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Please quote this reference in your reply: 7/2-012492/13

04 September 2017

Enquiries: [REDACTED]
Tel: [REDACTED]
Fax: [REDACTED]
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Lieutenant Colonel C Anderson
P.O BOX 3182
RANDGATE
1763
E-mail: [REDACTED]

Dear Colonel Anderson

A REPORT ON AN INVESTIGATION INTO A COMPLAINT BY LIEUTENANT COLONEL ANDERSON OF THE SAAF IN CONNECTION WITH AN INVESTIGATION CONDUCTED BY THE DIRECTORS-GENERAL OF THE JUSTICE, CRIME PREVENTION AND SECURITY CLUSTER INTO THE LANDING OF A CHARTERED COMMERCIAL AIRCRAFT AT AIR FORCE BASE WATERKLOOF ON 30 APRIL 2013

Attached hereto is the Closing report on an investigation into the above matter.

The report is provided to you in terms of section 8(3) of the Public Protector Act, 1994, for your information on the outcome of the Public Protector's investigation.



CLOSING REPORT

INVESTIGATION INTO A COMPLAINT LODGED BY LIEUTENANT COLONEL C ANDERSON OF THE SOUTH AFRICAN AIR FORCE IN CONNECTION WITH AN INVESTIGATION CONDUCTED BY THE DIRECTORS-GENERAL OF THE JUSTICE, CRIME PREVENTION AND SECURITY CLUSTER INTO THE LANDING OF A CHARTERED COMMERCIAL AIRCRAFT AT AIR FORCE BASE WATERKLOOF ON 30 APRIL 2013

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.
- 1.2** It relates to a complaint lodged by Lieutenant Colonel (Lt Col) C Anderson of the South African Air Force on 15 July 2013, in connection with an investigation that was conducted by the Justice, Crime Prevention and Security (JCPS) Cluster into the landing of a chartered commercial aircraft at Air Force Base Waterkloof on 30 April 2013.
- 1.3** Mr D Maynier MP approached the former Public Protector on 8 May 2013 requesting that she investigates the landing incident as he was concerned that JCPS Cluster investigation would not sufficiently cover all aspects of actually what happened. The former Public Protector informed Mr Maynier on 21 August

2013 that she had decided to investigate only the complaint relating to Lt Col Anderson's dissatisfaction with the investigation of the landing incident that was conducted by the JCPS Cluster.

- 1.4 In her complaint, Lt Col Anderson took issue with references in the JCPS Cluster's report that implicated her in improper conduct. She claimed that except for questions put to her in writing, she was not involved in the investigation or given an opportunity to respond to the adverse findings made against her.
- 1.5 The complaint was investigated in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act, 1994 that empowers the Public Protector to, *inter alia*, investigate conduct of any organ of state that is alleged to be improper or to result in any impropriety or prejudice. The JCPS is an organ of state.

2. ISSUES

- 2.1 The issues identified from the complaint to be investigated were:
 - 2.1.1 Whether the process of the investigation of the JCPS Cluster in regard to Lt Col Anderson's involvement in the incident was improper; and
 - 2.1.2 Whether Lt Col Anderson was prejudiced as a result of improper conduct of the JCPS Cluster investigation team.

3. THE INVESTIGATION

- 3.1 The investigation process included exchange of correspondence with the JCPS Cluster, interviews with Lt Col Anderson and other key role players and an

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analysis of the documents and other information obtained. The relevant laws and regulatory framework were also considered and applied, where appropriate.

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

4.1 Whether the process of the investigation of the JCPS Cluster in regard to Lt Col Anderson's involvement in the incident was improper.

4.1.1 On 30 April 2013, a Jet Airways chartered flight landed at the Air Force Base Waterkloof, a National Key Point. The landing was regarded as a national security incident and on 2 May 2013, the Ministers of the JCPS Cluster instructed that a team of Directors-General investigate the matter.

4.1.2 The investigation's terms of reference were to:

4.1.2.1 Determine the sequence of events prior to, during and after the landing of the chartered commercial aircraft.

4.1.2.2 Assess the actual events in the light of the established legislation, regulations, government and departmental protocol.

4.1.2.3 Interview and interact with relevant persons to establish facts and factor in investigations that were already under way.

4.1.2.4 Make findings and recommendations to avert similar occurrences.

4.1.3 On 3 May 2013, the Chief of the South African National Defence Force (SANDF) issued an order by virtue of which a Board of Inquiry was convened, in terms of section 101(1) of the Defence Act, 2002.

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- 4.1.4 The Board of Inquiry had to determine, *inter alia* whether there were any “*wrong doing*” that gave rise to the incident and the corrective measures, including disciplinary action to be taken against any member of the SANDF.
- 4.1.5 The JCPS Cluster’s investigation report was released on 17 May 2013. It found, *inter alia* that there was dereliction of duty on the part of Lt Col Anderson that contributed to the incident in question.
- 4.1.6 It recommended that the affected departments, including the SANDF, had to complete their investigations into the incident and take disciplinary and criminal action against the officials involved, where appropriate.
- 4.1.7 Lt Col Anderson lodged a complaint in connection with the JCPS Cluster’s investigation during a meeting with the former Public Protector, held on 15 July 2013.
- 4.1.8 From the investigation of the complaint, it transpired that Lt Col Anderson was indeed afforded the opportunity to respond to written questions put to her regarding the incident. Members of the JCPS investigation team disputed that she was not afforded an opportunity to submit more information and claimed that she failed to avail herself when she was required to do so.
- 4.1.9 Lt Col Anderson participated in the Board of Inquiry, where she was legally represented.
- 4.1.10 On conclusion of its inquiry into the incident, the Board referred the matter to the Director: Military Prosecutions to determine whether *inter alia*, Lt Col Anderson should be prosecuted.

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- 4.1.11** The case against Lt Col Anderson was formally withdrawn by the Director: Military Prosecutions on 19 January 2015. No further action was taken against her. This was made public and reported by the media.
- 4.1.12** Due to the capacity constraints experienced by the Public Protector South Africa, the Public Protector's investigation into Lt Col Anderson's complaint was not finalized before the Board of Enquiry issued its report on the landing incident and the case against Lt Col Anderson was withdrawn.
- 4.1.13** By that time, Lt Col Anderson, who was suspended from duty, had already retired having reached the compulsory retirement age of the SANDF in 2014.
- 4.1.14** At the time when Lt Col Anderson's complaint was lodged, she was already subjected to a Board of Inquiry convened by the Chief of the SANDF in terms of the Defence Act, 2002. This was apparently not brought to the former Public Protector's attention.
- 4.1.15** The Board of Inquiry was convened a day after the JCPS investigation was announced and was by law the appropriate body to determine, *inter alia* whether Lt Col Anderson acted improperly and, if so, whether any action should be taken against her.
- 4.1.16** No such action was taken.
- 4.1.17** The JCPS Cluster's report was of no consequence to Lt Col Anderson, except for the media reporting on the finding made against her, which was later refuted as no action was taken against her.

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4.1.18 Any negative impact that the investigation and report of the JCPS could have had on Lt Col was surpassed by the fact that she was ultimately absolved from any wrongdoing by the SANDF.

4.2 Whether Lt Col Anderson was prejudiced as a result of the improper conduct of the JCPS Cluster investigation team.

4.2.1 Even though Lt Col Anderson might have had reason to perceive that she was prejudiced by the JCPS investigation and report, the ultimate result of the Board of Inquiry and the decision of the military prosecution authority absolved her from any wrongdoing, which was also made public.

5. REASONS FOR CLOSURE

5.1 The impact of the JCPS investigation and report as far as it related to Lt Col Anderson, was overtaken by the final outcome of the Board of Inquiry and the withdrawal of the case against her.

5.2 Lt Col Anderson retired from the SAAF 3 years ago

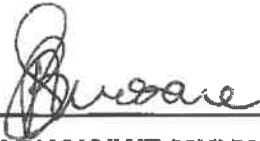
5.3 Further investigation of her complaint by the Public Protector would accordingly not serve any purpose.

5.4 Kindly further take note that in terms of section 7(2) of the Public Protector Act, the contents of this closing report is confidential and no person may disclose them without the authorisation of the Public Protector.

5.5 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) to a fine not exceeding R40 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

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5.6 Any response to this closing report has to be addressed to Adv [REDACTED] the Executive Manager Good Governance and Integrity of the Public Protector South Africa at [REDACTED] to reach him by 15 September 2017.



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

DATE: 04, 09, 2017



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SOUTH AFRICA

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Honourable David Maynier, MP

DA Shadow Minister of Defence and Military Veterans

Parliament of South Africa

P.O. Box 15

Cape Town

8000

Email: [REDACTED]

Dear Mr. Maynier

**RE: REQUEST FOR INVESTIGATION INTO THE ALLEGED UNAUTHORISED
LANDING OF A JET AIRWAYS AIRBUS A330-200 AT AIR BASE WATERKLOOF**

This is to inform you that we have finalised the extended assessment of your request to investigate allegations of the unauthorised landing of a Jet Airbus at Waterkloof Airbase.

After careful consideration of all factors, and having taken into account the information you provided in response to our request for more detail in respect of the issues you have raised, we have come to the following conclusion:

1. The request to investigate the role of Cabinet and other members of the Executive in the process and events leading to the landing of the aircraft is rejected due to insufficient evidence justifying such request;
2. However, we will pursue this matter in respect of the complaint lodged by Col. Anderson where she has expressed dissatisfaction in the manner in which the Task Team dealt with the investigation in so far as her participation in the process was concerned. She alleges that the Task Team conducted itself in an irregular manner by making findings against her without having given her an opportunity to respond before the report was published ;similarly
3. The complaint lodged by Public Service Accountability Monitor (PSAM) in respect of allegations relating to how the Task Team engaged with Col. Anderson will be investigated to determine whether or not the process was materially and substantially flawed.

Thank you for having asked us to investigate

Best Wishes,



Advocate TN Madonsela

Public Protector of South Africa

21 / 03 / 2013

Carina Van Eeden

From: [REDACTED]
Sent: 28 August 2013 09:34 AM
To: [REDACTED]
Subject: Request for investigation into the alleged unauthorised landing of a Jet Airways Airbus at Air Base Waterkloof
Attachments: Letter to Maynier.pdf

Dear Mr. Maynier

The abovementioned matter refers.

Kindly find attached hereto correspondence for your attention.

Kind Regards

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

