



Federal Head Office
P.O. Box 1475
Cape Town
8000
Tel: +27 21 465 1431

30 August 2018

Per e-mail: janine@myvotecounts.org.za
MLuleki@r2k.org.za

Dear Ms Ogle and Mr Marongo

REQUEST FOR INFORMATION ON PRIVATE DONATIONS

1. We refer to your letter of 14 August 2018, in which you request the details of the income earned by the Democratic Alliance (“the DA”) from private donations of more than R10 000, and the identity of such donors, for the financial years from 2014 to 2018.
2. In so doing you rely principally on your rights under section 32(1)(b) of the Constitution, read with paragraph 88 of the judgment of the Constitutional Court in *My Vote Counts NPC v Minister of Justice and Correctional Services and another* [2018] ZACC 17 (“the MVC judgment”).
3. You will also be aware that in the *MVC* judgment the Court noted (at paragraph 44) that the intersection of the right to vote and the right to freedom of information “yields an outcome that requires of the State to pass legislation that provides for the recordal, preservation and reasonable accessibility of information on private funding.”
4. In a similar vein, the Court held (at paragraph 53) that “clarity is required as to just how reasonably accessible” it is for people to request information about the private funding of political parties. In this regard the Court restricted its duty to provide “broad guidelines” (at paragraph 76) laying down the “fundamental principle ... that information on the private funding of political parties and independent candidates must be ‘held’ or ‘recorded’, preserved and be reasonably accessible.” But as to how the Constitutionally required ends would best be achieved, was explicitly “left to Parliament” (at paragraphs 75 and 80).
5. The legislation envisaged by the Constitutional Court has not as yet been passed. This legislation will, for instance, determine details of the types of records that must be kept by political parties, the threshold for donations which must be recorded, the format of these records, and when they must be made accessible.

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6. In addition, the information you have now requested all relates to information pre-dating the *MVC* judgment. That judgment was handed down on 21 June 2018, while the information you request is for the period until May 2018. This is significant as the *MVC* judgment makes it clear (at paragraph 66) that existing legislation applicable in this period (in the form of the Promotion of Access to Information Act 2 of 2000) did “not impose any obligation [on political parties] to record information on the private funding of political parties and independent candidates, but even if it did, provision was not made for reasonable access.”
7. Thus, at all relevant times, there was no legislative requirement imposing a positive duty on the DA to record any information in any particular format regarding the amount of private donations and the identity of the donors. The DA also did not create a database of the type you now seek.
8. In the current circumstances the DA is not in a position to respond to your request, for the following reasons:
9. In the **first** place, in the absence of legislation by the democratically elected legislature, you unilaterally impose a definition of a donation that is very wide and also includes “interest, dividends, loans and payments”. The basis on which you reach this wide definition of a donation is not explained. It would, however, appear to include amounts earned by the DA as ordinary banking interest on amounts in its accounts; amounts earned as dividends on commercial arms-length investments; and amounts loaned at commercial rates. Such amounts would in no way fall within any sensible definition of a donation.
10. In the **second** place, you also unilaterally impose a threshold for disclosure of donations over R10 000. You do not explain the basis on which you arrived at this number. The Constitutional Court held that this was one of the issues which should pre-eminently be left to the legislature (at paragraph 75). There is no good reason to pre-empt the determination by the legislature based on an arbitrary number of your determination.
11. In the **third** place, many donations were made on the understanding that they would not be publicly disclosed, and at a time when there was no law requiring public disclosure. Had donors known they may have limited their donations to under R10 000, or directed their charity elsewhere. The DA is not prepared to now betray the confidence placed in it by its donors.
12. In the **fourth** place, your request would require the DA to undertake a massive logistical operation of combing through its bank accounts and other records; identifying amounts which fall within the ambit of your self-appointed definition of a donation; and identifying the corresponding source of that income. It is not reasonable to expect the DA to undertake such a task, which would cost a significant amount and soak up the party’s resources – particularly in the run-up to an election which is likely to be one of the most significant in our country’s history.

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13. We can assure you that the DA remains committed to the entire Bill of Rights and Constitution. This is borne out by the party's extraordinary efforts to hold the State accountable to the principles of the rule-of-law. Much of this could only be achieved because of the ceaseless efforts of volunteers and party representatives to raise funds from private sources, and the preparedness of donors to make amounts available for worthy causes.
14. We appreciate your interest in this issue, and the fervor with which you have pursued it. We can assure you that once legislation is in place the DA will comply fully.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dion George', is written over a thin horizontal line.

Dion George
Chairperson Federal Finance Committee
Democratic Alliance

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