



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

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**LEGAL OPINION**  
**[Confidential]**

**TO:** Adv SP Holomisa, MP  
Mr BA Mnguni, MP  
Co-Chairperson of the Joint Constitutional Review  
Committee

**COPY:** Mr MB Coetsee  
Acting Secretary to Parliament

**FROM:** Constitutional and Legal Services Office  
[Adv G Rhoda – Parliamentary Legal Adviser]

**DATE:** 29 August 2012

**SUBJECT:** Legal Opinion on the submission by Mr Brian Carr to the  
Joint Constitutional Review Committee

**REFERENCE:** 189/2012

**CRC Ref:** CR12-7

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**MEMORANDUM**

**TO:** Adv SP Holomisa, MP  
Mr BA Mnguni, MP  
Co-Chairperson of the Joint Constitutional Review Committee

**COPY:** Mr MB Coetzee  
Acting Secretary to Parliament

**FROM:** Constitutional and Legal Services Office  
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**SUBJECT:** Legal Opinion on the submission by Mr Brian Carr to the Joint Constitutional Review Committee

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**INTRODUCTION**

1. Our Office was requested to advise on the submission by Mr Brian Carr for constitutional review by the Joint Constitutional Review Committee.
2. From the submission provided, Mr Carr is concerned by the failure of the local authorities to respond to any written requests, queries or concerns of transgressions. He further submits that he is not aware of the particular section of the Constitution, 1996 that would govern the failure of local authorities to respond to written requests, queries or concerns but that it is his right in terms of the Constitution to receive a reply within a "given period".
3. It is not clear on which provision in which Act Mr Carr is relying in order to request information or whether he is simply lodging complaints to his local authority.
4. Mr Carr therefore requests that the Joint Constitutional Review Committee consider "implementing or affording more rights to ensure that the local authorities comply".
5. From the submission it would appear that the local authority that Mr Carr is referring to is the Kwadukuza Municipality.

## ANALYSIS

6. Section 32 of the Constitution, 1996 provides that:

“(1) Everyone has the right to access to-

- (a) any information held by the state; and
  - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.”

7. The national legislation referred to above is the Promotion of Access to Information Act, No. 2 of 2000 (PAIA).

8. Section 9(e) of PAIA spells out one of the objectives of the Act:

“...generally, to promote transparency, accountability and effective governance of all public and private bodies by, including, but not limited to, empowering and educating everyone-

- (i) to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;
- (ii) to understand the functions and operation of public bodies, and
- (iii) to effectively scrutinise, and participate in, decision-making by public bodies that affect their rights.”

9. A ‘public body’ is defined in section 1 of PAIA as:

“(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or...”

10. From the submission provided, the public body (as defined in PAIA) in this case would be Kwadukuza Municipality.

11. Section 29(1) of PAIA sets out the timeframes within which the public body has to respond to the requester if the information is readily available and subject to the condition that the public body has the authority to divulge that particular information.

12. It would therefore appear that Mr Carr is indeed referring to PAIA, and not the Constitution, 1996 when he submits that “it is our right in terms of the constitution to receive a reply within a given period.”

## LEGAL ADVICE

13. This submission therefore does not propose an amendment to a particular constitutional provision. Mr Carr’s submission should be directed at an appropriate parliamentary committee.

14. It is recommended that the Joint Constitutional Review Committee does not consider the submission for the purpose of an amendment to the Constitution.

A handwritten signature in black ink, appearing to read 'Rhoda', written in a cursive style.

**Adv G Rhoda**  
**Parliamentary Legal Adviser**

Pat Jayiya - Fw: Annual Call for Review: Constitution of the Republic of South Africa

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**From:** "Brian"  
**To:**  
**Date:** 2012/05/15 11:44 AM  
**Subject:** Fw: Annual Call for Review: Constitution of the Republic of South Africa

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Dar Mrs.Jayiya

My only comment of the constitution at this time is the enforcement of same. I am nat familiar with the particular section and write as a matter of concern the lack of response by the local authorities to respond to any written requests or queries or concerns of transgressions and the like. . It is our right in terms of the constitution to receive a reply within a given period. Our local authority, Kwadukuza Municipality, is the very culprit.

I hope that you will consider implementing or affording more rights to ensure that they comply.

Kind regards

Brian Carr  
Ex Councillor  
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BALLITO  
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----- Original Message -----

**From:** PMG  
**To:** [brian@saltrockbeach.co.za](mailto:brian@saltrockbeach.co.za)  
**Sent:** Tuesday, May 15, 2012 10:43 AM  
**Subject:** Annual Call for Review: Constitution of the Republic of South Africa

Dear Subscribers

In terms of Section 45(1)(c) of the Constitution of the Republic of South Africa, 1996, the Constitutional Review Committee must review the Constitution annually. Therefore, members of the public are invited to make written submissions to the Constitutional Review Committee on specific sections of the Constitution that they feel need to be reviewed.

Comments can be emailed to Ms Pat Jayiya at [pjayiya@parliament.gov.za](mailto:pjayiya@parliament.gov.za) by no later than Friday, 01 June 2012.

Enquiries may be directed to Ms Pat Jayiya on tel: 021 403 3661 or cell: 083 709 8453.

Yours Sincerely,

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