



THE RIGHT TO INFORMATION COMMISSION

AFR NO: RTIC/AFR/05/2021

**THE ADMINISTRATOR
HEALTH FACILITIES REGULATORY AUTHORITY
ACCRA**

AND

**KWAKU KROBEA ASANTE
FOURTH ESTATE
ACCRA**

**DETERMINATION IN RESPECT OF APPLICATION FOR REVIEW FILED BY
MR. KWAKU KROBEA ASANTE AGAINST REFUSAL TO RELEASE
INFORMATION REQUESTED BY MR. KWAKU KROBEA ASANTE**

The Right to Information Commission (hereafter “The Commission”) makes this determination pursuant to an application for review filed by Mr. Kwaku Krobea Asante (“The Applicant”), a Journalist with The Fourth Estate. The application was dated 6th July 2021 and received by the Commission on 8th July 2021. It was against the Health Facilities Regulatory Authority (“The Respondent”), which had failed and/or refused to release to the Applicant certain pieces of information he requested for in exercise of his rights under Article 21(1)(f) of the 1992 Constitution of Ghana and Section 18 of the Right to Information Act, 2019 (Act 989).



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It was the complaint of the Applicant that in a letter dated 6th April 2021, he requested from the Respondent the following pieces of information:

“1. The date Frontiers Healthcare Services Limited applied for HeFRA license and the date it was issued to them to undertake COVID-19 test at the airport;

2. The license status of some health facilities in Accra and Kumasi as per [Attachment 1] as at the end of March, 2021.”

Not having received any response from the Respondent institution, the Applicant applied for internal review of the refusal to furnish him with the requested information. This application for internal review was dated 27th May 2021 and addressed to the Registrar of the Respondent institution. However, after the application for internal review, the Applicant has not received any communication from the head of the Respondent institution, the Registrar.

It must be pointed out that, upon receipt by the Commission of the Applicant's application for review, it wrote to the Respondent in a letter dated 21st July 2021 and received by the Respondent on 22nd July 2021. In the said letter, the Commission requested to be furnished with the justification for the refusal to grant the Applicant access to the pieces of information he requested for. As of the date of this determination by the Commission, the Respondent had failed and/or refused to respond to the Commission's request for justification.



According to **Section 23 (1) and (2) of Act 989**, upon receipt of an application for information the information officer of the public institution concerned shall make a decision on the application within fourteen (14) days from the date of receipt. These are the words of **Section 23 (1) and (2)**:

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

(2) The notice shall state

(a) whether or not access to the information will be given, and

(b) whether access to only a part of the information can be given and the reason for giving only a part.”

So, what happens where the Information Officer fails to make a decision on an application? The answer is found in **Section 23 (5) of Act 989**, which says that **“Where the information officer fails to determine an application within fourteen days after the application is received by the public institution, the application is deemed to have been refused and the applicant has the right to seek redress under sections 31 to 39.”** This is the course taken by the Applicant herein to lodge an internal review application with the Registrar of the Respondent institution, who had to make a decision within fifteen (15) days of



receipt of the application. This obligation of the Registrar is stipulated by **Section 33(1) of Act 989**:

“33. (1) The head of the public institution to whom a request for internal review is made shall, as soon as reasonably practicable, but in any event within fifteen days of receipt of the request

(a) make a decision; and

(b) notify the applicant of that decision in writing.”

Failure by the Registrar to make a decision on the Applicant’s internal review application amounted to a refusal of the Applicant’s application under **Section 35 of Act 989**. These are the words of the relevant provision referred to:

“35. Where the head of the public institution fails to give a decision on a request for internal review within fifteen days, the head of that public institution is deemed to have affirmed the original decision of the information officer.”

The Registrar’s denial of the Applicant’s application for internal review meant that the Applicant had exhausted the internal review procedure envisaged under **Section 66 of Act 989**. Having thus exhausted the Respondent’s internal review procedure, the Applicant became entitled under **Section 65 of Act 989** to apply to the Commission for a review of the Respondent’s decision to deny his application. These are the relevant provisions:



“65. (1) A person who is dissatisfied with a decision of a public institution or a relevant private body, may apply to the Commission for a review of the decision.

66. Subject to subsections (1) and (2) of section 65, an application to

(a) the Commission for a review of the decision of a public institution shall only be made to the Commission after the applicant has exhausted all rights of internal review offered by the public institution or relevant private body...”

As has already been pointed out in the opening stages of this determination, the Commission wrote to the Respondent asking for justification for failing to furnish the Applicant with the information he requested. The Respondent failed and/or refused to respond to the Commission’s letter. The Commission deplores the posture of the Respondent in the instant case and hereby makes it clear that, under Act 989, there is no public institution that is exempt from being called upon to disclose or release information; it is certain categories of information that are exempt from disclosure. Even with those categories of information, the exemption may not be absolute, where it is in the interest of the public or the “Harm’s test” prevails.

In the instant application under determination, the Commission does not find the pieces of information requested by the Applicant, and which have been declined by the Respondent, as falling into the range of exempt information



under Act 989. Under **Section 43 (2) (c) of Act 989**, the Commission is clothed with the power to **“make any determination as the Commission considers just and equitable including issuing recommendations or penalties in matters before the Commission.”** In the circumstances of this case, inasmuch as the requested pieces of information are not exempt information, the Commission hereby invokes its jurisdiction under **section 44 (c) of Act 989** to take appropriate action necessary to resolve the Applicant’s complaint. Moreover, according to **section 71 (4) of Act 989**, **“The Commission may issue directives that the Commission considers necessary for the enforcement of its decisions.”**

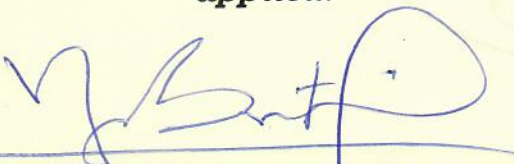
Proceeding on the strength of the power furnished under **Sections 43(2) (c), 44 (c), and 71(4) of Act 989**, the Commission hereby makes the following specific orders directed at the Respondent institution:

a. Based on the Respondent’s failure to make decisions on the Applicant’s applications lodged with it, as well as its failure to respond to the Commission’s letter received by it, an administrative penalty of GH¢ 30,000.00 is imposed on the Respondent and this shall be payable to the Commission by the Respondent within 14 days from the date of receipt of this decision. The penalty so imposed shall attract an additional default penalty rate of 10% on the principal penalty of GH¢ 30,000 in the event of default for any additional 14 days thereafter.



b. The Registrar of the Respondent institution, Dr. Philip Bannor, shall ensure that the following pieces of information are released to the Applicant not later than 14 days after receipt of this decision by the Commission:

- i. The date Frontiers Healthcare Services Limited applied for HeFRA license and the date it was issued to them to undertake COVID 19 test at the Airport;**
- ii. The license status of some health facilities in Accra and Kumasi as per Attachment 1 as at the end of March 2021**
 - a. The information ordered to be released to the Applicant under Paragraph (b) supra shall attract a reasonable charge of GH¢ 1.80 per sheet, where it is being released in hard copy, either through printing or photocopying. If the information is to be released in PDF format, a charge of GH¢ 1.90 should be applied.**


YAW SARPONG BOATENG, Esq
EXECUTIVE SECRETARY
4TH JANUARY 2022

