Report of the auditor-general to the Gauteng Provincial Legislature and council on the City of Johannesburg Metropolitan Municipality Group

Report on the audit of the consolidated and separate financial statements

Opinion

1. I have audited the consolidated and separate financial statements of the City of Johannesburg Metropolitan Municipality and its subsidiaries (the group) set out on pages … to …, which comprise the appropriation statement, consolidated and separate statement of financial position as at 30 June 2022, the consolidated and separate statement of financial performance, statement of changes in net assets, and cash flow statement and the statement of comparison of budget and actual information for the year then ended, as well as notes to the consolidated and separate financial statements, including a summary of significant accounting policies.

2. In my opinion, the consolidated and separate financial statements present fairly, in all material respects, the financial position of the group as at 30 June 2022, and their financial performance and cash flows for the year then ended in accordance with the South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the requirements of the Municipal Finance Management Act 56 of 2003 (MFMA) and the Division of Revenue Act 9 of 2021 (Dora).

Basis for opinion

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the consolidated and separate financial statements section of my report.

4. I am independent of the group in accordance with the International Ethics Standards Board for Accountants' International code of ethics for professional accountants (including International Independence Standards) (IESBA code) as well as other ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.

5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Key audit matters

6. Key audit matters are those matters that, in my professional judgement, were of most significance in my audit of the consolidated and separate financial statements for the current period. This matter was addressed in the context of my audit of the consolidated and separate financial statements as a whole and in forming my opinion, and I do not provide a separate opinion on this matter.

Key audit matter	How the matter was addressed in the audit
Revenue recognition	
Revenue from service charges for water and electricity, as disclosed in note 33 to the annual financial statements, was recognised based on actual meter readings and estimates of consumption. Revenue recognition from service charges for water and electricity has been identified as a key audit matter due to significant judgement applied in calculating the estimation of the consumption used and the significant volume of transactions processed and interfaced through a complex information system.	My procedures included the following to address the key audit matter: o Understanding and evaluating the flow of information, the information technology (IT) system and the controls relating to the meter reading process, the billing processes and the systems interface process, which included involving my IT audit specialists. o Identifying the significant risks associated with service billing and designing specific procedures to address the risks identified. o Performing a substantive test of detail using computer assisted audit techniques by IT audit specialist on the electricity and water consumption billed to identify estimations used. o Performing procedures on the appropriateness of assumptions made by management in calculating the estimate to determine whether it is reasonable. o Physical inspection of a sample of meter readings to validate the meter readings captured. o I found that manual and IT controls were designed and these control were adequately implemented for electricity but not adequately implemented for water. Overall, I found that the significant judgements made by management in calculating the estimate were reasonable. Even through there was a concern regarding estimates for water, which were beyond twelve months, no significant issues were noted on the reasonableness of revenue.

Emphasis of matters

7. I draw attention to the matters below. My opinion is not modified in respect of these matters.

Material impairments

8. As disclosed in note 10 of the consolidated and separate financial statements, the consumer debtors' balance has been impaired. The allowance for impairment of consumer debtors amount to R 37 955 248 000 (2020-21: R 32 715 319 000) which represents 82.15 % (2020-21: 82.22%) of the total consumer debtors.

9. As disclosed in note 8 of the consolidated and separate financial statements, the traffic fines debtors' balance has been impaired. The allowance for impairment of traffic fines debtors amounts to R 2 554 894 000 (2020-21: R 2 622 130 000) which represents 94, 56 % (2020-21:92, 07%) of total traffic fines debtors.

Material contingencies

10. With reference to note 47 to the consolidated and separate financial statements, the group is the defendant in various legal claims. The outcomes of the matters could not presently be determined and / or reliably measured; therefore, no provision for any liability that may result was made in the financial statements.

Restatement of corresponding figures

11. As disclosed in note 48 to the consolidated and separate financial statements, the corresponding figures for 30 June 2021 were restated as a result of errors in the consolidated and separate financial statements of the Metropolitan Municipality at, and for the year ended 30 June 2022.

Material losses - electricity

12. As disclosed in note 41 to the consolidated and separate financial statements, material electricity losses of R 4 168 819 000 (2020-2021: R 3 671 613 000) were incurred, which represents 30% (2020-21: 29%) of total electricity purchased. Technical losses amounted to R1 273 213 603 (2020-2021: R1 143 642 415) due to energy losses in transportation. Non-technical losses amounted to R2 895 604 788 (2020-2021: R2 527 971 199) due to theft and bypassing of the meters, illegal decalibtration of metres, damaged meters, faulty voltage and current transformers, billing errors and customers without meters.

Material losses - water

13. As disclosed in note 41 to the consolidated and separate financial statements, material water losses of R2 100 000 000 (2020-21: R1 500 000 000) were incurred, which represents 31, 80% (2020-21: 25, 08%) of the water inventory expensed. The level of physical losses for the year under review amounted to R1 500 000 000 (22, 90%), (2020-21: R1 100 000 000 (18, 06%)) and was due was due leaks on the water network infrastructure. The level of commercial losses for the year under review amounted to R589 400 000 (8, 91%), (2020-21: R425 900 000 (7, 02%)) and were due to illegal connections, metering and associated data transfer errors.

Other matter

14. I draw attention to the matter below. My opinion is not modified in respect of this matter.

Unaudited disclosure note

15. In terms of section 125(2) (e) of the MFMA, the Metropolitan Municipality is required to disclose particulars of non-compliance with the MFMA in the consolidated and separate financial statements. This disclosure requirement did not form part of the audit of the consolidated and separate financial statements and accordingly, I do not express an opinion thereon.

Responsibilities of the accounting officer for the consolidated and separate financial statements

16. The accounting officer is responsible for the preparation and fair presentation of the consolidated and separate financial statements in accordance with the SA Standards of GRAP and the requirements of the MFMA and Dora and for such internal control as the accounting officer determines is necessary to enable the preparation of consolidated and separate financial statements that are free from material misstatement, whether due to fraud or error.

17. In preparing the consolidated and separate financial statements, the accounting officer is responsible for assessing the group's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the group or to cease operations, or has no realistic alternative but to do so.

Auditor-general's responsibilities for the audit of the consolidated and separate financial statements

18. My objectives are to obtain reasonable assurance about whether the consolidated and separate financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated and separate financial statements.

19. A further description of my responsibilities for the audit of the consolidated and separate financial statements is included in the annexure to this auditor's report.

Report on the audit of the annual performance report

Introduction and scope

20. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for selected mayoral priorities presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.

21. My procedures address the usefulness and reliability of the reported performance information, which must be based on the municipality's approved performance planning documents. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the municipality enabled service delivery. My procedures do not extend to any disclosures or assertions relating to the extent of achievements in the current year or planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.

22. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected mayoral priorities presented in the municipality's annual performance report for the year ended 30 June 2022:

Mayoral priority	Pages in the annual performance report
Mayoral priority 1 – A City that gets the basics right	x – x

23. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.

24. The material findings on the usefulness and reliability of the performance information of the selected mayoral priority are as follows:

Mayoral Priority 1: A City that gets the basics right

Various indicators

25. I was unable to obtain sufficient appropriate audit evidence for the reported achievements of 2 of the 13 indicators relating to this mayoral priority. This was due to the lack of accurate and complete records. I was unable to confirm the reported achievements by alternative means. Consequently, I was unable to determine whether any adjustments were required to the reported achievements in the annual performance report for the indicators listed below:

Indicator	Reported Achievement
Percentage households with access to sanitation	99.79%
Percentage households with access to water	93.01%

Various indicators

26. The achievements reported in the annual performance report materially differed from the supporting evidence provided for the indicators listed below:

Indicator description	Reported Achievement
Number of lane km of road resurfaced	131.10L/KM
Number of gravel km upgraded and surfaced	20.86KM
Number of kilometres of open storm water drains converted to underground systems	3.05KM

Indicator: Number of indigent households benefitting from ESP (free basic services)

27. The achievement of 152 248 was reported against target 152 248 in the annual performance report. However, some supporting evidence provided materially differed from the reported achievement, while in other instances I was unable to obtain sufficient appropriate audit evidence. This was due to the lack of accurate and complete records. I was unable to further confirm the reported achievement by alternative means. Consequently, I was unable to determine whether any further adjustments were required to the reported achievement.

Indicator: Total water losses

28. The indicator was initially approved in the annual performance plan as 'Total water losses'. The indicators refers to total water losses, however, the method of calculation refers to the percentage of total water losses. The indicator is not well defined as it is ambiguous since it is generic and does not specify as to whether the total water losses referred to are in the form of the Rand Value, Quantity (i.e. Litres or Kilolitres) or other appropriate units of measure expressions. The planned indicator and target were *Total water losses (27%)*, but the reported achievement referred to was (*To be determined [Awaiting confirmation of accruals]*).

29. I was also unable to obtain sufficient and appropriate audit evidence for the reasons for the variance between the planned target and reported achievement reported in the annual performance report, due to these significant inconsistencies. I was unable to confirm the reported reason for the variance by alternative means. Consequently, I was unable to determine whether any adjustments were required to the reason for the variance reported.

Other matters

30. I draw attention to the matters below.

Achievement of planned targets

31. Refer to the annual performance report on pages x to x for information on the achievement of planned targets for the year. The City of Johannesburg Metropolitan Municipality achieved 69% of the planned targets for the year in the selected mayoral priority 1: A city that gets the basics right. Some of the planned targets that were not achieved relate to key service delivery indicators on water, sanitation and electricity, per the table below:

	Indicator	Planned Target	Reported Achievement
1	Indicator 2: Percentage households with access to sanitation	93.14%	93.01%
2	Indicator 4: Percentage of all recognised informal settlements provided with waste management services	100%	96%
3	Number of indigent households benefitting from ESP (free basic services)	120 000	152 248
4	Indicator 12: Total water losses	21%	Reported as " **To be determined"**
5.	Indicator 13: Percentage total electricity losses	22.4%	Reported as" **24%* (Preliminary) To be determined**

32. Reasons for underachievement of targets are included in the annual performance report on pages x to x.

Adjustment of material misstatements

33. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information of mayoral priority 1: A city that gets the basics right. As management subsequently corrected only some of the misstatements, I raised material findings on the usefulness and reliability of the reported performance information. Those that were not corrected are reported above.

Report on the audit of compliance with legislation

Introduction and scope

34. In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the municipality's compliance with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.

35. The material findings on compliance with specific matters in key legislation are as follows:

Annual financial statements

36. The consolidated and separate financial statements submitted for auditing were not prepared in all material respects in accordance with the requirements of section 122(1) of the MFMA. Material misstatements of property, plant and equipment, financial assets at fair value, deviations, segment reporting, commitments, and appropriation statement identified by the auditors in the submitted financial statement were subsequently corrected resulting in the consolidated and separate financial statements receiving an unqualified audit opinion.

Expenditure management

37. Reasonable steps were not taken to prevent irregular expenditure amounting to R3 556 841 000 as disclosed in note 53 to the consolidated and separate annual financial statements, as required by section 62(1) (d) of the MFMA. The majority of the irregular expenditure was caused by the non-compliance with SCM regulation 36.

38. Reasonable steps were not taken to prevent fruitless and wasteful expenditure amounting to R585 967 000 as disclosed in note 49 to the annual consolidated and annual financial statements, in contravention of section 62(1) (d) of the MFMA. The majority of the disclosed fruitless and wasteful expenditure was caused by payment to a service provider for unused SAP licences.

39. Reasonable steps were not taken to prevent unauthorised expenditure amounting to R1 333 731 000, as disclosed in note 50 to the annual consolidated and separate financial statements, in contravention of section 62(1) (d) of the MFMA. The majority of the unauthorised expenditure was caused by overspending on key votes.

Procurement and contract management

40. Some of the goods and services of a transaction value above R200 000 were procured without inviting competitive bids, as required by SCM Regulation 19(a). Deviations were approved by the accounting officer even though it was not impractical to invite competitive bids, in contravention of SCM Regulation 36(1). Similar non-compliance was also reported in the prior year.

41. The performance of contractors or providers was not monitored on a monthly basis, as required by section 116(2) (b) of the MFMA. Similar non-compliance was also reported in the prior year.

42. Awards were made to providers who were in the service of other state institutions or whose directors / principal shareholders were in the service of other state institutions, in contravention of MFMA 112(1) (j) and SCM Regulation 44.

43. Persons in service of the municipality whose close family members had a private or business interest in contracts awarded by the municipality failed to disclose such interest, in contravention of SCM regulation 46(2).

Consequence management

44. Some of the fruitless and wasteful expenditure incurred by the municipality was not investigated to determine if any person is liable for the expenditure, as required by section 32(2)(b) of the MFMA.

45. Some of the unauthorised expenditure incurred by the municipality was not investigated to determine if any person is liable for the expenditure, as required by section 32(2)(a) of the MFMA.

46. Some of the irregular expenditure incurred by the municipality were not investigated to determine if any person is liable for the expenditure, as required by section 32(2)(b) of the MFMA.

Strategic planning and performance management

47. Annual performance objectives and indicators were not established for the municipal entities and included in the municipal entities' multi-year business plans, as required by section 93B (a) of the MSA.

Other information

48. The accounting officer is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the consolidated and separate financial statements, the auditor's report and that selected mayoral priority presented in the annual performance report that have been specifically reported in this auditor's report.

49. My opinion on the consolidated and separate financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion on it.

50. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the consolidated and separate financial statements and the selected mayoral priority presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

51. I did not receive the other information before the date of this report. When I do receive and read the annual report, if I conclude that there is a material misstatement therein, I am required to communicate the matter to those charged with governance and request that the other information be corrected. If the other information is not corrected, I may have to retract this auditor's report and re-issue an amended report as appropriate. However, if it is corrected this will not be necessary.

Internal control deficiencies

52. I considered internal control relevant to my audit of the consolidated and separate financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. The matters reported below are limited to the significant internal control deficiencies that resulted in the findings on the annual performance report and the findings on compliance with legislation included in this report.

53. The accounting officer did not adequately exercise oversight responsibility, by holding senior management accountable for implementation of preventative controls relating to the financial and performance management as well as the compliance with laws and regulations.

54. Senior management did not adequately implement action plans designed to prevent the recurring instances of non-compliance. Consequence management relating to deviating from policies and procedures relating to compliance with laws and regulations were not implemented adequately, consistently and effectively.

Material irregularities

55. In accordance with the PAA and the Material Irregularity Regulations, I have a responsibility to report on material irregularities identified during the audit and on the status of the material irregularities reported in the previous year's auditor's report.

Material irregularities identified during the audit

56. The material irregularities identified are as follows:

Payments made for airtime and data loaded on sim cards but not utilised

57. The municipality entered into a contract with the service provide on 31 January 2019 for airtime and data. The sim cards were delivered in April 2019. The municipality did not utilize airtime and data loaded on sim cards between April 2019 and August 2019. This resulted in non-compliance with section 62(1) (a) of MFMA.

58. The non-compliance is likely to result in a material financial loss of R6 428 186 if not recovered. The amount is disclosed in note 44 as a comparative to the 2021-22 annual financial statements.

59. The accounting officer was notified of the material irregularity on 05 August 2022 and invited to make a written submission on the actions taken and that will be taken to address the matter.

60. The accounting officer has taken the following actions to address the material irregularity:

- Established a contract management committee in January 2022 to monitor all contracts within the municipality. Furthermore, a monthly checklist for contract management has been implemented effective August 2022.
- Instituted an investigation to determine officials responsible which is expected to be finalised 02 December 2022. The accounting officer plans to take disciplinary actions against implicated officials based on the outcome of the investigation.

61. I will follow up on the implementation of the planned actions during my next audit.

Construction of a fire station at Protea Glen Extension 13 without prior authorization

62. The municipality commenced construction of a fire station at Protea extension 13 in 2012-13 financial year without obtaining authorisation from the Gauteng Department of Agriculture and Rural Development. Due to its failure to obtain the authorisation, the municipality failed to

comply with section 24(F) (1) of the National Environmental Management Act which resulted in a penalty being imposed by Gauteng Department of Agriculture and Rural Development.

63. The non-compliance is likely to result in a material financial loss of R2 500 000 if not recovered. The amount is disclosed note 44 as a comparative to the 2021-22 annual financial statements.

64. The accounting officer was notified of the material irregularity on 15 December 2021 and invited to make a written submission on the actions taken and that will be taken to address the matter.

65. The accounting officer has taken the following actions to address the material irregularity:

- Instituted a disciplinary process against implicated officials which commenced on 11 May 2022 based on the outcome of the disciplinary process performed the official was recommended for dismal.

- The Emergency Management Services department has been capacitated with additional two employees during 2021-22.

- The accounting officer is in the process of conducting a cost benefit analysis to establish if actions can be taken against the service provider. The process is expected to be completed by 15 December 2022.

66. I will follow up on the implementation of the planned actions during my next audit.

Status of previously reported material irregularity

Failure to correctly deduct and withhold employee tax on gratuity payments

67. The South African Revenue Service (SARS) conducted a payroll taxes audit for the City of Johannesburg core department during 2018-19. Findings emanating from the SARS audit referenced an underpayment of employee's tax for final gratuities, leave and bonus payments on terminations to the value of R9 183 080 for the periods 2014 to 2017 due to the municipality incorrectly treating it as severance benefit payments. The municipality was found to have contravened section 2(1) of the fourth schedule to the Income Tax Act no. 58 of 1962 (Income Tax Act) and the underpayment resulted in SARS penalties and interest charged amounting to R6 303 048.

68. The non-compliance is likely to result in a material financial loss of R15 486 128, 45 if not recovered. The amount is disclosed note 44 as a comparative to the 2021-22 annual financial statements.

69. The accounting officer was notified of the material irregularity on 18 March 2021

70. The accounting officer has taken the following actions to address the material irregularity:

- Instituted an internal investigation to determine the responsible officials which was finalised in September 2021.
- Based on the outcome of the investigation, caution letters were issued to the identified officials in March 2022.

- Initiated the plan to recover overpayments made to the twelve employees who are still within the employment of the municipality and the last payment recovery is scheduled for 30 April 2027. The accounting officer has recovered R24 485, 60.
- Discontinued manual application of tax directives during 2021-22 and the payroll unit has .also been capacitated with competent individuals effective June 2022.
- Training has been provided by SARS to the officials within the payroll unit in February 2022.

71. I will continue to follow up on the implementation of the planned actions during the next audit.

Material irregularity in progress

72. I identified another material irregularity during the audit and notified the accounting officer of this, as required by material irregularity regulation 3(2). By the date of this auditor's report, the response of the accounting officer was not yet due. This material irregularity will be included in the next year's auditors report.

Other reports

73. In addition to the investigations relating to material irregularities, I draw attention to the following engagements conducted by various parties which had, or could have, an impact on the matters reported in the group's financial statements, reported performance information, compliance with applicable legislation and other related matters. These reports did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.

74. A total of one thousand, seven hundred and thirty one (1731) cases of alleged irregularities relating to financial misconduct, fraudulent acts, theft and non-compliance were investigated during the financial year. The majority of the cases were investigated internally by the Metropolitan Municipality's forensic department. Eight hundred and seventy three (873) of these cases were finalised during the 2021-22 financial year, while eight hundred and fifty eight (858) were still in progress at year end.

Auditor - General

Johannesburg

31 December 2022

AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

Annexure – Auditor-general's responsibility for the audit

1. As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the consolidated and separate financial statements and the procedures performed on reported performance information for selected mayoral priority and on the municipality's compliance with respect to the selected subject matters.

Financial statements

2. In addition to my responsibility for the audit of the consolidated and separate financial statements as described in this auditor's report, I also:

   - identify and assess the risks of material misstatement of the consolidated and separate financial statements, whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control
   - obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the municipality's internal control
   - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting officer
   - conclude on the appropriateness of the accounting officer's use of the going concern basis of accounting in the preparation of the consolidated and separate financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the ability of the City of Johannesburg and its subsidiaries to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the consolidated and separate financial statements about the material uncertainty or, if such disclosures are inadequate, to modify my opinion on the consolidated and separate financial statements. My conclusions are based on the information available to me at the date of this auditor's report. However, future events or conditions may cause a municipality to cease operating as a going concern
   - evaluate the overall presentation, structure and content of the consolidated and separate financial statements, including the disclosures, and determine whether the consolidated and separate financial statements represent the underlying transactions and events in a manner that achieves fair presentation
   - obtain sufficient appropriate audit evidence regarding the consolidated and separate financial information of the entities or business activities within the group to express an opinion on the separate and consolidated financial statements. I am responsible for the direction, supervision and performance of the group audit. I remain solely responsible for my audit opinion.

Communication with those charged with governance

3. I communicate with the accounting officer regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

4. I also provide the accounting officer with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and, where applicable, actions taken to eliminate threats or safeguards applied.

5. From the matters communicated to those charged with governance, I determine those matters that were of most significance in the audit of the consolidated and separate financial statements for the current period and are therefore key audit matters. I describe these matters in this auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, I determine that a matter should not be communicated in this auditor's report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest of such communication.