

IMPLEMENTING ANTI-HUMAN TRAFFICKING LEGISLATION

A Guide to Accessing Information
through Right to Information Laws



GHANA
KENYA



CHRI

Commonwealth Human Rights Initiative
working for the practical realisation of human rights in
the countries of the Commonwealth

ACKNOWLEDGEMENTS

This guide would not have been possible without the support provided by the Foreign, Commonwealth and Development Office (FCDO) India, through the Margaret Anstee Centre (MAC) Newnham College, University of Cambridge, UK.

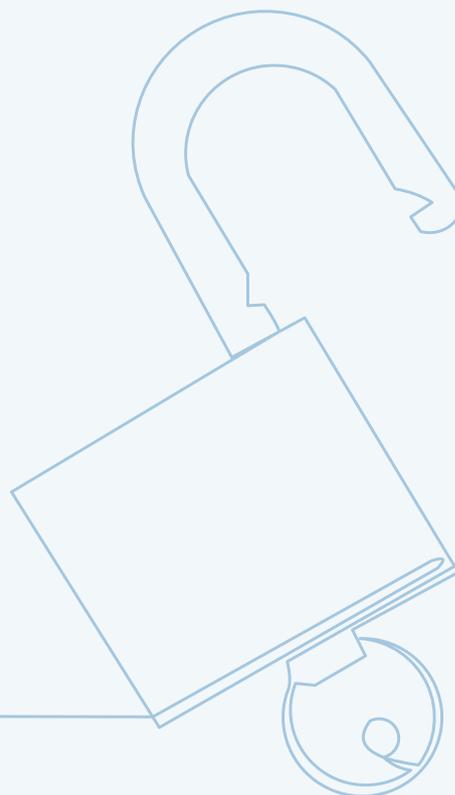
We are grateful to the non-governmental organisations (NGOs), including members of the Commonwealth 8.7 Network, who reviewed and shared their views on the guide. These are: Candle of Hope, Cheerful Heart Foundation, Challenging Heights, Engage Now Africa, Right to be Free, Awareness Against Human Trafficking (HAART Kenya), Hopen Center NGO, International Needs, National Plastic Action Partnership (NPAP NGO), Partners in Community Development Programme (PACODEP) Ghana, Sanjog, Street Girls Aid, and West Africa Coalition Against Trafficking in Persons and Smuggling of Migrants (WACTIPSOM).

From the Commonwealth Human Rights Initiative (CHRI), we are grateful to Venkatesh Nayak, the Director of CHRI India, for initiating the drafting of this guide supported by CHRI UK's Programme Manager, Ugonna Ukaigwe and the Legal, Research and Advocacy Officer, Maria Barraco. We thank other project team members, including CHRI UK's Programme Assistant, Malvika Rangta, who provided vital support for the launch of the guide and Esther Poku-Aduhene, Programme Manager, CHRI Africa. We also extend our appreciation to those who took the time to review, share reflections and edit the guide. This includes, Research and Advocacy Intern, CHRI UK, Mihika Poddar, Director of CHRI UK, Sneh Aurora, and Director of CHRI Africa, Mina Mensah.

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ABOUT CHRI

The Commonwealth Human Rights Initiative is an international, independent, non-governmental organisation that works for the practical realisation of human rights across the Commonwealth. Headquartered in New Delhi, India, we have offices in London, UK and Accra, Ghana. Since 1987, we have focused on human rights issues related to Access to Justice, Access to Information, Media Rights and Freedom of Expression, and Contemporary Forms of Slavery and Human Trafficking.

WORKING ON THE RIGHT TO INFORMATION

CHRI conducts analysis and comparative research on right to information legislation. We advocate for the passage and effective implementation of Right to Information (RTI) laws, identify good practices, provide specialised advice, build capacity, shed light on challenging issues, provide technical support to governments, information commissions and activists, and facilitate processes for widespread use of transparency laws.

WORKING TO ERADICATE CONTEMPORARY FORMS OF SLAVERY

CHRI also supports the achievement of Sustainable Development Goal (SDG) Target 8.7 through research, evidence-based advocacy, knowledge sharing, strategic engagement, and network and capacity building. CHRI began advocating for Commonwealth-wide action on contemporary forms of slavery, human trafficking and forced labour in 2016 which culminated in a commitment to end modern slavery reflected in the Communiqué of the 2018 Commonwealth Heads of Government Meeting (CHOGM).¹ This was reaffirmed by Commonwealth governments at the 2022 CHOGM where they pledged to continue to work towards the eradication of

modern slavery by 2025.² CHRI works with frontline anti-slavery organisations, ensuring local issues and priorities are brought to international policy makers, through advocacy at the United Nations and other fora.³

CONDUCTING RIGOROUS RESEARCH

Our research on issues relating to contemporary forms of slavery includes the comprehensive report, *Eradicating Modern Slavery: An assessment of Commonwealth governments progress on achieving SDG Target 8.7, Creating an Effective Coalition to Achieve SDG Target 8.7, The Commonwealth Roadmap to SDG Target 8.7, and Domestic Work is Work* which raises awareness of the importance of ratifying the International Labour Organisation (ILO) Domestic Workers Convention (C189) and outlines key messages and actions civil society can use to lobby their governments around the Convention and support domestic workers in their continued battle for decent work. Our research provides the basis for our advocacy efforts at international and regional levels.

STRENGTHENING PARTNERSHIPS AND NETWORKS

Working together with other partners, CHRI founded, and is currently Secretariat to, the Coalition on the Right to Information, Ghana (RTI Coalition). The RTI Coalition is a network of 100+ civil society organisations (CSOs) and human rights activists working to promote transparency and accountability of government as well as greater participation of citizens in the democratic process through the mechanism of the right to information legislation in Ghana.

CHRI also founded, and is currently Secretariat to, the Commonwealth 8.7 Network, a global network of 70+ local CSOs that share a common

1 Commonwealth Heads of Government Meeting (2018), *Communiqué. Towards a Common Future*. Available at: https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/documents/CHOGM_2018_Communique.pdf?VersionId=Maly3otwQ132RrFIUPMOsYfDtdAdrVQU

2 See for example: CHRI and Commonwealth 8.7 Network (2022), *Submission to the 2022 Commonwealth Heads of Government Meeting (CHOGM) on Modern Slavery and Human Trafficking*. Available at: <https://www.commonwealth-87.org/joint-statement-modern-slavery-chogm2022>

3 Commonwealth Heads of Government Meeting (2022), *Communiqué. Delivering a Common Future: Connecting, Innovating, Transforming*. Available at: <https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/2022-06/CHOGM%202022%20Communiqué.pdf?VersionId=sqWEwpE4gyzg8wldTCoPO0yQgVNZ7lzy>

vision to eradicate modern slavery and human trafficking. Together we raise awareness, strengthen skills, share good practice, provide support to survivors, and advocate for change to laws and policies. In 2019, the 8.7 Network received the Commonwealth Secretary-General's Innovation for Sustainable Development Award.

ADVOCATING FOR CHANGE TO STANDARDS AND POLICIES

CHRI has special consultative status with the United Nations (UN) Economic and Social Council (ECOSOC) and is an accredited Commonwealth organisation. CHRI continues to monitor and report on Commonwealth States' compliance with their civil, political, and human rights obligations. CHRI advocates on human rights exigencies where they are breached and seeks accountability for such breaches. CHRI regularly engages with UN human rights mechanisms, including the UN Human Rights Council (UNHRC), via written submissions and oral statements on a range of issues, as well as monitoring the performance of Commonwealth members of the UN HRC. CHRI also engages regularly with other UN human rights mechanisms, such as Treaty Bodies and Special Procedures. We also participate and provide inputs, both individually and collectively, in the Universal Periodic Review (UPR) process of Commonwealth countries.

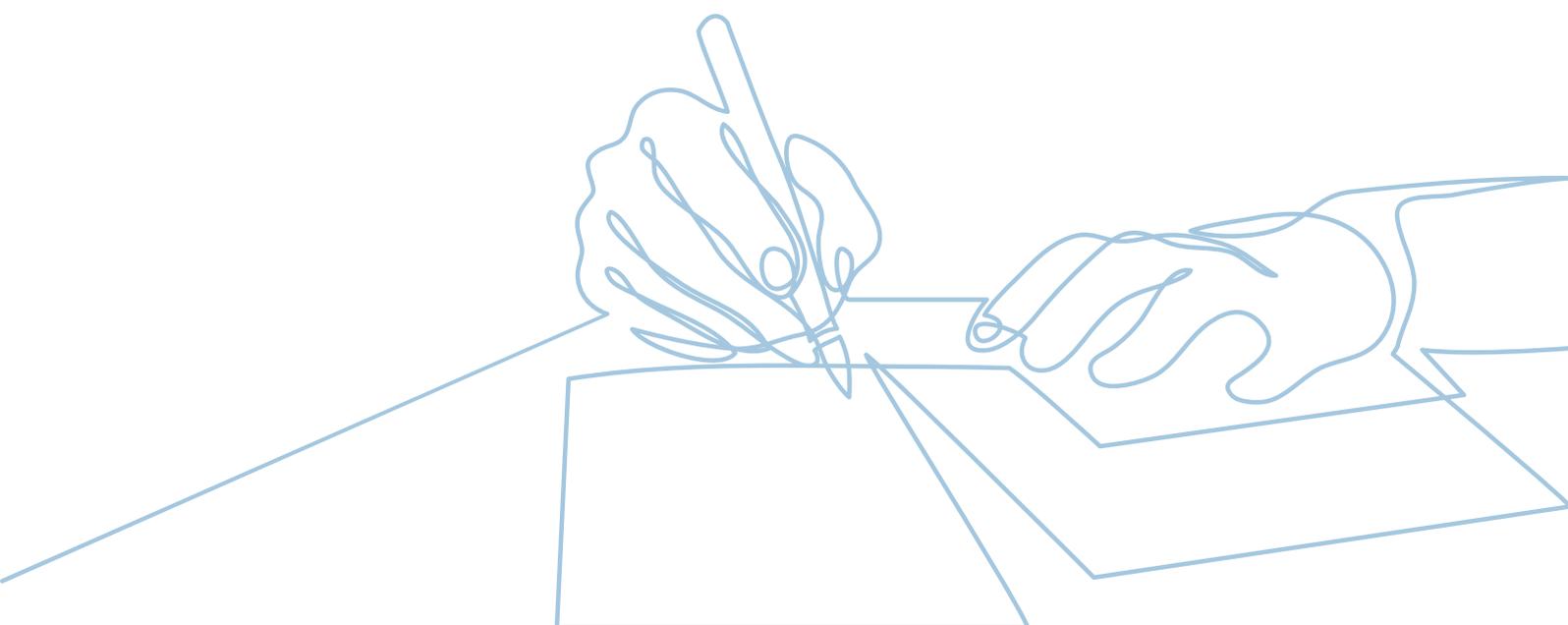
CHRI advocates for the eradication of contemporary forms of slavery, human trafficking and forced labour with Commonwealth states and at the UN, ensuring that international standards reflect the realities of those on the frontlines, including survivors. CHRI provides technical and capacity building support to civil society actors especially from small island states in the Commonwealth, to engage directly with UN mechanisms, including through facilitating in person participation at the UN Human Rights Council and other human rights mechanisms such as the UPR.

More about CHRI:

<https://www.humanrightsinitiative.org/>

More about the Commonwealth 8.7 Network:

<https://www.commonwealth-87.org/>



INTRODUCTION

All Commonwealth member states are constitutional democracies, yet many continue to grapple with poverty, inequality, lack of transparency and rampant corruption, several decades after wresting independence from colonial rule. The people, disempowered by the lack of access to information from their governments, are often unable to seek accountability for their government's performance. Recognising this major hurdle to citizen-engagement with the government and other public bodies and relevant private entities, the right of citizens to seek and obtain information held by them has been recognised in several Commonwealth jurisdictions as a fundamental human right. Many Commonwealth countries are signatories to international and regional treaties recognising the right to information and have incorporated this right into domestic legal frameworks including the adoption of right to information (RTI) legislation. Thirty five out of 56 Commonwealth countries have RTI laws⁴. Some of these laws have been in existence for some time while others are more recent.⁵

The right to information is recognised as a fundamental human right in various international human rights conventions and treaties, as well as regional human right treaties.⁶ The increasing recognition of access to information as a fundamental right has represented a significant shift of power in favour of the public. However, making the transition to a culture of transparency from one of age-old secrecy is tough. Indeed, several Commonwealth Member States continue



Openness promotes transparency.

Photo credit: Cerrophotography via Dreamstime.

to be burdened with colonial practices of maintaining unreasonable levels of secrecy. Much has to happen before access to information becomes a lived and experienced reality.

RIGHT TO INFORMATION AND CONTEMPORARY FORMS OF SLAVERY

It is estimated that over 49.6 million people in the world are held in modern slavery, including 27.6 million in forced labour and 22 million in forced marriage.⁷ According to the 2018 Global Slavery Index, approximately 40 percent of those in modern slavery reside in the Commonwealth⁸ – in other words, 1 in every 150 people in the Commonwealth are living in modern slavery.⁹

Although contemporary forms of slavery affect people and communities who are most vulnerable, such as women and girls, it can affect people of any age, gender, or race. Modern

4 The Gambia, Ghana, Kenya, Malawi, Mozambique, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, Togo, Uganda, United Republic of Tanzania, Bangladesh, India, Maldives, Pakistan, Sri Lanka, Antigua and Barbuda, Barbados, Belize, Canada, Dominica, Guyana, Jamaica, Saint Lucia, St Kitts and Nevis, St Vincent and The Grenadines, Trinidad and Tobago, Malta, United Kingdom, Australia, Fiji, New Zealand, Vanuatu. (For more information on the laws, see Appendix 4).

5 Australia – 1982, Belize – 1994, United Kingdom – 2000, South Africa – 2000, India – 2005, Uganda – 2005, Bangladesh – 2009, Sierra Leone – 2013, Nigeria – 2011; Kenya and Sri Lanka – 2016, Pakistan – 2017, Fiji and St. Kitts and Nevis – 2018, Ghana – 2019.

6 This includes: International Covenant on Civil and Political Rights (Article 19); African Charter on Human and Peoples' Rights (Article 9); American Convention on Human Rights (Article 13); European Convention on Human Rights (Article 10).

7 International Labour Organisation, International Organisation for Migration, and Walk Free (2022), *Global estimates of modern slavery: Forced labour and forced marriage*, p.2. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf

8 Prevalence data are not available for Antigua and Barbuda, Bahamas, Belize, Dominica, Fiji, Grenada, Kiribati, Malta, Nauru, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Samoa, Seychelles, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

9 Contemporary forms of slavery or modern slavery includes all forms of exploitation including forced labour, human trafficking, forced marriage, domestic servitude, slavery-like practices such as debt bondage, and the worst forms of child labour.

slavery is a big business. The illegal global profits obtained from forced labour is estimated to be US\$150.2 billion per year.¹⁰ These markets span the globe, with victims trafficked from country to country, and from region to region, as trafficking routes have become more diverse and widespread. Efforts to address contemporary forms of slavery and human trafficking will require greater collaboration and sharing of data within and among institutions, including stronger coordinated national level responses involving governments, private sector actors, civil society, and survivors.

Anti-human trafficking laws, just like other legislation, require the creation, collection, collation and dissemination of a variety of official records in the course of their implementation. These records contain a great deal of statistical data, action taken or progress reports, instructions, guidelines, standard operating procedures, budgetary allocation and expenditure related information, among other things. All such information falls within the scope and ambit of the RTI laws of respective jurisdictions. Anti-trafficking advocates, as well as victims and survivors, can rightfully seek and obtain access to this information, subject only to the exemptions listed in such laws. Access to this Information is critical to ensure that government responses to human trafficking and civil society support are targeted and impactful, meeting the needs of both victims and survivors.

ABOUT THIS GUIDE

Most anti-trafficking advocates do not use RTI laws to access information that government agencies working to combat human trafficking do not voluntarily place in the public domain. In addition, given that contemporary forms of slavery and human trafficking are mostly hidden crimes, governments, businesses and other relevant actors often do not feel compelled to release the information that they hold. They also tend to not allocate resources to the collection of information which is needed to ensure that

responses – laws, policies, and programmes – are targeted and relevant to the needs of both victims and survivors. Moreover, there are gaps in information on the implementation of laws and policies on modern slavery, since governments do not maintain data on this topic and/or do not make it available to the public.¹¹ Access to information about the actions and omissions of these agencies is important not only for the purpose of survivor assistance and rehabilitation, but also to prevent, identify and tackle the issues.

This guide reviews the substantive and procedural laws enacted to combat human trafficking in Ghana and Kenya. It identifies the various categories of official records, documents, data and information under various sections of the Human Trafficking Acts of Ghana and Kenya that are, and ought to be, created and held by law enforcement agencies in the course of implementing the provisions of the Acts. It goes further to provide a snapshot view of the procedures and mechanisms available in the RTI laws of the respective countries to access these records, documents, data and information. Although human trafficking is a widespread issues, the study of Ghana and Kenya legislation illustrate the utility of RTI laws to request information on issues related to human trafficking. Similar analysis can be applied to other Commonwealth jurisdictions.

Specifically this guide aims to:

- **Raise awareness among anti-trafficking advocates and government agencies on the importance and value of the right to information in efforts to combat human trafficking.**
- **Showcase the documents, data and records that are created by public institutions in Ghana and Kenya, in their efforts to tackle human trafficking, which anti-trafficking advocates have the right to access under RTI laws.**

¹⁰ International Labour Organisation (2014), *Profits and Poverty: the Economics of Forced Labour*, p.9–13. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf

¹¹ Commonwealth Human Rights Initiative and Walk Free (2020), *Eradicating Modern Slavery: An assessment of Commonwealth governments progress on achieving SDG Target 8.7*, p.16. Available at: <https://cdn.walkfree.org/content/uploads/2020/10/12034833/Walk-Free-Eradicating-Modern-Slavery.pdf>



Right to information legislation allows you the right not only to seek information, but also to inspect any records held by public institutions. Photo credit: Cottonbro via Pexels.

- Equip anti-trafficking advocates to use RTI legislation to address the information and/or data gaps they may find in their work, and to strengthen their advocacy.
- Empower civil society organisations (CSOs) to constantly view their advocacy work through the RTI/ATI lens which will help to strengthen and expand the right to information regime in their countries.
- Provide recommendations to both States and CSOs, to ensure adequate access to information in human trafficking matters.

WHO IS THIS GUIDE FOR

This resource is aimed to support anti-trafficking advocates to use RTI/ATI Laws to access relevant information, documents and/or records they might need to strengthen their advocacy efforts, and to make public institutions and other duty holders responsible for preventing and combating human trafficking, more transparent and accountable. This guide may be used not only by CSOs but also survivors of human trafficking and their families, media persons, researchers and academics.

HOW TO USE THIS GUIDE

In each of the country chapters – Ghana and Kenya – we provide a detailed analysis of the relevant sections of the national right to information legislation, as well as the primary human trafficking laws. This guide provides an analysis of the provisions of the *Human Trafficking Act of Ghana* and the *Counter-Trafficking In Persons Act of Kenya*. It provides the names of the relevant institutions that creates or holds the records and the type of information that can be obtained under the human trafficking Acts from the identified institutions using the RTI/ATI Acts.

Civil society organisations seeking to access information using this guide, can use the relevant human trafficking legislation table to see the kinds of documents or records that can be obtained under the Human Trafficking Act, identify the public institution holding the information, and use this information to make a request for information from that institution. Support to complete a request for information can be found in the appendixes. Where a request for information is refused or denied, information is provided on how the applicant may appeal the

decision by following the steps stipulated under the respective RTI/ATI Act.

METHODOLOGY

This resource brings together materials gathered through extensive desk research, feedback received from anti-trafficking CSOs, including Commonwealth 8.7 Network members, and during CHRI's right to information workshops, to identify the documents created by public institutions and other duty holders in Ghana and Kenya, in their efforts to tackle human trafficking, which can be accessed by CSOs under those laws. The analysis in this guide is based on CHRI's conceptual framework developed to enhance advocacy efforts to tackle human trafficking based on information, data and evidence obtained through information requests made under the respective RTI/ATI laws. The conceptual framework is based on the principle that except where a particular information is expressly exempted by the RTI/ATI law, every information generated by public institutions in the course of performing their responsibilities as public officials ought to be made accessible to the public either proactively or upon receiving formal request. For the purposes of this resource, only the right to information laws and the human trafficking laws of two countries – Ghana and Kenya – have been reviewed and analysed.

LIMITATIONS

This compilation is based on an immersive reading of the principal anti-human trafficking laws in Ghana and Kenya respectively. CHRI does not make any claim as to the exhaustiveness of this compilation. This is primarily because the subordinate legislation, such as rules and regulation, standard operating procedures (SoPs) and practice guidelines issued by the respective governments and other implementing agencies under the respective anti-human trafficking laws are not readily accessible in the public domain. This compilation is a first stage exercise to demonstrate that anti-human trafficking laws can be subjected to in-depth analysis to identify the various types of paperwork that is generated in the course of their implementation. An examination of the subordinate legislation,



Right to information (RTI) legislation applies to all materials held by public institutions. Photo credit: Maksym Kaharlytskyi via Unsplash.

SoPs, manuals and guidelines issued by the respective governments and other implementing agencies is necessary to make this compilation more comprehensive and reasonably reflective of the entire universe of documents and records in paper or electronic form that come into existence in the course of the implementation of such laws.

COUNTRY ANALYSIS

GHANA

SPOTLIGHT ON
GHANA'S *RIGHT TO
INFORMATION ACT*

OVERVIEW OF THE RTI ACT

Ghana's *Right to Information Act, 2019* (Act 989) (RTI Act) is a ground-breaking law that lays down systems and procedures for people to exercise their fundamental right to seek and obtain access to information held by or under the administrative control of public institutions and relevant private bodies. These public institutions and private bodies create, generate, collect, collate, receive, share, and disseminate a range of information in various forms in the course of their routine work. The RTI Act empowers people to demand access to all this information, including official records, documents and statistical data, subject to the exemptions provided under the Act.

KEY DEFINITIONS

The following definitions make clear the scope of not just the RTI Act, but also the expansive reach of people's right to know what the institutions that are covered by the Act are doing in their name and for their welfare.¹²

"Information"

Recorded matter or material, regardless of form or medium, in the possession or under the control or custody of a public institution. In the case of a private body, information must relate to the performance of a public function.

¹² These definitions are provided in Section 84 of the RTI Act.

¹³ See Section 28 of the RTI Act.

"Information officer"

He or she is appointed by the custodian of the information, namely, the public institution or relevant private body to process every information request received under the RTI Act.

"Public institution"

Any public body or any private body that receives public resources or provides a public function.

"Relevant private body"

A private body that the Minister may by legislative instrument add to the list of private bodies performing a public service or function.

"Right to information"

The right assigned to access to information.

FORM OF INFORMATION

The applicant may request information to be shared in a certain form or format.¹³ They can request either (1) a reasonable opportunity to inspect the information, or (2) a copy of the information. This applies to official records, documents, files, statistical data, emails, audio-visual and such other material held in physical or electronic formats.

Where a request for access to information has been made in a particular form, it can only be refused if: (1) it is likely to be detrimental to the preservation of the information; or (2) having regard to the physical nature of the information, it is not appropriate to grant access in that form.¹⁴

Where access cannot be given in the form specified by the applicant, but can be given in some other form, then access must be given in that other form that is available. The applicant must be provided with a reason why access cannot be given in their original requested form.

Additionally, the fee to be paid should not be more than what the applicant would have paid had access been given in the original form requested.¹⁵

WHO CAN REQUEST INFORMATION

According to the RTI Act, a person and/or organisation have the right to request information.

HOW TO REQUEST INFORMATION

The request for information must be directed to the public institution in question. The RTI Act obliges public institutions to publish a manual containing information on, amongst others, the organisational structure, the information held by said institution and the contact details of the information officer or designated officer.¹⁶

According to Section 18 of the RTI Act, the application must be:

- made in writing to the public institution
- contain sufficient description or particulars to enable the information to be identified
- indicate the form and manner of access required

- identify the applicant, and state the capacity of the applicant, the name of the applicant, and address to which a communication or notice can be sent
- signed by the applicant.

If the applicant is unable to make the application in writing due to illiteracy or a disability, the applicant may make the request orally.¹⁷

The request for information will be dealt with by the information officer of the public institution.¹⁸

FEES

According to Section 75 of the RTI Act, a person requesting information must pay a fee or charge approved by Parliament. In July 2022, Ghana adopted the Fees and Charges (Miscellaneous Provisions) Act¹⁹ to provide for an annual adjustment of fees being charged by public institutions. The Fees and Charges Act provides that a person requesting for information shall pay GHC 0.27 pesewas (USD 0.026) for an A4 size photocopy of the information requested.

There are some exceptions to paying fees, such as if the applicant requests personal information, or if the applicant is a person with disabilities or an indigent person. There is also no fee if the information supplied is beyond the time limit specified in the RTI Act. The RTI Act bars the inclusion of costs such as the time spent by officers processing the information request or preparing the information sought by the requestor.²⁰

REJECTIONS

If the information requested is refused, the public institution or relevant private body must justify its decision as to why the information cannot be disclosed.²¹ That justification must be linked to the permissible exemptions to disclosure listed under Sections 5–16 of the RTI Act. The

¹⁴ See Section 28(2) of the RTI Act.

¹⁵ See Section 28(3) of the RTI Act.

¹⁶ See Section 3 of the RTI Act.

¹⁷ See Section 18(2) of the RTI Act.

¹⁸ See Section 19 of the RTI Act.

¹⁹ The Fees and Charges (Miscellaneous provisions Act 2022 (ACT 1080), adopted on 18 July 2022. https://drive.google.com/file/d/1Q6UkZoum2pTcA83_VX45MCRuj-r_6lZw/view?usp=sharing

²⁰ See Section 75 of the RTI Act.

²¹ See Section 23(4) of the RTI Act.

custodian of the information is obliged by law to inform the applicant in writing, the reason upon which the refusal is based.

There is some information that is exempted from disclosure,²² including, amongst others things:

- **information that is prepared for submission or has been submitted to the President or Vice President for consideration**
- **information that is prejudicial to national security**
- **information that is prepared for submission to Cabinet or submitted to Cabinet for consideration**
- **if the disclosure of that information can reasonably be expected to damage or prejudice the defence of the Republic.**

The RTI Act permits the disclosure of exempt information on certain overriding grounds of public interest, for example where:²³

- **the information reveals evidence of a violation of a law or failure to comply with the law**
- **there is an imminent and serious threat to public safety, public health or morals**
- **the information relates to the prevention of a disorder or crime, the miscarriage of justice, abuse of authority or a neglect of performance of an official function**
- **the information relates to the protection of the rights or freedoms of others**
- **the information reveals evidence of any other matter of public interest.**

APPEALS

An information officer's decision is not final, especially if the request for information is partially or wholly rejected. The RTI Act provides

a three-tiered grievance resolution mechanism to any person who is unable to obtain access to the desired information.

STEP 1

The applicant can seek a review of the information officer's decision from the head of the public institution or the relevant private body which is the custodian of the information.²⁴

STEP 2

If Step 1 is not successful, the requestor has the right to escalate the matter to Ghana's Right to Information Commission which has extensive powers to compel, wholly or partially, the production of the records and documents containing the information to which access was denied twice by its custodian. In a proceeding before the Commission, the custodian of such information has the burden of proving why the information ought not to be disclosed to the requestor.²⁵ The RTI Commission has been granted the powers to prosecute offences under the RTI Act.²⁶

STEP 3

If the information is still denied, the requestor can move to the High Court in Ghana for adjudication.²⁷

22 See Sections 5–17 of the RTI Act.

23 See Section 16 of the RTI Act.

24 For more information on this step, see Section 31 of the RTI Act. Details of the internal review application process [e.g. time window in which an internal review application must be submitted] are contained in Section 32 of the Act.

25 See Section 66(a) of the RTI Act.

26 Norah Aluayo Kwami (2022), *Attorney-General grants RTI Commission prosecutorial powers*. Available at: <https://thefourthestategh.com/2022/09/30/attorney-general-grants-rti-commission-prosecutorial-powers>

27 See Section 55(b) of the RTI Act.

SPOTLIGHT ON GHANA'S HUMAN TRAFFICKING ACT

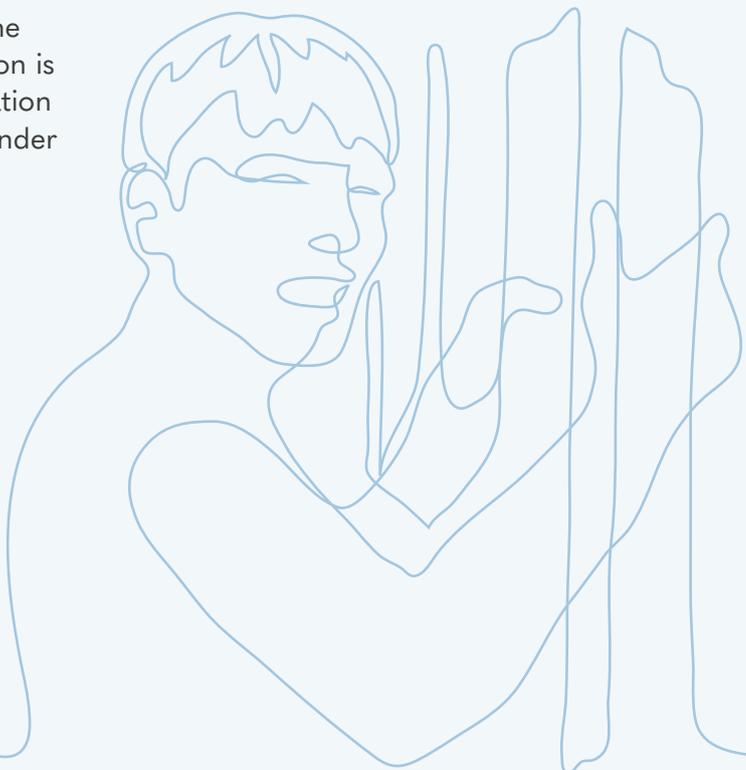
The *Human Trafficking Act, 2005* is Ghana's special purpose law to combat trafficking in persons and illegal organ trading. Several kinds of information, records, documents and data are generated by agencies tasked with the implementation of this law, including information that law enforcement agencies create, generate, collate, receive, publish, disseminate and/or share on human trafficking related issues. Some of these records are explicitly mentioned in the law whereas the existence of others can be inferred from a deeper reading of the statutory provisions. All these agencies tasked to implement and enforce the Human Trafficking Act qualify as either "public institutions" or "relevant private bodies" as per the definitions provided in Section 84 of the RTI Act. Therefore, the information they produce can be sought under the provisions of Ghana's RTI Act.

Any person in Ghana may seek access to information produced²⁸ in the course of implementing the Human Trafficking Act by making a formal written or oral request to the agency(ies) in whose custody such information is being held. Access to the requested information must be provided if it is fit to be disclosed under the RTI Act.

Information, records, and documents specifically produced by agencies in the course of implementing Ghana's Human Trafficking Act are listed below.

Note that under Section 38(1) of the Human Trafficking Act, the identity of a person trafficked is barred from being publicly disclosed except with the leave of a competent court. However, if a request for such information is made under the RTI Act, a decision must be made by the designated authorities in accordance with the provisions of the RTI Act with due regard to the spirit behind the bar on disclosure of identity prescribed in Section 38(1) of the Human Trafficking Act.

The table below provides a comprehensive summary of each legislative provision under the Ghana Human Trafficking Act referring to information that is produced by agencies and can be requested under the RTI Act.



²⁸ For the purpose of this guide, "information produced" means: information that is created, generated, collated, received, published, shared or disseminated.

ANALYSIS OF THE HUMAN TRAFFICKING ACT (GHANA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD ²⁹
<p>Section 6(1)(a)</p>	<p>Information provided by a person to the <i>police</i> about human trafficking</p>	<p>The relevant police station or office of police authorities which receives such information</p>	<p>Every person having information about human trafficking is required to report it to the police. Failure to do so is punishable.</p> <p>The person might have provided information about trafficking in writing or verbally. If provided verbally, the police have a duty to record the same in writing in paper or electronic form for taking further action under the Human Trafficking Act.²⁹ The written information and verbal information recorded in paper or electronic form both fall within the definition of “information” under the RTI Act and can be sought by making a formal request to the custodian police station/office.</p> <p>Sometimes the matter reported is so urgent, that the police officers might not have the time to record verbal information in writing in detail. Nevertheless, they are required to record the receipt of the information about human trafficking in the General Diary/Station Diary before proceeding to act on it.</p> <p>This can be useful, for example, to request information on how many cases of human trafficking were initiated or cases reported in a given period.</p>

²⁹ Section 11 of the HT Act.

ANALYSIS OF THE HUMAN TRAFFICKING ACT (GHANA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 6(1)(b)(i)</p>	<p>Information provided by a person to the <i>Commission on Human Rights and Administrative Justice</i> (CHRAJ) about human trafficking</p>	<p>CHRAJ</p>	<p>The person might have provided information about human trafficking in writing or verbally. If provided verbally, the concerned officials at CHRAJ have a duty to record the same in writing on paper or in electronic form for taking further action under the Human Trafficking Act.</p> <p>The written information and verbal information recorded in paper or electronic form both fall within the definition of “information” under the RTI Act and can be sought by making a formal request to CHRAJ.</p> <p>Additionally, CHRAJ is required to maintain a register of complaints received about allegations of human rights violations. This register is also covered by the definition of “information” under the RTI Act.</p> <p>Using the RTI Act, activists can request a copy of the register of complaints.</p>

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<p>Section 6(1)(b)(ii)</p>	<p>Information provided by a person to the <i>Department of Social Welfare</i> (DSW) about human trafficking</p>	<p>DSW</p>	<p>The person might have provided information about human trafficking in writing or verbally. If provided verbally, the concerned officials at DSW have a duty to record the same in writing on paper or electronic form for taking further action under the Human Trafficking Act.</p> <p>The written information and verbal information recorded in paper or electronic form both fall within the definition of “information” under the RTI Act and can be sought by making a formal request to DSW. CSOs can request to access information contained in these documents under the Ghana RTI Act.</p>

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<p>Section 6(1)(b)(iii)</p>	<p>Information provided by a person to the <i>Legal Aid Commission</i> (LAC) about human trafficking</p>	<p>LAC</p>	<p>The person might have provided information about human trafficking in writing or verbally. If provided verbally, the concerned officials at LAC have a duty to record the same in writing on paper or electronic form for taking further action under the Human Trafficking Act.</p> <p>The written information and verbal information recorded in paper or electronic form both fall within the definition of “information” under the RTI Act and can be sought by making a formal request to the LAC.</p>

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<p>Section 6(1)(b)(iv)</p>	<p>Information provided by a person to a reputable <i>Civil Society Organisation (CSO)</i> about human trafficking</p>	<p>Concerned CSO</p>	<p>The person might have provided information about human trafficking in writing or verbally. If provided verbally, the concerned staff of the CSO have a duty to record the same in writing on paper or electronic form for taking further action under the Human Trafficking Act.</p> <p>The written information and verbal information recorded in paper or electronic form both fall within the definition of “information” under the RTI Act and can be sought by making a formal request to the CSO.</p>

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<p>Section 6(2)</p>	<p>Records relating to the prosecution of a person who fails to inform the police about human trafficking</p>	<p>The police, prosecuting authorities and courts</p>	<p>As failure to inform the designated authorities about human trafficking is a punishable offence. The prosecution process will have to be initiated through a complaint to the police who will investigate the complaint, make out a list of charges supported by evidence (grounds for indictment) and submit all of the documents in court. The prosecuting agency will present its case and any additional documents called for by the court.</p> <p>All records that are required to be generated in the process of investigation and prosecution until a decision of conviction or acquittal is reached by the court under the applicable procedural laws, rules and regulations of the police, the prosecuting agencies and courts, are covered by the definition of “information” given in the RTI Act. The custodians of such information are “public institutions” as defined in the Act.</p> <p>This can be useful, for example, to request information on the number of convictions for failure to report human trafficking crimes.</p>

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<p>Sections 9(1) and 11(1)(b)</p>	<p>Complaint lodged by a trafficked person with the police or other security services</p>	<p>The relevant police station or office of other security services which receives such information</p>	<p>Section 9 relates to the right of a trafficked person or any other person having information about human trafficking to make a complaint about it to the police.</p> <p>The victim might have lodged the complaint in writing or verbally. If provided verbally, the police or other security services which receive the complaint have a duty to record the same in writing in paper or electronic form for taking further action under the Human Trafficking Act.</p> <p>The written information and verbal information recorded in paper or electronic form both fall within the definition of "information" under the RTI Act and can be sought by making a formal request to the custodian police station/office of the concerned security service.</p> <p>Under Section 11(1) of the Human Trafficking Act the police officer receiving such a complaint has a duty to provide a copy of the same to the person making the complaint.</p> <p>Any person including the victim can request information on the actions taken by the police or security services following the receipt of a complaint.</p> <p>If the concerned police station or office of the security service where the complaint has been lodged does not have</p> 

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<p>Sections 9(1) and 11(1)(b) <i>...continued</i></p>			<p>a designated information officer, the information request must be filed with such higher office that has supervisory jurisdiction over the police station or office of the security service which received the complaint. As such higher offices have supervisory powers, even if the information requested is not available in their physical custody, it will in fact be under their administrative control. They can call for such information from the lower office to make a decision on the information request.</p>

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<p>Section 9(3)</p>	<p>Complaint lodged by a trafficked person with a social welfare officer, probation officer, health care provider, teacher or district labour officer</p>	<p>Office from where the concerned social welfare officer, probation officer, health care provider, teacher or district labour officer functions ordinarily</p>	<p>The victim might have lodged the complaint about human trafficking in writing or verbally. If provided verbally, the authorised person who receives the complaint has a duty to record the same in writing on paper or electronic form for taking further action under the Human Trafficking Act.</p> <p>The written information and verbal information recorded in paper or electronic form both fall within the definition of “information” under the RTI Act and can be sought by making a formal request to the custodian office that holds such records.</p> <p>This can be useful, for example, to request information on cases that were initiated following victims’ complaints.</p>

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<p>Section 10(1)</p>	<p>Records containing details of protection provided to the person making a complaint about human trafficking to the police</p>	<p>The relevant police station</p>	<p>Section 10 places a duty on the police to provide protection to trafficked persons and assistance to complainants. A breach of this duty can invite disciplinary action.</p> <p>The Act is silent about the kinds of records that must be created to record details of action taken to provide protection to the complainant. It is difficult to draw an inference from the existing provisions. So, if statutory instruments have been issued providing these details or circulars, office memoranda or instructions have been issued to flesh out the manner of implementing Section 10(1) of the Human Trafficking Act, those documents may provide an insight into the kinds of documents that might be created or generated by the police. Both such information, as well as the relevant statutory instruments, circulars, office memoranda or instructions are “information” that may be formally requested under the RTI Act, if they have not been placed in the public domain already, especially through official websites.</p>

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<p>Section 10(2)</p>	<p>Copy of the complaint filed by a person who has been refused assistance by a police officer</p>	<p>Office from which the officer superior to the police officer complained against, functions ordinarily</p>	<p>The complainant might have lodged the complaint about a police officer’s refusal to provide assistance to him/her in the context of human trafficking even if he/she is not a trafficked person in writing or verbally. If provided verbally, the superior police officer who receives the complaint has a duty to record the same in writing on paper or electronic form for taking further action under the Human Trafficking Act. Such a complaint might have been sent by post also to the superior officer. His office ought to have a system for recording all applications, submissions and complaints received from the public, in an Entry Register or Daily Diary. All these documents fall within the definition of “information” under the RTI Act and can be sought by making a formal request to the custodian office that holds such records.</p> <p>A request can be made using the RTI Act to access information on the actions taken against an officer who fails to provide assistance to a victim or victims of trafficking.</p>

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<p>Sections 11(1)(a) – 11(1)(e)</p>	<p>a) Statement of parties and witnesses recorded by the concerned police officer after receipt of a complaint about human trafficking</p> <p>b) records containing details of assistance provided by the police officer to a trafficked person to obtain medical treatment, if any</p> <p>c) records containing details of action taken by the police officer to lodge the complainant in a safe place to ensure his/her safety</p> <p>d) Information on the victim’s rights and any basic material support that maybe available to assist the victim</p>	<p>The relevant police station or the office from which the police officer who acted on the human trafficking complaint functions ordinarily</p>	<p>The police are required to take specific steps upon receipt of a complaint of human trafficking.</p> <p>Each complaint received will require the opening of a specific case file. It is possible to not only seek copies of the records contained in such files but also demand to inspect them in accordance with Section 28(1)(a)(i) of the RTI Act.</p> <p>Section 11(2) makes it compulsory for the police officer to take the statement of a child about trafficking in the presence of a friend or guardian. If the identity of such a friend or guardian is not known from the case records, a request may be submitted to the police station to ascertain compliance with this procedural safeguard.</p> <p>Additionally, summary details of action taken on each complaint are required to be recorded in the General Diary/ Station Diary maintained by the concerned police station. These portions of the Diary are covered by the definition of the term “information” under the RTI Act.</p> <p>Information can be requested, for example, on the specific steps taken by a police officer upon receipt of a complaint of human trafficking.</p>

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<p>Section 12(1)</p>	<p>Warrant of arrest obtained by the police to arrest a person for human trafficking</p>	<p>1) Concerned police station 2) Court which issued the arrest warrant and where the arrested person was presented for a decision relating to remand or grant of bail</p>	<p>Section 12 deals with the manner in which a police officer may arrest a person for human trafficking.</p> <p>a) Until the arrest warrant is successfully executed, the custodian of this document is the police station which has obtained the warrant.</p> <p>b) After the arrest of the person for human trafficking the warrant is returned to the court of competence which issued the warrant. As arrest warrants usually have an expiry date, if the arrest has not been effected within the deadline, the warrant is returned to the court for renewal. If it is not renewed on the same day, the expired warrant remains in the files of the court.</p> <p>c) Upon arresting a person, the police is duty bound to produce the arrestee before the concerned magistrate for seeking remand into their custody for further interrogation or handing over to judicial custody to stand trial. So every such case file will be available in the court of competence.</p> <p>d) If the arrestee applies for bail, those official papers such as the bail application, documents created during the course of the bail hearing, the decision to grant or not grant bail will also be available with the court of competence.</p> 

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<p>Section 12(1) <i>...continued</i></p>			<p>All the information above may be sought from either the concerned police station or the competent courts.</p> <p>Additionally, the police will be required by their internal procedural rules and regulations to maintain a register of warrants obtained from courts and which were successfully executed or remain pending. Similarly, courts will have the concerned case files in their custody. Moreover, a register containing details of arrestees granted bail ought to be maintained by the concerned police station.</p> <p>All these official records are covered by the definition of the term “information” under the RTI Act and access to these records can be requested.</p>

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<p>Sections 12(2) and 12(3)</p>	<p>Records relating to the arrest of a person under the Human Trafficking Act without obtaining a warrant from a court under circumstances specified in the statutory provisions</p>	<p>Concerned police station through which the arrest was effected</p>	<p>A police officer can arrest a person for human trafficking under specific exigent circumstances. The fact of arrest will be recorded as per procedure provided in the Ghana’s Criminal Code, 1960 as amended from time to time. Records will be created in accordance with these procedural requirements by the police station. All of these records can be requested under the RTI Act.</p> <p>Every police station ought to maintain a register of persons arrested with or without warrant. Such a register is also covered by the definition of “information” under the RTI Act. Documents listed at #1 above and the explanations will apply to such cases as well.</p>

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<p>Section 13</p>	<p>Records relating to the arrest of a person for human trafficking, effected by a private person without a warrant</p>	<p>Concerned police station to which the arrested person was handed over</p>	<p>A person can be arrested for human trafficking by a private person without obtaining a warrant from the court.</p> <p>The arrestee is required to be handed over to the police immediately. Records will be created by the police station to which the arrestee is handed over in accordance with Ghana’s Criminal Code, 1960 as amended from time. All of these records can be requested under the RTI Act.</p> <p>Documents listed at #12 above and the explanations will also apply in this instant and access to these records can be requested.</p>

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<p>Section 14</p>	<p>1) Records relating to the rescue of a trafficked person whether effected by an authorised officer on his/ her or in collaboration with another organisation [such as CSOs, community based organisations (CBOs), non-government organisations (NGOs), Traditional Authorities (TAs) and religious bodies and associations (RB/As)] or by any government agency without any formal authorisation to conduct such rescue operations</p> <p>2) Records relating to collaboration with any organisation for the purpose of effecting a rescue</p> <p>3) List of officers authorised by the Government to conduct rescue operations</p>	<p>1) Concerned agency which has authorised officers for conducting the rescue operations</p> <p>2) The CSO, CBO, NGO, TA and RB/A which collaborated with the authorised officer for conducting the rescue</p> <p>3) The agency which conducted the rescue operations despite not being duly authorised</p>	<p>It is the duty of an authorised officer to conduct rescue operations in cases of human trafficking on his/her own or in collaboration with an organisation. Despite not being so authorised, any government agency may also conduct rescue operations.</p> <p>This is only an enabling statutory provision whose details might have been fleshed out in the statutory instruments, circulars, office memoranda or instructions issued by competent authorities. The kinds of records that are required to be created pursuant to conducting such operations will be listed in such instruments.</p> <p>Additionally, the Government would have issued a list of officers formally authorised to conduct rescue operations. All this information is covered by the RTI Act.</p> <p>Additionally, CSOs, CBOs, NGOs, TAs and RB/As whose assistance is enlisted under the RTI Act will also be covered by the definition of the term “public institutions” as they perform public functions to this extent. Hence, information requests may be placed with them directly under the RTI Act.</p> <p>Any government agency that might have conducted a rescue operation despite not being formally authorised to do so</p> 

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<p>Section 14 <i>...continued</i></p>			<p>would have to make a report to the Ministry of Women and Children’s Affairs (MWCA) or any agency authorised by such Ministry to keep track of such rescue operations.</p> <p>All this information is included in the definition of “information” under the RTI Act and should be available upon a request under the RTI Act.</p> <p>Information can be requested to know, for example, the number of victims of human trafficking rescued in a given period.</p>

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<p>Section 15(1)</p>	<p>1) Records relating to the temporary basic material support provided to trafficked persons by the MWCA</p> <p>2) List of entities engaged by MWCA to provide temporary shelter and care to trafficked persons</p> <p>3) Statistics compiled by MWCA periodically, relating to the provision of shelter and care to trafficked persons</p> <p>4) Budget sanctioned annually for providing temporary care and material support and actual expenditure incurred on such interventions at the end of every financial year</p>	<p>1) MWCA and its field offices/ line agencies</p> <p>2) Entities which have been engaged to provide temporary care and material support such as care homes for women and children</p> <p>3) Budget documents may also be sought from the Ministry of Finance, Office of the Clerk of Ghana’s Parliament and the Office of the Auditor-General which keeps track of government expenditure</p>	<p>The MWCA and the District Assembly are responsible for the temporary care and welfare of trafficked persons.</p> <p>This is only an enabling statutory provision whose details might have been fleshed out in relevant statutory instruments, circulars, office memoranda or instructions issued by MWCA. For instance, the kinds of records that are required to be created while providing temporary care and material support to trafficked persons and the channels through which they will be provided will be described in the statutory instruments such as rules, regulations, circulars, office memoranda and instructions issued MWCA.</p> <p>All this information is covered by the RTI Act and can be requested from the relevant institutions.</p>

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<p>Section 15(2)</p>	<p>1) Amount of monies channelised from the Human Trafficking Fund to the District Assemblies for ensuring the welfare of trafficked persons and basic material support that have been provided for victims</p> <p>2) List of beneficiaries who have received assistance from the Human Trafficking Fund in the jurisdiction of each District Assembly and the nature of such assistance</p> <p>3) Records relating to the collaboration of the District Assembly with other government agencies and organisations within its jurisdiction</p>	<p>1) District Assembly</p> <p>2) The Government agency(ies) and organisations which collaborated with the District Assembly</p>	<p>This is only an enabling statutory provision whose details might have been fleshed out in the statutory instruments, circulars, office memoranda or instructions issued by the Human Trafficking Fund. All this information is covered by the RTI Act.</p> <p>Additionally, records relating to the statutory auditor who keeps track of the expenditure of District Assemblies are also covered by the definition of “information” under the RTI Act.</p> <p>For example, information relating to the amount of monies channelled from the Human Trafficking Fund to the District Assemblies and the basic support provided to victims can be requested from the relevant institutions using the RTI Act.</p>

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<p>Section 16</p>	<p>1) Records relating to the provision of counselling services by MWCA to trafficked persons</p> <p>2) List of CSOs, CBOs, NGOs, TAs and RB/As/ specialists formally authorised to provide counselling services and the criteria and process applied for their selection .</p> <p>3) Records created in the process of monitoring the performance of organisations/ specialists authorised for providing counselling services</p> <p>4) Budgetary sanction and actual expenditure on the provision of counselling services</p>	<p>1) MWCA</p> <p>2) Authorised CSOs, CBOs, NGOs, TAs and RB/As</p> <p>3) The office of the Auditor-General</p> <p>The MWCA is required to provide counselling services to trafficked persons.</p>	<p>This is only an enabling statutory provision whose details might have been fleshed out in the statutory instruments, circulars, office memoranda or instructions issued by MWCA. All this information is covered by the RTI Act.</p> <p>Further, the authorised CSOs, CBOs, NGOs, TAs and RB/As will also be covered under the definition of the term “public institutions” as they perform a public function. Information requests can be submitted to them directly under the RTI Act.</p> <p>Additionally, records relating to the Auditor-General who keeps track of the expenditure of MWCA are also covered by the definition of “information” under the RTI Act.</p>

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<p>Section 17</p>	<p>1) Records relating to action taken by the police to trace the family of a trafficked person upon the request of MWCA</p> <p>2) Records relating to action taken by CSOs, CBOs, NGOs, TAs and RB/As to trace the family of a trafficked person upon the request of MWCA</p> <p>3) Records created by the concerned authorities to ascertain the will of the trafficked person in connection with family reunification</p> <p>4) Amount of funds spent by MWCA and/or concerned CSOs, CBOs, NGOs, TAs and RB/As who assisted with the family tracing process</p>	<p>1) The concerned police station/office</p> <p>2) The concerned CSOs, CBOs, NGOs, TAs and RB/As whose assistance was sought for tracing the family of the trafficked person</p> <p>3) The office of the Auditor-General</p> <p>Section 17 relates to the role of MWCA and the police in tracing the families of trafficked persons.</p>	<p>This is only an enabling statutory provision whose details might have been fleshed out in the statutory instruments, circulars, office memoranda or instructions issued by MWCA. All this information is covered by the RTI Act.</p> <p>Further, the concerned CSOs, CBOs, NGOs, TAs and RB/As who assisted with the family tracing process will also be covered under the definition of the term “public institutions” as they perform a public function. Information requests can be submitted to them directly under the RTI Act.</p> <p>Additionally, records relating to the Auditor- General who keeps track of the expenditure of MWCA are also covered by the definition of “information” under the RTI Act and can be accessed by the public.</p> <p>For example, information can be requested to know the efforts made to trace the families of victims of trafficking.</p>

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<p>Section 18</p>	<p>1) Records relating to assistance provided by MWCA to trafficked persons to acquire employable skills</p> <p>2) List of organisations authorised for providing employable skills to trafficked persons</p> <p>3) Amount of funds channelised to the authorised organisations annually and reports of actual utilisation received from them</p> <p>4) Records relating to the employment opportunities provided by MWCA to trafficked persons</p> <p>5) List of trafficked persons who have received start-up capital from MWCA along with date of fund release and amounts released to each individual</p>	<p>1) MWCA</p> <p>2) CSOs, CBOs, NGOs, TAs and RB/As authorised for providing employable skills</p> <p>3) Banks through which financial assistance has been released to trafficked persons</p> <p>4) The office of the Auditor-General</p>	<p>The MWCA has a duty to rehabilitate trafficked persons on its own and/or by involving the Human Trafficking Fund.</p> <p>This is only an enabling statutory provision whose details might have been fleshed out in the statutory instruments, circulars, office memoranda or instructions issued by MWCA and Human Trafficking Fund for the purpose of rehabilitating trafficked persons including children. All this information is covered by the RTI Act.</p> <p>Additionally, banks which are involved in routing such financial assistance to trafficked persons will be deemed to be “public institutions” under the RTI Act as they are performing public functions. So too with CSOs, CBOs, NGOs, TAs and RB/As authorised to provide employable skills to trafficked persons. Information requests can be submitted to them directly under the RTI Act.</p> <p>Additionally, records relating to the Auditor-General who keeps track of the expenditure of MWCA are also covered by the definition of “information” under the RTI Act. For example, information can be requested on the efforts made to rehabilitate victims of trafficking.</p> 

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<p>Section 18 <i>...continued</i></p>	<p>6) List of trafficked persons who have received financial assistance from Human Trafficking Fund and along with date of fund release and fund release and amounts released to each individual</p> <p>7) Bank records that might be created of the financial assistance from MWCA or the HumanTrafficking Fund is released through banks</p>		

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<p>Section 19</p>	<p>1) Court records directing a person convicted of the offence of human trafficking to pay compensation to the trafficked person(s)</p> <p>2) Bank records relating to the release of compensation amounts to the concerned trafficked persons</p>	<p>1) Courts of competent jurisdiction which convict offenders</p> <p>2) Banks through which compensation is routed to trafficked persons</p>	<p>The courts can require persons convicted for the offence of human trafficking to pay compensation to persons they trafficked or helped traffick.</p> <p>This is only an enabling statutory provision whose details might have been fleshed out in the statutory instruments, circulars, office memoranda or instructions issued by MWCA which is the nodal Ministry for implementing the Human Trafficking Act. Additionally, Constitutional Courts might have put in place systems for ensuring compliance with the compensation orders issued by courts of competent jurisdiction. All of this is information covered by the RTI Act.</p> <p>Additionally, the Government or MWCA or the Constitutional courts might have notified courts that are competent to conduct trials of offenders under the Human Trafficking Act. This is also information which can be obtained under the RTI Act if not easily available in the public domain.</p> <p>Information relating to the compensation of victims of trafficking is an example of information that can be requested using the RTI Act.</p>

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RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Sections 20, 21 and 23</p>	<p>1) Records relating to contributions made by individuals, CSOs, CBOs, NGOs, TAs, RB/As and private sector entities to the Human Trafficking Fund such as non-cash payment instruments and receipts issued</p> <p>2) If the contributions are made through banks all records relating to such bank transactions</p> <p>3) Budget records indicating the amount of public monies sanctioned to the Human Trafficking Fund</p> <p>4) Records relating to grants received by the Human Trafficking Fund from bilateral and multilateral sources</p> <p>5) Records relating to the proceeds obtained from the disposal of</p>	<p>1) MWCA</p> <p>2) The specific Banks through which payments to the Human Trafficking Fund are routed</p> <p>3) Office of the Clerk of Ghana’s Parliament (for budgetary records)</p> <p>4) Ministry of Finance (for budgetary records and contributions received from bilateral and multilateral sources)</p> <p>5) Ministry of Foreign Affairs and Regional Integration (for contributions received from bilateral and multilateral sources)</p> <p>6) Relevant tax authorities</p>	<p>Section 20 read with Section 21 relates to the establishment of the Human Trafficking Fund and the funding sources that are considered legitimate by the Act.</p> <p>The MWCA and Banks which receive contributions to the fund are “public institutions” and the records relating to such transactions are covered by the definition of the term “information” under the RTI Act. Information requests can be submitted to them directly under the RTI Act.</p> <p>Additionally, the Ministries concerned will be in the know of budgetary support and contributions received from foreign sources. They will also be the custodians of all records relating to such transactions. Information about the Human Trafficking Fund’s transactions might also be submitted to tax authorities even if the Fund is exempt from the payment of any kind of tax on its receipts. They are all public institutions under the RTI Act. Using the RTI Act, information can be sought from the relevant institutions on, for example, transactions made under the Human Trafficking Fund.</p>



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<p>Sections 20, 21 and 23 <i>...continued</i></p>	<p>property connected with human trafficking that has been confiscated which are deposited in the HumanTrafficking Fund</p> <p>6) Records relating to funds deposited by any other source approved by the Minister in charge of MWCA</p> <p>7) Records relating to the manner in which the Human Trafficking Fund is managed by MWCA such as bank passbook, payment instruments issued or received such as cheques, bank drafts, records of online transaction, other kinds of payment advice, periodical statement of accounts, information submitted by the Human Trafficking Fund to the tax authorities about the manner of operation of the Human Trafficking Fund</p>		

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RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 22</p>	<p>1) Records relating to the material support provided to trafficked persons by the Human Trafficking Fund including manner of verification that the claims being made are genuine, nature and duration of support provided, the sources through which such support is channelised such as banks, CSOs, CBOs, NGOs, TAs and RB/As, bank records relating to such transactions, details of beneficiaries of such support including bills, vouchers, utilisation certificates etc.</p> <p>2) Records relating to the provision of skills training to trafficked persons after rescue including the manner of decision making to select a trafficked person for a particular course of</p>	<p>1) MWCA</p> <p>2) Concerned CSOs, CBOs, NGOs, TAs and RB/As</p> <p>3) Banks through which transactions are routed</p> <p>4) The concerned police station of other police office (involved in the tracing of families of trafficked persons)</p> <p>5) Authorised training institutions</p>	<p>Section 22 explains the objectives of the Human Trafficking Fund i.e., the purposes for which monies received by the fund may be utilised legitimately.</p> <p>Section 23 relates to the management of the Human Trafficking Fund.</p> <p>These are only enabling statutory provisions whose details might have been fleshed out in the statutory instruments, circulars, office memoranda or instructions issued by MWCA. All this information is covered by the RTI Act.</p> <p>Further, the concerned CSOs, CBOs, NGOs, TAs and RB/As will also be covered under the definition of the term “public institutions” as they perform a public function. Information requests can be submitted to them directly under the RTI Act.</p> <p>Information relating to the management of the human trafficking funds is an example of the type of information that can be accessed using the RTI Act.</p>



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<p>Section 22 <i>...continued</i></p>	<p>skill development, the list of authorised institutions where such training is imparted, payments made to such training institutions, relevant bills and vouchers and utilisation certificates generated in the process.</p> <p>3) Records relating to the manner of spending of Human Trafficking Fund monies for tracing families of trafficked persons by the police in their own or in collaboration with CSOs, CBOs, NGOs, TAs and RB/As or anti-human trafficking activists including bills and vouchers generated as proof of spending and lists of beneficiaries of such actions</p> <p>4) Records relating to the manner of spending of Human Trafficking Fund monies for rescue, rehabilitation, and</p>		



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<p>Section 22 <i>...continued</i></p>	<p>reintegration of trafficked persons by the MWCA on its own or in collaboration with CSOs, CBOs, NGOs, TAs and RB/As, lists of beneficiaries, bills and vouchers generated as proof of spending</p> <p>5) Records relating to the utilisation of Human Trafficking Fund monies for the construction of reception shelters for trafficked persons in the districts such as documents relating to procurement (tender) processes, work orders issued to executing agencies or contractors, bills and vouchers and proof of wage payment to workers employed by them, fund release orders, bank transaction details relating to every construction project, engineers' notebooks</p>		

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<p>Section 22 <i>...continued</i></p>	<p>(measurement books) assessing the extent and quality of work on a periodic basis, utilisation certificates, records relating to the authorisation of CSOs, CBOs, NGOs, TAs and RB/As for running the reception shelters, records relating to the payments made to them for manning such shelters and the related documents indicating proof of expenditure.</p> <p>6) Records relating to the manner of spending of Human Trafficking Fund monies on the training and capacity development of persons connected with the rescue such as criteria applied for selection of trainees, curricula developed for imparting the trainings, manner of authorisation</p>		

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RELEVANT STATUTORY PROVISION OF C-TIP ACT	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 22 <i>...continued</i></p>	<p>of training institutions or specialists, details of training workshops such as agenda, list of participants, workshop reports, bills and vouchers generated in the course of spending money on the conduct of such workshops.</p>		

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<p>Section 24</p>	<p>1) Guidelines issued by the Human Trafficking Management Board (HTMB) for the disbursement of monies from the Human Trafficking Fund</p> <p>2) Cheques issued by the authorised signatories and payment vouchers explaining the purpose</p> <p>3) Records relating to the processing of all cheques issued by the Human Trafficking Fund</p>	<p>1) MWCA</p> <p>2) Banks through which cheque-based payments are routed payments</p> <p>3) The Secretariat of HTMB</p>	<p>Section 24 outlines the procedure to be followed for disbursing monies from the Human Trafficking Fund. In addition to MWCA and the concerned Banks, HTMB will also be a “public institution” for the purpose of the RTI Act. information may be sought from them directly.</p>

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<p>Section 25</p>	<p>1) Books of records and supporting documents maintained in accordance with the forms approved by the Auditor-General</p> <p>2) Accounts submitted by MWCA to the Auditor-General for each financial year along with supporting documents, if any</p> <p>3) Report of the audit of accounts and transactions submitted to the Minister for Women and Children’s Affairs</p>	<p>1) MWCA</p> <p>2) Office of the Auditor-General</p>	<p>Section 25 provides for the manner in which the transactions of the Human Trafficking Fund shall be audited.</p> <p>In addition to the MWCA, the Office of the Auditor-General is a “public institution” under the RTI Act. Information relating to every audit of the accounts of the Human Trafficking Fund can be sought directly from them under the RTI Act.</p> <p>The audited report of the MWCA for each financial year can be accessed using the RTI Act.</p>

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<p>Section 27</p>	<p>1) Annual Report submitted by the Minister for Women and Children’s Affairs to Parliament covering the details of activities of the Human Trafficking Fund, along with the report of the Auditor-General</p> <p>2) Statement of the Minister accompanying the Annual Report, if any</p>	<p>1) MWCA</p> <p>2) Office of the Clerk of Ghana’s Parliament</p>	<p>The Minister for Women and Children’s Affairs has a duty to table an Annual Report of the activities of the Human Trafficking Fund along with the audit report and any statement he considers necessary.</p> <p>All these documents are covered by the RTI Act and may be sought from the concerned public institutions after they are submitted to Parliament by making a formal request.</p>

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<p>Sections 28 and 29</p>	<p>1) Orders issued nominating the Minister or Deputy Minister of MWCA as Chairperson of HTMB, and one of its officers as its Secretary and representatives of other Ministries and Departments, the Police Service, the Immigration Service, the Customs, Excise and Preventive Services, the Director of Social Welfare and the offices of the Attorney General and the National Security Coordinator as its ex officio members</p> <p>2) Communication received from the Ghana Journalists Association nominating its representative to the HTMB</p> <p>3) Records relating to the selection of a candidate from the private sector and three</p>	<p>1) MWCA</p> <p>2) to 5) Ministries of Local Government, Interior, Education, Health</p> <p>6) to 8) The respective headquarters of the Police Service, the Immigration Service and the Customs Excise and Preventive Services</p> <p>9) The Department of Labour</p> <p>10) The Directorate of Social Welfare</p> <p>11) to 12) The Offices of the Attorney General and the National Security Coordinator</p>	<p>Sections 28 and 29 provide for the establishment and the composition of the Human Trafficking Management Board (HTMB).</p> <p>All custodians of the information are clearly “public institutions” under the RTI Act. Information may be sought from them directly in addition to MWCA which is in charge of appointing the Chairperson, the Secretary and all Members of the HTMB.</p>



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<p>Sections 28 and 29 <i>...continued</i></p>	<p>other persons including a woman for nomination to the HTMB by the Minister for Women and Children’s Affairs</p> <p>4) Records relating to the manner of ascertaining the commitment of the persons nominated for the membership of HTMB towards combating human trafficking</p>		

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<p>Section 30</p>	<p>1) Recommendations made to MCWA for developing a national plan of action against human trafficking</p> <p>2) Report on the progress made in implementing the national plan of action to the Economic Community of West African States (ECOWAS) through MCWA’s Minister and any responses or recommendations or other communication received in response</p> <p>3) Advice tendered to MCWA’s Minister regarding policy matters under the HT Act from time to time</p> <p>4) Assistance provided to the police, prosecution services and courts for investigating and prosecuting human trafficking cases</p>	<p>1) MWCA</p> <p>2) The Secretariat of HTMB</p> <p>3) Ministry of Foreign Affairs and Regional Integration (for reports sent to ECOWAS and responses received in return)</p>	<p>Section 30 lists out the functions of HTMB.</p> <p>Although all this information may be available with MWCA, HTMB is also a “public institution” under the RTI Act. All records and documents held by HTMB will be covered by the definition of “information” under the RTI Act. Requests for such information may be submitted to its Secretariat directly.</p> <p>As the Ministry of Foreign Affairs and Regional Integration will be the nodal point through which communications with multilateral and bilateral institutions are conducted, reports on the national plan for action submitted through MWCA to ECOWAS and responses or recommendations received ought to be available with this Ministry. Requests for such information may be submitted directly to this Ministry as well.</p> <p>Reports on the national plan for action, responses or recommendations received on the development of the plan as well as records containing proposals and strategies developed for combating trafficking can be requested by submitting an application to the MWCA, the HTMB and the Ministry of Foreign Affairs and Regional Integration.</p> 

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<p>Section 30 <i>...continued</i></p>	<p>5) Records containing proposals and strategies developed by HTMB for combating human trafficking</p> <p>6) Records containing details of the manner in which HTMB has liaised with government agencies and CSOs, CBOs, NGOs, TAs and RB/As to promote rehabilitation and reintegration of trafficked persons</p> <p>7) Guidelines issued for disbursing monies from the Human Trafficking Fund and the records of the decision making process underlying the composition of such guidelines</p> <p>8) Records relating to research conducted either on its own or through other institutions on international and regional developments and standards</p>		

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<p>Section 30 <i>...continued</i></p>	<p>on trafficking in persons including any monies spent from the Human Trafficking Fund or grants directed to be made from the Fund to research institutions for undertaking such research, related bills and vouchers, utilisation certificates and the product of the research received by HTMB</p>		

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<p>Section 31</p>	<p>1) Procedure adopted by HTMB for conducting its meetings every quarter</p> <p>2) Minutes of every meeting of the HTMB including a record of proof of attendance of its Members, such a register in which members' signatures are obtained</p> <p>3) Criteria adopted by HTMB for co-opting any person to attend its meeting(s) including details of name and credentials of such persons</p>	<p>1) The Secretariat of HTMB</p>	<p>Section 31 provides for the manner in which the HTMB may conduct its meetings.</p> <p>All the information ought to be available with the Secretariat of HTMB. A request for information may be placed with them directly under the RTI Act.</p> <p>Minutes of meetings of the HTMB are public documents and can be requested under the RTI Act.</p>

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<p>Sections 32 and 33</p>	<p>1) Orders issued by MCWA relating to sanctioned posts in the HTMB’s Secretariat at various levels of the administrative hierarchy</p> <p>2) Orders issued by MWCA in consultation with the Ministry of Finance fixing the salary and emoluments of the staff of HTMB’s Secretariat including allowances for transport, accommodation and daily sumptuary allowances payable to Members based outside Accra and any fees for attending meetings paid to the non ex officio Members</p> <p>3) Records relating to budget sanctioned to HMTB’s Secretariat and reports of the manner of expenditure it incurs on an annual basis</p>	<p>1) MWCA (for orders regarding sanctioned posts)</p> <p>2) Ministry of Finance (for records relating to the fixation of pay scales for members of HTMB’s Secretariat and the fixation revision of allowances payable to Members of HTMB)</p> <p>2) HTMB’s Secretariat for all other records</p>	<p>Section 32 provides for the establishment, staffing and resourcing of the HTMB’s Secretariat.</p> <p>Apart from the MCWA all information including sanction orders ought to be available with the Secretariat of HTMB. A request for information may be placed with them directly under the RTI Act.</p> <p>Information relating to consultations held by MWCA with the Ministry of Finance will also be available with the latter in addition to the former. A request for information may be placed with the Ministry of Finance directly under the RTI Act.</p> <p>Information relating to the salaries and allowances paid to the HTMB can be accessed using the RTI Act.</p> 

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RELEVANT STATUTORY PROVISION OF C-TIP ACT	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Sections 32 and 33 <i>...continued</i></p>	<p>4) Records relating to financial transactions involved in providing allowances to Members based outside Accra and any fees for attending meetings paid to the non ex officio Members</p>		

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RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 34</p>	<p>1) Orders, circulars and guidelines issued by MWCA and the Immigration Services regarding the lodgement and care of trafficked persons who may be illegal immigrants</p> <p>2) Data regarding trafficked persons who are determined to be illegal immigrants by the Immigration Services and the records containing details of the procedure adopted to arrive at such a determination</p> <p>3) Records relating to the repatriation of trafficked persons who are illegal immigrants arranged by HTMB</p> <p>4) Records relating to the consultations held by MWCA with the Ministry of the Interior for housing trafficked persons at shelter homes in Ghana despite being found</p>	<p>1) Immigration Services</p> <p>2) MWCA (for orders and guidelines issued regarding the lodgement and care and provision of shelter to trafficked persons in Ghana despite being found to illegal immigrants)</p> <p>3) Concerned police stations investigating the cases of trafficked persons who are illegal immigrants</p> <p>4) Secretariat of HTMB</p> <p>5) Ministry of the Interior (for matters relating to trafficked persons housed within Ghana despite being found to be illegal immigrants)</p>	<p>A trafficked person can be retained in Ghana even if the person is an illegal immigrant, until the completion of the investigation and prosecution in his or her case. This section also contains provisions for their transit from prison to a reception centre prior to repatriation. In certain cases the trafficked person may be housed and rehabilitated in Ghana at a shelter provided by MWCA in their best interests in consultation with the Ministry of the Interior.</p> <p>The MWCA is the nodal Ministry for implementing the Human Trafficking Act as progress and decisions in such cases must be shared with them. However, relevant parts of the information relating to each case will also be available with the Immigration Services, the police stations/offices, and the Ministry of the Interior in certain cases relating to rehabilitation of trafficked persons found to be illegal immigrants.</p> <p>Such information may be sought from them directly under the RTI Act.</p> <p>As courts are involved in making a determination about the status of a trafficked person as an illegal immigrant, information about every such case will be available in the</p>



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<p>Section 34 <i>...continued</i></p>	<p>to be illegal immigrants at the completion of the prosecution process</p> <p>5) Records relating to trafficked persons held in reception centres prior to their repatriation including list of names, care services provided to them and costs involved in the provision of such services</p>		<p>Registry/Clerk of such competent courts. Such information may be sought from them directly under the RTI Act.</p> <p>Information about trafficked victims who may be illegal immigrants as well as their repatriation status, amongst other information, can be accessed using the RTI Act.</p>

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<p>Section 35</p>	<p>1) Records relating to the extradition of non-citizen human traffickers upon conviction such as identity of the person, date and time of extradition, place of lodgement and manner of treatment during transit between the date of conviction and the date of extradition and related statistical data relating to such persons</p>	<p>1) MWCA 2) The concerned police station/office 3) The competent court which convicted the non-citizen human trafficker 4) Immigration Services</p> <p>Human traffickers who are non-citizens can be extradited upon conviction.</p>	<p>Multiple public institutions are involved in the process of extraditing non-citizen human traffickers. Requests for information relating to the extradition process may be placed with the concerned public institution in accordance with their roles and responsibilities in the entire extradition process.</p>

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<p>Sections 36 and 37</p>	<p>1) Orders of the competent court directing the referral of a matter relating to a trafficked child to the care and custody of a Family Tribunal</p> <p>2) Records relating to the proceedings of the Family Tribunal in such cases including orders and directions it issues</p> <p>3) Records relating to the manner of implementation of the Family Tribunal’s orders by designated authorities under The Children’s Act, 1990 and</p> <p>4) Records of agencies involved in providing actual care and protection services to trafficked children under the directions of the Family Tribunal such as CSOs,</p>	<p>1) Competent court trying a case of human trafficking involving a child</p> <p>2) The Family Tribunal which receives a matter and the custody of a trafficked child for care and protection</p> <p>3) CSOs, CBOs, NGOs, TAs and RB/As involved in providing care and protection services to trafficked children under directions from the Family Tribunal</p>	<p>A court of competence can refer a matter relating to the trafficking of a child during the pendency of the criminal case relating to the instance of trafficking, and place such child in the custody of the Family Tribunal in accordance with the provisions of The Children’s Act, 1990.</p> <p>Records required to be created as part of the Family Tribunal’s decision with regard to the care and protection of the trafficked child may be sought directly from the Family Tribunal as it is a “public institution” under the RTI Act.</p> <p>Where CSOs, CBOs, NGOs, TAs and RB/As are involved in providing care and protection services on the directions of the Family Tribunal, information may be sought from them directly as they are also public institutions under the RTI Act.</p> <p>Decisions made by the Family Tribunal and records of agencies involved in providing actual care and protection services to trafficked children and the financial support received from MWCA and District Assembly for providing such services are all public information that can be accessed using the RTI Act.</p>



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RELEVANT STATUTORY PROVISION OF C-TIP ACT	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Sections 36 and 37 <i>...continued</i></p>	<p>CBOs, NGOs, TAs and RB/As such as standards to be maintained in such homes, financial support received from MWCA and District Assembly for providing such services and data relating to children served in this manner</p>		

ANALYSIS OF THE HUMAN TRAFFICKING ACT (GHANA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 40</p>	<ol style="list-style-type: none"> 1) Records relating to orders issued by competent courts for confiscating the movable and immovable property of human traffickers and their eventual disposal 2) Records of the police station/office executing the order of confiscation in every case upon the court's direction 3) Records of the authority competent to dispose of confiscated property on the directions of the competent court 4) Records created by the Human Trafficking Fund regarding receipt of the proceeds from the disposal of confiscated property of human traffickers 	<ol style="list-style-type: none"> 1) Court of competence trying a case of human trafficking 2) Police Station/office (with regard to executing the confiscation orders) 3) Authority which is competent or the agency which is identified by the court for disposing of the confiscated property and depositing the proceeds with the Human Trafficking Fund 4) MWCA which administers the Human Trafficking Fund 5) The designated Bank through which the Human Trafficking fund carries out its transactions 	<p>A competent court trying a case of human trafficking can direct the confiscation of movable and immovable property of human traffickers. This section also empowers the said court to issue directions regarding the manner of disposal of the confiscated properties and deposition of the proceeds in the Human Trafficking Fund.</p> <p>The competent courts, police stations/offices and the competent authority/agency involved in the confiscation and the disposal of movable and immovable property acquired by the human trafficker are all public institutions under the RTI Act. The Bank designated to service the Human Trafficking Fund with its financial transactions is also a public institution under the RTI Act. Information may be sought from them directly under the RTI Act.</p> 

ANALYSIS OF THE HUMAN TRAFFICKING ACT (GHANA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 40 <i>...continued</i></p>	<p>4) Records relating to bank transactions involving transfer of monies from the competent authority or agency identified by the competent court to dispose of the confiscated property and deposit the proceeds with the Human Trafficking Fund</p>		

ANALYSIS OF THE HUMAN TRAFFICKING ACT (GHANA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 41</p>	<p>1) Regulations issued by MCWA in consultation with HTMB from time to time for the purpose of effectively implementing the Human Trafficking Act</p> <p>2) Records containing the details of consultation conducted between MWCA and HTMB for the purpose of developing the Regulations</p> <p>3) Records containing details of deliberations in Parliament over the draft Regulations moved by the Minister for Women and Children’s Affairs from time to time.</p>	<p>1) MWCA</p> <p>2) Secretariat of HTMB</p> <p>3) Office of the Clerk of Ghana’s Parliament</p>	<p>The Minister for Women and Children’s Affairs can issue regulations fleshing out a particular statutory provision to ensure their effective implementation. The Minister is required to consult with the HTMB prior to the finalisation of the regulations.</p> <p>MWCA and the Secretariat of HTMB are public institutions under the RTI Act. Information relating to the process of decision making on the issuance of the regulations on subjects listed in Section 41 may be sought from them directly using the RTI Act.</p> <p>Additionally, such regulations can be issued only with parliamentary approval. Hence, records relating to the deliberations in Parliament on the draft Regulations tabled by the Minister for Women and Children’s Affairs can be sought directly from the Clerk of Ghana’s Parliament.</p>

NOTE: In addition to all the official records and documents listed above, almost all of the decision-making processes initiated under the Human Trafficking Act will entail recording of the advice, opinions and views of the Minister, Deputy Minister and civil servants involved. Records containing such advice, opinions and views are also covered by the definition of “information” under the RTI Act. Requests for such information may be submitted to the custodians of such information under the RTI Act.

KENYA

SPOTLIGHT ON KENYA'S ACCESS TO INFORMATION ACT



OVERVIEW

The *Access to Information Act, 2016*³⁰ (ATI Act) of Kenya is a path breaking law that lays down systems and procedures for people to exercise their fundamental right to seek and obtain access to information held by public entities and private bodies. Public entities are all those public offices which are covered by the definition of that term provided under Article 260 of the Constitution of Kenya.³¹ Private bodies covered by the ATI Act include private entities and non-State actors that receive public resources and benefits, utilise public funds, engage in public functions, provide public services, or have exclusive contracts to exploit natural resources. Moreover, when a private body possesses information which is of significant public interest,³² it will also be covered by the ATI Act.³³

Such public entities and private bodies produced a range of information in various forms in the course of their work under the Constitution, various laws, statutory instruments such as rules and regulations approved by Parliament and circulars, instructions, office memoranda, amongst others, issued at various levels of the administration. The ATI Act empowers people to demand access to all this information, whether

they are official records, documents, files, statistical data, emails, audio-visual and such other material held in physical or electronic form.

KEY DEFINITIONS

The following definitions make clear the scope and ambit of not just the ATI Act, but also the expansive reach of people's right to know what the institutions covered by the Act are doing in their name and for their welfare.³⁴

"Electronic record"

A record generated in digital form by an information system, which can be transmitted within an information system or from one information system to another and stored in an information system or other medium.

"Information"

All records held by a public entity or private body, regardless of the form in which the information is stored or the date of production.

"Private entity"

Any private entity or non-state actor that either: (i) receives public resources and benefits,

³⁰ The ATI Act is currently being amended (as of September 2022).

³¹ In Section 260 of the 2010 *Constitution of Kenya*, "public office" means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament.

³² See Section 6(6) of the ATI Act for what constitutes public interest.

³³ See Section 2 of the ATI Act.

³⁴ These definitions are provided in Section 2 of the ATI Act.

*utilises public funds, engages in public functions, provides public services, has exclusive contracts to exploit natural resources (with regard to said funds, functions, services or resources); or (ii) is in possession of information which is of significant public interest.*³⁵

“Public entity”

Any public office (as defined in Article 250 of the Constitution) or any entity performing a function within a commission, office, agency or other body established under the Constitution.

“Public record”

Any record in written or any other form containing information relating to the conduct of the public entity's business, prepared, owned, used or retained by a public entity regardless of physical form or characteristics.

WHO CAN REQUEST INFORMATION

Every citizen of Kenya has the right of access to information.³⁶ This is also affirmed under Article 35 of the Kenyan Constitution. An application to access information can be made either in English or Kiswahili.³⁷

HOW TO REQUEST INFORMATION

To request information, an application to access information must comply with the following requirements:³⁸

- the application must be in writing, in English or in Kiswahili
- the application must provide sufficient particulars so that the officer understands the information that is being requested

- if the applicant is unable to make a written application, the information officer must ensure the applicant can make the request in a manner that meets the needs of the applicant.

It is important to note that a public entity may prescribe a specific form to request information, although this cannot impose unreasonable delays or undue burden upon applicants.³⁹

Also note that a public entity is not obliged to supply information to an applicant if that information is reasonably accessible by other means.⁴⁰

PROCESS

The public officer is required to make a decision within 21 days of receiving the request for information. If the information relates to the life or liberty of a person, the information must be provided within 48 hours.⁴¹ The information officer may extend this period up to 14 days, on a single occasion, if: (i) the request is for a large amount of information or requires a search; or (ii) if consultations are necessary to comply with the request.⁴²

Once a decision on the request of information has been made, the information access officer must communicate:

- if the entity holds the information requested
- if the request was approved
- if the request has been declined, and the reasons for refusal. In this case, the officer must also indicate in a statement how the applicant may appeal to the Commission.⁴³

If the application has been transferred to a different entity, the officer is required to inform the applicant within 7 days of the receipt of the application.⁴⁴

35 According to Section 2 of the ATI Act, information is of public interest if it relates to the “protection of human rights, the environment or public health and safety, or to exposure of corruption or illegal actions or where the release of the information may assist in exercising or protecting any right.”

36 Section 4(1) of the ATI Act.

37 Section 8(1) of the ATI Act.

38 Section 8 of the ATI Act.

39 Section 8(4) of the ATI Act.

40 Section 6(5) of the ATI Act.

41 Section 9(1) of the ATI Act.

42 Section 9(3)(a) and (b) of the ATI Act.

43 Section 9(4) of the ATI Act.

44 Section 10(2) of the ATI Act.

The information must be disseminated considering the needs of the persons with disabilities and must be easily accessible.⁴⁵

Section 11 of the ATI Act provides that where a decision is taken to provide the information applied for, an information access officer shall send to the applicant a written response within 15 working days of receipt of the application, advising:⁴⁶

- that the application has been granted
- that the information will be contained in an edited copy, where applicable
- the details of any fees or further fees to be paid for access, together with the calculations made to arrive at the amount of the fee
- the method of payment of such fees, if any
- the proposed process of accessing the information once the payment, if any, is made
- that an appeal may be made to the Commission in respect of the amount of fees required or the form of access proposed to be provided.

Upon receipt of the fee payable, an information access officer must provide the information to the applicant or permit an inspection of the information immediately, but in any event not later than two working days from the date of receipt of the fee payment.⁴⁷

Where a request for information is to a private body, Sections 11(1), (2), and (3) sets out the processes required to make an application to a private body.⁴⁸

Public entities shall keep and maintain records that are accurate and in a manner that facilitates the right of access to information.⁴⁹



All right to information requests must be accepted by public institutions. Photo credit: Kelly via Pexels.

It is an offence punishable by fine or imprisonment for a public officer to refuse to accept a request for information and/or fail to respond to a request for information within the prescribed time.⁵⁰

FEES

Access to information must be provided at a reasonable cost.⁵¹ No fee may be charged in relation to the submission of an application, although there could be a fee charged for the provision of the information. This latter fee cannot exceed the cost of making copies of said information.⁵²

As of April 2022, Kenya has not yet adopted ATI Regulations detailing the fees payable to obtain information under the ATI Act. Section 25 of the Act provides for the manner in which fees may be charged to the applicant. Section 12(2) of the ATI Act requires public entities and private bodies to not charge anything more than the actual cost of making copies of the requested

45 Section 5(2) of the ATI Act.

46 Section 11(1) of the ATI Act.

47 Section 11(2) of the ATI Act.

48 Section 11(4) of the ATI Act.

49 Section 17(2) of the ATI Act.

50 Section 28(3)(b)(c) of the ATI Act.

51 Section 4(3) of the ATI Act.

52 Section 12 of the ATI Act.

information and where applicable, supplying them to the applicant.

Upon receipt of the fee payable, the information access officer is required to provide the information to the applicant no later than two working days from the date of receipt of the payment.⁵³ Any information to be made accessible to an applicant shall be produced forthwith at the place where it is kept, for inspection in the form in which it is held unless the applicant requests that it be made available in another form, and, if it is practicable to do so, such information may be copied, reproduced or used for conversion to a sound transmission at the expense of the applicant.⁵⁴

LIMITATIONS

The right to information can be limited if the disclosure of information is likely to, amongst others:⁵⁵

- **undermine the national security of Kenya**⁵⁶
- **endanger the safety, health, or life of any person**
- **damage a public entity's position in any actual or contemplated legal proceedings.**

Information on foreign relations and scientific, technology or economic matters relating to national security fall within the parameters of information that may undermine the national security of Kenya.⁵⁷ Nevertheless, the limitation does not apply if a request for information relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.⁵⁸

The limitations listed above do not apply if the public interest in disclosure outweighs the harm to protected interests, as determined by a court.⁵⁹ If the information requested is not fit to be disclosed, the public entity or private body must justify its decision as to why the information

cannot be disclosed. That justification must be linked to the permissible exemptions to disclosure listed under Sections 6(1) and 6(2) of the ATI Act.

The decision to grant a request for information must be made by the information access officer appointed by the custodian of the information, namely, the public entity or private body set up for the purpose of processing applications for information received under the ATI Act. The information officer's decision is not final, especially if the request for information is partially or wholly rejected.

It is also important to consider that Section 6(4) of the ATI Act permits the disclosure of even exempt information on grounds of public interest in accordance with constitutional principles, such as: the need (i) to promote accountability of public entities to the public; (ii) to ensure that the expenditure of public funds is subject to effective oversight, (iii) to promote informed debate on issues of public interest; (iv) to keep the public adequately informed about the existence of any danger to public health or safety or to the environment; and (v) to ensure that any statutory authority with regulatory responsibilities is adequately discharging its functions.

APPEALS

The ATI Act provides a two-tiered grievance redressal mechanism to any person who is unable to obtain access to the desired information. The first step is to submit a complaint against the information access officer's decision to the Commission on Administrative Justice set up under the *Commission on Administrative Justice Act, 2011*.

⁵³ Section 11(2)(a) of the ATI Act.

⁵⁴ Section 11(3) of the ATI Act.

⁵⁵ Section 6(1) of the ATI Act.

⁵⁶ According to Section 6(2) of the ATI Act, information related to national security includes, amongst others: military strategy, covert operations, doctrine, capability, capacity or deployment; foreign government information with implications on national security.

⁵⁷ Section 6(2) of the ATI Act.

⁵⁸ Section 6(3) of the ATI Act.

⁵⁹ Section 6(4) of the ATI Act.

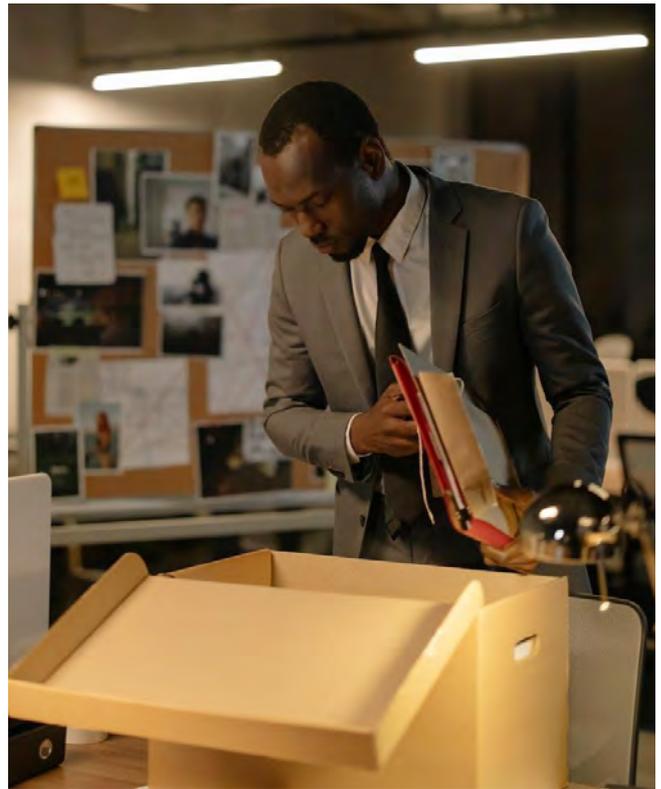
An applicant can apply to the Commission for a review of the following decisions, amongst others:⁶⁰

- a decision refusing to grant access to the information applied for
- a decision granting access to information in edited form
- a decision purporting to grant access, but not actually granting the access in accordance with the application
- a decision to defer providing access to the information
- a decision relating to imposition of a fee or the amount of the fee.

The appeal must be submitted in writing, within 30 days from the day on which the applicant has been notified of the decision.⁶¹

The Commission has extensive powers to compel the production of the records and documents containing the information, access to which was rejected by its custodian. It may also employ the services of a public officer or any investigation agency as it deems appropriate to inquire into such complaints. If the Commission deems it appropriate, it has the power to direct the disclosure of the information either wholly or partially as per the provisions of the ATI Act, despite the objections raised by the information officer or other representative of the custodian of requested information.⁶²

If the Commission decides that access to the requested information cannot be provided, the next step is to move to the High Court in Kenya for adjudication. Thus, here are two stages at which the initial decision of denying access to the requested information can be challenged. This system applies not only to official records and documents relating to the implementation of Kenya's *Counter-Trafficking in Persons Act*, but also to records created in the course of implementing other laws.



Time spent by officers processing RTI requests should not be charged. Photo credit: Cottonbro via Pexels.

⁶⁰ Section 14(1) of the ATI Act.

⁶¹ Section 14(2) of the ATI Act.

⁶² Section 23 of the ATI Act.

SPOTLIGHT ON KENYA'S COUNTER-TRAFFICKING IN PERSONS ACT

Counter-Trafficking in Persons Act, 2010 (C-TiP Act) is Kenya's domestic law to combat trafficking in human beings and illegal organ trading. The statute criminalises trafficking and aiding, abetting, financing and promoting trafficking in persons, including children. Several kinds of information, records, documents and data are created or collected and used by agencies tasked with the implementation of this law, including information created, generated, collated, received, published, disseminated, or shared by law enforcement agencies. Some of these records are explicitly mentioned in the law whereas the existence of others can be inferred from a deeper reading of the statutory provisions. All these records, documents, data and information can be sought by a requestor under Kenya's ATI Act. All these enforcement agencies, and those outside of the government sector which assist them, are either "public entities" or "private bodies" as per the definitions provided in Section 2 of the ATI Act.

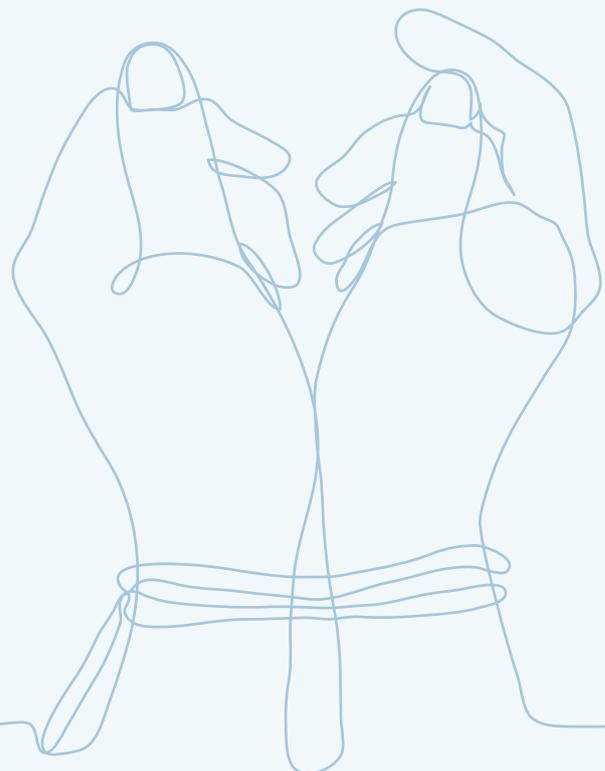
Any person in Kenya may seek access to all the information produced in the course of implementing the C-TiP Act through a formal written application submitted to the agency(ies) in whose custody such information is held. Irrespective of what the C-TiP Act or its implementing agencies may say, when a formal application for such information is made under the ATI Act, the decision whether or not such information must be disclosed is required to be made as per the provisions of the ATI Act alone. In other words, access to the requested information must be provided if it is fit to be disclosed under the ATI Act.

There is no bar on any person from formally seeking information even if it is exempted under the ATI Act. Furthermore, as explained in the

previous section, Section 6(4) of the ATI Act allows the disclosure of exempt information on specific grounds.

Information, records, or documents specifically created, generated, collated, received, published or disseminated by agencies in the course of the implementation of Kenya's C-TiP Act, are summarised below.

Note that under Section 11 of the C-TiP Act, the identity of a person trafficked is barred from being publicly disclosed except with the leave of a competent court. However, if a request for such information is made under the ATI Act, a decision must be made by the designated authorities in accordance with the provisions of the ATI Act with due regard to the letter and the spirit behind the bar on disclosure of identity prescribed in Section 11 of the C-TiP Act. The disclosure of information may be sought on the basis of one or more of the public interest grounds specified in Section 6(6) of the ATI Act.



ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD ⁶³
<p>Section 4(1)</p>	<p>Records created in the course of adopting or fostering or offering guardianship of a child for the purpose of trafficking</p>	<p>The relevant government agencies and public entities which regulate these matters</p>	<p>The adoption or fostering or offering guardianship of a child for the purpose of trafficking is a criminal offence. Such crimes are punishable with a maximum prison term of 30 years and/or a fine of 20 million shillings. A second conviction for similar offences will invite life imprisonment.</p> <p>Where any person adopts a child or agrees to provide foster care or offers guardianship to a child by following procedures laid down under relevant laws, the paperwork that will be created to permit such relationships will be covered by the definition of the terms “information”, “public records” and “electronic record” (if applicable) and therefore should be accessible.</p> <p>Where the adoption, fostering or offering guardianship of a child occurs through informal means, official records might not be readily available.</p> <p>The C-TiP Act is silent about the names of such agencies that can be approached for information relating to the adoption, fostering or guardianship of a child.</p>

⁶³ Certain provisions in the *Counter-Trafficking in Persons Act* of Kenya imply the existence of records or information which one can infer from reading the statutory provisions with an access to information lens.

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 5(a)</p>	<p>Records relating to the ownership or lease or hiring of a house, building or other built-up premises for the purpose of promoting trafficking</p>	<p>The authority competent to register documents relating to ownership and/or lease of buildings</p>	<p>Knowingly leasing any house, building or premises to any person for human trafficking, or use of house, building or premises for human trafficking by an occupier, are criminal offences punishable with a maximum prison term of 20 years and/or a fine of 20 million shillings. A second conviction for similar offences will invite life imprisonment.</p> <p>Documents relating to the ownership and lease of buildings are normally required to be formally registered with a government appointed agency under the law relating to registration of such transactional documents. Ordinarily, such documents are registered in publicly accessible registers under the relevant laws. Thus, there ought to be no need to make an application under the ATI Act to access such documents. However, if access to such records is denied under such registration laws, the ATI Act provides the applicant an alternate route to access these documents. Even though Section 6(5) of the ATI Act states that a public entity is not obliged to disclose information to an applicant if it is reasonably accessible by other means, an instance of rejection of access to information under the law relating to registration of such documents can be shown as the reason for making a specific application for such information under</p> 

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION OF C-TIP ACT	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 5(a) <i>...continued</i></p>			<p>the ATI Act. Then Section 6(5) of the ATI Act is not likely to be treated as an impediment to providing access to such documents.</p> <p>The C-TiP Act is silent about the names of the agencies which are competent to register such documents.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Sections 6 and 7</p>	<p>1) Official records relating to the issuance of travel documents and facilitating entry or exit of persons from Kenya at international and local airports, territorial boundaries and seaports</p> <p>2) Official records maintained by the immigration authorities noting the movement of persons - both entry and exit-through airports, seaports and territorial boundaries of Kenya</p>	<p>The Ministry responsible for Immigration and authorities under it which are competent to issue passport, visa and other travel documents</p>	<p>Obtaining travel documents through fraudulent means for the purpose of assisting human trafficking is a crime punishable with a maximum prison term of 10 years and/or a fine of 10 million shillings. A second conviction for similar offences will invite a further period of imprisonment for not less than 10 years without the option of paying a fine.</p> <p>Facilitating, aiding or abetting the exit or entry of persons through airports, seaports and territorial boundaries in Kenya for the purpose of promoting human trafficking is a crime punishable with a maximum prison term of at least 30 years and a fine of at least 30 million shillings. A second conviction can invite further imprisonment for not less than 30 years without the option of paying a fine.</p> <p>Passports, visas and other travel documents are issued by agencies under the Ministry responsible for Immigration. Official records will include applications received for such travel documents, records relating to decisions made by the competent authorities, security checks initiated, if any, amongst others. All these documents will be covered by the definition of the terms “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act.</p> <p>The C-TiP Act is silent about the names of government agencies responsible.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 11</p>	<p>Records created by the police authorities who investigate cases of human trafficking, prosecuting agencies and courts. These will include complaints received, complaints registered, witness statements, papers relating to launch of prosecution, indictment, evidence presented to court during the trial and the orders and judgements of the trial court</p>	<p>The police authorities competent to investigate crimes relating to human trafficking, the prosecution authorities and the trial courts</p>	<p>Section 11 lays down some basic procedures for investigating, prosecuting and trying offences of human trafficking.</p> <p>All records created or collected during the course of the investigation, prosecution and trial of offenders for crimes of human trafficking are covered by the definition of the terms “information”, “public record” and “electronic record” (if applicable).</p> <p>However, Section 11(3) prohibits the disclosure of the identity of the victims of human trafficking. Disclosure of the identity of the victim is an offence. Similarly, where a trial in such cases is held in camera (closed to the general public), disclosure of details including records of such proceedings is an offence under the C-TiP Act inviting a prison term of at least five years and a fine of five million shillings. If the offender is a body corporate (i.e., other than a human being), the fine is at least 10 million shillings. The same scheme of punishment applies to unlawful disclosure of the identity of the victim.</p> <p>The ATI Act is silent about the circumstances in which there might be a conflict between the operation of the confidentiality provisions of laws such as the C-TiP Act</p> 

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION OF C-TIP ACT	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 11 <i>... continued</i></p>			<p>and its own transparency requirements. However, Section 6(4) can be deployed to seek access to such confidential information on one or more of the public interest grounds specified in Section 6(6) of the ATI Act.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 12</p>	<p>Evidence produced during a trial proceeding with regard to the circumstances surrounding the commission of an offence under the C-TiP Act and the impact of such offence on the victim of trafficking</p>	<p>Documentary evidence presented in court</p>	<p>Section 12 provides for the production of evidence before the trial court to demonstrate the impact that the offences criminalised under the C-TiP Act have had on the victim of trafficking and for the purpose of seeking imposition of appropriate punishment having regard to the extent of harm suffered by the victim.</p> <p>Documentary evidence produced in court will be subject to the confidentiality provisions contained in Section 11 as explained immediately above.</p> <p>The ATI Act is silent about the circumstances in which there might be a conflict between the operation of the confidentiality provisions of laws such as the C-TiP Act and its own transparency requirements. However, Section 6(4) can be deployed to seek access to such confidential information on one or more of the public interest grounds specified in Section 6(6) of the ATI Act.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 13</p>	<p>Records relating to compliance with the order of restitution or compensation of the victim</p>	<p>The Trial Court which makes such an order and the public entities enlisted by the Court to ensure compliance</p>	<p>The Trial Court can issue an order that the person convicted of offences under the C-TiP Act make restitution or compensate the victim for costs on medical or psychological treatment, cost of necessary transportation, accommodation and other living expenses and any other relief that the Court may deem to be just in that case.</p> <p>The order directing the payment of restitution or compensation and the records created by the public entity that is tasked with ensuring compliance with such an order will be covered by the definition of the terms “information”, “public records” and “electronic record” (if applicable) provided in the ATI Act. A request can be made using the ATI Act to access information from the relevant institution on, for example the status of compliance with the court order.</p> <p>The C-TiP Act is silent about the names of the public entities that will be required to ensure compliance of the convicted person with such restitution or compensation orders.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 15</p>	<p>1) Plans formulated by the Minister responsible for matters relating to women and children for providing appropriate services to victims of trafficking and children accompanying them and all the correspondence and advice and opinion recorded on file in the decision making process with regard to the formulation of such plans</p> <p>2) Information about the judicial and administrative proceedings that victims of trafficking are entitled to receive</p>	<p>1) The office of the Minister responsible for matters relating to women and children</p> <p>2) The Trial Courts (with regard to the judicial proceedings)</p> <p>3) The offices and agencies under the Government that launch administrative proceedings in relation to cases of human trafficking</p> <p>4) The private agencies which are tasked with providing the support services with regard to rehabilitation, re-integration and medico-psychological treatment to victims and their children</p>	<p>The Minister responsible for matters relating to women and children has a duty to develop plans for ensuring the return of victims of trafficking and any children accompanying them to and from Kenya, their resettlement, reintegration into society, provision of appropriate shelter and other basic needs, psycho-social support, appropriate medical assistance, legal assistance or legal information including such information on the relevant judicial and administrative proceedings.</p> <p>While information such as the plans for providing services to victims of trafficking and the records relating to the judicial and administrative proceedings in human trafficking cases will be available with the relevant public entities and can be requested through an application brought under the ATI Act, the records relating to the actual provision of services will be available with private entities such as NGOs, medical treatment centres, hospitals, care homes etc. These latter bodies are obliged to provide information directly to an applicant under the ATI Act in accordance with Section 4(1) read with Section 4(3) of the ATI Act.</p>



ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION OF C-TIP ACT	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 15 <i>... continued</i></p>			<p>The Ministry responsible for matters relating to women and children may have drawn up a list of private entities that have the capacity to provide the kind of services envisaged under Section 15 of the C-TiP Act. Such a list may also be accessed under the ATI Act, in order to approach those private entities directly to seek information about actions taken by them to provide appropriate services in specific cases.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 17</p>	<p>Court records relating to the order to confiscate and ensure forfeiture of the proceeds from human trafficking and administrative records of agencies tasked with the responsibility of executing such orders</p>	<ol style="list-style-type: none"> 1) Trial Court which orders confiscation of proceeds of human trafficking 2) Police authorities or any other agency that confiscates and ensures forfeiture of the proceeds from human trafficking 3) The National Assistance Trust Fund for Victims of Trafficking 	<p>The Trial Court can direct the police or any other competent government agency to confiscate and ensure forfeiture of the proceeds of crime. The proceeds may be used for awarding damages or compensation to the victims of trafficking. Any shortfall in the availability of funds is required to be met from the funds made available to the National Assistance Trust Fund for Victims of Trafficking.</p> <p>The Trial Court, police and other competent authorities which implement the confiscation and forfeiture proceedings as well as the National Assistance Trust Fund for Victims of Trafficking are all covered by the definition of the term “public entity” under the ATI Act. The information which they hold in their custody will be covered by the definition of the terms, “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act.</p> <p>The confidentiality requirement mentioned in Section 11 of the C-TiP Act will apply only to the extent of protecting the identity of the victim. It will also apply if the direction to confiscate and ensure forfeiture are also issued in proceedings held in camera.</p> <p>However this confidentiality requirement will not apply to other proceedings under this provision of the C-TiP Act. Hence information may be disclosed in accordance with the provisions of the ATI Act to an applicant.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 18</p>	<p>Records relating to the repatriation of victims of human trafficking; travel documents issued to such persons who do not possess proper documentation; and records relating to retaining of victims of trafficking within Kenya to prevent further danger to them</p>	<p>The Ministry responsible for Immigration related matters and authorities which issue travel documents to victims</p>	<p>The Minister responsible for Immigration matters can ensure repatriation of victims of human trafficking to their country of origin by issuing travel documents. The Minister is also empowered by this provision to permit the victims to stay within Kenya if repatriation is likely to put them in danger again.</p> <p>The office of the Minister responsible for immigration and the authorities responsible for issuing travel documents are all “public entities” under the ATI Act. Where victims are housed within Kenya instead of repatriated to their country of origin, the services of NGOs and care homes may be enlisted. Such bodies will be covered by the provisions of the ATI Act as “private entities”. Records held by them may be sought through a formal application as per Section 4(1) read with Section 4(3) of the ATI Act.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 19 read with Paragraph 1 of the First Schedule</p>	<p>1) Records relating to the establishment of the Counter Trafficking in Persons Advisory Committee</p> <p>2) Records held by the Secretariat for the Counter-Trafficking in Persons Advisory Committee</p>	<p>1) The Ministry responsible for matters relating to women and children</p> <p>2) The Ministry responsible for matters relating to gender affairs</p>	<p>The Minister responsible for matters relating to women and children can establish the Counter Trafficking in Persons Advisory Committee comprising at least 10 ex officio and nominated members. Members nominated by civil society and other organisations serve on this committee for a period of three years renewable for another period of three years. Its Secretariat is housed in the Ministry responsible for matters relating to gender affairs.</p> <p>Both Ministries and the Committee are covered by the definition of the term “public entity” under the ATI Act. The information created, collected and used by the Committee in the course of its work is covered by the definition of the terms, “information”, “public record” and “electronic record” (if applicable).</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Paragraph 1 of the First Schedule</p>	<p>Records relating to the appointment of the members of the Counter Trafficking in Persons Advisory Committee. This will include their curriculum vitae, application for membership, if any, internal deliberations of the Ministry responsible for matters relating to women and children with regard to the nominations received, records containing criteria adopted for making the final selection, amongst others</p>	<p>The Ministry responsible for matters relating to women and children</p>	<p>Paragraph 1 of the First Schedule relates to the term of appointment of the civil society nominees as Members of the Advisory Committee in accordance with Sections 19(2)(l), (m) and (n) of the C-TiP Act.</p> <p>All records held by the Ministry responsible for matters relating to women and children regarding the appointment of the civil society nominees as members of the Advisory Committee are covered by the definition of the terms, “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act.</p> <p>The records containing the criteria adopted for the final selection of Committee members is an example of information that can be requested using the ATI Act.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Paragraph 2 of the First Schedule</p>	<p>Records relating to the resignation of a civil society nominated member of the Counter Trafficking in Persons Advisory Committee and records relating to the official deliberations with regard to accepting the resignation or otherwise</p>	<p>The Ministry responsible for matters relating to women and children</p>	<p>A civil society nominated member can quit the Counter Trafficking in Persons Advisory Committee by tendering one’s resignation.</p> <p>All records held by the Ministry responsible for matters relating to women and children regarding the resignation of the civil society nominated members of the Advisory Committee are covered by the definition of the terms, “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act and can be requested through the Act.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Paragraph 3 of the First Schedule</p>	<p>Records of proceedings relating to the removal of a civil society nominated member of the Counter Trafficking in Persons Advisory Committee</p>	<p>The Ministry responsible for matters relating to women and children</p>	<p>The grounds for removing a civil society nominated member of the Advisory Committee include being adjudged bankrupt, being convicted for an offence involving dishonesty or fraud, being convicted of a criminal offence and sentenced to more than a six-month prison term or fine of more than 10,000 shillings, being incapacitated by prolonged physical or mental illness, becomes unfit to discharge duties as a member of the Advisory Committee.</p> <p>All records held by the Ministry responsible for matters relating to women and children regarding the removal of the civil society nominated members of the Advisory Committee are covered by the definition of the terms, “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act. CSOs can request information regarding the removal of the CSO nominated member.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPER/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Paragraph 5 read with Paragraph 4 of the First Schedule</p>	<p>Minutes of the Counter Trafficking in Persons Advisory Committee’s meetings</p>	<p>Ministry responsible for matters relating to gender affairs</p>	<p>The procedure to be adopted by the Advisory Committee for its meetings entails the requirement of meeting at least four times every financial year where the gap between two consecutive meetings does not exceed three months, procedure for convening meetings other than the routine ones required by the C-TiP Act, procedure for electing the Chairperson and Vice-Chairperson of the Advisory Committee, the quorum required for every meeting, manner of transacting business by the Committee where both the Chairperson and the Vice Chairperson remain absent from a meeting, manner of arriving at decisions on matters where consensus is not possible (through majority vote) and procedures determined by the Committee to conduct its business and procedure for attendance of other persons at its meetings.</p> <p>All records are held by the Ministry responsible for matters relating to gender affairs as the appointed Secretariat of the Committee. These records are covered by the definition of the terms, “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act and should be accessible.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 20(2)</p>	<p>Records of the Counter Trafficking in Persons Advisory Committee relating to:</p> <ol style="list-style-type: none"> 1) The comprehensive and integrated programme formulated by the Minister responsible for matters relating to women and children for preventing and suppressing human trafficking; 2) Policy coordination of agencies involved in combating human trafficking; 3) Programmes formulated to reintegrate trafficked persons both locally and internationally; 4) Records relating to the monitoring and evaluation of the progress made with respect to prevention, protection and prosecution 	<ol style="list-style-type: none"> 1) The Secretariat of the Advisory Committee housed in the Ministry responsible for matters relating to gender affairs 2) NGOs, care homes, community based organisations and other institutions engaged with the Advisory Committee to assist with the performance of its functions under Section 20(2) of the Act 	<p>The Counter Trafficking in Persons Advisory Committee is vested with a host of functions and responsibilities to ensure the prevention and suppression of human trafficking and ensure support services for victims and survivors.</p> <p>The Secretariat of the Advisory Committee and other government department agencies functioning in collaboration with it to combat human trafficking are public entities under the ATI Act. NGOs, care homes, community-based organisations and other institutions that assist the Committee to carry out its mandate will be covered under the definition of the term “private body” under the ATI Act. The records that they hold in their custody with regard to the performance of their functions and responsibilities under the C-TiP Act are covered by the definition of the terms, “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act.</p> <p>CSOs can request for records relating to measures put in place to provide rehabilitation services to victims as well as efforts made by the relevant institution to establish intervention centres at various levels of the community.</p> 

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 20(2) <i>...continued</i></p>	<p>in the context of human trafficking;</p> <p>5) Documents and correspondence with other Government departments and NGOs to advance the purpose of the C-TiP Act, data and information on cases of trafficking compiled and documented for the purpose of policy formulation and programme direction; documents relating to mechanisms developed for ensuring timely, coordinated and effective response to human trafficking;</p> <p>6) Records relating to measures put in place to provide mutual assistance internationally to prevent and suppress trafficking;</p>		

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION OF C-TIP ACT	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 20(2) <i>...continued</i></p>	<p>7) Records relating to measures put in place to provide rehabilitation services to victims including educational and protective programmes, counselling, temporary shelter and intervention centres established at various levels of the community;</p> <p>8) Records relating to the mechanisms to screen persons entering or leaving Kenya to determine if they are victims of human trafficking;</p> <p>9) Records relating to public information campaigns;</p> <p>10) Records relating to establishing and supporting community based initiatives to address the phenomenon of human trafficking;</p>		



ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 20(2) <i>...continued</i></p>	<p>11) Records relating to the implementation of effective pre-employment orientation seminars and pre-departure counselling programmes to applicants for overseas employment.</p>		

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 21</p>	<p>Annual report submitted by the Counter Trafficking in Persons Advisory Committee to Parliament and the background materials which form the basis of such reports</p>	<p>1) Secretariat of the Advisory Committee housed in the Ministry responsible for matters relating to gender affairs 2) The Ministry responsible for matters relating to women and children and 3) The Secretariat of Parliament</p>	<p>The Counter Trafficking in Persons Advisory Committee is required to submit an annual report to Parliament covering its policies, programmes and activities relating to the implementation of the C-TiP Act.</p> <p>This annual report and the materials which were used to compile the report will be available with the Secretariat of the Advisory Committee. The annual report itself will be available not only with the Secretariat of the Advisory Committee but also the Ministry responsible for matters relating to women and children and the Secretariat of Parliament which receive such reports. All these bodies are “public entities” for the purpose of the ATI Act and the information relating to the annual reports are covered by the definition of the terms “information”, “public record” and “electronic record” (if applicable).</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 22</p>	<p>Records relating to the establishment of the National Assistance Fund for Victims of Trafficking in Persons</p>	<p>The Ministry responsible for matters relating to women and children</p>	<p>Section 22 provides for the establishment of a National Assistance Fund for Victims of Trafficking in Persons to provide assistance for victims of human trafficking.</p> <p>Although the C-TiP Act is not clear as to which agency of the Government has the responsibility of initiating action to establish the Fund, under the general scheme of the Act, it is the Minister responsible for matters relating to women and children who has the duty of implementing its key provisions. It is surmised that the Fund would also be established by the said Minister.</p> <p>All records relating to the establishment of the Fund are covered by the definition of the terms “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 23</p>	<p>All records relating to the deposit of monies into the National Assistance Fund for Victims of Trafficking in Persons</p>	<ol style="list-style-type: none"> 1) Secretariat of Parliament 2) Police authorities and other enforcement agencies 3) Secretariat of the Counter Trafficking in Persons Advisory Committee housed in the Ministry responsible for matters relating to gender affairs 	<p>The sources of monies that may be legitimately deposited with the Fund include monies appropriated by Parliament for the purpose of the fund; proceeds of crime confiscated or forfeited by the police and other law enforcement authorities acting under orders from the trial court; income generated by investments made by the Board of Trustees of the Fund and any donation received by the Board of Trustees for the purpose of the Fund.</p> <p>Information relating to monies appropriated by Parliament for the purpose of the Fund will be available with its Secretariat as well as the Secretariat of the Advisory Committee housed in the Ministry responsible for matters relating to gender affairs.</p> <p>Information relating to monies deposited from the confiscated and forfeited proceeds of crime will be available with the police and law enforcement agencies which are engaged in such actions and also the Secretariat of the Advisory Committee housed in the Ministry responsible for matters relating to gender affairs.</p> <p>Information about the investments made and donations received by the Board of Trustees will be available with the Secretariat of the Advisory Committee housed in the</p> 

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION OF C-TIP ACT	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 23 <i>...continued</i></p>			<p>Ministry responsible for matters relating to gender affairs.</p> <p>All records relating to the flow of monies into the Fund are covered by the definition of the terms, “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 23(2)</p>	<p>Records relating to the manner of use of the National Assistance Fund for Victims of Trafficking in Persons</p>	<p>Secretariat of the Counter Trafficking in Persons Advisory Committee housed in the Ministry responsible for matters relating to gender affairs</p>	<p>The money from the fund may be used for meeting expenses arising out of assistance provided to victims of human trafficking as required under Section 15 of the C-TiP Act. Additionally, it may also be used to meet the shortfall of funds for paying damages from the proceeds of human trafficking which are confiscated and forfeited to the State. The monies may also be used for such other purposes as may be determined by the Counter Trafficking in Persons Advisory Committee.</p> <p>All records relating to the expenditure of monies from the Fund are covered by the definition of the terms, "information", "public record" and "electronic record" (if applicable) provided in the ATI Act.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 24</p>	<p>Records relating to the nomination of non-ex officio members to the Board of Trustees of the National Assistance Fund for Victims of Trafficking in Persons</p>	<p>Secretariat of the Counter Trafficking in Persons Advisory Committee housed in the Ministry responsible for matters relating to gender affairs</p>	<p>Two of the members of the Board of Trustees of the Fund are non-ex officio appointees who are conversant with issues relating to human trafficking and have experience in financial management respectively. The latter is the Treasurer of the Board of Trustees.</p> <p>All records relating to the appointment of these two non-ex officio Members of the Board of Trustees of the Fund are covered by the definition of the terms, “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act.</p>

ANALYSIS OF THE COUNTER TRAFFICKING IN PERSONS ACT (KENYA)

RELEVANT STATUTORY PROVISION	NAME/TYPE/CATEGORY OF INFORMATION/DOCUMENT/ RECORD	CUSTODIAN OF THE INFORMATION/ DOCUMENT/ RECORD	BRIEF DESCRIPTION OF/COMMENTS ON THE NATURE OF INFORMATION/ DOCUMENT/RECORD
<p>Section 24(2) and 28</p>	<p>Records relating to the formulation of Regulations to give effect to the provisions of the C-TiP Act</p>	<p>1) The Ministry responsible for matters relating to women and children 2) Secretariat of the Counter Trafficking in Persons Advisory Committee housed in the Ministry responsible for matters relating to gender affairs</p>	<p>The specific themes on which the Minister responsible for matters relating to women and children may make regulations in consultation with the Advisory Committee include any matter that is required or permitted by the C-TiP Act to be prescribed, the inter-sectional implementation of the Act, the repatriation process, the conduct of the affairs of the Board of Trustees [Section 24(2)] and any other matter which is necessary or expedient to prescribe in order to achieve and promote the objects of the Act.</p> <p>All records relating to the formulation of any Regulation under the C-TiP Act will be in the custody of the Ministry responsible for matters relating to women and children. Additionally, as the Advisory Committee is required to be consulted while formulating these Regulations, records relating to such consultation will be available with the Advisory Committee’s Secretariat housed in the Ministry responsible for matters relating to gender affairs.</p> <p>All records relating to the formulation of Regulations from time to time under the C-TiP Act, are covered by the definition of the terms, “information”, “public record” and “electronic record” (if applicable) provided in the ATI Act.</p>

NOTE: In addition to all the official records and documents listed above, almost all of the decision making processes initiated under the C-TiP Act will entail recording of the advice, opinions and views of the Minister, Deputy Minister, if any, and civil servants involved. Records containing such advice, opinions and views are also covered by the definition of “information” under the ATI Act. Requests for such information may be submitted to the custodians of such information under the ATI Act.

RECOMMENDATIONS

TO STATES

In order to ensure effective implementation of right to information laws and to ultimately promote transparency and accountability in efforts to address issues related to human trafficking, the Commonwealth Human Rights Initiative makes the following recommendations:

WE URGE COMMONWEALTH STATES TO:

Promote and protect the public's right to access information as guaranteed under right to information legislation.

Ensure public awareness and education on the Right to Information Act/Access to Information Act.

Ensure that information, data and records on human trafficking are collated, consolidated and made available proactively, in a timely manner, and in accessible formats.

Ensure comprehensive training for all public officials on the right to information/access to information and their obligations under the relevant national laws.

Promote a culture of openness and transparency within governance.

Organise and maintain detailed record of the institutions, departments and/or agencies that tackle human trafficking, including a description of their roles and responsibilities, and kinds of information and records that are prepared by, or are in the custody or under the control of, each of these institutions.

Prepare detailed guidelines aimed to facilitate the exercise of the right to information by civil society and victims and survivors of human trafficking and their families.

Encourage collaboration and partnership with civil society organisations to enhance the sharing of information, records and data on human trafficking.

TO CIVIL SOCIETY ORGANISATIONS

In order to ensure anti-trafficking advocates have the necessary information to design, develop and implement effective and relevant programming, the Commonwealth Human Rights Initiative makes the following recommendations:

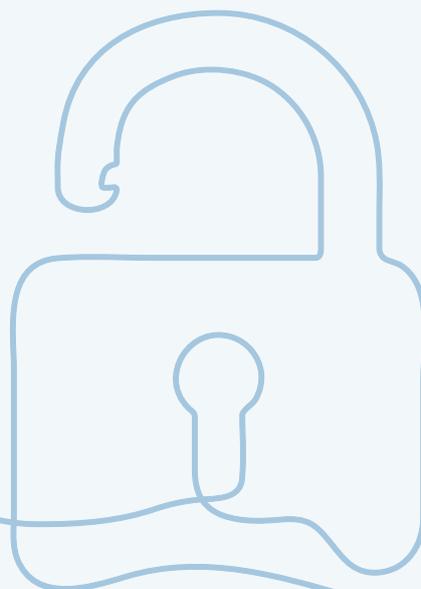
WE URGE CIVIL SOCIETY ORGANISATIONS TO:

Work with international, regional and national civil society networks and coalitions, such as the RTI Coalition Ghana and the Commonwealth 8.7 Network⁶⁴, to raise awareness about the importance and value of right to information in the efforts to combat human trafficking.

Promote a culture of knowledge sharing and learning among CSOs, especially grassroots organisations.

Use Right to Information/Access to Information legislation to address information/data gaps in the efforts to tackle human trafficking.

Make joint submissions and applications for information requests - a collective voice is stronger. Review RTI mechanisms and processes and advocate for the strengthening of these mechanisms where necessary.



⁶⁴ For more information about the Commonwealth 8.7 Network, visit: <https://www.commonwealth-87.org/>



APPENDIX 1

List of Relevant Government Agencies in Ghana

#	GOVERNMENT AGENCIES	WEBSITES
1	Ministry of Employment and Labour Relations	https://melr.gov.gh/
2	Ghana Police Service, CID Headquarters	https://police.gov.gh/en/
3	Anti-Human Trafficking Unit, Economic and Organised Crime Office (EOCO)	https://eoco.gov.gh/
4	Ghana Immigration Service	https://home.gis.gov.gh/
5	Department of Social Welfare	https://www.mogcsp.gov.gh/department-of-social-welfare/
6	Ministry of Gender, Children and Social Protection	https://www.mogcsp.gov.gh/
7	The Greater Accra Regional Directorate, Department of Gender	https://www.ghs.gov.gh/ghs-site/public/regions/greater-accra
8	The National Commission on Civic Education (NCCE)	https://www.nccegh.org/
9	Commission on Human Rights and Administrative Justice (CHRAJ)	https://chraj.gov.gh/
10	Department of Labour, Child Labour Unit	https://www.govgh.org/ministries/2ca526f196/

APPENDIX 2

List of Relevant Government Agencies in Kenya

#	GOVERNMENT AGENCIES	WEBSITES
1	Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA)	www.kudheiha.org
2	Counter Trafficking in Persons Secretariat	www.socialprotection.go.ke
3	Directorate of Immigration Services	www.immigration.go.ke
4	National Counter-Terrorism Centre	https://counterterrorism.go.ke/
5	Office of the Director of Public Prosecutions Anti-Trafficking Unit	www.odpp.go.ke
6	Child Welfare Society of Kenya (CWSK)	www.cwsk.go.ke
7	National Employment Authority	www.nea.go.ke
8	Department of Labour, Ministry of Labour and Social Protection	www.labour.go.ke
9	Kenya National Commission on Human Rights (KNCHR)	www.knchr.org
10	Ministry of Foreign Affairs and International Trade	www.mfa.go.ke
11	Law Enforcement: Directorate of Criminal Investigations, Anti-Human Trafficking, and Child Protection Unit (AHTCPU), Directorate of Criminal Investigations, Transnational Organised Crime Unit (TOCU)	https://www.nationalpolice.go.ke/2015-09-21-17-23-32/dci.html

APPENDIX 3

Minimum Content of a Right to Information Request Letter

When writing your application to request information, it is important that you word your question correctly so that it is perfectly clear what information you want. At a minimum, your application should contain enough information to enable an information officer to provide you with the information requested.

An application under the RTI / ATI Act should have the following:

- 1 Date
- 2 Name and postal address of Applicant
- 3 Name and address of the public authority
- 4 Description of the required information
- 5 Period for which information is required, if any
- 6a The form in which information should be provided: Photocopies/CD/Floppy/
certified copies/certified samples/inspection
- 6b If inspection is sought, indicate required duration
- 7 Proof of fee payment (based on the RTI Act and as required by the public institution)
- 8 Whether information will be collected in person or is required to be sent by post
- 9 Signature of the Applicant

APPENDIX 4

Commonwealth Countries with Right to Information Laws

#	COUNTRY	LAW AND DATE OF ENACTMENT
1	Antigua and Barbuda	Freedom of Information Act (2004)
2	Australia	Freedom of Information Act (1982)
3	Bangladesh	Right to Information Act (2009)
4	Barbados	Freedom of Information Act (2008)
5	Belize	Freedom of Information Act (1994)
6	Canada	Access to Information Act (1985)
7	Dominica	Law on Free Access to Public Information (2004)
8	Fiji	Information Act (2018)
9	Ghana	Right to Information Act (2019)
10	Guyana	Access to Information Act (2011)
11	India	Right to Information Act (2005)
12	Jamaica	Access to Information Act (2002)
13	Kenya	Access to Information Act (2016)
14	Malawi	Access to Information Act (2016)
15	Maldives	Right to Information Act (2014)
16	Malta	Freedom of Information Act (2012)
17	Mozambique	Access to Information Bill (2014)
18	New Zealand	Official Information Act (1982)
19	Nigeria	Freedom of Information Act (2011)
20	Pakistan	Access to Information Act (2017)
21	Rwanda	Law relating to Access to Information (2013)

#	COUNTRY	LAW AND DATE OF ENACTMENT
22	Saint Lucia	Freedom of Information Act (2009)
23	Seychelles	Access to Information Act (2018)
24	Sierra Leone	Right to Access to Information Act (2013)
25	South Africa	Promotion of Access to Information Act (2000)
26	Sri Lanka	Right to Information Act (2016)
27	St Kitts and Nevis	Freedom of Information Act (2018)
28	St Vincent and The Grenadines	Freedom of Information Act (2003)
29	The Gambia	Access to Information Bill (2021)
30	Togo	Freedom of Access to Information and Public Documentation Law (2016)
31	Trinidad and Tobago	Freedom of Information Act (1999)
32	Uganda	Access to Information Act (2005)
33	United Republic of Tanzania	Access to Information Act (2016)
34	United Kingdom	Freedom of Information Act (2000)
35	Vanuatu	Right to Information Act (2016)