



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 29 May 2020  
Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

**The South African History  
Archive Trust**

v

**The South African Reserve Bank and Another**

Today the Supreme Court of Appeal upheld an appeal from the Gauteng Division of the High Court, Johannesburg. The South African History Archive Trust requested documents from the South African Reserve Bank (the SARB) under the Promotion of Access to Information Act 2 of 2000 (PAIA). The documents relate to material researchers from the Open Secrets Project are collecting for a book. The book plans to deal with apartheid era procurement practices and public accountability. This will include analysis of abuses of the financial rand, corruption and foreign exchange transactions under apartheid. The documents in the appeal concern the late Brigadier Blaauw, Mr Robert Hill and Mr Vito Palazzolo.

The SARB refused access to the documents in its possession. It contended that they fell within sections of PAIA which entitled them to refuse access. The court of first instance dismissed an application to review and set aside that refusal but granted leave to the appellant to this court to appeal that judgment.

Access to requested documents may be refused where they contain information about persons whose rights might be affected if access is given. Where a public entity receives such a request and forms the view that the documents fall into that category, PAIA creates a carefully crafted set of provisions. These are aimed at affording the individuals concerned an opportunity to consent to the requested access and various opportunities to oppose such access. In order to give these opportunities, the entity concerned must take reasonable steps to inform the individuals of the request and of their rights. In this case, the SARB was obliged to take reasonable steps to notify the two living persons of the request. Unless this is done, and unless representations are made where the notice was not given by the SARB but they still became aware of the request, no decision on the request is competent. The SARB failed to take any steps to inform Messrs Hill and Palazzolo and neither of them made representations. Despite this, the SARB purported to refuse the request. It was not empowered to make a decision in those circumstances and that decision should accordingly have been reviewed by the court of first instance, set aside and the SARB be directed to take reasonable steps to inform the relevant persons of the request.

As regards the late Brigadier Blaauw, the SARB relied on a number of sections of PAIA which, it contended, allowed it to refuse access. The sections in question form a numerus clausus of the bases for refusal contained in PAIA. These must be strictly construed as the clear default position in PAIA is to afford access. The SARB was constrained to concede in argument that it had not made out a case for any of the exceptions to apply to the request for these documents. Accordingly, it was held that the court of first instance should have reviewed and set aside the decision to refuse and granted the appellant access to these records.

For these reasons, the appeal was upheld with costs, including those of two counsel where two counsel were utilised.