

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG PROVINCIAL DIVISION, PRETORIA**

**Case No.: 19343/2022**

In the matter between:

**THE HEALTH JUSTICE INITIATIVE**

Applicant

and

**THE MINISTER OF HEALTH**

First Respondent

**THE INFORMATION OFFICER,**

Second Respondent

**NATIONAL DEPARTMENT OF HEALTH**

**MINISTER OF COOPERATIVE GOVERNANCE**

Third Respondent

**AND TRADITIONAL AFFAIRS**

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**FIRST AND SECOND RESPONDENTS' ANSWERING AFFIDAVIT**

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I, the undersigned,

**DR. NICHOLAS GILMOUR CRISP**

do hereby make oath and state that:

1. I am a Deputy Director of the National Department of Health ("NDoH"). I am delegated by the Director General who is the designated Information Officer of the NDoH in terms of the Promotion of Access to Information Act, of 2000 (Act No. 2

of 2000) ("PAIA").

2. I am authorised to depose to this affidavit on behalf of the Minister of Health.
3. The facts set out in this affidavit are based on the information available to me in my capacity as a Deputy Director-General of the NDoH. Except where the context indicates otherwise, I have personal knowledge of the facts contained herein and to the best of my belief the facts set out in this affidavit are both true and correct.
4. Elsewhere in this affidavit where I make legal submissions, I do so on the advice of the NDoH's legal representatives. I accept such advice as correct.
5. I have read the affidavit deposed to by Fatima Hassan on behalf of the applicant and wish to respond thereto as follows:
6. I will respond to every allegation of fact or law made by Fatima Hassan in the founding affidavit. I will confine my response to the material allegations deserving a response from the NDoH and the issues falling within the NDoH's province.
7. The mere fact that I do not respond to all the allegations does not mean that I admit the allegations to be true and correct.
8. Every allegation of fact or law contained in the founding affidavit that is at variance with the contents of my affidavit is denied and the applicant is put to the proof thereof.



## **THE INFORMATION SOUGHT**

9. The information sought by the applicant is categorised into three categories, A, B and C. under category A) the applicant seeks the expert advice and Ministerial Advisory Committee Advisories on Covid-19, namely:

1. A list of the names of all local and international expert advisors to the NDoH on Covid-19, irrespective of whether they serve on any Ministerial Advisory Committee ("MAC") for Covid-19.
2. Copies of all MAC and Ministerial Advisory Committee Covid-19 Vaccine ("VMAC"). Advisories that are currently not in the public domain.
3. Copies of all memoranda and advisories from the MAC and VMAC that relate to options and recommendations for vaccinating all people with comorbidities.
4. Copies of all MAC, VMAC, NDoH, SAHPRA and any other expert recommendations and expert as well as ethic bodies / or other professional or expert bodies written advice including from the South African Medical Research Council ("SAMRC") and the South African Medical Association ("SAMA"), related to the vaccine selection and priority group eligibility criteria for South African from December 2020 to date, and copies of any changes in the respective recommendations/advice over this period.



**10. In category B) Prioritisation and risk framework and principles:**

- 1. A copy of the written and current approved (or draft form) risk and priority group framework or similar, timeline, that the NDoH is at present using to vaccinate people in South Africa and in turn using to make vaccine allocation and prioritisation of certain (eligibility) decisions.**
- 2. Copies of all submissions made by any other government department, trade union, political party, business body, organisations, medical schemes, statutory bodies or any other, whether locally or internationally, on the issue of vaccine selection for South Africa, and prioritisation of certain groups in South Africa ahead of others.**

**11. In category C) AstraZeneca Expert Decision:**

- 1. Copies of all the MAC, VMAC, SAHPRA and any other expert group or individual recommendations on the use or non-use of the AstraZeneca/ Covishield vaccine (from the Serum Institute of India) in South Africa for February -July 2021, for Covid -19.**
- 2. A copy of the scientific advice / advisories including from the MAC or VMAC or any other expert body or group of experts, that was submitted to the NDoH and that sets out the basis upon which the AstraZeneca vaccine should be paused for use in South Africa in 2021.**

3. Copies of the NDoH Memoranda, MAC and VMAC recommendations or any other expert groupings memoranda setting out the decision and rationale for pausing the use of the AstraZeneca vaccine in South Africa and the proposal and decision to donate / sell it in early 2021.
4. A copy of the contract and details of the final sale / donation of the AstraZeneca vaccine, including all details of the cost recovery or lack thereof.

### **OVERVIEW**

12. It is axiomatic that the request is expansive in its content. It covers a wide range of information. I will show herein below that some of the information request is already in the public domain. Further that some of the information request falls in the domain of other institutions and not the NDoH.
13. Some of the information requested is protected by mandatory non-disclosure in terms of the PAIA and that the applicant is already in possession of some of the information requested.

### **THE SCHEME OF PAIA**

14. The PAIA permits the public or private bodies or institutions, under certain circumstances to refuse access to a record requested in terms of it. In other words, the Act allows the mandatory non-disclosure of certain information.

15. The Act also allows the public or private bodies the discretion to disclose or not disclose specifics of the record requested in terms of the PAIA.

16. Section 33(1) of the PAIA reads: *The information officer of a public body:*

(a) *must refuse a request for access to a record contemplated in section 34(1), 35(1), 36(1), 37(1)(a), 38(a), 39(1)(u), 40 or 43(1); or*

(b) *may refuse a request for access to a record contemplated in section 37(1)(b), 38(b), 39(1)(b), 41(1)(a); or*

(c) *42(1 or 3); 43(2), 44 (1 or 2); 45;*

*Unless the provisions of section 46 apply.*

*"[1] Section 36(1) of the Act, provides that "Subject to subsection 2, the information officer of a public body must refuse a request for access to a record of the body, if the record contains:*

(a) *trade secrets of a third party;*

(b) *financial, commercial, scientific, or technical information, other than trade secrets, or of a third party, the disclosure of which will be likely to cause harm to the commercial or financial interests of that third party; or*

(c) *information supplied in confidence by a third party, the disclosure of which could reasonably be expected:*

(i) *to put that third party at a disadvantage in contractual or other negotiations; or*

*(ii) to prejudice that third party in commercial competition.*

*[2] A record may not be refused in terms of subsection (1) insofar as it consists of information-*

*(a) already publicly available;*

*(b) about a third party who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned; or*

*(c) about the results of any product or environmental testing or other investigation supplied by and earned out or on behalf of a third party and its disclosure will reveal a serious public safety or environmental risk.*

*[3] For the purposes of subsection (2)(c), the results of any production or environmental testing or other investigation, do not include the results of preliminary testing or other investigation conduct for the purpose of developing methods of testing or other investigations”.*

*17. Section 37(1) reads: “Subject to subsection 2 the information officer of a public body-*

*(a) must refuse a request for access to a record of the public body if the disclosure of the record will constitute an action for breach of duty of confidence owed to a third party in terms of an agreement; or*

*(b) may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party-*

- (i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and*
- (ii) if it is in the public interests that similar information, or information from the same source, should continue to be supplied.*

18. (2) *A record may not be refused in terms of subsection (1) insofar as it consists of information:*

- (a) already available; or*
- (b) about the third party concerned, that has consented in terms of Section 48 or otherwise in writing to its disclosure to a requester concerned”.*

19. *Section 44 of PAIA reads:*

*[1] Subject to subsections (3) and (4) the information officer of a public body may refuse a request for access to the record of the body:*

*(a) If the record contain:*

- (i) an opinion, advice, report, or a recommendation obtained or prepared; or*
- (i) a consultation, discussion, or deliberation that has occurred, including, but not limited to minutes of a meeting, for the purpose of assisting to formulate a policy or make a decision in the exercise of power or the performance of duties conferred or imposed by law; or*



**(b) if-**

**(i) the disclosure of the record could reasonably be expected to frustrate the deliberative process in the public body or between public bodies by inhibiting the candid-**

**(aa) communication of an opinion, advice or a report, recommendation; or**

**(bb) conduct of consultation, discussion, or deliberation; or**

**(ii) the disclosure of the record could, by prematurity of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.**

**20. Section 46 of the PAIA reads:**

**"Despite any other provision of this chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34(1), 36(1), 37(1)(a) or (b), 38(a) or (b), 39(1) (a) or (b), 40, 41(1)(a) or (b), 42(1) or 3, 43 (1) or (2), 44 (1) or (2), or 45, if-**

**(a) The disclosure of the record will reveal evidence of:**

**(i) a substantial contravention of, or failure to comply with the law; or**

**(ii) an imminent and serious public safety or environmental risk; and**

**(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question".**

21. Section 47 reads:

- (1) the information officer of a public body considering a request for access to a record that might be a record contemplated in terms of Section 3(34)(1), 35(1), 36(1), 37(1), or 43(1) must take all reasonable steps to inform the third party to whom a record could relate in respect of the request.*
- (2) the information officer must inform the third party in terms of subsection (1)-*

  - (a) as soon as reasonably possible, but in any event within (21) days after that request is received or transferred; and*
  - (b) by the fastest means possible.*
- (3) When informing a third party in terms of subsection (1) the information officer must-*

  - (a) state that he/she is considering a request for access to a record that might be a record contemplated in sections 34(1), 35(1), 36(1), 37(1), or 43(1) as the case may be and describe the content of the record in question;*
  - (b) furnish the name of the requester;*
  - (c) describe the provisions of sections 34(1), 35(1), 36(1), 37(1), 48(1).*

- (d) *in any case where the information officer believes that the provisions of section 46 might apply, describe those provisions, and specify which of the circumstances referred to in terms of section 46(u) in the opinion of the information officer might apply and state the reason why he/or she is of the opinion that section 46 might apply; and*
- (e) *state that the third party within 21 days after the third party is informed-*
- (i) *make written or oral representations to the information officer why the request for access should be refused; or*
- (ii) *give written consent for disclosure of the record to the requester."*

**THE NDoH's RESPONSE**

**CATEGORY A**

22. The applicant is aware of the names of all the ministerial advisory committee Covid -19. The attention of the Court is drawn to page 62 Annexure "HJ15" of the founding affidavit. This is a list of the names of the Ministerial Advisory Committee for Covid-19 ("MAC").

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23. The copies of the MAC and "VMAC" advisories are matters of public knowledge. These advisories are in the public domain. They are accessible in the DoH's website. The Court's attention is drawn to pages 63 to 68 Annexure "HJ16" to the founding affidavit. Those are all advisories found on the website.
24. The applicant should perhaps indicate a specific advisory that it would like to access, which could not be found on the website. The NDoH will make the advisory available. The advisories include the advisory relating to the recommendations for vaccinating people with comorbidities.
25. Regarding the information requested in paragraph 3, the written advice related to the vaccine selection and priority group eligibility criteria and the copies of all changes. The NDoH's view is that the record contains advice, opinion, report, or recommendation obtained or prepared, or on account of a consultation, discussion for the purposes of assisting to formulate a policy or take a decision in the exercise of power or performance of duty conferred or imposed by law. The NDoH has considered the request and decided that in line with section 44(1) of PAIA the information requested could not be made available to the applicant.

#### **REGARDING CATEGORY B**

26. I must mention that our understanding of the virus and the best manner of dealing with it changed constantly during 2020, and continues to do so, as the result of additional scientific studies and investigations become available. In this context no government can have fixed or required strategies for distributors of vaccines.

Instead, what is required is a constantly evolving vaccine strategy that takes account of the latest scientific developments.

27. Due to the diversity of the strategy, the NDoH also adopted a flexible approach to deal with vaccinations. A framework for rational COVID-19 vaccine allocation in South Africa and prioritisation of fair allocation of COVID -19 vaccines, identification of risk groups and the supporting documents are available on the website.
28. The NDoH does not have submissions purportedly made by other government departments, political parties, trade unions, or business body on the issue of vaccine selection. The NDoH has no advisories relating to the allocation and prioritisation of certain groups. This information is accessible on the website.

#### **REGARDING CATEGORY C**

29. The information relating to the use and the non-use of the AstraZeneca/ Covishield Vaccine is available on the website. This is part of the advisories made as the recommendation to the government. This information includes the advice indicating that AstraZanica/Covishield vaccine had an efficacy of 22% as against the 501Y. V2 variant.
30. The decision to pause the use of the AstraZeneca in South Africa was based on the recommendation of the VMAC and the MAC and other experts. However, the decision was made by Cabinet, thus the minutes of Cabinet are protected from

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disclosure, in terms of PAIA. The NDoH is not at liberty to divulge this information to the applicant.

31. The Astra-Zeneca vaccines were sold to the AU. The NDoH is not in possession of the sale agreement between the AU and the government. This information falls within the province is the National Treasury. Thus, the NDoH is unable to provide this information requested.
32. The applicant was advised by the NDoH that the information requested can be found on the website. The attention of the Court is drawn to page 37 paragraph 80 and page 189 of the founding affidavit. The applicant chose to ignore the advice to investigate the advice given.
33. I submit with respect that the application should be dismissed with costs.

#### **AD SERIATIM RESPONSE TO THE FOUNDING AFFIDAVIT**

I now wish to answer to the allegations to the extent it is necessary

#### **AD PARAGRAPHS 1-2**

34. Save to deny that the facts are true and correct, I have no knowledge of the contents thereof.

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### **AD PARAGRAPH 3.1**

35. The contents of this paragraph are not in dispute, save to state that the names of MAC and V-MAC members were published in the government gazette and are publicly available.

### **AD PARAGRAPHS 3.2 to 3.4**

36. The contents of these paragraphs are undisputed. I must mention that copies of all advisories and recommendations made by the MAC and VMAC and/or others including those relating to options and recommendations for vaccinating people with co-morbidities are available on the COVID-19 website of the National Department of Health which is [www.sacoronavirus.co.za](http://www.sacoronavirus.co.za).

### **AD PARAGRAPH 3.5**

37. The contents of this paragraph are not in dispute, save to state that the recommendation and advisories concerning the use or non-use of the AstraZeneca- University of Oxford/ Covishield vaccine and the decisions to pause its use in South Africa; ("the AstraZeneca-University of Oxford records"); the records are readily available on the website of the National Department of Health.

### **AD PARAGRAPH 3.6**

38. The contents of this paragraph are not in dispute, save to state that a copy of the contract and details of the final sale or donation of the AstraZeneca – University of Oxford/ Covishield vaccine, including all details cost of recovery relating thereto

(or lack thereof) ("the AstraZeneca – University of Oxford disposal documents").

The National Treasury is the custodian of that information.

#### **AD PARAGRAPH 4**

39. The contents thereof are not in dispute, save to state that there is no basis for this application, as the requested information is readily available.

#### **AD PARAGRAPHS 5-6**

40. Contrary to the applicant's assertions, the Minister of Health is not constitutionally obliged to make all the expert advice and recommendations that he received from MAC and V-MAC publicly available within a reasonable period. The Director General has a discretion in terms of section 44 of the PAIA to refuse a request for access to a record of the body-(i) if the record contains an opinion, advice, report or recommendation obtained or prepared; or (ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for a purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law.
41. As a responsive and transparent public body, the Department took a decision to publish all the expert advice on the department's website. All expert advice is readily available on the website of the National Department of Health.

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**AD PARAGRAPHS 7-10**

42. The contents of these paragraphs are undisputed.

**AD PARAGRAPHS 8-10**

43. I have no knowledge of the contents of these paragraphs.

**AD PARAGRAPHS 11-13**

44. The contents of these paragraphs are undisputed.

**AD PARAGRAPHS 14-21**

45. The contents of these paragraphs are undisputed. I must mention that the Disaster Management Act, 57, of 2002, ("the Act") provides for integrated disaster management policy that focuses on preventing and reducing the risk of disaster, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post disaster recovery. The Act further defines the powers and duties of the Minister. The Act including regulations thereof, have not been declared invalid and/or unconstitutional as alleged by the plaintiff.

**AD PARAGRAPH 22**

46. The contents of this paragraph are admitted, specifically that section 91 of the National Health Act, 200 (Act No. 61 of 2006), empowers the Minister to establish such number of Advisory and technical committees as may be necessary to achieve the objects of the Act.

**AD PARAGRAPH 23**

47. The contents of this paragraph are undisputed.

**AD PARAGRAPH 24**

48. The contents of this paragraph are undisputed.

**AD PARAGRAPH 25**

49. The contents of this paragraph are undisputed.

**AD PARAGRAPH 26**

50. The contents of this paragraph are admitted, specifically that the advises or inputs made by the MAC and its subcommittees on COVID-19 related matters, are proposals, suggestions or recommendations which are subject to consideration and approval of the Minister, if he or she agrees with the recommendations made.

51. The department exercised its discretion in terms of section 44 of PAIA to make the advice and recommendations received from MAC and VMAC publicly available. The expert advice and recommendations received from MAC and VMAC are readily available from the website of the NDoH.

**AD PARAGRAPH 27**

52. The contents of this paragraph are denied. Despite focusing, responding, and managing the rapid and range of demands of COVID-19 pandemic, the



department published all MAC advisories and recommendations as and when they were available for publication.

**AD PARAGRAPHS 28-29**

53. The contents of this paragraphs are admitted. I must mention further that having re-evaluated the progress of the pandemic and work of the MAC on COVID-19, a decision was made to strengthen the MAC, to ensure that it is able to address the gaps and target new challenges. The Minister took a decision to augment the existing with various other experts from different sectors.

54. The mandate and importance of the MAC remained the same, all that was done was to diversify the skills set to ensure that government is advised on issues that not only relate to medical science but also social sciences, behaviour, and psyche of the population. I still reiterate that all the advice and recommendations made by the MAC were published on the website of the NDoH, as and when they were ready for publication.

**AD PARAGRAPH 30**

55. The contents of this paragraph are undisputed.

**AD PARAGRAPHS 31-33**

56. Save to state that all the advice and recommendations made by the MAC are readily available on the website of the NDoH and are published as and when all

the internal approvals have been sought, the remainder of the allegations herein are undisputed.

**AD PARAGRAPHS 34 – 35.2**

57. All the advisories and recommendations received from VMAC, and MAC were published on the website.

**AD PARAGRAPH 36**

58. I have no knowledge of the contents of this paragraph and can neither admit nor deny same.

**AD PARAGRAPH 37**

59. The list of experts is also a moving target, as and when one expert becomes unavailable, advice is sought from another expert.

**AD PARAGRAPH 38**

60. The contents of this paragraph are not in dispute save to state that the purpose and scope of the MAC is to provide high level strategic advice to the Minister of Health on the management of the COVID-19 outbreak in South Africa.

**AD PARAGRAPHS 39-41**

61. The contents of these paragraphs are undisputed.



### **AD PARAGRAPH 42**

62. Save to admit that the framework serves as a guide and was adapted as new scientific information became available, for example information about specific characteristics of available vaccine/s, the benefit risk assessment for different population sub-groups, the amount and pace of vaccine supply, the epidemiology at the time of vaccine introduction, clinical management, public health response, and economic and social impact of the pandemic.
63. The framework provides that it is critical that African voices add not only to the debate but also to influencing the implementation of immunisation equity. In particular, the vulnerable and disadvantaged in remote and rural areas and urban slums should not be left behind. Therefore, it is important to consider African indigenous values and draw from the principles of Ubuntu. The proposed framework for SA is also in accordance with the principle articulated by the WHO.
64. The framework proposed a phased approach guided by the principles outlined in the framework and dependent on several factors including the efficacy of a vaccine for a specific population and on the doses available.

### **AD PARAGRAPH 43**

65. The contents of this paragraph are undisputed.

### **AD PARAGRAPH 43**

66. The contents of this paragraph are undisputed.

**AD PARAGRAPH 45**

67. The Draft Framework for Rational Allocation of COVID-19 vaccines in South Africa as recommended by the VMAC on 15 December 2020 was formally adopted by the Minister. By January 2021 the African CDC had already recommended revisions to the framework.

**AD PARAGRAPHS 46.1 - 47**

68. The contents of these paragraphs are undisputed.

**AD PARAGRAPH 48**

69. The NDoH has no knowledge of the contents of this paragraph, save to admit that the allocation of vaccines to recipients was guided by the principles outlined in the framework and dependent on several factors including the efficacy of a vaccine for a specific population and on the doses available.

**AD PARAGRAPHS 49 AND 50**

70. The contents of these paragraphs are undisputed.

**AD PARAGRAPH 51**

71. The contents of this paragraph are undisputed.

**AD PARAGRAPH 52**



72. The contents of this paragraph are undisputed.

**AD PARAGRAPH 53**

73. Save to state that the national vaccination roll-out commenced on 17 May 2021 and commenced with the adults over 60 years and a continuation of health care workers who were not yet vaccinated in the Sisonke programme, I have no knowledge of the remainder of the contents therein.

**AD PARAGRAPHS 54-58**

74. The contents of these paragraphs are undisputed.

**AD PARAGRAPH 59**

75. The contents of this paragraph are denied.

**AD PARAGRAPH 60**

76. The contents of this paragraph are undisputed, save to state that the science around the pandemic is constantly evolving at such a rapid pace, and that the government must keep abreast with the evolving scientific knowledge. Government recognises and respect the right of the public to access information held by the organs of state subject to applicable laws especially the Constitution of the Republic. The right of the public to have access to the records held by the State is not absolute, it is subject to certain statutory limitations.

77. The Minister considered the advice and recommendations made by the MAC and VMAC. It should be noted that the Minister is ultimately accountable for the decision taken on behalf of the department after consideration of the expert advises from various committees. As a transparent and accountable organ of state, the department made the recommendations, advice, and inputs readily available by publishing same on the website.

**AD PARAGRAPH 61**

78. The contents of this paragraph are not undisputed.

**AD PARAGRAPHS 62.1 – 64**

79. The contents of these paragraphs are undisputed, save to state that the expert recommendations, advice/ advisories are available on the website of the NDoH.

**AD PARAGRAPHS 63 - 64**

80. The contents of these paragraphs are undisputed.

**AD PARAGRAPH 65**

81. The contents of this paragraph are denied, save to state that the advice on the developments around indications that AstraZeneca COVID-19 vaccine may be deficient in its protectivity against the 501Y.V2 variant virus, was finalised on 7 February 2021 and signed on 18 March 2021. The reasons for retrospective



submission of the written advice are recorded in the document attached as HJI119 of the Affidavit.

82. On 15 February 2021, Dr. Mkhize advised parliament, that the AstraZeneca doses concerned would be offered to the African Union platform, for distribution to those countries who have already expressed an interest in acquiring the stock. This information is public knowledge.

**AD PARAGRAPH 66**

83. Save to state that the AstraZeneca vaccines were sold to the African Union, I have no knowledge of the contents of this paragraph.

**AD PARAGRAPH 67**

84. Save to state that government received the full purchase amount of AstraZeneca vaccines which was sold to the African Union, in accordance with the agreement entered between the parties therein. I admit that the sale agreement has not been made public. The information regarding the transaction resides with National Treasury.

**AD PARAGRAPH 68.1**

85. The contents of this paragraph are undisputed.

**AD PARAGRAPH 68.2**

86. The contents of this paragraph are denied. The Minister was transparent and responsive by publishing the expert advice and recommendations made by the MAC and VMAC committees.

**AD PARAGRAPH 68.3**

87. The contents of this paragraph are denied, specifically the relaxation of the legislative requirements or provisions relating to the public's right to access information held by the organs of state. As stated above, the right to access information is not absolute, regardless of the state disaster, transparency, and accountability.

88. PAIA limits the constitutional rights in line with section 36 of the Constitution. This limitation is reasonable and justified. Further argument will be presented at the hearing of the matter.

**AD PARAGRAPH 69**

89. The contents of this paragraph are denied.

**AD PARAGRAPHS 70 – 90**

90. The contents of these paragraphs are undisputed.

**AD PARAGRAPH 91**

91. The request for access to information is subject to the provisions of the PAIA.

**AD PARAGRAPH 92**

92. The contents of this paragraph are denied.

**AD PARAGRAPHS 93- 96**

93. It is common cause that during the COVID-19 pandemic period, the department focused its resources thereon on preventing and reducing the risk of the pandemic, mitigating the severity of the COVID-19, emergency preparedness, rapid and effective response to the COVID-19 pandemic and saving lives of the citizens which is the statutory obligation of the department.
94. During pandemic, the department saw it necessary to publish the recommendations and/or expert advisories of the website of the department and publishing the names of the MAC and VMAC in the Government Gazette which are also available on the website of the Department.



**CONCLUSION**

95. Based on the above facts, it is submitted that the applicant has failed to make out a case justifying the order sought in the notice of motion. The NDoH contends that this application should be dismissed with cost.
96. Further that public interest principle relating to costs enunciated in the Biowatch decision are inapplicable in this matter.



DEPONENT

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on this the 29<sup>th</sup> day of July 2022, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Full Names: CHRISTOPHER ANTHONY LEUKES

Capacity: Commissioner of Oaths Ex Officio

Designation: DIRECTOR: LEGAL SERVICES

**CHRISTOPHER ANTHONY LEUKES  
COMMISSIONER OF OATHS EX OFFICIO  
DEPARTMENT OF EDUCATION  
PRETORIA**

Address: 222 Struben Street  
Pretoria

SIGN: [Signature] DATE: 27/07/2022