

# Why everyone needs to know

For democracy to flourish, for delivery of services to the poor, information is vital, write **Judith February** and **Tobela Tapula**



**S**PEAKING at the Cape Town launch of the Council for the Advancement of the South African Constitution a few weeks ago, former Constitutional Court justice Kate O'Regan spoke of the importance of the foundational values of the constitution.

She spoke not only of the right to dignity, equality, non-sexism and non-racialism, but also of the emphasis on our founding document places on the values of accountability, responsiveness and openness.

These values mark a clear shift away from an authoritarian past marked by secrecy and a lack of accountability.

Great strides have been made in creating democratic institutions, but of course, much needs to be done to ensure that they are consistently open, responsive and accountable, as the constitution envisages.

Active citizens remain at the heart of any vibrant democracy. But for citizens to be active and for democracy to flourish, information is needed.

Without it, citizens are unable to engage with elected representatives and, more important, to claim the rights that are theirs. Any attempts by those in power to undermine our right to information must be treated with the suspicion it deserves – and must be resisted.

South Africa's Promotion of Access to Information Act remains a "gold standard" for freedom of information laws across the world, yet we have seen its implementation as patchy at best. Given the challenges the act already presents the Protection of Information Bill currently before Parliament is an even greater cause for concern – for it represents a backwards step in the fight for open democracy.

The bill aims to establish a statutory framework to classify and declassify state information. Thus far, classification takes place in terms of The Minimum Information Security Standards, currently used by the cabinet as a guideline for classifying information. The bill rightly seeks to formalise the standards into legislation and to replace apartheid-era secrecy legislation.

However, the bill over-reaches, with the effect of undermining the right to freedom of expression and access to information.

These aspects of the bill seek to impose an authoritarian stamp on



**SPEAKING UP:** Clockwise from top left, vice-chancellor of the Free State University Jonathan Jansen, vice-chancellor of the University of Cape Town Max Price and Archbishop Emeritus Desmond Tutu have given their support to the Right2Know campaign in opposition to the Protection of Information Bill.

the way state information is classified, in direct conflict with openness, one of the core values of the constitution. If the bill – yet to be costed – is passed as it stands, it will without doubt create an environment of over-weening secrecy.

The lessons of 1994, and indeed of our freedom of information laws, were that more, not less, information is needed for citizens to access their rights. In addition, attempts to restrict information create barriers to openness in the public service.

It is for this reason that the Right2Know campaign was formed in August. It arose from common concerns of a range of civil society organisations regarding the bill.

More than 300 civil society organisations from within South Africa and 50 international organisations have signed on in solidarity with the cause, including several prominent South Africans – such as Njabulo Ndebele, Max Price,



Jonathan Jansen, Desmond Tutu and Nadine Gordimer, to name a few.

However, it is the depth of support that this campaign has garnered throughout South Africa which has allowed its work to gain momentum.

Not only have more than 10 000 citizens signed an online petition to scrap the bill in its current form, but the hundreds of groups involved reflect a broad mix of community-based organisations, grassroots NGOs and an array of others.

The campaign is not, as some erroneously believe, a group of middle-class suburbanites mobilising around a middle-class concern. The right to information is about everyone, especially the poor.

Through Democracy Radio and translations of the bill, the campaign has reached all communities. One thing they have in common is that they oppose any proposals

to limit their right to information about their lives, or to information that might uncover corruption. For the bill will have negative consequences for all citizens.

At local government level, for instance, communities could find it increasingly difficult to access information about housing lists – because it might be deemed classified. If passed in its current form, the bill will surely lead to over-classification of information by the state, and will hinder citizens from using the right to information to hold the government accountable.

In addition, the bill as it stands means that:

- Any state agency, government department, parastatal, or even your local municipality, can classify public information as secret.
- Anything and everything can potentially be classified as secret at officials' discretion if it is in the "national interest". Even ordinary

information relating to service delivery can become secret.

- Commercial information can be made secret, making it very difficult to hold business and the government to account for inefficiency and corruption.
- Anyone involved in the "unauthorised" handling and disclosure of classified information can be prosecuted, not just the state official who leaks information, as is the case in other democracies.
- The disclosure even of some information which is not formally classified can lead to self-censorship and have a chilling effect on free speech.
- Whistleblowers and journalists than officials who deliberately conceal public information that should be disclosed.
- A complete veil is drawn over the work of the intelligence serv-

ices. It will prevent public scrutiny of our spies should they abuse their power or breach human rights.

- Officials do not need to provide reasons for making information secret.
- There is no independent oversight mechanism to prevent information in the public interest from being made secret.
- The minister of state security, whose business is secrecy, becomes the arbiter of what information across the government must remain secret.
- Even the leaking of secret information in the public interest is criminalised.
- Unusually severe penalties of up to 25 years in prison will silence whistleblowers, civil society and journalists doing their jobs.
- All these factors will limit public scrutiny of business and the government, whether through Parliament or by journalists.

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Accountability will be curtailed and service delivery will be undermined.

Given the bill's broad remit, the unintended consequences will indeed be that accessing information will be harder for everyone, specifically the poor.

The bill allows organs of state to withhold information if it is deemed to be "in the national interest". The "national interest" includes not only the "survival and security of the state", which one might reasonably expect, but also, *inter alia*, "all matters relating to the achievement of the public good".

In this way, bureaucrats may end up with excessive power to classify even the most mundane bits of information. A very high premium is placed on the "national security", which is added cause for concern.

From Tuesday to October 27, the Right2Know campaign will be coordinating a week of action, culminating in marches across the country. On October 19, 1977, the apartheid government banned the World newspaper – and so began a harsh period of repression. It stands as a reminder of what happens when the free flow of information is halted and when governments behave in ways which make them unaccountable. South Africa is far from that point – yet citizens need to remain vigilant lest our fundamental rights be infringed.

Our demands are simple:

- Limit secrecy to defined national security matters and no more. Officials must give reasons for making information secret.
- Exclude commercial information from the bill.
- Do not exempt the intelligence agencies from public scrutiny.
- Do not apply penalties for unauthorised disclosure to society at large, only to those responsible for keeping secrets.
- An independent body appointed by Parliament, and not the minister of intelligence, should be the arbiter of decisions about what may be made secret.
- Do not criminalise the legitimate disclosure of secrets in the public interest.
- Let the truth be told: stop the secrecy bill.
- February is head of *Idasa's Political Information and Monitoring Service and Tapula is an advocacy officer at the Open Democracy Advice Centre. Both are members of the Right2Know campaign.*