

# The role of buses in SA as an open society

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**W**HENEVER my cousins from the PlayStation generation hear something unbelievable, they say: "Who would have thunk it?" Sitting through the parliamentary deliberations on the Protection of Information Bill left me wondering: "Who would have thunk it that the fate of SA as an open democracy would rest on the Algoa Bus Company and the Natal Sharks Board?"

Most people have not even heard of the Algoa Bus Company — a not-for-profit, publicly owned entity that runs a public transport service in the Port Elizabeth area.

I'm certain the folk at both institutions are unaware of the pivotal role they have played in the heated debates in Parliament between the African National Congress (ANC) and the Democratic Alliance (DA).

The key point of disagreement is whether the bill should be applicable to all public institutions, including those that do not have a national security mandate.

According to the DA, the bill should apply only to national government departments that have responsibility over national security matters, such as the National Intelligence Agency, the South African Secret Service, the South African National Defence Force and the South African Police Service. This position is shared by civil society organisations. The ANC rejects this position on the grounds that national security is not the sole preserve of national departments responsible for security matters.

The counter-argument made by the Open Democracy Advice Centre, a law centre specialising in information disclosure laws, and others is that "non-strategic" public institutions — such as the Algoa Bus Company and the Natal Sharks Board — do not hold any information that can be regarded as requiring classification in order to protect national security and, therefore, the bill should not apply to them. The Algoa Bus Company scenario is representative of the overreaching nature of the current draft of the bill.

To address the "Algoa Bus Company scenario" the ANC proposes that only a director-general or equivalent can classify information.

A director-general can delegate this responsibility to a deputy director-general and no other. According to the ANC, the CEO of the Algoa Bus Company will not classify information and it believes this corrects the overly broad coverage of public institutions by the bill.



Since the head of the institution will not be given powers to classify information, it therefore stands that such an institution is not covered by the bill. But critics of the bill say this is a difficult argument to follow and the ANC's proposal does not sufficiently address the Algoa Bus Company scenario. "Nonstrategic" public institutions are still covered in the definition of organs of state in the bill and therefore remain covered by the bill.

This means that even though the CEO will not have the power to classify information, the institution's information can still be classified by someone else, such as the director-general of transport or the municipal manager.

When the ad hoc parliamentary committee on the bill adjourned, the parties remained deadlocked on the application of the bill to public institutions that do not have a national security mandate.

Reading the new version of the bill, it is evident that Parliament has been alive to criticism of the original version. The newer version does away with the concepts of information being classified to protect national interest and the classification of commercial information. The parties are very close to reaching consensus on what constitutes "national security" and on a clause that will bring the bill in alignment with whistle-blower protection laws. These are significant improvements that must be commended.

However, the parties remain far from consensus on the Algoa Bus Company scenario. If the Algoa Bus Company is excluded from application of the bill, it means the constitutional principles of transparency and openness of the public service are upheld.

If it is included, the long walk to open democracy continues. Who would have thought it that it all rests on the Algoa Bus Company?

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