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URGENT

The Honourable Chief Justice Maya
Chief Justice of South Africa

The Honourable Deputy Chief Justice Mlambo
Deputy Chief Justice of South Africa

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Your reference	Our reference	Date
	D Milo / DJ van Wyk / M Sambaza	11 November 2025

Dear Chief Justice Maya and Deputy Chief Justice Mlambo

REQUEST FOR INFORMATION CONCERNING THE SECRET COURT ORDER AGAINST OPEN SECRETS NPO/NPC

1. We act for amaBhungane Centre for Investigative Journalism NPC and Moxii Africa (formerly Media Monitoring Africa), who, among other things, advocate and litigate for the public's constitutional right to know.

2. Our clients have become aware, from the news article attached marked "**A**", that an unnamed Judge in an unnamed court has recently granted an interdict (on an *ex parte* and *in camera* basis) prohibiting Open Secrets NPO/NPC (a South African organisation that exposes economic crimes and human rights abuses) from publishing anything relating to an unknown applicant or applicants. This has been confirmed in a telephone discussion between Mr Milo and Mr Power, acting for Open Secrets. Mr Power further indicated that he was precluded by the court order from discussing any aspect of the matter with Mr Milo.

3. As our clients understand the position, Open Secrets is even prohibited from disclosing:

3.1 the court order (even in redacted form);

3.2 the case number; and

3.3 the Division in which the order was granted.

4. Such a "super-interdict" is unprecedented in South Africa, for good reason. It is anathema to the constitutional doctrine of open justice. It allows a Judge to operate in total secrecy, and thus to be immune from any accountability.

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5. Our clients submit that it is inconceivable that a matter could be so deserving of secrecy that the public should not even know the terms of the order, which court has granted it, and under which case number. An order can be anonymised in appropriate circumstances, but we submit that it cannot be wholly concealed from the public.

6. Our clients have repeatedly warned of the increasing weaponisation of South African courts to unjustifiably stifle freedom of expression, and particularly investigative journalism, and have conducted research into this growing global phenomenon. Our clients also have first-hand experience of being targeted by, and ultimately overturning, similar orders.

7. Our clients accordingly wish to be admitted as amici curiae, in order to assist the Court that will consider whether to make the super-interdict final, by advancing argument concerning the principles applicable to seeking interdicts against the media, especially in respect of (a) open justice; (b) *audi alteram partem*, and (c) prior restraints on publication, including the phenomenon of "super-interdicts" and how they represent an intolerable threat to freedom of expression and open justice.

8. But our clients cannot apply for admission as amici curiae without knowing: (i) which Division granted the super-interdict; (ii) the case number; and (ii) what the order contains (on an anonymised basis). It seems that the terms of the super-interdict are so restrictive that Open Secrets is even prevented from filing a Rule 16A notice.

9. Our clients therefore respectfully request the Honourable Chief Justice or the Honourable Deputy Chief Justice to direct the Judges President of the various Divisions of the High Court (each copied in this letter) to ascertain whether the super-interdict was granted in their Division, and if so, under what case number, the terms of the order (redacted as may be required on an interim basis), and to allow our clients to apply for admission as amici curiae in the proceedings.

10. Our clients, ourselves and our counsel are prepared to sign sworn confidentiality undertakings in respect of this information, should this be required.

11. This is a critical constitutional moment for our democracy. We submit that it will determine whether and how the judiciary can curb the abuse of its processes to erode the right to know.

12. We look forward to receiving your response.

Yours truly

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Unknown judge in unknown court gags Open Secrets from saying ...

This appears to be the most draconian prepublication interdict we have come across

10 November 2025 | By Zora Hollie (/author/980/)

News (/category/news/) | South Africa (/region/South%20Africa)



An unknown judge has issued a prepublication gag order against Open Secrets. Illustration: Lisa Nelson

Open Secrets, an organisation which exposes economic crimes and human rights abuses, has been issued a prepublication gag order. This is according to a statement (https://www.opensecrets.org.za/open-secrets-gag-order/) released by the organisation on Monday.

While there have been several such gag orders in recent years, all subsequently overturned or rendered moot, this one appears to be especially draconian.

The gag order bars the organisation from disclosing anything related to a matter of "significant public importance", according to Open Secrets. This includes the names of the parties involved. Not even the judge's name or the court where the gag order was issued may be published.

"What we can say is simple: efforts to muzzle public-interest journalism endanger everyone's right to know," Open Secrets said.

Despite the constitutional protection for freedom of expression and media freedom in South Africa, high court judges have issued prepublication gag orders against journalists at least twice this year.

In March, GroundUp reported on a gag order granted by Acting Judge Perlene Bramdhew. The order prevented an IOL journalist and others from making claims about a KZN solar panel company, ARTSolar. These claims suggested the company misrepresented that it was manufacturing solar panels locally when, in fact, it was importing most of them.

The journalist who was going to report on these allegations was not present or represented in the court when the interdict was granted. This is known as an ex parte order. While we cannot be certain, it is likely the order against Open Secrets was also ex parte.

ARTSolar eventually withdrew (https://groundup.org.za/article/artsolar-throws-in-the-towel-in-gagging-case/) the case.

Acting Judge Mpumelelo Sibisi granted a gag order in June against investigative TV outfit Carte Blanche. Carte Blanche was planning to broadcast allegations of malpractice against a cardiologist, Dr Ntando Peaceman Duze. The order was eventually overturned.

In these cases, the push for prior restraint did not come from government officials, but from private actors.

“In all the above cases, it’s a combination of private sector actors, zealous advocates and magistrates or acting judges with a poor understanding of the Constitution and judicial precedent,” GroundUp editors wrote (https://groundup.org.za/article/judges-should-respect-press-freedom/) in a July 2025 article.

See Judges should respect press freedom (https://groundup.org.za/article/judges-should-respect-press-freedom/)

Open Secrets urged private corporations and actors to end strategic lawsuits against public participation (SLAPPs) and intimidation, to disclose information that is of public interest, and respect the watchdog role of public interest media and the press.

There is legal precedent that gag orders should rarely be granted. In 2007, the Supreme Court of Appeal ruled the press should not be stopped in advance (https://www.saflii.org/za/cases/ZASCA/2007/56.html) from reporting a story, unless there are highly exceptional circumstances. This precedent was relied on by Judge Roland Sutherland (https://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPJHC/2023/771.html) in the widely publicised press freedom case in which businessman Zunaid Moti tried to stop AmaBhungane from publishing about him.

In the 2007 Supreme Court of Appeal case, the judge writing the judgment, Robert Nugent, stated that “unless the fact-specific circumstances convincingly demonstrate that the public interest is not served by such publication,” a court should not censor the press before publication.

Nugent described it as “a most egregious abuse of the court process”.

Open Secrets will challenge the gag order with help from attorneys at PowerLaw Africa, an alliance of public interest law firms.

GroundUp understands that Open Secrets can bring a counter-application within 24 hours, but without further knowledge of the details, we cannot be sure how the process will unfold, or even what stage it is at.

“Open Secrets will not be cowed by attempts to silence our investigations,” its statement read. “If we succeed in this legal challenge, you will be the first to know what we have uncovered.”

More about Freedom of Expression (/topic/freedom-expression/)