

THE RIGHT TO INFORMATION COMMISSION  
ACCRA  
2<sup>ND</sup> NOVEMBER, 2023

AFR NO: RTIC/AFR/44/2023

HUMAN RIGHTS & GOVERNANCE CENTRE (HRGC)  
NO 24 OTSOKRIKRI ST (GA-074-3640)  
TRUST TOWERS, SOUTH -WEST ASYLUM - ACCRA

APPLICANT

AND

AUDIT SERVICE OF GHANA  
PLOT NO. 12 FIRST DZORWULU CRESCENT  
WEST AIRPORT RESIDENTIAL AREA – ACCRA

RESPONDENT

**DETERMINATION BY THE RIGHT TO INFORMATION COMMISSION IN  
RESPECT OF APPLICATION FOR REVIEW FILED BY MARTIN KPEBU (HUMAN  
RIGHTS & GOVERNANCE CENTRE) AGAINST GHANA AUDIT SERVICE'S  
REFUSAL TO RELEASE INFORMATION**

**ISSUE FOR DETERMINATION**

The major issue for determination in this case is: whether or not the failure/and or refusal of the Respondent to grant the Applicant access to the information requested is justified under the Right to Information Act, 2019 (Act 989).

**Facts**

The Brief facts of the instant case follow that, on 8<sup>th</sup> May 2023, Martin Luther Kpebu, acting on behalf of the **Human Rights & Governance Centre (HRGC)** (hereinafter referred to as **'the Applicant'**) applied to the information officer of **Audit Service of Ghana** (hereinafter referred to as **'the Respondent'**) for the following information:

1. *Whether the Audit Service Board acted in consultation with the Public Services Commission before recruiting 150 new employees into the service in compliance with article 189(2) of the Constitution. If yes provide the evidence.*



2. *Whether or not the Audit Service Board had declared vacancies and placed advertisement in the national dailies to reach all probable candidates for recruitment in compliance with Article 3(1) of the Audit Service Scheme of Service 2020 and Article 7(a) of the Collective Agreement between the Audit Service of Ghana and the Public Service Workers Union (PSWU) of TUC Ghana, 2020. If yes, provide the evidence.*
3. *Please provide the following additional information:*
  - i) *Total number of candidates who applied for the job*
  - ii) *Total number of candidates who were shortlisted for the interview*
  - iii) *Interview dates and venue*
  - iv) *Composition of the panel*
  - v) *Score sheets of successful and unsuccessful applicants at the interview*
  - vi) *Final report of the interview Panel presented to the Audit Service Board*
  - vii) *Copies of appointment letters of the 150 successful candidates*
  - viii) *Academic and professional qualifications of all successful applicants*
  - ix) *Application letters of 150 successful applicants.*
  - x) *Expenditure, if any, incurred in relation to the recruitment exercise.*

After over a month of no response from the information officer of the Respondent, the Applicant sought internal review by a letter addressed to the Head of the institution and dated 13<sup>th</sup> June 2023. This letter was also met with no response, which led the Applicant to escalate the matter to the Right to Information Commission (hereinafter referred to as 'the Commission') for review. The Commission, by virtue of its powers under **section 43(2) and section 70** of the Right to Information, 2019 (Act 989) and pursuant to its investigative process, in a letter dated 7<sup>th</sup> August 2023 and referenced RTIC/RF/VOL.4/485, requested from the Respondent the reason(s) for its failure and/or refusal to grant the Applicant access to the information. This letter was also not responded to by the Respondent albeit several months have since elapsed.

### **RESOLUTION OF ISSUE FOR DETERMINATION**

Although the Respondent failed and/ or neglected to respond to the Applicant's request for information, it is still important for the Commission to determine whether the requested information can be disclosed to the Applicant within the stipulations of Act 989.



Per the stipulates of section 27(1) of Act 989, a request for information may be denied on two main grounds:

- i. Where the application is manifestly frivolous or vexatious; and
- ii. Where the information is exempt from disclosure under the law.

Consequently, to answer the question on whether the Respondent's failure to grant the Applicant's request for information was justifiable, one needs to, first, determine the question: whether or not the information requested is manifestly frivolous or vexatious, or if the information requested is exempt from disclosure under Act 989.

#### **Whether or not the pieces of information requested is manifestly frivolous or vexatious**

The Black's Law Dictionary (8<sup>th</sup> ed. 2004), Page 4842 defines 'vexatious' to mean *without reasonable or probable cause; harassing; annoying*. At page 1969, it defines 'frivolous' to mean *lacking a legal basis or legal merit; not serious; not reasonably purposeful*.

Being a civil society organisation that focuses on championing human rights and good governance practices, looking at the type of information sought by the Applicant from the Respondent, the application cannot be said to be frivolous or vexatious. It is information that may well assist the Applicant to hold an activity of the Respondent i.e. recruitment exercise to account.

#### **Whether or not the pieces of information requested is exempt from disclosure**

The law is clear from the provisions of **sections 5- 16 of Act 989** which speak on information exempt from disclosure that only exempt information is undisclosable. There is the need to examine the various requests in turns to ascertain whether they are exempt from disclosure or not.

First, the request: Whether the Audit Service Board acted in consultation with the Public Services Commission before recruiting 150 new employees into the service in compliance with article 189(2) of the Constitution. If yes provide the evidence. A careful analysis of sections 5 to 16 of Act 989 indicates that this information requested is not exempt from disclosure as it



contains only factual data. Consulting the Public Services Commission before doing recruitment is either a legal requirement for recruiting staff by the Respondent or otherwise. No part of that information can be said to infringe any of the exemptions under Act 989.

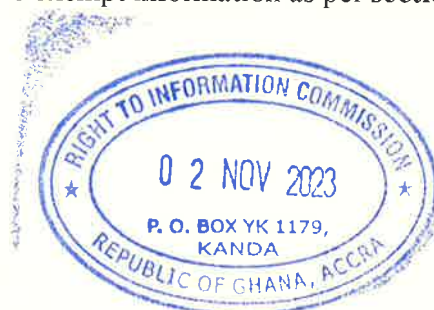
Second request is: Whether or not the Audit Service Board had declared vacancies and placed advertisement in the national dailies to reach all probable candidates for recruitment in compliance with Article 3(1) of the Audit Service Scheme of Service 2020 and Article 7(a) of the Collective Agreement between the Audit Service of Ghana and the Public Service Workers Union (PSWU) of TUC Ghana, 2020. If yes, provide the evidence.

This information, after a careful analysis, should not fall under the exemptions under the Act. It is merely factual information that is premised on legislation and a collective bargaining agreement.

Third, the information for the total number of candidates who applied for the job, total number of candidates who were shortlisted for the interview, interview dates and venue, expenditure, if any, incurred in relation to the recruitment exercise, composition of the interview panel, final report of the interview Panel presented to the Audit Service Board is all statistical information which can be disclosed.

Section 13(2) (a) of Act 989 states that internal working information which merely contains only factual and statistical data is not exempt from disclosure. The disclosure of this information would have been exempt if the information could undermine the deliberative process of the interview. However, it is apparent from the instant case that the interview and selection processes are over and thus leaving a zero probability of compromising any decision of the interviewing panel.

Fourth is the request for information on score sheets of unsuccessful applicants at the interview, copies of appointment letters of the 150 successful candidates, academic and professional qualifications of all successful applicants, and application letters of the 150 successful applicants. These pieces of information cannot be disclosed to the Applicant as they have certain elements of personal information which are exempt information as per **section 16(2) (c) of Act 989**.



Act 989 provides that disclosure of personal affairs of an individual is exempt where the disclosure is unreasonable. Also, disclosure of information which reveals or is likely to reveal confidential professional, commercial or financial affairs of an individual is also prohibited. In the instant case, the pieces of information requested have elements of personal matters and thus exempt from disclosure. The score sheets are likely to contain the names of the individuals that applied for the positions they were interviewed for. The request for appointment letters of the successful applicants is also likely to reveal confidential financial and professional information of the individuals as these business contracts between the Respondent institution and the individuals which entail information on the salaries and conditions of employment of the individuals which are exempt from disclosure. In the same vein the Applicant cannot be granted access to information on the professional qualifications of all successful applicants as this also entails people's personal affairs whose disclosure is not reasonable.

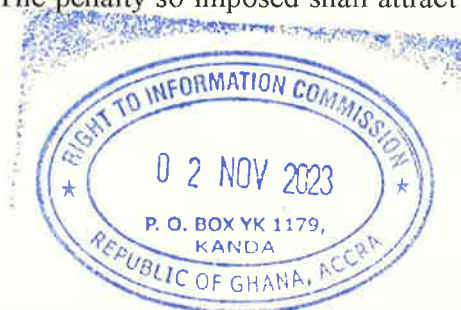
In light of the above discussed law and its application to the instant case, it is apparent that even though some of the information requested is exempt from disclosure, the Respondent erred by law in refusing/and or failing to grant access to the information most of the information requested by the Applicant.

The Commission hereby resolves the issue set down for determination by holding that most of the information requested by the Applicant cannot be said to be exempt from disclosure under Act 989.

#### **FINAL ORDERS**

Based on the powers vested in the Commission under sections 43(2) (c) and 71(4) of Act 989, the following specific orders are directed at the Auditor-General:

- a. Based on the Respondent's failure to furnish the Applicant with the information requested coupled with its refusal to respond to all correspondence from the Commission, an administrative penalty of Thirty Thousand Cedis (GH¢ 30,000) is imposed on the Respondent and this shall be payable to the Commission not later than 14 days after the date of receipt of this decision. The penalty so imposed shall attract an additional default penalty



rate of 10% on the principal penalty sum of GH¢ 30,000 in the event of default for any additional 14 days thereafter.

b. The Auditor-General shall ensure that the following information requested by the Applicant is granted to the Applicant and a copy forwarded to the Commission not later than 14 days after receipt of this decision by the Commission:

*i. Whether the Audit Service Board acted in consultation with the Public Service Commission before recruiting 150 new employees into the service in compliance with article 189(2) of the Constitution. If yes provide the evidence.*

*ii. Whether or not the Audit Service Board had declared vacancies and placed advertisement in the national dailies to reach all probable candidates for recruitment in compliance with Article 3(1) of the Audit Service Scheme of Service 2020 and Article 7(a) of the collective Agreement between the Audit Service of Ghana and the Public Service Workers Union (PSWU) of TUC Ghana, 2020. If yes, provide the evidence.*

*iii. Total number of candidates who applied for the job*

*iv. Total number of candidates who were shortlisted for the interview*

*v. Interview dates and venue*

*vi. Composition of the panel*

c. The information ordered to be disclosed to the Applicant under Paragraph (b) supra shall attract a fee of GH¢ 0.27 per page where it is to be photocopied. If the information is to be released in a printed form, a fee or charge of GH¢ 0.38 per page shall apply and a fee of GH¢ 0.29 per page shall apply where the information is to be released in a computer readable form on an external storage device pursuant to the Fees and Charges (Miscellaneous Provisions) Act, 2022 (Act 1080)



**YAW SARPONG BOATENG, ESQ**

**EXECUTIVE SECRETARY**

