



ADJUDICATION PANEL RULING

16 FEBRUARY 2021

Complaint	
Independent Media Publication	The Sunday Independent
Journalist/s	Piet Rampedi
Photographer	N/A
Complaint lodged by	Brigadier Vishnu Naidoo on behalf of SAPS
Date complaint lodged	20 October 2020
Type of complaint	No right to reply, use of Naidoo's pic without his consent and unethical reporting
Ruling	
Date Ruling delivered	16 February 2021
Applicable clauses of Independent Media Press Code	<p>Clause 2: Any publication will not publish inaccurate, misleading or distorted information;</p> <p>Clause 3: Anyone who is the subject of critical reportage should be given an opportunity to reply, unless there is good cause not to</p>

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	There is good cause not to share the document with SAPS Spokesperson, Vish Naidoo, in this instance.
Related complaints considered	N/A
Sanction/ Remedy	Right of reply in the form of a clarification in a follow up article
Is this report notable?	Yes
Summary of notability	The right of reply vs the protection of sources. If the reporter shares the document with the police, he could risk exposing his sources and could face possible criminal charges for being in possession of what has been deemed by the police as a “classified document”.

1. Background and Complaint:

- 1.1 On the 18th October 2020 the Sunday Independent carried an article titled: SAPS in R1,6bn PPE mess... Draft audit report says force irregularly awarded contracts, paid inflated prices. The story alleged the following: .

THE SAPS irregularly awarded personal protective equipment (PPE) contracts worth R1.6 billion by concluding them on “verbal authorisation” and without the requisite number of quotations.

It also paid inflated prices, awarded contracts worth R86 million to companies which were not tax compliant and ordered sterile surgical gloves “only meant for the Department of Health”.

- 1.2 The National police spokesperson Brigadier Vish Naidoo had been contacted to comment the previous day before publication, and is alleged to have responded that the draft audit report was “not a true reflection” of reality

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because it was a 'draft'. He warned the Sunday Independent journalist against publishing a story based on what he claimed was a leaked "classified document", adding this journalist could be criminally charged. The Ombud Office notes a draft audit report maybe a confidential internal document but it is certainly not "classified".

- 1.3 The SAPS Spokesperson also warned that the fact that it was a 'draft' document, it meant that it could still change when the final document is presented.
- 1.4 He could also be embarrassed by the leaked document opening the dirty linen with SAPS to the general public. Although Mr Naidoo alludes that Mr Rampedi could have 'seen' a totally different document & the use of his comments was disingenuous, unethical and unscrupulous... Worsening the situation, his picture was inserted in the story, without his permission, as if he had commented on the document.
- 1.5 The Ombud Office notes that the picture aligns to the commentary as attributed to him. The picture is relevantly aligned to his commentary. The Media house does not require his permission to use the picture of a Public Officer entrusted to speak on behalf of the institution...He is the face of SAPS; the picture signifies his official capacity.

2. Relief Sought by Complainant

- 2.1 SAPS is seeking a retraction of the story & an opportunity to peruse the document the journalist had seen.
- 2.2 In his personal capacity the Spokesperson demands an apology in the newspaper for using his photograph in the story without his permission.
- 2.3 Favourable consideration of request will be appreciated.

3. Sunday Independent's Stance

- 3.1 The editor and the journalist adamantly stand by their story and do not wish to concede that the article is inaccurate or misleading as the complainant claims.
- 3.2 That they were well within their rights to use Naidoo's picture – he is the national spokesperson for the SAPS. He is a public figure.

4. Deliberations by Each Panel Member

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4.1 Z Mkhize (Adjudication Panel Member)

SAPS Spokesperson is invited to comment on a draft document which the journalist claims to have seen of an audit report alluding to irregularities in the awarding of contracts ... BUT he does not share the document with the SAPS Spokesperson. It is a double-edged sword..... the SAPS Spokesperson would want to kill the story through a retraction... and also to save face of his Employer and his function as Spokesperson. He may want to see the journalist's document to seek his investigation for 'proof' of the news source. On the other hand, the journalist has sniffed a story but seeks comments from the Spokesperson to give authenticity and endorsement.

- 4.2 "Firstly, it is a draft. That can tell you that it's not a final document. It's not a true reflection of the environment because the environment that was audited was not given an opportunity to respond or comment at the time that the draft was leaked," Naidoo said.
- 4.3 "But they have since done that. But more importantly, that is a classified document. We have opened a criminal case because there was a breach of security on our side. If you have it, I suggest you don't share it with anybody."
- 4.4 When told that Sunday Independent was not in possession of the report but had only read it, Naidoo replied: "But you are not even supposed to see it. "It is a classified document.
- 4.5 "It's not for your eyes. If you write the story, you will be complicit as well.
- 4.6 "I must warn you now. A case has been opened in terms of the Police Act as well as the Promotion of Access to Information Act." Naidoo later sent a WhatsApp message asking for a copy of the document, saying "you cannot expect me to comment on a document you saw and I did not see".
- 4.7 Centrally, as per Clause 3 the right of reply to any journalistic subject must be afforded; but the essence of this story must never jeopardise the whistle blower who leaked the story. It is therefore the duty of the journalist to protect his sources at ALL times.
- 4.8 On the other hand, he must protect himself against a possible charge to be in possession of a confidential report that belongs to SAPS. He needs to protect himself that he ONLY SAW the report; but it's not in his possession.

- 'Even if he had it, showing it to the SAPS Spokesperson would have simply led to the source through coding that the journalist might not even be aware of as an internal SAPS practice. How does the journalist balance a credible news story vs the right to reply being afforded to the SARS Spokesperson? That is the double-edged sword.
- 4.9 The Ombud Office could not find substantial evidence that might require that Independent Media retracts the story which was based on a 'draft' as suggested by the SAPS Spokesperson.
- 4.10 No credible Media house may share documents with complainants, especially an investigative institution that may jeopardise sources for the journalist. It is within the journalists' rights to keep their sources confidential. Other than that the source may be traced and suffer consequences of a witch-hunt; the journalist might be charged for unlawful possession of an internal document that belongs to SAPS. Let SAPS conduct its own investigation without the assistance of Independent Media.
- 4.11 The article had been specific that *"National Police Spokesperson Brigadier Vish Naidoo yesterday said the draft audit report was "not a true reflection" of reality because it was a draft."* The SAPS Spokesperson had been contacted, had addressed himself to the "draft" document, hence his picture is relevant to the article in terms of his contributory comments. His verbatim comments are attributable to him... hence the use of his picture. There's no rule that requires journalists to seek the permission of the Officer to use his picture.
- 4.12 Journalists rely on unnamed sources for their craft; hence It was unreasonable to expect the journalist to comply with the Spokesperson's request; hence the journalist could only have viewed the evidence without taking possession thereof.
- 4.13 I do not recommend that any document be shared with SAPS Spokesperson.
- 4.14 The article inserted the picture of the Spokesperson, not in his personal capacity but as an authentic representative of SAPS and also his comments on the alleged 'draft' document.
- 4.15 I uphold that no personal capacity demands may be instituted against the media house based on this article.

5. B Ramguthee (Appeals Panel Chair)

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- 5.1 The SAPS should be afforded the right to reply as per Clause 3.
- 5.2 The newspaper must protect its sources and should not share the document with police.
- 5.3 A draft document cannot be a “classified” document. Therefore, there appears to be no basis to withdraw the article or apologize for it.
- 5.4 Brigadier Naidoo’s complaint about the usage of his picture “without my permission” is dismissed. The newspaper was well within its right to illustrate its story with a picture or a graphic because he is indeed a public figure, and the matter referred to was not one in which privacy, as applicable in a crimen injuria case, was a factor.

6. M Mosia (Adjudication Panel Member)

- 6.1 In light of the above set of facts, it is evident that a right of reply has been afforded to the complainant, but the question still remains was that a right of reply infringed upon in any way shape or form. The journalist in question, sent a WhatsApp message requesting commentary on the aforementioned set of facts, as published in the Sunday Independent.
- 6.2 The pertinent question now becomes, was the complainant offered an adequate and full right of reply. The complainant was asked to comment on the draft audit report between the hours of 10am and 12 noon, on 17 October 2020 Saturday, and the article was published, the very next day on 18 October 2020. This question is important, to the Office of The Group Ombud, as it sets precedent for what constitutes a reasonable time period for a response to a set of questions provided by a journalist who is aim is to provide a full and balanced a story.
- 6.3 It is general practice that a journalist should wait a minimum of 24 hours and a maximum of 48 hours for a response from a source. This time period, reasonable as it may not be set in stone, it is not absolute, as some stories are time sensitive. It is the recommendation of this Office that each complaint regarding a reasonable time period to receive a response from a source/complaint, be looked at on a case-by-case basis, taking into consideration the general standard of practice mentioned above.
- 6.4 In this set of facts, it cannot be ruled that the complainant was given a FULL and ADEQUATE right of reply. This can be deduced by the short time frame in which the complainant was given to respond, furthermore exasperated, by the immediate publishing of the article the following morning.

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- 6.5 It can be inferred that the journalist was doing research regarding the set of facts throughout the week prior to publishing, as is done in practice, and therefore it can be ruled that the complainant was not given a fair chance to respond to the allegations at hand.

7. Y Nair (Adjudication Panel Chair)

- 7.1 While the Sunday Independent remained steadfast in its defense that it had not violated the Press Code, and had given the complainant a right to reply, this adjudicator suggests that rather than a retraction, that the newspaper should instead afford the complainant an opportunity to clear any grey areas, with an emphasis on what the 'final report' contained, versus the 'draft' version which the newspaper based its report on. It would also be prudent for newspapers to revert to the tried and tested usage of 'alleged', where there is doubt about the authenticity of claims.
- 7.2 Brigadier Naidoo's complaint about the usage of his picture "without my permission" is dismissed. The newspaper was well within its right to illustrate its story with a picture or a graphic because he is indeed a public figure, and the matter referred to was not one in which privacy, as applicable in a crimen injuria case, was a factor.

8. Final Ruling

- 8.1 On the 18th October 2020 the Sunday Independent carried an article titled: SAPS in R1,6bn PPE mess... Draft audit report says force irregularly awarded contracts, paid inflated prices.
- 8.2 After careful consideration of each adjudication panel member's deliberations, the Ombud office could not find substantial evidence that might require that the Sunday Independent retracts the story which was based on a 'draft' as suggested by the Naidoo.
- 8.3 A draft document cannot be a "classified" document. Therefore, this is no basis to withdraw the article or apologize for it. Naidoo also asked for the document to be shared with him.

- 8.4 The newspaper must protect its sources at all costs and should not share the document with police. However, it must be noted that the reporter said he had sight of the document only and was not in possession of the actual document.
- 8.5 The title also used a picture of Naidoo not in his personal capacity but as an authentic representative of SAPS and also his comments on the alleged 'draft' document. The title was well within its rights to publish Naidoo's picture.
- 8.6 As per Clause 3, the SAPS should be afforded the right to reply. The complainant was asked to comment on the draft audit report between the 10am and 12 noon, on 17 October 2020, and the article was published the next day on 18 October 2020. It is general practice; the complainant should have been given a minimum of 24 hours and a maximum of 48 hours to respond.
- 8.7 With the facts on hand, it was clear Naidoo was not given the opportunity for a full and adequate right of reply, and it is therefore concluded that he must be awarded a right of reply in his capacity as Spokesperson for the SAPS.

9. Apologies

An apology must be offered to all parties concerned from the Office of The Group Ombud regarding the extreme time delay. We offer our sincerest apologies for any inconvenience caused. The time delays were caused due to unforeseen circumstances relating to internal administrative issues and health issues one of the panel members faced. The Ombud takes full accountability for failing to follow up due to an excessive administrative burden and backlog. The heavy workload led to this complaint falling through the cracks and the Ombud wishes to offer its sincerest apologies in this regard.

10. Panel Members

Yogas Nair (Adjudication Panel Chair), Brijlall Ramguthee (Appeals Panel Chair), Zamambo Mkhize, Moleboheng Mosia. Brijlall Ramguthee, as Appeals

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Panel Chairperson, adjudicated on behalf of Yogin Devan in this matter pending the outcome of the matter adjudicated regarding an article that Yogin Devan wrote.

11. Note

Either party has the right to appeal this decision with the Appeals Panel, and a party wishing to appeal has 7 business days to do so.

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