

**AMENDMENTS TO THE  
PROTECTION OF STATE INFORMATION BILL**

[B 6B-2010]

Submitted in terms of NA Rule 254

by

Inkatha Freedom Party

through

J.H. Van Der Merwe, MP

M.G.R. Oriani-Ambrosini, MP

and

Freedom Front Plus

through

A. Alberts, MP

Acting in terms of the Rules of the National Assembly, including but not limited to Rule 254, we the undersigned members of the National Assembly hereby table in the National Assembly the following amendments to the Protection of State Information Bill, bill no B6B-2010. All amendments set out herein are separate, distinct and self standing, and are to be deemed as having been introduced separately by the undersigned: they have been collated in this single document only for simplicity and expediency of processing.

**BE** the Protection of State Information Bill hereby amended as follows:

1. Replace the word “must” with the word “shall” where the word “must” occurs.
2. Delete the words “or any other archive” and the words “or other archive” where these words occur.
3. Ad Clause 1: in respect of the definition of “archives”
  - (a) delete the words “or any archive established in terms of a provincial law” and
  - (b) add the words “establish in terms of national law” after the words “an organ of state”.
4. Ad Clause 1: add the following definition:  
““Cabinet” means the organ contemplated in section 85(2) of the Constitution”
5. Ad Clause 1: add the following definition:  
““President” means the President of the Republic of South Africa”
6. Ad Clause 1: add the following definition:  
““provincial Cabinet” means the organ contemplated in section 132 of the Constitution”
7. Ad Clause 1: add the following definition:  
““Right to Know Commission” means the Commission established in terms of section \_\_\_”.
8. Ad Clause 1: add the following definition:  
““Security Services” means the security services contemplated in chapter 11 of the Constitution”
9. Ad Clause 2: delete sub clause (d).
10. Ad Clause 2: delete sub clause (f).
11. Ad Clause 2: add the following sub clause:  
“ensure that South Africa moves into the age of transparency and information without carrying along the shackles of a past characterized by secrecy”;
12. Ad Clause 2: add the following sub-clause:  
“prevent wrongful, undesirable, illegal or deviant activities or conduct on the side of the Agency or the Security Services”;
13. Ad Clause 2: add the following sub clause:  
“establish the Right to Know Commission as a civil-society based check and balance”.
14. Ad Clause 3: delete the words “of the Republic” from sub-clause (2)(a).

15. Ad Clause 3: replace the words “security services” with the words “Security Services” in sub-clause (2)(a).
16. Ad Clause 3: add the following sub-clause:  
“(3) The Minister shall  
(a) be able to exercise the power contemplated in subsection (2) only on the basis of a request of  
a. the minister of the department concerned, or  
b. the head of the organ of state concerned when such organ of state is not a department, and  
(b) not request, prompt or solicit Cabinet or a provincial Cabinet to request or prompt a minister of a department or a head of an organ of state to make the request contemplated in item (a) of this sub-section.”
17. Ad Clause 4: add at the end of that clause the following words:  
“as well as against unlawful or excessive classification or secrecy”
18. Ad Clause 5: add the following words at the end of subsection (2):  
“provided that information which is not in material or documented form may be subjected to classification by reducing it into such form.”
19. Ad Clause 6: add the following sub-clause:  
“(j) when public interest outweighs the reasons for secrecy, secrecy must be set aside.”
20. Ad Clause 6: add the following sub-clause:  
“(k) information which, for whatever reason, cannot be, or has not been, kept secret or is accessible to persons not bound to keep it secret shall be deemed to not being secret or capable of being classified in terms of this Act.”
21. Ad Clause 6: renumber the existing sub-clause (j) as sub-clause (l).
22. Ad Clause 7: add the following sub-clause:  
“(4) When developing the policies, directives and categories contemplated in subsection (1), the relevant head of an organ of state shall  
(a) publish a draft policy, directive or category for public comments;  
(b) consult the Right to Know Commission; and  
(c) if applicable, motivate in writing why he or she has departed from the comments received from the relevant segment of the public or the Right to Know Commission.”
23. Ad Clause 7: add the following sub-clause:  
“(5) The policies, directives and categories contemplated in subsection (1) shall  
(a) be published in the Gazette,  
(b) reviewed annually, and  
(c) amended as requested by the Classification Review Panel.”
24. Ad Clause 9: add the following sub-clause:  
“(4) The relevant organ of state shall, within two years from the commencement of this Act, make all relevant valuable information available on a website or any other means of easy and immediate free mass access to information which may in the future replace or perform the same function as a website.”
25. Ad Clause 9: add the following sub-clause:  
“(5) Anyone handling valuable information shall successfully undertake relevant and pertinent training as prescribed.”
26. Ad Clause 9: add the following sub-clause:  
“(6) Nothing in this Act shall adversely affect any right of persons other than organs of state to access, store, distribute or make available valuable information for commercial purposes.”

27. Ad Clause 9: add the following sub-clause:  
“(7) Nothing in this Act shall prevent a person other than an organ of state to destroy, fail to preserve, neglect or dispose of valuable information in such person’s possession.”
28. Ad Clause 10, turn the existing text into sub-clause (1) and add the following sub-clause  
“(2) A security clearance certificate shall not  
(i) be unreasonably withheld,  
(ii) withheld for political purposes, and  
(iii) withheld for any reason other than national security.
29. Ad Clause 12: add the following sub-clause:  
“(4) In determining whether sub-section (2) or (3) applies in respect of a piece of information, preference shall be given to sub-section (2) unless  
(a) irreparable demonstrable harm is involved, and  
(b) classification in terms sub-section (2) does not address the relevant need for secrecy.”
30. Ad Clause 12, add the following sub-clause:  
“(5) State information may be classified as restricted if the information  
(a) is not sensitive information, and  
(b) is not meant to be released beyond those who have produced it or are working on it,  
provided that  
(c) information may not be classified as restricted for a period exceeding 20 days;  
(d) It shall not be an offence to disclose restricted information, until and unless restricted information is otherwise classified in terms of this Act; and  
(e) it shall, in respect of restricted information, be misconduct for a public servant to disclose it or make it accessible beyond those authorised to receive it restricted information.”
31. Add the following clause after clause 12:  
“(1) The classification of information cannot be upgraded from  
(a) in the public domain to classified;  
(b) restricted to confidential, secret or top secret;  
(c) confidential to secret or top secret;  
(d) secret to top secret;  
(2) For purposes of this section, information shall be deemed in the public domain when, at the time of its being generated, completed, compiled or circulated, as the case may be, or immediately thereafter, such information is capable to be accessed by persons who, once such information is classified, would not be authorized to accesses it.”
32. Ad Clause 13: replace, in sub-clause (3), the words “designated staff members” with the words “staff members designated in terms of subsection (2)”.
33. Ad Clause 13: delete the words “as contemplated in chapter 11 of the Constitution” from sub-clause (6).
34. Ad Clause 13: add the following sub-clause:  
“(10) Any person authorised to classify information in terms of this section may vary or terminate such classification within the scope of his or her authority or may determine that such classification automatically lapses within a certain period, or on a given date or at the time of the occurrence of a certain event or condition.”
35. Ad Clause 13: add the following sub-clause:  
“(11) Any person who has the authority to classify, downgrade or declassify state information may delegate his or her power to classify, downgrade or declassify state information to any other person who

- has the same measure of own or delegated authority as he or she does.”
36. Ad Clause 14: substitute the words “this Act” with the words “this section” in clause (1).
  37. Ad Clause 14: add, in sub-clause (2)(h), the words “an necessarily” after the word “clearly”.
  38. Ad Clause 14: substitute sub-clause (20(k) with the following sub-clause:
    - “(k) Where state information needs to remain classified but its classification is no longer warranted, such information shall be downgraded to an appropriate level.”
  39. Ad Clause 14: add the following item to sub-clause (2):
    - “(l) Classification of state information shall be limited so as to prevent conditions under which the Agency or members thereof may engage in conduct which is deviant, illegal or contrary to the best interest of the public or the welfare of the Republic;”
  40. Ad Clause 14: add the following item to sub-clause (2):
    - “(m) State information shall not be classified when such information can support the growth and progress of the Republic or any of its communities.
  41. Ad Clause 14: add the following item to sub-clause (2):
    - “(n) State information shall not be classified when relating to the conflicts of the past.”
  42. Ad Clause 14: add the following item to sub-clause (2):
    - “(o) State information shall not be classified if necessary to hold elected representatives accountable in an open and democratic society.”
  43. Ad Clause 15: add, at the end of the clause, the following words:
 

“provided that no inquiry on, or investigation about, the identity of the person returning such information, or about the circumstances of such possession shall be conducted by said member or any organ of state.”
  44. Ad Clause 16 add the following words after the words “matter interests” in sub-clause (5):
 

“, including, *inter alia*, the Classification Review Panel and the Right to Know Commission,”
  45. Ad Clause 17: turn the existing provision in subsection (1) and add the following sub-clause:
    - “(2) The organ of state contemplated in subsection (1) shall send copy of the certification contemplated in subsection (1) and any comment thereon received from the Classification Review Panel to
      - (a) the Right To Know Commission, and
      - (b) the Portfolio Committee on Justice and Constitutional Development of the National Assembly.
  46. Ad Clause 17: add the following sub-clauses:
    - “(3) The certification contemplated in subsection (1) shall lapse unless renewed in terms of subsections (1) and (2) of this section within two years and every two years thereafter.
    - (4) On lapsing of the certificate referred to in subsection (2), the relevant information shall be deemed declassified.”
  47. Ad Clause 18: add the following sub-clause:
    - “(6) A head of a relevant organ of state who, for whatever reason, fails to timely comply with subsection (1) shall report such failure to
      - (a) the Classification Review Panel, and
      - (b) the Right to Know Commission.”
  48. Ad Clause 18: add the following sub-clause:

- “(7) A head of a relevant organ of state who fails to timely comply with subsection (6) shall be liable of the offence contemplated in section 48.”
49. Ad Clause 19: add the following sub-clause:  
“(7) In respect of any of the appeals or court actions contemplated in this section, the Right to Know Commission shall have the power to  
(a) assist per person requesting access  
(i) financially, or  
(ii) by means other relevant and appropriate means, and  
(b) intervene as a party.”
50. Ad Clause 19: add the following sub-clause:  
“(7) In respect of any of the appeals or court actions contemplated in this section, organs of civil society shall have the power to  
(a) assist per person requesting access, and  
(b) intervene as a party.”
51. Ad Clause 22: add the following words at the end of sub-clause (7):  
“which certificate shall not  
(a) be unreasonably withheld,  
(b) withheld for political purposes, and  
(c) withheld for any reason other than national security”
52. Ad Clause 23: at the end of sub-clause (h), replace the word “and” with the word “or”.
53. Ad Clause 27: add the following sub-clause:  
“(7) A head of a relevant organ of state who fails to timely comply with a final decision contemplated in this section shall be liable of the offence contemplated in section 48.”
54. Ad Clause 27: add the following sub-clause:  
“(8) Should a head of a relevant organ of state fail to comply with a final decision contemplated in this section for longer than 30 days, the relevant classified information shall be deemed to have been declassified.”
55. Ad Clause 28: add the following words at the end of that clause:  
“which certificate shall not  
(a) be unreasonably withheld,  
(b) withheld for political purposes, and  
(c) withheld for any reason other than national security”
56. Ad Clause 29: replace the words “National Assembly” with the words “Portfolio Committee on Justice and Constitutional Development of the National Assembly”.
57. Ad Clause 30: add the following sub-clause:  
“(7) The Classification Review Panel must publish the reports contemplated in this section on its website or make it available by any other means of easy and immediate free mass access to information which may in the future replace or perform the same function as a website.”
58. After Clause 30: add the following sub-clause in a new clause:  
“(1) There is hereby established a commission to be known as the Right to Know Commission.”
59. After Clause 30: add the following sub-clause in a new clause:  
“(2) The Right to Know Commission shall consist of five members appointed by organs of civil society selected by the Portfolio Committee on Justice and Constitutional Development of the National Assembly on the basis of public inputs received following adequate advertisement.”
60. After Clause 30: add the following sub-clause in a new clause:  
“(3) The Right to Know Commission shall have the power to

- (a) request from any organ of state in possession thereof, receive and consider any classified information withheld by an organ of state from a person requesting access to it in terms of this Act; and
- (b) order that such information be declassified or make such information public when:
  - (i) the disclosure of such information is of greater public interest or importance than its remaining classified;
  - (ii) such information was erroneously or wrongfully classified, or
  - (iii) such information has become accessible to persons not authorised to access it.”

61. After Clause 30: add the following sub-clause in a new clause:

- “(4) Members of the Right to Know Commission shall:
  - (a) serve for a three-year renewable period;
  - (b) not be remunerated by the State;
  - (c) be able to be remunerated by the organ of civil society from which the relevant Commissioner originates;
  - (d) receive a security clearance certificate from the Agency as a condition of his or her taking office, which certificate shall not
    - (i) be unreasonably withheld,
    - (ii) withheld for political purposes, and
    - (iii) withheld for any reason other than national security
  - (e) be able to be removed by the organs of civil society from which the relevant Commissioner originates for good cause shown and with the no-objection of the Portfolio Committee on Justice and Constitutional Development of the National Assembly.”

62. After Clause 30: add the following sub-clause in a new clause:

- “(5) The Right to Know Commission shall
  - (a) be able to fund its operations through donations or other contributions from any source other than organs of state, save for dedicated grants in-aid made on conditions which would not require the Public Finance Management Act to become applicable to the Right to Know Commission; and
  - (g) table a report of its activities with Portfolio Committee on Justice and Constitutional Development of the National Assembly once a year.”

63. After Clause 30: add the following sub-clause in a new clause:

- “(6) No organ of state or employee of an organ of state may interfere with, hinder or obstruct the Right to Know Commission or any member thereof in the performance of its, his or her functions.”

64. After Clause 30: add the following sub-clause in a new clause:

- “(7) No access to classified information may be withheld from the Right to Know Commission on any ground.”

65. Ad Clause 31: add the following sub-clause:

- “(4) In respect of any of the appeals or court actions contemplated in this section, the Right to Know Commission shall have the power to
  - (a) assist per person requesting access
    - (i) financially, or
    - (ii) by means other relevant and appropriate means, and
  - (b) intervene as a party.”

66. Ad Clause 31: add the following sub-clause:

- “(5) In respect of any of the appeals or court actions contemplated in this section, organs of civil society shall have the power to
  - (a) assist per person requesting access, and

- (b) intervene as a party.”
67. Ad Clause 32: add the following sub-clause:  
“(3) In respect of any of the appeals or court actions contemplated in this section, the Right to Know Commission shall have the power to  
(a) assist per person requesting access  
(k) financially, or  
(ii) by means other relevant and appropriate means, and  
(b) intervene as a party.”
68. Ad Clause 32: add the following sub-clause:  
“(4) In respect of any of the appeals or court actions contemplated in this section, organs of civil society shall have the power to  
(a) assist per person requesting access, and  
(b) intervene as a party.”
69. Ad Clause 33: add the following sub-clause:  
“(6) Within three months of the commencement of this Act, the National Archives shall list and report on all classified records in its direct or indirect custody to the  
(a) Classification Review Panel, and  
(b) Right to Know Commission.”
70. Ad Clause 33: add the following item to sub-clause (3):  
“(c) notify the Classification Review Panel”
71. Ad Clause 33: add the following item to sub-clause (3):  
“(d) notify the Right to Know Commission”
72. Ad Clause 34: add the following sub-clause:  
“(3) As soon as possible after having declassified information the organ of state which declassified such information shall  
(a) list such information as declassified information on its website or any other means of easy and immediate free mass access to information which may in the future replace or perform the same function as a website; and  
(b) Inform anyone who requested access to such information.”
73. Ad Clause 34: add the following sub-clause:  
“(4) For two years following its declassification, any declassified information and record containing it  
(a) shall be deemed valuable information, and  
(b) may not be destroyed, damaged, altered or kept in a manner likely to cause it to be lost”
74. Ad Clause 35: turn the existing text into sub-clause (1) and add the following sub-clause:  
“(2) In performing its functions under this Act the Agency shall  
(a) interact only with the head of the organ of state concerned, and  
(b) report any findings to the person bearing the final political responsibility for the organ of state concerned.”
75. Ad Clause 35: add the following sub-clause:  
“(3) In performing its functions under this Act the Agency shall not instruct, direct, intimidate or reprimand any public servant or contractor of any organ of state other than its own.”
76. After Clause 35: add the following sub-clause in a new clause:  
“(1) On recommendation of the Portfolio Committee on Justice and Constitutional Development of the National Assembly, the President may, once a year, grant a presidential honour of the prescribed nature and rank to anyone who has distinguished himself or herself in promoting transparency, accountability and free access to information within government.”

77. After Clause 35: add the following sub-clause in a new clause:
- “(2) The President in Cabinet shall make regulations for the exercise of the power contemplated in subsection (1), which, inter alia, shall provide that the presidential honours contemplated in subsection (1) have a rank available for public servants and a rank available non-public servants”.
78. After Clause 35: add the following new clause:
- “The President shall, within a year of the commencement of this Act, establish a means and a manner of communication which ensures that members of the public may communicate with the President or his or her designated officers under conditions and manners which preserve the anonymity of said members of the public for the purposes of revealing to the President deviant, illegal or concerning conduct of the Agency or of members thereof or of other members of the Security Services, when such conduct is made possible or is facilitated by means of classifying information in terms of this Act.”
79. Ad Clause 36: replace the word “intentionally” with the word “wilfully” where the word “intentionally” occurs.
80. Ad Clause 36: replace the word “25 years” with the words “15 years” where the words “25 years” occur.
81. Ad Clause 36: replace the word “15 years” with the words “7 years” where the words “15 years” occur.
82. Ad Clause 36: replace the word “five years” with the words “2 years” where the words “five years” occur.
83. Ad Clause 36: add the following sub-clause:
- “(5) If a person is convicted of an offence under this section in relation to conduct also punishable as offence in terms of another section of this Act and is charged or convicted in respect of such other offence, the terms of imprisonment contemplated in this section shall be reduced by half.”
84. Ad Clause 37: replace the word “intentionally” with the word “wilfully” where the word “intentionally” occurs.
85. Ad Clause 37: replace the word “25 years” with the words “7 years” where the words “25 years” occur.
86. Ad Clause 37: replace the word “15 years” with the words “5 years” where the words “15 years” occur.
87. Ad Clause 37: replace the word “five years” with the words “1 year” where the words “five years” occur.
88. Ad Clause 38: replace the word “intentionally” with the word “wilfully” where the word “intentionally” occurs.
89. Ad Clause 38: replace the word “20 years” with the words “10 years” where the words “20 years” occur.
90. Ad Clause 38: replace the word “15 years” with the words “5 years” where the words “15 years” occur.
91. Ad Clause 38: replace the word “five years” with the words “2 years” where the words “five years” occur.
92. Ad Clause 38: add the following sub-clause:
- “(4) only the following persons are punishable of the offence of hostile activity:
- (a) a person who is not a South African citizen or a South African resident is punishable of the offence of hostile activity; and
- (b) a person employed or contracted by the Agency.”
93. Ad Clause 38: add the following sub-clause:
- “(5) If a person is convicted of an offence under this section in relation to conduct also punishable as offence in terms of another section of this Act and is charged or convicted in respect of such other offence, the



terms of imprisonment contemplated in this section shall be reduced by half.”

94. Ad Clause 39: replace the word “10 years” with the words “3 years” where the words “10 years” occur.
95. Ad Clause 40: replace the word “intentionally” with the word “wilfully” where the word “intentionally” occurs.
96. Ad Clause 40: replace the word “10 years” with the words “3 years” where the words “10 years” occur.
97. Ad Clause 40: replace the word “five years” with the words “one year” where the words “five years” occur.
98. Ad Clause 40: add in sub-clause (5) the word “wilful” before the word “Intent”.
99. Ad Clause 40: replace the word “two years” with the words “six months” where the words “two years” occur.
100. Ad Clause 40: delete item (6)(e).
101. Ad Clause 40: add the following sub-clause:
  - “(7) Anyone charged with an offence under this section shall be entitled to raise as an exculpatory defence the benefits achieved in respect of
    - (a) advancements in computer techniques,
    - (b) exposure of computer programming flaws or shortcoming, or
    - (c) commercialization of new electronic products.”
102. Ad Clause 41: replace the word “five years” with the words “nine months ” where the words “five years” occur.
103. Ad Clause 41: add the following sub-clause:
  - “(3) This section applies only in respect of a person engaged or who was engaged or intends to be engaged in active intelligence gathering which is likely to directly or indirectly involve unlawfully procuring, soliciting or receiving classified information”.
104. Ad Clause 42: add the words “one third of” before the words “the punishment”.
105. Ad Clause 43: replace the word “intentionally” with the word “wilfully” where the word “intentionally” occurs.
106. Ad Clause 43: replace the word “five years” with the word “three years”.
107. Ad Clause 44: replace the word “15 years” with the words “3 months” where the words “15 years” occur.
108. Ad Clause 45: replace the word “five years” with the words “six months” where the words “five years” occur.
109. Ad Clause 47: add the following item to clause (1):
  - “(v) affect political or electoral processes.”
110. Ad Clause 47: add the following item to clause (1):
  - “(vi) affect domestic or foreign financial markets or stock exchange.”
111. Ad Clause 47: add the following item to clause (1):
  - “(vii) promote or hinder political parties or members thereof.”
112. Ad Clause 49: delete item (d).
113. Ad Clause 49: replace the word “15 years” with the words “5 years” where the words “15 years” occur.
114. After Clause 49: add the following clause:

“No person shall be liable for more than two offences under this Act in respect of the same conduct.”
115. After Clause 49: add the following clause:

“Any classified information which falls within the public domain or is disclosed in a manner which can make such information accessible by person other than those authorized to access it, shall be deemed no longer classified or classifiable in terms of this Act, save in respect of anyone who first caused such information to become of public domain or so disclosed.”
116. After Clause 49: add the following clause:

“Anyone charged with an offence under this Act shall be entitled to raise as a fully exculpatory defence the disclosure of the relevant information serving a reason of public interest or importance which outweighs the reason for its classification.”

117. After Clause 49: add the following clause:  
“Anyone charged with an offence under this Act shall be entitled to raise as a fully exculpatory defence the erroneous or wrongful classification of the information concerned.”
118. Ad Clause 50: move this clause under clause 3 as its sub-clause (3).
119. Ad Clause 51: add the following words at the end of that clause:  
“provided that such authority shall not be  
(a) unreasonably withheld, or  
(b) withheld in respect of the offences contemplated in section 47.
120. Ad Clause 52: add the following sub-clause:  
“(11) Notwithstanding anything to the contrary in this Act, any person charged with an offence and its, his or her legal representative shall, without delay, have the right to access to any classified information capable of  
(a) being used by such person in its, his or her defence, or  
(b) reasonably leading to the identification of information capable of being used by such person in its, his or her defence.”
121. Ad Clause 54: delete item (4)(b).
122. Ad Clause 54: delete item (4)(c)(v).
123. Ad Clause 55: add the following item:  
“(j) sections \_\_ to \_\_” [where the blanks refer to the clauses dealing with the Right to Know Commission].

So tabled in the National Assembly by the undersigned members of the National Assembly on this 19<sup>th</sup> day of September 2011 at 11h00 a. m. by means of verified hand delivery to the Speaker of the National Assembly or his designated agent.

A. Alberts, MP \_\_\_\_\_

M.G.R. Oriani-Ambrosini, MP \_\_\_\_\_

J.H. Van Der Merwe, MP \_\_\_\_\_