

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 29 OF 2008/09

REPORT ON AN INVESTIGATION INTO AN ALLEGATION THAT THE SOUTH AFRICAN POLICE SERVICE FAILED TO PAY A REWARD TO AN INFORMER AFTER UNDERTAKING TO DO SO

INDEX

Executive Summary	3
1. INTRODUCTION	5
2. THE COMPLAINT	5
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT	7
4. THE INVESTIGATION	8
5. MEETINGS WITH THE SOUTH AFRICAN POLICE SERVICE AND NATIONAL PROSECUTING AUTHORITY	8
6. LEGISLATIVE FRAMEWORK	10
7. OBSERVATIONS AND FINDINGS	10
8. RECOMMENDATIONS	11
9. MONITORING	11

EXECUTIVE SUMMARY

1. The Office of the Public Protector (OPP) investigated a complaint relating to the payment of a reward, against the South African Police Service (SAPS). The complainant complained while he was still under the witness protection program. He alleged that the SAPS failed to pay him a R75 000.00 reward, which was offered to him for successfully assisting the SAPS and the National Prosecuting Authority (NPA) in arresting and securing convictions. The said R75 000.00 was allegedly paid to SAPS by Khulani Security, even though the offer was made by SAPS on their behalf.

2. The OPP investigated the matter and made the following findings:
 - 2.1 The complainant provided SAPS with information that led to the arrest and conviction of suspects in a robbery case.
 - 2.2 SAPS offered a reward of R75 000.00 to the person who would provide it with information that would lead to the arrest and conviction of the suspects.
 - 2.3 Investigating officers in this case are aware of the reward that was promised to the complainant.
 - 2.4 SAPS failed to pay the reward to the complainant.

3. Consequently, it is recommended that:
 - 3.1 SAPS should pay the complainant the sum of R75 000.00; and

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- 3.2 In future the SAPS should desist from renegeing in its undertaking as this conduct brings its image into disrepute.

REPORT ON AN INVESTIGATION INTO AN ALLEGATION THAT THE SOUTH AFRICAN POLICE SERVICE FAILED TO PAY A REWARD TO AN INFORMER AFTER UNDERTAKING TO DO SO

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 (the Constitution) and section 8(1) of the Public Protector Act, 1994. It is submitted to the Minister of Safety and Security, the National Commissioner of the South African Police Service; and the Gauteng Provincial Police Commissioner.
- 1.2 It deals with an investigation into an allegation that the South African Police Service (SAPS) failed to pay an informer (the complainant)¹ for the information which led to the arrest and conviction of criminals after undertaking to do so.

2. THE COMPLAINT

- 2.1 The Office of the Public Protector (OPP) received a grievance from the complainant against the SAPS on 26 March 2007. The complainant alleged that he testified in SAPS case number 36/07/1998 of Bainsvlei (Bloemfontein) Police Station, involving armed robbery (cash in transit heist), murder and attempted murder.

¹ Complainant's name withheld for security reasons

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- 2.2 There was allegedly a reward of R75 000.00, which was offered to a person who would help the SAPS and the National Prosecuting Authority (NPA) in arresting and securing convictions. The said R75 000.00 was allegedly paid to the SAPS by Khulani Security Company, even though the offer was made by the SAPS on their behalf. The complainant alleged that he assisted the police in arresting the people who committed the abovementioned crimes, wherein convictions were secured. He allegedly even testified against them.
- 2.3 The complainant further alleged that the abovementioned case was finalised during 1999 and the investigating officers² made the necessary arrangements for his payment (R75 000.00 reward). As the complainant was also supposed to testify in another case at Siyabuswa Police Station (case number 153/12/1997), the State Prosecutor in the matter requested that the payment be suspended until the Siyabuswa case was finalised as the defence team in the Siyabuswa case might have concluded that the government paid him to testify against their clients.
- 2.4 The complainant was also arrested for the Siyabuswa case, as he transported the robbers, but he turned a state witness. He was placed under the witness protection program from 2000 until 5 September 2008.
- 2.5 When the Siyabuswa case was finalised, the complainant requested payment of the R75 000.00, but was allegedly sent from pillar to post.

² Names withheld for security reasons

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 Chapter 9 of the Constitution as one of a number of bodies that support constitutional democracy. The operational requirements of the OPP are provided for by the Public Protector Act, 1994.

3.2 Section 6(4)(a) of the Public Protector Act, 1994 provides that the Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged

(v) act or omission by a person in the employ of government at any level, or a person performing a public function, which results in an unlawful or improper prejudice to any other person.

3.3 Section 6(9) provides that *except where the Public Protector in special circumstances, within his or her discretion, so permits, a complaint or matter referred to the Public Protector shall not be entertained unless it is reported to the Public Protector within two years from the occurrence of the incident or matter concerned.*

3.4 This matter therefore falls within the ambit of the jurisdiction of the Public Protector to investigate. Although the Siyabuswa case was finalized in 2004 and the complainant should have received his reward at that time, he only realised that the police were not prepared to pay in January 2007 when one police

officer³ hinted that it might not be possible to pay him as police officers who dealt with his case were dead and others had resigned.

4. THE INVESTIGATION

The investigation was conducted in terms of Section 7 of the Public Protector Act, 1994, and comprised the following:

- 4.1 Correspondence with the SAPS and NPA;
- 4.2 Meetings with the SAPS and NPA; and
- 4.3 Consideration of the relevant legislation, namely, the Witness Protection Act, 1998.

5. MEETINGS WITH THE SOUTH AFRICAN POLICE SERVICE AND NATIONAL PROSECUTING AUTHORITY

- 5.1 A meeting was held with a director of Specific Violent Crimes and Organized Crimes Unit of SAPS on 5 November 2007.
- 5.2 The SAPS could not deny or accept the fact that Khulani Security Company paid the money (R75 000.00) into its account, but indicated that normally rewards are paid directly to the beneficiaries and the SAPS only facilitates such payments.

³ Name withheld for security reasons

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- 5.3 Khulani Security Company no longer exists, and as a result its side of the story could not be obtained.
- 5.4 It was revealed that the complainant was registered as an informer and was allocated a registration number⁴. The Investigating Officer⁵ confirmed that he was aware that the SAPS was supposed to pay the complainant, but failed to disclose the amount which was supposed to be paid.
- 5.5 He further indicated that his colleague⁶ even compiled a report in which he recommended that the complainant be paid and was not sure why the SAPS never paid him. This investigating officer is well versed with the complainant's case and also referred to other cases where arrests and convictions were secured with his assistance. He is also the one who booked him into the witness protection program.
- 5.6 Enquiries were made with the NPA's Witness Protection Unit, which confirmed that the complainant was in their program and he was released with a resettlement agreement involving R48 000.00. The Unit also purchased him a house for R45 000.00 and a cost of living allowance amounting to R1 200.00.

⁴ Number withheld for security reasons

⁵ Name withheld for security reasons

⁶ Name withheld for security reasons

5.7 The Public Protector has sent a communiqué to the Acting National Police Commissioner requesting him to intervene in this matter. He expressed his concern that if police did not keep their word when dealing with informers members of the public will not be keen to come forward with information that may assist police in their investigations. A response had not been received from the Acting National Police Commissioner at the date of issue of the report.

6. LEGISLATIVE FRAMEWORK

6.1 Witness Protection Act, 1998

6.1.1 The management of witness protection is regulated by the Witness Protection Act, 1998.

6.1.2 The Act seeks to provide for, amongst others, temporary protection of witnesses pending placement under protection and services related to their protection.

7. OBSERVATIONS AND FINDINGS

7.1 The complainant provided the SAPS with information that led to the arrest and conviction of suspects in a robbery case.

7.2 The SAPS offered a reward of R75 000.00 to a person who would provide it with information that would lead to the arrest and conviction of the suspects.

7.3 Investigating officers in this case are aware of the reward that was promised to the complainant.

7.4 SAPS failed to pay the reward to the complainant.

8. RECOMMENDATIONS


It is recommended in terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, 1994 that:

8.1 The SAPS should pay the complainant the sum of R75 000.00; and

8.2 In future the SAPS should desist from renegeing in its undertakings as this conduct could bring its image into disrepute.

9. MONITORING

The OPP will monitor the implementation of the above-mentioned recommendations on a quarterly basis.



ADV ML MUSHWANA

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

DATE:

Assisted by: MM Malatji: Senior Investigator

N Mukwevho: Limpopo Provincial Representative