SPECULATIVE BILLING

Report on an investigation into an allegation of incorrect billing for municipal services against the Ba-Phalaborwa Municipality

Report No: 8 of 2012/13
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### Executive Summary

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Executive Summary

(i) Mr Keith Macvicar, (the Complainant) Manager of Sefapane Lodge (the Lodge), a tourist and accommodation entity in Phalaborwa, submitted a complaint against the Ba-Phalaborwa Municipality (the Municipality) on 6 December 2010. In his complaint he alleged that the Municipality overbilled the Lodge in respect of water and electricity consumption and failed to take readings in order to properly calculate such consumption.

(ii) The Complainant alleged further that despite numerous requests to the Municipality for an investigation into the Lodge’s accounts that were affected by the overbilling, the Municipality did not conduct an investigation.

(iii) The Public Protector made the following findings:

(a) The Municipality failed to comply with Section 95 of the Municipal Systems Act of 2000 (the Municipal Systems Act) and section 20 (2) of the Ba-Phalaborwa Municipality Water Services By-Law (the By-Law) which required it to monitor the recording of correct meter readings in respect of the Lodge’s water consumption. This resulted in unreliable readings and the incorrect billing of water consumption and therefore amounts to maladministration;

(b) The Municipality failed to comply with section 21(3) (a) and (b) of the By-Law which provides the prescribed formulae to calculate the estimated consumption and which confirms that the estimated consumption should only occur if there are compelling circumstances that prevents the recording of actual readings. This amounts to maladministration;

(c) The non-compliance with section 95 of the Municipal Systems Act and sections 20(1) and (2) of the By-Law is found to have had a detrimental effect on both the Complainant, as the consumer who was not properly
billed for the services rendered and the Municipality, as there was no proper collection of revenue in this regard;

(d) The actual amount potentially overreached and under-collected could not be determined by this investigation due to the incorrect and unreliable meter readings and applicable tariff periods;

(e) The Municipality’s investigation into the complaint of the Lodge was not conducted diligently and effectively as contemplated by section 95 of the Municipal Systems Act. As a result the Municipality failed to deal with the complaint properly and objectively and this amounts to maladministration; and

(f) The failure by the Municipality to verify the allegation of meter tampering made by the contractor is improper and amounts to maladministration.

(iv) The appropriate remedial action to be taken in terms of section 182 (1) (c) of the Constitution is that the Executive Mayor of the Municipality must:

(a) Conduct an audit of the actual consumption of services in respect of the Lodge’s account in accordance with the Municipal Systems Act and ensure that the actual readings are recorded to determine the actual consumption and applicable tariff to be charged for such consumption;

(b) In the event that it experiences difficulties in allocating specific readings and calculating the consumption for specific periods and applicable tariffs, take all necessary steps to ensure compliance with section 20 and 21 of the By-Law and calculate the correct amount owed by the Lodge for the services that were rendered to it in accordance with the average consumption for the specific periods in question; and

(c) Take steps to ensure that its relationship with the contractor is properly managed to make certain that it (the Municipality) complies with its statutory duties in this regard.
REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF INCORRECT BILLING FOR MUNICIPAL SERVICES AGAINST THE BA-PHALABORWA MUNICIPALITY

1. INTRODUCTION

1.1 “Speculative Billing” is a report of the Public Protector in terms of section 182(1) (c) of the Constitution, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

1.2 The report is submitted to the following persons in terms of this report:

1.2.1 The Executive Mayor of Ba-Phalaborwa Municipality and
1.2.2 The Municipal Manager of Ba-Phalaborwa Municipality.

1.3 A copy of the report is also provided to Mr Keith Macvicar, (the Complainant) in terms of the Public Protector Act.

1.4 The report relates to an investigation into an allegation of incorrect billing for municipal services against the Ba-Phalaborwa Municipality (the Municipality).

2. THE COMPLAINT

2.1 The Complainant, a Manager of Sefapane Lodge (the Lodge), a tourist and accommodation entity in Phalaborwa, submitted a complaint against the Municipality on 6 December 2010. In his complaint he alleged that the Municipality overbilled the Lodge in respect of water and electricity consumption and failed to take readings in order to properly calculate such consumption.

2.2 The Complainant alleged further that despite numerous requests to the Municipality for an investigation into the Lodge’s accounts that were affected by the overbilling, the Municipality did not conduct an investigation.
2.3 The alleged failure by the Municipality to conduct an investigation and rectify the improper billing has resulted in prejudice to the Lodge.

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

4.1 Key sources of information retrieved
The investigation was conducted in accordance with section 182 of the Constitution and sections 6 and 7 of the Public Protector Act and comprised the following:

4.1.1 Enquiries with the Municipality through its various officials;
4.1.2 Meetings with the Complainant and relevant officials of the Municipality; and
4.1.3 Inspections in loco conducted at the Lodge in Phalaborwa on two occasions.

4.2 Summary of the investigation process and evidence obtained during the investigation

4.2.1 Subsequent to receiving the complaint, written enquiries were made with the Municipality. The Municipality undertook to conduct an internal investigation and report its findings to the Public Protector within a reasonable time.

4.2.2 On 1 February 2011 a letter was emailed to the Public Protector in which the Municipality responded as follows:

"we have since examined Sefapane Lodge account after the complain, to date we found nothing wrong with the account, the readings captured are correct, the tariff applied is correct, we were not able to establish or detect anything wrong with the account unless if they can submit to you anything to the contrary.

We apologise for the inconvenience caused by us not responding in time and hope this is in order." Sic

The letter was signed on behalf of the Chief Financial Officer, Tondy Nkuna.

4.2.3 In light of the above it was concluded that the Municipality did not deal with the issues raised in the complaint and a meeting, to be facilitated by the Public Protector, was scheduled with the Municipality and the Complainant for 24 February 2011.
4.2.4 At the meeting the Municipality was represented by the Accountant for Revenue, Mr Oupa Hlongwane. During the meeting the Complainant made new allegations against specific officials of the Municipality who were not present at the meeting. It was agreed that the meeting be postponed to 8 March 2011 to allow these officials to be present at the meeting and allow them an opportunity to respond to the allegations made by the Complainant.

4.2.5 On the 8 March 2011, the Complainant attended the meeting with Ms Leandri van Vollenstee, the Financial Manager at the Lodge. Mr Oupa Hlongwane and Ms Lario Malungane, Chief Accountant for Credit Control represented the Municipality. Ms Dorah Ramoshaba represented KWCRS, an entity that was contracted by the Municipality to record the readings for water and electricity consumption in Phalabowa. The meeting was facilitated by the Public Protector.

4.2.6 The Complainant stated the following during his presentation:

4.2.6.1 Since March 2010 the Lodge has paid an average amount for consumption however, the Municipality alleged that it was in arrears with an in excess of R 350 000 (Three Hundred and Fifty Thousand Rands). He was of the view that the Lodge was being overreached in terms of the Municipal billing system.

4.2.6.2 The Municipality billed the Lodge an average of R 3 000 (Three Thousand Rand) per month in respect of water consumption up to April 2010. In May 2010 the Municipality submitted a bill in the amount of R 22 676.76 (Twenty Two Thousand Six Hundred and Seventy Six Rand and Seventy Six Cents). The table below illustrates the billing patterns by the Municipality that led to the dissatisfaction of the Complainant.

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<td>3127.49</td>
<td>3050.45</td>
<td>3479.89</td>
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4.2.6.3 The Lodge's consumption is seasonal, since, as a lodge that provides accommodation to tourists, it is able to measure its consumption against the services that were offered and paid for a specific period. It was noted that the Complainant did not provide details to substantiate this but made reference to the May 2010 consumption of 1986 kilolitres of water compared to the August 2010 consumption of 2 257 kilolitres with the bill for the latter month being far less than that of May 2010 despite the annual tariff hike in August that year.

4.2.6.4 There was no problem with the billing before March 2010. The Municipality had admitted in an email sent to him by an official called Simon, on 14 October 2010, that it billed the Lodge incorrectly and that it undertook to correct this. As a result the Lodge's account was credited with an amount of R 18 000.

4.2.7 Mr Hlongwane responded to the Complainant's allegations on behalf of the Municipality as follows:

4.2.7.1 They became aware of the concerns raised by the Complainant in November 2010.

4.2.7.2 When he received the complaint, he personally went out to verify whether or not the readings were correct and found them to be correct. The consumption between March 2010 and November 2010 cannot be the same due to, among other things, the tariff increase. He further stated that when an account is high, the contributing factor is always excessive consumption.

4.2.7.3 He inspected the meter with a meter reader from the Municipality and not from the contractor (KWCRS) at the time of his investigation on 10 December 2010. Neither the Complainant nor an employee from the Lodge was invited or present at the time of his inspection of the meters.

4.2.7.4 When the Municipality captures information, the system requires an amount of consumption to determine the correct billing to be made. The system itself estimates the readings if they are not provided. The readings are received immediately and fed into the system which credits and corrects the average
consumption for the next billing period. Municipal billing is based on average consumption, therefore, neither the Complainant nor the Lodge was prejudiced as these were automatically corrected and the account was credited in the following months.

4.2.7.5 When the meter readers from KWCRS took readings in January 2011, they found that two water metres were removed. On 25 February 2011, accompanied by Dora Ramoshaba, the representative of KWCRS, this finding was confirmed.

4.2.8 Mr Hlongwane was asked to clarify why the readings were not taken in November 2010 and he replied that the readings were in fact taken but were not captured into the system. No plausible reason was furnished as to why this was not done.

4.2.9 He added that the account for May 2010 was correct, but the account for July 2010 was incorrect. Therefore, the Lodge owed the Municipality the difference between the incorrect and correct amounts. The reason for this, he stated, was that the programmers were preparing the tariffs for the next financial year which commenced on 1 July 2010.

4.2.10 Inspection of water metres

4.2.10.1 As a result of the fact that the Complainant vehemently denied removing the water meters as alleged by the Municipality (paragraph 4.2.6.5 above) an inspection in loco was conducted by the Public Protector to verify the allegation.

4.2.10.2 The meeting was therefore adjourned so that the inspection in loco visit could be undertaken immediately at the Lodge to verify the Municipality’s allegation that the water meters were removed. From the inspection, no evidence was found to support this allegation. It was decided that the water meter reader of KWCRS who had informed the Municipality of the alleged discovery should be requested to explain or point out the exact location of where the water metre was allegedly removed.
4.2.10.3 The second inspection in loco visit resumed on 15 March 2011. The water metre reader was present along with the Complainant and Mr Hlongwane. He pointed to a spot next to an existing metre as seen in the photograph below (KWCRS 1), next to his feet. He alleged that the two metres were located there, but had now been removed. We requested that the members of the technical team from the Municipality dig up the area to see if the layout of the water pipe beneath would reveal that there were metres previously positioned there. Subsequent to this, all present, including Mr Hlongwane, agreed that there was no evidence of meters being positioned there and therefore no evidence of such being removed. Picture KWCRS 3 reflects the same area after digging, with the same picture KWCRS 2.

KWCRS 1.
Evidence revealed that only one meter was there and had been there all the time. Which can be seen in this picture below.
4.2.10.4 Other metres in and around the premises of the Lodge were inspected and were found not to have been tampered with.

4.3 Other documents were made available to the Public Protector by the Municipality, and additional filed documents from the Lodge were perused. These related mainly to accounts rendered by the Municipality, the applicable tariffs as well as readings ostensibly taken from the meters in question. These documents will be referred to and discussed in more detail in paragraph 6 below.

5. LEGAL AND REGULATORY FRAMEWORK

5.1 The Local Government: Municipal Systems Act 32 of 2000 (the Municipal Systems Act)

5.1.1 Section 74(1) of Municipal Systems Act prescribes that a municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself which complies with the provisions of the Municipal Systems Act and the Municipal Finance Management Act and any other legislation.

5.1.2 Section 95 of the Municipal Systems Act provides that a municipality must, within its financial and administrative capacity:

.....

(d) where the consumption of services has to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems;

(e) ensure that persons liable for payments receive regular and accurate accounts 20 that indicate the basis for calculating the amounts due;

(f) provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;

(g) provide accessible mechanisms for dealing with complaints from such 25
persons, together with prompt replies and corrective action by the municipality; and

(h) provide mechanisms to monitor the response time and efficiency in complying with paragraph (g)

5.1.3 Section 101 of the Municipal Systems Act provides that the occupier of the premises in a municipality must give an authorised representative of the municipality or of a service provider access at all reasonable hours to the premises in order to read, inspect, install or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service.

5.2 The Water Services By-law, 200 of the By-laws for the Ba-Phalaborwa Local Municipality (the By-Law)

5.2.1 The By-law provides for the supply and metering of water supply in the area.

5.2.2 Section 20 (1) provides that the engineer (defined as the engineer of the Municipality, or any person authorised by him) must provide a metering device designed to provide either a controlled volume of water, or an uncontrollable volume of water, to a customer.

5.2.3 Section 20 (2) provides that the Municipality must, at regular intervals, measure the quantity of water supplied through a measuring device designed to provide an uncontrolled volume of water.

5.2.4 Section 21 (2) provides that where water supplied by the municipality to any premises is in any way taken by the customer without the water passing through any measuring device provided by the municipality, the municipality may, for the purpose of rendering an account, estimate, in accordance with subsection (3) the quantity of water supplied to the customer during the period that water is so taken by the customer.

5.2.5 Section 21 (3) provides for the basis of the estimate referred to above.
5.2.6 Section 21 (4) states that *nothing in these by-laws shall be construed as imposing on the municipality an obligation to cause any measuring device installed by the engineer on any premises to be measured at the end of every month or any other fixed period, and the municipality may charge the customer for an average consumption during the interval between successive measurements by the measuring device.* (Own emphasis)

6. EVALUATION OF THE EVIDENCE OBTAINED DURING THE INVESTIGATION

6.1 It is common cause that the Municipality does have a tariff policy in place which is reviewed annually;

6.2 It is not disputed that the Complainant, at all times, provided the Municipality with full access to the water and electricity meters at the Lodge so that it or its appointed service provider could record the consumption readings.

6.3 It is also not disputed that the Complainant raised objections with the Municipality regarding the billing charges of the lodge and that the Municipality investigated the matter as stated and in fact conducted by Mr Hlongwane in December 2011. The findings or outcome of the investigation, as contained in the Municipality’s letter dated 1 February 2011, were confirmed by Mr Hlongwane himself in person during the meeting of 8 March 2011 and at which he was present with Ms Lario Malungane, the Complainant and Ms Leandri Van and Ms Dorah Ramoshaba.

6.4 The Municipality conceded that it did not always load the information collected from meter readings, on the system, and therefore relied on estimated readings. There was no reasonable explanation given as to why, in the present case, estimated readings were relied on instead of actual readings which were indeed obtained by the meter readers. This was in contravention of the provisions of Section 95 of the Municipal Systems Act referred to above;

6.5 From the documents obtained from the Municipality, it appeared that readings were done on all the water metres between the months of April 2010 and October 2010.
The following table illustrates the hand-written readings taken/recorded for the period April 2010 to October 2010.

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6.6 These readings, if indeed recorded correctly, suggest that there was no movement in respect of water consumption in respect of metre number 190, which remained at the same reading of 5537 kilolitres throughout the sample period. Even when the Public Protector team did the inspection of the metres on 8 and 23 March 2011 respectively, the same reading was recorded in respect of this metre.

6.7 These readings reveal that there was an abnormal reading in respect of metre number 1 and therefore these may have been estimations of total kilolitres consumed and not actual readings.

6.8 The Complainant did not produce concrete evidence to suggest that the Municipality overreached the Lodge with a specific amount apart from making a comparison of the monthly bills and relying on the average consumption that the Lodge was billed for until the bill increase to an extraordinarily high amount than usual. In addition, they did not rely on actual readings and the tariff applied prior to March 2010 and the readings and tariff applied thereafter.
6.9 By the Municipality’s own admission, it has not always loaded the actual readings recorded but has relied on estimated consumption. It is difficult to understand why this was done when the readings were in fact recorded and made available to the Municipality as required by section 95 of the Municipal Systems Act. As mentioned above, the Municipality did not have an explanation to justify its conduct in this regard.

6.10 The allegation made by the Municipality that two metres were removed from the premises of the Lodge was unsubstantiated as apparent from the inspection in loco conducted by this office and at which Municipality and the metre reader who made the allegation, was present. The Municipality relied on unconfirmed information provided by its contractor and despite its own investigation conducted at the Lodge in December 2010 Mr Hlongwane accepted the allegation.

6.11 Access to the Lodge was made possible at all times. On both occasions during which this office visited the Lodge access was granted even though controlled by a security guard. The other metres that are in the yard behind a security gate could also be accessed through the Lodge’s main entrance, or by requesting such from the maintenance officer who is always on the premises. There seems to be no justification in the Municipality choosing to use estimates to bill the Lodge instead of recording the actual readings that were taken.

6.12 There are measuring devices in place at the Lodge, as provided for by section 20 of the By-law. These measuring devices were, except for one, found to be in perfect working order during the inspection in loco.

6.13 There was no evidence to support the allegation that the Lodges tampered with the measuring devices that could provide good reason for the Municipality to justify estimated consumption as contemplated by section 21 (2) of the By-law.

6.14 The estimated consumption was not done in accordance with the prescribed formulae in section 21(3) (a) and (b). An assessment of the By-laws and Municipal Structures Act confirm that estimated consumption should only occur if there are compelling circumstances that prevents the recording of actual readings.
6.15 It therefore begs the question as to whether or not it would amount to fruitless and wasteful expenditure if the Municipality engages the services of a meter reader who renders an account to the Municipality for that service and then disregards the meter reader’s actual readings at the expense of individual consumers.

7. RESPONSE TO THE PUBLIC PROTECTOR’S PROVISIONAL REPORT

7.1 Section 7(9) of the Public Protector Act, 1994, provides that:

“If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.”

7.2 The Public Protector therefore resolved to issue a provisional report on the investigation to the Executive Mayor of the Ba-Phalaborwa Municipality, and the Municipal Manager of the Ba-Phalaborwa. A copy of the report was also issued to the complainant, Mr Keith Macvicar. The Provisional Report was distributed as a confidential document to provide the recipients thereof and the individuals implicated therein an opportunity to respond to its contents.

7.3 No response was received from the complainant and the Executive Mayor.

7.4 The Municipal Manager, Dr S S Sebashe, furnished the Public Protector with a response on behalf of the Municipality, which, apart from indicating that the Municipality would correct the situation of the water and electricity meters and pass credits accordingly, did not dispute the contents of the provisional report. The findings and remedial action accordingly stand as contained in the provisional report.
8. FINDINGS

The Public Protector accordingly makes the following findings:

8.1 The Municipality failed to comply with Section 95 of the Municipal Systems Act and section 20 (2) of its Water Services By-Law which required it to monitor the recording of correct meter readings in respect of the Lodge’s water consumption. This resulted in unreliable readings and the incorrect billing of water consumption and therefore amounts to maladministration;

8.2 The Municipality failed to comply with section 21(3) (a) and (b) of the By-Law which provides the prescribed formulae to calculate the estimated consumption and which confirms that the estimated consumption should only occur if there are compelling circumstances that prevents the recording of actual readings. This amounts to maladministration;

8.3 The non-compliance with section 95 of the Municipal Systems Act and sections 20(1) and (2) of the By-Law is found to have had a detrimental effect on both the Complainant, as the consumer who was not properly billed for the services rendered and the Municipality, as there was no proper collection of revenue in this regard;

8.4 The actual amount potentially overreached and under-collected could not be determined by this investigation due to the incorrect and unreliable meter readings and applicable tariff periods;

8.5 The Municipality’s investigation into the complaint of the Lodge was not conducted diligently and effectively as contemplated by section 95 of the Municipal Systems Act. As a result the Municipality failed to deal with the complaint properly and objectively and this amounts to maladministration; and

8.6 The failure by the Municipality to verify the allegation of meter tampering made by the contractor is improper and amounts to maladministration.
9. REMEDIAL ACTION

The appropriate remedial action to be taken in terms of section 182 (1) (c) of the Constitution is that the Executive Mayor of the Municipality must:

9.1 Conduct an audit of the actual consumption of services in respect of the Lodge’s account in accordance with the Municipal Systems Act and ensure that the actual readings are recorded to determine the actual consumption and applicable tariff to be charged for such consumption;

9.2 In the event that it experiences difficulties in allocating specific readings and calculating the consumption for specific periods and applicable tariffs, take all necessary steps to ensure compliance with section 20 and 21 of the By-law and calculate the correct amount owed by the Lodge for the services that were rendered to it in accordance with the average consumption for the specific periods in question; and

9.3 Take steps to ensure that its relationship with the contractor is properly managed to make certain that it (the Municipality) complies with its statutory duties in this regard.

10. MONITORING

The Public Protector will:

10.1 Require an action plan from the Executive Mayor of the Municipality indicating the manner in which the remedial action in paragraph 8 above will be implemented with within 30 days from the date of the final report;

10.2 Require a progress report from the Mayor on the implementation of the remedial action referred to in paragraph 8 above within two months from the date of the final report; and
10.3 Monitor the progress made by the Municipality in this regard regularly.

ADV T N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 28/09/2012

Assisted by: Mr S H Samuel, Provincial Representative: Limpopo
Mr T Malope, Investigator: Limpopo