



Our Reference.....

RTIC/AFR/22/190

THE RIGHT TO INFORMATION COMMISSION

7TH DECEMBER, 2022

CASE NO: RTIC/AFR/22/2022

**CENTRE FOR DEMOCRATIC EMPOWERMENT
(REP: ERNEST DANNSA APPIAH)
ACCRA.**

APPLICANT

AND

**GHANA OIL COMPANY LTD.
HEAD OFFICE
ACCRA.**

RESPONDENT

**DECISION BY THE RIGHT TO INFORMATION COMMISSION IN RESPECT OF
APPLICATION FOR REVIEW FILED BY CENTRE FOR DEMOCRATIC
EMPOWERMENT AGAINST REFUSAL TO RELEASE INFORMATION REQUESTED
BY CENTRE FOR DEMOCRATIC EMPOWERMENT.**

This decision by the Right to Information Commission (hereafter “The Commission”) is being given pursuant to an application for review filed by Centre for Democratic Empowerment (CDE) (“The Applicant”). The application letter was dated 22nd June, 2022 and received by the Commission on the same day. It was against the Ghana Oil Company Ltd (GOIL) (“The Respondent”), which had failed and/or refused to release to the Applicant certain pieces of information requested in exercise of its 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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The Applicant's complaint was that, in a letter dated 17th May, 2022, CDE, through its Executive Director, Richard Danso, requested from the Respondent via its Information Officer the following pieces of information:

"we would like your office to furnish us with details of contracts awarded by your organization in the years 2020 and 2021."

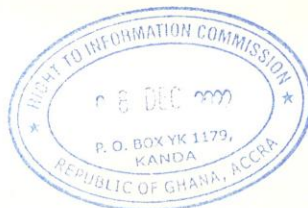
Since the Applicant did not receive any response from the Information Officer, through its Director of Operations, Ernest Dannsa Appiah, it applied for internal review of the refusal by the Information Officer to furnish it with the requested information. This application for internal review was dated 13th June, 2022.

On 16th June, 2022, the Respondent wrote to the Applicant advancing the following reasons for not having to grant the Applicant's request for information:

Kindly take note that though Government is the majority shareholder, GOIL PLC is a listed company with institutional/corporate shareholders as well as individual shareholders. On that basis, we should be mindful of the rights of all shareholders including minority shareholders who can resort to court for oppression if they feel their rights are being trampled upon.

In our humble opinion, the Right to Information Act refers to solely state Institutions. Based on the foregoing we are unable to accede to your request.

It is noteworthy that, upon receipt by the Commission of the Applicant's application for review, it wrote to the Respondent in a letter dated 27th July, 2022 and received on 28th July, 2022. In the said letter, the Commission referred the Respondent to the definition of public institution under section 84 of Act 989 and concluded that "In accordance with Section 84, GOIL, in the



performance of its duties, performs a public function that affects the bulk of the public and is therefore a public institution within the meaning of Act 989.”

The Commission also referred the Respondent to sections 43(2)(b), (f) and 70 of Act 989 and consequently asked to be furnished with the information requested by the Applicant for inspection by the Commission. As of the date of this decision by the Commission, the Respondent had failed and/or refused to respond to the Commission’s request. For ease of verification, sections 43(2)(b), (f), 70 and 84 of Act 989 provide as follows:

43(2) The Commission shall have the power to

(b) determine the need for the nature and form of investigation required for the determination of a matter before the Commission;

(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 information exempt from disclosure;

70. A public institution, a relevant private body or an interested party shall assist the Commission in the course of an application or investigation.

84. public institution includes a private institution or organisation that receives public resources or provides a public function.

ISSUE FOR DETERMINATION

From the facts of the case, as outlined above, the Commission sets for its determination the following issues:



1. *Whether or not GOIL PLC is a public institution for purposes of furnishing access to information.*
2. *Whether or not the pieces of information requested by the Applicant from the Respondent are exempt from being disclosed under the Right to Information Act, 2019 (Act 989).*

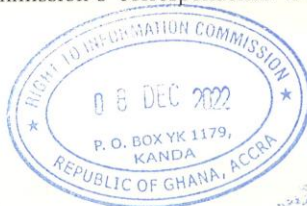
FINDING OF FACT

To aid the Commission in resolving the issues set down for determination, the Commission finds as a fact that the Respondent has advanced two reasons for denying the Applicant the information it requested for. These are, first, the Respondent is not a public institution because although Government holds a majority shares in it, there are other individual and institutional shareholders. Second, Act 989 "...refers to solely state institutions." The Commission also finds that the information requested by the Applicant from the Respondent institution is contractual information or documents. Such information or documents may or may not be exempt information under Act 989; it may be exempt when the contents of that information or those documents can be subsumed under one or more of the heads of exemption created under Act 989.

RESOLUTION OF ISSUES

1. *Whether or not GOIL PLC is a public institution for purposes of furnishing access to information.*

The resolution of this issue turns principally on the definition of public institution as provided under section 84 of Act 989. As already stated early on in this determination and intimated to the Respondent in the Commission's correspondence to it, under section 84, "Public institution



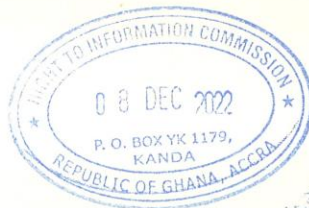
includes a private institution or a private organisation that receives public resources or provides a public function.” This is an inclusive definition of a public institution premised on a foreknowledge of those institutions that are public institutions. The definition only extends the confines of institutions that constitute public institutions for purposes of access to information by adding private institutions or organisations. From the definition, for a private institution or organisation to qualify to be regarded as a public institution for purposes of access to information, one of two things must happen:

- a. the institution or organisation has to receive public resources; or
- b. the institution or organisation has to perform a public function.

It is instructive to note that what is used in the definition of public institution under section 84 is a disjunctive “or”, and not a conjunctive “and”. This means that, as pointed out already, a private organisation or institution only has to satisfy one of the two requirements to pass for a public institution.

As indicated already, the Respondent says that Act 989 only covers solely state institutions and once it is not a solely state institution, it falls outside the coverage of Act 989. However, it is worth noting that the fact that the Respondent is not solely owned by the State does not necessarily mean that the Respondent is not a public institution under Act 989. This is because no part of Act 989 says that to be a public institution under the Act, an institution has to be solely owned by the State.

The Commission is of the considered view that looking at the shareholding structure of the Respondent, it can be said that it receives public resources. This is because the State owns a total of 79.26% shares. Such shares translate into State funds injected into the operations of the

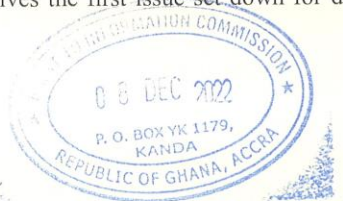


Respondent. According to *lawinsider.com*, an online law resource, “public resources means any property or asset owned by the state or any local agency, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and state-compensated time.” In fact, *goil.com.gh* reveals the following shareholding structure of the Respondent:

- Government of Ghana- 34.23%
- SSNIT- 25%
- BOST- 20.03%
- OTHERS/PRIVATE- 20.74%.

Assuming, without admitting, that the Respondent does not receive public resources, it certainly performs a public function. Act 989 is silent on what a public function is, but the Commission is of the view that a public function is any activity whose performance benefits the public. The Respondent performs a public function because its petroleum products sale services benefit the Ghanaian public. Indeed the Respondent itself gives us an idea of the extent to which the public benefits from its services: *“GOIL has the largest retail network across the country. The company also has numerous consumer outlets throughout Ghana. The consumer outlets include companies, schools, hospitals, factories, hotels, banks and major parastatals. In addition, there are a number of other retail outlets established to market premix fuel and kerosene to rural areas. LP Gas filling plants have also been installed at some of the filling and service stations and at other locations in the country.”*

Having established that the Respondent receives public resources and performs a public function, the Commission hereby resolves the first issue set down for determination by holding that the



Respondent is a public institution for purposes of access to information. The Respondent is covered by Act 989 in terms of the obligation to release information to applicants for information. Not being a solely state institution does not absolve the Respondent from its obligation to release information under Act 989. Likewise the Respondent's concerns about the rights of minority shareholders and the possibility of their pressing a court action for oppression do not absolve it from releasing information under Act 989. In fact, the Commission is of the considered reasoning that releasing information in the nature requested by the Applicant does not stand to affect the rights of minority shareholders and same should not amount to oppression against them.

2. *Whether or not the pieces of information requested by the Applicant from the Respondent are exempt from being disclosed under the Right to Information Act, 2019 (Act 989).*

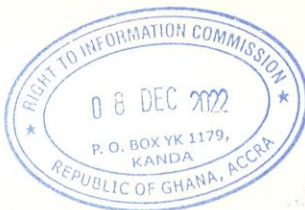
According to **Section 23 (1) and (2) of Act 989**, when an application for information is received by a public institution, the information officer of the public institution shall take a decision on the application within fourteen (14) days from the date of receipt. These are the words of **Section 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, in a case where the Information Officer fails to take a decision on an application, what happens? 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 Managing Director of the Respondent institution, who had to take a decision within fifteen (15) days of receipt of the application. This obligation of the Managing Director is stipulated by **Section 33(1) of Act 989**:

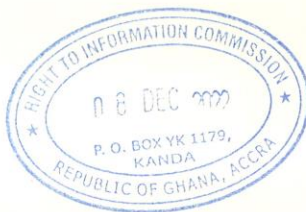
“33. (1) The head of the public institution to whom a request for internal review is made shall, as soon as reasonably practicable, but in any event within fifteen days of receipt of the request

(a) make a decision; and

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

Failure by the Managing Director to take a decision on the Applicant’s internal review application amounted to a denial of the Applicant’s application under **Section 35 of Act 989**. These are the words of the relevant provisions 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.”



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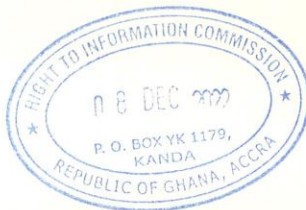
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The Managing Director's denial of the Applicant's application for internal review meant that the Applicant had exhausted the internal review procedure envisaged under **Section 66 of Act 989**. Having thus exhausted the Respondent's internal review 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:

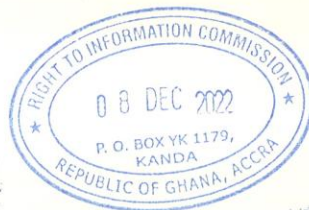
"65. (1) A person who is dissatisfied with a decision of a public institution or a relevant private body, may apply to the Commission for a review of the decision.

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 pointed out in the opening stages of this determination, the Commission wrote to the Respondent asking for the reasons for failing to furnish the Applicant with the information requested. This was an opportunity for the Respondent to explain their side of the matter. Unfortunately the Respondent did not take advantage of this. It rather failed and/or refused to respond to the Commission's letter. The Commission deprecates 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 only certain pieces of information that are exempt from disclosure.

In the instant application under determination, the Commission does not find the pieces of contract information or documents requested by the Applicant, and which have been denied by the



rate of 10% on the principal penalty sum of GH¢ 100,000 in the event of default for any additional 14 days thereafter.

- b. The Managing Director of GOIL shall ensure that the following information is released to the Applicant not later 14 days after receipt of this decision by the Commission viz:*

The details of contracts awarded by the GOIL in the years 2020 and 2021.

- 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 in its entirety.*



YAW SARPONG BOATENG, Esq
EXECUTIVE SECRETARY

