

# Information bill a small victory for SA's citizens

 By [Anton Harber](#)

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We need to learn to celebrate the big victories, and not dwell on the small defeats. The Protection of State Information Bill currently awaiting President Jacob Zuma's signature is a victory for organised citizens' power.

The amended bill is so much better than the original version the secuocrats tabled a couple of years ago in that it signals a setback for what they were trying to achieve: greater control over the flow of information (leaks, in other words) that was troubling and often embarrassing the government.

Make no mistake, however, I am not welcoming the law. It is still not a good one, and it would be better if Parliament passed something that promoted our constitutional values of openness and accountability and protected only the narrowest range of dangerous information. It is still based on a desire to stem the flow of information. It still undermines our basic right to know what is going on in the government. It still goes against the international trend towards open democracy and South Africa's commitments in the Open Government Partnership. It remains an offence - threatening up to 25 years' imprisonment - to "make available" classified state information if one "ought reasonably to have known (it) would directly or indirectly benefit a foreign state". This is too wide and open to abuse.

## Whistle-blowers still vulnerable

Whistle-blowers are protected only if they reveal criminal activity. This is too narrow, excluding suspected criminal activity, or actions that are just against the public interest. For example, if the government makes a controversial decision about our troops in the Central African Republic, it might not be criminal, and it might benefit a foreign state - but it is something we should know about.

The bill still allows for too many people to have - or be delegated - the power to classify documents.

Frankly, some of the remaining complaints about the bill are secondary. Critics say it criminalises the public as spies if it just receives classified state information. But it does so only if the information is received "unlawfully and intentionally", so I am not sure this is so serious.

They also ask for a full public-interest defence, which would get one off the hook if one shows that leaking material served the public good. They are right that this would be a good thing, but the bill does oblige any official to declassify a document if it shows evidence of criminal activity, or serious public safety or environmental risk or the public interest in revealing it outweighs the harm. This clause could be stronger, but it doesn't seem altogether bad.

## Still problematic

So what was a draconian, clearly unconstitutional and antidemocratic bill just a few months ago is now just a problematic bill. Zuma would be wise to send it to the Constitutional Court before signing it, to ensure it is now fully compliant.

What happened in the past two years was that the bill - and the threat of a statutory media appeals tribunal - sparked a broad citizens' movement to protect our information and free-speech rights. The Right2Know campaign did sterling work in mobilising a wide range of people against the bill, preventing it from being rammed through Parliament, and achieving significant improvements that nullified its worst aspects. And, perhaps most important of all, it was made clear that any attempt to use the law improperly would be met with resistance. If citizens will defend their rights, this is what counts.

Parliament cannot claim much credit, as almost all ruling party MPs were eager to do whatever they were told and pass whatever version came down from above. The changes were made only under the pressure of mobilised citizenry.

It was a victory for those who organised against it, who made a noise in Parliament, the media and the streets, and forced the government to pay attention. It was a victory for our democracy, which allowed for such extensive public debate, and protected those who fought against the bill. It was a defeat for those who want to hold on to the power that information gives to citizens. It is the securocrats who should be lamenting this bill. Democrats can celebrate.

## ABOUT ANTON HARBER

Anton Harber, Wits University Caxton Professor of Journalism and chair of the Freedom of Expression Institute, was a Weekly Mail (now Mail & Guardian) founding editor and a Kagiso Media executive director. He wrote *Diepsloot* (Jonathan Ball, 2011), *Recht Malan* Prize winner, and co-edited the first two editions of *The A-Z of South African Politics* (Penguin, 1994/5), *What is Left Unsaid: Reporting the South African HIV Epidemic* (Jacana, 2010) and *Troublemakers: The best of SA's investigative journalism* (Jacana, 2010).

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