

## MEDIA ARTICLE

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### **CO-OPERATING FULLY WITH LAW ENFORCEMENT AND OTHER COMPETENT AUTHORITY PARTNERS**

**11 November 2016** - The Financial Intelligence Centre (FIC) strongly rejects the suggestion created in the media that it is not co-operating fully with its law enforcement and other competent authority partners.

Ordinarily, the FIC prefers to deal with operational matters such as the distribution of information directly with its partners. However, this matter has recently been brought into the public domain and along with it, the allegation that the FIC is not sharing information as per its mandate. It is in the media also, that because of the lack of co-operation from the FIC, an investigation by the Hawks has had 'to grind to a halt'. This claim is clearly nefarious, mischievous and totally without basis.

As per its mandate, the FIC responds to requests for information from law enforcement authorities and other competent authorities, including the Hawks. In doing so, the FIC follows legislative processes compelling it to co-operate with law enforcement and other competent authorities, and has processed thousands of requests for information since its establishment in 2003. In the past year alone, the FIC has responded to close to 2 000 requests for information in support of investigations.

The supposed lack of co-operation by the FIC is in relation to reports on transactions mentioned in a certificate attached to a founding affidavit filed by the Minister of Finance in a High Court Application on 14 October 2016.

Since the Minister's application there have been several questions directed at the FIC about the Financial Intelligence Centre Act, 2001 (No 38 of 2001) and there has been a growing narrative about the organisation being unco-operative in allowing people access to the reports in question.

We suspect that this is because there is a general misunderstanding of a report on a transaction, which a reporter deems suspicious or unusual and our role in protecting the reported information. We also want to explain the FIC's role and responsibility as the custodians of this information and the role and responsibility of those who are entitled to access such information.

A report on a suspicious or unusual transaction contains information about a person's identity as well as the person's most private information such as bank account details, signatories on accounts, balances in accounts, and so on.

It also contains information about financial transactions the parties involved, amounts involved, etc. This is non-public, private and confidential information about a person that is protected under the Protection of Private Information Act and the Constitution of the Republic of South Africa.

We can categorically state that the FIC has never, since its inception, given copies of reports on suspicious or unusual transactions to investigators, politicians (including the Minister of Finance who is the Executive Authority responsible for the FIC) or any other person, or allowed any such person to access to such reports. Any suggestion of such allegations is incorrect. The Minister's application contained a certificate from the FIC and not the actual, confidential suspicious and unusual transaction reports.

Unlawful access to such sensitive information has serious ramifications, including possible criminal liability. In addition to private information of individuals, a report on a suspicious or unusual transaction also contains other highly sensitive information such as details about who reported the transaction and the reasons why the reporter considered the relevant transactions to be suspicious or unusual and therefore submitting it to the FIC.

The FIC is entrusted to protect the confidentiality of this information and to ensure no person's rights are unlawfully and unfairly prejudiced through illegitimate access, be it the reporter of the suspicious or unusual transaction, the reported person or third parties mentioned in the report.

The FIC is therefore the gatekeeper of this information and the FIC's job is to protect and preserve citizen's rights. If we fail in our duty citizens' rights as enshrined in the Constitution will be unfairly prejudiced. Access to the information reported to the FIC is regulated in the FIC Act and the requirements to access this information are also defined in the Act. These safeguards were put in place by Parliament and not the FIC. These laws were put in place to protect citizens' rights and prevent abuse of their information. If we deviate from the standards set in law we undermine

the very safety net built by Parliament to balance the interests in having access to private information for lawful purposes in the application of the criminal justice system with protection of our citizens.

One of the requirements to access this information includes the need for the requestor of the information to have a national mandate to investigate an unlawful activity. Another requirement is the need for the investigating authority, at the very least, to indicate what unlawful activity is being investigated. These are very low standards for access to such privileged information, far lower than the test used by our courts to grant warrants to access similar information for evidentiary purposes. These are the factors that would confirm that information reported to the FIC is required for a legitimate reason and once these criteria have been met the FIC has no discretion to refuse a request for the sharing of information.

If the FIC refuses access to this information which it is obliged to protect it is because the requestor did not meet the legal threshold set by the legislator to access such information. We also want to point out that private persons are not entitled to access information reported to the FIC and, in particular, not the content of reports on suspicious or unusual transactions. These checks and balances are inherent in the provisions of the FIC Act.

It is very unfortunate that, in this instance, failure by the requestor of this information to meet the legislative standard, has been interpreted as the FIC being unco-operative. However, the FIC cannot become party to arbitrary violation of citizens' rights and the legislative standard designed to protect our citizens. Instead, where requests from competent authorities, such as law enforcement agencies, are defective, the FIC assists by indicating what is required from the requestor to lay a proper legal basis for the sharing of requested information.

We also want to point out that the contents of a report on a suspicious or unusual transaction is hearsay, by nature, and is based on a reporter's suspicions and therefore will not meet evidentiary standards set by our judiciary for use in certain legal proceedings. The FIC Act provides that any person making such a report may not be compelled to testify in criminal proceedings that may follow the report and that their identity may not be revealed without their consent. Thus it is domestic and international practice that the actual content of a report on a suspicious or unusual transaction cannot be used, in and of itself, to support a conviction in a criminal prosecution.

The reports we refer for investigation do not contain the actual suspicious or unusual transaction reports made to us. Instead it contains a substantial amount of information relating to descriptions

of the transactions or activities relating to the financial conduct of reported person(s) and how those transactions or activities are linked with the person(s) mentioned in the FIC's referral. The FIC extracts this information from the reports which persons make to the FIC. In addition to these factual descriptions, a referral from the FIC also contains the FIC's analysis of the events mentioned in the referral and their potential links to unlawful activity, as well as the FIC's advice on the potential unlawful activity which the recipient of the referral may wish to pursue in an investigation. However, any suggestion that the FIC refers mere reports for investigation is technically and factually incorrect.

The FIC wants to assure South Africans that we will continue protecting citizens' rights despite an onslaught of negative and disparaging remarks regarding co-operation. Our records reflect numerous citations from law enforcement agencies for outstanding co-operation. Lastly, we want to assure all law enforcement agencies and victims of crime that the FIC will lawfully co-operate as we have done over the past 14 years to make our information available in order to combat unlawful activity in the Republic of South Africa.

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## **ISSUED BY THE FINANCIAL INTELLIGENCE CENTRE FOR MORE INFORMATION**

**PLEASE E-MAIL: [communications@fic.gov.za](mailto:communications@fic.gov.za)**

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**Note to editors:** The Financial Intelligence Centre (FIC) is South Africa's national centre for the gathering, analysis and dissemination of financial intelligence. The FIC was established in 2003 through the promulgation of the Financial Intelligence Centre Act 2001 (38 of 2001) FIC Act) to identify proceeds of crime, combat money laundering and the financing of terrorism. The FIC reports to the Minister of Finance and to Parliament.

In protecting the financial system, the FIC's primary activities as set out in its founding legislation, are to: process, analyse, interpret and retain information disclosed to and obtained by the FIC; inform, advise, co-operate with and make its financial intelligence products available to investigating authorities supervisory bodies, intelligence services and SARS to facilitate the country's administration and enforcement of law; supervise and enforce compliance with the FIC Act in affected institutions and by individuals not regulated or supervised by a supervisory body, or where the supervisory body is unable to act; exchange information with similar bodies in other countries; monitor and give guidance to accountable and reporting institutions, supervisory bodies and individuals regarding their compliance with the FIC Act; implement a registration system for all affected institutions and individuals; annually review the implementation of the FIC Act and report on this to the Minister of Finance.

The FIC Act establishes a regulatory framework of compliance control measures, which requires certain categories of business (defined as schedule 1 in the FIC Act) to take steps regarding: registration with the FIC; client identification, verification and record-keeping; appointment of compliance officers; training employees on compliance; reflecting their organisation's compliance structures and filing statutory reports with the FIC. The Act also requires all businesses to report suspicious and unusual financial transactions.

Statutory reports submitted to the FIC are the basis upon which the FIC's financial intelligence is developed. This is important for law enforcement, revenue agencies, police and others to support their investigations and forfeiture processes.

**KEY STATISTICS FOR 2015/16**

180 363	Number of suspicious transaction reports received
9 314 339	Number of cash threshold reports received
34 255	Number of institutions registered with the FIC
R184 6 million	Blocked as suspected proceeds of crime