



PUBLIC PROTECTOR
MOSIRELETSI WA BATHO • MOŠIRELETSI WA BATHO
MUSIRHELELI WA VANHU • MUSHIRELEDZI WA VIKATHU
OPENDABE BESITHEPE • UMKHUSELI WABANTU • UTVIKELI WUBANTU

NATIONAL OFFICE

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Please quote this reference in your reply: Report No. 17 of 2010/11
Your reference:

21 July 2010

Mr Bheki Cele: National Commissioner
South African Police Services
Private Bag X 94
PRETORIA
0001

Dear Mr Cele

REPORT NO. 17 of 2010/11: REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994

Attached hereto is my report on an investigation into allegations of undue delay by the South African Police Services to process and submit pension exit documents of Mr Volker to the Government Employees Pension Fund.

Your attention is directed to the recommendations made in terms of section 182(1)(b) of the Constitution and dealt with in paragraph 8 of the report. Please keep me informed of the progress made with regard to the implementation of the said remedial action.

Best wishes

ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA



PUBLIC PROTECTOR

MOŠIRELETSI WA BATHO • MOŠIRELETSI WA BATHO

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**Please quote this reference in your reply: Report No. 14 of 2010/11
Your reference:**

21 July 2010

Mr E T Volker
P O Box 19588
Lintongrange
PORT ELIZABETH
6015

Dear Mr Volker

REPORT NO. 17 of 2010/11: REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994

Please be advised that the investigation into your complaint has been concluded.

A report on the matter is attached hereto for your information.

Best wishes

**ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA**



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Please quote this reference in your reply: Report No. 17 of 2010/11
Your reference:

21 July 2010

Mr M S Landu: Provincial Commissioner: Eastern Cape
South African Police Services
Private Bag X 7471
KING WILLIAMS TOWN
5600

Dear Mr Landu

REPORT NO. 17 of 2010/11: REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994

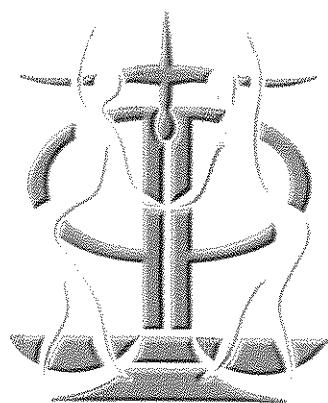
Attached hereto is my report on an investigation into allegations of undue delay by the South African Police Services to process and submit pension exit documents of Mr Volker to the Government Employees Pension Fund.

Your attention is directed to the recommendations made in terms of section 182(1)(b) of the Constitution and dealt with in paragraph 8 of the report. Please keep me informed of the progress made with regard to the implementation of the said remedial action.

Best wishes

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REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8 (1) OF THE PUBLIC PROTECTOR ACT, 1994



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 17 OF 2010/11

REPORT ON AN INVESTIGATION INTO AN ALLEGED UNDUE DELAY BY THE SOUTH AFRICAN POLICE SERVICE TO PROCESS AND SUBMIT PENSION EXIT DOCUMENTS OF MR VOLKER TO THE GOVERNMENT EMPLOYEES PENSION FUND



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Executive Summary

- (i) The Public Protector received a complaint from Mr E T Volker (the Complainant) on 7 July 2008, regarding the delay by the South African Police Service (the SAPS) in the processing and submission of pension exit documents to the Government Employees Pension Fund (the GEPF) following his resignation on 30 November 2006. When he complained to the Public Protector, the Complainant's pension benefits had not been paid because the pension exit documents had not been forwarded by the SAPS to the GEPF. As a result of the intervention of the Public Protector the pension benefits, as well as interest due to the late payment, were paid.
- (ii) The following findings were made:
 - (a) The SAPS failed to submit the Complainant's pension exit documents to the GEPF within a reasonable time after his resignation;
 - (b) The process of preparing and submitting the Complainant's exit documentation to the GEPF took the SAPS a period of 25 months from the date of resignation, to complete; and
 - (c) Investigations revealed that there is a system in place within the SAPS in terms of which exit documents are processed and submitted to the Fund, but in this case there was non-compliance.
- (iii) In pursuance of section 182(1)(c) of the Constitution the remedial action taken by the Public Protector was to ensure that the pension benefits due to the Complainant were paid with interest on 1 December 2008.
- (iv) Recommendations

In terms of section 182(1)(b) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, 1994, the Public Protector recommended that the National Commissioner and the Eastern Cape Provincial Commissioner of the SAPS, respectively, should:

- (a) Conduct an internal investigation to determine who or what caused the delay in the payment of the Complainant's pension benefits; and
- (b) Put in place a mechanism that would ensure the verification of documents and strictly observe timelines in order to render the system effective and compliant with the Government Employees Pension Law, 1996, thus avoiding unnecessary delays.

REPORT ON AN INVESTIGATION INTO AN ALLEGED UNDUE DELAY BY THE SOUTH AFRICAN POLICE SERVICE TO PROCESS AND SUBMIT PENSION EXIT DOCUMENTS OF MR VOLKER TO THE GOVERNMENT EMPLOYEES PENSION FUND

1. INTRODUCTION

- 1.1 The report is submitted to Mr E T Volker (the Complainant).
- 1.2 This report is also submitted to the National Commissioner of the South African Police Service and the Eastern Cape Provincial Commissioner of the South African Police Service, in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Act).
- 1.3 It relates to an investigation into an allegation that the South African Police Service (the SAPS) unduly delayed the processing and submission of Mr Volker's pension exit documents to the Government Employees Pension Fund (the GEPF), following his resignation on 30 November 2006.

2. THE COMPLAINT

- 2.1 The Public Protector received a complaint on 7 July 2008 from the Complainant who alleged that he was employed by the SAPS from 27 November 1987 until 30 November 2006, when he resigned. At the time of his resignation he was serving as an Inspector at Humewood Police Station, Port Elizabeth in the Eastern Cape Province.
- 2.2 The GEPF paid the pension benefits due to him on 1 December 2008.

- 2.3 The reason advanced by the GEPF for the delay in the payment of the pension benefits was that the SAPS had delayed furnishing the GEPF with the necessary pension exit documents.
- 2.4 The Complainant alleged that during the period 30 November 2006 to 1 December 2008 he was unable to obtain a progress report from the SAPS.
- 2.5 It was only through the intervention of the Public Protector that his pension benefits, as well as interest as a result of the late payment, were processed and paid by the GEPF.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

- 3.1 The institution of the Public Protector was established in terms of section 181 of the Constitution to strengthen constitutional democracy.
- 3.2 Section 182(1) of the Constitution provides that the Public Protector has the power, as regulated by national legislation:
 - (a) *to investigate any conduct in state affairs or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
 - (b) *to report on that conduct; and*
 - (c) *to take appropriate remedial action."*
- 3.3 In terms of section 6(4) of the Act, the Public Protector shall be competent to investigate on his or her own initiative or on receipt of a complaint, any alleged maladministration in connection with the affairs of government at any level.

- 3.4 The SAPS is an organ of state which performs a public function.
- 3.5 The matter complained about falls within the jurisdiction of the Public Protector.

4. THE INVESTIGATION

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act and it comprised the following:

4.1 Consultation with the SAPS and the GEPF

- 4.1.1 Enquiries made with the office of the Provincial Commissioner of the SAPS, Eastern Cape, revealed that the Complainant's resignation was tendered at Humewood Police Station on 30 November 2006, but that the pension exit documents were only submitted to the Provincial Commissioner's Office on 8 September 2008, that is, 20 months later. It was further revealed that the reason for the delay in the submission of the said documents was the due to an outstanding application for incapacity leave.
- 4.1.2 The conversation between the investigator in the Eastern Cape Provincial Office of the Public Protector, and Inspector Welman of the Eastern Cape Provincial Commissioner's Office further revealed that, the prescribed timelines for the processing and submission of pension documents from the Provincial Commissioners office to the Head Office, is 60 days. He advised that the delay could not be avoided due to the late submission of the Complainant's application for incapacity leave.
- 4.1.3 On 29 August 2008 the said investigator contacted the Administration Section of the GEPF in connection with the complaint. The response received was that the Complainant's pension exit documents are awaited from the SAPS.

- 4.1.4 A telephonic conversation on 3 September 2008 with Superintendent Botha at the SAPS Head Office in Pretoria revealed that the Complainant's claim was with the Service Termination Division of the SAPS. It was noted that a period of 21 months from the date of the Complainant's resignation, 30 November 2006, had already expired.
- 4.1.5 On 18 November 2008 information was received from the SAPS that the file was forwarded to the GEPF on 10 November 2008. On 28 November 2008 an official from the GEPF advised that the matter has been finalised and payment was to be made on 1 December 2008.

4.2 APPLICABLE LEGISLATION AND POLICIES

4.2.1 The Constitution

- 4.2.1.1 In terms of section 195(1) of the Constitution, public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

"(a) A high standard of professional ethics must be promoted and maintained ...

(d) Services must be provided impartially, fairly, equitably and without bias."

4.2.2 The Government Employees Pension Law, 1996

- 4.2.2.1 Section 26(1) of the Government Employees Pension Law (GEP Law) provides as follows:

"26. Period within which payment of benefits shall commence-

- (1) *Notwithstanding anything to the contrary in any law contained, a benefit payable in terms of this Law shall be paid to the member, pensioner or beneficiary entitled to such benefit within a period of 60 days from the benefit becoming payable to the member, pensioner or beneficiary, which 60 days shall be calculated from the day following the date on which the benefit becomes payable: Provided that a benefit shall become payable to a member, pensioner or beneficiary on the last day of service at the employer of that member or pensioner or the death of that pensioner.”*

4.2.3 Code of Ethics of the SAPS

4.2.3.1 The Code of Ethics of the SAPS provides that the employees of the SAPS must act with integrity and respect for people’s diversity and the law, thereby enhancing service excellence to the approval of the public.

4.2.3.2 Members of the SAPS should perform their duties according to; *inter alia*, the following principles:

“Integrity: Application: employees of the SAPS regard the truth as being of the utmost importance.

Explanation: Employees of the SAPS should continuously strive to uphold the mission, values, ethical principles and standards of the SAPS. They will behave in a manner, which is consistent with these values. They will always tell the truth, perform their duties with noble motives and set an example in their communities.

Obedience of the Law: Application: Employees of the SAPS respect and uphold the law at all times.

Explanation: Their duties mainly involve enforcing the law, and in their application of the law they will always stay within the law and Constitution of their country. They will at all cost, avoid any conduct which would make them

violators of the law. They will protect inhabitants of South Africa against unlawful action.

Service Excellence: Application: Employees of the SAPS work towards service excellence.

Explanation: They will, at all times, perform their duties to the best of their abilities. Their conduct will bear the mark of professionalism. Their conduct and appearance will be proof of their commitment to service excellence.”

4.2.4 The Batho Pele Principles

4.2.4.1 The following Batho Pele principles are relevant to the matter:

- (a) *“Service Standards: Citizens should be told what level and quality of public services they will receive so that they are aware of what to expect;*
- (b) *Courtesy: Citizens should be treated with courtesy and consideration;*
- (c) *Information: Citizens should be given full, accurate information about the public services they are entitled to receive;*
- (d) *Redress: If the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and speedy and effective remedy; and when complaints are made, citizens should receive a sympathetic, positive response.”*

5. EVALUATION OF FACTS AND EVIDENCE

5.1 The Complainant resigned 30 November 2006 and made enquiries with the SAPS regarding payment of his pension, but was unable to establish what the status of the matter was. As a result of the lack of response from the SAPS he

lodged a complaint with the Public Protector in July 2008. At that time a period of 21 months had already lapsed from the date of his resignation.

- 5.2 On receipt of the complaint the Public Protector investigated the matter and a further four months lapsed before the SAPS processed and submitted the pension exit documents to the GEPF.
- 5.3 In terms of section 26 of the GEP Law pension benefits should be paid to the Complainant within 60 days from the date of his resignation.
- 5.4 In both instances mentioned above, the prescribed turnaround time of 60 days was not complied with and this was in violation of the provisions of the GEP Law.
- 5.5 The conduct of the SAPS in delaying the submission of the Complainants exit documents to the GEPF was contrary to the standard of integrity as required by the Code of Ethics of the SAPS and service standards as prescribed in the Batho Pele principles.
- 5.6 The investigation revealed that there was no justifiable reason for the delay of 25 months before the payment of the pension benefit was made.
- 5.7 The GEPF duly paid interest to the Complainant in terms of the GEP Law.

6. FINDINGS

- 6.1 The SAPS failed to submit the Complainant's pension exit documents to the GEPF within a reasonable time after his resignation;
- 6.2 The conduct of the SAPS in dealing with the Complainant's claim for payment of his pension benefits, was in violation of the Code of Ethics of the SAPS and the Batho Pele principles;

- 6.3 The process of preparing and submitting the Complainant's pension exit documents to the GEPF took the SAPS a period of 25 months from the date of resignation, to complete;
- 6.4 Investigations revealed that there is a system in place within the SAPS in terms of which exit documents are processed and submitted to the GEPF, but in this case there was non-compliance.

7. REMEDIAL ACTION TAKEN

In pursuance of section 182(1)(c) of the Constitution the remedial action taken by the Public Protector was to ensure that pension benefits due to the Complainant were paid with interest on 1 December 2008.

8. RECOMMENDATIONS

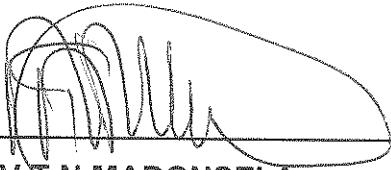
In terms of section 182(1)(b) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, it is recommended that the National Commissioner and the Eastern Cape Provincial Commissioner of the SAPS, respectively:

- 8.1 Put in place a mechanism that would ensure the verification of documents and strictly observe timelines in order to render the system effective and compliant with the GEP Law, thus avoiding unnecessary delays.
- 8.2 Conduct an internal investigation to determine who or what caused the delay in the payment of the Complainant's pension benefits.

9. MONITORING

- 9.1 The Head of Department should submit a report regarding action to be taken in response to this report by 31 August 2010.

- 9.2 The Head of Department should submit a report indicating action taken with regard to implementation of this report by 30 October 2010.
- 9.3 The Public Protector will monitor the implementation process on an ongoing basis.



ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA

DATE: 21 July 2010

Assisted by: N Kosi, Investigator, Eastern Cape Office

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