



PUBLIC PROTECTOR
SOUTH AFRICA

Accountability • Integrity • Responsiveness

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Dear Dr Buthelezi

**INTERVENTION LETTER TO THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HEALTH
ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY TO RESPOND TO A
COMPLAINT LODGED BY MR P NGCEBETSHANE AND TO ASSIST HIM WITH FURTHER
REQUESTED MEDICAL TREATMENT**

1. INTRODUCTION

- 1.1 The Public Protector's mandate is derived from section 182(1) of the Constitution of the Republic of South Africa (the Constitution) and the Public Protector Act, 1994 (the Public Protector Act) to promote accountability, transparency and fairness in the public sector. The Public Protector continuously reviews and monitors the information gathered from complaints lodged with the Public Protector South Africa (PPSA) with

the view to identifying the most probable underlying (root) causes of the problems, complaints and undesired events within relevant public bodies or authorities, with the aim of formulating and agreeing on corrective actions to at least mitigate, if not eliminate, those causes and so produce significant long term improvements in the public administration.

- 1.2 This is an intervention letter in terms of section 8(1) of the Public Protector Act, 1994, to make known to any person any finding, point of view or recommendation in respect of a matter investigated by the Public Protector.
- 1.3 This intervention letter relates to an investigation into an allegation of undue delay by the National Department of Health (the Department) to respond to, and to assist the Complainant with further requested medical treatment on the allegation that there is a foreign object implanted in his forehead.
- 1.4 The point of departure is that any complaint, even if it is found to be unsubstantiated, might be the symptom of an underlying organisational failure in areas such as 'systems', 'procedures', 'human error' and so on. By addressing the underlying deficiencies in the systems that are the causes of the complaints, the PPSA aims to reduce the number of individual complaints, in turn working collaboratively with stakeholders to get the problems resolved and provide constructive feedback that will enable it to address the root causes of complaints and prevent recurrence.

2 THE COMPLAINT

- 2.1 Mr Ngcebetshane (the Complainant) lodged a complaint with the Public Protector on 12 April 2021, where he alleged:
 - 2.1.1 That a Sister Pretorius, who is also known as "Bigshow", stationed at the Hermanus Provincial Hospital in the Western Cape, allegedly implanted a microchip in his head without his consent and knowledge in August 2018; and
 - 2.1.2 That he lodged a complaint with the Minister of Health (the Minister) on 01 April 2020 and he was informed through a letter dated 01 April 2020 that his matter was referred to the office of the Director General of the Department of Health (the Department).

2.2 In essence, the Complainant alleged that the Department unduly delayed to respond to his complaint, and to assist him with further medical treatment to address the matter.

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 the 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, 1994, to investigate and redress maladministration. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

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

4 THE INVESTIGATION

4.1. The Issue Identified for the Investigation:

4.1.1 Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

4.1.2 Whether the Department unduly delayed to respond to the complaint lodged by the Complainant and to assist him further with medical treatment and whether such conduct constituted improper conduct as envisaged by section 182(1) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, 1994.

4.2 **The Scope of the Investigation**

4.2.1 The investigation was conducted in terms of section 182(1)(a) of the Constitution and sections 6 and 7 of the Public Protector Act.

4.2.2 The complaint was classified as a Service Delivery matter capable of resolution by way of a conciliation process or mediation in line with section 6(4)(b) of the Public Protector Act in order to help the parties reach a settlement.

4.3 **Methodology**

4.3.1 The investigation is conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution), read with section 6 and 7 of the Public Protector Act, 1994.

4.4 **Approach to the investigation**

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

4.4.2 What happened?

4.4.3 What should have happened?

4.4.4 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

- 4.4.5 In the event of maladministration what would it take to remedy the wrong or place the Complainant as close as possible to where they would have been but for the maladministration?
- 4.4.6 The question regarding what happened is resolved through factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence is evaluated and a determination made on what happened based on balance of probabilities.
- 4.4.7 The enquiry regarding what should have happened, focuses on law or rules that regulate the standard that should have been met by the National Department of Health and its functionaries to prevent maladministration.
- 4.4.8 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 her as close as possible to where they would have been had the Department complied with the regulatory framework setting the applicable standards for good administration.

4.5 **Key Sources of Information**

4.5.1 **Documents**

- 4.5.1.1 Complaint form dated 11 March 2021 received from the Complainant on 12 April 2021,

4.5.2 **Correspondences sent and received**

- 4.5.2.1 Email to the Complainant dated 08 May 2021;
- 4.5.2.2 Email to the Complainant dated 17 May 2021;
- 4.5.2.3 Email to the Complainant dated 05 August 2021;

- 4.5.2.4 Email from the Complainant dated 13 August 2021;
- 4.5.2.5 Email to the Chief Investigator dated 17 August 2021;
- 4.5.2.6 Email from Acting Executive Manager, Mr Dlamini dated 17 August 2021;
- 4.5.2.7 Email to the Director General of the National Department of Health, Dr Buthelezi;
- 4.5.2.8 Email from the National Department of Health dated 18 August 2021;
- 4.5.2.9 Email from the National Department of Health dated 30 August 2021;
- 4.5.2.10 Email to the National Department of Health dated 06 September 2021;
- 4.5.2.11 Email to the Complainant dated 07 September 2021;
- 4.5.2.12 Email to the National Department of Health dated 13 October 2021;
- 4.5.2.13 Email from the National Department of Health dated 13 October 2021;
- 4.5.2.14 Email to the Complainant dated 22 October 2021;
- 4.5.2.15 Email to the National Department of Health dated 22 October 2021;
- 4.5.2.16 Email from the Complainant dated 26 November 2021;
- 4.5.2.17 Email to Ms Koen, Deputy Director Office of the HOD Health , Western Cape dated 21 February 2022;
- 4.5.2.18 Email to the Complainant dated 21 February 2022;
- 4.5.2.19 Email from Ms Koen dated 21 February 2022;
- 4.5.2.20 Email to Ms Koen dated 25 February 2022;
- 4.5.2.21 Email to the Complainant dated 25 February 2022;
- 4.5.2.22 Email to the National Department of Health dated 09 March 2022;

- 4.5.2.23 Email to the Complainant dated 09 March 2022;
- 4.5.2.24 Email from Ms Koen dated 11 March 2022;

- 4.5.2.25 Email from the Complainant dated 15 March 2022;
- 4.5.2.26 Email to Ms Koen, dated 16 March 2022;

- 4.5.2.27 Email from the Complainant dated 25 March 2022;
- 4.5.2.28 Email to Ms Koen dated 06 June 2022;
- 4.5.2.29 Email to the Complainant dated 06 June 2022;
- 4.5.2.30 Email from Mr Binza of Western Cape Health dated 06 June 2022;
- 4.5.2.31 Email from Ms Koen of Western Cape Health dated 06 June 2022;
- 4.5.2.32 Email from Mr Mfeya, of Khayelitsha District Hospital dated 09 June 2022, Outcome of CT Scan;

- 4.5.2.33 Email to Mr Mfeya, of Khayelitsha District Hospital dated 14 June 2022; and

- 4.5.2.34 Email to Dr Bush dated 30 June 2022.

4.5.3 **Meeting(s) held**

- 4.5.3.1 Meeting with Dr Luke Bush and Dr C Kibamba and Mr of Mr Bonani Mfeya of the Khayelitsha District Hospital on 17 June 2022.

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 **Whether the Department unduly delayed to respond to the complaint lodged by the Complainant and to assist him further with medical treatment and whether such conduct constituted improper conduct as envisaged by section 182(1) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, 1994.**

Common Cause issue

- 5.1.1 The Complainant lodged a complaint with the Minister of Health in 2020, which was referred to the Director-General of the Department of Health for further attention.

Issue in dispute

- 5.1.2 The issue for determination is whether the Department failed to assist the Complainant when he lodged a complaint with the Minister.

The Complainant's version

- 5.1.3 Following the complaint submitted to the Public Protector the Complainant included evidence of a medical report and X-Rays allegedly taken on 29 May 2020 at a medical institution (the name of the institution was not mentioned) where he was allegedly informed that there is a foreign object implanted in his head. The Complainant requested the Public Protector that the information of the X-Rays and medical report should not be shared with the Department as he wants the Department to take their own X-Ray of his skull and provide him with their own findings and further treatment.

- 5.1.4 During the Investigation the Complainant contended that despite examinations including X-ray, Ultra sound and a *Computerized Tomography Scan* (CT scan) conducted at a later stage at the Khayelitsha Hospital in 2020, he was never informed about the outcome of the examinations and any further medical procedure to be performed.

Response by the Department:

- 5.1.5 Dr SSS Buthelezi, the Director-General of the Department responded to an enquiry from the Public Protector in a letter dated 28 August 2021 as follows:

"The Head of Department in the Western Cape, Dr Cloete provided a report on this matter on 16 November 2020, which indicated among others that:

Mr Ngcebetshane is a known mental health care user at Khayelitsha Hospital who is not compliant to the psychotropic medication provided. He has a history of absconding from hospital while undergoing 72 hour mental health assessment for further involuntary mental health care.

There has been numerous occasions where the health team in the province visited Mr Ngcebetshane to advise him to undergo the assessment and treatment as advised, but he declined. Efforts to get him to a mental facility for necessary intervention have failed.

Since May 2019, he lodged this complaint to various other structures such as the Department of Social Development, SAPS and Commission of Inquiry into State Capture, Human Rights Commission, DA, Western Cape Premier, Cabinet members and the Public Protector in November 2019.

Note that I also wrote to Mr Ngcebetshane directly, urging him to present himself for health assessment and comply with the advice by health professionals.

In terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002), Mr Ngcebetshane sounds eligible for a 72 hour assessment due to the history of a mental illness, non-compliance with his medication and what appears to be persecutory delusions from the history provided.

The Act prescribes measures to be followed in order to provide care, treatment and rehabilitation of mental health care users without their consent on an outpatient or inpatient basis. This includes:

- If there is reasonable belief that the mental care user has mental illness of such nature that he is likely to inflict serious harm on himself or herself or others, or*
- Where such care, treatment and rehabilitation is necessary for the protection of the financial interest or reputation of the user and at the time of the mental health care user is incapable of making an informed decision on the need for care, treatment and rehabilitation services and also unwilling to receive such services.*

Kindly note that I have instructed officials from the Directorate: Mental Health and Substance Abuse at the National Department of Health to further engage with the relevant officials at the Western Cape Department of Health to explore alternative ways within the prescripts of the Mental Health Care Act to ensure that Mr Ngcebetshane

receives the necessary intervention, in collaboration with the South African Police Service”

5.1.5.1 From a report of Dr Cloete, the Head of Department in the Western Cape, dated 16 November 2020, which was provided as an attachment to the above mentioned response from the Director-General, the following efforts to assist the Complainant after his complaint was escalated from the Minister’s office to the Department, is noteworthy:

“Processes followed to address complaints

- 1. An official complaint came through the HOD’S office from Mr Ngcebetshane on 2/2/20 for support*
- 2. Telephone conversation between Mr Ngcebetshane and Ms Roelofse from the provincial office, Department of Health on 3 March 2020 confirmed that he believes a microchip was implanted in his brain. All he expects from the Department of Health is to have an X-Ray performed to confirm that the microchip was implanted without seeing a doctor’s opinion. The process was explained that a CBS Coordinator will visit him, that she will refer him to the closest health facility to assess if a X- ray is required.*
- 3. The CBS Coordinator together with the NPO visited the complainant 2 days later at his home before he left for work. They discussed the matter and obtained information that he is a known mental health care user of Khayelitsha hospital. He has a history of absconding from hospital once he is admitted for the 72-hour assessment period. He refuses to take his medication as he believes it doesn’t work. They were very concerned about his mother living with him as he has a history of TB and she looked very frail and sick. He got agitated towards the end of the conversation and wanted to leave for work. They agreed that they will visit again, with the main aim to not only look at his complaint but to assess the mother’s medical and emotional needs.*
- 4. Sr Titus (Coordinator from the NPO) visited his house unannounced on 3 further occasions early in the morning before work. The windows were open but no one answered.*
- 5. On 23 March 2020 Mr Ngcebetshane called the HOD’s office complaining that no progress has been made thus far, that no one has communicated with him since*

his complaint was lodged and in his statement he confirms the following: "All I want to do now is to get an X RAY / CT SCAN nothing else"

6. *Sr Titus again visited Mr Ngcebetshane's home on 24 March 2020, but only found the windows open with no response. Sr Titus spoke to the neighbours who did not want to get involved.*
7. *The CBS coordinator, Ms Engel also followed up with a call on his cell to set up an appointment, with no success. Her phone call was followed up with an e-mail to which he responded. They agreed on a date but on the day of the visit no one was home.*
8. *Ms Engel consulted the family physician from Eerste River hospital who felt that Mr Ngcebetshane's should be admitted for a 72-hour assessment period. He suggested that the mother be asked to commit him.*
9. *Sr Titus managed to get hold of the mother on 28 May 2020 and asked her for support to get him admitted. Regrettably she declined as she now also believes that he has a microchip implanted in his brain. She admitted that he is not taking his medication*
10. *Mr Ngcebetshane continued to send derogatory emails about high level leaders to different platforms during the period of June to October 2020*
11. *He again made contact with the HODs office in October about the lack of support from the Department*
12. *A last home visit was attempted on 5 October 2020 by Sr Titus, who again found no one at home".*

5.1.5.2 In an effort to assist the Complainant further, the Western Cape Department of Health (WC Health) arranged for the Complainant to report to the Kleinvlei Clinic on 08 December 2021, for X-Rays to be taken, however an X-Ray could not be done as the Radiographer was not available. Appointments were rescheduled to 05 January 2022 and 19 January 2022, however these appointments could not be honoured due to the unavailability of the Complainant.

5.1.5.3 On 11 February 2022, the Complainant availed himself at the Khayelitsha Hospital and was attended to by Dr Bush for an assessment, an X-Ray and Ultra Sound (Sonar) scan was taken to ascertain whether there is a microchip implanted in his head.

5.1.6 The Complainant indicated to the Public Protector's Investigation team that during a further appointment on 22 March 2022 with Mr Bonani Mfeya, the Quality Assurance

Manager at Khayelitsha Hospital, he was not given the requested copy of the X-Ray and medical report and was not satisfied with what was communicated to him as an outcome of the assessment of 11 February 2022.

- 5.1.7 The Complainant further informed the Public Protector Investigation team that, despite the examination he was also approached by Ms Ntombi Khumalo, who wanted to meet with him with the view to conduct a mental assessment. The Complainant stated that he is not willing to avail himself for a mental assessment until the microchip that he alleges is in his head is removed.
- 5.1.8 In following up on the further issues raised by the Complainant, the Western Cape Department of Health informed the Public Protector Investigation Team on 11 April 2022, that the matter of the Complainant was again discussed with the head of Radiology and the Clinical Manager of the Khayelitsha Hospital where it was resolved that a CT Scan will be conducted on 07 June 2022.
- 5.1.9 On 9 June 2022 the Public Protector Investigation Team was presented with a copy of the Complainants CT scan report. However, due to the technical nature of the report a virtual meeting was held on 17 June 2022 with a medical and administrative team of the Khayelitsha Hospital consisting of, Dr Crispin Kibamba Emergency Medicine Specialist, Dr Luke Bush, Medical Practitioner and Mr Bonani Mfeya, Quality Assurance Manager, wherein Dr Bush clarified and explained the following:
- 5.1.9.1 He consulted the Complainant on 11 February 2022 and conducted an X-Ray and Sonar, and found that there was a foreign object at the back of the Complainant's head. Dr Bush stated that the Complainant was not concerned about the foreign object visible on the X-Ray at the back of his head, but referred to a scar on his forehead where the microchip was allegedly implanted.
- 5.1.9.2 Dr Bush further explained to the Public Protector's Investigation team that the Complainant was allegedly hit on his forehead with an object during a fight with his brother for which he received treatment at the Hermanus Hospital in 2018. In examining the area pointed out by the Complainant, Dr Bush stated that it might be well possible that a particle, unseen by the human eye, which came from or was on the object hit with, could have stayed behind when the wound was cleaned and treated. Alternatively, that there could have been traces of scar tissue that had formed after the

healing of the wound. Dr Bush denies however that there is any object implanted in the forehead area of the Complainant.

5.1.9.3 Dr Bush mentioned that in order to remove any particle or scar tissue from the area examined the procedure will involve surgery by a Plastic and Reconstructive Specialist of which the cost, in a matter such as the complainant's, will usually not be borne by a state institution such as the Khayalitsha Hospital and that there is no guarantee of any success with such surgery.

5.1.9.4 Dr Bush indicated that although he discussed his findings of the assessment, X-ray, Ultra sound and CT scan examinations with the Complainant, he is of the view that the Complainant would need further counselling to understand his medical condition.

Application of the applicable law

5.1.10 Section 27 of the Constitution¹ provides that "(1) *Everyone has a right to have access to-*

(a) *Health care services*"

5.1.11 Section 195 of the Constitution provides, amongst others, that:

"Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) *A high standard of professional ethics must be promoted and maintained"*

5.1.12 Batho Pele Principles

In terms of one of the Batho Pele principles *"Citizens should be given full, accurate information about the public services they are entitled to receive"*.

5.1.13 National Health Care Act, 2003

¹ Act 108, of 1996

Section 6(1) of the National Health Care Act, provides that every health care provider must inform the user of-

(a).....

(b) *the diagnostic procedures and treatment options generally available to the user;*

(c) *the benefits, risks, costs and consequences generally associated with each option; and*

(d) *the user's right to refuse health services and explain the implications, risks, obligations of such refusal;*

(2) *The Health care provider concerned must, where possible, inform the user as contemplated in section (1) in a language that the user understands and in a manner which takes into account the user's level of literacy. (Own emphasis).*

Conclusion

5.1.14 Despite the interventions to assist the Complainant in 2020, the medical evaluation and examinations performed on 11 February 2022, and although the Complainant was provided with a copy of the CT scan conducted on 09 June 2022, there is no indication and evidence presented that the findings and outcome of the latter X-Ray, Sonar and CT scan outcomes were explained in a language and terminology that could easily be understood by the Complainant.

5.1.15 The Department has also not presented evidence which indicates that any further treatment option in the form of surgery together with the benefits, risks, costs and consequences associated with such an option was communicated and explained to the Complainant.

6 ROOT CAUSE PROBLEM IDENTIFIED

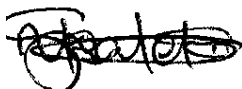
- 6.1. After assessing all the evidence and information obtained during the investigation, the Public Protector has taken cognisance of the medical assessment and examination in the form of X-ray, ultra sound and CT scan which the Complainant received. However, when the Complainant approached the Public Protector during the investigation process about the outcome of the medical examinations, it became clear that the observations, detections and any further possible medical treatment by the Khayalitsha medical team was not properly explained to the Complainant in a language and terminology that the Complainant understands, considering his medical condition.

7 INTERVENTION

- 7.1. It is recommended, in terms of section 6(4)(c)(ii) of the Public Protector Act, that the Director General of the Department of Health within thirty (30) days from the date of this letter, intervene and ensure that a meeting is arranged between the medical team and the Complainant, accompanied by a family member to:
- 7.1.1. Explain and provide all with a written report as to the outcome of the observations made during the medical examination, any further medical treatment available to remove the presence of any particle or scar tissue, the risk involved in such treatment, and the possible incurrence of personal costs for such treatment in a language and terminology that will be comprehensible to all.
- 7.1.2. The Department of Health continue to explore alternative ways within the prescripts of the Mental Health Care Act to ensure that Mr Ngcebetsane receives the necessary intervention.

Yours sincerely,

PUBLIC PROTECTOR
SOUTH AFRICA



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ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 30 SEPTEMBER 2022