

The Ghana Integrity Initiative (GII) Consortium:  
GII, Ghana Anti-Corruption Coalition (GACC) & SEND GHANA

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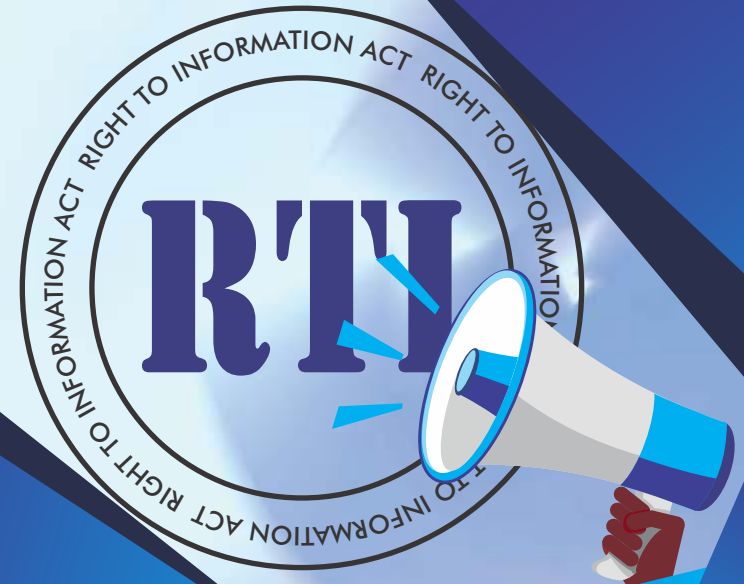
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# THE RIGHT TO INFORMATION ACT, 2019 (ACT 989)

# ABRIDGED



The Ghana Integrity Initiative (GII) Consortium was established in 2014, comprising GII, Ghana Anti-Corruption Coalition (GACC) and SEND GHANA to implement a 5year USAID funded project titled “Accountable Democratic Institutions and Systems Strengthening (ADISS)” in 50 districts across the 10 regions of Ghana.

ADISS seeks to renew and build upon on-going efforts and also increase the capacities of anti-corruption CSOs to motivate citizens to apply pressure on policy makers and institutions through a number of targeted and focused actions with the aim to reduce corruption in Ghana.

Compiled and Edited by ADISS Research Team

Designed & Printed by Kricyimage

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of August, 2019. Nevertheless, GII Consortium cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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**THE RIGHT TO  
INFORMATION  
ACT, 2019  
(ACT 989)**

**ABRIDGED**

**AUGUST 2019**

## **ACKNOWLEDGEMENT**

The Ghana Integrity Initiative (GII) Consortium, comprising GII, GACC and SEND-Ghana, is grateful to the United States Agency for International Development (USAID) for providing funding support to implement the Accountable Democratic Institutions and Systems Strengthening (ADISS) Activity, from which this publication is funded.

We acknowledge Mr. Nicholas Opoku, for the initial draft of this abridged Right to Information (RTI) Law. Mr. Akoto Ampaw (Lawyer and Leading Member of the RTI Coalition) and Dr. Kojo Pumpuni Asante (Director of Advocacy and Policy Engagements at CDD-Ghana) provided professional inputs, review to enrich the final publication. The Civil Society RTI Implementation Committee were also instrumental in providing varied perspectives on the document.

## **ABOUT ADISS**

The Accountable Democratic Institutions and Systems Strengthening (ADISS) Activity is a five-year project funded by USAID over the period September 2014 to December 2019. The activity seeks to renew and build upon on-going anti-corruption efforts and increase the capacities of anti-corruption Civil Society Organizations (CSOs) to motivate citizens to apply pressure on policy makers and institutions. The outcomes of the activity implemented in 50 districts across 16 regions are: increased civil society engagement in lobbying and law reform advocacy; increased enforcement of audit recommendations by MDAs/MMDAs; and increased reporting, investigations and redress of corruption cases. In the five years of implementation, ADISS has chalked some important successes in relation to law reform advocacy – key of which is its contribution towards the passage of the RTI Law.

The history of ADISS' support and advocacy to get the law passed also spans the entire Activity period. ADISS' intervention began with a citizens' sensitization on the benefits of the RTI. In 2015, citizens bought into the need to have an RTI law and collected more than 3,000 signatures from 50 districts to petition their Members of Parliament (MPs), expressing their desire for an RTI law. When the bill was relayed in Parliament in 2017, ADISS took on the campaign once again by taking the bill to the grassroots, educating citizens on the content of the bill and collating views from the public. These views as well as expert reviews of the bill were the basis for several engagements undertaken by ADISS and the RTI Coalition with the Committee on Constitutional, Legal and Parliamentary Affairs, the Leadership of the House and targeted MPs. ADISS also engaged PNAfrica to undertake daily monitoring of Parliamentary sittings to track the progress of the RTI Bill under consideration in Parliament as well as supporting some of the activities of the Media Coalition on the RTI. Outside Parliament, the ADISS strategy was to keep the RTI in the public consciousness and offer forums for citizens to apply pressure on Parliament to pass the Bill.

After years of advocacy, the Parliament of Ghana finally passed the RTI Bill on March 26, 2019. The President gave his assent to the bill on May 21, 2019.

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# INTRODUCTION

**Article 21 (1) (f) of the Constitution of Ghana provides as follows:**

**“ All persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society ”**

This means every person in the jurisdiction of Ghana, citizen or non-citizen has a right to information. Any restrictions to the right have to be necessary in a democratic society. The Right to Information Act 2019 (RTI Act) was passed in 2019, 27 years after the 1992 Constitution became operational and 17 years after a bill was first laid before the Parliament of Ghana to provide for a framework for accessing information.

The RTI Act is founded on the fundamental principle that the sovereignty of Ghana resides in the people of Ghana and that all powers of government must be exercised in the name and for the welfare of the people. Thus, all information held by public institutions and government or private persons or entities performing a public function in principle is information held in the name and for the welfare of the people. The people therefore have a right to such information unless there is a compelling

public interest reason why such information should not be given to the people.

This abridged version of the RTI Act has been prepared to meet the need for a simplified and reader-friendly version of the Act. It is hoped that thereby, the legal protection contained in the RTI Act will be accessible to the public and ensure that the law is better able to fulfil the purpose for which it was enacted.

While the abridged version of the Act has been produced to provide a quick and easy access to the contents of the RTI Act, it preserves the essential elements of the legislation.

The content is arranged in a manner that is consistent with the RTI Act itself except in one respect. The exemption clauses are discussed in the latter part of the document rather than earlier, as it currently is in the law. This structure of the content in the abridged version reflects the underlining principle in Article 21 (1) (f) that as this is a right to information law, the provisions on accessing information must precede the necessary limitations.

# ARRANGEMENT OF SECTIONS

## ACCESS TO OFFICIAL INFORMATION (SS. 1-2)

1. Everyone has the right to ask for any information that is held by public institutions including private institutions performing a public function in Ghana. All public institutions must make it easy for the public to obtain information.
2. The Government has the duty to provide the public with information even when no one has made a request for it.

## PROCEDURE FOR ACCESS (SS. 18-22)

1. To access information held by a public institution, the person applying for the information,
  - (i) Must make a written application (electronic or otherwise) to the information officer of that institution,
  - (ii) Must provide his or her contact details, identification and sufficiently describe the information required,
  - (iii) An illiterate person or a disabled person who is unable to make a written application can make the request orally in a language that he or she understands,
  - (iv) Where the request is made orally, the information officer must write down the request and then explain what he or she has written down to the person. Where the person applying for the information is illiterate, the information officer must also ask a



witness to endorse that the officer read the written request back to the person in a language the person understood and the person appeared to understand what was read. The person applying for the information should be made to sign or thumbprint the request,

- (v) Where an application is made to a public institution, but the institution is unable to deal with the request because it does not have the information requested for, the public institution must transfer the request to the appropriate public institution within two (2) days of receipt of the application and then inform the person applying for the information of the transfer.

### **Manner of Access (s.28)**

1. A person who applies for information may be allowed to access the information in the following ways:
  - (i) through an inspection of the information
  - (ii) by receiving a copy of the information
  - (iii) by arranging for the person to view images or hear sounds, in cases where the information cannot be reproduced
  - (iv) written transcript of words recorded
  - (v) electronic, computer printout or other forms of computer storage devices or web portals.

### **Amendment of Personal Records (ss.29-30)**

1. A person who has personal records with a public institution may apply to amend the information where such information is incorrect, out of date or incomplete.
2. A person must make a written application to a public institution for his records to be amended. The application must contain all the particulars necessary for the identification and amendment of the records.

### **Decision on Application (ss.23, 25)**

1. An application for information must be decided on by the information officer of that public institution within 14 days. The person who applied for the information must be notified in writing of the decision to grant or refuse the information requested. Where the information officer decides not to give the information, he or she must state in writing the reasons for refusal and the provision of the RTI Act under which the application is refused.
2. Where no decision is made after 14 days, the application will be considered to have been refused and



the person who applied will be entitled to seek redress.

3. Where the information being asked for may take a longer period to search, the head of the public institution may extend the time required for dealing with the application. The extension must not exceed 7 days and the person who applied for the information informed of the extension. In other words, a decision must be taken on the information requested for within a maximum period of twenty-one (21) days of the request.
4. Where however the application for information is about information which reasonably appears to be necessary to safeguard the life or liberty of a person, the information officer shall take a decision within forty-eight (48) hours and give the person applying the information within that period, if the application is granted.
5. Where the information being asked for concerns another person, the person who applied for the information may

not be granted access unless the person whom the information concerns has tried unsuccessfully to prevent the release of the information through the Courts.

6. Where the information being asked for would require a search through a large volume of records or search through more than one source, the head of the public institution may extend the time required for dealing with the application. The extension must not exceed 7 days and the person who applied for the information must be informed of the extension.

### **Refusal of Access (s.27)**

1. A public institution may refuse an application for access to information where the request is frivolous, or the information is exempt. The refusal, and the reasons why the application was refused must be communicated by the information officer in writing to the person who applied for the information.

# FEES AND CHARGES (SS. 75-76)

1. A person who applies for the information under the Act must pay the fees and charges approved by Parliament in accordance with Fees and Charges (Miscellaneous Provisions) Act, 2009 (Act 793).
2. Fees and Charges are not required to be paid on the following grounds:
  - (i) a reproduction of personal information of the person who applied for the information or on his behalf or to a person who applied for the information who is either poor, needy or disabled.
  - (ii) the reproduction of information which is in the public interest, or information that should have been provided under this Act within a specific time.
3. Where a request for information is made in a particular language other than the language in which the information is held, or where information requested has to be a transcription, the person who applied for the information must be made to pay a reasonable cost for the translation or transcription.

**In other words, in general fees charged are simply to cover the cost of reproducing the information requested for by the applicant.**



# INTERNAL REVIEWS AND APPEALS (SS. 31-39)

## Application and Decision on Internal Review

1. A person who is unhappy with the decision of an information officer can apply to the head of the public institution and ask the head to review the decision. The application for the decision to be reviewed must be made within 30 days of the receipt of the information officer's decision.

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2. The head of a public institution must decide on a request for internal review within 15 days of receipt of the request and must notify the person who applied for the information of the decision.

3. Where it is decided that the person who applied for the information should be allowed to have it, the person must also be informed of any fees that he or she has to pay and told the manner in which the information will be given.

4. Where the application for review is refused, the person who applied for the information must be notified of the refusal and must be informed that he or

she has a right to appeal the refusal to the Information Commission.

5. Where the head of the public institution fails to decide on a request for review within 15 days, it will be considered that he or she agrees with the information officer's decision to refuse the application.

6. The Information Commission has the power to resolve complaints, dismiss applications for information, dismiss complaints relating to applications for information, limit access to information to parties under this Law and decide on issues of representation where necessary.

## Application for Review by the Commission (ss. 65-67)

1. Where an application to review a decision by the Information Officer is refused by the head of that institution, the person may apply to the Information Commission for a review of the decision.

2. An application to the Commission may be made orally or in writing; where it is

- made orally it should be reduced to writing and the applicant given a copy. In the case of an illiterate applicant the written request must be read back to the applicant to ensure he or she correctly understands the request being made. The applicant can bring a witness to endorse that the right thing was done, then the applicant must sign or thumbprint the written request.
3. A person applying to the Commission is expected to have exhausted the internal review processes provided in this law. Similarly, applicants should exhaust the processes of the Commission before exercising their constitutional rights to apply to the High Court for the review of a decision.
  4. Nonetheless, a person can apply directly to the Commission after being refused by an information officer and without going through the internal review process where the information requested was their personal information; was in the public domain, the request was time bound, was needed to safeguard life and liberty and received no notification or was refused.
  5. The Commission may determine such application summarily on the facts presented or ask the Information Officer to take further actions before taking a decision.
  6. While Section 65 (b) of the Act provides that an aggrieved applicant can apply to the High Court for review only after the applicant has exhausted all rights of review by the Commission, it must be noted that Article 33 (1) of the 1992 Constitution of the Republic gives every person the right to apply to the High Court for redress where the person's fundamental human right has been violated or is likely to be contravened. Since the right to information is a fundamental human right, this means that any aggrieved applicant has the constitutional right to apply to the High Court directly without having to exhaust all processes of review by the Commission.

### Application to High Court for Judicial Review

1. Where an application to access information is refused, the person who applied for the information may apply to the High Court within 21 days for judicial review.
2. The High Court must hear the application and make the appropriate order.
3. The High Court may make an order for the person who applied for the information to be given access to information within a period specified by the court.

# ESTABLISHMENT OF THE RIGHT TO INFORMATION COMMISSION (SS. 40-54)

The RTI Act establishes the Right to Information Commission. The Commission shall be independent in the performance of its functions under the Act, except where a provision of the Constitution of Ghana does not permit it.

This is to ensure that nobody, neither government, political party, economic interest, or social group directs or instructs the Commission as to how to do its work. The High Court, however, has power to intervene in the work of the Commission where it is contrary to the provisions of the Constitution or the RTI Act.

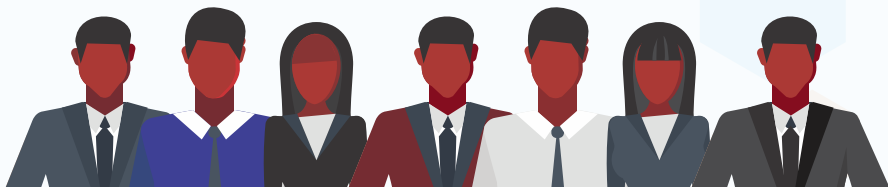
## Powers of the Commission

1. The Commission is expected to promote, monitor, protect and enforce a person's right to information.

2. To the extent that the Constitution allows it, the Commission must be independent in the performance of its functions.
3. The Commission must submit its budget to Parliament through the Minister of Finance for approval annually. This once more emphasizes the Commission's independence. It does not submit its budget through the Ministry responsible for it.
4. The Commission must determine the nature, processes and activities necessary for the performance of its functions.

## Functions of the Commission

1. The Commission can perform the following functions under the Law:



- (i) order that information should be reproduced,
  - (ii) hold hearings in public, unless it is not appropriate to do so;
  - (iii) publish its findings, recommendations, orders, decisions and directives quarterly,
  - (iv) collaborate with other institutions in the country to promote and sustain awareness within the country and educate the public on the right to information.
  - (v) conduct any research it considers appropriate in order to achieve its objects. The Commission must include the findings of any research it conducts in its reports and recommendations to be submitted to Parliament.
2. The Commission must have monitoring powers over public institutions and relevant private organisations in terms of compliance and implementation of directives.
  3. The Commission may engage the services of an expert for the purposes of exercising its functions under the RTI Act.

### Composition of the Commission

1. There must be a Board of the Commission made up of seven members; including a chairperson and

executive secretary. All members of the board are appointed by the President, in accordance with Article 70 of the Constitution.

2. A Board member must hold office for five years at a time and can be appointed again for one more term.
3. A Board member may resign at any time by notifying the President in writing.
4. The Board must meet at least once every three months for business. The quorum at a meeting must be five members. The chairperson or deputy presides over meetings. At least 5 members can request, through writing, that an extraordinary meeting should be convened. In that case, the chairperson must convene the extraordinary meeting at a place and time that the chairperson determines.
5. Whenever a matter comes before the board and any of the board members has any previous involvement in the matter, that member must tell the Board about the nature of his involvement in the matter and he or she must not participate in the deliberation of the Board with respect to the matter. A member who fails to comply with this rule must cease to be a member of the Board.

6. The Board may establish committees consisting of members of the Board and non-members to perform the functions of the Board.
7. Board and committee members must be paid allowances approved by the Minister of Information in consultation with the Minister of Finance.
8. A Board member must while in office, not occupy any office of profit or engage in partisan politics.
9. The funds of the Commission must include; monies approved by Parliament, administrative penalties imposed by the Commission, and donations, grants and gifts.
10. The Commission must submit its accounts to the Auditor-General within six months after the end of the financial year. The Auditor-General must also within six months of receipt of the accounts, conduct an audit and submit a copy of its report to the Commission.
11. The Commission must within thirty (30) days of receipt of the audit report, submit to the Minister, an annual report of the Commission's activities and also include the Auditor-General's report. The Minister must also submit the report together with the necessary statement to Parliament within one month of receipt of the annual report.

# EXEMPT INFORMATION (ss. 5-17)

While the general principle guaranteed by the Constitution is that every person has the right to information, there are occasions where it is necessary in the public interest or for the protection of the rights of others, for some types of information to be restricted. These are exceptions to the general duty on public institutions to disclose information upon request. They are referred to in the Act as “Exemptions”.

## National Security

1. The following types of information cannot be given to the public for national security reasons:
  - (i) Information which has been prepared for the President or Vice President, and which is likely to undermine official decision making processes or do damage to the security of Ghana.
  - (ii) Information which has been prepared for Cabinet, and which Cabinet decides to not give out and in addition is likely to cause harm to effective policy making, or to the security of Ghana.

## Law Enforcement and Public Safety

1. The following types of information cannot be given out because there is a need to protect the safety of the public

or individuals:

- (i) Information which will undermine criminal investigations
- (ii) Information which can undermine the fair trial of a person in court
- (iii) Information which can endanger the life of a person who is assisting with criminal investigations; or who is assisting the prevention or prosecution of a crime
- (iv) Information which can endanger the life of a prisoner or which can help him escape from lawful custody
- (v) Information which can affect the prevention of crimes like terrorism, espionage, sabotage
- (vi) Information which can harm the security of Ghana or that of another country

## International Relations

1. The following types of information cannot be given out in order to preserve Ghana's relations with other countries:
  - (i) Information which is given to the Government of Ghana in confidence/secret by the government of another country
  - (ii) Information which is given in confidence to a public institution of Ghana by another country's public



institution or by an international organization

2. However, the President can allow the above types of information to be revealed.

### **Economic and any other Interests**

1. The following types of information cannot be revealed until they are published:
  - (i) Trade secrets, or technical information which belongs to the country and which has some financial value.
  - (ii) Information which can damage the country's financial system or interests or how the State manages the economy.
  - (iii) Information which can disrupt business activities in the country, when it is revealed.
  - (iv) Information which can affect or benefit someone due to the fact that it will allow the person to have prior notice of certain economic measures that the country is planning to take.
  - (v) Information which concerns negotiations that the country is undertaking and which can have implications for national security and economic development in the country.
  - (vi) Information which undermine integrity of examination, recruitment or selection process.

### **Information relating to Tax**

1. Information which is provided by a tax payer to revenue authorities to facilitate the assessment of the person's tax liability.

### **Internal Working Information of Public Institutions**

2. Information which when disclosed, will reveal an opinion, advice, recommendation, consultation or deliberation that is likely to undermine ongoing discussion in a public institution.

### **Parliamentary privilege, fair trial and contempt of Court**

1. Information which when revealed, will violate parliamentary privilege; or affect the fair trial of a person by a court; or amount to contempt of court or contempt of a body which is exercising powers that are similar to that of a judge.

### **Economic Information of Third Parties**

1. The following information are protected and therefore cannot be revealed unless the person who has the right to reveal the information, decides to waive the protection.

- (i) Information which is shared between a lawyer and their client
  - (ii) Communication between spouses
  - (iii) Provisions in the Evidence Act, 1975 (NRC D 323) that protect the confidentiality of certain types of information, such as protection against self-incrimination by an accused person or a witness, protection of lawyer and client communication, communication between husband and wife,
  - (iv) Information which is shared between a doctor and a patient.
- c. Where revealing the information would allow the public to hold the government accountable
  - d. Where revealing the information will not unfairly damage the reputation of the person whom the information concerns.
  - e. Where the recipient of the information is the same person whom the information concerns.
  - f. Where the information has already been made public by the appropriate or authorised person.
  - g. Where the person whom the information concerns was made aware that the information was being released.
  - h. Where the information is disclosed to a deceased person's next of kin or personal representative.
  - l. Where the information concerns the physical or mental health of a person of 18 years or a person who cannot understand the nature of the request, the information can be revealed to someone who is caring for the person.

### Disclosure of Personal Matters

1. The following types of information which concern the personal affairs of a person (dead or alive) cannot be revealed:
  - (i) Information concerning a person's physical or mental health
  - (ii) Business or trade secrets of commercial value
  - (iii) Information concerning a person's confidential commercial or financial affairs
2. However, these types of information can be revealed in the following circumstances:
  - a. Where the person whom the information concerns allows the information to be revealed
  - b. Where revealing the information would allow public health or public safety to

### Harms Test (s. 17)

There are no blanket exemptions under the Act. Rather all exemptions are based on the harm test, that is, whether or not disclosure will cause harm to a legitimate public or individual interest. It is important to stress that even where information is exempt from disclosure, such information must still be disclosed where its disclosure reveals:

- (a) A contravention of or failure to comply with a law.
- (b) An imminent and serious threat to
  - (i) public safety,
  - (ii) public health or morals,
  - (iii) the prevention of disorder or crime,
  - (iv) or the protection of freedoms of others.
- (c) A miscarriage of justice
- (d) An abuse of authority or a neglect to perform an official function; or
- (e) Any other matter of public interest.

However, in any of those situations, there is a further burden on the applicant to demonstrate that the benefits of disclosure clearly outweigh the harm or damage that the disclosure will cause.

### Limitation on Disclosure of Exempt Information (s.78)

1. Any information which is not allowed to be revealed under this Law, has a limitation of 30 years from the time the information came into existence. After the 30 years, the information can be requested and the public institution must reveal it in accordance with the procedure established under this Act unless the disclosure will endanger the life of an individual, public safety, national security, national economic interest and international relations with any other country.
2. This Act applies to information, which came into existence before and after the commencement of this Act.

# GENERAL AND MISCELLANEOUS PROVISIONS (ss. 72-86)

## Public Institution (s.84)

Under the Act, a public institution is not restricted to only those institutions that we ordinarily understand to be public institutions, but includes a private institution or a private organisation that receives public resources or provides a public function.

## Regulations (s.83)

1. The Minister for Information, in consultation with the Board of the Commission may make Regulations, in the form of a Legislative Instrument (L.I.) which requires public institutions and other private organisations to keep their records in good condition, and in a manner that makes it easy for the public to access the information. The LI can also provide for additional procedures for how people can access any information under the Law. Similarly, the LI should put in place any mechanisms that would allow the Law to work fully and effectively.
2. The Minister, in consultation with the Board, can also ensure that the Law

applies to private institutions. This can be done through an L.I. In that case, the L.I. must specify the provisions of the Law that will apply to the private sector, the type of information that people can have access to, and the exemptions that must apply to the private sector.

## Burden of Proof (s.72)

1. A public or relevant private organisation which refuses an application for information must prove that the information that is being requested, falls under the category of information that is not allowed to be released.
2. However, in certain cases, the person who applied for the information is the one who must show why the information he or she is seeking must be released. This is in cases where (1) the application for information is refused because the information requested does not help in the exercise and protection of rights, or (2) the person who applied for the information insists that he or she is not required to pay the fee being asked for because the information requested is in the public

interest, or the person who applied for the information is poor and needy.

### **Information Officers (s.73)**

An information officer under this Act must perform the duties assigned under this Act.

### **Immunities (s.74)**

1. An information officer cannot be sued or prosecuted by the person who is seeking the information just for performing the duties he or she is required to perform under the Law.
2. When information is given under this law, this does not amount to defamation, breach of confidence, or an authorisation or approval for the person who applied for the information to publish that information.

### **Annual Reports of Public Institutions (s.77)**

1. A public institution has 60 days after 31st December each year to submit a written report to the Commission on its activities under the Law.
2. The report must include the total number of applications received, approved,

rejected and the reasons for the rejections. The report must also include reviews requested, granted; and those dismissed with reasons. Additionally, the report must contain applications submitted to the courts for judicial review and their outcome.

3. The Minister may request any information necessary for the purposes of a comprehensive report. He or she must present to Parliament an annual report by the 30th June of every year on the activities of the Commission based on the reports from public institutions.

### **Records Keeping (s.3)**

1. All public institutions shall compile and publish a manual within a year of the RTI Act coming into force and then (subsequently) every year. The manual shall contain the list of department and units, information generated by the institution, information that can be accessed for free and those that are chargeable, contact details and procedures for accessing information. The information generated, processed and preserved must be accurate and the institution must establish an information unit to support applicants accessing information.

# OFFENCES (ss. 81-82)

1. Any person who wilfully reveals information which the Law does not allow to be revealed commits an offence and can be fined for a fee which is not less than 250 penalty units and not more than 500 penalty units, or imprisoned for a term of imprisonment of not less than 6 months and not more than 3 years, or both.
2. An information officer or any other public officer who fails or neglects to perform his duties under this Act commits an offence and can be fined a sum which is not less than 250 penalty units and not more than 500 penalty units, or imprisoned for a term of imprisonment of not less than 1 year and not more than 3 years, or both. One penalty point is currently equal to Twelve Ghana cedis (GHC12.00).

**Date of Passage:** March 26, 2019

**Date of Assent:** May 21, 2019.

**Commencement:** This Act shall have full effect at the beginning of the next financial year, January 2020.