



COMMENT

On

the Right to Information Bill of the Republic of Ghana

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About the ARTICLE 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation. These publications are available on the ARTICLE 19 website: <http://www.article19.org/publications/law/standard-setting.html>.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme operates the Media Law Analysis Unit which publishes a number of legal analyses each year, commenting on legislative proposals as well as existing laws that affect the right to freedom of expression. The Unit was established in 1998 as a means of supporting positive law reform efforts worldwide, and our legal analyses frequently lead to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at <http://www.article19.org/publications/law/legal-analyses.html>.

If you would like to discuss this Memorandum further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at law@article19.org.

SUMMARY OF RECOMMENDATIONS**Recommendation:**

- Article 1 of the Draft Bill should specify that the right to access information entitles everyone to be informed whether or not the public body holds a record containing that information, and to have that information communicated to him or her.
- Information held by judicial and legislative bodies should also be subject to disclosure under the access to information law.
- Private bodies should be required to disclose information necessary for the exercise or protection of individual rights.
- Paragraph 4 of Article 1 should be amended to remove the requirement for a requester of information to give a reason for urgent requests for information.
- Article 2 should be amended to impose an obligation on all government agencies to disclose certain information without a request by specific person. Further, it is advisable that the Draft Bill specify the types of information which should be disclosed without a request.
- Public bodies should have an obligation to maintain websites and disclose information on them regularly.
- Articles 5 and 6, exempting the Offices of the President and Vice President and the Cabinet from obligation to disclose the information submitted to them, should be deleted.
- Article 18 establishing the public interest override should be amended to specify that the list of situations justifying the weighing of interests is not exhaustive.
- Exemptions should be possible only if disclosures *seriously harm* legitimate interests.
- Paragraph 1 of Article 21 should be amended to impose an obligation on information officers to *immediately* notify a requester of information if the information is not held by their agency and transfer the request *immediately* to the actual owner of the information.
- Paragraph 4 of Article 21 should be amended to require that in case of transfers the time limit for responses shall be 21 working days from the day of the receipt of the initial request.
- Article 22 allowing for access to information to be deferred should be deleted.
- Paragraph 1 of Article 23 should be amended to require that public bodies respond to requests as soon as possible and at least within 15 working days of receipt of the request.
- Paragraph 5 of Article 23 should be amended stating that a failure to comply with a time limit for responding to a request is deemed to be a refusal of said request.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

- Article 24 providing that governmental agencies can refuse to give information if it cannot be found or is not in existence should be deleted.
- Article 26 should be amended to require that information officers can extend the original time limit for responses to requests to the extent *strictly necessary*, and in any case to not more than 30 working days, where the request is for a large number of records or requires a search through a large number of documents and where compliance within the original time limit would unreasonably interfere with the operations of the agency. In addition, consultation with a person outside the organisation should be removed as a ground for extension of the time limit.
- Article 28 should be amended to ensure that access to information can be refused only if the information is exempted or the request is manifestly frivolous or vexatious.
- Time limits for exemptions should be set out by the law.
- Article 63 allowing administrative and judicial bodies to extend the time for issuing decisions under the Draft Bill should be deleted.
- A time limit for appointment of information officers should be set out in the Draft Bill.
- Public bodies should be obliged to ensure the provision of appropriate training of its information officers as well as of its officials on the right to information.
- Public bodies should be obliged to maintain their records in accordance with an uniform Code of Practice.
- Article 67 should be amended setting out that the disclosure of information pursuant to any other legislation should not be limited or otherwise restricted by this Law.
- Public bodies should be obliged to provide information requesters with receipts documenting their requests.
- Article 59 stating that the Draft Bill does not apply to all information held by national archives, museums and libraries is confusing and unnecessary and should be deleted
- Public bodies should not impose fees for requests for personal information or in the public interest. Similarly Article 38 should be amended to abolish fees for internal reviews.
- The oversight of the implementation of the access to information law should be carried out by independent bodies rather than the Attorney General and ministers. The law should guarantee the independence formally and through a process by which the head and/or board is/are appointed.

I. Introduction

This Comment contains ARTICLE 19's analysis of the Draft Right to Information Bill of Ghana ("Draft Bill"), which has been prepared by the Government.¹

ARTICLE 19 welcomes the efforts to introduce protection of the right to information by the proposed law. Bearing in mind the civil society campaign of many years for adoption of freedom of information legislation, ARTICLE 19 commends the current Cabinet's approval of the Draft Bill in November 2009 and its promise to table the latter before Parliament in the next few weeks. ARTICLE 19 is committed to providing assistance in the process of the adoption and implementation of the specific legislation on freedom of information.

Our analysis of the Draft Bill is based on international law and best practices in the field of the right to information, as summarised in two ARTICLE 19 publications: *The Public's Right to Know: Principles on Freedom of Information Legislation* ("ARTICLE 19 Principles")² and *A Model Freedom of Information Law* ("ARTICLE 19 Model Law").³ Both publications represent broad international consensus on best practices regarding right to information legislation. They therefore provide a useful framework in which to discuss the features of access to information legislation.

The Draft Bill includes all key elements of a modern freedom of information law. We commend the Draft Bill for granting the right to access information to every person; the lack of requirement to give reason for requests for information; and the recognition of the public interest override. At the same time, the Draft Bill suffers from some significant weaknesses. The most serious are the long time-limits, the unclear and broad exception clauses and the lack of independent control over its implementation. In contradiction to international standards private bodies are not subject to the law.

This Comment consists of three parts. In the first part, we highlight the positive aspects of the Draft Bill. Thereafter, we point to the problematic areas, which we discuss in detail and then propose recommendations for amendments. At the end the relevant international standards are presented.

II. Positive aspects

We welcome the following aspects of the Draft Bill:

- the right to access information is granted to everyone;
- requesters of information do not need to give a reason for information requests;
- whenever possible information which is not subject to an exception should be separated from the rest of the information and communicated to requesters;
- government agencies are obliged to appoint information officers and to publish key information;
- information officers are required to assist information requesters and facilitate access;

¹ ARTICLE 19 received an unofficial translation of the Draft Bill in January 2010, which is reproduced in the Appendix to this Comment. ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments based on mistaken or misleading translation.

² London: June 1999, available at <http://www.article19.org/pdfs/standards/righttoknow.pdf>.

³ London: July 2001, available at <http://www.article19.org/pdfs/standards/modelfoiaw.pdf>.

- public interest override of exemptions is recognised;
- a procedure for correction of personal information is introduced;
- government agencies bear the burden of proof in review proceedings;
- a publication of a manual for implementation of the law is envisaged;
- transparency and accountability of the oversight bodies is guaranteed by the obligation to report to Parliament annually;
- fee waivers for requesters suffering financial hardships and exemption of liability for disclosures made in good faith are guaranteed.

III. Matters of concern

We have identified the following issues that require revision.

1. Structure of the right

The right to access to information creates two separate entitlements for its holders. Firstly, they are entitled to be informed whether or not a public body holds a record containing the information requested by them. Secondly, they are entitled to have that information communicated to them, if the public body holds such a record. Article 1 of the Draft Bill establishes a right to access to information without specifying the entitlements it creates. Due to this failure the scope of the right and the scope of the responsibilities of public bodies are unclear.

For the sake of clarity it is recommendable that Article 1 of the Draft Bill specifies that the right to access information entitles everyone to be informed whether or not the public body holds a record containing that information, and to have that information communicated to him or her. The proposed amendment clarifies not only the key elements of the right but also the respective responsibilities of public bodies and removes confusions in the understanding and implementation of the law.

2. Subjects of the law

The principle of maximum disclosure, which is the key principle of any freedom of information law, establishes a presumption that all public bodies should be required to disclose information. For this purpose, the definition of ‘public bodies’ should be defined broadly. Disregarding this requirement, the definition of ‘government agency’ in the Draft Bill is narrowly defined.⁴ It includes ministries, government departments, district assemblies or local authorities and public offices funded in whole or in part from public funds.

Nothing that these bodies make up part of the executive branch of government only, ARTICLE 19 recommends that judicial and legislative bodies also be included.

Further, according to paragraph 1 of Article 1, concerning the scope of the general right of access, the Draft Bill applies only to government agencies. The exception of private bodies from the access to information regime contravenes the principle of maximum disclosure. Private bodies should also be included if they hold information whose disclosure is likely to diminish the risk of harm to key public interests, such as the environment and health. The South African access to information regime is exemplary in this respect. The 2000 Promotion

⁴ See Article 66 of the Draft Bill.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

of Access to Information Act of South Africa states that the act applies to records of both public and private bodies regardless of when the records have come into existence.⁵

Even though Article 1, relating to the scope of the general right of access, excludes private bodies from the access to information regime they are mentioned in two provisions of the Draft Bill. These articles are at the very end of the Draft Bill which makes the link to Article 1 unclear. The first of these provisions, Article 60, states that the proposed law applies to information held by independent contractors engaged by a government agency as a contractor. The second provision, Article 64, sets out that the Attorney General may by legislative instrument extend the application of the proposed law to the private sector. Even though the subject matter regulated by Article 60 and 64 relates to the scope of the right to access to information it is unclear why these articles are at the end of the Draft Bill. The confusion is likely to affect the access to information regime.

Of greater concern, however, is the power of the Attorney General to extend the application of the proposed law to the private sector. In view of the fact that the proposed legislation concerns a human and constitutional right, the regulation should be made by Parliament. This requirement stems from international human rights law and serves as a guarantee that regulations affecting human rights are not arbitrary. In this respect the delegation under Article 64 of powers of the legislature to the Attorney General would be regarded as unconstitutional in other states.

ARTICLE 19 recommends that private bodies be required to disclose information necessary for the exercise or protection of any individual right. In view of this recommendation, Articles 60 and 64 should be deleted.

3. Reasons for the request

As pointed out above, it is commendable that requesters of information are not required to give a reason for doing so.⁶ However, the Draft Bill requires information requesters to explain the reasons for their requests if the latter are urgent. Noting that the Draft Bill sets out a very long time limit for responses to information requests – up to 21 working days – ARTICLE 19 is concerned that in practice information requesters would have to explain why they need the information in order to have it provided without delay. Journalists who use the access to information legislation will certainly have to state the reasons for their requests because normally they cannot wait long to report on issues of high public interest which demand quick responses by the society.

ARTICLE 19 recommends that Paragraph 4 of Article 1 be amended to remove the requirement for information requesters to giving a reason for urgent requests for information.

4. Various opportunities to avoid disclosure of information

The Draft Bill makes it possible for government agencies to evade disclosing of information on two peculiar grounds that are not permissible across the world. Firstly, according to Article 22 an agency may defer access to information if the requests concern information which requires publication under the law but it is yet to be published or which has been prepared for

⁵ The Promotion of Access to Information Act 2 of 2000 can be found on the Internet at <http://www.sita.co.za/act/AccessToInfoAct.pdf>.

⁶ See Article 1, paragraph 4 of the Draft Bill.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

submission to any person or body and is yet to be submitted. Article 22 is problematic inasmuch as it allows the government to treat official information as their property rather than property of the people.

Noting that all individual requests for information from public bodies should be met unless the information falls within the scope of the limited regime of exceptions, ARTICLE 19 recommends that Article 22 be deleted.

The second provision which gives government agencies opportunity to evade disclosure of information is Article 24. It extends the existing regime of exceptions by stating that access to information cannot be given if the information cannot be found or is not in existence. This ground for refusal is not found in any other access to information law. It is very problematic inasmuch as government agencies would be able to keep the information secret claiming that the information cannot be found or is not in existence. The risk of abuses is high due to the lack of provision establishing a duty on public officials to maintain public records and protecting the latter from destruction.

In view of the foregoing it is recommendable that Article 24 be deleted.

5. Many opportunities to protract the responses

Apart from making it possible to avoid disclosure of information, the Draft Bill gives government agencies many opportunities to protract the responses to requests for information. Firstly, the time limit for responses to request for information is very long. According to Article 23 government agencies must respond to requests for information within 21 working days of the receipt of the request. The Draft Bill does not require for public officials to immediately disclose the information requested if they already have it. In other words public officials can delay their response until the twenty first day of the receipt of the request.

Noting that in many cases the interest in particular information may diminish in the course of time, ARTICLE 19 recommends that paragraph 1 of Article 23 be amended to require that government agencies respond to requests as soon as possible and, in any event, within 15 working days of receipt of the request.

A second opportunity for protraction arises from the long time limit for responses when the information is held by another agency. According to paragraph 1 of Article 21 information officers are obliged to transfer the request within ten working days of its receipt. Therefore government agencies can postpone the transfer of the request for 10 days notwithstanding their being immediately aware that they do not have the information. The wording of paragraph 4 of Article 21 suggests that a new time limit of 21 working days starts to run from the day when the transfer is received. This can result in a delay of the response for 31 days altogether.

ARTICLE 19 recommends that paragraph 1 of article 21 is amended to impose an obligation on information officers to *immediately* notify information requesters if the information is not held by their agency and transfer *immediately* the request to the owner of the information. In addition, it is advisable to amend paragraph 4 of Article 21 to require that in case of transfers the time limit for responses shall be 21 working days which starts running of the day of the receipt of the initial request. This proposal is made taking into account that the Draft Bill

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

gives an opportunity for governmental agencies to obtain an extension of time if they cannot fulfil the request within the time limit.

Article 26 also creates opportunities for the protraction of responses to requests for information. This article allows information officers to extend the time for dealing with requests if the information is of large quantity or consultations with persons outside the agency are required. In these cases the original time limit can be extended by another 21 working days leading to a delay of 42 days altogether.

Further, according to paragraph 3 of Article 26 the notification of the extension cannot be made within the original twenty one day period but within 30 days of the receipt of the request. In other words, information officers are allowed to protract the notification regarding the extension for 10 days after the time limit for response expired.

Noting that Article 26 grants information officers with broad powers to extend the time limits for responses, it is recommendable that this Article be amended to require that information officers can extend the original time limit for responses to requests to the extent *strictly necessary*, an in any case to not more than 30 working days, where the request is for a large number of records or requires a search through a large number of documents and where compliance within the original time limit would unreasonably interfere with the operations of the agency. In addition ARTICLE 19 recommends that consultations with a person outside the organisation be removed as a ground for extension of the time limit, so as to limit the opportunities for protraction of responses.

Finally, ARTICLE 19 notes with concern that administrative and judicial bodies responsible for issuing acts and making decisions under the Draft Bill are also allowed to extend the time limit for doing so.⁷ Article 63 provides that these bodies can extend the original time limit by no longer than 14 working days. The extension can be made on the ground that more time is necessary to locate and retrieve the requested information or to enable consultations with another person on the requested information.

Concerned that Article 63 might be used by government agency to the detriment of information requesters, ARTICLE 19 recommends that the provision in question be deleted.

6. Exemptions

Although the Draft Bill can be praised for including a public interest override clause, the regime of exemptions has certain flaws.⁸

Firstly, Article 18, establishing the public interest override rule of exemptions, specifies the public interests which may outweigh interests justifying non-disclosure. Recognizing that the cases enlisted in the provision such as miscarriage of justice or abuse of authority, for example, are relevant, ARTICLE considers that it is impossible to determine all situations when the public interest may outweigh interests justifying non-disclosure. Therefore it is recommendable to specify that the list of situations provided by the law is not exhaustive.

Secondly, international standards require that exceptions are based only on the content, rather than on the type of the document. Some of the exemptions set out in the Draft Bill fail to meet

⁷ Article 63 of the Draft Bill.

⁸ Article 18.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

this requirement. Such are the exceptions concerning information relating to the offices of the President and the Vice President⁹ and information relating to Cabinet¹⁰. In these cases the Draft Bill exempts information only because it is contained in documents submitted to President or to Cabinet.

ARTICLE 19 recommends that Articles 5 and 6 are deleted.

Thirdly, international standards require that exemptions are narrowly defined. For this purpose it is not sufficient that information simply fall within the scope of a legitimate aim listed in the law. Public bodies are not required to show that the disclosure will seriously harm these interests.¹¹ In contradiction to this international standard, the Draft Bill does not require any harm test. For example, Article 7 states that information is exempt if it contains matters which if disclosed can reasonably be expected to interfere with the prevention or possible contravention of a law.

ARTICLE 19 recommends that public bodies be required to prove that a disclosure will seriously harm the legitimate interest.

Fourthly, all exceptions should meet the three-part test established by international law. In contradiction to this rule government agencies can refuse information in some cases without taking account of the three-part test. For example, Article 28 provides that information can be refused on the ground that the work involved in processing the application will, if carried out, substantially and unreasonably divert resources away from their use.¹² Further, information may be refused if it is contained in a document which is available for inspection at that or any other agency.¹³ The same article allows also information to be refused if it is available for purchase¹⁴ or forms part of library material.¹⁵ These exemptions are peculiar and do not appear in other national access to information law.

ARTICLE 19 recommends that Article 28 be amended to ensure that access to information can be refused only if 1) the information is exempted or 2) the request is manifestly frivolous or vexation.

Finally, the Draft Bill does not require that exceptions to the right to access information be time-limited. Non-disclosure of information concerning legal proceedings, commercial and confidential information, health and safety and public economic interests is legitimate only if the harm they envisage would occur at or after the time at which the request is considered. In other words no information can remain secret forever. Even information concerning law enforcement and defence and security should be revealed after a period of time inasmuch as the harm they envisage becomes smaller or disappear with the passage of time. In this respect, we recommend to include a 30-year period (as suggested by best practices outlined in ARTICLE 19 Model Law).

ARTICLE 19 recommends that time limits for exemptions be set out by the law.

⁹ Article 5 of the Draft Bill.

¹⁰ Article 6 of the Draft Bill.

¹¹ See Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 42.

¹² Article 28, paragraph 1, Letter C of the Draft Bill.

¹³ Article 28, paragraph 1, Letter E of the Draft Bill.

¹⁴ Article 28, paragraph 1, Letter F of the Draft Bill.

¹⁵ Article 28, paragraph 1, Letter G of the Draft Bill.

7. Fees

ARTICLE 19 Model Law establishes that payment of a fee shall not be required for request for personal information and requests in the public interest. The Draft Bill fails to exempt personal information and requests in the public interest from the general fee scheme. It is recommended that these fees be waived.

Further the Draft Bill provides that internal reviews shall be conditional on payment of a prescribed fee.¹⁶ Noting that fees for internal reviews are likely to deter information requesters from internal reviews ARTICLE 19 recommends that these fees are abolished.

8. Appointment and Training of Information officers

The access to information regime cannot operate without information officers. In this respect it is commendable that the Draft Bill provides that government agencies appoint information officers to deal with information requests.¹⁷ However, the Draft Bill does not set out a time limit for appointment or designation of information officers.

Noting that the same legislative omission has caused long delays in the enforcement of access to information laws in other countries, ARTICLE 19 recommends that a time limit for appointment of information officers be set out in the Draft Bill.

Further, noting that the effective implementation of access to information laws depends on the knowledge and experience of information officers, it is problematic that the Draft Bill does not provide for such training. Trainings of public officials are beneficial to the promotion of openness and transparency. Further they are a useful tool in eradicating the tendency of the public bodies to treat public information as their own.

It is recommended that a special provision imposes the obligation on every government agency to ensure the provision of appropriate training for its information officers as well as for its officials on the right to information.

9. Measures to promote openness

Access to information laws should establish measures to promote openness. One such measure is the manual, which according to Article 3, all ministers are obliged to compile and publish in order to assist the government agencies under their supervision. The Draft Bill also creates an obligation of the Government to publish certain information without request.¹⁸ Noting that this obligation does not explicitly apply to government agencies but to the Government itself, ARTICLE 19 recommends that Article 2 be amended to include government agencies. Further, it is advisable that the access to information act specify the types of information that should be released without a request by a specific person.

In order to promote openness it is recommended that public bodies maintain their records in a manner which facilitates the right to information. Public bodies should issue and observe a

¹⁶ Article 38.

¹⁷ Article 20 and Article 48 of the Draft Bill. Ministers can also designate officers in government agencies under their control.

¹⁸ Article 2 of the Draft Bill.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Code of Practice relating to the keeping, management and disposal of records. The Draft Bill does not contain provisions regarding maintenance of records. Noting that the operation of the access to information regime depends on the good record keeping, ARTICLE 19 recommends that the Draft Bill include a special provision on this issue. ARTICLE 19 Model Law contains an exemplary provision on maintenance of records:

19. (1) Every public body is under an obligation to maintain its records in a manner which facilitates the right to information, as provided for in this Act, and in accordance with the Code of Practice stipulated in sub-section (3).

...

(3) The Commissioner shall, after appropriate consultation with interested parties, issue and from time to time update a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to the [insert relevant archiving body, such as the Public Archives].¹⁹

Finally, this duty to publish does not relate to publications on the Internet. Due to the global availability of the Internet, public bodies worldwide publish key information on their internet sites. Therefore, it is advisable to impose an obligation on public bodies to maintain websites and regularly disclose information on them.

10. Non-Independent Oversee Body and Procedures

The independence of oversight bodies is a key requirement for the successful implementation of access to information legislation. The Draft Bill fails to ensure that independent bodies oversee the implementation of the law. Firstly, the responsibility for the effective implementation of the access to information regime lies on the Attorney-General, who is also Minister of Justice of Ghana.²⁰ According to Article 54 the Attorney-General may conduct public education programmes on access to information, and initiates research into matters affecting the purpose of the access to information law. The Attorney-General is a party to proceedings before the Appeal Commissioner or the Supreme Court for the review of a refusal to disclose information.²¹ Government agencies submit reports to the Attorney-General regarding their activities under the access to information law and is responsible for the drawing up of the annual report to Parliament.²²

In addition, international standards require that appeals against refusal are made before independent administrative bodies. The Draft Bill does to meet this requirement either because internal reviews are carried out by the minister overseeing the government agency whose refusal is being appealed.²³

In view of the above-mentioned failures to ensure the independence of the oversight bodies ARTICLE 19 recommends that the Draft Bill provide for an individual right of appeal before an independent administrative body from a refusal by a public body to disclose information. This may be either an existing body, such as Human Rights Commission, or one specially established for this purpose. In each case, its independence should be guaranteed, both formally and through a process by which the head and/or board is/are appointed.

¹⁹ Article 19 of ARTICLE 19 Model Law.

²⁰ Article 54 of the Draft Bill.

²¹ Article 55 of the Draft Bill.

²² Article 57 of the Draft Bill.

²³ Article 38 of the Draft Bill.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

11. Relations with other laws

Article 67 states that the Draft Bill applies to disclosure of information regulated by laws preceding its adoption. While recognising the importance of this provision, ARTICLE 19 notes that some special laws concerning access to information may offer better regimes on access to information. Therefore it is recommendable that special regimes continue to operate after the adoption of the Draft Bill.

Having this in mind ARTICLE 19 recommends that Article 67 be amended setting out that the disclosure of information pursuant to any other legislation should not be limited or otherwise restricted by this Law.

12. Other Procedural Shortcomings

Apart from the above-mentioned procedural shortcomings, the Draft Bill contains no provision regarding failures of government agencies to comply with the time limits for responding to requests. According to Article 23, paragraph 5 where the agency fails to determine an application within twenty-one working days after the application is received, the agency shall give reasons for the failure. Noting that public bodies often deliberately remain silent with respect to information requests ARTICLE 19 considers that paragraph 5 of Article 23 is not likely to be effective in such situations. Therefore it is recommendable to amend the provision stating that a failure to comply with a time limit for responding to a request is deemed to be a refusal of the request. The provision will allow information requesters to appeal the request without having to determine the reasons for the failure of the governmental agency to respond.

One of the procedural guarantees of the right to access information is the requirement for public bodies to issue a receipt documenting an information request. This requirement has two purposes. Firstly, it is an acknowledgement of the receipt of the request. Secondly, it attests the date when the request is made. Noting that the Draft Bill does not require government agencies to provide information requesters with a receipt documenting their requests ARTICLE 19 recommends that a special provision is included imposing such a requirement.

13. Unnecessary provision

The second peculiar provision is Article 59. It states that the law does not apply to information held by the national archive, libraries and museum to which the public have access. The peculiarity of this provision stems from two reasons. Firstly, inasmuch as the national archive, libraries and museums are public institutions, there is no justification to exclude them from the general obligations of the public offices to provide access to the information contained in their records. For example, individuals should be able to obtain information about policies and decisions adopted by of government bodies of the National Library, their annual reports and budget. Secondly, the section of Article 59 which concerns the national archive contradicts Article 67. Whilst the first provision excludes the access to information from the state archive from the scope of application of the Draft Bill, the second provision states that disclosure of information, regulated by other laws, such as a law on state archives, will be subject to the regime under the Draft Bill.

Considering that both provisions are confusing and unnecessary ARTICLE 19 recommends that they be deleted.

IV. International and Constitutional Guarantees of the Right to Access Information

a. International Guarantees of Access to Information

The *Universal Declaration of Human Rights* (UDHR) is generally considered to be the flagship statement of international human rights, binding on all states as a matter of customary international law. Article 19 of the UDHR guarantees the right to freedom of expression and information in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR) guarantees to everyone the right to “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Article 25 of the ICCPR gives citizens the right to participate in the conduct of public affairs and to have access to public service in their country. The ICCPR is a legally binding document to which Ghana has been a party since 2000.

The right to access information is recognized also by the African Union’s African Charter on Human and Peoples’ Rights. Its Article 9 states that “Every individual shall have the right to receive information”.²⁴

The African Commission of Human and Peoples’ Right adopted a Declaration of Principles on freedom of Expression in Africa in October 2002. The Declaration endorses the right to freedom to access information. Section IV on “Freedom of Information” states:

IV Freedom of Information

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
 - everyone has the right to access information held by public bodies;
 - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;

²⁴African Charter on Human and Peoples’ Rights, Nairobi, Kenya, June 1981. <http://www.africa-union.org/root/au/Documents/Treaties/Text/Banjul%20Charter.pdf>

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

- any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
 - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
 - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
 - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.²⁵

Information has an important social and political role in contemporary society. As the UN Special Rapporteur on Freedom of Opinion and Expression has said, the right to seek and have access to information is an essential element of freedom of speech and expression. The right to receive information is not simply the converse of the right to impart information but is an independent right:

Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.²⁶

The right to information is also well established in many national legal systems. Today more than 80 countries worldwide, including South Africa and Ethiopia in Africa, have national laws on access to information, establishing mechanisms for the public to request and receive government-held information.

b. Constitutional Guarantees

The 1992 Constitution of Republic of Ghana builds on these international human rights standards and goes one step further by specifically including the right of access to government-held information. Article 21 (f) of the Constitution provides that

All persons shall have the right to-

(f) information, subject to such qualifications and laws as are necessary in a democratic society;

²⁵ Adopted by the African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, in Banjul, The Gambia, from 17 to 23 October 2002.

²⁶ Special Rapporteur's report to the UN Commission on Human Rights, E/CN.4/1995/32, para. 35.

Right to Information Bill

ARRANGEMENT OF SECTIONS

Section

Access to official information

1. Right to access to official information
2. Responsibility of Government to provide information on governance

Compilation and publication of manual on information of an agency

3. Responsibility of Minister in respect of access
4. Provision of guidelines for manual

Exempt information

5. Information from the Office of the President and of the Vice-President
6. Information relating to the Cabinet
7. Information relating to law enforcement, public safety and national security
8. Information affecting international relations
9. Information that affects the defence of the country
10. Economic and any other interests
11. Economic information of third parties
12. Information relating to tax
13. Internal working information of agencies
14. Parliamentary privilege, fair trial, contempt of court
15. Legal profession and any other privilege under law
16. Medical professional privilege
17. Disclosure of personal matters
18. Disclosure for the protection of the public interest

Procedure for access

19. Application for access to information
20. Person to deal with application
21. Transfer of application
22. Deferred access
23. Decision on application
24. Information that cannot be found or not in existence
25. Payment of advance deposit
26. Extension of time to deal with an application
27. Refusal to process for failure to pay deposit
28. Refusal of access
29. Manner of access

Right to Information Bill

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Amendment of personal records in custody of an agency

30. Amendment of personal records
31. Application for amendment of information
32. Dealing with an application to amend records
33. Incomplete applications
34. Action on application to amend record
35. Refusal to amend records
36. Notice of decision
37. Notations to be added to records

Internal reviews and appeals

38. Internal review by the Minister
39. Action by the Minister
40. Decision of the Minister on review
41. Delegation of power by the Minister
42. Application for judicial review
43. Application to the Supreme Court for judicial review
44. Powers of the Supreme Court
45. Ruling of the Supreme Court
46. Right to a lawyer or any other expert

General and miscellaneous provisions

47. Burden of proof
48. Appointment of information officers
49. Protection in respect of certain criminal actions
50. Protection in respect of certain criminal actions
51. Fees and charges of agency
52. Waiver of fee on basis of financial hardship
53. Fees and charges not part of the Consolidated Fund
54. Responsibility of the Attorney-General
55. Attorney-General as a party to proceedings
56. Annual reports by agencies
57. Report by the Attorney-General to Parliament
58. Limitation of period for exempt information
59. Information held by the national archives, museums and libraries
60. Application of Act to existing and future information
61. Offence of disclosure of exempt information
62. Other offences
63. Extension of time
64. Application to the private sector
65. Regulations

Right to Information

66. Interpretation
67. Modification to existing enactments

A
BILL
ENTITLED
RIGHT TO INFORMATION ACT, 2007

AN ACT to provide for the implementation of the constitutional right to information held by a government agency, subject to the exemptions that are necessary and consistent with the protection of the public interest in a democratic society, to

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

foster a culture of transparency and accountability in public affairs and to provide for related matters.

ENACTED by the President and Parliament

Access to official information

Right of access to official information

1. (1) In accordance with paragraph (f) of clause (1) of article 21 of the Constitution, a person has a right of access to information or part of an information in the custody or under the control of a government agency.

(2) The exercise of the right under subsection (1) is subject to the exemptions specified in sections 5 to 18.

(3) The right may be exercised through an application made in accordance with section 20.

(4) A person does not have to give a reason for the application except where that person requests that the application be treated as urgent.

(5) Where an agency receives an application for access, part of which is exempt, the information officer shall disclose to the applicant as much of the information as can reasonably be separated without disclosing the exempt part.

Responsibility of Government to provide information on governance

2. In addition to the requirements of article 67 of the Constitution, and subject to this Act, the Government shall make available to the people general information on their governance without application from a specific person.

Compilation and publication of manual on information of an agency

Responsibility of Minister in respect of access

3. (1) The Minister responsible for a government agency shall, within twelve months from the date of the coming into force of this Act, and every twelve months after that date, compile and publish, after consultation with the Public Services Commission and the Head of the Civil Service and in accordance with the guidelines issued by the Public Services 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.

(2) The manual shall contain

(a) a description of the organisational structure and functions of each agency including details of the responsibility of each division or branch of each agency,

(b) a list of the various classes of information which are prepared by or are in the custody or under the control of each agency,

(c) a list of the types of information that may be purchased or inspected free of charge or subject to a fee, and the deposit required or the fee, or charge payable in respect of an access to information as specified by the Attorney-General under section 51.

(d) the name, telephone number, fax, e-mail and postal address of the information officer of the agency or a designated officer of the agency to whom a request for access may be made,

(e) the place in the agency where information which is accessible under this Act or any other enactment, can be found or made available,

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

- (f) the arrangements made or procedures established by the agency that will enable members of the public to participate in the formulation of the policies of the agency, and
- (g) the arrangement made or procedures established by the agency to enable a member of the public to seek amendment of that member's personal official records with the agency.

Provision of guidelines for manual

4. (1) The Public Services Commission in consultation with the Attorney-General as the Minister who has responsibility for the effective implementation of this Act shall provide guidelines for the preparation of the manual by the Minister under section 3.

(2) The Attorney-General is responsible for the implementation of this and any other enactment which relates to access to official information in the custody or control of an agency.

Exempt information

Information from the Office of the President and of the Vice President

5. (1) Information is exempt information

- (a) if it is for submission or has been submitted to the Office of the President or of the Vice-President, or
- (b) if it contains matters the disclosure of which would reveal information concerning opinion, advice, deliberation, recommendations, minutes or consultations made or given to the President or the Vice-President.

(2) A certificate under the hand of the Secretary to the President or the Secretary to the Vice-President that information is exempt information is conclusive evidence that the information is exempt subject to the operation of article 135 of the Constitution.

(3) Information which contains factual or statistical data and does not disclose information concerning a deliberation or decision of the Office of the President or of the Vice President is not exempt information.

Information relating to Cabinet

6. (1) Information is exempt information

- (a) if it is prepared for submission to the Cabinet or submitted to the Cabinet for consideration,
- (b) if it is an official information form the Cabinet, not published or released to the public, or
- (c) if it contains matters which if disclosed would reveal information on a decision, deliberation or discussion of the Cabinet.

(2) Information which contains factual or statistical data and which does not disclose information concerning a decision, deliberation or discussion of the Cabinet is not exempt information.

(3) A certificate under the hand of the Secretary to the Cabinet or the Head of National Security that the information is exempt information is conclusive evidence that the information is exempt subject to the operation of article 135 of the Constitution.

(4) This section does not prevent the Cabinet from publishing or granting access to information that is otherwise exempt.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

(5) For the purposes of this section, a reference to the Cabinet includes a reference to a committee or sub-committee of the Cabinet.

Information relating to law enforcement, public safety and national security

7. (1) Information is exempt if it contains matters which if disclosed can reasonably be expected

- (a) to interfere with the prevention, detection or curtailment of a contravention or possible contravention of a law,
- (b) to prejudice the investigation of a contravention or possible contravention of a law,
- (c) to reveal investigation techniques and procedures in use or likely to be used in law enforcement,
- (d) to disclose the identity of a confidential source of information, matter or the information given by a confidential source in respect of law enforcement,
- (e) to impede the prosecution of an offence,
- (f) to endanger the life or physical safety of a person,
- (g) to prejudice the fair trial of a person or the impartial adjudication of a case,
- (h) to reveal a record of information that has been confiscated from a person by a police officer or a person authorised to effect the confiscation in accordance with an enactment,
- (i) to interfere with the maintenance or enforcement of a lawful method or procedure for protecting the safety of the public,
- (j) to endanger the security of a building, structure or means of transport or a system including computer and communication systems for which security is reasonably required,
- (k) to prejudice the security of a prison or place for lawful detention,
- (l) to facilitate the escape of a person from lawful custody, or
- (m) to prejudice a system or procedure for witness protection or any other procedure for the protection of persons or property where the protection is required.

(2) Information is not an exempt information

- (a) if it consists merely of a report on the success of a programme adopted by an agency to deal with a contravention or possible contravention of the law,
- (b) if it contains a general outline of the structures of a programme adopted by an agency to deal with a contravention or possible contravention of an enactment, or
- (c) if it consists merely of a report on a law enforcement investigation that has already been disclosed to the person who is the subject of the investigation

(3) Information created by or in the custody of the Armed Forces or the security and intelligence agencies established under the Security and Intelligence Agencies Act 1996 (Act 526) which related to the security of the State is exempt information.

Information affecting international relations

8. (1) Information is exempt information if its disclosure can reasonably be expected

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

- (a) to damage or prejudice the relation between the Government and the government of any other country,
- (b) to reveal information communicated in confidence to a government agency by or on behalf of another government, or
- (c) to reveal information communicated in confidence to an agency by an international organisation of states or a body of that organisation.

(2) Despite subsection (1), the exempt information may be disclosed if the President gives prior approval for the disclosure.

Information that affects the defence of the country

9. Information is exempt information if its disclosure can reasonably be expected

- (a) to damage or prejudice the defence of the Republic or a foreign state allied to or friendly with the Republic, or
- (b) to be prejudicial to the detection, prevention or suppression of terrorism, sabotage or espionage.

Economic and any other interests

10. Information is exempt prior to official publication

- (a) if it contains trade secrets or financial, commercial, scientific or technical information that belongs to the Government and the information has monetary or a potential monetary value,
- (b) if the disclosure of the information can reasonably be expected to damage the financial interests of the Government or the ability of the Government to manage the national economy,
- (c) if the disclosure of the information can reasonably be expected to create undue disturbance in the ordinary course of business or trade in the country,
- (d) if the disclosure of the information can reasonably be expected to create undue disturbance in the ordinary course of business or trade in the country,
- (e) if it contains criteria, procedures, positions or instruction that relate to negotiations carried on or to be carried on by or on behalf of the Government, or
- (f) if it contains questions to be used in an examination or test for educational purposes.

Economic information of third parties

11. (1) Information which would reveal a trade secret, research, scientific, technical, commercial, financial or labour related information supplied in confidence whether expressly or impliedly is exempt information if the disclosure can reasonably be expected

- (a) to prejudice the competitive position or interfere with the contractual or any other negotiations of a person, a group of persons or an organisation,
- (b) to result in undue loss or gain to a person, a group, a financial institution or any other body, or
- (c) to result in similar information which is not being supplied to the agency, where it is in the public interest that similar information continue to be supplied.

(2) Information which has already been made available to the public by the appropriate person, authority or body is not exempt information under subsection (1).

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Information relating to tax

12. (1) Information obtained from a tax return or gathered for the purposes of determining tax liability is exempt information.

(2) Exempt information under subsection (1) may be disclosed if the person to whom the information relates agrees to the disclosure.

Internal working information of agencies

13. (1) Information which if disclosed would reveal

(a) an opinion, an advice, a report or a recommendation contained, prepared or recorded, or

(b) a consultation or a deliberation held

in the course of or for the purpose of making a decision in the public service or an agency of the Government and which can reasonably be expected to frustrate or inhibit the candid deliberative process of an agency or between agencies is exempt information.

(2) Information is not exempt information under sub-section (1)

(a) if it merely contains material that has been publicly mentioned as forming the basis of a public policy or for formulating public policy, or

(b) if it contains only factual or statistical data.

Parliamentary privilege, fair trial, contempt of court

14. Information is exempt information if its disclosure can reasonably be expected

(a) to infringe or contravene a parliamentary privilege,

(b) to prejudice the fair trial of a person or the impartial adjudication of a case before a Court or a quasi-judicial body, or

(c) to constitute contempt of court or of a quasi-judicial body.

Legal profession and any other privilege under law

15. (1) Information is exempt information where it is privileged from disclosure on grounds of

(a) lawyer and client professional relationship,

(b) communication between spouses whether married under an enactment or under the common law as defined in clause (2) of article 11 of the Constitution, or

(c) the Evidence Act, 1975 (N.R.C.D. 323).

(2) Subsection (1) does not apply where the person entitled to the privilege waives the privilege.

Medical professional privilege

16. Information the disclosure of which reveals confidential communication between a doctor and a patient or any other medical professional expert, in connection with the patient's medical diagnosis or treatment is exempt information.

Disclosure of personal matters

17. (1) Information the disclosure of which involves the unreasonable disclosure of information concerning the personal affairs of an individual whether living or deceased is exempt information

(2) Disclosure is unreasonable if it reveals or is likely to reveal information about the individual's

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

- (a) physical or mental health,
 - (b) marriage or employment record,
 - (c) business or trade secrets of commercial value to the individual, or
 - (d) professional, commercial or financial affairs
- (3) Disclosure is reasonable if
- (a) the individual to whom the information relates gives prior consent,
 - (b) the disclosure is required to promote public health or public safety,
 - (c) the disclosure is necessary in order to subject government activities to public scrutiny,
 - (d) the disclosure does not unjustifiably damage the reputation of any other person referred to in the information,
 - (e) the disclosure is made to the individual to whom the information relates,
 - (f) the disclosure does not contravene a provision on exempt information specified in this Act,
 - (g) the disclosure would not have an adverse effect on the affairs of the individual or prejudice the future supply of the information,
 - (h) the information has already been made available to the public by the appropriate person, authority or body,
 - (i) the individual to whom the information relates was informed or made aware prior to supplying the information that the information belongs to a class of information that will or might be made available to the public, or
 - (j) in the case of a deceased person, the applicant is the next of kin or represents the next of kin or is the personal representative of the deceased.

Disclosure for the protection of public interest

18. Despite a provision of this Act on exempt information, information is not exempt if the disclosure of the information reveals evidence of

- (a) a contravention of, or a failure to comply with, a law, or
- (b) an imminent and serious risk to public safety, public health or the environment,
- (c) miscarriage of justice,
- (d) abuse of authority or a neglect in the performance of an official duty,

and the benefits of disclosure clearly outweigh the harm or danger that could occur in the event of a disclosure.

Procedure for access

Application for access to information

- 19.** (1) An application for access to information held by an agency shall
- (a) be made in writing to the agency,
 - (b) contain sufficient description or particulars to enable the information to be identified,
 - (c) indicate the type of access required,
 - (d) state the capacity of the applicant to the satisfaction of the officer to whom the application is made, if the application is made on behalf of another person,

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

- (e) state an address in the country to which a communication or notice can be sent, and
- (f) be accompanied with the relevant fee.

(2) Where an applicant is unable to make the application in writing due to illiteracy or a disability, the applicant shall make the request orally and the request shall be reduced into writing by the officer to whom the application is made, who shall give a copy of the written request as recorded to the applicant.

(3) Where an applicant does not sufficiently describe the information required, the agency to which the application is made shall so inform the applicant and offer the applicant the necessary assistance to identify the document.

Person to deal with application

20. (1) An application for access to information shall be dealt with by the information officer of the agency or an officer designated for that purpose by the Minister in the manual referred to in section 3.

(2) The information officer of the agency or the designated officer may delegate the function under subsection (1).

(3) The delegation

(a) shall be in writing, and

(b) does not prevent the person who made the delegation from performing the function as provided under subsection (1).

Transfer of application

21. (1) Where an agency is unable to deal with an application because the information requested

(a) is not in the custody or control of the agency, but to the knowledge of the agency, it is held by another agency, or

(b) is in the custody of the agency but it is more closely related to the functions of another agency,

the information officer to whom the application is made shall, within ten working days of the receipt of the application, transfer the application to the other agency and give written notice of the transfer to the applicant.

(2) Where an application for access is made and the agency to which the application is made does not have the information in its custody, the information officer

(a) shall make the necessary enquiry to establish whether any other agency has the information, and

(b) shall transfer the application to that other agency if that agency has the information, and

(c) shall notify the applicant accordingly.

(3) A notice of transfer shall state,

(a) the date of the transfer,

(b) the reason for the transfer.

(4) An application transferred from one agency to another is a request for access to information made to the agency to which the application is transferred on the date the transfer is received.

Deferred access

22. An agency may defer access to information if it is information

(a) which requires publication under an enactment but the information is yet to be published,

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

- (b) which is required to be published within ninety days from the receipt of the application or the transfer of the application, or
- (c) which has been prepared for submission to any person or body and is yet to be submitted.

Decision on application

23. (1) Where an application for access is received by an agency, the information officer shall take a decision on the application and send a written notice to the applicant within twenty one working days from the date of receipt of the application.

(2) The notice shall state

- (a) whether or not access to the information will be given,
- (b) whether access to only a part of the information can be given and the reason for giving only a part,
- (c) whether or not there has been a transfer under section 21, and
- (d) whether or not there is deferred access under section 22.

(3) Where the information officer decides to give access, the notice shall state

- (a) the period, which shall not be more than fourteen days, within which the access can be given,
- (b) the form or manner in which the access will be given,
- (c) whether access is to only a part of the information because the other part is exempt information,
- (d) the day on which the agency expects the information to be published or submitted, in the case of a deferred access under section 22,
- (e) a reasonable fee to be paid by the applicant, and
- (f) the right of the applicant to lodge a complaint about the fee.

(4) Where the agency decides to refuse access, the notice shall state,

- (a) the reason for the refusal,
- (b) the right of the applicant to seek redress in accordance with the provisions on internal reviews and appeals under sections 38 to 46,
- (c) the name and rank of the officer who dealt with the application, and
- (d) the fees payable for dealing with the application.

(5) Where an agency fails to determine an application within twenty-one working days after the application is received by the agency, the agency shall give reasons for the failure, and the applicant has the right to seek redress under sections 38 to 46.

(6) Subsection (5) does not apply to an application which has been transferred to another agency or which the agency has refused to continue to process for failure to pay the required deposit or fee.

Information that cannot be found or is not in existence

24. (1) Where reasonable and practical steps have been taken to find the information requested and there are reasonable grounds to believe the information

- (a) is in the possession of the agency but cannot be found, or
- (b) does not exist,

the information officer or the designated officer shall by a statutory declaration notify the applicant that it is not possible to give access for the stated reason.

(2) The notice shall state the steps taken to find the document or to determine its existence.

(3) A notice under this section is a refusal to give access to the information and the applicant may take the steps that are open to the applicant under sections 38 to 46.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

(4) Where the information is found after the notice, the information officer shall so notify the applicant and give access, unless the information is exempt or is inaccessible under a provision of this Act.

Payment of advance deposit

25. (1) Where the costs to the agency for dealing with an application are likely to exceed the amount of the application fee, the agency may request the applicant to pay a reasonable advance deposit determined by the agency.

(2) A deposit requested by an agency under subsection (1) is not part of the application fee, and a further advance deposit paid in respect of the application is in excess of the amount which is necessary to cover the costs of dealing with the application.

(3) A request for an advance deposit shall be accompanied with a notice that sets out the basis on which the amount of the deposit has been calculated.

(4) The amount of advance deposit requested by an agency in respect of an application shall be paid to the agency within the period of time specified by the agency in the request.

(5) An agency may refuse to give access to information if a fee or advance deposit payable is not paid within the period notified to the applicant.

(6) An agency shall refund an excess payment of a fee or deposit to the applicant.

Extension of time to deal with an application

26. (1) An information officer may extend the time provided for dealing with the application for a further period if

(a) the application is for a large quantity of information or necessitates a search through a large number of documents and compliance with the original time limit would unreasonably interfere with the operations of the agency,

(b) consultations with a person outside the agency are required and cannot reasonably be complied with within the time limit, or

(c) the applicant agrees to the extension of time.

(2) The period of extension shall not exceed twenty-one working days from the date when a decision on the application should have been made.

(3) An information officer on extending the time, shall within thirty days of the receipt of the application, notify the applicant in writing stating,

(a) the period of the extension,

(b) the reason for the extension, and

(c) the right of the application to lodge an application for a review under sections 38 to 46 within the prescribed period.

Refusal to process for failure to pay deposit

27. (1) An agency may refuse to continue to process an application where the agency has by notice demanded payment of an advance deposit in relation to the application, and the applicant has not paid the deposit within the period of time specified in the notice.

(2) Where an agency refuses to continue to process an application when the applicant has paid part of the advance deposit, the agency shall refund to the applicant the part of the advance deposit paid which exceeds the costs incurred by the agency in processing the application.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

(3) An agency which refuses to continue to process an application shall immediately notify the applicant in writing of the refusal.

(4) A refusal to continue to process an application under this section is subject to review and appeal under sections 38 to 46.

Refusal of access

28. (1) An agency may refuse access to information if

- (a) the application is manifestly frivolous or vexatious,
- (b) the information is an exempt information,
- (c) the work involved in processing the application will, if carried out, substantially and unreasonably divert resources away from their use by the agency in the performance of the agency's functions,
- (d) the information is contained in a document which is available for inspection at that or any other agency, whether as part of a public register or otherwise, or whether or not inspection of the document is subject to a fee or charge,
- (e) the information is contained in a document which is available from, or available for inspection at, that agency, free of charge, in accordance with that agency's policies and practices,
- (f) the information is usually available for purchase, or
- (g) the information forms part of library material.

(2) An agency shall not refuse to give access by virtue of subsection (1)(c) without first assisting the applicant to amend the application so that the work involved in processing it will not, if carried out, substantially and unreasonably divert the agency's resources away from their use by the agency in the performance of its functions.

Manner of access

29. (1) Access to information may be given to an applicant

- (a) by giving the applicant
 - (i) a reasonable opportunity to inspect the document containing the information, and
 - (ii) a copy of the document containing the information,
- (b) by making arrangements for the applicant to hear the sounds or view the visual images, in the case of information contained in a document from which sounds or visual images are capable of being reproduced, whether or not with the aid of another device,
- (c) by giving the applicant a written transcript of the words recorded in the document, in the case of information contained in a document in which words are recorded in a manner in which they are capable of being reproduced in the form of sound,
- (d) by giving the applicant a written transcript of the words contained in the document, in the case of information contained in a document in which words are contained in the form of shorthand writing or in coded form,
- (e) by giving the applicant the written form, in the case of information contained in a document in which words are recorded in a manner in which they are capable of being reproduced in a written form, or
- (f) in any other form including computer printouts, diskette, compact disk rom and downloading.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

(2) Where an applicant has requested that access be given in a particular form, access to the information shall be given in that form.

(3) Subsection (2) does not apply where giving access in the form requested,

(a) will unreasonably divert the agency's resources away from their use by the agency in the performance of its functions,

(b) will be detrimental to the preservation of the information or having regard to the nature of the document containing the information, will otherwise not be appropriate, or

(c) will involve an infringement of a copyright subsisting in a matter contained in the information.

(4) Where access cannot be given in the form specified by the applicant but can be given in some other form, access shall be given in that other form.

(5) Where an applicant has requested that access be given in a particular form and access in that form is refused but given in another form, the applicant shall not pay a charge in respect of the giving of access which is greater than the charge that the applicant would have paid had access been given in the form requested.

(6) This section does not prevent an agency from giving access to information in a form agreed on between the agency and the person who requested the access.

Amendment of personal records in custody of an agency

Amendment of personal records

30. A person given access to information contained in an agency's records may apply for an amendment of the information if

(a) the information represents the personal records of that person, and

(b) in that person's opinion, the information is incorrect, misleading, incomplete or out of date.

Application for amendment of information

31. (1) An application for the amendment of information contained in an agency's records

(a) shall be in writing,

(b) shall specify that it is made under this Act,

(c) shall contain particulars which will enable the agency's records, to which the applicant has been given access, to be identified, and

(d) shall specify the area in which the applicant claims the information contained in the records is incorrect, misleading, incomplete or out of date.

(2) Where the applicant claims that the information contained in the records is incomplete or out of date, the application shall be accompanied with the relevant information which the applicant considers necessary to complete the agency's records or bring them up to date.

(3) An application shall indicate an address in the country to which a notice under this Act should be sent and the application shall be submitted at the office of the agency.

Dealing with an application to amend records

32. The provisions of sections 20 and 23 which deal with applications and the twenty one working days period for dealing with an application shall apply to section 30 with the necessary modifications.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Incomplete applications

33. An agency shall not refuse to accept an application to amend a personal record on the ground that the application does not contain sufficient particulars to enable the agency's records which contain the information to which the applicant has been given access to be identified, without first taking steps that are reasonably practicable to assist the applicant to provide the relevant particulars.

Action on application to amend record

34. (1) An agency shall, in respect of an application to amend a personal record,
(a) amend its records in accordance with the application, or
(b) refuse to amend its records.

(2) Where an agency fails to take a decision on an application within twenty-one working days after the application is received by the agency to amend its records in accordance with the application, the agency shall give reasons for the failure and the applicant has the right to seek redress under sections 38 to 46.

Refusal to amend records

35. An agency may refuse to amend its records in accordance with an application if it is satisfied that

- (a) its records are complete, correct, up to date or not misleading in a material particular, or
- (b) the application contains matter that is incorrect or misleading in a material particular.

Notice of decision

36. Section 23 (which requires notice of a decision to be given by the information officer of an agency to an applicant within twenty one working days) applies to the application for amendment of a personal record with the necessary modifications.

Notations to be added to records

37. (1) Where an agency refuses to amend its records, the applicant may, by notice in writing lodged at an office of the agency, require the agency to add to those records a notation

- (a) specifying the particulars in respect of which the applicant claims the records are incomplete, incorrect, out of date or misleading, and
- (b) setting out the information the applicant claims is necessary to complete the records or to bring them up to date if the applicant claims the records are incomplete or out of date.

(2) The agency shall comply with the requirements of the notice lodged under subsection (1) and shall give a written notice of the notation to the applicant.

(3) Where an agency discloses to another person an information contained in the part of its records to which a notice relates, the agency

- (a) shall give to that person, when the information is disclosed,
 - (i) a statement that the person to whom the records relate, claims that the information in the record is incomplete, incorrect, out of date or misleading, and
 - (ii) a statement setting out particulars of the notation added to its records, and

(b) shall in the statement give the reason for the agency's refusal to amend its records in accordance with the notation.

*Internal reviews and appeals***Internal review by the Minister**

38. (1) Except as otherwise provided in this Act, a person aggrieved by a decision of the information officer of an agency may submit an application for review of that decision to the Minister with responsibility for the agency.

(2) An application for review

(a) shall be in writing,

(b) shall be accompanied with the prescribed fee,

(c) shall be addressed to the Minister, and

(d) shall be submitted within twenty-one working days after the receipt of the notification of the decision sought to be reviewed.

Action by the Minister

39. (1) On the receipt of an application for review, the Minister shall

(a) inform the information officer who dealt with the original application and any other person affected by the review, and

(b) call for and examine any other document of relevance to the review.

(2) The Minister may by notice in writing require the applicant and any other person affected by the review to make a submission in person or in writing to the Minister in furtherance of the review.

(3) The Minister shall conduct the review in *camera*.

(4) The Minister shall not, in the course of reviewing the decision of an agency, disclose to the applicant or a person other than the information officer, any information that is exempt under this Act.

Decision of Minister on review

40. (1) The Minister shall notify the applicant of the Minister's decision on the application within twenty-one working days of receipt of the application for a review, if there is no delay or other default on the part of the applicant.

(2) The notice shall state

(a) the reason for the decision and the provision of this Act relied on, and

(b) where the review is dismissed, that the applicant may file an application for a judicial review by an Appeals Commissioner of the decision of the Minister or with the Supreme Court as is applicable.

(3) Where the Minister fails to notify the applicant of a decision on the review within the twenty one working days the Minister shall give reasons for the failure, and the applicant may seek redress with the Appeals Commissioner or in the Supreme Court.

(4) Where the Minister decides a review in favour of the applicant for access to information, the information officer shall promptly within forty-eight hours after the Minister's decision has been communicated to the applicant, give access to the relevant information.

Delegation of power by Minister

41. The Minister may in writing delegate the power conferred under sections 38 to 40 to an officer of a rank higher than that of the information office.

Application for judicial review

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

42. (1) For the purposes of reviewing a decision of the Minister in a review, the Chief Justice, in consultation with the Judicial Council, shall appoint, as an Appeals Commissioner, a person who is qualified to be appointed a Justice of the Court of Appeal.

(2) Unless otherwise provided in this Act, a person dissatisfied with a decision of the Minister in a review may file an application for judicial review, by the Appeals Commissioner, of the decision of the Minister.

(3) A person refused access to information held by the Office of the President or the Office of the Vice-President or the Cabinet Office under sections 5 (2) or 6 (3) may apply to the Appeals Commissioner for a review.

(4) An application for judicial review shall not be dealt with by the Appeals Commissioner unless the right to apply for a review under section 39 has been exhausted.

(5) A person aggrieved by a determination of the Appeals Commissioner may appeal to the Supreme Court.

(6) An application for a judicial review under this section shall be heard *in camera*.

(7) In respect of the review by the Appeals Commissioner, the Rules of the Court of Appeal shall apply with the modifications that are necessary made by the Rules Committee.

Application to Supreme Court for judicial review

43. (1) Where an applicant is refused access to information by an agency because the disclosure of the information will be prejudicial to the security of the State or will be injurious to the public interest, the applicant may apply to the Supreme Court for a judicial review of the decision.

(2) The application for judicial review shall be lodged within twenty one working days of receipt of the notification of the decision.

Powers of the Supreme Court

44. (1) Subject to the Constitution, the Supreme Court may, in respect of an application for judicial review under section 43,

(a) require the relevant information under the control of the agency to be produced before it for examination and scrutiny,

(b) enter and inspect premises occupied by the agency concerned in the appeal,

(c) require to see original documents, and

(d) summon and examine on oath a person who the Supreme Court considers may have information relevant to the appeal.

(2) The proceedings of the Supreme Court shall be held *in camera* and the Supreme Court may prohibit the publication of information relating to the proceedings.

(3) The Supreme Court shall not, in the course of a review, disclose to a party other than the representative of the agency and the Attorney-General information which is exempt from disclosure under this Act.

Ruling of the Supreme Court

45. (1) The Supreme Court, after hearing the application and presentations made before it, may make an appropriate order.

(2) Where the Supreme Court orders that access should be given to an information, the Court shall specify the period within which access should be given.

Right to a lawyer or other expert

46. A person who applies for access to information, the information officer of the agency concerned and a person affected by any proceedings under this Act whether before a Minister or a Court is entitled to be represented by a lawyer or an expert.

*General and miscellaneous provisions***Burden of proof**

47. In proceedings for the review of a decision of a person who has authority to grant or refuse access to information under this Act, the burden of proof that the decision is justified lies on that person.

Appointment of information officers

48. For the purposes of this Act, an agency shall designate an officer known as an information officer to perform the function assigned to an information officer under this Act.

Protection in respect of actions for defamation or breach of confidence

49. (1) Where access to information is given under this Act, and the person by whom the decision to give access believes in good faith, when making the decision, that this Act permits or requires the decision to be made, an action for defamation or breach of confidence does not lie against the Republic, an agency, an information officer, a Minister or a member of staff of an agency in respect of the making of the decision or the giving of access.

(2) The giving of access to information under this Act or the making of a decision to give access does not constitute, for the purpose of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the information by the person to whom access is given.

Protection in respect of certain criminal actions

50. Where access to information is given in good faith under this Act, the person by whom the decision is made or a person concerned in giving access to the information has not committed an offence in respect of the decision to give access.

Fees and charges of agency

51. (1) An applicant seeking an access to information under this Act shall pay the fee or charge specified by the Attorney-General in written guidelines issued to the agencies.

(2) The guidelines shall specify the amount payable for

- (a) a search for every hour or fraction of an hour of manual search required in excess of two hours to locate the information,
- (b) computer access and any other costs incurred in locating, retrieving, processing and photocopying the information,
- (c) the cost of preparing the information for disclosure, and
- (d) the postage costs.

(3) For the purposes of subsection (1), an agency shall not charge fees for the location of information which requires not more than two hours of manual search.

Waiver of fee on basis of financial hardship

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

52. An information officer of an agency may waive a fee or charge for giving access to information where the information officer considers that the applicant will suffer financial hardship if required to pay the fee or charge.

Fees and charges not part of the Consolidated Fund

53. Fees and charges received by an agency under this Act do not form a part of the Consolidated Fund and shall be kept by the agency in an identified account to be used to defray the expenses incurred by the agency in the performance of its functions under this Act.

Responsibility of Attorney-General

54. (1) The Attorney-General has ministerial responsibility for the effective implementation of this Act, and may for that purpose issue written guidelines to agencies and ministries.

(2) Subsection (1) is in addition to paragraph (c) of article 296 of the Constitution.

(3) The Attorney-General may

- (a) conduct public education programmes and provide information for the implementation of this Act,
- (b) initiate research to be conducted into matters affecting the purposes of this Act, and
- (c) receive representations from the public in respect of the operation of this Act.

Attorney-General party to proceedings

55. The Attorney-General shall, under this Act, be a party to proceedings before the Appeal Commissioner or the Supreme Court for the review of a decision of an agency.

Annual reports by agencies

56. (1) An agency shall, within three months after the 31st December each year, submit a written report on the activities of the agency under this Act during the preceding year to the Attorney-General.

(2) The report shall include

- (a) the number of applications for access during the reporting period;
- (b) the number of applications approved and the number rejected together with the reasons for the rejection;
- (c) the number of reviews requested, the number granted and the number dismissed together with reasons; and
- (d) the number of application to the High Court, the Court of Appeal and the Supreme Court for judicial review and the results of the reviews.

(3) The Attorney-General may in writing request for any other information which the Attorney-General considers necessary for the purposes of submitting a comprehensive report to Parliament under section 57.

Report by the Attorney-General to Parliament

57. (1) The Attorney-General shall by the 30th of June of each year lay before Parliament an annual report on the activities of the agencies in respect of the preceding year based on the annual reports of the agencies referred to in section 56.

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

(2) The report of the Attorney-General may contain comments that the Attorney-General considers necessary including an assessment of the extent to which agencies are complying with this Act.

Limitation of period for exempt information

58. (1) Information classified as exempt information under section 5 to 18 ceases to be exempt information on the expiry of twenty years calculated from the end of the calendar year in which the information came into existence.

(2) On the expiry of the period specified in subsection (1), a person may seek access to the information and the agency which has custody of the information shall give access in accordance with the procedure for access under this Act.

Information held by the national archives, museums and libraries

59. This Act does not apply to information held by the national archive, libraries and museums to which the public have access.

Application of Act to existing and future information

60. (1) This Act applies to information which came into existence before, or comes into existence after, the commencement of this Act.

(2) This Act applies to information held by an independent contractor engaged by an agency as a contractor and that information, for the purposes of this Act, is information held by the agency.

Offence of disclosure of exempt information

61. A person who wilfully discloses information which is exempt from disclosure under this Act commits an offence and is liable on summary conviction to a fine not less than two hundred and fifty penalty units or to a term of imprisonment of not less than twelve months or to both the fine and the imprisonment or to a non-custodial sentence as determined by the Court.

Other offences

62. (1) A failure or neglect by an information officer or other public officer to perform a function authorised by this Act where the occasion arises to perform that function constitutes a gross misconduct.

(2) A person who

(a) seeks or gains access to the personal record of another person under false pretences,

(b) wilfully makes a false statement

(i) to mislead any other person in order to gain access, or

(ii) to gain access to information, or

(c) with intent to deny right of access to information,

(i) destroys, damages, alters or conceals a document, or

(ii) makes a false entry in a document,

commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units or to a term of imprisonment of not less than twelve months or to both the fine and the imprisonment or to a non-custodial sentence as determined by the Court.

Extension of time

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

63. Unless extension of time is provided for, where in this Act provision is made for taking a step, for the doing of an act or making a decision within a specified time, the time may be extended for a further period not exceeding fourteen working days if

- (a) the extension is needed to locate and retrieve the requested information, or
- (b) the extension is necessary to enable consultation to be held with another person on the requested information.

Application to the private sector

64. (1) The Attorney-General may, by legislative instrument, extend the application of this Act to the private sector.

- (2) The legislative instrument made under subsection (1) shall specify
 - (a) the provision of the Act which shall apply to the private sector,
 - (b) the type of information to which access should be given
 - (c) the exemptions which shall apply to the private sector as they apply in the public sector, and
 - (d) the court procedures that may be enforced to make available the requisite information.

Regulations

65. The Attorney-General may, by legislative instrument, make Regulations

- (a) making it obligatory for government agencies and private organizations to maintain their records in good and accessible condition in order to facilitate access to information;
- (b) for further procedures for access to information under this Act, and
- (c) to provide for matters that are necessary to give full effect to this Act.

Interpretation

66. In this Act, unless the context otherwise requires,

- “access” means right of access to information;
- “agency” means a government agency;
- “Court” means a court of competent jurisdiction;
- “designated officer” means an officer so designated for the purposes of this Act;
- “exempt information” means information which falls within any of the exemptions specified in sections 5 to 18;
- “function” includes powers and duties;
- “government agency” includes a Ministry, government department, District Assembly or a local authority, a statutory or any other body corporate or unincorporated, or a public office, funded in whole or in part from public funds or in which the Government has an interest, or holds shares;
- “information” includes recorded matter or material,
 - (a) regardless of form or medium,
 - (b) in the possession or under the control or custody of an agency, and
 - (c) whether or not it was created or made by an agency;
- “information officer” includes the information officer of the agency to whom an application is made and a designated officer;

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

“international organisation” includes an organisation of States or Government of States or an organ of that organisation;

“right of access” means the right of access to information;

“Rules Committee” means the Rules Committee established by article 157 of the Constitution

“state secret” includes information considered confidential by the Government which if disclosed would be prejudicial to the security of the State or injurious to the public interest;

“trade secret” means a secret formula or technique, process, programme, device or product known and used to the advantage of only one manufacturer and the disclosure of which would cause significant economic loss to the owner or manufacturer.

Modification to existing enactments

67. Where an enactment in existence immediately before the coming into force of this Act, provides for the disclosure of information by a person or an authority, the disclosure of the information is subject to this Act.