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**THE RIGHT TO  
INFORMATION BILL,  
1999 (Draft)**

*Justice P.D. Anim*

THE INSTITUTE OF  
ECONOMIC AFFAIRS  
ACCRA, GHANA

The Institute of Economic Affairs (IEA) Ghana was founded in October 1989 as an independent, non-governmental Institution dedicated to the establishment and strengthening of a market economy and a democratic, free and open society. It considers improvements in the legal, social and political institutions as necessary conditions for sustained economic growth and human development.

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BILL, 1999  
(Draft)**

*Justice P.D. Anin*



*An Institute of Economic Affairs Publication*

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## PREFACE

This is an Occasional Paper of a special kind. It contains the full text of what is proposed as a suitable law which Parliament may pass on the subject of the Right to Information.

Under Ghana's current Constitution of 1992, Parliament has the exclusive power to legislate. The initiative for the passing of laws need not come exclusively from the Executive. Member's of Parliament may initiate the passing of laws. Civil society, on its part, may press for the passing of laws which are considered necessary. If the initiative for passing legislation comes exclusively from the Executive, as appears to be the practice now, it means, in effect, that the supreme legislative authority of Parliament is to that extent curtailed. Ghana's system of governance is different from the British system, in which the Executive and the Legislature are more or less fused. Ghana's is more akin to the United States' system.

The publication of this paper is aimed at directing the attention of Parliament to the need for a law governing the right to information. It is also intended to assist Parliament by providing it with a model. As can be seen, the draft takes the forms of a Bill ready for publication! This model, it is hoped, will sharply focus Parliament's attention on the specific provisions. It should help Parliament, if it is impressed, to move expeditiously in the direction of passing a suitable law on the right to information. The adopting of this draft, subject to any necessary modification, should perhaps be a suitable first step. There are indications that Government is not averse to the passage of such a law.

There is a general feeling that the passage of such a law is long overdue because its absence renders Article 21 (1) (f) a lame provision of the Constitution.

I am delighted to place on record, the gratitude of the Institute of Economic Affairs to the Danish Government, through the Royal Danish Embassy in Accra and DANIDA, whose generous assistance made the publication of this Occasional Paper possible.

Dr. George A. Apenteng  
*Executive Director*  
Institute of Economic Affairs

**Accra, July 1999**

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## **MEMORANDUM**

The 1992 Constitution of Ghana is unique in conferring on all persons the right to information, subject to such qualifications and laws as are necessary in a democratic society (Art.21(l)(f)).

### **RIGHT TO INFORMATION – A FUNDAMENTAL FREEDOM AND HUMAN RIGHT**

This general right to information is part and parcel of the general fundamental freedoms and human right contained in Chapter 5 of the Constitution (Arts. 12-33); and embracing, inter alia:

- the right to life
- personal liberty
- protection from slavery and forced labour
- equality and freedom from discrimination
- protection of privacy of home and other property
- fair trial
- protection from deprivation of property
- general fundamental freedoms –
  - \* freedom of speech and expression, including freedom of the press and other media;
  - \* freedom of thought, conscience and belief, including academic freedom
  - \* freedom to practice any religion and to manifest such practice;
  - \* freedom of assembly, including freedom to participate in processions and demonstrations;
  - \* freedom of association
  - \* freedom of information; and
  - \* freedom of movement in and out of Ghana

There has been further case law development of these fundamental freedoms, with the notable exception of freedom of information.



## ABOUT THE AUTHOR

***Justice P.D. Anin*** was educated at Achimota School; Cambridge University where he graduated in history in 1952; and the London School of Economics and Political Science where he graduated in law in 1955.

Following his admission to the Gold Coast Bar in 1956, he engaged in extensive legal practice stretching up to July 1967. Thereafter, he held many public offices, including appointments in the cabinet of the NLC Government, and on the Bench as Justice of the Appeal Court, and Justice of the Supreme Court.

From 1980 to September 1994, he sat on the Gambian Court of Appeal from which he retired in September 1994, having served as President of the Court for over eight years.

He contributed to the development of legislation in the Gambia by serving as the first Law Reform Commissioner of the Gambia (1985); drafting new Court Rules for the Supreme Court and the Court of Appeal; and drafting thirty new laws, all of which were passed by Parliament.

For instance, the Supreme Court case of *Abel Edusei v. Attorney General and Others* (1996-97) SCGLR 1-62, dealt with the jurisdiction of the Supreme Court in a freedom of movement and the significance of a Ghanaian's passport case.

*Rosemany Ekwam v. Kwame Pianim and Others* (Nos 1,2 and 3) dealt with disqualification issues, Interim Injunction Orders therein (see pages 117, 120 and 431-445, respectively, of the above quoted (1996-97 SCGLR).

*New Patriotic Party v. Attorney General* (CIBA case), (1996-97) SCGLR 729-803 contains important pronouncements and rulings on the freedom of association of corporate persons.

*Republic v. Tommy Thompson Books Ltd* Nos. 1 and 2 (1996-97) SCGL 312-319, 804-891 and 484-514, respectively, deal with press freedom, criminal libel and other cognate issues.

*In Mensimah and Others v. Attorney-General and Others* (1996-97) SCGLR 676-728, freedom of association issues are considered and adjudicated upon.

To date, however, there have been no suits in the Supreme Court dealing with the freedom of information under Article 21(1)(f).

The present draft bill on that enactment is a modest attempt to give teeth to it, and encourage discussion of this vital fundamental freedom; and to invite the legislature to define and regulate the scope and parameters of this Constitutional enactment.

## OPEN GOVERNMENT AND ACCESS TO INFORMATION

Good governance and open government in a democratic society such as Ghana are predicated upon transparency, accountability and probity on the part of the rulers, officials, government departments and agencies alike on the one part, and a well-informed general public on the other part. The latter are



entitled, as of a Constitutional right, to access to official information, unless there is good reason in a particular case for withholding it.

This Bill is accordingly designed and intended to increase the availability to the general public of official information in order to enable their effective participation in the making of, and meaningful contribution to the administration, of laws and policies; to promote the accountability of Ministers and officials; and thereby to enhance respect for law and order in society.

It is common knowledge that the citizen can only form an informed opinion about governmental policies, plans and measures when in possession of the material facts. He lives in an information age, and access to official information is a *sine qua non* for his effective participation in government, both at the local and national levels.

To instance but one professional group in society, media houses are deserving of reasonable access to official information, subject to necessary qualifications in the sensitive areas of state security and national defence, in the discharge of their public duty of dissemination of information, education, and entertainment to the public; otherwise they stand in danger of peddling falsehoods and defamatory material. A true balance must be kept between personal freedom on the one hand, and national security on the other.

The withholding provisions of this proposed Bill follow existing common law and statutory laws, and are intended to strike a correct balance between openness and the interests of effective government.

#### EXEMPT INFORMATION AND THE LAW OF PRIVILEGE

Furthermore, the categories of exempt information in the Bill (Clauses 7-18), accord with the dictates of justice and public policy as exemplified in the law of privileges, a component branch of the

existing Ghana Law of Evidence (see pages. 87-110 of the Evidence Decree, 1975 (NRCD 323)).

Privilege is an example where, on grounds of contemporary public policy and justice, relevant evidence ordinarily admissible in evidence may be rendered inadmissible, or immunity may be granted to persons otherwise competent to be witnesses, thereby exempting them from being compelled either to give oral or real evidence, or else to produce a document in evidence.

Four main categories of information are, in accordance with the existing laws of Ghana, exempted from disclosure in this Bill, to wit :—

- (a) Any information which tends to incriminate a witness in any proceeding or trial (see also the identically worded rule in S.97(1) of the Evidence Decree 1976 (NRCD 323)).
- (b) An accused person in a criminal trial shall not be compelled to testify, save on his own application. (see on this the identical Constitutional provision in Article 19 (10): No person who is tried for a criminal offence shall be compelled to give evidence at the trial. See also the identically worded S.96 (1) of NRCD 323).
- (c) The following kinds of evidence are by enactments exempted from disclosure as a general rule in all proceedings (a term defined by S.87 of the Evidence Decree, 1975 (NRCD 323), Sub-section 3 thus: a proceeding in this context means any action, investigation, inquiry, hearing, arbitration or fact-finding procedure, whether judicial, administrative, executive, legislative or not before a government body, formal or informal, public or private).

The list of exempted kinds of evidence includes state secrets; the identity of an informant who has supplied to the Government information purporting to reveal the



commission of a crime or a plan to commit a crime; trade secrets; professional communication between lawyer and client, between a professional Minister of Religion and member of his congregation, and between medical doctor and patient.

- (d) Cabinet papers, confidential documents affecting the national economy, fiscal or budgetary measures; the internal working documents of the Government prior to publication; confidential documents regulating the conduct of diplomacy between Ghana and other sovereign States, and concerning Ghana's conduct of international affairs or relations with international organizations (see Part II, Clauses 7-18 of this Bill, which are modeled after like provisions in S.87-110 of the Evidence Decree, 1975 (NRCD 323)).

While this Bill follows closely the existing law on privileged evidence, it reserves discretionary power to the Supreme Court to decide, upon application made to it either directly or through an Inferior Court during the pendency of a case before it, whether or not to lift the *prima facie* exemption from disclosure of proffered privileged evidence in a particular case, having regard to the needs of justice, public policy, and vital national security and defence interests, and the competing needs of administrative law and practice. Following the precedent in S.8 of the Courts Act, Act 459, all Inferior Courts and Tribunals before whom questions of disclosure or non-disclosure or production of official information, state secrets and exempt information arise, are in duty bound to suspend their proceedings forthwith, and to refer such questions to the Supreme Court for a ruling and appropriate orders for due compliance therewith (see the proposed Clause 20 of this Bill).

### ANALYSIS OF THE BILL

The attached Bill is accordingly entitled "The Right to Information

Bill". Part 1 deals with the right to access to official information; Part 2 deals with exempt information, and embodies a comprehensive list of exempt information tallying with those in the Evidence Decree (NRCD 323) S. 87-110.

Part 3 is devoted wholly to the novel Constitutional enactments, Art. 121, which provides for the testimony of public officials before Parliament and the National Security Council, and the mode and manner of the production and disclosure of official information, including exempt information.

Procedural matters are covered in Part 4, Section 20; Part 5 prescribes a limitation period of 20 years; Part 6, S.22 is the interpretation or dictionary section of the Act. Special attention may here be drawn to the extended meaning of document in this Act to include real evidence stored in electronically or mechanically produced records, systems or gadgets, as well as such documents as maps, plans, drawings and photographs.

### **FREEDOM OF INFORMATION vs OFFICIAL SECRETS ACTS**

It is manifestly clear that the express terms of this new Bill, and the spirit underlying this enactment, an offshoot of the 1992 Constitution (Act 21(E), are both inconsistent with, and diametrically opposed to, the Official Secrets Act, i.e. S.192 of the Criminal Code 1960 (Act 29), which makes it a first degree felony punishable by maximum imprisonment of life imprisonment. Under S. 192/Act. 29, any person who for any purpose prejudicial to the safety or interest of the Republic :

- (a) enters, approaches, inspects, passes over, or is in the neighbourhood of, an prohibited place, or
- (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy ; or

- (c) obtains, collects, records or publishes or communicates to any other person, any secret official code, word or password or any sketch, plan, model, article, or note or other document or information, which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or
- (d) retains any official document when he has no right to retain it, or fails to comply with any lawful directions with regard to the return or disposal thereof,

shall be guilty of first degree felony.

The Constitution is the supreme law of Ghana, and any other law found to be inconsistent with any provision of the Constitution shall, to the extent of the inconsistency, be void (Art. 1(i)).

If, as it is confidently hoped, Parliament legislates the attached Freedom of Information Bill, then S. 192 of Act 29 would have to be repealed by the same enactment.

The procedure for the repeal of the existing S. 192/Act 29 is simple: through the insertion of the following Repeal Clause as Clause 23, headed REPEAL thus:-

### **REPEAL**

23. S. 192 of the Criminal Code, 1960 (Act 29) is hereby repealed.

## **A BILL ENTITLED THE RIGHT TO INFORMATION BILL, 1999**

An ACT to regulate the production and disclosure of information, including official documents in evidence before Parliament and the National Security Council under Article 121 of the Constitution, and also before the Courts and Tribunals created by the Constitution and other enactments; and to regulate the resolution of issues and doubts arising therefrom in the Supreme Court vested with exclusive jurisdiction by Article 135 of the Constitution; and other auxiliary matters.

Date of Assent:

BE IT ENACT by Parliament as follows:-



**THE RIGHT TO ACCESS TO  
OFFICIAL INFORMATION**

1. All persons shall have the right to information, including official documents, subject to such qualifications and laws as are necessary in a democratic society, and in accordance with the provision of this Act.
2. The right to information, herein called the right to access, is available to any person, herein called applicant, who applies for it in writing from the custodian of information, save such as is exempt under this Act, and subject to the conditions and procedures prescribed by this Act.
3. A person's right to access information not otherwise designated exempt by Sections 7 to 20 below, shall not be hindered or fettered by conditions precedent imposed on him by the custodian, save those prescribed by this Act.
4. The custodian, who has in his or its possession or custody the specific information to which an application for access was made, shall respond thereto fully, openly and promptly.
  - (a) If the response does not exceed one folio, i.e. 100 words in length, then the response shall be delivered to the applicant not later than three days from the date of receipt of the application.
  - (b) If the response, whether in the form of an office document or copy thereof, exceeds one folio in length, it shall be delivered to the applicant within a week; save that if the response either exceeds one hundred folios in length of a typewritten document or is a map or plan or drawing or photograph or a reproduction of information stored or recorded mechanically or electronically, then it must be delivered within a month of receipt of the application.

- (c) If the applicant has not provided the custodian with sufficient details of his request, and further particulars are needed by the custodian in order to identify the request, then the time limit for the grant of the response shall begin to run from the date of supply of these further particulars by the applicant to the custodian.
  - (d) If the custodian needs more time either to search for the information sought or to consult other sources or to seek permission from another person or agency for the due discharge of his duties, then the time limit for response may be further extended to not more than one month; whereof due notice must be given to the applicant.
  - (e) If another custodian has in his custody or possession the information sought, the applicant must be immediately so informed by the first custodian approached, and furnished with the name and address of such other custodian.
  - (f) If it is impracticable for the custodian promptly to respond to the request received, he must notify the applicant immediately of that fact, giving reasons at the same time why it is impracticable; and he shall further inform the applicant of when the response will be ready for collection.
  - (g) If the information sought is either covered by an embargo or can only be released upon the happening of an event in the future, the application must be so informed and also told at the same time when it will be ready for collection.
5. An applicant for information designated exempt information by Part II below, must first apply to the Supreme Court for an order for access in his favour before submitting his initial application to the custodian for attention.

6. (1) An applicant for information shall pay to the custodian in respect of each application for access, the fees prescribed.
- (2) The custodian shall upon due payment of the said fees, pay them into the Consolidated Fund after issuing therefore an official receipt to the applicant.

**EXEMPT INFORMATION**

- 7 (1) The following kinds of information contained in any document, official or otherwise, are hereby designated exempt information; and may only be accessed in accordance with the rules contained in this part of the Act, to wit :
- (a) Information is exempt if its disclosure will harm or prejudice the security or defence of the State.
  - (b) Information is exempt if its disclosure is or may reasonably be prejudicial or inimical to the Government of Ghana's conduct of its international affairs and diplomacy, or cause damage to the relationship between Ghana and other countries or international organizations.
  - (c) Information is exempt if its disclosure would or might reasonably
    - (i) interfere with, or obstruct an investigation of a breach of the law or failure to comply with the requirements of any statutes; or
    - (ii) expose the existence or identity of a confidential source of information in relation to enforcement of the law or the ability of a person to ascertain such existence or identity; or
    - (iii) endanger the life or physical safety of a person engaged in the performance or a legal or public duty; or
    - (iv) prejudice the fair trial of a person; or
    - (v) expose lawful procedures for the prevention or detection of a crime or breach of the peace or evasions of the law if disclosure is reasonably likely to render such procedures ineffective; or

- (vi) prejudice the enforcement of lawful measures for the protection of public safety.
- (2) Where investigation is carried out and information is obtained for the purposes of a criminal trial, such information shall be exempt until after the trial is concluded or until the decision is taken by the competent official not to prosecute; after which it shall cease to be exempt.
- (3) (a) Information is exempt which discloses the identity of informers or persons who give information to the police or other security agencies for the detection of crimes.
- (b) The Government of Ghana's privilege from disclosure of the identity of an informant who has supplied to the Government information concerning the commission of a crime or a plan to commit crime, is exempt; subject to S.107 of the Evidence Decree, 1975.
- (4) A document containing minutes, opinions, advice, recommendations, deliberations or accounts of meetings which have taken place or been given within a government department or public body or authority being an internal working document, is exempt from disclosure where the government department or public body or authority in control of the document, has through its professional head or the Minister in charge thereof issued a certificate accordingly. The said certificate shall specify the nature of the public interest which will be endangered by disclosure, and whether it relates to the whole document or part or parts thereof only, and identifies such part or parts.
- (5) A certificate issued under the foregoing Sub-section (4) shall be served on an applicant for access not later than fourteen days from the date of request submitted for access; and the applicant shall be informed that access has been refused on the grounds stated in the certificate.

- (6) (a) A document submitted to the Cabinet for its consideration, or which has been prepared for submission to the Cabinet for consideration, or any official record of the Cabinet not yet generally published or released to the general public, is exempt from access or disclosure.
- (b) Unless and until it has been officially published, a document, access to which would involve disclosure of discussions or deliberations or decisions of the Cabinet, is exempt from access or disclosure.
- (c) A certificate signed by the Secretary to the Cabinet or the National Security Council, as the case may be, certifying that a document falls within category (a) or (b) of this sub-section 6, establishes conclusively that such document is exempt; but is subject to the ruling of the Supreme Court under S.20 of this Act.
- (7) (a) A document is exempt if it has been submitted to either the President or the Vice-President or has been prepared for submission to either of them, or is an official record of their offices, or is a copy of such a document.
- (b) A document containing opinions, advice or recommendations or minutes or consultation given or made to either the President or Vice-President is exempt unless it has been officially published.
- (c) A certificate signed and issued by the Secretary to either the President or Vice-President certifying that a document falls within either category (a) or (b) of this sub-section 7, establishes conclusively that such document is exempt.
- (8) A document is exempt, prior to official publication, if its disclosure would, or could seriously prejudice or endanger the management of the national economy, create un-

due disturbance in the ordinary course of business or trade in the nation, unduly benefit or be detrimental to any person or group of persons because it gives premature information about future economic or fiscal measures to be introduced by Government or Parliament.

- (9) Documents which fall under the foregoing sub-section 8 of section 7 include, but are not limited to, documents dealing with
- i. currency and exchange rates;
  - ii. interest rates and dividends;
  - iii. taxes, Customs and Excise duties;
  - iv. regulations issued by the Bank of Ghana for the control and supervision of the affairs of commercial banks, or financial institutions, or Rural Banks or Forex Bureaux, or insurance companies; and
  - v. the National Budget and all matters falling under Chapter 13 of the Constitution entitled Finance.
10. (1) A document is exempt if it relates to purely personal information or details of any person.
- (2) Personal information referred to in the foregoing sub-section includes, but is not limited to, information about a person's physical or mental health or marriage or employment record; unless the person concerned waives his privilege of non-disclosure or consents to the disclosure through a qualified person of his choice.
11. (1) Information is exempt if it is, or affects, a trade or commercial secret (as defined in S.22 below), and includes a patent or copyright, or any secret formula or technique or process known and used to advantage by only one manufacturer or his agent.

- (2) The owner of a trade secret or his authorized agent has a privilege of non-disclosure of his trade secret unless the value of the disclosure of the trade secret substantially outweighs the disadvantages caused by its disclosure.
  - (3) When disclosure of a trade secret is required, the competent court, on its own motion or at the request of an interested party, may take such action to protect the trade secret from further disclosure or unauthorized usage as may be appropriate.
12. A person has a privilege of non-disclosure of how he cast his vote in public election or referendum conducted by secret ballot, unless sufficient evidence has been introduced to support a finding of fact that it was cast illegally.
13.
  - (1) A person making a record, report or document required by law has no privilege to refuse to disclose or to prevent any other person from disclosing the contents of the record, report or disclosure except as otherwise specifically provided by any enactment.
  - (2) A public official or public entity by whom a record, report or disclosure is required by law to be made, has a privilege to refuse to disclose the contents of the record, report or disclosure if the law requiring it to be made prevents its disclosure for the purpose in question.
14.
  - (1) A lawyer and his client are entitled to privilege of non-disclosure of their mutual confidential communication reasonably related to professional legal services, and within the limits and exceptions prescribed by the Evidence Decree, 1975 (NRCD 323) S. 100-102
  - (2) However, in cases falling under S.100 of the said Evidence Decree, 1975 (NRCD 323), there shall be



no privilege of non-disclosure generally, save as is otherwise permitted by the Evidence Decree in the specified cases in S.101 (a) – (e) inclusive.

15. (1) In any trial or proceeding, a person has privilege to refuse to disclose any matter, or to produce any document or object that will incriminate him.
- (2) A person's privilege against self-crimination does not include the matters prescribed in Sub-sections (2) to (5) of Section 97 of the Evidence Decree 1975 (NRCDC 323), to wit
- (a) where the Court deems it necessary to the determination of an issue to order that a person shall submit either his body to examination for the purpose of discovering or recording his physical features or other identifying characteristics or his physical or mental condition, or to furnish or permit the taking of samples of body fluids or substances for analysis; or to speak, write, assume a posture, or make a gesture or do any other act for the purpose of identification; or
- (b) if the accused in a criminal trial voluntarily testifies on his own behalf, he has no privilege under the foregoing Sub-section (1) of Section 15 to refuse to disclose any matter or produce any document that is relevant to any issue in the Criminal trial or prosecution.
- (3) A matter or document incriminates a person within this Act if it constitutes, or forms an essential part, or when taken in conjunction with other matters already disclosed, it is a basis for a reasonable inference of a violation of the criminal laws of Ghana; provided that a matter or document which would otherwise incriminate a person will not do so if he has become permanently immune from punishment for a violation of the criminal laws of Ghana.

## **PART IV**

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### **PROCEDURE**

20. (1) The Supreme Court under Article 135 of the Constitution, shall have exclusive jurisdiction to determine whether an official document shall not be produced in Court because its production or the disclosure of its contents will be prejudicial to the security of the State or will be injurious to the public interest.
- (2) Where any issue referred to in the foregoing Sub-section (1) arises as to the production or otherwise of an official document in any proceedings before any Court, other than the Supreme Court, the proceedings in the other Court shall be suspended while the Supreme Court examines the document and determines whether the document should be produced or not; and the Supreme Court shall make the appropriate order.
- (3) The proceedings of the Supreme Court as to whether an official document may be produced shall be held in camera.
- (4) For the purpose of this Section, the Supreme Court may
- (a) order any person or authority that has custody, legal or otherwise, of the document to produce it, and any person or authority so ordered shall produce the document in question for the purpose of inspection by the Supreme Court; and
  - (b) determine whether or not the document shall be produced to the Supreme Court or to the other Court from which the reference was made, after hearing the parties to it or their legal representatives, or after having given them the opportunity of being heard.

- (5) Where the Supreme Court is of the opinion that the document should be produced in evidence, it shall make an order that the person or authority that has custody or possession of the document shall produce it or shall produce so much of the contents of it as is essential for the proceedings in accordance with the terms of the order.
- (6) Where there is a doubt as to the nature of any document referred to in Clause 2 of Article 121 of the Constitution (see S.19 above), the Speaker of Parliament or the National Security Council, as the case may be, shall refer the matter to the Supreme Court for determination by that Court whether the production or the disclosure of the contents of the document would be injurious to the public interest or public policy, or prejudicial to the security of the State.

16. (1) A person has privilege of non-disclosure of confidential communication between himself and his medical or professional expert in connection with his diagnosis or treatment for a mental or emotional condition.
  - (2) A person has privilege of non-disclosure of confidential communication between himself and his professional Minister of Religion or spiritual adviser in accordance with and subject to Section 104 of the Evidence Decree, 1975 (NRCD 323)
  - (3) A person has a privilege to refuse to disclose to a Court or Tribunal of fact, information concerning the offering or acceptance of valuable consideration in compromising a claim which was disputed either as to validity or amount, or information concerning conduct or statements made as an integral part of such compromise negotiations or award; provided that no such privilege of non-disclosure of information exists if the compromise was made with the intention that it would not be so privileged from disclosure to a Tribunal of fact.
17. A person has a privilege to refuse to disclose confidential communication between himself and his spouse during their marriage, whether monogamous or polygamous.
  18. A document, the disclosure of which would intrude on purely personal information about any person unreasonably, or is contrary to public policy, is exempt.

**PRIVILEGE FROM DISCLOSURE UNDER ART  
121 OF THE CONSTITUTION**

19. (1) A person summoned to attend to testify, or to produce a document before Parliament shall be entitled, in respect of his evidence, or the production of a document, as the case may be, to the same privileges as if he were testifying before a Court.
- (2) A public officer shall not be required to produce before Parliament a document where
- (a) the Speaker certifies that the document belongs to a class of documents, the production of which is injurious to the public interest; or that disclosure of the contents of the document will be injurious to the public interest; or
- (b) where the National Security Council certifies that the document belongs to a class of documents, the production of which is injurious to the security of the State; or that the disclosure of the contents of the document will be prejudicial to the security of the State.
- (3) Where there is a doubt as to the nature of a document such as is referred to in the foregoing Sub-section (2) of Section 19, the Speaker or the National Security Council, as the case may be, shall refer the matter to the Supreme Court for the resolution of the alleged doubt and the making of an appropriate order.
- (4) An answer by a person to a question put by Parliament shall not be admissible in evidence against him in any civil suit or criminal proceedings out of Parliament, except proceedings for perjury brought under criminal law.

## **PART V**

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### **LIMITATION**

21. (1) Every document which falls into the category of exempt information by virtue of Part II of this Act shall cease to be exempt after the expiration of a period of 20 years from the date of its coming into existence, hereinafter called the Limitation Period.
- (2) On the expiration of the limitation period of a document, every person shall have access to a document affected by the limitation period, and the custodian of such a document shall not be entitled to refuse access but shall grant access in accordance with the provisions of this Act.

**INTERPRETATION**

22. In this Act unless a contrary intention appears from the context,

"access" means the right or privilege to approach or reach or make use of or retrieve information in a document;

"applicant" means a person who applies for permission to access a document;

"constitution" means the 1992 Constitution;

"custodian" means a person or agency or department who has in his possession or under his control or in his keeping, a document to which access may be applied for under this Act;

"department" means a department of the Public Services of Ghana under Chapter 14 of the 1992 Constitution;

"document" means any paper or writing or any map, plan, sketch, drawing or photograph, or anything from which sounds, images or writings can be or are reproduced, or any article on which information has been stored or recorded mechanically or electronically or by any other scientific method or process;

"internal working document" means a document which contains opinions, advice, recommendations, deliberations, minutes or consultations within a department, agency, authority or the Public Services;

"exempt information or document" means information or document which is by the provision of Part II of this Act exempt from access for a period of up to 20 years by virtue of S.21 herein.

"state secret" is information considered confidential by the Government which has not been officially disclosed or published to the general public, and which it would be prejudicial to the security of the State, or injurious to the public interest to disclose.

"trade secret" means a secret formula, technique, process, programme, device or product known and used to advantage by only one manufacturer, and the disclosure of which would cause significant economic loss to the owner or manufacturer.



**REPEAL**

S. 192 of the Criminal Code, 1960 (Act 29) is hereby repealed.

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