

## **Business Day (Johannesburg)**

NEWS

September 23, 2004

*By Wyndham Hartley, Parliamentary Editor  
Cape Town*

Only one in four of about 100 requests for information from government received any response, and more than half the requests did not even receive an acknowledgement, a study has shown.

The Open Democracy Advice Centre is monitoring the way in which national, provincial and local government responds to the constitutionally enshrined right to information. This is the second year of the project.

The Promotion of Access to Information Act sets out the rules under which requests for information can be made and the basis on which they can be refused.

Two journalists, one from Business Day and one from the Mail & Guardian, took part in the study, which aimed to determine whether the response from government differed according to who or what organisation wanted the information.

The centre has found that of the 96 requests in the second year of the study, 52% met with a "mute" refusal or no acknowledgement at all. Six percent were orally refused and 2% received written refusals, while 23% were answered.

"These results are surprising, especially given that SA's freedom of information law has been lauded as an excellent law on paper," the study said.

"This act is the first freedom of information law in Africa and is being held up as a model for other African countries.

"This monitoring highlights serious problems with implementation which need to be addressed if the right to access to information is to be enjoyed in SA, and the law is to set standards for the rest of the Africa."

In the study of how government responded to who was making the request, some non governmental organisations and Business Day fared the best, with each receiving a response to about 40% of their requests.

However, all requests from the Mail & Guardian received mute refusals. The study showed enormous bias against a political journalist, the centre noted.

"We note the labelling of media as progovernment or oppositional. In SA, both (Business Day and the Mail & Guardian) can be critical of government the difference being that one is a business newspaper and thus its perspective on the news may be different from the other which is a more politically charged newspaper," the report concluded.

It said any journalist faring so badly was cause for concern as the media were vital in getting information to the public.

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September 28, 2004

*By Wyndham Hartley, Parliamentary Editor  
Johannesburg*

*More than half of all requests for information are ignored, advice centre says.*

AFTER the silence and suspicion of the apartheid era, the Open Democracy Bill, when it was first mooted, sounded extraordinary .

It was the first shot at producing a freedom of information statute for the new SA and it went as far as seeking to make minutes of cabinet meetings public.

The bill endeavoured to put meat on the bones of the constitutional guarantee that all South Africans have a right to know what information is being held about them by the state.

Given that many people were spied on and massive security branch files were compiled on them without their knowledge during the apartheid era, this was a breath of fresh air.

But by the time the law reached the statute book, many things had changed. Even its name was now the Promotion of Access to Information Act.

Common sense had prevailed over the earlier idealism.

It is simply not practical to allow the public to listen to cabinet debates these could include discussions on issues of national security .

While the bill was passing through Parliament there was a lot of criticism that the exemptions allowed were too wide and would put government information officers in the position of being able to refuse requests too easily.

Every government entity is required to have a designated information officer and a manual indicating the sort of information they hold and these must be accessible: in terms of section 16, the Government Communication and Information Service is responsible for publishing details on information officers in the telephone directory.

The act broke the mould it was the first of its kind in Africa and provided a legal basis for people to access information held by government.

But the Open Democracy Advice Centre's second year of monitoring responses to the legislation shows very negative results.

More than half 52% of all requests made to government were simply ignored; there was no response at all what the report calls "mute responses".

"A requestor of information in South African law has an unqualified right to government records. They do not need to show any rights to or interest in the record. All they must do is to identify the record and from which agency they require this record," the centre's report says.

It also notes that the time frames in the law are very generous: "Bodies covered by the law have 30 days to answer requests for information, and another 30 if an extension is needed to respond to complex requests.

"Appeals are possible under section 74, which provides for the right to internal appeal against a decision of the information officer within 60 days of the decision.

"Only once the local remedies of internal appeal have been exhausted can an aggrieved requestor take on appeal the decision to the high court. This route is lengthy, expensive and inaccessible to many South Africans."

The Open Democracy Advice Centre found that although no government institutions performed particularly well, there were differences in performance.

"The departments of defence, education and the regional executives answered half of the requests received, with finance and Telkom answering one in three. Telkom was also the only body to issue written refusals," it says .

Bodies with high levels of mute refusals included the president's office, the regional courts, the department of environmental affairs and tourism, and local executives.

"Worst performing were the Independent Development Trust and Eskom, neither of which answered any of the six requests submitted."

The report concludes: "Most of the problems identified emanate from the lack of political will. A major hurdle in the successful use of this act is its effective implementation. Unless there is the political will to implement it, the issues of training and resources will not be solved, and mute refusals will remain the primary outcome.

"Clearly the objective of the act is noble and ambitious but it will be of no use until it is well implemented. More penalties for noncompliance should be imposed otherwise the law will be good only on paper, and will continue to disappoint."