LOOKING AFTER ONE'S OWN

Report on an investigation into allegations of nepotism and non-compliance with the Employment Equity Plan at the Drakenstein Municipality

Report No: 21 of 2012/13
INDEX

Executive summary 3

1. INTRODUCTION 6

2. THE COMPLAINT 6

3. POWER AND JURISDICTION OF THE PUBLIC PROTECTOR 7

4. THE INVESTIGATION 8

5. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION 9

6. EVALUATION OF THE EVIDENCE AND INFORMATION OBTAINED 23

7. LEGAL AND REGULATORY FRAMEWORK 26

8. RESPONSES TO THE PROVISIONAL REPORT AND ADDITIONAL SUBMISSIONS 31

9. CONCLUSION 35

10. FINDINGS 38

11. REMEDIAL ACTION 40

12. MONITORING 4

2
Executive Summary

(i) The Public Protector conducted an investigation into allegations of nepotism, regarding the appointment of certain employees at the Drakenstein Local Municipality (Municipality), and non-compliance with the Employment Equity Plan of the Municipality. Reference was made to the existence of a family relationship between certain appointees and incumbents in various components of the Municipality.

(ii) A Provisional Report on the investigation was issued on 3 December 2012 to the Municipal Manager of the Drakenstein Municipality and the Complainant. Both parties were afforded an opportunity to respond to the report. The complainant furnished his comments on 2 January 2013. A response was forwarded to the Public Protector by the Municipality on 14 December 2012.

(iii) The Public Protector makes the following findings:

(a) The allegation that there was favouritism in respect of the appointment of Mr Eric Klaasen, whose father Mr Willem Klaasen is employed at the Water Works Section, is not substantiated by the demonstrable evidence.

(b) The allegation that there was favouritism in respect of the appointment of Ms Yolanda Klaasen, whose father Mr Willem Klaasen is employed at the Water Works Section, is not substantiated by the demonstrable evidence.

(c) Mr A E Endley’s involvement in the practical test of his nephew, Mr George Endley, prior to the interview, was improper and amounted to non-compliance with section 2.3 of the Municipality’s Staffing Policy and Item 4 of the Code of Conduct applicable to municipal staff members.
found in Schedule 2 of the Systems Act, as he used his position to improperly benefit another person.

(d) The evaluation of the documentation in respect of the appointment of Mr George Endley shows discrepancies in that there were changes made to the score received by the candidate and it is not clear who the signatory was to the document. The failure on the part of Mr A E Endley to recuse himself from the recruitment process in accordance with the Municipal Policy amounted to maladministration. Mr Endley’s failure to disclose his relationship to the candidate whilst being aware of the Municipal Policy which prohibits the involvement of family members in the interview process of a relative, amounts to unethical conduct as he failed to disclose a conflict of interest.

(e) Mr L Williams is not the brother of Ms Lynne Williams as alleged and no evidence could be found of any improper conduct on Ms Williams’ part.

(f) The allegation that there was favouritism in the appointment of the Grade 3 Clerk in the Streets Section is not substantiated by the evidence.

(g) The allegation of favouritism on the part of the Senior Superintendent, in the appointment of an Access Controller: Civil Engineering (Cleaning Section) is not substantiated by the evidence.

(h) With regard to the allegation of non-compliance with the Employment Equity Plan of the Municipality, the evidence revealed that the Municipality is currently not meeting the numerical goals of its Employment Equity Plan. The Plan is in operation till 30 September 2013.

(i) The Municipality failed to comply with its Staffing Policy which requires it to employ proper records and document management systems during the
recruitment and "fast tracking" processes. This resulted in systemic deficiencies and thus amounts to maladministration.

(iv) The appropriate remedial action to be taken in terms of section 182(1)(c) of the Constitution is that the Municipal Manager must take urgent steps to:

(a) Ensure that the Municipality's Staffing Policy is revised to address the deficiencies relating to record and document management. This includes a review of all documentation presently being used during interviews as well as the weight to be attached to practical tests that are conducted prior to interviews. All staff members must be sensitized to the Staffing Policy after such revision.

(b) The processes of "fast tracking" by the Municipality should be added into the Staffing Policy. Similarly, full reasons should be reflected in appointment documents when a decision is taken to appoint a candidate who did not receive the highest score during the interview. This is to ensure that the process is documented and can be reviewed objectively;

(c) Introduce a system for all staff involved with interviews to confirm that they have knowledge of the Staffing Policy to prevent claims of ignorance at a later stage. In addition, staff involved in interviews should undergo training and sensitization in respect of what is expected of them during the interview process and in terms of the Staffing Policy.

(d) The Municipality should subject Mr A E Endley to an internal disciplinary process for acting in breach of the provisions of the Municipality's Staffing Policy; and;

(e) Ensure targeted and focused recruitment with a view to meeting the numerical goals of the Employment Equity Plan before the expiry thereof on 30 September 2013.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF NEPOTISM AND NON-COMPLIANCE WITH THE EMPLOYMENT EQUITY PLAN AT THE DRAKENSTEIN MUNICIPALITY

1. INTRODUCTION

1.1 "Looking after one's own" is a report of the Public Protector 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 Public Protector Act).

1.2 This report is submitted to Mr J Mettler, the Municipal Manager of the Drakenstein Municipality (the Municipality).

1.3 A copy of the report is also provided to the Complainant, Mr D Beukes, in terms of section 8(1) of the Public Protector Act.

1.4 The report relates to an investigation undertaken by the Public Protector following allegations of nepotism and non-compliance with the Employment Equity Plan of the Municipality by a member of the public, Mr D Beukes (the Complainant).

2. THE COMPLAINT

2.1 On 16 July 2010 the Public Protector received a complaint from the Complainant in which he alleged favouritism on the part of the Municipality in the appointment of certain persons.

2.2 The Complainant alleged that the persons indicated below, were appointed as a result of favouritism by family members who were already employed by the Municipality:
2.2.1 Mr Eric Klaasen, who was appointed as a general worker at the Municipality's Civil Engineering Services (Water and Sewerage), is the son of Mr Willem Klaasen, who is employed at the Water Works Section of the Municipality;

2.2.2 Ms Yolanda Klaasen, who was appointed as a general worker at the Department of Community Services at the Municipality, is the daughter of Mr Willem Klaasen indicated above;

2.2.3 Mr George Endley, who was appointed as a general worker at the Municipality's Civil Engineering Services (Water and Sewerage), is the nephew of Mr Anthony Endley who is the Senior Superintendent of the Water Works Department;

2.2.4 Mr Leon Williams who was appointed as a general worker in Civil Engineering Services (Streets Section), who is allegedly the brother of Lynne Williams who is employed in the recruitment and selection section of the Human Resources (HR) Department;

2.2.5 Favouritism on the part of the Senior Superintendent in the appointment of the Clerk, Grade 3 in the Streets Section;

2.2.6 Favouritism on the part of the Senior Superintendent in the appointment of an Access Controller: Civil Engineering (Cleaning Section);

2.3 A further allegation by the Complainant was that the Municipality failed to comply with its Employment Equity Plan.
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector was established in terms of Chapter 9 of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that the Public Protector has the power 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, to report on that conduct and take appropriate remedial action. It further directs that the Public Protector has additional powers prescribed in legislation.

3.3 The Public Protector’s operations are regulated by the Public Protector Act which mandates the Public Protector to investigate and redress maladministration and related improprieties in the conduct of state affairs and further mandates the Public Protector to resolve the disputes through conciliation.

3.4 The Municipality is an organ of state and its conduct amounts to conduct in state affairs, as a result this matter falls within the ambit of the Public Protector’s mandate.

4. THE INVESTIGATION

The investigation was conducted in terms of section 182 of the Constitution and section 7 of the Public Protector Act.
4.1 The Scope

4.1.1 The investigation referred to in this report was restricted to the period October 2003 to November 2011.

4.2 Methods of gathering evidence

The following methods of gathering and analyzing information were employed:

4.2.1 Interviews were conducted and meetings held with:

4.2.1.1 The Complainant;
4.2.1.2 The Human Resources Manager;
4.2.1.3 A Senior official of the Engineering Department;
4.2.1.4 The Superintendent of the Streets Section;
4.2.1.5 Senior Superintendent of Water Works;
4.2.1.6 Two officials from the Human Resources Department; and
4.2.1.7 The Senior Superintendent of the Streets Section

4.2.2 Documentation, correspondence and information requested and received from relevant officials and the Complainant were analysed.

4.2.3 Documents relating to the appointment of the various candidates were submitted by the Municipality and were examined by the Public Protector.

4.2.4 A copy of the Municipality’s Employment Equity Plan was considered.

4.2.5 Legislation and other prescripts.
5. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

5.1 Documents relating to all relevant posts were obtained and examined.

5.2 Several municipal officials were interviewed, amongst others the following:

5.3 Interview with the Human Resources Manager

5.3.1 An interview was conducted with the Human Resources Manager (HRM) on 23 March 2011. She explained the interview process followed at the Municipality as follows:

5.3.1.1 A request is received from a municipal department that a specific post must be advertised. The advertisement is signed by the HRM; the Municipal Manager and the municipal department representative.

5.3.1.2 A closing date is agreed upon for applications. Human Resources (HR) Department receives all the applications and captures it in a schedule which is sent to the municipal department for purposes of recommending names for final short listing.

5.3.1.3 Once these recommendations are received by the HRM, a meeting is arranged to table the list submitted by the municipal department. The parties present at this meeting include the HRM; the department representative and two union members who have observer status.

5.3.1.4 At this meeting the recommendations are considered and all parties are to agree on the final shortlist. The shortlisted candidates are then invited by the HR Department to an interview.
5.3.1.5 In some instances, there is a practical test conducted to determine whether the person is suited for the specific post. This test can take place before or during the formal interview process.

5.3.1.6 The municipal department provides the interview panel with a list of questions to be posed to the candidates. The interview panel consists of the same parties as those present at the final short listing. All parties, except the union members, are given a scoring sheet to score the candidates.

5.3.1.7 The successful candidate is decided on by the interview panel. The recommendation for the successful candidate to the post is decided on the basis of the scores on the scoring cards.

5.3.1.8 In instances where there is a dispute at any stage of the interview, which cannot be resolved, the matter is referred to the Municipal Manager who decides finally on the dispute, as the function of appointment is a delegated function which he holds.

5.3.2 The HRM further responded to the role of the union members during the interview process, specifically the allegation of influence by the unions. It was indicated that the union members only have observer status in the process. However, it later became apparent that the union had more than observer status as they were also allowed to ask questions in order to get clarity on a particular issue. They further have to agree to the fairness of the process and sign a document to confirm same. If the union members do not agree and or sign the document, the process is at a deadlock, so in essence the concerns of the union members have to be addressed.

5.3.3 It was indicated that there are instances that the department representative can make a recommendation as to who should be appointed as they have suitable knowledge to know who will be the ideal candidate. In these
instances, it could mean that the person who did not score the highest is appointed, and it may seem that there is a discrepancy as the best candidate on paper was not appointed. The HRM confirmed that there is no written record, for e.g. in a memorandum form, which encapsulates the reasons for the decision taken. The HRM indicated that the "yellow form" is used to note the decision, and reasons are not always noted thereon. An example of the confusion which can occur is discussed in paragraph 6.2.5 below, where a candidate was "fast tracked" into the position of general worker although he applied for a position as a truck driver.

5.3.4 The HRM was further requested to indicate the weight which was attached to the practical tests which were held in certain instances and responded by indicating that there is no specific weight attached to the test. Although in some cases it can be the deciding factor as it is used to determine the amount of persons to be interviewed.

5.3.5 The HRM indicated that the persons who conduct the interview from the Department and the HR offices, are not briefed as to what is expected from them. It is accepted that the persons are familiar with the interview processes and the relevant policies.

5.3.6 Members of the interview panel are not expected to specifically declare whether they are related to any persons being interviewed. The HRM stated that it is accepted that all persons are aware of this policy. At the time when the interviews referred to in this report were considered, there was no formal way of noting an interviewer’s assertion that he / she is not related to a candidate. This has subsequently been changed and the interviewers are now expected to sign a document indicating that they are in fact not related to the candidates.
5.4 The appointment of Mr Eric Klaasen, whose father, Willem Klaasen is employed at the Water Works Section of the Municipality

5.4.1 An examination of the appointment documents in respect of this allegation revealed that there had been 11 candidates shortlisted for the General Worker post at the municipal department of Water Works and Sewerage.

5.4.2 A practical test was conducted prior to the formal interview on 15 June 2009. This test was overseen by Mr A E Endley and Mr B K Erasmus, the senior superintendents for Water Works and Sewerage respectively. All candidates completed the practical test and were scored on four (4) categories. The scores were calculated by adding the total for each category, the final total being out of 35 marks.

5.4.3 A formal interview was conducted with all candidates on 22 July 2009. The candidates were interviewed by the Senior Superintendent of the Sewerage section, HR representatives, whilst three Union representatives were present.

5.4.4 At the formal interview all candidates were asked general questions on which they were scored. The interviewers gave all candidates the same score. During the Public Protector’s investigation when confronted with this anomaly, the two HR representatives, who were part of the panel members at the formal interview (indicated above), stated that the questions which were posed to the candidates were simple and merely required “yes” or “no” answers. The scores for the answers could be a 1 (one) for a “yes” answer or 0 (zero) for a “no” answer depending on the answer by the candidate. Both HR representatives had the same response in respect of the above.

5.4.5 Mr Eric Klaasen’s final score in the practical test was 28/35. He was one of four candidates that scored the second highest during the practical test. The
highest score obtained was 29/35. A total of seven candidates which included Eric Klaasen, were appointed at the end of the evaluation process.

5.5 The Appointment of Ms Yolanda Klaasen, whose father, Willem Klaasen (indicated above) is employed at the Water Works Section of the Municipality

5.5.1 An evaluation of the relevant appointment documents in respect of this allegation revealed that 10 candidates were shortlisted for the General Worker post at the municipal department of Community Services. Of these ten candidates, seven were recommended for appointment and six were eventually appointed, which included Ms Y Klaasen.

5.5.2 A formal interview was conducted with all candidates on 25 February 2005. The candidates were interviewed by the Department’s representative, Mr A van der Merwe; the HR representative; Ms W Philander and two Union representatives were present.

5.5.3 At the formal interview all candidates were asked general questions on which they were scored. The candidates received varying marks.

5.5.4 An evaluation of the evidence revealed that the candidates who were appointed were in fact the persons who had received the highest scores. Ms Y Klaasen scored 19/30 along with one other candidate who was also appointed. She obtained the sixth highest score.

5.6 The appointment of Mr George Endley, the nephew of Mr A E Endley who is the Senior Superintendent for Water Works at the Municipality

5.6.1 The documentation received from the Municipality showed that 11 candidates were shortlisted along with Mr George Endley for purposes of the
practical test and formal interview for a position as a general worker in the Sewerage Section, of which Mr B K Erasmus was the Senior Superintendent.

5.6.2 The documentation relating to this appointment revealed that Mr George Endley's practical test score sheet was undersigned by Mr B K Erasmus and Mr A E Endley, who according to the allegations by the Complainant is the uncle of the candidate.

5.6.3 The practical test was conducted prior to the formal interview on 15 June 2009. This test was undersigned, as indicated, by Mr A E Endley and Mr B K Erasmus, the senior superintendents for Water Works and Sewerage respectively. All candidates completed the practical test and were scored on four (4) categories. The scores were calculated by adding the total for each category, the final total being out of 35 marks.

5.6.4 The final score of Mr George Endley was a total of 28/35. He obtained the second highest score, along with three other candidates, the highest score having been 29/35.

5.6.5 Apart from the fact that the document was undersigned by Mr George Endley's uncle, the following discrepancies were noted from the document:

(i) It is not clear who in fact did the scoring between these two representatives.

(ii) For the evaluation in respect of the first aspect: listening skills, the candidate was given a score of “4” marks which was subsequently changed to a “5”.

5.6.6 The Public Protector thus conducted formal interviews with both Mr A E Endley, Senior Superintendent of the Water Works Section and Mr B Erasmus, Senior Superintendent of the Sewerage Sections respectively.
5.6.7 The interview revealed that there were in fact interviews conducted for both these sections on the same day, in addition to others. The candidates shortlisted for the Water Works and Sewerage departments conducted the practical tests together, which resulted in the two department superintendents overseeing the applicants, of which Mr George Endley was also a candidate.

5.6.8 During the interview with the Public Protector, Mr A E Endley discussed his part in the interview and selection process. This interview revealed the following:

(i) Mr A E Endley confirmed that he was in fact a party to the interview process for the General Worker post discussed above.

(ii) The following question was posed to Mr A E Endley:

"Are you aware of the policy that an interviewer is to recuse himself if he has a family member being interviewed?"

The response by Mr A E Endley was:

"I am aware of that[the policy]."

(iii) Upon further questioning, it was confirmed that Mr A E Endley is the uncle of Mr George Endley, the candidate which he evaluated alongside Mr Erasmus in the practical test.

(iv) It is worth noting that Mr A E Endley indicated that "...he did not choose him [George Endley]", as a candidate to be shortlisted for his department and he was consequently not appointed in his department, but that he was chosen
by Mr Erasmus for his Department as a justification for his presence at the practical test stage where Mr George Endley was tested.

(v) Further questioning during the interview regarding the value/ weight attached to the practical test resulted in Mr A E Endley indicating that the test itself could be the deciding factor in some cases. This is especially the case in the General Worker posts where the duties are mainly practical. He indicated that "he [MrEndley] is the main person at the practical test".

5.6.9 The Public Protector’s interview conducted with Mr B Erasmus confirmed Mr A E Endley’s statement that the candidate Mr George Endley was appointed and shortlisted for his department.

5.6.10 Mr B Erasmus could not give any clarity on who in fact scored the candidate, and confirmed that he was present at the practical test stage along with Mr AE Endley.

5.6.11 He further indicated that he was aware of the Municipality’s policy that family members may not be involved with the interview processes in instances where their family members are interviewed. He however indicated that he was not aware that Mr A E Endley had been related to any of the applicants, despite the fact that he shared a surname with one of the candidates.

5.6.12 It is therefore clear that Mr A E Endley contravened the Staffing Policy of the Municipality which requires all employees involved in shortlisting or interviewing to recuse themselves of all processes if their relatives apply for a post. Mr A E Endley did not only fail to recuse himself, he was party to the scoring as he signed the practical test scoring sheet.
5.7 The appointment of Mr L Williams who is allegedly the brother of Ms Lynne Williams who is employed in the HR Department

5.7.1 The documentation received from the Municipality in respect of this allegation showed that there were 13 candidates who were interviewed during this interview procedure for a post as a truck driver. Mr L Williams, the candidate which was allegedly favoured, applied for this post.

5.7.2 It is evident from the documentation that Mr L J Williams was in fact not successful in his application as a truck driver. However, one of the internal candidates which were moved from a general worker post to the vacant truck driver post caused an opening for a general worker to be appointed.

5.7.3 The HR Representative, Ms Lynne Williams, was interviewed and indicated that the Municipality also uses a process of “fast tracking” where a person can be appointed in the General Worker post, after it has become vacant due to the promotion of such general worker. It is however required that this person had in the past submitted an application for the General Worker post.

5.7.4 Ms Lynne Williams explained during the interview by the Public Protector that the Municipality advertises the General Worker posts only once yearly, after which the applicants for these posts are recorded in a database. Should the applicants come to a formal interview for another post, and they are unsuccessful, but there is a vacancy due to promotion of an internal candidate, the candidate can be “fast tracked” into this post. The proviso is that he / she is on the database and s/he qualifies according to his/her performance during the formal interview process.

5.7.5 It was confirmed by Ms Lynne Williams that Mr L Williams was a candidate for the truck driver post, he was “fast tracked” in this instance and further, he was on the database.
5.7.6 Ms Williams was questioned as to her knowledge and understanding of the Municipality’s Staffing Policy, specifically with regard to the position in instances when the interviewer is related to the candidate. She indicated that “usually if there are relatives of mine in any interviews, I excuse myself from interviews”. She was specifically questioned about whether she was related to any of the candidates in the interview process as indicated and she responded that “I am familiar with this shortlisting but both these Williams’ are not related to me as I indicated to my HRM”. Apart from the verbal submission by Ms Williams that she was not related to the candidate, she provided an affidavit attesting that she is in fact not related to the candidate.

5.7.7 In response to the question whether there were any documentation which noted that all the parties confirmed no relation to the candidates, she indicated that at the time of this interview, there was no such documentation. Ms Williams further provided an affidavit attesting that she is in fact not related to Mr L Williams, the candidate who was interviewed.

5.8 The allegation of favouritism on the part of the Senior Superintendent in the appointment of the Clerk, Grade 3 in the Streets Section

5.8.1 The documents received from the Municipality in respect of this post, show that there were both external and internal candidates which were interviewed. The candidates had to complete a formal interview as well as a practical typing test.

5.8.2 All the candidates’ scores were low in the practical test and a decision was taken on that basis that the post should be re-advertised.

5.8.3 A subsequent interview conducted in respect of the same post, revealed that there were six candidates which were recommended to be interviewed. Of
these six persons, three were at the previous interview, two internal candidates and one external candidate.

5.8.4 At these interviews the candidates had to complete a practical test which involved a typing test and computer knowledge as well as a formal interview.

5.8.5 A comparison of the test scores shows that the successful candidate scored 36% on her knowledge of computers and 92% for her accuracy in the same test. The latter scores are the second lowest score of all the candidates tested for this aspect.

5.5.6 In respect of the typing skills test, the successful candidate scored the third highest score overall for words typed per minute being twelve (12).

5.8.7 However, at the formal interview, the successful candidate scored the highest according to the score card, this being 13/14, the second highest being 8/14.

5.8.8 The successful candidate was thus an internal candidate who had previously been interviewed and who did not perform the best in the practical test, but scored the highest during the formal interview.

5.8.9 It is not clear from the documentation the weight assigned to either the formal interview and or the practical test. However, the interview with the HRM revealed that the Municipality has not assigned specific weights to the formal and or practical tests components. She agrees that this should be addressed in future.

5.8.10 The requirements for the post are clear, grade 12 or equivalent qualification; computer literacy and interpersonal skills. From the
documentation reviewed, it would seem that the candidate met the requirements.

5.9 The allegation of favouritism on the part of the Senior Superintendent in the appointment of an Access Controller: Civil Engineering (Cleaning Section)

5.9.1 The Complainant alleged that there had been favouritism in respect of appointment in this post. During an interview with the HRM on 31 January 2011, the HRM indicated that a moratorium had been placed on this post.

5.9.2 The candidates who were shortlisted for the position included the Complainant in this matter, an external candidate.

5.9.3 The moratorium was placed on the post after the formal interviews were conducted. The HRM indicated that there has to be an internal correction of the post levels before a candidate could be appointed. The position of Access Controller has not been filled to date according to the records of the Municipality.

5.10 The allegation that there is non-compliance with the Employment Equity Plan of the Municipality

5.10.1 The Municipality was requested to provide the Public Protector with their Employment Equity Plan which is presently in operation.

5.10.2 The Municipality provided the Public Protector with the Employment Equity Plan for the period 1 October 2008 up to and including 30 September 2013, thus indicating that the period of operation of the current Employment Equity Plan is still in operation. The Municipality thus has five years in which
to comply with the numerical targets set out in terms of the Employment Equity Plan.

5.10.3 In respect of non-compliance with the Employment Equity Plan the allegation was specifically that the Municipality failed to comply with the targets as set out in the Employment Equity Plan in respect of the appointment of "White" persons in the General Worker posts. The Public Protector accordingly focused on this aspect of the Employment Equity Plan.

5.10.4 The Public Protector considered the Employment Equity Plan provided and established the following:

(i) The General Worker employees were captured under “unskilled and defined decision making” as per the Employment Equity Plan. This category is however not only General Workers, but also includes other categories of employees such as security guards and other entry level posts.

(ii) The Employment Equity Plan differentiates between “Africans”; “Coloureds”; “Indians” and “Whites” as well as gender.

(iii) At the time of the commencement of the Employment Equity Plan, the total amount of “White” employees for the category “unskilled and defined decision making” was ten.

(iv) The Employment Equity Plan indicates that the numerical goals for the Municipality for the duration of the Employment Equity Plan in respect of the "White" employees under the category “unskilled and defined decision making” is 62 in total.
(v) The Municipality was requested to provide the Public Protector with the latest Employment Equity Plan i.e. for the period 1 October 2010 until 30 September 2011.

(vi) An analysis of workforce profile in respect of the "white" employees in the category "unskilled and defined decision making" reveals a total of 13.

(vii) It is evident that this is still not close to the numerical goals and targets as set out in the Employment Equity Plan during 2008.

5.10.5 The totals provided above show that the Municipality is not at present meeting the goals as per the Employment Equity report, however the period of the current Employment Equity Plan is up to and including 30 September 2013.

5.10.6 It should be noted that monitoring of compliance and progress regarding numerical targets in this regard fall within the functions of the Department of Labour and could in future be raised with that Department.

6. EVALUATION OF THE EVIDENCE AND INFORMATION OBTAINED

6.1 During the investigation and interviews conducted by the Public Protector, cognizance was taken of the processes and procedure at the Municipality in conducting an interview.

6.2 It became apparent that in instances of a vacancy of a general worker in a specific department, the HR Department forwards a schedule of possible candidates to the specific department. At this stage, the department
nominates an official to determine who will be forwarded for possible screening by the short-listing committee.

6.3 It was further noted that this schedule could contain in excess of 2000 names. The nominated person uses criteria such as age; gender; race etc. to decrease the volume of the list. S/he then selects “randomly” from the names left in the schedule. These names are then forwarded to a short-listing panel for selection of the candidates for a formal interview.

6.4 This “random” selection by the department representative is not documented at any stage. The criteria used to decrease the amount of persons in the schedules are not documented and not included in the policies of the Municipality. Furthermore the practice of using one person to do the selection for the short-listing committee creates a lacuna for possible future complaints.

6.5 As mentioned above, the Municipality also uses a process called “fast tracking” where a person can be appointed for instance in a General Worker post, after it has become vacant due to the promotion of such General Worker (with the proviso that this person had in the past submitted an application for the General Worker post).

6.6 As per the Staffing Policy of the municipality, there should be adequate record keeping of the selection processes and thus instances of “fast-tracking” should be motivated and recorded in a memorandum so as to clarify the position. In respect of the appointment of Mr L. Williams, this information was not recorded anywhere in the documentation provided, and it was only upon the questioning of Ms L. Williams that same became apparent. This is another instance where the Municipality should review their record keeping.
6.7 During the investigation it was noted that there are instances where the second highest scoring candidate is appointed instead of the highest scoring candidate, without any clear justification recorded. This could possibly create the impression of bias or unfair selection. The reasons for the decision to appoint despite the fact that the person was not the highest scoring candidate as per the document, should be motivated and encapsulated in a memorandum, so that it is apparent to a person who was not part of the interview process.

6.8 The practical tests which are used in the evaluation of candidates for most general worker (but also other) posts, are often the deciding factor as the questions posed to candidates during the formal interviews are general and it is possible that candidates score the same or very similar scores at the formal interview. Consideration should accordingly be given to attaching more weight to these tests.

6.9 In addition, the Municipality also has to closely monitor and document who assesses the test, the recording of scores and motivation for scores and evaluation thereof. As these processes inform the interviewing panel, it is important to put systems in place to ensure good practice, including prevention of conflict of interest or favouritism. It is evident from the evaluation of the process followed in the appointment of Mr George Endley that it is not clear from the documents used in the practical test which official had in fact scored the applicant and further who had made the changes to the scoring sheet of the candidate.

6.10 A point of concern is that most of the municipal officials that were interviewed by the Public Protector indicated that they have never been formally briefed in respect of the Staffing Policy and / or what is expected of them during the interview or at any stage prior to the interview. The staff should generally be sensitized to the Staffing Policy and if any changes are made to the Policy,
staff should be updated. Records should further be kept that persons conducting the interview are aware of the Staffing Policy and what is expected from them.

6.11 To the credit of the Municipality, since the investigation commenced certain measures have already been introduced, for example, a document is now to be signed by all interviewers prior to an interview indicating that they are in fact not related to any of the candidates being interviewed.

7. LEGAL AND REGULATORY FRAMEWORK

The regulatory framework within which this matter is to be assessed is as follows:

7.1 The Constitution

7.1.1. Section 195(1) (i) of the Constitution, which deals with Public Administration, provides as follows:

"Public Administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation."

7.2 The Local Government: Municipal Systems Act of 2000 (the Systems Act)

7.2.1 Section 50 of the Systems Act provides that local public administration is governed by the democratic values and principles embodied in section 195(1) of the Constitution.
7.2.2 It is further noted in section 51(m) of the Systems Act that a Municipality must establish and organize its administration in order to provide an equitable, fair, open and non-discriminatory working environment.

7.2.3 Section 69 of the Systems Act provides that the Code of Conduct contained in schedule 2 of the said Act applies to all municipal staff members. This Code provides, \textit{inter alia}, as follows:

(i) Item 2 of the Code of Conduct indicates among other aspects that the general conduct of any staff member should at all times include the performance of his or her functions of office in good faith; diligently, honestly and in a transparent manner. In terms of this Item the staff member is to act in such a way that the spirit and purport of section 50 of the Systems Act is promoted. The staff is further to act in a manner which avoids compromising the credibility and integrity of the Municipality. Finally, staff members are to act impartially and treat all people, including other staff members, equally without favour or prejudice.

(ii) Item 4 of the Code stipulates that a staff member may not use his/her position or privileges obtained for private gain or to improperly benefit another person. This Item further provides that the staff may not take a decision on behalf of the Municipality in which he/she or that staff member’s spouse, partner or business associate, has a direct or indirect personal or private business interest.

(iii) Item 14A of the Code of Conduct provides that a breach of this Code is a ground for dismissal or other disciplinary steps against a staff member who has been found guilty of such a breach.
7.3 The Employment Equity Act, 1998 (the Employment Equity Act)

7.3.1 The purpose of the Employment Equity Act as per section 2 is to achieve equity in the workplace by-

(i) The promotion of equal opportunity and fair treatment in employment through the elimination of unfair discrimination;

(ii) The implementation of affirmative action measures to redress the disadvantages in employment experienced by designated groups to ensure their equitable representation.

(iii) According to section 4, the Employment Equity Act is applicable to all employers with certain exceptions which are not relevant for purposes of this report.

7.3.2 A duty imposed upon all employers by the Employment Equity Act is the preparation of and implementation of an employment equity plan (section 13).

7.3.3 Section 20 of the Act provides for the employment equity plan and states among other things that the plan must be prepared and implemented which “will achieve reasonable progress towards employment equity in that employer’s workforce.” Section 20 of the Act further provides the requirements of an employment equity plan.

7.3.4 Section 42 of the Act enumerates the requirements for the assessment of compliance to the Act by a designated employer, which assessment is completed by the Director-General (Department of Labour) whilst section 43 deals with the review by the Director-General.

7.3.5 Section 44 of the Act empowers the Director-General to either approve the employer’s Employment Equity plan, or make certain recommendations in
writing to the employer. Section 45 finally states that the Director-General may refer an employer to the Labour Court where the employer has failed to comply with the recommendations of the Director-General as per Section 44.

7.4 The Staffing Policy of the Municipality

7.4.1 The Staffing Policy of the Municipality dated 12 October 2004 stipulates that it aims to achieve the following:

"2.1 Introducing fair and objective principles, procedures and guidelines for the recruitment, selection and placement of suitably qualified personnel;

2.2 Ensuring that the employer complies with legislative principles regarding recruitment, selection and placement of personnel as set out in relevant legislation and

2.3 In the absence of a nepotism policy all employees involved with short-listing; or

The interviewing process:-

- Must rescues(sic) [recuse] themselves of all processes listed above if they intend to apply for a post; or
- If their relatives apply for a post; or
- If no interest was declared upfront, such applications shall automatically be disqualified after verification is confirmed by at least three persons of the appointments or criteria committee and or the interview panel.
- The employees’ guilty of such misconduct will be subject to disciplinary action."
7.5 Nepotism

7.5.1 Nepotism is defined as;

“Favouritism shown to relatives or friends in appointing them to jobs”¹.

7.5.2 In Report No 11 dated 15 April 1999 the Public Protector remarked that:

“... while the employer’s choice of employment relationship is largely unfettered, there are a number of statutory curbs with regard to its selection of employees for the employment, for example the prohibition on the employment of certain minors etc. It is further accepted that the employer’s choice of employees is also meddled with where both the reality and the appearance of conflict of interest in employment should be avoided. The opinion is held that this is in particular the case where the salary, fees or compensation of such appointee is to be paid from public funds...”

“Appointments in government or the public service could, in my view, only be regarded as nepotism and would therefore be improper, should such an appointment be made with a view to favour a particular candidate because he/she is related to the person who makes or controls the appointment. However, in circumstances where a properly qualified candidate is appointed by means of proper procedures and in circumstances where there is no indication that such appointment was influenced in any way by another person in the public sector or service who is related to the applicant, the mere fact that the two people concerned are both employed by the state could not be regarded as a pointer to nepotism.”

¹ Oxford English Dictionary; Revised Fifth Edition; Edited by Lucinda Coventry with Martin Nixon
8. RESPONSES TO THE PROVISIONAL REPORT AND ADDITIONAL SUBMISSIONS

The Public Protector issued a Provisional Report on the matter investigated on 3 December 2012. The Provisional Report was presented to the Complainant and the City Manager of the Drakenstein Municipality. Both parties were provided with an opportunity to respond to the contents of the Provisional Report. The respective responses is presented and assessed below:

8.1 Response by the Complainant regarding the appointment of George Endley

8.1.1 The Complainant submitted that it is "...highly impossible that Mr B K Erasmus did not know that George and Mr A E Endley were family". Before his appointment as Senior Superintendent of Sewerage section he was working with Mr A E Endley and another brother of Mr A E Endley at Water Works section. When the practical test took place Mr B K Erasmus was supposed to verify whether George and Mr A E Endley are related or not." The Complainant further stated "[my] recommendation is that HR must oversee the practical evaluation of all the applications with relevant officials excluding from the departments but from engineering who have the necessary experience."

8.1.2 The Public Protector considered the above, but attention is directed to the fact that the investigation found no evidence to support the allegation that Mr B K Erasmus was aware of the relationship between the two parties despite the allegation that he had worked with Mr A E Endley for a substantial period. There was no duty on Mr B K Erasmus to verify the relationship between the parties. Mr A E Endley, as an employee of the Municipality and who was part of the interview process, was supposed to disclose this information. As far
as the suggestion that HR should also oversee practical evaluations, the feasibility thereof was not interrogated during the investigation. It is nevertheless proposed that the Municipality consider this matter when revising the Staffing Policy.

8.2 Response by the Drakenstein Municipality regarding the Appointment of George Endley

8.2.1 The Municipality indicated that steps will be taken against Mr A E Endley for his involvement in the appointment of Mr George Endley.

8.2.2 The Municipality further indicated that it is at present a requirement that an employee taking part in the recruitment process is required to declare any interest in writing, failing which the candidate will be disqualified. This policy has further been brought to the attention of all managers as well as the Trade Union representatives.

8.2.3 The Public Protector notes these comments, which are also discussed in paragraph 6.11 above.

8.3 Response by the Complainant regarding the appointment of Mr L Williams who is allegedly the brother of Ms Lynne Williams, who is employed in the HR Department

8.3.1 The complainant notes as follows:

"Lynn Williams is the daughter of Mr. Pompies Williams which reside in New Orleans Paarl. Mr. Pompies Williams are (sic) either Mr. Leon Williams uncle/ brother or he is related to Leon Williams parents who reside in Kiewiet Flats Amstelhof. Is (sic) can also be noted that Pompies Williams did stay in the same house where Mr. Leon Williams parents are staying."
8.3.1.1 The Complainant further avered that Ms Lynne Williams is the sister of Mr Lester Williams who was allegedly appointed along with Mr George Endley.

8.3.2 The Public Protector noted that the Complainant was not certain about possible family relations between Messrs Pompies and Leon Williams. The Public Protector required some basis for an allegation / complaint and cannot be expected to go on a “fishing expedition” in this connection. It was also not clear whether the Lester Williams referred to by the Complainant is Mr L J or Leon Williams. Nevertheless, as pointed out in paragraph 5.7.6 above Ms Williams confirmed during the investigation that she was not related to either Williams’ in connection with that recruitment.

8.3.3 The Complainant further noted that Mr Leon Williams was in fact an employee of the Municipality prior to his appointment as a General Worker after the “fast tracking” process discussed in this report. The Complainant alleged that he was charged for possible theft / misuse of Council property, but had resigned from the Municipality before disciplinary action could be taken against him in a matter. Thus, he did not appear before a disciplinary hearing and did not get any disciplinary record. Mr Leon Williams then re-applied to the Municipality as a General Worker as per the recruitment process highlighted in this report. The Complainant thus stated that the Municipality should put measures in place to prevent a recurrence of the situation.

8.3.4 The Public Protector in this regard noted that, in the initial written complaint submitted to the Public Protector, the Complainant stated that Mr Leon Williams was “departmentally charged for theft but was found guilty only for misuse of vehicle. He was demoted to general worker and had resigned after that incident.” In a subsequent consultation (to clarify the complaints) between the Complainant and the Public Protector South Africa, the complainant did not take the issue of Mr Williams’ re-employment further but
only raised the issue of “fast tracking” in respect of the appointment of Mr L Williams. The statements of the Complainant are therefore somewhat inconsistent. The Public Protector also does not have a complaint on record from the Complainant that there was a discrepancy in the re-appointment of Mr Leon Williams due to the fact that he was previously employed at the Municipality as is alleged at this stage. The statements by the Complainant under discussion in his response, was thus not the subject of investigation for the above-mentioned reasons. The Municipality should nevertheless consider including the issue of employment / re-employment of staff who have criminal or disciplinary records.

8.4 The response by the Municipality in respect of the allegation of non-compliance with the Employment Equity Plan

8.4.1 The Municipality pointed out that “white males” were not regarded as a target group in the Employment Equity Act and reference to that group can therefore not be a “target group” for preferential treatment and employment in any category. It further noted that “[i]t is true that we do not fully comply with our targets yet, but it is clear from the demographics of the organisation that we are fairly representative of the population we serve. The allegation in our opinion cannot [be] found to be true.”

8.4.2 The Public Protector noted that the Municipality conceded that targets have not fully been complied with. Accordingly, it stands by the finding that there is time in which the Municipality can meet the requirements as per the Municipality’s Employment Equity Plan and can thus not make a finding against the Municipality at this stage. Furthermore, it is reiterated that complaints relating to non-compliance with the Employment Equity Plan, can be submitted to the Director- General of the Labour Department and in turn the Labour Court.
8.5 General comments / responses by both the complainant and the Municipality

8.5.1 The Complainant was of the view that the Municipality should take measures to reform the appointment process and prevent corruption and afford all citizens an equal opportunity in its selection processes.

8.5.2 The Municipality also noted the shortcomings within the recruitment process (recording) especially in respect of the appointment of general worker posts and indicated that this process would be dealt with differently in future. It was stated that more care should be taken to record decisions and reasons for decisions as well as the status and weighing of the different parts of the assessment process. The Municipality confirmed that it is in the process of reviewing the Staffing Policy currently in place.

8.5.3 The Public Protector notes and commends the Municipality for the steps already taken by it in implementing the remedial action in accordance with paragraph 11.1 of this report.

9. CONCLUSION

9.1 With regard to the appointment of Mr Erik Klaasen, it was observed that there were six vacancies and he obtained the second highest score during the interview (with other candidates). However, no evidence indicated that his father, Willem Klaasen, had any influence or involvement in respect of his appointment.

9.2 With regard to the allegation of favouritism in the appointment of Ms Y Klaasen it was noted that the six candidates appointed to the vacant positions received the highest scores during the interviews; including Ms Klaasen. The investigation did not reveal any evidence that her father,
Willem Klaasen, had any influence or involvement in the process of her appointment. There were ten persons appointed at the end of this interview.

9.3 Regarding the appointment of Mr George Endley, the investigation revealed that Mr A E Endley is his uncle and he was in fact involved with the practical test of his nephew prior to his interview. Mr A E Endley indicated that he was aware that the Staffing Policy stipulated that he should not be involved with the interview process should a member of his family be interviewed. The interviews conducted with Mr Erasmus and Mr A E Endley could not shed light on who in fact scored the candidate, Mr George Endley. This anomaly in fact justifies perceptions of bias on the part of members of the public.

9.4 With regard to the allegation that there was non-compliance with the Employment Equity Plan of the Municipality, the available evidence revealed that the Municipality is not currently meeting the numerical goals of the Plan. However, the Plan is still in operation and the Municipality is cautioned to focus on meeting the targets by 30 September 2013. Specific issues relating to monitoring of compliance and progress on numerical targets could in future be raised with the Department of Labour.

9.5 The investigation revealed shortcomings on the part of the Municipality with regard to the regulation and recording of the selection for short listing of candidates for general worker posts. To this end, the Public Protector notes the following systemic deficiencies:

9.5.1 At the stage where the various municipal departments are provided with the schedule of applicants and requested to provide a shortlist, the Municipality has no record keeping process in place. It was clear from the evidence that the criteria used to decide on the shortlist by the various departments are not documented at any stage of the interview by the specific department. To this end it is not clear which persons are involved in deciding on the shortlist and or what criteria are used.
9.5.2 At the stage of the formal interview, whilst record is kept by the Municipality of the scores obtained by the various candidates, there is more often than not no record of the questions posed to these candidates and the criteria for scoring.

9.5.3 There is no weight attached to the practical tests undertaken by candidates, although it is the deciding factor in many of the General Worker post vacancies.

9.5.4 The role of the union members throughout the interview process is not clearly enumerated as it was indicated that they have an observer status, but it was later conceded that they have to agree on a specific candidate before the person can be appointed. This is arguably more than an observer status.

9.5.5 The investigation revealed that the most members of the interview panel were not briefed on what is expected of them in respect of the interview, nor was there sensitization in respect of the Municipality’s Staffing Policy.

9.5.6 The procedure relating to “fast tracking” which is used at the Municipality should be enumerated in the Staffing Policy in order for this procedure to be considered objectively.

9.5.7 At the time that the interviews in this specific investigation were conducted, the Municipality did not have any documentary evidence to confirm that members of the interview panel indicated that they were not related to any of the candidates or declaration of any similar conflict of interest. However, this has since been addressed.

9.6 The appointment process within the Municipality as described by the various individuals and the steps taken by the Municipality, further emphasizes the control measures in place to prevent any maladministration in the appointment process.
9.7 The legislation and the Staffing Policy of the Municipality require that action be taken against employees who are found guilty of nepotism.

9.8 In respect of the Employment Equity Plan, all employers are required to have an Employment Equity Plan. In instances where there is non-compliance with the Employment Equity Plan, the Director-General and in turn the Labour Court could deal with a transgression on the part of the employer in failing to submit an Employment Equity Plan.

10. FINDINGS

The Public Protector makes the following findings:

10.1 The allegation that there was favouritism in respect of the appointment of Mr Eric Klaasen, whose father Mr Willem Klaasen is employed at the Water Works Section, is not substantiated by the demonstrable evidence.

10.2 The allegation that there was favouritism in respect of the appointment of Ms Yolanda Klaasen, whose father Mr Willem Klaasen is employed at the Water Works Section, is not substantiated by the demonstrable evidence.

10.3 Mr A E Endley’s involvement in the practical test of his nephew, Mr George Endley, prior to the interview, was improper and amounted to non-compliance with section 2.3 of the Municipality’s Staffing Policy and Item 4 of the Code of Conduct applicable to municipal staff members found in Schedule 2 of the Systems Act, as he used his position to improperly benefit another person.
10.4 The evaluation of the documentation in respect of the appointment of Mr George Endley shows discrepancies in that there were changes made to the score received by the candidate and it is not clear who the signatory was to the document. The failure on the part of Mr A E Endley to recuse himself from the recruitment process in accordance with the Municipal Policy amounted to maladministration. Mr Endley’s failure to disclose his relationship to the candidate whilst being aware of the Municipal Policy which prohibits the involvement of family members in the interview process of a relative amounts to unethical conduct as he failed to disclose a conflict of interest.

10.5 Mr L Williams is not the brother of Ms Lynne Williams as alleged and no evidence could be found of any improper conduct on Ms William’s part.

10.6 The allegation that there was bias in the appointment of the Grade 3 Clerk in the Streets Section is not substantiated by the evidence.

10.7 The allegation of favouritism on the part of the Senior Superintendent, in the appointment of an Access Controller: Civil Engineering (Cleaning Section) is not substantiated by the evidence.

10.8 With regard to the allegation of non-compliance with the Employment Equity Plan of the Municipality, the evidence revealed that the Municipality is currently not yet meeting the numerical goals of its Employment Equity Plan. The Plan is however still currently in operation till 30 September 2013.

10.9 The Municipality failed to comply with its Staffing Policy which requires it to employ proper records and document management systems during the recruitment and “fast tracking” processes. This resulted in systemic deficiencies and thus amounts to maladministration.
11. REMEDIAL ACTION

The Public Protector directs that the appropriate remedial action to be taken in terms of section 182(1) (c) of the Constitution is that the Municipal Manager must take urgent steps to:

11.1 Ensure that the Municipality's Staffing Policy is revised to address the deficiencies relating to record and document management. This includes a review of all documentation presently being used during interviews as well as the weight to be attached to practical tests that are conducted prior to interviews. All staff members must be sensitized to the Staffing Policy after such revision;

11.2 The processes of "fast tracking" by the Municipality should be added into the Staffing Policy. Similarly, full reasons should be reflected in appointment documents when a decision is taken to appoint a candidate who did not receive the highest score during the interview. This is to ensure that the process is documented and can be reviewed objectively;

11.3 Introduce a system for all staff involved with interviews to confirm that they have knowledge of the Staffing Policy to prevent claims of ignorance at a later stage. In addition, staff involved in interviews should undergo training and sensitization in respect of what is expected of them during the interview process and in terms of the Staffing Policy;

11.4 The Municipality should subject Mr A E Endley to an internal disciplinary process for acting in breach of the provisions of the Municipality's Staffing Policy; and

11.5 Ensure targeted and focused recruitment with a view to meeting the numerical goals of the Employment Equity Plan before the expiry thereof on 30 September 2013.
12. **MONITORING**

The Public Protector will:

12.1. Require an implementation plan from the Municipal Manager indicating the manner in which he intends to implement the remedial action to be taken in paragraph 11 above within 30 days from the date of this report;

12.2 Require a progress report within 30 days after receipt of the implementation plans referred to above; and

12.3 Monitor the progress made in this regard over regular intervals.


date: 04/02/2013

Assisted by: Adv Ruthven van Rensburg, Provincial Representative: Western Cape
Ms Rugshana Fredericks, Investigator: Western Cape