

**THE RIGHT TO INFORMATION COMMISSION**

**ACCRA**

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

**AFR NO: RTIC/AFR/23/2022**

**REDEEMER BUATSI**

**APPLICANT**

**ACCRA**

**AND**

**THE COMMISSIONER GENERAL**

**RESPONDENT**

**GHANA REVENUE AUTHORITY**

**ACCRA**

**DECISION BY THE RIGHT TO INFORMATION COMMISSION IN RESPECT OF  
THE APPLICATION FOR REVIEW FILED BY MR. REDEEMER BUATSI AGAINST  
GHANA REVENUE AUTHORITY'S REFUSAL TO RELEASE INFORMATION  
REQUESTED BY MR REDEEMER BUATSI**

**FACTS**

On 24<sup>th</sup> June, 2022, the Applicant herein, Mr. Redeemer Buatsi, a journalist, filed an application for review with the Right to Information Commission (hereafter "The Commission"). The application for review was filed against the Ghana Revenue Authority, GRA (the "Respondent") for its denial of the Applicant's request for certain pieces of information pertaining to the implementation of the Electronic Levy Management System (ELMAS). This determination is being made pursuant to the application for review aforesaid. The Applicant's request for information dated 4<sup>th</sup> May 2022 was addressed to the Information Officer of the Respondent institution. The request did not receive response from the Respondent and so the Applicant rightfully deemed same as denied. He therefore applied to the Commissioner-General of the Respondent institution on 3<sup>rd</sup> June 2022 for an internal review of the denial by the Information



Officer of the Respondent institution. The Applicant still did not receive any response from the Commissioner-General of the Respondent hence his application to the Commission aforementioned. The Commission wrote to the Respondent in a letter dated 27<sup>th</sup> July, 2022 asking for the reasons for denying the Applicant's request for information. As of the date of this determination by the Commission, the Respondent had failed, refused and/or neglected to respond to the Commission's request for reason.

The following pieces of information were requested by the Applicant from the Respondent:

- 1. Copies of contracts awarded to entities in respect of implementation of Electronic Levy Management System (ELMAS).**
- 2. Copies of any agreement signed with any entity/entities to provide services related to the implementation of the electronic levy and/or Electronic Levy Management System (ELMAS).**
- 3. Copies of any agreement signed with any entity/entities to provide technical support in relation to the design, development and maintenance of the electronic levy and/or the ELMAS.**
- 4. Copies of any agreement in terms of any Management System to support charging, exemptions and monitoring of the Electronic Levy.**
- 5. If no contracts have been awarded to any such external party, but such an external party has been engaged in any form whatsoever to assist with the implementation and monitoring of the electronic levy and advise if such an external party has been involved in any way, shape or form in the implementation process so far.**

Since the Respondent failed to respond to the Commission's letter, the Commission is inclined to apply the relevant provisions of the Right to Information Act, 2019 (Act 989) to determine whether or not the requested pieces of information, as outlined above, are exempted from disclosure.



## **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 of the public institution concerned shall make a decision on the application within fourteen (14) days from the date of receipt of the application. **Section 23(10) and (2)** provides 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”.**

That begs the question, 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 states 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 Commissioner-General of the Respondent institution who had to make a decision within 15 days of receipt of the internal review application. The obligation of the Commissioner-General of the

Respondent institution who is the head of the public institution as envisaged by the Act 989 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 Commissioner-General of the Respondent institution to make a decision on the Applicant’s internal review application amounted to a denial of the Applicant’s application under Section 35 of Act 989:

**“35. Where the head of a public institution fails to give a decision on a request for internal review within 15 days, the head of that public institution is deemed to have affirmed the original decision of the information officer.”**

The failure by the Commissioner-General of the Respondent institution to respond to the Applicant’s application for internal review meant that the Applicant had exhausted the internal review procedure envisaged under Section 66 of Act 989. Thus, having exhausted the 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. The relevant provisions are stated as follows:

**“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 decision, the Commission wrote to the Respondent asking for reasons for failing to furnish the Applicant with the information he



requested for. The Respondent failed to respond to the Commission's letter. The Commission disapproves of the posture of the Respondent in the instant case and hereby makes it clear in no uncertain terms that, under the Right to Information Act, 2019, 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.

Under section 10 of Act 989, the law exempts from disclosure, prior to official publication, information which contains trade secrets or financial, commercial, scientific or technical information that belongs to the State or public institution where the information has monetary or potential monetary value. Information is also exempt where its disclosure 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. Again, information is exempt from disclosure prior to official publication where the disclosure of the information can reasonably be expected to cause a disruption of business or trade in the country.

Under section 11 of Act 989, there is exemption from disclosure of third party economic information. This is information which can reasonably be expected to prejudice the competitive position of a person, a group of persons or an organisation, or even adversely affect negotiations with a third party or result in undue loss or gain to a person, a group, a financial institution, or any other body. Such information may reveal a trade secret, research, scientific, technical, commercial, financial or labour-related information supplied in confidence.

The Commission has made reference to sections 10 and 11 of Act 989 because these are the exemptions that are closely related to the information requested by the Applicant. That said, it is important to point out that the Commission does not find the information requested for by the Applicant as falling within the above-referenced exemptions under sections 10 and 11 of Act 989 or any other exemption stated under Act 989.

The Applicant's request borders mainly on contracts and/or agreements entered into by the Respondent institution with entities or persons for the implementation of the Electronic Levy Management Systems (ELMAS). The Commission is of the considered view that, once the request is not about the technical details regarding the functioning of the ELMAS, there is no



palpable risk of revealing information which contains trade secrets or commercial, scientific or technical information belonging to the State or the Respondent Institution which has monetary or potential monetary value.

In the instant application under determination, therefore, the Commission resolves the issue set down for determination by holding that it does not find the pieces of information requested by the Applicant, and which have been denied by the Respondent, as falling into the range of exempt information under Act 989. The Commission holds that the Applicant is entitled to the pieces of information he requested for. Those pieces of information are not exempt from disclosure.

### **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 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. **Section 44 (c) reads;**

**“44. To achieve its object, the Commission shall**

**(c) take appropriate action that is necessary to enable the Commission resolve a complaint before it.**

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.”**

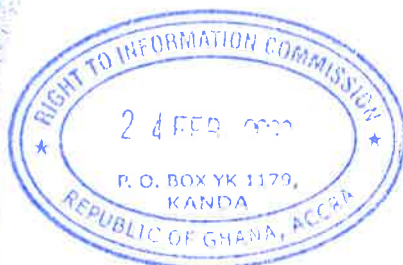
Proceeding on the strength of power furnished under Sections 43(2) (c), 44 (c), and 71(4) of Act 989, the Commission hereby makes the following specific orders directed at the Respondent:

- a. 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 does not augur well for the right of access to information as enshrined under Article 21(1) (f) of the 1992 Constitution of Ghana and affirmed by Act 989 and same ought to be rejected in no uncertain terms. For this reason, an administrative penalty of GH¢ 20,000.00 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 by the Respondent. The penalty so imposed shall attract an additional default penalty rate of 10% on the principal penalty sum of GH¢ 20,000.00 in the event of default for any additional 14 days thereafter.

- b. The Commissioner-General of the Ghana Revenue Authority 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:
- a. Copies of contracts awarded to entities in respect of implementation of Electronic Levy Management System (ELMAS).
  - b. Copies of any agreement signed with any entity/entities to provide services related to the implementation of the electronic levy and/or Electronic Levy Management System (ELMAS).
  - c. Copies of any agreement signed with any entity/entities to provide technical support in relation to the design, development and maintenance of the electronic levy and/or the ELMAS.
  - d. Copies of any agreement in terms of any Management System to support charging, exemptions and monitoring of the Electronic Levy.
  - e. If no contracts have been awarded to any such external party, but such an external party has been engaged in any form whatsoever to assist with the implementation and monitoring of the electronic levy and advise if such an external party has been involved in any way, shape or form in the implementation process so far.



- c. The information ordered to be released to the Applicant under Paragraph (b) supra shall attract a reasonable charge of GH¢0.27 per sheet, where it is being released in hard copy. If the information is to be released in PDF format, fee or charge of GH¢0.29 should be applied for the information per page.



**YAW SARPONG BOATENG, Esq**  
**EXECUTIVE SECRETARY**

