

Right to Information Bill, 2018

MEMORANDUM

The right to information is a fundamental human right guaranteed by the Constitution and is recognised as a right by international conventions on human rights.

Paragraph (f) of clause (1) of article 21 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;”

The purpose of the Bill is to give substance to that constitutional provision by providing for

- (a) access to official information held by public institutions, and
- (b) the qualifications and conditions under which the access should be obtained.

Our choice of democratic governance entails an active participation by all in the governance of the country. In this participatory democracy, the right to information is particularly relevant. It is essential to ensure good governance. It is only when those who are to participate in governance are well informed that they can contribute meaningfully to governance. This can only be achieved if they have access to the relevant information. Thus access to information requires that there is in existence the requisite data or information. It also ensures

- (a) that there is available to the individual the requisite data or information,
- (b) that there is more truthfulness and transparency in government, and
- (c) that corruption is reduced to a minimum because the actions of various persons in authority are made subject to public scrutiny.

This realisation of the importance of the right to information and the desire to ensure that there is transparency in governance, constitute the foundation for empowering the citizenry to contribute to good governance and rapid development and progress of this country. The right to information, however, needs to be qualified in accordance with the Constitution.

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For our purposes, the Constitution in clause (2) of article 12 subjects the enjoyment of the human rights provisions in Chapter Five to the rights and freedoms of others and the public interest. In addition, paragraph (f) of clause (1) of article 21 specifically subjects the right to information “to such qualifications and laws as are necessary in a democratic society”. Conventions on human rights, such as the African Charter on Human Rights, the European Convention on Human Rights and the International Covenant on Civil and Political Rights provide guidelines as to the import of the right to information.

The underlying factor in the qualifications to the right to information, is the need to protect the safety and integrity of the State and the privacy of individuals. This need is summed up in the general term of “subject to respect for the rights and freedoms of others” and “for the public interest”. In the language of clause (2) of article 12 of the Constitution,

“Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter, but subject to respect for the rights and freedoms of others and for the public interest”.

The required qualification to the right to information finds expression in the Bill through the exemptions and protection from disclosure of various kinds of information.

In the provision for the exemptions and protection, however, care has been taken to make them relate to specific circumstances and situations and to make them address specific pressing social needs so as to ensure that loopholes are not available which will be taken advantage of to whittle away the right of access in the implementation of the law.

The Bill deals with two broad subject areas, the first area dealing with information held by public institutions, and the second area with general and miscellaneous matters.

Clause 1 provides for the right to information subject to qualifications and laws necessary in a democratic society. A person may exercise the right through an application made in accordance with *clause 18* and

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does not need to give a reason for the request for access, unless that person requests that the application be treated with urgency.

Maximum disclosure in relation to governance is provided for in *clause 2* which requires the Government to make non-exempt information on governance available to the public without the need of an application. This provision is meant to ensure transparency in Government and to equip the public with the necessary knowledge and information to contribute meaningfully to national development. This provision and indeed any other mandatory provisions may, like any of the provisions of the Constitution on fundamental human rights, be enforced through an action at the High Court as specified in article 33 of the Constitution.

The compilation and publication of an up-to-date manual on official information by each public institution is covered by *clause 3*. The manual shall, among other things, contain a list of departments or agencies under that public institution and a description of the organisational structure and responsibilities of each public institution including details of the activities of each division or branch of the public institution; contain a list of the various classes of information which are prepared by or are in the custody or under the control of each public institution; and contain the name, telephone number, fax, e-mail, postal address and any other contact details of the information officer of the public institution or a designated officer of the public institution to whom a request for access should be made and state the procedures by which access may be obtained.

Clause 4 requires the Minister, in consultation with the Public Services Commission, to issue guidelines for the preparation of the manual by a public institution and for the preparation and publication of a legislative instrument.

Exempt information is provided for in *clauses 5 to 16*. *Clause 5* provides for information to be exempt from disclosure if it is prepared for submission or has been submitted to the Office of the President or if it contains matters the disclosure of which would reveal information concerning opinion, advice and recommendation, among others, given to the President or the Vice-President.

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Clause 6 exempts information from disclosure if it is prepared for submission to Cabinet or submitted to Cabinet for consideration or if it is an official information from Cabinet which has not been published or released to the public, as well as deliberations of Cabinet which may prejudice national security, among others. In spite of the exemption from disclosure of information relating to Cabinet, Cabinet has the power to grant access to information which contains factual or statistical data and which does not disclose information concerning a decision, deliberation or discussion of Cabinet. This is another provision intended to enhance transparency in governance.

Clause 7 exempts information that relates to law enforcement and public safety from disclosure. This provision is necessary for the protection of public order and public health. Even then, where the information pertains to measures adopted to counteract a contravention or a possible contravention of the law and to the outcome of those measures, and disclosure of the information is in the public interest, the information ceases to be exempt.

Clauses 8, 9 and 10 provide, among others, for the exemption from disclosure of information that is likely to damage or prejudice

- (a) the relationship between this country and any other countries or an international organisation,
- (b) the defence of this country or of a friendly foreign country, and
- (c) the economic or financial interests of the country.

They are aimed at safeguarding the national interest or national security.

Clause 11 exempts from disclosure, confidential information which would reveal a trade secret or which relates to research, scientific, technical or commercial subjects or to labour where the disclosure of the information would prejudice the economic or financial interests of a person, a group of persons or an organisation, among others. In *clause 12* provision is made for the exemption from disclosure of information obtained on a tax return or for the purpose of determining tax liability. *Clauses 11 and 12* together protect the rights of third parties in respect of information held by public institutions, which affects the interests of the third parties. This is in consonance with the Constitution.

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In *clause 13*, information contained in internal working documents of a public institution which relates to an opinion or advice given or a report or recommendation made or consultation or deliberation held in the course of making a decision in the public service or a public institution is exempt from disclosure in so far as the disclosure will frustrate the decision-making process of the public institution. This information is, however, not exempt from disclosure if it forms the basis of a public policy or for formulating a public policy and has already been publicly mentioned.

Clauses 14 and 15 respectively, exempt from disclosure privileged information the disclosure of which would

- (a) infringe or contravene a parliamentary privilege or constitute a contempt of court or of a quasi-judicial body;
- (b) infringe on lawyer and client professional relationship or 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 is privileged from disclosure under the Evidence Act, 1975 (N.R.C.D. 323); or
- (c) reveal confidential communication between a doctor or any other medical expert and a patient in connection with the patient's medical diagnosis or treatment.

Clause 16 exempts from disclosure, information that relates to unreasonable disclosure of the personal affairs of an individual, whether living or deceased and defines what constitutes unreasonable disclosure. *Clauses 14, 15 and 16* taken together protect the individual's right to privacy.

The exemptions from disclosure are subject to the public interest and can be lifted where disclosure would help reveal a contravention or a failure to comply with a law or non-disclosure could result in an imminent and serious risk to public safety, health or the environment, among others, *clause 17*.

Clause 18 provides for the procedures for access. It requires among other things that an application for access to information shall be made in writing to the public institution, adequately describe the information for which access is sought, indicate the form and manner of the access required and be accompanied with the relevant fee, among others.