

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 09/51422

In the matter between:

**M & G LIMITED**

First Applicant

**NICHOLAS ADRIAN MICHAEL DAWES**

Second Applicant

**ADRIAAN JURGENS BASSON**

Third Applicant

and

**2010 FIFA WORLD CUP ORGANISING COMMITTEE  
SOUTH AFRICA (ASSOCIATION INCORPORATED  
UNDER SECTION 21)**

First Respondent

**DANIEL ALEXANDER JORDAAN**

Second Respondent

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**FILING SHEET**

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**Document to be filed:** First and Second Respondents' Answering Affidavit

Dated at Johannesburg on this the 9th day of April 2010.

**EDWARD NATHAN SONNENBERGS**

Per: 

Attorneys for Respondents  
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TO: **The Registrar**  
High Court  
JOHANNESBURG

AND TO: **WEBBER WENTZEL**  
Attorneys for Applicants  
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Johannesburg, 2196  
(Ref: Dario Milo/Emma Sadleir/1946104)

**WEBBER WENTZEL**  
WITHOUT PREJUDICE / SONDER  
BENADELING VAN REGTE

TIME: 13:58

09 April 2016



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**2010 FIFA WORLD CUP ORGANISING  
COMMITTEE SOUTH AFRICA  
(ASSOCIATION INCORPORATED UNDER  
SECTION 21)**

First Respondent

**DANIEL ALEXANDER JORDAAN, N.O.**

Second Respondent

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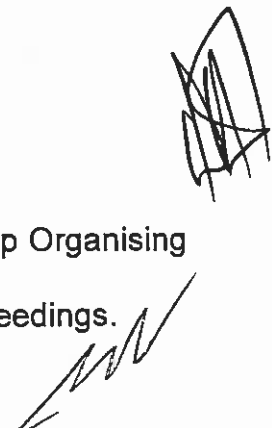
**FIRST AND SECOND RESPONDENTS' ANSWERING AFFIDAVIT**

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I, the undersigned,

**DANIEL ALEXANDER JORDAAN,**

do hereby make oath and say that:

1. I am the Chief Executive Officer of the 2010 FIFA World Cup Organising Committee South Africa, the First Respondent in these proceedings.
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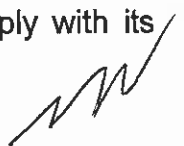
2. The facts and allegations contained herein are within my personal knowledge and belief, except where otherwise stated or appears and are to the best of my belief both true and correct. Where I make legal submissions, I rely on advice that the Respondents have received from their legal representatives.
  
3. I depose to this affidavit in my personal capacity as the Second Respondent and in a representative capacity on behalf of the First Respondent. I am duly authorised to oppose this application and to depose to this Answering Affidavit on behalf of the First Respondent. As the Chief Executive Officer of the First Respondent I am also the "head" of the First Respondent, within the meaning of the definition assigned thereto in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA"). If the First Respondent is found to be a public body (which I submit it is not, for reasons to be set out below), I would, in terms of the definition assigned thereto in PAIA, be its "information officer".

#### **FACTUAL BACKGROUND**

4. Before dealing with the allegations contained in the Founding Affidavit, it will be convenient to provide an overview of the structure of the Organising Committee. I do so below.
  
5. **Fédération Internationale de Football Association ("FIFA")**



- 5.1. FIFA is the governing body and the owner of all rights in respect of any FIFA World Cup™. FIFA grants to different member associations the right to host the FIFA World Cup™ within the territory of such member association.
- 5.2. On 23 September 2002, the FIFA Executive Committee confirmed that only African member associations affiliated to FIFA would be invited to submit a bid to host the 2010 FIFA World Cup™.
- 5.3. FIFA imposes various standards as regards construction, infrastructure, safety and so forth with which a host nation must comply. This is done to ensure that previous FIFA World Cups™ and the current 2010 FIFA World Cup™ run smoothly, safely and on time; that the pitches are conducive to football of the highest quality; and that the stadia facilitate the viewing of matches both by a sizeable number of global spectators and a global audience. It is also done to ensure that the FIFA World Cup™ brand, in which FIFA has invested so much, is burnished and not diminished. FIFA has also retained the power to finally approve the Host City and Stadium Use Agreements, in order to ensure that those standards are met.
- 5.4. FIFA's requirements are, however, of a general nature, and directed at technical issues. FIFA gives the organising committees a wide latitude in relation to how to comply with its

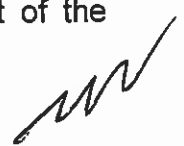


technical requirements and how the FIFA World Cup™ should be organised and operated. FIFA does not interfere with issues like stadium designs or venues, or dictate where matches should be played. FIFA can obviously provide input and guidance on a whole range of issues relating to the hosting of the FIFA World Cup™, and, in the light of the expertise which FIFA can offer in relation to the FIFA World Cup™, it would be foolish for an organising committee not to tap into this institutional knowledge. However FIFA could only take issue with a decision of the organising committee when it is apparent that there is non-compliance with the FIFA requirements or reason to believe that the organising committee will fall foul of any other contractual obligations to FIFA.

**6. South African Football Association ("SAFA")**

6.1. In South Africa, SAFA is responsible for co-ordinating all football-related activities and is a member association of FIFA. As a member association, SAFA was therefore entitled to submit a bid for the hosting of the 2010 FIFA World Cup™. It resolved to do so.

6.2. In order to qualify to host the event, it was necessary for SAFA to compile a "bid book" which detailed the ability of South Africa to meet the requirements for staging and hosting an event of the



nature of the 2010 FIFA World Cup™ (the "Bid Book"). The nature and scope of the event means that any bidding country must demonstrate that the country will have football stadia and the requisite supporting infrastructure (including telecommunications, information technology, accommodation and transport).

6.3. The Bid Book submitted to FIFA by SAFA on 30 May 2003 provided an overview of the potential football stadiums and proposed infrastructural measures which could be provided by South Africa in the event of it being awarded the right to host the 2010 FIFA World Cup™. Included in the Bid Book were various Guarantees issued by the Government of the Republic of South Africa ("government") in favour of FIFA ("the Guarantees"). It must be stressed that the Guarantees were for the benefit of FIFA and not for the benefit of the Organising Committee. The Guarantees related to matters such as health services, transport, safety and security, taxes, exchange control, immigration and so forth, none of which fall within the purview of the Organising Committee.

6.4. In August 2003, SAFA also contractually committed to FIFA to deliver the 2010 FIFA World Cup™. The contractual arrangement concluded between SAFA and FIFA was recorded in a document



known as the Organising Association Agreement. A copy of the Organising Association Agreement is annexed hereto marked "DAJ1".

6.5. The Organising Association Agreement stipulated the general obligations to be assumed in preparation for staging and hosting the 2010 FIFA World Cup™. Amongst the contractual terms agreed to by SAFA was an obligation to establish an organising committee which would undertake such activities as may be required to organise, stage and host the 2010 FIFA World Cup™. The Organising Association Agreement also laid down various requirements for 2010 FIFA World Cup™ infrastructure (such as stadiums). The details of the stadium requirements were all ultimately encapsulated in Stadium Use Agreements, which will be described further below. Other portions of the Organising Association Agreement relate to ancillary infrastructure such as accommodation, transport, safety and security, and stadium access – all of which need to be considered in conjunction with the provision of the stadiums.

6.6. After various countries (and football organisations) had submitted bids to host the 2010 FIFA World Cup™, FIFA undertook a rigorous evaluation from 1 October 2003 to 31 January 2004 of the various bids which had been received. The evaluation



process included an inspection of each of the bidding countries to determine how viable it would be for them to host the 2010 FIFA World Cup™. After this exhaustive evaluation had been completed, FIFA decided which national football organisation should be awarded the right to host the 2010 FIFA World Cup™. FIFA decided on SAFA, as President Blatter (the President of FIFA) announced to the world on 15 May 2004.

**7. 2010 FIFA World Cup Organising Committee South Africa** ("the Organising Committee", also referred to colloquially as "the Local Organising Committee" or "LOC")

**7.1. The structure of the Organising Committee:**

7.1.1. Following the award of the hosting rights to South Africa, SAFA sought FIFA's consent to house the organising committee in a separate legal entity. It did so in order to ensure that there was a single body dedicated to performing the obligations required to stage and host the 2010 FIFA World Cup™, and to separate the administrative activities associated with the 2010 FIFA World Cup™ from the general operational functions of SAFA. The Organising Committee was duly incorporated as a section 21 company on 29 August 2005 and SAFA assigned its



rights and obligations in terms of the Organising Association Agreement to the Organising Committee

7.1.2. The Organising Committee is structured in such a way that the various participants in football and operational activities associated with football are represented on the board of the Organising Committee. The board of the Organising Committee comprises representatives of SAFA, cabinet members responsible for specific portfolios within government, independent members of the business community not aligned to either government or football, and representatives of organised labour. The rationale for the inclusive approach is to ensure that there is a co-ordinated effort in the preparatory activities and the implementation of the 2010 FIFA World Cup™. Each participant has specific skills and expertise which will be contributed as part of the combined undertaking to successfully host the 2010 FIFA World Cup™.



7.2. The role of the Organising Committee:

7.2.1. The Organising Committee is the body ultimately responsible for all operational matters pertaining to the 2010 FIFA World Cup™. The role of the Organising



Committee is to ensure that the venues, and the operational elements which will go into making the venues work, are planned and delivered on time within the parameters of the Organising Committee's budget and, importantly, are fully integrated with the permanent features of the venues.

7.2.2. The 2010 FIFA World Cup™ brings its own set of requirements. The obligations to the footballers, officials, broadcasters, press, commercial affiliates and spectators all need to be taken into account in preparing the physical venue. These requirements include:

7.2.2.1. the physical separation of constituent groups within 'zones' in the venues to which accreditation grants entry;

7.2.2.2. the significant infrastructural requirements of the host broadcaster and other rights-holding broadcasters particularly in relation to commentary and camera positions;



7.2.2.3. the massive technology requirements and the complex computer and telecommunications rooms;

7.2.2.4. the massive volumes of temporary structures, notably tents and temporary seats;

7.2.2.5. the elements of overlay and fit-out which include telephones, signage, beds, chairs, tables, radios and a host of other equipment.

7.3. The general financing of the Organising Committee:

7.3.1. The Organising Committee has agreed a detailed expense budget with FIFA in the amount of 423 million United States Dollars ("USD"). The expense budget, prepared by SAFA and approved by FIFA on 6 October 2004, has come to be known as the FIFA Approved Budget. It consists of 16 budget categories which include insurance, safety and security, stadiums and other infrastructure, medical facilities, transport, accreditation, ticketing, IT solution, official events, accommodation, advertising, marketing and PR, finance and administration, tournament operating



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expenses, protocol cost and management and support services.

7.3.2. In order to finance these budget items, the Organising Committee agreed an income budget with FIFA. In terms of this budget, FIFA provided the Organising Committee with seed capital of USD 20 million, a minimum deficit guarantee of USD 160 million, income from the category of commercial affiliates known as national supporters and finally the nett revenues from the sale of tickets for the FIFA Confederations Cup South Africa 2009 and the 2010 FIFA World Cup South Africa™. These are the main sources of income for the Organising Committee. I must emphasise that none of this income comes from government.

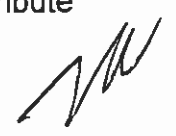
7.3.3. As is the case with most organising committees, there is a lack of certainty about the size of the income budget. Right up until the time of the event there remains uncertainty about revenues such as national supporter income and ticketing revenues.

7.4. The limited role of government funding for the Organising Committee:



7.4.1. Additional funding for specific purposes has been received by the Organising Committee from various spheres of government. This funding, aside from the potential funding in respect of event power as described more fully in paragraph 7.4.4.6 below, was neither sought nor requested by the Organising Committee and has been given to the Organising Committee in furtherance of institutions individual mandates. The funding given by the City of Johannesburg, for instance, for the Opening and Closing ceremony of the FIFA Confederations Cup 2009 gave much needed publicity to the City of Johannesburg and gave it the opportunity to showcase itself to the world.

7.4.2. The specific purposes by government relates primarily to (a) the opening and closing ceremonies and (b) volunteer training. Government set aside R25 million for the training of volunteers for different purposes. Due to the fact that government did not have a volunteer training programme, it approached the Organising Committee with a request that the Organising Committee train the volunteers for government and in return government would contribute



financially towards the cost of this training. Thus the government funding received for volunteer training by the Organising Committee is not funding in relation to the furtherance of an obligation or responsibility of the Organising Committee.

7.4.3. The Organising Committee has received funding for volunteer training and for the opening and closing ceremonies from the Department of Arts and Culture, the Department of Sport and Recreation and the City of Johannesburg, in the following amounts:

7.4.3.1. City of Johannesburg — R5 000 000.00 for the Opening and Closing ceremony of the FIFA Confederations Cup 2009;

7.4.3.2. Department of Arts and Culture — R5 000 000.00 for the Opening and Closing ceremony of the FIFA Confederations Cup 2009;

7.4.3.3. Department of Sport and Recreation — R8 775 545.74 for Volunteer Training at the FIFA Confederations Cup 2009; and



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7.4.3.4. Department of Sport and Recreation —  
R9 000 000.00 for Volunteer Training at the  
2010 FIFA World Cup South Africa™.

7.4.4. The total funding received from the aforementioned institutions, to date, equals R27 775 545.74. This represents the amounts actually paid to the Organising Committee from the aforementioned institutions. The Organising Committee is still awaiting payment of R110 782 129.41 for the specific purposes mentioned below:

7.4.4.1. Department of Arts and Culture —  
R2 870 308.00 for the Final Draw held in  
Cape Town on 4 December 2009.

7.4.4.2. The North West Province — R5 880 780.15  
for a contribution to the Medical and Team  
Workshop of the 2010 FIFA World Cup™;  
which was a contribution made towards the  
Organising Committee complying with its  
obligation towards FIFA.



7.4.4.3. The City of Johannesburg — R40 000 000.00 for the Opening and Closing Ceremony of the 2010 FIFA World Cup™.

7.4.4.4. Department of Arts and Culture — R40 000 000.00 for the Opening and Closing ceremony of the 2010 FIFA World Cup™.

7.4.4.5. The Organising Committee is in negotiations with the Department of Home Affairs in respect of the Organising Committee training the Department of Home Affairs' volunteers for the staffing of the ports of entry into the country during the 2010 FIFA World Cup™ in the same manner as referred to in 7.4.2 above.

7.4.4.6. The Organising Committee is in negotiations with the Department of Minerals and Energy with a view to it contributing funds towards the expenses incurred by the Organising Committee in relation to its obligations to provide event power. The Organising Committee is required, in terms of its obligations to FIFA, to ensure uninterrupted



event power which will primarily be provided by generators and which will be backed-up by the domestic power grid. The Organising Committee has entered into an agreement with a JV comprising of Shanduka Energy (Pty) Ltd and Aggreko International Projects Limited in order to ensure compliance with its obligations.

7.4.5. I must emphasise that all of the money received from government has been ring-fenced (and will continue to be ring-fenced) for the specific purposes referred to above. In other words, the money will be used for the specific purpose for which it has been ear-marked by the relevant government institution, and does not form part of the general operating budget of the Organising Committee.

7.4.6. Save as aforesaid, the Organising Committee has not received any funds from government, and is not anticipating receiving any such funds.

7.5. Given that most of the Organising Committee's funding comes from FIFA, the Organising Committee is dependent on the



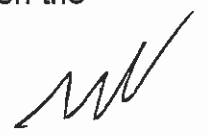
financial success and income of FIFA and thus the commercial and financial interests of the two institutions are aligned.

**8. The role of government**



8.1. The Organising Committee is well aware of the autonomy afforded to national government, the provinces and the cities to regulate their own affairs. The Constitution of the Republic of South Africa gives national, provincial and local authorities different powers and functions, and allows each sphere of government to govern, on its own initiative, the matters entrusted to that sphere. The Organising Committee is also cognisant of the legislation which has been enacted to regulate financial and administrative decisions of municipalities legislation, such as the Local Government: Municipal Finance Management Act and the Local Government: Municipal Systems Act. No private body (such as the Organising Committee) can purport to alter the municipal decision-making procedures enshrined therein or exercise functions falling within the jurisdiction of the relevant sphere of government. The Organising Committee has at no stage sought to do so.



8.2. It is therefore necessary to maintain a clear distinction between the functions and obligations of the Organising Committee on the one hand, and the functions and obligations of government on the





other. As I shall indicate below, the Founding Affidavit repeatedly ignores that distinction by impermissibly conflating the functions of the Organising Committee and the functions of government. That having been said, it is also necessary for there to be a co-ordinated approach of co-operation between the Organising Committee and government towards the hosting of the 2010 FIFA World Cup™. For example, there are certain matters (such as security and infrastructure provision) which fall within the purview of government operations and without which the hosting of the 2010 FIFA World Cup™ would not be possible. The 2010 FIFA World Cup™ therefore requires continuous liaison and co-operation between the Organising Committee and government.

- 8.3. In sum, each of FIFA, the Organising Committee and the three spheres of government have specific roles and responsibilities. However, the co-ordinating function falls within the scope of operation of the Organising Committee. The Organising Committee liaises with FIFA and government to ensure the implementation of FIFA's requirements by government. The Organising Committee itself does not perform the government-specific obligations. Rather, government assumes the responsibility of putting in place the institutional framework for delivery of its obligations. At all times each party remains responsible for its individual obligations. As I shall indicate in
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more detail below, the Founding Affidavit frequently elides the distinction between the Organising Committee on the one hand and the three spheres of government on the other.

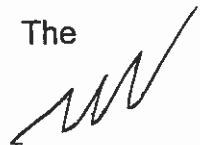
- 8.4. It is for the reasons given above that cabinet members responsible for specific portfolios within government were invited to participate on the board of the Organising Committee. The appointment to the board of the Organising Committee was by virtue of the position held within government by the relevant minister, and was not linked to a particular cabinet member. The governmental activities associated with, for example, sports and recreation necessitated that the Minister representing such portfolio be appointed to the board of the Organising Committee.

## 9. The Stadiums

- 9.1. I must emphasise that the Organising Committee has not been responsible for choosing a match venue for a host city. The nomination of a stadium had to come from the host city itself. The candidate host cities had to formulate their own proposals and include them in a binding offer to the Organising Committee and FIFA. The Organising Committee would then consider the relative strengths of each option and decide which match venues would be included among the final list of ten to be submitted to FIFA for its endorsement.
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9.2. Every candidate host city formulated proposals, made presentations, and submitted itself to inspections during the course of 2005. But, ultimately, it was only when the candidate host cities had submitted signed Host City and Stadium Use Agreements to the Organising Committee that they were irrevocably committed to participating in the 2010 FIFA World Cup™ if selected by the Organising Committee. It was only after receipt of those agreements that the Organising Committee made a final decision as to the identity of the cities and venues which would participate in the 2010 FIFA World Cup™.

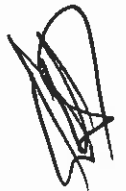
9.3. The Organising Association Agreement obliged SAFA (and, after its incorporation and the assignment of SAFA's obligations, the Organising Committee) to sign stadium agreements with the host cities or stadium authorities to ensure the provision and use of each 2010 FIFA World Cup™ stadium in accordance with the Organising Association Agreement. Inasmuch as the Organising Association Agreement committed SAFA and the Organising Committee to providing FIFA with stadiums of the highest technical, infrastructure and construction level, all complying with the FIFA requirements, the stadium agreements contemplated therein had to embody a commitment by a host city, the stadium owner or operator towards the Organising Committee and FIFA to provide a stadium which met FIFA's specifications. The



Organising Committee, for its part, had to undertake to report to FIFA any changes or requirements associated with each stadium.

9.4. The nature and scope of the FIFA Requirements appear from each of the Stadium Use Agreements. These are practical and technical requirements which are necessary to ensure that all stadiums are constructed in a manner which ensures that the matches of the 2010 FIFA World Cup™ are presented in the best possible manner to the international community.

9.5. It was initially contemplated that the Stadium Use Agreements would be finalised during the course of 2006 and presented to FIFA in the first quarter of 2007. There was, however, pressure from the host cities and stadium authorities to finalise the selection of the host cities and match venues as soon as possible. They had to prepare budgets, commit funds, procure contractors for construction and infrastructural work, and incur costs in relation to stadium design and planning as soon as possible in order to ensure a successful 2010 FIFA World Cup™. The host cities and stadium authorities further required that the requisite funds from National Government be allocated to them for the planning stage sooner rather than later. It was a condition of government that signed agreements should be concluded before any planning or other funds could be released. The host cities



and stadium authorities were understandably reluctant to take these steps, and in particular to start incurring expenditure, if they were not to be selected and consequently would not receive any planning funds from government.

9.6. It is important to emphasise that government has provided funding to the host cities and the stadium authorities; this funding has *not* been provided to the Organising Committee. The Organising Committee is a legal entity that exists independently of the host cities and the stadium authorities. As I shall indicate in more detail below, the Founding Affidavit frequently ignores this by eliding the distinction between the Organising Committee on the one hand and the host cities or stadium authorities on the other.

## 10. The Protected Event Notice

10.1. Although the Founding Affidavit refers to various items of legislation that impact on the Organising Committee, it does not refer to General Notice 683 of 2006, which was published in the Government Gazette on 25 May 2006. I am advised that it is necessary for me to draw the attention of this Honourable Court to this Notice. I do so below.

10.2. Section 15A of the Merchandise Marks Act of 1941 provides that the Minister of Trade and Industry may by notice in the Gazette



designate an event as a "protected event". For the period during which an event is protected, no person may use a trade mark in relation to such event in a manner which is calculated to achieve publicity for that trade mark and thereby to derive special promotional benefit from the event, without the prior authority of the organiser of such event.

- 10.3. The Minister of Trade and Industry has designated the 2010 FIFA World Cup™ as a "protected event" in terms of section 15A of the Merchandise Mark Act, 1941. He did so in General Notice 683 of 2006, which was published in the Government Gazette on 25 May 2006, which was published in the Government Gazette on 25 May 2006 ("the Protected Event Notice"). A copy of the Notice is annexed hereto marked "DAJ2". The Protected Event Notice states as follows:

*"I, Mandisi Mpahlwa, Minister of Trade and Industry, pursuant to the Notice published 17 November 2005, in Government Gazette No 28243, Notice No 1259) hereby designate 2010 FIFA World Cup (the World Cup) as a "protected event" in terms of section 15A of the Merchandise Marks Act, 1941 (Act) from the date of publication of this Notice in the Government Gazette to six calendar months after the date of commencement of the World Cup. For ease of reference section 15A is attached and the*



public should pay particular attention to the provisions of subsection 2, 3, 4 and 5 of the section.

The "protected event" status is conferred on the World Cup on the understanding that the World Cup is in the public interest and that the Local Organising Committee (LOC) has created opportunities for South African businesses, in particular those from the previously disadvantaged communities.

The "protected event" status is further conferred on the understanding that:

- The Procurement Policy of LOC shall apply public section procurement principles such as procedural and substantive fairness, equity, transparency and competitiveness.
- The Procurement Policy of LOC shall apply constitutional procurement principles, the Preferential Procurement Policy Framework Act, 2000, the Department of Trade and Industry (the dti) codes of good practice for Broad Based Black Economic Empowerment (BBBEE) when evaluating suppliers and administrative law principles of fair procedure.
- The LOC must submit an impact assessment of the World Cup on communities in South Africa to the Minister six months after termination of the "protected event".



*The date of termination of the "protected event" status is six (6) calendar months (as envisaged in the Special Measures Act, 2006) after the date of commencement of the World Cup."*

- 10.4. I pause to emphasise that the Protected Event Notice does not purport to impose on the Organising Committee an obligation to "apply constitutional procurement principles, the Preferential Policy Framework Act, 2000 [and] the Department of Trade and Industry codes of good practice for Broad-based Black Economic Empowerment". Nor could it do so in law, since this would be *ultra vires* section 15A of the Merchandise Marks Act. The Protected Event Notice does no more than to record the Minister's "understanding" that the Organising Committee has assumed a voluntary obligation to comply with that legislation. The Organising Committee has indicated to the Minister that it will endeavour to comply with these obligations where possible, even though it is not required to do so in law. This amounts to the voluntary assumption of an obligation that does not bind the Organising Committee in law; it does *not* amount to the imposition of a legislative obligation.





**OVERVIEW OF THE BASIS UPON WHICH THE RESPONDENTS OPPOSE  
THIS APPLICATION**

11. I turn now to summarise the basis upon which the Respondents oppose this application.
12. Prayer 1 of the notice of motion refers to "the records (as defined in the Founding Affidavit attached to this Notice of Motion)". The Founding Affidavit defines "the records" in paragraph 16. It follows that this application seeks access to "the records" that are listed in paragraphs 16.1 to 16.6 of the Founding Affidavit. The significance of this is that "the records" as defined in the Founding Affidavit differ in some respects from "the records" listed in Schedule A to the public body request and the private body request. For example, item 8 of Schedule A ("all records relating to the award of the tender to provide security services") is not mentioned in paragraph 16 of the Founding Affidavit. For the purpose of this application, it is only necessary for me to have regard to the records that are listed in paragraphs 16.1 to 16.6 of the Founding Affidavit since these are the only records to which the applicants seek access.
13. I must draw attention at the outset to the extraordinary breadth of the Applicants' request for access to "the records". The Applicants do not seek access to a specific category of tender documents. On the contrary, they seek access to *all* records that have to do with *all* tenders,



requests for quotation and requests for information issued by the Organising Committee. This is a vast amount of documentation:

13.1. Based on the work that has been done for purposes of finalising this affidavit, it appears that the Organising Committee has initiated approximately 62 tender processes, some of which were ultimately awarded and some of which were cancelled prior to contract award. I would conservatively estimate that the records relating to these tender processes alone would fill some 1700 lever arch files which includes copies of bid submissions, as required in terms of different tender requirements. It is difficult to give a precise estimate, because the volume of documentation per tender process differs dramatically from tender to tender, depending on the nature and scope of goods or services tendered for, and the number of bidders. Some tenders have attracted up to forty four bidders, whilst others resulted in only two or three submissions. The number of copies required per bid submission varies from tender to tender, and the process followed to reach conclusion of a tender process (whether that be cancellation, or award and contracting) has differed depending on the relative merits of bidders, the quality of bids and the issues arising during a tender process.



13.2. It has not been possible, in the time available for the filing of this Answering Affidavit, to quantify the precise volume of the Organising Committee's records relating to requests for quotations. The reason for this is that there is no consolidated record of the Organising Committee's quotation-related documentation. The only way to ascertain which of the Organising Committee's purchase orders (being its records of monthly expenditure) arise from requests for quotations, would be to review every monthly payment statement applicable to the Organising Committee for the full duration of its existence, and to work out – from anecdotal knowledge of financial officials at the Organising Committee and their predecessors – which payments made by the Organising Committee on a monthly basis are payments that originate from such a process (of obtaining quotations from competitors for a particular good or service), and then to trace those purchases back to a particular department at the Organising Committee, and from there to try to locate the applicable documentation (most of which is historical and not being currently used). In the time available for the filing of this Answering Affidavit, it has not been possible to perform this task. Based on the level of activity undertaken by the Organising Committee during the period of its existence, I have no doubt that



the volume of documentation relating to requests for quotations is very substantial indeed.

13.3. In relation to the breadth of the request for records made by the Applicants, the Respondents' attorneys addressed a letter dated 24 February 2010 which is annexed hereto marked as "DAJ3". In this letter the Respondent's attorneys set out in some detail the problems associated with the breadth of the request and invited the Applicants to narrow the request by specifically pointing to those records it requires. In its response, the Applicants' attorneys did not address the issue of narrowing the request for records, which response is annexed hereto marked as "DAJ4". In other words, the applicants declined to limit the breadth of their request to manageable proportions.

**14. Locus standi of the First and Second Applicants**

14.1. The present application is brought in terms of section 78 of PAIA. Insofar as relevant for present purposes, it provides that a "requester" may apply to court for relief in terms of section 82. A "requester" is defined in section 1 of PAIA.

14.2. In the case of both the public body request and the private body request, the "requester" was the Third Applicant. This is expressly stated to be the case on each of the request forms



(annexures ND9 and ND13 respectively). When asked on each form to indicate the "capacity in which request is made, when made on behalf of another person" and "particulars of person on whose behalf request is made", the Third Applicant responded "n/a".

14.3. I accept that the Third Applicant has locus standi to bring the present application. However I deny that the First and Second Applicants have standing to bring this application in terms of section 78 of PAIA, since they were not the "requesters" in relation to the public body request or the private body request.

**15. The public body request**

15.1. The public body request can only succeed if the Organising Committee is a "public body" within the meaning of PAIA. I respectfully submit that this definition must be given a narrow interpretation. PAIA gives effect to section 32(1) of the Constitution, which refers to the right of access to (inter alia) "any information held by the state". The definition of "public body" in PAIA is intended to capture institutions that form part of "the state". This is made plain by section 9(a) of PAIA.



15.2. It is common cause that the Organising Committee does not fall within paragraph (a) of the definition of "public body" in PAIA. The



Applicants contend that the Organising Committee falls within paragraph (b) of the definition. In advancing this contention, the Founding Affidavit repeatedly contends that the Organising Committee is a functionary that exercises a public power or performs a public function in terms of legislation *in general*.

15.3. I am advised and respectfully submit that the relevant question is not whether the Organising Committee exercises a public power or performs a public function in terms of legislation *in general*. The relevant question is whether the Organising Committee exercises a public power or performs a public function in terms of legislation *when it exercises the functions that form the subject matter of the requested records*. Section 8 of PAIA makes it clear that the same institution may be a "public body" when it performs certain functions and a "private" body when it performs other functions.

15.4. It follows that large portions of the Founding Affidavit are irrelevant since they seek to establish that the Organising Committee is a public body *in general terms*. This is not the relevant enquiry. Since all of the Records relate to tenders advertised, adjudicated and awarded by the Organising Committee, the relevant question is whether the Organising Committee was functioning as a public body when it invited and



awarded those tenders. In other words, as is stated in paragraph 52 of the Founding Affidavit, the question is whether the Organising Committee was functioning as a public body "when it decided to award the tenders to the successful tenderers".

15.5. I respectfully submit that this question must receive a negative answer. I submit that, in general, the Organising Committee does not exercise a "public power" or perform a "public function" when it invites and awards tenders. The Founding Affidavit repeatedly suggests that, if the public has an interest in the way in which a power is exercised, then the exercise of that power must necessarily amount to a "public power". I respectfully submit that this reasoning is fallacious since the conclusion does not follow from the premise. The hallmark of a "public power" or "public function" is that it is governmental in character. I submit that the powers of the Organising Committee to invite and award tenders are not governmental in character, and therefore do not amount to the exercise of a public power or the performance of a public function.

15.6. For the purposes of this application, however, I am prepared to accept for the sake of argument that the position may be different in the case of those tenders that involve the expenditure of money that has been given to the Organising Committee by government

for designated purposes. I have indicated in paragraph 7.4.1 above that the Organising Committee has received funding from government for specific purposes, and that those funds have been ring-fenced for the designated purposes. For the purposes of this application, I am prepared to accept for the sake of argument that the Organising Committee may exercise a "public power" or performs a "public function" when it invites and awards tenders involving expenditure of the money referred to in paragraph 7.4.1 above. I point out that the Organising Committee has awarded only one tender that falls into this category being the tender for the opening and closing ceremony awarded to the VVV Consortium. If negotiations with the Department of Minerals and Energy are successful in relation to energy supply, a further tender will fall into this category.

15.7. Further and in any event, the Organising Committee does not act "in terms of legislation" when it awards tenders to successful tenderers. I say so for the following reasons:


15.7.1. The drafters of PAIA were clearly alive to the distinction between law and legislation. For example, section 44(1)(a) refers to a decision taken "in the exercise of a power or performance of a duty conferred or imposed by law". In contrast, the definition of "public body"




refers to a functionary or institution "exercising a public power or performing a public function in terms of any legislation".

15.7.2. There is no legislation that confers on the Organising Committee the power to procure goods and services or to award tenders. The Organising Committee derives its procurement powers from the common law, not from legislation. The Founding Affidavit conspicuously omits to point to any legislation that confers on the Organising Committee the specific power to procure. As I shall indicate below, the FIFA statutes and regulations to which reference is made in the Founding Affidavit, manifestly do not amount to "legislation" within the meaning of PAIA.

15.7.3. I have drawn the attention of this Honourable Court to the Protected Event Notice. I point out that it does not confer on the Organising Committee the power to procure goods and services. The Protected Event Notice would be *ultra vires* section 15A of the Merchandise Marks Act if it purported to do so.



15.8. It follows, in my respectful submission, that the Organising Committee does not fall within the definition of a "public body"



when it awards tenders or exercises procurement functions. Put simply, the Organising Committee does not award tenders "in terms of any legislation". For the same reason, the Organising Committee is not a "functionary" or "institution" (within the meaning of the definition) when it awards tenders. A "functionary" or "institution" is a body that derives its powers from legislation. The power of the Organising Committee to exercise procurement functions derives from the common law, not from legislation.

15.9. If this Honourable Court were to find that the Organising Committee is not a "public body" when it awards tenders, then the public body request must necessarily fail. If this Honourable Court were to take a different view of the matter and were to find that the Organising Committee is a "public body" when it awards tenders, then the Organising Committee intends to rely on a series of provisions in PAIA for refusing access to the relevant records. I shall refer to the relevant provisions below. Although the Organising Committee did not have regard to these provisions when it wrote the letter that is annexure ND12 to the Founding Affidavit, I am advised and respectfully submit that it is competent for the Organising Committee to have regard to them in the context of the present application. The matter will be fully addressed in argument.



15.10. For all of these reasons, I respectfully submit that the public body request should be dismissed with costs.

**16. The private body request**

16.1. I accept that, if the Organising Committee does not fall within the definition of a "public body" when it awards tenders, then it necessarily falls within the definition of a "private body" for that purpose.

16.2. In order to succeed in the private body request, the Applicants have to establish that the requested records are "required for the exercise or protection of any rights" (section 50(1)(a) of PAIA). I respectfully submit that the Applicants have not discharged that burden of proof. The Applicants say that they "require the information for the exercise of their rights to freedom of expression and media freedom, and to vindicate the right of the public to receive information on matters of public interest" (paragraph 60 of the Founding Affidavit). If such a bald reliance on the constitutional right to freedom of expression were sufficient, it would mean that any journalist is axiomatically entitled to request *any* record of any private body under PAIA. I respectfully submit that this would yield an absurd outcome, and that the Applicants cannot circumvent this difficulty by averring



that they are seeking to vindicate the right of the public to receive information.

16.3. In any event, the Applicants make out no case to indicate why they require access to such a vast body of records in order to exercise or protect their rights or the rights of the public. The Founding Affidavit deals with the requested documents in general terms; it makes no attempt whatsoever to indicate why the Applicants require access to the particular documents listed in paragraph 16 of the Founding Affidavit. For example, there is nothing in the Founding Affidavit to indicate why the Applicants require access to "all records relating to hearings and/or interviews held by the first respondent in regard to the Tenders" (paragraph 16.5 of the Founding Affidavit) in order to exercise or protect their rights or the rights of the public. The Applicants' failure to indicate why they require access to the particular records listed in paragraph 16 of the Founding Affidavit is, in my respectful submission, destructive of the private body request.

16.4. If this Honourable Court were to take a different view of the matter, then the Organising Committee intends to rely on a series of provisions in PAIA for refusing access to the relevant records. I shall refer to the relevant provisions below. Although the Organising Committee did not have regard to these provisions



when it wrote the letter that is annexure ND15 to the Founding Affidavit, I am advised and respectfully submit that it is competent for the Organising Committee to have regard to them in the context of the present application. The matter will be fully addressed in argument.

16.5. For all of these reasons, I respectfully submit that the private body request should be dismissed with costs.

## 17. Conclusion

17.1. For the reasons set out above, the Respondents ask that the application be dismissed with costs.

## 18. Access fees

18.1. If this Honourable Court were to reject all of the preceding submissions and were minded to order the Respondents to supply the Applicants with copies of the Records, then I respectfully submit that the Applicants should be ordered to pay the prescribed deposit on the access fees. I shall address this issue at the end of my affidavit. I shall indicate that, by virtue of the enormous volume of records to which the Applicants seek access, the prescribed access fees will amount to many hundreds of thousands of Rands.



**RESPONSE TO THE FOUNDING AFFIDAVIT**

19. I turn now to respond on a paragraph-by-paragraph basis to the Founding Affidavit of Nicholas Adrian Michael Dawes ("Dawes"). In order to avoid unnecessary prolixity, I shall not repeat what I have already stated above but respectfully request that it be read as if incorporated in what appears below.

**20. Ad paragraphs 1 to 6**

20.1. Save to deny that all of the facts deposed to by Dawes are true and correct, I do not dispute the contents of these paragraphs.

20.2. I reiterate the First and Second Applicants are not "requesters", within the meaning of PAIA, and therefore have no locus standi to bring this application.

**21. Ad paragraph 7**

21.1. I admit that this is an application for access to certain Records held by the Organising Committee and has been brought in terms of PAIA.

21.2. I note that the Applicants do not seek access to records relating to particular tenders (or particular classes of tenders). They seek access to *all* tenders advertised, adjudicated and awarded by the Organising Committee.

21.3. I dispute that the Records relate only to the tenders advertised adjudicated and awarded by the Organising Committee. The Records encompass significantly wider documentation, as I shall indicate below.

**22. Ad paragraph 8**

22.1. The content of this paragraph is noted.

**THE PARTIES**

**23. Ad paragraphs 9 and 10**

23.1. The allegations contained in this paragraph are admitted.

23.2. I reiterate the First and Second Applicants are not "requesters", within the meaning of PAIA, and therefore have no locus standi to bring this application. I note that the First and Second Applicants make no attempt in these paragraphs to establish their locus standi.

**24. Ad paragraphs 11.1, 11.2 and 11.3**

24.1. I note that the Third Applicant has investigated and is investigating the various tenders awarded by the Organising Committee. However, it is clear from what appears in paragraph 16 of the Founding Affidavit that the Records requested extend significantly beyond those tenders awarded by the Organising



Committee. This will be dealt with more fully in my response to paragraph 16.

**25. Ad paragraph 12.1**

25.1. This is admitted.

**26. Ad paragraph 12.2**

26.1. Save to clarify that the Organising Committee is an organisation charged by FIFA with the responsibility of organising the Confederations Cup and the 2010 FIFA World Cup™, the allegations contained herein are admitted.

**27. Ad paragraph 12.3**

27.1. Save to state that the Organising Committee is only in possession of *certain* of the Records requested in terms of PAIA, the allegation is admitted.

**28. Ad paragraph 12.4**

28.1. The allegation herein is admitted.

**29. Ad paragraph 13**

29.1. Only a public body is required to have an "information officer". For the reasons set out above, I deny that the Organising Committee is a "public body" within the meaning of PAIA. I



accept, however, that if the Organising Committee is a public body then I would be its "information officer". If the Organising Committee is found to be a "private body" rather than a "public body", then I would be its "head" within the meaning of PAIA.

29.2. Save as aforesaid, the allegations contained herein are admitted.

**JURISDICTION**

**30. Ad paragraphs 14 and 15**

30.1. The allegations herein are admitted.

**31. Ad paragraph 16:**

31.1. I do not understand the use of the word "include" as a preface to the list of records in paragraphs 16.1 to 16.6. It is clear from the notice of motion that the documents listed in paragraphs 16.1 to 16.6 constitute a numerus clausus of "the records" to which access is sought. The Applicants cannot seek access to records that are not described in paragraph 16 of the Founding Affidavit.

**31.2. Ad paragraph 16.1**

31.2.1. The public body request and the private body request can only relate to a "record", as defined in PAIA. A record is a document that already exists; it does not include a document that would have to be specially



compiled for the purpose. Insofar as this paragraph refers to "details", I assume that the Applicants intend to refer to existing records since the request would otherwise be incompetent.

31.2.2. For the reasons that follow, the Records described in this paragraph do not exist.

31.2.3. Although the precise meaning of "details of all [Tenders]" is not clear, it is clear that a Record or Records containing such details must be distinguished from the documentation issued by the Organising Committee in respect of the Tenders, and the documentation submitted by service providers in regard to the Tenders, because those Records are provided for separately in paragraphs 16.2 and 16.3 of the Founding Affidavit.

31.2.4. Thus I have assumed that when the Applicants request "details of all [Tenders]", they are requesting some sort of list or spreadsheet in which is detailed, on a consolidated basis, certain information relating to all the requests for proposals and/or requests for quotations and/or requests for Information issued by the Organising Committee.



31.2.5. There is no consolidated Record in the possession or control of the Organising Committee comprising of a list of all requests for proposals, requests for quotations and requests for Information issued by the Organising Committee. I attach confirmatory affidavits from the Chief Legal Advisor of the Organising Committee, Mr Mncedisi Khumalo, and the Managing Sourcing Specialist of the Organising Committee, Mr Benjamin van As, as annexures "DAJ5" and "DAJ6" respectively. They confirm that there is no such list, nor are there individual lists relating (separately) to each of the (a) requests for proposals; (b) requests for quotations; and (c) requests for Information, issued by the Organising Committee.

31.2.6. It is therefore not possible to give the Applicants access to the abovementioned records since they do not exist (as contemplated in section 23(1) and 55(1) of PAIA).

### 31.3. Ad paragraph 16.2

31.3.1. I note the contents of this paragraph. As regards certain sub-categories of records within the category described in paragraph 16.2, the request is subject to one or more statutory grounds of refusal as



contemplated in PAIA. This will be dealt with more fully in paragraphs 115 to 116 hereunder.

#### **31.4. Ad paragraph 16.3**

- 31.4.1. The request is noted, but is subject to one or more statutory grounds of refusal as contemplated in PAIA. This will be dealt with more fully in paragraphs 115 and 116 hereunder.



#### **31.5. Ad paragraph 16.4**

- 31.5.1. The public body request and the private body request can only relate to a "record", as defined in PAIA. A record is a document that already exists; it does not include a document that would have to be specially compiled for the purpose. Insofar as this paragraph refers to "details", I assume that the Applicants intend to refer to existing records since the request would otherwise be incompetent.

- 31.5.2. The Organising Committee initiated the development of a "preferred supplier" database through a process of supplier accreditation and registration, which was conducted manually through the provision of information and supporting documentation by potential



suppliers. The data was entered on a spreadsheet by the Organising Committee, with hard copies of the accreditation and registration applications and supporting documentation to those applications being kept on file.

- 31.5.3. At some point the Organising Committee decided to upgrade its preferred supplier database with the assistance of a service provider which was contracted to convert the existing manual database to a web-based electronic system, and to maintain it as such. Unfortunately the process of computerisation of the preferred supplier database took longer than expected and did not yield the expected efficiency gains, resulting in a dispute with the contracted service provider. The Organising Committee has thus reverted to using the original manual preferred supplier database, as updated from time to time. The Organising Committee's preferred supplier database is not the only resource used by it to identify potential suppliers, and is supplemented where appropriate by the use of a commercially available database of South African suppliers.
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31.5.4. The records referred to in paragraph 16.4 of the Founding Affidavit, as described above, are subject to one or more statutory grounds of refusal as contemplated in PAIA. This will be dealt with more fully in paragraphs 115 to 116 hereunder.

**31.6. Ad paragraph 16.5**

31.6.1. The request is noted, but is subject to one or more statutory grounds of refusal as contemplated in PAIA. This will be dealt with more fully in paragraphs 115 to 116 hereunder.

**31.7. Ad paragraph 16.6**

31.7.1. The request is noted, but is subject to one or more statutory grounds of refusal as contemplated in PAIA. This will be dealt with more fully in paragraphs 115 to 116 hereunder.

**BACKGROUND TO THIS APPLICATION**

**32. Ad paragraph 17**

32.1. The Third Applicant addressed detailed questions in regard to private security services for the Confederations Cup and in particular requested information in regard to a dispute around



tender RFQ & I, FCC 17. The Third Applicant did not request copies of any documentation, as appears from annexure ND3 to the Applicant's Founding Affidavit.

**33. Ad paragraph 18**

33.1. I point out that not only did Mkondo respond as alleged as the Applicant, but he also answered the queries raised by the Third Applicant. It was only in regard to the identity of the "successful contractor" that Mkondo declined to identify the name of the "successful contractor".

**34. Ad paragraph 19**

34.1. The allegations herein are admitted.

**35. Ad paragraphs 20 to 22**

35.1. The allegations herein are admitted, save to note that the enquiry had moved away from an enquiry regarding the award of security tender (RFQ & I, FCC17) to a request for all the Records that appear in paragraph 16 of the Founding Affidavit.

35.2. The basis upon which the Applicants' attorney, Dario Milo, contends that the First Applicant is entitled to the Records will be dealt with more fully hereinafter.

**36. Ad paragraph 23**



36.1. The allegations herein are admitted.

36.2. Annexure ND9 was not only signed by the Third Applicant (as averred herein); Paragraph B also described the Third Applicant in express terms as the requester. Annexure ND9 did not describe the First Applicant or the Second Applicant as the requester.

36.3. It should be noted that the Organising Committee's attorneys corrected certain of the allegations contained in annexure ND7 and stated further as follows:

*"4. Furthermore, the general nature of the demand contained in paragraph 3 of your letter clearly denotes that it is no more than a fishing expedition, the actual purpose of which is not apparent.*

*5. Even if our client were inclined to providing information to your client, it would be impossible to do so in the time available. You will appreciate that our client is a procurement driven event organiser and the quantity of the document relevant to your request is enormous.*

*6. Accordingly, given that our client has no obligation to give any of the information requested, that the deadline imposed is unachievable and that the request is so general in nature that*



*it is impossible to properly consider the request in an informed manner, our client respectfully declines the demand.*

7. ...

8. *Should your client wish to pursue in obtaining specific information, we invite your client to proceed in accordance with the provisions of PAIA, as they related to private (and not public) entities, and our client will consider its response, taking into account also the obligations it has in relation to third parties."*

#### **PUBLIC BODY REQUEST**

#### **37. Ad paragraph 23**

37.1. Notwithstanding the response contained in annexure ND8 to the Founding Affidavit, an application for information of a public body was submitted to the Organising Committee, as alleged in terms of paragraph 23.

#### **38. Ad paragraph 24, 24.1, 24.2 and 24.3**

38.1. The allegations contained herein are admitted.

#### **39. Ad paragraph 25**



39.1. The deponent avers herein that the Organising Committee "is a public body" *in general*. For the reasons set out above, this mischaracterises the proper enquiry. The relevant question is whether the Organising Committee falls within the definition of a "public body" *when it invites and awards tenders*. I reiterate that the answer to this question is "no".

39.2. If this Honourable Court were to take a different view of the matter, then the Organising Committee relies on various grounds for refusing access to the records in terms of PAIA. I shall deal with those grounds at the end of my affidavit.

#### PRIVATE BODY REQUEST

##### **40. Ad paragraph 26**

40.1. I deny the allegation that "the first applicant ... submitted a private body request". Annexure ND13 described the Third Applicant as the requester. Annexure ND13 did not describe the First Applicant or the Second Applicant as the requester.

##### **41. Ad paragraph 27**

41.1. The allegations are admitted.

##### **42. Ad paragraph 28**

42.1. The allegations are admitted.



**43. Ad paragraph 29**

43.1. I deny that the First Applicant requested access to the records.

The request was made by the Third Applicant.

43.2. I admit that the Third Applicant requested access to the Records on the basis set out in paragraphs 30.1 to 30.3. For reasons that will be dealt with below, I deny that this provided a proper basis for the private body request.

**44. Ad paragraph 30**

44.1. It is admitted that the request was refused by the Organising Committee, as it was entitled to do.

**45. Ad paragraph 30.1**

45.1. The allegations contained herein are admitted.

**46. Ad paragraph 30.2**

46.1. It is correct that the Organising Committee did not rely on any of the grounds of refusal contained in PAIA, given its contention the Applicants did not establish that the Records were required for the exercise or protection of any rights, as contemplated in PAIA.

46.2. In this affidavit, the Organising Committee will deal with the grounds for refusal contained in PAIA in relation to those aspects



of the Record that can be identified. This appears more fully in paragraphs 115 to 116 hereunder.

46.3. The Organising Committee reiterates its position that the rights as set out in annexure ND13 to the Founding Affidavit do not found a legally enforceable right to the Records requested.

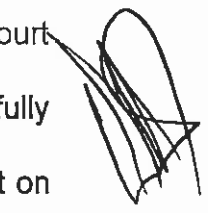
**47. Ad paragraph 30.3**

47.1. Section 50(1)(a) of PAIA provides that the relevant record must be "required for the exercise or protection of any rights". I deny that the Applicants have made out a proper case to establish that they require access to the Records in order to exercise or protect any rights, within the meaning of section 50(1)(a).

**RELIEF SOUGHT**

**48. Ad paragraph 31**

48.1. I deny that the Applicants have made out a proper case for the relief sought in the notice of motion. If this Honourable Court were to take a different view of the matter, then I respectfully submit that the Applicants should be directed to pay a deposit on the access fees before the records are made available to them. I shall address this issue at the end of my affidavit, where I will indicate that the access fees amount to many hundreds of thousands of Rands.



**THE CONSTITUTIONAL ROLE AND OBJECT OF PAIA**

**49. Ad paragraph 32**

49.1. The allegations herein are admitted.

**50. Ad paragraph 33**

50.1. The allegations herein are admitted.

**51. Ad paragraph 34**

51.1. The allegations herein are admitted.

**52. Ad paragraph 35**

52.1. I admit that this is a correct quotation from section 9 of PAIA.

**53. Ad paragraph 36**

53.1. These are matters for legal argument that will be addressed at the hearing.

53.2. In regard to the allegation that private bodies are obliged to provide access to a Record if it is required for the exercise or protection of any rights, I reiterate that the Applicants have failed to make out a proper case in support of their allegations that the Records requested are required for the exercise or protection of any rights.



**PUBLIC INTEREST IN RECEIVING THE RECORDS**

**54. Ad paragraph 37**

54.1. I admit the allegations in this paragraph. The fact that the organisation and hosting of the Confederations Cup and the FIFA World Cup™ are matters of public interest, does not justify the conclusion that the Organising Committee exercises a public power or performs a public function. I have dealt with this issue above.

**55. Ad paragraph 38**

55.1. Whilst I admit that the 2010 FIFA World Cup™ is the most significant sporting event in the world, I deny that this justifies the relief sought by the Applicants in terms of PAIA.

**56. Ad paragraph 39**

56.1. Whilst it is so that South Africa will be in the international spotlight for the duration of the 2010 FIFA World Cup™, it is respectfully submitted that it is in the interest of FIFA and the LOC that the 2010 FIFA World Cup™ is the best tournament it can possibly be given the financial investments in the hosting thereof. The Organising Committee has ensured that the best service providers are employed as a result of its procurement processes and it has taken all appropriate measures to ensure the exclusion



of corruption, graft or incompetence. Certainly, the Applicants make no case in their Founding Affidavit to support any allegation that corruption, graft and/or incompetence have marred the tender processes of the Organising Committee.

56.2. The Grant Thornton study annexed as ND16 does not advance any argument made by the Applicants, save to highlight the national, provincial and local government spends, which are not the spend of the Organising Committee or FIFA. These figures appear at page 10 of annexure ND16.

**57. Ad paragraph 40**

57.1. For similar events to that of the 2010 FIFA World Cup™, there is an enduring problem of unofficial brands finding ways to promote themselves in connection with the event without paying the requisite sponsorship fee, for example through announcements in the press and in their advertising media that they are official suppliers to the event (by virtue of having been awarded a tender by the organising institution). As a consequence, FIFA has contractually bound the Organising Committee, in terms of the Organising Association Agreement, to ensure that those service providers with which the Organising Committee contracts, are prevented from publicly disclosing or publicising in any manner the fact of their having been awarded a supply contract, or the



nature of their transaction with or services provided to the Organising Committee, unless prior written approval is obtained from FIFA.

57.2. In terms of its contractual obligations towards FIFA under the Organising Association Agreement, the Organising Committee has withheld, as far as possible, disclosure of the names and other details of its service providers and/or the contractual nature of its relationship with those service providers.

**58. Ad paragraph 41**

58.1. Of the approximate R31 billion which government will spend on the 2010 FIFA World Cup™, only R166 333 220.89 thereof, which represents approximately 0.54% of the total government spend, will be given to the Organising Committee. I have dealt with this in paragraph 7.4 above.

58.2. It must be borne in mind that the funds from government pale into insignificance in comparison to the amounts to be spent by the Organising Committee as detailed in paragraph 7 above.

58.3. I have already dealt with the funding of the Organising Committee. Save for admissions expressly made above, I deny the contents of this paragraph.

**59. Ad paragraphs 42 and 43**



59.1. Whilst the PSC report may have expressed concern around the risk of increased corruption surrounding the 2010 FIFA World Cup™, this "potentiality" has not been tied to the procurement activities of the Organising Committee.

59.2. The quotation in this paragraph deals with infrastructure spending. This is the responsibility of government and not the responsibility of the Organising Committee. Access to the relevant Records may be requested by the Applicants from the relevant State entities.

**60. Ad paragraphs 44 and 45**

60.1. Again, these concerns do not relate to the procurement functions of the Organising Committee, but deal with the management of public funds. The article does not make any allegations in regard to the Organising Committee, nor does it mention the activities of the Organising Committee.

**61. Ad paragraph 46**

61.1. I deny the contents of this paragraph. A request in terms of PAIA can be addressed to the relevant governmental institutions in order to hold them "accountable to the public". I reiterate that the Organising Committee does not "wield public power".

**62. Ad paragraph 47**



62.1. The allegations are admitted. I reiterate that the Organising Committee is not a public body, and that the Applicants have not established that the Records requested are required for the exercise or protection of any rights.

**63. Ad paragraph 48.1**

63.1. The Applicants have failed to establish what Records are required for the exercise or protection of any rights. Furthermore, there are grounds of refusal contained in PAIA which the Organising Committee will rely on in paragraphs 115 to 116 hereunder.

**64. Ad paragraph 48.2**

64.1. The Organising Committee is entitled to refuse access to a Record where, in terms of the provisions of PAIA, the Applicants are not entitled to such a Record.

**65. Ad paragraph 48.3**

65.1. I deny that the refusal by the Organising Committee is "spurious".

I refer to what I have stated above in this regard.



**66. Ad paragraph 49**

66.1. The allegations herein are noted.

**67. Ad paragraph 50**



67.1. The deponent avers herein that the Organising Committee is a public body *in general*. For the reasons set out above, this mischaracterises the proper enquiry. The relevant question is whether the Organising Committee falls within the definition of a "public body" *when it invites and awards tenders*. I reiterate that the answer to this question is "no".

**68. Ad paragraph 51**

68.1. The relevant provision of section 1 of PAIA is correctly reflected.

**69. Ad paragraph 52**

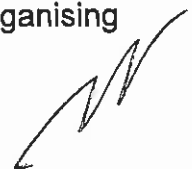
**69.1. Ad paragraph 52.1**

69.1.1. I reiterate that the Organising Committee is not a "functionary" or "institution" within the meaning of PAIA when it invites and awards tenders. A "functionary" or "institution" is a body that derives its powers from legislation. The power of the Organising Committee to exercise procurement functions derives from the common law, not from legislation.



**69.2. Ad paragraph 52.2**

69.2.1. In this paragraph and the paragraphs that follow, the deponent seeks to establish that the Organising



Committee exercises a public power or performs a public function *in general*. This mischaracterises the proper enquiry. The relevant question is whether the Organising Committee exercises a public power or performs a public function in terms of legislation *when it invites and awards tenders*. I reiterate that, save for the concession I have made for the purposes of this hearing in paragraph 15.6 above, the answer to this question is "no".

69.2.2. I point out that the numbering of the Founding Affidavit has gone awry at this point. In order to avoid confusion, I shall refer to the paragraphs of the Founding Affidavit as they are numbered (even though these numbers are manifestly incorrect).

**70. Ad paragraph 49.5.1**

70.1. I respectfully submit that the regulations quoted by the Applicants and annexed as annexure ND19 are not relevant to the matter.

70.2. I refer to the details around the structure of the Organising Committee as set out in paragraphs 5 to 7 above.

**71. Ad paragraph 49.5.2**



71.1. It is correct that the Organising Committee is subject to the supervision and control of FIFA, as more fully detailed in the introduction to this affidavit.

**72. Ad paragraph 49.5.3**

72.1. The allegations herein are admitted.

**73. Ad paragraph 49.5.4**

73.1. The allegations herein are admitted insofar as they may be relevant to the matter.

**74. Ad paragraph 49.5.5**

74.1. These allegations are admitted.

**75. Ad paragraphs 49.5.6 and 49.5.7**

75.1. I deny that the "request for information" advances the Applicants' contention that the Organising Committee is exercising a public function. This is a process that is utilised by both private and public bodies in exercising procurement functions.

75.2. Static guards are deployed by the Organising Committee for purposes of protecting property at the stadiums. This comprises day-to-day security. Steward management services relate to the securing of the perimeters at stadiums on match and event days.



On match and event days, the SAPS is responsible for security issues, and the steward management services take their instructions directly from the SAPS. It is the mandate of government and specifically the SAPS to ensure that law and order is upheld, and to cater for disaster management and national emergencies at events such as the 2010 FIFA World Cup™. There are twelve tenders that relate to static guards and steward management services; some of these tenders include agreements in relation to the procurement of security infrastructure such as security fences to be used in and around stadiums.

**76. Ad paragraph 49.5.8**

76.1. There is a distinction between the Organising Committee's expense budget of US\$ 423 million (which is primarily made up of private funding from FIFA and, in due course, from ticket sales and other revenue streams) and government's budget which has exceeded R31 billion for the 2010 FIFA World Cup™ (which is made up of taxpayers' money). I have explained this distinction above.



76.2. The R31 billion referred to by the Applicants is spent by government (national, provincial and local), and not by the



Organising Committee. As mentioned above, only approximately 0.54% thereof is allocated directly to the Organising Committee.

76.3. The Organising Committee and government co-operate with one another on those aspects of the 2010 FIFA World Cup™ which in the opinion of government are required to ensure the successful hosting of the 2010 FIFA World Cup™. By way of example, the 2010 Estimates of National Expenditure Report (the "Report") prepared by National Treasury and which can be found on their website ([www.treasury.gov.za](http://www.treasury.gov.za)) highlights the amount of such expenditure as well as the entity concerned on which or by which such expenditure was made. An extract of the relevant provisions of the Report is attached as annexure "DAJ7" hereto.

76.4. Thus the relationship between the Organising Committee and government is one of co-operation and not oversight; government retains its autonomy as to the manner in which its funds are spent. The Organising Committee has no say or influence over the manner in which government spends the budget it has allocated for infrastructure in relation to the 2010 FIFA World Cup™. Further, government procures its own contracts and utilises its own staff in performing the tasks for which it is responsible.



76.5. In terms of the 2010 Soccer World Cup Coordination sub programme, R20.9 billion was allocated to the Department of Transport over a 7 year period to support public transport infrastructure development in large metros and cities [page 792 of annexure "DAJ7"].

76.6. The Department of Sport and Recreation total projected cost to be paid for the design and construction or design and upgrade of the stadiums to be used for the 2010 FIFA World Cup™ will be R11 463 400 000.00 [page 392 of annexure "DAJ7"] which has been allocated to the host cities (see Schedule 6 of the Division of Revenue Acts for 2007, 2008 and 2009).

76.7. The Department of Communications will transfer R1.5 billion to its public entities to develop the necessary ICT infrastructure for the 2010 FIFA World Cup™ [page 538 of annexure "DAJ7"].

76.8. The averment herein that the Organising Committee oversees how the government budget is spent is incorrect. How the money is spent by government is an issue that the Organising Committee has no control over.

**77. Ad paragraph 49.5.9**

77.1. The fact that there has been certain publicity around tenders awarded by the Organising Committee does not advance the



Applicants' argument in any way. It is not clear what the relevance of this contention is and the Organising Committee is accordingly unable to meaningfully respond thereto.

**78. Ad paragraph 49.5.10**

78.1. Save to admit that the board of directors of the Organising Committee includes Cabinet Ministers; I deny the contents of this paragraph. The purpose of appointing Ministers to the board of the Organising Committee appears from paragraphs 8.1 and 8.4 above.

**79. Ad paragraph 49.5.11**

79.1. The contents herein are admitted.

**80. Ad paragraph 49.5.12**

80.1. The allegations contained herein are admitted.

80.2. I refer again to what I have said in paragraph 8 above.

**81. Ad paragraph 49.5.13**

81.1. I do not dispute that Dr Khoza made the statements quoted herein.

**82. Ad paragraph 52.3**



82.1. The Organising Committee is only funded by government to the limited extent referred to in paragraph 7.4 above.

**83. Ad paragraph 49.5.14**

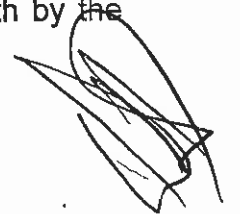
83.1. Annexure ND26 amounts to hearsay. I deny its contents to the extent that it is inconsistent with what I have stated above regarding the funding of the Organising Committee. I reiterate that only approximately 0.54% of the budget allocated by government is paid to the Organising Committee, while the remainder thereof is spent and allocated by government without oversight or interference by the Organising Committee.

**84. Ad paragraph 49.5.15**

84.1. Annexure ND27 amounts to hearsay. I deny its contents to the extent that it is inconsistent with what I have stated above regarding the funding of the Organising Committee.

84.2. As stated in paragraph 76 above, the expenditure referred to herein falls outside the budget of the Organising Committee. This is expenditure by government over which the Organising Committee has no control. The expenditure is dealt with by the relevant spheres of government.

**85. Ad paragraph 49.5.16**



85.1. As stated in paragraph 76 above, the government funding does not pass through the Organising Committee, as alleged herein.

**86. Ad paragraph 49.5.17**

86.1. As stated in paragraph 76 herein, government's financial contribution is managed directly by the relevant spheres of government and not by the Organising Committee. Where government has allocated funds to the Organising Committee, those funds have been allocated for a specific purpose only. I refer to what I have stated above in this regard.

**87. Ad paragraph 49.5.18**

87.1. As stated in paragraph 76 above, the Organising Committee receives only approximately 0.54% of the budget allocated by government for expenditure on the 2010 FIFA World Cup™.

87.2. The money spent by SRSA is spent by Government, not by the Organising Committee. Save to the extent set out in paragraph 7.4 above, the Organising Committee has not received any money from SRSA.

**88. Ad paragraph 49.5.19**

88.1. Save for what has been indicated above in paragraph 7.3, the Organising Committee has received no further funds from SRSA.



**89. Ad paragraph 49.5.20**

89.1. As set out in paragraph 7.4 above, the Organising Committee has received limited funding from the National Department of Sport and Recreation of which R8 775 545.74 has been provided for obtaining volunteers for the FIFA Confederations Cup and R9 000 000.00 for obtaining volunteers for the 2010 FIFA World Cup™. Save to the extent set out in paragraph 7.4 above, the Organising Committee has not received any money from SRSA.

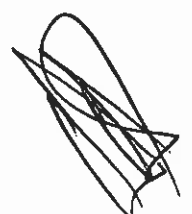
**90. Ad paragraph 49.5.21**

90.1. I admit that there is a close working relationship between government and the Organising Committee, for the reasons set out in paragraph 8 above.

90.2. I deny that the Organising Committee was appointed by SAFA as the organisation to give effect to the Guarantees signed by government as set out in paragraph 6.3 above. The Guarantees signed by government need to be complied with by government while the Organising Committee is responsible for complying with the obligations under the Organising Association Agreement.

**91. Ad paragraphs 49.5.22 and 49.5.23**

91.1. As stated in paragraphs 7.4.2 and 7.4.4.5 above, the funding received by the Organising Committee for volunteer training



relates to an agreement whereby the Organising Committee agreed to train government volunteers in circumstances where government did not have a volunteer training programme.

**92. Ad paragraph 49.5.24**

92.1. This paragraph impermissibly conflates expenditure by government on World Cup infrastructure with expenditure by the Organising Committee of money given to it by government. The Organising Committee has not received funding from the Government Coordinating Unit but has only received funding from the Department of Sport and Recreation to the limited extent set out in paragraph 7.4 above

**93. Ad paragraph 49.5.25**

93.1. The use of the word "we" by the Organising Committee in relation to infrastructure required for the 2010 FIFA World Cup™ is an indication of the coordinated approach of co-operation required to be adopted by the Organising Committee (as more fully elucidated in the introduction to this affidavit). It does not transform the Organising Committee into the body responsible for the infrastructure spend on the stadiums. I reiterate that this is the function of government, not the function of the Organising Committee. Furthermore there are two stadiums that are not



owned by government, being the Blue Bulls Stadium and the Royal Bafokeng Stadium. Where the host city owns the stadium, it is mostly operated by a private entity (usually by way of a lease) and not by the host city itself.

**94. Ad paragraph 49.5.26**

94.1. These allegations are not disputed. However they are irrelevant because the Special Measures Act does not confer on the Organising Committee the power to procure goods and services or to award tenders. That is a power that derives from the common law.

**95. Ad paragraph 49.5.27**

95.1. I dispute the legal submissions in this paragraph. Sections 5 and 6 of the Special Measures Act do not confer on the Organising Committee "the powers to exercise security and access control" in designated areas. Those powers are conferred on peace officers. The Organising Committee is merely given the power to issue accreditation cards. The matter is regulated further by the 2010 FIFA World Cup South Africa Safety and Security Regulations, a copy of which is annexed marked "DAJ8". I reiterate what has been said in paragraph 75.1 above.



95.2. In any event, sections 5 and 6 of the Special Measures Act do not confer on the Organising Committee the power to procure goods and services or to award tenders. That power derives from the common law. I reiterate that, when it awards tenders, the Organising Committee does not do so "in terms of legislation" (within the meaning of paragraph (b)(ii) of the definition of "public body" in PAIA).

**96. Ad paragraph 49.5.28**

96.1. This is noted.

**97. Ad paragraph 49.5.29**

97.1. I dispute the legal submissions in this paragraph. Annexure ND35 is irrelevant because it does not confer on the Organising Committee the power to procure goods and services or to award tenders. That power derives from the common law. I reiterate that, when it awards tenders, the Organising Committee does not do so "in terms of legislation" (within the meaning of paragraph (b)(ii) of the definition of "public body" in PAIA).

**98. Ad paragraph 49.5.30**

98.1. I am, with respect, surprised by the contents of this paragraph. Annexure ND36 contains a document called the "FIFA statutes". It is not a "statute" in the sense in which an enactment of



Parliament is a "statute". FIFA's so-called "statutes" are merely the founding documents that bind the members of FIFA. Annexure ND36 does not have the force of law, it merely sets out the rules that FIFA's members have agreed to be bound by. Annexure ND36 manifestly does not amount to "legislation" within the meaning of PAIA. It does not amount to "legislation" for the same reason that the constitution of any voluntary association does not amount to "legislation".

**99. Ad paragraph 49.5.31**

99.1. Again, this is a surprising contention. Although Annexure ND19 is called "FIFA Regulations", it does not contain regulations in the sense of delegated legislation. Annexure ND19 was not enacted by any lawmaker and it does not have the force of law. Annexure ND19 manifestly does not amount to "legislation" within the meaning of PAIA. It does not amount to "legislation" for the same reason that the constitution of a voluntary association does not amount to "legislation".

**100. Ad paragraph 50**

100.1. I dispute the legal submissions in this paragraph. I am advised and respectfully submit that the phrase "in terms of any legislation" qualifies "public power" no less than "public function".



**101. Ad paragraph 51**



101.1. These are matters for legal argument. I reiterate that the fundamental issue when considering whether an action constitutes "public power", is whether it is governmental in character.

**102. Ad paragraph 52**

102.1. Save to the extent set out in paragraph 15.6 above, I deny that the Organising Committee exercised a public power or performed a public function when it decided to award tenders to the successful tenderers. Even if this Honourable Court were to take a different view of the matter, the Organising Committee did not do so *in terms of any legislation*. The deponent has not identified a single piece of legislation that confers on the Organising Committee the power to award tenders. I reiterate that this power derives from the common law, not from legislation.

**103. Ad paragraph 53**

103.1. I admit that this is the most important and significant sporting event in our country's history. I also admit that the manner in which the Organising Committee spends money given to it by government (as described in paragraph 7.4 above) is a matter which "affects the nation". However I deny the remaining



allegations in this paragraph, for reasons that have been set out above.

**104. Ad paragraph 54**

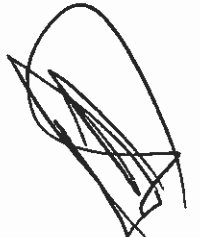
104.1. I deny the contents of this paragraph. Once again, the deponent has characterised the enquiry by asserting that the World Cup "is a public body" *in general*. The relevant question is whether the Organising Committee is a public body *when it invites and awards tenders*. I reiterate that the answer to this question is "no". The Organising Committee will in any event rely on statutory grounds for refusing access to the records in paragraphs 115 to 116 hereunder.

**105. Ad paragraph 55**

105.1. The allegations in this paragraph are admitted.

**106. Ad paragraph 56**

106.1. It is correct that the Organising Committee did not rely on any grounds of refusal as contained in PAIA since it took the view that the Applicants had failed to establish that the Records were required for the exercise or protection of any rights. The Organising Committee will however rely on various statutory grounds for refusing access to the Records in paragraphs 115 to 116 hereunder.



**107. Ad paragraph 57**

107.1. The allegation is noted.

**108. Ad paragraph 58**

108.1. It is noted that the rights relied upon by the Applicants were articulated as the right to freedom of expression and the corollary right of the public to receive information on matters of public interests.

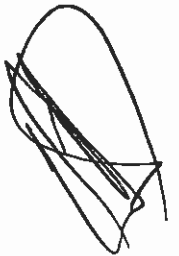
108.2. I deny that the Applicants have established that the Records are "required for the exercise or protection" of these rights, within the meaning of section 50(1)(a) of PAIA.

**109. Ad paragraph 59**

109.1. I deny the contents of this paragraph. These are matters for legal argument.

**110. Ad paragraph 60**

110.1. I deny the contents of this paragraph.



**111. Ad paragraph 61**

111.1. These allegations are denied. The Applicants have failed to make out a proper case for obtaining the Records from the Organising Committee, as they are required to do in terms of the provisions of

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PAIA. Accordingly, it is denied that the refusal unjustifiably and disproportionately limits the Applicants' rights to information, limits the Applicants' rights to freedom of expression and freedom of the media and undermines the values of openness, responsiveness and accountability as alleged by the Applicants.

**112. Ad paragraph 62**

112.1. It is denied that the refusal is disproportionate and offensive to the constitutional values of openness and transparency.

**113. Ad paragraph 63**

113.1. For the reasons set out above, I deny the contents of this paragraph.



**STATUTORY GROUNDS FOR REFUSAL**

114. For the reasons set out above, I respectfully submit that the Applicants have failed to satisfy the threshold requirements for the public body request or for the private body request. In the event that this Honourable Court were to take a different view of the matter, the Organising Committee relies on a number of provisions in PAIA for refusing access to the Records. I shall refer to the relevant provisions below. Although the Organising Committee did not rely on these provisions when it wrote



the letters that are annexures ND12 and ND15 to the Founding Affidavit, I am advised and respectfully submit that it is competent for the Organising Committee to rely on them in the context of the present application. The matter will be fully addressed in argument.

**115. The public body request:**

115.1. In the section of my affidavit that follows, I shall assume for the sake of argument that this Honourable Court may find that the Organising Committee is a "public body" when it exercises procurement functions and awards tenders. I make this assumption for the sake of argument only, and without conceding its correctness. If this Honourable Court were to find that the Organising Committee is *not* a "public body" when it exercises procurement functions and awards tenders, then this section of my affidavit would become irrelevant.

115.2. In relation to the records described at paragraph 16.1 of the Founding Affidavit (described as "details of all requests for proposals, quotations and Information (collectively "**the Tenders**") issued by the Organising Committee, including those Tenders that have been awarded, in respect of both the Confederations Cup and the 2010 FIFA World Cup™), I wish to point out that such records do not exist. In this regard, I note the following:



115.2.1. although the precise meaning of "details of all [Tenders]" is not clear, it is clear that a record or records containing such details must be distinguished from the documentation issued by the Organising Committee in respect of the Tenders, and the documentation submitted by service providers in regard to the Tenders, because those records are provided for separately in paragraphs 16.2 and 16.3 of the Founding Affidavit;

115.2.2. thus I have assumed that when the Applicants request "details of all [Tenders]", they are requesting some sort of list or spreadsheet in which is detailed, on a consolidated basis, certain information relating to all the requests for proposals and/or requests for quotations and/or requests for Information issued by the Organising Committee;

115.2.3. there is no consolidated record in the possession or control of the Organising Committee which constitutes a list of all requests for proposals, requests for quotations and requests for Information issued by the Organising Committee. The Chief Legal Advisor of the Organising Committee, Mr Mncedisi Khumalo, and the





Managing Sourcing Specialist of the Organising Committee, Mr Benjamin van As, confirm that there is no consolidated list as described above. Nor are there individual lists relating (separately) to each of the (a) requests for proposals; (b) requests for quotations; and (c) requests for Information, issued by the Organising Committee.

115.3. In relation to the records described at paragraph 16.2 of the Founding Affidavit, I note that amongst these records there are certain communications addressed by the Organising Committee to individual bidders, which indicate that a bidder has either been awarded a contract pursuant to a tender process, or has been designated as preferred bidder pursuant to a tender process. In regard to all such records (being communications addressed from the Organising Committee to specific bidders indicating success or potential success in a tender process), I submit that such records constitute commercial information relating to the business and operations of the Organising Committee, the disclosure of which would be likely to cause harm to the commercial or financial interests of a public body as contemplated in section 42(3)(b) of PAIA. In terms of that provision, the information officer of a public body may refuse such a request for access to records of the body.



115.4. I submit that the disclosure of any such communications by the Organising Committee is likely to cause harm to the commercial interests of the Organising Committee. In this regard, I draw attention to clause 29 of the Organising Association Agreement, which regulates so-called "Marketing Rights" in respect of the 2010 FIFA World Cup™. The business model of FIFA, and the architecture of the Organising Association Agreement, is to grant specified marketing rights to selected commercial affiliates based on their financial contributions to the 2010 FIFA World Cup™, and to prohibit and prevent all other commercial entities from advertising or disclosing any affiliation at all with the 2010 FIFA World Cup™. Thus the Organising Committee is obliged to ensure that in all of its service provision contracts, there is a clause prohibiting the service provider from disclosing the fact of its obligation to provide goods or services to the Organising Committee, as such disclosure would undermine the marketing rights granted by FIFA to paying sponsors. The Organising Committee is under a general obligation not to do any thing that would result in an infringement of FIFA's marketing rights (which are very broadly defined) or those of the commercial affiliates. Public disclosure in the media of the names and any other details regarding service providers to the Organising Committee which are not commercial affiliates, would undermine the business



model of FIFA and jeopardise the position of the commercial affiliates, with consequential harm to FIFA. Because the commercial interests of the Organising Committee are so closely aligned to those of FIFA, this would also cause harm to the Organising Committee. On the assumption that the Organising Committee may be found to be a public body (which I submit is not the case), in my capacity as the information officer of the Organising Committee I refuse access to the Applicants' request for access to those records described in paragraph 16.2 of the Founding Affidavit which name any tenderer as being a successful or preferred bidder, on the basis of section 42(3)(b) of PAIA.

115.5. In relation to the records described at paragraph 16.3 of the Founding Affidavit (described as "all records submitted to the Organising Committee by service providers in regard to the Tenders, including tender proposals, quotations and/or information"), I note that there may be one or more statutory grounds of refusal as contemplated in PAIA that may apply to certain records falling into the category of records covered by paragraph 16.3. In this regard, I state the following:

115.5.1. the terms and conditions applicable to tenderers, as set out in the requests for proposal or requests for



information issued by the Organising Committee in a tender process, generally include a term relating to confidentiality. In terms of that confidentiality provision, a tenderer agrees by virtue of submitting a bid that:



115.5.1.1. all information and data submitted by a bidder shall become the sole property of the Organising Committee, with the exception of copyrighted material, trade secrets or other proprietary information clearly identified as such by the bidder;

115.5.1.2. it shall indemnify the Organising Committee and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by the Organising Committee for its refusal to disclose materials marked confidential, trade secret or other proprietary information to any person seeking access thereto; and

115.5.1.3. the Organising Committee undertakes to keep confidential all information received from a bidder which is clearly identified as



confidential in such bidder's bid submission;

- 115.5.2. in terms of section 37(1) of PAIA, the information officer of the Organising Committee must refuse a request for access to a record of the Organising Committee if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement, unless the third party has consented to the disclosure in terms of section 48 of PAIA or otherwise;
- 115.5.3. those records referred to in paragraph 16.3 of the Founding Affidavit which have been marked by a bidder as being confidential, are subject to a binding obligation on the part of the Organising Committee, undertaken in terms of the tender documentation issued to bidders as described above, to keep them confidential. The binding nature of the obligation can be determined with reference to the disclaimer which forms part of the Organising Committee's standard tender terms and conditions, which disclaimer includes a provision to the effect that the terms and conditions set out in the request for information or proposals are stipulated for
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the express benefit of the Organising Committee and except where expressly stated to the contrary, may be waived at the Organising Committee's discretion at any time. The undertaking to keep confidential those bidder records marked confidential constitutes an express statement that the Organising Committee will in fact be bound by that undertaking;

115.5.4. before the Organising Committee can ascertain whether there is consent to disclosure as contemplated in section 37 of PAIA and make its decision whether to refuse or grant access, it must notify the bidder of the Applicants' request for access to the applicable bidder records in terms of section 47 of PAIA, give the bidder an opportunity to respond in terms of section 48 of PAIA, and either consider the bidder's representations as to why the request should be refused and make its own decision as to refusal or grant of access, or receive the bidder's consent to disclosure and make its own decision as to refusal or grant of access in terms of section 49 of PAIA, and if it decides to grant access notwithstanding the lack of consent as contemplated herein, it must notify the bidder of the decision and wait

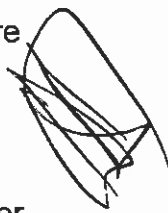


the prescribed period before disclosing the records to the Applicants;

115.5.5. the Organising Committee therefore requires an opportunity to give effect to the third party notification provisions of PAIA, before deciding whether to refuse or grant access to the Applicants' request for access to the above-described confidential bidder records;

115.5.6. in terms of section 36(1) of PAIA, even in the absence of any agreement as to confidentiality, the information officer of the Organising Committee must refuse a request for access to a record of the Organising Committee if the record contains trade secrets of a third party, or financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party, unless the third party has consented to the disclosure thereof in terms of section 48 of PAIA or otherwise;

115.5.7. the disclosure of certain records submitted by a bidder in response to a request for proposals or information issued by the Organising Committee may cause harm to the commercial or financial interests of that bidder.



In this regard I believe that disclosure of the financial statements of a private company (inclusion of which in a bid submission is a standard requirement of the Organising Committee) may cause such harm, because disclosure of such records is not otherwise required by law and is not generally a matter of public knowledge; in addition the financial statements of a private company contains information that would be of interest not only to the Organising Committee in order to evaluate a tender submission, but also to competitors, suppliers and creditors of a private company, who or which may take actions based on such information that is adverse to the bidder entity;



115.5.8. before the Organising Committee can ascertain whether there is consent to disclosure as contemplated in section 36 of PAIA and make its decision whether to refuse or grant access, it must notify the bidder of the Applicants' request for access to the bidder records in terms of section 47 of PAIA, give the bidder an opportunity to respond in terms of section 48 of PAIA, and either consider the bidder's representations as to why the request should be refused and make its own decision as to refusal or grant of access, or receive the



bidder's consent to disclosure in terms of section 49 of PAIA, and if it decides to grant access notwithstanding lack of consent as contemplated herein, it must notify the bidder of the decision and wait the prescribed period before disclosing the records to the Applicants; and

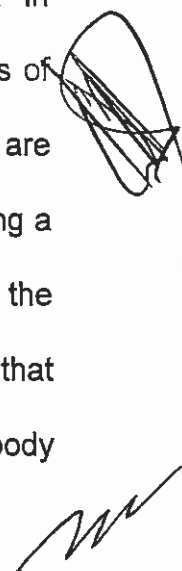
115.5.9. the Organising Committee therefore requires an opportunity to give effect to the third party notification provisions of PAIA, before deciding whether to refuse or grant access to the Applicants' request for access to the above-described bidder records.

115.6. In relation to the records described at paragraph 16.4 of the Founding Affidavit (described as "details of all the service providers that have been awarded preferred supplier status by the Organising Committee"), the Organising Committee's own preferred supplier database records referred to in paragraph 31.5 above constitute trade secrets of the Organising Committee, and thus that the Organising Committee is entitled to refuse a request for access to such records on the basis of section 42(3)(a) of PAIA. On the assumption that the Organising Committee may be found to be a public body (which I submit is not the case), in my



capacity as the information officer of the Organising Committee I refuse access to those documents in terms of section 42(3)(a).

115.7. In relation to the records described at paragraph 16.5 of the Founding Affidavit (described as "all records relating to hearings and/or interviews held by the Organising Committee in regard to the Tenders, including all minutes of meetings, internal memoranda, correspondence and shortlists relating to the Tenders"), I submit that the Organising Committee is entitled to refuse access to all such records on the basis of the ground of refusal set out in section 44(1)(a) of PAIA. That ground of refusal permits a public body to refuse a request for access to a record if the record contains an opinion, advice, report or recommendation obtained or prepared, or an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to take a decision in the exercise of a power or performance of a duty conferred or imposed by law. All the documents listed in paragraph 16.5 of the Founding Affidavit relate to the process of evaluation of tender submissions, and are records that are produced for purposes of, and are designed to assist in, making a decision as to a tender award. They thus fall squarely within the parameters of section 44(1)(a) of PAIA. On the assumption that the Organising Committee may be found to be a public body



exercising a power or performing a duty conferred or imposed by law (which I submit is not the case), in my capacity as the information officer of the Organising Committee I refuse access to those documents in terms of section 44(1)(a).

115.8. In relation to the records described at paragraph 16.6 of the Founding Affidavit (described as "all records relating to the award of Tenders, including but not limited to the service providers it was awarded to, the price to be paid and the contracts between the Organising Committee and service providers" [which would include the Shanduka-Aggreko Agreement for Event Power referred to in paragraph 7.4.6]), I submit as follows:

115.8.1. letters of award are covered by the request set out in paragraph 16.2 of the Founding Affidavit and can be dealt with as part of that portion of the request;

115.8.2. the price to be paid in respect of a Tender, as finally agreed, is contained in the final signed version of a contract between the Organising Committee and a service provider;

115.8.3. all of the contracts concluded between the Organising Committee and a successful bidder in respect of a Tender contain commercial information relating to the



business and operations of the Organising Committee, including the names of its service providers and details of the nature and scope of services they will provide to the Organising Committee; and

115.8.4. in terms of section 42(3)(b) of PAIA, the information officer of a public body may refuse access to a request for access to records of the body if the records contain (amongst others) commercial information the disclosure of which would be likely to cause harm to the commercial or financial interests of the State or a public body. I submit that the disclosure of any service provision contracts of the Organising Committee is likely to cause harm to the commercial interests of FIFA. In this regard, I draw attention to clause 29 of the Organising Association Agreement, which regulates so-called "Marketing Rights" in respect of the 2010 FIFA World Cup™. The business model of FIFA, and the architecture of the Organising Association Agreement, is to grant specified marketing rights to selected commercial affiliates based on their financial contributions to the 2010 FIFA World Cup™, and to prohibit and prevent all other commercial entities from advertising or disclosing any affiliation at all with the



2010 FIFA World Cup™. Thus the Organising Committee is obliged to ensure that in all of its service provision contracts, there is a clause prohibiting the service provider from disclosing the fact of its obligation to provide goods or services to the Organising Committee, as such disclosure would undermine the marketing rights granted by FIFA to paying sponsors. The Organising Committee is under a general obligation not to do anything that would result in an infringement of FIFA's marketing rights (which are very broadly defined) or those of the commercial affiliates. Public disclosure in the media of the names, details, scope of services and other information regarding service providers to the Organising Committee which are not commercial affiliates, would undermine the business model of FIFA and jeopardise the position of the commercial affiliates, with consequential harm to FIFA, and because the commercial interests of the Organising Committee are so closely aligned with those of FIFA, also to the Organising Committee;

115.8.5. on the assumption that the Organising Committee may be found to be a public body (which I submit is not the case), in my capacity as the information officer of the



Organising Committee I refuse access to the Applicants' request for access to the records described in paragraph 16.6 of the Founding Affidavit, on the basis of section 42(3)(b) of PAIA.

115.9. I have indicated above that the Organising Committee will be required to afford third parties notification in terms of section 47 of PAIA before it can decide whether to grant access to some of the relevant records in terms of PAIA. I am advised that the Respondents are also required to comply with Rule 3(5)(a) of the Promotion of Access to Information Rules published in Government Notice R965 in Government Gazette 32622 dated 9 October 2009 ("the Rule").

115.10. In order to comply with the Rule in my capacity as "head" of the First Respondent I need to notify, in writing, all affected persons of the application launched by the Applicants with the view of affording them an opportunity to object to the disclosure of the documents requested by the Applicants, should they wish to do so. The Respondents have not complied with this Rule to date but have given much consideration to how to do so. I respectfully submit that it would be excessively burdensome to require the Respondents to notify every person affected as this would require notifying those who have submitted tenders, those who have been



awarded tenders, as well as those who have submitted quotes and the list goes on. To comply with this would be a mammoth task for which the Organising Committee is not geared. It will take an enormous amount of time and resources to determine every affected person that needs to be notified, since a list of such persons is not readily available.

115.11. Further the Rule also requires that notification in writing must include a copy of the application (which, given the substantial number of affected persons who will be required to be notified) will cost the Organising Committee a substantial sum in copying costs. I submit that, on a proper construction, the Rule does not require such onerous steps to be taken by the Respondents.

115.12. I have set out in paragraph 12 and 13 above the breadth of the request by the Applicants, and the depth of documentation which pertains to the tenders alone. As mentioned above in paragraph 13.3 and in paragraph 5.17 of annexure DAJ2 the Respondents requested that the Applicants to narrow the request, but the Applicants elected not to do so. The Organising Committee has limited resources in terms of persons who are able to copy documentation and send them to a wide range of potential affected persons. Accordingly, the First Respondent



proposes to use its best endeavours to send electronic copies of the Founding Affidavit and this Answering Affidavit, together with an appropriate covering email, to those parties who engaged in the 62 tender processes set out in paragraph 13.1. I submit that this is the most expeditious course of action for the following reasons:

115.12.1. The bid documents submitted by various parties have aspects of confidentiality therein;

115.12.2. These parties may be readily identified, albeit that this will be a time-consuming task;

115.13. Furthermore, it is proposed that every bidder in terms of the 62 tenders be notified of this application, which will also, if respectfully submitted, constitute proper notice in terms of section 47 of PAIA. In this way, the Organising Committee will be able to comply simultaneously with its obligations under the Rule and under section 47 of PAIA.

115.14. In the interim, and whilst the First Respondent engages in the exercise set out in the preceding paragraphs, the Applicants are once again invited (notwithstanding their failure to respond to the previous invitation) to limit the unreasonably wide ambit of this application.



115.15. The Respondents will utilise their best endeavours to file a Supplementary Affidavit in due course, describing the steps the Organising Committee has taken to comply with its obligations in terms of section 47 of PAIA and the Rule. The Respondents specifically reserve their rights to approach the above Honourable Court at the hearing for directions with regard to the furnishing of the requisite notices in terms of the Rule where the First Respondent has not been able to properly comply (whether on the basis of notifying only the tender bidders, or where the Applicants have refused to limit and delineate their request other than in respect of the tenders) with their obligations under the Rule. Furthermore, in the event that substantial compliance with the Rule has not been possible, the Respondents will seek the guidance of the Court with regard to formal steps to be taken (including a ruling as to whether or not the steps already taken are adequate, and additional steps to be taken), as well as an order directing further time periods within which to comply.

**116. The private body request:**

116.1. Even if (a) the Organising Committee is found by the court to be a private body as defined in PAIA, and (b) the court finds that the Applicants require the requested records in order to exercise or protect their rights, it does not follow that in terms of PAIA, every



record requested by the Applicants must be disclosed by the Organising Committee. The following statutory grounds for refusal are relevant.

116.2. In relation to the records described at paragraph 16.1 of the Founding Affidavit (described as "details of all requests for proposals, quotations and Information (collectively "the Tenders") issued by the Organising Committee, including those Tenders that have been awarded, in respect of both the Confederations Cup and the 2010 FIFA World Cup™"), I wish to point out that such records do not exist. In this regard, I note the following:

116.2.1. although the precise meaning of "details of all [Tenders]" is not clear, it is clear that a record or records containing such details must be distinguished from the documentation issued by the Organising Committee in respect of the Tenders, and the documentation submitted by service providers in regard to the Tenders, because those records are provided for separately in paragraphs 16.2 and 16.3 of the Founding Affidavit;

116.2.2. thus I have assumed that when the Applicants request "details of all [Tenders]", they are requesting some sort of list or spreadsheet in which is detailed, on a

consolidated basis, certain information relating to all the requests for proposals and/or requests for quotations and/or requests for Information issued by the Organising Committee;



116.2.3. there is no consolidated record in the possession or control of the Organising Committee which constitutes a list of all requests for proposals, requests for quotations and requests for Information issued by the Organising Committee. The Chief Legal Advisor of the Organising Committee, Mr Mncedisi Khumalo, and the Managing Sourcing Specialist of the Organising Committee, Mr Benjamin van As confirm that there is no such list, nor are there individual lists relating (separately) to each of the (a) requests for proposals; (b) requests for quotations; and (c) requests for Information, issued by the Organising Committee.

116.3. In relation to the records described at paragraph 16.2 of the Founding Affidavit, I note that amongst these records there are certain communications addressed from the Organising Committee to individual bidders, which indicate that a bidder has either been awarded a contract pursuant to a tender process, or has been designated as preferred bidder pursuant to a tender



process. In regard to all such records (being communications addressed from the Organising Committee to specific bidders indicating success or potential success in a tender process), I submit that such records constitute commercial information relating to the business and operations of the Organising Committee, the disclosure of which would be likely to cause harm to the commercial or financial interests of a private body as contemplated in section 68(1)(b) of PAIA. In terms of that provision, the Head of the private body may refuse such a request for access to records of the body.

116.4. I submit that the disclosure of any such communications by the Organising Committee is likely to cause harm to the commercial interests of the Organising Committee. In this regard, I draw attention to clause 29 of the Organising Association Agreement, which regulates so-called "Marketing Rights" in respect of the 2010 FIFA World Cup™. The business model of FIFA, and the architecture of the Organising Association Agreement, is to grant specified marketing rights to selected commercial affiliates based on their financial contributions to the 2010 FIFA World Cup™, and to prohibit and prevent all other commercial entities from advertising or disclosing any affiliation at all with the 2010 FIFA World Cup™. Thus the Organising Committee is obliged to ensure that in all of its service provision contracts, there is a



clause prohibiting the service provider from disclosing the fact of its obligation to provide goods or services to the Organising Committee, as such disclosure would undermine the marketing rights granted by FIFA to paying sponsors. The Organising Committee is under a general obligation not to do anything that would result in an infringement of FIFA's marketing rights (which are very broadly defined) or those of the commercial affiliates. Public disclosure in the media of the names and any other details regarding service providers to the Organising Committee which are not commercial affiliates would undermine the business model of FIFA and jeopardise the position of the commercial affiliates, with consequential harm to FIFA and because the commercial interests of the Organising Committee are so closely aligned to those of FIFA, also to the Organising Committee. In my capacity as head of the Organising Committee I refuse access to the Applicants' request for access to those records described in paragraph 16.2 of the Founding Affidavit which name any tenderer as being a successful or preferred bidder, on the basis of section 68(1)(b) of PAIA.



116.5. In relation to the records described at paragraph 16.3 of the Founding Affidavit (described as "all records submitted to the Organising Committee by service providers in regard to the Tenders, including tender proposals, quotations and/or



information"), I note that there may be one or more statutory grounds of refusal as contemplated in PAIA that may apply to certain records falling into the category of records covered by paragraph 16.3. In this regard, I note the following:

116.5.1. the terms and conditions applicable to tenderers, as set out in the requests for proposal or requests for information issued by the Organising Committee in a tender process, generally include a term relating to confidentiality. In terms of (relevant portions of) that confidentiality provision, a tenderer agrees by virtue of submitting a bid that:

116.5.1.1. all information and data submitted by a bidder shall become the sole property of the Organising Committee, with the exception of copyrighted material, trade secrets or other proprietary information clearly identified as such by the bidder;

116.5.1.2. it shall indemnify the Organising Committee and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by





the Organising Committee for its refusal to disclose materials marked confidential, trade secret or other proprietary information to any person seeking access thereto; and

116.5.1.3. the Organising Committee undertakes to keep confidential all information received from a bidder which is clearly identified as confidential in such bidder's bid submission;

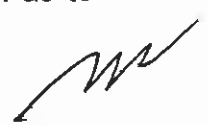
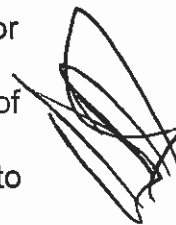
116.5.2. in terms of section 65 of PAIA, the head of the Organising Committee must refuse a request for access to a record of the Organising Committee if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement;

116.5.3. those records referred to in paragraph 16.3 of the Founding Affidavit which have been marked by a bidder as being confidential, are subject to a binding obligation on the part of the Organising Committee, undertaken in terms of the tender documentation issued to bidders as described above, to keep them confidential. The binding nature of the obligation can be determined with



reference to the disclaimer which forms part of the Organising Committee's standard tender terms and conditions, which disclaimer includes a provision to the effect that the terms and conditions set out in the request for information or proposals are stipulated for the express benefit of the Organising Committee and except where expressly stated to the contrary, may be waived at the Organising Committee's discretion at any time. The undertaking to keep confidential those bidder records marked confidential constitutes an express statement that the Organising Committee will in fact be bound by that undertaking;



116.5.4. before the Organising Committee can make its decision whether to refuse or grant access to those records which may be records subject to section 65 of PAIA, it must notify the bidder of the Applicants' request for access to the applicable bidder records in terms of section 71 of PAIA, give the bidder an opportunity to respond in terms of section 72 of PAIA, and either consider the bidder's representations as to why the request should be refused and make its own decision as to refusal or grant of access, or receive the bidder's consent to disclosure and make its own decision as to



refusal or grant of access in terms of section 73 of PAIA, and if it decides to grant access notwithstanding the lack of consent as contemplated herein, it must notify the bidder of the decision and wait the prescribed period before disclosing the records to the Applicants;

116.5.5. the Organising Committee therefore requires an opportunity to give effect to the third party notification provisions of PAIA, before deciding whether to refuse or grant access to the Applicants' request for access to the above-described confidential bidder records;

116.5.6. in terms of section 64(1) of PAIA, even in the absence of any agreement as to confidentiality, the information officer of the Organising Committee must refuse a request for access to a record of the Organising Committee if the record contains trade secrets of a third party, or financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party, unless the third party has consented to the disclosure thereof in terms of section 72 of PAIA or otherwise;



116.5.7. the disclosure of certain records submitted by a bidder in response to a request for proposals or information issued by the Organising Committee may cause harm to the commercial or financial interests of that bidder. In this regard I believe that disclosure of the financial statements of a private company (inclusion of which in a bid submission is a standard requirement of the Organising Committee) may cause such harm, because disclosure of such records is not otherwise required by law and is not generally a matter of public knowledge; in addition the financial statements of a private company contains information that would be of interest not only to the Organising Committee in order to evaluate a tender submission, but also to competitors, suppliers and creditors of a private company, who or which may take actions based on such information that is adverse to the bidder entity;

116.5.8. before the Organising Committee can ascertain whether there is consent to disclosure as contemplated in section 64 of PAIA and make its decision whether to refuse or grant access, it must notify the bidder of the Applicants' request for access to the bidder records in terms of section 71 of PAIA, give the bidder an



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opportunity to respond in terms of section 72 of PAIA, and either consider the bidder's representations as to why the request should be refused and make its own decision as to refusal or grant of access, or receive the bidder's consent to disclosure in terms of section 73 of PAIA and make its own decision as to refusal or grant of access, and if it decides to grant access notwithstanding lack of consent as contemplated herein, it must notify the bidder of the decision and wait the prescribed period before disclosing the records to the Applicants; and

116.5.9. the Organising Committee therefore requires an opportunity to give effect to the third party notification provisions of PAIA, before deciding whether to refuse or grant access to the Applicants' request for access to the above-described bidder records.

116.6. In relation to the records described at paragraph 16.4 of the Founding Affidavit (described as "details of all the service providers that have been awarded preferred supplier status by the Organising Committee"), I submit that any such preferred supplier records constitute trade secrets of the Organising Committee, and thus that the Organising Committee is entitled to refuse a request



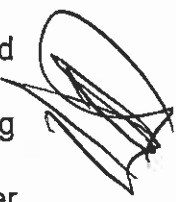
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for access to such records on the basis of section 68(1)(a) of PAIA. In my capacity as the head of the Organising Committee, I refuse access to those documents in terms of section 68(1)(a).

116.7. In relation to the records described at paragraph 16.5 of the Founding Affidavit (described as "all records relating to hearings and/or interviews held by the Organising Committee in regard to the Tenders, including all minutes of meetings, internal memoranda, correspondence and shortlists relating to the Tenders"), I submit that:

116.7.1. the Organising Committee is entitled to refuse access to those records that pertain to tenders that are not yet unconditionally awarded by the Organising Committee (in the sense of a contract of supply having been executed and become operational), on the basis set out in section 68(1)(c) of PAIA, namely that those records contain information, the disclosure of which could reasonably be expected to put the Organising Committee at a disadvantage in contractual or other negotiations;

116.7.2. the reason that disclosure of such records could reasonably be expected to put the Organising Committee at a disadvantage in contractual



negotiations, is that although the tender documentation issued by the Organising Committee is designed to elicit the maximum information from bidders and to finalise as many of the terms and conditions of supply as possible, the tender award is not final until a contract between the Organising Committee and the successful bidder has been executed. Any disclosure of tender evaluation materials will jeopardise the advantageous finalisation of contract negotiations, because relative prices and technical solutions, and the identity of competing bidders, will become public knowledge and be used by the currently preferred bidder to its advantage in such negotiations with the Organising Committee;

- 116.7.3. the Organising Committee is entitled to refuse access to those records that pertain to tenders that have been finally awarded, on the basis set out in section 68(1)(b) of PAIA, namely that those tender evaluation materials contain financial, commercial or technical information, other than trade secrets, of the Organising Committee, the disclosure of which would be likely to cause harm to the commercial or financial interests of the Organising Committee; and



116.7.4. the reason that disclosure of such records would be likely to cause harm to the commercial or financial interests of the Organising Committee, is that disclosure of such records by the Organising Committee is likely to cause harm to the commercial interests of the Organising Committee. In this regard, I draw attention to clause 29 of the Organising Association Agreement, which regulates so-called "Marketing Rights" in respect of the 2010 FIFA World Cup™. The business model of FIFA, and the architecture of the Organising Association Agreement, is to grant specified marketing rights to selected commercial affiliates based on their financial contributions to the 2010 FIFA World Cup™, and to prohibit and prevent all other commercial entities from advertising or disclosing any affiliation at all with the 2010 FIFA World Cup™. Thus the Organising Committee is obligated to ensure that in all of its service provision contracts, there is a clause prohibiting the service provider from disclosing the fact of its obligation to provide goods or services to the Organising Committee, as such disclosure would undermine the marketing rights granted by FIFA to



paying sponsors. The Organising Committee is under a general obligation not to do any thing that would result in an infringement of FIFA's marketing rights (which are very broadly defined) or those of the commercial affiliates. Public disclosure in the media of the names and any other details regarding service providers to the Organising Committee which are not commercial affiliates would undermine the business model of FIFA and jeopardise the position of the commercial affiliates, with consequential harm to FIFA and because the commercial interests of the Organising Committee are so closely aligned to those of FIFA, also to the Organising Committee. In my capacity as Head of the Organising Committee I refuse access to the Applicants' request for access to those records described in paragraph 16.5 of the Founding Affidavit which pertain to tenders that have been awarded by the Organising Committee, on the basis of section 68(1)(b) of PAIA.

116.8. In relation to the records described at paragraph 16.6 of the Founding Affidavit (described as "all records relating to the award of Tenders, including but not limited to the service providers it was awarded to, the price to be paid and the contracts between the

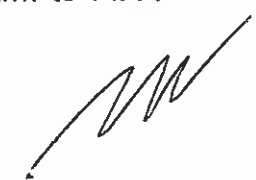


Organising Committee and service providers”), I submit as follows:

- 116.8.1. letters of award are covered by the request set out in paragraph 16.2 of the Founding Affidavit and can be dealt with as part of that portion of the request;
- 116.8.2. the price to be paid in respect of a Tender and the details of the successful tenderer are contained in the final signed version of a contract between the Organising Committee and a service provider;
- 116.8.3. all of the contracts concluded between the Organising Committee and a successful bidder in respect of a Tender contain commercial information of the Organising Committee disclosure of which will harm the Organising Committee;
- 116.8.4. disclosure of the records requested by the Organising Committee is likely to cause harm to the commercial interests of the Organising Committee. In this regard, I draw your attention to clause 29 of the Organising Association Agreement, which regulates so-called “Marketing Rights” in respect of the 2010 FIFA World Cup™. The business model of FIFA, and the



architecture of the Organising Association Agreement, is to grant specified marketing rights to selected commercial affiliates based on their financial contributions to the 2010 FIFA World Cup™, and to prohibit and prevent all other commercial entities from advertising or disclosing any affiliation at all with the 2010 FIFA World Cup™. Thus the Organising Committee is obligated to ensure that in all of its service provision contracts, there is a clause prohibiting the service provider from disclosing the fact of its obligation to provide goods or services to the Organising Committee, as such disclosure would undermine the marketing rights granted by FIFA to paying sponsors. The Organising Committee is under a general obligation not to do any thing that would result in an infringement of FIFA's marketing rights (which are very broadly defined) or those of the commercial affiliates. Public disclosure in the media of the names and any other details regarding service providers to the Organising Committee which are not commercial affiliates would undermine the business model of FIFA and jeopardise the position of the commercial affiliates, with consequential harm to FIFA



and because the commercial interests of the Organising Committee are so closely aligned to those of FIFA, also to the Organising Committee. In my capacity as Head of the Organising Committee I refuse access to the Applicants' request for access to those records described in paragraph 16.6 of the Founding, on the basis of section 68(1)(b) of PAIA.

116.9. I have indicated above that the Organising Committee will be required to afford third parties notification in terms of section 71 of PAIA before it can decide whether to grant access to some of the relevant records in terms of PAIA. The Organising Committee must also comply with the Rule. The Organising Committee proposes to comply the third party notification procedure provided for in sections 47 and 71 of PAIA and the Rule in the manner set out in paragraph 115.13 above. I ask that the contents of that paragraph be read as if incorporated herein.



#### **ACCESS FEES**

117. If this Honourable Court were to reject all of the preceding submissions and were minded to order the respondents to furnish the Records to the



Applicants, then I make the following submissions regarding the payment of access fees.

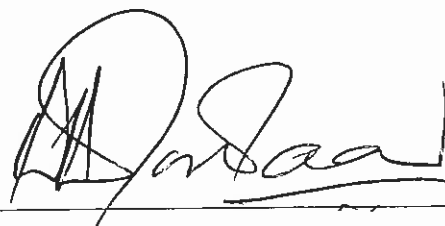
118. Prayer 3 of the notice of motion seeks an order directing the respondents to supply the applicants "with a copy of the records". I have indicated above that "the records" (as defined in para 16 of the founding affidavit) amount to a vast quantity of documents. The preparation of the records for disclosure would require considerably more than the six hours prescribed for this purpose in the Regulations regarding the Promotion of Access to Information. In terms of section 22(2) of PAIA, the requester may be required to pay one-third of the access fee as a deposit. In terms of section 54(2) of PAIA, the requester must be required to pay one-third of the access fee as a deposit.
119. I have indicated above that the records relating to tender processes would fill some 1700 lever arch files. If each lever-arch files is assumed to contain on average 350 pages, that comes to a total of 595 000 pages. The access fee for photocopying those pages would be R357 000 if the Organising Committee is found to be a public body, and R654 500 if the Organising Committee is found to be a private body.
120. This fee only relates to the photocopying of documents relating to tenders and does not cover the access fee due for copying the other documents referred to in paragraph 16 of the Founding Affidavit. I am unable to determine the extent of the fee for this but the Organising



Committee likely has the equivalent of rooms filled with such documentation and suffice it to say that the access fee will increase dramatically in respect of the copying of these documents.

121. In the circumstances, I respectfully submit that it would be just and equitable for this Honourable Court to order the applicants to pay one-third of that access fee as a deposit in terms of section 22(2) or section 54(2) of PAIA.

**WHEREFORE** the Respondents pray that this application be dismissed with costs.



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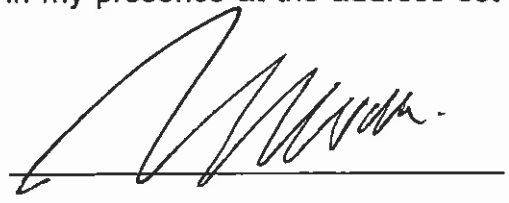
**DANIEL ALEXANDER JORDAAN**

I certify that:

- I. the Deponent acknowledged to me that :
  - A. He knows and understands the contents of this declaration;
  - B. He has no objection to taking the prescribed oath;
  - C. He considers the prescribed oath to be binding on his conscience.



- II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".
- III. the Deponent signed this declaration in my presence at the address set out hereunder on



**COMMISSIONER OF OATHS**

9 April 2010

Designation and Area:

Full Names:

Street Address:

**JACOBUS VAN DER WALT**  
 CHARTERED ACCOUNTANT (S.A.)  
 PARTNER ERNST & YOUNG  
 COMMISSIONER OF OATHS  
 BY APPOINTMENT FOR DISTRICT JHB  
 WANDERERS OFFICE PARK, 2ND FLOOR  
 52 CORLETT DRIVE, ILLOVO  
 REF. 9/1/8/2 JOHANNESBURG (A15)  
 26 AUGUST 2000

