

State already keeps secrets all too well

A minefield is placed in the way of organisations wanting information, writes Alison Tilley



HOW many secrets does a government have anyway? Even without the Protection of Information Bill? I wish I could say our government differed in this regard from other administrations, but I can't.

All governments have secrets – the Kiswahili word for government is supposed to translate as “fierce secret” – and some keep them better than others.

Keeping secrets is expensive, and in the age of instantly transferable electronic files almost impossible, but nevertheless let us concede that there are secrets to keep and they need to be kept safe.

However, there are also government secrets that we just don't understand.

Using the Promotion of Access to Information Act (PAIA), we have made some requests recently for documents that we have since been told are secret.

The reasons given are varied. Some are lawful but odd, and some are not lawful, and odd anyway. It's possible only to challenge the unlawful ones in court, so let's start with those that are odd, but can be justified.

The first involved a request to the ministerial committee on corruption. We work in this area and needed to know for one of our projects what progress the committee was making.

We didn't find out much through phoning around, so sent in a PAIA request, asking when the committee had met and what the meetings had dealt with.

Back came a response, from the Minister in the Presidency in charge of Performance, Monitoring and Evaluation, Collins Chabane.

It stated: “...my decision on your appeal is to refuse access to the schedule of meetings for the year 2010 as well as the minutes of the last meetings held on the basis of section 12(a) of PAIA which provides that the Act does not apply to a record of Cabinet, and its committees”.

So is that a lawful response? Indeed, it may be – PAIA excludes from its reach all cabinet records and the records of cabinet committees. But is it a sensible refusal? Of course not. You're planning to fight corruption, but you won't tell anyone how or where? Don't you want anyone to help?

In another request, we asked the Department of Justice for a report by the SA Law Reform Commission that was apparently referred to in 2004.

The department's response was: “The report requested is a 'pre-decisional' record which contains advice or recommendations prepared for the purpose of taking a decision in

the exercise of a power or performance of a duty conferred by law to the Minister of Justice and Constitutional Development”.

They've been thinking about it? Since 2004? This is possibly unlawful and definitely madness. How long can you possibly need to contemplate a document before reaching a decision? I don't think anyone

thought we needed an “upper limit on contemplation” rule, but there you go.

One would think sheer embarrassment would prevent the use of this excuse, but it seems not. The reason I say possibly, but not definitely, unlawful is that there may be a reasonable explanation for the long delay which has simply not

been given to us. Like, I don't know... aliens ate the minister?

Now we have to go to court to request this document, which is also madness, because we need the document long before we will get a court date, even if we sue in the magistrate's court. We'll sue anyway, in the hope that the State law advisers will advise their client not to persist

with this refusal – but there we are, another secret.

Then we have the refusal to release crime statistics – all crime statistics. One of our clients, who runs a local newspaper, wants to access crime statistics for the area.

He has been told that information on “specific sub-tendencies of crime or requests pertaining to crime

information of specific geographical areas such as station precincts will only be provided for any period up to that covered by the latest annual report on crime statistics released for public consumption”.

Translated, that means if you want to know anything that happened on the crime statistics front since March 2009, tough. It's a secret.

What does this all add up to? The government has secrets, which it refuses to divulge and keeps perfectly well, without the assistance of the Protection of Information Bill. So why bring it in? Because we have so many secrets, is the answer. But should we?

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