

**CLOSING 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



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REPORT NUMBER 06 of 2023/2024

ISBN: 978-1-991244-38-3

**INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE DEPARTMENT OF
TRADE, INDUSTRY AND COMMERCE TO ADDRESS MR ALEX MAGAGULA'S
COMPLAINT AGAINST THE NATIONAL LOTTERIES COMMISSION**



TABLE OF CONTENTS		
ITEM NO.	DESCRIPTION	PAGE NO.
	LIST OF ACRONYMS	3
1.	INTRODUCTION	4
2.	THE COMPLAINT	5
3.	POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR	5
4.	ISSUE IDENTIFIED FOR INVESTIGATION	6
5.	THE INVESTIGATION	7
6.	THE DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS	9
7.	FINDINGS	17
8.	CLOSURE	18



LIST OF ACRONYMS/ABBREVIATIONS

ACRONYMS / ABBREVIATIONS	DESCRIPTIONS
Constitution	Constitution of the Republic of South Africa, 1996
DG	Director General
DTIC	Department of Trade, Industry and Commerce
Email	Electronic mail correspondence
NLC	National Lotteries Commission
PAIA	Promotion of Access to Information Act, 2000
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	Rules relating to investigations by the Public Protector and Matters Incidental Thereto, 2018, as amended
Public Protector	Public Protector South Africa



1. INTRODUCTION

- 1.1. This is a Closing Report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, (the Constitution), section 8(1) of the Public Protector Act, 1994 (the Public Protector Act) and Rule 40(b) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018*, as amended (the Public Protector Rules) as promulgated in terms of section 7(11) of the Public Protector Act.
- 1.2. The report is submitted in terms of sections 8(1), read with section 8(3) of the Public Protector Act and Rule 40(b) of the Public Protector Rules, which empowers the Public Protector to make known the findings of an investigation, to affected parties, including the Complainant, for such persons to note the outcome of the investigation. The report is submitted to the following persons:
 - 1.2.1 The Acting Director-General of the Department of Trade Industry and Commerce (DTIC), Ms Malebo Mabitje-Thompson (Ms Mabitje-Thompson);
 - 1.2.2 The Commissioner of the National Lotteries Commission (NLC), Ms Jodi Scholtz; and
 - 1.2.3 The Complainant.
- 1.3. The report relates to an investigation into allegations that the DTIC failed to address the complaint of Mr Alex Magagula (the Complainant) against the NLC.



2. THE COMPLAINT

2.1 The investigation emanates from a complaint lodged with the Public Protector on 04 October 2018 by the Complainant, alleging that:

2.1.1 He bought a lotto ticket and subsequently won the jackpot and on 09 September 2016, went to redeem the ticket at a retailer in Gezina, Pretoria. The lotto machine at the time of reading the ticket jammed. He then went to another terminal at the Sinoville Post Office the following day and he was paid thirty-seven rand (R37.00), whereas the winning ticket was worth forty two million rand (R42 000 000);

2.1.2 He reported the matter to the NLC, however, the feedback he received was unsatisfactory, as there were conflicting explanations from different employees of the entity;

2.1.3 On 22 August 2017, he then approached the DTIC and provided it with the NLC report, which was acknowledged. He requested a meeting with the DTIC to address and resolve this matter; and

2.1.4 Since no meeting was arranged by the DTIC, he approached the Public Protector to intervene and resolve his complaint.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution established in terms of 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 the additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.4 The DTIC is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the Public Protector is satisfied that the complaint falls within her competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and sections 6(4) of the Public Protector Act.

4. ISSUE IDENTIFIED FOR INVESTIGATION

4.1 Based on the analysis of the complaint, the following issue was identified and investigated:

4.1.1 Whether the DTIC failed to address Mr Alex Magagula’s complaint against the National Lotteries Commission, if so, whether such conduct was improper in



terms of section 182(1)(a) of the Constitution and amounted to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

5. THE INVESTIGATION

5.1 Methodology

5.1.1 The investigation into the complaint is conducted in accordance with section 182(1) of the Constitution, read with sections 6 and 7 of the Public Protector Act.

5.2 Approach to the investigation

5.2.1 The approach to the investigation included analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

5.2.2 The investigation was approached using an enquiry process that seeks to determine:

5.2.2.1 What happened?

5.2.2.2 What should have happened?

5.2.2.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or improper conduct?

5.2.2.4 In the event of maladministration or improper conduct what would it take to remedy the wrong?



5.2.3 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.

5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the DTIC and its functionaries to prevent maladministration and improper conduct.

5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration.

5.3 **Key sources of information**

5.3.1 Complaint Form to the Public Protector, dated 04 October 2018;

5.3.2 Allegations letter to the DG of the DTIC, Mr Lionel October (Mr October), dated 30 January 2019;

5.3.3 Letter from the Executive Manager: Legal, Mr Tsietsi Maselwa (Mr Maselwa) of the NLC to the Public Protector, dated 25 March 2019;

5.3.4 Letter from Mr October to the Public Protector, dated 10 May 2019;

5.3.5 Copy of minutes of the meeting held between the Complainant, the DTIC and the NLC, dated 09 July 2019;

5.3.6 Copy of DTIC report, dated 08 November 2019;

5.3.7 The Intention to close file letter sent to the Complainant, dated 13 January 2020;



5.3.8 Email from the Complainant to the Public Protector, dated 14 January 2020; and

5.3.9 Closing letter sent to the Complainant, dated 21 February 2020.

5.3.10 Legislation and other prescripts

5.3.10.1 The Constitution of the Republic of South Africa, 1996;

5.3.10.2 The Public Protector Act, 1994; and

5.3.10.3 Lotteries Act, 1997.

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

6.1 Whether the DTIC failed to address Mr Alex Magagula's complaint against the National Lotteries Commission, if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act

Common Cause

6.1.1 The Complainant bought four (4) lotto tickets in Gezina, two (2) of the tickets were power-ball tickets and two (2) were straight lotto tickets for the draw which occurred on 02 September 2016.



Issue in dispute

- 6.1.2 The issue for determination by the Public Protector is whether the DTIC failed to address a complaint lodged by the Complainant against the NLC.

The Complainant's version

- 6.1.3 On 02 August 2017, the Complainant approached the NLC to lodge a complaint, alleging that he was not paid his full lotto winnings from the draw which took place on 02 September 2016.
- 6.1.4 On 22 August 2017, the Complainant approached the DTIC requesting it to convene a meeting to address an NLC report regarding the outcome of his complaint.
- 6.1.5 The Complainant contends that after he had requested the DTIC to convene a meeting in August 2017, to discuss the contents of the NLC report and the manner in which the NLC had attended to the matter, he received no response from the DTIC.

Response from the NLC

- 6.1.6 Mr Tsietsi Maselwa, Executive Manager: Legal at the NLC provided the Public Protector with a response letter, dated 25 March 2019, to the allegations letter of the Public Protector submitted to the DG of the DTIC, Mr Lionel October, dated 30 January 2019 and stated the following:
- 6.1.6.1 The Complainant's complaint was received and investigated by the NLC in 2017, the investigation was conducted in line with their processes and it was confirmed that his lotto ticket was validated for the amount of thirty seven rand and fifty cents (R37.50);



6.1.6.2 The investigation revealed that the initial terminal in Gezina did not validate the Complainant's ticket and it was only validated at Sinoville Post Office where the correct amount of R37.50 was paid to him. Ithuba Holdings, the National Lottery Operator, had also confirmed that the coupon presented by the Complainant was paid correctly and that his ticket was not a jackpot winner ticket as he had alleged; and

6.1.6.3 The jackpot was not won at the time he bought his ticket as it was rolled over and won much later. The full details were explained to the Complainant and the same was relayed to his attorney.

Documentary information obtained from the NLC

6.1.7 The NLC annexed to its response a letter by the Commissioner, Mrs. TCC Mampane, dated 01 February 2019 to Mr October, wherein they provided the DTIC with the outcome of their investigation into the allegations by the Complainant. The letter further indicated that the NLC had advised the Complainant that no tickets won the jackpot for that draw.

6.1.8 The letter dated 01 February 2019, also confirmed that the prize payout process had been explained to the Complainant when he first approached the NLC with his complaint in September 2016 and again on 02 August 2017. It was further stated in the letter that the NLC considered the matter resolved as the Complainant had been assured that he had not been defrauded when he submitted his ticket for the prize payout.

Response from the DTIC

6.1.9 The allegations were raised with the DTIC through correspondence dated 30 January 2019. On 10 May 2019, Mr October, representing the DTIC, provided a response stating the following:



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- 6.1.9.1 The DTIC engaged with the NLC to determine whether the Complainant won the jackpot as he alleged and to confirm whether they would agree to meet with the DTIC and the Complainant to explain to him the validity of his claim;
- 6.1.9.2 The DTIC indicated in their response to the Public Protector that a meeting took place between the DTIC and the NLC (no date was provided when the meeting took place). During that meeting with the DTIC, the NLC confirmed that the Complainant did not win the jackpot. The NLC explained that it had a rigorous verification system in place in the event that someone wins the jackpot. The NLC confirmed that no one won the jackpot for the period in question. In addition, they indicated that they would meet with the DTIC and the Complainant to explain that he did not win the jackpot and also the processes used by the NLC to verify whether a lotto participant had won or not; and
- 6.1.9.3 The DTIC stated in the response to the Public Protector that they had accordingly attempted to contact the Complainant through his representative, Mr Harry Makhalemele, but received no response to its request for a meeting.
- 6.1.10 On 14 November 2019, the DTIC also provided the Public Protector with a report titled *Mr Alex Magagula's Complaint against the National Lotteries Commission*, dated 08 November 2019. According to the report, the DTIC and the NLC subsequently engaged with the Complainant on 09 July 2019, with the view to affording him the opportunity to present his case and to also explain the process to him.
- 6.1.11 The DTIC annexed an attendance register to the report confirming the meeting which took place on 09 July 2019, wherein the Complainant was in attendance.



Meeting held between the DTIC, NLC and the Complainant

- 6.1.12 The Public Protector perused the report and noted the following relating to what transpired during the meeting:
- 6.1.12.1 The representatives of the NLC, Mr Mvelisi Hlunguli and Mr Prince Masango, in explaining the process, advised that when one plays the lotto, one selects numbers on a lotto form at the retailer and hands it back to the retail machine operator, who inserts the form into the machine. The machine then converts the form into a ticket by printing thereon a unique serial number. That ticket is then handed back to the person playing the lotto after he pays for the ticket. After the draw, the person is required to bring the same ticket back to the lotto machine operator. The operator will then insert the ticket again into the lotto machine. The machine will then validate the ticket;
- 6.1.12.2 The NLC emphasised that there are various security mechanisms, one of which is that all lotto machines have been programmed not to pay out huge sums of money. Should someone, for example, win fifty thousand rand (R50 000.00), the machine will simply print out a coupon, telling that player to go to the offices of Ithuba. This security mechanism is designed to ensure that the lotto machine operator does not surreptitiously or secretly switch the winning ticket with another one. The NLC emphasised that in relation to the particular draw, no one had won the lotto. The Complainant's view that the machine displayed the word "Jackpot" with some numbers including "42" is therefore incorrect, since the lotto machines were not programmed to display such words, even if a player wins the jackpot;
- 6.1.12.3 It was noted that the Complainant was satisfied that the meeting should address whether he won the lotto, and secondly whether one can verify that he had won;



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- 6.1.12.4 The NLC advised that although the lotto ticket is the main indication that a person won the lotto, it may be possible for a person to prove that he has won without producing a ticket, however, in such an instance, the evidence must be compelling. Nevertheless, the NLC representative insisted that, in respect of the particular lotto draw of 02 September 2016, the jackpot of over forty two million rand (R42 000 000) was not won by anyone;
- 6.1.12.5 Accordingly, the Chairperson, Mr Douglas Pietersen of the DTIC: Legal Services, concluded that it was common cause that the drawing process is transparent and it should be easy to ascertain whether the Complainant had won the lotto for the particular draw; and
- 6.1.12.6 The Chairperson accordingly proposed that one determines (1) the winning number for the particular draw, and (2) the numbers which the Complainant played. Once this is obtained, one will be in a position to compare the numbers and establish whether the Complainant won or not. Unfortunately, the Complainant could not recall either the winning numbers or the numbers which he played, neither could he provide his original coupon which was issued by the Sinoville Post Office.
- 6.1.13 In conclusion, the report stated that *“...the Complainant did not win the R42 million. This is because the NLC, Ithuba and independent auditors confirmed that no one won the 1st division of the Powerball draw.”*

Notice in terms of Rule 41(1) of the Public Protector Rules

- 6.1.14 On 13 January 2020, a Notice in terms of Rule 41(1) of the Public Protector Rules was issued to the Complainant to afford him the opportunity to make representations in connection with the intended closure of the matter. Rule 41(1) of the Public Protector Rules provides that when the Public Protector intends concluding a complaint by means of a closing report provided for in Rule 40(b), the Complainant shall be informed in writing accordingly and be



given an opportunity to make representations in connection with the intended closure of the complaint within fourteen (14) days of delivery of the notification.

- 6.1.15 On 14 January 2020, the Complainant responded by stating that he could respond to the notice as he has not been given access to the report which led to the closure of his file, and therefore, he could not make a judgement on a document which the Public Protector relied on to close the investigation. He also indicated that he wished to apply to have access to the contents of the file to assist him in formulating the criminal charge against the NLC and Ithuba.
- 6.1.16 The Complainant contended that on 22 August 2017, he approached the DTIC and provided it with the NLC report. This is the same report that the DTIC based its response on when responding to the Public Protector. Therefore, according to the Complainant's own admission, the NLC provided him with the report he is now seeking access to in terms of PAIA, in order to respond to the Rule 41(1) Notice. Nevertheless, the Complainant was advised to apply for the DTIC report issued to the Public Protector in terms of PAIA directly from the DTIC as the Public Protector cannot furnish the Complainant with a report received from a third (3rd) party and which is considered as privileged to the Public Protector.
- 6.1.17 The Complainant was provided with form A for him to apply for the information on 16 January 2020. Since then, he has only advised the Investigation Team that he applied to the NLC to have access to the documents in the investigation file but has not provided a response to the investigation findings. As a result, a closing letter dated 21 February 2020, was eventually issued to the Complainant, informing him about the closure of the file.
- 6.1.18 The Complainant visits the office frequently and even managed to have a new file opened on 30 November 2021, when he reported the same matter as a new complaint. However, this file was subsequently closed when it was



identified that a comprehensive investigation was conducted by the Public Protector into the same complaint.

Applicable law

Lotteries Act, 1997

6.1.19 Section 2 of the Lotteries Act provides for the establishment of a board to be known as the National Lotteries Board which shall be a juristic person.

6.1.20 Section 10 provides that the Board shall, applying the principles of openness and transparency and in addition to its other functions in terms of this Act –

(a) ensure that –

(i) the interests of every participant in the National Lottery are adequately protected.

Analysis

6.1.21 The evidence before the Public Protector indicates that the Complainant's complaint was investigated by the NLC. Furthermore, a meeting was held between the Complainant, DTIC and the NLC wherein the prize payout process was extensively explained to him in compliance with the provisions of section 10(a)(i) of the Lotteries Act.

6.1.22 The Complainant was invited to provide the original coupon that would assist Ithuba to obtain the numbers that he played on the day in question, but the Complainant failed to provide the information.



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- 6.1.23 Contrary to the Complainant's contention that the ticket he played on the day in question won the lotto, the evidence before the Public Protector indicates that the NLC, Ithuba and an Independent Auditor confirmed that neither the Complainant nor any other person won the forty two million rand (R42 000 000) Powerball jackpot on 02 September 2016 during this draw. Evidence before the Public Protector indicates that the jackpot had to be rolled over to the next draw.

Conclusion

- 6.1.24 The allegation that the DTIC failed to attend to the Complainant's complaint against the NLC is not supported by the evidence that was provided to the Public Protector.

7. FINDINGS

Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

7.1 Whether the DTIC failed to address Mr Alex Magagula's complaint against the NLC, if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act

- 7.1.1 The allegation that the DTIC failed to attend to a complaint the Complainant lodged against the NLC, is not substantiated.
- 7.1.2 The Complainant's complaint was investigated by the NLC in compliance with section 10(a)(i) of the Lotteries Act. Subsequent to the investigation a meeting



was held between the Complainant, DTIC and the NLC wherein the prize payout process was extensively explained to him.

7.1.3 The Complainant was invited to provide the original coupon that would assist Ithuba to obtain the numbers that he played on the day in question, which he failed to provide.

7.1.4 Furthermore, the NLC, Ithuba and an Independent Auditor confirmed that the Complainant did not win the forty two million rand (R42 000 000) jackpot nor was it won by anyone during the relevant Powerball draw.

7.1.5 The conduct of the DTIC does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

8. CONCLUSION

8.1 The Public Protector considers this matter finalised and cannot take it further. Should any party be dissatisfied with this decision, they are at liberty to explore legal remedies at their disposal.



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 30 JUNE 2023

Assisted by: Ms Ponatshego Mogaladi
Executive Manager: Investigations Branch