

**MINISTRY**

**COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NUMBER 1289 OF 2020**

**◙1289. Mr C Brink (DA) to ask the Minister of Cooperative Governance and Traditional Affairs**

Whether, since her reply to question 468 on 16 September 2019, she has made any attempt to obtain the requested information; if not, what is the position in this regard; if so, (a) what are the full details of the specified attempts, including emails, meetings and telephonic correspondence and (b) why has she failed to provide the requested information to date? NW1657E

**QUESTION NUMBER 468 of 2019**

**468. Mr C Brink (DA) to ask the Minister of Cooperative Governance and Traditional Affairs:**

1. (a) What are the details of the process that needs to be followed by any municipal council when investigating allegations of serious financial misconduct against a municipal manager and (b) on which statutory provisions should they rely in this regard;
2. whether she will issue a circular to provincial departments responsible for cooperative governance and traditional affairs to clarify (a) the relationship between the Disciplinary Regulations for Local Government Senior Managers based on the Local Government: Municipal Systems Act, Act 32 of 2000 and the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings based on the Local Government: Municipal Finance Management Act, Act 56 of 2003, and (b) in which circumstances each is to be applied?

NW1460E

**Reply:**

1. (a) Regulations 5 and 6 of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (“Municipal Financial Misconduct Regulations”)prescribe that the following processes be followed by a municipal council when investigating allegations of financial misconduct against a municipal manager:

(i) A municipality or municipal entity must develop terms of reference for an investigation within seven days of receipt of a referral from a disciplinary board for approval by council or board of directors.

(ii) A disciplinary board must conduct a preliminary investigation to determine whether or not the allegation is founded and make a recommendation to council or board of directors as to whether sufficient grounds exists to warrant a full investigation into the allegation.

(iii) If the disciplinary board determines that the allegation is founded, a full investigation must be conducted by:

1. disciplinary board;
2. provincial or national treasury;
3. appropriate specialist expertise and who is not an official of the municipality or municipal entity; or
4. an independent team of investigators appointed by council or board of directors

(iv) After completion of a full investigation, the investigator must:

1. compile a report on the investigation.
2. submit a report to the mayor or chairperson of the board of directors and the accounting officer together with its findings and recommendations regarding disciplinary steps that should be taken against the alleged transgressors, if applicable; and
3. immediately inform the speaker of council of the submission of the report and submit a copy of the report to the provincial treasury and the national treasury.

(v) The mayor, speaker, accounting officer or chairperson of the board of directors must table the report of the investigation to council or board of directors at the first sitting after the report is finalised.

(vi) If the report that is tabled before council or board is amended, the person tabling the report must provide written reasons for the amendments to council or board.

(vii) If the findings or recommendations of the report are rejected by council or board, reasons for rejection must be provided to the investigator within five days of rejection.

1. Where the recommendations of the report regarding disciplinary steps against the alleged transgressors are not implemented, the investigator must notify the provincial treasury and the national treasury for a possible intervention in terms of regulation 19 of the Municipal Financial Misconduct Regulations.
2. If the investigator recommends that disciplinary proceedings be instituted against the alleged transgressor, council or board of directors must by way of resolution institute the disciplinary proceedings.

(b) The provisions as contained in the Municipal Financial Misconduct Regulations made in terms of the Municipal Finance Management Act, 2003 take precedent in relation to investigations of serious financial misconduct.

2. (a) No. The Municipal Systems Act Disciplinary Regulations and the Municipal Finance Management Act Municipal Financial Misconduct Regulationswere enacted into law following comprehensive consultations with the provincial treasuries, provincial departments responsible for local government and municipalities and therefore there is no evidence that municipalities confuse the relationship between the two set of regulations.

(b) The Municipal Financial Misconduct Regulations deals with reporting and investigation of financial misconduct, including criminal offences while the Municipal Systems Act Disciplinary Regulations prescribe procedures for the institution of disciplinary proceedings against municipal managers. Therefore, the two set of regulations are complementary and applied concurrently to the extent required.

**End.**