

BEFUDDLED INTERESTS

Report of the Public Protector on an investigation into allegations of improper conduct by the former Member responsible for Health and Social Development of the Executive Council of the Limpopo Provincial Government relating to the procurement of services for the Limpopo Department of Health

Report No. 20 of 2011/12



PUBLIC PROTECTOR
SOUTH AFRICA

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INDEX

Executive summary	3
1. INTRODUCTION.....	6
2. THE COMPLAINT	7
3. BACKGROUND	7
4. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR	9
5. THE INVESTIGATION	10
5.1 The scope of the investigation	10
5.2 Method of gathering evidence	11
6. THE LEGAL AND REGULATORY FRAMEWORK.....	14
6.1 The Constitution	14
6.2 The Executive Members' Ethics Act, 1998	15
6.3 The Executive Ethics Code.....	15
7. INFORMATION OBTAINED DURING THE INVESTIGATION	16
7.1 Common cause	16
7.2 The involvement of the MEC in the awarding of the contracts to Tsepo and Trispen .	17
7.3 The response of the MEC.....	17
8. ANALYSIS OF THE EVIDENCE OBTAINED DURING THE INVESTIGATION	18
9. THE PROVISIONAL REPORT OF THE PUBLIC PROTECTOR	19
10. FINDINGS.....	19
10.1 General findings	19
10.2 Specific findings against the MEC	20
11. REMEDIAL ACTION.....	21
12. MONITORING	21

Executive summary

- (i) *Befuddled Interests* is the report of the Public Protector in response to a complaint lodged with her office, in June 2010, in connection with contracts relating to forensic investigations that were awarded by the Limpopo Department of Health (the Department) to Trispen Solutions (Pty) Ltd (Trispen) and Tsepo Technology Consulting (Pty) Ltd (Tsepo).
- (ii) It was alleged that the former Member responsible for Health and Social Development of the Executive Council of the Limpopo Provincial Government, Ms M Segabutla (the MEC), selected the two said service providers as the sole Director of Tsepo, Mr J Lucas, is related her and her attorney, Mr G Van der Merwe, was involved with Trispen.
- (iii) The basis for the allegations against the MEC were that she indicated Mr Lucas as a relative on a visitors' form of the school in Pretoria that her daughter attended, and that Mr Van der Merwe represented her in divorce proceedings.
- (iv) No evidence was presented during the investigation indicating that the MEC was involved in the selection of Tsepo and Trispen. The acquisition of the services of the two service providers was approved by the then Acting Head of the Department on 15 December 2009, on the recommendation of the Departmental Bid Committee.
- (v) At first, the MEC denied any involvement with Messrs Lucas and Van der Merwe other than in her official capacity.
- (vi) However, when she was interviewed during the investigation the MEC explained that she got to know Mr Lucas when he was rendering services for the Department and that she trusted him. She conceded that she indicated Mr Lucas as her daughter's "uncle" on the school's visitors' form even though they are not related. Mr Lucas was requested on occasion to deliver parcels to her daughter at the school when he travelled from Polokwane to Pretoria, returning home from rendering services at the Department. This was confirmed by Mr Lucas during the investigation.
- (vii) The MEC further conceded that she met Mr Van der Merwe when he was rendering services to Trispen that was conducting forensic investigations at the Department. During this time, she instructed him to represent her in a divorce matter. Mr Van der Merwe confirmed that he was acting on behalf of the MEC in her private capacity.

(viii) The Public Protector's general findings in relation to the complaints lodged are that:

- (a) By virtue of her position as the Member responsible for Health and Social Development of the Executive Council of the Limpopo Province, it was expected of the MEC to act in the best interests of the Department and in a manner that is consistent with her position.
- (b) By requesting Mr Lucas to visit her daughter at school and indicating to the school that he is related to her, the MEC created the perception that he is a relative or a close family friend. It is reasonable to expect only relatives and close family friends to be entrusted with visits to a young girl in a boarding school.
- (c) As Mr Lucas is the sole director of Tsepo who was involved in a multi-million Rand contract with the Department at the time, the MEC furthermore created the perception that Mr Lucas might have been favoured in the selection process, due to his close relationship with her.
- (d) The interaction between the MEC and Mr Lucas in connection with her daughter, as referred to in this report, constituted a conflict between her official responsibilities as the Member responsible for Health and Social Development of the Executive Council of the Limpopo Province and her personal interests.
- (e) The MEC briefed Mr Van der Merwe to act as her attorney in a private matter, whilst she was fully aware at the time that he was also involved in a forensic investigation that was conducted for the Department by Trispen.
- (f) Under the circumstances, the MEC created the perception that Mr Van der Merwe became involved in the said contract between the Department and Trispen because he was her attorney and that he was therefore favoured in the selection process.
- (g) Instructing Mr Van der Merwe to represent her in a private matter at a time when he was also involved in providing a service to the Department, constituted a conflict between the MEC's personal interests and her official responsibilities.

(ix) The Public Protector's specific findings against the MEC are that:

By conducting herself in the manner referred to in paragraph (viii) above, the MEC

- (a) Exposed herself to situations involving the risk of a conflict between her official responsibilities and her private interests, as prohibited by the provisions of section 136 of the Constitution and paragraph 2.3(e) of the Executive Ethics Code; and
 - (b) Acted in a manner that is inconsistent with the position that she occupied and that was not in the best interests of the Department.
- (x) As Ms Segabutla is not a member of the Executive Council of the Limpopo Province anymore, no appropriate action can be taken against her by the Premier or the Provincial Legislature.
- (xi) Ms Segabutla has been appointed by the President as the South African Ambassador Designate to the Republic of Cuba in August 2011. She is currently therefore employed by the Government and based at the Ministry of International Relations and Cooperation.
- (xii) The remedial action that is to be taken, as envisaged in section 182(1)(c) of the Constitution, is the following:**
- (a) The President to reprimand Ms Segabutla for her unethical conduct referred to in this report and to advise her on how to conduct herself in future.
 - (b) The Speaker of the Limpopo Provincial Legislature to take steps to ensure that this report is tabled in Limpopo Provincial Legislature within 30 days from the date that it is issued; and
 - (c) The Premier of the Limpopo Province to take steps to ensure that all the members of the Executive Council of Limpopo are made aware of the contents of this report and are sensitised about compliance with the provisions of section 136 of the Constitution and the Executive Ethics Code, within 30 days from the date of this report.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT BY THE FORMER MEMBER RESPONSIBLE FOR HEALTH AND SOCIAL DEVELOPMENT OF THE EXECUTIVE COUNCIL OF THE LIMPOPO PROVINCIAL GOVERNMENT RELATING TO THE PROCUREMENT OF SERVICES FOR THE LIMPOPO DEPARTMENT OF HEALTH

1. INTRODUCTION

1.1 *Befuddled Interests* is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act). It deals with the Public Protector's findings following an investigation into allegations of improper conduct by the former Member responsible for Health and Social Development of the Executive Council of the Limpopo Provincial Government, Ms M Segabutla, (MEC). The allegations related to the procurement of services for the Limpopo Department of Health (formerly the Department of Health and Social Development)(the Department).

1.2 The report is submitted to:

1.2.1 The President of the Republic of South Africa;

1.2.2 The Minister of Cooperative Governance and Traditional Affairs;

1.2.3 The Speaker of the Limpopo Provincial Legislature; and

1.2.4 The Premier of the Limpopo Province.

1.3 Copies of the report are also distributed to:

1.3.1 Mr R S Mabunda, the Secretary of the Forum of Limpopo Entrepreneurs, who lodged the complaint;

1.3.2 Ms M Segabutla (the MEC);

1.3.3 The Director-General of the Presidency;

1.3.4 The Member responsible for Health and Social Development of the Executive Council of the Limpopo Provincial Government;

- 1.3.5 The Head of the Limpopo Department of Health;
- 1.3.6 Mr G Van der Merwe of Van der Merwe & Associates Incorporated Attorneys;
- 1.3.7 Mr J Lucas, the Managing Director of Tsepo Technology Consulting (Pty) Ltd; and
- 1.3.8 Mr P F Erasmus, the Managing Director of Trispen Solutions (Pty) Ltd.

2. THE COMPLAINT

- 2.1 On 29 June 2010, the Secretary of the Forum of Limpopo Entrepreneurs (the Complainant) lodged a complaint with the Public Protector against the MEC, alleging that she had *“awarded a tender worth more than 15 million Rands (sic) to her personal lawyer without advertising it”*.
- 2.2 The Complainant explained during the investigation that the *“personal lawyer”* referred to is an attorney who represented the MEC in a personal matter, Mr G Van der Merwe.
- 2.3 In addition, the Complainant alleged that the MEC also influenced the awarding by the Department of a contract to one of her relatives, Mr J Lucas.
- 2.4 He explained that the contracts referred to related to forensic investigations that had to be conducted at the Department.

3. BACKGROUND

- 3.1 In June 2006, the Department awarded a contract for the implementation of the Provincial Health Information System to LHC Health Solutions (LHC). The contract was for period of three years, expiring on 20 June 2009, and to the value of R261 436 524.
- 3.2 LHC failed to complete the project within the contract period.
- 3.3 Shortly before the contract expired, LHC requested an extension for a period of 12 months at an additional cost of R100 million. At that time, the Department had already paid to LHC an amount of approximately R260 million.

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- 3.4 The Department raised concerns in respect of LHC's request for an extension, especially relating to the proposed additional costs, which amounted to almost 40% of the value of the contract. It was decided that a forensic audit should be conducted to determine exactly what had been delivered by LHC in terms of the contract and whether it constituted value for money. LHC's request for an extension was put on hold pending the outcome of the proposed forensic audit.
- 3.5 As the service rendered by LHC related to information technology and due to the lack of capacity of the Department in this field at the time, it was decided to approach the State Information Technology Agency (SITA) for assistance in the procurement of a service provider to conduct the forensic audit at the Department.
- 3.6 A tender was accordingly advertised by the SITA on 26 August 2009. However, the procurement process found no suitable service provider. After reviewing the specifications, the tender was re-advertised on 1 October 2009.
- 3.7 During this period, on 9 September 2009, LHC lodged an urgent application in the North Gauteng High Court to compel the Department to pay an amount of R43 941 024, which allegedly represented overdue payments plus interest, relating to the said contract.
- 3.8 Faced with the court application against it, the Department considered it urgent to appoint a service provider to conduct the forensic audit, which was regarded as vital to its response. The Head of the Department decided to act in terms of Treasury Regulation 16A6.4, which provides for the procurement of goods and services by means other than competitive bids when it is impractical to do so.
- 3.9 In addition, it was decided that it was also relevant to conduct a forensic audit on the acquisition by the Department from different suppliers of CISCO Network Equipment.
- 3.10 Quotations were obtained from four relevant entities on the database of the Department and were submitted to the Departmental Bid Committee, on 15 January 2010.
- 3.11 On 20 January 2010, the Head of the Department approved the awarding of a contract to Trispen Solutions (Pty) Ltd (Trispen) to conduct a forensic audit on the acquisition by the Department of CISCO Network Equipment. He also approved the awarding of a contract to

Tsepo Technology Consulting (Pty) Ltd (Tsepo) to conduct a forensic audit on the implementation of the Provincial Health Information System.

- 3.12 Based on the results of the forensic audit conducted by Tsepo, the Department filed a counter claim for damages against LHC in the amount of R150 million in the litigation referred to above. The matter is still pending.
- 3.13 Trispen subcontracted part of the forensic audit to Mr G Van der Merwe of Van der Merwe & Associates Incorporated, during February 2010.
- 3.14 On 27 March 2010, Mr Van der Merwe was instructed by the MEC to represent her in divorce proceedings.

4. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 4.1 The Public Protector is an independent institution, established in terms of Chapter 9 of the Constitution. Section 182(1) of the Constitution provides that the Public Protector has the power to:
 - 4.1.1 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;
 - 4.1.2 Report on that conduct; and
 - 4.1.3 Take appropriate remedial action.
- 4.2 In terms of section 182(2) of the Constitution, the Public Protector has the additional powers and functions prescribed by national legislation.
- 4.3 Section 6(4) of the Public Protector Act provides that the Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, *inter alia*, any alleged:

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- 4.3.1 Maladministration in connection with the affairs of government at any level;
 - 4.3.2 Improper conduct by a person performing a public function; and
 - 4.3.3 Receipt of an improper advantage by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function.
 - 4.4 The Public Protector may, in terms of section 8(1) of the Public Protector Act, make known to any person any finding, point of view or recommendation in respect of a matter investigated by him or her.
 - 4.5 In determining whether the conduct complained of was improper or constituted maladministration or any of the violations envisaged in the Public Protector Act, the Public Protector compares the conduct of the government entities and officials complained of against the relevant legislation and other prescripts, to ascertain whether such conduct complied with the constitutional requirements of fairness, reasonableness and transparency and local and international best practice.
 - 4.6 The complaint lodged and the allegations made against the MEC referred to in this report fall within the jurisdiction and powers of the Public Protector.

5. THE INVESTIGATION

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

5.1 The scope of the investigation

- 5.1.1 The scope of investigation was restricted to the period from June 2006, when the contract for the implementation of the Provincial Health Information System was awarded to LHC, to the conclusion of the investigation referred to in this report, in November 2011

5.2 Method of gathering evidence

The following methods of gathering and analysing information were employed:

5.2.1 Interviews conducted

Interviews were conducted with:

- 5.2.1.1 The Complainant;
- 5.2.1.2 The MEC;
- 5.2.1.3 The former Head of the Department of Health and Social Development, Dr A Morake;
- 5.2.1.4 The Chief Financial Officer of the Department;
- 5.2.1.5 Two officials of the Division: Supply Chain Management of the Department;
- 5.2.1.6 Mr G Van der Merwe of Van der Merwe & Associates Incorporated Attorneys;
- 5.2.1.7 Mr J Lucas, the sole Director of Tsepo;
- 5.2.1.8 Mr P F Erasmus, the sole Director of Trispen;
- 5.2.1.9 Ms A Roberts, Trispen Operations Manager; and
- 5.2.1.10 Three officials of the SITA.

5.2.2 Analyses of documentation and information

The following relevant documents were analysed and perused:

- 5.2.2.1 The written complaint lodged by the Complainant;
- 5.2.2.2 A document titled: *BOARDER VISITORS' FORM 2010* of the St Mary's Diocesan School for Girls in Pretoria;
- 5.2.2.3 Correspondence between the former Head of the Department and the Chief: Procurement Services of the SITA;
- 5.2.2.4 The records of the Companies and Intellectual Property Commission pertaining to Tsepo and Trispen;

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- 5.2.2.5 Correspondence between Mr G Van der Merwe of Van der Merwe & Associates Incorporated and Trispen;
- 5.2.2.6 Correspondence between the Senior Manager: Legal Services of the Department and the Office of the State Attorney;
- 5.2.2.7 Correspondence between the General Manager: Supply Chain Management of the Department, Tsepo and Trispen;
- 5.2.2.8 A Memorandum from the Chief Financial Officer addressed to the Head of the Department on 15 December 2009, titled: *“REQUEST FOR APPROVAL TO CONDUCT AN AUDIT ON THE IMPLEMENTATION OF PROVINCIAL HOSPITAL INFORMATION (sic) SYSTEM, ACQUISITION OF CISCO NETWORK EQUIPMENT AND TO ACQUIRE THE SAID SERVICES THROUGH QUOTATIONS;*
- 5.2.2.9 The Minutes of the Department’s Bid Committee meetings held on 24 June 2009 and 15 January 2010;
- 5.2.2.10 A Memorandum from the Demand and Acquisition Management Division addressed to the Head of the Department, dated 18 January, under the heading: *“SUBMISSION IRO QUOTATION FOR THE FORENSIC AUDIT OF THE IMPLEMENTATION OF HEALTH (sic) INFORMATION SYSTEMS (PHIS) IN THE DEPARTMENT OF HEALTH AND SOCIAL DEVELOPMENT”;*
- 5.2.2.11 A Memorandum from the Demand and Acquisition Management Division addressed to the Head of the Department, dated 18 January, under the heading: *“SUBMISSION IRO QUOTATION FOR THE FORENSIC AUDIT IN THE ACQUISITION OF CISCO NETWORK EQUIPMENTS (sic) AT HEAD OFFICE;*
- 5.2.2.12 Correspondence between Tsepo, Trispen and the General Manager: Supply Chain Management of the Department;
- 5.2.2.13 Pleadings in the matter between *LHC Health Solutions (Pty) Ltd and Member of the Executive Council, Department of Health and Social Development, Limpopo, North Gauteng High Court Case No: 55429/09;*

5.2.2.14 An *Interim Legal Audit Report* signed by Mr G Van der Merwe of Van der Merwe & Associates Incorporated, on behalf of Trispen, on 15 March 2010;

5.2.2.15 A letter from Mr G Van der Merwe of Van der Merwe & Associates Incorporated addressed to Ramushu Mshile Twala Incorporated under the heading: “*DIVORCE MRK SEGABUTLA/KP SEGABUTLA*”, dated 30 April 2010; and

5.2.2.16 Correspondence between the Head of the Department, Tsepo and Trispen.

5.2.3 Correspondence considered

Correspondence between the Public Protector and:

5.2.3.1 The former Head of the Department of Health and Social Development, Dr A Morake;

5.2.3.2 The MEC; and

5.2.3.3 Mr G Van der Merwe of Van der Merwe & Associates Incorporated;

5.2.4 Legislation and other prescripts

The relevant provisions of the following legislation and other prescripts were considered and applied, where appropriate:

5.2.4.1 The Constitution;

5.2.4.2 The Public Protector Act;

5.2.4.3 The Executive Members Ethics Act, 1998;

5.2.4.4 The Executive Ethics Code, published by proclamation by the President in the Government Gazette on 28 July 2000, in terms of section 2(1) of the Executive Members’ Ethics Act, 1998;

5.2.4.5 The Public Finance Management Act, 1999; and

5.2.4.6 The Treasury Regulations issued in terms of the Public Finance Management Act, 1999, dated March 2005

6. THE LEGAL AND REGULATORY FRAMEWORK

6.1 The Constitution

- 6.1.1 Section 125 provides that the executive authority of a province is vested in the Premier of that province.
- 6.1.2 The Premier exercises the executive authority, together with the other members of the Executive Council by, *inter alia*, co-ordinating the functions of the provincial administration and its departments.
- 6.1.3 Section 132(2) provides that the Premier of a province appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them.
- 6.1.4 Members of the Executive Council of a province are, in terms of section 133, responsible for the functions of the executive assigned to them by the Premier. They are accountable collectively and individually to the legislature for the exercise of their powers and the performance of their functions.
- 6.1.5 Section 133(3) provides that members of the Executive Council of a province must act in accordance with the Constitution.
- 6.1.6 The conduct of members of Executive Councils is regulated by section 136, which provides that:
- “(1) *Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation.*
- (2) *Members of the Executive Council of a province may not-*
- (a) *undertake any other paid work;*
 - (b) *act in any way that is inconsistent with their office, **or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests;** or*
 - (c) *use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.” (emphasis added)*

6.2 The Executive Members' Ethics Act, 1998

6.2.1 Section 2 of this Act provides that the President must publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and Members of Executive Councils (MECs) of provinces must comply.

6.2.2 The code of ethics must include, inter alia, provisions requiring Cabinet members, Deputy Ministers and MECs at all times to act in good faith and in the best interest of good governance. It must also include provisions prohibiting Cabinet members, Deputy Ministers and MECs from, inter alia:

6.2.2.1 acting in a way that is inconsistent with their office;

6.2.2.2 exposing themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests; and

6.2.2.3 acting in a way that may compromise the credibility or integrity of their office or of the government.”

6.3 The Executive Ethics Code

6.3.1 Paragraphs 2.3(a), (b) and (e) of the Executive Ethics Code, referred to in paragraph 6.2 above provides that:

“Members may not:

(a)

(b) ***act in a way that is inconsistent with their position;***

(c)

(d) ...

(e) ***expose themselves to any situation involving the risk of a conflict between their official responsibilities and their financial and/or personal interests”***

(emphasis added)

7. INFORMATION OBTAINED DURING THE INVESTIGATION

The following is an analysis of the evidence and information relied upon, as supported by the relevant documentation obtained from the Department.

7.1 Common cause

- 7.1.1 Mr J Lucas is the sole Director of Tsepo. He got to know the MEC when Tsepo offered its services free of charge to assist the Department in 2009.
- 7.1.2 On 20 December 2009, the Department requested Tsepo (amongst other service providers) to submit a quotation to conduct a forensic audit of the implementation of the Provincial Health Information System. Its quotation was accepted by the former Head of the Department on 20 January 2010, in the amount of R8 857 800.
- 7.1.3 The MEC was aware of the contract that was awarded to Tsepo by the Department.
- 7.1.4 The Department requested Trispen (amongst other service providers) to submit a quotation to conduct a forensic audit of its acquisition of CISCO Network Equipment on 22 December 2009. Its quotation was accepted by the former Head of the Department on 20 January 2010 in the amount of R7 511 285.
- 7.1.5 Trispen involved an attorney, Mr G Van der Merwe of Van der Merwe & Associates Incorporated, to provide legal advice in respect of the forensic audit, at the end of February 2010. Mr Van der Merwe submitted a report in this regard and was paid by Trispen in April 2010.
- 7.1.6 Mr Van der Merwe met the MEC during his involvement in the forensic audit. She was aware that he was instructed by Trispen to provide legal advice in respect of the forensic audit.
- 7.1.7 No further contracts were awarded to Trispen and Tsepo by the Department to date.

7.2 The involvement of the MEC in the awarding of the contracts to Tsepo and Trispen

- 7.2.1 No evidence was presented during the investigation or could be found that indicated that the MEC was involved in the selection of Trispen and Tsepo as service providers and the awarding of the contracts to them.
- 7.2.2 According to the records of the Department, the acquisition of the services of forensic auditors by means of a quotation process was approved by the then Acting Head of the Department, Ms D N Nyathikazi on 15 December 2009.
- 7.2.3 The selection of Tsepo and Trispen was done by the Departmental Bid Committee on 15 January 2010 and approved by the Head of the Department on 20 January 2010.
- 7.2.4 In her response to the allegations made against the MEC, the former Head of the Department stated in a letter addressed to the Public Protector on 15 October 2010, that all the relevant procurement procedures were followed and that the MEC was not involved.

7.3 The response of the MEC

- 7.3.1 The MEC responded to the allegations made against her in a letter addressed to the Public Protector on 18 October 2010 in which she stated that:

"I hereby declare that I have not influenced the awarding of the two companies Tsepo Consulting (PTY)LTD and Trispen Solutions (PTY)(LTD) (sic) and that the allegations by FOLE are false and misleading. According to my knowledge all procurement procedures were followed when awarding the above mentioned contracts.

My relationship with Mr Gert van der Merwe and Mr John William Lucas is totally client and service provider orientated. (emphasis added)

- 7.3.2 However, when she was interviewed during the investigation on 20 October 2010, the MEC explained that she got to know Mr Lucas when he was rendering services to the Department. She conceded that she included Mr Lucas' name on the 2010 Boarder Visitors' form of the St Mary's Diocesan School for Girls that her daughter attended. The

MEC could not explain why she indicated Mr Lucas as “*uncle*” on the form as there is no family relationship between her daughter and him, except to state that she trusted him.

7.3.3 The MEC further stated that she had requested Mr Lucas, who resides in Pretoria, on occasion when he was in Polokwane in connection with the forensic investigation that Tsepo was conducting for the Department, to deliver parcels to her daughter at the school in Pretoria when he returned home.

7.3.4 Mr Lucas confirmed during the investigation that he met the MEC when he was rendering services to the Department. He was requested by the MEC to deliver parcels to her daughter at the St Mary’s Diocesan School for Girls in Pretoria, which he did. He also confirmed that there is no family relationship between him and the MEC and her daughter.

7.3.5 As far as Mr Van der Merwe is concerned, the MEC explained that she got to know him when he was involved in the forensic investigation that Trispen conducted for the Department. She briefed him to act as her attorney in a divorce matter.

7.3.6 Mr Van der Merwe confirmed during the investigation that the MEC instructed him to represent her in divorce litigation, in March 2010, when he was still involved in the forensic investigation that was conducted for the Department by Trispen. He consulted with her in this regard on 27 March 2010 and subsequently represented her in court. His fees were to be covered by the MEC in her personal capacity.

7.3.7 On 19 January 2012, Mr Van der Merwe advised that he had not been paid for the services rendered to Ms Segabutla. He explained that the division of the communal estate of Ms Segabutla and her husband was delayed as a result of a High Court application for the appointment of a liquidator. The matter was settled between the parties and a liquidator will be appointed soon. The assets will then be liquidated, including a house. Mr Van der Merwe expects to be paid from the proceeds of the liquidation.

8. ANALYSIS OF THE EVIDENCE OBTAINED DURING THE INVESTIGATION

8.1 The first response of the MEC to the enquiries made by the Public Protector in connection with the complaint lodged against her (referred to in paragraph 7.3.1 above) was inconsistent with the information that she provided when she was interviewed during the investigation. It was not clear why the MEC initially created the impression that she had no

dealings with Messrs Van der Merwe and Lucas except in her official capacity, when it was not the case.

- 8.2 Although the MEC might not have been directly involved in the procurement process, it is common cause that she closely interacted with both service providers to the point of gaining a sufficient level of confidence in Mr Lucas to trust him with her daughter, and in Mr Van der Merwe to handle sensitive divorce proceedings on her behalf.
- 8.3 Due to the position that the MEC occupied, it is fair to conclude that the service providers would have understood her to be the ultimate end user.
- 8.4 The private interests of the MEC which made her to maintain good relations with the said service providers were in conflict with the public interest of ensuring professional conduct by them.

9. THE PROVISIONAL REPORT OF THE PUBLIC PROTECTOR

- 9.1 The Public Protector issued a Provisional Report on the investigation to the President, the MEC and the Complainant on 3 February 2012 and provided the recipients with an opportunity to respond to the contents thereof.
- 9.2 No significant response was received to the contents of the Provisional Report. In her reply dated 10 February 2012, the MEC stated:

“This serves to acknowledge receipt of the Preliminary Report (sic) and wish to indicate that the contents thereof have been noted. I further wish to indicate that I do not have comments on the report and respect the findings and the recommendations thereof.”

10. FINDINGS

10.1 General findings

- 10.1.1 By virtue of her position as the Member responsible for Health and Social Development of the Executive Council of the Limpopo Province, it was expected of the MEC to act in the best interests of the Department and in a manner that is consistent with her position.

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- 10.1.2 By requesting Mr Lucas to visit her daughter at school and indicating to the school that he is related to her, the MEC created the perception that he is a relative or a close family friend. It is reasonable to expect only relatives and close family friends to be entrusted with visits to a young girl in a boarding school.
- 10.1.3 As Mr Lucas is the sole director of Tsepo who was involved in a multi-million Rand contract with the Department at the time, the MEC furthermore created the perception that Mr Lucas might have been favoured in the selection process, due to his close relationship with her.
- 10.1.4 The interaction between the MEC and Mr Lucas in connection with her daughter, as referred to in this report, constituted a conflict between her official responsibilities as the Member responsible for Health and Social Development of the Executive Council of the Limpopo Province and her personal interests.
- 10.1.5 The MEC briefed Mr Van der Merwe to act as her attorney in a private matter, whilst she was fully aware at the time that he was also involved in a forensic investigation that was conducted for the Department by Trispen.
- 10.1.6 Under the circumstances, the MEC created the perception that Mr Van der Merwe became involved in the said contract between the Department and Trispen because he was her attorney and that he was therefore favoured in the selection process.
- 10.1.7 Instructing Mr Van der Merwe to represent her in a private matter at a time when he was also involved in providing a service to the Department, constituted a conflict between the MEC's personal interests and her official responsibilities.

10.2 Specific findings against the MEC

The Public Protector's specific findings are that by conducting herself in the manner referred to in paragraph 10.1 above, the MEC:

- 10.2.1 Exposed herself to situations involving the risk of a conflict between her official responsibilities and her private interests, as prohibited by the provisions of section 136 of the Constitution and paragraph 2.3(e) of the Executive Ethics Code; and

10.2.2 Acted in a manner that is inconsistent with the position that she occupied and that was not in the best interests of the Department.

11. REMEDIAL ACTION

11.1 As Ms Segabutla is not a member of the Executive Council of the Limpopo Province anymore, no appropriate action can be taken against her by the Premier or the Provincial Legislature.

11.2 Ms Segabutla has been appointed by the President as the South African Ambassador Designate to the Republic of Cuba in August 2011. She is currently therefore in the employ of the Government and based at the Ministry of International Relations and Cooperation.

11.3 The remedial action to be taken, as envisaged by section 182(1)(c) of the Constitution, is the following:

11.3.1 The President to reprimand Ms Segabutla for her unethical conduct referred to in this report and to advise her on how to conduct herself in future.

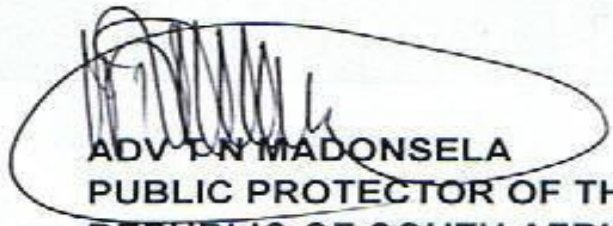
11.3.2 The Speaker of the Limpopo Provincial Legislature to take steps to ensure that this report is tabled in Limpopo Provincial Legislature within 30 days from the date that it is issued; and

11.3.3 The Premier of the Limpopo Province to take steps to ensure that all the members of the Executive Council of Limpopo are made aware of the contents of this report and are sensitised about compliance with the provisions of section 136 of the Constitution and the Executive Ethics Code, within 30 days from the date of this report.

12. MONITORING

12.1 The Director-General of the Presidency is to inform the Public Protector in writing of the steps taken by the President as referred to in paragraph 11.3.1 above, within 30 days from the date of this report;

- 12.2 The Secretary of the Limpopo Provincial Legislature is to submit to the Public Protector copies of relevant documentation indicating that this report was tabled, as envisaged by paragraph 11.3.2 above, within 30 days from the date that it was issued; and
- 12.3 The Director-General in the office of the Premier of Limpopo to submit a report to the Public Protector in connection with the implementation of the remedial action referred to in paragraph 11.3.3 within 30 days of the date of this report.



ADV T N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

Date: 29 February 2011

Assisted by: Adv C H Fourie
Executive Manager:
Good Governance and Integrity
Public Protector South Africa

Adv M Malatji
Senior Investigator:
Limpopo Provincial Office
Public Protector South Africa