

MEDIA RELEASE

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FIC OPPOSES UNSEALING OF DOCUMENTS IN THE CONSTITUTIONAL COURT

Wednesday, 16 September 2020: The Financial Intelligence Centre (FIC) is created by and operates strictly within the Financial Intelligence Centre Act, 2001 (Act 38 of 2001). All its decisions are driven by its duties under the Act. Where the FIC is obliged by the Act to share information with other organs of state such as the Public Protector or the courts, it does so. Where it is obliged by the Act to protect the confidentiality of information, it does so. These are the principles that guide the Director on decisions made by the FIC.

The FIC receives various regulatory reports from financial and non-financial institutions that are obliged to register with and report to the FIC. These reports form the basis for the analysis the FIC conducts and the financial intelligence it develops. Its financial intelligence is provided to the competent authorities for use in their investigations. The FIC is not an investigative authority and therefore, its intelligence needs to be converted into evidence by the competent authorities before it can be utilised in court.

Provisions of the FIC Act protect the confidentiality of reports made to the FIC and the identities of the persons who make those reports, as well as of the information that the FIC shares with investigating and other authorities. These provisions serve an important twofold purpose, namely, to avoid premature disclosure of information that undermines ongoing investigations, and to minimise harm to both subjects and submitters of reports that may flow from such premature disclosure. Furthermore, the FIC Act makes it an offence to disclose confidential information other than in terms of the provisions of the Act.

The principle of applying the provisions of the FIC Act with strict neutrality and objectivity, has guided the Director in relation to the FIC's decisions in the litigation between, among others, the Public Protector and the President regarding donations made to the CR17 campaign with a view

to electing Mr Cyril Ramaphosa to the position of President of the African National Congress in December 2017.

In the run-up to that case a directive was issued by the Deputy Judge President of the Gauteng High Court, Pretoria, that certain documents be sealed from public scrutiny. Included in those documents was information provided by the FIC to the Public Protector as a competent authority and in terms of the FIC Act. The case was heard and decided without the documents being unsealed. The case is now on appeal to the Constitutional Court. The FIC is abiding by the outcome of the case before the Constitutional Court.

The Economic Freedom Fighters (EFF) has launched an application in the High Court to now have the documents unsealed. In its application the EFF has cited the FIC as a respondent. The FIC has considered its obligations under the Act and has concluded that it is obliged to protect the confidentiality of the information obtained from it, particularly, but not exclusively because the case for which the information was required has been decided and the appeal record before the Constitutional Court does not include the sealed documents, and therefore they will play no role in the appeal. The information obtained from the FIC is confidential and the FIC is under a statutory duty to maintain that confidentiality, and this is what it is doing.

The FIC has thus filed a notice to oppose the EFF's application to have certain documents unsealed, which form part of the record of the Public Protector's decision in relation to the CR17 campaign funding. As was confirmed by the High Court in the course of the President's application to have the Public Protector's report set aside, this record contains, among other aspects, information and documents that the FIC had shared with the Office of the Public Protector. The FIC has therefore opposed the EFF's application to unseal the information obtained from the FIC report, as unsealing the report would make public the contents of the FIC's report, the effect of which will render the contents of its report public, in contravention of the Act.

The FIC is implementing what the Act requires of it by protecting the confidentiality of the information and it is doing so independently of the interests of any party to the litigation.

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Issued by:

The Financial Intelligence Centre

For more information please contact communications@fic.gov.za or visit www.fic.gov.za.

Note to editors: As South Africa's national centre for the gathering and analysis of financial data, the role of the Financial Intelligence Centre (FIC) is to safeguard the integrity of the country's financial system and its institutions. In pursuit of this, the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), mandates the FIC to identify the proceeds of crime, combat money laundering and the financing of terrorism, and facilitate effective supervision and enforcement of the Act.

Under this legislation, financial and non-financial institutions are required to fulfil certain compliance obligations, including filing of transactions reports to the FIC. The information provided in these reports form the basis upon which analysis is conducted to develop financial intelligence reports for use by a wide range of law enforcement agencies and other government institutions to facilitate the administration and enforcement of the laws of the Republic. The FIC Act also sets out the enforcement and penalty regime for non-compliance with the FIC Act.

In 2017, new amendments to the FIC Act were passed to create greater transparency in the financial system and to advance the fight against corruption, money laundering and the financing of terrorism. These amendments ensure that South Africa continues to meet international standards and best practices. The amendments target four key areas:

- Adopting a risk-based approach when establishing the identity of a client
- Identifying who really owns and benefits from corporate vehicles
- Improving the management of relationships with prominent influential persons
- Implementing United Nations Security Council financial sanctions.

For more about the FIC visit www.fic.gov.za