
PAIA CIVIL SOCIETY NETWORK

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THE SECRECY BILL WILL AFFECT YOUR RIGHT TO INFORMATION

Throughout the course of the debate on the Secrecy Bill government representatives gave numerous assurances that the Bill would not impact on the citizen's right to information under the Promotion of Access to Information Act (PAIA). Despite those assurances the final version of the Bill passed by the ad hoc committee restricts the right to information under PAIA.

After assurances from government in mid-November last year that the Bill would be aligned with PAIA, less than three weeks prior to the passage of the Bill by the ad-hoc committee a few key provisions were inserted that completely reverse the position between the Bill and PAIA.

Currently PAIA overrides any legislation that prohibits or restricts the disclosure of information in a manner inconsistent with PAIA. PAIA is therefore the supreme law relating to access to information in South Africa and any decision to refuse access to requested records must be based on one of the grounds of refusal set out in PAIA. New section 1(4) of the Secrecy Bill, inserted on 31 August (just 6 days before the Bill was passed by the ad-hoc committee), reverses that position so that the Bill will override PAIA such that regulators will be able to deny access to records that have been classified under the Bill even if none of the grounds of refusal under PAIA are applicable. This means that restrictions on the release of information under the Secrecy Bill will apply even where PAIA would require that information to be released. It also means that procedural differences between the Bill and PAIA will be resolved in favour of the Bill.

In light of this there are two key areas of concern where the Bill will have a substantial and negative effect on the right to information under PAIA:

1. The Secrecy Bill effectively inserts a new ground for refusal into PAIA, allowing access to documents requested under PAIA to be refused merely on the basis of their status as a classified document. The Secrecy Bill provides that a classified record must be declassified before it is released. If it is released prior to declassification both the person releasing and the person receiving the information may be subject to criminal prosecution. The test for declassification does not conform with any of the grounds for refusal under PAIA.
2. The Secrecy Bill extends the timeline for responding to requests. Where a request is made for access to classified information, the information holder must consider whether the information can be declassified. There is no requirement in the Secrecy Bill that this declassification process be undertaken in any specific time period, only that the period is 'reasonable'. This is inconsistent with the 30 day time period for responding to requests under PAIA and will cause further delays in a system already fraught with delay.

Accordingly, if the Secrecy Bill is passed in its current form it will represent an erosion of the right to information in South Africa without justification. Adequate protections for records containing issues of national security, defence and international relations are already provided under PAIA. Accordingly, the Bill must be aligned with PAIA by providing that requests for information must be dealt with in accordance with the provisions of PAIA, including both the grounds for refusal and timelines provided in that Act.

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For and on behalf of the PAIA Civil Society Network

The PAIA Civil Society Network (the Network) is an umbrella body of organisations working to advance the right of access to information. The member organisations are committed to improving the implementation and usage of the Promotion of Access to Information Act (PAIA), raising awareness about the right amongst citizens and working with bodies subject to the Act to improve understanding. The PAIA CSN consists of: Black Sash, Centre for Environmental Rights, Endangered Wildlife Trust, Freedom of Expression Institute, Khulumani National Support Group, Legal Resource Centre, Media Monitoring Africa, Nelson Mandela Foundation, Open Democracy Advice Centre, Public Services Accountability Monitor, Socio-Economic Rights Institute of South Africa (SERI), South African History Archive, South African Litigation Centre, University of Witwatersrand and Vaal Environmental Justice Alliance.