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Your Ref:

Our Ref: SK/Surveillance

1 November 2016

Mr C Nqakula MP

Chairperson of the Joint Standing Committee on Intelligence

Per email: nmbuqe@parliament.gov.za

Dear Sir

RE: IGI APPOINTMENT

We hereby acknowledge receipt of your letter dated 28 October 2016 herein.

Our client is somewhat surprised by your view that curriculum vitae documents received from the applicants for the all-important constitutional post of the Inspector General of Intelligence can be withheld from public scrutiny and circulation. We are instructed to take all steps possible to ensure that these do become available to the public particularly so that they are able to comment on the applicants before your committee has to recommend a candidate to the National Assembly. This will ensure public scrutiny of these documents in a manner similar to that followed in the appointment of the Public Protector and the members of the South African Human Rights Commission.

Allowing the public to view and scrutinize the candidates' CV's constitutes a vital public exercise to reveal whether CV's contain false or misleading information. It is also necessary for the legitimacy and rationality of the process. The Constitution demands that Parliament conducts its proceedings openly and that it promotes public participation in all its activities.

This is all or more important in view of the very tight timelines being allowed for this nomination procedure. Public scrutiny of CVs – documents produced by the applicant themselves, not by the intelligence services or any other classified entity – are vital to check their validity and worthiness. In the unlikely event that there is anything on anybody's CV requiring secrecy that particular item could be redacted.

More broadly, we are of the view that Rule 17(1) needs to be read in the context of Rule 14 which deals with the disclosure of information. Rule 14(2)(a) qualifies the rules on non-disclosure by stating that such "intelligence, information or document" is required to be public "to the extent to which it may be necessary for the proper administration of the Act." This properly interpreted would require that the chairperson grant written permission for the CV's to be published as the failure to do so would not allow for the proper administration of the appointment of the Inspector General of Intelligence.

Our clients would prefer that the appointment take place and not be delayed by litigation. However, failing to release the CVs of the candidates would be contrary to the constitutional requirements in an open and democratic society. Any appointment that occurred as a result would be unlawful and subject to being set aside by a court.

We are accordingly instructed to invite you to reverse your view taken in your letter of 28 October 2016.

Kindly advise us by not later than close of business on Thursday 3 November 2016 as to whether these documents will indeed be made available. If not, our instructions are to pursue all legal options to ensure their disclosure so as to ensure a properly informed and fair selection process.

Yours faithfully

LEGAL RESOURCES CENTRE

Per:


STEVE KAHANOVITZ

cc: **Mr. C.T Frolick MP**
Chairperson – Oversight and ICT Parliament
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