



## environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

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Reference: PAIA188384  
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Per Email: tloyd@cer.org.za;  
maidoo@cer.org.za

Dear Mr Lloyd

### **REQUEST FOR ACCESS TO INFORMATION RELATING TO A PRE-COMPLIANCE NOTICE, ESKOM'S REPRESENTATIONS (INCLUDING AN ACTION PLAN) MADE IN RESPONSE TO SUCH PRE-COMPLIANCE NOTICE AND PROGRESS/COMPLIANCE VERIFICATION DOCUMENTS RELATED THERETO IN RESPECT OF THE KENDAL AND CAMDEN COAL-FIRED POWER STATIONS**

1. Your application for access to information in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) ("PAIA") dated 10 October 2019 and for which payment was made on 21 October 2019, has reference.
2. You have specifically made the following request for information:
  - A. ***In the National Environmental Compliance and Enforcement Report 2018/19 It was reported that a pre-compliance notice (PCN) was issued by Environmental Management Inspectors (EMIs) in the Department of Environment, Forestry and Fisheries (the Department) to Eskom Holdings (Pty) Limited (Eskom) in respect of the Kendal coal-fired power station on 9 November 2018, that representations were received by Eskom on 31 January 2019 and that these representations included an action plan proposed by Eskom.***

***In the light of the above, the following documents are requested:***

- i. ***A copy of the PCN issued by EMIs (the Department) to Eskom in respect of the Kendal power station dated 9 November 2018.***
- ii. ***A copy of the representations received by EMIs (the Department) from Eskom dated 31 January 2019.***
- iii. ***A copy of the action plan proposed by Eskom which was reportedly attached to, or formed part of, the representations referred to above.***
- iv. ***Any and all progress reports, emissions reports, or other documents showing Eskom's compliance or lack of compliance with the action plan referred to above, received by EMIs (the Department) from Eskom during the period of 31 January 2019 to the date.***

**B. In the National Environmental Compliance and Enforcement Report 2018/19 It was reported that a PCN was issued by EMI in the Department to Eskom in respect of the Camden coal fired power station during August 2018, that representations were received by Eskom during October 2018 and that these representations included an action plan proposed by Eskom. In the light of the above, the following documents are requested:**

- I. A copy of the PCN issued by EMI (the Department) to Eskom in respect of the Camden power station during August 2018.**
- II. A copy of the representations received by EMI (the Department) from Eskom during October 2018.**
- III. A copy of the action plan proposed by Eskom which was reportedly attached to, or formed part of, the representations referred to above.**
- IV. Any and all progress reports, emissions reports, or other documents showing Eskom's compliance or lack of compliance with the action plan referred to above, received by EMI (the Department) from Eskom during the period of October 2018 to date.**

3. I have duly considered your request and upon perusal of the requested records, I have realised that the requested records fall within the ambit of sections 44(1)(a)(ii) and 44(2)(c) of PAIA. Section 44(1)(a)(ii) of PAIA states that:-

*"(1) Subject to subsections (3) and (4), the information officer of a public body may refuse a request for access to a record of the body-*

*(a) if the record contains-*

*(i) .....; or*

*(ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or ..."*

4. Section 44(2)(c) of PAIA further provides that:-

*"(2) Subject to subsections (4), the information officer of a public body may refuse a request for access to a record of the body if-*

*(a).....;*

*(b).....; or*

*(c) the record contains a preliminary, working or other draft of an official of a public body."*

5. In light of the provisions of sections 44(1)(a)(ii) and 44(2)(c) of PAIA quoted above, I have decided to refuse your request for access to information. The requested records contain accounts of consultation, discussion or deliberation that have occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law as contemplated in terms of section 44(1)(a)(ii) of PAIA. The Pre-Compliance Notice, representations received from ESKOM and minutes of any meetings held on this matter are records that contain accounts of a consultation, discussion or deliberation that have occurred for the purpose of assisting to take a decision on whether or not to issue a final compliance notice to ESKOM.

6. Furthermore, the requested records are also records containing a preliminary, working or other draft of an official of a public body as contemplated in section 44(2)(c) of PAIA. The Pre-Compliance Notice is a working document which contains draft instructions that may or may not lead to final enforcement action being taken.

7. Should you wish to appeal this decision you are referred to sections 74 and 75 of PAIA which allows you to lodge an internal appeal in the prescribed form to the Information Officer of the Department within sixty (60) days. The subject and reasons for the internal appeal must be clearly indicated.

Yours faithfully



**DEPUTY INFORMATION OFFICER  
DEPUTY DIRECTOR-GENERAL: REGULATORY COMPLIANCE AND SECTOR MONITORING  
DEPARTMENT OF ENVIRONMENTAL AFFAIRS  
473 STEVE BIKO**

**ARCADIA  
PRETORIA**

**0083**

**DATE:**

01/11/2019