



Legal guidelines for the collection of information in the competitive intelligence process in South Africa

S. Olivier

School of Economics, Risk Management and International Trade
Potchefstroom University for Christian Higher Education, South Africa
Sielle.Olivier@ferrosteel.co.za

W. Viviers

School of Economics, Risk Management and International Trade
Potchefstroom University for Christian Higher Education, South Africa
eknwv@puknet.puk.ac.za

S.P. le R. de la Harpe

Law Faculty
Potchefstroom University for Christian Higher Education, South Africa
pvrspdlh@puknet.puk.ac.za

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1 Introduction

Regardless of the complexity and uncertainty in any environment, information processing (a firm's ability to adapt to existing market conditions) is largely dependent on its ability to process relevant market information effectively (Egelhoff 1982).

The concept of intelligence as a process, has long been proposed as an effort to increase a firm's competitiveness and its strategic planning process (Guyton 1962; Pearce 1971, Montgomery and Weinberg 1979; Porter 1980).

The collection of information for the purposes of enhancing a company's competitiveness must however be done within the legal framework of the particular country involved. It is the purpose of this article to determine some legal guidelines for the collection of information within South Africa.

2 Competitive intelligence (CI) as an emerging business practice

2.1 What is CI?

In 1966, William Fair proposed the formation of a corporate 'Central Intelligence Agency' within the firm whose function it would be to 'collect, screen, collate, organize, record, retrieve and disseminate information'. Since that time, this proposition has grown to become an emerging business construct with delineated job functions directly responsible for intelligence collection, analysis and dissemination (Kahaner 1996).

The importance of CI in current circumstances is described by John E. Pepper, the chairman of Procter & Gamble: 'I can't imagine a more appropriate time to be talking about competitive intelligence than right now, for I can't imagine a time in history when the competencies, the skills, and the knowledge of the men and women in competitive intelligence, are more needed and more relevant to a company being able to design a winning strategy and act on it'.

CI includes competitor intelligence as well as intelligence collected on customers, suppliers, technologies, environments, or potential business relationships (Guyton 1962; Fair 1966; Grabowski 1987; Gilad 1989). However, a broader examination of the literature shows that intelligence is not only about monitoring competition but the entire business environment. Mere environmental scanning does not capture all of the multiple functions within the intelligence process. Gilad (1996) talks about the objective of intelligence as 'being able to predict competitors' moves, customers' moves, government moves and so forth.' In the broadest sense, intelligence (including the collection, analysis and dissemination of knowledge) is the process to reduce managerial decision uncertainty. In fact, one study has shown that no more than 25% of a typical intelligence project is spent in collecting information (Calof and Miller 1997).

A more appropriate definition of intelligence is 'actionable recommendations arising from a systematic process involving planning, gathering, analysing, and disseminating information on the external environment for opportunities, or developments that have the potential to affect a company's or country's competitive situation' (Calof and Skinner 1998). The core objective in CI is therefore to predict what is going to happen in an environment and then develop appropriate responses to either take advantage of it or help to shape the environment.

In analysing the varied applications of the intelligence terms in the literature, it may be more appropriate to define 'competitive intelligence' as the above process in which relevant information is gathered, analysed and interpreted and in which the resultant intelligence is disseminated to enhance a company's competitiveness.

2.2 CI practices of South African firms

CI is attracting increasing attention throughout the world. Within South Africa it is increasingly attracting media (Viviers 2001; Naudé 2001) and executive attention (Venter 2001) through conferences [such as those organized by Marcus Evans and the Institute for International Research (IIR)], university courses, consultants and associations (such as SCIPSA and SAACIP).

Researchers conducted a survey in 2001/2002 and sent questionnaires to South African companies to determine their CI status. The findings indicated that CI as a business application practice is still in its infancy. The results also indicated that South African companies are not yet well equipped to conduct good intelligence practices, especially in the

areas of collection, process and structure, analysis and communication of the CI results (Viviers, Saayman, Muller and Calof 2002).

As background for this study, the key areas/constructs of CI, of which the collection of information is one construct, are described subsequently.

2.3 CI constructs

Using the definitions of CI, the Calof and Breakspear (1999) study identified six key areas/constructs, which collectively form the intelligence wheel. Those who truly understand competitive intelligence refer to a multistage process called the competitive intelligence wheel or process (Figure 1) consisting of defining intelligence needs (focus) and planning the intelligence project, data collection, analysis of the data and then evaluation and communication of the entire project.

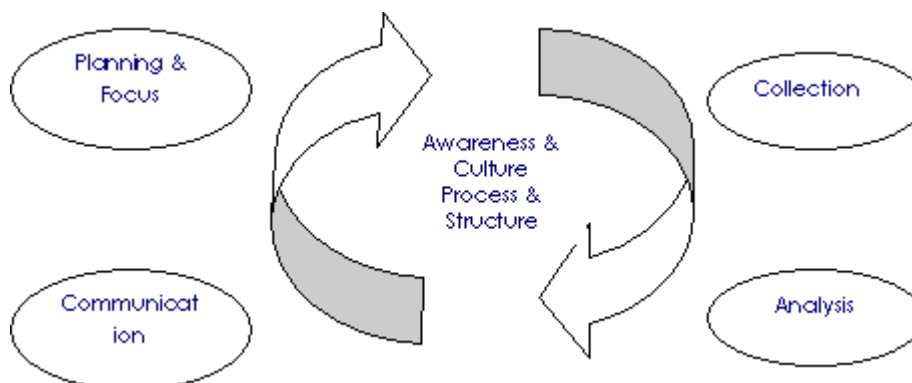
2.3.1 Planning and focus

CI is not about collecting all possible information or researching everything related to a subject, but focusing on those issues of highest importance to senior management (Aguilar 1967; Montgomery and Weinberg 1979; Porter 1980; Gilad and Gilad, 1985(a); Goretsky 1982; Daft, Sormunen and Parks 1988; Herring 1998; Gilad 1989).

2.3.2 Collection

It is during the collection phase that information is collected for examination during the CI process. Collection comes from a variety of primary and secondary sources and acquisition methods, including environmental scanning (Aguilar 1967; Lenz and Engledow 1986a; Lenz and Engledow, 1986b; Daft *et al.* 1988). Other subjects related to the collection stage are the information source and information usage (Menon and Varadarajan 1992; Garvin 1993; Maltz and Kohli, 1996). Generally, most people view the collection of publicly disseminated or publicly accessible information as being both legal and ethical. In this article, the focus falls on this construct of collection and in particular the legal guidelines for the collection of information as part of the CI process.

Figure 1 Competitive intelligence (CI) wheel



Source: Canadian Security Intelligence Service 2003

2.3.3 Analysis

Many practitioners believe that this is where 'true' intelligence is created, that is converting information into 'actionable intelligence' on which strategic and tactical decisions may be

made (Gilad 1989; Gilad and Gilad 1986; Kahaner 1996; Calof and Miller 1997; Herring 1998). Much work has therefore been done in the areas of competitive analysis, strategic analysis, environmental analysis and competitive theory. However, it is a general tendency in countries where CI practices are still in their developing phase to make more use of basic analysis tools. In more sophisticated CI environments, such as North America, Europe and Asia, more advanced analysis techniques are more commonly used (Calof and Miller 1997).

2.3.4 Communication

The results of the CI process or project need to be communicated to those with the authority and responsibility to act on the findings. Corollaries to this include the study of marketing knowledge within the firm (Menon and Varadarajan 1992; Moorman 1995) and knowledge dissemination (Huber 1990; Garvin 1993; Kahaner 1996; Hurley, Thomas and Hult 1998).

2.3.5 Process/Structure

CI requires appropriate policies, procedures and a formal (or informal) infrastructure so that employees may contribute effectively to the CI system as well as gain the benefits from the CI process. There is much support for a formal structure and a systematic approach to CI (Cox and Good 1967; Cleland and King 1975; Porter 1980; Gilad and Gilad 1985a; 1985b and 1986; Ghoshal and Kim 1986). However, many firms' CI efforts are short-term projects and they do not have an on-going CI process in place, even though they conduct CI activities (Prescott and Smith 1987). A more formal structure would involve dedicating a CI manager or champion to co-ordinate the collection, storage, analysis and dissemination of intelligence. Such a person must be trained in developing and running an effective CI capability and should be well respected at all levels in the company, preferably be a member of the executive team and must have an understanding of the industry and organization to also benefit from his/her contact network. Furthermore, CI is a strategic management tool and should therefore be situated as closely as possible to the strategic decisionmakers and not in a line functional department. Despite this recommendation, it is found that most firms' CI capabilities reside in the marketing department (Calof and Breakspear 1999).

2.3.6 Organizational Awareness/Culture

For a firm to utilize its CI efforts successfully, there must be an appropriate organizational awareness of CI and a culture of competitiveness. In 1974, Wall proposed that a firm must have an internal sense of competitiveness in order to gain the maximum effectiveness of an intelligence department. There has been support for this awareness/culture construct in the area of market orientation (Gelb et al 1991; Ghoshal and Kim 1986; Ghoshal and Westney 1991; Kohli and Jaworski 1990; Madsen and Dishman 2000; Pole, Slater and Narver 2000; Slater and Narver 1994; Slater and Narver 1995;). The heightened awareness of a firm's competitive environment (which the existence of CI within a firm may create) is one of the bases for organizational learning theory. Imbedded in the organizational awareness/culture construct is also the application of ethical standards and behaviour (Beltramini, 1986; Cohen and Czepiec, 1988; Hallaq and Steinhorst, 1994; Jones and Bryan, 1995).

Given the position of the collection of information in the CI process, the implications of the Bill of Rights on this construct will be addressed in the next section.

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3 Implications of the Bill of Rights on the collection of information

3.1 Introduction

The *Constitution of South Africa Act 108 of 1996*, in chapter 2 (the Bill of Rights) provides for certain rights that affect the CI process. These rights are subject to the limitations contained and referred to in section 36 of the *Constitution* and other rights provided in the Bill of Rights itself.

It is not the purpose of this article to discuss in detail the influence of all the provisions of the Bill of Rights on CI. However, certain provisions, which are pertinent to the collection of information are discussed.

3.2 Certain relevant provisions in the Bill of Rights

Section 8(2) of the Constitution stipulates that the Bill of Rights binds natural and juristic persons if and to the extent that a right is applicable, taking into account the nature of the right and of any duty imposed by the right. Section 8(4) provides that juristic persons are entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person. Section 14 provides for the right to privacy, which includes the right not to have the privacy of your communications infringed [Section 14(d)]. Section 16 provides for freedom of expression, which includes the freedom to receive and impart information and ideas [section 16(1)(b)]. Section 22 provides for the right to choose your trade, occupation or profession freely. Section 32 provides for access to information namely:

- '32(1) Everyone has the right of access to –
- a. any information held by the State; and any information that is held by another person and that is required for the exercise or protection of any rights.

The values, as set out in the *Constitution*, are binding on everyone. The courts have the obligation in terms of section 8(3)(a) to give effect to a right in the Bill of Rights, and apply or when necessary develop the common law to the extent that legislation does not give effect to that right. The values enshrined in the constitution will therefore also be a determining factor when evaluating whether the CI process was executed lawfully or not.

Our law does not acknowledge a claim for constitutional damages [*Fose v Minister of Safety and Security* 1997(3) SA 786 (CC)]. The general principles of the law must still be utilized to protect people's rights. These principles must however be in accordance with and can be developed to conform to the constitution. To determine whether the collection of information, as part of the CI process/wheel, is lawful will depend to a large extent on the principles of the law of delict. A specific form thereof, namely unlawful competition, is of particular importance in this process. Should information be gathered unlawfully, it could lead to delictual liability. A claim for damages, or for an interdict to prevent unlawful information being published or utilized, may be obtained.

Contrary to this right there is also the right to information, which is provided for in the constitution (section 32) and legislation (*The Promotion of Access to Information Act 2 of 2000*). In the collection of information as part of the CI process, these rights should be utilized to the full.

3.3 Delict

It is the purpose of the law of delict to determine which are interests and which are rights laws, the circumstances under which these interests or rights are protected against infringement and to recognize how an infringement may be remedied. Individual interests are continuously in a state of conflict. This necessarily leads to infringement of these interests. The law of delict will *inter alia* determine under which circumstances a person can be held liable for the damage caused by his or her infringement of the particular interest.

A widely accepted definition of a delict is the following:

'A delict is the act of a person which in a wrongful and culpable way causes harm to another' (Neethling, Potgieter and Visser, 2001:4).

From the foregoing, five requirements or elements can be identified, namely conduct, wrongfulness, fault, causation and damages (or harm.) Should one or more of these elements not be present, there is no delict in law and therefore no liability. As a rule these principles apply irrespective of which interest is impaired or the way in which it is done. The law of delict is therefore able to recognize and protect individual interests. It will therefore also be able to protect individual interests in the CI process.

Certain forms of delict, which frequently occur in practice, have become known under specific names, for instance defamation, invasion of privacy, wrongful deprivation of liberty and unlawful competition. Such forms have developed their own specific rules within the framework of the general principles of delict. Unlawful competition is one of those forms that is of particular importance to the CI process. Before turning to unlawful competition, the separate elements of the delict are discussed.

3.3.1 Conduct

Generally speaking, the element of conduct may be defined as a voluntary human act or omission. It is important to note that not only a positive act but also an omission (being the failure to do something) can be sufficient to comply with the element of conduct.

3.3.2 Wrongfulness

One of the more important and problematic elements of the delict, for the CI process, is that of wrongfulness. It entails that the damage caused must have been caused in a wrongful way, that is in a legally reprehensible or unreasonable manner. To determine whether conduct was wrongful, it must firstly be determined whether a legally recognized individual interest has been infringed and, if so, secondly, whether that individual interest has been prejudiced in a legally reprehensible or unreasonable manner. There must therefore be a breach of a legal norm.

The basic test for wrongfulness is the legal convictions of the community (*boni mores*). This is an objective test based on the principles of reasonableness. In *Coronation Brick (Pty) Ltd v Strachan Construction Company (Pty) Ltd* 1982 4 SA 371 D at 380 it was stated:

'In any given situation the question is asked whether the defendant's conduct was reasonable according to the legal convictions or feelings of the community.'

In *Compas Motors Industry (Pty) Ltd v Call Guard (Pty) Ltd* 1992 SA 520 W at 528 – 529 it was stated:

'This indicates that the community's perception of *boni mores* is closely linked to the concept of good faith in community relations. These concepts, again, are similarly associated with the community's perception of justice, equity and reasonableness. This has been recognized not only in historical and comparative context, but in the contemporary decisions of our own courts. ...From this it appears that public policy, in the sense of *boni mores*, cannot be separated from a concept such as justice, equity, good faith and reasonableness, which are basic to harmonious community relations and may indeed be regarded as the purpose of applying public policy considerations.'

In *Coronation Brick* (supra) at 384 it was further stated:

'In determining whether the conduct is of such a nature as to be determined unlawful, the court must carefully balance and evaluate the interests of the concerned parties, the relationship of the parties and the social consequences of the imposition of liability in that particular type of situation.'

This entails the *ex post facto* balancing or weighing up of, on the one hand, the interests which the one party actually promoted by his or her act and, on the other hand, the interests which he or she actually infringed. The court must therefore weigh the conflicting interests of the different parties in view of all the relevant circumstances in order to decide whether the infringement of the particular party's interest was reasonable or unreasonable.

Various factors may play a role in the process of determining the reasonableness of the conduct. Neethling *et al.* (2001:40) gives the following examples:

- The nature and extent of the harm and of the foreseeable or foreseen loss
- The degree of probability of the success of preventative measures
- The nature of the relationship between the parties
- The motive of the defendant
- Economic considerations
- The legal position in other countries
- Ethical and moral issues
- The values underlying the Bill of Rights
- Considerations of public interest or public policy
- The social utility of the damage-producing activity
- The economic consequences for each party of burdening him or her with the loss
- The nature of the loss, the nature of the defendant's calling
- Other relevant factors.

These criteria enable the courts to adapt the law to reflect the changing values and needs of the community.

3.3.3 Fault

Fault encompasses intent and negligence. These terms refer to the legal blameworthiness or the reprehensible state of mind of the person who acted wrongfully. In *Kruger v Coetzee* 1966 2 SA 42 (A) at 430 the test for negligence was put as follows:

'For the purpose of liability culpa arises if –

- a) a *diligens paterfamilias* in the position of the defendant –
 - i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss, and
 - ii) would take reasonable steps to guard against such occurrence; and
- b) the defendant failed to take such steps.'

The test of the reasonable person takes the central place in the determination of negligence. The reasonable person serves as the legal personification of those qualities which the community expects from its members in their daily conduct with one another.

3.3.4 Causation

To determine causation the courts use a factual and legal test. The question of legal causation

arises when determining for which harmful consequences actually caused by the wrongdoer's wrongful culpable act he or she should be held liable. In *S v Mokgethi* 1990 (1) SA 32(A) at 39 it was stated that:

'The basic question is whether there is a close enough relationship between the wrongdoer's conduct and its consequences for such consequence to be imputed to the wrongdoer in view of policy considerations based on reasonableness, fairness and justice.'

3.3.5 Damage

The last prerequisite for a delict is the causing of damage or harm, which is described as the diminution, as a result of a damage-causing event, in the utility or quality of a patrimonial or personal interest in satisfying the legally recognized needs of the person involved (Neethling *et al.* 2001:211):

The one element of the delict, which is of particular relevance to the question of the collecting of information, is the question of unlawfulness. The collection of information will in certain circumstances clearly be unlawful, for example to steal secret information from someone for the purpose of going in direct competition with the owner of the information. A more difficult question will be where information is requested and the purposes for which the information will be used is not stated to its owner. Thereafter the information so obtained is used to the detriment of the owner thereof. The answer regarding unlawfulness depends on the prevailing circumstances of each particular case and it is therefore of utmost importance that everyone in the CI process has an appreciation of the boundaries/limits regarding the collection of information.

3.4 Unlawful competition

One of the specific forms of *injuria*, which has developed in the South African law, is unlawful competition. This is merely a specific form of the broad concept of delict. This form of delict however is the form of delict that is the most common in the CI process.

There exists a competitive relationship between people operating in the market who engages in a struggle for the favour of the client. The benefit that the one gains usually leads to the prejudice or potential prejudice of the competitor. There is therefore a continuous conflict of interests. In South Africa the courts have recognized delictual liability in this field and the ordinary principles of the law of delict are available to a prejudiced competitor.

Our courts accept that wrongfulness in unlawful competition basically lies in the infringement of a competitor's rights to the goodwill of his undertaking. The dynamic character of competition entails that the majority of competitive acts by an entrepreneur factually infringe the goodwill of his competitors without being wrongful. An infringement of the competitor's right must also be accompanied by the violation of a legal norm. In other words, there must be a factual infringement of the goodwill of a competitor that violates a legal norm. The limits of the rights of goodwill were initially ascertained by the courts with reference to honesty and fairness in trade and competition [*Schultz v Butt* (3) SA 667 A at 679]. At present the general criterion for wrongfulness in our law is the *boni mores* or criterion of reasonableness (public policy) or the general sense of justice of the community [*The Concept Factory v Heyl* 1994 (2) SA 105 T at 115].

In *Schultz v Butt* 1986 (3) SA 667 A at 679 the court stated:

'In judging of fairness and honesty, regard is had to *boni mores* and the general sense of justice of the community ...'

The following factors may play a role in determining wrongfulness (Neethling *et al.* 2001:317):

- The honesty and fairness of the conduct involved
- The morals and business ethics of the economic trade sector involved
- The protection the positive law already extends to the area concerned
- The importance of a free market and strong competition in our economic system
- The question whether the parties are competitors
- Conventions with other countries
- The motive of the actor.

Neethling *et al.* (2001:319) give the following examples of infringements of the goodwill of a competitor:

- Misleading the public as to the quality, extent, character or price of one's own performance
- Passing off, that is, adopting or copying a competitor's distinguishing signs, his trade name, his trade mark or get-up, etc.
- Leaning on, that is, openly exploiting the reputation of a competitor's performance by means of the use of his advertising signs, such as his trade name, trade mark or service mark;
- Undue influence on the public with regard to one's own performance
- Bribery of an client's employee or agent
- Obtaining and using the trade secrets or confidential business information of a competitor
- The misappropriation of a competitor's performance, that is, the direct adoption of/identical copying of his performance
- Interference with the contractual relationships of a competitor
- Competition in breach of a statutory duty
- Statements that belittle a competitor's undertaking, goodwill or services in a false or untruthful manner
- Instigating a boycott against a competitor
- Exercising physical or psychological pressure on potential clients, employees or suppliers of a competitor
- Direct attacks that primarily infringe an independent subjective right of a competitor other than his right to goodwill.

The most important example of infringement of the goodwill of a competitor in the collecting of information as part of the CI process is the obtaining and using of the trade secrets or confidential business information of a competitor in an unlawful manner.

3.5 Right to information

What must be kept in mind in the CI process is not only those acts which might be unlawful and inhibit the gathering of information but also the right to obtain information.

In this regard, section 32 of the *Constitution* provides for a right to access to information. A distinction must be made between information held by the state and information that is held by another person. In the second instance the right of access to information is limited in that it needs to be required for the exercise or protection of a right. In pursuance of section 32 of the *Constitution*, the *Promotion of Access to Information Act 2 of 2002* was promulgated. This act is an important tool in the CI process and a thorough understanding of the act is necessary to be able to utilize it to its full potential. The act differentiates between information held by the state and information held by another person. Section 9 of the act

inter alia states:

'The objectives of this act are –

a) To give effect to the constitutional right of access to:

- i) any information held by the state;
- ii) any information that is held by another person and that is required for the exercise or protection of any rights;

b) To give effect to that right –

- i) subject to justifiable limitations, including, but not limited, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance; and
- ii) in a manner which balances that right with any other rights, including the rights in the Bill of Rights in chapter 2 of the constitution..'

Section 11 of the Act provides that a requester (of information) be given access to a record of a public body if he/she complies with all the procedural requirements and access to that record is not refused in terms of any ground for refusal contemplated in chapter four. In section 11(3), it is clearly stated that this right is not subject to or affected by the reasons for the requester requesting access, or the information officer's belief of what the requester's reasons are for requesting access. Certain bodies are excluded namely the cabinet and its committees, judicial functionaries of a court, a special tribunal established in terms of section 2 of the *Special Investigation Units and Special Tribunals, Act 74 of 1996* or a judicial officer of such court or special tribunal or an individual member of parliament or of the provincial legislature in that capacity.

The limitation set out in section 34 entails that a public body must refuse the request for access to a record of the body if disclosure of the record involves an unreasonable disclosure of personal information about a third party, including a deceased individual.

Section 35 makes provision for the refusal of a request for access to a record of the South African Revenue Service if it contains information that was obtained or is held by that service for the purpose of enforcing legislation concerning the collection of revenue.

Section 36(1) (which is the limitation clause) provides as follows:

'(1) Subject to sub-section (2) the information officer of a public body must refuse a request for access to a record of the body if a record contains –

a) trade secrets of a third party;

b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, disclosure of which would be likely to cause harm to the commercial or financial interests of that third party;

c) information supplied in confidence by a third party the disclosure of which could reasonably be expected –

- i) to put that third party at a disadvantage in contractual or other negotiations;
- ii) to prejudice that third party in commercial competition.

(2) A record may not be refused in terms of sub-section (1) in so far as it consists of information –

a) already publicly available;

b) about a third party who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned;

c) about the results of any product or environmental testing or other investigations supplied by a third party or the result of any such testing or investigation carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.'

The act provides for mandatory protection of certain confidential information, and protection of certain confidential information of third parties; the mandatory protection of the safety of individuals and protection of property; the mandatory protection of police dockets and bail proceedings, and protection of law enforcement and legal proceedings; the mandatory protection of records privileged from production in legal proceedings; and the defence, security and international relations of the Republic (Sections 37 to 41).

Section 42 also provides for the refusal of a request should it be necessary in the economic interest and financial welfare of the Republic and commercial activities of public bodies. Section 43 makes provision for the mandatory protection of research information of third parties and protection of research information of a public body.

Section 50 and further makes provision for the right of access to records of private bodies, which have to be given if:

- that record is required for the exercise or protection of any rights;
- the requester complies with the procedural requirements relating to the request for the access to that record; and
- access to that record is not refused in terms of any grounds for refusal contemplated in chapter four.

Section 33 makes provision for the mandatory protection of the privacy of a third party who is a natural person. Section 64 provides for the protection of commercial information of a third party, which contains:

'a) Trade secrets of a third party;

b) Financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or

c) Information supplied in confidence by a third party, the disclosure of which could reasonably be expected –

- i) to put that third party at a disadvantage in contractual or other negotiations;
- ii) to prejudice that third party in commercial competition.'

The Act provides for mandatory protection of certain confidential information of third parties; the protection of safety of individuals and the protection of property; the protection of records privileged from production and legal proceedings; the protection of commercial information of private bodies; and the protection of research information of third parties and protection of research information of a private body (sections 65 to 69).

In *Cape Metropolitan's Council v Metro Inspection Services Western Cape CC and Others 2001* (3) SA 1031 (SCA) it was stated:

'Information can only be required for the exercise or protection of a right if it will be of assistance in the exercise or protection of the right. It follows that, in

order to make out a case for access to information in terms of section 32, an applicant has to state what the right is that he wishes to exercise or protect, what the information is which is required and how that information would assist him in exercising or protecting that right.'

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4 Conclusion

Because of the nature of the collecting of information in the CI process and the sphere of competitive rights in which this activity operates, the participants in the process must ensure that they act in accordance with the law. Should any of the collectors' actions be unlawful, they can be held liable in their individual capacities. Should they have performed their functions in the course and scope of their employment with their employer, the employer can also be held liable.

Although, on the one hand, the collection of information should be done within the limits of the law, the law on the other hand provides particular opportunities to obtain information. It is in this regard that the *Promotion of Access to Information, Act 2 of 2000* is useful in the CI process, especially with regard to information held by the government. Because of the importance of the government, which includes the three spheres of government, namely local, provincial and central government, the importance of this Act should not be underestimated. This right should be used in the CI process as it is an invaluable tool in sourcing information.

The difficulty with the legal aspects of the CI process is that the legality of each and every aspect of the CI process will have to be determined in light of the particular circumstances. A thorough knowledge of the legal implications of the CI process is crucial and can be to the advantage of the particular business, both in preventing unlawful actions and utilizing the right to information to its full extent.

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