

30 April 2013

Dear President Zuma,

The Public Service Accountability Monitor (PSAM) hereby requests that you submit the current draft of the Protection of State Information Bill (hereinafter “the Bill”) to the Constitutional Court (in accordance with section 84(2)(c)) so as to obtain that court’s ruling as to the Bill’s constitutionality.

We submit that the absence of adequate provisions within the Bill pertaining to the following matters result in the Bill being inconsistent with the Constitution:

- a full public interest defence;
- inadequate whistle-blower protection;

We submit that the Bill goes too far in that it permits:

- the Minister of State Security to give classification powers to other state bodies (and junior officials) without adequate public consultation and reasons being provided.
- severe sanctions where a person acquires protected information that has already entered the public domain.
- Criminal sentences which are inconsistent with international practice and which will have a chilling effect on anyone in possession of protected information that should be released in the public interest.

In addressing this correspondence to you the PSAM is mindful of section 83(b) of the Constitution which requires that you “*uphold, defend and respect the Constitution as the supreme law of the Republic*”. We are of the considered view that should you act in accordance with section 84(2)(c) this would be in the country’s best interest. Such a decision would be testimony to both your commitment to the Constitution and the vital role played by our judiciary in advancing an open and democratic society.

Yours sincerely,

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