

NATIONAL ASSEMBLY

FOR WRITTEN REPLY**QUESTION 2288**

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(INTERNAL QUESTION PAPER NO 23-2023)

2288. M. Gen O S Terblanche (DA) to ask the Minister of Police [329] [Question submitted for oral reply now placed for written reply because it is in excess of quota (Rule 137(8))]:

Whether, with reference to the issuing by the Minister of Justice and Correctional Services, Mr R O Lamola, of a certificate of exemption in terms of section 46(3) of the Regulation of Interception of Communication and Provision of Communication-related Information Act, Act 70 of 2002, to the SA Police Service (SAPS) to be in possession of listed equipment in terms of the specified Act for a period of five years, any investigations have been launched to investigate allegations that listed equipment had been procured and was in possession of the SAPS' illegally prior to the issuing of the certificate of exemption; if not, what is the position in this regard; if so, what are the relevant details?

NW2592E

REPLY:

On 29 December 2005, in Government Notice Number (GNR) 1263, the Minister of Justice and Constitutional Development declared certain devices as listed equipment under certain conditions or circumstances.

- **Any instrument, device or equipment, which is capable of being used to access, record, monitor or retrieve communications from a computer, without the permission of the author of the communication, including but not limited to -**
 - **keystroke recorders; and**
 - **software that can be installed on a computer and which has the ability to retrieve and/or store information so as to make it available to another person without the consent of the author of the communication.**

- **Any instrument, device or equipment which is capable of being used to record, monitor or listen to a communication, including but not limited to –**
 - **telephone wiretaps;**
 - **long range electronic audio amplified microphones;**
 - **miniature laser audio transmitters;**
 - **miniature radio frequency audio transmitters;**

- cellular phone intercepting devices; and
 - miniature sound recording devices.
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- **Any instrument, device or equipment which is capable of being used to visually record, monitor or observe a communication, including but not limited to –**
 - miniature video cameras;
 - miniature cameras; and
 - night vision apparatus.

 - **Any instrument, device or equipment which is capable of being used to determine or monitor the geographical location of a person, vehicle or object.**

It is important to note that in order to fulfil its mandate, the South African Police Service (SAPS) was in possession of the listed equipment, before the Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA), 2002 (Act No. 70 of 2002) came into effect.

Section 45(1) of the RICA states that "Subject to Subsection (2) and Section 46, no person may manufacture, assemble, possess, sell, purchase or advertise any listed equipment."

Subsection 45(2) states that "Subsection (1) does not apply to any telecommunication service provider or other person who, or law enforcement agency which, manufactures, assembles, possesses, sells, purchases or advertises listed equipment under the authority of a certificate of exemption issued to him or her or to it for that purpose by the Minister under Section 46."

In order to comply with Subsection 45(2), a total of five applications/submissions were made since 2010 with the last application in 2019.

Regrettably, none of the earlier applications received the attention they deserved, although the Minister of Justice and Correctional Services indicated that sufficient circumstances exist, which justify an exemption and that it is in the public interest to grant the exemption, the Minister of Justice and Correctional Services could not

approve any application without the consent of the relevant Cabinet Members. (Communications, Defence, State Security and Policing).

During the course of 2022 the consent of the relevant Cabinet Members could finally be obtained, with assistance, intervention and facilitation by the Minister of Police, the National Commissioner and the Joint Standing Committee on Intelligence (JSCI). This resulted in approval of the exemption by the Justice Portfolio Committee during March 2023, after the Department of Justice and Constitutional Development's referral of the matter to the Speaker of Parliament.


As stated in paragraph 2 above, the SAPS was in possession of listed equipment before the RICA came into effect and there was equipment procured after the promulgation of the RICA. In instances where there were irregularities during any regulatory or departmental process, consequence management was implemented. It is important to mention that consequence management is not only limited to disciplinary processes, but is inclusive of any other remedial action that led to the department obtaining the exemption certificate.

Reply to question 2288 recommended/~~not~~ recommended


GENERAL
NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
SF MASEMOLA (SOEG)

Date: 2023-06-19

Reply to question 2288 approved/~~not~~ approved


MINISTER OF POLICE
GENERAL BH CELE, MP

Date: 21/06/2023