

# **THE RIGHT TO INFORMATION BILL, 2007 OF GHANA**

**A CRITIQUE**

**AND**

**RECOMMENDATIONS FOR IMPROVEMENT**

**Submitted by**

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# **THE RIGHT TO INFORMATION BILL 2007 of GHANA**

## **A CRITIQUE AND RECOMMENDATIONS FOR IMPROVEMENT**

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People's right to access information has gained wide recognition as an indispensable feature of a functional democracy. Article 21(f) of the Ghanaian Constitution guarantees every person the right to information subject to such qualifications as are necessary in a democratic society." This Bill seeks to lay down systems and procedures for ensuring access to information to every person from government agencies thereby operationalising this crucial fundamental right. It is commendable that the government has circulated the present Bill for inputs from the civil society effectively paving the way for public consultation.

### **Venkat's Comment**

**Nana and Florence, we normally add 2-3 paras about the work we have been doing in any country after the introductory para. You would be best placed to fill this up. I leave it to you to provide a précis of the work that CHRI has been doing in Ghana on RTI issues.**

While it is necessary to ensure that the public participates in the drafting process to ensure that the final legislation developed is appropriate for the national context, it is generally well accepted that there are basic minimum standards which all Right to Information legislation should satisfy. Chapter 2 of CHRI's Report, *Open Sesame: Looking for the Right to Information in the Commonwealth*<sup>1</sup>, provides a more detailed discussion of these standards. This critique primarily draws upon this research and CHRI's experience of participating and advising the process of implementation of similar laws in India and Uganda.

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<sup>1</sup> [http://www.humanrightsinitiative.org/publications/chogm/chogm\\_2003/default.htm](http://www.humanrightsinitiative.org/publications/chogm/chogm_2003/default.htm)

## Critique of the Draft Right to Information Bill, 2007

Overall, CHRI's assessment is that the Bill in its current form is relatively comprehensive and to a large extent includes provisions on par with international best practice. It is commendable that the draft legislation guarantees information access rights to all persons and not merely to Ghanaian citizens. This submission contains several recommendations for strengthening the law and smoothing the process of its implementation. These recommendations are given in separate boxes at the end of the discussion of the relevant provisions under each chapter of the Bill.

### Preamble:

1. The Preamble of a law clarifies its objectives and the intentions of Parliament's legislative policy. The Preamble indicates that the RTI Bill is meant for implementing the right to information held by a government agency. Section 64 of the Bill seeks to empower the Attorney General to extend the coverage of this law to the private sector by legislative instrument. International best practice on right to information does not place such powers in the hands of government functionaries. It would also lead to unnecessary duplication of access legislation. Instead the examples of South Africa and Antigua and Barbuda in the Commonwealth can be used for guidance. Their information access laws cover government agencies as well the private sector. The crucial difference is in the conditions stipulated for accessing information from these bodies. Under the access laws in both countries a requestor may seek information from any government agency without having to provide reasons. This is based on the principle that the State has a perfect obligation to respect, promote and fulfill fundamental rights of persons. Therefore no reasons are required to be given for exercising the fundamental right to information from government agencies. On the other hand, in both countries, information can be sought from private agencies only for the protection of a legally enforceable right. This is based on the principle that agencies in the private sector have an imperfect obligation to respect and fulfill fundamental rights as they are not a part of the State sector. People do not have a direct claim on the information held by private bodies unlike a government agency. The request must be based on a claim which is recognizable in law and it is necessary to disclose the nature of such a claim for the private body to take action. If this principle is laid down clearly in a single access law in Ghana, it can avoid confusion. This will also reduce opposition and heartburn when private agencies may be selectively brought within the ambit of this law at a later date.
2. The Memorandum accompanying the RTI Bill recognizes the value of the right to information for reducing corruption due to heightened public scrutiny. This is a laudable objective and is mentioned in the preamble of the RTI Act in India as well. This policy statement ought to be included in the preamble itself. Consideration may be given to amending the preamble of the Bill to include containment of corruption as another explicitly stated objective.
3. The Preamble could also state clearly the two methods of providing access to information to people given in the law – voluntary disclosure by bodies covered by this law and disclosure upon a formal request.

### **Recommendation:**

*The Preamble may be amended as follows:*

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

*related matters.*

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

#### **General Comments:**

4. There are a few instances of loosely worded drafting that detract from the reading of the draft Bill and its interpretation. These general issues have been addressed throughout this critique. The layout of the draft Bill could be improved to enable ease of navigation, for example by revising the chapterisation of the operative provisions. For example Chapter I should be a general introductory section and should include the interpretation section (section 66) of the draft Bill since the interpretation section provides the framework within which the rest of the provisions of the legislation will be understood. **Consideration may be given to moving section 66 to the beginning of the Bill. Similarly consideration may be given to bringing forward the scope of the right to information and the procedures for providing access before the provisions for exempting disclosure are discussed. This will give a positive impression about the legislation’s priority – i.e. providing access to information and not merely withholding access.**
5. Under exempt information (section 5 to section 18), reference to “information is exempt” should be removed. The Bill should provide for the circumstances under which information may be denied by a body covered by this law. The declaring of any category of information as being exempt is not in tune with international best practice. Furthermore section 18 of the Bill provides for the disclosure of information in public interest even if it covered by one or more exemptions. Therefore categorizing certain types of information as ‘exempt information’ runs contrary to this section as well. **Consideration may be given to replacing the phrase “information is exempt” with “access to information may be denied...”.**
6. **It is necessary to use gender sensitive language while detailing the provisions of any law. Consideration may be given to ensuring that gender sensitive language is used in all provisions.**

#### **Recommendations**

- All provisions of the Bill may be carefully edited to ensure that there are no loosely worded phrases. For example the Bill refers to its provisions as section whereas the Memorandum refers to them as clauses. Standardising usage would help avoid confusion.

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

- 1. Short title, extent of coverage, timeline for operationalisation of various provisions and interpretation (section 66).**
- 2. Explicit mention of right of access and obligation of government agencies and private bodies to provide access to information (section 2)**
- 3. Obligations of suo motu disclosure (section 3)**
- 4. Procedures for access through formal request including fee related provisions (sections 19-33, 51-53)**

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

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

**7. Internal reviews and appeals (sec 38-46 and including provisions relating to CHRI's recommendations for creating the Ghana Information Commission- see paras 40-41 below)**

**8. Miscellaneous provisions**

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

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

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

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

8. It is international best practice for the Bill to specify which sections are to be implemented immediately and which at a later date. This will statutorily limit the number of sections given a later date for implementation rather than leave this decision to the discretion of officials. However, this needs to be weighed against the need to give agencies sufficient time to prepare for implementation. **Consideration may be given to inserting a provision indicating extent of the Act and phasing in different obligations over different time frames to ensure that the Act has its full and intended effect as soon as possible.** For example, the provisions relating to *suo motu* disclosure, the designation of Information Officers and authorities competent to hear appeals and the constitution of the Information Commission (newly recommended by CHRI) could be operationalised as soon as the Bill becomes law. Provisions relating to filing of information requests, the amendment of information in personal records, and filing of internal reviews and appeals before the newly recommended Information Commission could commence after 3-4 months of the enactment of the law.

**Recommendations**

- Please insert a section to specify a maximum time limit for the Act coming into force, which is no later than twelve months from the date the Act receives Presidential assent.

- Or, consider including a provision on phased commencement and implementation of the different provisions in the Bill, for example:
- 3-4 months should be allowed before people can make formal requests for information;
- 4 months should be allowed for the Information Commission to start entertaining appeals;
- please insert a complete list of provisions which will be subject to delayed implementation.

## **Access to official information**

### *Section 1: Right of access to official information*

9. Section 1 provides every person a positive and broad right to information. However the draft Bill does not contain the definition of the term 'person'. The definition of the term 'person' may be taken from the Income Tax Act or the Companies Act in force in Ghana. This will ensure that individuals and organised groups such as civil society organisations and companies can also access information under this law. **Consideration may be given to including a new section to define "person" in section 66 so that organisations and companies (artificial-juridical entities) may be enabled to seek and obtain information under the Act.**
10. Experience from India shows that Information Officers often force citizens to file written applications for obtaining proactively disclosed information. In order to avoid this situation in Ghana **consideration may be given to include the following provision in section 3** to specify *"The right may be exercised through an application made in accordance with section 20 for any information other than the information required to be published under section 3."*
11. Section 4(1) requires a person making an urgent information request to give reasons justifying the urgency. It is against international best practice to ask for reasons to prove the urgency of the requested information except where such a request is made to a private body. **Consideration may be given to rephrasing section 4 as follows:** *"A person does not have to give reasons for requesting information except where such a request is being made to a Private Body:  
Provided that a person requesting information from a Private Body under this Act shall clearly indicate the right that is sought to be protected by the disclosure of information."*
12. Section 1 should not only describe the nature and scope of the right to information but also describe its content. **Consideration may be given to inserting a new section 5A describing the content of the right of access to information.**

### **Recommendations**

- Please insert a new section to define "person" in the interpretation section (section 66)
- In accordance with the recommendations in paragraph 11 above, amend sub-section 3 of section 1 to clearly indicate that an application for information which is already available in the public domain is unnecessary. Sub-section 3 may be rephrased as follows,  
***"The right may be exercised through an application made in accordance with section 20 for any information other than the information required to be published under section 3."***
- Sub-section 4 of section 1 may be rephrased as follows:

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

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

- Please insert new clause 5A below clause 5 of section 1. This provision may draw from section 2(j) the Indian Right to Information Act, 2005 as follows:

*“5A) The “right to information” means the right to information accessible under this Act which is held or under the control of any government agency or private body and includes the right to-*

*(i) inspection of work, documents, records;*

*(ii) taking notes , extracts or certified copies of documents or records;*

*(iii) taking certified samples of material*

*(iv) obtaining information in the form of diskettes ,floppies, tapes ,videos cassettes or in any other electronic mode or through print outs where such information is stored in a computer or other device of any government agency or private body.”*

### *Section 2: Responsibility of Government to provide information on governance*

13. Section 2 places an obligation on the government to routinely and proactively disseminate information of general relevance to people. **Consideration may be given to amending section 2 to clarify that the Government shall make available to the people general information on their governance in a voluntary manner so that the people’s need for filing formal applications for information under this Act becomes minimal.**

### *Section 3: Responsibility of the Minister in respect of access*

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

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

16. The section must provide for broad dissemination of information. Specifically, information disclosed by each Ministry proactively must be accessible to all in society equally with little effort

required. Therefore the only consideration should be that the contents of the manual must be effectively disseminated and bring to everyone including the unlettered, minority groups and those who are located in rural regions within its outreach. The most effective method of dissemination and the language spoken by the people must be guiding factors behind the dissemination efforts. **Consideration may be given to adding an explanation to the term 'disseminate' beneath clause (1) section 3 describing the form and manner of dissemination.**

17. Clause (2) of Section 3 is contains a meagre list of information that is required to be proactively disclosed. The information access laws of Mexico and India may be used as guidance as they contain an expansive list of information categories that need to be disclosed proactively and updated on a regular basis. If more and more information is disclosed proactively, there will be fewer applications from people seeking information in a formal manner under this Act. This will reduce the burden of Information Officers considerably. **Consideration may be given to including more categories of information especially regarding operational and financial details of government agencies and private bodies in this list in accordance with international best practices.**
18. This section does not place an obligation on public authorities to be accountable for their decisions – an avowed objective of the law as mentioned in the preamble. It is international best practice to include such obligations in the provisions dealing with proactive disclosure. **Consideration may be given to including in this section a provision that makes it mandatory for government agencies and private bodies to – 1) disclose all information and relevant facts while formulating any important policy, project or decision that may affect people or sections of people and 2) give reasons for its administrative or quasi-judicial decisions to persons affected by such decisions.**

### **Recommendations**

- Please amend section 2 as follows-

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

- Please amend section 3(1) as follows-

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

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

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



**about such body in the form of a manual.”**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Section 4: Provision of guidelines for manual*

19. Proactive disclosure is not an easy task and requires technical expertise to put together. Disclosure schemes should become standardized so that people may navigate the contents with ease. This is a specialized task which is better handled by the newly proposed Ghana

Information Commission. Consideration may be given to amending this section to vest the duties for developing guidelines in the Ghana Information Commission.

**Recommendation:**

- Please replace the term 'Public Service Commission' in clause (1) of section 4 with '**Ghana Information Commission**'.

**Exempt Information**

20. The exemptions clauses require to be carefully constructed because they set limits on the range of information which can be accessed. Accordingly, it is essential that they are very tightly drafted and carefully worded in order to minimise the chance that they might be misused by obstructive officials. In accordance with best practice, the following changes are suggested to the exemptions clauses in the draft Bill:

- (a) The Bill should provide for the circumstances under which information may be denied by a body covered by this law. The declaring of any category of information as being exempt is not in tune with international best practice. Furthermore section 18 of the Bill provides for the disclosure of information in public interest even if it covered by one or more exemptions. Therefore categorizing certain types of information as 'exempt information' runs contrary to this section as well. **Consideration may be given to replacing the phrase "information is exempt" with "access to information may be denied..."**.
- (b) Section 5 (1) (a) explicitly provides a blanket exemption for the Office of the President and the Vice President which is unnecessarily broad and against the principles of maximum disclosure and accountability. There is no reason why information from these offices should be exempted from disclosure. People have a right to know what advice was tendered to these high constitutional functionaries and whether that advice was legal and just. Any sensitive matters contained in such advice whose disclosure may jeopardize for example, national security, defense interests, foreign relations or economic interests of the country will attract other legitimate exemptions given in this Bill. There is no need to provide a blanket exclusion for information relating to these offices. In actual operation such are likely to be stretched too far to exclude such offices from any duty to give information at all which is unjustifiable. **Consideration may be given to deleting this provision.** Clause 2 of section 5 provides for internal discretion by giving the Secretary to the President or Vice President the power to unilaterally issue certificates that prevent disclosure of information which if exercised will amount to being the judge in one's own case. Clause 3 indicates what will not be included under this exemption. **In view of our contention regarding the deletion of clause (1) of this section consideration may be given to deleting both clauses.**
- (c) The wording of s.6 is too broad and inappropriate. International best practice requires class exemptions be avoided in such laws. While *some* information in *some* Cabinet papers may be sensitive - and on that basis, will be covered by one of the other exemption provisions in the Act - it is not the case that *all* Cabinet papers are *always* sensitive. Ghana is a functional and responsible democracy and the people should have the right to know about the proposals being suggested and should have access to the materials used by Cabinet when it makes a decision. International best practice does not support such a strict approach to protecting Cabinet information. The appropriate protection for Cabinet documents should be directed at whether premature disclosure would undermine the policy or decision-making process. Thus, an exemption should only be available to protect information submitted to Cabinet where disclosure would

*“seriously frustrate the success of a policy, by premature disclosure of that policy”* (and of course, if it otherwise contained sensitive information covered by another exemption). In recognition of the fact that Cabinet papers are largely time sensitive, it is worth noting that in Wales, UK, Cabinet proactively discloses all minutes, papers and agendas of its meetings within 6 weeks unless there are overriding reasons not to. In Israel, Cabinet decisions are automatically made public on the Prime Minister's Office website. **Consideration may be given to deleting this section entirely.**

- (d) Although police investigations should be protected, section 7 (1) (c) is too broadly worded. Currently the clause is limited to investigations and exemption applies as long as it “reveals” investigative techniques and procedures. Generally investigation techniques and procedures are in the public domain in the form of police manuals. What needs to be protected is the plan for or manner of their application in specific cases as disclosure of case specific techniques and methods may jeopardize the outcome of the entire process. Therefore, the drafting could be tighter and leave less room for abuse. In order for an exemption to apply, it should be necessary for the disclosure of the requested information to actually cause (serious or substantial) prejudice. **Consideration may be given to amending the wording in section 7 (1) (c) to relate to specific cases of investigation.**
- (e) In section 7 (1) (e) there is a minor drafting error in section 7 (1) (e). **Consideration may be given to replacing the word “offence” with the term “offender” which is more appropriate to the context.**
- (f) The manner of drafting of section 7(h) gives the impression that records confiscated in accordance with an enactment will be barred from disclosure for all time to come. This is not in tune with international best practice. Such documents become public information when they are produced before a court or tribunal as part of any proceedings. Access to documents produced as evidence in open courts cannot be denied under the RTI law. They may be withheld from disclosure only until they are produced before a court or tribunal. **Consideration may be given to rephrasing section 7 (h) as follows- “to reveal a record of information that has been confiscated from a person by a police officer or a person authorized to the effect the confiscation in accordance with an enactment prior to its production in any judicial or quasi-judicial proceedings”.**
- (g) In section 7 (2) **consideration may be given to replacing “Information is not an exempt information” with “information shall not be withheld”** in order to harmonise it with the general recommendation that we have made at sub-para (a) above.
- (h) Section 7(3) provides a blanket exemption to the Armed forces, security and intelligence agencies. This provision is too broad and can be misused to withhold practically any information generated by these agencies. International best practice requires that only such information be exempted that would jeopardize their ability to carry out their statutory functions or if disclosure would harm the maintenance of security or dry up intelligence flows. As these bodies are also established in public interest, funded by the taxpayer's money and they function for the sake of the people they should also be subject to the same standards of disclosure as other government agencies. This is the practice in countries like the UK and Ireland. Sensitive information handled by the armed forces and other security and intelligence agencies are in any case protected under clause (a) to (m) of section 7 (1). **Consideration may be given to deleting section 7 (3).**
- (i) The harm test contained in section 8(1) (a) is of a very low threshold. The key concern ought to be whether disclosure would actually cause serious damage to a legitimate public interest which deserves to be protected. **Consideration may be given instead to**

**withholding disclosure only when it will lead to "serious harm" or "serious damage"** to relations of the Government with any other country.

- (j) The wording of clause (c) of section 8 (1) is too broad. The current phrasing of this provision increases the chances of its abuse. Simply because information was given to the Government of Ghana in confidence by an international organization of states does not require it to remain confidential. This amounts to providing blanket exemptions which is not in tune with the twin principle of maximum disclosure and narrowly drawn circumstantial exemptions. At the time it was communicated it may have been sensitive, but at the time it is requested it may be harmless. Disclosure need not be prevented in such cases. As long as the more general protection which guards against disclosures that would prejudice international relations is retained, the relevant interests will be protected. **Consideration may be given to deleting section 8(1)(c).**
- (k) The President is sought to be vested with the power of deciding whether information under section 8(1) will be disclosed or not. This is not in tune with international best practices. Disclosure ought not to be subjected to executive fiat in this manner. The decision to allow disclosure should be made by the newly recommended Ghana Information Commission which will be the adjudicatory body under this Act or by the courts where appeals may be filed. **Consideration may be given to deleting this clause.**
- (l) The harm test contained in section 9(a) is also of a very low threshold. The key concern ought to be whether disclosure would actually cause serious damage to the defense of the Republic. **Consideration may be given instead to withholding disclosure only when it will lead to "serious harm" or "serious damage"** to the defense of the Republic. The reference to terrorism in the same clause is also cause for concern. Instances of lawful behaviour and petty crimes being treated as terrorist offences are not uncommon in both developed and developing countries. As section 7(1) contains adequate protection for information relating to investigation of offences there is no need to single out terrorism in this provision. **Consideration may be given to deleting the term "terrorism" from this section.**
- (m) The phrasing of clause 10(f) may be extended to similar instances involving recruitment or career advancement. The same level of protection is required for these processes in order to prevent misuse of the RTI Act. **Consideration may be given to adding these two circumstances to this exemption.**
- (n) The word "impliedly" used in clause 11(1) is too vague and is liable to be misused. **Consideration may be given to deleting this word.** The phrasing of clause 11(c) is vague and liable to misunderstanding. **Consideration may be given to rephrasing it as follows- "to jeopardize the supply of similar information in future, where it is in the public interest that such information continues to be supplied."**
- (o) It is not in tune with international best practices to exempt internal working documents of government agencies from disclosure as it is against the principles of maximum disclosure and minimum exceptions. While some internal working papers may be sensitive, it is completely inappropriate to extend a blanket exemption for all such information. This is an unjustifiably broad protection which could very easily be abused by officials of all ranks to keep their working documents secret. Any sensitive information contained in such documents may be withheld using other exemptions already provided for in this law. **Consideration may be given to deleting section 13.**
- (p) The protection provided under clause 14(b) is already available under clause 7(1). There is no need for repeating it here. **Consideration may be given to deleting this clause.** Clause 14(c) refers to disclosure of information that would result in the contempt of a

quasi-judicial body. In most jurisdictions quasi judicial bodies do not have the power to punish for contempt unless specified in their constituting law. There is no reason why they should be privileged in this manner as it will lead to further obstacles in bringing about transparency in the working of such bodies. **Consideration may be given to deleting the reference to 'quasi-judicial body'.**

- (q) The waiver of privilege is loosely worded in clause 15(2). In order to ensure that a person has truly waived the privilege of confidentiality it must be in writing. **Consideration may be given to adding the phrase "in writing" at the end of this clause.**
- (r) The provisions exempting personal information from disclosure are broader than what international best practice warrants. For example the treatment of marriage related record as exempt information is unnecessary as most of this information will be available in public documents such as marriage registers. Similarly treatment of employment record especially in a government agency as personal matter is not justifiable. **Consideration may be given to deleting this clause.** Trade secrets and commercial interests are already protected under section 11. There is no need to repeat it in this context. **Consideration may be given to deleting this clause.**
- (s) In accordance with our recommendation at sub-para (a) above of para 19 **consideration may be given to replacing the phrase 'information is not exempt' with the phrase, 'information shall not be denied'.** Furthermore section 18 limits the number of grounds on which public interest will determine disclosure of exempt information to four. This is not in tune with international best practice. 'Public interest' is not a closed category and varies from case to case. **Consideration may be given to adding the phrase "but not restricted to the following".**

#### **Recommendation**

- Please *replace in all sections the phrase "information is exempt" with the phrase - "access to information may be denied".*
- Please delete s.5 (1) (a), 5(2) and 5(3)
- Please delete s.6
- Please insert the phrase **'in a specific case'** at the end of sub-clause 7(1)(c).
- Please replace the word **"offence"** with the term **"offender"**.
- Please insert the phrase **"prior to its production in any judicial or quasi-judicial proceeding"** at the end of section 7 (1) (h).
- Please consider replacing the phrase - *"Information is not an exempt information"* with the phrase - *"information shall not be withheld"* at the beginning of section 7 (2).
- Please delete section 7 (3).
- Please insert the term **'serious'** before the term **'damage'** and replace the term **'prejudice'** with the term **'serious harm'** in clause 8(1) (a).
- Please delete s.8 (1) (c).
- Please delete s.8 (2).

- Please insert the term '**serious**' before the term '**damage**' and replace the term '**prejudice**' with the term '**serious harm**' in clause 9(a).
- Please delete the term '**terrorism**' from clause 9(a).
- Please insert the phrase – "**recruitment and career advancement**" after the word '**educational**' and before the word '**purposes**' in clause 10(f).
- Please replace clause 11(1)(c) with the following - "**to jeopardize the supply of similar information in future, where it is in the public interest that such information continues to be supplied.**"
- Please delete s.13.
- Please delete s.14(b).
- Please delete the term '**quasi judicial body**' from s.14(c).
- Please insert the phrase "**in writing**" at the end of s.15(2).
- Please delete s.17(b) and 17(c).
- Please insert the phrase "**but not restricted to the following**" after the phrase 'disclosure of the information reveals evidence of'

### **Procedure for Access**

21. Experience from countries like India shows that information officers frequently insist that requestors seeking information proactively disclosed by public bodies file a formal written application. This defeats the very purpose of proactive disclosure. People in Ghana ought not to be required to file formal written applications for seeking access to the manuals prepared and disseminated under section 3. **Consideration may be given to adding the phrase – “other than that which is proactively disseminated pursuant to section 3 of this Act” to the opening sentence of clause 19(1).**
22. Clause (a) of section 19(1) requires that application for access to information be made in writing to the agency. It is advisable that the application be addressed to the Information officer of the government agency or private body directly. It is necessary to ensure that where the application is received by post or courier it is immediately forwarded to the Information Officer for action. In the absence of such a requirement there could be unnecessary delays especially when applications are addressed to other officers working in the government agency or public body. **Consideration may be given to adding the phrase “information officer of” to clause 19(1)(a).**
23. Clause 19(1)(f) requires a person seeking information to enclose relevant fee while submitting an application. Read along with the provision for deposit of additional fee contained in section 25 this amounts to imposing an application fee on every applicant. It is international best practice to collect only such fees that may be necessary for reproducing the requested information. There is no need to collect any fee at the stage of filing the application as neither the applicant nor the information officer would have a clear idea of how much it would cost to reproduce the requested information. In cases where the requested information is covered by one or more exemptions and no public interest is served by disclosure it is not proper to expect the applicant to pay a fee for information that he/she is not likely to get. Furthermore this law is being passed to give effect

to a fundamental right of persons in Ghana. The Government should not treat this as an opportunity of increasing its revenue receipts from the public every time a person chooses to exercise his/her fundamental right to access information. **Consideration may be given to deleting clause 19(1)(f).**

24. In view of the recommendation made at para 21 above **consideration may be given to replacing the term “officer” with the term “information officer” in clause 19(2).**
25. As this law gives effect to a fundamental right persons seeking information from government agencies should not be required to give reasons. Unless the law contains an explicit provision that does not require citizens to give reasons Information Officers steeped in the colonial mentality of maintaining undue secrecy in public affairs are likely to harass requestors for reasons and delay the decision-making process unreasonably. **Consideration may be given to inserting a new sub-clause to section 19 that prevents information officers of government agencies from demanding reasons from applicants.** However in accordance with the argument provided at para 1 above, private bodies can seek reasons before providing information as they do not have a perfect obligation like the State to give information unless the requestor claims that the information is required for protecting a legally enforceable right. **Consideration may be given to adding a new sub-clause to section 19 that requires requestors to provide details of the right that is sought to be protected by disclosure of information from private bodies.**
26. Clause 20(1)(a) provides the Information Officer the power to delegate functions in writing. Often these internal arrangements are not publicised widely and the person seeking information is often at a loss as to the identity of the officer he/she is required to approach with the information request. **Consideration may be given to including a requirement in this clause that all delegation of powers under this clause be publicised widely.**
27. The Bill commendably contains detailed provisions (section 21) for transferring applications from one government agency or private body to another if the requested information is partly or wholly held by that other body. However Clause 21(1)(b) needlessly complicates matters by requiring that applications more closely connected to the functions of another agency be transferred to that agency even if the requested information is in the custody of the agency originally receiving the request. International best practice requires that a request for any document or record held by an agency be disposed by that agency only. Transfer of the application is to be resorted to only when the agency does not have the requested information wholly or partially. This avoids unnecessary delays in processing information requests. **Consideration may be given to deleting clause 21(b).** Second, the time allowed for transfer of applications under this provision is too long. International best practice is to prescribe a shorter deadline for effecting transfers. **Consideration may be given to reducing the time limit allowed for transfer of applications from ten days to five.** Third, in accordance with our recommendation contained at paras 21 and 23 above, **consideration may be given to amending section 21 to the effect that applications fit for transfer shall be sent to the information officer of the other agency or private body that is most likely to have the information.** Fourth, it is necessary to specify that the same time limits stipulated in section 23 will apply to transferred applications also not including the time taken for such transfer. **Consideration may given to amending clause 21(4) to indicate that the time limits specified in section 23 shall apply to applications received from other agencies or private bodies subsequent to their transfer.**
28. Section 23(1) requires disposal of an application within 21 working days. When read along with s.26 that provides for an extension up to a further period of 21 days, the amount of time allowed for the Information Officer to make a decision becomes too long (almost 60 calendar days). This is not in tune with international best practices. **Consideration may be given to reducing the time limit to 14 working days.** (Please see the recommendation regarding section 26 at para

30 below.) Second, this section stipulates that the applicant will be provided only a period of fourteen days for accessing the information. This time limit places an unnecessary burden on the requestor and is not in tune with international best practice. In developing countries like Ghana where transport and communication systems do not provide adequate connectivity between people living in remote and the administrative headquarters the Information Officer's communication itself may reach the applicant a day or two before or well after the expiry of the deadline. Experience from other countries with nascent RTI laws indicates that unscrupulous officers are known to deliberately cause delay in conveying communication about access to the requestor with a view to frustrate him/her. Such cases may be avoided in Ghana. Where information is sought in the form of photocopies the Information Officer may send them by post/courier after receipt of the reproduction charges from the applicant. If inspection of the records is sought, the Information Officer and the applicant may agree on a specific date after consultation. There is simply no need to retain a provision that limits the period of access. **Consideration may be given to deleting this clause.** Third, this section provides for the charging of fees even where an application is rejected. As has been argued at para 22 above, this is a law giving effect to a fundamental right guaranteed by the Constitution. The Government is best advised not to treat this as an opportunity for increasing its revenues at the cost of the information requestor. There is no reason why an applicant should be required to pay any fee when the Information Officer decides to withhold access. The expenses involved in making this decision and communicating it to the applicant are in any case borne out of taxpayer funds. There is no need to place an extra financial burden on the applicant. **Consideration may be given to deleting clause 23(4)(d).** Fourth, clause 23(6) empowers the Information Officer to refuse to continue to process an application for failure to pay the deposit or fee. We have argued above that applicant should not be required to pay a fee while submitting an application. Furthermore according to international best practice non-payment of fees cannot be a ground for refusal of access to information. The obligation of the government agency to provide access does not exist only when the information is covered by one or more exemptions and no public interest is served by disclosure. In all other circumstances the obligation to provide information does not come to an end just because some procedures have not been completed. It is often the case that procedures could not be completed due to some communication gap. **Consideration may be given to deleting the second half of clause 23(6).**

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

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



can be sought. International best practice also allows the filing of complaints against the charging of unreasonably high fees before Information Commissions as instances of charging high fees in order to frustrate the applicant and discourage him/her from accessing the information are not rare. **Consideration may be given to replacing section 25 with a more applicant friendly procedure.**

31. In accordance with our argument made at para 28 above **consideration may be given to reducing the time limit to 14 working days from 21 working days mentioned in section 26 relating to cases where extension of time is sought for dealing with an application.**
32. In accordance with our arguments at para 28 above against empowering the Information officer to refuse access for failure to pay fees, and keeping in view the more applicant friendly fee payment procedure recommended at para 30 **consideration may be given to deleting section 27 altogether.**
33. Most of the clauses in section 28 dealing with the procedure for refusal of information are not in tune with international best practice. The only ground for refusal of access recognised in a vast majority of countries having information access laws is the applicability of one or more exemption clauses mentioned in such law coupled with the absence of any public interest in disclosure. No other ground is valid. Clause 28(1)(b) meets this requirement. All other grounds are unnecessary and will have the effect of curbing the fundamental right to information needlessly. First, vesting the Information Officer with powers to reject applications on the grounds that they are vexatious or frivolous is dangerous and liable to misuse. In the absence of what constitutes vexation in the law any application for information that may reveal poor decision making, corruption, wastage or misuse of public funds is liable to be treated as vexatious. Furthermore what may appear to be serious and public spirited to an applicant may be termed as frivolous information request by unscrupulous officials who stand to gain from continued secrecy about their actions. **Consideration may be given to deleting this clause.** Second, diversion of resources of the agency or private body cannot be a reason for denying access to information. Where access cannot be granted in the form requested by the applicant access may be given in some other form that has the approval of the applicant. Clauses 3 and 4 of Section 29 already contain adequate provisions for handling such requests that are in accordance with international best practices. **Consideration may be given to deleting clause 28(1)(c).** Third, clauses 28(1)(d) and (e) are also unnecessary and liable to be misused. Accustomed to enforcing a regime of undue secrecy for long, bureaucracies around the world especially in developing countries, do not allow easy access to public registers and other documents available for inspection free of cost or for a price under laws such as those relating to environment, registration of transactions in immovable property, record of rights in land and regulation of the affairs of public and private sector companies. One of the reasons behind poor compliance with transparency provisions contained in such laws is the absence of a strong enforcement mechanism and sanctions for willful violation. Therefore it has become necessary to have laws like the current one that require all government agencies to share information with people. People will make use of RTI laws in order to access public registers because there is a guarantee of access within a time limit and sanctions can be demanded against officers who do not comply. It is necessary to allow access to such records under RTI laws as well because they also constitute 'information' within the definition of the term provided. **Consideration may be given to deleting clauses 28(1)(d) and (e).** Fourth, clause 28(1)(f) is also liable to be misused. For example if a record is already available for sale the Information Officer has to merely collect the price of the publication from the requestor and provide him a copy. There is no valid reason for denying access just because it is available for sale. Furthermore a publication put up for sale may run out of print. In such cases using this clause to deny access will amount to unreasonable denial of information. Instead the Information Officer should provide access to the lone copy of the document available with his/her agency either by way of inspection or photocopying or some other electronic format if such facilities are available. **Consideration may be given to deleting clause 28(1)(f).** Fifth,

denying information because it is part of library material in general is also not in tune with international best practices. It is possible that several publications and documents produced by Government departments may be preserved in libraries long after they have run out of print. In such instances access may be requested under the RTI law. If the library is run out of public funds access to copies of such publications cannot be denied. A better way of phrasing this clause is to link it to violation of private copyright which is a reasonable way of balancing the right to information against the rights of authors and private publishers. If the State owns the copyright to a requested document, access must not be denied solely on that basis because the copyright belongs to the people of Ghana in the ultimate analysis. However if providing access to a document over which the State has a copyright is likely to lead to serious harm to public interest such revelation of trade secrets of a public sector company or jeopardize the ability of Government to manage the economic affairs or seriously harm the defence or security of the Republic those grounds will be valid for denying access. **Consideration may be given to replacing clause 28(1)(g) with a provision that protects private copyright. Consideration may be given to deleting clause 29(3)(c) in view of the above recommendation to avoid duplication.** Sixth, keeping in view the aforementioned arguments, **consideration may be given to moving a suitably amended section 28(2) to section 29 as it relates to the manner of providing access.**

34. The provisions relating to manner of granting access contained in section 29 refer to grant of copies of documents at clause 2. This is not adequate as the requestor has the right to access documents that are true copies of the original. In countries like India RTI laws in addition to other domestic laws provide for supply of copies of documents that are certified by competent officers as being true copies of the original. Including this provision in the RTI law ensures that Information Officers will not tamper with the contents of copies of documents before supplying them to the requestor. The threat of sanctions against falsifying documents also acts as a deterrent. Certified copies of documents can also be produced as evidence in courts. **Consideration may be given to including the term 'certified' in clause 29(1)(ii).**
35. Given the fact that corruption in the procurement of materials used in government agencies and private bodies either for routine office work or the construction of roads, premises or other facilities is not uncommon, developing countries like India have included the right to seek and obtain certified samples of such materials within the definition of 'right to information'. As the RTI Bill seeks to contain corruption in Ghana it is advisable to include a similar provision. **Consideration may be given to inserting a new provision in section 29(1) that grants certified samples of materials used in government agencies and private bodies.**

**Recommendation**

- Please insert the phrase ***“other than that which is proactively disseminated pursuant to section 3 of this Act”*** after the phrase ***“access to information held by an agency”*** and before the word ***“shall”***.
- Please insert the phrase ***“information officer of”*** after the phrase ***“in writing to”*** and before the phrase ***“the agency”*** in clause 19(1)(a).
- Please delete section 19(1)(f).
- Please replace the term ***“officer”*** with the term ***“information officer”*** in section 19 (2).
- Please insert a new sub-clause (4) to section 19 as follows:

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

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

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

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

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

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

- Please replace the word “ten” with the word “five” in clause 21(1).

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

***“and shall be dealt with in accordance with the time limits as specified under section 23”.***

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

- Please delete section 23(3)(a).

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

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

- Please insert a new clause 23(7) below clause 23(6) as follows:

***“Subject to the procedure specified under section 26 of this Act, where an Information Officer fails to give a decision on an application within the time limit specified the application shall be deemed to have been refused and the applicant may take steps that are open to him or her under sections 38 to 46 of this Act”.***

- Please replace section 25 with the following:

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

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

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

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

- Please delete clauses (a), (c), (d), (e) and (f) of section 28(1).
- Please replace clause (g) of section 28(1) with the following:  
*“providing access would involve infringement of copyright subsisting in a person other than the State.”*
- Please amend the contents of section 28(2) as give below and move it to section 29 as a new clause 29(3)(1):.  
*“Where it is not possible to provide access to information in the form in which it is sought by the applicant, the Information Officer shall assist the applicant to amend the application so that the work involved in processing it will not, if carried out, substantially and unreasonably divert the resources of the government agency or private body, as the case may be, away from their use in the performance of its functions.”*
- Please insert the word **“certified”** after the word **“a”** and before the phrase **“copy of the document”** in section 29(1)(ii).
- Please replace the word **‘or’** in clause 29(1)(e) with a comma (,) insert the word **‘or’** at the end of clause 28(1)(f) and insert the following provision below it:  
*“by giving certified samples of materials used.”*
- Please delete section 29(3)(c).

### Internal reviews and appeals

36. Sub section (2) of section 38 provides for a review mechanism that is internal to the government agency or private body covered by this law. There are a few problematic provisions that need to be amended to bring the internal review procedure in tune with international best practices. First, the Bill envisages that an internal appeal will be accompanied by “a prescribed fee”. This is not in tune with international best practice. Stipulating fees for filing appeals may act as a deterrent for an economically disadvantaged person from approaching this mechanism. **Consideration may be given to deleting the requirement of a fee payment for seeking internal review of the decision of an Information Officer.** Second, the responsibility of conducting internal reviews has been placed at a very high level. This may not be a suitable mechanism for offices situated at the field level in remote areas. In many such cases applicants would like to present their views and arguments in person as is indicated by the experience from developing countries like India. The Minister is also likely to be overburdened by applications seeking internal review when more and more people start making use of the act to obtain information. It is a better option to designate an officer senior in rank to the Information Officer in each office of the government agency or the private body to look into applications for internal review. **Consideration may be given to designating officers senior in rank in every office to conduct internal reviews.** Third, requestors from information may not be able to file applications for internal review within the deadline for very genuine reasons such as ill-health or breakdown of transport and communication due to natural calamities. In order to provide for such circumstances the appellate authority should be vested with the power to condone delays in submission of the application for internal review. **Consideration may be given to vesting the appellate authority with the power to condone delays in filing applications for internal review.**

37. Section 39(3) requires that all proceedings related to the review be conducted *in camera*. This is not in tune with international best practices. Merely holding a hearing into the review application does not amount to disclosure of exempt information that is the subject of the dispute. All such hearings should be held as open proceedings and the applicant or his authorised representative should be given adequate notice of the date and venue of the review proceedings. The applicant should also be given a fair chance of making representation either verbally or in writing at the proceedings. **Consideration may be given to amending this provision to state that all hearings relating to internal reviews must be held in accordance with the principles of natural justice.**
38. Section 40 refers to delay or default on the part of the applicant as a precondition for notifying the decision in a matter relating to internal review. This is an unnecessary requirement in view of our arguments above that no fees need be paid by the applicant. The mere filing of an application for review ought to be sufficient cause for conducting the review proceedings and arriving at a final decision. **Consideration may be given to deleting the last line of clause 40(1).**
39. International best practice requires that where information that is the subject of a dispute under RTI laws pertains to confidential or sensitive information relating to a third party such third party ought to be given an opportunity to make a representation during the internal review proceedings. This Bill adequately protects the rights of third parties at the applications stage. The same protection must be given at the stage of internal review as well. **Consideration may be given to inserting a new clause under section 40 to provide third parties with an opportunity to make a representation at internal review proceedings.**
40. In accordance with our arguments contained in para 36 above there is no need to provide for the delegation of powers of the Minister regarding internal appeals. **Consideration may be given to deleting section 41.**

#### **Recommendation**

- Please delete clause (b) of section 38 (2).
- Please replace the term “**Minister with responsibility for the agency**” contained in section 38(1) with the phrase “**designated appellate authority who shall be an officer senior in rank to the Information Officer**”
- Please replace all references to the term “Minister” with the term “**appellate authority**” from clause 38(2) onwards up to section 40.
- Please insert a new clause (e) below section 38(1)(d) as follows:  
  
***“Where the application for review is sought to be filed after the expiry of the period specified in clause(d), the appellate authority may admit the appeal if he or she is satisfied that the applicant was prevented by sufficient cause from filing the application in time.”***
- Please replace clause (3) of section 39 as follows:  
  
***“the appellate authority shall conduct the review in accordance with the principles of natural justice and the procedural requirements of a fair hearing.”***
- Please delete the comma (,) after the term “**review**” and the phrase “**if there is no delay or default on the part of the applicant**” contained in clause 40(1).

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

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

- Please delete section 41.

### **Recommendation for setting up an Information Commission for Ghana**

41. The RTI Bill contemplates further appeals to courts of law in Ghana. This of course is in tune with the practice in some countries around the world. However international best practice requires the setting up of an independent and specialized body that will inquire into appeals against the decision given in internal review proceedings. Such Commission are vested with the power to receive direct complaints from persons aggrieved by any act of commission or omission of Information Officers. Countries like Canada, the UK, Antigua and Barbuda and India have opted for single member or multi-member Information Commissions. In countries like Australia, New Zealand and Pakistan the Ombudsman plays the role of an independent appellate authority. Having an Information Commission is advantageous for several reasons. First, courts will not be overburdened with information access related disputes allowing them time to focus on other routine litigation. Second, as Information Commissions are quasi-judicial bodies appellants and complainants will not find the proceedings expensive and cumbersome. In countries like India, not court fees are charged or lawyers required to be hired by the litigants for making a successful representation before the Information Commission. Third, in countries like Mexico and the UK, Information Commissions are not merely adjudicatory bodies. They are also champions of transparency in government bodies. They are empowered to develop schemes for proactive disclosure and programmes for improving records management in consultation with Ministers and other senior officers in Government to smoothen the implementation of this law. Fourth, Information Commissions also monitor the implementation of RTI laws and submit an unbiased report to Parliament regarding levels and quality of compliance in public bodies. This report is likely to be more objective than a report submitted by the Government. These positive aspects of having independent appellate authorities are proven across the world. **Consideration may be given to replacing section 42 with a new chapter containing provisions relating to the setting up of the Ghana Information Commission.**

42. In order for the Ghana Information Commission to become an effective champion of transparency it is necessary to have an objective and unbiased public process for appointment of members of this Commission. Their rank and prestige should be kept sufficiently high in order to ensure that their orders are obeyed. Membership of the Commission must be drawn from a wide pool of talent available in a variety of fields in Ghana such as law, governance, social service, journalism, science, technology and management. For a country of the size of Ghana a five member Commission ought to be adequate to start with. The Ghana Information Commission should have operational, financial and staffing autonomy in order to be able to function without fear or favour from any agency. It should be granted the powers of a civil court in order to be able to inquire into disputes. It should also have the powers to impose sanctions on errant officers. These sanctions should be in the nature of administrative penalties. Punishment for the more serious offences can be imposed by a competent court in the manner described in section 61 and 62.

**Recommendations:**

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

**“The Ghana Information Commission**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**as such Information Commissioner:**

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

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

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

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

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

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

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

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

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

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

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

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

**40(C). (1) Subject to the provisions of sub-section (3), the Chief Information**



Commissioner or any Information Commissioner shall be removed from his or her office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.

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

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

(a) is adjudged an insolvent; or

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

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

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

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

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

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

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

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

(b) who has been refused access to any information requested under this Act;

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

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

**unreasonable;**

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

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

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

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

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

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

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

**(c) receiving evidence on affidavit;**

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

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

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

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

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

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

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

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

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

**(e) to converse in private with any person in any premises entered pursuant to paragraph (a) and otherwise carry out therein such inquiries within the authority of the**

**Information Commission as may be appropriate.**

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

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

**(8) An appeal against the decision of the appellate authority under section 40 shall lie with the Ghana Information Commission within ninety working days from the date on which the decision should have been made or was actually received:**

**Provided that the Ghana Information Commission may admit the appeal after the expiry of the period of ninety working days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.**

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

**(10) In any appeal proceedings initiated under this section, the onus to prove that the denial of access to information was justified shall be on the Information Officer who denied such access.**

**(11) An appeal filed under this section shall be disposed of within ninety working days of the receipt of the appeal.**

**(12) The Ghana Information Commission shall exercise all powers specified in this section while deciding an appeal.**

**(13) In its decision on an appeal or complaint filed before it, the Ghana Information Commission shall have the power to—**

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

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

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

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

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

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

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

**(b) require the government agency or private body as the case may be to**

**compensate the person filing the appeal or complaint as the case may be, for any loss or other detriment suffered;**

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

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

**(14) The decision of the Ghana Information Commission shall be binding.**

**(15) The Ghana Information Commission shall give notice of its decision, including any right of appeal, to the person filing the complaint under sub-section (1) and the public body.**

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

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

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

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

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

**(22) On receipt of a report from the Ghana Information Commission under sub-section (14) the Parliament of Ghana may debate the findings and recommendations contained in the report and may call upon the President to take such action as may be necessary to ensure better compliance with the provisions of this Act.**

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

**40(E). Penalties for contravention of the provisions of this Act: (1) Where the Ghana Information Commission at the time of deciding any complaint or appeal is of the opinion that the Information Officer has without any reasonable cause, refused to receive an application for information or has not furnished information within the time limit specified under this Act or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed**

*information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a monetary fine of up to fifty thousand cedis (GHC):*

*Provided that the Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him or her:*

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

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

43. Clause (2) of Section 44 requires the Supreme Court to conduct hearings in camera on information related disputes as a rule. This is not in accordance with international best practices. Holding hearings on information related disputes in public will not reveal sensitive information contained in the disputed documents. The Court can always examine such documents in camera but conduct other parts of the proceedings in public. **Consideration may be given to requiring the Supreme Court to conduct hearings in accordance with the principles of natural justice and a fair hearing.**

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

**Recommendations:**

- Please replace the term “in camera” with the phrase “*in accordance with principles of natural justice and fair hearing*” in clause 2 of section 44.

- Please replace section 46 as follows:

***“Parties to a dispute regarding access to information under this law shall not be required to be represented by lawyers at any proceedings under this law save that before the Court under clause 16 of section 49(D) and section 43 of this Act.”***

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### **General and Miscellaneous**

45. Section 48 provides for designating an information Officer in a government agency (or private body) to deal with applications for information. Experience from other countries with similar laws shows that it is advisable to designate more officers than one as more and more information requests will be made as awareness about this law spreads amongst the people. **Consideration may be given to empowering entities covered by this law to designate as many officers as may be necessary for giving effect to the provisions of this law.**
46. The Act makes it the sole responsibility of the Information Officer to handle information requests. It is assumed that he or she will be able to manage the task single-handedly. Experience from developing countries like India shows that Information Officers will not be custodians of all information held by a government agency or private body. They may also lack the seniority to requisition records in the custody of their colleagues (senior or contemporary) in the absence of adequate powers. For example in the absence of statutory authority an Information Officer may not be able to requisition a file if his or her senior does not want to part with it. Experience also shows that unscrupulous officers refuse to part with information and the penalty is borne by the Information Officers for no fault of theirs. In order to avoid such unpleasant situations in Ghana **consideration may be given to empowering the Information Officer to seek the assistance of any other officer in the agency to perform his or her duties. The law should also make it obligatory for any officer whose assistance has been sought to provide such assistance. Sanctions should apply to such other officer who refuses to part with information and not to the Information Officer dealing with the application.**
47. Section 49 provides protection to all officers and functionaries for action taken in good faith against any litigation. In accordance with our recommendation about the formation of the Ghana Information Commission similar protection must be afforded to this body as well. **Consideration may be given to inserting the phrase “Ghana Information Commission” in section 49(1).**
48. Clause (2) of section 49 has the effect of preventing a person who obtains information under this law from publishing it. This caveat is linked to laws relating to defamation and breach of confidence. This provision is not in tune with international best practices. If information obtained under this law points to wrongdoing in a government agency or private body then the people have a right to know all about such matters. Retaining this provision will have the effect of curtailing the people’s fundamental right of freedom of speech and expression guaranteed under Article 21(1)(a) of the Constitution of Ghana. If the fear is that a person obtaining information under this Act will misuse it, such matters can be dealt with under the existing penal laws of Ghana. There is no need to have such a restrictive provision in a law that seeks to promote transparency. Furthermore if the information obtained under this Act cannot be sued publicly for debate one of the principle objective of this law namely, securing accountability in public affairs will stand defeated from the very first day of the operation of this law. No person will ever use this law in interest. **Consideration may be given to deleting clause (2) of section 49.**
49. The fee related provisions contained in section 51 if operationalised can be misused to impose a huge financial burden on the applicant as a means of discouraging him or her from seeking information under this law. International best practice in both developed and developing countries requires that as far as possible no fee be charged for giving access to information as the exercise of a fundamental right cannot be subjected to payment of fees. However in the interests of ensuring optimum utilisation of the limited resources available with the government agencies and private bodies and also in order to ensure that the right to information is exercised in a responsible manner, reasonable fees may be charged for providing access to information.

This means that the body providing access shall not charge the applicant anything more than the cost of reproducing the information through the most economical means. Reasonable postage charges may be added to this amount if the applicant desires to receive the information by post. Requiring the applicant to pay for search, retrieval and collation of the information is against international best practice. These costs should be borne by the agency providing the information. In the case of government agencies these costs will be covered by public funds whose source is the tax payer. There is no rationale for passing on the burden once again to the taxpayer. In private bodies if the search and retrieval costs are likely to be high, access may be provided by making judicious use of the provisions relating to extension of time contained in section 26 and the manner of access contained in section 29. This would considerably ease the financial burden of the private bodies. **Consideration may be given to amending section 51 to ensure that only reasonable fees are charged from the applicant.**

50. Section 54 details the responsibilities of the Attorney General for giving effect to the implementation of this Act. First, it is commendable that the responsibility of conducting public education programmes about this law is vested in this office. However this is a discretionary power. It should be made obligatory and all such responsibilities must be executed in consultation with the proposed Ghana Information Commission which as has been argued above, is the champion of transparency under this law. Along with public education it is extremely important to develop training programmes for Information Officers and the Appellate Authorities. Experience around the country has shown that civil society inputs into developing and conducting such public education and officer training programmes go a long way in ensuring greater respect for this law at all levels. **Consideration may be given to including in this provision the responsibility for developing and conducting training programmes for officers.** As is the case in India and other developing countries **consideration may be given to requiring the Attorney General to develop a User Guide for the people in consultation with civil society organisations and the Ghana Information Commission.**
51. Section 55 requires that the Attorney general be made a party to proceedings before the Appeals Commissioner and the Supreme Court. In accordance with our arguments in favour of setting up the Ghana Information Commission contained in paras 41 and 42 above and also our arguments contained in para 46 above against requiring legal representation in appeals and complaints related matters except before the competent court **consideration may be given to deleting reference to the Appeals Commissioner in section 55.**
52. Section 56 requires that an annual compliance report be prepared by the Attorney General. Section 57 requires that such a compliance report be placed before Parliament. International best practice in countries like the United Kingdom, Canada, Mexico and India is to entrust this responsibility to the Information Commission as it is an independent body that is unlikely to be biased in its reporting. **Consideration may be given to vesting this power in the newly proposed Ghana Information Commission and replacing all references to the Attorney General in sections 56 and 57 with the Ghana Information Commission.**
53. Section 58(1) provides for time bound declassification of records covered by the exemptions prescribed in the Act. This is a welcome provision. However international best practice is to prescribe a shorter period for declassification. **Consideration may be given to reducing the time limit for declassification of exempt information to ten years.** Second, clause (2) of the same section provides that access to declassified information be provided in accordance with the procedures under this law. While this is commendable, it overlooks the operation of section 18 which requires that information be disclosed in public interest if the benefits outweigh the harm that would be caused in the event of disclosure. Therefore access to exempt information is possible even if it has not been declassified. In any case after time bound declassification the

information should be accessible to the applicant in principle. **Consideration may be given to deleting clause (2) of section 58 as it is superfluous.**

54. Section 63 refers to some additional procedures relating to extension of time. This is wholly unnecessary as adequate provisions exist under section 26. There is no need to duplicate this provision. **Consideration may be given to deleting section 63.**

55. In view of our arguments regarding direct coverage of private bodies contained at para 1 above and similar threads of discussion in subsequent paras **consideration may be given to deleting section 64 as it would be superfluous.**

**Recommendations:**

- Please renumber section 48 as section 48(1) and replace the contents as follows:

***“48(1) A government agency or private body as the case may be, shall designate as many officers as may be necessary in all of its administrative units and offices as Information Officers authorised to give effect to the provisions of this Act.”***

- Please insert new clauses numbered (2) and (3) below clause (1) under section 48

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

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

- Please insert the phrase ***“Ghana Information Commission”*** after the phrase ***“an information officer, a Minister”*** and before the phrase ***“or a member of staff of an agency”*** in section 49(1).

- Please delete clause (2) of section 49.

- Please delete clauses (a) of section 51(2).

- Please renumber clause (b) of section 51(2) as clause (a) and replace its contents as follows:

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

- Please renumber clause (c) of section 51(2) as clause (b) and replace its contents as follows:

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

- Please delete clause (3) of section 51.



- Please replace the opening line of clause (3) of section 54 as follows:

***“The Attorney General shall in consultation with the Ghana Information Commission and civil society organizations in Ghana”***

- Please insert a new clause (d) under clause (c) of section 54(3) as follows:

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

- Please insert under the proposed clause (e) of section 54(3) a new clause (d) as follows:

***“(e) within twelve months from the commencement of this Act compile and publish in the official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act and disseminate the guide amongst the public.”***

- Please delete the term “**Appeals Commissioner**” in section 55.

- Please replace all references to the “**Attorney General**” in sections 56 and 57 with the phrase “**Ghana Information Commission**”

- Please replace the word “**twenty**” with the word “**ten**” in section 58(1).

- Please delete section 58(2).

- Please delete section 63.

- Please delete section 64.

56. Section 66 of the Bill contains the interpretation of the meaning of terms used commonly throughout the Bill. First, it is advisable to move this section to the front of the Bill as recommended at para 4 above. Second, the term ‘government’ does not adequately cover all public authorities in Ghana. For example the definition leaves out the offices of the President, the Vice President, Parliament and the courts. International best practice requires that transparency laws apply to these bodies equally as they do to the executive. **Consideration may be given to including all bodies established by or under the constitution of Ghana and all statutory bodies within the ambit of this law.** Third, the definition of information is not adequate and does not match international best practice standards. A comprehensive definition of the term ‘information’ is required in order to obviate the possibility of exclusion of certain types of documents like contracts and agreements between a government agency and private parties from the purview of this law. Similarly information about private bodies collected by government agencies should also be included within the definition of information. In any case access to such records will be subject to the exemptions and third party procedures provided in this Bill. So there need not be any fear of violating private party’s right by including information relating to them in the definition. **Consideration may be given to expanding the definition of information into a more comprehensive one.**

57. The phrase ‘right of access’ is defined in section 66. In accordance with a detailed definition of the phrase recommended at para 12 above **consideration may be given to deleting this reference and avoid duplication.**

58. In accordance with the recommendation contained at paras 41 and 42 above it is necessary to include a reference to the newly proposed Ghana Information Commission and its members in section 66. **Consideration may be given to including a definition of the Ghana Commission and its members in section 66.**
59. The term “person” is not defined in the Act although it is used throughout the text. The definition of the term ‘person’ may be taken from the Income Tax Act or the Companies Act in force in Ghana. This will ensure that individuals and organised groups such as civil society organisations and companies can also access information under this law. **Consideration may be given to including a new section to define “person” in section 66 so that organisations and companies (artificial-juridical entities) may be enabled to seek and obtain information under the Act.**
60. Section 67 attempts to harmonise the operations of information access provisions in other laws with the provisions of this law. This is a good feature. However it is needs to be strengthened against laws that may contain provisions inconsistent with its requirements of transparency. Other laws may have provisions that require withholding of information. In the absence of a clear overriding provision in the RTI law to overcome such difficulties it would be difficult to resolve the conflict. Government agencies will take the plea and courts may even support them that the RTI Act being a general law cannot override special laws that restrict access to information. International best practice requires that the RTI law be provided with an overriding effect to the extent of inconsistency with other laws in force. This implies that where another law requires withholding of information requested under the RTI law and the reasons for such non-disclosure can be justified under the exemptions clauses of the RTI law they will remain valid. Information will not be disclosed unless there is an outweighing public interest in disclosure. However if the same reasons cannot be justified under the exemptions clauses of the RTI law then the information will have to be disclosed. This is the effect of providing an overriding provision in the RTI law. **Consideration may be given to replacing section 67 with an overriding provision.**

**Recommendations:**

- Please move section 66 to the top of the Bill as advised at para 4 above.
- Please insert the phrase, ***“all bodies and offices established by or under the Constitution of Ghana or by a law of Parliament and”*** after the word ***“includes”*** in section 66.
- Please replace the definition of information contained in section 66 with the following:  
***“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;***
- Please delete the definition of “right of access” in section 66.
- Please insert in section 66 in alphabetical order the following:  
***“Ghana Information Commission means the Information Commission constituted in accordance with section 40 A of this Act.***  
***“Chief Information Commissioner means a Chief Information Commissioner***

***appointed under section 40(A) of this Act.”***

***“Information Commissioner means an Information Commissioner appointed under section 40(A) of this Act.”***

- Please include a definition of the term “**person**” in section 66.
- Please replace section 67 as follows:

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

**Insert new section – Whistleblower Protection:**

61. In order to support maximum information disclosure, the law should also provide protection for “whistleblowers”, that is, individuals who disclose information in contravention of the law and/or their employment contracts because they believe that such disclosure is in the public interest. Whistleblower protection is based on the premise that individuals should be protected from legal, administrative or employment-related sanctions for releasing information on wrongdoing. The inclusion of strong whistleblower protection is important in order to send a message to the public and officials that the government is serious about opening up to legitimate scrutiny.

**Recommendation**

- Please insert a new provision in the form of section 68 below section 67 as follows:

***“68. Protection of Whistleblowers: (1) No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.***

***(2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a government agency or private body.”***