

Information Bill: Changes welcome, more needed

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Rhodes University welcomes the changes agreed upon by the African National Congress (ANC) on 24 June in deliberations by an ad-hoc committee of Parliament on the Protection of Information Bill.

We especially appreciate the committee's commitment to move away from a culture of secrecy in the state and to prevent abuses of the Bill to cover up mal-governance and even corruption.

Academic freedom is constitutionally protected in South Africa, and this freedom would be impossible to achieve without freedom of information. This freedom is necessary for academics to generate knowledge, which in turn assists in the development of good public policy.

The University had serious concerns about the Bill, as it threatened to cloak the state in a shroud of secrecy, and could have made academic enquiry on many aspects of the state's operations impossible. Such secrecy would have violated the right of universities to determine teaching and research priorities freely.

Universities have a duty to secure the necessary conditions for their own intellectual work in society; but they also have a broader duty to secure conditions for the practice of democratic citizenship in society generally.

We were particularly concerned that if universities were included in the scope of application of the Bill, then they would be required to classify documents, which could have led to the very culture of secrecy that many feared creeping into government, creeping into universities as well.

We also feared the bureaucratic burden that classification would place on universities. We welcome the ANC's agreement that the scope of application of the Bill will be limited to organs of *state* security, with an opt-in clause for other organs of state.

The University also welcomes the fact that minimum mandatory sentences in the Bill's penalties clauses have been dropped, with the exception of sentences that apply to espionage offences.

We agree with the ANC that the principle of proportionality must be recognised in relation to penalties. Other welcome changes are establishing an independent appeal mechanism for individuals who wish to appeal a classification decision, and an independent classification review panel to conduct oversight of the classification process.

These measures go a long way to ensuring that the classification process is not abused, and the concessions have addressed several of the University's concerns about the Bill.

However, we still feel that the current Bill limits the right of access to information in a manner that is not reasonable and justifiable in a democracy based on openness and transparency, and continue to have concerns that remain unaddressed.

First, there are no public interest and public domain defence clauses. If researchers come into the possession of classified documents, then they will be guilty of a crime, even if possession of such information is in the public interest.

Furthermore, if documents find their way into the public domain, those who access them in the public domain will also be guilty of an offence, which we consider inappropriate in a democracy.

Failure to include public interest and public domain clauses will mean that academic research on matters relating to the organs of state security could be criminalised, and the academics concerned will not have access to a legally recognised defence.

At the very least, the Bill should incorporate a harms test, which should allow researchers to argue that the harm to national security was offset by the public interest in disclosure.

Second is the overbroad definition of what constitutes national security and overbroad grounds for classification. In terms of the Bill, classification exists to protect national security, which is defined so broadly that huge swathes of documents could be classified. This will make research on these aspects of the state difficult, if not impossible, which means that universities will be unable to make a contribution to knowledge production on these vital areas of government. While the definitions of the grounds for classification of 'confidential', 'secret' and 'top secret' information have been tightened, they still remain vague.

Third is the 'double blind provision'. A researcher could request the organ of state concerned to declassify certain documents, which the Bill allows 'in furtherance of a genuine research interest or a legitimate public interest.'

Also a researcher can apply for classified documents in terms of the Promotion of Access to Information Act (PAIA), which would trigger an enquiry into whether the document should be declassified. But the organ of state concerned has the right even to deny the existence of the documents, which can easily be misused by the authorities to conceal information that is in the public interest.

This means that in order to pursue the matter, the researcher would have to expose his or her knowledge of the documents' existence, which would invite a security investigation into whether s/he already had access to the documents, which may well discourage researchers from even considering particular lines of enquiry.

Also, the government decides what constitutes a genuine research interest, which conflicts with a fundamental tenet of academic freedom, namely the freedom to decide what to

research and how. Admittedly, this risk is mitigated somewhat by the new review and appeal procedures.

Fourth is the inconsistency in time frames between PAIA, and the Bill for requests for classified information, which will affect researchers using PAIA to access classified documents.

Fifth, the fact that the organs of state security do not have to justify why particular documents are being classified is a recipe for abuse. This clause, which was included in the 2008 version of the Bill, should be reinserted.

Finally, there is inadequate protection for whistleblowers and access to information.

All these problems mean that the Bill still favours secrecy above openness and transparency in the organs of state security in a manner that threatens academic freedom.

South Africa has a sorry history of abuse of the state security apparatuses, and universities have a key role to play to ensure that such abuses are not repeated. Researchers need access to documents that expose the inner workings of the security cluster, and its interface with society. Otherwise, research that is of considerable public importance - such as research into the restructuring and 're-militarisation' of the police and its relationship to growing police violence, and research into the transformation of the military – will be extremely difficult to undertake.

The University calls on the ad-hoc committee to address these remaining problems when it commences work later this month.

Dr Saleem Badat is Vice-Chancellor of Rhodes University. This is an edited version of a document released by Rhodes with the support of the University Senate and Council.