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WHAT'S PUBLIC IS PROPAGANDA, WHAT'S SECRET IS SERIOUS: OFFICIAL SECRECY AND FREEDOM OF INFORMATION IN SOUTH AFRICA

by Christopher Merrett

We exist at the moment in a strange interregnum, between an old order where speech was regarded as a privilege, not a right and a new order under a bill of rights... whose ambit is presently a matter for speculation.

Background

If South Africa is ever to become a participative democracy it will require firstly, a large number of educated people; and secondly, information. Without background knowledge about issues, and the way government has tackled and intends to tackle them, the ability of the electorate to make informed and intelligent decisions, especially in an increasingly technologically based society, is limited. Knowledge does not equal power, as the cliché would have it, but it is true to say that power cannot be exercised without it. Information is essential to efficient and thereby effective democracy, which is why the concept of the right to know is recognized as fundamental in democratic societies. Information contributes to judgments and choices which make people into responsible citizens as well as legitimating the very concept of government.

South African society has traditionally been highly secretive, for a number of easily explained reasons. The most obvious is the fact that a government which defied all modern thought and whose survival depended on the repression of human rights would not act in an open way... Official secrecy (also known as statutory censorship) lies in legislation which controls vast areas of public life. The South African government is not unique: all governments try to hide details of the ways in which they work, particularly those which are unsavoury or unpopular. In South Africa, however, the national information system has become grossly distorted to the benefit of government propaganda in an attempt to preserve the power of a white elite and its allies. Furthermore, most South Africans have become conditioned to...
assume that this is normal and natural, or even desirable. One of the biggest secrets in South Africa is the extent of government secrecy.

From the mid-1950s until the late 1980s, information on certain topics became hard and even dangerous, to acquire. Real debate on vital issues was hampered by both a dearth of information and punitive action by the government against dissenting opinion. To varying degrees information about the following was circumscribed:

- Business information and foreign trade
- Capital punishment, especially racial bias in sentencing
- Conscientious objection
- Corruption and cases of fraud
- Detention without trial and the treatment of detainees
- Land consolidation
- Liberation movements and their activities and policies
- Mental health institutions
- Military incursions into Angola and repression in Namibia
- Nuclear power and the development of nuclear weapons
- Oil supplies and reserves
- Police involvement in repression in South Africa
- Prisons and treatment of prisoners
- Sanctions and South African trade
- Weapons procurement and development

These are all topics about which the voters and taxpayers have a right to be well informed. The current legislation preventing them can be classified, very crudely, as follows:

- Acts which control official information (eg. Protection of Information Act, Statistics Act)
- Acts which restrict information from all sources on specific topics (eg. Nuclear Energy Act, Petroleum Products Act)
- Acts which regulate administrative and legal functions (eg. Archives Act, Criminal Procedure Act, Disclosure of Foreign Funding Act, Inquests Act)
- Other Acts extending arbitrary government power (eg. Indemnity Act, Internal Security Act, Publications Act)

Did South Africa explode a nuclear device in the southern Indian Ocean on 22 September 1979; and who else was involved? Which countries have transferred technology to South Africa in the course of developing the arms industry? Who lost the country $30 million in 1979 by paying twice for a stolen cargo of oil from the tanker Salem? Why did Samora Machel's plane crash just inside South Africa in October 1986? What caused the South African Airways aircraft Helderberg to crash off Mauritius in 1987? Who was responsible for the assassinations of Matthew Goniwe and his comrades, the Ribeiros, David Webster, Stanza Bopape, Siphiwe Mtikulu and Anton Lubowski? These are all legitimate questions of public interest to which citizens have a right to expect a comprehensive answer. In each case knowledge is deficient and official secrecy is trying to hide the truth.

**Current Situation**

The situation has improved slightly since 1990 without the legislation being altered drastically. The exceptionally high level of secrecy began to break down as government confidence waned and investigative journalism flourished, reinforced by lessons learned by the democratic movement during the State of Emergency. The *Weekly Mail*, *Vrye Weekblad* and *New/Sunday Nation*, for instance, have published exposes on certain aspects of prisons, psychiatric hospitals, the activities of hit squads and “special forces”, arms supplies to Iraq, Israel and Rwanda, oil supplies and the Inkathagate funding scandal. The most recent example concerned an expose of government duplicity about South Africa's nuclear capability which came to light through court records dating from 1987. The authorities have threatened legal action but seem less sure of themselves than they were a few years ago. From this we can draw the lesson that harsh repression in the sphere of information requires confidence on the part of the authorities. During 1992, laws about the police and prisons were relaxed; and Reg Rumney writing in the *Weekly Mail* about oil supplies a year earlier remarked that he was able to work, for the first time in years, without the fear of “the Special Branch paying visits to researchers who asked too many questions about the...industry.”

However, Max de Preez of *Vrye Weekblad* was convicted and fined under the Protection of Information Act in 1990 for pub-
lishing news that an institute attached to Stellen Bosch University acted as a conduit for information to the National Intelligence Service. The same Act was invoked in a fraud case which revealed the fact that the Civil Cooperation Bureau (CCB) was involved in military interference in the affairs of another state. No further evidence would be revealed. In November 1990, the trial of a conscientious objector, Michael Graaf, was hurriedly adjourned when he revealed details about security force actions in Namibia as part of his evidence, thus infringing the Defence Act. As Mathew Blatchford remarked, “The armed forces operate in secret, a secrecy protected by a huge number of interlocking statutes.... Without this concealment the South African public might have been revolted by what the armed forces have done.”

Secrecy seems to be an integral part of the “new” South Africa. Commentary on CODESA8 in 1992 and on the work of the Advisory Committee on Land Reform (ACLA)9 has been especially critical of the secrecy involved. A particularly worrying current concern is that about South Africa’s nuclear weapons. In 1991 South Africa signed the Nuclear Non-Proliferation Treaty, which opened up its stockpile to inspection by the International Atomic Energy Authority (IAEA). The IAEA fears that, because the nuclear programme was secret and unmonitored for so long,10 weapons grade material is undocumented. United States government sources suggest that the South African authorities have shredded documents concerning the nuclear programme and may have fabricated records showing how much enriched uranium it produced. There is a major worry that material unaccounted for may fall into the wrong (that is to say, right wing) hands. Hidden from the public was the fact that South Africa had developed battlefield nuclear weapons which could be launched from Armscor’s11 G5 and G6 guns, capable of projecting a 2 kiloton warhead 42 km. Russian and US experts suspect that South Africa had developed thermonuclear devices and the capability to deliver them as far as Nairobi and Lagos. The other fact that was carefully concealed was the amount of international assistance given to South Africa. The carefully nurtured image of a robust, defiant economy becoming self-sufficient in armaments was largely propaganda; assistance being provided by Germany, the United States, France, Canada and, in particular, Israel.12

Another recent issue which has been clouded in secrecy has been that of South Africa’s relations with Angola. Jonas Savimbi of UNITA visited South Africa unannounced on 17 September 1992, twelve days before the Angolan elections which he later repudiated. Apparently he was assured of South African support for his federal demands and promised clandestine aid in a continuing war via a massive air bridge from the upgraded military base at Pomfret in the northern Cape. There was heavy nighttime flying over Botswana in the second half of 1992 and ludicrous claims were made by the South African military authorities that private planes were flying through gaps in the radar coverage of the country’s borders.13 The private, secretive conduct of foreign policy in this way would, of course, either bring down any democratically elected government, or have severe repercussions for it. There are good reasons why the South African government should be secretive about its relations with Angola: the parallels with Inkatha and Natal (especially at the time of writing in April 1994) are chillingly obvious.

The most blatant potential use of secrecy is found in the Further Indemnity Act of 1992, which provides for a National Indemnity Council to meet in secret to decide who should receive indemnity for political crimes. Evidence and documentation are strictly confidential (section 10 of the Act). Thus are war criminals to be exonerated. This measure was rejected even by an unrepresentative parliament and forced through via the appointed President’s Council. It is a continuation of the policy of repression as state strategy and designed to protect servants of the apartheid state, some of them highly placed. It is part of what Brian Currin of Lawyers for Human Rights (LHR) describes as the “forgiveness industry” so appealing to the conservatives and born-again democrats who want to wash their hands of the past, establish a “clean break” and “forgive and forget.” In the words of Kader Asmal14, apartheid was a criminal conspiracy and a calculated crime against humanity. It was no unfortunate error, but a policy which glorified lawlessness, social disintegration and immorality; and treated anyone who dissented from its viewpoint, and did so effectively, as a criminal.

Enforced amnesia about the past is no beginning for a society requiring openness.15 Hilda Bernstein writes evocatively in a recent essay on South Africa’s history as one of “torn and miss-
We need to complete some of those pages by finding out who did what to whom and why, a process also required of the ANC in light of its inertia after the Motsuenyane Commission and hypocrisy about events in its Angolan and Ugandan camps. Reconciliation requires truth and justice, and Philip van Niekerk argues persuasively that “there are matters of honour of setting the record straight, of making sense of the sad history of our country that still require the truth.” As George Orwell put it epigrammatically, “Who controls the past controls the future. Who controls the present controls the past.”

For several years there have been rumours that government officials were destroying documents: the first example which came to light concerned the police forensic laboratories in Pretoria at the time of Dirk Coetzees revelations about police death squads. In August 1993, the wholesale destruction of classified documents, especially those relating to the work of the National Security Management System (NSMS), was highlighted. The National Intelligence Service (NIS) contended that classified documents are exempt from the Archives Act (as of course are the South African Defence Force (SADF) documents) and the State Archives appeared to have no plans to take legal action. The destruction order was itself a classified document. It was recalled on 28 September 1993 as part of an out-of-court settlement, after an application made to the Supreme Court by LHR. Papers must now be treated in terms of the Archives Act, although complacency must be avoided in view of the South African tradition of shredding historically incriminating material: there is apparently no complete record of the Rivonia Trial in the Transvaal Supreme Court archives and inquest records are routinely destroyed. Inquests have of course, like commissions of enquiry, been notorious in South Africa for the details they obscured, rather than the truth they revealed, so the destruction of related documents is to be expected. Recently the Koevoet archive disappeared mysteriously en route from Windhoek to Pretoria.

In 1992 at the Library and Information Workers' Organization (LIWO) Conference held in Cape Town, Albie Sachs pointed out that the most comprehensive biographical dictionary in South Africa consisted of security police files, although one wonders about their long-term survival. Some would say that, knowing the low level of intelligence and morality of those who supplied the information, and something about the experience of revealing police files in East Germany, perhaps this is a good thing. It is interesting to note that certain well-connected individuals have been allowed access to the files: Emma Gilbey, biographer of Winnie Mandela, was allowed to see police material including copies of first year university essays and bank statements. There is also fear that documents seized from anti-apartheid organizations over the years are now being destroyed by the police using the excuse that since the 1990 unbannings they are no longer needed.

There are thus two main reasons why there is concern about freedom of information and its relation to a future democratic society. Firstly, we must reclaim our history. Any nation which has an incomplete understanding of its past rests on shaky foundations and there are parallels here with the German experience after the Second World War. Secondly, government must be made accountable in the light of the historical role of the South African state as a kleptocracy, an exploiter and repressor. In view of this, there is a need to develop freedom of information rights, laws and practice which concentrate not so much on the relation between government and individual, as in other countries, but rather on redressing socio-economic inequities within society.

Principles

It is widely accepted that governments have a legitimate right on behalf of the citizenry as a whole to classify certain information. The parameters need not, however, be as wide as most governments would like us to believe. The best standpoint from which to proceed would be an assumption that all information should be available, with certain exemptions. Obviously data which might assist an external aggressor must be protected; and some personal information in which the State has a legitimate interest should be kept confidential. There is even a case for the strategic advice given to Ministers, but not the data upon which it is based, to be confidential. Australian law exempts certain (but not all) documents affecting national security and international relations, relations between the states, the Cabinet, internal gov-
ernment processes, law enforcement and public safety, government financial or property interests, personal privacy, legal professional privilege, certain business affairs, certain research, the national economy, matters divulged in confidence or involving contempt of court or parliament, and elections. This is a long list for a country known as one of the world’s leading democracies and it illustrates the difficulty of establishing a freedom of information ethos.

What must be tackled in South Africa is the unchallenged ability of a government to confuse the legitimate security of the state with the protection of party political and other sectional interests, or the covering up of human rights abuses, corruption, and maladministration. Such confusion is precisely what has happened in the past, and continues to this day. Boundary lines have to be drawn around that limited amount of information to which the state can justifiably claim confidentiality. Simple right of access to information is not, however, the full extent of the issue at stake. Even South Africa’s stringent system of official secrecy was not sufficient to ensure complete secrecy. For example, an outline of the Salem affair was known almost immediately, even if the precise details of South Africa’s involvement remained obscure for some years. The presence of South African troops deep in Angola in 1975 was impossible to hide for long.

Both of these examples had international dimensions which ensured that the authorities had no control over the broad details. Their ability to control information about internal affairs, for instance, prison brutality and the premeditated assaults by police on the rights of citizens, was of course a good deal stronger. However, even where information gradually came to light, insufficient was known quickly enough to have made an impact even if universal suffrage had been in place.

If governments are to be held accountable for their actions, the public must have information quickly. Thus not only do the laws governing official secrecy in South Africa need radical and rapid revision to entrench a right to information, but the media must be encouraged to expose issues which have a public interest dimension. Even a post-liberation government will be tempted to cover up embarrassing details of the ways in which it works and perpetuate its term in office by keeping people in ignorance.

There is also good reason to apply freedom of information regulations to private companies. They should be required to publish in their annual reports all breaches of legislation on environmental matters, occupational health and safety, discrimination, advertising and trades description and consumer protection, and account for all accidents. This is the concept of rudimentary social audit which becomes as important as government accountability in an era in which those who continue to hold political power in South Africa desperately privatize the common wealth ahead of black political empowerment.

The law as it stands encourages corruption and suppresses dissent. It has come as no surprise to those who opposed apartheid for so long that the moral decay which it deified encouraged financial and other corruption. This was inevitable in a society dedicated to secrecy in which dissent was equated with treason. The latter is a symptom of a sick society: national health is dependent upon a good measure of dissent and unfettered questioning. One of the speakers in the debate in the British House of Commons in February 1993 described secrecy as a “corrosive disease.” Philip van Niekerk has made the telling point that the litmus test of any political movement’s commitment to society is its policy on freedom of speech and information.31

Methods

Official secrecy will not be reduced to reasonable proportions by legislative reform alone: for instance, by repealing statutory censorship clauses in topical legislation, and loosening the Protection of Information Act. The right to information must be entrenched in a constitution or Bill of Rights guaranteed by the independent judiciary. Furthermore, the civil service must be trained to reflect its name, to see itself acting for the benefit of society as a whole.

A climate of greater openness can only be assured in the long term by changes in the attitude of individuals and groups and radical alteration of the national ethos. Government claims
regarding the need for secrecy need to be treated with extreme
suspicion. Tony Heard quite correctly argues that "deceit,
secrecy and obfuscation have been the norms for four
decades..." and points to the danger of "trip switching" from
one sterile era of conformity to another."32 South Africans must
become less deferential to those with political and economic
power, more cynical about their motives and more ready to
challenge them, if necessary in imaginative ways. This is
embodied in calls for a strong and resilient civil society in
which trade unions, the churches, the press, universities, the
professions and librarians and information workers act as soci­
ety's watchdogs in such matters. This can also be seen as a ral­
lying and unifying issue, appealing to intelligent conservatives
(assuming that this is not a contradiction in terms) as it leads
to more economical government, greater accountability and a
higher quality of decision making. Certainly there can be no
such freedom without a vigorous, pluralistic, free press with
high standards of journalism, especially in the field of inves­
tigative reporting. Sadly, there is in South Africa a long history
of press deference to politicians33 while the electronic media,
as it does world-wide, tends to trivialize important and com­
plex matters. Ironically at the point of political liberation,
South Africa's vibrant press is being decimated: New African
(Durban) and Vrye Weekblad (Johannesburg) have recently
closed down and other titles are under threat.

One way governments can avoid the issue is by reducing their
commitment to collecting information, for instance, by privatiz­
ing and commercializing aspects of data collection formerly paid
for from the public purse. There is a need to counter the right
wing idea that there is no such thing as society, that human rela­
tionships can be reduced to a two dimensional structure based
on authority (domination-subordination) and commerce (buyer­
seller). All progressive thought in the past few centuries has
accepted that we have responsibilities towards one another and
that the health of society as a whole is vital. Such a collectivist
vision depends upon the duty of government to act in the inter­
ests of the citizenry of such society, collect data about it and pro­
mote a free flow of information. At this stage of South Africa's
history there is a strong call for transparency, but the Kempton
park negotiations (which led to the first non-racial elections in
April 1994) and the operations of the Transitional Executive
Council (TEC)34 have been notable for the amount of work com­
pleted behind closed doors.

ANC policy in this regard is not encouraging. It proposes that
the press be guaranteed fair comment, but this does not mean it
will be free. It all sounds rather reminiscent of the National
Party's demand that the press should be "responsible." Nor is
there a commitment to freedom of information, but rather "nece­
sary" information for "effective" use.56 Van Niekerk speculates
that this policy is designed to suppress internal dissent. After
the recent Sisulu bodyguard shooting incident, it is thought that
the ANC and the police agreed not to release any further infor­
mation, ostensibly to avoid a "trial by the media." There are
laws to prevent this; all that transpired was that the public
were deprived of information. Furthermore, recent discussion
about the role of the press has raised again that oppressive
spectre of the 1970s and 1980s "national consensus." The
favoured phrase of the TEC is "constructive reporting"37 and
this has awakened fears of a post-apartheid government inhibit­
ing freedom of information and expression in the name of
national reconstruction, reconciliation and development." The
example of Zimbabwe is sufficient warning of the propensity of
post-liberation governments to utilize the repressive legislation
of their predecessors.

What of librarians and information workers: where do they fit
in? Obviously their role in society is dependent upon the
amount and relevance of information provided to users; or at
the very least the amount of constructive advice imparted
about where to locate it. At a Library Association symposium
in London in 1990, entitled "In the national interest," a mem­
ber of the audience asked a panel whether its members could
identify with the concept of "librarian as hero." They were too
taken aback to respond coherently, but I have often thought
about that question subsequently, and come to the conclusion:
yes, if librarians take part courageously, vociferously and elo­
quently in the promotion and defence of a civil right as funda­
mental as freedom of information. Of course, it will be neces­
sary to shake off that tradition of professional cowardice
shown by the establishment which dominates South African

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10 Articles

Progressive Librarian 11
librarianship in relation to the problem of censorship. The sobering truth is that without the collaboration of librarians, state censorship could not have worked, at least not since June 1976, the point at which cracks began to appear in the monolith of apartheid. If librarians have the courage of their convictions and can break away from the timidity of the past, lining up with other civil libertarians, then the rewards can be great. Librarians need to be frontrunners in a vibrant and if necessary aggressive civil society which takes on the authorities in such matters, part of the reclamation of the people’s history and a group seen to be essential to the flow of information which will underpin democracy.

For many years South Africans saw their national struggle, quite understandably, as distinctive and in some ways unique. The struggle for the “right to know” lines South Africans up in a global development in which they can learn from other societies. If they do not, there can be no political empowerment for the mass of people.

NOTES
1. This view of officialdom and information is attributed to Charles Bohlen (1905-1974), US Ambassador to Moscow and Paris in the 1950s and 1960s.
4. The Salem was a tanker which broke the oil embargo of South Africa in December 1979 by landing a stolen cargo of oil at Durban. She was scuttled in an insurance scam off the coast of West Africa soon afterwards.
5. Goniwe, the Ribeiros, etc. were all anti-apartheid activists assassinated by various arms of the South African security forces. Anton Lubowski was a member of SWAPO who worked for the independence of Namibia.
8. CODESA was the acronym for the multi-lateral talks which started the negotiation process leading to democratic elections but which broke down in mid-1992. ACLA was an early attempt to tackle land restitution.
9. An editorial in Farmer’s Weekly complained that the members of ACLA were political appointments and that their recommendations were secret. It argued that the judicial process should be used to settle land claims in open courts so that justice could be seen to be done [Land briefs, AFRA News, February 1993, p.20].
10. Both the IAEA and the CIA claim that they failed to identify South Africa’s nuclear bomb factory at Advena, 40 kilometres west of Pretoria, although this is a little hard to accept.
11. Armscor is the state agency for manufacturing, procuring and exporting military hardware.
14. Kader Asmal was a prominent human rights lawyer in exile with the ANC. He is now Minister of Water Affairs in the Government of National Unity.
17. The Motsuanyane Commission was the third internal ANC investigation into alleged human rights abuses in its Angolan and East African camps.
20. Dirk Coetzee operated out of the police squad base at Vlakplaas near Pretoria for some years before fleeing the country and putting information at the disposal of the ANC.
22. The trial of 1963 which sent Nelson Mandela and much of the ANC leadership to jail for life.


25. People discovered that their spouses or children informed on them, information which they might have been better without. There is also the distinct possibility that false information supplied to the police out of malice or ignorance is now accepted as truth and that the reputations of honourable people will be sullied forever. The irony of freedom of information achieving the ends of a now disgraced and notionally disbanded security police would be complete.


28. In Australia, 28,247 freedom of information (FOI) requests were received in 1991-92, at a cost of $A 12.7 million. Full time equivalent staff employed on FOI matters were 203. Most of the requests (92%) concerned veteran's affairs, social security, taxation, and immigration, local government and ethnic affairs. Other issues (about 6%) included education, housing, defence, police and foreign affairs. Only 4% of requests were refused entirely, and 19% in part [Australia. Attorney-General's Department. Freedom of Information Act, 1982. *Annual report, 1991-1992*. Canberra: Australian Government Publishing Service, 1992.]


34. The Transitional Executive Council was theoretically a power sharing body administering South Africa with the National Party government for the four months leading up to the April 1994 elections.