**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 1375**

**DATE OF QUESTION: 19 MAY 2017**

**DATE OF SUBMISSION: 2 JUNE 2017**

**Mr W Horn (DA) to ask the Minister of Justice and Correctional Services:**

1. Whether any steps were taken against a certain person (name and details furnished) for granting an application for cellphone data in terms of section 205 of the Criminal Procedure Act, Act 51 of 1977, as amended, in the British American Tobacco South Africa matter, without allegedly properly considering the inadequate application; if not, why not; if so, what are the relevant details;
2. whether any steps were taken against the prosecutor in the specified matter for authorising access to cellphone data without allegedly properly considering the inadequate application; if not, why not; if so, what are the relevant details?

**NW1517E**

**REPLY:**

1. No. I have been informed that the Magistrates Commission has not received any formal complaint against the Magistrate.
2. No steps were considered necessary, as the prosecutor was not deemed to have breached any guidelines or legal prescripts. Applications for cell phone data in terms of section 205 of the Criminal Procedure Act, Act 51 of 1977, as amended, are based on an affidavit from the investigating officer motivating why cell phone data is needed in respect of the number(s) and period(s) stated in the affidavit.

The prosecutor also considers the affidavit before submitting it to the judicial officer, who is the final and independent arbiter on the application. There are thus three safeguards, in addition to the processes which may follow as part of a criminal prosecution which permits the accused to challenge the admission of evidence.