



PUBLIC PROTECTOR
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NATIONAL OFFICE

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5 February 2002

Ms M Abreu
Legal Officer
C²I² Systems (Pty) Ltd

Fax: 021 683 5435

Dear Ms Abreu

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

Your request for access to certain records pertaining to the joint investigation of the Strategic Defence Procurement Packages, dated 15 January 2002, and received on 22 January 2002, has reference:

As a constitutional institution that supports our constitutional democracy, the Public Protector is, naturally, supportive of the upholding of the principles of openness and transparency. However, as is clearly provided by the provisions of section 181(2) of the Constitution, 1996, the office of the Public Protector is subject to the laws of the land. We, therefore, as far as any legislation and the common law are concerned, have to apply the law as it stands.

The provisions of the Promotion of Access to Information Act, 2000, (the Act) only apply in certain cases. Section 7 of the Act, for example, makes it clear that it does not apply to the record of a public body if the record is requested for the purpose of criminal or civil proceedings, so requested after the

commencement of such criminal or civil proceedings and if the production of or access to that record for that purpose is provided for in any other law.

As you are aware, Dr Young has indicated to the media and others on numerous occasions that he intends to institute civil action against the state in connection with the so called "arms deal" (we presume on behalf of C²I² Systems). Several such media reports appear on the website of C²I² Systems. Copies of only two are attached as examples. You will note that during his interview with PM Live on 16 November 2001, Dr Young stated very specifically (that was after the Report of the three investigating agencies was submitted to Parliament) that he intends taking legal action on the contents of the report. With reference to your request for access to information addressed to the Auditor-General, Dr Young was quoted by the Mail and Guardian of 11 January 2002 as having stated that he wants access to the drafts of the report "with a view to legal proceedings over his exclusion from the arms deal".

In the light of the above and in the absence of any information that indicates that Dr Young has not already commenced with his intended legal action, it cannot be determined whether or not the Act applies to your request and whether or not it should therefore be considered by our Information Officer. Once you have clarified this matter and should it be that the Act applies, your request will, subject to what is stated below, be considered by our Information Officer.

A further prerequisite for an application for access to information to be considered by the Information Officer of a public body is that the request **must** conform to the requirements as stated in section 11 of the Act. As you are aware, section 18 requires that the request for access must be made in

the prescribed form. Section 18(2) provides that the form **must**, at least require the requester concerned to (inter alia), if the request is made on behalf of a person, submit proof of the capacity in which the requester is making the request.

We have noted that you have stated, in your mentioned letter of 15 January 2002, that you act, in your request for access to the records of this office, on behalf of Dr Young and C²I² Systems. However, in Section 3 of the form that you attached reference is only made to C²I² Systems as the "person" requesting the record. As you appear to also act on behalf of Dr Young (we presume in his personal capacity and not as part of C²I² Systems) we are of the view that Section C of the form should also be completed. There is also no proof attached to the form of the capacity in which you have made the request of behalf of C²I² Systems and Dr Young, as is required by the Act. As your request for access to the records of the office of the Public Protector does not fully comply with the provisions of section 18 of the Act, it cannot be considered by the Information Officer at this point in time.

In your e-mail of 30 January 2002 you tendered the prescribed access fee without indicating whether it was done on behalf of C²I² Systems or Dr Young or both. Be that as it may, we are of the view that, in terms of section 29 of the Act, payment of the access fee is only required once a decision to grant access has been taken by the Information Officer and the requester has been notified accordingly. Tendering the access fee at this stage is therefore premature.

Kindly note that all future correspondence, other than in connection with your request for access to records, should be addressed to the State Attorney, as indicated to Dr Young in my letter addressed to him on 9 January 2002.

To prevent any delays in our further communication in respect of your request for access to information, it is suggested that you fax your response (if any) to this letter to 012 320 1772.

Yours faithfully


ADV C H FOURIE
CHIEF INVESTIGATOR

State could be Sued after Arms Deal Inquiry

Publication	The Star
Date	2001-08-29
Reporter	sapa
Web Link	www.iol.co.za

The outcome of the probe into South Africa's arms deal could prompt a large lawsuit against the state, a private defence contractor said on Wednesday.

Richard Young confirmed that he had considered suing the state for between R100-million and R200-million over alleged irregularities in the procurement of the defence package.

Asked on Wednesday at the Pretoria hearings into the arms deal whether he still intended going to court, Young said: "That will depend on the outcome of this investigation."

Young is managing director of Communications Computer Intelligence Integration Systems (CCII), a Cape Town-based information technology company.

Those implicated had a right to testify again

He contends there were irregularities in the awarding of a R40-million tender for information management systems used in the four corvettes that South Africa bought under the arms package.

CCII was named the preferred supplier of these systems, Young claims. The tender was, however, awarded to French company Detexis.

Detexis is the sister company of African Defence Systems (ADS), of which arms acquisition head Chippy Shaik's brother, Schabir, is a director.

Young on Wednesday confirmed he told a newspaper in January he would seek legal remedy for his alleged loss if the matter was not probed by the Special Investigating Unit, at the time headed by Willem Heath.

During cross-examination Martin Kriegler, for ADS, said: "Eight months have gone by and you still haven't gone to court."

Young replied he had postponed the matter when the probe was referred to three state investigating agencies.

The chairperson of the panel, Public Protector Selby Baqwa, agreed that those implicated had a right to testify again.

The hearing continues.

With acknowledgment to Sapa and The Star.

Dr Richard Young re the Arms Deal Report

Radio Station	SAfm
Program	PM Live
Date	2001-11-16
Web Link	www.safm.co.za

The Scorpions' investigative unit has struck again. This time they pounced on a bidding contractor in the arms deal and brother of a top defence department official. Sipho Ngwema, spokesperson for the National Directorate of Public Prosecutions, had this to say, "We still believe that he stole those documents that's why they are charging him for theft, they will also try charging him alternatively for contravention of the Protection of Information Act."

Reporter: "I wonder if you could just give us an idea of how serious these charges are...theft. What about the Protection of Information Act. How seriously is this taken?"

Sipho Ngwema: "Extremely serious. Nobody - no private citizen has the right to have top classified government documents. That includes cabinet minutes. Nobody has the right to have cabinet minutes. How did he get hold of those cabinet minutes. And two, those meetings discussed the arms procurement process for which he was going to tender. So, it is extremely serious that he came into possession of highly classified cabinet documents."

Reporter: "Mr Sipho Ngwema, could you tell us whether Chippy Shaik, his brother, in his role as Chief of Acquisitions in the Department of Defence, would he have had access to those documents at all?"

Sipho Ngwema: "Yes, he was present at some of those meetings which are reflected in those documents."

Reporter: "But he wouldn't have been able to access those documents, would he?"

Sipho Ngwema: "He would have, yes."

Reporter: "He would have. So, is there a possibility that his brother might be arrested, that Chippy Shaik, might be arrested?"

Sipho Ngwema: "We are still investigating it. Don't know if we got him

Shabir Shaik handed himself to the Scorpions this morning and was charged in the Durban Magistrates Court on the charge of theft related to him being in possession of secret government documents related to the procurement process.

Reporter: Shabir Shaik is the brother of top defence official, Chippy Shaik. Last month the Scorpions raided his luxury penthouse on the Durban beach front and his offices on the Esplanade and confiscated loads of documents. Some of the documents, allegedly secret minutes of government cabinet meetings, were seized and are being used in evidence against him. They were apparently classified government documents and were found in his bedroom cupboard. The raid on his flat was conducted in conjunction with raids on his business interests in France and Mauritius. This morning Shaik was whisked into court by the Scorpions, but later agreed to walk out of court for the media. He said he found it surprising that the investigations were focussed on his two percent interest of the total deal. "We are putting so much of tax payers money in pursuing two percent of the so-called

conflicts of interest. What's happened to the other 98 percent interest? Are the investigations going on? I believe... I'd like to think they are going on. Will there be arrests? Well, I certainly hope not, but I'd like that the auditor-general really probe these kind of issues and let South African citizens like myself and business people like ourselves when he moves forward in his investigation. We would be very willing to assist him."

Shabir Shaik, who is the director of several companies with substantial interest in this country, was released on bail of R1 000. His attorney told the court that shares in the company runs into millions of rands. The Scorpions are tight lipped on their next move. Many others are however bracing themselves for the Scorpion's sting.

We spoke to Richard Young from C²I² Systems. He is the MD of the company who alleged widespread flaws and inconsistencies in the evaluation of bids and threatened legal action against the state. Young lost out on a multimillion rand contract for the supply of a combat suit for corvettes on the arms deal, he said he had evidence of irregularities in the awarding of the contract. We asked him what he thinks of the outcome of the investigation into the arms deal.

Richard: "I'm extremely, extremely disappointed with the findings. In fact, I don't consider the findings under the subsection "Findings" to be findings at all, but there are some absolute gems in the main body of that section. And the other thing that I'm a bit disappointed about is that despite Shauket Fakie saying that each and every chapter had it's own key findings and recommendations, Chapter 11 has no recommendations whatsoever. That section of the report had no teeth at all."

Reporter: "You were hearing from the opposition party saying it's a white wash, it's a stage managed act, would you concur?"

Richard: "Absolutely. In fact I know, and I'm not going to tell you how I know, but there were different authors to the report - and I only have personal knowledge of my particular section - but the people who wrote the detail of the report had no contribution to the so-called subsection or section findings. So, it is stage-managed in that they actually got somebody else to go through the first or the first set of drafts and to sanitise it in such a way that it was more appetising for the government and I suppose for the electorate."

Reporter: "Your view that the arms procurement deal is going to go ahead regardless?"

Richard: "That doesn't surprise me at all in terms of the prime contract. The prime contracts have always been couched in the term *strategic procurement / strategic acquisitions*. And once you couch the acquisitions in those words, it means the government, the executive can basically make any decisions they like."

Reporter: "You were talking about legal actions some weeks ago. Are you still considering that?"

Richard: "Absolutely. Now that I've gone through the body of Chapter 11, I invite anybody to go and look at it for themselves. Not the findings, the findings are a complete waste of time, but you can see in there that there is absolute grounds for follow-up legal actions."

That is Richard Young, MD of C²I² Systems in Cape Town.

With acknowledgement to SAfm PM Live.