CENTRE FOR LAW AND DEMOCRACY

Ghana

Analysis of the Right to Information Bill, 2018

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Introduction[1]

The right to information is enshrined in Article 21(1)(f) of Ghana's 1992 Constitution[2] but, for many years, Ghana has struggled to pass a right to information (RTI) law. As far back as 1999, Ghana's Institute of Economic Affairs (IEA) drafted an RTI Bill for Ghana. Despite this early start, Ghana has still not managed to adopt an RTI Law. In March 2018, the Right to Information Bill, 2018 (2018 Bill or Bill)[3] was placed before Parliament. At Ghana's 61st Independence Day celebrations, which also took place in March, the President of Ghana made a statement confirming the government's commitment finally to pass the Bill[4] and he repeated that on 2 May 2018, at the main UNESCO celebration of World Press Freedom Day, which took place in Accra.

This Analysis provides an assessment of the Bill taking into account international standards and better comparative practice, making specific recommendations to bring it more fully into line with international standards. The Analysis is based, in part, on an informal RTI Rating assessment of the Bill done by the Centre for Law and Democracy (CLD). The RTI Rating[5] is an internationally recognised methodology for assessing the strength of RTI legislation that was developed by CLD and Access Info Europe. Below is breakdown of the specific scores of the Bill according to the seven categories of the RTI Rating:

Section	Max Points	Score
1. Right of Access	6	4
2. Scope	30	12
3. Requesting Procedures	30	16
4. Exceptions and Refusals	30	16
5. Appeals	30	22
6. Sanctions and Protections	8	7
7. Promotional Measures	16	12
Total score	**150**	**89**

[2] Constitution of the Republic of Ghana, 1992. Available at: http://extwprlegs1.fao.org/docs/pdf/gha129754.pdf.
[3] Right to Information Bill, 2018. Available at: https://www.parliament.gh/docs?type=Bills&yr=2018&mon=3&OT.
[4] Akufo-Addo's 61st Independence Day Anniversary Speech [Full Text], CitiFM Online, 6 March 2018. Available at: http://citifmonline.com/2018/03/06/akufo-addos-61st-independence-day-anniversary-speech-full-text/.
[5] Available at: http://www.RTI-Rating.org.

The RTI Rating assessment found that the Bill scored 89 points out of a maximum possible total of 150. This would place Ghana in 49th place globally out of the 111 countries currently on the Rating, only just making it into the top one-half. There are several areas in which the Bill needs improvement and we urge the Ghanaian authorities to incorporate our recommendations into the Bill before it is passed.

As a preliminary point, we note that there are a number of problems with the way the Bill has been drafted. This is partly due to the fact that it is not organised in a logical fashion inasmuch as provisions that are related to each other are scattered in different parts of the Bill rather than being grouped together. A more serious problem is the presence of contradictory or unclear rules in a number of areas. One example of both of these problems is the rules on appeals. Section 68(b) provides for the exhaustion of the right of review before the Commission before applying for judicial review, while section 38, in a totally different part of the Bill, suggests that requesters may appeal directly to the courts without going through the Commission, at least in certain cases. Other examples of this are provided in the text of the Analysis.

1. Right of Access and Scope

Article 21(1)(f) of Ghana's Constitution guarantees the right to information "subject to such qualifications and laws as are necessary in a democratic society". This is repeated in section 1(1) of the Bill. The Bill's very short Preamble states that the purpose of the Act is "to provide for the implementation of the constitutional right to information held by a public body, subject to the exemptions that are necessary and consistent with the protection of the public interest in a democratic society, to foster a culture of transparency and accountability in public affairs and to provide for related matters".

While accountability is one of the wider benefits served by the right to information, better practice is to set out a broader range of such benefits – including fighting corruption and efficiency in public administration and fostering citizen participation – either in the preamble or within the main body of the law. This should also be linked to interpretation, so as to ensure that this is done in the manner that best serves those benefits. The guarantee of the right of access in section 1(1), although it is based on the Constitution, fails to make it clear that the law creates a specific presumption in favour of access to information held by public bodies, subject only the regime of exceptions set out in the law.

It is better practice to allow anyone, regardless of nationality or residence, as well as legal entities, to make a request for information. Section 1(1) of the Bill states that a 'person' has the right of access. In general, 'persons' include legal entities, but it is preferable to make this explicit to avoid any possibility of confusion.

The Bill's definition of 'information', in section 91, states that information "includes

recorded matter or material, (a) regardless of form or medium, (b) in the possession or under the control or custody of a public body, (c) whether or not it was created or made by a public body and, in the case of a private body, relates to the performance of a public function". This is largely in line with international standards, although it does impose unduly broad constraints on information held by private bodies (which should also be covered inasmuch as they are publicly funded even if they are not deemed to be undertaking a public function). It is unnecessary to include this limitation here; rather it should be covered by the rules regarding which information requesters can access from particular private bodies (i.e. only about their public functions, if this is how they come to be public bodies). It is also better practice for RTI laws to provide explicitly that requesters may ask for either information or specific documents or records, given that the former may need to be compiled from different documents.

The poor and incomplete definition of 'public institution' in the Bill is one of the main reasons for its very weak score under 'Scope', the lowest for any category of the RTI Rating. Section 91 provides that a public institution "includes a private institution or a private organisation that receives public resources or provides a pubic function". This is useful but the failure of the Bill to define clearly which other (i.e. public sector) public bodies are covered by it means that there are likely to be ongoing disputes about this. In addition, section 84 of the Bill explicitly excludes information held by the national archives, libraries and museums from its scope.

Recommendations:

- Section 1(1) of the Bill should create a broad presumption in favour of access to all information held by public bodies subject only to its regime of exceptions.
- The Bill should refer to a wider set of external benefits of the right to information and then require its provisions to be interpreted so as best to give effect to those benefits.
- Consideration should be given to stating explicitly that legal entities have a right to make requests for information.
- The law should make it clear that requesters have a right to access both information and documents, and the limitation on the definition of information regarding private bodies should be removed.
- A public body should be clearly defined not only in relation to private bodies but also all public bodies.
- Section 84, precluding application of the Bill to the national archives, libraries and museums, should be removed.

Right of Access

Indicator	Max	Points	Section

1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	2	21(1)(f)
2	The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	2	1	1(1)
3	The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law. The legal framework emphasises the benefits of the right to information.	2	1	Preamble
	TOTAL	**6**	**4**	

Scope

Indicator		Max	Points	Section
4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	2	1(1)
5	The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	4	3	85, 91
6	Requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).	2	0	91
7	The right of access applies to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above.	8	4	84, 91
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	0	91
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	0	91
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	0	
11	The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	2	1	91
12	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	2	2	91
	TOTAL	**30**	**12**	

2. Duty to Publish

Although proactive disclosure is not covered in the RTI Rating, it is an indispensable element of a robust right to information system. Better practice is to include in the RTI law a list of the specific categories of information that public bodies are required to publish on a proactive basis. Section 3 of the Bill requires each public body, within 12

months of the law coming into force and annually thereafter, to produce a manual containing general information about its organisational structure, the activities it undertakes, the kinds of information it prepares and keeps, and the contact details of the information officer. These obligations are very general and limited in scope, and fall short of modern proactive disclosure standards. Better practice in this area is to require public bodies to disclose budgetary and financial information, information about the beneficiaries of their programmes, and information related to their contractual relationships, particularly with respect to the purchase of goods and services. In addition, consideration should be given to granting the Information Commission the power to expand the proactive publication list as public bodies become more proficient in this area.

Section 3 requires this information to be compiled and published in the form of a manual, but it is unclear where or how this manual can be accessed. The law should describe the ways in which the public can access and consult proactively disclosed information. Nowadays, online publication is the preferred means of dissemination as it allows for more information to be made available easily to the whole public. However, given Ghana's medium Internet penetration rate (34.3%),[6] the law should also require physical dissemination of the manuals, such as by making them available for inspection at the premises of public bodies.

Recommendation:

- The Bill should provide for a more extensive list of categories of information that must be proactively disclosed which at least includes a requirement to provide detailed financial and budgetary information.
- Consideration should be given to granting the Commission the power to extend the list of proactive publication obligations over time.
- Consideration should be given to requiring both online and physical publishing of the manuals.

Note: The RTI Rating did not assess the duty to publish and so no excerpt from it is provided here.

3. Requesting Procedures

International standards require right to information legislation to include comprehensive rules relating to the requesting process. Section 18(1) sets out the procedures for making requests. Section 18(1)(f) requires applications to be accompanied by the prescribed fee, whereas international standards call for it to be free

[6] See: https://www.internetworldstats.com/africa.htm#gh.

to file a request. Better practice is also to provide up to 20 pages of information at no cost, which is not provided for in the Bill, although it does provide for fee waivers for impecunious requesters. Section 78(2) excludes a number of activities from being subject to fees – including the time it takes to review requests and to prepare to provide access to information – but it is not entirely clear that the time spent locating the information may not be subject to a fee, while international standards limit fees to the costs of providing and sending the information.

Section 18(4) of the Bill requires assistance to be provided to requesters who are having difficulty describing the information sought clearly, but it does not specifically require assistance to be provided to illiterate and disabled persons.

The Bill fails to require public bodies to provide a receipt to requesters when they lodge their requests. This is important, for example to prove that a request has been filed where a public body does not respond or there are delays.

Section 20 of the Bill provides for the transfer of requests to other public bodies where the original body does not hold the information, which is in line with better practice. However, it calls for notice to be given to the requester within 10 days, which is far too long. It should take no more than five working days to process and notify the requester of a transfer.

The Bill lost a number of points on the Rating on account of its timelines. Better practice is to require public bodies to respond to requests as soon as possible, to avoid situations in which officials delay even though the information is easily accessible. Section 22(1) states that public bodies have 14 days to make a decision on a request. It is not clear if this is working or calendar days. If the former, better practice is to require a response within 10 working days. Section 25(1) provides that a body may extend the original limit by 14 days for large requests or requests that require more effort to gather the information. According to section 25(2), the Information Commission may approve a further 14-day extension, so that, in total, a requester may face a 28-day extension. Confusingly, section 25(3) states that notice about an extension must be provided to the requester within 30 days of the original request, which would be 2 days after the end of an initial 14-day extension. Section 88 adds to the confusion stating: "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 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."

Finally, it is better practice to allow requesters to use any information provided to them as they may see fit, subject to certain limited conditions such as respecting the intellectual property rights of third parties, known as the right of reuse. The Bill contains no framework of rules for the reuse of information.

Recommendations:

- The law should state explicitly that it is free to file a request for information.
- Consideration should be given to providing a minimum of ten or twenty pages of information for free and it should be clear that fees may only be charged for reproducing and sending information.
- Public bodies should be required to provide assistance to illiterate and disabled persons where they need this to make a request.
- Public bodies should be required to provide requesters with notices acknowledging the receipt of their requests.
- Notice about transfers of requests should be required to be provided within five days or less.
- Public bodies should be required to respond to requests as soon as possible.
- References to 'days' in the Bill should be clarified consistently as either working or calendar days and consideration should be given requiring public bodies to respond to requests within ten working days.
- The rules on extensions should be clarified and consideration should be given to reducing the overall time limit for extensions to a maximum of 20 working days.
- A framework of rules should be added to the law relating to the reuse of information which has been disclosed in response to a request.

Indicator		Max	Points	Section
13	Requesters are not required to provide reasons for their requests.	2	2	1(3)
14	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	2	2	18(1)
15	There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	2	1	18(1)-(3)
16	Public officials are required provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	2	2	18(4)
17	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	2	0	
18	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days	2	0	
19	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the	2	2	20

	requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.			
20	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	2	2	29(2)
21	Public authorities are required to respond to requests as soon as possible.	2	0	
22	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	2	2	20
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2	2	29
24	It is free to file requests.	2	0	
25	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	2	1	24, 78
26	There are fee waivers for impecunious requesters	2	2	78(2)(e)
27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally protected copyright over the information.	2	0	
	TOTAL	**30**	**16**	

4. Exceptions and Refusals

The regime of exceptions is central to any RTI law, since it delineates between which information should be disclosed and which may be legitimately withheld. International standards require that exceptions to the right of access be narrowly tailored. They should serve to protect a limited set of clearly defined and legitimate interests set out in the RTI law, unless disclosure poses a risk of harm to one or more of the protected interests. Information should nonetheless be disclosed, even where there is a risk of harm, if on balance disclosure is in the overall public interest.

The regime of exceptions in the Bill leaves much to be desired. An initial problem is that the Bill does not contain a provision which states that, in case of conflict with other laws, in particular secrecy provisions in other laws, the RTI law shall prevail. This is essential to overcome problems with pre-existing and overly broad secrecy laws, such as Ghana's State Secrets Act, 1962 (Act 101).[7]

[7] State Secrets Act, 1962 (Act 101). Available at: https://www.law-democracy.org/live/wp-content/uploads/2018/06/STATE-SECRETS-ACT-1962.pdf.

Many of the Bill's exceptions protect legitimate interests but many also go beyond what is permitted under international law. For example, section 5(1)(a) protects information prepared for the Office of the President, while section 6(1)(a) protects information which has been submitted to Cabinet. These are class exceptions, protecting a type of information, as opposed to exceptions which are designed to protect a particular interest (such as, in this case, the free and frank exchange of advice). In both cases, these exceptions follow the class exception by drilling down to create harm-based exceptions, such as 5(1)(b)(ii), referring to information which would "prejudice national security", which is legitimate (except that this is already protected by section 9). Class exceptions are never legitimate.

Section 14(1)(a) of the Bill refers to disclosures of information that can reasonably be expected to "infringe or contravene parliamentary privilege". International standards do not recognise Parliamentary privilege as a legitimate exception to the right of access because this is gratuitous if other legitimate grounds for withholding information, such as the free and frank provision of advice, national security and privacy, are otherwise protected.

Section 15(1)(a)(ii) of the Bill protects "communications between spouses". This is again unnecessary inasmuch as privacy is recognised a legitimate exception to the right of access. Privacy also covers the concerns raised in section 15(1)(b), regarding communications with doctors.

Section 16 is the provision covering privacy, which is legitimate. However, section 16(2)(b)(business or trade secrets of commercial value) is completely unrelated to privacy and should not, as a result, be there. Section 16(3) covers categories of information that are not unreasonable to disclose on grounds of privacy. While this is generally welcome, parts of it could create some confusion. For example, section 16(3)(d) renders disclosure reasonable if it "does not unjustifiably damage the reputation of any other person referred to in the information", but reputation is different from privacy. In addition, sections 16(3)(f), (g) and (h), which deem disclosure reasonable if it does not "contravene a provision on exempt information specified in this Act", "have an adverse effect on the affairs of the individual" or "prejudice the future supply of information" are also misplaced in this context, including because they all go beyond the issue of privacy.

Section 10(c), referring to the disruption of business or trade, is too general to serve as a limitation on access to information. For example, it could be used to hide embarrassing information on the argument that this might disrupt trade.

Although the Bill does not refer to the term elsewhere, section 91 defines a 'State secret' as "information considered confidential by the Government which if disclosed would be prejudicial to the security of the State or injurious to the public interest." This could be used as a backdoor exception which would appear to grant the State broad discretion to decide when information is deemed to be confidential rather than basing this on an

objective assessment of harm. The notion of "injurious to the public interest" is, in particular, a vastly overbroad and flexible notion.

Section 10(e), referring to information containing criteria, procedures, positions or instructions that relate to negotiations, lacks a harm test. Similarly, section 7(1)(c), referring to information related to law enforcement investigation techniques, section 7(1)(h), referring to information which a police officer has confiscated, sections 8(1)(b) and (c), referring to information communicated in confidence by another government or an international organisation, section 12(1), referring to information obtained from a tax return, and section 13(1)(a), referring to advice, are all examples of exceptions which do not include a requirement of harm.

The Bill contains a relatively robust public interest override at section 17. Importantly, section 18(5) of the Bill also has a clear rule on severability.

The Bill fails to make proper provision for consultation with third parties when requests relate to information that they provided to the public body in confidence. Third parties are only mentioned in relation to appeals to the Commission and not the initial requests themselves (section 35) The Bill also grants the Commission the discretion to refuse to notify third parties where it does not consider this to be necessary. Better practice here is to allow third parties to make representations, including at the initial stage, whenever information provided by them in confidence is requested.

Section 22(4) of the Bill provides that public bodies must provide reasons when they refuse to provide information but it fails to state that public bodies must also inform requesters about their right to lodge an appeal against the refusal.

Recommendations:

- The law should include a clear override provision so that it prevails over other laws in case of conflict.
- Sections 5, 6, 14(1)(a), 15(1)(a)(ii), 15(1)(b), 16(2)(b) and 10(c) should be removed for the reasons set out above.
- Sections, 16(3)(d), (f), (g), and (h) should be removed from section 16 as they are not related to privacy.
- A proper harm test should be applied to sections 7(1)(c) and (h), 8(1)(b) and (c), 10(e), 12(1) and 13(1)(a).
- The definition of a 'State secret' should be removed from section 91 or amended so that it does not imply that States have discretion to decide what constitutes a State secret.
- The law should provide for a clear obligation to consult with third parties when requests for information provided by them in confidence are made, including at the initial stages of reviewing the request.

- Public bodies should be required to inform requesters about their right to lodge an appeal against any refusal, in addition to the reasons for the refusal.

Indicator		Max	Points	Section
28	The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.	4	0	
29	The exceptions to the right of access are consistent with international standards. Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form.	10	6	5–16
30	A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.	4	0	5–16
31	There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity.	4	4	17
32	Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.	2	2	83
33	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	2	1	35
34	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	2	2	18(5)
35	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	2	1	22(2)(3)(4)
	TOTAL	**30**	**16**	

5. Appeals

A successful RTI regime provides access to an independent and effective appeal for those whose requests have not been dealt with in accordance with the law. Ideally, an RTI law will have a robust three-tier system of appeals. First, there should be an internal appeal to a higher authority within the public body that dealt with the request in the first place. Second, there should be an administrative appeal to an independent body such as an Information Commission or Ombudsman. This is essential given the great expense involved in appealing to the court system. Third, and finally, requesters should also be able to appeal to the courts.

The Bill performed relatively well in the category on appeals in the RTI Rating. It provides for all three levels of appeal – internal, administrative and judicial – but there is also some confusion with respect to the hierarchy in the appeals process. Once received, internal applications for review should be submitted to the head of the body as soon as practicable but in any case within five days (section 33(5)), and the head must then make a decision and notify the applicant within a further 15 days (sections 34(1)(a)-(b)), i.e. potentially 20 days after the appeal has been lodged. While these clear time limits are welcome, they are longer than necessary given that the public body has already considered and made an initial decision on the case.

Applications for review, both internal and before the administrative oversight body, should be free. Section 32(2)(c) of the Bill states that applications for internal review "shall, except where the applicant is exempt, be accompanied with the prescribed fee". It is not clear whether a fee may be charged for lodging an administrative appeal.

Section 68(a) states that an application for review "shall only be made to the Commission after the applicant has exhausted all rights of internal review", while sections 69(1)-(4) provide for direct access to the Commission in certain circumstances. Given that internal appeals may simply be a waste of time (for example if the public body is clearly not going to release the information), it is better practice to allow requesters to lodge complaints directly with Commission. In addition, although section 70 sets out relatively clear procedures for appeals before the Commission, the Bill fails to provide for maximum time limits for decisions on appeals by the Commission.

Judicial appeals are provided for in section 38. Requesters may lodge applications with the High Court for judicial review within 21 days of a decision by a public body refusing to disclose information on the grounds that it is prejudicial to the security of the State or because it is injurious to the public interest. The latter, provided for in section 38(1)(a)(ii), seems to suggest that harm to the public interest may be a ground for refusing to disclose information. This is not the case according to the rest of the Bill, so this is an unfortunate reference. Furthermore, section 38(1)(b) provides a catchall, allowing applications to the High Court "for any other reason", thus vitiating any need for section 38(1)(a).

The Bill has contradictory provisions on when a requester can file a judicial appeal. Although section 38 is clear that a court appeal may be made against a refusal of access by a public body within 21 days, section 68(b) states that an application for review to

the High Court can only be made after the applicant has exhausted all rights of review before the Commission.

Although section 73(2) grants the Commission the power to provide a wide range of individual remedies to requesters, it provides for more limited powers to order remedies to be imposed on public bodies. Better practice here is for oversight bodies to be able to impose appropriate structural remedies on public bodies when this is needed to address structural problems. Unfortunately, the Bill only provides for the possibility of administrative penalties (presumably fines) in section 73(2)(f).

Independence of oversight bodies is of paramount importance if they are to be able to do their jobs properly. Section 44(1) establishes the Commission as an independent and autonomous body. While this is useful, it is undermined by some of the practical systems for protecting independence. The President exercises far too much power over appointments to the Commission's five-person governing body, which is appointed in accordance with Article 70 of the Constitution (pursuant to section 50(2) of the Bill). Article 70 gives the President a lot of power over the appointments process, and this is exacerbated by section 57(2) of the Bill, whereby the President also appoints the Commission's Executive Secretary, and section 60 of the Bill, whereby the President appoints the Secretary of the Board, in both cases in accordance with Article 195 of the Constitution. Furthermore, the Bill also gives the President blanket powers to appoint the general staff of the Commission without any consultation requirements whatsoever (section 59). Better practice is to allow the Commission to recruit its own staff and to involve a wider range of actors in the appointments process for members.

Another important way of reinforcing structural independence is by ensuring that the budget of the Commission is provided in a manner that is free of political influence. The budget is approved by Parliament, which is positive (section 44(2)). Ideally, the law should also create an obligation to provide an amount funding for the Commission which is sufficient to enable it to carry out its duties properly. According to section 66, the Commission reports to the Minister who then tables that report before Parliament, with a statement of his or her own if he or she so wishes. Having the Commission report directly to Parliament, without that involving a comment by the Minister, would be preferable.

Section 56 states: "A member of the Commission shall not, while in office, occupy any office of profit or engage in any partisan political activity." However, there are no prohibitions on appointing politically engaged individuals in the first place, or requirements of expertise on the part of members.

Recommendations:

- The overall time allocated to deciding internal appeals should be reduced to a maximum of ten working days.
- Both internal and administrative appeals should be free, and the law should

state this clearly.
- Clear time limits should be in place for the Commission to decide on appeals.
- Requesters be permitted to appeal directly to the Commission without needing to exhaust internal review procedures.
- Section 38 should be removed and requesters should have to go through an appeal before the Commission before they appeal to the courts.
- The Commission should be given the power to order public bodies to undertaken structural measures to remedy systemic failures to implement the law.
- Consideration should be given to amending the process for appointing members to the Commission, in particular to reduce the power of the President in this process, as a means of bolstering the Commission's independence. In addition, the Commission, and not the President, should have the power to appoint all of the staff of the Commission.
- Consideration should be given to requiring the relevant authorities to provide sufficient funding to the Commission and to having the Commission report directly to Parliament.
- Prohibitions on the appointment of individuals as members of the Commission who either have strong political connections or who do not have relevant expertise should be added to the law.

Indicator		Max	Points	Section
36	The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less).	2	1	32-34, 36, 37
37	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).	2	2	44(1), 67
38	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	2	1	50, Article 70 of Const., 51
39	The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.	2	1	44(2), 66
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	1	56
41	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	2	1	45(2)(f), (g), (h), (j), 49(4)
42	The decisions of the independent oversight body are binding.	2	2	73
43	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	2	2	73
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	2	38

45	Appeals (both internal and external) are free of charge and do not require legal assistance.	2	1	
46	The grounds for the external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.).	4	4	34(2)(c), 34(5)(c), 67(1)
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	1	70
48	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	2	2	74
49	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management)	2	1	73(2)(f)
	TOTAL	**30**	**20**	

6. Sanctions and Protections

The Bill has a reasonably well-developed system of sanctions and protections. Section 87 provides for sanctions to be imposed on those who fail to perform a function under the law or who obstruct access to information in certain ways, but the scope of activity captured by this is limited. Better practice is to make it an offence wilfully to obstruct access under the law in any way. In addition, the Bill creates the unnecessary offence of wilful disclosure of exempt information (section 86). This is unnecessary because other laws already prohibit the disclosure of exempt information and it is likely to create a chilling effect on information officers. On the other hand, section 49(5) gives the Commission the power to impose administrative penalties on public bodies, which is positive.

Sections 17(2), 76 and 77 provide broad immunity for officials who disclose information in good faith. Section 69(4) also provides for limited protection for whistleblowers, i.e. persons who, in good faith, release information, including potentially exempt information, which discloses wrongdoing. However, it is limited to disclosures to the Commission. At the same time, Ghana does already have more expansive protections for whistleblowers in the form of its Whistleblower Act of 2006.[8]

Recommendations:

- The law should provide for broader grounds for sanctions for wilful obstruction of access to information under the law.

[8] Whistleblower Act, 2006. Available at: http://www.drasuszodis.lt/userfiles/Ghana%20Whitsleblwer%20Act.pdf.

Indicator		Max	Points	Section
50	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	2	1	87(1)
51	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).	2	2	49(5), 73(2)(f)
52	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.	2	2	17(2), 76, 77
53	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	2	2	17
	TOTAL	**8**	**7**	

7. Promotional Measures

The Bill also performed relatively well in this area earning a respectable 75% of the total points. One weakness here is that the Bill fails to put in place any system to ensure that minimum standards regarding records management are set and applied.

Section 3(2)(b) requires public bodies to publish "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". This is positive but better practice is to require public bodies to publish lists of the actual documents, not just classes of documents, that are in their possession.

Finally, better practice standards require pubic bodies to provide adequate training to their officers. According to section 47(2)(c), the Commission can provide recommendations and guidelines for internal training to public bodies and offer training to them upon request. While this is welcome, it falls short of an actual obligation on public bodies to provide adequate training to their staff and information officers.

Recommendations:

- The Bill should put in place a proper records management system that involves the setting of standards by a central body, potentially the Commission, and measures for enforcing implementation of those standards.
- Section 3(2)(b) should be amended to require public bodies to publish lists of the documents they hold.

- The Bill should require public bodies to ensure that their staff, and information officers in particular, receive adequate training on the right to information.

Indicator		Max	Points	Section
54	Public authorities are required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.	2	2	19, 75
55	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	2	2	47, 48, 80
56	Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law.	2	2	46(2), 47, 80(3)
57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	0	
58	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	2	1	3(2)(b)
59	Training programmes for officials are required to be put in place.	2	1	47(2)(c)
60	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	2	2	81
61	A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.	2	2	82
	TOTAL	**16**	**12**	