



Ms Jill Fabing  
Deputy information officer

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Ref File No: 2/8/7/2/646 - 2016/17  
2/8/7/2/651 - 2016/17

08/05/2017

**ATTENTION: MS. KIARA WORTH**

**3 SPINNER CLOSE**

**HOUT BAY HEIGHTS**

**7806**

**E - MAIL: [Kiara.worth@gmail.com](mailto:Kiara.worth@gmail.com)**

**DEAR MADAM**

**SECTION 25 NOTICE: REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000 ["PAIA"].**

1. The above refers.
2. Kindly take note that you have submitted two applications, requesting the following records:  
  
"a) Copy of the Atmospheric Emissions License held for Oceana Fishmeal Plant in Hout Bay; and  
b) Health Risk Assessment conducted in 2016 regarding the emissions from the Oceana Fishmeal factory and potential implications for housing development in Hangberg."
3. I have considered your applications and had regard to section 47 of PAIA which sets out the process to notify third parties of requests that would implicate and affect their rights. I have since been informed by our internal line department that the information of the third parties contain proprietary information. I had subsequently been informed by the one third party, being Lucky Star Operations, that they refuse the disclosure of the information on the basis of **section 39(1)(b)(iii)(ee)**<sup>1</sup> of the PAIA. The reason for the refusal by the third party, Lucky Star Operations is

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<sup>1</sup> Section 39 (1) provides as follows that "(1) The information officer of a public body— (b) may refuse a request for access to a record of the body if ... (iii) the disclosure of the record could reasonably be expected ... (ee) to prejudice or impair the fairness of a trial or the impartiality of an adjudication."

that they have submitted an appeal in terms section 62 of the Local Government Municipal Systems Act, 2000 which is currently sub judice and not finalized. The merits of the appeal relate to the atmospheric emission license (AEL) granted by the City to Lucky Star Limited. Since the appeal is sub judice and no final decision has been made it would prejudice and impair the impartiality of the adjudication of the appeal. It is further my view that since the license is sub judice and the license being in dispute it remains unapproved until a final decision is made to approve the license.

4. I further considered the requirements of **section 44 (1)**<sup>2</sup> of PAIA and the fact that a final decision has not yet been made on the appeal regarding the license. Relying on the precepts of section 44(1) I view it as premature to disclose a copy of the license which would likely or reasonably frustrate the deliberative adjudication process of the appeal. It is on the basis of these provisions i.e. sections 39(1)(b)(iii)(ee) and 44(1) that your application for the record relating to the AEL is hereby refused.
5. In respect of the second record i.e. the Health Risk Assessment report, this record has not been received by my office and I am not able to apply my mind or make a decision in this respect. In terms of section 27 of PAIA<sup>3</sup> this is considered a failure to give a decision and for the purposes of the Act regarded as a refusal.
6. If you are not satisfied with the above decision you may lodge an internal appeal in terms of section 74 (1) of the Act within 60 days of receipt hereof. Your appeal notice must identify the subject matter of the appeal and state the reasons for the appeal and may include any other information known by you. All appeals must be submitted for attention, the Speaker and addressed to the Legal Services: Statutory Compliance Unit on the 20<sup>th</sup> floor Tower Block, Civic Centre, Hertzog - Boulevard, Cape Town, faxed to 021 400 5963, or e-mailed to [access2info.act@capetown.gov.za](mailto:access2info.act@capetown.gov.za).

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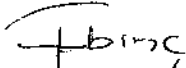
<sup>2</sup> **Section 44(1)** provides that "(1) Subject to subsections (3) and (4), the information officer of a public body may refuse a request for access to a record of the body—

(a) if the record contains— (i) an opinion, advice, report or recommendation obtained or prepared; or (ii) 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 formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or

(b) if— (i) the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid—(aa) communication of an opinion, advice, report or recommendation; or (bb) conduct of a consultation, discussion or deliberation; or (ii) the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy."

<sup>3</sup> **27. Deemed refusal of request.**—If an information officer fails to give the decision on a request for access to the requester concerned within the period contemplated in section 25 (1), the information officer is, for the purposes of this Act, regarded as having refused the request.

Yours faithfully

Handwritten signature of Jill Fabing in black ink, appearing as 'J Fabing'.

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**JILL FABING**  
**DEPUTY INFORMATION OFFICER (designated in terms of section 17(1) of the Promotion of Access to Information Act 2 of 2000)**