**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PALRIAMENTARY QUESTION NO: 1373**

**DATE OF QUESTION: 19 MAY 2017**

**DATE OF SUBMISSION: 2 JUNE 2017**

**Adv G Breytenbach (DA) to ask the Minister of Justice and Correctional Services:**

1. What safeguards have been put in place to ensure that, pending the revision of the relevant legislation, current applications for cellphone data submitted in terms of section 205 of the Criminal Procedure Act, Act 51 of 1977, as amended, are (a) limited to the essential information only and (b) submitted in that form and not expanded to include information or data not authorised by the relevant magistrate or judge;
2. whether the relevant authorising magistrates and judges received any training regarding the consideration and granting of such applications in each of the past three financial years; if not, in each case, why not; if so, what are the relevant details in each case;
3. what is the total number of (a) applications for cellphone data in terms of section 205 of the specified Act were made to (i) prosecutors, (ii) judges, (iii) regional magistrates and (iv) magistrates in the specified period and (b) the specified applications that were (i) granted and (ii) declined in each case?

**NW1515E**

**REPLY:**

1. 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. The Magistrate considers the application based on the affidavit but may also request that further information be provided and order that information not relevant to the case should not be used for any purpose 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.

1. Yes. I have been informed that judges and magistrates receive continuous training and that applications in terms of section 205 of the Criminal Procedure Act resorts under the Criminal Law and Procedure Curriculum of the South African Judicial Education Institute.
2. No specified period was included in the question. It should be noted that the National Prosecuting Authority does not specifically require prosecutors to record the number of applications for cell phone data, and whether or not these were successful.