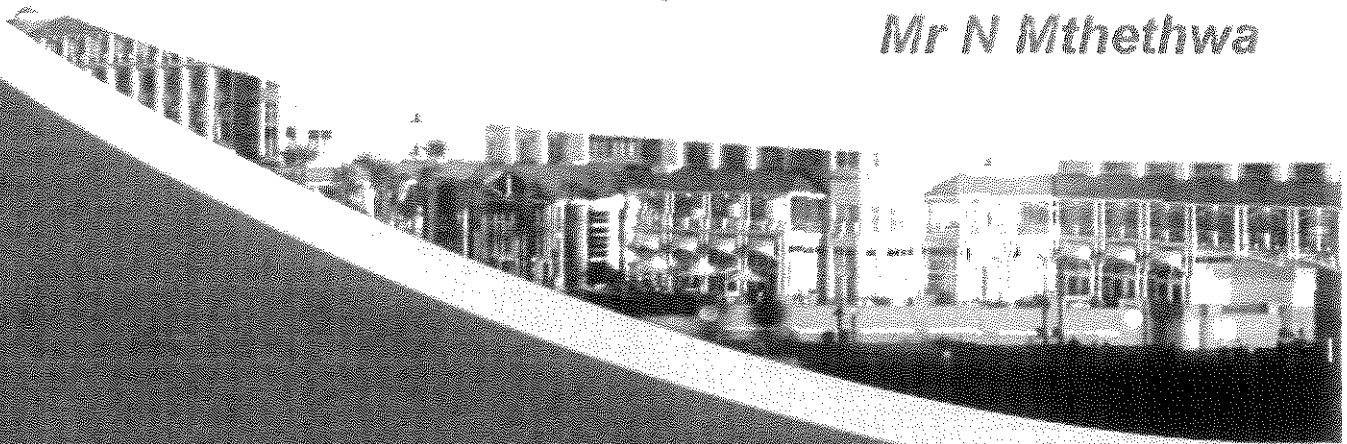


PUBLIC PROTECTOR
SOUTH AFRICA

'FIVE STAR ACCOMMODATION'

***Report No. 7 Of 2011/12: An investigation into an
allegation of a breach of the Executive Members'
Ethics Code by the Minister of Police,
Mr N Mthethwa***



Accountability • Integrity • Responsiveness

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 3(2) OF
THE EXECUTIVE MEMBERS' ETHICS ACT, 1998**



REPORT NO 7 OF 2011/12

The ethics of staying in comfort

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF A BREACH OF THE
EXECUTIVE ETHICS CODE BY THE MINISTER OF POLICE, MR N MTHETHWA**

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Executive Summary

- (i) Mr H Hoosen MP (the complainant) submitted a complaint in writing to the Public Protector in terms of section 3(1) of the Executive Members Ethics Act. The complainant is a member of the National Assembly and the Secretary General of the Independent Democrats.
- (ii) Complainant made the following allegations:
 - (a) During the months of October and November 2009, several reports surfaced in the media regarding the exorbitant expenditure of the Minister of Police (the Minister) in respect of hotel expenses at the Hilton Hotel in Durban and the Table Bay Hotel in Cape Town;
 - (b) Collectively the expenditure was in excess of R700 000 for hotel expenditure during *inter alia* Christmas 2008, New Year 2009 and Valentine's Day 2009;
 - (c) The Minister might have accommodated guests or staff members who did not qualify for such facilities at the state's expense in terms of the provisions of the Ministerial Handbook;
 - (d) During the period of the Hilton Hotel booking the Minister might have been absent for short periods and the state incurred expenditure for guests or staff members who did not qualify for such a facility in terms of the Ministerial Handbook during his absence;
 - (e) The Minister might have incurred expenditure on the state's behalf for accommodation not deemed to have been used during official business;
 - (f) The complainant was therefore of the view that the Minister might have breached provisions of the Executive Ethics Code (the Code) issued in terms of the Executive Members Ethics Act 82 of 1998 (the Executive Members Ethics Act).
- (iii) The Minister would have to have done one or more of the following to be able to say that he breached the Code:

- (a) Acted inconsistently with the integrity of his Office;
 - (b) Disregarded the administrative rules that apply to allowances or payments;
 - (c) Acted in bad faith and not in the interest of good governance;
 - (d) Acted in a way inconsistent with his Office;
 - (e) Used his position to enrich himself; or
 - (f) Used his position to benefit improperly any other person.
- (iv) The Public Protector found that:

General findings

- (a) The accommodation expenses for the Ministry of Police at the Table Bay and Hilton came to R734 448;
- (b) The Minister was entitled to accommodation at State expense in Cape Town when he had to vacate his official residence during May to July 2009 because of repairs being done to the residence;
- (c) The Minister was on official business in Durban intermittently from 19 December 2008 to 25 April 2009, including on Christmas and New Year and over weekends, and therefore entitled to stay at a hotel in Durban at State expense;
- (d) The Minister was not entitled to stay at a five-star hotel unless the tariffs of that hotel were reasonable with reference to other five-star hotels, otherwise the injunctions of the Handbook that accommodation expenses should be reasonable and kept as low as possible were not adhered to;
- (e) However, the Minister left the accommodation arrangements and the choice of hotels to his staff as he was entitled to do. The element of knowledge that the hotel tariffs could be regarded as unreasonable could therefore not be said to be present in the case of the Minister;
- (f) No evidence was forthcoming indicating that the Minister influenced accommodation arrangements in any way to have him put up in the Table Bay or the Hilton;

- (g) No evidence was forthcoming indicating that the Minister influenced accommodation arrangements in any way to have staff put up in the Table Bay or the Hilton;
- (h) The financial responsibilities of the Minister were not such that it could be argued that he should have been aware of irregularities regarding accommodation expenses;
- (i) When the Minister became aware of irregularities regarding accommodation arrangements, he instructed an investigation. When the investigation report became available he instructed implementation of the recommendations of the report;
- (j) On the itineraries, no periods could be identified that the Minister was absent while staff remained in the Hilton;

Specific findings

- (k) The amount spent on the Minister and his entourage's accommodation was unreasonably high and did not comply with the requirements of paragraph 7.2.5 of the Handbook which requires not only that one can make use of hotels that suit the status of ministers, but also that the accommodation expenses should be reasonable and kept as low as possible;
 - (l) The lapse of judgment was enabled by the absence of clear guidelines in the Handbook on what constitutes a reasonable tariff;
 - (m) The Minister was not aware of the amounts involved and as soon as he became aware took appropriate corrective action
 - (n) The Minister did not act in breach of any of the provisions of the Code with regard to his stay in the Table Bay or Hilton.
-
- (v) It was concluded that since the Minister did not act in breach of any of the provisions of the Code, no further action against the Minister would be required.
 - (vi) It was recommended that the Minister's exemplary example of not having his staff book him into five-star hotels unless it is absolutely necessary, be considered by Cabinet as the norm for ministerial accommodation, and included in the Handbook.

- (vii) It was noted that officials of Legal Services in the Ministry of Public Service and Administration were in the process of reviewing the Handbook. It was recommended that the following suggestions made to the Chief Director: Legal Services in the Ministry of Public Service and Administration should be taken into account during the review of the Handbook:
- (a) The wording of the Code in Chapter 1 of the Handbook should be brought in line with the wording of the Code itself; and
 - (b) The oversight in the Handbook of not specifically dealing with the standard for domestic accommodation should be rectified.
- (viii) Consideration should be given to the publication of annual or biennial tariffs for ministers similar to subsistence and travel guides to guide optimal accommodation.
- (ix) The process of the review of the Handbook should be expedited to provide clarity on ethical considerations regarding executive accommodation, particularly in the current climate of fiscal challenges.
- (x) It was suggested that ministers should familiarize themselves with the provisions of the Handbook and be sensitive to whether or not staff adhered to the Handbook for the reasons set out in paragraph 8.32 of the report.

REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF A BREACH OF THE EXECUTIVE ETHICS CODE BY THE MINISTER OF POLICE, MR N MTHETHWA

1. INTRODUCTION

- 1.1 This report is submitted to the President of the Republic of South Africa in terms of the provisions of section 3(2) of the Executive Members Ethics Act 82 of 1998 (the Executive Members Ethics Act).
- 1.2 The report relates to an investigation into an allegation of a breach of the Executive Ethics Code (the Code) by the Minister of Police, Mr N Mthethwa (the Minister), concerning alleged expenses for accommodation in excess of R700 000.

2. THE COMPLAINT

- 2.1 Mr H Hoosen MP submitted a complaint in writing to the Public Protector in terms of section 3(1) of the Executive Members Ethics Act. The complaint was dated 19 October 2009 and received on 20 October 2009.
- 2.2 Mr Hoosen (the complainant) is a member of the National Assembly and the Secretary General of the Independent Democrats.
- 2.3 He requested the Public Protector in terms of section 3(1) of the Executive Members Ethics Act to investigate whether or not the Minister had contravened the provisions of the Code or any other relevant legislation in view of the allegation that the Minister had spent in excess of R700 000 towards accommodation for himself and unknown guests or staff at two five star luxury hotels in Cape Town and Durban. He referred to recent media reports in this regard.

3. MEDIA REPORTS

- 3.1 During October 2009 media reports¹ referred to the Minister incurring extravagant expenses for hotel accommodation.
- 3.2 In short the media reported as follows:
- 3.2.1 From 19 December 2008 to 25 April 2009 the Minister was intermittently booked into the luxurious Hilton Hotel in Durban along with members of his VIP Protection Unit;
- 3.2.2 The cost came to R578 499;
- 3.2.3 The Minister also stayed in Cape Town's five-star Table Bay Hotel for 17 days between May and July 2009;
- 3.2.4 The cost in this case came to R234 902.

4. JURISDICTION OF THE PUBLIC PROTECTOR

- 4.1 Section 182(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution) provides that the Public Protector has the power 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. It further mandates the Public Protector to report on the conduct investigated, and to take appropriate remedial action.
- 4.2 Section 182(2) of the Constitution provides that the Public Protector has the additional powers and functions prescribed by national legislation.
- 4.3 Such additional functions were prescribed by the Executive Members Ethics Act. Sections 3(1) and 4(1)(a) of the latter Act *inter alia* provide that the Public Protector

¹ Beeld of 9 October 2009 at www.beeld.com "Hy wis nie hotel is duur"; Iafrika at news.iafrica.com.sa/1970400 "Mthethwa's five-star spree"; Mail & Guardian online at www.mg.co.za/article/2009-10-19 "Mthethwa racks up another massive hotel bill"; Pretoria News of 19 October 2009 "Minister racks up R500 000 hotel bill" as reported on www.iol.co.za

must investigate any alleged breach of the Code (published by the President in terms of section 2(1) of the Executive Members Ethics Act) on receipt of a complaint by a member of the National Assembly against a member of Cabinet.

- 4.4 The Public Protector therefore had the necessary powers to investigate the matter raised by the complainant, and was indeed obliged to do so.

5. BACKGROUND

- 5.1 The Minister was informed of the investigation in a letter dated 6 November 2009.
- 5.2 The National Commissioner of Police, General B Cele (in his capacity of Accounting Officer), was requested in a letter dated 12 November 2009 to provide relevant documentation to the Public Protector to enable the Public Protector to consider the merits of the allegations. The Personal Assistant of the acting National Commissioner indicated that General Cele would be back at his office on 23 November 2009, when the request would be brought to his attention.
- 5.3 In terms of section 3(2) of the Executive Members' Ethics Act the Public Protector must submit a report on the alleged breach of the Code within 30 days of receipt of the complaint. Since the necessary information had not yet reached me by 20 November 2010, I submitted an interim report (Report No 30 of 2009/10) to the President explaining the situation, and indicating that a final report would be submitted on completion of the investigation.
- 5.4 The National Commissioner responded to a request for information dated 12 November 2009 in a letter dated 25 November 2009. He requested the following information "in order to fully consider" the request:
- 5.4.1 The exact nature of the complaint in respect of which the investigation was conducted;

- 5.4.2 The specific provisions of the Executive Members Ethics Act, or the Code, which had allegedly been contravened; and
- 5.4.3 Information on how the Act or Code had allegedly been contravened.
- 5.5 The complainant was requested for further details in view of the request of the National Commissioner in a letter dated 17 December 2009, which was sent to the complainant on 8 January 2010.
- 5.6 The complainant reacted as follows in a letter 14 January 2010 (received on 28 January):
- 5.6.1 During the months of October and November 2009, several reports surfaced in the media regarding the exorbitant expenditure of the Minister in respect of hotel expenses at the Hilton Hotel in Durban and the Table Bay Hotel in Cape Town;
- 5.6.2 Collectively the alleged expenditure was in excess of R700 000 for hotel expenditure during Christmas 2008, New Year 2009 and Valentine's Day 2009;
- 5.6.3 It was alleged that the Minister might have accommodated guests or staff members who did not qualify for such facilities at the state's expense in terms of the provisions of the Ministerial Handbook;
- 5.6.4 It was alleged that during the period of the Hilton Hotel booking the Minister might have been absent for short periods and the state incurred expenditure for guests or staff members who did not qualify for such a facility in terms of the Ministerial Handbook during his absence;
- 5.6.5 It was alleged that the Minister might have incurred expenditure on the state's behalf for accommodation not deemed to have been used during official business;

5.6.6 The complainant was therefore of the view that the Minister might have breached the following provisions:

- 5.6.6.1 Paragraph 2.1(d) or paragraph 2.3(g) of Chapter 1 of the Code of Ethics;
- 5.6.6.2 Paragraph 7.2.5 of Chapter 3 of the Code of Ethics (sic);
- 5.6.6.3 Section 2(2)(b)(v) of the Executive Members Ethics Act.

5.7 A letter dated 17 February 2010 was addressed to the Minister giving the background of the correspondence with the National Commissioner, passing on the further particulars received from the complainant, and requesting the Minister to ensure that the National Commissioner supplied the information required, since it was believed that the further particulars provided would put the Commissioner in a position to do so.

5.8 A reminder to the Minister followed on 9 March 2010. Since no response was received from the Minister a meeting to discuss the investigation was requested with the Minister. This eventually led to a meeting with the Chief State Law Adviser (on behalf of the Minister) on 7 June 2010, who agreed to discuss the matter with the Minister as soon as possible and to provide the requested information.

5.9 Towards the end of July 2010, a bundle of documents was received by the Public Protector from the Minister personally. The Minister also apologized for the time it took to respond, and explained that it was due to a miscommunication on their side.

5.10 Regrettably the investigator's programme at that stage was such that the matter could not be taken further immediately, and the investigator was then taken ill for a substantial period.

5.11 The investigation was taken further when the investigator interviewed the Secretary of Police, Ms J Irish-Qhobosheane, on 2 February 2011 and the Chief Financial Officer of the Police, Lt-gen SJP Schutte, on 11 February 2011.

5.12 The Secretary of Police subsequently made further documentation available to me.

6. THE INVESTIGATION

Key sources of information

6.1 The key sources of information for the investigation were:

6.1.1 Documentation made available by the Minister of Police, namely:

6.1.1.1 A document entitled "Points to be made regarding the Minister of Police Travel Account";

6.1.1.2 New travel policy for the Ministry of Police (unsigned);

6.1.1.3 Itineraries, internal memoranda and order forms for expenditure at the Hilton Hotel during the period 19 December 2008 to 25 April 2009;

6.1.2 Documentation made available by the Secretary of Police:

6.1.2.1 Summary of Finding related to the Investigation into the Accommodation at the Table Bay Hotel;

6.1.2.2 Travel Policy for the Ministry of Police, signed by the Minister on 20 November 2009 and effective from 1 December 2009;

6.1.2.3 List of hotels visited by the Minister after 3 September 2009; and

6.1.2.4 Documentation regarding expenditure at the Table Bay Hotel during the period 18 May to 5 July 2009;

6.1.3 Interview with the Secretary of Police (Secretary);

6.1.4 Interview with the Chief Financial Officer of the Police (CFO);

6.1.5 Media reports; and

6.1.6 Meeting with the Chief State Law Advisor.

Summary of the investigation process and evidence

- 6.2 The investigation approach was to peruse the documentation received from the Police, and to confirm, clarify, question or add to what appeared from the documentation during the interviews with the Secretary and the CFO. Since the present Chief of Staff was a recent appointment, it was not considered necessary to interview him.
- 6.3 A provisional report was made available to the Minister, Secretary and CFO on 2 June 2011. The purpose was to give them a final opportunity, before finalizing the report, to comment on any factual errors or errors in law there might have been in the provisional report. The Secretary and CFO suggested a few minor semantic corrections, and the Minister had no comments.
- 6.4 The complainant requested copies of the documentation the Police made available to the Public Protector, as well as an extension of the deadline for comments. His request was primarily based on his concern that a written answer the Police provided in September 2009 on a question of the DA in the National Assembly, differed from the evidence in the provisional report. Although this issue was not addressed in the provisional report (since it was not thought to take the issue of a contravention of the Code any further), it was dealt with by the Secretary in her report on her investigation into the accommodation at the Table Bay Hotel, dated 2 November 2009. In view of the concerns of the complainant the said written answer was then dealt with in paragraphs 6.26 to 6.28 below.
- 6.5 The complainant also wanted to peruse the documentation since he might be able to make further deductions from it, which in turn might lead to the further improvement of the procedures in the ministry. However, he indicated that he did not think that anything would come up that would change the conclusions of the Public Protector on the

Minister's alleged contravention of the Code. He therefore left it for the Public Protector to decide on whether or not to further delay the issuing of a final report by giving him the opportunity to peruse the documentation.

- 6.6 It was decided not to delay the final report any longer for the following reasons:
- 6.6.1 The purpose of making the provisional report available was to obtain inputs within the personal knowledge of the recipients, and not for them to review the investigation of the Public Protector;
 - 6.6.2 The complainant's indication that he did not think that anything would come up that would change the conclusions of the Public Protector on the Minister's alleged contravention of the Code; and
 - 6.6.3 The concern regarding the answer to the National Assembly was addressed in this final report in paragraph 6.26 to 6.28.
- 6.7 The complainant requested, in the event of not extending the deadline for comments on the provisional report, that it be recorded that he was unable to respond to the invitation to make inputs in a satisfactory manner as he was not in possession of the key sources of information and relevant supporting documentation that was made available to the Public Protector.
- 6.8 Although the stay in the Hilton Hotel happened before the stay in Table Bay Hotel, the summary of evidence firstly deals with the Table Bay stay. The reason for this is that the Secretary picked up on irregularities that took place regarding the stay in the Table Bay and undertook an internal investigation into the Table Bay, and that the Hilton only came to the fore at a later stage through media reports.

Table Bay Hotel expenses

6.9 According to the invoices, the Minister was booked in at the five-star Table Bay Hotel in Cape Town during May to July 2009 for a total of 26 days. The specific dates were as follows:

6.9.1 18 to 23 May 2009;

6.9.2 1 to 8 June 2009;

6.9.3 8 to 12 June 2009;

6.9.4 14 to 19 June 2009;

6.9.5 23 to 26 June 2009; and

6.9.6 3 to 5 July 2009.

6.10 The accommodation expenses for this period came to the following:

6.10.1 Minister only: R128 145;

6.10.2 All Ministerial staff and office bearers: R301 515.

6.11 The Minister was put up in the Table Bay since his official residence in Cape Town was not habitable due to serious flood damage.

6.12 The flood damage was brought to the attention of the Department of Public Works (Public Works), but since they had a backlog of repairs to attend to, it was agreed that the Police would assist and bring in contractors to fix the damage. The Minister was then required to move out of the house until the damage had been repaired.

6.13 At the time the ministerial staff went ahead to book the Minister into the Table Bay, without referring the matter to Public Works, which should have been done. Thus Public Works later refused to pay for the Table Bay expenses and indicated that it could not retrospectively authorize the Table Bay stay. It therefore had to be paid for from the budget of the Minister. The investigation established that the Minister was not involved with these arrangements and merely reported the problem with his official residence to the Police. In the view of the Secretary the fact that the matter had not been referred to

Public Works could be attributed to a combination of the Police taking responsibility for the repair of the damage to the official residence and the new incoming Personal Assistant to the Minister not understanding the processes to be followed.

- 6.14 The State provides an official residence for the Minister in Pretoria and one in Cape Town since these are the main centers where he works. His actual home is in KwaMthethwa in the north-east of KwaZulu-Natal. Because the State is responsible to provide an official residence in Cape Town the Minister also has to be provided with alternative accommodation when he cannot live in the official residence. The Minister pays for his official residence in Cape Town according to a prescribed formula, and this also confirms the responsibility of the State to provide alternative accommodation when the official residence is not available.
- 6.15 At the time the Minister was commuting between Cape Town and Pretoria which explains why he was booked into the Table Bay intermittently.

Investigation by the Secretary of Police

- 6.16 The Secretary joined the department as Secretary of Police on 1 September 2009. She became aware of issues surrounding the Table Bay bills when someone in the Police alerted her to it soon after she took office. On the same day she sat with the Minister to discuss the information. This was specifically about the Table Bay, since the Secretary only became aware of the Hilton expenses at a later stage after it was reported in the media.
- 6.17 On 4 September 2009, and in response to the information provided by the Secretary, the Minister requested the Secretary to undertake an investigation into the accounts and travel bills related to the stay in the Table Bay Hotel. This was before the matter was raised in the media during October of 2009.

- 6.18 At this stage already the Minister instructed that no person in the Ministry would travel without the prior authorization of the Secretary, and the travel agents serving the Ministry were requested to seek this authorization before finalizing any booking, including bookings for the Minister. This was a precautionary step to ensure proper control of expenditure until the difficulties surrounding travel arrangements could be identified and systems put in place to prevent future occurrences. Another reason for the arrangement regarding the Minister's bookings was that the Minister wanted someone who would be very sensitive to where he was to stay to authorize bookings made for him.
- 6.19 The Secretary provided the Minister with a report dated 2 November 2009. A new Chief of Staff was appointed at the Ministry at the time of the Secretary's investigation. It was agreed with the incoming Chief of Staff that as the Secretary identified problems they would be rectified immediately, and not to wait for finalization of her investigation.
- 6.20 It emerged from the Secretary's report that the Minister was accommodated in the presidential suite of the Table Bay for one night. However, this was at the expense of the Table Bay because the hotel had no other rooms available. The Minister was not charged extra for the upgrade.
- 6.21 The Secretary's report also identified discrepancies in the Table Bay billing that could not be accounted for in relation to the Minister's stay at the Table Bay. These discrepancies related to the use of the mini bar at times when the Minister could not have been at the hotel since he was in Parliament – the Minister also does not take alcohol. The problem was that no-one checked the bills on the Minister's departure, and it was impossible to identify later who was responsible for the discrepancies.
- 6.22 The Secretary's report identified that there were no proper systems and procedures in place regarding the travel of staff members and protectors who accompanied the Minister. Although the Police had an extensive set of travel and subsistence prescripts, these did not apply to the Minister, to whom the Ministerial Handbook gives direction.

The staff in the Ministry, as well as the Minister's protectors, were all civil servants. Their subsistence was primarily guided by the Ministerial Handbook, and secondly the Police prescripts would be applicable. If an official accompanied the Minister then the Ministerial Handbook applied, but not if that official was travelling without the Minister.

- 6.23 The Secretary's report further identified irregularities with the approval of the accounts. The Ministry was a separate cost centre within the budget of the Police. This meant that they received their own budget from the Police and had to manage their expenditure within this budget. This also meant that they had to authorize accommodation expenditure.
- 6.24 There was one staff member in particular who was responsible for the approval of the accounts, and who did not adhere to government prescripts in this regard. Nor were accounts queried when a basic review of these accounts would have showed up irregularities. This staff member, and the manager in the Ministry ultimately responsible for proper processes and procedures regarding expenditure, allowed certain travel policies to be violated without informing the Minister.
- 6.25 For the sake of completeness it should be pointed out that the Secretary's report also dealt with the booking of the Deputy Minister at the Table Bay during the period 18 to 22 May 2009. Certain problems were also identified regarding the Deputy Minister's stay similar to the ones mentioned above. The Deputy Minister was accommodated at the Table Bay since the official housing to which he was entitled in Cape Town had not been finalized.
- 6.26 Another issue the Secretary dealt with in her report concerns a question Ms D Kohler-Barnard, MP, of the DA put to the Minister for a written reply. The question was recorded as question 748 in the Internal Question Paper No 9 of 2009 of the National Assembly. It was published on 14 August 2009 and answered early September 2009. The question was whether or not the Minister or any other official stayed at the Table Bay Hotel in the months of May, June and July 2009, and if so, to provide details.

During the Secretary's investigation, when going through the bills it appeared that some aspects of the answer were not particularly correct. The Secretary referred to the following in her report:

- 6.26.1 The Police answered that the Minister stayed in the presidential suite. The Secretary pointed out that this was not correct since all the bills for the Minister's accommodation reflected that the Minister stayed in luxury suits and there was no bill that referred to accommodation in the presidential suite. She indicated that the Minister actually spent one night in the presidential suite and that that was an upgrade on the part of the Table Bay because of a booking problem. It was done at no extra cost to the state;
 - 6.26.2 There were certain omissions in the response prepared by the Police - some bills were left out; and
 - 6.26.3 There were certain inaccuracies in the Police's answer and some of the costs were inflated.
- 6.27 A perusal of the documentation provided to the Public Protector showed that in two cases the answer to the National Assembly inflated the cost of the actual bills somewhat, in two cases the cost indicated in the answer were lower than on the bills, in two cases the costs for officials were not included in the answer at all, and in the remaining five cases the costs reported in the answer were accurate. In the case of the Minister the May bills were not included in the answer. Overall the expenditure indicated in the bills was higher with R66 613 than indicated in the answer to Parliament.
- 6.28 Although the Secretary did not include any recommendations regarding the incorrect answers to the National Assembly in her report, she indicated during the interview with her that they had had some concerns on the way in which the Police answered Parliamentary questions in general. She did not believe that there had been any intention to mislead, but inaccuracies rather flowed from the way responses were packaged. These concerns were since addressed – the Secretary subsequently screened all responses before they went to Parliament. Since the questions were drafted for, and not by, the Minister; the Secretary did take steps to ensure quality

control of future answers to Parliament; and this report relied on the actual costs in the documentation and not on the information provided in the response to the question, it was not regarded necessary to canvass the issue of the answer to the National Assembly here further.

6.29 The Secretary's report pointed out that the lack of control identified in the report resulted in the following:

6.29.1 Three staff members (including one reporting to the Deputy Minister) were accommodated at the Table Bay for 4 nights each, whilst they were not entitled to stay at a five-star hotel. The two staff members reporting to the Minister were the former Chief of Staff and a special advisor to the Minister. They argued at the time that they were entitled to stay at the same hotel as the Minister since they had been working on the Minister's budget speech. However, their argument was not accepted. The Secretary indicated that the approach should be that staff only stay in the same hotel than the Minister (where the rates of the hotel were higher than that allowed for staff) in circumstances, for example, where staff had to work with the Minister late into the night and there would be no transport available to take them back to their hotels;

6.29.2 Accommodation was paid for and not used on at least two occasions, both on 1 June 2009 – once for the former Chief of Staff and once for the Deputy Minister. These individuals (in the case of the Deputy Minister, staff in his office) were responsible for the cancellation of the bookings where they did not need the accommodation any longer, but bookings were not cancelled;

6.29.3 Irregular billing on the Minister's account was not picked up in time;

6.29.4 Extra expenses incurred by staff were incorrectly charged to the Ministry's account, whilst those staff members were entitled to claim subsistence allowance. (In the case of the protectors this was also taken up with the senior management of the SAPS VIP Protection Section); and

6.29.5 On one occasion protectors were accommodated in a suite more expensive than the accommodation of the Minister. It was a requirement that protectors were accommodated in close proximity to the Minister, depending on what rooms were available in the hotel. However, in this particular instance the travel agents beforehand sent an e-mail to the staff member approving the accounts alerting her to the high costs that would be incurred for the protectors should the Ministry go ahead with the booking, since cheaper rooms were not available. The staff member failed to respond to the e-mail, or to alert the Chief of Staff or Minister that there was a problem in this regard.

6.30 The above led to an amount of R73 700² being paid that could be attributed to expenses that should not have occurred had proper systems and procedures been in place in the Ministry.

6.31 The Secretary indicated that the Auditor-General never reported on the above expenditure. However, she did raise it at a meeting with auditors of the Auditor-General, indicating that it had been exposed during her investigation, but that systems and a new policy had been put in place to prevent a repetition. The auditors at the time indicated that since the problem had been identified and corrected there was no further need for the Auditor-General to get involved.

6.32 The Secretary recommended the following in her report to the Minister:

6.32.1 The lack of clarity among Ministry staff regarding accommodation and travel policies should be rectified;

6.32.2 During the investigation the Police was requested to work with the Ministry and the Secretary to put in place proper procedures and processes for the Ministry. These processes were already in place at the time of reporting, and it was essential that the Chief of Staff and all Ministry staff ensure that these processes and procedures are

² The document "Points to be made regarding Minister of Police travel account" put this amount at more than R90 000.

followed at all times. The travel agents were also requested only to process orders for travel if the correct processes and procedures had been followed;

6.32.3 Staff from the finance section of the Police was asked to work with the Ministry to put strict systems in place for the monitoring of all travel expenses and that bills were scrutinized before payment;

6.32.4 The Minister's and Deputy Minister's Personal Assistants need to be more circumspect in the accommodation utilized for their principals and should take into account both public perception and cost to state;

6.32.5 Disciplinary action should be considered where there was clear negligence on the part of staff;

6.32.6 In future Public Works should address accommodation needs linked to official housing for the Minister.

6.33 The Minister thereupon issued oral instructions to the then Chief of Staff that the Secretary's report should be acted upon.

Steps taken in response to the Secretary's report

6.34 The Secretary considered steps against members of staff who had violated policy. She consulted a specialist labour lawyer in private practice who was known to her. It was by way of an informal meeting at no cost to the State and no written opinion was provided. The lawyer identified the following difficulties:

6.34.1 Disciplinary action could be taken against staff members still employed who allegedly violated procedures, but it would be pointless to try and proceed against staff who had resigned – the sanctions were all work related and how, for example, did one fire a person no longer in employ;

6.34.2 One could lay criminal charges where criminal conduct could be proved. However, since there had not been proper systems or procedures in place for more than 4 years prior to the Minister taking office, it would not be possible to prove intentional fraud on the part of staff.

- 6.35 At the time only the staff member responsible for the approval of the accounts was still employed. Her manager, who was ultimately responsible for proper processes and procedures, had resigned earlier on 1 August 2009, thus before the Secretary's investigation and indeed before the Secretary came on board.
- 6.36 A process was started to engage the remaining staff member. A meeting was set up with the Secretary indicating to her the issues picked up by the Secretary's investigation, and that she needed to give an account of these issues. The purpose of this request was to see whether or not there was a basis for disciplinary action against her. However, the member resigned and left the Ministry two days later.
- 6.37 Based on the findings in the Secretary's report, strict new policy and procedures were implemented in the Ministry to regulate travel arrangements. This policy was based on the Ministerial Handbook as well as the travel and accommodation policies of the Police, the DPSA and Treasury. The aim with the policy was to include in one policy all the prescripts applicable to Ministerial staff so that everyone would be well aware of what they were allowed and not allowed.
- 6.38 Two financial experts were also seconded from the Department to the Ministry, and together with a staff member from the office of the Secretary put financial systems in place to prevent irregularities going undetected in future. The Ministry also became strict with regard to who could stay where, and a ceiling was put on accommodation expenses for staff (presently R1 200 per day, but presently under consideration to be raised to R1 300 due to the escalation in hotel rates).
- 6.39 The Travel Policy for the Ministry of Police was signed by the Minister on 20 November 2009 and came into effect on 1 December 2009.
- 6.40 The Personal Assistant now checks and signs off bills on checking out of hotels. All bills are checked for discrepancies which can then immediately be identified and rectified.

Bills are certified promptly before payment. The same approval documentation is used as before, but emphasis is put on the correct and full completion of such documentation, so that approvals can be done on proper information. An example would be that the reasons why the trip is necessary must be supplied in the approval documentation to enable the staff member doing the approvals to judge whether or not the expenditure is justifiable. Furthermore correct financial protocols are being followed by having a different staff member certifying the expense, than the one who placed the order.

- 6.41 The Secretary indicated that the problem of staff not cancelling bookings was taken care of by not allowing staff themselves to change bookings, but to have to do so through the travel agents. The aim was to prevent wasted expenditure by having to pay for unutilized bookings.
- 6.42 The CFO indicated that he was satisfied that the new travel policy of the Ministry conformed to the broader framework of the State prescripts.
- 6.43 Chiefs of Staff tend to get involved with advising their Ministers. In the case of the Police, this is not necessary since the Minister already has the Secretariat (headed by the Secretary of Police) that advises the Minister on policy and technical issues and support the Minister in whatever way required, as well as a political advisor. Emphasis can therefore, and has been, put on the new Chief of Staff playing a strong administrative role to ensure compliance.
- 6.44 The Secretary remained involved with the administration until the situation had been stabilized, and the new Chief of Staff had the opportunity to settle in. The authorization of the bookings was then given back to the Chief of Staff, since it became difficult for the Secretary to deal with this administrative task in addition to her other work.

Hilton Hotel expenses

- 6.45 The Secretary's investigation into the Hilton expenses was not as extensive as the one for the Table Bay, and no report was brought out. A brief review of the Hilton accounts highlighted similar irregularities as at the Table Bay. However, by the time the Hilton expenses (which occurred prior to the expenses of the Table Bay) were raised in the media, the Minister had already instructed the Ministry to investigate and implement corrective measures flowing from the Table Bay investigation, and the Ministry was already involved with such implementation. The Secretary therefore did not consider it necessary to do a detailed investigation on the Hilton expenses.
- 6.46 It was confirmed that, from 19 December 2008 to 25 April 2009, the Minister was intermittently booked into the five-star Hilton Hotel in Durban.
- 6.47 The documentation provided told the following tale:
- 6.47.1 The Minister did not request the approval of accommodation himself, but it was done by staff in the Ministry;
- 6.47.2 There was no indication on the itineraries or internal memoranda what the position (as opposed to rank) of the person in need of the accommodation was – it can therefore not be verified from the documentation what position the staff occupied that was booked in with the Minister. It was confirmed with the Secretary that they were all protectors, and in one case the Personal Assistant of the Minister who stayed for 3 nights;
- 6.47.3 The itineraries, as well as the internal memoranda for approval, merely stated that it was for accommodation, but never indicated what the reason was why the accommodation was necessary. However, the Secretary confirmed that all the stays at the Hilton had been when the Minister was on official business;
- 6.47.4 No Ministerial staff or protectors were booked into the Hilton at times when the Minister was not also booked in.
- 6.48 It is correct that the Minister stayed in the Hilton over Christmas, New Year and on Valentine's Day. It was explained that the Minister was on official business in Durban

during this period, working on weekends and public holidays, to ensure that the Province “was secure for the April 2009 elections”.

- 6.49 The Secretary explained that what might strike some people as surprising times to be working, would not be for the Police and especially not for the Minister of Police. Often holidays were the busiest periods with the Minister moving around the country. To take Christmas 2010 as an example, the Minister was working until 24 December, and would probably have continued had staff not suggested to him that it was time to take a break.
- 6.50 The Secretary indicated that she was already doing work for the Minister during 2009 before she was officially appointed as Secretary of Police. She was therefore aware that the Minister at that stage had to play a more direct role in policing matters since there was no permanent National Commissioner as yet, and the acting National Commissioner was on leave for long periods. The Minister therefore found himself leading some of the operational work normally done by the National Commissioner, which added to his workload.
- 6.51 Media reports indicated the cost at the Hilton to have come to R578 499 - however the approvals included in the documentation for the Hilton only amounts to R432 932.90. It appeared that not all itineraries for the Hilton during that period were included in the bundle – for example, for 17 to 19 January 2009 there were no approvals included for any protectors of the Minister, and Ministers are usually accompanied by their protectors. The Secretary indicated that she did not think the amount reported in the media to be entirely correct, but also conceded that she had trouble obtaining all the Hilton accounts since they were not to be found in a single place in the Ministry. This was one of the problems she had identified in the Ministry and this was put right since.

Minister's response

- 6.52 Since the Minister personally submitted the document entitled “Points to be made regarding the Minister of Police Travel Account” to the Public Protector it was clearly his

defense on the complaint against him. However this document had not been signed. It was established that the Secretary compiled it for the Minister. The contents of this document, and that it represents the Minister's response to the complaint, were confirmed with the Secretary.

6.53 The said document concluded that:

6.53.1 The Minister inherited a system that allowed incidents like the expenses for the Hilton and Table Bay hotels to occur, but systems had been put in place to prevent such incidents in future;

6.53.2 The Minister was not in violation of any prescripts by staying at the Hilton or the Table Bay;

6.53.3 The Minister had taken all the necessary remedial steps required and corrective measures were implemented to prevent future abuse;

6.53.4 The corrective and remedial steps were being put in place as the investigation progressed, some even prior to the expenditure going public.

6.54 In the view of both the Secretary and the CFO, the Minister was technically entitled to stay at the Table Bay in terms of the government prescripts. The Secretary also pointed out that it was not the Minister who had decided on the Table Bay, but his Personal Assistant. Hence the Minister was advised that there was nothing wrong with him staying at five-star hotels, but it was suggested that he should reconsider the level of his accommodation.

6.55 The Secretary's view was that since the Minister's staff was responsible for ensuring proper processes and procedures, the Minister cannot be expected to know at all times where his staff was staying, what the costs were and whether there were irregularities. The Secretary indicated further that the reaction of the Minister, when she informed him of irregularities that she had identified, clearly indicated that he had not been aware of them. She further confirmed that the Minister did not handle or influence the bookings

and had not been aware of staff that was staying at the Table Bay that should not have been staying there.

- 6.56 The Minister subsequently indicated that he would prefer not to stay in five-star hotels, and that his Personal Assistant should be sensitive about accommodation expenditure and check the nature of the hotels he was booked into.
- 6.57 At that point the travel agent was asked to draft a preferred list of hotels around the country in an effort to move away from the more expensive hotels. A meeting was held with Ministerial staff where the Secretary sensitized them to set an example and not be seen in fancy hotels.
- 6.58 The Secretary made a list available of accommodation booked for the Minister after 3 September 2009 up to 31 October 2010. During this period the Minister stayed over at 16 different hotels all over the country. According to the websites of these hotels, all but three fall into the four-star and even three-star categories.
- 6.59 The other three hotels have a five-star classification, but the booking of accommodation at these hotels could be justified as follows:
- 6.59.1 Fancourt Hotel: According to its website the tariffs of this hotel varies from R2 900 to R10 500. It was explained that, while the principle is that the Minister will not stay at expensive hotels, there are some instances where this is unavoidable because of accommodation pressures and time constraints. In this specific case the Minister had to be booked into the Fancourt Hotel for one night due to late notification requiring him to attend a community meeting in the area.
- 6.59.2 Leaves Luxury Lodge: According to its website this lodge is extremely reasonable for a five-star establishment. A luxury room starts at R750 for bed and breakfast and it presidential suite only comes to R1 100. This is less than the R1 200 maximum tariff now prescribed for Ministerial staff;

6.59.3 The Royal Hotel: At the time the travel agents reported that no other suitable accommodation was available in Durban. Special permission was then granted for the travel agents to go ahead with this booking.

7. REGULATORY FRAMEWORK

Executive Code of Ethics

- 7.1 Section 96 of the Constitution provides that members of the Cabinet must act in accordance with a Code prescribed by national legislation.
- 7.2 The Executive Members' Ethics Act was promulgated *inter alia* to provide for such a code. In terms of section 2 of this Act the President published the Code by Proclamation No 41 in Government Gazette 21399 of 28 July 2000.
- 7.3 The Code prescribes what a "member of the Executive" must, or may not, do. Regulation 1 defines a "member of the Executive" to include a Cabinet member. The Minister is a member of the Cabinet and the Code therefore applies to him.
- 7.4 The complainant was of the opinion that the following provisions of the Code might find application in the circumstances of this case:
 - 7.4.1 Paragraph 2.1: Members of the Executive must to the satisfaction of the President:
 - (d) Act in all respects in a manner that is consistent with the integrity of their Office or the government; and
 - 7.4.2 Paragraph 2.3: Members of the Executive may not:
 - (h)³ Make improper use of any allowance or payment properly made to them, or disregard the administrative rules which apply to such allowances or payments.

³ In the further particulars dated 14 January 2010 the complainant actually mentioned sub-paragraph (g), but clearly sub-paragraph (h) was intended as the relevant provision, as will be explained below when dealing with the Ministerial Handbook.

7.5 The complainant was also of the opinion that the Minister might have breached the provisions of section 2(2)(b)(v) of the Executive Members Ethics Act. However, this section provides that the Code must include provisions prohibiting Cabinet Ministers from acting in a way that may compromise the credibility or integrity of their Office or the government. This injunction is *inter alia* adhered to in paragraphs 2.1 and 2.3 of the Code. It is therefore not section 2(2) of the Act that can be breached, but paragraphs 2.1 and 2.3 of the Code.

7.6 Except for paragraphs 2.1(d) and 2.3(h) mentioned by the complainant, the following paragraphs may also find application in the present circumstances to decide whether or not the Minister did act in a way that may have compromised the credibility or integrity of his Office:

7.6.1 Paragraph 2.1: Members of the Executive must to the satisfaction of the President:

(c) Act in good faith and in the best interest of good governance; and

7.6.2 Paragraph 2.3: Members of the Executive may not:

(c) Act in a way that is inconsistent with their Office; or

(d) Use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

The Ministerial Handbook

7.7 The Ministerial Handbook: A Handbook for Members of the Executive and Presiding Officers (the Handbook), was approved by Cabinet on 7 February 2007. It was produced by the Ministry of Public Service and Administration in 2007. It was, at least until recently⁴, a confidential document and therefore not in the public domain.

⁴ An SABC 3 interview with the Spokesperson for Government and the Minister of Public Service and Administration on 21 April 2011 reportedly informed that the Ministerial Handbook has been declassified, correctly so, one may add.

- 7.8 According to the preface the Handbook is a guideline for benefits to which members and their families are entitled in the execution of their duties. It should also be noted that the preface provides that the interpretation of the guidelines in the Handbook rests with Cabinet.
- 7.9 Of importance also is that the preface provides that anything not mentioned in the guidelines of the Handbook does not form part of the benefits, allowances and support services envisaged for political Office bearers.
- 7.10 In the definitions of the Handbook it is provided that in these guidelines, the word “member” *inter alia* means a minister – the Minister is therefore bound by the guidelines in the Handbook.
- 7.11 Chapter 1 of the Handbook incorporates the Executive Code of Ethics by repeating it. What is interesting is that the wording of the Handbook differs slightly from that of the Code. Of relevance in the present context is that paragraphs 2.3(a) and (b) as provided for in the Code were combined into one paragraph 2.3(a) in the Handbook and the subsequent paragraphs renumbered accordingly. The result is that paragraph 2.3(g) in the Handbook (making improper use of allowances or disregarding applicable administrative rules) should actually be paragraph 2.3(h) as it is in the Code. The pitfall of this seemingly small change is illustrated in the present complaint where the complainant obviously used the Handbook to articulate the possible provisions that the Minister might have breached and therefore referred to paragraph 2.3(g), whereas this paragraph in the Code itself deals with the receiving of remuneration for any work or service other than the performance of the Minister’s functions as a member of the Executive, which is irrelevant for present purposes.
- 7.12 In the absence of any amendment to the Code, which has the status of sub-ordinate legislation, the Handbook should not depart from the wording in the Code. It was confirmed with the Chief Director: Legal Services in the Ministry of Public Service and

Administration that government is aware that Chapter 1 of the Handbook is not quite in line with the wording of the Code, and that the Handbook is being reviewed, *inter alia* to correct the wording.

- 7.13 Chapter 3 of the Handbook deals with benefits, “reimbursive” allowances and other provisions in this regard. Paragraph 7.1.1 provides that the relevant department of the State meets the costs of subsistence for official purposes, which would include accommodation. It was confirmed by the Chief Director: Legal Services in the Ministry of Public Service and Administration that there are no other general prescripts in place regarding payment of accommodation expenses of ministers, unless there are internal provisions issued by departments. These can of course not allow more benefits for the Minister than the Handbook does, but there is no impediment to put the level of benefit lower than the Handbook allows.
- 7.14 An example of such an internal provision would be the Travel Policy for the Department of Public Service and Administration. In paragraph 12.2 this policy deals with hotel grading. It provides that their Minister, Director-General and the Deputy Directors-General should make use of hotels which suit their status, but have reasonable tariffs. All other employees should stay in hotels which do not charge in excess of R1 300 per night for bed and breakfast. This paragraph does not take the matter of the level of their Minister’s accommodation further, since it merely repeats what the Handbook provides for.
- 7.15 Chapter 4 of the Handbook deals with residences of members of the Executive. Paragraph 1.3 provides that the Minister can be allocated State-owned residences for official purposes.
- 7.16 Paragraph 3.1.1 of Chapter 4 provides that the Minister may occupy one State-owned residence in the capital of his choice free of charge. Paragraph 3.1.2 provides that the Minister may occupy a second State-owned residence in the other capital, if available. In this event, the paragraph continues, a monthly market related rental is payable.

- 7.17 “Market related rental” seems to be a bit of a misnomer since paragraph 3.2.1 qualifies market related rental to be the basic component of the inclusive remuneration (salary) of the Minister, x 1% divided by 12. Actual market related rentals for houses usually used for ministerial residences would come to much higher amounts than 1% of a minister’s salary. However, the CFO pointed out that the Minister pays a sizable portion of income tax on the benefit of the second official residence. In terms of paragraph 10.2(b) of Chapter 2 occupying one State-owned residence for official purposes free of charge is not taxable. The second residence that a minister pays rental on, is therefore subject to income tax. What the State loses on the rental will probably be made up by the Fiscus through income taxation.
- 7.18 Chapter 4, and in fact the rest of the Handbook, is silent on what should happen when the Minister’s official residence becomes not habitable. A reference is found in paragraph 2.3 of Chapter 2, which provides that the expenses of alternative accommodation may be debited to the State where a State-owned residence is not immediately available for a minister, but this is only on assumption of duty, and does not deal with the situation where a residence already occupied by a minister must be vacated for repairs.
- 7.19 Paragraph 3.3.1 of Chapter 4 provides that the occupation of State-owned residences is taken on arrangement with the Minister of Public Works.
- 7.20 Normally staff cannot stay with the Minister in a more expensive hotel, unless it is a protector of the Minister – putting them up in a cheaper hotel, even if close by, would seem to defeat the purpose of having protectors in the first place. In Chapter 8 (dealing with the private office staff of the Executive such as the Chief of Staff and Private Secretary) the Handbook gives guidance on when Ministerial staff can stay in the same hotel than the Minister. In terms of paragraph 3.3 all expenses incurred by Ministerial staff in the course of official duty, are borne by the relevant department.

- 7.21 Paragraph 3.2 of Chapter 8 provides that a member of the Minister's private office may accompany the Minister and stay in the same hotel at government expense. There are, however, certain conditions set in this regard:
- 7.21.1 Firstly the Minister must be performing official functions by virtue of his office;
 - 7.21.2 Secondly the stay must, in the Minister's opinion, be warranted
- 7.22 The most contentious issue is whether or not the Minister could have stayed in five-star hotels such as the Hilton or Table Bay. The only reference in the Handbook to the level of accommodation to which a minister is entitled, is found in paragraph 7.2.5 of Chapter 3. It provides that accommodation and subsistence expenses should be kept as low as possible by making use of hotels which suit the status of ministers, but which have reasonable tariffs.
- 7.23 Paragraph 7.2 of Chapter 3 deals with "Subsistence and Travel Allowance (International)". Thus sub-paragraph 7.2.5 sets the standard for international travel. Paragraph 7.1, dealing with "Subsistence and Travel Allowance (Domestic)", has no reference to the standard of accommodation. What happened in practice seemed to be that everyone using the Handbook took it for granted that the standard in sub-paragraph 7.2.5 also applied to domestic travel. Notwithstanding the oversight in the Handbook of not providing the standard for domestic travel, it is taken for present purposes that the intention was to have the same standard for domestic travel as for international travel – there does not seem to be any reason to have different standards for domestic and international accommodation in view of the qualification that the hotels should have reasonable tariffs.
- 7.24 The oversight in the Handbook of not specifically dealing with the standard for domestic accommodation was brought to the attention of the Chief Director: Legal Services in the Ministry of Public Service and Administration. She indicated that this would be taken into account during the current review of the Handbook.

- 7.25 The complainant also thought the Minister might have acted in breach of the provisions of paragraph 7.2.5 of Chapter 3 of the “Code of Ethics”. However, paragraph 7.2.5 appears in Chapter 3 of the Handbook, and Chapter 3 is not part of the Code (which is found only in Chapter 1 of the Handbook). It appears that paragraph 7.2.5 sets the standard that has to be taken into account when deciding whether or not a Minister has acted in breach of paragraphs 2.1 or 2.3 of the Code.

The Public Finance Management Act

- 7.26 Section 63 of Chapter 7 of the Public Finance Management Act 1 of 1999 (PFMA) deals with the financial responsibilities of executive authorities. “Executive authority” is defined in section 1 in relation to a national department to mean the Cabinet member who is accountable to Parliament for that department, which in this case would be the Minister of Police.
- 7.27 In terms of section 63 the Minister must perform his statutory functions within the limits of the funds authorized for the relevant vote. In other words, the responsibility of the Minister was to see to it that he stayed within the budget for the Police approved by Parliament, and he could not insist that policies be implemented that there was no money for in the budget.
- 7.28 To this is added that the Minister had to consider the monthly reports submitted to him in terms of sections 39(2)(b) and 40(4)(c). Both these reports are reports submitted to the Minister by the Accounting Officer of the Police. In the case of section 39(2)(b) it contains particulars of under collection of revenue due, shortfalls in budgeted revenue, and overspending of the department’s vote or a main division within the vote. The report in section 40(4)(c) contains the projected expected expenditure and revenue collected for the remainder of the financial year, an explanation of any material variances and a summary of steps that are taken to ensure that the projected expenditure and revenue remain within budget.

7.29 It is therefore not the task of the Minister to ensure internal controls, an appropriate procurement and provisioning system, the effective use of the resources of the department, or to prevent irregular, fruitless or wasteful expenditure. That is the responsibility of the Accounting Officer, as section 38(1) of the PFMA clearly provides.

8. EVALUATION OF EVIDENCE AND CONCLUSIONS

Possible breach of the Code

8.1 The paragraphs in the Code that could possibly apply in the circumstances have been recorded in paragraphs 7.4 and 7.6 above. To summarize, one would have to find that the Minister did one or more of the following to be able to say that he breached the Code:

- 8.1.1 Acted inconsistently with the integrity of his Office;
- 8.1.2 Disregarded the administrative rules that apply to allowances or payments;
- 8.1.3 Acted in bad faith and not in the interest of good governance;
- 8.1.4 Acted in a way inconsistent with his Office;
- 8.1.5 Used his position to enrich himself; or
- 8.1.6 Used his position to benefit improperly any other person.

8.2 To find that the Minister acted in any of these ways in the circumstances of this matter, one would have to find that the Minister:

- 8.2.1 Made use of accommodation at state expense when he was not entitled to;
- 8.2.2 Stayed at a hotel at a level to which he knew he was not entitled;
- 8.2.3 Instructed, approved or influenced arrangements for his own accommodation at a level that he was not entitled to;
- 8.2.4 Instructed, approved or influenced arrangements for staff to be put up in accommodation at a level that they were not entitled to; or
- 8.2.5 Had been aware or should have been aware of irregularities and not taken action.

- 8.3 The above points are dealt with below to see whether any of them were present in the case of the Minister with reference to this stay in the Table Bay and the Hilton.

Did the Minister make use of accommodation at state expense when he was not entitled to?

- 8.4 It is not in dispute that the Minister did stay at the Table Bay when in Cape Town during the period 18 May 2009 to 5 July 2009. According to the invoices the Minister stayed for a total period of 26 days.
- 8.5 The accommodation bill for this period came to R128 145 for the Minister, and if one adds the expenses for the protectors and other staff that stayed there, as well as the Deputy Minister, the total comes to R301 515.
- 8.6 The Minister was put up in the Table Bay when he was in Cape Town because his official residence was not available to him because of flood damage. Although the Handbook is silent on what should happen when the Minister has to vacate his official residence for repairs, it seems logical that the state should provide alternative accommodation. More so in this case, since it was the Minister's second official residence on which he pays rent and income tax.
- 8.7 The conclusion is that the Minister was entitled to accommodation at State expense in Cape Town when he had to vacate his official residence because of repairs being done to the residence.
- 8.8 It is similarly not in dispute that the Minister did stay at the Hilton in Durban during the period 19 December 2008 to 25 April 2009. According to the itineraries the Minister stayed there intermittently for a total period of 39 days.

- 8.9 The accommodation bill for this period came to R276 499 for the Minister, and if one adds the expenses for the protectors and, for three nights, the Personal Assistant of the Minister, the total comes to R432 933.⁵
- 8.10 It is also not in dispute that the Minister stayed in the Hilton over Christmas, New Year and on Valentine's Day. It should be noted that Valentine's Day (14 February) is a normal working day, and nothing turns on that date. In 2009 it fell on a Saturday and the question is rather whether or not the Minister was on official business over the weekend.
- 8.11 It was explained that the Minister was on official business in Durban during this period, including the public holidays and over weekends. This was confirmed by the Secretary. Ministers are known to have to work at times when other public servants need not do so. The Minister's home is also not in Durban. In terms of the Handbook it is clear that the Minister has to be provided with accommodation when he travels on official business away from the centers where his official residences are, namely Pretoria and Cape Town. On a preponderance of probabilities the Minister was on official business and therefore entitled to stay at a hotel in Durban at the time.

Did the Minister stay at a hotel at a level to which he knew he was not entitled?

- 8.12 The crucial question is whether or not the Minister was entitled to stay at five-star hotels, and if not, whether or not he knew this.
- 8.13 Paragraph 7.2.5 of Chapter 3 sets the standard in this regard. It provides that accommodation and subsistence expenses should be kept as low as possible by making use of hotels which suit the status of ministers, but which have reasonable tariffs.

⁵ Included in this amount are 10 bed nights when the Minister and his protectors actually stayed at the Protea Hotel and not the Hilton (from 14 to 16 February 2009).

8.14 Attaching value to a “minister’s status” as provided for in the Handbook raises various ethical questions. The Handbook itself is not helpful. The status of ministers is a rather nebulous concept. What to one person would be commensurate with the status of a minister may not be to another. Ministerial and departmental staff tend to put ministers on a pedestal, while political opponents, for example, would rate that status lower. The subjective view of his or her own status could also differ from one minister to another depending on that individual’s value system. However, from an ethics point of view, the following balancing act needs to inform considerations on the acceptable levels of comfort for Ministers and officials.

8.15 On the one hand it should be borne in mind that ministers:

8.15.1 Are the political leaders of the country;

8.15.2 As such should be compensated adequately and receive reasonable benefits;

8.15.3 Have to travel often, especially in South Africa owing to the administrative and legislative capitals being so far apart, which adds to an already stressful work environment; and

8.15.4 Could hardly be expected to be accommodated in meager circumstances.

8.16 On the other hand one has to bear in mind that:

8.16.1 South Africa has a large poor population and ambitious development goals;

8.16.2 Any extravagant living standards of public servants and ministers at the expense of the State have an impact on the money available in the Fiscus to assist the poor population or fund the development agenda; and

8.16.3 It is accepted best practice that public servants and ministers should be frugal with the money of taxpayers.

8.17 What should not be overlooked is that paragraph 7.2.5 not only refers to the status of the Minister, but adds two other considerations, namely that subsistence and

accommodation expenses ***should be kept as low as possible by using hotels that have reasonable tariffs.***

- 8.18 The Minister was advised that he was entitled to stay in a five-star hotel. However, to this should have been added that the hotel should have reasonable tariffs. The Table Bay may be described as the flagship in Cape Town of the chain that it belongs to, and is one of the more expensive hotels. Today's tariffs quoted on its website range from R3 400 up to R28 000. At the time in 2009 the Minister paid an average of R4 818 per night at the Table Bay. Even in today's tariffs at least 7 five-star hotels in Cape Town quote tariffs on their websites starting as low as R1 260 up to R4 500 per night. It would thus be possible to stay in a five-star hotel in Cape Town today for less than it cost the Minister to stay at the Table Bay in 2009.
- 8.19 For the period that the Minister intermittently stayed at the Hilton⁶ the bill on average came to R7 089 per day for the expenses of the Minister only. This amount includes all expenses and not only the overnight tariff. Considering that the 2011 tariffs as advertised on the website of an eminent four-star hotel in Durban starts from R1876 per night for an executive room, the amount of R7 089 seems exceedingly and unreasonably high. This remains so even if one were to take into account that extras (such as lunch) are included in the latter amount and still have to be added to the R1 876.
- 8.20 In terms of the Handbook some would argue, and indeed did argue, that the Minister was entitled to stay in a five-star hotel in accordance with his status. However, the matter does not end there - the hotel's tariffs should also have been reasonable. It may well be that the Table Bay provides value for the money it asks, but from a taxpayer's point of view the tariffs are not reasonable if one could have five-star comfort for less money. By putting the Minister up in a more expensive five-star hotel, the third

⁶ Including the two nights at the Protea

consideration of paragraph 7.2.5, namely that accommodation expenses should be kept as low as possible, was not adhered to.

8.21 However, as would be seen below, the Minister left the accommodation arrangements and the choice of hotels to his staff. The element of knowing that the hotel tariffs could be regarded as unreasonable can therefore not be said to be present in the case of the Minister.

Did the Minister instruct, approve or influence arrangements for his own accommodation at a level that he was not entitled to?

8.22 Travel and accommodation arrangements are usually taken care of by the Ministerial staff, and all indications in this regard point to that also being the case here. Not only was it confirmed that the Minister did not get involved with the accommodation arrangements and that his Personal Assistant choose the hotels in which he stayed, but the approval documentation of both the Table Bay and the Hilton supports that to be the case.

8.23 No evidence was forthcoming indicating that the Minister influenced accommodation arrangements in any way to have him put up in the Table Bay or the Hilton.

Did the Minister instruct, approve or influence arrangements for staff to be put up in accommodation at a level that they were not entitled to?

8.24 As in the case of his own accommodation, the Minister was not involved with accommodation arrangements for his protectors and other staff. The Secretary brought to the attention of the Minister the fact that certain staff stayed in five-star hotels in circumstances that they were not entitled to do so. One would therefore not be able to deduct that the Minister was aware of who was staying where and at what cost.

8.25 In this case also no evidence was forthcoming indicating that the Minister influenced accommodation arrangements in any way to have staff put up in the Table Bay or the Hilton.

Had the Minister been aware, or should he have been aware, of irregularities and not taken action?

8.26 The Minister indicated that he had not been aware of accommodation irregularities before the Secretary discussed with him the irregularities brought to her attention regarding the Table Bay expenses. The Secretary stated that the Minister's reaction to the news made it clear to her that he had not been aware of the irregularities. It should also be noted that the Minister had not been in his present portfolio long when the issue of the Table Bay expenses arose, and that he did not have sufficient time to get to know the Ministerial staff well. Although one should be able to assume that Ministerial staff is of the highest integrity, the irregularities ferreted out by the Secretary proves this not always to be the case.

8.27 The financial responsibilities of the Minister, as discussed in paragraphs 7.26 to 7.29 above, did not include ensuring internal controls, appropriate procurement and provisioning systems, effective use of the resources of the department, or preventing irregular, fruitless or wasteful expenditure. His role was in broad to stay within the approved budget when giving directives to the Accounting Officer.⁷ One could therefore not argue the Minister should have known about the irregularities in terms of his financial responsibilities.

8.28 However, this does not mean that a minister may ignore irregularities that do come to his or her attention – doing so would no doubt amount *inter alia* to not acting in the interests of good governance, or acting inconsistently with the integrity of the Office of a member of Cabinet.

⁷ Cf sec 64 of the PFMA

- 8.29 The Minister's response when he was made aware of the irregularities was to immediately instruct an investigation into those irregularities. On receipt of the Secretary's report in this regard, the Minister instructed the immediate implementation of the recommendations flowing from that investigation. It is also clear that the Minister also instructed, and this was before the hotel expenditure broke in the media, that all approvals for accommodation would be done by the Secretary to prevent further irregularities pending the Secretary's investigation.
- 8.30 As can be seen from paragraphs 6.32 and 6.33 above, the steps taken to rectify the irregularities adequately addressed the situation to prevent future abuse. One of the crucial accepted recommendations in the Secretary's report is that in future Public Works should be consulted and they should address accommodation needs linked to official housing for the Minister. This recommendation will prevent a repeat of the situation where the Police make alternative accommodation arrangements for the Minister that Public Works subsequently does not want to approve. The recommendation is in line with paragraph 3.3.1 of Chapter 4 of the Code that provides that the occupation of State-owned residences is taken on arrangement with the Minister of Public Works. Public Works should therefore be the experts when it comes to alternative arrangements when an official residence must be temporarily vacated for repairs, and it should indeed be left to them.
- 8.31 A related question is whether the Minister could not be said to have realized that he was booked into rather posh hotels, and that the Handbook requires accommodation expenses to be reasonable.
- 8.32 As previously indicated the Minister was advised that he could stay in 5-star hotels and left the arrangements to his staff. A minister is entitled to leave it to his staff to make accommodation arrangements, since that is why they are there and why there are managers to control expenditure, and it could hardly be expected of ministers to deal with, or oversee, administrative tasks in addition to their onerous duties. However,

although the administration of the Handbook is left to staff, the provisions of the Handbook concerns ministers closely. Moreover, it is a politicized (and in South Africa with its development targets even an emotive) area since it provides for the level of spending of taxpayers' funds on ministers. It is fair to assume that the Ministerial Handbook, directed at ministers, expects ministers to take more than a cursory interest in their staff's adherence to its provisions. It is therefore suggested that ministers should familiarize themselves with the provisions of the Handbook and be sensitive to whether or not staff adheres to the Handbook.

General

- 8.33 On the itineraries no periods could be identified that the Minister was absent while staff remained in the Hilton.
- 8.34 In view of the fact that no finding could be made against the Minister of conduct that would indicate a breach of the Code, it is clear that the Minister cannot be said to have acted in breach of the Code.

9. FINDINGS

9.1 General Findings

- 9.1.1 The accommodation expenses at the Table Bay and Hilton came to R734 448.⁸
- 9.1.2 The Minister was entitled to accommodation at State expense in Cape Town when he had to vacate his official residence during May to July 2009 because of repairs being done to the residence.

⁸ Including an amount for 14 to 16 February 2009 when the Minister and his protectors actually stayed at the Protea Hotel in Durban and not the Hilton.

- 9.1.3 The Minister was on official business in Durban intermittently from 19 December 2008 to 25 April 2009, including on Christmas and New Year and over weekends, and therefore entitled to stay at a hotel in Durban at State expense.
- 9.1.4 The Minister was not entitled to stay at a five-star hotel unless the tariffs of that hotel were reasonable with reference to other five-star hotels, otherwise the injunctions of the Handbook that accommodation expenses should be reasonable and kept as low as possible were not adhered to.
- 9.1.5 The Minister left the accommodation arrangements and the choice of hotels to his staff as he was entitled to do. The element of knowledge that the hotel tariffs could be regarded as unreasonable could therefore not be said to be present in the case of the Minister.
- 9.1.6 No evidence was forthcoming indicating that the Minister influenced accommodation arrangements in any way to have him put up in the Table Bay or the Hilton.
- 9.1.7 No evidence was forthcoming indicating that the Minister influenced accommodation arrangements in any way to have staff put up in the Table Bay or the Hilton.
- 9.1.8 The financial responsibilities of the Minister were not such that it could be argued that he should have been aware of irregularities regarding accommodation expenses.
- 9.1.9 When the Minister became aware of irregularities regarding accommodation arrangements, he instructed an investigation. When the investigation report became available he instructed implementation of the recommendations of the report.
- 9.1.10 On the itineraries no periods could be identified that the Minister was absent while staff remained in the Hilton.

9.2 Specific Findings

- 9.2.1 The amount spent on the Minister and his entourage's accommodation was unreasonably high. It did not comply with the requirements of paragraph 7.2.5 of the Handbook which requires not only that one can make use of hotels that suit the status of ministers, but also that the accommodation expenses should be reasonable and kept as low as possible.
- 9.2.2 The lapse of judgment was enabled by the absence of clear guidelines in the Handbook on what constitutes a reasonable tariff.
- 9.2.3 The Minister was not aware of the amounts involved and as soon as he became aware took appropriate corrective action.
- 9.2.4 The Minister did not act in breach of any of the provisions of the Code with regard to his stay at the Table Bay or Hilton.

10. REMEDIAL ACTION

- 10.1 Since the Minister did not act in breach of any of the provisions of the Code, no further action against the Minister would be required.
- 10.2 It is recommended that the Minister's exemplary example of not having his staff book him into five-star hotels unless it is absolutely necessary, be considered by Cabinet as the norm for ministerial accommodation, and included in the Handbook.
- 10.3 It has been noted that officials of Legal Services in the Ministry of Public Service and Administration are in the process of reviewing the Handbook. It is recommended that the following suggestions made to the Chief Director: Legal Services in the Ministry of Public Service and Administration should be taken into account during the review of the Handbook:

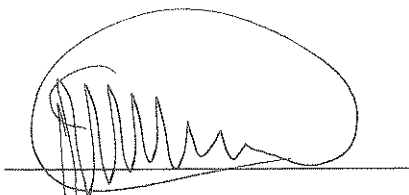
10.3.1 Suggestion in paragraph 7.12 above, namely that the wording of the Code in Chapter 1 of the Handbook should be brought in line with the wording of the Code itself; and

10.3.2 Suggestion in paragraph 7.24 above, namely that the oversight in the Handbook of not specifically dealing with the standard for domestic accommodation, be rectified;

10.4 Consideration should be given to the publication of annual or biennial tariffs for ministers similar to subsistence and travel guides to guide optimal accommodation.

10.5 The process of the review of the Handbook should be expedited to provide clarity on ethical considerations regarding executive accommodation, particularly in the current climate of fiscal challenges.

10.6 It is suggested that ministers should familiarize themselves with the provisions of the Handbook and be sensitive to whether or not staff adheres to the Handbook for the reasons set out in paragraph 8.32 above.



ADWT N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 26 August 2011

Assisted by: Dr M Schutte, Executive Manager: Early Resolution