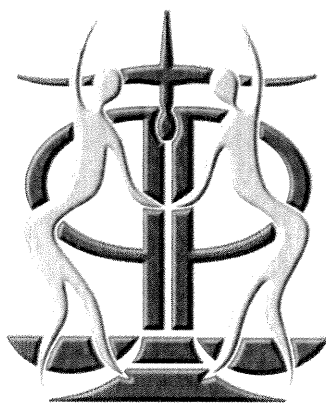


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION  
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH  
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT,  
1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT NO.14 of 2009/10**

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION THAT THE STEVE  
TSHWETE MUNICIPALITY IN THE MPUMALANGA PROVINCE FAILED TO  
RESPOND TO COMPLAINTS AND REPRESENTATIONS RECEIVED FROM MR M  
JOUBERT**

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## Executive Summary

- (i) The investigation arose out of a complaint lodged by Mr M Joubert (the Complainant) that the Steve Tshwete Municipality (Municipality) ignored all written correspondence and representations he made regarding the Municipality's alleged failure to perform some of its statutory duties.
- (ii) It was found that:
  - (a) The Complainant sent numerous letters and a petition to the Municipality and made several personal visits to the Municipal Manager's office to follow up on his complaints;
  - (b) The Municipality acknowledged receipt of the Complainant's documents, but failed to respond to him; and
  - (c) The Municipality's failure to respond was in contravention of the applicable laws.
- (iii) The Public Protector recommended that:
  - (a) The Municipality should establish appropriate mechanisms, processes and procedures for the receipt, processing and consideration of petitions and complaints lodged by members of the community; and
  - (b) The mechanisms, processes and procedures referred to above should ensure prompt responses by the Municipality to written or oral communication, representations and complaints received from members of the community. In this regard the Municipality should develop a Service Delivery Charter that would indicate the timelines within which complaints from the public are dealt with.

# REPORT ON AN INVESTIGATION INTO AN ALLEGATION THAT THE STEVE TSHWETE MUNICIPALITY IN THE MPUMALANGA PROVINCE FAILED TO RESPOND TO COMPLAINTS AND REPRESENTATIONS RECEIVED FROM MR M JOUBERT

## 1. INTRODUCTION

- 1.1 This report is submitted to the Municipal Manager and Council of the Steve Tshwete Local Municipality and the Member of Executive Council in charge of Co-operative Governance and Traditional Affairs in the Mpumalanga Provincial government in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994.
- 1.2 It deals with an investigation into an allegation that the Municipal Manager of the Steve Tshwete Local Municipality improperly failed to respond to complaints and representations raised by Mr. M Joubert (the Complainant), a concerned resident of the Municipality.

## 2. THE COMPLAINT

- 2.1 The investigation was the result of a complaint lodged with the Office of the Public Protector by the Complainant on 22 November 2007.
- 2.2 The Complainant alleged that the Steve Tshwete Municipality (Municipality) had failed to respond to numerous letters of complaint and other representations he made to the Municipality. He stated that despite personal visits to the Municipal Manager's office to enquire about progress in addressing the issues he raised in his correspondence, his representations were ignored and no written or verbal reply was ever given.

2.3 The complaints and representations related to the alleged failure by the Municipality to perform its statutory duties in relation to the following-

#### 2.3.1 Traffic Control

Excessive speeding and drunken driving which were endemic in the streets of Middelburg area and the failure by the local traffic department to intervene to correct the situation. Numerous newspaper clippings, mentioning various vehicle accidents around the municipal boundaries were submitted to the Municipality as illustration of the unacceptable state of affairs.

#### 2.3.2 Access to Information

A request was made on 21 August 2007 for the Municipality to provide information relating to the expenditure of the council and the productivity of the traffic department without any response. An acknowledgement of receipt of this letter was obtained from the Financial Manager's office.

#### 2.3.3 Noise Pollution

A letter regarding noise pollution was sent to the Municipality on 26 November 2006, but there was no response to it. The Municipality was unable to produce Noise Pollution By-laws merely stating that By-laws were in the process of being re-drafted.

#### 2.3.4 Public Drunkenness

Liquor is used in public places and in the presence of children. Drunken people can be spotted at picnic spots. No notice boards are displayed in public places to warn against public use of alcohol.

### 2.3.5 Malfunctioning Sewer System

Effluent sometimes flows for days on end into the “Little Elephant’s River”. The matter was reported to the Municipality, but it failed to address this situation.

### 2.3.6 Vehicle Registration Numbers

Vehicles are driven without displaying the registration numbers. A couple of the Municipality’s vehicles are amongst such vehicles.

### 2.3.7 Accessibility of Information Published in Newspapers

Legal notices are placed in a newspaper that is not widely read by the community. While the newspaper is distributed for free, it is not available in some areas.

## **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

3.1 The Office of the Public Protector was established in terms of Chapter 9 of the Constitution to support constitutional democracy. Section 182 of the Constitution gives the Public Protector the power 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 impropriety and prejudice, to report on that conduct and to recommend appropriate remedial action. The operational requirements of the Office of the Public Protector are provided for by the Public Protector Act, 1994.

3.2 Section 6(4) of the Public Protector Act, 1994 empowers the Public Protector to investigate, amongst other things, abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function.

- 3.3 The findings of an investigation by the Public Protector may, when he/she deems it fit but as soon as possible, be made available to the Complainant and to any person implicated thereby.
- 3.4 The complaint of maladministration and/or improper conduct against the Municipality falls within the jurisdiction of the Public Protector to investigate.

#### **4. THE INVESTIGATION**

The investigation was conducted in terms of section 6 and 7 of the Public Protector Act, 1994 and comprised the following:

- 4.1 Assessment of the complaint;
- 4.2 Correspondence and consultation with Mr W Fouche (the Municipal Manager);  
and
- 4.3 Consideration of the Constitution and the Local Government: Municipal Systems Act, 2000

#### **5. CORRESPONDENCE AND CONSULTATION WITH THE MUNICIPAL MANAGER**

- 5.1 Preliminary written enquiries outlining the complaint were sent to the Municipal Manager. After several written reminders and telephone messages, the Municipal Manager responded by stating that the Municipality has to attend to the needs of approximately 150 000 residents on a daily basis. Further, that it was not possible for him to continuously interact with a single resident on his particular personal issues.

- 5.2 He stated that if the Complainant had specific inputs that he wished to make, he should do so through his Ward Councilor, Ward Committee or the relevant member of the Mayoral Committee. Lastly, the Municipal Manager stated that if the Complainant required any information from the Municipality, he should utilise the provisions of the Promotion of Access to Information Act, 2000.
- 5.3 A meeting was arranged with the Municipal Manager in which he restated the contents of his letter with regards to his failure to respond to correspondence and representation by the Complainant.
- 5.4 It was pointed out to the Municipal Manager that the Complainant, as a member of the community, is entitled by law to raise concerns with the Municipality and receive prompt responses thereto. It was further pointed out that one of Complainant's representations was, in fact, in the form of a petition which had been signed by other members of the community and, as such, could not be regarded as a personal issue. The Municipal Manager offered no reasonable explanation for not responding to the Complainant's correspondence.

## **6. MEETING HELD WITH THE PARTIES**

A meeting was arranged with the Municipal Manager and the Complainant with the aim of bringing the parties together to discuss all the outstanding issues. During the meeting the Municipal Manager responded to the issues raised as follows:

### **6.1 Failure to respond**

The Municipal Manager apologised for not responding to the issues raised by the Complainant. He also conceded that the issues raised by the Complainant were administrative issues and that it was therefore incorrect to refer the Complainant to his Ward Counselor.



## 6.2 Inadequate traffic control

6.2.1 The Municipal Manager said the Complainant's suggestion for the installation of a traffic circle was investigated but found not to be an ideal solution. He stated that the Municipality had looked at a few proposed designs for a traffic circle but had concluded that none of them would be appropriate. He also mentioned that an official announcement by the Municipality would be made shortly to ensure that the trucks remained on the main roads.

6.2.2 Both the Municipal Manager and the Complainant agreed that the Municipality was attending to the issue of excessive speeding. The Municipal Manager stated that the Municipality would look into the possibility of installing traffic lights in order to ensure that drivers observe the speed limit.

## 6.3 Access to information

The Municipal Manager reiterated the stand point taken in his correspondence that the Complainant should in his correspondence to the Municipality, follow the procedures provided for in terms of the Promotion of Access to Information Act, 2000.

## 6.4 Noise pollution

6.4.1 The Municipal Manager asked for clarity on this issue, and the Complainant explained that he was referring to an event that took place at the stadium. The Municipal Manager pointed out that the Complainant was complaining about a once-off event, which he could not address as the complaint was raised after the event. He stated that the Municipality would in future ensure that usage of the stadium would be monitored and that proposals in this regard would serve before the Council within six months' time.

6.4.2 The Complainant also raised the issue of loud quad bikes that are usually driven around the area during weekends. The Municipal Manager undertook to look into the matter.

6.5 Public drunkenness

The Municipal Manager undertook to look into the matter.

6.6 Malfunctioning sewer system

The Municipal Manager disputed the Complainant's statement that the Municipality was not attending to the problem. He stated that the Municipality attended to sewer problems whenever they arose and before any lasting damage could occur.

6.7 Accessibility of information published in newspapers

The Municipal Manager disagreed with the Complainant in this matter. He said that the newspaper was distributed throughout the area and thus reached all residents. He also mentioned that the particular newspaper was more accessible to the public as it was distributed free of charge.

## 7. APPLICABLE LEGISLATION

### 7.1 The Constitution

Section 152(1) of the Constitution provides that the objects of local government, amongst others, are to provide democratic and accountable government for local communities and to encourage the involvement of communities and community organisations in the matters of local government.

## 7.2 The Local Government: Municipal Systems Act, 2000

7.2.1 Section 55(1)(a) provides, amongst other things, that as head of administration, the Municipal Manager of a municipality is responsible and accountable for the formation and development of an economical, effective, efficient and accountable administration responsive to the needs of the local community to participate in the affairs of the municipality.

7.1.2 Section 4(2) provides that the council of a municipality, within its financial and administrative capacity has a duty to-

*“(b) Provide, without favour or prejudice, democratic and accountable government;*

*“(c) Encourage the involvement of the local community.”*

7.1.3 Section 5(1) provides that members of the local community have the right-

*“(a) through mechanisms and in accordance with processes and procedures provided in terms of this Act and other applicable legislation to submit written or oral recommendation, representation and complaints to the municipal council or to another political structure or a political office bearer or the administration of the municipality;*

*“(b) To prompt responses to their written or oral communication, including complaints, to the municipal council or to another political structure or a political office bearer or the administration of the municipality; and to the regular disclosure of the state of affairs of the municipality, including its finances.”*

7.2.4 Section 17(2)(a) provides that-

*“(a) a municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality, and must for this purpose provide for the receipt, processing and consideration of petitions and complaints lodged by members of the local community.”*

## **8. OBSERVATIONS AND FINDINGS**

- 8.1 The Municipal Manager ignored correspondence and representations from the Complainant.
- 8.2 The aforesaid conduct was improper and breached the provisions of sections 4 and 5 of the Local Government: Municipality Systems, Act, 2000.

## **9. RECOMMENDATION**

It is recommended in terms of section 182(1)(b) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, 1994 that:

- 9.1 The Municipality should, in accordance with section 17(2)(a) of the Local Government: Municipal Systems Act, 2000 establish appropriate mechanisms, processes and procedures for the receipt, processing and consideration of petitions and complaints lodged by members of the community; and
- 9.2 The mechanisms, processes and procedures referred to in paragraph 9.1 above should ensure prompt responses by the Municipality to written or oral communications, representations and complaints received from members of the community. In this regard the Municipality should consider compiling a Service Delivery Charter that would indicate the timelines within which complaints from the public are dealt with.

## 10. CONCLUSION

The Office of the Public Protector will monitor implementation of the recommendations on a quarterly basis.



**ADV ML MUSHWANA**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:** 19/08/09,

Assisted by: Ms M Mashigoane, Investigator: Nelspruit Office