



PUBLIC PROTECTOR  
SOUTH AFRICA

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**CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF VIOLATION  
OF THE EXECUTIVE ETHICS CODE BY THE MEMBER OF THE EXECUTIVE  
COUNCIL OF THE WESTERN CAPE PROVINCIAL GOVERNMENT FOR HEALTH,  
DR NOMAFRENCH MBOMBO**

## 1. INTRODUCTION

- 1.1 This is a closing report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution), section 3 of the Executive Members' Ethics Act, 1998 (EMEA) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).
- 1.2 The report relates to an investigation of a complaint of a violation of the Executive Ethics Code by the Member of the Executive Council of the Western Cape Provincial Government for Health, Dr Nomafrench Mbombo (MEC Mbombo).
- 1.3 The report is submitted to the Premier of the Western Cape, Mr Alan Winde, in terms of section 3(2)(b), read with section 3(3) of the EMEA.
- 1.4 The complaint was lodged with the Public Protector by Mr Khayaletu Elvis Magaxa (the Complainant), who at the time was the Leader of the African National Congress (ANC) in the Western Cape Provincial Legislature, on 29 August 2017.
- 1.5 The Complainant alleged that MEC Mbombo *"received benefits/sponsorships on or around 6 September 2016 during special birthday celebrations in her honour"*:
- 1.6 He further stated in his complaint that MEC Mbombo:

*"...has failed to act in good faith and in the best interest of good governance by accepting gifts and failing to disclose them. Her actions do not comply with what is expected from a person holding the office of MEC in the province.*

*By accepting gifts/sponsorships from contractors and consultants, she failed to act in a manner that is consistent with the integrity of her office. The benefit*

*received by the MEC could improperly influence her in the performance of her duties as various contractors to whom bids/tenders have been awarded to do work for her department had been in attendance and contributed. At the function, at least one contractor publicly said that she contributed and expect good returns on his (sic) investment.*

*At least one benefactor, Phumla Zantzi of Jawula Trading and Construction and MEC Bonginkosi Madikizela admitted to have held this party for the MEC at the expensive Cape Town bay side Radisson Blue Hotel.”*

1.7 The Complainant concluded that by failing to declare the benefits/sponsorships that she received on or around 6 September 2016 during special birthday celebrations in her honour, MEC Mbombo breached the Executive Ethics Code.

1.8 Section 3(1) and 4(1)(b) of EMEA provide that the Public Protector must investigate any alleged violation of the Executive Ethics Code by an MEC on receipt of a complaint by a Member of the Provincial Legislature of a province.

## **2. THE ISSUES CONSIDERED AND INVESTIGATED**

2.1 On analysis of the complaint, the information and documentation received during preliminary enquiries, the following issues were considered and investigated:

2.1.1 Whether MEC Mbombo received any benefit/gift and/or sponsorship for or in respect of a birthday party that was held for her on or about 6 September 2016, and if so;

2.1.2 Whether MEC Mbombo failed to disclose the benefit/gift and/or sponsorship in terms of the Executive Ethics Code, and if so;

2.1.3 Whether MEC Mbombo acted in breach of the Executive Ethics Code.

### **3. THE INVESTIGATION**

#### **3.1 Scope of the investigation**

3.1.1 The investigation was conducted in terms of section 182(1) of the Constitution, section 3 of the EMEA and sections 6 and 7 of the Public Protector Act.

3.1.2 The scope of the investigation focused on the issues referred to in paragraph 2 above.

3.1.3 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.

#### **3.2 The investigation approach**

3.2.1 The investigation process included a letter addressed to the Complainant on 19 September 2017, requesting more information relating to, *inter alia* the consultants or contractors that were allegedly responsible for the benefits or sponsorships referred to in his complaint, the value thereof and who was responsible for organising the birthday party. No response was received.

3.2.2 It also included correspondence with the former Premier of the Western Cape, Ms H Zille, MEC Mbombo, the Registrar of Members' Interests of the Western Cape Provincial Legislature (Registrar) and the Meetings and Events Manager of the Radisson BLU Hotel at the Waterfront in Cape Town.

3.2.3 The investigation was approached using an enquiry approach that seeks to establish:

3.2.3.1 What happened?

3.2.3.2 What should have happened?

- 3.2.3.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to a violation of the Executive Ethics Code?
- 3.2.4 The question regarding what should have happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this case, the factual enquiry principally focused on whether or not MEC Mbombo received a benefit/gift and/or sponsorship for in respect of an alleged birthday party held for her on 6 September 2016, and if so whether she failed to disclose it and violated the Executive Ethics Code.
- 3.2.5 The enquiry regarding what should have happened, focused on the law or rules that regulate the standard that should have been met by MEC Mbombo in compliance with the Executive Ethics Code.

#### **4. KEY SOURCES OF INFORMATION**

##### **4.1 Correspondence between the Public Protector and:**

- 4.1.1 The Complainant, dated 19 September 2017;
- 4.1.2 The former Premier of the Western Cape, Ms H Zille, dated 9 and 14 November 2017;
- 4.1.3 MEC Mbombo, dated 12 December 2017, 26 January 2018, 22 and 23 March 2018;
- 4.1.4 The Registrar of Members' Interests of the Western Cape Provincial Legislature, dated 20 and 23 February 2018, 14 and 15 May 2018, 25 June 2018 and 26 September 2018; and

4.1.5 The Radisson BLU Hotel in Cape Town, dated 25 and 29 May 2018.

#### 4.2 **Applicable Legislation**

4.2.1 The Constitution of the Republic of South Africa, 1996.

4.2.2 The Public Protector Act No 23 of 1994.

4.2.3 The Executive Members' Ethics Act No 82 of 1998.

4.2.4 The Executive Ethics Code.

### 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 MEC Mbombo received any benefit/gift and/or sponsorship for or in respect of a birthday party that was held for her on or about 6 September 2016**

#### Common cause issues or undisputed facts

5.1.1 It is not in dispute that MEC Mbombo attended a function at the Radisson BLU Hotel in Cape Town in September 2016.

#### Issues in dispute

5.1.2 The main issue for determination was whether MEC Mbombo received benefits/gifts or sponsorships for or in respect of a special birthday celebration held in her honour.

5.1.3 The former Premier of the Western Cape, Ms H Zille was informed of the complaint that was lodged against MEC Mbombo, on 9 November 2017.

- 5.1.4 In her response to the enquiries of the Western Cape Provincial Office of the Public Protector South Africa, dated 14 November 2017, Premier Zille stated that she had not received any such complaint against MEC Mbombo and accordingly had not investigated the allegations.
- 5.1.5 Written enquiries were directed to Ms Mbombo during the investigation and she responded on 26 January 2018, denying that a birthday party was held for her in September 2016. However, she confirmed that she attended a lunch with family, friends and colleagues around the time indicated in the complaint.
- 5.1.6 The Registrar of Members' Interests of the Western Cape Provincial Government (the Registrar) also raised the allegations made against her with MEC Mbombo, in terms of the Code of Conduct for Members of the Western Cape Provincial Parliament, 2014. MEC Mbombo responded that she attended a lunch at the Radisson BLU Hotel on 10 September 2016 with colleagues, family and friends. According to her, the lunch was held during the day and was paid for by her partner, Mr Bonginkosi Madikizela, who at the time was the Member of the Executive Council of the Western Cape Provincial Government for Human Settlements. (MEC Madikizela). MEC Mbombo denied having received any gifts at the lunch.
- 5.1.7 In his response to the Registrar relating to this matter, MEC Madikizela confirmed that he paid for the lunch held at the Radisson BLU Hotel on 10 September 2016. He denied that the lunch was sponsored or paid for by anyone else.
- 5.1.8 During the investigation, it was established, from the records of the Radisson BLU Hotel that MEC Madikizela arranged and paid for the event held on 10 September 2016. The total amount paid was for 40 guests and in excess of R25 000.
- 5.1.9 The Complainant was requested to provide more particulars in support of the complaint in this regard, but failed to respond. The newspaper article that was

attached to his letter of complaint also did not relate to a function that was held for MEC Mbombo. The reference to Phumla Zantzi of Lawula Trading and Construction clearly related to MEC Madikizela and not to MEC Mbombo.

- 5.1.10 No evidence or information could be found indicating that MEC Mbombo was offered or received any gift, benefit or sponsorship at the function held on 10 September 2016.
- 5.1.11 No evidence was found that anyone received any improper benefit from MEC Mbombo that related to the function held on 10 September 2016.
- 5.1.12 The investigation by the Registrar of the allegations made against MEC Mbombo in terms of the Code of Conduct for Members' of the Western Cape Provincial Parliament, was not concluded to date.

Application of relevant legislation and the Executive Ethics Code

- 5.1.13 Paragraph 4 of the Executive Ethics Code regulates the receipt of gifts by, *inter alia*, Members of the Provincial Executive Councils.
- 5.1.14 It provides that a member may not solicit or accept a gift which is in return for any benefit received from the member in his/her official capacity, constitutes an improper influence on the member or constitutes an attempt to influence him or her in the performance of his/her duties.
- 5.2 The essence of the complaint was that MEC Mbombo received benefits or sponsorships in the form of the hosting of her birthday party, and that she failed to declare it, as required by the Executive Ethics Code.
- 5.3 Paragraph 4.2 of the Executive Ethics Code deals specifically with the receipt of a gift in the course of a member's duties. It is not in dispute that the birthday party or lunch on 10 September 2016 was not held in the course of MEC Mbombo's official duties, but was private event.



- 5.4 However, this paragraph provides an indication of the meaning of “gift” as contemplated by the Executive Ethics Code, in the absence of a definition. If a member in the course of his or her duties received a gift or more than R1000, he/she may request permission from the Premier to retain it. Where such permission was not requested or granted, the member may return the gift or donate it to the state.
- 5.5 The hosting of a private birthday party or lunch for colleagues, friends and family is clearly not a benefit that a member can first ask permission to receive, and then return it or donate it to the state after the event, if permission is not granted.
- 5.6 The hosting by MEC Madikizela of a lunch for his partner MEC Mbombo, and their colleagues, friends and family at his expense cannot be regarded as a gift or benefit that MEC Mbombo received, as contemplated by paragraph 4 of the Executive Ethics Code. She was not the only beneficiary thereof, as the hosting was shared by all those present. It also did not represent an item or object that became her sole property and that she could dispose of or return.
- 5.7 Paragraph 6 of the Executive Ethics Code regulates the disclosure by members of financial interests. It provides that the source and description of direct financial sponsorship or assistance, which benefits the member in his or her personal and private capacity must be disclosed. The hosting of the function on 10 September 2016 was clearly not a direct financial sponsorship that benefitted only MEC Mbombo in her private or personal capacity. Most of the expense incurred was enjoyed by the other 40 guests at the event.
- 5.8 In terms of paragraph 6.3(c), hospitality intended as a personal gift of a value of more than R350 must be disclosed. The hosting of the birthday party or lunch was enjoyed by 40 people and was clearly not for the benefit of MEC Mbombo only. It cannot be construed that the hosting of the function constituted hospitality that was intended as a personal gift for MEC Madikizela only, as contemplated by the Executive Ethics Code.

Conclusion

5.9 MEC Mbombo did not receive any benefit, gift or sponsorship, as contemplated by the Executive Ethics Code for or in respect of the function that was held at the Radisson BLU Hotel in Cape Town on 10 September 2016.

**6 REASONS FOR CLOSURE**

6.1 The complaint lodged by Mr Magaxa against MEC Mbombo that she received gifts/benefits/sponsorships on or around 6 September 2016 during a special birthday celebration held in her honour, which she failed to disclose and that she therefore breached the Executive Ethics Code, is not substantiated.

6.2 The Complainant was afforded an opportunity to comment on the contents of this report before it was finalised. He did not respond.



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**ADV BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR**  
**THE REPUBLIC OF SOUTH AFRICA**  
DATE: 12/03/2020

Assisted by: Western Cape Provincial Office  
Public Protector South Africa



PUBLIC PROTECTOR  
SOUTH AFRICA

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OPENBARE BESKEMER • UMKHUSELI WOLUNTU • UMWIKELI WOMPHEKATHI  
UMVIKELI WEMPHAKATSI • UMWIKELI WESITJHABA

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Mr A Winde  
The Premier  
Western Cape Provincial Government  
7 Wale Street  
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Dear Premier Winde

**CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE MEMBER OF THE EXECUTIVE COUNCIL OF THE WESTERN CAPE PROVINCIAL GOVERNMENT FOR HEALTH, DR NOMAFRENCH MBOMBO**

1. Attached hereto my Closing Report ON AN INVESTIGATION INTO ALLEGATIONS OF VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE MEMBER OF THE EXECUTIVE COUNCIL OF THE WESTERN CAPE PROVINCIAL GOVERNMENT FOR HEALTH, DR NOMAFRENCH MBOMBO, for your attention.
2. The Report is submitted to you in terms of section 3(2)(b), read with section 3(3) of the Executive Members' Ethics Act, 1998

Yours faithfully

  
**ADV BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

DATE: 12/03/2020