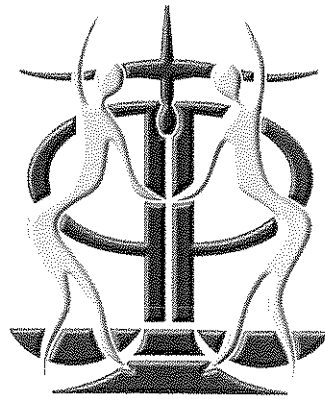


REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 31 OF 2009/10

REPORT ON AN INVESTIGATION INTO THE FAILURE BY THE FORMER DEPUTY PROVINCIAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE FOR GAUTENG TO INVESTIGATE AN ALLEGATION OF CRIMINAL ACTIVITIES COMMITTED BY CERTAIN MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE AND THE PUBLIC

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Executive Summary

- (i) The Public Protector investigated the failure by the former Deputy Provincial Commissioner for Gauteng, Mr. R N Mdluli (former Deputy Provincial Commissioner), of the South African Police Service (SAPS) to investigate an allegation of criminal activities committed by certain members of the SAPS and the public in the Tshwane Municipal area.
- (ii) On 11 September 2008, the Public Protector referred the complaint to the Gauteng Provincial Commissioner (Provincial Commissioner) Mr. P Naidoo, after it was received from an anonymous complainant. During the enquiry into progress of the matter in November 2008, the office of the Provincial Commissioner advised that the matter was referred to Superintendent Govender, and later on to the former Deputy Provincial Commissioner, for further handling.
- (iii) Despite requests for further progress reports, the former Deputy Provincial Commissioner failed to respond, which raised the concern that the matter was not given the attention it deserved.
- (iv) From the investigation it was found that:
 - (a) The failure by the former Deputy Provincial Commissioner to ensure that the matter was timeously, efficiently and sufficiently investigated, was improper;
 - (b) The former Deputy Provincial Commissioner's failure to respond to the enquiries of, and to provide the Public Protector with progress reports, when requested to do so, was unjustified and in conflict with the relevant provisions of the Constitution and was therefore improper; and
 - (c) The failure by the former Deputy Provincial Commissioner to investigate the complaint or to ensure that an investigation was urgently instituted

was unjustified, unreasonable and in conflict with the spirit of the Constitution of the Republic of South Africa, 1996 (Constitution), and the South African Police Service Act, 1995 (Police Act), as it adversely affected the credibility of the SAPS and could therefore amount to defeating the ends of justice.

- (v) The remedial action to be taken by the National Commissioner of the SAPS is to:
- (a) Take urgent steps to ensure the expedition and the finalisation of the investigation of the complaint referred to in this report;
 - (b) Inquire into the reasons for the failure by the former Deputy Provincial Commissioner to ensure that urgent steps were taken to investigate the matter referred to him by the Provincial Commissioner and, if appropriate, to consider the necessary action;
 - (c) Inquire into the reasons for the failure by the former Deputy Provincial Commissioner to respond to, or to ensure that a response was provided to the Public Protector and to consider appropriate action against those officials found responsible for such failure;
 - (d) Take the necessary steps to ensure that the management and staff of the SAPS nationally, adhere to their constitutional obligation to co-operate with the Public Protector and to respond promptly to all its enquiries whenever they are required to do so; and
 - (e) Take steps to ensure that proper monitoring systems in respect of handling of complaints are established and adhered to in the office of the Provincial Commissioner.

**REPORT ON AN INVESTIGATION INTO THE FAILURE BY THE FORMER DEPUTY
GAUTENG PROVINCIAL COMMISSIONER OF THE SOUTH AFRICAN POLICE
SERVICE TO INVESTIGATE AN ALLEGATION OF CRIMINAL ACTIVITIES
COMMITTED BY CERTAIN MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE
AND THE PUBLIC**

1. INTRODUCTION

- 1.1 This report is submitted, in terms of Section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act) to the Minister of Police, the National Commissioner and the Gauteng Provincial Commissioner of the South African Police Service (SAPS).
- 1.2 It relates to an investigation into the failure by the former Deputy Provincial Commissioner in Gauteng of the SAPS to investigate an allegation of criminal activities committed by certain members of the SAPS and the public.

2. BACKGROUND

- 2.1 On 7 August 2008, an anonymous complaint was lodged with the Public Protector.
- 2.2 The Complainant alleged that certain members of the public and the SAPS were engaged in criminal activities, which related to drug dealing and illegal towing and “chopping” of cars in the Tshwane Municipal area.

3. REFERRAL OF THE COMPLAINT TO THE SAPS

On 11 September 2008, the Public Protector referred the complaint to the Gauteng Provincial Commissioner (Provincial Commissioner) Mr. P Naidoo, for urgent attention, with a request that the Public Protector be provided with

information regarding progress made with the SAPS investigation, to ensure that the matter received the necessary attention.

4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE DELAY OF THE SAPS TO INVESTIGATE THE MATTER CONCERNED (THE COMPLAINT)

4.1 The institution of the Public Protector was established by Chapter 9 of the Constitution to strengthen our constitutional democracy. In terms of section 182 of the Constitution, the Public Protector is empowered 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 impropriety or prejudice, to report on the conduct investigated and to take appropriate remedial action.

4.2 Section 6(4) of the Public Protector Act, provides that the Public Protector is competent to investigate, on own initiative or on receipt of a complaint, *inter alia*, any alleged:

4.2.1 Maladministration in connection with the affairs of government at any level;

4.2.2 Undue delay by a person performing a public function; and

4.2.3 Act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.

4.3 The failure by the former Deputy Provincial Commissioner to investigate an allegation of criminal activities falls within the powers and jurisdiction of the Public Protector to investigate.

5. THE INVESTIGATION

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

- 5.1 Assessment of the anonymous complaint and information received;
- 5.2 Correspondence with:
 - 5.2.1 The office of the Provincial Commissioner;
 - 5.2.2 The former Deputy Provincial Commissioner;
 - 5.2.3 Superintendent B Botha of the office of the Provincial Commissioner; and
 - 5.2.4 Captain N C Mlondzo of the office of the former Deputy Provincial Commissioner.
- 5.3 Telephonic discussions with:
 - 5.3.1 Captain Mlondzo; and
 - 5.3.2 Ms Pearl of the office of the Provincial Commissioner.
- 5.4 Consideration of statements made by:
 - 5.4.1 Captain Mlondzo; and
 - 5.4.2 Ms P M Pinkoane: Secretary to the former Deputy Provincial Commissioner.
- 5.5 Consideration and application of the relevant provisions of:
 - 5.5.1 The Constitution; and

5.5.2 The Police Act.

6. THE LEGISLATIVE FRAMEWORK APPLICABLE TO THE FUNCTIONS OF THE SAPS

6.1 The Constitution

6.1.1 Section 205(3) provides that the objects of the SAPS are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law.

6.1.2 In terms of section 195(1), public administration (every sphere of government, organ of state and public enterprises¹) must be governed by the democratic values and principles enshrined in the Constitution. These principles provide, *inter alia*, that:

6.1.2.1 A high standard of professional ethics must be promoted and maintained;

6.1.2.2 Services must be provided impartially, fairly, equitably and without bias;

6.1.2.3 Transparency must be fostered by providing the public with timely, accessible and accurate information; and

6.1.2.4 The public administration must be accountable.

6.1.3 Organs of state, such as the SAPS, must, in terms of section 181(3) assist and protect, *inter alia*, the institution of the Public Protector to ensure its independence, impartiality, dignity and effectiveness.

¹ See section 195 (2)

6.1.4 Section 237 provides that all constitutional obligations must be performed diligently and without delay.

6.2 The Police Act

6.2.1 The powers, duties and functions of the SAPS, are provided for in Chapter 5 of the Police Act.

6.2.2 Section 13(3)(a) of the Police Act, provides that a member who is obliged to perform an official duty, shall, with due regard to his or her powers, duties and functions, perform such duty in a manner that is reasonable in the circumstances.

7. THE EVIDENCE

7.1 The information received from the office of the Provincial Commissioner

7.1.1 On 22 October 2008, during a telephone enquiry to the office of the Provincial Commissioner regarding progress made with the investigation of the complaint concerned, Ms Pearl indicated that it was referred to Superintendent Govender and that the matter was receiving attention. Written confirmation to this effect was requested, but not received.

7.1.2 During a follow-up telephone enquiry, on 14 November 2008, Ms Pearl indicated that the complaint was further referred to the former Deputy Provincial Commissioner for further consideration. This was later confirmed in writing.

7.1.3 On 8 May 2009, an e-mail enquiry was sent to the Provincial Commissioner, raising the concern that since the former Deputy Provincial Commissioner acknowledged receipt of the complaint, no further report regarding progress of the matter was provided to the Public Protector. The Provincial Commissioner was requested to intervene.

7.1.4 In his response, the Provincial Commissioner stated that *“I have requested the Deputy Provincial Commissioner Mdluli to follow this matter up as a matter of urgency and to provide you with the necessary feedback in this regard”*. (own emphasis)

7.2 The response of the former Deputy Provincial Commissioner

7.2.1 On 14 July 2009, a letter in terms of section 7(9) of the Public Protector Act was issued to the former Deputy Provincial Commissioner Mdluli, which requested him to respond by Friday, 24 July 2009 and advising him that:

7.2.1.1 From the observations made during the investigation:

- (i) There appeared to be reluctance on his part to provide information regarding progress of the matter and that his conduct in that regard is improper, as it is contrary to the spirit of the Constitution and the mandate of the SAPS; and
- (ii) The undue delay on his part to attend to the complaint promptly and expedite the matter is considered improper and could amount to defeating the ends of justice.

7.2.1.2 The Public Protector might make an adverse finding against him in connection with his failure to respond to the Public Protector’s enquiries and the delay in the expedition of the matter concerned.

7.2.2 The former Deputy Provincial Commissioner responded as follows:

7.2.2.1 On 18 November 2008, his office received an enquiry from the Public Protector regarding the matter;

- 7.2.2.2 Captain Mlondzo was tasked to open a file for the enquiry and to forward it to the office of the Provincial Head: Detective Services for further handling;
- 7.2.2.3 Numerous queries regarding the lack of reports from his office were received from the office of the Provincial Commissioner;
- 7.2.2.4 Captain Mlondzo enquired with the Provincial Head: Detective Services, Assistant Commissioner Taioe, and it transpired that Captain Erasmus was tasked to handle the matter;
- 7.2.2.5 On 22 July 2009, Captain Mlondzo inquired with Captain Erasmus on the progress made and was informed that he had no knowledge of the matter and that nobody at the Detective Services could account for the case file;
- 7.2.2.6 An internal investigation by the office of the Divisional Commissioner would be conducted to establish the cause of the delay in reporting the matter and the findings would be reported to the Public Protector;
- 7.2.2.7 In July 2009, he was promoted from Deputy Provincial Commissioner to Divisional Commissioner: Crime Intelligence and is based at Head Office in Pretoria;
- 7.2.2.8 The SAPS noted that the matter was delayed due to the reasons mentioned above and that a speedy investigation of the matter would be done under the supervision of the current Deputy Gauteng Provincial Commissioner Bester; and
- 7.2.2.9 Cognisance was taken of the fact that the delay hindered service delivery in the Public Protector and an apology was offered.

7.3 The statement from Captain Mlondzo

In his sworn statement, Captain Mlondzo confirmed what the former Deputy Provincial Commissioner has stated, as far as it related to him.

7.4 The statement from Portia Mathapelo Pinkoane

7.4.1 Ms Pinkoane stated in her sworn statement that:

7.4.1.1 She was the secretary to the former Deputy Provincial Commissioner at the time when the Public Protector sent an enquiry to the office of the Deputy Provincial Commissioner and she was tasked by Captain Mlondzo to type an acknowledgement letter to the Public Protector;

7.4.1.2 Captain Mlondzo was tasked to open a file and to send it to Detective Services for further handling; and

7.4.1.3 She was aware of the numerous queries received from the Provincial Commissioner's office.

8. EVALUATION OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

8.1 The office of the Provincial Commissioner, after receiving the complaint in September 2008, transferred it to the office of the former Deputy Provincial Commissioner, without keeping proper records of the Complaint.

8.2 The office of the Provincial Commissioner did not monitor the handling of the complaint, after it was transferred to the office of the former Deputy Provincial Commissioner.

- 8.3 The former Deputy Provincial Commissioner failed to monitor and ensure that the matter was attended to properly, after he referred it to Captain Mlondzo for further handling.
- 8.4 The former Deputy Provincial Commissioner failed to take the matter seriously, as he did not ensure that it was attended to urgently and investigated properly.
- 8.5 Monitoring mechanisms in the offices of the Provincial Commissioner and the former Deputy Provincial Commissioner were not applied properly or at all in respect of the complaint.
- 8.6 The former Deputy Provincial Commissioner ignored requests, from the OPP and the Provincial Commissioner, to furnish progress reports.

9. KEY FINDINGS

The following key findings were made from the investigation:

- 9.1 The failure by the former Deputy Provincial Commissioner to ensure that the matter was timeously, efficiently and effectively investigated was improper;
- 9.2 The former Deputy Provincial Commissioner's failure to respond to the enquiries of, and to provide the Public Protector with progress reports, when requested to do so, was unjustified and in conflict with the relevant provisions of the Constitution and was therefore improper; and
- 9.3 The failure by the former Deputy Provincial Commissioner to investigate the complaint or to ensure that an investigation was urgently instituted was unjustified, unreasonable and in conflict with the spirit of the Constitution and the Police Act, as it adversely affected the credibility of the SAPS and could therefore amount to defeating the ends of justice.

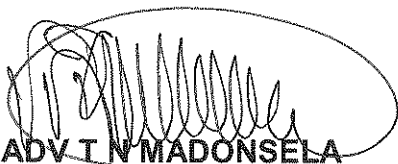
10. REMEDIAL ACTION TO BE TAKEN

In terms of the provisions of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, the remedial action to be taken by the National Commissioner of the SAPS is to:

- 10.1 Take urgent steps to ensure the expedition and the finalisation of the investigation of the Complaint referred to in this report;
- 10.2 Inquire into the reasons for the failure by the former Deputy Provincial Commissioner to ensure that urgent steps were taken to investigate the matter referred to him by the Provincial Commissioner, and, if appropriate, to consider the necessary action;
- 10.3 Inquire into the reasons for the failure by the former Deputy Provincial Commissioner to respond to, or to ensure that a response was provided to the Public Protector and to consider appropriate action against those officials found responsible;
- 10.4 Take steps to ensure that the management and staff of the SAPS nationally adhere to their constitutional obligation to co-operate with the Public Protector and respond promptly to all the Public Protector's enquiries whenever they are required to do so; and
- 10.5 Take steps to ensure that proper monitoring systems in respect of handling of complaints are established and adhered to in the office of the Provincial Commissioner.

11. CONCLUSION

The implementation of the remedial action mentioned in paragraph 10 above will be monitored by the OPP on a quarterly basis.



ADV. T. N. MADONSELA

**PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA**

Date: 17/12/2009

Assisted by: Mr. P Tjale (Senior Investigator)