

THE RIGHT TO INFORMATION COMMISSION

ACCRA

20TH FEBRUARY, 2023

CASE NO: RTIC/AFR/34/2022

CENTRE FOR DEMOCRATIC EMPOWERMENT (CDE)

APPLICANT

(ERNEST DANNSA APPIAH)

P.O. BOX 5702

ACCRA, GHANA

AND

NATIONAL LOTTERIES AUTHORITY

RESPONDENT

J.E.A. MILLS HIGH STREET

ACCRA

DECISION BY THE RIGHT TO INFORMATION COMMISSION IN RESPECT OF APPLICATION FOR REVIEW FILED BY THE CENTRE FOR DEMOCRATIC EMPOWERMENT (CDE) AGAINST THE REFUSAL TO RELEASE INFORMATION BY THE NATIONAL LOTTERIES AUTHORITY(NLA).

FACTS

In the instant case, the Respondent refuses to grant the Applicant access to the information he requested for. According to the Respondent, the requested information is exempt from disclosure.

The Right to Information Commission (hereafter the “Commission”) makes this determination pursuant to an application for review filed by Mr. Ernest Dannsa-Appiah, Director of Operations at the Centre for Democratic Empowerment (CDE) (the “Applicant”), a not-for-profit research and advocacy thinktank. The application was dated 12th August, 2022 against the National



Lotteries Authority (NLA) (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).

It was the complaint of the Applicant that, in a letter dated 27th June, 2022, he requested from the Respondent, through its Chief Executive Officer, the following pieces of information:

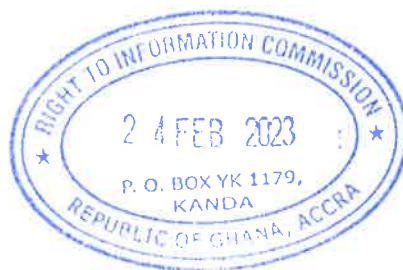
1. Evaluation report on contracts awarded from 1st January, 2021 to date;
2. Documents used by tenderers of aforementioned contracts to support their bid;
 - a. Tax Clearance Certificate.
 - b. Public Procurement Authority Certificate
 - c. Social Security Certificate

The Respondent, in a letter dated 20th July, 2022, responded to the Applicant’s request giving the following reasons for its inability to provide the Applicant with the information requested:

- i. The information requested for falls within sections 10 (b), (d) and 11 (c) of Act 989.
- ii. The contractual relationship between NLA and its contractors contains information, the disclosure of which can reasonably be expected to affect the integrity or stability of the financial system or damage the financial interest of NLA.
- iii. Any disclosure can unduly be injurious to NLA because it involves providing business information of its contractors.

The Applicant, aggrieved by this response, wrote to the Commission for a review of the Respondent’s decision. Thus, the Commission, in a letter dated 18th August, 2022, wrote to the Respondent requesting for the reasons for its refusal to grant to the Applicant the information requested for. The Respondent, in its reply on 1st September, 2022, indicated that the information sought for by the Applicant was exempt information under Act 989. The relevant portion of the letter is reproduced here for easy reference:

“Bearing in mind the constitutional right to information held by a public institution, subject to the exemptions provided under Sections 5 to 17 of Act 989, that are necessary and consistent with the protection of public interest in a democratic society, we



acknowledge that NLA is in no position to misdirect or misapply the said provisions in complying with Act 989. Thus, by our letter dated 20th July, 2022, we notified CDE that pursuant to the provisions of Sections 10(b)(d) and 11 (c) of Act 989, NLA is unable to furnish the information requested and furthermore, proceeded to expatiate on the said provisions as they applied to their request. Accordingly, NLA fully complied with Section 27 of Act 989 by notifying CDE that the requested information is exempt”.

Upon receipt of the abovementioned letter, the Commission wrote to the Respondent on 3rd October, 2022 requesting for the information under contention to determine whether or not it is information exempt from disclosure pursuant to its powers under section 43 (2) (f) of Act 989.

ISSUE

From the response from the Respondent, the following issue can be deduced: **Whether or not the information being sought for by the Applicant is exempt information under Act 989?**

EXAMINATION OF INFORMATION

As stated, section 43 (2) (f) of Act 989 clothes the Commission with powers to require the production of information for examination to determine whether or not it is exempt information.

The relevant section provides as follow:

“43 (2) (f) The Commission shall have the power to

(f) require the production of information to which access has been refused on the basis of an exemption for the purpose of deciding whether it is an information exempt from disclosure”.

Pursuant to this provision, the Commission requested the Respondent, in its letter dated 3rd October, 2022, to furnish it with the information the Applicant is requesting for to determine whether or not it is exempt under the Act. The Respondent, in its willingness to assist the Commission in resolving the matter, made the information available to the Commission for examination.

The Respondent indicated that the information requested for is exempt under sections 10 (b), (d) and 11 (1) (c). The sections provide as follows:



Section 10

Information is exempt from disclosure prior to official publication where

(b) the disclosure of the information can reasonably be expected to affect the integrity or stability of the financial system or, damage the financial interests of the State or public institution or the ability of the State to manage the national economy;

(d) the disclosure of the information can unduly benefit or be injurious to a person because it provides prior information about future economic or financial measures to be introduced by the Government or public institution;

Section 11 (1) (c)

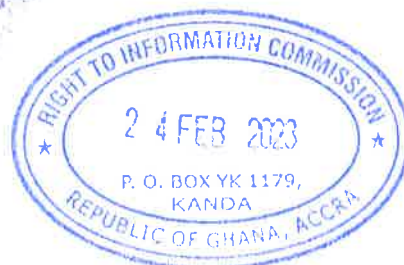
Information which would reveal a trade secret, research, scientific, technical, commercial, financial or labour related information supplied in confidence is exempt from disclosure if the disclosure of that information can reasonably be expected to

(c) result in undue loss or gain to a person, a group, a financial institution or any other body.

Upon the review and examination of the information submitted by the Respondent, the Commission finds that, although some part of the information requested for by the Applicant would fall within the sections quoted above, not all the pieces of information requested for would affect or is likely to affect the economic interests of the State or of the third parties involved.

The Commission recognizes the importance of protecting third party information as well as internal working information of public institutions (as provided for under section 13 of Act 989) and therefore finds that information regarding Ghana Revenue Authority (GRA) tax clearance certificates, minutes of tender openings, Public Procurement Authority (PPA) official receipts and memos fall within specific categories of exempt information under the Act. The Commission however does not find the evaluation reports on contracts awarded by your institution as falling within the category of exempt information.

Under **Section 44 (C)** of the Act, the Commission shall take appropriate actions that are necessary to enable the Commission to resolve a complaint before it. **Section 43 (2) (c)** of Act



989 also clothes the Commission with the power to “make any determination as the Commission considers just and equitable including issuing recommendations or penalties in matters before the Commission.” 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.”

FINAL ORDERS

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

- a. The following pieces of information are to be released to the Applicant not later than 14 days after receipt of this decision by the Respondent:**
 - i. Photocopies of the summary of the evaluation report on contracts awarded and not the entire evaluation report by your organization from 1st January, 2021 to date.**
 - ii. However, the GRA tax clearance certificates, minutes of tender openings, PPA official receipts of Kanga Company Ltd, Akwaba World Limited and memos are exempt information and should not be released to the Applicant.**
- b. The information ordered to be released to the Applicant under Paragraph (a) supra shall attract a charge of GH¢ 0. 27 per page, where it is being released in hard copy. If the information is to be released in PDF format, a fee or charge of GH¢ 0.29 per page should be applied.**


YAW SARPONG BOATENG, Esq
EXECUTIVE SECRETARY

