



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF
IMPROPER CONDUCT AND MALADMINISTRATION BY THE KNYSNA
LOCAL MUNICIPALITY RELATING TO THE APPOINTMENT OF THE
MUNICIPAL MANAGER AND FAILURE TO COMMUNICATE WITH A
COMPLAINANT**

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(2A) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report relates to an investigation into allegations of improper conduct and maladministration by the Knysna Local Municipality (Municipality) pertaining to the appointment of the Municipal Manager in 2015 and the failure by the Municipality to communicate with the complainant.
- 1.3 The report is submitted to the Executive Mayor of the Municipality.
- 1.4 A copy of the report is also provided to the Chairperson of the National Council of Provinces, the Municipal Manager of the Municipality and Mr Mike Hampton, who lodged the complaint (Complainant).

2. BACKGROUND TO THE COMPLAINT

- 2.1 The Complainant submitted a petition to the Standing Committee on Petitions and Executive Undertakings (Committee) of the National Council of Provinces (NCOP) on 28 April 2015 in connection with his complaints against the Municipality.
- 2.2 The Committee subsequently conducted hearings in connection with the complaints on 10 February 2016; 16 March 2016 and 24 May 2017.
- 2.3 On 11 December 2017, the Committee resolved to recommend to the NCOP that the Public Protector should be requested to investigate some of the issues raised by the Complainant.

2.4 This recommendation was accepted by the NCOP on 13 June 2018. The then Chairperson addressed a letter to the Public Protector, requesting an investigation of the said matters, on 13 June 2018. This letter was only received by the Public Protector South Africa on 11 September 2018.

3. THE COMPLAINT

3.1 The essence of the complaints raised against the Municipality in the petition to the NCOP, were the following:

3.1.1 The appointment of Mr Grant Easton as the Municipal Manager in 2015 was improper and irregular;

3.1.2 The Municipality failed to communicate with the Complainant and “*blocked*” his emails;

3.1.3 The Municipality improperly and unlawfully funded the Knysna Tourism Board; and

3.1.4 The Municipality improperly awarded a tender for the Integrated Strategic Development Framework to the Knysna Creative Heads Consortium.

3.2 This report only relates to the complaints referred to in paragraphs 3.1.1 and 3.1.2 above. The matters referred to in paragraphs 3.1.3 and 3.1.4 are the subject of further investigations that are being conducted.

4 POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

4.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

4.2 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”.*

- 4.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.
- 4.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. 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.
- 4.5 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect¹. The Constitutional Court further held that: *“When the remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences”*².
- 4.6 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the

¹ [2016]ZACC 11; 2016(3) SA 580(CC) and 2016 (5) BCLR 618 (cc) at para [76].

² *Supra* at para[73]

incident, and in deciding what constitute 'special circumstances', some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and / or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation; whether the prejudice suffered by the complainant persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitute 'special circumstances' depends on the merits of each case.

- 4.7 The Municipality is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector's mandate.
- 4.8 The jurisdiction of the Public Protector to investigate the allegations was not disputed by the parties.

4 THE INVESTIGATION

4.1 Methodology

- 4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
- 4.1.2 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.

4.2 Approach to the investigation

4.2.1 The investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

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

4.2.2 In the event of maladministration, what would it take to remedy any wrong where appropriate and to place the Complainant as close as possible to where he/she would have been, but for the maladministration or improper conduct.

4.2.3 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. In this particular case, the factual enquiry principally focused on whether or not the appointment of Mr Grant Easton as the Municipal Manager in 2015 was improper and irregular and the Municipality failed to communicate with the Complainant in respect of his complaints.

4.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Municipality or organ of state to prevent maladministration and prejudice, where applicable.

4.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of any maladministration found, where appropriate.

4.3 On analysis of the complaint, the following issues were considered and investigated:

- 4.3.1 Whether the appointment of Mr Grant Easton as the Municipal Manager in 2015 was improper and irregular and;
- 4.3.2 Whether the Municipality failed to communicate with the Complainant in connection with his complaints against the Municipality.

4.4 Key sources of Information

4.4.1 Documents and information received

4.4.1.1 The relevant information and documents received and analyzed were primarily correspondence with the Committee, the Western Cape Department of Local Government, Environmental Affairs and Development Planning and the Municipality, and the consideration and evaluation of documents submitted.

4.4.2 Meetings

5.4.2.1 A meeting was held with the Legal Department of the Municipality on 30 April 2019.

4.4.3 Applicable Legislation

4.4.3.1 The Constitution of the Republic of South Africa, 1996; and

4.4.3.2 The Public Protector Act 23 of 1994.

4.4.3.3 The Local Government: Municipal Systems Act, 32 of 2000. (Municipal Systems Act).

4.4.3.4 The Regulations on Appointment and Conditions of Employment of Senior Managers, published in Government Gazette No 167 dated 7 March 2013, made in terms of the Municipal Systems Act.

5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS.

5.1 Whether the appointment of Mr Grant Easton as the Municipal Manager in 2015 was improper and irregular

Common cause or undisputed facts

5.1.1 It is common cause that the position of Municipal Manager of the Knysna Municipality became vacant on 1 December 2014.

5.1.2 The post was advertised and Mr G Easton was appointed as Municipal Manager on 1 April 2015.

Issues in dispute

5.1.3 The Complainant contended that Mr Easton was previously employed by the Municipality as the Chief Financial Officer, during which time he was involved in various financial irregularities for which he was never held accountable. The Complainant did not submit any evidence or details in this regard, despite having been requested to do so during the investigation.

5.1.4 Further, that Mr Easton was appointed as the Municipal Manager only because he previously worked with the Executive Mayor and the Deputy Mayor when he was the Chief Financial Officer of the Municipality. No information or evidence was presented in this regard.

- 5.1.5 The Complainant also alleged that Mr Easton's academic qualifications were not verified by the Municipality when he was appointed as the Municipal Manager.
- 5.1.6 During the investigation, it was established from the records of the Municipality that the Municipal Council resolved on 2 October 2014 that the Selection Panel for the appointment of the new Municipal Manager would consist of the Executive Mayor, three Councillors and the Director: Municipal Governance of the Western Cape Provincial Department of Local Government, Environmental Affairs and Development Planning.
- 5.1.7 The Municipal Council also resolved that the then Municipal Manager was authorised to appoint a service provider to assist with the recruitment and selection process of the candidate for the position of Municipal Manager.
- 5.1.8 The Municipality accordingly appointed "*ODS Consultants CC*" as the service provider responsible for the screening of the all the applications for the position.
- 5.1.9 In total thirty six (36) applications were received and ultimately five (5) candidates were shortlisted for interviews.
- 5.1.10 Interviews were held on 29 and 30 January 2015.
- 5.1.11 Mr Easton obtained the highest score during the interviews and the Selection Panel regarded him as the most suitable candidate for the position.
- 5.1.12 On 26 March 2015, the Executive Mayor submitted a report on the outcome of the selection and recruitment process to the Municipal Council, indicating that the verification of the qualifications of the shortlisted candidates were awaited.
- 5.1.13 The Municipal Council resolved to appoint Mr Easton as the Municipal Manager with effect from 1 April 2015.

- 5.1.14 The Municipal Council informed the then Member of the Western Cape Executive Council for Cooperative Governance and Traditional Affairs on 10 April 2015 of the appointment of Mr Easton as the Municipal Manager in accordance with the provisions of Section 54A(7)(a) of the Municipal Systems Act. The appointment was noted by the MEC on 3 June 2015.
- 5.1.15 It was established during the investigation that the Municipality received feedback on the verification that Mr Easton obtained a Bachelor of Arts in Public Administration from the Glasgow College of Technology in 1984.
- 5.1.16 No information or evidence was found during the investigation of any complaints or irregularities raised against Mr Easton prior to his appointment as the Municipal Manager.
- 5.1.17 There is also no evidence indicating that the Executive Mayor or any councillor improperly influenced Mr Easton's appointment.
- 5.1.18 Mr Easton resigned as Municipal Manager on 15 March 2017.

The relevant legislation

- 5.1.19 Section 54A of the Municipal Systems Act provides that the municipal council must appoint a municipal manager as the head of the administration of the municipality. The municipal council must inform the MEC for Local Government of the appointment.
- 5.1.20 The appointment of senior managers, including the municipal manager, is further regulated by the Regulations on Appointment and Conditions of Employment of Senior Managers, published in Government Gazette No 167 dated 7 March 2013, made in terms of the Municipal Systems Act (the Regulations).
- 5.1.21 Regulation 12 provides that a municipal council must appoint a selection panel to make recommendations for the appointment of candidates to vacant senior manager posts. The selection panel for the appointment of a

municipal manager must consist of at least three and not more than five members, which should include the mayor as the chairperson, a councillor appointed by the Council, and at least one other person who has the expertise or experience in the field of the advertised post and who is not a councillor or a staff member.

- 5.1.22 The selection panel must, in terms of Regulation 16(5) submit a report and recommendation on the selection process to the municipal council on the suitability of the candidates interviewed. The municipal council must then, in terms of Regulation 17(2) take a decision on the appointment of a suitable candidate.

Conclusion

- 5.1.23 The appointment of Mr Easton as the Municipal Manager on 1 April 2015 was in accordance with the process of selection and recruitment as prescribed by the Municipal Systems Act and the Regulations.
- 5.1.24 No verifiable evidence of any impropriety was submitted by the Complainant to substantiate his allegations.
- 5.1.25 No evidence of any improper influence in the appointment of Mr Easton was found during the investigation and his qualification that was considered for his appointment as the Municipal Manager was verified.
- 5.1.26 The allegation that Mr Easton was involved in financial irregularities when he was the Chief Financial Officer of the Municipality was also not substantiated by the Complainant and no evidence of any such complaints or investigations against Mr Easton prior to his appointment as Municipal Manager was found in the records of the Municipality.

5.2 Whether the Municipality failed to respond to communication from the Complainant in connection with the matters that he had raised

Common cause or undisputed facts

- 5.2.1 It is common cause that the Complainant addressed numerous and continuous email correspondence to various institutions, including the Municipality and individuals over a substantial period of time, before his complaints were referred to the Public Protector in 2018.
- 5.2.2 In his email correspondence, the Complainant used several email addresses for response.

Issues in dispute

- 5.2.3 The Complainant contended that the Municipality improperly and unlawfully “blocked” his emails before he submitted his petition to the NCOP in April 2015.
- 5.2.4 During the investigation, it was established that the former Municipal Manager responded to *inter alia*, this allegation of the Complainant to the then Western Cape MEC for Local Government, on 18 February 2016, as follows:

“With regards to the blocking of emails from the petitioner (Complainant) we acknowledge that two of the petitioner’s e-mail addresses, i.e mike@loveknysna.com and mike@knysnakeep.org were previously blocked on the instruction of the then Municipal Manager, Ms L Waring.

Ms Waring took that decision following a number of aggressive, derogatory, abusive and often defamatory e-mails which the petitioner sent to various municipal officials. The view of the then Municipal Manager, which is still the view of the administration, is that although we are public officials, we

deserve to be treated with human dignity and respect and should never be forced or subjected to abuse by any individual.

It should be noted that not all of the e-mail addresses used by the petitioner were blocked. We attach hereto electronic mails sent by the petitioner from various other mailing addresses, which were not blocked by the administration. The petitioner unfortunately, has never been satisfied with any response given by the municipality to any of his queries and has the habit of attacking any official who holds a view at variance with his perspective on matters or at times interpretation of the law.”

5.2.5 The former Municipal Manager further confirmed that all the Complainant's e-mail addresses were unblocked since January 2015, i.e. before he lodged the petition with the NCOP.

5.2.6 It also appeared from the investigation that the Complainant has lodged more than twenty (20) applications for access to information to the Municipality, all of which have been responded to in terms of the Promotion of Access to Information Act, 2000.

5.2.7 Due to the resistance and failure of the Complainant to cooperate with the investigation, it was not possible to verify the information relating to the blocking of his emails addressed to the Municipality, with him. However, the records of the Municipality contains numerous email correspondence received from him since and prior to January 2015.

Conclusion

5.2.8 The allegation that the Municipality failed to communicate with the Complainant in connection with the matters he had raised is not supported by the evidence obtained in the records of the Municipality, from which it was found that he has been provided with numerous and comprehensive responses to his complaints and applications for access to information.

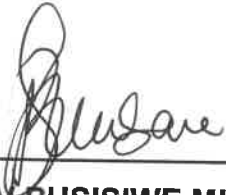
5.2.9 Even though some of his email addresses were blocked by the Municipality at the instruction of a former Municipal Manager, it was only for a short period of time and email communication was still received from the Complainant's other email addresses.

6. REASONS FOR CLOSURE

- 6.1 The allegations of the Complainant relating to the appointment of Mr G Easton as Municipal Manager are not substantiated by the evidence and information obtained during the investigation.
- 6.2 The allegation that the Municipality failed to communicate with the Complainant in connection with his complaints is not substantiated by the evidence and information obtained from the records of the Municipality. Even though the former Municipal Manager decided that emails from some of his email addresses should be blocked due to it being abusive and offending, this was only for a short period and emails were still received from the Complainant's other email addresses during this time. By the time that he lodged the petition with the NCOP there was no restriction on email communication sent by the Complainant at the Municipality.
- 6.3 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 authorisation of the Public Protector.
- 6.4 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.

CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE KNYSNA LOCAL MUNICIPALITY RELATING TO THE APPOINTMENT OF THE MUNICIPAL MANAGER AND FAILURE TO COMMUNICATE WITH A COMPLAINANT

- 6.5 Should there be any enquiries or responses to this closing report, kindly contact Ms Sune Griessel, the Western Cape Provincial Representative of the Public Protector at suneg@pprotect.org within ten (10) business days from the date of this report.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE 07 10 2019