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EMPLOYMENT ALERT

Our programme on Conducting a Disciplinary Enquiry has been accredited by the Services SETA.

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DOES AN EMPLOYEE IN THE PUBLIC SECTOR HAVE THE RIGHT TO REQUEST REASONS FOLLOWING AN UNSUCCESSFUL APPLICATION FOR EMPLOYMENT?

Gezani Isaac Masingi v Greater Giyani Municipality (case number 2679/2016), (GLD).



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Following two rounds of interviews which took place in September 2014 and February 2015, the Applicant was advised that his application for the post of Municipal Manager of the Respondent municipality had been unsuccessful.

The Act arms a party who seeks information necessary for the exercise or protection of a right to call for the provision of such information.



Gezani Isaac Masingi v Greater Giyani Municipality (case number 2679/2016), (GLD).

Following two rounds of interviews which took place in September 2014 and February 2015, the Applicant was advised that his application for the post of Municipal Manager of the Respondent municipality had been unsuccessful. The second round of interviews had included a psychometric and competency-based test as prescribed by the Municipal Regulations on Minimum Competency Levels, 2007, issued in terms of the Local Government: Municipal Finance Management Act 2003. Dissatisfied with the outcome of the interview process, the Applicant requested the municipality provide him with the outcome of the interview process together with the results of the interview and competency assessments. The request was refused. Thereafter, the Applicant's attorneys made a formal request in terms of s18 of the Promotion of Access to Information Act, No 2 of 2000 (the Act). This request failed to produce any results. The Applicant then approached the High Court in terms of s11 of the Act and sought an order compelling the municipality to provide him with firstly, the results of the interviews and secondly the scores or aggregate scores of all the candidates interviewed, including the recommendations made to the municipality following these interviews.

Section 11 of the Act provides that "a requester must be given access to the record of a public body if (a) that requester complies with all the procedural requirements in the Act relating to a request for access to that

record; and (b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of the Act". The Court noted that the purpose of the Act was to engender the principle of transparency and accountable governance. The Act arms a party who seeks information necessary for the exercise or protection of a right to call for the provision of such information. Referring to various authorities regarding the constitutional right of access to information, the Court held that "the right to be provided with reasons for decisions made in the exercise of a public function or power has been an integral part of our administrative law system for decades and is now entrenched by the Constitution". In the exercise of such right, "the Applicant is entitled to the reasons sought, namely why he was not appointed or appointable".

As to whether the Applicant was entitled to the scores of all the candidates interviewed, the Court emphasised that s34 of the Act provided for the mandatory protection of privacy of third parties who are natural persons. That section provides that "subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual." Noting that one of the grounds for refusal was personal information relating to medical history or personal opinion, the Court held that

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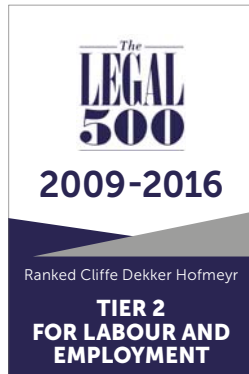
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The Applicant was not entitled to the competency-based assessment scores and results of other candidates other than his own.

the ambit of medical information was wide enough to include psychometric assessment scores if this was a component of the competency assessment. As such, the Applicant was not entitled to the competency-based assessment scores and results of other candidates other than his own. The municipality was nonetheless ordered to provide the Applicant with

the reasons for not appointing him to the post of Municipal Manager as well as the recommendations made to Council in relation to the first, second and third recommended candidates. The Applicant was also entitled to his own personal competency assessment scores.

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Gavin Stansfield



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