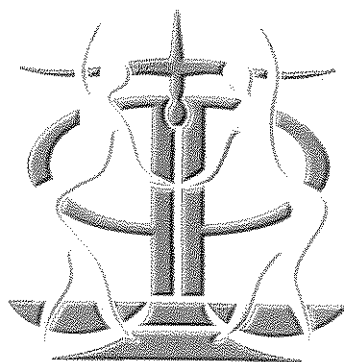


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION  
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH  
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR  
ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT NO. 22 of 2010/2011**

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF UNDUE  
DELAY IN THE RECTIFICATION AND ISSUING OF AN IDENTITY  
DOCUMENT BY THE DEPARTMENT OF HOME AFFAIRS, EASTERN CAPE  
PROVINCE**

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## INDEX

<b>Executive Summary</b>	<b>3</b>
1. INTRODUCTION	5
2. THE COMPLAINT	5
3. JURISDICTION OF THE PUBLIC PROTECTOR	7
4. THE INVESTIGATION	8
5. DISCUSSIONS WITH THE DEPARTMENT OF HOME AFFAIRS	8
6. LEGISLATIVE AND POLICY FRAMEWORK GOVERNING THE DEPARTMENT OF HOME AFFAIRS	9
7. OBSERVATIONS	12
8. FINDINGS	13
9. REMEDIAL ACTION	13
10. MONITORING	13

## Executive Summary

- (i) The Public Protector investigated a complaint in connection with an undue delay allegedly caused by the Department of Home Affairs (Department) in rectification of an identity document (ID).
- (ii) The Complainant alleged that she applied for the rectification of her ID during 2005. When the Complainant approached the Department, she could apparently not be assisted. She therefore approached the Public Protector for intervention.
- (iii) The Public Protector found that:
  - (a) The Department of Home Affairs unduly delayed the processing of the complainant's ID application and that such act constitutes maladministration.
  - (b) The Complainant suffered prejudiced due to the delay by the Department in processing her application for the rectification of her ID document.
- (iv) Remedial action in terms of section 182(1)(c) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 6(4) of the Public Protector Act, 1994 (the Public Protector Act):
  - (a) The Complainant's application for rectification of her ID document was processed and finalised; and
  - (b) In addition to the above remedial action, the Department must extend an apology to the Complainant.

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- (v) It is further recommended that the Director General takes steps to ensure that the capturing of ID applications and compliance with turnaround times in the process relating to ID rectifications are monitored in the interest of service delivery.

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**REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF UNDUE DELAY IN THE RECTIFICATION AND ISSUING OF AN IDENTITY DOCUMENT BY THE DEPARTMENT OF HOME AFFAIRS, EASTERN CAPE PROVINCE**

**1. INTRODUCTION**

- 1.1 This report is submitted in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector, 1994 (the Public Protector Act), to Mrs Ngqaza (the Complainant), the Minister of Home Affairs, the Director-General of the Department of Home Affairs and the Regional Manager of the Department of Home Affairs, Queenstown in the Eastern Cape Province.
- 1.2 It deals with a complaint wherein it was alleged that the Queenstown Regional Office of the Department of Home Affairs (the Department) in the Eastern Cape Province unduly delayed to process the application for rectification of an identity document (ID).

**2. THE COMPLAINT**

- 2.1 The Complainant approached the Public Protector on 14 May 2008. She alleged that she submitted an application for an ID rectification to the Department in 2005 and had received no response.
- 2.2 According to the Complainant, the ID was issued on 11 November 1992 but her date of birth was incorrectly reflected as 17 March 1952, instead of 2 August 1948.

- 2.3 She alleged that when she approached the Department in 2005 her application was rejected due to the fact that she was unable to provide the Department with any of the following documents:
- 2.3.1 A certificate from the hospital/maternity or nursing home where she was born (if applicable) issued by the Superintendent or Matron. This certificate must bear the signature of a person by whom it is used and must also contain the official stamp of the institution;
- 2.3.2 An extract from the admission register of the first school attended, in which the full name and date of birth appear (if applicable). This certificate must be signed by the principal and must bear the official stamp of the school;
- 2.3.3 An affidavit from the parents of the Complainant confirming her birth particulars or an affidavit from a senior relative in the family can be submitted in which the relation to the Complainant and the particulars of her natural parents are confirmed. This person must be able to identify himself or herself in the presence of a Commissioner of Oaths;
- 2.3.4 An official marriage certificate or the personal particulars of the spouse, if applicable; and
- 2.3.5 Any other documentary proof which is applicable and which can contribute to a correct conclusion (an immunisation certificate, a travel document, reference book, former homeland ID, home permit etc).
- 2.4 In the absence of sufficient documentary proof the senior official of the office must interview the applicant in order to prepare a comprehensive recommendation and written report for submission.

2.5 In 2007, the application was submitted with the original certificate of baptism and subsequently a letter of acknowledgement dated 19 March 2007 was received by the Complainant.

### 3. JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The mandate of Public Protector is governed by section 182 of the Constitution.

3.2 The Constitution provides that the Public Protector has the power as regulated by national legislation:

*“(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*

*(b) to report on that conduct; and*

*(c) to take appropriate remedial action.”*

3.3 In terms of section 6(4)(a)(ii) of the Act the Public Protector is competent to investigate on his or her own initiative or on receipt of a complaint, any alleged, abuse or unjustifiable exercise of power or unfair capricious, discourteous or other improper conduct or undue delay by a person performing a public function.

3.4 The complaint against the Department therefore falls within the jurisdiction of the Public Protector.

#### **4. THE INVESTIGATION**

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act and comprised the following:

- 4.1 Consideration of the complaint;
- 4.2 Consultation with the Complainant;
- 4.3 Consultation with the Department; and
- 4.4 Consideration of the applicable legal prescripts.

#### **5. DISCUSSIONS WITH THE DEPARTMENT OF HOME AFFAIRS**

- 5.1.1 Following the complaint, the matter was raised with the Department.
- 5.1.2 Ms N Lebatla (Administration Clerk) from the Department confirmed that the application was not forwarded to their Head Office in Pretoria due to an alleged lack of fingerprints which were later found to have been at the Department's disposal.
- 5.2. The following information was revealed:
  - 5.2.1 The Complainant's application was captured on 3 September 2008;
  - 5.2.2 On 3 September 2008, the same day the application was sent from the ID section to the Head Office and receipt thereof was acknowledged;
  - 5.2.3 The application was received at the Verifications Section on 9 September 2008;
  - 5.2.4 The Complainant's date of birth was officially changed in the Population Register from 17 March 1952 to 2 August 1948;

- 5.2.5 The incorrect ID number was cancelled in the Population Register;
- 5.2.6 A new ID reflecting the Complainant's correct date of birth was issued to her on 22 September 2008; and
- 5.2.7 The Complainant collected her corrected ID on 29 October 2008.

## 6. LEGISLATIVE AND POLICY FRAMEWORK GOVERNING THE DEPARTMENT

### 6.1 The Constitution

- 6.1.1 Section 195(1) of the Constitution states that public administration must be governed by the democratic values and principles enshrined in the Constitution including the following principles:

- (d) Services must be provided impartially, fairly, equitably and without bias.*
- (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.*
- (f) Public administration must be accountable.*

- (g) *Transparency must be fostered by providing the public with timely, accessible and accurate information.*"

## 6.2 Identification Act, 1997

6.2.1 Corrections, cancellation and replacement of identity cards are governed by section 19 of the Identification Act, 1997 (the Identification Act).

6.2.2 Section 19(1) of the Identification Act, states that:

*"19.(1) If -*

*(a) an identity card does not reflect correctly the particulars of a person to whom it was issued; or*

*(b) a temporary identity certificate or any certificate does not reflect correctly the particulars of the person to whom it was issued, the person concerned or the guardian of the person to whom the card or certificate was issued, as the case may be, shall within the prescribed period hand over or send by registered post the identity card, temporary identity certificate or certificate, as the case may be, to the Director-General."*

5.2.3 Section 19 (3) of the Identification Act provides that:

*"(3) If by virtue of this section the Director-General has obtained possession of -*

*(a) an identity card, he or she shall, subject to section 16, without delay cancel it in the prescribed manner and, subject to sections 9 and 10, replace it with a corrected identity card; or*

*(b) a temporary identity certificate or any certificate, he or she shall without delay -*

- (i) *effect the necessary corrections directly on the temporary identity certificate or certificate, as the case may be, if in his opinion it can be done; or*
- (ii) *in the prescribed manner cancel and replace it with a corrected temporary identity certificate or appropriate certificate, as the case may be."*

### **6.3 Batho Pele Principles**

6.3.1 The White paper on the Transformation of Public Service (Batho Pele White Paper) was published on 24 November 1995. The purpose of this White paper was to provide a policy framework and a practical implementation strategy for the transformation of public services delivery.

6.3.2 Eight principles for transforming public service delivery (the Batho Pele Principles) have been identified. The following principles are relevant to the complaint:

6.3.2.1 Access: All citizens should have equal access to the services to which they are entitled;

6.3.2.2 Courtesy: Citizens should be treated with courtesy and consideration; and

6.3.2.3 Service standards: Citizens should be told what level and quality of public services they will receive so that they are aware of what to expect.

## **6.4 Service Delivery Charter**

6.4.1 The Service Delivery Charter of the Department prescribes that, when applying for an ID document, South Africans are required to submit official application forms and other supporting documents, as well as provide fingerprints, at their local Department.

## **7. OBSERVATIONS**

7.1 The Department acknowledged receipt of the Complainant's application on 19 March 2007 and the complaint was brought to the attention of the Public Protector on 14 May 2008.

7.2 All the requisite information to process the Complainant's application was already at the disposal of the Department stored in a Digital Fingerprint Matching database, when the Complainant approached Public Protector.

7.3 Upon intervention by the Public Protector it took only a day to process and finalise the Complainant's application.

7.4 The Complainant was neither informed of timeframes within which her application would be finalised nor was she informed of the level of service that can be expected.

7.5 The Department unduly delayed in processing the Complainant's application, it took about a year before the matter was resolved.

7.6 The systems are in place, but the Department failed to capture the Complainant's application.

## **8. FINDINGS**

- 8.1 The Department of Home Affairs unduly delayed the processing of the complainant's ID application and such act constitutes maladministration.
- 8.2 The Complainant suffered prejudiced due to the delay by the Department in processing her application for the rectification of her ID document.

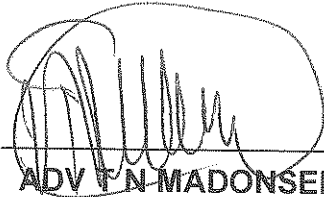
## **9. REMEDIAL ACTION**

- 9.1 Remedial action in terms of section 182(1)(c) of the Constitution and section 6(4) of the Public Protector Act:
- 9.1.1 The Complainant's application for rectification of her ID document was processed and finalised.
- 9.1.2 In addition to the above remedial action, the Department must extent an apology to the Complainant.
- 9.2 It is further recommended that the Director General of the Department takes steps to ensure that capturing of ID applications and compliance with turnaround times in the process relating to ID rectifications are monitored in the interest of service delivery.

## **10. MONITORING**

- 10.1 The Director General of the Department should submit a report regarding action to be taken in response to this report by 15 October 2010.
- 10.2 The Director General of the Department should submit a report indicating action taken with regard to implementation of this report by 30 November 2010.

10.3 The Public Protector will monitor the implementation process on an ongoing basis.



ADV F N MADONSELA

PUBLIC PROTECTOR OF THE  
REPUBLIC OF SOUTH AFRICA

Date: 09/10/2010

Assisted by Investigator: Ms N Gcolotela