

Power is information

Myths and fables about access

Introduction

I wish to make a rather simple and straightforward point about public access to information using a few examples from South Africa's Promotion of Access to Information Act (PAIA), of 2000. My point is that power is information, which reverses the more familiar phrase that information is power. So the emphasis here falls instead on the secular terrain of politics and of power over information instead of the sacred belief in information's power over everything else. This calls for a mind-switch to see the rabbit (power is information) instead of the duck (information is power) in the same pictorial image. Of course, both occupy the same space, and I believe that this image can help us understand a few things about information politics.

It is commonly assumed that equitable access to data, information, best practices and knowledge is a driver of science and technology in the information society. This view is emphatic in Unesco's booklet on science in the information society that was prepared for the World Summit on the Information Society (WSIS) in Geneva, in December 2003 (Khan 2003: 5). But more important is its acknowledgement that information societies should be firmly based on a commitment to human rights and fundamental freedoms, including the freedom of expression. These freedoms include the free and unimpeded flow of information, which is a prerequisite for the development of science. And this is why Unesco commits scientific and engineering communities to reach out to other groups in civil society to ensure that appropriate legal and institutional frameworks are put in place to allow the free flow of information.

It therefore becomes necessary for the South African scientific community to track civil society's experiences with legislation like the PAIA, and to help make it work. Most information society enthusiasts promote the view that information is wealth and that access to information is power as an age-old truism that extends even further back than Francis Bacon's dictum in 1597 that knowledge itself is power (Large 1982: 3). But the point I make is the opposite, namely that it is not knowledge or information that unilaterally shapes power, but that power possesses the means to produce and can prohibit access to information. This is neither a novel insight and is one that was also known before Bacon, and certainly well before Michel Foucault's recent revelations on knowledge and power (Gordon 1980). Foregrounding the view that power is information will, I believe, bring a more realistic perspective into information society studies, and unmask some of its myths and false prophecies.

Some of the more obviously wrong information society predictions are that: leisure time has not increased; tele-work and tele-cottage industries have not mushroomed; the environment has not benefited from the so-called decline of industrialism; and the paperless office has not yet arrived. Contemporary international conflicts and crises are still more about oil, land, food security, clean water and other industrial age issues than about information. The common vision of WSIS (2004: 2) is an information society that would function as people-centred, equitable, inclusive and development-oriented. But it overlooks structural obstacles and fails to explain how inclusiveness, for example, would be achieved in an extremely unequal society like

South Africa where the political-economic situation has shifted from the old systemic exploitation of mainly black South Africans to their new systemic exclusion.

Or, as economist Sampie Terreblanche (2002: 423) says in his recent study of inequality in South Africa: 'poverty is worse than in 1970, and probably also more deeply institutionalised'. This poverty and inequality are carried over to South Africa's information society. The Global Information Technology Report of 2003-2004 shows South Africa as having the second largest disparity among 102 countries between individual readiness (ranked 67) and business readiness (ranked 33) to benefit from and participate in ICT developments (Dutta 2004: 195). Since most countries have a much smaller gap between the two indicators, this Network Readiness Index reveals the business community's over-preparedness and the average South African's under-preparedness to participate in the information society.

To pin our hopes on the information society to achieve socio-economic goals, therefore, is to exaggerate what it can deliver. South Africa's information society inhabits South African society and reflects its balance of power. One needs only to look at the profile of members of the Presidential National Commission on Information Society and Development (ISAD). It shows an over-representation of government and business, largely excluding civil society and ordinary people. It is therefore rather the insight of a double dynamic of conflicting social forces to expand and to restrict access that can get information professionals to improve public access to information. There are many historical examples to show that wherever there are social forces to expand democratic access to information there are opposing social forces to restrict access (Dick 2002).

So, while 'information is power' generally identifies a democratic ethos for expanding access, 'power is information' refers to an authoritarian spirit for restricting access, but refers also to an insurgent force to resist such restriction. In other words, access to information involves a power struggle between opposing social forces to restrict and to expand access. There are several factors that affect this balance of power. But what is power? There is behavioural power that is the ability to obtain desired outcomes, and there is resource power that is the possession of resources to achieve the desired outcomes (Keohane & Nye 1998: 86). It is the degree of possession or deprivation of resource power (like ICTs) that defines the kind of access to and the quality of information accessed. Let us take some examples to observe how power is information works in the case of the state.

The power to deny

In October 2004, the Open Democracy Advice Centre (ODAC) laid a formal complaint with the Public Protector after a five-country study on access to information placed South Africa last in ignoring requests for access to information held by the State. ODAC believes that high levels of silence in response to requests for information under the PAIA amounts to maladministration. South African deputy information officers ignored 63% of the submitted requests and performed worse than their counterparts in the

other transitional democracies, namely, Armenia, Macedonia, Bulgaria and Peru (South Africa fails 2004).

The PAIA of 2000 was a landmark for access to information and is internationally admired. This progressive piece of legislation is especially significant because it seeks to give effect to our constitutional right of public access to information following the control of information and the secrecy that was at the heart of the anti-democratic character of the apartheid system. But its poor implementation record, which deserves less admiration, effectively denies a fundamental human right and the tool needed to empower citizens and to fight corruption.

The study showed that, contrary to the PAIA itself that requires that completion of forms be dispensed with in the case of illiterate requesters, one woman was given the run-around and was harassed with questions like why she wants this information. According to the PAIA, the motivation for a request is completely immaterial, and its consideration is in fact illegal. A blind requester also failed to file many requests from information, and makes nonsense of the equality and inclusiveness claims of information society advocates.

Requesters for information routinely meet with non-compliance, bureaucratic arrogance and hostility. The Presidency was among those that fared worst in the study, and is embarrassing to the President who played a leading role in this act, and who zealously advocates the information society for Africa. Others that performed poorly were Eskom and the Independent Development Trust, which failed to answer requests. The Provincial departments did better, and the departments of defence and education answered half of all the requests within the 30-day period required by the act (SA denied knowledge 2004). The Open Society, which conducted the study, said that follow up interviews with South African officials revealed that many felt that information released would be abused or used against the government. State suspicion, it would seem, takes precedence over the right of public access to information.

The power to deny can also be coupled with the privilege to neglect, as the Human Rights Commission (HRC) 2004 Annual Report reveals. The HRC must include in its Annual Report to the National Assembly statistics regarding the PAIA compliance for each public body. And yet it was only after reminders in four major newspapers and pleas to the Minister of Justice, the President's Office and the Speaker of the National Assembly that 62 out of all the public bodies eventually submitted reports to the HRC (Sorenson 2004). But the statistics for 2003 collected by the South African History Archives (SAHA), a human rights archives, provide a snapshot of the national situation on public access to information, and the implications for scientific work (South African History Archives 2004: 32-4).

The power to destroy and delay

The apartheid government destroyed state documents over a number of years in order to deny a new government access to incriminating evidence and to sanitise the history of the apartheid era (McKinley 2003). And the

new government's National Intelligence Agency (NIA) was caught destroying records of former bantustan intelligence agencies in 1996 (Harris 2004). But the Truth and Reconciliation Committee (TRC) collected a large amount of valuable information about the apartheid security establishment and the violation of human rights.

There were 34 boxes and two folders that contained information on apartheid regime informers, the Civil Cooperation Bureau, the Dulcie September case, Wouter Basson's Project Coast and confidential military intelligence submissions by the African National Congress. The TRC report recommended that upon completion of its work all TRC records be transferred to the National Archives, and that they should be accessible by the public. This turned out to be far more problematic than anticipated, and in early 2001 the SAHA, submitted a PAIA request to the Department of Justice for a list of the missing files.

Full access to these files however is still impossible, which shows how determined government departments and politicians are to hide sensitive information. Some of these files could indeed have been destroyed already, as archivists from the National Archives suspected when they discovered that some of the records were returned to the government departments from which they had been originally accessed. McKinley (2003) explains that the SAHA's efforts show the 'extremely limited nature of realising the right of access to a body of information that rightfully belongs to the people of South Africa but that has been effectively hijacked by government officials and politicians for their own purposes and reasons'.

Former Minister of Justice Penuell Maduna granted the NIA, where the missing files were located, an exemption until 2008 from compliance with the PAIA disclosure provisions (this quickly prompted ESKOM, TELKOM and ISCOR also to consider seeking exemptions). The Minister also announced that the missing TRC records would be subject to re-classification by a NIA-based classification review committee. Curiously enough, the file containing a list of apartheid-era informers is missing (Harris 2004). Which indicates the state's power of surveillance and its own access to information about its citizens, and the powerlessness of citizens to access state information. The point is that full access to all the missing files dealing with sensitive information around human rights violations now seems more remote than ever. McKinley (2003) laments that 'while the perpetrators of gross human rights violations under apartheid must be laughing, the victims should be crying'.

The power to defy and disregard

On 19 November 2003, the Cabinet announced its operational plan on Comprehensive Care and Treatment for HIV and Aids, which gave hope to the 5.6 million people living with Aids in South Africa. This plan committed government to roll out antiretroviral treatment, improve the public health system by hiring 22 000 more health care workers over a five-year period, provide nutritional programmes and improve accessibility to counselling and testing. The implementation of this treatment plan would proceed

according to a timetable that appeared as 'Annexure A' of the operational plan. The Treatment Action Campaign (TAC), an organisation that campaigns for greater access to HIV treatment for all South Africans, sought access to this timetable in order to assist government with its implementation by discovering dates, clinics, hospitals and numbers of patients to be treated and additional health care workers that would be hired.

Requests were directed at the Minister of Health since 20 February 2004, and letters were addressed to the ANC and the Parliamentary Portfolio Committee on Health appealing for intervention. All of this in vain! The Department of Health's behaviour was not surprising. The ODAC survey revealed that it failed to respond to any requests filed with it. When the TAC finally took the Minister of Health to court on 18 June 2004 to compel access under the PAIA, the department responded in September 2004 that 'Annexure A' was in fact a draft, and that references in the operational plan to this annexure were errors that should have been corrected (Why the TAC is going to court 2004). So it took the department about a year to realise and announce that a poorly edited document was officially released to the public.

The TAC has now asked the Pretoria High Court to award legal costs for taking the case so far before being informed that 'Annexure A' was just a draft. It is also proceeding with separate litigation to compel the government to make the timetable available. This litigation could be ended if the Minister of Health simply provides the information (Achmat 2004: 38). But the Minister of Health remains defiant and still refuses to make an implementation timetable publicly available. For HIV-Aids patients, the right to information is about the right to life.

The power to demand

These examples provide some evidence that public access to information is not automatically guaranteed through a constitution, a bill of rights and a piece of legislation like the PAIA. Success with the PAIA thus far has come mostly through pressure and struggle, and from the power to demand public access to information.

The most notable achievements came through the SAHA as a result of both its experience and resources. In October 2003, for example, the Department of Defence released to the SAHA 'the first official record documenting South Africa's nuclear weapons programme to be released since the Apartheid government's pre-1994 disclosures' (South African History Archives 2004: 17).

But this kind of success comes at a price that ordinary South Africans cannot afford. In another case, for example, the SAHA was charged over five thousand Rands for access to 30 files (Harris 2002; the charges were for the access fee, search and preparation fees and copying fees). There have also already been instances of organisations requiring payment of fees much higher than provided in the PAIA (Sorenson 2004).

Ordinary South Africans therefore work through organisations like SAHA to have any hope of success. Some of the other NGOs committed to make the PAIA work are ODAC, the Freedom of Expression Institute (FXI), Khulumani

Support Group for victims of apartheid, which seeks access to information about the Department of Justice's policy on reparations, and the Institute for the Advancement of Journalism.

Conclusion

Confronting state and private power requires a coordinated effort from civil society organisations committed to strengthening the public sector, and enforcing compliance with the PAIA. The power to demand is based on our constitutional right of access to information and our democratic responsibility of holding power to account. It is in a collective and integrated effort that demands will yield results. There is already talk of the need for a coalition of civil society forces and a broader strategy of engagement in the struggle for public access to information (McKinley 2003) – a public access to information front, as it were. This recognises that public access to information is a human right that gives effect to the achievement of all other human rights, and that it drives progress in science and technology in South Africa's information society. But more fundamentally, it affirms the view that power is information.

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