



## **CLOSING REPORT**

### **INVESTIGATION INTO ALLEGATIONS OF A POSSIBLE VIOLATION OF THE EXECUTIVE ETHICS CODE AND THE POWERS, PRIVILEGES AND IMMUNITIES OF THE PARLIAMENT AND PROVINCIAL LEGISLATURES ACT, 4 OF 2004 BY THE MINISTER OF SMALL BUSINESS DEVELOPMENT, HON. LINDIWE ZULU**

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#### **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 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act), on an investigation conducted into allegations of violation of the Executive Ethics Code and the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 4 of 2004 by the Minister of Small Business Development, Ms Lindiwe Zulu, in respect of her response to a question put to her in Parliament on 29 November 2017, regarding Ministerial vehicles for the Department of Small Business Development (the Department).
- 1.2. The complaint was lodged by Hon. Mr Toby Chance, MP (Mr Chance), the Shadow Minister of the Department.
- 1.3. The investigation was conducted in accordance with the provisions of section 182(1) of the Constitution, 1996 read with sections 3 and 4 of the Executive Members' Ethics Act, 1998 and sections 6 and 7 of the Public Protector Act, 1994.

## 2. ALLEGATIONS

- 2.1 Mr Chance alleges that Ms Zulu wilfully misled Parliament and/or misrepresented information to Parliament, in her oral reply to a Parliamentary question in the National Assembly on 29 November 2017. The question was posed to Ms Zulu by Mr Chance and it related to new cars that were allegedly in the process of being bought for Ms Zulu and the Deputy Minister by the Department.
- 2.2 The Transcription of the Proceedings of The National Assembly held on Wednesday, 29 November 2017, received from Mr Chance with his complaint, reveals that Mr Chance stated “Minister, the Department of Small Business Development has bought a Mercedes Benz E400 valued at R1,1 million for you, Minister, and you Deputy got a Lexus GS 350, valued at R900,000 and a BMW 5 series for R1 million – these three cars valued at R3,1 million”.
- 2.3 Mr Chance also questioned the justification of the purchase of these vehicles and the exorbitant expenditure by the Department taking into consideration the current challenges facing small businesses in South Africa.
- 2.4 According to Mr Chance, he posed the question because the Adjusted Budgets for Small Business Development was revealed on 22 November 2017 and this budget indicated that the vehicles mentioned by him in his question to Ms Zulu on 29 November 2017 were already accommodated for in the adjusted budget.
- 2.5 In response to Mr Chances questions and statements, Ms Zulu indicated that she did in fact drive a Lexus which was valued at R580 000. She stated that she did not have a BMW bought by the Government. Ms Zulu also pointed out that the Deputy Minister drove a car which was inherited from the Department of Trade and Industry. No mention was made by Ms Zulu in response to Mr Chance’s statement with respect of the Mercedes E400.

- 2.6 It is Mr Chance's argument that Ms Zulu would have known about the intent of the Department to purchase the vehicles he mentioned as they were budgeted for prior to his question to her in Parliament. He believes that Ms Zulu wilfully concealed this information thus preventing Parliament from exercising its oversight function over the Department.
- 2.7 Mr Chance further alleges that a written response to a DA question on 15 March 2018 revealed that two new BMW 540i's, costing over R1.8million were purchased on 20 December 2017 and that this purchase was authorized by the Director General.
- 2.8 The Complainant, Mr Chance, expressed his view that Ms Zulu should be held to account in terms of Sections 2.3(a) of the Executive Ethics Code as well as Sections 7(a) and (b) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 4 of 2004.
- 2.9 Section 2.3(a) of the Executive Ethics Code provides that *"Members of the Executive may not wilfully mislead the legislature to which they are accountable"*.
- 2.10 Section 7(a) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act provides that *"A person may not improperly interfere with or impede the exercise or performance by Parliament or a House or committee of its authority or functions"*.
- 2.11 Section 7(b) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act provides that *"A person may not improperly interfere with the performance by a member of his or her functions as a member"*.

### 3. THE PRELIMINARY INVESTIGATION

- 3.1 I conducted a preliminary investigation into the complaint lodged by Mr Chance in terms of section 7(1)(a) of the Public Protector Act, 1994, to determine the merits of the complaint and how the matter should be dealt with.
- 3.2 The preliminary investigation process included a request to Ms Zulu for a response to the allegations as well as information and documentation pertinent to the matter under investigation.
- 3.3 On 16 July 2018 Ms Zulu responded to my request by submitting a letter together with supporting documentation. The details of Ms Zulu's response are as follows:
- 3.3.1 Ms Zulu explained that when she responded to Mr Chance's statement regarding the vehicles in Parliament on 29 November 2017, her response was based on the current vehicles being utilised by her and the Deputy Minister and the only vehicles within her knowledge and possession as at that date (being 29 November 2017).
- 3.3.2 National Treasury had approved the Medium Term Expenditure Forecast (MTEF) adjustment budget for the remainder of the 2017/2018 financial year (Vote 31) on 22 November 2017 for the Department. The Goods and Services budget for the Department was varied and the budget accommodated the purchase of motor vehicles for her and the Deputy Minister.
- 3.3.3 According to Ms Zulu, when a budget is approved in Parliament, the document is not immediately available to the Minister, but is published on the National Treasury website to be accessed by the Department's CFO & Accounting Officer. The document is then routed via submissions to the Minister's office.
- 3.3.4 The Minister further indicated that at the time of her reply to Mr Chance, on 29 November 2017, she was not privy to the full Adjusted Estimate document and was therefore not aware (nor made aware) of the shifting of funds from Goods and

Services to Machinery and Equipment, authorising and approving the purchase of motor vehicles for her and the Deputy Minister. Further, she stated that on 29 November 2017 she was not aware that the cars were being purchased for herself and the Deputy Minister nor of the intent of the Department to purchase the cars,

- 3.3.5 According to Ms Zulu, her written submission to Parliament on 15 March 2018 is a true reflection of the actual transaction, which was a purchase on 20 December 2017 of a BMW 540i for her, valued at R874 876.80, and a BMW 540i for the Deputy Minister, valued at R944 376.80. According to Ms Zulu, both vehicles cost a total of R1 819 253.60 which was far less than the R3 000 000.00 that was budgeted for.
- 3.3.6 The two BMW 540i's were purchased on 20 December 2017 after the written approval of the expenditure was obtained via submission by the Accounting Officer of the Department on 6 December 2017.
- 3.3.7 The BMW's were purchased in terms of the National Treasury Transversal Agreement for BMW and Mercedes Benz and further in accordance with National Treasury's Transversal contract number RT57 of 2016.
- 3.3.8 The vehicles that were planned to be purchased were abandoned because of the cost of the Mercedes Benz E400 and the BMW X5 was also abandoned because of the price difference. The Lexus was not bought because it was not contained in the list of the budgeted vehicles i.t.o the National Treasury Transversal Agreement for BMW and Mercedes Benz (Commitment for Goods and Services).
- 3.3.9 Ms Zulu justified the need for new vehicles for her and the Deputy Minister based on paragraph 1.2.3 of Chapter 5 of the Ministerial Handbook, wherein Departments are authorised to purchase 2 official vehicles each for the Minister and Deputy Minister directly from manufacturers or dealerships when the current vehicle has reached mileage of 120 000km or is older than 5 years.

- 3.3.10 She stated that both the Minister's and Deputy Minister's cars met this criteria and were due to be changed. The vehicle that was used by the Deputy Minister at the time in the 2017/2018 financial year in Pretoria was at a mileage of 119 500 km and her Cape Town vehicle had exceeded 5 years. This meant that the Deputy Minister's Cape Town Vehicle should have been replaced in 2016 already.
- 3.3.11 The Minister's vehicle at the time (the Lexus) had already exceeded a mileage of 120 000km and was 3 years old. She also explained that her vehicle had mechanical problems and that on many occasions she was unable to travel safely in order to fulfil her duties. There were many times when Ms Zulu had to hire a vehicle due to her unroadworthy vehicle which was posing a functional and safety risk to her.
- 3.3.12 The purchase of the two BMWs on 20 December 2017, a BMW 540i for Ms Zulu, valued at R874 876.80, and a BMW 540i for the Deputy Minister, valued at R944 376.80 were approved in accordance with Paragraph 1.2.4(a) and (b) of Chapter 5 of the Ministerial Handbook which allows the Minister and Deputy Minister vehicle purchases for official use, not exceeding 70% of their inclusive annual remuneration packages.

#### **4. REASONS FOR CLOSURE**

- 4.1 In terms of section 7(1)(a) of the Public Protector Act, I had to determine the merits of the complaint, and, upon determining the merits, decide on the manner in which the matter should be dealt with.
- 4.2 Mr Chance alleged that the Department purchased a Mercedes Benz E400 valued at R1,1 million for the Minister, a Lexus GS 350 for the Deputy Minister, valued at R900,000 and a BMW 5 series for R1 million, all of which totalled to R3,1 million. To this allegation Ms Zulu explained that she was driving a Lexus but that it was valued at R580 000. Ms Zulu also responded that she was not in possession of any new BMW purchased by government as alleged and that the Deputy Minister

was driving a vehicle which had been inherited from the Department of Trade and Industry. Ms Zulu explained that this response was based on the vehicles being utilized by herself and the Deputy Minister at the time. Ms Zulu's response in Parliament did not refer to the Mercedes Benz mentioned by Mr Chance.

- 4.3 According to Ms Zulu, although the MTEF Adjusted Budget for the remainder of 2017/2018 had been approved by National Treasury on 22 November 2017, she had no knowledge of the shifting of funds nor the intended purchase of specific vehicles at the time of her response to Mr Chance in Parliament, which was a week later. The reason for this, according to Ms Zulu, was that once the budget is approved by Parliament, it is not immediately made available to her. It gets published on the National Treasury website to be accessed by the Department's CFO and the Accounting Officer where after it is only sent to her office via submissions.
- 4.4 Therefore Mr Chance's allegation that the Minister wilfully concealed information from Parliament thus preventing Parliament from exercising its oversight role over the Department is unfounded since the Minister was, at the time, not aware of the vehicles that the Department intended purchasing.
- 4.5 The other point raised by Mr Chance was the exorbitant expenditure with regards to the purchase of the vehicles, which amounted to R3,1million by the Department and which he believed could not be justified considering the challenges facing small businesses in South Africa.
- 4.6 To this allegation, Ms Zulu explained that the purchase of new vehicles for her and the Deputy Minister were necessary as her vehicle at the time had major mechanical problems and she often had to utilize rental vehicles to perform her duties. She indicated further that the Deputy Minister's vehicle had reached a mileage of 119 500km at that time and that her Cape Town vehicle had exceeded its 5 year period and should have been replaced in 2016 already. According to Paragraph 1.2.3 of Chapter 5 of the Ministerial Handbook, Departments are

authorised to purchase two official vehicles each for the Minister and Deputy Minister directly from manufacturers or dealerships when the current vehicle has reached mileage of 120 000km or is older than 5 years. However despite the fact that the budget approved the purchase of vehicles to the value of R3.1million, two BMWs were in fact actually purchased on 20 December 2017, a BMW 540i for Ms Zulu, valued at R874 876.80, and a BMW 540i for the Deputy Minister, valued at R944 376.80, totalling R1,819,253.60 which was far less than the R3.1million originally budgeted for on 22 November 2017. Based on this information, the allegation by Mr Chance of exorbitant expenditure by the Department in the purchase of a Mercedes Benz E400 valued at R1,1 million for the Minister, a Lexus GS 350 for the Deputy Minister, valued at R900,000 and a BMW 5 series for R1 million, all of which totalled to R3,1 million, is refuted.

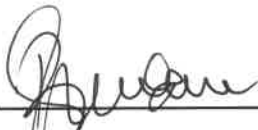
- 4.7 The purchase of the two 540i BMWs on 20 December 2017 were approved in accordance with the requirements as contained in the Ministerial handbook, and in fact resulted in a saving to the Department – where the Department had budgeted for three vehicles totalling R3million, they only purchased two vehicles which totalled R1 819 253.60.

## 5. CONCLUSION

- 5.1 Based on the response received from the Minister I cannot make a finding that she wilfully misled Parliament nor that she prevented Parliament in exercising its oversight function over the Department, in terms of Section 7(a) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, as alleged by the Complainant.
- 5.2 Neither can I find that Ms Zulu contravened Section 2.3(a) of the Executive Ethics Code.



- 5.3 Kindly take note that in terms of section 7(2) of the Public Protector Act, the contents of this closing report are confidential and no person may disclose them without the authorization of the Public Protector.
- 5.4 Contravention of section 7(2) is in terms of section 11(1) of the Public Protector Act an offence and upon conviction, punishable in terms of subsection (4) with a fine not exceeding R40 000 or with imprisonment not exceeding 12 months or with both such fine and such imprisonment.
- 5.5 Should there be any enquiries or responses to this closing report, kindly contact Ms Lesedi Sekele, Chief Investigator: Good Governance and Integrity of the Public Protector South Africa at [lesedim@pprotect.org](mailto:lesedim@pprotect.org) within ten (10) working days from the date of receipt of this report.



**ADV. BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**  
DATE: 02/10/2013