



CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY
OFFICE OF THE SPEAKER

2nd Floor, Council Chamber Wing
PO Box 1049
158 Civic Boulevard, Braamfontein
Johannesburg
South Africa, 2000

Tel: +27 (0) 11 407 7551
Cell: 060 704 3594
aminaw@joburg.org.za

www.joburg.org.za

TO: EXECUTIVE MAYOR
OFFICE OF THE EXECUTIVE MAYOR
CITY OF JOHANNESBURG

AND TO: CHIEF WHIP OF COUNCIL
OFFICE OF THE CHIEF WHIP
CITY OF JOHANNESBURG

AND TO: CITY MANAGER
OFFICE OF THE CITY MANAGER
CITY OF JOHANNESBURG

DATE: 03 JULY 2023

THE REVIEWED AND APPROVED TERMS OF REFERENCE (TORs) ON THE APPOINTMENT OF A REPUTABLE SENIOR COUNSEL (SC) TO CONDUCT A LEGAL EXAMINATION AND AN INDEPENDENT INVESTIGATION INTO ALLEGATIONS AND/OR EVIDENCE OF FRAUD, CORRUPTION AND MALADMINISTRATION IN THE SECTION 13 COMPLAINTS OF THE SPEAKER, DISCLOSURE OF THE GFIS OPERATIONS DIRECTOR, SECTION 55 ADVISORY NOTICE OF THE CITY MANAGER, SECTION 18 DIRECTIVES OF THE SPEAKER AND OTHER RELATED DOCUMENTS

A. THE MANDATE FOR THE APPOINTMENT A SENIOR COUNSEL

1. The Speaker of Council acting in terms of her powers in section 18 of the Amended Municipal Structures Act 03 of 2021 as the Head of Council seeks the services of a reputable Senior Counsel (“SC”) to conduct a legal examination of certain compliance matters, and further lead an investigation into allegations and/or evidence of fraud, corruption and maladministration.
2. The decision to appoint a Senior Counsel follows from a disclosure of the Operations Director of Group Forensic Investigation Services (“GFIS”) and a subsequent report that was tabled by the Executive Mayor regarding rogue, clandestine and unlawful investigations that were conducted against senior managers and councillors. This alleged improper and unlawful conduct of GFIS reported was also a subject of various complaints that were submitted in Speaker’s Office in terms of the following provisions of Schedules of the Municipal Systems Act (“MSA”), namely:

2.1 Item 13 of Staff Code of Conduct which states, “whenever a staff member of a municipality has reasonable grounds that there has been a breach of this Code, the staff member must without delay report the matter ... to the speaker of council”; and

2.2 Item 13 of Councillors Code of Conduct which states “if the chairperson of a municipal council, is of the opinion that a provision of this Code has been breached, the chairperson must authorise an investigation of the facts and circumstances of the alleged breach”.

3. On the report of the Executive Mayor, Council in resolution (8) directed that the City Manager must appoint a Senior Counsel to conduct a review of the prejudice caused by the alleged improper and unlawful conduct of GFIS. This resolution reinforced a previous resolution that Council had taken following a report of the Speaker of Council on 22 February 2022 on the obstruction of the appointment of the City Manager. In that matter, Council resolved to investigate evidence in the complaint that was submitted to the Speaker Office regarding a rogue, clandestine and unlawful investigation of GFIS was used to oust a qualifying candidate for a position of the City Manager.
4. On 23 June 2023, that is two days after the resolutions on the report of the Executive Mayor were taken by Council the City Manager issued an Advisory Notice and pointed to the fact that some resolutions that were taken by Council carries serious legal risks and should not be implemented in their current form. He advised that they must be reviewed by a Senior Counsel. He further advised that the legal review to be conducted by a Senior Counsel will involve reviewing evidence of alleged acts of fraud, corruption and maladministration by GFIS which implicates councillors and is contained in section 13 complaints that were previously submitted to the Speaker’s Office. As the City Manager lacks the jurisdiction to investigate councillors, it became clear that parallel process will be too costly and unworkable, and that an integrated approach was needed.
5. With the powers to investigate councillors being in the province of the Speaker of Council, she accepted the advice in the advisory notice. She then issued directives and assumed jurisdiction over the work of the Senior Counsel. These directives were issued in terms of her powers in section 18 (g, h, j) of the Amended Municipal Structures Act 03 of 2021 which states as follows, “The Speaker of Council must ensure the legislative authority of the Municipality functions effectively [and] ... is responsible for the effective oversight over the executive authority of the municipality ... [as well as] ... the ethics and accountability of the municipal council”.
6. The copy of these directives were provided to all whips of parties to share with their respective caucuses. The caucus leader of the Democratic Alliance (“DA”) raised concerns regarding the names of their councillors who are implicated in those investigation having been made public. This concern was subsequently addressed by the Speaker of Council. And therefore, in terms of the above directives the City Manager is properly authorised through the Terms of Reference (“TOR’s) that are approved by the Speaker of Council to appoint a Senior Counsel to conduct a legal examination on compliance and regulatory requirements relating to GFIS investigations, and to lead the related investigation processes under the supervision of the Speaker of Council, and submit an urgent report that must be tabled in the council meeting scheduled for July 2023.

B. THE FIVE TOPICS THAT REQUIRE LEGAL EXAMINATION AND INVESTIGATION

AA. THE ALLEGED ACTS OF FRAUD, CORRUPTION AND MALADMINISTRATION RELATING TO ESTABLISHMENT OF GFIS AS SEPARATE DEPARTMENT AND APPOINTMENT OF ITS HEAD

7. It is noted that various complaints were submitted to the Speaker's Office, and were never reported to the Council. Instead, they were allegedly dismissed through various media statements and a press briefing that was organised by the former Executive Mayor, Speaker of Council and MMC for Corporate Services next to the Hillbrow Police Station. As result, the following allegations and supporting evidence into complaints must be legal examined and investigated namely:
- 7.1 The alleged subversion of authority of Council and sanctioning the functions of GFIS as a separate department without its organizational structure and staff establishment having been approved by the Municipal Council as required by legislation.
 - 7.2 The alleged subversion of authority of Council and sanctioning of the functions of GFIS as a separate department without its purported sub-delegations having been submitted and approved by the Municipal Council as required by legislation.
 - 7.3 The alleged subversion of authority of the City Manager as the Head of Administration and Accounting Officer and sanctioning of reporting lines of GFIS to the Audit Committee which appears not to have supervisory and managerial powers in law.
8. The submitted complaints to the former Executive Mayor, MMC for Corporate Services, and later to the former Speaker of Council further suggested that the above alleged acts of subversion of the authority of the Municipal Council and City Manager were part of scheme to create certain conditions for an unsuited and unqualified candidate to be the Group Head of GFIS. In this regard, the following serious allegations which are recorded in those complaints must be investigated:
- 8.1 The alleged defrauding of Human Resource policies to ensure that an unqualified person is appointed in the junior position of a Unit Head in the Group Risk and Assurance Services ("GRAS") department and later installed in the senior position of Group Head of GFIS without undergoing applicable recruitment processes to Heads of Departments ("HODs"), and his employment as an HOD having been approved by Council as required by legislation.
 - 8.2 The alleged defrauding of remuneration policies and benefit schemes to ensure that the salary of the Group Head of GFIS in increased from the R1.2 million to R1.8 million, and includes locomotive allowance, despite having been provided with a 24 hour VIP protection and transportation. Furthermore, that the report regarding his service conditions of employment as an HOD were never approved by Council as required by legislation.
 - 8.3 The alleged defrauding of vetting processes to ensure that a person who does not have a top security clearance for a junior position of Unit Head in GRAS is installed in the position of Group Head of GFIS without obtaining such certificate as required by national legislation. And that he would proceed to operate as Group Head of GFIS for more than five (5) years and access sensitive and classified information without being security cleared.

9. Therefore, the above alleged acts of fraud, corruption and maladministration relating to the establishment of GFIS as a separate department and appointment of former Group Head must be investigated. And as the establishment of a department and an appointment of its Head is a legal competency of Council, the Speaker of Council acting in terms of her powers in section 18 of the Amended Municipal Structures Act 03 of 2021 authorizes that this matter be investigated.

BB. THE ALLEGED ACTS OF FRAUD, CORRUPTION AND MALADMINISTRATION RELATING TO IMPLEMENTATION OF ROGUE, CLANDESTINE AND UNLAWFUL INVESTIGATIONS BY GFIS

10. Also, a close examination of the contents of the complaints that were submitted to the former Executive Mayor, MMC for Corporate Services and Speaker of Council further suggests that the purported investigative powers were allegedly used to conduct rogue, clandestine and unlawful investigations. As a result, the following allegations must be investigated:

10.1 The abuse of power in launching of investigation into allegations against senior officials and councillors which were never unauthorized by the Municipal Council and the Disciplinary Board as required by applicable national legislation.

10.2 The unlawful procurement and/or deployment of snooping device called the Digital Forensic Equipment (“DFE”) which is used to remotely access, intercepts and stores electronic information from various gadgets without authorization.

10.3 The unlawful sanctioning and performance of investigation functions that were not provided in the purported delegations of GFIS and through delegations that were never approved by the Municipal Council as required by national legislation.

11. The above alleged failure by the former Executive Mayor and MMC for Corporate Services to act on allegations that were made against the former Group Head of GFIS ensured that in return would not investigated by GFIS after they committed the following alleged unlawful acts, namely:

11.1 The alleged implementation of a fronting arrangement to have a service provider of choice of the former Executive Mayor, which was not in the approved panel of the City to receive investigative work through a company that was appointed in the panel. The allegations and supporting evidence regarding this matter was reported to the Speaker’s Office, and this is one of the matters that must be investigated and finalised.

11.2 The alleged obstruction of the appointment of the City Manager by the former Executive Mayor and MMC for Corporate Services to oust one of the complainants who was a recommended candidate for the said position. This was allegedly realized by concealing an investigation report which had cleared the complainant from certain allegations. They then submitted a misleading report which stated that he has not been cleared, and the position must be readvertised. This conduct was referred to the Ethics Committee and Independent Investigator for an investigation and no progress has been reported so far, and as stated above, approached to integrate these investigations will have to be implemented.

- 11.3 The alleged victimization by the former Executive Mayor, MMC for Corporate Services, Chairperson of the Group Audit Committee and Acting Head of GFIS of another senior official who was investigating the unlawful expenditure that was incurred by GFIS. It is alleged that when she discovered tens of millions of concealed unlawful expenditure by the former Group Head of GFIS, she was then subjected to a rogue, clandestine and unlawful investigation and sustained media attacks. It is further alleged that when she was cleared the investigation was not closed, and instead other allegations were generated. This is one of the pressing matters that must still be investigated and finalised.
12. Therefore, the above alleged acts of fraud, corruption and maladministration relating to the implementation of rogue, clandestine and unlawful of GFIS must be investigated. Also, in light of the powers of Council that were unlawfully usurped in those investigation, and in a manner that caused a blight to its authority, the Speaker of Council acting in terms of her powers in section 18 of the Amended Municipal Structures Act 03 of 2021 authorizes that this matter be investigated.
- CC. THE ALLEGED ACTS OF FRAUD, CORRUPTION AND MALADMINISTRATION RELATING TO UNLAWFUL PROTECTION THAT WAS PROVIDED TO THE FORMER GROUP HEAD OF GFIS
13. The disclosure that was made by the Director of Operations of GFIS that they were instructed by the former Group Head of GFIS to conduct rogue, clandestine and unlawful investigations seem to be rooted in a culture of unlawful protection that was given to the former Group Head of GFIS. This is made evident by the following special treatment of his alleged questionable conduct:
- 13.1 An official from the Legal Services department addressed a legal opinion and advised that the law would not allow an automatic promotion of a former employee from the position of the Unit Head of the GRAS department to the Group Head of the GFIS. And for some reason, this opinion was not adhered to when the GFIS became a separate department and its own Head of Department (HOD). And also the legally prescribed recruitment processes and approval of his employment as an HOD were completely disregarded.
- 13.2 A whistleblower had provided an audio recording which contained evidence of prima facie improper and unlawful conduct of former Group Head of GFIS. The former City Manager then launched an investigation into that evidence through Bowmans Attorneys, and it made adverse findings in its final report. And for some reason, this report was shelved, and instead, an arrangement was made that the whistle-blower who had been unlawfully suspended and constantly harassed by the former Group Head of GFIS be redeployed to other departments within the City, and no action was taken against him.
- 13.3 When the former Executive Head in the City Manager's Office compiled a letter for the City Manager which was forwarded to the former Group Head of GFIS to notify him that he had no authority to investigate senior managers, he retaliated by launching a covert operation against the Executive Head in the Eastern Cape. The Executive Head discovered

this operation and reported it to the former Executive Mayor, and he instructed the former City Manager to act against the former Group Head of GFIS. This instruction was never implemented, and again no action was taken against the former Group Head of GFIS.

14. The above acts of unlawful protection were further reinforced with the following actions that were allegedly implemented to stave-off any possible investigations from being launched into the allegations of improper and unlawful conduct of the former Group Head of GFIS, namely:
 - 14.1 The letter of the Public Protector (“PPSA”) which had confirmed that certain incriminating evidence on the questionable employment and operations of the former Group Head of GFIS was allegedly concealed from her investigation was never submitted to the Council. And instead, the former Executive Mayor Group Head of GFIS issued media statement, and held press briefings, and made certain public misrepresentations claiming that the said official was cleared by the PPSA. The effect of the concealment of this letter from Council, is that, the City has been deprived an opportunity to investigate this concealed evidence, and take further action if it becomes necessary.
 - 14.2 The letter of and State Security Agency (“SSA”) which confirmed that the former Group Head of GFIS was in possession of snooping electronic device called the Digital Forensic Equipment (“DFE”) which is used to conduct crime intelligence and investigation activities, and which in terms of legal requirements must be controlled by law enforcement officers was concealed from Council. And instead, the former Executive Mayor and Group Head of GFIS issued media statements and held press briefings, and made certain public misrepresentations claiming that this official was cleared by the SSA. The effect of the concealment of this letter from Council, is that, the City has been deprived an opportunity to investigate the concealed evidence, and take further action if it becomes necessary.
 - 14.3 The section 106 notice investigation of the MEC for Local Government in Gauteng into the allegations that former Executive Mayor and MMC for Corporate Services used an unlawful report of GFIS to obstruct Council from appointing one of the complainants in the position of the City Manager, was allegedly frustrated by the former Executive Mayor. She deposed to an affidavit as the leader of the DA and challenged the said appointment in Court hoping to stave-off the investigation. The effect of this opportunistic litigation is that, the MEC had to suspend the investigation process, pending the outcome of the said court proceedings. And once again, the Council has been deprived of another opportunity of holding those who committed the said unlawful obstructive acts accountable.
15. Therefore, the above alleged acts of fraud, corruption and maladministration relating to the unlawful protection that was provided to the former Group Head of GFIS must be investigated. Also, in light of such protection having bred a culture of impunity in GFIS, and undermined the authority of Council, the Speaker of Council acting in terms of her powers in section 18 of the Amended Municipal Structures Act 03 of 2021 authorizes that this matter be investigated.

DD. THE ALLEGED MANIPULATION OF PROCESSES AND STAGING OF RETALIATORY ACTS BY CERTAIN PERSONS TO DETRIMENT THE CAREERS AND REPUTATIONS OF COMPLAINANTS

16. It would seem that after the submission of a complaint by one of the complainants and reported that a rogue, clandestine and unlawful investigation were used against him for the purpose of ousting him from recruitment processes for the position of the City Manager, the following acts were allegedly implemented to detriment his career and reputation, namely:
 - 16.1 A legal opinion was sought by the previous Executive Mayor and MMC for Corporate Services from a Senior Counsel regarding the prospects of him succeeding to challenge the recruitment processes. And when this legal opinion confirmed that the complainant may succeed, it was shelved. Then they sought a second one from another Senior Counsel, and when this second legal opinion required them to make uncomfortable disclosure to the Council, it was shelved, and was never presented before Council for its consideration.
 - 16.2 They then caused Council to launch a second investigation against the complainant and reinvestigate the same allegations which were reported by the complainant has having been generated from an investigation that was rogue, clandestine and unlawful. It is also alleged that when he was cleared by the second investigation, the former Executive Mayor and MMC for Corporate Services concealed the report from the Council and instead, they issued media statements and sought to keep the cleared allegations alive.
 - 16.3 They further submitted a misleading report in Council to readvertise the City Manager position in which the complainant had been recommended for, and claimed that he was not cleared by the second investigation. And during the shortlisting for the readvertised position, the complainant was excluded on the basis that he did not qualify. And instead, a candidate whose competency assessment report and prescreening employment report from GFIS rendered him unsuitable was recommended for the City Manager position.
17. And regarding another complainant who had reported that he was also being subjected to rogue, clandestine and unlawful investigations by the former Group Head of GFIS, the following acts were allegedly acts to detriment his career and reputation were also implemented, namely:
 - 17.1 Anonymous google mails with new allegations against the complainant were sent to the former Executive Mayor and Group Head of GFIS, and they instructed a law firm to launch a second investigation against the complainant. In the meantime, a report in respect of the first investigation which he had reported as rogue, clandestine and unlawful was being finalised, and his complaint in respect of that investigation was completely disregarded by the former Executive Mayor, MMC for Corporate Services and Speaker of Council.
 - 17.2 When the complainant resisted being subjected to further rogue, clandestine and unlawful investigations, and reported the former Group Head of GFIS, Executive Mayor and Speaker of Council to the Ministers of COGTA and Police, the former Group Head of GFIS issued various threatening whatsapp messages. And one of those messages, called

for the complainant to be dealt with during the recruitment processes for the two positions in which the complainant had been a shortlisted applicant. And when they were signs that the complainant was being dealt with he withdrew his applications.

17.3 With is applications withdrawn, the former Executive Mayor and MMC for Corporate Services attempted to table in Council, the unlawful investigation report of GFIS against the complainant. They later withdrew the said report following a written complaint of a former councillor of the DA who was implicated by its contents. They then instructed that the allegations in the said report which pertains to their colleague from the DA be excluded with the view of resubmitting the report in Council. The complainant resigned. And five months after the complainant had resigned, the former Executive Mayor and MMC for Corporate Services attempted to table the said report, and the current Speaker of Council refused to table the said report on the basis that it was a subject of a complaint.

18. Therefore, the above alleged manipulation of internal processes and staging of retaliatory acts to detriment the careers and reputations of complainants must be investigated. And also noting that it was the investigation and recruitment of senior managers which falls squarely with the jurisdiction of Council in terms of legislation that were manipulated, and Council was exposed to litigation risks, the Speaker of Council acting in terms of her powers in section 18 of the Amended Municipal Structures Act 03 of 2021 authorizes that this matter be investigated.

EE. THE ALLEGED ACTS OF FRAUD, CORRUPTION AND MALADMINISTRATION IN THE DEPLOYMENT OF COUNTER-MEASURES TO STAVE-OFF INVESTIGATIONS INTO GFIS

19. The submitted complaints further indicate that counter-measures were deployed to stave-off possible investigations into the questionable employment and operations of GFIS. Firstly, these appeared to have been allegedly targeted on implementation of a full investigation which had been recommended in a preliminary report by Zebediela Attorneys (**“Zebediela Report”**), as follows:

19.1 The said report was submitted to the former Speaker of Council and Executive Mayor, and they did not tabled it in Council for its consideration and further investigation as recommended thereto. And instead, the former Executive Mayor unlawfully procured some questionable legal opinion from a firm of attorneys that were not in the approved panel of the City, and which seemingly advised her not to table the report in Council.

19.2 The former Group Head of GFIS also launched review application against the said report, and one of the complainants who was an Acting City Manager authorised Mogaswa Attorneys to oppose the said review application. Further, then solicited and received a legal opinion from Terry Motau SC who advised that the former Group Head of GFIS does not have a case against the City, and he must be suspended and the decision to oppose his application must be proceeded with. And once the complainant was removed from the acting position, the Mogaswa Attorneys and Motau SC were also instructed to withdraw from opposing, and the matter was heard unopposed in favour of Mr Sibiya.

- 19.3 While the said proceedings were still pending, the newly appointed Acting City Manager authorised another firm of attorneys review the said report. This firm recommended that the recommendations made in the Zebediela Report which included that a full investigation be conducted should not be implemented. This is despite the obtained legal opinion from Motau SC have confirmed that the allegations made in the Zebediela Report are of serious nature and must be investigated, and the former Group Head of GFIS must be suspended.
20. It also appears that the above alleged rogue, clandestine and unlawful investigations were concealed from Council by eliminating any form of political opposition against GFIS. In this regard, it alleged that political leaders from the minority parties in the Municipal Council who were opposed to the above conduct of GFIS were subjected to retaliatory investigations as follows,
- 20.1 The former MMC for Development Planning and current caucus leader of the DA raised certain allegations against councillor Thapelo Amad from Al-Jamah who was at the forefront of questioning the alleged improper and unlawful conduct of GFIS. Interestingly, the former MMC for Development Planning instead of reporting her allegations to the Ethics Committee, she reported them to GFIS. This is despite her knowing that Cllr Amad have issued various media statements and briefings and exposed the special treatment which was given to the former Group Head of GFIS by the former Executive Mayor.
- 20.2 It also noted that in the same period, other allegations of fraud and corruption were raised against Cllr Magaret Arnolds were reported to GFIS and not the Ethics Committee. Similarly, it was known as a matter of fact that Cllr Arnolds was one of those who were at the centre of the campaigns that challenged the alleged improper and unlawful conduct of GFIS. This is because those who made those allegations knew that Cllr Arnolds have also issued various media statements and held press briefings which publicly exposed the unlawful conduct of the former Group Head of GFIS.
- 20.3 Also, in the same period, an intelligence styled 200 page investigation report on the personal affairs and business dealings of the former Chair of Chairs, Cllr Colleen Makhubele also emerged. This report appeared after Councillor Makhubele had recorded her objection in a meeting of the DA-led multi-party coalition regarding the concealment of reports from Council regarding the alleged unlawful conduct of GFIS. This report was concluded when Cllr Makhubele had decided to join the forces that were advocating for a regime change, and was involved in certain political negotiations which resulted in her making a political shift that will catapulted her to the position of Speaker of Council.
21. Therefore, the above alleged acts of fraud, corruption and maladministration in the deployment of counter-measures to stave-off investigation into GFIS operation must be investigated. And also noting that the investigation of councillors falls squarely with the jurisdiction of Council in terms of legislation, and Council was exposed to litigation risks by the manner in which its councillors were being investigated, the Speaker of Council acting in terms of her powers in section 18 of the Amended Municipal Structures Act 03 of 2021 authorizes that this matter be investigated.

C. THE RELEVANT INCRIMINATING ADMISSIONS BY THE AFFECTED PARTIES

22. It appears from the signed affidavits of the former Group Head of GFIS in the review proceedings which he instituted at the High Court, and allegedly as a counter-measure to stave-off the recommended comprehensive investigation in the Zebediela Report, that he recorded the following incriminating pleadings which are relevant to the investigation, namely:

22.1 At paragraph 23.1 and 24 of his affidavit at the High Court, the former Group Head of GFIS provided as proof of his appointment as the Group Head of GFIS, the advertisement and appointment letter as the Unit Head for Security and Investigations and is annexed thereto marked “GS8” and “GS9”. These pleadings and documents provides a preliminary indication that this official knew that processes and compliance with Human Resource policies and national legislation was never followed in appointing him as an HOD. Otherwise, he would have availed proof of his appointment as the Group Head of GFIS.

22.2 At paragraph 23.1 and 23.2 of his affidavit at the High Court, the former Group Head of GFIS further provides a copy of the delegations that were signed and given to him by the former City Manager, and a report on the structural placement of GFIS, and are annexed thereto marked “GS3” and “GS5”. These pleadings provides a preliminary indication that he also admits he received those delegations as Group Head of GFIS on 08 March 2017, despite the fact that GFIS was formally established as a department by on 26 April 2017. Further, that he knew those delegations were never approved by the Council as required by national legislation. Otherwise, he would have provided proof of such approval.

22.3 At paragraph 52.4.9 of his affidavit at the High Court, the former Group Head of GFIS provided as proof of authorisation to conduct forensic investigations and operate a snooping machine, a clearance certificate dated 30 March 2022, and is annexed thereto marked annexure “GS28”. These pleadings and said document provides an indication that he accepts that for more than five years, he conducted investigation and access sensitive information without proper authorisation as required by legislation. Bearing, in mind that the top security clearance was a prescribed minimum requirement for his appointment, that means, he accepts that for more than five years he was unqualified for his appointment.

23. Also, it appears from the signed affidavits by the former Executive Mayor in the review proceedings instituted by the DA at the High Court to allegedly as a counter-measure to stave-off the section the section 106 investigation of the MEC for Local Government, that she recorded the following incriminating pleadings which are relevant to the investigation, namely:

23.1 At paragraph 58 of her affidavit at the High Court, the former Executive Mayor pleads as proof that the complainant responded to the alleged rogue, clandestine and unlawful investigation that was conducted against him. And she then attached his complaint, in which she was addressed in copy, and is annexed thereto marked “FA8”. These pleadings and document provides a preliminary indication that she did receive and/or knew there was complaint regarding the said investigation of GFIS, and simply disregarded it.

- 23.2 At paragraph 74 to 77, of her affidavit at the High Court, the former Executive Mayor pleads as proof that that she acted on the report that was generated from the alleged rogue, clandestine and unlawful investigation of GFIS and shed tabled it in Council to have the complainant placed on special leave. And she attaches a resolution of Council, and is annexed marked “FA11”. These pleadings and document provides a preliminary indication that while she knew the complainant had objected to the said investigation, and she simply disregarded his objection, and caused the complainant to be removed from his job.
- 23.3 At paragraph 114 to 115 of her affidavit at the High Court, the former Executive Mayor pleads as proof the prescreening report of the former Group Head of GFIS, which recorded the purported negative findings of the alleged rogue, clandestine and unlawful investigation against the complainant. And then she attaches that report, and is annexed thereto marked “FA24”. These pleadings and document provides a preliminary indication that while she knew the complainant had objected to the said investigation of GFIS, and she allowed its outcomes to be used against him in order to oust from a recruitment process.
24. There is also a full audio recording of the press briefing that was held at Hillbrow Police Station by the former Executive Mayor and Speaker of Council. They can be heard stating that they received various complaints that were submitted to them, and regarded them as lies, and hence they would not act on them. They can also be heard reading and referencing certain parts of the letters of SSA and PPSA and which favors their election not to act on the submitted complaints. And towards the end of the recording, they make a public declaration that the officials and councillors who have “lied” about GFIS would be dealt with decisively. It is worth noting that after this press briefing a report that cleared one of the complaints mentioned in the recording was concealed from Council, and another alleged unlawful report from GFIS on another complainant was withdrawn before it was tabled in Council. Also, the 200 page intelligence styled report on Councillor Makhubele was produced and allegations against councillors were reported to GFIS.

D. THE SCOPE OF THE WORK AND EXPECTED DELIBERABLES

25. It must be noted that the nature and complexity of the above matters required a legal examination that should create certainty within the Council and administration, and therefore, the Senior Counsel is expected to deliver a legal opinion regarding the following matters:
- 25.1 The appropriate legal treatments that must implemented to regularise the rogue, clandestine investigations of GFIS, and to dispose of its illicit equipment.
- 25.2 The appropriate legal treatments that must be implemented to regularise all the investigations of the GFIS that were conducted without Council approved delegations.
- 25.3 The investigative powers that can lawfully be delegated to GFIS, and the reporting and functional arrangements for GFIS to lawfully operate within those delegations.

26. This investigation is further complicated by the fact that it will have to enquire into conduct of current and former councillors, touch on investigations by the other functionaries, involve other organs of state (COGTA, PPSA, SSA) and it carries public, media and political interests, it is required that the Senior Counsel shall provide an advisory memorandum regarding the following:
- 26.1 The structure and form that the investigation process should take given the abovementioned diverse interests.
 - 26.2 The estimated investigation timeline and other supporting resources and infrastructure that the investigation process is likely to require.
 - 26.3 The assessment of other internal investigations that may need to be seamlessly integrated into this comprehensive Council approved investigation process, and the mechanisms to do so in order to minimise wastage of resources and eliminate duplication of efforts.
27. Once the above required expedited investigation programme is implemented, it is expected that the Senior Counsel shall submit an investigation report, which shall pronounce on whether or not:
- 27.1 There is prima facie evidence to substantiate the alleged acts that are recorded under the matters that must be investigated
 - 27.2 Applicable policies, legal prescripts and procedures were contravened in respect of any of the matters that must be investigated.
 - 27.3 Any person/s unlawfully benefited and/or were unjustifiable enriched and/or unlawfully gratified in respect of the matters under investigation.
 - 27.4 Civil, criminal and disciplinary proceedings such as those mentioned in section 32 of the MFMA, section 34 of the PRECCAA or any other applicable law must be instituted.
28. The above is a summary of expected deliverables from the Senior Counsel, and other matters may still be included as part of deliverables prior and/or during the investigation, and upon a written agreement between the Senior Counsel and the Speaker of Council if it becomes necessary.

Yours in the fight against fraud, corruption and maladministration.



CLLR C MAKHUBELE
SPEAKER OF COUNCIL
CITY OF JOHANNESBURG
DATE: 03 JULY 2023