



Our Reference. *RTIC/REF/09/2022*

THE RIGHT TO INFORMATION COMMISSION
ACCRA

7TH DECEMBER, 2022

CASE NO: RTIC/AFR/09/2022

GILBERT KORBLA KEKLIE
KETA.

APPLICANT

AND

THE MUNICIPAL CHIEF EXECUTIVE
KETA MUNICIPAL ASSEMBLY
KETA.

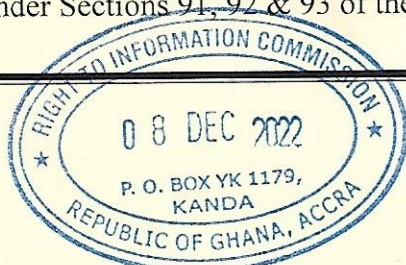
RESPONDENT

DETERMINATION BY THE RIGHT TO INFORMATION COMMISSION IN RESPECT OF APPLICATION FOR REVIEW FILED BY MR. GILBERT KORBLA KEKLIE AGAINST REFUSAL TO RELEASE INFORMATION REQUESTED BY MR. GILBERT KORBLA KEKLIE

The Right to Information Commission (hereafter “The Commission”) makes this determination pursuant to an application for review filed by Mr. Gilbert Korbla Keklie (“The Applicant”), Assembly Man for the Dziehe – Ablame of Anlo Afiadenyigba Electoral Area of the Keta Municipal Assembly. The application was dated 17th March, 2022 and received by the Commission on 1st April, 2022. It was against the Keta Municipal Assembly (“The Respondent”), which had failed and/or refused to release to the Applicant certain pieces of information he requested for in exercise of his rights under Article 21(1)(f) of the 1992 Constitution of Ghana and Section 18 of the Right to Information Act, 2019 (Act 989).

It was the complaint of the Applicant that in a letter dated 7th September, 2021, he requested from the Respondent via its Secretary, the following pieces of information:

“1. I write to request whether the Keta Municipal Assembly has granted permit to GOIL Fuelling Station, Keta under Sections 91, 92 & 93 of the Local Governance Act, Act 936 (2016).



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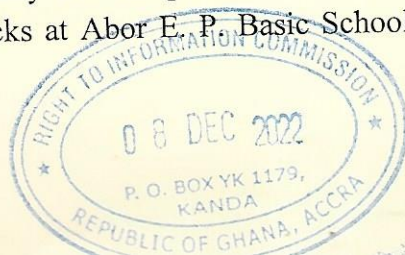
If your answer to the above is in the affirmative, I humbly request for:

- i. A copy of the permit application
- ii. A copy of the scoping report
- iii. A copy of community engagement report
- iv. A copy of the environmental impact statement in respect of the application.
- v. A copy of the permit from the Keta Municipal Assembly documentary evidence of payment made.
- vi. A copy of the permit from the Environmental Protection Agency
- vii. A copy of the permit from the Energy Commission
- viii. A copy of the permit from the National Petroleum Commission
- ix. A copy of their environmental certificate

2. I write to request whether the Keta Municipal Assembly had between 2018 and 2021 procured the services of JUSTDAN COMPANY LTD, OUTSIDE GHANA LTD, JOHN GOODLUCK ENTERPRISE, DEMESCO CONSTRUCTIONS WORKS and ARCHITECTURAL AND ENGINEERING SERVICES (AESL) to rehabilitate Keta PWD Yard & Offices, to construct classroom blocks at Abor E. P. JHS, to construct Ghana Kpedzi Road at Abutiakope, to construct Abor Magistrate Court at Keta and to provide consultancy services to JUSTDAN COMPANY LTD, OUTSIDE GHANA LTD in the Keta Municipal Assembly respectively under Section 33 of the Local Governance Act, Act 936 (2016).

If your answer to the above is in the affirmative, I humbly request for:

- i. A copy of the request for quotations or notice of competitive tendering advertisement in any National Daily Newspaper by the Keta Municipal Assembly for the above projects
- ii. A copy or copies of the Minutes of the General Assembly of the Keta Municipal Assembly approving the budget estimates for all the above-mentioned projects or services
- iii. A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly approving the above-mentioned consultant to supervise the rehabilitation of Keta PWD Yard and Classroom blocks at Abor E. P. Basic School.
- iv. A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly recommending the contracts for the rehabilitation of Keta PWD Yard, Classroom blocks at Abor E. P. Basic School and Construction of Abor Magistrate Court to the Tender Review Committee of the Volta Regional coordinating Council for concurrence approval or approvals.
- v. A copy of copies of the concurrence approval letter or letters from the Tender Review Committee of the Volta Regional Coordinating Council.
- vi. A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly actually awarding the contracts for the rehabilitation of Keta PWD Yard, Classroom blocks at Abor E. P. Basic School, Construction of Abor Magistrate Court,



- construction of Ghana Kpedzi Road and consultancy services to the above-mentioned companies.
- vii. A copy or copies of letter or letters from the Management of Abor E. P. JHS recommending for modifications of the project descriptions for the construction of classroom blocks at Abor E. P. JHS.
 - viii. A copy or copies of Evaluation Report or Reports
 - ix. Copies of award of contract letters from the Keta Municipal Assembly to the above-mentioned companies
 - x. Copies of the acceptance letters from the above-mentioned copies to the Keta Municipal Assembly
 - xi. A copy or copies of Inspection Reports on the above-mentioned projects
 - xii. Copies of documentary evidence of all payments made to the above-mentioned companies
 - xiii. Copies of full details of the Directors of the above-mentioned companies

3. I write to request whether the Keta Municipal Assembly had received a grant of GHC166,280.62 received the Administrator for District Assembly Common Fund to carry out COVID-19 activities in 2020 under Section 124 (1b) (2) of the Local Governance Act, Act 936 (2016).

If your answer to the above is in affirmative, I humbly request for:

- i. A copy of the request for quotations or notice of competitive tendering advertisement in any National Daily Newspaper by the Keta Municipal Assembly for the above projects
- ii. A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly approving the above-mentioned project to any company
- iii. A copy of Evaluation Report
- iv. A copy of award of contract letter from the Keta Municipal Assembly to the company
- v. A copy of the acceptance letter from the above-mentioned copies to the Keta Municipal Assembly
- vi. A copy of inspection reports on the above-mentioned projects
- vii. Copies of documentary evidence of all payments made to the above-mentioned company
- viii. Copies of full details of the Directors of the above-mentioned companies

4. Copies of External Auditors' Report on the accounts of the Keta Municipal Assembly for periods 2016, 2017, 2018, 2019, 2020.

Upon not receiving any response from the Respondent, the Applicant on the 21st of January, 2022 sent a reminder to the Municipal Chief Executive after which he applied for an internal review of the refusal by the Secretary to the Assembly to furnish him with the requested information. This application for internal review was dated 28th January, 2022. However, after the application for internal review, the Applicant had still not received any communication from the Respondent.



It must be pointed out that, upon receipt by the Commission of the Applicant's application for review, the Commission wrote to the Respondent in a letter dated 25th April, 2022 requesting for the reasons for the refusal to grant the Applicant access to the pieces of information he requested for. As of the date of this determination by the Commission, the Respondent had failed and/or refused to respond to the Commission's request.

According to **Section 23 (1) and (2) of Act 989**, upon receipt of an application for information the information officer of the public institution concerned shall make a decision on the application within fourteen (14) days from the date of receipt. The section provides as follows:

Section 23 (1) and (2):

“23. (1) Where an application for access is received by a public institution, the information officer shall take a decision on the application and send a written notice to the applicant within fourteen days from the date of receipt of the application.

(2) The notice shall state

(a) whether or not access to the information will be given, and

(b) whether access to only a part of the information can be given and the reason for giving only a part.”

So, what happens where the Information Officer as stated in section 23 above fails to make a decision on an application? The answer is found in **Section 23 (5) of Act 989**, which states that **“Where the information officer fails to determine an application within fourteen days after the application is received by the public institution, the application is deemed to have been refused and the applicant has the right to seek redress under sections 31 to 39.”**

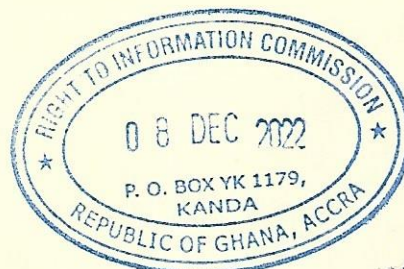
This was the course taken by the Applicant herein to lodge an internal review application with the Municipal Chief Executive, who had to make a decision within fifteen (15) days of receipt of the application. This obligation of the Head of Institution, in this instance, the Municipal Chief Executive of the Keta Municipal Assembly is stipulated by **Section 33(1) of Act 989:**

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

(a) make a decision; and

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

Failure by the Municipal Chief Executive to make a decision on the Applicant's internal review application amounted to a denial of the Applicant's application under **Section 35 of Act 989**. The relevant section provides that:



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

The Municipal Chief Executive’s denial of the Applicant’s application for internal review meant that the Applicant had exhausted the internal review procedure envisaged under **Section 66 of Act 989**. Having thus exhausted the Respondent’s internal review procedure, the Applicant became entitled under **Section 65 of Act 989** to apply to the Commission for a review of the Respondent’s decision to deny his application. These are the relevant provisions:

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

66. Subject to subsections (1) and (2) of section 65, an application to

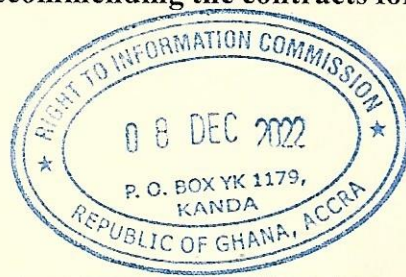
(a) the Commission for a review of the decision of a public institution shall only be made to the Commission after the applicant has exhausted all rights of internal review offered by the public institution or relevant private body...”

As has already been pointed out in the opening stages of this determination, the Commission wrote to the Respondent asking for the reasons for failing to furnish the Applicant with the information he requested for. The Respondent failed and/or refused to respond to the Commission’s letter. The Commission disapproves of the posture of the Respondent in the instant case and hereby makes it clear that, under Act 989, there is no public institution that is exempt from being called upon to disclose or release information; it is certain categories of information that are exempt from disclosure. Even with those categories of information, the exemption may not be absolute.

In the instant application under determination, the Commission does not find that all the pieces of information requested by the Applicant with the exception of the Minutes of the Assembly, and which have been declined by the Respondent, as falling into the range of exempt information under Act 989.

It must be noted that, the Applicant shall not be given access to the following information because they are internal working information of the Respondent and are therefore exempt.

- i. A copy or copies of the Minutes of the Minutes of the General Assembly of the Keta Municipal Assembly approving the budget estimates for all the above-mentioned projects or services**
- ii. A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly approving the above-mentioned consultant to supervise the rehabilitation of Keta PWD Yard and Classroom blocks at Abor E. P. Basic School.**
- iii. A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly recommending the contracts for the rehabilitation of Keta PWD**



Yard, Classroom blocks at Abor E. P. Basic School and Construction of Abor Magistrate Court to the Tender Review Committee of the Volta Regional coordinating Council for concurrence approval or approvals.

- iv. A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly actually awarding the contracts for the rehabilitation of Keta PWD Yard, Classroom blocks at Abor E. P. Basic School, Construction of Abor Magistrate Court, construction of Ghana Kpedzi Road and consultancy services to the above-mentioned companies.
- v. A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly approving the above-mentioned project to any company

Internal working information are information that are used to support the daily work and processes of the organization and information such as internal memos, internal e-mails, confidential letters or documents and minutes of meetings of public institutions are deemed to be internal working information since they are used to deliberate and make decisions in public institutions. Minutes of meetings of public institutions can only be attended by persons who are invited or mandated to be present, and their opinions, advice, recommendation, consultation or deliberation are covered under Section 13 of Act 989. On that basis, the Minutes of meetings requested by the Applicant are exempt from disclosure. Section 13 reads:

“13. (1) Information is exempt from disclosure where the disclosure of the information will reveal

(a) an opinion, or an advice given, or

(b) a recommendation, consultation or deliberation made

To the public institution and is likely to undermine the deliberative process in that public institution.

(2) Information which

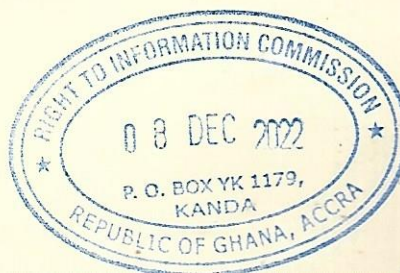
(a) merely contains material that has been publicly mentioned as the basis of a public or for formulating public policy, or

(b) contains only factual or statistical data,

is not exempt from disclosure

FINAL ORDERS

Under Section 43 (2) (c) of Act 989, the Commission is clothed with the power to **“make any determination as the Commission considers just and equitable including issuing recommendations or penalties in matters before the Commission.”** In the circumstances of this case, inasmuch as some of the requested pieces of information are not exempt information, the Commission hereby invokes its jurisdiction under section 44 (c) of Act 989 to take appropriate action necessary to resolve the Applicant’s complaint. Moreover, according to section 71 (4) of Act 989, **“The Commission may issue directives that the Commission considers necessary for the enforcement of its decisions.”**



Proceeding on the strength of power furnished under Sections 43(2) (c), 44 (c), and 71(4) of Act 989, the Commission hereby makes the following specific orders directed at the Municipal Chief Executive, Hon. Emmanuel Gamegah:

- a. *Based on the Respondent's failure to make decisions on the Applicant's application lodged with it, as well as its failure to respond to the Commission's letter received by it, an administrative penalty of GHC 20, 000 is imposed on the Respondent Organization and this shall be payable to the Commission not later than 14 days after receipt of this decision.*
- b. *The following pieces of information are to be released to the Applicant not later than 14 days after receipt of this decision by the Respondent:*

"1. I write to request whether the Keta Municipal Assembly has granted permit to GOIL Fuelling Station, Keta under Sections 91, 92 & 93 of the Local Governance Act, Act 936 (2016).

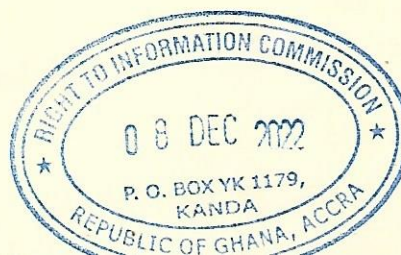
If your answer to the above is in the affirmative, I humbly request for:

- i. *A copy of the permit application*
- ii. *A copy of the scoping report*
- iii. *A copy of community engagement report*
- iv. *A copy of the environmental impact statement in respect of the application.*
- v. *A copy of the permit from the Keta Municipal Assembly documentary evidence of payment made.*
- vi. *A copy of the permit from the Environmental Protection Agency*
- vii. *A copy of the permit from the Energy Commission*
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- ix. *A copy of their environmental certificate*

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If your answer to the above is in the affirmative, I humbly request for:

- i. *A copy of the request for quotations or notice of competitive tendering advertisement in any National Daily Newspaper by the Keta Municipal Assembly for the above projects*



- ii. *A copy of copies of the concurrence approval letter or letters from the Tender Review Committee of the Volta Regional Coordinating Council.*
- iii. *A copy or copies of letter or letters from the Management of Abor E. P. JHS recommending for modifications of the project descriptions for the construction of classroom blocks at Abor E. P. JHS.*
- iv. *A copy or copies of Evaluation Report or Reports save that where the evaluation reports contain tax clearance certificates, same should be excluded.*
- v. *Copies of award of contract letters from the Keta Municipal Assembly to the above-mentioned companies*
- vi. *Copies of the acceptance letters from the above-mentioned copies to the Keta Municipal Assembly*
- vii. *A copy or copies of Inspection Reports on the above-mentioned projects*
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- v. *A copy of inspection reports on the above-mentioned projects*
- vi. *Copies of documentary evidence of all payments made to the above-mentioned company*
- vii. *Copies of full details of the Directors of the above-mentioned companies*

4. *Copies of External Auditors' Report on the accounts of the Keta Municipal Assembly for periods 2016, 2017, 2018, 2019, 2020.*

The following pieces of information shall however not be granted to the applicant on the basis that they are exempt information:



- vi. *A copy or copies of the Minutes of the Minutes of the General Assembly of the Keta Municipal Assembly approving the budget estimates for all the above-mentioned projects or services*
 - vii. *A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly approving the above-mentioned consultant to supervise the rehabilitation of Keta PWD Yard and Classroom blocks at Abor E. P. Basic School.*
 - viii. *A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly recommending the contracts for the rehabilitation of Keta PWD Yard, Classroom blocks at Abor E. P. Basic School and Construction of Abor Magistrate Court to the Tender Review Committee of the Volta Regional coordinating Council for concurrence approval or approvals.*
 - ix. *A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly actually awarding the contracts for the rehabilitation of Keta PWD Yard, Classroom blocks at Abor E. P. Basic School, Construction of Abor Magistrate Court, construction of Ghana Kpedzi Road and consultancy services to the above-mentioned companies.*
 - x. *A copy or copies of the Minutes of the Entity Tender Committee of the Keta Municipal Assembly approving the above-mentioned project to any company*
- C. *The information ordered to be released to the Applicant under Paragraph (b) supra shall attract a reasonable charge of GH¢ 0.27 per page, where it is being released in hard copy. If the information is to be released in PDF format, a fee or charge of GH¢ 0.29 should be applied for the information.*


YAW SARPONG BOATENG, Esq
EXECUTIVE SECRETARY

