

THE RIGHT TO INFORMATION COMMISSION

ACCRA

11<sup>TH</sup> DECEMBER 2024

AFR NO: RTIC/AFR/87/2024

PATIENCE EWURAMA OCRAN GBEKOR

APPLICANT

ACCRA

AND

ARCHITECTS REGISTRATION COUNCIL

RESPONDENT

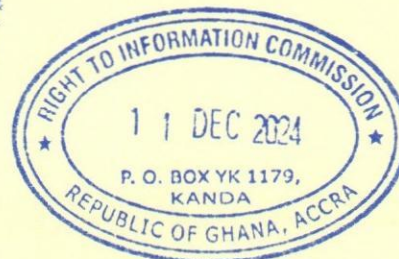
RIDGE, ACCRA

GA-053-6589

**DETERMINATION BY THE RIGHT TO INFORMATION COMMISSION IN RESPECT OF APPLICATION FOR REVIEW FILED BY EWURAMA OCRAN GBEKOR AGAINST ARCHITECTS REGISTRATION COUNCIL.**

In furtherance of her constitutional and inalienable right to information, Ewurama Ocran Gbekor a.k.a. Patience E. Ocran (the Applicant), who is a member of the Ghana Institute of Architects, requested for information from the Architects Registration Council (ARC) (the Respondent). The information requested was pursuant to a letter addressed to the President of the Ghana Institute of Architects (GIA) informing members that the tenure of the 3<sup>rd</sup> Governing Board of the ARC had been extended in principle by the Hon. Minister of Works and Housing, Hon. Kojo Opong Nkrumah. The initial request for information application was addressed to the Registrar of the Respondent institution by a letter dated 4th September 2024. The information requested is recounted below:

- 1. The legal basis for the request of the extension and the reasons assigned.*
- 2. A copy of the official letter to the Ministry of Works and Housing requesting for this extension.*



3. *A copy of the official response from the Ministry of Works and Housing to your request.*

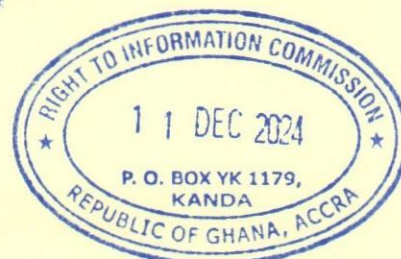
The Applicant received a response by an email dated 5<sup>th</sup> September 2024 from the Respondent through its Registrar that:

1. *We do not need a legal basis to make a request. It was a decision of the Governing at Board at a Board Meeting. The Act gives the Board the power to make decisions.*
2. *Copies of official letters are not shared with individuals*
3. *I can confirm that as a Registrar I have written as directed by the Board to request for an extension of tenure with justification. Kindly note that though the Minister in principle agreed based on the justification offered citing the need for continued leadership is conferring with the appropriate authority for advice.*
4. *The Council has written to notify all the Bodies with representation on the Board.*

The Applicant, dissatisfied with the Respondent's answers, applied to the Right to Information Commission (the Commission) for review on 25<sup>th</sup> September, 2024, seeking redress of the decision of the Respondent.

Upon receipt of the review application, the Commission, by a letter dated 15<sup>th</sup> November, 2024, requested that the Respondent **'submit copies of the letters referred to in the Applicant's application as well as the legal basis for the request of the extension and reasons assigned to enable the Commission determine whether or not the information requested is exempt from disclosure under The Right to Information Act, 2019 (Act 989).'** The Commission further engaged the Respondent in a meeting on 18<sup>th</sup> November, 2024, and subsequent email dated 19<sup>th</sup> November, 2024 directing that the Respondent respond to its correspondence.

The Respondent, by a letter dated 18<sup>th</sup> November, 2024, informed the Commission that, **'Please be informed that the Registrar is currently out of the office on official duties. In the meantime, we kindly advise that any inquiries or requests for information related to the mandate, and inauguration of the ARC Board as well as its tenure, should be directed to the Chief Director of the Ministry of Works and Housing, who oversees these matters'**. The Respondent, however, failed and/or neglected to comply with the order of the Commission to submit to the Commission the documents requested within a seven (7)-day time limit.



The law is clear from the provisions of **sections 5- 16 of Act 989** that only certain classes of information are exempt from disclosure; no public institution is exempt from application of the Right to Information Act, 2019 (Act 989). All public institutions have the responsibility to disclose information proactively and/or when it is requested by an Applicant, insofar as that information is not exempt.

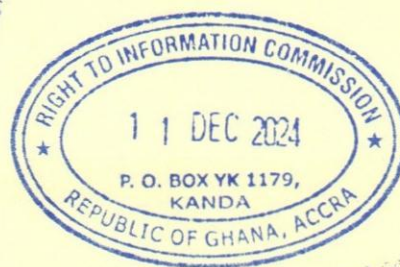
### **ISSUE FOR DETERMINATION**

On account of the above stated facts and circumstances of the instant case, it is imperative the Commission determines the issue, **whether or not the information requested by the Applicant is exempt from disclosure.**

From a careful analysis of the exemptions encapsulated under sections 5-16 of Act 989, the Commission finds that the Applicant's request for the legal basis and reasons for the extension of the tenure of the governing Board of GIA is not exempt from disclosure. The Respondent, in its response to the Applicant through its Registrar, stated that *'the Act gives the Board the power to make decisions'*. An Act or enactment is a source of law in Ghana pursuant to Article 11 of the 1992 Constitution, therefore, where any purported Act gives any person authority or power to do anything, that Act can be considered as a legal basis or authority for that action to be done. In the instant case, since the Respondent has made claims that there is an Act that gives the Board the power to make certain decisions, it is incumbent on the Respondent to point out to the Applicant the relevant section of the Act which gives the Board the legal basis to make decisions to extend the tenure of the Board members of GIA.

Respondent's assertion that *'We do not need a legal basis to make a request' is erroneous*, and so the Commission finds. The Commission also finds that a copy of the official letter to the Ministry of Works and Housing requesting for extension, which was part of the information requested by the Applicant, is not exempt from disclosure; it cannot be treated as internal working information. This is because, the disclosure of the letter is not likely to affect any deliberative process between the parties, since it is apparent from the facts of the case that discussions have been completed.

Considering the third information requested by the Applicant, the Commission is of the view that it does not fall within the exemptions stipulated under Act 989, and that it must be released to the Applicant. The release of the information requested to the Applicant is not likely to affect any



deliberations between ARC and the Ministry of Works and Housing, since the discussion regarding the extension is over, and the extension of tenure of the Governing Board of the GIA has already been decided on and implemented. The Commission hereby resolves the issue set down for determination by holding that the information requested by the Applicant is not exempt from disclosure. According to section 27 (1) (b), a public institution can only refuse to grant access to information where the information requested is exempt from disclosure.

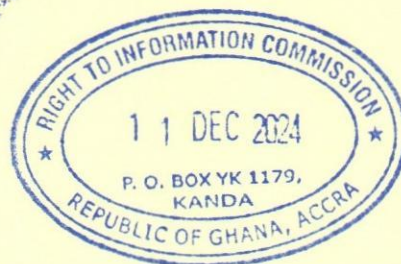
The Commission is vested with powers pursuant to section 43(2)(f) of Act 989 to request for the submission of documents which are deemed by a public institution to be exempt from disclosure so as to aid the Commission in its determination of whether that information is exempt per the dictates of Act 989. The relevant law provides that:

**Section 43(2)**

**The Commission shall have the power to**

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

The Respondent's failure, refusal and/or neglect to provide the Commission with the documents ordered to be submitted is an outright breach of the dictate of Act 989, which is vehemently frowned upon by the Commission. Additionally, the Commission has taken note of the signatory and signature of the letter by the Respondent dated 18<sup>th</sup> November, 2024. The Commission finds it particularly strange that the said letter was signed by the Respondent's Registrar, Arc. Dr. Emmanuel Eyiah Botwe, however, in that same letter the Respondent makes purported claims that *'the Registrar is currently out of the office on official duties'* and due to that reason, advises that *'any inquiries or requests for information related to the mandate, and inauguration of the ARC Board as well as its tenure, should be directed to the Chief Director of the Ministry of Works and Housing, who oversees these matters.'* The Commission, as the custodian and enforcer of Act 989, condemns any act done by a public institution to circumvent the responsibilities imposed on the public institution by Act 989. Such conduct does not promote the transparency and accountability responsibility imposed on public institutions, including the Respondent.



In any case, there is a laid down procedure under **section 20(1)(a)(b)(c)(d) of Act 989** on the circumstances upon which an application for information may be transferrable, and, how a public institution is to conduct a transfer of an application. The relevant law provides that:

***20(1) where a public institution is unable to deal with an application because the information requested***

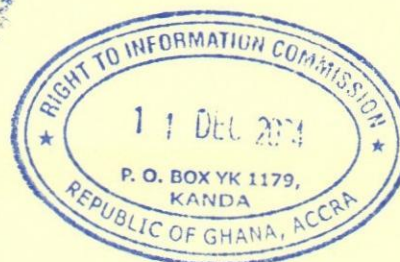
- a) is not in the custody or control of the public institution, but to the knowledge of the public institution, it is held by another public institution, or***
- b) is in the custody of the public institution but it is more closely related to the functions of another public institution, the information officer shall, within two days of the receipt of the application,***
- c) refer the applicant to the relevant public institution; or***
- d) transfer the application to the relevant public institution and give written notice of the transfer to the applicant.***

From the foregoing, it is apparent that the Respondent's letter to the Commission was ill-conceived. A transfer of application can only be done on condition that the information requested is held by another public institution or closely related to the functions of another public institution. Additionally, a respondent should refer an applicant to the relevant public institution in custody of information requested by the applicant within two days of receipt of the applicant's request. The Respondent in the instant case is out of time and has not indicated any cause for the Commission to believe that the information requested is not in its custody.

### **FINAL ORDERS**

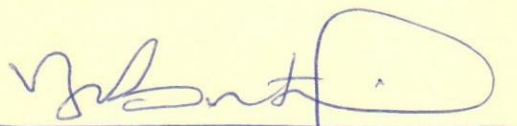
**Based on the powers vested in the Commission under sections 43(2) (c) and 71(4) of Act 989, the following specific orders are directed at the Respondent:**

1. That following the Respondent's failure, refusal an/or neglect to furnish the Applicant with the information requested, and to comply with the orders of the Commission to submit within seven (7) days copies of the letters referred to in the Applicant's application as well as the legal basis for the request for extension of tenure of the Board



of ARC, and reasons assigned to enable the Commission determine whether or not the information requested is exempt from disclosure under Act 989, an administrative penalty of Fifty Thousand Ghana cedis only (GH¢50,000) is imposed on the Respondent and this shall be payable to the Commission not later than 7 days after the date of receipt of this decision. The penalty so imposed shall attract an additional default penalty at a rate of 10% on the principal penalty sum of GH¢50,000 in the event of default for any additional 7 days thereafter.

2. The Respondent shall ensure that the following information requested by the Applicant is granted to the Applicant and a copy forwarded to the Commission not later than **Seven (7) days** after receipt of this decision by the Commission:
  - a. *The legal basis for the request of the extension and the reasons assigned.*
  - b. *A copy of the official letter to the Ministry of Works and Housing requesting for this extension.*
  - c. *A copy of the official response from the Ministry of Works and Housing to your request.*
3. The information ordered to be disclosed to the Applicant under Paragraph (2) supra shall attract a fee of GH¢ 0.27 per page where it is to be photocopied. If the information is to be released in a printed form, a fee or charge of GH¢ 0.38 per page shall apply and a fee of GH¢ 0.29 per page shall apply where the information is to be released in a computer readable form on an external storage device pursuant to the Fees and Charges (Miscellaneous Provisions) Act, 2022 (Act 1080)



**YAW SARPONG BOATENG ESQ.**  
**EXECUTIVE SECRETARY**

