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# TESTING THE LIMITS OF OPENNESS, TRANSPARENCY AND ACCESS TO INFORMATION

– PUBLIC ACCESS TO INFORMATION THAT PARLIAMENT  
REQUESTS FROM DEPARTMENTS

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## ACRONYMS

<b>ATC</b>	Announcements, Tablings, Committee Reports (parliament publication)
<b>CS</b>	Committee Secretary
<b>CSO</b>	Civil Society Organisation
<b>DOI</b>	Dullah Omar Institute, University of the Western Cape
<b>Elected Representative</b>	Includes Members of Parliament (MPs) at national level and Members of Provincial Legislatures (MPLs) at provincial level
<b>MP</b>	Member of Parliament
<b>NA</b>	National Assembly
<b>NCOP</b>	National Council of Provinces
<b>PMG</b>	Parliamentary Monitoring Group
<b>PC</b>	Portfolio Committee (in National Assembly)
<b>SAPS</b>	South African Police Service
<b>SANDF</b>	South African National Defence Force

## COMMITTEE ABBREVIATIONS

<b>PC Agric, Land Reform</b>	Portfolio Committee on Agriculture, Land Reform and Rural Development
<b>PC COGTA</b>	Portfolio Committee on Cooperative Governance and Traditional Affairs
<b>PC Defence</b>	Portfolio Committee on Defence and Military Veterans
<b>PC Labour</b>	Portfolio Committee on Employment and Labour
<b>PC HEST</b>	Portfolio Committee on Higher Education, Science and Technology
<b>PC Settlements</b>	Portfolio Committee on Human Settlements, Water and Sanitation
<b>PC International</b>	Portfolio Committee on International Relations and Cooperation
<b>PC Justice</b>	Portfolio Committee on Justice and Correctional Services
<b>PC Mineral</b>	Portfolio Committee on Mineral Resources and Energy
<b>PC Public Service</b>	Portfolio Committee on Public Service and Administration, Performance Monitoring and Evaluation
<b>PC Public Works</b>	Portfolio Committee on Public Works and Infrastructure
<b>PC Sports, Arts</b>	Portfolio Committee on Sports, Arts & Culture
<b>PC Women</b>	Portfolio Committee on Women, Youth and Persons with Disabilities
<b>NCOP Education</b>	Select Committee on Education, Technology, Sports, Arts and Culture
<b>SC Appropriations</b>	Standing Committee on Appropriations
<b>SCOPA</b>	Standing Committee on Public Accounts

# 1. INTRODUCTION

The Constitution of the Republic of South Africa establishes Parliament and the provincial legislatures as the forums for public consideration of issues to ensure **‘government by the people under the constitution’** in our democracy.<sup>1</sup> The Constitutional Court has also stated that ‘Parliament is the mouthpiece, the eyes and the service-delivery-ensuring machinery of the people.’<sup>2</sup> **Legislatures must act on behalf of the public, and with ongoing public input.** The Constitution reinforces that the executive branch of government has a duty to account to the legislatures<sup>3</sup> and that the legislatures have a duty to hold the executive to account.<sup>4</sup>

The **‘executive branch’** includes: the President, ministers, government departments, and state owned entities at national, provincial and local levels. The legislatures must hold institutions that support democracy such as the Public Protector and the South African Human Rights Commission to account.

The role of legislatures is to perform **oversight and hold the executive to account** is critical – to ensure that Ministers, departments and other entities deliver on the promises of the Constitution, laws, and political commitments to the public. They must act as the **‘watchdog of State resources, the enforcer of fiscal discipline and cost-effectiveness for the common good of all our people’**<sup>5</sup>. The legislatures’ oversight should result in departments spending public funds carefully and according to the rules, that law and policy is implemented as intended, and that the public are able to assess the government’s performance.<sup>6</sup>

Legislatures **must be transparent** and conduct all of their work in a manner that is **open to the public**.<sup>7</sup> **Access to information is essential** to accountable government and also to public participation. Thus the requirements for transparent oversight and our aspirations for meaningful public participation depend on information firstly being available to the legislatures, and also being accessible to the public. In our opinion, for legislatures to fulfil their duty, the constitutional rationale for transparency, openness and access should apply to all information that is provided to legislatures in the course of conducting their business, not only to the physical meetings.



Information asked for in an open meeting that a member of the executive promises to deliver after the meeting as the information is not at hand, cannot automatically be deemed unavailable to the public. Yet this is happening frequently, and when it does, it turns that public meeting into an in camera (private) meeting or exchange of information.

## WHAT WE DID AND WHY?

This research project expands on this small, but important, aspect of the performance of the National Parliament in its openness, transparency and access to information linked to conducting oversight over the executive. The Parliamentary Monitoring Group (PMG) and the Dullah Omar Institute (DOI) monitored requests made by parliamentary committees for additional written information from government departments or other entities that report to Parliament<sup>8</sup> to be provided after the meeting.

Our overall intention with this project is to support transparency and public access to information. We did this by assessing how often committees rely on requests for information in addition to that which is presented or provided to committees during the public space of a meeting; to try to assess the extent to which departments comply with these requests; and to see how available these documents are to the public. This research was planned late in 2019, and thus the period in which we have undertaken this monitoring coincided with the 2020 lockdown when Parliament conducted its meetings online.

## OUR QUESTIONS?

How reliant are committees on additional information being supplied after meetings?

How responsive are departments in supplying the information requested or promised?

Is this information made available to the public?

Through this process we noticed several instances where committee members themselves expressed frustration towards members of the executive for failing to provide requested information. It also appears that the process of obtaining information from departments may be arduous for many committees. We hope that this report will provide useful information not only to the public and civil society organisations (CSOs) that work with legislatures, but also to Members of Parliament (MPs); to committee staff, such as committee secretaries and researchers; and to departments, including parliamentary liaison officers.

## 2. ROLE OF PARLIAMENT AND ITS COMMITTEES

For the most part, the public has very little exposure to what legislatures are supposed to do or how they and our **elected representatives (Members of Parliament or Members of Provincial Legislatures)** do that work. In addition to the National Parliament (which is a ‘legislature’), there are nine Provincial Legislatures in South Africa. Our research focussed on committees in National Parliament (Parliament), but many of its rules and processes also apply to the Provincial Legislatures.

**Elected representatives** are the people who are elected to represent the public in our democracy.

At national and provincial level, political parties identify the list of people who will sit in Parliament and the Provincial Legislatures if that political party wins enough votes in the elections. The South African public vote for the party and the party decides who the public representatives will be.

If the public do not like the people who are listed to represent the party, they may choose not to vote for that political party. Although the public can see who is on the ‘party list’ ahead of the election, the public does not vote directly for elected representatives at national and provincial levels.

**At provincial level elected representatives are referred to as Members of the Provincial Legislatures (MPLs) and at national level as Members of Parliament (MPs).**<sup>4</sup>

While the public mostly see the main ‘Chamber’ or ‘House’ of the National Assembly (NA) in Parliament through the media, **committees do most of the detailed work of Parliament** (and also of the nine Provincial Legislatures). **The House is the place where final decisions are taken**, including voting, after issues have been through longer discussions and deliberations in committees.

**‘House’** is a word used to describe the full decision-making forum in a legislature - when all the elected members come together to debate issues, make final decisions, or vote. The **‘Chamber’** is the room where the ‘house’ or all elected members gather for this purpose. In South Africa we have two houses of our National Parliament - 1) the National Assembly with 400 elected Members (sometimes referred to as ‘seats’) and 2) the National Council of Provinces with 90 elected Members representing the nine provinces. Provincial Legislatures each have one ‘House’.

## LAW-MAKING, OVERSIGHT, AND PUBLIC INVOLVEMENT

Legislatures main roles include **1) law-making**, and **2) oversight** over the executive branch of government (departments and other institutions). In addition they must **3) ensure ‘public involvement’ in both their law reform and other oversight work.**<sup>10</sup>

The main purpose of committees is to perform functions which the House as a whole is not well fitted to perform – committees are made up of smaller groups of elected representatives from different political parties, they are extensions of the House. Working in committees allows elected representatives to spend more time and focus in depth on different issues, such as health, or education, or land and so on. **The requirements for transparency and access that apply to legislatures, apply to committees.**

Ben Zeev points out that in spite of our parliamentary oversight processes becoming more established over time, overall their contribution to improved government service delivery is questionable.<sup>11</sup>

Delegates at a 2012 civil society conference on the legislatures demonstrated that despite resource constraints, weaknesses in oversight should largely be attributed to the power imbalance between the legislatures and the executive that result from our electoral system, and also failures in the political will of elected representatives to exert themselves against political party interests.<sup>12</sup>

As noted above, the Constitution mandates that **Ministers and departments (the executive) must account to and submit to the oversight authority of Parliament and its committees.** The public cares that the government delivers on its commitments – such as meeting service delivery targets or judicious spending of public funds, and the **legislatures act on behalf of the public** in this regard. Lack of accountability, including departments not providing information requested by MPs, can mean that some objectives that matter to the public are repeatedly overlooked. Too frequently no reasons are provided as to why this is happening and how the situation can be improved.<sup>13</sup>

However, committee members themselves do call into question the respect of Ministers and departments for the oversight authority of parliamentary committees. For example, in June 2020, in response to the Department of Cooperative Governance and Traditional Affairs not arriving to make an expected presentation, committee members discussed the question of the Department’s respect for the committee’s oversight authority, and the committee chairperson commented that "the Committee feels like it is held ransom by the Department".<sup>14</sup>

Despite the strong provisions and well established systems in place, **the impact of public involvement on the outcomes of the work of South Africa’s legislatures is also questionable.** There is still much to do to broaden the range of the public who participate and, importantly, to deepen the potential for participation to have influence over the final decisions taken.<sup>15</sup> And while the systems for public involvement in law reform are relatively well established, these are much weaker and less frequently implemented in terms of Parliament’s oversight role.

## SOURCES OF INFORMATION FOR OVERSIGHT

By their nature, **scrutiny, oversight, and accountability require that that information must be provided to legislatures** - the Constitution and other laws specifically require that departments and other entities must provide certain information to Parliament in the course of accounting.<sup>16</sup> This includes regularly providing quarterly and annual reports, budgets, and annual and longer-term strategic plans.

Overall, the main source of information officially provided to the legislatures on the performance of departments comes from those departments themselves. Yet, it stands to reason that the 'overseen' cannot be the only source of information for effective oversight over their performance. This poses serious challenges to effective democratic oversight.

Committee oversight should and can cover a range of activities to obtain information and monitor government performance including: 1) Receiving briefings from Ministers, department officials, parliamentary researchers or external experts, 2) interrogation of documents ranging from strategic plans to annual reports and budgets, 3) consideration of submissions from the public and public hearings, 4) asking questions and 5) going on 'oversight visits', as well as other less frequently used mechanisms. No doubt as active members of our society, MPs also access information through the media, their family, community and other social networks.

Elected representatives' **right to ask questions** of departments is a significant mechanism for legislative oversight. These questions can demonstrate to the public that MPs are considering and interrogating the information that is made available to them. They also allow MPs to obtain additional information on the implementation of government programmes, protecting the rights and freedoms of individuals, identifying cases of abuse of power by the executive government, or obtaining clarification on government policy and legislation proposed to Parliament. Thus in addition to providing the regular information required by law about their performance, **responding to additional requests for information is a big part of departments' work in relation to Parliament.**



**TYPES OF REQUESTS INCLUDE:**

- 1.** Parliamentary questions for oral or for written reply, which are tabled in the House and follow formalised processes.<sup>17</sup> These must be answered within a stipulated time frame. These questions often generate significant media attention and public interest. Parliament publishes written replies on its website, and oral replies are contained in minutes of proceedings that are found in the Hansard Record.
- 2.** Requests for information that are made prior to committee meetings. We observed that after legislatures reconvened during the Covid-19 lockdown period, this approach was used more frequently than previously observed. Due to the limited time available for meetings initially (two hours) at the start of the virtual Parliament, some committees agreed that members could submit questions before the meeting. This was to assist in ensuring that their concerns and questions were responded to by departments. As the discussions on these questions were dealt with during the meeting, the information was generally available to the public who observed those meetings.
- 3.** Requests for additional information made during committee meetings. In addition to department presentations and documents provided prior to and during meetings, MPs may request further information to be provided by the department afterwards. If and when this information is provided to a committee, it is not proactively published as is the case with written questions tabled in the house. If it is provided to members, it is also often not discussed in a committee meeting. For these reasons the public are often excluded from accessing the information, and the question of if it is even submitted to a committee often goes under the radar.

It is this third type of information, which falls outside of the established systems for being made public, that we focus on in this report.



## ACCESSING WRITTEN INFORMATION PROVIDED TO COMMITTEES

It is generally difficult for members of the public, and even organised civil society, to obtain much of the information that is provided by departments to committees. Hard copies of the information can be obtained by people who are physically present at a meeting - however at times there are insufficient copies of the documentation available; and committee secretaries can be approached to email electronic versions of the documents. Both of these **mechanisms for accessing documents from committees have very limited reach broadly across the public.**

Over the past 25 years, the PMG has kept a record of the discussions in committee meetings, documents and presentations submitted to committees, and uploaded these to a website platform. We are aware that there are technological limitations to the broader public accessing online platforms in a country such as South Africa . Despite these challenges, the PMG website is widely used by all sectors in South Africa – in 2019, the site had an average of 231 998 unique visitors per month. PMG has been the only resource for the public and organised civil society to engage with, or monitor in any level of detail and in reasonable timeframes, the oversight activities of their representatives in the ‘engine rooms’ of Parliament.

In addition to recording and uploading information provided to committees prior to or during meetings, PMG has since 2017 undertaken a dedicated process to follow up with selected committees to obtain information promised by departments for submission after meetings, and if received, to make this information available to the public.

Written information that is provided to committees after their meetings must also be considered public information because it is part of their committee work. It is another form of departments’ responses to questions that is usually given verbally and immediately in the committee and which are open to the public and recorded. Thus **the constitutional requirements for transparency and access must apply to these additional pieces of written information** that are provided to committees.

PMG and civil society organisations that regularly follow specific issues in committees have noted that requests for further information in writing seem to be made relatively often by committee members. However, it appears that committee expectations that departments will provide answers are not always realised.

CSOs have also questioned if, and if so by what systems, information that is provided by departments to committees is also made available to the public.

Organisations with an interest in an issue are as interested in the content of any written information provided to committees outside of a meeting as they are in the information presented and discussed during meetings. **Failures of departments to provide requested information to committees, and failures of committees to make the information publicly available are both problematic** because this limits transparency, openness, and access. And as much as it would frustrate oversight when the information is not provided to the committee, lack of public access frustrates and limits the public’s ability to engage substantively on those issues subsequently.

### 3. METHODOLOGY

In order to identify as many instances of departments being requested to provide additional information after a committee meeting, three researchers from PMG and DOI searched the PMG website records of all 569 committee meetings held by 46<sup>18</sup> parliamentary committees which met during the five-month period between 1 March and 31 July 2020.

Using the PMG website's search engine, we searched for keywords and key phrases such as - "*in writing*", "*written responses*" and "*follow-up*" in reports. Particular emphasis was given to the discussion and closing remarks sections of the reports, where the cues were more likely to be found. The results included requests made by the committees, through the Chairperson or by individual members of committees from different political parties, as well as offers to provide additional information by departments. Since the research relied on searching PMG's written version of the meeting proceedings which are not verbatim (as opposed to the sound recording), it is possible that we may have missed some requests for additional information.

Subsequently, we would communicate with the relevant committee secretary via email to request the information that should have been provided by the department. In cases where a committee has more than one secretary, requests would be sent to all of them. We would send a follow-up email between two and seven working days later. If needed we followed up with telephone calls after seven working days as a last step.

The substantive content of all correspondence between committee secretaries and the PMG/DOI, flowing from the requests, was recorded in a detailed table. The recording of this information consisted of the name of the relevant committee, the date of the oral request by the committee, and the status of the request made by PMG/ DOI. In the event of documents being received, they were promptly uploaded on the PMG website to form part of the meeting record for use by members of the public, civil society organisations and other stakeholders.

## 4. FINDINGS AND DISCUSSION

### 4.1 HOW RELIANT ARE COMMITTEES ON RECEIVING INFORMATION IN WRITING AFTER MEETINGS?

We are mindful given the range of reasons requests for additional information may be made, that taken on their own **these requests are not an indication of either a strong effective committee, or of an unprepared department.** That would require a deeper qualitative look into a wider range of questions than those we have considered. Those questions might include some judgement on the relative importance of issues requiring oversight and prioritising committees; the number of meetings per committee; the issues raised and discussed at those meetings; the quality of that discussion; and the information provided prior to, during, or after the meeting to increase such insight. Thus we cannot assess the effectiveness of parliamentary oversight in general or specifically during the Covid-19 State of National Disaster. While our analysis and commentary may touch on the context in which committee oversight was taking place, it should not be considered as an assessment of their general oversight performance.

Of the 46 of the 52 parliamentary committees that held public meetings during this five-month period,<sup>19</sup> just over half (24) made use of this method of obtaining additional information from departments during the five-month period. Of these, 13 committees requested written information only once, and seven only twice. Four committees requested information more than twice, and of the 50 requests in our sample, 23 (46%) were made by those four committees.

*Overview of committee requests for additional written information:*



We questioned if committees that may have been busier were more likely to rely on requests for additional information. However, while the committee that had the highest number of meetings did make the most requests, overall it was not the case that committees that met more frequently made more requests for additional information.<sup>20</sup>

The Portfolio Committee on Cooperative Government and Traditional Affairs (PC COGTA) had the greatest number of meetings during the period and made eight requests in 39 meetings (20% of its meetings). This is not surprising given that the PC COGTA was the lead department under the State of National Disaster and was required to make critical decisions, including developing regulations at a fast pace. The relatively high rate of this committee requiring additional information from the executive seems reasonable as there could have been numerous situations where department officials did not have the information at hand as information may have been in the process of being developed, or the committee may have asked questions for which the department had not prepared.

The Portfolio Committee on Police held 15 meetings in the period (below the 17-meeting average for the 24 committees that used this mechanism), yet had the highest rate of requesting additional written information. The committee made these requests at 40% of its meetings (6 requests). This could be because the committee met relatively less often than others, coupled with the context of additional reliance on the SAPS (along with the SANDF) under the State of National Disaster and the profound issues of safety and police brutality that were reported. The low rate of meetings coupled with a higher need for oversight may have meant that when the committee did meet, members raised numerous questions for which the SAPS had not prepared, such as additional statistics.<sup>21</sup>

The committee with the second highest rate (30%) of requesting additional information (six requests) was the PC on Higher Education Science and Technology (PCHEST) that met 20 times in the period. From the meeting records, it appears that this committee may have specifically utilised this mechanism to strengthen its oversight. There were three occasions (shown below) where the chairperson interrupted department officials as they responded verbally to questions asked, to request that the department instead provide their responses in writing. This suggests that the chairperson's preference is for written information.

### PC HIGHER EDUCATION, SCIENCE AND TECHNOLOGY (PCHEST)<sup>22</sup>

**22 May 2020:** The Chairperson interjected and remarked on the allegations and findings (SIU investigation into the former CEO's corruption case). He asked for the details to be submitted in writing in the next seven days.

**26 May 2020:** The Chairperson interjected and suggested the responses must be provided in writing, because the Committee specifically asked for a report speaking to the implementation of the recommendations in the forensic report (Service Seta).

**02 June 2020:** The Chairperson interjected and asked the CEO to respond to the remaining questions in writing.

The Portfolio Committee on Communications stands out with the lowest rate of oral requests for additional information. This committee met 29 times (second highest number of meetings after PCCOGTA), well above the 17-meeting average, but requested additional information only once.

On the other hand, as noted, there were 21 other committees that met over this period but which did not make oral requests for additional information, for example, the Standing Committee on Finance met relatively frequently (19 times) but did not make any requests for information in writing. The select committees in the NCOP also seemed to use this measure very infrequently. Only the Select Committee on Education and Technology, Sports, Arts and Culture, which met ten times, made a request for additional information on one occasion.

From this we conclude that neither **the busyness of a committee nor the frequency with which it meets, on its own, is a factor in the number of requests for additional information.**

#### - REASONS WHY FOLLOW-UP WRITTEN INFORMATION WAS REQUIRED?

There are a number of reasons provided for requesting additional information. Probably the most common is the challenge of **time running out** resulting in members' questions not being answered during the meeting. As noted above, at the beginning of the virtual Parliament during the 2020 lockdown some meetings were limited to two hours which added to the typical time pressures. Given the impact of time limits on engagements in these meetings, the PMG staff have noticed that committee chairpersons have increasingly given shorter speaking times for presenters or requested them to 'take the presentation as read' and only to note pertinent points. This compels those presenting to focus on key points and allows time for a more reasonable engagement session than would have been possible given the limited time.

For example, in a Portfolio Committee meeting, the Minister of Social Development offered to provide some responses to the committees questions in writing in order "*to give an adequate response that was not possible in the meeting, due to time constraints*".<sup>23</sup>

The **sheer number of questions asked, linked to the available time**, is another aspect. During proceedings, in some committees the number of questions may be limited and may be posed in two to three shorter rounds of questions, with responses in batches in-between. However, often all members ask their questions and then the presenters respond to all the questions at once. The presenters may be faced with dozens of questions to respond to at the end of question time. Regardless of the format used, members also take a scattershot approach, with questions ranging from those requiring high-level information to extremely detailed information, and it is not unusual for the questions to address matters not connected to the presentation at all. When asked a barrage of questions, presenters are able to, intentionally or not, get away without answering all the questions. Following this, where chairpersons do request that the answers be provided in writing, it may not cover all of the questions that were verbally asked.

The requests by members of two of the committees that relied heavily on requests for further written information (PCCOGTA and PCHEST) appear to have been to ensure that the **responses would be**

**richer and more comprehensive** than an oral response would have been at that time. The request for a written response was made at the time the question was asked and no reference is made to time limitations in the meeting. As noted, there were instances where the department was able to offer the information verbally but the chairperson interrupted them and indicated a preference for the information to be submitted in writing. This, we assume, would improve oversight due to the paper trail that would be created allowing for deeper interrogation of the information and easier follow-up.

Members also requested more comprehensive written information after indicating that the **information that had been provided in the meeting was inadequate**. For example, members of the Portfolio Committee on Justice and Correctional Services requested further detail from the Public Protector on information that had been provided in the Annual Performance Plan (APP) reporting cycle. Here the Public Protector provided numbers of new cases, including those received after the start of the lockdown, but did not provide details on the nature of those cases.<sup>24</sup>

In some instances, demonstrating good standards of oversight, MPs asked **for follow-up information on information that had previously been submitted**. For example, in the same meeting with the Public Protector mentioned above, members of PC Justice requested information on statistics on cases that had not been finalised in the previous year's report and for which no follow-up information was provided in the 2019/2020 report.<sup>25</sup>

At other times the information provided by the department in the first place in the report submitted prior to the meeting, or in the presentation made at the committee meeting was inadequate. Frequently the department did **not have the requested information at hand**, such as specific statistics, amounts, or expenditure breakdowns. For example, in one PC Justice meeting, the National Director of Public Prosecutions replied to questions on how long corruption cases had been on the court roll indicating that: "All the requested figures and information will be provided to the Committee in writing" as the NPA did not "have that information at hand."<sup>26</sup>

During virtual meetings, **technical glitches** disrupted the smooth flow of discussions and resulted in requests for additional information. Such as in a meeting of the Portfolio Committee on Public Service and Administration, Brand SA (an entity reporting to that committee) was requested to submit its answers to questions in writing as a result of connectivity problems.<sup>27</sup>

Another reason for requesting written information is when the **Minister or the correct department officials are not present** in the meeting. This is demonstrated in another PC Public Service meeting where information was required from the Minister but the Minister was not present. The acting Chairperson highlighted that the question of performance agreements should be directed to the Minister, and a response in writing would be appreciated since the Minister was not present at the meeting.<sup>28</sup>

**- DO COMMITTEES ATTACH TIMEFRAMES TO THE REQUESTS FOR INFORMATION?**

**Most requests did not include a timeframe or deadline.** A timeframe in which the written information should be provided was stipulated during the meeting only in 13 instances (26%).<sup>29</sup> Attaching timeframes to any task, including the delivery of information, is good practice. Ensuring that as short a time period as possible passes between the request and the response is important to enable more effective oversight.

Timeframe given	No timeframe	Total requests
13 (26%)	37 (74%)	50
2 days - 2		
3 days - 3		
4 days - 2		
5 days - 1		
6 days - 0		
7 days - 5		

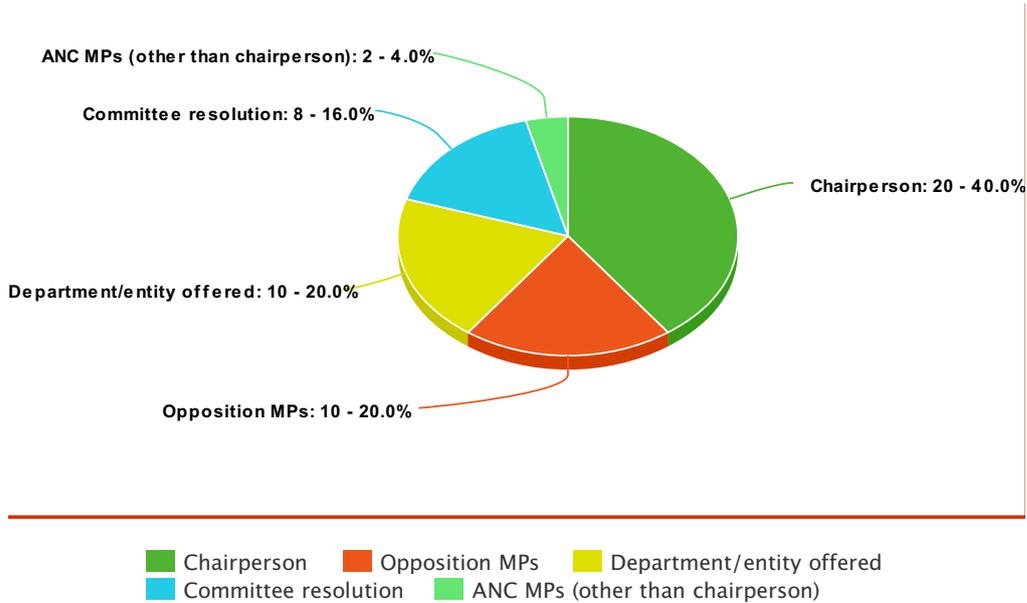
In instances where committees indicated by when they would expect to receive the information, the timeframes ranged from two days to one week. However, seven days was the most common timeframe – used in five of the 12 instances that timeframes were specified. One committee secretary advised the PMG/DOI researchers in an email that ‘the timeframe for the written response gets determined on the [day of the] meeting ...5 working days or more, depends. The responses are then sent to Members of the Committee and that is how we work with Departments’.<sup>30</sup>

**- WHO REQUESTS THE INFORMATION?**

Committees as a whole may through a committee resolution, or the chairperson, or an individual member, request additional information to be provided in writing after the meeting. In some cases when initially responding to questions by committee members, a department may not have the information immediately available and will pre-empt a committee request by offering to provide information in writing after the meeting. Below is a breakdown of the source of the requests made in the period under review. Where an individual member makes the request, we have indicated if the member was from the ruling or an opposition party. Note that in all committees, except the Standing Committee on Public Accounts, the chairperson is a member of the ruling party.

### *Who requested the additional written information?*

Of the 50 requests for additional written information, 20 (40%) were made by committee chairs; eight (16%) by committee resolution; 10 (20%) by opposition MPs; two (4%) by ANC MPs; and 10 (20%) were offers made by departments and entities to provide the information in response to committee questions.



Requests made by committee resolution are those where, at the conclusion of a meeting, the chairperson puts it to the committee that the department should send responses in writing. Members would then concur and express support for the proposal. On the other hand, in instances where the chairperson, as part committee deliberations, requests that their questions be replied to in writing, these we have counted as requests made by the chair, not by committee resolution. It appears as if the chairpersons made the most requests. However, a request for written response may be first raised by an ANC/opposition member but is often repeated by the chair. In this research exercise, our methodology may have skewed these results as we tended to select the request repeated by the chair (and not by the ANC/opposition member) when emailing the committee secretary.

While ruling party MPs - other than the chairpersons - are the majority of members in most committees, these members collectively made the lowest number of requests for further information. This reflects another common pattern we have generally observed among majority party members - where the engaged questioning for oversight is left to the chairperson and a small minority of ruling party members. As noted above, it is also due to strong alignment among majority party members, where those members' questions are 'covered by' the chair. It is not unusual that opposition MPs in countries with rich traditions of parliamentarianism generally exercise the right to ask questions more frequently than members of the majority.<sup>31</sup>

Departments themselves relatively frequently indicate that they are unable to answer a question immediately and offer to provide the information in writing after the meeting. The rate at which departments took the initiative was relatively high at 20%.

## 4.2. WAS THE REQUESTED INFORMATION PROVIDED?

As noted above, our methodology cannot with certainty establish the number of responses that were sent by a department or entity to a committee. We can only assess if the documentation became publicly available.

The majority of requests for written information were not provided to the PMG/DOI or otherwise made accessible to the public. Of the 50 requests for further written information in our sample, only 20 were provided or available to PMG/DOI by the end of August 2020. One document was not provided in response to our requests; however, we were informed it was available in a committee report. This means that **of the 50 requests, a total of 21 (42%) were accessed by the PMG/DOI.**

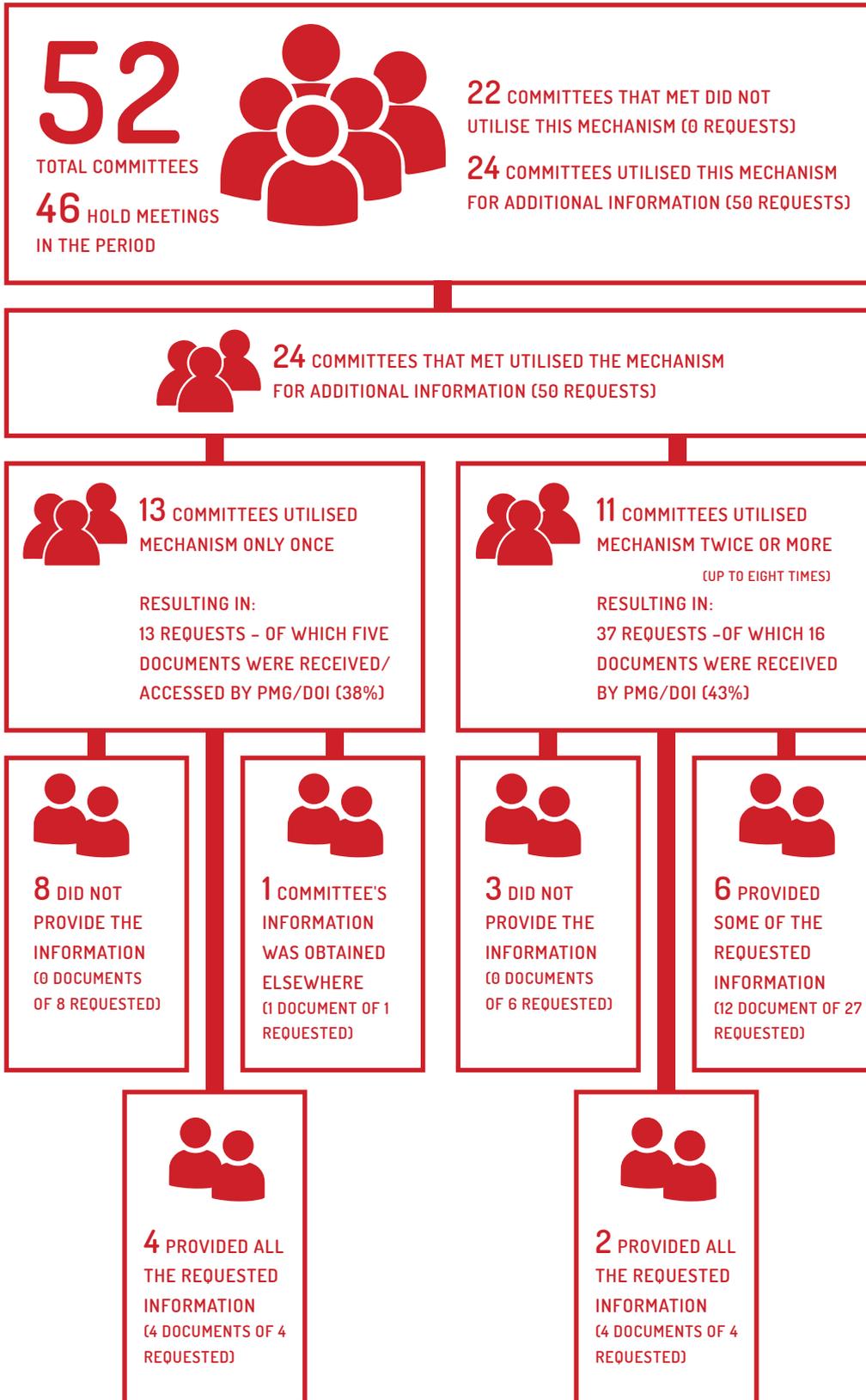
In the annexures we provide an overview of the requests by committees and the extent to which PMG/DOI were able to access the additional information.

Of the 24 committees that met and requested additional information from departments during the period, 13 provided us with some or all of the documents that we requested, one document we accessed elsewhere.<sup>32</sup> Eleven committees did not provide any information we requested.

*Overview of committee responsiveness to PMG/DOI requests:*



Responsiveness to the PMG/DOI requests – detail on documents received:



Thirteen of the committees that used this mechanism for information only requested additional information once during the period. Eight of these failed to provide the information, only four of these sent the requested documents, and one we accessed the document by other means.

Only two of the 11 committees that had made two or more requests to departments provided all the information we requested from them.<sup>33</sup> However it is noteworthy that we received five of the six documents that we requested from the PC on Higher Education, Science and Technology. We were informed that the sixth document was not provided due to it being confidential. See annexure 3 for detailed information on the response rate per committee.

We considered if committees that utilise this method for obtaining additional information were more likely to provide the information to the PMG/DOI due to perhaps having more systems in place. However, **the number of times a committee requested additional information from departments seemed to have no effect on the rate at which the documents were made available to us.** We had a 33% response rate from committees that only used this mechanism once during the period (we received four out of 12 documents requested) and a 36% response rate from committees that utilised it more than once (we received 12 of the 33 documents we requested). Only four committees requested additional information from departments more than twice; of the 19 documents we requested from these four committees, we received six documents – at 31%, so this is a marginally lower response rate.

#### - PARTIAL RESPONSE SUBMITTED

In some cases, departments submitted the requested information, but the information they provided was partial or incomplete. Members expressed concern about this in their meetings:

[A committee member] said that at the previous meeting, the Department had committed to providing a response to the Committee's questions in writing, **but there were some questions that had not been answered.** For example, there had been no answer regarding how much money was being spent on legal cases, and it had not given a breakdown of where social workers would be deployed.<sup>34</sup>

Committees pushed back against these attempts from departments or entities to provide only limited information. For example, the Portfolio Committee on Higher Education and Training requested a report from the Services Sector Education and Training Authority (SSETA) Board which was provided verbally – not in writing – and only partially:

The Chairperson interjected and suggested the responses must be provided in writing, because the Committee specifically asked for a report speaking to the implementation of the recommendations in the forensic report. The presentation only outlined the Board taking a decision to stop all the cases. This is different from the verbal response Mr Sibiya just gave the Members.<sup>35</sup>

These partial responses would limit or delay a committee's ability to perform efficient and effective oversight. Partial responses often led to the committee having to repeatedly request this information along with other new documents and did not guarantee that the department would provide the requested information at a later time.

### - INFORMATION NOT PROVIDED

In our project, 58% of documents requested (29 of 50) were not accessible to PMG/DOI. We are aware that there were some cases where a department submitted the information to the committee, but it was not made available to PMG/DOI researchers (see section 4.3 below for more detail).<sup>36</sup> However it appears that many of the documents that were not provided to us may also not have been provided to the committees.

Some committee secretaries clearly indicated to us that documents had not yet been provided by the department. For example one committee secretary replied to our request for written information, as follows: "This is to inform you that the department did not submit the responses in writing."<sup>37</sup> Another stated: "We are also still waiting on the information from the Department."<sup>38</sup>

Although there are clearly cases where documents are provided to a committee but were not made available to us, we think **it is likely that many of the documents not provided to us were also not submitted to the committees.**

**In that process  
PMG was informed  
that 35% of  
documents  
requested were  
not provided to  
committees.**

Our findings are similar to those of a process in which PMG tracked 37 committee requests in 2017/18 solely to trace department compliance. In that process PMG was informed that 35% of documents requested were not provided to committees. For 10 of the requests, departments provided the written response to the committee without reminder by the committee secretary (27%); for eight requests, departments provided the written response after reminders by the committee secretary (22%); and for 13 requests, departments did not respond to reminders and/or failed to provide the document (35%). The remaining 6 requests could not be traced due to the committee secretary not giving PMG this information about compliance.<sup>39</sup>

In addition, we have found a number of references from committee members in meetings to the issue of departments or ministers failing to provide the requested information. For example, the chairperson of the Portfolio Committee on Agriculture, Land Reform and Rural Development picked up on this issue in one of the committee meetings, noting that the Department had not fulfilled previous requests for written responses made by the committee.<sup>40</sup>

The Chairperson said all questions that are not answered must be provided in writing even though the Department has not met these requests in the past.<sup>41</sup>

Similarly in a PC HEST meeting in November the Chairperson Noted: "... the Minister had been asked to provide information on that. The Minister had still not responded to the Committee and a reminder had been sent".<sup>42</sup> A member of the PC Communications note their concern regarding the 'many outstanding matters on which the SABC had still not responded to the Committee'.<sup>43</sup> And members of the PC Trade and Industry discussed failures of the National Lottery Commission to provide responses in writing.<sup>44</sup> At times we noted that these comments or follow-up requests referred to resulted in documents being provided at a later date.

The overall low rate of documents provided is concerning. Firstly, and critically, if the information was provided to the committee but was not accessible to our researchers, it is fundamentally problematic from the perspective of the constitutional requirement for transparency - a precursor to open democracy, as the committee is not conducting its business in an open manner. Secondly, if it is not being provided to the committee, it waters down parliamentary committees' effectiveness in carrying out their oversight.

Despite many documents not being sent to us, there was only one instance where a committee stated that they had received the information but that it was confidential. The secretary replied to our request for written information, as follows:

"I will be forwarding the response starting with the meeting of the 22 May 2020. I should however indicate that some of the information sent to the Committee includes reports that are meant to be treated confidential."<sup>45</sup>

The Constitution sets a high bar before it allows for circumstances where information may be withheld from public scrutiny - **the business of the legislatures may only be withheld from the public gaze when it is reasonable and justifiable in an open and democratic society**. Unfortunately Parliament has not developed mechanisms to ensure that when meetings (and documents) are closed to the public that there is public accounting for these decisions. Civil society organisations have called for this level of accountability about closing meetings in the past;<sup>46</sup> we maintain that the same good standard for transparency should be applied to documentation under consideration by committees.

## - DEADLINES AND TIMEFRAMES

On its own, measuring adherence to deadlines is limited as it does not provide insight into the quality of the information. However, meeting timelines are an indicator of departments taking committee oversight seriously, and of their performance in terms of their readiness to submit information within the timeframe.

Setting timeframes seems to have no effect on if the public could access the information. Timeframes were set for 13 of the 50 requests. Of these, six resulted in the documents being provided to PMG/DOI. In addition, of the 21 written responses that were accessed by PMG/DOI, only six had a time frame attached - 15 did not. See annexures 4 and 5 for more detail.

Although timeframes set by the committee do not appear to have an effect on the availability of a document to the public, our research could not establish if departments are more likely to submit requested information when there is a deadline attached, or the extent to which departments meet required timeframes. This is because we mostly cannot tell if departments do send the information, let alone when, but also because our researchers only made contact with some committee secretaries after some of those deadlines had passed, at times weeks later.

PC HEST, for example, included a deadline in two of the six requests they made, and they received all six responses, five of which were accessed by PMG/DOI.<sup>47</sup> Here the department was responsive regardless of a deadline being set. In contrast, PC COGTA attached a deadline to five of the eight requests, but we only received two of those written responses. The Standing Committee on Public Accounts attached a deadline to two of the three requests for information that it made; however, the document that was provided to PMG/DOI is the one that did not have a timeframe attached. The limitations of our process mean that we can only see that deadlines being set for the department to deliver the information had no correlation to information being available to the public. This question would best be explored through further research with committee members and staff.

#### - DO QUESTIONS ENDORSED BY THE COMMITTEE CARRY MORE WEIGHT THAN THOSE ASKED BY INDIVIDUALS?

We were interested to see if there was a difference when information was requested by different members of a committee or by committee resolution. We started with the assumption that documents requested through formal committee resolution and/or committee chairpersons would have a higher rate of being submitted than those by individual MPs. Another category was departments/entities offering to provide information in writing after the meeting – typically because they did not have the information available. In this sense these offers pre-empted requests as they related to questions the committee had asked.

Requested/ offered by	Number of requests	Number received by PMG/DOI	Percent received
Committee resolution	8	3	38%
Chairperson	20	11	55%
Ruling party MP (other than chairperson)	2	0	0%
Opposition MP	10	3	30%
Department offered	10	4	40%
<b>TOTAL</b>	<b>50</b>	<b>21</b>	<b>-</b>

The surprising result was to see how few documents requested through a committee resolution, were made available. However, of the 21 response documents accessed, 11 had been requested by a chairperson.<sup>48</sup>

This represents a higher rate of compliance than the overall average of 42%, however 52% is still very poor. The failure to provide the two pieces of information requested by ruling party MPs - other than the chairpersons - does not tell us much as the total is too low.

The lack of responsiveness of departments to requests endorsed by a committee is illustrated in a PC Agriculture meeting where the chairperson stated: ‘... in all previous meetings, Members had been raising questions that needed to be responded to in writing’ but that the Committee had not yet received by the end of May.<sup>49</sup> In this case the chairperson requested that the Committee Secretariat write to the Minister, Deputy Minister and executives to address this.

Departments/entities proactively offered to provide information in writing in ten instances, yet only four of these were ultimately made available to PMG/DOI. One would expect that where departments are proactive the information would be submitted.

The response rate to requests by opposition members is relatively low at 30%. Opposition MPs have themselves expressed frustration in some committee meetings about the lack of responsiveness of departments to their questions. In the example below, an opposition MP addressed the problem of written requests for information from the department going unanswered and seeks the intervention of the ANC committee chairperson(s) to assist in getting the department to be responsive.

[An opposition member] referred to the reporting requirements of the Department, and said he had sent written questions but had not yet received a response. **There were many letters that had not been answered by the Department**, and he requested that both Chairpersons write to the Department stating that Members could not wait forever for answers to questions, as they had oversight work to do.<sup>50</sup>

## 4.2. ACCESSING THE INFORMATION

In this section we consider the extent to which committees and committee secretaries facilitated access to information requested by PMG/DOI as representatives of the ‘public’. However this is qualified by the fact that these two organisations are resourced, have years of experience communicating and otherwise engaging with legislatures, and have developed relationships with some of the staff. For these reasons, we assume that we would have found it easier to access information than most members of the public or many other civil society organisations.

### - HOW LONG DID IT TAKE TO RECEIVE THE REQUESTED INFORMATION?

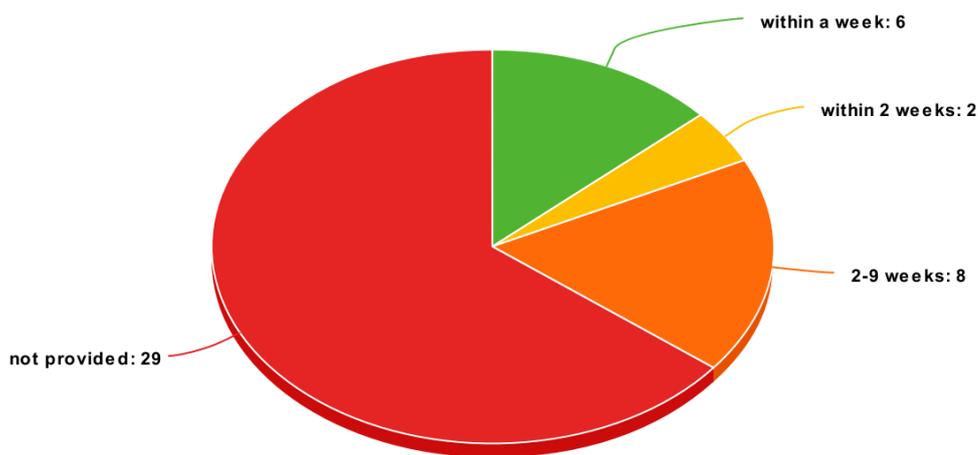
Of the 50 requests for additional information that were made during the period, five (10%) were provided to us without our requesting them because the committee had a follow-up meeting on the same topic within two weeks. Of the 45 documents that we requested from committees, only 15 were

sent to us. For one other document, we were told how to access it in a published committee report. There were 29 documents that we did not receive, despite repeated requests over the course of up to four months.

Of the documents that we requested and received, eight were sent within two weeks of our request –and in fact six of these were received within one week. Of the eight documents that took more than two weeks for us to access after our request, the majority were sent more than five weeks later.

All five documents provided to us without our making a request were provided within two weeks of the committee asking for the information from departments. The reason we received these is because the committee held a follow-up meeting within two weeks on the same or similar topic and the requested written response was distributed in that open meeting. This drives home the need to regulate public access to oversight documents requested in an open meeting that are not later deliberated on in another meeting.

*Timeframes in which 45 documents requested were accessed or received:*



■ within a week   ■ within 2 weeks   ■ 2-9 weeks   ■ not provided

Based on the above we assess that we only received eight documents out of the 45 requested within a reasonable timeframe. The process of accessing the other eight as well as the 29 that were not provided to us was labour intensive.

## - THE INTERFACE BETWEEN COMMITTEES AND THE PUBLIC

Committee secretaries are a critical link between committees and the public. There is no prohibition on members of the public contacting MPs – including committee chairpersons – directly. However, a committee chairperson or member would largely refer that member of the public (or the request) to the committee secretaries. For CSOs working regularly with committees, it is understood that the means to access information from or about a committee is via the committee secretary.

In this process, we relied only on communications with committee secretaries to obtain the documents. We are mindful that there are likely to be systems, internal protocols, political and administrative pressures, as well relationship dynamics that are outside of the control of committee secretaries. As members of civil society ‘we don’t know what we don’t know’, and thus we are not aware of the extent of additional factors which are likely to affect the workloads and pressures of committee secretaries.

At its best, despite the pressures they face, some committee secretaries sent us the information or they responded within a reasonable timeframe to our emails or telephone calls (regardless of their being able to provide the document). While most committee secretaries responded to our emails and telephone calls, there were some that did not acknowledge receipt of our emails.

Committee secretaries provided some indications of why there were delays and/or why some information could not be provided to PMG/DOI:

1. The written response had not been received by a committee at the time our request was made;
2. Many committee secretaries expressed that they were required to first obtain the permission of the chairperson before they could provide the information to us;
3. The documents had been sent, however committee members had not received the information and it was not reasonable to send the information to us prior to committee members;
4. Information provided was of a sensitive nature and the committee had to review this information before it could be shared publicly;
5. The committee had received the document and deemed it confidential; and
6. Written responses were incorporated into a report by the committee and committee secretaries referred us to the report instead.

In addition to these reasons expressed by the committee secretaries, we were mindful that committee secretaries are generally busy, having to respond quickly to the various demands of committee work. In addition, during the Covid-19 lockdown a number of committees were busier than before; and the initial period involved a learning curve of developing online meeting systems, and to support members to adjust to this.<sup>51</sup> Working remotely would conceivably have added to the stressors experienced by committee secretaries, as this was a common experience among people working remotely and under pressure during the Covid-19 pandemic and lockdown.

Given that a number of committee secretaries indicated that they first required permission from the committee chair before they could send a document, working remotely – linked to the range of serious issues committee chairs and members were facing – would in all likelihood also have limited the opportunities for committee secretaries to interact with chairpersons about our requests.

As the key interface between committees and the public, the demands placed on committee secretaries by our researchers (or the public), coupled with their relying on chairpersons or committees to make the decision about releasing the documents, had the potential to create tensions. The researchers expressed concern about feeling as if they were pestering those committee secretaries who were less responsive to our requests. This raised the question for us of how might a member of the public trying to request information independently experience the process?

### - IMPROVING OUR OWN PRACTICE TO OBTAIN DOCUMENTS

We considered if our own practices could be improved to yield better responses. Our approach meant that significant time would sometimes pass between a committee requesting a written response from a department and our searching the PMG records of that committee and then requesting that department's written response be sent to us. In some cases our requests were made more than nine weeks after the committee's initial request.

We noted that we were more likely to receive the documents when we made that request within (up to) three weeks<sup>52</sup> of the committee making its request to the department. Although the number of requests we made within three weeks was small (7 of the 50 requests), 71% of those were provided; whereas only 23% of the 26 requests made between five and 10 weeks later were provided.

*Time between committee request for department written response and PMG/DOI request for this:*

Time between committee and PMG/DOI request	Total PMG/DOI requests	Info sent by CS	Info accessed elsewhere	Info not accessed
5 weeks to over 9 weeks (day 34 and over)	26	6 (23%)	1 (4%)	19 (73%)
3 weeks to over 4 weeks (day 20 to day 33)	12	4 (33%)	0	8 (67%)
Same day to over 2 weeks (day 0 to day 19)	7	5 (71%)	0	2 (29%)
No request made but documents sent for follow-up meeting	5	5 (100%)	0	0
<b>TOTAL</b>	<b>50</b>	<b>20 (40%)</b>	<b>1 (2%)</b>	<b>29 (58%)</b>

Looking closer at the '3 weeks to over 4 weeks' period demonstrated a big difference in obtaining documents requested between days 19 and 26, and those we requested between days 27 and 33.<sup>53</sup> It appears that the sooner we asked, the more likely we were to receive the documents. This suggests that our organisations would need to implement systems and human resources to ensure that we request these documents within a four-week period to increase our access.

## 5. CONCLUSIONS

This project looked into one small part of the picture of effective oversight. We chose to look into this aspect because these **requests for additional information are used relatively often by committees and mostly fall outside of the public gaze**. They are a part of the system for committee scrutiny of issues that matter to the public and thus are part of the system for state accountability to the public. As these written responses to questions posed in committees are not systematically made available to the public, it is not possible to know if committees follow up on receiving them, or if committee members (on behalf of the public) engage with their content.

**Overall the performance of legislatures making information of this nature available to the public is weak.** It appears, following the lack of systems or guidance to committees on information of this nature, that the **primary reasons are likely to be slow or lack of responsiveness of departments to the requests, and decisions by committees not to release some of the information to the public**. In our view failures to ensure that the information is available to the public may be due to administrative or systems failures.

By not ensuring that the information requested from departments is proactively made available to the public; by making it difficult for the public to obtain the documents; and by withholding some documents as confidential without justifying the decision, committees risk further undermining public trust. Given the exposure of the scale of state capture in our country, increasing transparency is an imperative. When information is not available to the public, regardless of the reasons for this, it can create the impression of something being hidden, and with that the question of 'why?'. As such, it threatens to undermine public trust both in elected representatives and the executive.

The nature of the links between elected representatives and the public can have a strong impact on MPs' incentives to conduct effective oversight.<sup>54</sup> This requires improving communication mechanisms between elected representatives, committee staff, departments, civil society organisations, and the wider public.

For a committee to effectively carry out oversight there needs to be synergy between the committee staff (responsible for keeping a record, tracking and following-up on requests), government departments and entities (who are expected to cooperate and respond to requests), and the committee chairperson (who acts on behalf of the committee and must insist on responses to all questions as well as implementation of committee recommendations).

Without working more closely with committees and committee staff, we could not measure, with this process, departments' responsiveness to committee requests. In addition we note that we did not meet with committee members or committee secretaries to gain a better understanding of their experiences of attempting to obtain this information from departments. Pursuing this can strengthen both our understanding of the difficulties faced by committees and their strategies to improve public access to information of this nature. In the spirit of knowing that there are things that 'we don't know', we expect that there are important layers to understanding the obstacles faced by committees and secretaries that we are not privy to.

## - RECOMMENDATIONS

While we monitored this question in the national Parliament, our recommendations apply to Parliament and to the Provincial Legislatures.

Specifically on the issue of committees' requests for additional written information from departments and entities reporting to them, we propose the following:

1. The Rules and Guide to Procedure need to contain a framework that ensures a systematic approach to additional written information requested from a department by a committee during an oversight meeting.
2. The framework must stipulate that the constitutional standards for public transparency apply to these documents.
3. The framework must specify the process to be followed before a document may be treated as confidential. This includes that where a decision is taken to close public access to a document (or meeting), reasons for this decision must be recorded and made available to the public.
4. To meet the constitutional standards for public access, the framework must establish systems and mechanisms by which documents will be made available to the public and the public must reasonably be informed of where to access this information.
5. The inception process for members and staff of the legislature must include education to promote clarity to chairpersons, members and committee secretaries of the general right of the public to access documents.
6. The framework must include requirements for committees to:
  - a) make use of timeframes when requesting additional information from the executive, and
  - b) embed regular follow up with the executive on the requested information in committee systems.

## ANNEXURES

### - 1. BREAKDOWN OF RATE AT WHICH COMMITTEES REQUESTED ADDITIONAL INFORMATION

	Committee	Number of meetings in the period	Number requests for further written information	Rate %
1	PC on Police	15	6	40%
2	PC on Higher Education, Science & Technology	20	6	30%
3	PC COGTA	39	8	20,5%
4	Standing Committee on Public Accounts	16	3	18,75%
5	PC on Public Service and Administration, Performance Monitoring and Evaluation	14	2	14,28%
6	NCOP Education	7	1	14,28%
7	PC on Social Development	15	2	13,33%
8	PC on Transport	16	2	12,5%
<b>Average rate of requests/meetings (by 24 committees that made requests) is 12%.</b>				
9	PC on International Relations	10	1	10%
10	PC on Sports, Arts and Culture	10	1	10%
11	PC on Basic Education	11	1	9,09%
12	PC on Health	11	1	9,09%
13	PC on Trade and Industry	22	2	9%
14	PC on Human Settlements, Water and Sanitation	25	2	8%
15	PC on Justice and Correctional Services	26	2	7,69%
16	PC on Defence and Military Veterans	13	1	7,69%
17	PC on Home Affairs	13	1	7,69%
18	PC on Public Works and Infrastructure	13	1	7,69%
19	Standing Committee on Appropriations	27	2	7,4%
20	PC on Agriculture, Land Reform and Rural Development	15	1	6,66%
21	PC on Mineral Resources and Energy	15	1	6,66%
22	PC on Employment and Labour	16	1	6,25%
23	PC on Women, Youth and Persons with Disabilities	19	1	5,26%
24	PC on Communications	29	1	3,45%
<b>24 Committees that used this mechanism</b>		<b>Total number of meetings: 417</b>	<b>Total requests = 50</b>	<b>Average rate: 12%</b>
<b>46 Committees that met during the period (including those that use the mechanism)</b>		<b>Total meetings: 569</b>	<b>Total requests = 50</b>	<b>Average rate: 8,8%</b>

## - 2. RESPONSE RATE PER COMMITTEE - DETAILED

Note: Where responses inaccessible, it is unknown if Dept failed or PMG/DOI not permitted by Committee.<sup>55</sup>

Committee	Department/entity	# Committee requests for further information	# Information accessed by PMG/DOI	# Responses not accessible
PC COGTA	COGTA; Western Cape Provincial Government; Tshwane Metro Municipality; SALGA	8	2	6
PC HEST	Department of Higher Education & Training; Department of Science & Technology; NSFAS; SAQA; Construction SETA (CETA)	6	5	1
PC Police	SAPS & IPID	6	2	4
SCOPA	Department of Water and Sanitation (2) & Department of Public Works and Infrastructure	3	1	2
PC Public Service	Public Service Commission; Brand SA	2	2	0
PC on Transport	Department of Transport; Civil Aviation Authority; Airports Company of SA	2	2	0
Standing Committee on Appropriations	Public Service Commission; Department of Public Enterprises; National Treasury	2	1	1
PC on Social Development	Department of Social Development; SASSA & National Development Agency	2	1	1
PC on Human Settlements, Water and Sanitation	Departments of Human Settlements (DHS) & Water and Sanitation (DWS)	2	0	2
PC on Justice and Correctional Services	National Prosecuting Authority; SA Human Rights Commission; Special Investigating Unit	2	0	2
PC on Trade and Industry	Department of Trade, Industry and Competition	2	0	2
PC on Agriculture, Land Reform and Rural Development	Department of Agriculture, Land Reform and Rural Development	1	1	0
PC on Defence and Military Veterans	SA National Defence Force	1	1	0
PC on International Relations	DIRCO	1	1	0
PC Sports, Arts and Culture	Department of Sports, Arts and Culture	1	1	0
PC Basic Education	Department of Basic Education	1	0	1
PC Communications	USAASA	1	0	1
NCOP Education	Department of Higher Ed; NSFAS	1	0	1
PC Labour	Department of Employment and Labour	1	0	1
PC Health	Life Healthcare; Netcare	1	0	1
PC Home Affairs	Department of Home Affairs	1	0	1
PC Mineral	Department of Mineral Resources and Energy	1	1	0
PC Public Works	Department of Public Works	1	0	1
PC Women	Department of Women	1	0	1
<b>Total</b>		<b>50</b>	<b>21 (42%)</b>	<b>29 (58%)</b>

### - 3. REQUESTS FOR INFORMATION FROM DEPARTMENTS THAT INCLUDED A TIME FRAME

Note: Where responses inaccessible, it is unknown if Dept failed or PMG/DOI not permitted by Committee.<sup>55</sup>

Committee	Date of committee request	Deadline timeframe in days	Received by PMG/DOI? Y/N - date
PC COGTA <sup>56</sup>	21 April	Y - 2	N
PC COGTA	28 April	Y - 2	N
PC COGTA	30 April	Y - 4	N
PC COGTA	8 May	Y - 3	N
PC COGTA	10 July	Y - 4	Y - 16 July
PC HEST <sup>57</sup>	22 May	Y - 7	Y - 24 July
PC HEST	24 June	Y - 7	Y - 25 August
SCOPA <sup>58</sup>	26 May	Y - 7	N
SCOPA	3 June	Y - 7	N
PC Public Service <sup>59</sup>	6 May	Y - 7	Y - 26 June
PC Transport <sup>60</sup>	6 May	Y - 5	Y - 23 June
PC Transport	18 May	Y - 3	Y - 19 June
PC Settlements <sup>61</sup>	8 May	Y - 3	N
<b>Total 13 requests with time frames</b>		2 days - 2 3 days - 3 4 days - 2 5 days - 1 6 days - 0 7 days - 5	Y - 6 N - 7

## - 4. WERE THE DOCUMENTS RECEIVED BY PMG/DOI ACCOMPANIED BY A DEADLINE TO THE DEPARTMENT?

Committee	Date of committee request	Timeframe? Y/N - # days	Received by PMG/DOI? Y/N - date
PC on Cooperative Governance and Traditional Affairs	23 June	N	Y - 11 July
PC on Cooperative Governance and Traditional Affairs	10 July	Y - 4	Y - 16 July
PC on Higher Education, Science & Technology	11 May	N	Y - 21 May
PC on Higher Education, Science & Technology	22 May	Y - 7	Y - 24 July
PC on Higher Education, Science & Technology	26 May	N	Y - 24 July
PC on Higher Education, Science & Technology	2 June	N	Y - 24 July
PC on Higher Education, Science & Technology	24 June	Y - 7	Y - 25 August
PC on Police	8 May	N	Y - 13 May
PC on Police	13 May	N	Y - 22 May
Standing Committee on Public Accounts	19 June	N	Y - 8 July
PC Public Service	6 May	Y - 7	Y - 26 June
PC Public Service	19 June	N	Y - 9 July
PC on Transport	6 May	Y - 5	Y - 23 June
PC on Transport	18 May	Y - 3	Y - 19 June
Standing Committee on Appropriations	4 May	N	Y - 26 June
PC on Social Development	8 July	N	Y - 13 August
PC on Agriculture, Land Reform	26 May	N	Y - 20 July
PC on Defence and Military Veterans	22 April	N	Y - 10 July
PC on International Relations	21 May	N	Y - 6 June
PC on Sports, Arts and Culture	5 May	N	Y - 9 July
PC on Mineral Resources and Energy	7 May	N	Y - Not sent to PMG/DOI but published
<b>Total</b>		<b>Y - 6 N - 15</b>	<b>Total 21 received</b>

## - END NOTES

<sup>1</sup> Act 108 of 1996. The Constitution of the Republic of South Africa. Act 108 of 1996. (The Constitution). Section 42(3)

<sup>2</sup> Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11. Para 22

<sup>3</sup> The Constitution. Section 92(2) and 92(3)

<sup>4</sup> The Constitution. Section 42(3), 55(2) and 114.

<sup>5</sup> Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11. Para 22

<sup>6</sup> Ben Zeev K. 2013. People's Power People's Parliament – A civil society conference on South Africa's Legislatures. P41

<sup>7</sup> The Constitution. Section 59(1)(b). We note that the Constitution (and the Rules of Parliament and of legislatures) allows that there may be circumstances where the public may be excluded from the proceedings in the legislatures. Section 59(2) states that where this is done it must be 'reasonable and justifiable' in an open and democratic society.

<sup>8</sup> Throughout this document we will generally use the word 'department' to describe the structure over which the legislatures must perform oversight, however where it is necessary and appropriate we will refer to other entities.

<sup>9</sup> At local level, half of the representatives are voted for directly by the public, and half are elected by political parties depending on how many votes the party wins. At local level elected representatives are referred to as councillors.

<sup>10</sup> The Constitution. Section 59(1)(a)

<sup>11</sup> Ben Zeev K. 2013. Ibid. P43

<sup>12</sup> Ben Zeev K. 2013. Ibid. P44-45

<sup>13</sup> Accountability in modern government: what are the issues? Accessed at: <https://bit.ly/2Gnj62e> on 02 November 2020

<sup>14</sup> PMG record of the Local Government: Municipal Systems Amendment Bill; with Deputy Minister Portfolio Committee on Cooperative Governance and Traditional Affairs (National Assembly) 05 June 2020. Accessed at <https://pmg.org.za/committee-meeting/30410/> on 29 October 2020.

<sup>15</sup> Waterhouse S. 2015. 'People's Parliament? Do citizens influence South Africa's legislatures?' in Khadiagala GM, Naidoo P, Pillay D, and Southall R (Eds) New South African Review 5: Beyond Marikana. 171 – 187.

<sup>16</sup> The Constitution. Section 92(3)(b) and Public Finance Management Act no. 1 of 1999 as amended. Section 40(1)(e).

<sup>17</sup> Rules of the National Assembly. 9th Edition (2016) Chapter 10.

<sup>18</sup> There are a total of 52 committees in Parliament in 2020: 30 NA committees; 12 NCOP committees; 7 Joint NA and NCOP committees; 3 Ad Hoc Committees. However six – 1 NCOP; 4 Joint; 1 Ad Hoc Committee, did not meet (or met in camera) during the period.

<sup>19</sup> The following committees did not meet during the five months in which the monitoring exercise was conducted: Joint Constitutional Review Committee; NCOP Rules Committee; Joint Rules Committee and three Ad Hoc Committees. Meetings of the Joint Standing Committee on Intelligence are not open to the public and thus we are not aware of if they met.

<sup>20</sup> See table 'Detailed breakdown of the rate at which committees requested additional information' in Annexure 3.

<sup>21</sup> PMG record of meeting: Portfolio Committee on Police (National Assembly): Firearms Amnesty: Follow-up with Ministry & SAPS, 03 June 2020. Accessed at <https://pmg.org.za/committee-meeting/30377/> on 16 November 2020. In this meeting Members requested statistics which a department was not able to produce.

<sup>22</sup> PMG record of meetings of Portfolio Committee on Higher Education, Science and Technology (National Assembly): 22 May 2020 MERSETA, MICTSETA, ETDP, QCTO & National Skills Fund 2020/21 Annual Performance Plans accessed at <https://pmg.org.za/committee-meeting/30286/>; 26 May 2020: S-SETA, W-SETA and C-SETA on governance and management challenges accessed at <https://pmg.org.za/committee-meeting/30305/>; 02 June 2020: CGE on Gender Transformation in Tertiary Institutions; Biovac; DHET & DSI Budget: Committee Reports accessed at <https://pmg.org.za/committee-meeting/30365/> on 18 December 2020.

<sup>23</sup> PMG record of meeting Department of Social Development COVID-19 update; with Minister. Portfolio Committee on Social Development 31 July 2020. Accessed at <https://pmg.org.za/committee-meeting/30825/> on 29 October 2020.

<sup>24</sup> PMG record of meeting Public Protector South Africa 2020/21 Annual Performance Plan. Portfolio Committee on Justice and Correctional Services. 16 May 2020. Accessed at <https://pmg.org.za/committee-meeting/30239/> on 10 November 2020.

<sup>25</sup> PMG record of meeting Public Protector South Africa 2020/21 Annual Performance Plan. Portfolio Committee on Justice and Correctional Services. 16 May 2020. Accessed at <https://pmg.org.za/committee-meeting/30239/> on 10 November 2020.

<sup>26</sup> PMG record of meeting Lockdown case backlogs: overcrowding & release of inmates: Minister's briefing. Portfolio Committee on Justice and Correctional Services. 24 June 2020 Accessed at <https://pmg.org.za/committee-meeting/30529/> on 12 November 2020.

<sup>27</sup> PMG record of DPME, Brand SA & Stats SA 2019/20 Quarter 4 Performance; with Deputy Minister. Portfolio Committee on Public Service and Administration. 19 June 2020. Accessed at <https://pmg.org.za/committee-meeting/30493/> on 18 November 2020.

<sup>28</sup> PMG record of DPME, Brand SA & Stats SA Adjustment Budget & Revised Annual Performance Plan. Portfolio Committee on Public Service and Administration. 10 July 2020. Accessed at <https://pmg.org.za/committee-meeting/30639/> on 29 October 2020.

<sup>29</sup> It is possible that timeframes may have been communicated between committees and departments outside of the meeting, information to which the researchers would not be privy.

<sup>30</sup> Email communication between a committee secretary and a PMG researcher dated 26 June 2020.

<sup>31</sup> Importance of Parliamentary Oversight (MP's questions). Accessed at [https://www.transparency.ge/sites/default/files/post\\_attachments/parliamentary\\_control.pdf](https://www.transparency.ge/sites/default/files/post_attachments/parliamentary_control.pdf) on 02 November 2020

<sup>32</sup> The Committee Secretary informed us that the information was in a committee report. Information appeared in a committee report published in ATC of 6 June 2020: <https://pmg.org.za/tables-committee-report/4145/>.

<sup>33</sup> The PC Transport and PC Public Service provided both of the documents we requested from each.

<sup>34</sup> PMG record of DSD Budget: Committee Report. Portfolio Committee on Social Development (National Assembly) 15 July 2020. Accessed at <https://pmg.org.za/committee-meeting/30669/> on 29 October 2020.

<sup>35</sup> PMG record of S-SETA, W-SETA and C-SETA on governance and management challenges. Portfolio Committee on Higher Education and Training 26 May 2020. Accessed at <https://pmg.org.za/committee-meeting/30305/> on 10 November 2020.

<sup>36</sup> Portfolio Committee on Higher Education, Science and Technology committee secretary email to PMG dated 24 July 2020.

<sup>37</sup> A committee secretary email to PMG dated 21 July 2020

<sup>38</sup> A committee secretary email to PMG dated 06 July 2020

<sup>39</sup> <https://pmg.org.za/static/resources/docs/tracking.pdf>

<sup>40</sup> In this instance, the information required on that day was provided to the committee after the Chairperson's reference to previous requests for written information not being met by the department.

<sup>41</sup> PMG record of National Rural Youth Service Corps (NARYSEC): briefing. Portfolio Committee on Agriculture, Land Reform and Rural Development 26 May 2020.

Accessed at <https://pmg.org.za/committee-meeting/30307/> on 10 November 2020.

<sup>42</sup> PMG record of NSFAS maladministration allegations meeting. Portfolio committee on Higher Education Science and Technology. 06 November 2020. Accessed at <https://pmg.org.za/committee-meeting/31410/> on 07 January 2021.

<sup>43</sup> PMG record of SABC on Turnaround Plan and Editorial Policy with Minister meeting. Portfolio Committee on Communications. 21 July 2020. Accessed at <https://pmg.org.za/committee-meeting/30712/> on 07 January 2021.

<sup>44</sup> PMG record of Trade Agreements and Trade relations meeting with Minister on 13 October 2020. Accessed at Trade and Industry <https://pmg.org.za/committee-meeting/31169/> on 07 January 2021.

<sup>45</sup> A committee secretary email to PMG, dated 30 June.

<sup>46</sup> Parliament Watch correspondence to (then) Speaker Baleka Mbete Closing of National Assembly committee meetings dated 25 October 2019. The letter included 14 signatories, 12 of which were organisations. Accessed <https://dullahomarinstitute.org.za/women-and-democracy/putting-people-in-the-peoples-parliament/resources/advocacy-documents/na-closed-committee-meetings-25-10-final.pdf> on 20 November 2020.

<sup>47</sup> The sixth document had been received but was confidential.

<sup>48</sup> Chairpersons in all but one committee are members of the ruling party.

<sup>49</sup> PMG record of meeting: Agriculture, Land Reform and Rural Development Budget: Committee Report. Portfolio Committee of Agriculture, Land Reform and Rural Development 31 May 2020. Accessed at <https://pmg.org.za/committee-meeting/30340/> on 16 November 2020

<sup>50</sup> PMG record of Department of Transport Adjusted Budget & Revised Annual Performance Plan; with Minister. Joint meeting of Portfolio Committee on Transport (National Assembly) and Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure (NCOP) 07 July 2020. Accessed at <https://pmg.org.za/committee-meeting/30578/> on 29 October 2020.

<sup>51</sup> As observed by the authors and researchers in numerous virtual committee meetings where secretaries provided information and support, we have no doubt that most secretaries performed this role between meetings outside of the public gaze.

<sup>52</sup> As noted above, we counted as 'a week' where the document was provided within one working day of a week. Thus day 0-5 is less than a week; day 6, 7, 8 would be 1 week, and day 9 to 12 will be > (greater than) a week and so forth.

<sup>53</sup> 60% (3) of the five documents requested in the '3 weeks to over 4 weeks' period (day 20 to day 26) were provided; whereas only 14% (1) of the 7 requested in the '4 weeks and over' period (day 27 to day 33).

<sup>54</sup> Accountability in modern government: what are the issues? Institute for Government 2018. P 32 accessed at: <https://bit.ly/2Gnj62e> on 02 November 2020.

<sup>55</sup> We were unable to track if it was the Department which failed to deliver the response or if it was the Committee ruling that PMG/DOI could not have permission to receive the response.

<sup>56</sup> A timeframe was attached to five of the eight requests

<sup>57</sup> A timeframe was attached to two of the six requests

<sup>58</sup> A timeframe was attached to two of the three requests. The request that did not have a deadline attached is the document that PMG/DOI were provided with.

<sup>59</sup> A timeframe was attached to one of the two requests. PMG/DOI could access both documents.

<sup>60</sup> A timeframe was attached to both of the committees' requests and the PMG/DOI were given access to both responses.

<sup>61</sup> A timeframe was attached to one of the two requests. PMG/DOI were not provided with either document.

A detailed spreadsheet of the results can be requested from [info@pmg.org.za](mailto:info@pmg.org.za)

