

Corruption Watch (RF) NPC
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29 March 2017

Robert McBride
Executive Director
Independent Police Investigative Directorate ('IPID')
Per email: rmcbride@ipid.gov.za

And to: Tshiamo Mahibila
Personal Assistant to Mr McBride
Per email: tmahibila@ipid.gov.za

And to: Berning Ntlemeza
National Head: Directorate for Priority Crime Investigation (Hawks)

c/o Brigadier Hangwani Mulaudzi
National Spokesperson
Directorate for Priority Crime Investigation
Per email: MulaudziH@saps.gov.za

Dear Sirs/ Madam,

Corruption Watch Enquiry: Investigations against SARS employees

1. We refer to the above matter.
2. Corruption Watch (CW) is a civil society organisation that opened its doors to the public in January 2012. We are registered as a non-profit company in terms of the Companies Act.
3. Corruption Watch seeks to expose corruption and the abuse of public funds. We aim to expose those who engage in corrupt activities, nepotism and abuse of public funds in both the public and private sector.

4. As part of our mandate, we are committed to strengthening the criminal justice system, including efforts to address financial crime; to the refinement of our planning and procurement systems; and to supporting and strengthening the ability of private and public bodies to better detect and address corruption in their spheres of operation.

Background

5. On 17 May 2016, the FIC sent Mr Tom Moyane, Commissioner and CEO of the South African Revenue Services ("SARS"), a report detailing fraud and corruption on the part of Mr Makwakwa and Ms Elskie, both SARS employees. We understand that they were alleged to have committed crimes in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004, ("PRECCA"), the Financial Intelligence Centre Act, 38 of 2001 ("FICA") and the Prevention of Organised Crime Act, 121 of 1998 ("POCA").
6. We wrote to Moyane on 25 October 2016 in order to find out what steps he was taking against the employees as well as to find out more about his unlawful disclosure of the FIC report to the employees and his failure to report the corrupt activities to the Hawks, both in violation of PRECCA.
7. We indicated that we would lodge criminal complaints against the employees in respect of the allegations contained in the FIC report and against him in respect of his own unlawful actions. A copy of our letter is attached marked "A". Moyane responded to our letter on 27 October 2016, a copy of which is attached marked "B".
8. In this regard, we also wrote to the Director of the FIC, Mr Murray Michel and to the Head of the Hawks, Lieutenant-General Berning Ntlemenza. Our letters are attached "C" and "D" respectively. We received a response from the FIC, attached "E" but did not receive a response from the Hawks.
9. Having received unsatisfactory responses from SARS and the HAWKS as to the nature and status of any investigations into the matters, we proceeded to lodge criminal complaints against Moyane, Makwakwa and Elskie at the Brooklyn Police Station on 8 December 2016. Attached as annexures "F", "G" and "H" are copies

of the criminal complaints under case numbers; **217/12/2016**, **218/12/2016**, and **222/12/2016** respectively.

10. On Tuesday, 3 January 2017 we received a message that Captain RD Mosuma would be investigating all three cases. However, we did not receive any further communication until the end of January 2017 when Captain Mosuma contacted us to arrange a meeting. We met with him on Monday, 8 February 2017, and we were advised that the Hawks were handling an "inquiry" in respect of the FIC report against Makwakwa and Elskie. Although we raised pertinent questions about the nature and scope of this "inquiry" as opposed to a proper investigation, we were not provided with further information. We were also not informed as to what was being done in respect of the criminal complaint against Moyane.
11. We subsequently addressed a letter to Brigadier Makinyane on 21 February 2017 in order to find out more about the "inquiries" which were being conducted by the Hawks. A copy of this letter is attached marked "I" and we confirm that to date, we have not received a response.

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12. Corruption Watch is concerned about the manner in which the Hawks are handling the FIC report which was referred to them in May 2016 as well as the criminal complaints which we lodged in December 2016.
13. We understand that an "inquiry" is being made into the allegations of corruption against Makwakwa and Elskie despite the FIC having compiled all the evidence relating to the corrupt activities in its May 2016 report. In regard to our criminal complaint against Moyane, we are uncertain about what steps are being taken, if any, to investigate our complaint.
14. It is evident from PRECCA that the Hawks are mandated and obliged to investigate corruption and any failure by a head of an institution to report corrupt activities. Sections 16 (1) and (2) and 17 of the South African Police Services Act 68 of 1995 (as amended) ("SAPS Act") also reinforce such mandate.
15. We are therefore very concerned about the failure of the Hawks to conduct an investigation into Makwakwa, Elskie and Moyane. As complainants in the criminal

complaints against them, we are entitled to request and receive information about investigations into these matters; however, we have been provided with little or no information.

16. As the institution responsible for oversight over the South African Police Service, which in terms of section 5(1)(d) of the SAPS Act, includes the Hawks, we request IPID to enquire into the failure of the Hawks to properly investigate Makwakwa, Elskie and Moyane as well as their failure to provide us with information relating to any steps they have or have not taken in respect of our criminal complaints.
17. We note that the key objectives of the Independent Police Investigative Directorate Act 1 of 2011 ("IPID Act") are to ensure independent oversight of the SAPS and to enhance accountability and transparency by the SAPS in accordance with the principles of the Constitution. We therefore hope that IPID will consider our request and obtain and share information about whether or not the Hawks are investigating the FIC Report and our related criminal complaints.
18. Kindly provide us with a response by Friday, 7 April 2017. In addition, please note that in the interests of transparency, we may publish this correspondence and any response thereto.
19. We trust that you find the above in order.

Yours faithfully,

Leanne Govindsamy / Nhlamulo Mvelase
Corruption Watch
[Unsigned due to electronic transmission]