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Democracy and access to information in South Africa

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ABSTRACT

Access to information has been recognised as a vital component of healthy democracies across the world. In South Africa the right to access information is enshrined in the Constitution, which is the supreme law of the land, and legitimised through the Promotion of Access to Information Act (PAIA). This progressive law has resulted in South Africa being considered a leader as regards access to information, both on the continent and in the world. However, in democratic South Africa, the law has come under severe criticism for the manner in which it has been implemented and effected. Many users, including the media as one of the most prolific, have experienced various limitations while utilising the law in their endeavour to effect democratic accountability. In many instances it includes lengthy and costly legal battles and denials by the bureaucracy.

This thesis explores how the access to information legislation can be used to effect accountability and how this relationship in turn, affects democracy. It evaluates the theoretical underpinnings of democracy in relation to access to information, analysing how power intercepts the relationship between access to information and accountability. In evaluating PAIA in the context of South Africa's young democracy, this work attempts to understand how PAIA contributes towards the enhancement of democracy in the country. It reflects on the implementation of the law through two case studies, which trace the routes that were taken by two non-governmental groupings to access information in the country. Both cases only found resolution in the courts. It illustrates how the mechanisms of PAIA can be helpful to establish democratic accountability in South Africa. However, it also highlights the nuances in the power relations that affect the manner in which this plays out. Ultimately it outlines how the democratic deficits in South Africa's democracy, particularly with regard to PAIA, have a negative impact on South Africa's young democracy.

Keywords: PAIA, Access to Information, Democracy, Democratic Theory, Accountability, Freedom of Information, Constitutional rights, Power, Enabling rights