



THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Mr Dario Milo
Webber Wentzel
P.O Box 61771
Marshalltown
2107

Dario.milo@webberwentzel.com

Dear Mr Milo;

RE: REQUEST FOR ACCESS TO INVESTIGATION AND REPORT BY INDEPENDENT PANEL ENQUIRING INTO DOCKING OF RUSSIAN VESSEL, KNOWN AS “LADY R”

1. Your letter dated 15 June 2023 addressed to Judge Mojapelo on the above matter refers.
2. Kindly be advised the Secretariat of the Panel referred your letter to the Legal and Executive Services Unit for further attention and reply.
3. At the outset, we wish to convey the Panel’s respect and appreciation for public interest and freedom of expression as a constitutional principle, and the important role played by the media in this regard. You will no doubt appreciate the delicate balance that is needed between the public’s right to freedom of expression and the state’s need to secure information, the disclosure of which may jeopardise the national security and/or international relations.
4. It was in the spirit of respecting this delicate balance that the Panel tasked with investigating the matters related to the Lady R docking in Simonstown was not made a commission of inquiry by the President.
5. The process of investigation followed by the Panel (as it was with the Panel investigating the July 2021 unrest), the nature of documentation collected and the types of questions it has been asked to answer, requires confidentiality for a number of reasons:
 - 5.1 Commercial information of any third parties may be involved;
 - 5.2 There may therefore also be a possible breach of confidentiality owed to a third party;
 - 5.3 Disclosure of information that may jeopardise the security of any party, or impair the methods and systems used to safeguard the public or property;
 - 5.4 Disclosure may jeopardise methods and techniques for prevention or investigation of contraventions of the law or may impede envisaged

- prosecutions;
- 5.5 Disclosure may jeopardise current criminal investigations;
 - 5.6 Disclosure may be prejudicial to the defence and security of the Republic or would reveal information supplied in confidence by another state or international organisation or by South Africa to another state or international organisation and needs to be held in confidence. This includes information relating to military operations, held for the purpose of detecting or curtailing hostile activities or that constitutes diplomatic correspondence exchanged with another state;
 - 5.7 A record contains advice or reports or recommendations made to assist in taking a decision in the exercise of public powers or duties conferred by law;
 - 5.8 Some information may relate to activities of the South African Revenue Services in the collection of revenue; and
 - 5.9 Some information may be that of private bodies.
6. You will note that all of the above align with the protections to information set out in the Promotion of Access to Information Act. We are, in appreciation of the contents of that Act, fully aware of our obligations should the information gathered in the course of this investigation warrant disclosure in the public interest.
 7. The Panel therefore cannot be certain, as it begins to look into the various aspects of the matter, what it will uncover. The process of investigation followed by the Panel will require some confidentiality in certain respects. We are in agreement that the panel will use its discretion when dealing with the confidentiality issues.
 8. Regarding public access to the investigations, The Panel has, as was announced by The Presidency on Monday, 12 June 2023, invited submissions from interested parties. We would hope that your client take up this opportunity to contribute to this endeavour. The Panel is open to inviting interested parties that have made submissions to give oral evidence.
 9. Regarding the publication of the Report, the view is that some of the outcomes of the inquiry may well require publication, by law. Until the Panel has done its work however, based on the nature of the issues to be investigated, the nature of documentation collected and the identity of the individuals from whom information will need to be sought (within public bodies and that may well have information disclosure of which is prohibited or may be prohibited), it has been decided that the process ought not to be conducted in public. The final decision will however only be taken after the Panel has submitted the final report to the President.
 10. We ask that you allow this process to unfold, and appreciate the basis for the precaution taken to safeguard information and abide by the law on disclosure and safeguarding of information.

Yours Sincerely,



Mr Geoffrey Mphaphuli
Acting Head: Legal & Executive Services
Date: 24 July 2023