# THE RIGHT TO INFORMATION BILL, 2013 OF GHANA

***A CRITIQUE***

***AND***

***RECOMMENDATIONS FOR IMPROVEMENT***


**Submitted by**

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# THE RIGHT TO INFORMATION BILL 2013 of GHANA

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Guaranteeing people the right to access information held by public bodies and private bodies performing public services or functions or receiving public funds is an indispensable feature of a functional democracy and accountable governance. Article 21(f) of the Ghanaian Constitution guarantees every person the right to information subject to such qualifications as are necessary in a democratic society." In 2007 the Government prepared a draft Right to Information Bill (RTI Bill) to give effect to the constitutionally guaranteed fundamental right to information. Widespread consultations were held with civil society and media representatives. CHRI prepared a detailed analysis of the provisions of the RTI Bill and submitted it to the Government. In August 2009 CHRI received a copy of the latest version of the RTI Bill that was vetted in the Ministry of Justice. CHRI made a second submission pointing out to the fact that none of the recommendations for improvement had been incorporated in the newer version of the RTI Bill. More than four years later the RTI Bill in its current version remains almost unchanged except for a couple of cosmetic alterations. The refusal of successive governments to take a serious note of the recommendations made by CHRI as well as the RTI Coalition in Ghana repeatedly does not reflect well on their pious intentions to engender transparency in governance. Perhaps the excuses lay in the unwillingness of the establishment to look upon the principles underpinning access to information laws developed in the more advanced democracies as being suitable for the conditions in which Ghana found itself. However such excuse is no more valid in light of the emergence of the Model Access to Information Law for the African Union developed through widespread public consultation across the African continent in 2012 under the aegis of the African Commission on Human and Peoples' Rights. This homegrown model law can serve as the inspiration for strengthening the RTI Bill in Ghana and bring it up to internationally accepted standards.

This critique of the Ghana's latest version of the RTI Bill primarily draws upon the experience informing the AU Model ATI Law and the research and experience that CHRI has gained over more than two decades by participating in legislation drafting exercises and advising the process of implementation of similar laws in India, Uganda, Nigeria, Kenya, Malawi, Sierra Leone, Tanzania and Zambia, in Africa, Barbados and Cayman Islands in the Caribbean, Canada and Guyana in the Americas, Malta in Europe, Pakistan, Bangladesh and Sri Lanka in South Asia and Fiji and Cook Islands in the Pacific. CHRI's recommendations for strengthening the RTI Bill in the light of similar suggestions submitted in the years 2008 and 2009 are given below.

***Preamble:***

1. The Preamble of a law clarifies its objectives and the intentions of Parliament's legislative policy. The Preamble indicates that the RTI Bill is meant for implementing the right to information held by a government agency. The definition of the term 'government agency in clause 65 makes it clear that the office of the President and the Vice President, Parliament, the judiciary and chieftaincies are not covered by the RTI Bill. This limited coverage of the RTI Bill is worrisome as it falls short of international best practice standards. The fundamental right to information is not restricted only to government agencies by the Constitution of Ghana. Therefore legislation intended to give effect to this right must be equally comprehensive in its coverage. The preamble may be amended to indicate that the law covers all **public bodies (and not merely government agencies)** constituted, established or recognised by or under the Constitution of Ghana.[1] Such public bodies would include all private bodies that provide public services or perform public functions or utilize public funds.

2. Clause 64 of the Bill seeks to empower the Minister responsible for Justice to extend the coverage of this law to the private sector by legislative instrument. International best practice on the right to information avoids placing such powers in the hands of government in the form of delegated legislation. It would also lead to unnecessary duplication of access legislation. Instead the examples of South Africa and Antigua and Barbuda in the Commonwealth can be used for guidance. Their information access laws cover government agencies as well the private sector. The crucial difference is in the conditions stipulated for accessing information from these bodies. Under the access laws in both countries a requestor may seek information from any government agency without having to provide reasons. This is based on the principle that the State has a perfect obligation to respect, promote and fulfill fundamental rights of persons. Therefore no reasons are required to be given for exercising the fundamental right to information from government agencies. On the other hand, in both countries, information can be sought from private agencies only for the protection of a legally enforceable right. This is based on the principle that agencies in the private sector have an imperfect obligation to respect and fulfill fundamental rights as they are not a part of the State sector. People do not have a direct claim on the information held by private bodies unlike a government agency. The request must be based on a claim which is recognizable in law and it is necessary to disclose the nature of such a claim for the private body to take action. If this principle is laid down clearly in a single access law in Ghana, it can avoid confusion. This will also reduce opposition and heartburn when private agencies may be selectively brought within the ambit of this law at a later date.

[1] This issue was discussed towards the end of the previous critique submitted by CHRI in 2008 and is included here as a fresh recommendation.

3. Alternately, the models of Liberia and Nigeria may be followed where the access to information laws cover all private bodies performing public functions or providing public ervices or utilising public funds have a direct obligation of transparency towards the people.

4. The Memorandum accompanying the RTI Bill recognizes the value of the right to information for making governance truthful and transparent and for reducing corruption through heightened public scrutiny. These are laudable objectives and are mentioned in the preamble of the RTI Act in India as well. This policy statement ought to be included in the preamble of the RTI Bill itself. **Consideration may be given to amending the preamble of the Bill to reflect these stated objectives.**

5. The Preamble could also state clearly the two methods of providing access to information to people given in the law – voluntary disclosure by bodies covered by this law and disclosure upon a formal request.

***Recommendation:***

*The Preamble may be amended as follows:*

*"An Act to provide for the implementation of the constitutional right to information held by a* ***public body and a private body****, subject to the exemptions that are necessary and consistent with the protection of the public interest in a democratic society, to foster a culture of truthfulness, transparency and accountability in public affairs, to* ***contain corruption*** *and to provide for related matters.*

*Now therefore this law places an obligation on government agencies and private bodies to provide to any person access to information suo motu and in response to a formal request received, in a timely, inexpensive and reasonable manner"*

***General Comments:***

6. In conformity with the recommendation made a para #1 above the term 'government agency' may be replaced with the phrase 'public body or private body' throughout the RTI Bill wherever appropriate.

7. There are a few instances of loosely worded drafting that detract from the reading of the draft Bill and its interpretation. These general issues have been addressed throughout this critique. The layout of the draft Bill could be improved to enable ease of navigation, for example by revising the chapterisation of the operative provisions. For example Chapter I should be a general introductory clause and should include the Interpretation clause of the

Bill since the interpretation clause provides the framework within which the rest of the provisions of the legislation will be understood. **Consideration may be given to moving the Interpretation Clause to the front of the Bill.**

8. Under exempt information (clause 5 to clause 18), references such "information is exempt" or "is exempt information" should be removed. The Bill should provide for the circumstances under which information may be denied by a body covered by this law. The declaring of any category of information as being exempt is not in tune with international best practice. Furthermore clause 18 of the Bill provides for the disclosure of information in public interest even if it covered by one or more exemptions. Therefore categorizing certain types of information as 'exempt information' runs amounts to placing a blanket exemption which is contrary to this clause as well. **Consideration may be given to replacing the phrase "information is exempt" with "access to information may be denied…".**

9. It is necessary to use gender sensitive language while detailing the provisions of any law. **Consideration may be given to ensuring that gender sensitive language is used in all provisions.**

***Recommendations:***

- **The term 'government agency' be replaced with the phrase *'public body or private body'* throughout the RTI Bill.**[2]

- The operative provisions may be divided into the following thematic chapters preceded by a revised Table of contents**:**

***1. Short title, extent of coverage, timeline for operationalisation of various provisions and interpretation (clause 65).***

***2. Explicit mention of right of access and obligation of government agencies and private bodies to provide access to information (clause 2)***

***3. Obligations of suo motu disclosure (clause 3)***

***4. Procedures for access through formal request including fee related provisions (clauses 19-33, 51-53)***

***5. Exemptions to disclosure (clauses 5-18 )***

***6. Procedure for dealing with requests for amendment of personal records (clauses 34-37 )***

***7. Internal reviews and appeals (sec 38-46 and including provisions relating to CHRI's***

[2] This is a new recommendation that had not been included in the previous critique submitted by CHRI in 2008.

***recommendations for creating the Ghana Information Commission- see paras 40-41 below)***

***8. Miscellaneous provisions***

- In accordance with our recommendation that private bodies be included within the purview of this law, please insert the phrase ***"or private body, as the case may be"*** at all places immediately after the occurrence of the phrase **"government agency"** except in the newly proposed sub-clauses of 19(4) and 19(5).

- Under "*Exempt information*" please *replace in all clauses the phrase* ***"information is exempt"*** with the phrase **- *"access to information may be denied"***.

- Please use gender sensitive language in all provisions of this Act. For example where words such as **'he', 'his'** and **'him'** are used in any provision, the feminine equivalent such as ***'she', 'hers'*** and ***'her'*** may be added.

10. There is no clarity with respect to extent of coverage and commencement of the law. The Bill must provide for a specific timeline for commencement and implementation of the operative provisions of the law to be enacted. Failure to specify a commencement date in the legislation itself can otherwise undermine the use of the law in practice. In India for example, the Freedom of Information Act 2002 was passed by Parliament and even assented to by the President, but it never came into force because no specific date for commencement was included in its provisions. Although it is understandable that the Government may wish to allow for time to prepare for implementation, international best practice requires that the Act itself should specify a maximum time limit for implementation, to ensure there is no room for postponing implementation of this law indefinitely. Even if a phased approach is adopted, which may require key Ministries to implement in the first year, and other agencies to implement 12 months later, this should be spelled out in the law itself. (For example, Mexico allowed one year for implementation while India's Right to Information Act 2005 allowed 120 days. The United Kingdom took five years to prepare for the implementation of its information access law. Ghana may choose time limit that is best suited for its ground realities.)

11. It is also good practice for an RTI Bill to specify which clauses are to be implemented immediately and which at a later date. This will statutorily limit the number of clauses given a later date for implementation rather than leave this decision to the discretion of officials. However, this needs to be weighed against the need to give agencies sufficient time to prepare for implementation. **Consideration may be given to inserting a provision indicating extent of the Act and phasing in different obligations over different time frames to ensure that the Act has its full and intended effect as soon as possible.** For example, the provisions relating to *suo motu* disclosure, the designation of

Information Officers and authorities competent to hear appeals and the constitution of the Information Commission proposed by us could be operationalised as soon as the Bill becomes law. Provisions relating to filing of information requests, the amendment of information in personal records, and filing of internal reviews and appeals before the proposed Information Commission could commence after 3-4 months of the enactment of the law.

***Recommendations:***

- Please insert a clause to specify a maximum time limit for the Act coming into force, which is no later than twelve months from the date the Act receives Presidential assent.
- Or, consider including a provision on phased commencement and implementation of the different provisions in the Bill, for example:
- 6-8 months should be allowed before people can make formal requests for information;
- 10 months should be allowed for the Information Commission to start entertaining appeals and complaints;
- please insert a complete list of provisions which will be subject to delayed implementation.

## Access to official information

***Clause 1: Right of access to official information***

12. Clause 1 provides every person a positive and broad right to information. However the draft Bill does not contain the definition of the term 'person'. The definition of the term 'person' may be taken from the Income Tax Act or the Companies Act in force in Ghana. This will ensure that individuals and organised groups such as civil society organisations and companies can also access information under this law. **Consideration may be given to including a new clause to define "person" in clause 65 so that organisations and companies (artificial-juridical entities) may be enabled to seek and obtain information under the Act.**

13. Experiences from India and Bangladesh show that Information Officers often force citizens to file written applications for obtaining proactively disclosed information. In order to avoid this situation in Ghana **consideration may be given to include the following provision in clause 3** to specify *"The right may be exercised through an application made in accordance with clause 19 for any information other than the information required to be published under clause 3."*

14. Clause 1(3) requires this right may be exercised by an application specified in Clause 19 of the Bill. The duty of proactive disclosure arises in such circumstances. **A rephrasing of this clause may be introduced: "Subject to sub clause (3) of clause 1, the right of access to official information may be exercised by filing an application under Article 19."**

15. Clause 1(4) requires a person making an urgent information request to give reasons justifying the urgency. It is against international best practice to ask for reasons to prove the urgency of the requested information except where such a request is made to a purely private body that does not perform any public function or provide any public service of utilize public funds. **Consideration may be given to rephrasing clause 1 (4) as follows: "***A person does not have to give reasons for requesting information except where such a request is being made to a Private Body:*

*Provided that a person requesting information from a Private Body under this Act shall clearly indicate the right that is sought to be protected by the disclosure of information.***"**

***Recommendations:***

- Please insert a new clause to define "person" in the interpretation clause (clause 65)
- In accordance with the recommendations in paragraph 11 above, amend sub-clause 3 of clause 1 to clearly indicate that an application for information which is already available in the public domain is unnecessary. Sub-clause 3 may be rephrased as follows,

***"The right may be exercised through an application made in accordance with clause 19 for any information other than the information required to be published under clause 3."***

- Clause 1(3) to be rephrased: "Subject to sub clause 3 of clause 1,
- Sub-clause 4 of clause 1 may be rephrased as follows:

***"A person does not have to give reasons for requesting information except where such a request is being made to a Private Body:***

***Provided that a person requesting information from a Private Body under this Act shall clearly indicate the right that is sought to be protected by the disclosure of information."***

***Clause 2: Responsibility of Government to provide information on governance***

Clause 2 places an obligation on the government to routinely and proactively disseminate information of general relevance to people. **Consideration may be given to amending clause 2 to clarify that not only Government but all public and private bodies directly obligated under this law shall make available to the people general information on their functioning**

**in a voluntary manner so that the people's need for filing formal applications for information under this Act is progressively reduced.**[3]

***Clause 3: Responsibility of the Minister in respect of access***

16. In accordance with our recommendation contained at para 1 above regarding the inclusion of private bodies within the ambit of this law, **consideration may be given to extend this obligation of proactive disclosure to private bodies as well.**

17. The term 'publish' used in clause 3(1) has a specific meaning in law. By using the term 'publish' the Act will be insisting that all public and private bodies print their proactive disclosure documents. This is not feasible for small entities, possessing limited resources. It is advisable to commence the formulation of this clause by requiring public and private bodies to prepare these documents and disseminate them widely. **Consideration may be given to amending clause (1) of clause 3 to indicate that every public and private body has a duty to *prepare the required information in the local language and disseminate it through various means* such as hard copy publications, media advertisements (print and electronic), display on notice boards, and accessible on websites. Where resources are scarce the information may be neatly typed or hand written on paper, put in a file and made available for free inspection on demand in a place in the office that is easily accessible to the public.** The timeline for public and private bodies for proactive disclosure is 12 months which is too long. **Consideration may be given to reducing the timeline for preparing this information from twelve months to six months and then it may be updated at regular intervals in consultation with the newly proposed Ghana Information Commission. Consideration may be given to making the Information Officer as the custodian of the information proactively disclosed by his/her government agency or private body.**

18. Clause (2) of Clause 3 is contains a meagre list of information that is required to be proactively disclosed. The information access laws of Mexico and India may be used as guidance as they contain an expansive list of information categories that need to be disclosed proactively and updated on a regular basis. If more and more information is disclosed proactively, there will be fewer applications from people seeking information in a formal manner under this Act. This will reduce the burden of Information Officers considerably. **Consideration may be given to including more categories of information especially regarding operational and financial details of public and private bodies in this list in accordance with international best practices**.

19. This clause does not place an obligation on the entities covered by this law to be accountable for their decisions – an avowed objective of the law as mentioned in the

[3] Please see Section 4(2) of India's *Right to Information Act, 2005* for an example of such a statutory requirement.

preamble. It is international best practice to include such obligations in the provisions dealing with proactive disclosure. **Consideration may be given to including in this clause a provision that makes it mandatory for public and private bodies to** – *1) disclose all information and relevant facts while formulating any important policy, project or decision that may affect people or clauses of people and 2) give reasons for its administrative or quasi-judicial decisions to persons affected by such decisions.*

***Recommendations:***

- Please amend clause 2 as follows-

***"In addition to the requirements of Article 67 of the Constitution and subject to the provisions of this Act, the Government shall make available to the people general information on their governance in a voluntary manner so that the people's need for filing formal applications for information under this Act is progressively reduced."***

- Please amend clause 3(1) as follows-

"***The Minister responsible for a government agency shall within six months from the date of the coming into force of this Act, and every twelve months after that date prepare and disseminate, after consultation with the Ghana Information Commission, the Public Services Commission, the Head of the Civil Service and in accordance with the guidelines issued by the Ghana Information Commission under clause 4, an up-to-date official information compilation in the form of a manual listing the government agencies that are under that Ministry."***

- Please insert new clause 3(1)(a) after 3(1) as follows:

***"The head of a public or private body having obligations under this Act shall within six months from the date of the coming into force of this Act and every twelve months after that date prepare and disseminate after consultation with the Ghana Information Commission and in accordance with the guidelines issued under clause 4, an up-to-date information compilation about such body in the form of a manual."***

- Please add an explanation of the term "dissemination" to clause 3(1) and 3(1)(a) drawing from the Indian Right to Information Act, 2005 as follows:

***Explanation—For the purposes of sub clause (1) "disseminate" means making known or communicating the information to the public in the local language of the area through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of the manual in the office of any government agency.***

- Please insert new sub-clauses to clause (2) of clause 3 such as the following:

***"(h) the channels of supervision and accountability in a decision-making process;***

***i) the norms set by a government agency or a private body as the case may be for the discharge of its functions;***

***j) details of any arrangements such as committees, boards and councils that have been put in place for public consultation in the formulation and implementation of policy, whether meetings of such bodies are open for the public to attend and whether the minutes of such meetings will be made available to the public;***

***k )the monthly remuneration and the system of compensation given to its employees;***

***l) the budgets allocated to each agency of the public body or private body as the case may be indicating the particulars of all plans, proposed expenditure and reports on disbursements made;***

***m) manner of implementation of welfare schemes and subsidy programmes including amounts allocated and disbursed and details of beneficiaries.***

***n) particulars of recipients of concessions, permits, authorizations granted by the government agency or a private body as the case may be"***

- Please insert new clause (3), (4) and (5) drawing from the Indian Right to Information Act, 2005 as follows:

***"(3)The Information Officer of the public body or the private body as the case may be shall be the custodian of the information prepared under clause 1 of clause 3 and shall provide access to any person on demand at such fees as may be prescribed under the Regulations."***

***(4) Every public or private body as the case may be, shall disclose all information and relevant facts while formulating any important policy, project or decision that may affect people or clauses of people;***

***(5) Every public or private body as the case may be, shall provide reasons for its administrative or quasi-judicial decisions to persons affected by such decisions."***

***Clause 4: Provision of guidelines for manual***

20. Proactive disclosure of information is a necessary function that all public authorities must take seriously because if done well and in a comprehensive manner it has the potential to diminish people's need to seek information by making formal requests. All such manuals

must be available in the local language and updated from time to time and also disseminated through a variety of methods so that they are easily accessible to the people. Section 4(4) of the Indian RTI Act makes the public information officer of the public authority concerned the custodian of the proactive disclosure manuals. This is a reasonable arrangement for people who may not have access to such information if merely uploaded on a website or published at some date in the newspapers. Ideally an independent body should be made responsible for developing the disclosure scheme along with the public and private bodies to which this law will apply. It is advisable to give this responsibility to the Ghana Information Commission whose structure, composition, powers and functions are explained in our recommendations below (see para # XX) instead of the Public Services Commission which is mandated to perform only recruitment and oversight functions over the bureaucracy. It simply does not have jurisdiction over any private body providing public services or performing public functions or which utilizes public funds due the very nature of its constituting legislation. As a champion of transparency and a creature of this access legislation the proposed Ghana Information Commission is best placed to perform this role.

21. It is also advisable to incentivize good performance of public and private bodies vis-à-vis their proactive disclosure functions and provide for sanctions against similar bodies that are non-compliant in accordance with the recommendations given below.

***Recommendation:***

- Please replace the term 'Public Service Commission' in clause (1) of clause 4 with '***Ghana Information Commission'***.
- Please guidelines so issued must be made mandatory and its non-compliance should attract sanction in the form of funds cuts in the budget or some public censuring while high levels of compliance may be incentivized in the form of public recognition or awards for the most comprehensive and easily understood manuals.

***Exempt Information***

22. The exemptions clauses in any access law must be carefully constructed because they set limits on the range of information which can be accessed by people legitimately as a matter of right. Accordingly, it is essential that they are very tightly drafted and carefully worded in order to minimize the chance that they might be misused by obstructive officials. They must contain strict harm tests which must be applied by the public or private body while making a decision of disclosure regarding any information requested to determine the negative consequences of disclosure, if any. These negative consequences

must be in the nature of harming an important public interest well recognized in law and governance. If not the exemptions are likely to be abused by the public and private bodies to withhold access to any and every category of information. An underlying principle of a strong and progressive access law is the presumption that all information unless exempted from disclosure under strict harm tests are accessible to any person either *suo motu* or upon making a formal request.

*(a)* Almost all exemption clauses use the phrase "information is exempt" while describing the protection given to certain kinds of information from disclosure under certain kinds of circumstances specified in the clauses themselves. This is likely to lead to bad practice where denial of access becomes the default option for a public or private body when such kinds of information are sought. Further clause 18 of the Bill provides for disclosure of even exempt information if any of the conditions specified under that clause are satisfied. Therefore categorizing certain types of information as 'exempt information' runs contrary to this clause as well. ***Consideration may be given to replacing the phrase "information is exempt" with "access to information may be denied, if…".***

(b) Clause 5 (1) (a) explicitly provides a blanket exemption for the Office of the President and the Vice President which is unnecessarily broad and against the principles of maximum disclosure and accountability. There is no reason why information from these offices should be exempted from disclosure. People have a right to know what advice was tendered to these high constitutional functionaries and whether that advice was legitimate, reasonable and just. Any sensitive matters contained in such advice whose disclosure may jeopardize for example, national security, defense interests, foreign relations or economic interests of the country will attract other legitimate exemptions given in this Bill. There is no need to provide blanket exclusion for information relating to these offices. In actual operation such are likely to be stretched too far to exclude such offices from any duty to give information at all which is unjustifiable. Moreover the provision is silent on what happens after the decision is made on a matter by these offices and the information/files and documents are returned to the originating ministry or public body. It is in the public interest to disclose the final decision of these high constitutional functionaries along with advice and opinions given by officers in the minstries, along with the materials that formed the basis of the opinions given, after the decision is taken and the matter is final and over. In this context **it is advisable to include a proviso to this clause in the manner of the proviso mentioned under Section 8(1)(i) of the Indian RTI Act.**

Clause 2 of clause 5 provides for internal discretion by giving the Secretary to the President or Vice President the power to unilaterally issue certificates that prevent disclosure of information which if exercised will amount to being the judge in one's

own case. Further this clause provides for a challenge to a certificate issued in this manner only in the Supreme Court in terms of Article 135 of the Constitution. Article 135 of the Ghanaian Constitution pertains to the power of the Court to make a determination in matters relating to the security of the State or where disclosure may be prejudicial to the public interest, in other words, the consequences of disclosure may be more harmful than beneficial. These are two narrow grounds mentioned in the Constitution when compared to the broad swathe of information that may be exempted in this manner simply because it has been submitted to these constitutional functionaries. The Supreme Court may not even be willing to entertain a challenge to decisions that do not fall within the purview of Article 135 even though they may be made under this access law. This leaves a whole range of information-related disputes pertaining to the office of these constitutional functionaries outside the jurisdiction of the Supreme Court. This will be the unfortunate consequence of passing this clause in its current formulation, particularly in the absence of an independent Ghana Information Commission.

(c) The wording of clause 6 is too broad and undesirable. International best practice requires class exemptions be avoided in access laws. While *some* information in *some* Cabinet papers may be sensitive - and on that basis, will be covered by one of the other exemptions in this Bill - it is not the case that *all* Cabinet papers will *always* be sensitive. Ghana is a functional and responsible democracy and the people should have the right to know about the proposals being suggested and should have access to the materials used by Cabinet when it makes a decision on such proposals. International best practice does not support such a strict approach to protecting Cabinet information. The appropriate protection for Cabinet documents should be directed at whether premature disclosure would undermine the policy or decision-making process. Thus, an exemption should only be available to protect information submitted to Cabinet where disclosure would *"seriously frustrate the successful formulation or implementation of a policy, by premature disclosure of information concerning the decision-making process involving that policy"*. In recognition of the fact that Cabinet papers are largely time sensitive, it is worth noting that in Wales, UK, the Cabinet proactively discloses all minutes, papers and agendas of its meetings within 6 weeks unless there are overriding reasons not to. In Israel, Cabinet decisions are automatically made public on the Prime Minister's Office website. Sub-clause 4 of clause 6 of this Bill leaves room for discretion of the Cabinet to decide on matters pertaining to disclosure or otherwise. Such decisions must be decided by an independent body. Also as people have the right to know the decisions taken by the Cabinet, they must be routinely disclosed after the matters are complete. **Including a proviso similar to the proviso to the section 8(1)(i) of the Indian RTI Act is recommended.**

(d) Clause 7(1) (a) provides for exemption of information from disclosure if it contains matter which if disclosed can reasonably be expected to 'interfere' with the prevention, detection, curtailment of a contravention or possible contravention of law. The usage of the term "interfere' signifies a very low threshold of the harm test usually prescribed in progressive ATI laws. It is advisable to change substitute this with a stricter harm test such as "seriously harm" or "seriously prejudice". This clause will have to be reformulated accordingly if this suggestion is accepted. Although police investigations should be protected, clause7(1)(c) is very broadly worded. Currently the clause is limited to investigations and exemption applies as long as it "reveals" any and all investigative techniques and procedures. Generally investigation techniques and procedures are in the public domain written into police manuals and standard operating procedures. What needs to be protected is the plan for or the manner of their application in specific cases as disclosure of case specific techniques and methods may jeopardize the outcome of the entire investigation process. Therefore, the formulation of this clause may be tightened leaving less room for abuse or misuse. In order for an exemption to apply, it should be necessary for the disclosure of the requested information to actually cause (serious or substantial) prejudice. **Consideration may be given to amending the wording in clause 7(1)(c) to relate to specific cases of investigation only**.

(e) In clause 7(1)(e) there is a minor drafting error. ***Consideration may be given to replacing the word "offence" with the term "offender" which is more appropriate to the context.***

(f) The manner of drafting of clause 7(h) gives the impression that records confiscated in accordance with an enactment will be barred from disclosure for all time to come. This is not in tune with international best practice. Such documents become public information when they are produced before a court or tribunal as part of any proceedings. Access to documents produced as evidence in open courts cannot be denied under the RTI law. They may be withheld from disclosure only until they are produced before a court or tribunal. ***Consideration may be given to rephrasing clause 7(h) as follows- "to reveal a record of information that has been confiscated from a person by a police officer or a person authorized to the effect the confiscation in accordance with an enactment prior to its production in any judicial or quasi-judicial proceedings".***

(g) Clause 7(1)(i) provides for exemption of information from disclosure if it contains matter which if disclosed can reasonably be expected to interfere with the maintenance or enforcement of a lawful method or procedure for protecting the safety of the public. Again the use of the term "interfere' signifies a very low threshold of harm. It is advisable to substitute this word with the phrase "seriously harm" or

"seriously prejudice" to make the harm test much stricter. **The clause will have to be reformulated accordingly if this suggestion is accepted.**

(h) In clause 7(2) ***consideration may be given to replacing the phrase- "Information is not an exempt information" with "information shall not be withheld"*** in order to harmonise it with the general recommendation that we have made at sub-para (a) above.

(i) Clause 7(3) provides a blanket exemption to the Armed forces, security and intelligence agencies from the obligation of disclosure of information relating to the security of the State when generated under the enactment specified in that clause. This provision is too broad and can be misused to withhold practically any information generated by these agencies in the said context under the guise of protecting State security. International best practice requires that only such information be exempted that would jeopardise their ability to carry out their statutory functions or if disclosure would harm the maintenance of security or dry up intelligence flows. As these bodies are also established in public interest, funded by the taxpayer's money and they function for the benefit and well-being of the people they should also be subject to the same standards of disclosure as other government agencies. This is the practice in countries like the UK and Ireland as well. Sensitive information handled by the armed forces and other security and intelligence agencies are in any case protected under sub-clauses (a) to (m) of clause 7(1). ***Consideration may be given to deleting clause 7(3).***

*(j)* The harm test contained in clause 8(1)(a) is of a very low threshold. The key concern ought to be whether disclosure would actually cause serious damage to a legitimate public interests which deserves to be protected. ***Consideration may be given instead to withholding disclosure only when it will lead to "serious harm" or "serious damage" to relations of the Government with any other country.***

*(k)* The language of clause (c) of clause 8 (1) is too broad. The current formulation increases the possibility of its abuse. Simply because information was given to the Government of Ghana in confidence by an international organisation of states does not require it to remain confidential. This amounts to providing blanket exemptions which is not in tune with the twin principle of maximum disclosure and narrowly drawn circumstantial exemptions. At the time it was communicated it may have been sensitive, but at the time it is requested for by any person its disclosure may not have harmful consequences. Disclosure of such information need not be prevented in such circumstances when the harm caused is not demonstrable. As long as the more general protection which guards against disclosures that would prejudice international relations is retained, the relevant interests will be protected. ***Consideration may be given to deleting clause 8(1)(c).***

(l) **Clause 8 (2) provides for exempt information to be disclosed by the prior approval of the President.** The decision of disclosing exempt information, must be made by an independent body such the proposed Ghana Information Commission (refer to para 47 below) or a competent Court as the President is the executive head of the State and may not always decide the case impartially being an interested party. Further this provision is not in tune with international best practices. Access to information which is a fundamental right of the seeker ought not to be subjected to executive fiats in this manner.

*(m)* The harm test contained in clause 9(a) is also of a very low threshold. The key concern ought to be whether disclosure would actually cause serious damage to the defense of the Republic. ***Consideration may be given instead to withholding disclosure only when it will lead to "serious harm" or "serious damage"*** to the defense of the Republic. The reference to terrorism in the same clause is also cause for concern. Instances of lawful behaviour and petty crimes being treated as terrorist offences are not uncommon in both developed and developing countries. As clause 7(1) contains adequate protection for information relating to investigation of offences there is no need to single out terrorism in this provision. ***Consideration may be given to deleting the term "terrorism' from this clause.***

*(n)* Clause 10 (a) includes within its ambit any information containing trade secrets or financial, commercial, scientific or technical information having a "monetary or potential monetary value". This would include every publication with a price and this could also lead to refusal of access to even budget documents. ***Hence, it is recommended that a harm test be introduced in this sub-clause to protect the legitimate commercial interests of the holder of such categories of formation and also require the proposed Ghana Information Commission to apply the public interest override test before making a decision about disclosure.***

(o) Clause 10 (e) provides for exemption of information pertaining to criteria, procedures, positions or instructions which relate to negotiations carried on or to be carried on by or on behalf of the Government***. It is recommended that unless such negotiated instruments or treaties are subject to ratification by Parliament such information must be placed in the public domain***. Even otherwise a minima of information about such negotiations must be made public at the time of their occurrence to inform the people about how best the negotiators are representing their interests.

*(p)* The language of clause 10(f) may be extended to similar instances involving recruitment or career advancement. The same level of protection is required for these processes in order to prevent misuse of the RTI Act. ***Consideration may be given to adding these two circumstances to this exemption. The provision might be***

***rephrased as follows:*** *"if disclosure will compromise the integrity of an examination or test for educational or recruitment purposes or give undue advantage to any examinee."*

*(q)* The word "impliedly" used in clause 11(1) is too vague and is liable to be misused. ***Consideration may be given to deleting this word, where it is in the public interest that such information continues to be supplied.*** In Clause 11 (1) (a) the inclusion of words, 'interference with contractual position' puts out of the purview of this access law, all contracts containing confidentiality clauses. ***It is advisable to delete this ground as other grounds mentioned in this exemptions clause offer adequate protection for legitimate interests that require protection***. The phrasing of clause 11(c) is also vague and liable to misunderstanding. The obverse of this ground is correct and not the current formulation. Hence, ***consideration may be given to deleting the word "which is".***

*(r)* Clause 12 which provides for exemption from disclosure to information relating to tax. It is worthwhile noting that in countries like Norway, tax data is public information as this helps in avoiding tax evasion and creates a responsible tax-paying citizenry. ***Consideration may be given to disclosing at least some information about taxes paid by individuals and other persons.***

*(s)* It is not in tune with international best practices to exempt internal working documents of government agencies from disclosure as it is against the principles of maximum disclosure and minimum exceptions. While some internal working papers may be sensitive, it is completely inappropriate to extend a blanket exemption for all such information. This is an unjustifiably broad protection which could very easily be abused by officials of all ranks to keep their working documents secret. Any sensitive information contained in such documents may be withheld using other exemptions already provided for in this law. ***Consideration may be given to rephrasing clause 13 in order to lay down specifically the grounds for exemption and not to extend a blanket exemption. Further, Clause 13 (1) (b) must say for the sake of clarity that unless other exemptions are applicable such information will be proactively disclosed after the decision is taken and prior to its implementation.***

(t) The waiver of privilege is loosely worded in clause 15(2). In order to ensure that a person has truly waived the privilege of confidentiality it must be in writing. **Consideration may be given to adding the phrase *"in writing"* at the end of this clause.** Further "knowingly waive" may be replaced with the phrase "gives informed consent to waive the privilege"

(u) Clause 16 imposes a blanket cover on all the communications made between a doctor and a patient***. Consideration may be given to amending the provision to make information available to the family members or guardians of the patient where disclosure of such information is beneficial to the interest of the patient or is necessary for protecting the right of any other person***.

*(v)* The provisions exempting personal information from disclosure under clause 17 are broader than what international best practice warrants. For example the treatment of marriage-related record as exempt information is unnecessary as most of this information will be available in public documents such as marriage registers. Transparency in matters such as who is married to whom is useful to women particularly when ill-treated by polygamous men. Similarly treatment of employment records especially in a government agency as personal matters of the employee is not justifiable however there is some justification for providing such proection to employees of a purely private body. ***Consideration may be given to amending this clause to cover only purely private bodies.*** Trade secrets and commercial interests are already protected under clause 11. There is no need to repeat it in this context. ***Consideration may be given to rephrasing and redrafting this clause, to narrow down the exemptions provided there.*** Moreover, in clause 17(3), it is not clarified whether any one or more of these conditions are required to be satisfied before the disclosure is considered to be reasonable. ***Consideration may be given to include the words, "if any one or more of these conditions must be satisfied in any given case."***

(w) In accordance with our recommendation above ***consideration may be given to replacing the phrase 'information is not exempt' with the phrase, 'information shall not be denied'.*** Furthermore clause 18 limits the number of grounds on which public interest will determine disclosure of exempt information to four. This is not in tune with international best practice. 'Public interest' is not a closed category and often varies from case to case depending upon the circumstances in which information si sought or the circumstances in which the existence of harm due to disclosure must be tested. **Consideration may be given to adding the phrase "but not restricted to the following".** ***Further, establishment of an independent Ghana Information Commission to make this decision is recommended, as a public or private body may not always make an unbiased decision.***

Clause 18 implies that any one of the sub-clauses and the additional condition must both be satisfied for disclosure of exempt information. The "public interest override" must be independent of all other conditionalities mentioned here as there may be several other grounds favouring disclosure even though the conditions mentioned in the sub-clauses may not be attracted. Simple grounds such as the necessity of public debate on a controversial issue that has to do with exempt information should be ground enough for disclosure. Further leaving the matter of public interest to be

decided by the agency or later by the Minister is not a good practice as they will all be interested parties prejudiced in their opinion. The public interest in disclosure must be determined by an independent body such as the proposed Ghana Information Commission. Leaving it to the Supreme Court for reasons explained above and also would not encourage many people to use this route, as court proceedings are very expensive and time consuming. Further for many public and private bodies outright refusal to disclose information in spite of Clause 18 may become the default option. This is being faced in the Indian context in innumerable cases even when the information is not covered by any exemption. There is a clearly visible tendency in the bureaucracy to wait for the Information Commissions to order disclosure, so that the agency does not have to apply its mind seriously to a request. ***Consideration may be given towards having a strong and effective Information Commission chosen through a credible process, staffed with competent investigative staff and resourced directly by Parliament through grants in order to make determinations of public interest in an appeal or complaint under this law.***

*(x)* **Clause 19 (1) must be linked to Clause 20** to clarify "to whom" such application must be made. Consideration may be given to ***rephrase clause 19(1)(c) to replace from "form of access" to "type of access***.

***Recommendations:***

- Please *replace in all clauses the phrase "information is exempt"* with the phrase - *"access to information may be denied"*.

- Please delete s.5 (1) (a), 5(2) and 5(3) or as

- Please **include a proviso similar to the proviso to the section 8(1)(i) of the Indian RTI Act**

- Please insert the phrase ***'in a specific case'*** at the end of sub-clause 7(1)(c).

- Please replace the word ***"offence"*** with the term ***"offender".***

- Please insert the phrase ***"prior to its production in any judicial or quasi-judicial proceeding"*** at the end of clause 7 (1) (h).

- Please consider replacing the phrase - *"Information is not an exempt information"* with the phrase - *"information shall not be withheld" at the beginning of clause* 7 (2).

- Please delete clause 7 (3).

- Please insert the term **'*serious*'** before the term '**damage'** and replace the term **'prejudice'** with the term ***'serious harm'*** in clause 8(1) (a).

- Please delete s.8 (1) (c).

- Please delete s.8 (2).

- Please insert the term **'*serious*'** before the term '**damage'** and replace the term **'prejudice'** with the term ***'serious harm'*** in clause 9(a).

- Please delete the term **'terrorism'** from clause 9(a)

- Please weigh the **legitimate public interest** before providing for this blanket exemption in clause 10(a)

- Please place in the **public domain information** pertaining to such **negotiated instruments** or treaties are subject **to ratification by Parliament** in clause 10 (e)

- Please insert the phrase – ***"recruitment and career advancement"*** after the word **'educational'** and before the word **'purposes'** in clause 10(f) or rephrase the clause as

**"**if disclosure will compromise the integrity of an examination or test for educational or recruitment purposes or give undue advantage to any examinee".

-Please delete the ground of exemption as provided under clause 11(1)(a) as other grounds mentioned in this clause offer adequate protection.

- Please delete the term **"which is"** clause 11(1)(c).
- Please make provisions for **disclosing at least some information about taxes** paid by individuals and other under clause 12.
- Please delete s.13.

- Please delete s.14 (b).

- Please insert the phrase **"in writing"** at the end of s.15(2).

-Please insert provision regarding disclosure of information pertaining to patient by doctor to the family members or guardians of the patient in case benefits the patient or aids in protection of rights of a third person

- Please delete s.17 (b) and 17(c).

- Please **consider establishing a strong and effective Ghana Information Commission chosen through a credible process, staffed with competent investigative staff and resourced directly by Parliament.**

**-** Please rephrase clause 19(1)(c) to **replace from "form of access"** to **"type of access"**

- Please insert the phrase ***"but not restricted to the following"*** after the phrase 'disclosure of the

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| information reveals evidence of'. |

***Procedure for Access***

23. Experience from countries like India shows that information officers frequently insist that requestors seeking information proactively disclosed by public bodies file a formal written application. This defeats the very purpose of proactive disclosure. People in Ghana ought not to be required to file formal written applications for seeking access to the manuals prepared and disseminated under clause 3. ***Consideration may be given to adding the phrase – "other than that which is proactively disseminated pursuant to clause 3 of this Act" to the opening sentence of clause 19(1).***

24. Clause (a) of clause 19(1) requires that application for access to information be made in writing to the agency. It is advisable that the application be addressed to the Information officer of the government agency or private body directly. It is necessary to ensure that where the application is received by post or courier it is immediately forwarded to the Information Officer for action. In the absence of such a requirement there could be unnecessary delays especially when applications are addressed to other officers working in the government agency or public body. ***Consideration may be given to adding the phrase "information officer of" to clause 19(1)(a).***

25. Clause 19(1)(f) requires a person seeking information to enclose relevant fee while submitting an application. Read along with the provision for deposit of additional fee contained in clause 25 this amounts to imposing an application fee on every applicant. It is international best practice to collect only such fees that may be necessary for reproducing the requested information. There is no need to collect any fee at the stage of filing the application as neither the applicant nor the information officer would have a clear idea of how much it would cost to reproduce the requested information. In cases where the requested information is covered by one or more exemptions and no public interest is served by disclosure it is not proper to expect the applicant to pay a fee for information that he/she is not likely to get. Furthermore this law is being passed to give effect to a fundamental right of persons in Ghana. The Government should not treat this as an opportunity of increasing its revenue receipts from the public every time a person chooses to exercise his/her fundamental right to access information. ***Consideration may be given to deleting clause 19(1)(f)***.

26. In view of the recommendation made above ***consideration may be given to replacing the term "officer" with the term "information officer" in clause 19(3)***.

27. As this law gives effect to a fundamental right persons seeking information from public or private bodies covered directly by this law should not be required to give reasons. Unless

the law contains an explicit provision that does not require citizens to give reasons Information Officers steeped in the colonial mentality of maintaining undue secrecy in public affairs are likely to harass requestors for reasons and delay the decision-making process unreasonably. **Consideration may be given to inserting a new sub-clause to clause 19 that prevents information officers of public and private bodies covered by this law from demanding reasons from applicants for requesting information.** However in accordance with the argument provided above, purely private bodies can seek reasons before providing information as they do not have a perfect obligation like the State to give information unless the requestor claims that the information is required for protecting a legally enforceable right. **Consideration may be given to adding a new sub-clause to clause 19 that requires requestors to provide details of the right that is sought to be protected by disclosure of information from purely private bodies.**

28. Clause 20(2) provides the Information Officer the power to delegate functions in writing. Often these internal arrangements are not publicised widely and the person seeking information is often at a loss as to the identity of the officer he/she is required to approach with the information request. The delegation may be permitted only to an officer who is junior to the IO by one rank/grade. ***Consideration may be given to including a requirement in this clause that all delegation of powers under this clause be publicised widely.***

29. The time allowed for transfer of applications under clause 21 is too long. International best practice is to prescribe a shorter deadline for effecting transfers. **Consideration may be given to reducing the time limit allowed for transfer of applications from ten days to five.**

    Second, in accordance with our recommendation above, ***consideration may be given to amending clause 21 to the effect that applications fit for transfer shall be sent to the information officer of the other public or private body that is most likely to have the information.***

    Third, it is necessary to specify that the same time limits stipulated in clause 23 will apply to transferred applications also not including the time taken for such transfer. ***Consideration may given to amending clause 21(4) to indicate that the time limits specified in clause 23 shall apply to applications received from other public or private bodies subsequent to their transfer.***

30. Clause 22 which provides for deferred access must be subject to review for the requestor to establish why the information must be disclosed prematurely. ***Consideration may be given to the arguments forwarded by the requestor as to the public interest served in disclosing the information prematurely.***

31. Clause 23(1) requires disposal of an application within 21 working days. When read along with clause 26 that provides for an extension up to a further period of 21 days, the amount of time allowed for the Information Officer to make a decision becomes too long (almost 60 calendar days). This is not in tune with international best practices. ***Consideration may be given to reducing the time limit to 14 working days.***

    Second, Clause 23(2)(c) stands in contradiction to Clause 21 which requires written intimation of the transfer to the requestor within 10 working days. ***Hence consideration may be given to deleting this sub-clause.***

    Third, the provision in sub-clause (3) stipulates that if the information is fit for disclosure the applicant must get it within a period of not more than fourteen days. This time limit does not take into consideration the possibility of the applicant seeking a review of the fees required to be paid for accessing the information. ***Consideration may be given to deleting this clause and including a new clause indicating that access may be provided as expeditiously as possible upon payment of fees and in no case later than fourteen days of such payment.***

    Fourth, Clause 23(4)(a) ***must clearly indicate the reasons for an information not to be disclosed which must be based only on the provisions of this law and no other, i.e exemption clauses contained in this law.***

    Fifth, this clause provides for the charging of fees even where an application is rejected. As has been argued above, this is a law giving effect to a fundamental right guaranteed by the Constitution. The Government is best advised not to treat this as an opportunity for increasing its revenues at the cost of the information requestor. There is no reason why an applicant should be required to pay any fee when the Information Officer decides to withhold access. The expenses involved in making this decision and communicating it to the applicant are in any case borne out of taxpayer funds. There is no need to place an extra financial burden on the applicant. ***Consideration may be given to deleting clause 23(4)(d).***

    Sixth, clause 23(6) empowers the Information Officer to refuse to continue to process an application for failure to pay the deposit or fee. We have argued above that the applicant should not be required to pay a fee while submitting an application. Furthermore according to international best practice non-payment of fees cannot be a ground for refusal of access to information. The obligation of the government agency to provide access does not exist only when the information is covered by one or more exemptions and no public interest is served by disclosure. In all other circumstances the obligation to provide information does not come to an end just because some procedures have not been completed. It is often the case that procedures could not be completed due to some communication gap or due to the fact that the applicant may have sought an internal

review of the quantum of fees under clause 38(1). ***Consideration may be given to deleting the second half of clause 23(6).***

32. This Bill does not contain a provision of 'deemed refusal'. International best practice requires that all information requests not dealt with within the stipulated period be treated as instances where access has been denied. This enables the applicant to make use of the internal review mechanism or file a complaint with the proposed Ghana Information Commission instead of waiting endlessly for a decision from the Information Officer. Experience also shows that in the absence of such a 'deemed refusal' provision authorities responsible for conducting the internal review or independent Information Commissions do not entertain appeals or complaints against the Information Officer claiming that no written order of the Information Officer has been produced by the applicant. Such situations can be avoided in Ghana. ***Consideration may be given to adding a new provision relating to deemed refusal.***

33. Clause 24 discusses about the information that cannot be found or not in existence. Clause 24 (1) (a) makes provision in case the information is in possession of the agency but the same cannot be found, the applicant must be notified that the access is not possible. Alternatively, if the information cannot be found **a police complaint must be filed for loss of public property** under the criminal law procedures of Ghana.

    Further Clause 24 (4), creates a possibility that if the information is found after the notice, the applicant will be informed of the recovery of the information and access be given, unless it is exempt. The ***information must be provided free of charge to the requestor,*** if the notice is issued after the deadline for replying.

34. Clause 25 relates to payment of advance deposit towards the cost of providing information. This provision unnecessarily complicates the process of information giving. When the Information Officer makes a determination as to whether the information can be disclosed under the Act or not, he/she will also be able to calculate how much it would cost to reproduce the information and provide it to the applicant. There is no need to seek an advance deposit at all. Instead the Information Officer can send a written communication to the applicant indicating the exact amount of fees that needs to be paid for obtaining the information. Such communication should also contain details of the calculations made on the basis of which the total amount of fee was arrived at. According to international best practice the applicant has a right to seek a review of the fees charged if he/she thinks it is unreasonably high. Therefore the Information Officer will be required to indicate the name, designation and contact details of the authority where a fee review can be sought. International best practice also allows the filing of complaints against the charging of unreasonably high fees before Information Commissions as instances of charging high fees in order to frustrate the applicant and discourage him/her from

accessing the information are not rare. ***Consideration may be given to replacing Clause 25 with a more applicant friendly procedure.***

35. In accordance with our argument made above ***consideration may be given to reducing the time limit to 14 working days from 21 working days mentioned in clause 26 relating to cases where extension of time is sought for dealing with an application.***

    As for **Clause 26(3)**, where an extension of time is granted by the Information Officer, he grants nothing to the requestor except informing of the delay. Hence ***consideration may be given to including the intimation of extension within the initial 21 working day period.***

36. In accordance with our arguments above against empowering the Information officer to refuse access for failure to pay fees on the part of the applicant, and keeping in view the more applicant-friendly fee payment procedure recommended in this critique, ***consideration may be given to deleting clause 27 altogether.***

37. Most of the clauses in clause 28 dealing with the **procedure for refusal of information** are not in tune with international best practice. The only ground for refusal of access recognised in a vast majority of countries having information access laws is the applicability of one or more exemption clauses mentioned in such laws coupled with the absence of any public interest in disclosure. No other ground is valid. ***Clause 28(1) (b) meets this requirement. All other grounds are unnecessary and will have the effect of curbing the fundamental right to information needlessly.*** First, vesting the Information Officer with powers to reject applications on the grounds that they are vexatious or frivolous is dangerous and liable to misuse. In the absence of what constitutes vexation in the law any application for information that may reveal poor decision making, corruption, wastage or misuse of public funds is liable to be treated as vexatious. Furthermore what may appear to be serious and public spirited to an applicant may be termed as frivolous information request by unscrupulous officials who stand to gain from continued secrecy about their actions.

    Second, diversion of resources of the agency or private body cannot be a reason for denying access to information. Where access cannot be granted in the form requested by the applicant access may be given in some other form that has the approval of the applicant. Clauses 3 and 4 of clause 29 already contain adequate provisions for handling such requests that are in accordance with international best practices. ***Consideration may be given to deleting clause 28(1)(c).***

    There must be a **check on this power by way of proactive intimation of the decision of refusal on this ground to an Information Commission, so that the legitimacy of the decision can be judged by an independent agency.** The FOI law of Ontario serves a

good example in this regard as all such refusals must be notified to the Information Commissioner. Clause 28 (1) (d) creates a situation where access to such kinds of information may be often refused simply because the relevant laws will have hardly have any provision for remedying refusal. ***If information of this kind is sought under this law, it should be provided and fees may be collected in accordance with the other law under which such documents are accessible, if applicable.***

Third, clauses 28(1)(d) and (e) are also unnecessary and liable to be misused. Accustomed to enforcing a regime of undue secrecy for long, bureaucracies around the world especially in developing countries, do not allow easy access to public registers and other documents available for inspection free of cost or for a price under laws such as those relating to environment, registration of transactions in immovable property, record of rights in land and regulation of the affairs of public and private sector companies. On of the reasons behind poor compliance with transparency provisions contained in such laws is the absence of a strong enforcement mechanism and sanctions for willful violation. Therefore it has become necessary to have laws like the current one that require all government agencies to share information with people. People will make use of RTI laws in order to access public registers because it there is a guarantee of access within a time limit and sanctions can be demanded against officers who do not comply. It is necessary to allow access to such records under RTI laws as well because they also constitute 'information' within the definition of the term provided. ***Consideration may be given to deleting clauses 28(1)(d) and (e)***. Fourth, clause 28(1)(f) is also liable to be misused. For example if a record is already available for sale the Information Officer has to merely collect the price of the publication from the requestor and provide him a copy. There is no valid reason for denying access just because it is available for sale. Furthermore a publication put up for sale may run out of print. In such cases using this clause to deny access will amount to unreasonable denial of information. Instead the Information Officer should provide access to the lone copy of the document available with his/her agency either by way of inspection or photocopying or some other electronic format is such facilities are available. ***Consideration may be given to deleting clause 28(1)(f).*** Fifth, denying information because it is part of library material in general is also not in tune with international best practices. It is possible that several publications and documents produced by Government departments may be preserved in libraries long after they have run out of print. In such instances access may be requested under the RTI law. If the library is run out of public funds access to copies of such publications cannot be denied. A better way of phrasing this clause is to link it to violation of private copyright which is a reasonable way of balancing the right to information against the rights of authors and private publishers. If the State owns the copyright to a requested document, access must not be denied solely on that basis because the copyright belongs to the people of Ghana in the ultimate analysis. However if providing access to a document over which the State has a copyright is likely to lead to serious harm to public interest such revelation of trade

secrets of a public sector company or jeopardize the ability of Government to manage the economic affairs or seriously harm the defence or security of the Republic those grounds will be valid for denying access. ***Consideration may be given to replacing clause 28(1)(g) with a provision that protects private copyright.***

38. ***Consideration may be given to deleting clause 29(3)(c) in view of the above recommendation to avoid duplication.*** Sixth, keeping in view the aforementioned arguments, ***consideration may be given to moving a suitably amended clause 28(2) to clause 29 as it relates to the manner of providing access.***

39. The provisions relating to manner of granting access contained in clause 29 refer to grant of copies of documents at clause 2. This is not adequate as the requestor has the right to access documents that are true copies of the original. In countries like India RTI laws in addition to other domestic laws provide for supply of copies of documents that are certified by competent officers as being true copies of the original. Including this provision in the RTI law ensures that Information Officers will not tamper with the contents of copies of documents before supplying them to the requestor. The threat of sanctions against falsifying documents also acts as a deterrent. Certified copies of documents can also be produced as evidence in courts. ***Consideration may be given to including the term 'certified' in clause 29(1)(ii)***.

40. Given the fact that corruption in the procurement of materials used in public and private bodies either for routine office work or the construction of roads, premises or other facilities is not uncommon, developing countries like India have included the right to inspect ongoing public works and the right to seek and obtain certified samples of such materials within the definition of 'right to information'. As the RTI Bill seeks to contain corruption in Ghana it is advisable to include a similar provision. ***Consideration may be given to inserting a new provision in*** *clause* ***29(1) that grants certified samples of materials used in public and private bodies.***

41. Clause 29(3)(c) which provides for exemption from giving access to information in the requested form wherein it would involve the infringement of a copyright subsisting in a matter contained in the information. It is advised that only private copyright must be protected and ***this clause should not be applicable to a case where the copyright vests with a State agency.***

***Recommendations:***

- Please insert the phrase **"o*ther than that which is proactively disseminated pursuant to*** clause ***3 of this Act*"** after the phrase **"access to information held by an agency"** and before the word

**"shall"**.

- Please insert the phrase ***"information officer of"*** after the phrase **"in writing to"** and before the phrase **"the agency"** in clause 19(1)(a).

- Please delete clause 19(1)(f).

- Please replace the term **"officer"** with the term ***"information officer"*** in clause 19 (2).

- Please insert a new sub-clause (4) to clause 19 as follows:

***"An applicant shall not be required to provide reasons for seeking information from a government agency under this Act and no officer shall compel such applicant to disclose reasons for seeking information".***

- Please insert a new sub-clause (5) to clause 19 as follows:

***"An applicant seeking information from a private body under this Act shall provide details of the right that is sought to be protected by the disclosure of such information."***

- Please insert the following lines at the end of clause 20(3)(a):

***"shall be publicised widely through notice boards and advertisements in popular dailies electronic media including internet websites and"***

- Please delete clause 21(1)(b).

- Please replace the word **"ten"** with the word ***"five"*** in clause 21((1).

- Please add the following phrase at the end of clause 21(4):

**"*and shall be dealt with in accordance with the time limits as specified under*** clause ***23".***

**-** Please consider the arguments forwarded by the requestor as to the public interest override in disclosing the information prematurely in clause 22**.**

- Please replace the word **"twenty one"** with the word ***"fourteen"*** in clause 23(1).

- Please delete clause 23 (2)(c) and 23(3)(a).

- Please rephrase 23(4)(a) to clearly indicate the reasons for an information not to be disclosed which must be based only on the provisions of this law and no other, i.e exemption clauses 5-18.

- Please delete clause 23(4)(d).

- Please delete the lines **"or which agency has refused to continue to process for failure to pay the required deposit or fee."** from clause 23(6).

- Please insert the following new clauses 23(7) and 23(8) below clause 23(6) as follows:

**"23. (7)** ***Where the information officer decides to give access on payment of a reasonable fee, access to the requested information shall be provided to the applicant as expeditiously as possible, upon payment of such fee, and in no case later than fourteen days from the date of payment of such fee."***

**23. (8)** ***Subject to the procedure specified under*** clause ***26 of this Act, where an Information Officer fails to gives a decision on an application within the time limit specified the application shall be deemed to have been refused and the applicant may take steps that are open to him or her under*** clause ***38 to 46 of this Act."***.

-Please provide for filing of **police complaint for loss of public property** under the criminal law procedures of Ghana in clause 24(1)(a).

-Please amend clause 24(4) so as to ensure free access to requested information in case where notice is issued after the deadline for replying.

- Please replace clause 25 with the following:

***"Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Information Officer shall send an intimation to the applicant giving—***

***a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-*** clause ***(1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-*** clause***;***

***(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other relevant information."***

- Please replace the word **"twenty one"** with ***"fourteen"*** in clause 26(2).

-Please include **the intimation of extension within the initial 21 working day period.**

- Please delete clauses (a), (c), (d), (e) and (f) of clause 28(1).

- Please replace clause (g) of clause 28(1) with the following:

***"providing access would involve infringement of copyright subsisting in a person other than***

***the State."***

- Please amend the contents of clause 28(2) as give below and move it to clause 29 as a new clause 29(3)(1):.

***"Where it is not possible to provide access to information in the form in which it is sought by the applicant, the Information Officer shall assist the applicant to amend the application so that the work involved in processing it will not, if carried out, substantially and unreasonably divert the resources of the government agency or private body, as the case may be, away from their use in the performance of its functions."***

- Please insert the word ***"certified"*** after the word **"a"** and before the phrase **"copy of the document"** in clause 29(1)(ii).

- Please delete the word '**or**' at the end of sub-clause (e) and insert the following new sub-clauses under clause (f) of sub- clause (1) of clause 29 :

***"g) by giving certified samples of materials used in public works, or***

***h) by giving the applicant a reasonable opportunity to inspect ongoing public works."***

- Please delete clause 29(3)(c).

***Amendment of personal records in custody of an agency***

42. **This chapter must find place in the data protection law a Bill for which has already been introduced in the Parliament of Ghana in 2012 instead of the law on the right to information.**

***Internal reviews and appeals***

43. Sub clause (2) of clause 38 provides for a review mechanism that is internal to the public or private body covered by this law. There are a few problematic provisions that need to be amended to bring the internal review procedure in tune with international best practices. First, the Bill envisages that an internal appeal will be accompanied by "a prescribed fee". This is not in tune with international best practice. Stipulating fees for fling appeals may act as a deterrent for an economically disadvantaged person from approaching this mechanism. ***Consideration may be given to deleting the requirement of a fee payment for seeking internal review of the decision of an Information Officer [Clause 38(2)(b)].*** Second, the responsibility of conducting internal reviews has been placed at a very high level. This may not be a suitable mechanism for offices situated at

the field level in remote areas. In many such cases applicants would like to present their views and arguments in person as is indicated by the experience from developing countries like India. The Minister is also likely to be overburdened by applications seeking internal review when more and more people start making use of the act to obtain information. It is a better option to designate an officer senior in rank to the Information Officer in each office of the government agency or the private body to look into applications for internal review. ***Consideration may be given to designating officers senior in rank to the Information Officer in every office to conduct internal reviews [Clause 38(2)(c)].*** Third, requestors from information may not be able to file applications for internal review within the deadline for very genuine reasons such as ill-health or breakdown of transport and communication due to natural calamities. In order to provide for such circumstances the appellate authority should be vested with the power to condone delays ***and extend the time limit to 30 working days*** in submission of the application for internal review. **Consideration may be given to vesting the appellate authority with the power to condone delays *and extend the time limit to 30 working days* in filing applications for internal review.**

44. Clause 39(3) requires that all proceedings related to the review be conducted *in camera*. This is not in tune with international best practices. Merely holding a hearing into the review application does not amount to disclosure of exempt information that is the subject of the dispute. All such hearings should be held as open proceedings or else there would be no way of protecting an innocent person from being victimized for seeking a review. He may be threatened, attacked or accused of destroying official property and if there is an in camera proceeding, he will not have witnesses to support his defence against such allegations made during a hearing. Further, the applicant or his authorized representative should be given adequate notice of the date and venue of the review proceedings. The applicant should also be given a fair chance of making representation either verbally or in writing at the proceedings. **Consideration may be given to amending this provision to state that all hearings relating to internal reviews must be held in accordance with the principles of natural justice and in public. However a document for which exemption is claimed by the public or private body, such information may be perused only by the reviewing officer before deciding whether the applicant must be granted access to a copy or not.**

45. Clause 40 refers to delay or default on the part of the applicant as a precondition for notifying the decision in a matter relating to internal review. This is an unnecessary requirement in view of our arguments above that no fees need be paid by the applicant. This is too expensive for a common citizen. ***Consideration may be given to the establishment of the proposed Ghana Information Commission for adjudicating such access before the stage of approaching the Supreme Court.*** The mere filing of an

application for review ought to be sufficient cause for conducting the review proceedings and arriving at a final decision. ***Further, under Clause 40 (4) consideration may be made to provide for reasons, in cases where access to information was denied by the Minister.***

46. International best practice requires that where information that is the subject of a dispute under RTI laws pertains to confidential or sensitive information relating to a third party such third party ought to be given an opportunity to make a representation during the internal review proceedings. This Bill adequately protects the rights of third parties at the applications stage. The same protection must be given at the stage of internal review as well. ***Consideration may be given to inserting a new clause under*** *clause* ***40 to provide third parties with an opportunity to make a representation at internal review proceedings.***

47. In accordance with our arguments above, there is no need to provide for the delegation of powers of the Minister regarding internal appeals. Delegation of this responsibility will in all probability become the default option as no Minister would like to be made accountable before the proposed Ghana Information Commission or the Supreme Court for denial of information. This would take away the gravity of the review process. ***It is advisable to make the highest ranked bureaucrat in each agency the reviewing authority.*** Ministers must only supervise the implementation of the law as representatives of the people. ***Consideration may be given to deleting*** *clause* ***41.***

***Recommendations:***

- Please delete clause (b) of clause 38 (2).

- Please replace the term **"Minister with responsibility for the agency"** contained in clause 38(1) with the phrase ***"designated appellate authority who shall be an officer senior in rank to the Information Officer"***

- Please replace all references to the term "Minister" with the term ***"appellate authority"*** from clause 38(2) onwards up to clause 40.

- Please insert a new clause (e) below clause 38(1)(d) as follows:

***"Where the application for review is sought to be filed after the expiry of the period specified in clause(d), the appellate authority may admit the appeal if he or she is satisfied that the applicant was prevented by sufficient cause from filing the application in time."***

- Please replace clause (3) of clause 39 as follows:

***"the appellate authority shall conduct the review in accordance with the principles of natural justice and the procedural requirements of a fair hearing."***

- Please delete the **comma (,)** after the term **"review"** and the phrase **"if there is no delay or default on the part of the applicant"** contained in clause 40(1).
-Please amend clause 40(4) to provide reasons in cases where access to information was denied by the Minister.

- Please insert a new clause (5) below clause (4) under clause 40 as follows:

"***If the application for review relates to information of a third party protected under this Act, the appellate authority shall give such third party a reasonable opportunity of being heard before arriving at a decision on that application."***

- Please delete clause 41.

***<u>Recommendation for setting up an independent Information Commission for Ghana</u>***

48. The RTI Bill contemplates further appeals to courts of law in Ghana. Clause 42(1) provides for judicial review by the Supreme Court. It is suggested that the judicial review of a decision to withhold access to information must be the last option. After the internal review stage, ***consideration may be given to incorporating a provision for the creation of an independent Information Commission*** or ***an Information Commissioner with two Deputy Information Commissioners assisting him/her*** to decide cases of appeals against the decision of an agency. The responsibility of monitoring the implementation of the Act must lie with them. If this responsibility is left in the hands of politicians and the bureaucracy, they may not show much interest in implementing this law. Making them answerable to the Apex Court will be a herculean task for an individual or even an organisation. Further, the option of judicial review is available only when access is denied for information sought through a formal application. There is simply no remedy if an agency does not perform its proactive disclosure obligations. Consequently, if the scheme of this Bill is allowed to enter the statute book without amendment, it would mean that in order to move to the Supreme Court to enforce the proactive disclosure provision, an applicant would first have to make a formal request in writing and then go up to the internal review stage for redress. This process would defeat the very purpose of the proactive disclosure provision in the Bill. Otherwise the writ jurisdiction of the

Constitutional courts will have to be invoked to enforce the proactive disclosure provision through a petition praying for issue of a writ of mandamus. There is nothing to prevent Supreme Court when approached so from directing the petitioner to move a formal application before the agency to seek the information and to exhaust all other remedies available to him and then approach the Court. This would demean the existence of the provision for proactive disclosure as enforcing it would be so entangled.

49. Further, international best practice requires the setting up of an independent and specialized body that will inquire into appeals against the decision given in internal review proceedings. Such Commissions are vested with the power to receive direct complaints from persons aggrieved by any act of commission or omission of Information Officers. Countries like Canada, the UK, Antigua and Barbuda and India have opted for single member or multi-member Information Commissions. In countries like New Zealand and Pakistan the Ombudsman (Ombudsmen) play(s) the role of an independent appellate authority.

50. Having an independent Information Commission is advantageous for several reasons. First, courts will not be overburdened with information access related disputes allowing them time to focus on other routine litigation. Second, as Information Commissions are quasi-judicial bodies appellants and complainants will not find the proceedings expensive and cumbersome. In countries like India, not court fees are charged or lawyers required to be hired by the litigants for making a successful representation before the Information Commission. Third, in countries like Mexico and the UK, Information Commissions are not merely adjudicatory bodies. They are also champions of transparency in government bodies. They are empowered to develop schemes for proactive disclosure and programmes for improving records management in consultation with Ministers and other senior officers in Government to smoothen the implementation of this law. Fourth, Information Commissions also monitor the implementation of RTI laws and submit an unbiased report to Parliament regarding levels and quality of compliance in public bodies. This report is likely to be more objective than a report submitted by the Government. These positive aspects of having independent appellate authorities are proven across the world. It is therefore advisable that ***consideration may be given to establish an independent Information Commission of such composition as may be decided by the legislators of Ghana.*** The RTI laws of Mexico, India, Nepal and Bangladesh serve as useful models of multi-member Information Commissions, while UK serves the best model for one Information Commission assisted by two or more Deputy Information Commissioners.

Further, if the grounds for approaching the Supreme Court are limited in this manner provided in Clause 42, the best way in which an agency can frustrate an applicant is to simply not issue a decision at all. Then in the event of absence of a decision the Court will not entertain any petition for review. This is one of the favorite loopholes utilized by the

agencies in some of the Indian States to escape the responsibility of providing information or at least an order of rejection. Courts usually tend to stick to the black letter of law while interpreting the law and would end up rejecting a petition only on the grounds that there was no order from the reviewing authority. This vicious trap must be avoided. Hence, ***consideration may be given to incorporate all grounds for internal review including a situation of 'no reply' at any stage as an adequate ground for moving to the Information Commission and later the Court***. A very detailed scheme for setting up and empowering an Information Commission is proposed below.

Clause 42 (2) provides for the lime limit within which the application for judicial review is to be filed with the Supreme Court which is twenty one working days. If we take into Consideration the fact that the review lies in a Constitutional Court where every missing comma or line spacing can be grounds for refusal to admit a petition, adequate time must be provided to an applicant. There could be instances where unscrupulous officers in the agencies have an applicant seeking inconvenient information attacked and get him hospitalized so as to prevent him from seeking a judicial review within the time limit. Attacks on RTI users are not uncommon in India. So, ***consideration may be given to extend the time limit for seeking a review from the Information Commission and the Court must be at least six months.***

51. In order for the Ghana Information Commission to become an effective champion of transparency it is necessary to have an objective and unbiased public process for appointment of members of this Commission. Their rank and prestige should be kept sufficiently high in order to ensure that their orders are obeyed. Membership of the Commission must be drawn from a wide pool of talent available in a variety of fields in Ghana such as law, governance, social service, journalism, science, technology and management. For a country of the size of Ghana a three or five member Commission ought to be adequate to start with. The Ghana Information Commission should have operational, financial and staffing autonomy in order to be able to function without fear or favour from any agency. It should be granted the powers of a civil court in order to be able to inquire into disputes. It should also have the powers to impose sanctions on errant officers. These sanctions should be in the nature of administrative penalties. Punishment for the more serious offences can be imposed by a competent court in the manner described below.

***Recommendations:***

- Please insert a new chapter relating to the constitution, powers and functions of the Ghana Information Commission as follows-

**"The Ghana Information Commission**

***40(A). (1) The President shall, by notification in the Gazette, constitute a body to be known as the Ghana Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.***

***(2) The Ghana Information Commission shall consist of—***

***(a) the Chief Information Commissioner; and***

***(b) such number of Central Information Commissioners, not exceeding five, as may be deemed necessary.***

***(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—***

***(i) the Chairman of the Council of State, who shall be the Chairperson of the committee;***

***(ii) the Speaker of the Parliament of Ghana and***

***(iii) The Chief Justice of the Supreme Court of Ghana.***

***(4) The general superintendence, direction and management of the affairs of the Ghana Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Ghana Information Commission autonomously without being subjected to directions by any other authority under this Act.***

***(5) (1) The Chief Information Commissioner and Information Commissioners shall be persons of proven eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.***

***(2) The Minister responsible for Justice shall prescribe in the Regulations the criteria for determining the 'eminence', 'knowledge' and 'experience' of candidates for recommendation for appointment to the Commission.***

***(6) The Chief Information Commissioner or an Information Commissioner shall not continue to be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession after appointment to the Commission.***

***(7) The headquarters of the Ghana Information Commission shall be at Accra and the Ghana Information Commission may, after prior consultation with the Attorney General establish offices at other places in Ghana in order to provide speedy resolution of information disputes under this Act.***

***40(B). (1) The Chief Information Commissioner shall hold office for a term of five years from the date on which he or she enters upon his or her office and shall not be eligible for reappointment:***

***Provided that no Chief Information Commissioner shall hold office as such after he or she has attained the age of sixty-five years.***

***(2) Every Information Commissioner shall hold office for a term of five years from the date on which he or she enters upon his or her office or till he or she attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:***

***Provided that every Information Commissioner shall, on vacating his or her office under this sub-clause be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-clause (3) of clause 12:***

***Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his or her term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.***

***(3) The Chief Information Commissioner or an Information Commissioner shall before he or she enters upon his or her office make and subscribe before the President an oath or affirmation according to the form set out for the purpose in the First Schedule.***

***(4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his or her hand addressed to the President, resign from his or her office:***

***Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under clause 40(C).***

***(5) The salaries and allowances payable to and other terms and conditions of service of—***

***(a) the Chief Information Commissioner shall be the same as that of a judge of the Supreme Court of Ghana;***

***(b) an Information Commissioner shall be the same as that of the Chief Justice of the High Court:***

***Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Republic of Ghana, his or her salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits***

***excluding pension equivalent of retirement gratuity:***

***Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his or her appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Act or a Government company owned or controlled by the Government, his or her salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:***

***Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.***

***(6) The Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.***

***40(C). (1) Subject to the provisions of sub-clause (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his or her office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.***

***(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.***

***(3) Notwithstanding anything contained in sub-clause (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be,—***

***(a) is adjudged an insolvent; or***

***(b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or***

***(c) engages during his term of office in any paid employment outside the duties of his office; or***

***(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or***

***(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.***

***(4) If the Chief Information Commissioner or a Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-clause (1), be deemed to be guilty of misbehaviour.***

***(5) It shall be the duty of the Government to fill up any vacancy, arising due to the retirement or resignation or removal of the Chief Information Commissioner or an Information Commissioner, appointed under this Act, as expeditiously as possible and in any case no later than a period of ninety days from the date of commencement of such vacancy.***

***40(D). <u>Powers and functions of Ghana Information Commission</u>. — (1) Subject to the provisions of this Act, it shall be the duty of the Ghana Information Commission to receive and inquire into a complaint from any person,—***

***(a) who has been unable to submit a request to an Information Officer, either by reason that no such officer has been appointed under this Act, or because an Information Officer has refused to accept his or her application for information;***

***(b) who has been refused access to any information requested under this Act pursuant to the review process under Section 38 of this Act;***

***(c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;***

***(d) who has been required to pay an amount of fee which he or she considers unreasonable;***

***(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and***

***(f) in respect of any other matter relating to requesting or obtaining access to information under this Act,***

***within ninety working days of receiving a decision made by an Information Officer or a reviewing authority under this Act or within ninety days of the date within which such decision ought to have been made under this Act.***

***(2) Where the Ghana Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it shall initiate an inquiry in respect thereof.***

***(3) In an inquiry proceeding pursuant to a complaint received under sub-clause (1), the onus to prove that a denial of a request was justified shall be on the Information Officer who denied the request.***

*(4) The Ghana Information Commission shall, while inquiring into any matter under this clause, have the same powers as are vested in a civil court while trying a suit under the laws of the Republic of Ghana, in respect of the following matters; namely:—*

*(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;*

*(b) requiring the discovery and inspection of documents;*

*(c) receiving evidence on affidavit;*

*(d) requisitioning any public record or copies thereof from any court or office;*

*(e) issuing summons for examination of witnesses or documents; and*

*(f) any other matter which may be prescribed.*

*(5) Notwithstanding anything inconsistent contained in any other Act or instrument having the effect of law for the time being in force in Ghana, the Ghana Information Commission may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public body, and no such record may be withheld from it on any grounds.*

*(6). (1) Notwithstanding anything inconsistent contained in any other law for the time being in force, the Ghana Information Commission shall during any inquiry initiated of its own accord or upon receipt of a complaint, under this Act have the power –*

*(a) to enter any premises occupied by any public body that is the subject of the inquiry;*

*(b) to conduct a search for any information that is the subject of the inquiry;*

*(c) to seize records, documents, files and any material defined in sub-clause (a) of clause (2) of this Act relating to information that are the subject of the inquiry;*

*(d) to examine any information seized from a public body under this clause;*

*(e) to converse in private with any person in any premises entered pursuant to paragraph (a) and otherwise carry out therein such inquiries within the authority of the Information Commission as may be appropriate.*

*(2) A public or private body that is the subject of an inquiry under this Act shall provide all reasonable assistance to the Ghana Information Commission and any of their authorised representative to enable the smooth conduct of the inquiry and shall not withhold access to any information from the Ghana Information Commission or its authorised representative.*

*(7) A complaint under sub-clause (1) shall be disposed of by the Ghana Information Commission within ninety working days of the receipt of the complaint.*

***Provided that the Ghana Information Commission may extend the time limit specified in this Section by thirty working days for reasons to be recorded in writing.***

***(8) If the complaint filed before the Ghana Information Commission relates to the information of a third party, the Ghana Information Commission shall give that third party a reasonable opportunity of being heard.***

***(9) In any review or complaint proceeding initiated under this clause, the onus to prove that the denial of access to information was justified shall be on the Information Officer or reviewing authority who refused such access.***

***(10) In its decision on a complaint filed before it, the Ghana Information Commission shall have the power to—***

***(a) require the public or private body as the case may be to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—***

***(i) by providing access to information and if so requested, in a particular form;***

***(ii) by appointing an Information Officer;***

***(iii) by publishing certain information or categories of information;***

***(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;***

***(v) by enhancing the provision of training on the right to information for its officials and employees;***

***(vi) by providing it with an annual report relating to compliance with the provisions of this Act;***

***(b) require the government agency or private body as the case may be to compensate the person filing the appeal or complaint as the case may be, for any loss or other detriment suffered;***

***(c) impose any of the penalties provided under this Act;***

***(d) reject the appeal or complaint as the case may be.***

***(11) The decision of the Ghana Information Commission shall be binding unless challenged before the Supreme Court in accordance with the provisions of this Act.***

***(12) An appeal against a decision of the Ghana Information Commission shall lie before the Supreme Court within a period of one hundred and twenty working days from the date of such decision.***

***(13) The Ghana Information Commission may also initiate of its own accord an inquiry, as may be appropriate, against any public or private body into any matter relating to non-compliance with the provisions of this Act including but not restricted to any of the circumstances in sub-clause (1).***

***(14) The Ghana Information Commission shall complete an inquiry initiated under sub-clause (11) within such reasonable time as it may deem appropriate and shall exercise all such powers as are granted to it under this clause in relation to such inquiry.***

***(15) During or on completion of an inquiry initiated on complaint from any person or of its own accord, if it appears to the Ghana Information Commission that the practice of a public or private body in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the public body a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.***

***(16) On completion of an inquiry, initiated of its own accord under sub-clause (10), the Ghana Information Commission shall submit to the public or private body a report of its findings along with any recommendations for ensuring better compliance with the provisions of this Act.***

***(17) On receipt of a report from the Ghana Information Commission under sub-clause (14) the public or private body shall report compliance within such period stipulated in the report or submit an appeal to theSupreme Court ni accordance with the provisions of thisAct.***

***(18) The Ghana Information Commission shall conduct an inquiry under this clause in accordance with such procedure as may be prescribed in the Regulations."***

***40(E). <u>Penalties for contravention of the provisions of this Act</u>: (1) Where the Ghana Information Commission at the time of deciding any complaint is of the opinion that the Information Officer has without any reasonable cause, refused to receive an application for information or has not furnished information within the time limit specified under this Act or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a monetary fine of up to fifty thousand cedis (GHC):***

***(2) Where the Ghana Information Commission at the time of deciding a complaint is of the opinion that the Information has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time limit specified under this Act or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend launch of proceedings against such Information Officer in the Court.***

***Provided that the Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him or her or a recommendation for launch of disciplinary proceedings is made against him or her:***

***Provided further that the burden of proving that he or she acted reasonably and diligently shall be on the Information Officer.***

***(3) The complainant shall not be denied the opportunity of being present in any penalty proceeding under this Act.***

52. Clause (2) of Clause 43 requires the Supreme Court to conduct hearings *in camera* on information access related disputes as a rule. This is not in accordance with international best practices. Holding hearings on information related disputes in public will not reveal sensitive information contained in the disputed documents. The Court can always examine such documents in camera but conduct other parts of the proceedings in public. The public has a right to every man's evidence presented n Court particularly in such disputes. ***Consideration may be given to requiring the Supreme Court to conduct hearings in accordance with the procedure provided in Article 135 of the Constitution of Ghana and with due regard to the principles of natural justice and a fair hearing .***

53. Clause 45 of the Bill allows parties to an information dispute to be represented by lawyers at the proceedings related to internal review or before a Court. International best practice requires that proceedings related to internal appeals, appeals and complaints before the Information Commission be least cumbersome for the applicant. Retaining clause 46 in the law in its current form will place an unfair burden on the applicant as the government agency or private body and the Information Officer will invariably hire lawyers given the fact that they are better placed in terms of resources. It will also make the proceedings unnecessarily adversarial which is not in tune with international nest practices. However it is common practice for advocates of transparency to provide *pro bono* support to individual appellants and complainants to argue their case better. This practice need not be barred. Representation by lawyers will be required only when matters reach the competent court. ***Consideration may be given to deleting the requirement of legal representation during proceedings related to internal review and appeals and complaints before the Ghana Information Commission.***

***Recommendations:***

- Please insert the words **"Subject to the Constitution"** at the beginning of clause 2 of clause 43 and replace the term **"in camera"** with the phrase ***"in accordance with principles of natural justice and fair hearing"***.

- Please replace clause 45 as follows:
***"Parties to a dispute regarding access to information under this law shall not be required to be represented by lawyers at any proceedings under this law save that before the Court under clause 42 of this Act."***

***General and Miscellaneous***

54. Clause 47 provides for designating an information Officer in a government agency (or private body) to deal with applications for information. Experience from other countries with similar laws shows that it is advisable to designate more officers than one as more and more information requests will be made as awareness about this law spreads amongst the people. ***Consideration may be given to empowering entities covered by this law to designate as many officers as may be necessary for giving effect to the provisions of this law.***

55. The Bill makes it the sole responsibility of the Information Officer to handle information requests. It is assumed that he or she will be able to manage the task single-handedly. Experience from developing countries like India shows that Information Officers will not be custodians of all information held by a government agency or private body. They may also lack the seniority to requisition records in the custody of their colleagues (senior or contemporary) in the absence of adequate powers. For example in the absence of statutory authority an Information Officer may not be able to requisition a file if his or her senior does not want to part with it. Experience also shows that unscrupulous officers refuse to part with information and the penalty is borne by the Information Officers for no fault of theirs. In order to avoid such unpleasant situations in Ghana ***consideration may be given to empowering the Information Officer to seek the assistance of any other officer in the agency to perform his or her duties. The law should also make it obligatory for any officer whose assistance has been sought to provide such assistance. Sanctions should apply to such other officer who refuses to part with information and not to the Information Officer dealing with the application.*** **Another option is to make the Head of the public or private body liable for providing the information to the Information Officer to make a decision regarding grant or refusal of access.** The RTI Act of Nepal not only makes the Chief of a public body liable for supplying information to the Information Officer but also provides for imposition of a penalty if he/she fails to discharge this duty lawfully.[4]

56. Clause 48 provides protection to all officers and functionaries for action taken in good faith against any litigation. In accordance with our recommendation about the formation of the Ghana Information Commission similar protection must be afforded to this body as well. ***Consideration may be given to inserting the phrase "Ghana Information Commission" in clause 48(1).***

[4] See Sections 6 and 32 of Nepal's RTI Act.

57. Clause (2) of clause 48 has the effect of preventing a person who obtains information under this law from publishing it. This caveat is linked to laws relating to defamation and breach of confidence. This provision is not in tune with international best practices. If information obtained under this law points to wrongdoing in a government agency or private body then the people have a right to know all about such matters. Retaining this provision will have the effect of curtailing the people's fundamental right of freedom of speech and expression guaranteed under Article 21(1)(a) of the Constitution of Ghana. If the fear is that a person obtaining information under this Act will misuse it, such matters can be dealt with under the existing penal laws of Ghana. There is no need to have such a restrictive provision in a law that seeks to promote transparency. Furthermore if the information obtained under this Act cannot be used publicly for debate one of the principle objective of this law namely, securing accountability in public affairs will stand defeated from the very first day of the operation of this law. People may be effectively discouraged from using this law in public interest. ***Consideration may be given to deleting clause (2) of clause 48.***

58. The fee **related** provisions contained in clause 50 if operationalised can be misused to impose a huge financial burden on the applicant as a manes of discouraging him or her from seeking information under this law. The purpose of proactive disclosure of a list of the documents and files held by a public or private body is to enable the people to know what kinds of records that body holds. If that public or private body knows what information it holds and where, there is no reason why search fees must be charged on the applicant because records will be easily retrievable. The salaries of the officers who search for records are already paid for the by the taxpayers. There is no reason why the applicant must be burdened with additional costs. By way of analogy of tax laws, this is like saying that in addition to being paid the regular salary, a tax collector must also receive additional payment for the time spent on collecting taxes from each taxpayer. It is best to expand the proactive disclosure clauses of this Bill, and make such information easily accessible to the people so that they have little need to seek information through formal application. Only information reproduction charges or a nominal fee for every second hour of inspection of the document must be charged. The first hour of inspection must be allowed free of charge. ATI is a fundamental right. Its exercise should not be treated as an excuse for filling up the State's coffers or for imposing a financial burden so as to discourage a person from seeking the information at all. With great difficulty the RTI campaign in India got the Information Commission to recognise this principle. Nobody charges fees for search or compilation purposes in India any more. International best practice in both developed and developing countries requires that as far as possible no fee be charged for giving access to information as the exercise of a fundamental right cannot be subjected to payment of fees. However in the interests of ensuring optimum utilisation of the limited resources available with the government agencies and private bodies and also in order to

ensure that the right to information is exercised in a responsible manner, reasonable fees may be charged for providing access to information. This means that the body providing access shall not charge the applicant anything more than the cost of reproducing the information through the most economical means. Reasonable postage charges may be added to this amount if the applicant desires to receive the information by post. Requiring the applicant to pay for search, retrieval and collation of the information is against international best practice. These costs should be borne by the agency providing the information. In the case of government agencies these costs will be covered by public funds whose source is the tax payer. There is no rationale for passing on the burden once again to the taxpayer. In private bodies if the search and retrieval costs are likely to be high, access may be provided by making judicious use of the provisions relating to extension of time contained in clause 26 and the manner of access provided by this Bill. This would considerably ease the financial burden of the private bodies. ***Consideration may be given to amending clause 50 to ensure that only reasonable fees are charged from the applicant.***

59. Clause 51 provides for waiver of fees on basis of financial hardship of the applicant. Consideration may be given to inclusion of a provision of waiver of fee to disclosure of information pertaining to public interest such as the environment, public health, public safety etc. in which a large segment or all of the population has a stake.

60. Clause 53 details the responsibilities of the Minister responsible for Justice for giving effect to the implementation of this Act. First, it is commendable that the responsibility of conducting public education programmes about this law is vested in this office. However this is a discretionary power. It should be made obligatory and all such responsibilities must be executed in consultation with the proposed Ghana Information Commission which as has been argued above, is the champion of transparency under this law. Along with public education it is extremely important to develop training programmes for Information Officers and the Appellate Authorities. Experience around the country has shown that civil society inputs into developing and conducting such public education and officer training programmes go a long way in ensuring greater respect for this law at all levels. ***Consideration may be given to including in this provision the responsibility for developing and conducting training programmes for officers.*** As is the case in India and other developing countries ***consideration may be given to requiring the Minister responsible for Justice to develop a User Guide for the people in consultation with civil society organisations and the Ghana Information Commission.***

61. Clause 55 requires that an annual compliance report be prepared by the Minister responsible for Justice. Considering the load of work that this Ministry has, ***it is advisable that this reporting requirement be vested with the proposed Ghana Information***

***Commission***. Further clause 55 (2) (d) is quite ambiguous about the fact that an application may be made to a High Court, as such an appeal procedure does not find place anywhere else in the Bill. **Therefore, consideration may be given to deleting this term for the sake of clarity and conformity with other provisions.** Under clause 55 (3) Parliament must have the duty to examine this report and ask questions either in plenary or through one of its Committees. Annual reports in India though submitted to the legislatures have almost never been debated or discussed during the last eight years. ***It is advisable for Parliament to pay some attention to make an assessment of the implementation of the law that it enacted to establish a regime of transparency,*** and this cannot be achieved merely through the instrument of seeking answers to questions raised during the question hour.

62. Clause 56 requires that such a compliance report be placed before Parliament. International best practice in countries like the United Kingdom, Canada, Mexico and India is to entrust this responsibility to the Information Commission as it is an independent body that is unlikely to be biased in its reporting. ***Consideration may be given to vesting this power in the newly proposed Ghana Information Commission and replacing all references to the Minister responsible for justice in clauses 55 and 56 with the Ghana Information Commission.***

63. Clause 57(1) provides for time bound declassification of records covered by the exemptions prescribed in the Act. This is a welcome provision. However international best practice is to prescribe a shorter period for declassification. It is quite possible that some documents may continue to remain sensitive in nature for more than 25 years. The Government must have the powers to continue to keep such information under wraps. However all classification of sensitive documents must be subject to the approval of an independent authority such as the proposed Ghana Information Commission. The Information Commission of Nepal has the power to review the decision of an agency to classify a document upon application from any citizen. (Please refer to section 27 of the RTI Act of Nepal.) Also ***it is advisable to review the classification label of all documents periodically.*** This must be an annual exercise and not something that is done once in 25 years. If any information contained in such a document is no longer sensitive there is no reason to keep it under wraps for the full 25-year period. ***Declassified information must also be archived for use by the people especially researchers.*** Then there would be no need to approach an agency for seeking access to such documents. ***Consideration may be given to reducing the time limit for declassification of exempt information to ten years.*** Second, clause (2) of the same clause provides that access to declassified information be provided in accordance with the procedures under this law. While this is commendable, it overlooks the operation of clause 18 which requires that information be disclosed in public interest if the benefits outweigh the harm that would be caused in the event of disclosure.

Therefore access to exempt information is possible even if it has not been declassified. In any case after time bound declassification the information should be accessible to the applicant in principle. ***Consideration may be given to deleting clause (2) of clause 57 as it is superfluous.***

64. The presumption behind clause 58 is that the records held in archives and museums are not public information. This is an erroneous presumption. Archives of public records are also public information and there is no justification for denying access to them under the RTI Act. Archives' laws may require an applicant or researcher to show sufficient cause for seeking an access to the archives. This would create a dichotomy. When the archives are paid for by the taxpayer, there is no reason why access must be denied under this law. However the fee rates applicable under the Archives law may be applied when information is sought under the RTI Act. Efforts must be made to harmonize all fee rates under all laws that permit disclosure of information on payment of a charge. This clause would also contradict Clause 66 of this Bill. Hence, ***consideration may be given to amending the clause in order to provide information held by the national archives, museums and libraries on payment of prescribed fees.***

65. ***Consideration must be given to extending the ambit of clause 59 to include public private partnerships (PPPs)*** for reasons already mentioned in our comments above as they are set up in public interest and not solely for private gain.

66. ***Consideration may be given to deleting clause 60*** from the Bill for effective and objective implementation of the law. In the event of non-deletion of this clause, the default option for officers would be to refuse access to all exempt information. It also criminalises disclosure of exempt information in public interest. ***If it is necessary to retain such a punishment, the term 'wilfully' must be substituted with the term 'mala fidely'. This will raise the standard of proof to a much higher level which is desirable.***

67. Imprisonment must be awarded only in cases of serious crimes such as, knowingly destroying a record that was the subject of a request, or deliberately providing false, incomplete or misleading information. This should be commensurate with similar kinds of offences under the penal law. The punishment should not be so high as to discourage information officers from doing their duties without fear. For minor infractions information officer should be penalized only monetarily. Reference may be made to Nepal RTI laws which permit penalizing the head of an agency if he fails to supply information to the Information Officer to deal with an information request. (Please refer Section 32 of Nepal's RTI Act.) Reference may also be made to Section 20 of the Indian RTI Act as a model along with Nepal's RTI penal provisions. ***Consideration may be given to amending***

***clause 61 to bring out a balanced penalty provisions for the information officers to ensure effective compliance with purpose of the Bill.***

68. Clause 62 refers to some additional procedures relating to extension of time. This is wholly unnecessary as adequate provisions are already in existence under clause 26. There is no need to duplicate this provision. ***Consideration may be given to deleting clause 62.***

69. Coverage of the private sector must not be left to the executive through delegated legislation even though this may require parliamentary approval. Parliament should clarify at the very outset which private sector bodies will be covered by the RTI Act. The AU Model law and the RTI laws of Nigeria and Liberia provide good examples of such choices where in it provides for any private body performing public functions, providing public services or receiving public funds to be covered by the RTI Act. RTI laws of South Africa and Antigua and Barbuda require an applicant to show sufficient cause for seeking information from a private agency. In view of our arguments regarding direct coverage of private bodies given at the beginning of this critique above and similar threads of discussion in subsequent paras ***consideration may be given to deleting clause 63 as it would be superfluous.***

70. For effective implementation of clause 64 (a) it is necessary to include private bodies in the enactment itself instead of leaving it for the Minister's discretion. Further clause 64 gives the Minister responsible for this law to make regulations imposing an obligation on chieftaincies to maintain records in good and accessible condition in order to facilitate access to information. This amendment is very welcome. However there needs to be an enabling provision in Clause 65 clearly indicating that chieftaincies and other bodies in referred to in Chapter 22 of Ghana's Constitution are covered by the term "public bodies" (which must replace the current term- "government agency" as we have recommended above.) **Consideration may be given to extend the applicability of the Bill to private bodies as well as to include the term "chieftancy" within the meaning of the term "public body (which we have recommended as a replacement of the term "government agency" used in this Bill.).**

***Recommendations:***

- Please renumber clause 47 as clause 47(1) and replace the contents as follows:

***"47(1) A government agency or private body as the case may be, shall designate as many officers as may be necessary in all of its administrative units and offices as Information Officers authorised to give effect to the provisions of this Act."***

- Please insert new clauses numbered (2) and (3) below clause (1) under clause 47

***"(2) An Information Officer may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties under this Act.***

***(3) Any officer whose assistance has been sought under clause (2) of this clause shall render all assistance to the Information Officer seeking his or her assistance and for the purposes of any contravention of the provisions of this Act such other officer shall be treated as the Information Officer."***

- Please insert the phrase ***"Ghana Information Commission"*** after the phrase **"an information officer, a Minister"** and before the phrase **"or a member of staff of an agency"** in clause 48(1).

- Please delete clause (2) of clause 48.

-Please amend clause 50 to ensure that only **reasonable fees are charged** from the applicant.

-Please include **waiver of fee** to disclosure of information **pertaining to public interest** in clause 51

- Please delete clauses (a) of clause 50(3).

-Please renumber clause (b) of clause 50(3) as clause (a) and replace its contents as follows:

***"accessing information which shall be reasonable and not exceed the actual cost of reproducing the information."***

- Please renumber clause (c) of clause 50(3) as clause (b) and replace its contents as follows:

***"The Information Officer shall not include any fee for search, retrieval, collation or any other costs for the purpose of calculation of the amount of fee payable by the applicant."***

- Please replace the opening line of clause (1) of clause 53 as follows:

***"The Minister for Justice shall in consultation with the Ghana Information Commission and civil society organizations in Ghana"***

- Please insert a new clause (d) under clause (c) of clause 53(3) as follows:

***"(d) develop and organize training programmes for officers and employees of government agencies and private bodies as the case may be with particular emphasis on Information Officers and Appellate Authorities."***

- Please insert under the proposed clause (e) of clause 53(3) the proposed new clause (d) as follows:

***"(e)within twelve months from the commencement of this Act compile and publish in the official***

***language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act and disseminate the guide amongst the public."***

-Please request Parliament to pay some attention to make an assessment of law that it enacted to establish a regime of transparency.

**-**Please review the classification label of all documents periodically in clause 57.

- Please replace the word **"twenty-five"** with the word ***"ten"*** in clause 57(1).

- Please amend clause 58 to provide for information held by the national archives, museums and libraries on payment of prescribed fees.

- Please extend ambit of clause 59 to include Public private partnerships.

- Please delete clause 60.

- Please amend clause 61 to bring out a balanced penalty provisions for the information officers to ensure effective compliance with the purpose and objective of the Bill.

- Please delete clause 62.

- Please delete clause 63.

71. Clause 65 of the Bill contains the interpretation of the meaning of terms used commonly throughout the Bill.

"**access**": In order to avoid redundancy with the interpretation of the phrase 'right to information', **access may be defined in terms of the forms of access** that will be reasonably provided under this law. This will reiterate the specific clause above which describes the 'types of access'.

"**government agency**": First, it is **advisable to move this clause to the front of the Bill** as recommended above. Second, the term '**government agency**' does not adequately cover all public authorities in Ghana. For example the definition leaves out the offices of the President, the Vice President, Parliament and the courts. However. For the sake of clarity the interpretations clause **must mention these offices under the definition of the term 'government agency'.** International best practice requires that **transparency laws apply to Parliament as well**, Similarly there is no mention of the institution of chieftaincies and related institutions established under the Chapter 22 of Ghana's Constitution. Further any office performing public functions or providing public services must also be included

explicitly in this law in the manner of RTI laws of Liberia and Nigeria. While clause 64 has been amended to include regulations to be made for the purpose of records management in chieftaincies there is no mention of these bodies in clause 65. This can create a lot of ambiguity when information access disputes are to be decided. ***Consideration may be given to specifically mentioning all offices and bodies constituted, established or recognised by or under the constitution of Ghana and all statutory bodies falling within the ambit of this law under the Interpretations clause.*** *Third, the definition of "**information"*** is not adequate and does not match international best practice standards. A comprehensive definition of the term 'information' is required in order to obviate the possibility of exclusion of certain types of documents like contracts and agreements between a government agency and private parties from the purview of this law. This definition should make it clear that samples and models used in agencies must also be included within the definition of the term 'information'. Please see Sections 2(f) and 2(j) of the Indian RTI Act. Similarly information about private bodies collected by government agencies should also be included within the definition of information. In any case access to such records will be subject to the exemptions and third party procedures provided in this Bill. So there need not be any fear of violating private party's right by including information relating to them in the definition. ***Consideration may be given to expanding the definition of information into a more comprehensive one.***

"**right of access**": In accordance with a detailed definition of the phrase recommended above ***consideration may be given to deleting this reference and avoid duplication.***

In accordance with the recommendation contained at paras 41 and 42 above it is necessary to include a reference to the newly proposed "Ghana Information Commission" and its members in clause 65. ***Consideration may be given to including a definition of the Ghana Commission and its members in clause 65.***

The term "**person**" is not defined in the Act although it is used throughout the text. The definition of the term 'person' may be taken from the Income Tax Act or the Companies Act in force in Ghana. This will ensure that individuals and organised groups such as civil society organisations and companies can also access information under this law. ***Consideration may be given to including a new definition of the term "person" in clause 66 so that organisations and companies (artificial-juridical entities) may be enabled to seek and obtain information under the Act.***

The term **"third party"** may be defined in this clause to mean any person other than the applicant and the agency to which the application has been made.

***Recommendations:***

- Please move clause 65 to the top of the Bill as advised at para 4 above.

- Please define **access in terms of the forms of access.**

- Please insert the phrase, ***"all bodies and offices constituted, established or recognised by or under the Constitution of Ghana or by a law of Parliament and"*** after the word **"includes"** in clause 64 under the definition of the term 'government agency' **which as has been recommended above should be replaced with the term 'public body' (see para #1 above).**

- Please replace the definition of information contained in clause 65 with the following:

***"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;***

- Please delete the definition of "right of access" in clause 65.

- Please insert in clause 65 in alphabetical order the following:

***"Ghana Information Commission means the Information Commission constituted in accordance with clause 40 A of this Act.***

***"Chief Information Commissioner means a Chief Information Commissioner appointed under clause 40(A) of this Act."***

***"Chieftaincy shall have the same meaning assigned in Chapter 22 of the Constitution of Ghana."***

***"Information Commissioner means an Information Commissioner appointed under clause 40(A) of this Act."***

- Please include a definition of the term ***"person"*** in clause 65.

- Please include a definition for term "third party" in clause 65

- Please replace clause 66as follows:

***"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act in Ghana."***

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