

**2022 ANNUAL LECTURE IN HUMANITIES BY JUSTICE SIR DENNIS DOMINIC ADJEI ON MAY 5, 2022 2021 AT THE GHANA ACADEMY OF ARTS AND SCIENCES**

**TOPIC: THE PARAMETERS AND IMPACT OF THE RIGHT TO INFORMATION IN GHANA**



Table of Contents

[INTRODUCTION 2](#_Toc102462110)

[RATIONAL FOR THE RIGHT TO INFORMATION 3](#_Toc102462111)

[HISTORY AND DEVELOPMENT OF THE RIGHT TO INFORMATION IN GHANA 8](#_Toc102462112)

[THE RIGHT TO INFORMATION UNDER THE 1992 CONSTITUTION 12](#_Toc102462113)

[ACCESS TO INFORMATION: MODES OF ACCESSING INFORMATION 15](#_Toc102462114)

[Access through the Right to Information 15](#_Toc102462115)

[Access by State Agencies 16](#_Toc102462116)

[Access through Communication Service Providers 19](#_Toc102462117)

[Access through Illegal Means 23](#_Toc102462118)

[ACCESS TO INFORMATION UNDER THE RTI ACT 27](#_Toc102462119)

[Procedure for Acquiring Information Under the RTI Act 31](#_Toc102462120)

[Challenges with the RTI Law 37](#_Toc102462121)

[JOURNALISM, THE JUDICIARY, AND ACCESS TO INFORMATION 38](#_Toc102462122)

[Journalism and Contempt of Court 38](#_Toc102462123)

[Open court and closed court 40](#_Toc102462124)

[Information on court proceedings 42](#_Toc102462125)

[International best practices 43](#_Toc102462126)

[LIMITATIONS TO ACCESS TO INFORMATION 48](#_Toc102462127)

[Sexual Information 48](#_Toc102462128)

[State Secrets Act 50](#_Toc102462129)

[Plagiarism 50](#_Toc102462130)

[Access to information and copyright issues 50](#_Toc102462131)

[CONCLUSION 52](#_Toc102462132)

[BIBLIOGRAPHY 54](#_Toc102462133)

**INTRODUCTION**

There is no gainsaying that over the past few years, there has been increasing scrutiny on how information is obtained, stored, and exploited. This is not surprising as it is often said that information is power. The scrutiny, once largely limited to governments and their agencies, has now extended to private institutions. We, therefore, see tech giants such as Google, Facebook, and Amazon increasingly being the subject of scrutiny over their handling of data.

However, the law governing the handling of information is far from straightforward. In pluralistic legal systems such as Ghana, portions of the law may be found in the common law, statutes, and the Constitution. The nuances as it relates to information are endless. There are issues relating to which kind of information is accessible, what information can be shared, the mode for acquisition and publication of such information, issues relating to confidentiality, and striking a balance between public interest and the need for certain kinds of information to be made accessible. We cannot cover these areas meaningfully within the space of this lecture.

There are different types of information. These include documentary, real, scientific, demonstrative, and digital or electronic information. Documentary information means any form of document which carries information including photographs, cash, cheques, letters, maps, site plans, newspapers, deeds, judgments and enactments. Real information includes tangible physical objects, substances or equipment such as a knife, cutlass, stone, cannabis, acid, gold, diamond or weapon. Scientific information is mainly information obtained from science such as blood test, medical reports, DNA, fingerprints, handwriting, ballistic, pathological and other expert reports. Digital or electronic information is mainly information stored or transmitted in an electronic form such as WhatsApp, e-mails, telex, fax, ATM transactions, debit cards, credit cards, scanned, images and footage.

In today’s lecture, we delve into access to information in Ghana. The discussion will be centred on access to information from public and private bodies, how such information can be obtained, the rationale behind such access and other issues relating to access to information. I seek to shed light on the available avenues for accessing information, whilst simultaneously commenting on the parts which should be improved.

# RATIONALE FOR THE RIGHT TO INFORMATION

The right to information is central to the realization of the ideals of accountable governance, the rule of law, the protection and preservation of fundamental human rights, public safety, the economic well-being of the people, and the prevention of disorder, crime or immorality.

The right to information is inextricably linked to the concept of trusts. A trustee’s fiduciary obligations to the beneficiaries include: duty of loyalty; duty of prudence; duty of impartiality; duty not to commingle; duty to be transparent, inform and account; and duty to collect and protect trust property. Trustees must be transparent to the beneficiaries, give adequate information to the beneficiaries and account for their stewardship. A beneficiary has the right to call upon trustee to be transparent, give information about their stewardship and make a demand on them to render faithful accounts for their stewardship. A trustee is required to protect trust properties in their custody. A beneficiary may demand a trustee to explain the steps they have taken to protect trust properties to prevent them from going waste or to deteriorate. The above requirements imposed on trustees include public officers who hold office and owe a duty to their beneficiaries.

The Executive, Legislature and the Judiciary which form the Government of Ghana are to cater for the needs of the citizenry who have ceded their powers to them as trustees. This is because the sovereign people of Ghana collectively voted for the Constitution of Ghana and ceded their powers to the government to be exercised within the limits laid out in Constitution to cater for their welfare[[1]](#footnote-1).

A public official who fails to be loyal to Ghanaians may be called upon by any Ghanaian to provide information on their stewardship. A public official must be impartial in the discharge of their official duty, and they must be knowledgeable enough to respond to all questions that arise with respect to their office. The official cannot refuse to answer unless it is exempted by law. Public officers must separate their personal properties from that of the State in their possession or over which they have control to avoid misapplication or misappropriation of funds. A certain category of public officers is required to file inventory with the Auditor-General on assumption of office to disclose all the properties they have and shall file a new inventory for every five years to show the properties they have acquired within every five years. An officer who fails to faithfully file an inventory may be called upon to give account for the basis of their wealth within that period.

Citizens are to take part in governance and should be given the opportunity to access information relevant to the roles they play. All people are equal and any relevant information available to public institutions should be made available to any person who requests for it except where its disclosure would offend democratic principles. The information which is available to the majority who are at the helm of affairs must be made available to the minority for constructive criticisms. The people directly or indirectly appoint public officers to be in leadership positions and these public officers are required to account to them. The President, Vice-President and Cabinet are therefore accountable to the people whether or not the person requiring for accounts is a political sympathizer.

It is noteworthy that the right to information is not limited to public officials or institutions only. The right to information is also applicable to a private organization or institution which receives public resources or provides a public function and has in its possession, control or custody information relating to the performance of a public function except specifically exempted by law from disclosure[[2]](#footnote-2).

Some instances are discussed as follows. The majority of hospitals built by the Christian Health Service and the Muslim Health Service are privately owned by the church which built them but are funded by the State to perform public function. They are therefore accountable to the citizenry with respect to the information on the services they deliver. Also, the Ghana Football Association and the Ghana Boxing Association are private organizations that receive public resources and fall within the private organizations who are bound to disclose information under article 21(1)(f) of the Constitution and the Right to Information Act, 2019 (Act 989). A person who seeks information under the Constitution of Ghana, 1992 and the Right to Information Act, 2019 (Act 989) shall demand for same unless its disclosure is exempted by law.

Access to information cannot be granted in respect of matters or materials which are in the custody or possession or control of a private organization which does not provide a public function or does not receive public resources under the Right to Information Act, 2019 (Act 989). The reason is that such private organizations are not accountable to the people as they neither provide a public function or receive public resources.

A person who holds public office, a private organization or private establishment that receives funding from the State or a public agency has the duty to account to the citizenry because the funding given to them is from national coffers and the citizens are required to know how their monies are invested.

The right to information is a fundamental human right. Thus, when information is requested from either a public institution or a private body which performs public functions in accordance with law, the request must be honoured unless the information is exempted by law. These exemptions under right to information must accord with democratic principles such as citizens participation in governance, equality before the law, political tolerance, transparency and accountability of government and public bodies, the rule of law, curbing abuse of power in government and by public office holders, and finally, an independent electoral commission that will organize free and fair elections to ensure that the choice of the majority of the people are respected.

The above principles of democracy hold public institutions and private organizations accountable for providing information relating to their offices unless expressly exempted by law. The leaders of a country must inform the people to ensure that they are abreast of whatever goes on in the country particularly political, economic, social and cultural objectives of the country. In doing so, they are accountable to the people. Transparency promotes accountable governments and a government which fails to deliver on its mandate or acts contrary to its mandate may be called upon to explain after the people obtain the required information from the appropriate quarters. I submit that any limitations placed on access to information not made in accordance with the Constitution or democratic principles must be declared void to the extent that it will deny the people their right to information which is a basic human right.

# HISTORY AND DEVELOPMENT OF THE RIGHT TO INFORMATION IN GHANA

The right to information was first discussed in 1946 and passed into Resolution by the United Nations General Assembly as Resolution 59(1). It provides thus:

*“Freedom to information is a fundamental right and it is the touchstone of all the freedoms to which the United Nations is consecrated. Freedom of information implies the rights to gather, transmit and publish news anywhere without fetters. As such it is an essential factor in any serious effort to promote the peace and progress of the world.”*

The resolution was not interested in whether the information would be admissible in court or otherwise, rather it is aimed at promoting free flow of information for the consumption of the people. The question of admissibility may arise when the information is to be used in court and not for informational purpose for which the resolution was passed.

The Universal Declaration of Human Rights was the first soft international instrument which introduced the right to seek information as a fundamental human right. The Instrument made the right to access information an integral part of the right to freedom of opinion and expression. Article 19 of the Instrument provides as follows:

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.[[3]](#footnote-3)”*

From the article stated above, a person has an inherent right to seek and obtain information from the Executive, Legislature, Judiciary and public institutions to enable that person to express an opinion on matters relevant to the State unless it is exempted in accordance with democratic principles. A person who seeks and receives information from public institutions may inform and educate the people through the media.

Notwithstanding the provision on the right to access information provided by the Universal Declaration of Human Rights, the 1957 and 1960 Constitutions of Ghana did not have any specific provisions on the right to information and there was no intention to pass an Act of Parliament to define areas where access could be gained and the exemptions. However, in those regimes the use of other forms of access to information was prevalent. These included the access to information through the coercive powers of the State through the security agencies and other identifiable bodies, information illegally obtained by private persons, and confession statements by some of the security agencies.

The 1960 Republican Constitution of Ghana did not have any provision on right to information. Section 13 of the Constitution which was expected to be a fundamental human rights provision was construed by the Court as a Bill of Right and the President was not legally bound by it[[4]](#footnote-4). The combined effect of the Preventive Detention Act, 1958 (PDA) and the Deportation Act of 1957 was that political activities were suppressed, and the enjoyment of basic human rights was equally eroded. The preamble to the 1969 Constitution provided that the chiefs and people of Ghana having experienced the regime of tyranny resolved never to allow themselves to be subjected to a like regime. The 1964 amendment to the Constitution which amended article 1 by the addition of 1A (1) by Act 224 to make Ghana a one National Party and a Socialist Country in substance prohibited right to information which did not exist in socialist countries. The amendment to the Constitution provided thus:

*“1(1) In conformity with the interests, welfare and aspirations of the People, and in order to develop the organizational initiative and political activity of the People, there shall be one National Party which shall be the vanguard of the People in their struggle to build a socialist society and which shall be the leading core of all organizations of the People.*”

The same amendment made by Act 244 to article 45(3) specifically gave power to the President to remove judges from office any time for reasons which appeared to him to be sufficient.

As a fundamental human right, the right to information was first introduced in the 1969 Constitution, and subsequently provided for in the 1979 Constitution and the 1992 Constitution of Ghana[[5]](#footnote-5). Upon the coming into force of the 1969 Constitution, even though the right to information was considered a general fundamental human right under the Universal Declaration of Human Rights, there was no statute to provide for its parameters as pertains under the Constitution of Ghana, 1992. This is presumably because of the intermittent coups d’état. The 1969 Constitution which came into force on 22nd September, 1969 was suspended on 13th January, 1972 by the National Redemption Council. The 1979 Constitution which came into force on 24th September, 1979 was also suspended by the Provisional National Defence Council on 31st December, 1981.

The right to information which is a fundamental human right provision in some democratic societies did not have a place in all the military regimes in Ghana, thus from National Liberation Council, National Redemption Council, Supreme Military Council, Supreme Military Council II, Armed Forces Revolutionary Council and Provisional National Defence Council but the other modes used to access information by security agencies and other public officers and information illegally obtained were predominant. One prominent feature of military regimes was dictatorship and in a dictatorial regime, an opportunity would not be given to the people to access information on the decisions of the government most of which were taken arbitrarily or capriciously. Thus, under these regimes, intolerance was the order of the day.

# THE RIGHT TO INFORMATION UNDER THE 1992 CONSTITUTION

The right to information is a fundamental human right under the 1992 Constitution. Article 21(1)(f) of the Constitution of Ghana, 1992, provides that:

*“(1) All persons shall have the right to-*

*(f) information, subject to such qualifications and laws as are necessary in a democratic society.”*

As a fundamental human right, it is an inalienable right which must be respected by the Executive, Legislature, Judiciary, all other organs of government as well as private persons including natural and artificial persons without discrimination. It is also enforceable by the courts[[6]](#footnote-6).The only fetter placed on a person from obtaining some information from a public officer is where the information cannot be disclosed on grounds of law.

Public office holders who are responsible for public institutions are required to update the people of Ghana on accurate information about the nature of their work and any information which ought to be disclosed in a democratic dispensation. People’s access to information in a democratic regime is a right to enable them to participate fully in the government by holding public institutions and officers accountable unless the disclosure of that information is expressly forbidden by law.

Thus, the Constitution provides for the grounds under which official documents shall not be produced, and the grounds under which information shall not be disclosed considering such qualifications and laws that are necessary in democratic governance.

The author submits that in the case of the production of the contents of official document in court, upon resolution of the issue by the Supreme Court, the matter ends and the court in whose proceedings that issue came up shall be bound by it. The question as to whether the contents of a document or its production or disclosure will be prejudicial to the security of the State or injurious to public interest is a term-of-art and shall be determined on a case-by-case basis.

The Constitution forbids the disclosure of official documents whose contents if disclosed or produced in court will be prejudicial to the security of the State or will be injurious to public interest without any exceptions. To forestall any issue with regards to which Court can determine when an order of the production of official documents can be made in court, the Constitution confers exclusive original jurisdiction on the Supreme Court. Under the circumstances where a matter is pending before any court apart from the Supreme Court and the question as to whether the content of an official document should be disclosed or not, the proceedings in that court shall be suspended and the Supreme Court shall determine whether the document should be produced or not[[7]](#footnote-7).

Furthermore, the Constitution expressly provides for the disclosure of information which is necessary in democratic regimes except where there are such qualifications or laws forbid their disclosure[[8]](#footnote-8). The exemptions envisaged by article 21(1) (f) of the Constitution have been provided by Parliament under the Right to Information Act, 2019 (Act 989). The author will subsequently discuss the RTI Act in detail and the procedure for obtaining information under the Act. However, before this discussion, the author will discuss the general modes of obtaining information.

# ACCESS TO INFORMATION: MODES OF ACCESSING INFORMATION

There are different modes of accessing information. However, we shall focus on the four most used ones in the country. These modes are:

1. Access through the exercise of the right to information under the Constitution of Ghana, 1992 and the Right to Information Act, 2019 (Act 989).
2. Access through the exercise of statutory powers conferred on state institutions to access information.
3. Access through communication service providers.
4. Access through illegal or unlawful means.

## **Access through the Right to Information**

The first mode of accessing information deals with the lawful exercise of the right to information under the Constitution of Ghana, 1992 and the Right to Information Act, 2019 (Act 989). This is the acceptable mode by which a person in a democratic regime may access information from a public institution or a private organization which performs a public function or is funded by the State, in the exercise of that person’s fundamental human rights under article 21(1)(f) of the Constitution of Ghana, 1992. The procedure for such access will be discussed subsequently.

## **Access by State Agencies**

The second mode of accessing information deals with access by state agencies. Here, a law is enacted to empower the police or any other agency of the government to use coercive powers of the State to arrest, search and obtain information from persons who are suspected to have committed a criminal offence or about to commit an offence. Any information obtainable under this mode may be acquired with or without an order of a court of competent jurisdiction. For example, a senior police officer of the rank of Assistant Superintendent and above is clothed with authority by law to conduct a search without a warrant and may also authorize any police officer to enter a shop, warehouse, ship, boat and vessel to search and take away any property where he has reasonable cause to believe that it is a stolen property or has been dishonestly received[[9]](#footnote-9).

Also, a search warrant may be issued by a court of competent jurisdiction upon an application made to it ex-parte to order a law enforcement body such as a police officer, the Special Prosecutor or any officer authorized by him or the Executive Director of the Economic and Organized Crime Office and his authorized officers to enter into any private house or place to search and seize intangibles and tangibles including computers, mobile phones, photographs, equipment or document with or without the presence their owner to prevent their destruction or from being used to commit crime[[10]](#footnote-10).

In addition to search a warrant, searches may be made by some security agencies and authorized officers in emergency situations to access information through seizure[[11]](#footnote-11). The Special Prosecutor or its authorized officers may apply to the court ex-parte to grant a warrant to intercept, detain or open an article being sent by post or courier, or intercept communication or secretly listen to communication and record or install a device used to intercept messages and retain same to aid in the investigation or prosecution of corruption and corruption related offences under the Criminal Offences Act, 1960 (Act 30).

The Police and other public officers clothed with power to search and obtain information may exercise the right to obtain information in consonance with law. A police officer of the rank of Assistant Superintendent and above may conduct a search without warrant or may authorise a non-commission officer to enter unto any place where he has reasonable grounds to believe that a property which has been stolen or dishonestly received is being kept. The Police officer shall seize any document or information or the stolen item at the place where the search was conducted.[[12]](#footnote-12)

The Attorney-General may authorise a person who is within or outside the jurisdiction to furnish the Attorney-General with information from a person who is detected to have committed an offence against the State or the action of that person is prejudicial to the Republic, in relation with the Republic to other States, or the security of the Republic to produce information in the custody or possession of that person including books, accounts and documents and the Attorney-General or the person acting on the directions of the Attorney-General to take copies of same. A person who fails to comply with the directives of the Attorney-General and refuses to produce the information requested for or makes a statement which is false or reckless to prevent its production commits an offence of misdemeanour[[13]](#footnote-13). The purpose of this provision is to give power to the Attorney-General to obtain information from persons whose acts are prejudicial to the security of the State and where the person fails to provide the said information, he commits an offence.

The Special Prosecutor has the powers of the Police to conduct a search with or without a warrant and enter unto any premises to conduct a search and seize any property, document that will aid him to prosecute a case. He may also apply to the High Court or Circuit Court to issue a warrant for a premises to be searched and documents and books to be seized for inspection or for copies to be taken.[[14]](#footnote-14)

The powers given to the police and other bodies with investigative and prosecutorial powers to obtain information with or without a warrant are some of the recognised modes of interfering with the right of a person to privacy of their home and communication in a democratic society to prevent the commission of crime, disorder and morality in accordance with article 18 of the Constitution of Ghana, 1992.

## **Access through Communication Service Providers**

The third mode of accessing information also through lawful means deals with access by the state through communication service providers. Here, a law empowers a body such as a communication service provider to intercept and retain in a decrypted form any information that passes through its medium and make them accessible upon an order of a court of competent jurisdiction.

The computer age and its associated problems have compelled States to enact laws to access information on subscribers to the telecommunication industries without the consent of the subscriber concerned. However, retention is made in accordance with law in a free and democratic society.

The Cybersecurity Authority was established under the Cybersecurity Act, 2020 (Act 1038) to, inter alia, control, regulate and create awareness of cybersecurity activities in the country. It was made to interfere with the privacy of a person but aimed at preventing the commission of crime, disorder immoral conduct and protect public safety, reputation of a person, information given as confidential and interest of children[[15]](#footnote-15). The Cybersecurity Act, 2020 (Act 1038) mandates domestic service providers such as Scancom, Airtel and Vodafone to install an interception capability to enable them to retain any information on subscriber, traffic data and content data for at least six years, twelve months and twelve months respectively.[[16]](#footnote-16) Any communication on any of the telecommunication networks is to be retained without the consent of the subscriber and may be disclosed upon an application made to the High Court for that purpose. A person or body who intercepts traffic data or content data or retrieves subscriber information commits an offence and in addition may be sued for defamation where the information disclosed contrary to law affects the reputation of the subscriber or any other person.[[17]](#footnote-17)

The High Court upon an application by a person may order a service provider to produce information on a subscriber, traffic content, or data content it has intercepted within a period of not less than six years, twelve months, and twelve months respectively. The period for retention of data by a service provider may be extended by the High Court upon an application made to it ex parte by an investigative officer or senior investigative officer authorized by a designated officer under the Act.[[18]](#footnote-18)

The equipment used for the interception of the information shall not make it possible for a foreign country access through installation, management, monitoring or for the purposes of maintenance[[19]](#footnote-19). The equipment should be capable to decrypt a telecommunication message that has been intercepted in accordance with the Act[[20]](#footnote-20).

The High Court may upon an application made to it for the purposes of protection of national security; children; public safety; the prevention or investigation of a disorder or crime; the protection of the reputation of a person or rights of an individual; prevention of disclosure of information received in confidence and any other valid ground to be determined by the Authority block, filter and take down illegal content including phone numbers.[[21]](#footnote-21)

The members of the Authority and its officers are immune from civil action in respect of actions taken by them or omitted to take in good faith in the performance of the functions of the Authority[[22]](#footnote-22).

There are other provisions on access to information in the Electronic Communications Act, 2008 (Act 775), the Electronic Transactions Act, 2008 (Act 772), the Banks and Specialized Deposit-Taking Institutions Act , 2016 ( Act 930) , Economic and Organized Crime Office Act, 2010 (Act 804), Mutual Legal Assistance Act, 2010 (Act 807), Data Protection Act, 2012 (Act 843) and Payment Systems and Services Act, 2019 (Act 987) and the author shall not discuss them as they collectively have the same effect as the Cybersecurity Act, 2020 (Act 1038). Access to information under the above enactments gives power to particular groups of persons including the police, Bank of Ghana, service providers to interfere with information of others to prevent crime, immorality, rights and freedoms of others and disorder and, further promote economic well- being of the people, health and morals to make the country safe and attractive as pertains in other democratic societies.

I submit that the power given to service providers to intercept all communications on their network are susceptible to abuse particularly where the persons involved are perceived to be opponents of the government in power. Furthermore, it is quite easy to entrap persons who may not have an intention to commit a crime but may be set up for political expediency. The High Court must not grant any application to intercept or to disclose a retained information or block, filter and take down illegal contents and phone numbers on a mere suspicion unless it is satisfied that it is expedient to grant same as are necessary in a democratic dispensation.

## **Access through Illegal Means**

The fourth mode involveshow individuals and state agencies access information through illegal means. Such information may be referred to as illegally obtained information. Under this mode, information may be obtained from a person without the consent of the person or body concerned and may take the form of secret recording, disclosure of confidential or privilege information. There are three conflicting positions on the admissibility of illegally obtained information and the disagreement is on the mode of accessing same.

The first position as pertains in other jurisdictions including the United State of America is that illegally obtained information is to be prohibited and such information should not be admissible by a court of law.

The second position which is practised in other jurisdictions including England is that illegally obtained information is as good as any other information because if legitimate tools are employed, there are some information which cannot be accessed. The common law supports illegally obtained information by the reason that it is the information which is material and not the process by which it was obtained. Thus, the position in these jurisdictions is that where some information is required from a person and a legitimate method cannot be used to access it, any possible method that could be used to access it ought to be used even though it may be obtained in contravention of that person’s fundamental human rights. An example is where persons are conspiring to commit crime in Ghana and most of them are outside the jurisdiction. In such a scenario, police investigation into it may not succeed unless they use illegal method such as secret recording or interfering with their telephone discussions and recording same or implanting a person among them to solicit for information through secret recording. It would be prudent to embark upon that method to prevent the commission of a crime.

The third school of thought which is currently practiced in Ghana is that illegally obtained information that seeks to promote the economic well-being of the people or to prevent the commission of crime, disorder or morality is valid and should be encouraged. Furthermore, it is admissible in court. On the other hand, information illegally obtained to be used in civil proceedings is not be admissible despite its relevance. Information obtained in contravention of article 18 (2) of the Constitution, 1992 which is on interference with the privacy of a person to his home or communication may be used for any other purpose including naming and shaming but shall not be used in court.

The misleading fact about illegally obtained information is that it is associated with illegally obtained evidence which is a means of proving a case in court. However, illegally obtained information may be relevant if they help combat crime, illegality, immorality and expose the persons involved to public ridicule. Where illegally obtained information is obtained for public consumption, a defamation suit against the person who obtained it or the journalist who published it is unlikely to succeed on grounds of justification. Illegally obtained information is as good as legally obtained information for the benefit of the public as most of such information is obtained for the benefit of the people and not necessarily to be used in court where their admissibility ought to be decided by the courts on a case-by-case basis.

The present position on illegally obtained information is that it is permitted in a democratic society where the information was obtained for public safety, economic well-being of the people, for the protection of health or morals, or for the prevention of crime and disorder and may be admissible in criminal proceedings against the person from whom the evidence is obtained[[23]](#footnote-23). The law is also settled that illegally obtained evidence may be used for whatever purpose for which it was acquired but shall generally not be admissible in court in civil proceedings.

This principle was upheld in the case of *Cubagee v. Asare & Others.[[24]](#footnote-24)* In this case, the Plaintiff secretly recorded a superintendent minister in Sunyani over ownership to a land and when the matter was pending for hearing the superintendent minister filed a statement contrary to what he had previously stated and captured on tape. It was held to be inadmissible because it was a civil matter, and the secret recordings violated the fundamental human rights of the superintendent minister.[[25]](#footnote-25) The Supreme Court stated that the information was not admissible having failed the tests provided in the Constitution.

There is no definitive position that illegally obtained evidence article 18(2) of the Constitution is admissible in criminal proceedings only and Cubage v Asare, supra, did not say so. Illegally obtained evidence may be admissible under the exceptions provided by the Constitution including for the protection of health or morals prevention of crime or disorder and it is immaterial whether the exceptions falls within civil or criminal proceedings. Where a married person is recorded when having sexual intercourse with another person, the information would not be limited for public consumption only but may also be admitted in evidence under article 18(2) on grounds for the protection of morals.

# ACCESS TO INFORMATION UNDER THE RTI ACT

Under this section, the author discusses access to information under the RTI Act. The Right to Information Act, 2019 (Act 989) was enacted pursuant to article 21(1) (f) of the Constitution to enforce the constitutional right of the persons to access information from public institutions, private institutions and organizations that receive public resources to perform public functions to make information which is accurate and authentic available to the people and the grounds upon which information may not be disclosed.

The Right to Information Act, 2019 (Act 989) further provides for the procedure to obtain information not exempted by law and a right to go to the High Court subject to the exclusive jurisdiction of the Supreme Court under article 135 of the Constitution to determine whether an information should be disclosed or not within the limits of the law.

The Right to Information Act, 2019 (Act 989) has established the Right to Information Commission to promote, protect, monitor and enforce the right to information under the Constitution of Ghana, 1992.

The exemptions provided by law under the RTI Act include in the case of the President and Vice- President any information that has been submitted to anyone of them or both for consideration or where it relates to recommendation, advice, opinion or deliberation, consultation given or minutes received by them which content is likely to be prejudicial to national security or will undermine deliberative process by either the President or Vice President or both of them. On the other hand, any information from the President or Vice- President which is made up of factual or statistical data cannot be exempted where it is in the custody of the President or Vice- President[[26]](#footnote-26).

Any information relating to Cabinet or a committee or a sub- committee of Cabinet containing factual or statistical data is not exempted from disclosure. The areas of information relating to Cabinet exempted under the Act which are necessary in democratic governance include: any information prepared to be submitted to Cabinet or has been submitted before Cabinet for consideration; or an information dealt with by Cabinet but has not been released to the public or not published by Cabinet; and if a disclosure is made and it would disclose information relating to opinion, advice, recommendation or deliberation, consultation or minutes which is likely to prejudice national security; prejudice effective formulation or development of government policy; undermine the discussion of the matter before Cabinet; or where the policy is premature and its disclosure would affect its success. However, Cabinet may grant access to information before it even though is exempted by the Act[[27]](#footnote-27).

Access to information relating to law enforcement and public safety is granted subject to exemptions. Some of the exemptions are; where the disclosure of the information interferes with the prevention, detection or curtailment of a contravention of an enactment; or prejudices an investigation or possible contravention of an enactment; a technique of investigation or procedure by a law enforcement is to be disclosed; a confidential source of information or a confidential information source in relation to a law enforcement would be disclosed; or to obstruct the prosecution of an offence. The other areas exempted include where the disclosure of the information will endanger the life and physical safety of a person in criminal investigations or proceedings; affect a fair trial or an impartial adjudication of a matter; or will disclose an information on a police officer or person who was authorized to confiscate the property of a person under an enactment; or will facilitate a person in lawful custody to escape; or where it will prejudice persons in lawful detention or the security of a person in prison; or will interfere with the lawful maintenance or enforcement of a lawful method made to protect public safety of the public; or will prejudice a system or procedure meant to protect a witness or persons or property required to be protected under law[[28]](#footnote-28).

Privileged information including lawyer and client professional relationship; communication between a married couple who are married under any form of marriage; pastor and a congregant including fetish priests, Mohammedan priests, priest and others who lead religious faiths are exempted from disclosure; doctor and patient relationship which discloses confidential communication between them or any medical expert in relation to medical diagnosis or treatment of the patient and, other special relationship between persons which have been exempted by Evidence Act, 1975 (NRCD 323) have been exempted from disclosure under the Act unless the person who is entitled to privilege under law waives it[[29]](#footnote-29).

The disclosure of personal matters including the person’s health condition, which is unreasonable whether the person is living or dead; economic and other interests and economic information of third parties that will disclose their trade secrets, research, financial or labour supplied in confidence; information affecting international relations; security of the State; internal working information of public institutions, parliamentary privilege, fair trial, contempt of court; and disclosure for the protection of public interest have been exempted from disclosure with few exceptions[[30]](#footnote-30).

## **Procedure for Acquiring Information Under the RTI Act**

A body which is required under the Right to Information Act, 2019 (Act 989) to disclose information shall disclose up-to-date accurate and authentic information in a manual and in addition establish an information unit to be headed by an information officer who shall promote access to information. The bodies which were in existence at the time the Act came into force on 21st May, 2019 were given twelve months to come out with a manual and which shall be reviewed every twelve months to update. The public bodies which were established after the Act had come into force were to provide manual and update it every twelve months.

The manual shall contain a list of departments or agencies under the public body specifying their mandates; list of types of information prepared by them or in their custody; control or possession; types of information that could be accessed or inspected from the body and the appropriate fees payable; contact details of the information officer or an officer designated to perform that duty for or on behalf of the body; the mode by which a person may contact the public body including its postal address, e-mail, fax, and telephone numbers; and finally provide facility to enable a member of the public who has his personal records with the public body to amend same to reflect his true and accurate records[[31]](#footnote-31).

The information officer appointed by the public body to deal with an application by a person who wants to access information shall be the interface between the public and the public body concerned. An applicant who seeks to access some information from a body covered by the Act shall submit an application to the public body by specifying the information he is seeking. A person who applies for information under the Act is not required to give reasons, however, where the information is urgently required, the applicant shall state reasons why it is urgent and should be dealt with by the body[[32]](#footnote-32). The applicant in the application shall state the name of the applicant and an identification, provide adequate description of the information required, the manner and form of the access required, the address to which the information is to be submitted, the applicant shall sign and pay the appropriate fees.[[33]](#footnote-33)

An applicant who is illiterate or cannot write as a result of disability may contact the information officer of the body concerned, give an oral statement to be reduced into writing by the information officer including his name and identification, adequate description of the information, form or manner of the access required, and sign or thumbprint with a jurat to the effect that the contents of the application has been read over to him in a language he understands and that they approved of its content. A blind person may also submit his application in Braille.[[34]](#footnote-34)

The information Officer of a body which receives an application and knows that the information being sought is with a different body, shall refer it or transfer same within two days from the date of receipt to the appropriate public body. Where the information being accessed is with another public body, the information officer shall within ten days on receipt of same make the necessary enquiry to that effect, transfer the application to that body, and notify the applicant accordingly. The information officer shall issue a notice stating the date of the transfer, the public body to which the transfer has been made, and the reason for the transfer. The public body to which the transfer is made shall acknowledge receipt of same[[35]](#footnote-35).

A public body which receives information and knows that the information is readily available but, in the custody, or care or possession of another public body shall direct the application to the appropriate body and notify it about the request by the applicant.[[36]](#footnote-36)

A public body to which an application has been made to by an applicant to access information may defer the request where the information is required to be published within ninety days from the date of the application or the transfer of the application or has been prepared to be submitted to any person shall be deferred, and the information officer shall within three days write to the applicant to inform him about the deferment, reasons for the deferment, and the likely period of the deferment[[37]](#footnote-37).

A public body on receipt of the application shall within fourteen days give its decision as to whether access should be given or not, and whether an access could be granted only to part of same and the reasons for it. Where access is to be given, the form or manner of it shall be stated, and where part is exempted the part not exempted shall be given, and where it is deferred, the day on which the information is to be submitted or published shall be stated together with the fees payable. The information officer shall give reasons when he decides to refuse an application to grant access to information. In a case where no response is made to an application received within fourteen days, the application shall be deemed to have been refused except the application has been transferred to another public in accordance with law.

On the other hand, where the application relates to information which seeks to safeguard the life or liberty of a person, the information officer shall give a ruling on it within forty-eight hours but where the information officer is of the considered opinion that it does not safeguard the liberty or life of the applicant and should be considered as any regular application, he shall inform the applicant that his decision on it shall be rendered within fourteen days[[38]](#footnote-38).

A public institution may refuse to process an information where the prescribed processing fee to reproduce the information within the time given in the notice has not been paid and the applicant is duly notified. A decision by the information officer not to process the application for failing to pay the prescribed fee is subject to appeal or review[[39]](#footnote-39).

A public institution may refuse to grant access to information where the application is manifestly frivolous or vexatious or it has been exempted under sections 5-17 of the Act and shall inform the applicant about the refusal[[40]](#footnote-40).

A person dissatisfied with the decision of the information officer may submit an application for internal review to the head of that public institution within thirty days of the decision of the information officer. An information officer may grant an extension of time to the applicant who fails to file internal review within thirty days. The information officer shall within five days on receipt of the internal review submit same to the head of the institution[[41]](#footnote-41). The head of the institution shall on receipt of same give its decision within fifteen days and notify the applicant. In a case where the head of the institution refused to grant access, it would be deemed to have confirmed the decision of the information officer[[42]](#footnote-42).

The High Court’s judicial review jurisdiction may be invoked within twenty-one days after an applicant’s application has been refused by a public institution on grounds that its disclosure will be prejudicial to the security of the State or injurious to public interest or for any other reason. The High Court shall hear the judicial review application in camera and make appropriate orders as it may deem fit. During the hearing of the judicial review application the High Court may require the relevant information under consideration to be brought for examination and scrutiny; to see the original document in issue and may summon and take evidence on oath from a person who may have information on the relevant document[[43]](#footnote-43).

The speaker argues that the RTI Act seems to suggest that the decision of the High Court shall be final as it fails to prescribe an appellate jurisdiction. This would be declared unconstitutional because Parliament cannot by an Act of Parliament make the High Court the final appellate court on a matter. The Constitution may make a Court other than the Supreme Court a final appellate court and Parliament cannot by an Act oust the appellate jurisdiction for the Court of Appeal and the Supreme Court[[44]](#footnote-44).

The Act has also established the Right to Information Commission as an independent body to promote, monitor, protect, and enforce the right to information under article 21(1)(f) of the Constitution of Ghana, 1992 and may sanction public institutions for failing to comply with the Act. The Commission is to ensure the production of up-to-date manuals, designating a public officer as an information officer, ensuring that public institutions response to applications for access to information by applicants, and may impose penalties for non-compliance of any provision in the Act.[[45]](#footnote-45)

## **Challenges with the RTI Law**

The fees to be paid by an applicant who applies to access information for public consumption is unreasonable and the provision of payment of fees should be repealed. A person who legitimately requires information but cannot pay for the prescribed fee would be denied of his fundamental right to obtain information. In this democratic regime, information should not be sold by the public to a person who requires it for educational or other purposes.

The judicial review applications brought against the decision of the information officer or head of an institution should not attract the same filing fees which are paid in judicial review applications as it may deter persons with legitimate interest from pursuing such applications for the benefit of the public. Furthermore, cost should not be awarded in those cases against an appellant where the application for judicial review is refused by reason of its fundamental human rights nature.

The education on the Right to Information Act, 2019 (Act 989) should be promoted to encourage people to make use of the Act to deepen democracy.

# JOURNALISM, THE JUDICIARY, AND ACCESS TO INFORMATION

The effective functioning of the judiciary and journalism are both essential to democracies. However, their roles are different and may come into conflict. Journalists, including broadcast journalists, editorial journalists and photo/ television journalists, inform and educate the people on matters of public, economic, political, social and cultural interests through print, electronic media and photography. The courts on the other hand, resolve disputes and legalities in accordance with law. The courts concern themselves with issues of legal relevance and admissibility of information, but the journalists are not strictly bound by such considerations.

## **Journalism and Contempt of Court**

Journalists are prohibited from reporting from court and making comments that will prejudice the fair trial of a person before the court, or quasi- judicial body or that may constitute contempt. These prohibitions come into direct conflict with under cover journalism which seeks, either through entrapment or secret recording, to expose the rot and wrongs in a country or an organization.

There is no precise definition for contempt of court, but it is explained through its classification. The two types of contempt are civil and criminal contempt. A civil contempt is committed by a person where that person wilfully disobeys an order of a court of competent jurisdiction which directs him to do an act or to refrain from doing an act otherwise than payment of money[[46]](#footnote-46).

Criminal contempt is committed by a person who does anything which: scandalizes the court or tends to scandalize it; insults the court or a judge in a pending proceeding; lowers or tends to lower the authority of the court; prejudices or tends to prejudice or interferes or tends to interfere with a pending judicial proceeding; or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner. Criminal contempt may be committed in the face of the record or outside the court. Criminal contempt is committed in the face of the court where any of the above forbidden conduct is made within the precincts of the court or through any virtual means that comes to the notice of the court. Criminal contempt is committed outside the view or hearing of the court where it cannot be ascertained by the court through video or virtual means[[47]](#footnote-47).

The settled position is that truth is not a defence in criminal contempt unlike in defamation where the defence of justification, if proved, is a valid defence.[[48]](#footnote-48) In the Ghanaian case of Republic v Mensa Bonsu, Ex parte Attorney- General,[[49]](#footnote-49) where the publication made about the judge in the case may have been true but was published to scandalize the court, the accused was convicted for contempt.

I wish to state that in Ghana, contempt of court is found in Article 19 of the Constitution of Ghana 1992 which is an entrenched provision. Since the article 19 is entrenched and cannot be easily amended, journalists and court users must be circumspect in their utterances to avoid being cited for contempt.

## **Open court and closed court**

There are two schools of thought as to whether proceedings in court could be published by journalists through video, broadcast, print or electronic or there should be a closed court. In Ghana, apart from the two Presidential Elections Dispute which were reported live, the public has not had the opportunity to observe court proceedings through the media. The Constitution provides that unless otherwise provided in it or otherwise by a court, the proceedings of the court shall be heard in the court (public) except those to be heard in chambers on grounds of public morality, public safety or public order.[[50]](#footnote-50)

Some court proceedings which are also heard in private are as follows.

First, family tribunals and juvenile courts shall sit with the members and officers of the courts, parties and their lawyers, witnesses and any person directly concerned with the case, social welfare and probation officers[[51]](#footnote-51). A person who publishes an information in a matter before the family tribunal or juvenile court that may lead to the identification of a child without the permission of the court commits a criminal offence.[[52]](#footnote-52)

Second, matrimonial proceedings may be heard in private and the court may exclude all other persons from attending with the exception of the officers of the court, the parties, lawyers, witnesses where the court is satisfied that the interests of the parties or children of the household demands. Matrimonial causes or matters shall be heard in public unless the court directs otherwise in the interests of the parties or the children of the household[[53]](#footnote-53). The author argues that matrimonial matters may be heard in public where the pleadings disclose bad conduct of one of the parties which contributed immensely to the dissolution of the marriage to forewarn potential partners who may fall into their trap.

Also, journalists must not seek access to any information which infringes or violates parliamentary privileges[[54]](#footnote-54). The author submits that journalists may publish any information from Parliament unless it will amount to contempt of Parliament or a violation of parliamentary privilege[[55]](#footnote-55).

## **Information on court proceedings**

A person does not have the right to inspect or access the record of evidence recorded in court or obtain court’s notes for whatever purposes unless it is expressly provided by the Constitution, rule of a court or any other enactment. In practice, proceedings are obtained from court through an application to the Registrar of the Court. A person who is affected by a court order or a judgment and seeking to procure a copy shall make an application to the registrar of the court for a copy upon payment of the appropriate fees unless the court for a special reason orders it to be issued free of charge.[[56]](#footnote-56)

The Courts Act, 1993 (Act 459) which is a specific enactment to deal with matters relating to the courts and the right to obtain court’s recordings, evidence, order or judgment is in conflict with the Right to Information Act, 2019 (Act 989) which permits free access to information except expressly is forbidden by law. The conflict between the two enactments can be reconciled through the proper invocation of *generalia specialibus non derogant*, which literally means that where two enactments of the same rank are in conflict and one is a specific enactment and the other is a general enactment, the specific enactment overrides the general enactment.

Therefore, a person seeking to obtain evidence from the court, court’s notes, proceedings, judgment or order of a court shall comply with section 70 of the Courts Act, 1993 (Act 459) and not go under the Right to Information Act, 2019 (Act 459). The Courts Act, Act 459 encourages a closed court as opposed to an open court which is the modern trend in obtaining information from the court. Section 70 of the Courts Act, Act 459 ought to be amended to permit journalists and persons interested in proceedings of a court, court’s notes, judgments and orders which do not affect them to obtain same except expressly forbidden by law. Judgments and orders of the courts including matrimonial are published in the law reports without any exceptions and other information from the courts should also be made available upon an application to avoid inaccurate reporting of court proceedings.

## **International best practices**

Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) provides for hearing of cases in public unless the court excludes the press from the trial or part of the trial for reasons of morals, public order, national security or the private lives of the parties but criminal judgments shall be delivered in public except where a juvenile has interest in the matter, or the proceedings involved matrimonial disputes or the guardianship of children. The same provision is repeated in article 6(1) of the European Court of Human Rights and it also promotes open justice in criminal trials and judgments.

In the United Kingdom, the law is now settled that judges sitting on cases are on trial and open justice allows the public to access the judges who are accountable to them. In the case of *R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs:[[57]](#footnote-57)*

“*justice must be done between the parties. The public must be able to enter any court to see that justice is being done in that court, by a tribunal conscientiously doing its best to do justice according to law. For that reason, every judge sitting on judgment is on trial... without the commitment of an independent media, the operation of the principle of open justice would be irremediably diminished*.”

The author argues that open justice should be introduced to allow journalists to broadcast live proceedings to educate the people on the procedure in the courts. The 2012 Presidential Elections which saw live broadcast of the proceedings made a lot of people develop an interestin law and should be encouraged.

Restrictions are imposed on a journalist who take notes from the court to report to the public but he is of the considered opinion that those restrictions should be lifted as journalists are supposed to educate and inform people about some cases in the courts which are of public or national interests including criminal and constitutional cases.

South Africa set the pace in the case of NDPP v Media 24 Limited and Others and HC Van Breda and Media 24 Limited and Others[[58]](#footnote-58), where the Supreme Court of Appeal affirming the decision of the High Court which allowed video recording of proceedings held thus:

*“... pencils and sketch pads and now considered anachronistic. There is no restriction regarding filming outside the court. Nor is there any restriction regarding attending in court and taking notes, drawing pictures or upon accessing pictures. The restriction relate to the means of gathering the information and the place where it may be gathered. There simply can be no logic in a court permitting journalists to utilize the reporting techniques of the print media but not permitting a television journalist to utilize his or her technology and method of communication, being the broadcasting and recording of proceedings, despite the fact that live camera footage will be more accurate than a reporter’s after the fact summary.”*

The South African Court permitted the television journalists to set up their cameras fifteen minutes before the hearing of the case and to use stationary elected video cameras to be operated without human movement which would disturb the court proceedings. Prior to the delivery of the above-mentioned case, in 2009, the Supreme Court of Appeal issued a practice direction allowing full audio- visual broadcasting of its proceedings[[59]](#footnote-59). The Constitutional Court of South Africa has also issued a practice direction allowing full audio-visual broadcasting of its entire proceedings which are constitutional cases contained in the practice direction mentioned above.

The Federal Supreme Court of Canada has settled the issue of restrictions imposed on court reporting and held that the court must be opened for full coverage of its proceedings to afford persons who cannot physically attend court for obvious reasons including adequate space the opportunity to observe the judge’s temperament, the witnesses called, the evidence adduced and how they were discredited and the arguments put up by the parties.[[60]](#footnote-60)

The United States in the Supreme Court case of Richmond Newspapers v Virginia[[61]](#footnote-61) held that the First and Fourteenth Amendments permit unrestricted freedom of speech and of the press and there is a presumption of openness in all criminal proceedings and print and electronic media should be given unfettered access to the court to promote accurate recording to be accessed by the public.

The United Kingdom Supreme Court in the case of Al Ravi and Others v The Security Service and Others[[62]](#footnote-62) authoritatively held that open justice is a common law fundamental human rights principle and not a mere procedural rule. Lord Diplock in the case of Attorney-General v Leveller Magazine Ltd[[63]](#footnote-63) held that open justice is a requirement on the courts to promote accurate publicity of their proceedings to a wider public and to build public confidence in the courts and at the same time prevent judicial arbitrariness by making judges accountable.

The present position in most jurisdictions is to promote open justice system to ensure fairness, accountability and transparency in adjudication. Journalists should be given the opportunity to educate people on proceedings in court where the law does not require closed hearing.

It is recommended that the Judicial Service Ghana must be funded to broadcast live all important constitutional, criminal, and human rights cases. Journalists should be given unfettered access to televised live proceedings from court, this will ensure that the information is disseminated without any distraction to the court process. This will promote the free flow of information and dissolve the myth about the courts and their proceedings which are owned by the public who appointed Judges and Magistrates as their trustees unless it will not be in the interest of public morality, public safety, or public order or otherwise stated by a court as provided by article 126(3) of the Constitution, 1992.

# LIMITATIONS TO ACCESS TO INFORMATION

## **Sexual Information**

There are limitations placed on access to pornographicimages of a child or any other person and has been criminalized unlike secret recordings of other matters or conduct which have not been criminalized and can be published despite their consequences. The law is that a person who takes or permits to be taken an indecent image or photograph of a child, or procures same for the purposes of publication of whatever kind including storing it on a computer commits an offence and shall be liable upon conviction to be sentenced to a minimum of five years and maximum of ten years.[[64]](#footnote-64)

A person who uses a computer on-line service, internet service, a local bulletin board service, or any electronic equipment capable of storing or transmitting information which deals with a child including luring, soliciting, seducing, grooming, enticing; or attempt or aid and abet any of the above acts for purposes of sexual abuse ; or any information that will disclose the identity of a child in connection with sexual activities including the production child’s telephone number, electronic mail address physical description or picture (cyber stalking of a child) commits an offence and upon conviction shall be liable to a term of not less than five years and not more than fifteen years.[[65]](#footnote-65) Sexual extortion has been criminalized and a person who threatens to distribute matters concerning private image or moving images of other person or a child engaged in sexually explicit conduct for whatever purposes, commits an offence and upon conviction shall be liable to a term of imprisonment of not less than ten years and more than twenty- five years.

It is also an offence for a person to intentionally distribute or cause another person to distribute intimate images or prohibited visual recordings of another person without the consent of that person where there was a reasonable expectation of privacy at the time of the creation of the image or visual recording commits an offence and upon conviction shall be liable to a minimum sentence of one year and not more than three years.[[66]](#footnote-66)

## **State Secrets Act**

It is also worth noting that some categories of information are classified as state secrets. Thus, under the State Secrets Act, 1962 (Act 101), the communication of such information is a criminal offence.[[67]](#footnote-67)

## **Plagiarism**

Persons are entitled to information for their use and for other purposes including education. However, they are to disclose their sources of information. Plagiarism is committed where a person copies from someone else’s academic work or ideas such as papers, webpages, books and articles as their own work and takes credit for it without acknowledging the source. Plagiarism is considered as fraud and amounts to academic dishonesty and a scarlet sin. The right to information does not authorise a person to copy another person’s academic work or ideas and take credit without acknowledging the source. Plagiarism is a civil wrong and authors who have been found to have plagiarized for academic purposes are disqualified from the use of that information and are penalized by demotion, withdrawal or dismissal.

##

## **Access to information and copyright issues**

Copyright is a form of intellectual property which gives the owner an exclusionary right to prevent others from copying, performing, selling, displaying and making derivative versions of the work of authorship. Although registration confers several advantages on the owner of the copyright, it is not a prerequisite to copyright infringement. The copyright Act in Ghana provides a list of works which are eligible for copyright. The works which are copyrightable in Ghana are literary work, artistic work, musical work, sound recording, audio-visual work, choreographic work, derivative work, and computer software or programs.[[68]](#footnote-68) Folklores are also protected under the Act, but rights of folklore are vested in the President on behalf of and in trust for the people of Ghana.[[69]](#footnote-69)

Furthermore, not all unauthorized uses of works which are copyrighted constitute an infringement. There are exceptions where the use of others’ works is permitted or allowed, even without obtaining the consent of the copyright owner. This is referred to as fair use, which is a well-defined or limit to copyright protection in the world. Where the work of an author is to be used for commercial purposes the consent of the author has to be sought first. However not all commercial uses are forbidden most newspapers are sold for profit, yet they are not automatically excluded from benefiting from this doctrine. Fair use seeks to advance news reporting by journalists or broadcasters, public interest on topical issues, researching or teaching purpose for classroom use.[[70]](#footnote-70)

Under the permitted use in Ghana journalists have the right to report or reproduce in the media political speech delivered in public, speech delivered in public during legal proceedings, or lectures, addresses, sermons or other work of a similar nature delivered in public, where the use by reproduction to the public is exclusively for the purpose of reporting fresh events or new information.[[71]](#footnote-71)

Works which enjoy copyright protection can be used without the consent of the author for purposes of reporting an event or new information only, communication for teaching purposes of the work and broadcast for use in educational institutions without infringing a copyright protection.

# CONCLUSION

Access to information makes public office holders accountable to the public who are their beneficiaries. It promotes transparency as any wrongdoing by a public officer is likely to find itself in the public domain as general information. Arbitrariness in public officers is curtailed in a regime where there is unfettered rights to access to information.

Access to justice includes open justice which permits free flow of information in court proceedings through television and other print and electronic media to give accurate report of what transpires in court to avoid allegations of bias, accusations and counter accusations against the courts where only print journalists are allowed.

The importance of access to information cannot be overestimated. This is necessary for the development of every democracy. Today, I have shown the various means by which information can be accessed by various individuals. These avenues must be explored to further foster transparency and accountability from the leaders who we as a people have elected.

Thank you for coming and your attention.

# BIBLIOGRAPHY

**International Instruments**

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR).

**Enactments & Legislation**

1957 Constitution of Ghana.

1960 Constitution of Ghana.

1979 Constitution of Ghana.

1992 Constitution of Ghana.

Banks and Specialized Deposit-Taking Institutions Act, 2016 ( Act 930).

Children’s Act, 1998 (Act 560).

Criminal and Other Offences (Procedure) Act, 1960 (Act 30).

Criminal Offences Act, 1960 (Act 30).

Cybersecurity Act, 2020 (Act 1038).

Data Protection Act, 2012 (Act 843).

Deportation Act 1957.

Economic and Organized Crime Act, 2010 (Act 804).

Economic and Organized Crime Office Act, 2010 (Act 804).

Electronic Communications Act, 2008 (Act 775).

Electronic Transactions Act, 2008 (Act 772).

Evidence Act, 1975 (NRCD 323).

Mutual Legal Assistance Act, 2010 (Act 807).

Office of the Special Prosecutor Act, 2017 (Act 959).

Payment Systems and Services Act, 2019 (Act 987).

Preventive Detention Act, 1958.

Right to Information Act, 2019 (Act 989).

State Secrets Act, 1962 (Act 101).

**Cases**

Ackah v Agricultural Development Bank [2017-2020] 1 SCGLR 226.

Al Ravi and Others v The Security Service and Others (2011) UKSC 34.

Asare v Attorney- General [2003-2004] 2 SCGLR 823.

Attorney-General v Leveller Magazine Ltd [1979] AC 440.

Coward v Wellington (1836) 173 ER 234.

Cubagee v Asare & Others [2017-2020] 1 SCGLR 305.

Edem Adinyira v Scancom Limited & Anor (2017) Civil Appeal No. H1/100/2017 27th July 2017.

Edmonton Journal v Alberta Attorney- General (1989) 2 SCR 1326.

In re Martindale [1891-4] All ER Rep 1248.

NDPP v Media 24 Limited and Others and HC Van Breda and Media 24 Limited and Others 425/2017 [2017] ZASCA/2017.

R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (2010) EWCA Civ 65.

Re Akoto and 7 Others [1961] GLR 523.

Republic v High Court, Exparte Laryea Mensah [1997-98] 2 GLR 1002.

Republic v Mensa- Bonsu; Ex parte Attorney- General [1995-96] 1 GLR 377.

Richmond Newspapers v Virginia (1980) (448) US 555.

**Books**

Alexander I. Poltorak and Paul J. Lerner *Essentials of Intellectual Property Law, Economics, and Strategy*, Second Edition page 31.

**Articles**

Sir Justice Dennis Adjei, “Contempt of Court", October 2015, Association of Magistrates and Judges of Ghana (AMJG) News Journal, 7th Edition, 42- 46.

1. Constitution of Ghana, 1992, art 1 (1). [↑](#footnote-ref-1)
2. Constitution of Ghana, 1992, art 21(1) (f). [↑](#footnote-ref-2)
3. Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR) art 19. [↑](#footnote-ref-3)
4. Constitution of Ghana, 1960, s. 13(1); *Re Akoto and 7Others* [1961] GLR 523. [↑](#footnote-ref-4)
5. Constitution of Ghana, 1969, art 22; Constitution of Ghana, 1979, art 28(1); Constitution of Ghana, 1992, art 21(1) (f), respectively. [↑](#footnote-ref-5)
6. Constitution of Ghana, 1992, art 12. [↑](#footnote-ref-6)
7. Constitution of Ghana, 1992, art 135 (1) and (2). [↑](#footnote-ref-7)
8. Constitution of Ghana, 1992, art 21 (1) (f). [↑](#footnote-ref-8)
9. Criminal and Other Offences (Procedure) Act, 1960 (Act 30), s 94 (1). [↑](#footnote-ref-9)
10. Criminal and Other Offences (Procedure) Act 1960 (Act 30), s 94; Office of the Special Prosecutor Act, 2017 (Act 959), s 28; Economic and Organized Crime Act, 2010 (Act 804), ss 20 & 22. [↑](#footnote-ref-10)
11. Economic and Organized Crime Act, 2010 (Act 804), s 27. [↑](#footnote-ref-11)
12. Criminal and Other Offences (Procedure) Act, 1960 (Act 30), s 94. [↑](#footnote-ref-12)
13. Criminal and Other Offences (Procedure) Act 1960 (Act 30), ss 50 and 53. [↑](#footnote-ref-13)
14. Office of the Special Prosecutor Act, 2017 (Act 959), s 28. [↑](#footnote-ref-14)
15. Cybersecurity Act, 2020 (Act 1038), s 3. [↑](#footnote-ref-15)
16. Cybersecurity Act, 2020 (Act 1038), s 77(1). [↑](#footnote-ref-16)
17. *Edem Adinyira v Scancom Limited & Anor* (2017) Civil Appeal No. H1/100/2017 27th July 2017. [↑](#footnote-ref-17)
18. Cybersecurity Act, 2020 (Act 1038), s 77 (2). [↑](#footnote-ref-18)
19. Cybersecurity Act, 2020 (Act 1038), s 76 (5). [↑](#footnote-ref-19)
20. Cybersecurity Act, 2020(Act 1038), s 76 (6). [↑](#footnote-ref-20)
21. Cybersecurity Act, 2020 (Act 1038), s 87. [↑](#footnote-ref-21)
22. Cybersecurity Act, 2020 (Act 1038), s 84. [↑](#footnote-ref-22)
23. Constitution of Ghana, 1992, art 18. [↑](#footnote-ref-23)
24. *Cubagee v Asare & Others* [2017-2020] 1 SCGLR 305. [↑](#footnote-ref-24)
25. See also the case of *Ackah v Agricultural Development Bank* [2017-2020] 1 SCGLR 226. [↑](#footnote-ref-25)
26. Right to Information Act, 2019 (Act 989), s 5 (1) & (2). [↑](#footnote-ref-26)
27. Right to Information Act, 2019 (Act 989), s 6 (1) (a)(b)(c); (2), (3) and (4). [↑](#footnote-ref-27)
28. Right to Information Act, 2019 (Act 989), s 7. [↑](#footnote-ref-28)
29. Right to Information Act, 2019 (Act 989), s 15. [↑](#footnote-ref-29)
30. Right to Information Act, 2019 (Act 989), ss 16, 10, 11, 13 and 14. [↑](#footnote-ref-30)
31. Right to Information Act, 2019 (Act 989), s 3(1) and (2). [↑](#footnote-ref-31)
32. Right to Information Act, 2019 (Act 989), s 1. [↑](#footnote-ref-32)
33. Right to Information Act, 2019 (Act 989), s 18(1) [↑](#footnote-ref-33)
34. Right to Information Act, 2019 (Act 989), s 18. [↑](#footnote-ref-34)
35. Right to Information Act, 2019 (Act 989), s 20 (3),(4) and (5). [↑](#footnote-ref-35)
36. Right to Information Act, 2019 (Act 989), s 21. [↑](#footnote-ref-36)
37. Right to Information Act, 2019 (Act 989), s 22. [↑](#footnote-ref-37)
38. Right to Information Act, 2019 (Act 989), s 23. [↑](#footnote-ref-38)
39. Right to Information Act, 2019 (Act 989), s 26. [↑](#footnote-ref-39)
40. Right to Information Act, 2019 (Act 989), s 27. [↑](#footnote-ref-40)
41. s Right to Information Act, 2019 (Act 989), s 32. [↑](#footnote-ref-41)
42. Right to Information Act, 2019 (Act 989), s 33, 35. [↑](#footnote-ref-42)
43. Right to Information Act, 2019 (Act 989), ss 36, 37 and 38. [↑](#footnote-ref-43)
44. Constitution of Ghana, 1992, art. 48 (2). [↑](#footnote-ref-44)
45. Right to Information Act, 2019 (Act 989), ss 40 - 47. [↑](#footnote-ref-45)
46. *Republic v High Court, Exparte Laryea Mensah* [1997-98] 2 GLR 1002. [↑](#footnote-ref-46)
47. Sir Justice Dennis Adjei, “Contempt of Court", October 2015, Association of Magistrates and Judges of Ghana (AMJG) News Journal, 7th Edition, 42- 46. [↑](#footnote-ref-47)
48. In re Martindale [1891-4] All ER Rep 1248, Republic v Mensa- Bonsu; Ex parte Attorney- General [1995-96] 1 GLR 377 & Coward v Wellington (1836) 173 ER 234 where it was held that truth is a defence to defamation. [↑](#footnote-ref-48)
49. *Republic v Mensa Bonsu, Ex parte Attorney- General* [1995-96] 1 GLR 377. [↑](#footnote-ref-49)
50. Constitution of Ghana, 1992, art 126(3). [↑](#footnote-ref-50)
51. Children’s Act, 1998 (Act 560), s 36. [↑](#footnote-ref-51)
52. Children’s Act, 1998 (Act 560), s 39. [↑](#footnote-ref-52)
53. Matrimonial Causes Act, 1971 (Act 367), s 39. [↑](#footnote-ref-53)
54. Right to Information Act, 2019 (Act 989), s 14. [↑](#footnote-ref-54)
55. Constitution of Ghana, 1992, art 122. [↑](#footnote-ref-55)
56. Courts Act, 1993 (Act 459), s 70 (1) and (2). [↑](#footnote-ref-56)
57. *R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs,* (2010) EWCA Civ 65. [↑](#footnote-ref-57)
58. *NDPP v Media 24 Limited and Others and HC Van Breda and Media 24 Limited and Others* 425/2017 [2017] ZASCA/2017. [↑](#footnote-ref-58)
59. Direction 1/2009: Expanded Media Coverage of the Proceedings of the Supreme Court of Appeal Practice Direction; http/[www.justice.gov.za/sca/](http://www.justice.gov.za/sca/) practice/Practice Notice 2009-01 20090206. [↑](#footnote-ref-59)
60. *Edmonton Journal v Alberta* *Attorney- General* (1989) 2 SCR 1326. [↑](#footnote-ref-60)
61. *Richmond Newspapers v Virginia* (1980) (448) US 555. [↑](#footnote-ref-61)
62. *Al Ravi and Others v The Security Service and Others* (2011) UKSC 34. [↑](#footnote-ref-62)
63. *Attorney-General v Leveller Magazine Ltd* [1979] AC 440. [↑](#footnote-ref-63)
64. Cybersecurity Act, 2020 (Act 1038), s 62. [↑](#footnote-ref-64)
65. Cybersecurity Act, 2020 (Act 1038), ss 63, 64 and 65. [↑](#footnote-ref-65)
66. Cybersecurity Act, 2020 (Act 1038), s 67. [↑](#footnote-ref-66)
67. State Secrets Act, 1962 (Act 101), s1. [↑](#footnote-ref-67)
68. Copyright Act, 2005 (Act 690), s 1(1). [↑](#footnote-ref-68)
69. Copyright Act, 2005 (Act 690), s 4. [↑](#footnote-ref-69)
70. Alexander I. Poltorak and Paul J. Lerner *Essentials of Intellectual Property Law, Economics, and Strategy*, Second Edition page 31. [↑](#footnote-ref-70)
71. Copyright Act, 2005 (Act 690), s 19. [↑](#footnote-ref-71)