

Protection of Information

- Secrecy - the practice of hiding information from certain individuals or groups, perhaps while sharing it with other individuals.
- What needs to be kept secret? What should be classified and why?
- Who is allowed to keep secrets? Who 'needs to know'? Who decides?
- How are secrets protected? How is the right of access to information protected?

'Given the secrecy surrounding the intelligence services, and the potential abuse that such secrecy carries, citizens must be assured that there are clear parameters and policy guidelines for the exercise of secrecy and transparency'

Sandy Africa, Well-Kept Secrets

What needs to be hidden?

- Acknowledge legitimate secrets that need to be protected
- There are also dangers to excessive secrecy:
 - Causal link between secrecy and abuse of power
 - Transparency = improved governance & accountability
 - Climate of distrust
 - Secrecy is for losers!

A case can be made . . . that secrecy is for losers. For people who don't realize how important information really is... Openness is now a singular, and singularly American, advantage. We put it in peril by poking along in a mode of an age now past. It is time to dismantle government secrecy, this most pervasive of Cold War-era regulations. It is time to begin building the supports for the era of openness that is already upon us.

Daniel Patrick Moynihan,
U.S. Senator, ambassador, administration official and academic



- It is also increasingly difficult to keep secrets
- It is also increasingly expensive to keep secrets
- Recognise constitutional and democratic imperatives
- As a tool of public policy, the function of the Pol is to set the parameters within which govt depts operate.
- Argument here: Pol does not create very clear boundaries

Definitions and lack of clarity

Protection of Information Bill	White Paper on Intelligence
Intelligence – any information, obtained by a national intelligence structure, for the purpose of crime prevention, investigation and combating or for the purpose of informing any government decision- or policy-making process carried out in order to protect national security or to further national interest	Intelligence – the product arising from the collection, evaluation and analysis, integration and interpretation of all available information, supportive of the policy- and decision-making processes pertaining to the national goals of stability, security and development

Intelligence is a secret state activity to understand any threat to national security and thereafter to advise policy makers on steps to counteract such threat. It is an activity performed by officers of the state for state purposes. Secret collection and the use of information that is not publicly available are the constitutive elements that would distinguish this from other intellectual activity.

Minister of Intelligence Services, LN Sisulu (MP), on the occasion of the Intelligence Services Budget Vote, National Assembly, Cape Town, 17 June 2003

Protection of Information Bill	National Strategic Intelligence Act
<p>Counter-Intelligence - measures and activities conducted, instituted or taken to impede and to neutralise the effectiveness of foreign or hostile intelligence operations, to protect intelligence and any classified information, to conduct security screening investigations and to counter sedition, treason and terrorist and –related activities.’</p>	<p>Counter-Intelligence – measures and activities conducted, instituted or taken to impede and to neutralise the effectiveness of foreign or hostile intelligence operations, to protect intelligence and any classified information, to conduct security screening investigations and to counter subversion, treason, sabotage and terrorism aimed at or against personnel, strategic installations or resources of the Republic</p>

In terms of the Act, NIA’s counter-intelligence mandate entails four functions, two of which are clear and regulated: to protect intelligence and classified information, and to conduct security screening investigations. The other two functions – to impede and neutralise the effectiveness of foreign or hostile intelligence operations, and to counter subversion, treason, sabotage and terrorism – are not described precisely and are not regulated.

The absence of legal rules and executive policy on these countermeasures is extremely dangerous as it might lead to interference in politics and infringing rights without sufficient cause.

Protection of Information Bill	National Strategic Intelligence Act
<p>Domestic Intelligence – intelligence on any internal activity, factor or development which is detrimental to the national stability of the Republic, as well as threats or potential threats to the constitutional order of the Republic, the safety and well-being of its people, <i>on all matters relating to the advancement of the public good and all matters relating to the protection and preservation of all things owned or maintained for the public by the State</i></p>	<p>Domestic Intelligence – intelligence on any internal activity, factor or development which is detrimental to the national stability of the Republic, as well as threats or potential threats to the constitutional order of the Republic, the safety and well-being of its people</p>

- *The domestic intelligence mandate is too broad and open to interpretation*
- *NIA has historically interpreted this mandate in so expansive a fashion as to encompass the thematic focus of virtually every government department*
- *The broad mandate and political intelligence function may have politicised NIA and given rise to an inappropriate focus on political activities*
- *The Act should be amended so that NIA’s intelligence mandate is not based on imprecise terms like threats to ‘national stability’*

Ministerial Review Commission Report

National Security	National Interest
<p>the resolve of South Africans as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life, and includes protection of the people and occupants of the Republic from hostile acts of foreign intervention, terrorist and related activities, espionage and violence, whether directed from or committed within the Republic or not, and includes the carrying out of the Republic's responsibilities to any foreign country in relation to any of the matters referred to in this definition.</p>	<p>Includes but is not limited to:</p> <ul style="list-style-type: none"> •all matters relating to the advancement of the public good •all matters relating to the protection and preservation of all things owned or maintained for the public by the State •The survival and security of the State and people •The pursuit of justice, democracy, economic growth, free trade, a stable monetary system and sound international relations •Security from all forms of crime •Protection against attacks or incursions or acts of foreign interference •Defence and security plans and operations •Details of criminal investigations and police and law enforcement methods •Significant political and economic relations with international organisations and foreign governments •Economic, scientific or technological matters vital to the Republic's stability, security, integrity and development

Concluding remarks

- The Pol Bill does not assist in defining what should be kept secret
- If nothing else, it provides grounds for anything to be justified as requiring protection
- There are serious concerns about how to implement this in a manner that will lead to increased efficiency & effectiveness
- Role of oversight bodies

The aim then is to provide a statutory framework which provides direction to those in government who are charged with information protection; substantially reduce the amount of state information that is protected from disclosure; provide more effective protection to that information that truly requires safeguarding; and to align the information protection regime with the values, rights and freedoms enshrined in the Constitution

Minister for State Security, 7 May 2010