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. 2 of 2020/21

ISBN No 978-1-990942-68-6

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR BILLING AND
IMPROPER PREJUDICE BY THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY
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Executive Summary

(i) This is my report as the Public Protector, issued 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, 23 of 1994 (Public Protector Act).

(ii) This report communicates my findings and appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of irregular billing and improper prejudice by the City of Tshwane Metropolitan Municipality (the CoT) against Mrs Gerda van Schalkwyk (the Complainant).

(iii) The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

(iv) In the main, the complaint was that: 1) the CoT had unduly delayed to provide the Complainant with accurate billing; and 2) that the undue delay had caused the Complainant to suffer improper prejudice.

(v) Based on an analysis of the allegations, I identified the following issues to inform and focus this investigation:

(a) Whether the CoT had unduly delayed to provide the Complainant with accurate water billing and if so, whether the Complainant’s excessive water account could have been avoided if regular billing was taken; and

(b) Whether the Complainant suffered prejudice as a result of the conduct of the CoT.

(vi) The investigation process commenced with an attempt to mediate between the parties to endeavour to resolve the dispute through mutual agreement. When the mediation process failed, a formal investigation, conducted through perusal of documents,
meetings and interviews with the Complainant and relevant officials of the CoT as well as inspection of all relevant documents and the analysis and application of all relevant laws, policies, and related prescripts, followed.

(vii) Key laws and policies taken into account to help me determine if there had been an undue delay, gross negligence and maladministration by the CoT and if the Complainant suffered improper prejudice, were principally those imposing administrative standards that should have been upheld by CoT in managing the account of the Complainant. Those are the following:


b) The Public Protector Act No 23 of 1994;

c) The Municipal Systems Act 32 of 2000 (the MSA);

d) The City of Tshwane Metropolitan Municipality Credit and Debt Collection Policy approved on 30 August 2012; and

e) Case of Argent Industrial Investment (Pty) Ltd vs Ekurhuleni Metropolitan Municipality case 17808/2006.

viii. Having considered the evidence uncovered during the investigation, as against the relevant regulatory framework, the complaint received as against the concomitant responses by the CoT, I make the following findings:
(a) Regarding whether the CoT had unduly delayed to provide the Complainant with accurate water billing and if so, whether the Complainant’s excessive water account could have been avoided if regular billing was taken:

(aa) The allegation that the CoT unduly delayed to provide the Complainant with accurate water billing is substantiated.

(bb) My investigation revealed that between 12 January 2015 and 02 October 2015, the CoT failed to issue the Complainant with accurate water consumption bills.

(cc) My investigation further revealed that the CoT’s officials recorded monthly water meter readings, but failed to provide the accurate billing to the Complainant. Had the CoT issued accurate and regular bills to the Complainant, she could have attended to the invisible and underground water leakage on her property and avoided the excessive billing.

(dd) It was noted that the Complainant’s water meter was not situated on the property, but nearly 40 metres away from the property. The meter is situated in the street behind the Complainant’s property. Furthermore the leak was on the Complainant’s property, but was underground which was not visible to the Complainant. Due to the fact that the leak was underground, the Complainant could not have known or realised that water was being lost. Had the CoT provided regular and accurate accounts, the Complainant could have picked up the water loss and rectified same. It was noted that when the Complainant received her actual account on 2 October 2015 with the high bill, she investigated and discovered the internal leak which was repaired within three (3) weeks from the date on which the leakage was discovered.

(ee) The conduct of the CoT was in violation of section 195(1)(a)(b)(d) and (f) of the Constitution and section 95 of the MSA.
(ff) Such conduct also constitutes improper conduct in state affairs as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(b) Regarding whether the Complainant suffered prejudice as a result of the conduct of the CoT:

i. The allegation that the Complainant suffered prejudice as a result of the conduct of the CoT is substantiated.

ii. The almost seven (7) month period that it took the CoT to provide accurate and regular billing had prevented her from establishing that she had an internal leak on the property and had delayed her from utilizing remedies to rectify the leak. The CoT also charged her interest on the account to the amount of approximately R30 000.00 and the leaked water was also charged at the highest step of the sliding scale tariff. The CoT has a discretion to provide financial relief or write off the account. Even though the CoT had given the Complainant a 50% discount, she still suffered financial prejudice amounting to approximately R130 000.00 for water lost through the undetected leakage.

iii. The conduct of the CoT resulted in improper prejudice suffered by the Complainant as envisaged in section 182(1) of the Constitution and improper prejudice as envisaged in section 6 (4)(v) of the Public Protector Act.

ix. The appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remedying the improper conduct in state affairs and maladministration referred to in this report, is the following:
The City Manager must:

A) Within one (1) month of the date of this report tender a written apology to the Complainant for the CoT’s failure to provide her with accurate and regular statements of her account; and

B) Prepare a submission setting out the reasons of the debt to Council, including this report, for consideration for the outstanding debt of this account to be written off in terms of the CoT Credit and Debt collection policy.

The Municipal Council must:

C) Consider taking a resolution on this matter within sixty (60) business days from the date of receiving the submission of the City Manager referred to in paragraph (B) above, together with a copy of this report.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR BILLING AND IMPROPER PREJUDICE BY THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

1. INTRODUCTION

1.1. This is my report as the Public Protector issued 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, 23 of 1994 (the Public Protector Act).

1.2. The report is submitted in terms of section 8(1) of the Public Protector Act to the following persons:

1.2.1. The Executive Mayor of the City of Tshwane;

1.2.2. The Speaker of the City of Tshwane;

1.2.3. The City Manager of the City of Tshwane, and

1.2.4. The Complainant, Mrs Gerda van Schalkwyk.

1.3. This report relates to my investigation into the irregular billing by the City of Tshwane (the CoT) and the improper prejudice suffered by Mrs van Schalkwyk.

2. THE COMPLAINT

2.1. The complaint was lodged by Mrs Gerda van Schalkwyk (the Complainant) on 18 December 2018 due to the alleged excessive water charges that she received from the CoT and the CoT’s alleged failure to provide her with regular accurate billing for her water consumption.
2.2. The Complainant alleged that:

2.2.1. Her account number with the CoT was 5006797366 and that she was billed water estimates for almost 200 days from 5 January 2015 to 22 July 2015. On 5 January 2015, her daily consumption was 4.74 kl per day that escalated to 26.52kl per day with the reading on 22 July 2015. Her last statement was recorded on 2 July 2015 and on 2 October 2015, ninety two (92) days, she received a statement of account, with actual water readings of an amount of R167 900.81;

2.2.2. Upon realising that the water usage was out of her normal monthly water consumption, she considered other reasons for the excessive consumption. The water meter was situated almost 40 meters in the street behind the property. After her initial investigation, the Complainant obtained the services of a plumber who does leak detection on properties. The leak detection was done on 4 November 2015 and the leak was found and repaired. The leak was underground, hence the Complainant had no knowledge thereof. The Complainant had acted on the CoT's municipal account received on 2 October 2015 and the leak was detected and repaired in 33 days of receipt of the account;

2.2.3. It was only as a result of the CoT's actual water consumption invoice dated 2 October 2015 that brought her attention to the leak. She submitted furthermore that had she received accurate billing from the CoT, she would have realised that there was a leak on the property and she would have repaired same within 33 days; and

2.2.4. She ended up with a water bill of R258 796.00 during 14 December 2015. She lodged a dispute with the CoT and received 50% relief which left her with a huge bill in excess of R130 000.00 to pay.
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) 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 as regulated by national legislation –

(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,

(b) to report on that conduct; and

(c) to take appropriate remedial action".

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 In the Constitutional Court, (in the matter of Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016), Chief Justice Mogoeng stated the following with own emphasis, when confirming the powers of the Public Protector:
3.5.1 The remedial action taken by the Public Protector has a binding effect, "When remedial action is binding, compliance is not optional, and whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences" (para 73);

3.5.2 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);

3.5.3 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (para 67);

3.5.4 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);

3.5.5 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (para 69);

3.5.6 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (para 70);

3.5.7 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (para 71);
3.5.8 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (para 71(c));

3.5.9 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d));

3.5.10 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (para 71(e));

3.6 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017), the Court held as follows:

3.6.1 The Public Protector has power to take remedial action, which include instructing the Members of the Executive including the President to exercise powers entrusted on them under the constitution where that is required to remedy the harm in question (para 82);

3.6.2 The Public Protector, in appropriate circumstances, have the power to direct the president to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective (paras 85 and 152);

3.6.3 There is nothing in the Public Protector Act or Ethics Act that prohibit the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4)(c)(ii) of the Public Protector Act (paras 91 and 92);
3.6.4 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (para 100 and 101):

(a) Conduct an investigation;
(b) Report on that conduct; and
(c) To take remedial action.

3.6.5 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings (para 104);

3.6.6 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (para 105).

3.6.7 The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector’s observations constitute *prima facie* findings that point to serious misconduct (paras 107 and 108);

3.6.8 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (para 112);

3.7 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute ‘special circumstances’, some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and / or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation; whether the prejudice suffered by the complainant persists; whether
my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitute 'special circumstances' depends on the merits of each case.

3.8 The institution mentioned in this report is an organ of state and its conduct amounts to conduct in state affairs, as a result the complaint falls within the ambit of the Public Protector's mandate. Accordingly, the Public Protector has the power and jurisdiction to investigate and take appropriate remedial action in the matter under investigation. The Public Protector's power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties in this investigation.

4. **THE INVESTIGATION**

4.1. **Methodology**

4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2. **Approach to the investigation**

4.2.1. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amounts to maladministration or improper conduct?
4.2.1.4 In the event of improper conduct or maladministration what would it take to remedy the wrong occasioned by the said maladministration or improper conduct?

4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination made on what happened on a balance of probabilities. In this particular case, the factual enquiry principally focused on whether or not the CoT acted improperly in the delay in proving the Complainant with actuate billing? The Public Protector also had to determine if the conduct of the CoT had improperly prejudiced the Complainant.

4.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the CoT or organ of state to prevent maladministration and prejudice. In this case, key reliance was placed on legislation, prescripts and policies that regulate the standard that should have been met by the CoT to ensure that it acted fairly and responsibly and that the Complainant was not improperly prejudiced.

4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a Complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the CoT or organ of state complied with the regulatory framework setting the applicable standards for good administration.

4.2.5. During the investigation process, I issued a notice in terms of section 7(9)(a) of the Public Protector Act (Notice) to the CoT on 9 December 2019 to afford the CoT an opportunity to respond to the Public Protector's provisional findings. The CoT responded to the section 7(9)(a) Notice on 16 January 2020, which is referred to later in this report.
4.3 Based on the analysis of the allegations, I identified the following issues to inform and focus this investigation:

4.3.1. Whether the CoT had unduly delayed to provide the Complainant with accurate water billing and if so, whether the Complainant’s excessive water account could have been avoided if regular billing was taken; and

4.3.2. Whether the Complainant suffered prejudice as a result of the conduct of the CoT.

4.4 The Key Sources of information

4.4.1 Documents

4.4.1.1 The Complainant’s CoT accounts dated 12 January 2015 and 2 October 2015;

4.4.1.2 A letter dated 31 July 2018 from the CoT to the Complainant;

4.4.1.3 The CoT’s response to the Alternative Dispute Resolution (ADR) hearing dated 25 July 2019;

4.4.1.4 Section 7(9)(a) notice issued to the CoT dated 9 December 2019; and

4.4.1.5 The CoT’s response to the section 7(9)(a) notice dated 16 January 2020.

4.4.2 Interviews/ Meetings conducted

4.4.2.1 An ADR hearing held on 16 May 2019. The following people were in attendance: the Complainant; Mr Joubert van Wyk (the Complainant’s advisor); Ms Constance Matlou of CoT’s Utility Services; Mr Thivhulawi Nyambeni from the CoT; Mr WG James, the CoT’s Deputy Director Finance; Mr DG Lekota, the CoT’s Revenue Finance and Mr Elias Mako from the CoT.
4.4.3 Correspondence sent and received

4.4.3.1 Correspondence between my investigation team and officials from the CoT; and
4.4.3.2 Correspondence between my investigation team and the Complainant.

4.4.4 Legislation and other prescripts

4.4.4.1 The Constitution;

4.4.4.2 The Public Protector Act;

4.4.4.3 The Municipal Systems Act 32 of 2000 (the MSA).

4.4.4.4 The City of Tshwane Metropolitan Municipality Credit and Debt Collection Policy approved on 30 August 2012; and

4.4.4.5 Case of Argent Industrial Investment (Pty) Ltd vs Ekurhuleni Metropolitan Municipality case 17808/2006.

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether the CoT had unduly delayed to provide the Complainant with accurate water billing and if so, whether the Complainant's excessive water account could have been avoided if regular billing was taken:

Common cause issues

5.1.1 The Complainant received an accurate account of her water bill on 12 January 2015. Based on the actual water meter reading of 5 January 2015, the daily water consumption was 4,74kl per day. On 26 August 2015, the water consumption had
escalated to 50 kl/day. The next accurate account that was issued by the CoT was on 2 October 2015, approximately 263 days later, this was the actual water meter reading of 26 August 2015 by the CoT. (own emphasis)

5.1.2. When the CoT submitted an accurate account on 2 October 2015, the Complainant, on receipt of the high bill, investigated and discovered an underground leak on the property. This leak was repaired on 5 November 2015, 33 days after the accurate account was submitted by the CoT.

5.1.3. The total water loss was 8 310kl at a total cost of R212 712.74. Furthermore; the leaked water was charged at the highest step of the sliding scale water tariff and the CoT charged interest on the account.

Issues in dispute

5.1.4. The issue for my determination is whether the CoT had unduly delayed to provide the Complainant with accurate water billing and whether such excessive water account could have been avoided if regular billing was taken. The Complainant’s submission was that had she received regular/frequent billing, she would have realised that there was a leak on the property and would have rectified same.

5.1.5. By a letter dated 31 July 2018 from the CoT to the Complainant, the CoT stated, inter alia, that they had confirmed the dispute received for investigation and that the high consumption of water occurred inside the premises due to the leakage which remains the responsibility of the Complainant, hence there were debits of R166 210.34 levied on the property dated 2 October 2015 and the amount of R81 916.78 that was levied on the invoice dated 3 November 2015. The internal leak was fixed and the report was submitted by the Complainant’s plumber to the CoT. As a result, a 50% discount was granted from the period 6 January 2015 to 27 October 2015. The same procedure was also determined on sanitation.
5.1.6. The CoT advised that if the internal leak occurred inside the property, it should be noted that the owner of the property, in terms of the CoT by-laws, is responsible for the maintenance of the internal water reticulation on the property.

5.1.7. Based on the above, an alternative dispute resolution (ADR) session was held on 16 May 2019 by my Investigation team with the following in attendance: the Complainant; Mr van Wyk, the Complainant’s advisor; Ms Matlou; Mr Nyambeni; Mr WG James, the CoT’s Deputy Director Finance; Mr DG Lekotaand and Mr Mako. In essence, the Complainant stated, inter alia, that on 12 January 2015, she received an actual account from the CoT, thereafter, nearly 263 days (2 October 2015) later, she received her next actual account with a huge water bill of about R250 000.00. On investigation by her plumber, they discovered a leak underground on her property. When the matter was reported to the CoT, the only remedy that was provided to the Complainant was a 50% discount which still left her with a huge amount of about R126 000.00.

5.1.7.1. She submitted that in terms of the MSA, she should have received regular and accurate billing. This leak was repaired within a reasonable time by the Complainant when it was discovered. The Complainant has made payments and still owed the CoT about R36 000.00 at the date of this Report. The CoT advised, inter alia, that upon receipt of the complaint, it gave the Complainant a discount of 50%. The CoT confirmed that in terms of the by-laws, the Complainant is responsible if the water leak occurred in her property. The CoT advised that it works in a regulated environment and cannot just write off accounts. The only people that can write off accounts is Council which will be based on a report submitted by CoT’s officials. The CoT also advised that customers are also entitled to approach the CoT requesting actual accounts. With regard to estimated billing, the CoT works on a calendar and the CoT is divided into areas with each area being read at a different time. The CoT confirmed that it was unacceptable for estimate billing to go on longer for three months. The meeting could not reach any resolution. My office proceeded to adjudicate on the matter.
5.1.8. The CoT provided a response to the ADR hearing on 25 July 2019 to my office and submitted eight (8) annexures in support of its response. The following documents were submitted: Credit control and debt collection policy; rates tariff by-laws; Meter Track (Meter readers recorded readings); SAP systems meter reading results; water IBIS job card report; and outcome of the comments from the Water Department. The letter from the CoT, compiled by Mr Ronny Shilenge, the Divisional Head: Revenue Management stated, *inter alia*, that according to the billing section, the discrepancy on the inspectors’ readings, i.e. the meter readers’ records and the readings captured on the CoT’s SAP system, was due to a missing digit. The water reading included four (4) digits instead of five (5). This then resulted in the insertion of manual estimations for the period January 2015 to June 2015.

5.1.9. A copy of the CoT’s meter reading history for the Complainant’s property (19 Krige Lane, Irene) was perused. It was noted that meter readings were conducted by COT’s meter readers in the months that the Complainant received estimates.

5.1.10. A copy of the CoT’s water loss report dated 13 June 2016 compiled by Ms Hilda Fest, the CoT’s Senior Administrative Officer: Commercial Water Loss Management was perused. The report stated, *inter alia*, that the Complainant was brought under the wrong impression of what the actual readings was, due to estimated readings being billed while actual readings on meter track were available from 2 February 2015 until 24 June 2015. The Complainant was advised that the CoT has a procedure to establish if there is an internal leak and there are conditions to submit a claim on CoT’s insurance.

*Application of the relevant legal prescripts*

**The Constitution**

5.1.11. Section 195 of the Constitution enjoins the CoT to ensure efficiency and effectiveness in its administration as a public entity. It specifically provides that public
administration must be governed by democratic values and principles enshrined in the Constitution, including the following principles:

"(a) a high standard of professional ethics must be promoted and maintained;
(b) efficient, economic and effective use of resources must be promoted;
(d) services must be provided impartially, fairly, equitable and without bias;
(f) Public administration must be accountable…"

5.1.12. When conducting its business, the CoT is expected to promote and maintain a high standard of professionalism ethics and its administration is also expected to be efficient, economic and it must promote the effective use of its resources. The CoT had human resources (Meter Readers) that were conducting actual readings, but it appears that the information was not being processed correctly within the CoT units in order for the Complainant to receive accurate and regular billing.

5.1.13. The CoT had recorded actual readings in that period, but had failed to provide the Complainant with the accurate readings.

The Municipal Systems Act No 32 of 2000

5.1.14. Section 95 of the MSA provides for the Municipal customer care and management. It states that:

"Customer care and management
95. In relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity—
(a) …;
(b)…;
(c)…;
(d)…;"
(e) ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due…”

5.1.15. In this case the Complainant did not receive regular or accurate billing in the period that estimates were done.

*The City of Tshwane Metropolitan Municipality Credit and Debt Collection Policy approved on 30 August 2012*

5.1.16. The CoT adopted a policy on credit and debt collection on 30 August 2012. It provides that:

“… **10.5 LEAKAGES ON PROPERTIES**

- If the seepage/leakage is on the customer’s side of the meter, the customer will still be responsible for the payment of the metered services supplied to the property.

- Where leakages on the consumer’s side are found and repaired by the consumer, he or she can submit proof of repair costs and the amount of excessive consumption to the Municipality, who may, at its sole discretion provide financial relief. Insurance may be maintained for this purpose or the extent of financial assistance may be limited at the discretion of the Chief Financial Officer in the Municipality’s budget.

- The customer is responsible for controlling and monitoring his or her consumption or usage of services…”

5.1.17. The Complainant was paying according to estimates provided by the CoT. The CoT did not provide regular and accurate billing for a period longer than three (3) months. It was not possible for the Complainant to monitor her consumption as the CoT was providing her with estimates for nearly eight (8) months. The CoT should take into consideration that even thought there was meter reading done the CoT failed to provide regular and accurate accounts.
Case law

5.1.18. In the case of “Argent Industrial Investment (Pty) Ltd vs Ekurhuleni Metropolitan Municipality case 17808/2016” Judge AJ Yacoob at paragraph 15 of the judgement stated the following:

“... It is not the applicant’s duty to read meters, determine what its consumption is, and be ready to pay for that consumption whenever the respondent gets around to asking for payment, whenever in the future that may be. The respondent has a duty to read the meters and invoice for consumption, at its convenience, but at reasonable intervals...” Own emphasis added.

5.1.19. It was not reasonable for the Complainant to receive estimates for a period that was longer than three months as this resulted in her not establishing that there was an internal leak under her property which was not visible. This resulted in her receiving the huge bill which caused her to suffer financial prejudice.

Response to my Notice in terms of the provisions in terms of section 7(9)(a) of the Public Protector Act:

5.1.20. On 9 December 2019, I signed off and subsequently issued to the CoT a section 7(9) (a) notice of the Public Protector Act, with the view to afford the CoT an opportunity to respond to the allegations against them, particular in relation to the role the CoT played in the matter.

5.1.21. On 16 January 2020, the CoT responded as per letter below:
Dear Sir

RESPONSE TO NOTICE OF SECTION 7(9)(a) OF THE PUBLIC PROTECTOR ACT 23 F 1994: NOTICE ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR BILLING AND IMPROPER PREJUDICE BY THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY - VAN SCHALKWYK G A 19 KRIGE LANE IRENE ACCOUNT 5006797366

In response to your letter dated, 9 December 2019. The following clauses from the Water Supply By-Laws have reference:

Chapter III, Part 3, 23 (7),

"Nothing in these by-laws contained may 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 during any other fixed period, and the Municipality may estimate the quantity of water supplied during any period in an interval between the successive measurements of the measuring device and render an account to a customer for the quantity of water so estimated."

Chapter III, Part 3, 26,

"A customer is not entitled to a reduction in the amount payable for water wasted of for water losses in a water installation."

Authorisation to pass credits on accounts where water leaks existed and meter readings were not obtained or manually changed was approved by the Chief Financial Officer on 21 April 2016 and was stopped 12 February 2019 for to write off 50% has no basis in terms of the Water Bylaw, thus no longer valid. The customer already received 50% on the amount that has been levied on the account based on the document.

The Water Department together with the Finance Department cannot recommend any further discount and the customer remain responsible for the water consumed.

Below screen print of location of leakage and receipt of plumber confirming the removing of paving to expose the burst pipe.
Report of the Public Protector on an investigation into allegations of Irregular billing and improper prejudice
The customer acknowledged debt for the down payment of the debt which is still outstanding with, R36 725.94.

We hope you find the above in order.

Benno Shilenge
DIVISIONAL HEAD: REVENUE MANAGEMENT

On request, this document can be provided in another official language.
5.1.22. I further refer to CoT’s email below:

From: Hilda H.L. Fest
Sent: 03 June 2016 09:31 AM
To: Riana Le Roux <RianaLR@TSHWANE.GOV.ZA>
Cc: Nanette Van Veenhuyzen <NanetteDB@TSHWANE.GOV.ZA>; Emily Mathabathe <EmilyMa@TSHWANE.GOV.ZA>; Benita van Rede van Oudtshoorn <BenitaRvQ@TSHWANE.GOV.ZA>; Neva Jansen Van Rensburg <NevaJVR@TSHWANE.GOV.ZA>
Subject: FW: Deferral, acc 5006797366, 19 Krige Lane, Stand 181/R, Irene
Importance: High

Good morning Riana

Enquiry on the outcome of this investigation refers.

Please find attached a spreadsheet with analysis of consumption trend.

Region 4 has indicated that a leak was repaired for 20 King Str, Irene on 12 October 2015 on position 1 of the water meter connection, therefore on the service pipe on the upstream towards the meter and could therefore not influence the consumption through the meter.

It is noted that the customer was brought under the wrong impression of what the actual water consumption is due to that estimated readings was billed while actual readings on Meter Track was available from 2 February 2015 until 24 June 2015. Customer could have noted already from 28 January 2015 that high water consumption is experienced. It is not possible for this Division to establish what the reason is for the higher consumption that was experienced from 28 January 2015 to 23 November 2015 as we have no control over how much water is being used on a private property.

All work done at this property is listed on the attached spreadsheet and according to Region 4 the work done on 12 October 2015 was on the supply pipe before the meter that serves 20 Krige Lane and could therefore not influence the consumption through the meters of both 19 and 20 Krige Lane.

It must be noted that an owner of a property is, in terms of the City’s Water Supply By-Laws, responsible for the maintenance of the internal water reticulation on a property. Customers is advised that should they have repaired an internal leak that assistance is provided by the CoT for residential properties with an internal leak. Attached please find the procedure to establish if there is an internal leak and conditions to submit a claim on CoT Insurance are contained in the attached annexure H.

It needs to be mentioned that the meter is a mechanical instrument and can only register flow when water passes through it. All water meters purchased and installed by the City of Tshwane comply with the required metrological standards in accordance with SABS 1529. In accordance with the National Trade Metrology Regulations as well as our Water By-laws, the testing of the water meter is the only acceptable method of determining meter accuracy. Should customers have reason to believe that the metered consumption is not a true reflection of their use, they are advised to request a water meter test. The meter will be sent to an external accredited laboratory for testing after the customer submit the completed application form to the Finance Division.

Please find attached the procedure to apply for a meter test as well as the necessary application form that can be used for future purposes.

The Division is of the opinion with the information that is available on the CoT systems that the actual readings for M# 36036928 are an accurate record of the water consumed at the premises and that the customer is therefore liable for the water consumed.

Should the customer has any further enquiries about the leak that was repaired on 12 October 2015 they can visit the Water Distribution Offices of Region 4 that is situated at 3 Piel Brahmaan Str, Lyttelton Manor.

Regards

Hilda Fest
Senior Administrative Officer:
Commercial Water Loss Management

CITY OF
TSHWANE

Water and Sanitation Division | 1st Floor | Room G115 | Capital Towers North | 225 Madiba Street Pretoria | PO Box 440 | 0001 | www.tshwane.gov.za

Tel: 012 358 9019 | Fax: 086 5349 787 | Email: tap@tshwane.gov.za

IT'S MY RESPONSIBILITY
TO PAY MY MUNICIPAL ACCOUNT IN FULL, ON TIME.

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Conclusion

5.1.23. Based on the evidence gathered, it can be concluded that the CoT did not comply with applicable legal prescripts in promptly providing the Complainant with accurate bills.

5.1.24. The response by the CoT does not explain why the Complainant did not receive regular and accurate billing, even though according to their system (meter track) as per the CoT internal email of 3 June 2016, actual reading was available.

5.1.25. Even though there is no obligation on the CoT in terms of clause 23(7) of its Water Supply by-laws to measure the meters monthly or during any fixed period and further that the CoT may estimate the quantity of water supplied and render an account based on the estimate, they are still not absolved of their statutory obligation to render regular and accurate accounts. Evidence before me indicated that the CoT also procured service providers to take meter readings at the Complainant’s house during the period in issue, but it did not record it in her statement of account. The passing of about eight (8) months between the rendering of accurate accounts to the Complainant even if same was available to the CoT was not reasonable and not in line with the CoT’s obligations in terms of section 95 of the MSA.

5.1.26. Furthermore, the CoT failed to consider that the leak was an internal leak not visible to the Complainant, which she had no control over.

5.2. Regarding whether the Complainant suffered prejudice as a result of the conduct of the CoT:

Common cause issues

5.2.1. The total water loss as a result of the leakage on the Complainant’s property was 8 310kl at a total cost of R212 712.74. The CoT gave the Complainant a 50%
discount and she was left with an outstanding account of over R130 000.00 at the
date of this notice.

Issues in dispute

5.2.2. The Complainant argued that she suffered financial prejudice to the amount of about
R130 000.00 as a result of the CoT’s undue delay to provide her with accurate
statements of account. She indicated that she could not detect the leakage as it was
underground and not visible, but had the CoT issued actual, instead of estimated
water readings, she could have become aware and repaired the said underground
leakage within a reasonable time.

5.2.3. The CoT could not provide valid reasons why estimate billing was done when it was
noted by this office that the CoT’s meter readers had conducted readings during the
period when the Complainant was sent estimate accounts.

5.2.4. The CoT did not dispute that that Complainant suffered prejudice, but advised that
the decision to write-off billing can only be taken by Council. Furthermore, the CoT
credit and debt policy allows at the sole discretion of the CoT for financial relief to be
provided to customers.

6. FINDINGS

Having considered the evidence uncovered during the investigation against the
relevant regulatory framework, I hereby make the following findings:
6.1. Regarding whether the CoT had unduly delayed to provide the Complainant with accurate water billing and if so, whether the Complainant’s excessive water account could have been avoided if regular billing was taken:

6.1.1. The allegation that the CoT unduly delayed to provide the Complainant with accurate water billing is substantiated.

6.1.2. My investigation revealed that between 12 January 2015 and 02 October 2015, the CoT failed to issue the Complainant with accurate water consumption bills.

6.1.3. My investigation further revealed that the CoT’s officials recorded monthly water meter readings, but failed to provide the accurate billing to the Complainant. Had the CoT issued accurate and regular bills to the Complainant, she could have attended to the invisible and underground water leakage on her property and avoided the excessive billing.

6.1.4. It was noted that the Complainant’s water meter was not situated on the property, but nearly 40 metres away from the property. The meter is situated in the street behind the Complainant’s property. Furthermore the leak was on the Complainant’s property, but was underground which was not visible to the Complainant. Due to the fact that the leak was underground, the Complainant could not have known or realised that water was being lost. Had the CoT provided regular and accurate accounts, the Complainant could have picked up the water loss and rectified same. It was noted that when the Complainant received her actual account on 2 October 2015 with the high bill, she investigated and discovered the internal leak which was repaired within three (3) weeks from the date on which the leakage was discovered.

6.1.5. The conduct of the CoT was in violation of section 195(1) (a)(b)(d) and (f) of the Constitution and section 95 of the MSA.
6.1.6. Such conduct also constitutes improper conduct in state affairs as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.2. Regarding whether the Complainant suffered prejudice as a result of the conduct of the CoT:

6.2.1. The allegation that the Complainant suffered prejudice as a result of the conduct of the CoT is substantiated.

6.2.2. The almost seven (7) month period that it took the CoT to provide accurate and regular billing had prevented her from establishing that she had an internal leak on the property and had delayed her from utilizing remedies to rectify the leak. The CoT also charged her interest on the account to the amount of approximately R30 000.00 and the leaked water was also charged at the highest step of the sliding scale tariff. The CoT has a discretion to provide financial relief or write off the account. Even though the CoT had given the Complainant a 50% discount, she still suffered financial prejudice amounting to approximately R130 000.00 for water lost through the undetected leakage.

6.2.3. The conduct of the CoT resulted in improper prejudice suffered by the Complainant as envisaged in section 182(1) of the Constitution and improper prejudice as envisaged in section 6 (4)(v) of the Public Protector Act.

7. REMEDIAL ACTION

The appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remedying the improper conduct in state affairs and maladministration referred to in this report, is the following:
7.1. The City Manager must:

7.1.1. Within one (1) month of the date of this report tender a written apology to the Complainant for the CoT’s failure to provide her with accurate and regular statements of her account; and

7.1.2. Prepare a submission setting out the reasons of the debt to Council, including this report, for consideration for the outstanding debt of this account to be written off in terms of the CoT Credit and Debt collection policy.

7.2. The Municipal Council must:

7.2.1. Consider taking a resolution on this matter within sixty (60) business days from the date of receiving the submission of the City Manager referred to in paragraph (7.1) above, together with a copy of this report.

8. MONITORING:

8.1. The Public Protector must be advised on the CoT’s planned action in respect of the remedial action to be taken, indicating timelines, within thirty (30) days of the date of this report.

8.2. Unless the remedial action taken by the Public Protector are reviewed and set aside by a Court of law, compliance is not optional and same must be complied with within the stated period.

ADV. BUSISWE MKHWEBANE
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA
DATE: 20/09/2020