

THE RIGHT TO INFORMATION COMMISSION  
ACCRA

20<sup>TH</sup> FEBRUARY, 2023

CASE NO: RTIC/AFR/35/2022

AFRICA EDUCATION WATCH  
REPRESENTED BY KOFI ASARE  
25 NII TORGBOR AVENUE, ARS, EAST LEGON  
ACCRA.

APPLICANT

AND

MINISTRY OF EDUCATION  
MINISTRIES, ACCRA

RESPONDENT

**DECISION BY THE RIGHT TO INFORMATION COMMISSION IN RESPECT OF  
APPLICATION FOR REVIEW FILED BY AFRICA EDUCATION WATCH AGAINST  
REFUSAL BY MINISTRY OF EDUCATION TO RELEASE INFORMATION.**

**FACTS**

The Right to Information Commission (hereafter “The Commission”), as part of its mandate under the Right to Information Act, 2019 (Act 989), receives applications or complaints from individuals and entities dissatisfied with decisions of public institutions regarding their request for information from those public institutions. The Commission makes this determination pursuant to an application for review filed by Africa Education Watch through its representative, Kofi Asare, the Executive Director (“The Applicant”) and the information available to the Commission. The application was dated 18<sup>th</sup> August, 2022 and received by the Commission the same day. It was against the Ghana Education Service of the Ministry of Education (“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 Act 989.

The Applicant’s complaint was that, in a letter dated 9<sup>th</sup> June, 2022, he requested from the Respondent, through the Director-General, certain pieces of information regarding the Computerized School Placement for 2021/2022 academic year. The following were the pieces of information that were requested:

1. “Index numbers of all candidates placed.



2. Schools of all candidates placed.
3. JHS attended by all candidates placed.
4. Raw scores of all candidates placed.

No response was received from the Director-General. Following the lack of response by the Director-General of the Ghana Education Service, the Applicant applied for internal review to the Minister of Education. This application for internal review was dated 28<sup>th</sup> July, 2022. However, after the application for internal review, the Applicant, once again, did not receive any communication from the Minister of Education.

It is noteworthy that, upon receipt by the Commission of the Applicant's application for review dated 28<sup>th</sup> August, 2022, it wrote to the Respondent in a letter dated 3<sup>rd</sup> October 2022. In the said letter, the Commission requested to be furnished with the reasons 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, refused and/or neglected to respond to the Commission's letter.

#### **ISSUE FOR DETERMINATION**

Based on the facts of the instant case, as outlined above, the following issue can be deduced for resolution: **Whether or not the information requested by the Applicant and denied by the Respondent is exempt from disclosure under Act 989?**

#### **RESOLUTION OF ISSUE SET DOWN FOR DETERMINATION**

According to **Section 23 (1) and (2) of Act 989**, upon receipt of an application for information, the Information Officer (the Director-General in the instant case) of the public institution concerned shall take a decision on the application within fourteen (14) days from the date of receipt. **Section 23 (1) and (2)** succinctly states as follows:

**“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 take 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 was the course taken by the Applicant herein to lodge an internal review application with the Minister of Education, who had to decide within fifteen (15) days of receipt of the application. This obligation of the Minister of Education, being the Head of the Respondent institution, 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 Minister of Education to decide on the Applicant’s internal review application amounted to a denial of the Applicant’s application under **Section 35 of Act 989**. It provides that:

**“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 Minister of Education’s denial of the Applicant’s application for internal review meant that the Applicant had exhausted the internal review procedure provided 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 its reasons for failing to furnish the Applicant with the information he requested for. The Respondent failed and/or refused to respond to the Commission’s letter. The Commission disapproves of the posture of the Respondent in the instant case and hereby states emphatically 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.

Although the Respondent failed to respond to the Commission’s letter, it is still imperative for the Commission to determine whether the information requested by the Applicant is exempt from disclosure under Act 989. This is because, under Act 989, there are only two reasons based upon which an applicant for information may be denied the information they seek. According to section 27 of Act 989, these two grounds are, first, where the application is manifestly frivolous or vexatious, and second, where the information is exempt from disclosure. Suffice it to say that there is no indication on the face of the Applicant’s application for information that the application is frivolous or vexatious. What is left to be determined is whether the information requested is exempt information.

Sections 5 to 16 of Act 989 provide for information which is exempt from disclosure. In the circumstances of this case, it is judicious to determine whether or not the information requested falls under personal information since the information requested pertains to pupils and entities. Section 16 (1) of Act 989 provides as follows:

**Section 16 (1)**

**Information, the disclosure of which is unreasonable concerning the personal affairs of an individual whether living or deceased is exempt from disclosure.**



How do we determine whether disclosure of information is reasonable or unreasonable. Section 16 (2) shows what to look out for in determining whether disclosure of information is unreasonable. According to section 16 (2),

“(2) Disclosure is unreasonable if it reveals or is likely to reveal information about the individual’s

- (a) physical or mental health;
- (b) business or trade secrets of commercial value; or
- (c) confidential professional, commercial or financial affairs.”

From the above provision, can it be said that disclosing the information requested by the Applicant stands to reveal something about the physical or mental health, business or trade secrets of commercial value, or confidential professional, commercial or financial affairs of the pupils about whom the information is being sought? The Commission answers this question in the negative. Disclosure of information about index numbers of candidates, schools of candidates, JHS attended by candidates and raw scores of candidates cannot reveal any of the enumerated states under section 16 (2) of Act 989.

Section 16 (3) outlines scenarios and instances in which disclosure of information is reasonable. Germane to the pieces of information being sought in our instant case is section 16 (3) (c), (d), (f), and (g):

“(3) Disclosure is reasonable if

- (c) the disclosure is necessary in order to subject government activities to public scrutiny;
- (d) the disclosure does not unjustifiably damage the reputation of any other person referred to in the information;
- (f) the disclosure does not contravene a provision on exempt information specified in this Act;
- (g) the disclosure would not have an adverse effect on the affairs of the individual.”

The Commission finds that, from section 16 (3) (as outlined above), disclosing the information requested by the Applicant would not necessarily damage the reputation of the pupils referred to in the information, and the disclosure should also not have any adverse effect on them. The Commission is also of the view that there is nothing confidential about the index numbers of



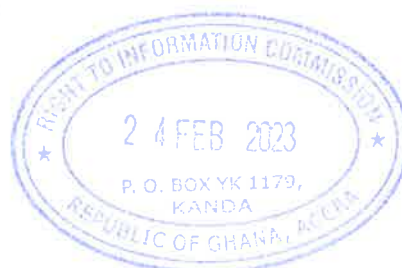
pupils. In fact, prior to the introduction of the computer placement of pupils in senior high schools, it was a common practice for names and index numbers of pupils to be posted on notice boards of various schools to which they were admitted.

The Applicant is the Executive Director of Africa Education Watch, an education policy, research and advocacy organisation that works with "...governments, private sector and civil society to achieve an equitable and accountable education that assures quality and equal opportunity for all." With such an outlook, when the Applicant secures the information requested, he is sure and likely to use same to promote the objects of his organisation to help put Government on its toes to achieve better and quality education. To that end, it can be said that disclosing the information requested by the Applicant is necessary to subject government activities pertaining to education to public scrutiny. In conclusion, the Commission does not find that disclosure of any of the information requested by the applicant contravenes any provision on exempt information in Act 989.

In the instant application under determination, the Commission holds that it does not find that the pieces of information requested by the Applicant, and which have been declined by the Respondent, fall into the range of exempt information under Act 989.

From the facts of this case, the Commission finds as a fact that although the information sought by the Applicant borders on pupils, selection of, and placement in, schools, no part of the information pertains to a specific individual pupil or examination candidate. Rather, it is general information about pupils and schools they are placed in.

Before the Commission makes its final orders, it is noteworthy that the Applicant should have made his application, in the first instance, to the Information Officer of the Ghana Education Service and then addressed an application for internal review to the Director-General of the Ghana Education Service. Every public institution is required under Act 989 to have an Information Officer.



## FINAL ORDERS

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, since the requested pieces of information are not exempt information and that the Applicant is entitled to be furnished with same, 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 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 Minister of Education:

1. **Based on the Respondent’s failure to make decisions on the Applicant’s application lodged with it, the Respondent has clearly failed to perform its obligation under Act 989. This is coupled with its failure to respond to the Commission’s letter received by it. Such a posture by the Respondent goes against the right of access to information enshrined under Article 21(1) (f) of the 1992 Constitution of Ghana and affirmed by Act 989 and same ought to be disapproved in strong terms. For this reason, an administrative penalty of GH¢50,000.00 is imposed on the Respondent and this shall be payable to the Commission not later than 14 days after receipt of this decision of the Commission. The penalty so imposed shall attract an additional default penalty rate of 10% on the principal penalty sum of GH¢50,000 in the event of default for any additional 14 days thereafter.**
  
2. **The following pieces of information pertaining to school placement for 2021/22 academic year are to be released to the Applicant:**
  - a. **Index numbers of all candidates placed;**
  - b. **Schools of all candidates placed;**



- c. JHS attended by all candidates placed; and
- d. Raw scores of all candidates placed.

- 3. The above information is to be released in PDF format for a fee or charge of GH¢0.29 for the information per page.
- 4. However, if the above information has been published in any official publication, the Respondent shall inform and direct the Applicant to that official publication accordingly.



**YAW SARPONG BOATENG, Esq**

**EXECUTIVE SECRETARY**

