe for final determination.
5. The dispute involves an unfair labour practice claim under the Labour Relations Act 66 of 1995 (LRA). The applicant had applied for the Deputy Director – MOD Programme position but was not shortlisted.

She contests the respondent's decision, alleging that she met the shortlisting criteria while shortlisted candidates did not.

6. I note at this juncture that the appointed candidate need not be joined as an interested party to the arbitration since the applicant does not seek to unseat her from the position. The applicant in principle challenges the respondent's decision not to have shortlisted her for the impugned position. In the event of a finding in her favour, the applicant seeks compensatory relief as provided for by the provisions of the LRA.
7. In challenging the actions of the respondent, the applicant lodged both an internal grievance and a dispute with the Bargaining Council (BC). Additionally, she submitted a request under the Promotion of Access to Information Act 2 of 2000 (PAIA), seeking disclosure of documents related to the recruitment process.
8. At the start of the arbitration, the applicant expressed concern about the respondent's refusal/failure to disclose relevant information regarding the issue in dispute. Although some information was shared, much of it was redacted due to concerns regarding the confidentiality of personal data relating to third-party data subjects, namely the other (shortlisted) job applicants. The applicant requested a ruling on whether the information should be disclosed.
9. As a result, both parties were instructed to submit written arguments, as required under the provisions of the LRA and the BC Rules of Proceedings for and against the disclosure of information (Rule 30 read with Rule 32), which they duly attended to.
10. For conciseness, the submissions and arguments will not be restated in full. Relevant points necessary for the conclusions will be highlighted. All submissions and arguments presented by the parties have however been thoroughly reviewed.
11. The respondent objects to the request for information because it involves third-party data protected under the POPI Act¹. The individuals whose data is being requested are not involved in the dispute and have not consented to the disclosure of their information. Therefore, the respondent asserts that sharing this information would violate the POPI Act.
12. It is important to recognize that the data subjects affected by the request for information have the constitutional right to privacy as intended by Section 14 of the Constitution of South Africa². The POPI

¹ The Protection of Personal Information Act 4 of 2013.

² The Constitution of the Republic of South Africa, 1996 as amended.

Act, among other things, upholds this right. However, in this case, the rights outlined in Section 14 must be balanced against the rights in Section 32.

13. The applicant has the right to access any information held by the state or another person if that information is necessary for exercising or protecting their rights, as stated in Section 32 of the Constitution of South Africa.
14. As articulated by the Constitutional Court, courts typically support a litigant's request for access to documents or information deemed reasonably necessary to assert or protect a threatened right or to advance a legal claim. This is due to the recognition of the litigant's interest in being able to present their case fully during litigation. In weighing the interests of justice, courts aim to provide parties with a reasonable opportunity to achieve their objectives in advancing their cases. Ultimately, having a sufficient opportunity to prepare and present one's case ensures fairness and due process.³
15. It is not surprising that the LRA and the Rules of the BC, along with other statutes such as the PAIA, are designed to facilitate a party's right to access information necessary for exercising or protecting their rights. Rule 30 specifies that after a request for arbitration has been made, either party may request an order for the disclosure of relevant information, such as documents or other evidence, especially if they cannot reach an agreement on the matter.
16. In arbitration matters, the key criterion for disclosure is relevance.⁴ The information must hold evidentiary value or assist in clarifying disputed issues. It is a well-established principle in our law that a litigant must disclose information relevant to any issues formally presented in a dispute. A document is generally considered relevant if it holds information that may either directly or indirectly strengthen the requesting party's case or undermine their opponent's case.⁵
17. In opposing the application for disclosure, the respondent primarily relies on the POPI Act, arguing that the information pertains to the personal information of third-party data subjects and is therefore confidential.
18. However, the POPI Act governs the responsible and lawful processing of personal and special information concerning a data subject. It does not impose a blanket prohibition on the disclosure of information. Accepting such a proposition would undermine the principles of openness, transparency, and accountability. The respondent is obligated under the POPI Act to protect personal

³ Independent Newspapers (Pty) Ltd v Minister for Intelligence Services (Freedom of Expression Institute as amicus curiae) In re: Masetlha v President of the Republic of South Africa and another, 2008 (5) SA 31 (CC).

⁴ Moolman v Commission For Conciliation, Mediation and Arbitration and Others (JA98/22) [2024] ZALCJHB 339 (22 August 2024).

⁵ Ibidem.

information from unauthorized access, unauthorized disclosure, or loss, and must ensure that the secondary use of the data aligns with the initial purpose for which it was collected.

19. Importantly, the courts have established that confidentiality alone does not provide a valid ground for privilege, nor does it exempt parties from the obligation to disclose information. While confidentiality is a factor to consider, it is insufficient on its own to justify withholding information in the absence of additional grounds.⁶
20. Even in cases where the information is genuinely confidential, courts often implement a confidentiality regime to balance the interests of both parties in a discovery or disclosure process. This consideration of fairness ensures that neither party is hindered in presenting its case while still protecting the confidentiality of the information. It is worth noting that the confidentiality of the requested information is not the deciding factor; rather, the discretion must be exercised judiciously based on the totality of the circumstances.⁷
21. In the current case, I am not convinced that the information in question is confidential enough to outweigh the need for disclosure. Denying access to this information would be excessively prejudicial and would hinder the applicant's ability to prepare and present her case adequately.
22. However, the applicant party, as well as the trade union, must proceed with caution. The information obtained from the respondent must be handled in accordance with the respondent's obligations and in compliance with the provisions of the POPI Act. Both the applicant and the trade union must ensure that the information is adequately protected from unauthorized access or loss. They are also prohibited from further disclosing the information or using it for purposes other than advancing the claim related to the current dispute.
23. Considering the totality of the parties' submissions and the discussion above, the following ruling with directives is issued.

RULING:

24. The appointed candidate does not need to be included as an interested party, as the applicant is not seeking to remove her from the position.
25. The respondent is ordered to provide the applicant with all relevant information, which may not be redacted, within 21 days of receiving this ruling. This includes all information listed by the applicant in

⁶ Op Cit, 2008 (8) BCLR 771 (CC) (22 May 2008).

⁷ Helen Suzman Foundation v Judicial Service Commission (CCT289/16) [2018] ZACC 8; 2018 (4) SA 1 (CC); 2018 (7) BCLR 763 (CC) (24 April 2018).

her application under the PAIA, as well as any additional information specified in paragraph 19 of this application.

26. The applicant and the PSA must ensure that the information received from the respondent is processed responsibly and lawfully, per the provisions of the POPI Act. Both the applicant and the PSA are responsible for protecting the information against unauthorized access or loss. They are prohibited from disclosing this information further and may only use it exclusively for advancing the current dispute. Upon the conclusion of the arbitration, both the applicant and the trade union must return the information to the respondent immediately.



.....
Reza Slamang
GPSSBC Arbitrator