



**MINISTRY OF ENERGY**  
**REPUBLIC OF SOUTH AFRICA**

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**Memorandum from the Parliamentary Office**

**1897. Mr G Mackay (DA) to ask the Minister of Energy:**

- (1) With reference to her reply to question 1701 on 5 September 2016, on which statutory grounds is she relying to prevent the release of the (a) proposal for the roll-out of new nuclear power plants as signed off by her, (b) Integrated Nuclear Infrastructure Review by the International Atomic Energy Agency, (c) terms of reference for the National Nuclear Energy Executive Coordinating Committee (NNEECC), (d) communication and stakeholder engagement strategy of the NNEECC, (e) phased decision making approach of the NNEECC for implementing Government's nuclear programme, (f) designation of Eskom as the owner and operator of nuclear power plants in South Africa, (g) 2004 Bilateral International Agreement with the Russian Federation and (h) May 2013 agreement signed between South Africa and Russia during the BRICS Summit meeting held in Durban;
- (2) Whether she will make each of the specified documents available to Mr G Mackay; if not, why not; if so, by when? NW2207E

**Reply**

- (1) The State is not relying on a statutory ground to prevent the release of the said documents in the litigation concerned but relies in general on a privilege in the Law of Evidence and recognized in terms of the common law, in terms of which the State is exempted from having to disclose documents pertaining to the high affairs of state (such as minutes of the meetings of Cabinet, documents exchanged between sovereign states or in the conduct of international relationships) so as to *inter alia* (a) not interrupt the orderly governance of the country entrusted to the National Executive

by the Constitution of the Republic of South Africa, 1996 and (b) to promote a freedom of open discussion and discourse in Cabinet.

These documents were further requested in terms of rule 35(12) of the Uniform Rules of Court, which is firstly restricted to documents that are not privileged and which secondly requires that the relevant affidavit must refer to a document as such before it can be requested: some of those documents were not so referred to and was additionally refused on that basis.

The two bilateral agreements are already in the public domain and they were in fact made available to the other parties in the litigation; they are also immediately available to the Honorable Member of Parliament

Cabinet has recently deliberated on the outcome of the Integrated Nuclear Infrastructure Review by the International Atomic Energy Agency and the stance in respect of this document will change in due course.

- (2) For the reasons set out in paragraph (1) above, the rest of the documents are privileged and will not be made available to the Honorable Member of Parliament.