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Ghana's Right to Information Bill: An Opportunity for the Implementation of Digital Preservation Infrastructure

Kofi Koranteng Adu

Department of Information Science, University of South Africa

azay723@yahoo.com, azay723@gmail.com

ABSTRACT

Information in the 21st century has become the heart, cornerstone and an important resource to most governments around the world. Access to this information is a universal right according to the UN and is being viewed as an important trajectory in strengthening democracy, transparency, accountability and sustainable developments. To give effect to this provision, Ghana has begun to take steps in promulgating the Right to Information Law (now the information Bill) to provide a legal and institutional framework for making public sector information accessible. However, while the legal framework is necessary, it is not sufficient enough to guarantee real access to digital information by the citizenry. This paper echoes the need for the passage of the bill and the establishment of a digital preservation infrastructure in order to actuate the much anticipated law, particularly when the sustenance and comprehensive use of the law hinges on a digital preservation infrastructure. Promulgation of RTL by government is an assurance to the public that it is transparent and accountable. Existence of proper management of government records backed by RTL is an assurance that governance is carried out to reflect and protect the will of the public. The originality of this paper emanates from its pioneering role and contribution in the emerging discourse about the right to information law and the establishment of a digital preservation infrastructure.

Keywords: *Digital Preservation, Freedom of Information (FOI), Right to Information (RTI) Information Infrastructure.*

1. INTRODUCTION

As enshrined in Article 19 of the Universal Declaration on Human Rights, each individual has the right to seek, receive and impart information through any media and regardless of frontiers[1]. Citizens exercise this right when they access information in digital form. Trustworthiness and integrity of documentary heritage and documentary systems are therefore a prerequisite for the continued exercise of this right. According to Lipchak [2], information is critical to good governance as it captures government activities and processes. Murphy's [3] view on information strikes an accord with Lipchak[2] when he stated that information is the epicentre of the relationship between government and the public it governs. Without information, Murphy continues, the public cannot understand, let alone ask how and why decisions were made on their behalf [3]. Information and data produced by government and public sector organizations represent the single largest and source of information [4]. Access to public sector information is being viewed as an important path to strengthening democracy, good governance, public service and sustainable development. In Ghana, a key strand of the government's transparency agenda is www.ghana.gov.gh. This is a central point of access for government-held non-personal data which enables the citizenry to use public sector information. Citizenry access to government information contributes to building public trust in government, enhances the quality of public policy and strengthens democracy and civic capacity [5]. It also creates information industry and market which improve business and contribute substantially to socio-economic development. It is within this context that President Barack Obama of the United States, within a day into his administration, presented a memorandum entitled Transparency and Open Government to the heads of executive departments and agencies. The memorandum states: My Administration is committed to creating an

unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government [6].

In the same light David Cameron of the United Kingdom on assumption of office touted the transparent agenda of his government as follows: Greater transparency across Government is at the heart of our shared commitment to enable the public hold politicians and public bodies to account; to reduce the deficit and deliver better value for money in public spending; and to realise significant economic benefits by enabling business and non-profit organisations to build innovative applications and websites using public data (David Cameron, 29 May 2010).

These assurances can effectively be enforced when legal and institutional frameworks are put in place to make public sector information accessible. The frameworks usually set out the policies, infrastructure, conditions and rules for accessing and exploiting Public Sector Information [7]. The institutional frameworks usually take the form of freedom of information or the right to information (FOI or RIL) and it is a fundamental pillar of an open government.

1.1 Freedom of Information Defined

Freedom of Information (FOI) refers to the legal right of access to government information given to the public. It creates an environment where government information flows freely to the public but with some level of exemptions [7]. This enables the public to understand what decisions government has made, why they were made and if they have the needs of the public at heart [8]. In 1980, 20 per cent of the OECD Member countries had legislation on access to information; in 1990 this figure had risen to just over 40 per cent and by the end of 2000 it had reached 80 per cent (or 24 out of the 30 member countries); and the

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scope, quantity and quality of information provided to the public has also increased significantly [5]. Currently, all the member countries of the OECD except Luxemborg have legislation on access to information covering the actions of the central government. However, the scope of these laws varies in terms of institutions and types of information covered [9]. These developments are in sharp contrast with the situation in Africa where just ¹eleven countries out of the continent of Africa have legislation (FOI) covering access to information [10]

1.2 The Right to Information in Africa

Essentially the origin of the RTI law in Africa is mixed. In Uganda and Nigeria, civil society organizations campaigned for RTI laws and secured this as part of the struggle for recognition of democratic rights. On the other hand, the governments of Angola, Guinea-Conakry, Niger, and Zimbabwe adopted RTI laws on their own initiative and not as part of a democratization process. It is not clear what motivated military juntas in Niger and Guinea-Conakry to adopt RTI laws few months before handing over power. In Zimbabwe, President Mugabe's ZANU-PF government adopted the restrictive Access to Information and Protection of Privacy Act (AIPPA) in response to the media's exposure of numerous scandals involving senior ZANU-PF leaders at a time when the opposition Movement for Democratic Change was gaining strength and visibility. The law instead of enhancing and facilitating free speech rather controls free flow of information and contains provisions which give the government extensive powers to control the media and suppress free speech by requiring the registration of all journalists.

In Ghana, substantial pressure from civil society compelled the government in 2003 to take steps towards drafting or creating the legal framework that allows the public to access information. Following the continues engagement of civil society with the government, the Right to information Bill (hereinafter referred to as the Bill) was drafted in 2007 and received cabinet approval as a Bill in 2009 after series of modification, for onward submission to Parliament. The bill should have been passed by the end of 2010 or latest by 2012 after the ruling government had used it as political leverage over his opponents to garner votes. It received its first reading in parliament but has not yet been passed due to calls for further modifications. Some of the interesting modifications proposed by the coalition of civil society organizations on the Bill are:

- Changing the title right to information Bill to Freedom of Information Bill; since freedom is greater than a right which may be taken by government at any time.
- Enhancing and strengthening accountability by specifying penalties for information officers and/or

officials who, without just cause, delay a request for information or refuse application on unwarranted grounds; and that a reasonable time limit should be specified for response to requests for information.

- Fees should be limited to the document search, duplication, and review by the information officer (i.e. marginal cost approach) and must provide for waiver of fees in certain circumstances.
- The establishment of a central executive agency designated to oversee the implementation and functioning of the law and ministers should have no business in the review of applications and compilation of list of publicly accessible information.
- Positive obligation for setting up, upgrading and/or scaling up specific systems for storing and disseminating information, taking into consideration both traditional and modern means and tools of communication. To this end, there should be a clear provision on funding the implementation of the law; and priority for funding the development of information systems in particularly public institutions affected by the law.
- Clear provisions that bear positive obligation for suo motto disclosures by Government (in other words government proactively informing citizens without being asked) in order to give substance and effect to the constitutional provision of right to information.
- Further relaxation and clarification in the restrictions and exemptions clauses as these are too wide and vague in their current form.
- The extension of the coverage of the Bill to all agencies and entities of public interest or in which Ghana has an interest.

So far, the government has not hidden his intention to pass the bill into law. On the flipside, the political twist surrounding the passage of the bill sends a signal that it will take a longer period than anticipated. Whiles the seat of government has at various times made clear public declarations of their preparedness to adopt the RTI when it is passed by parliament, parliament on the other hand says it is not a priority (Ghana's Parliament Majority leader, 2012). This posturing of the government of Ghana is not different from the government of Zambia and Bostwana as it raises concerns as to whether they can be taken seriously or not (Freedom of Information network, 2013).

1.3 State of RTI in Africa

Failure to implement the RTI law effectively also remains a great concern to the African region. For instance, regulations to support the implementation of the Ugandan law were only passed in 2011, six years after the passage of the RTI law in 2005. In Ethiopia, regulations to support the 2008 RTI law are yet to be finalized. In South Africa, despite the existence of the right to information for over a decade, recent civil society research indicates that forty per cent of requests for information go unanswered by public authorities. In order words, accessibility comes along with some level of exemptions and limitations to the prospective

¹ The eleven countries with legislation on RTI in Africa are: Angola Ethiopia Guinea Liberia Namibia Niger Nigeria Rwanda Sierra Leone South Africa Tunisia Uganda, Zimbabwe.

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user [10]. As at the time of putting this work together, there is no signal that Ghana's Bill will be read for the second time and even be considered in parliament. However, if the Right to Information Law (RIL) is enacted, Ghana will join the ranks of the eleven countries to have passed the law and further improve her rankings in the ²corruption perception index in the world.

While calls for the passage of the bill are necessary, it is not sufficient to ensure real access to public sector information if proper storage of digital records is not pursued. Poor storage of digital records will render the RTI law ineffective and undermine government effort to implement e-government [11]. Countries with advanced experience in RIL such as the U.S.A, U.K, New Zealand, Canada and Australia acknowledge the serious implication of poorly managed records. This is so because the realization of the core tenets of the legislation is contingent on the management of good records keeping [12]. Accordingly, the implementation plan for RTI Law includes steps towards ensuring that the records have been preserved well to support RTI Law requests which will eventually make information accessible. Accessibility in this context comprises discoverability, retrievability, affordability and usability of information to a prospective user (Yawson, Armah and Dadzie, [6]. To that effect, the enactment of the law is to provide an appropriate policy or institutional framework to create a technical infrastructure for the preservation of records in order to give life to the law.

As the UK Lord Chancellor's Code of Good Practice on the Management of Records (issued under the Freedom of Information Act 2000 indicates [13]:

FOI is only as good as the quality of the records and information to which it provides access. Access rights are of limited value if information cannot be found when requested or, if found, cannot be relied on as authoritative, or the arrangements for their eventual destruction or transfer to an archives, are inadequate.

The exercise of one's right to request for records hinges on the availability of information about records in the government ministries and private organization. Clearly, FOI has the potential to enhance records management either within an individual ministry or across government by making government officials aware about the importance of records and the significant role records play in supporting them to hold themselves accountable to what they do.

1.4 Digital Preservation

Essentially, the use of ICT has led to the creation of vast amount of digital data both within the public and private sector [14]. However, this vast amount of digital information can be a nightmare, given that electronic records are more complicated, delicate than paper based systems and therefore threaten the future sustainability of government information

[15]. The tragedies of the terrorist attacks on the United States on 11 September, 2001 which affected public records- [16] and the rapid changes in computer hardware and software and the media failure [17], have necessitated the need for an information infrastructure to ensure longevity of public information.

In Ghana, public sector organizations are creating almost all of their information in digital form and this includes land records, parliamentary records and court records. However, this information is at risk due to technological obsolescence, lack of organizational policies, insufficient resources and fragile storage media. The country, in the last decade has witnessed reported cases of damaged documents in public institutions as a result of flood, fire, natural disaster, and computer virus and system failures. The most affected were the Ministry of Foreign Affairs and Regional Integration and the Ministry of Information. The nation has also lost a great deal of valuable institutional memory through poor record-keeping culture of many public institutions [18]. Clearly, this unfortunate phenomenon poses a huge threat to the much anticipated RTI law.

Although the enactment of the Public Records and Archives Administration Act, 1997 (Act 535) which established the Public Records and Archives Administration (PRAAD) was meant to anticipate and to cure the malaise of public record keeping in the country, lack of funding and logistics has made it impossible for PRAAD to play its envisaged role [19]. For instance PRAAD is currently understaffed and lacks the capacity to digitize its current records system

The RTL law will ensure that the digital information so preserved remains accessible to users for a long time and for future generations. The creation of a trusted system in this regard to manage records in our public agencies will eventually facilitate the use of the RTI law. A trusted information infrastructure is a type of system where rules govern which documents are eligible for inclusion in the preservation system; who may place records in the system and retrieve records from it; what may be done to the record; how long records remain in the system; and how records are removed from it [20]. Whereas digital approach to public records will ensure long term accessibility of resources to the public, faster and better search possibilities using search tools; the RTI law will promptly respond to the efficient delivery of government services to citizens and business and better dissemination of government information.

Since governance in every democratic culture is of the people, by the people and for the people, government ought to be responsible to the general public. Citizens demand trust, transparency and accountability from their government. Their records therefore must be kept and made available when they need them.

² Ghana placed 64th out of 171 countries in the corruption perception index in 2012. Slipping behind Namibia, Rwanda, Cape Verde and Botswana.

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2. OVERVIEW OF THE RIGHT TO INFORMATION BILL

The principles of freedom of access to information entrenched in western tradition is gradually gaining presence in the political and social landscape of Africa [21]. It is in this light that chapter five of the 1992 constitution of Ghana, Article 21, clause 1 paragraph f [22] enunciates that everyone shall have the right to 'information subject to such qualifications and laws as are necessary in a democratic society'. The objective of the information bill is therefore to give effect to this provision by ensuring that everyone has the right of access to information held by the state and that such access should be based on certain qualifications and requirements. In other words, the Bill directs that, with the exception of information exempted from public access, a person has a right of access to information or part of an information in the custody or under the control of a government agency; and that a person need not specify the reason for the request except that the applicant requires an urgent response to the request. The bill further espouses mandatory disclosure of information on governance to the public without the need for an application and enjoins ministers of state in consultation with the public service commission and the Head of Civil Service, to compile and publish lists, indexes and manuals of its information holdings. In addition, the manual specifies which information is accessible freely, at a fee, or may be purchased; and provide the contact details of the person to whom an application may be made and the procedures by which the information can be accessed.

Clause 5 to 18 of the Bill contains grounds for exemptions to certain type of information and public bodies and officials to whom the Bill does not apply. In short, access to such information can be denied if the information is related to the president and/or vice-president; information relating to cabinet decisions, law enforcement, public safety and national security, defense, international relations, and other privacy issues. Under clause 19 to 30, the Bill empowers the information officer to decide whether giving access to the records of agency will be in the public interest or not. Essentially, such vague and discretionary powers can impede the public access to information. Be that as it may, an application can be refused if the application is frivolous or vexatious, or the processing of the application would require an unreasonable diversion of the agency's resources and the applicant has not paid in advance the cost of the processing as determined by the agency.

3. CONCLUSION

Passing the RTI law is fundamental but insufficient if a digital preservation system is not in place. A good access to information requires an efficient management of records and civil society engagement. Digital preservation is a core tenet of the realization of the RTL law. The success of the RTL law and digital preservation is dependent on each other. Transparency and accountability can only be guaranteed if the public have access to government information. Digital preservation gives an assurance to the RTI law that the government will create, accumulate and maintain information that is authentic, verifiable and reliable. On the

other, responsibility is placed on all public agencies to make government accumulated authentic and reliable information accessible to the public.

REFERENCES

- [1] United Nations. Article 19. Universal Declaration of Human Rights
- [2] Lipchak, A. (2002). "Information Management to Support Evidence-Based Governance in the Electronic Age- A Public Policy Forum Discussion Paper, November, 2002.
- [3] Murphy, K. (1996). Information and the Public Service, speech delivered to the EHB at Dr. Steevens Hospital, 22nd February 1996. Available: http://ombudsman.gov.ie/2292_156.htm (Accessed 4th February 2013).
- [4] Public Sector Information and U.K landscape Report. (2010). www.nationalarchives.gov.uk (Accessed 13th June 2012)
- [5] OECD (2001). Citizens as Partners: Information, Consultation and Public Participation in Policy-Making, Paris: OECD Publications (No. 52159).
- [6] Obama, B. (2009). Transparency and Open Government. Office of the President, United States of America, at <http://www.whitehouse.gov> [accessed 29 October 2012].
- [7] Yawson, D.O., F.A. Armah and Dadzie. S.K (2010). Ghana's Right to Information Bill: Opportunity For SDI As A Technical Infrastructure.
- [8] Riley, T.B. (2000). "Freedom of Information and the Right to Know: Accessing Government Documents" in D Routledge, K Barata, and P Cain (eds) IRMT, Information for Accountability Workshops, Sourcebook, London: IRMT, pp. 29-30.
- [9] OECD. (2010). Good Governance for Digital Policies: How to Get the Most Out of ICT: The Case of Spain's Plan Avanza, OECD Publishing.
- [10] Global network of freedom of information advocates, 2013. www.freedominfo.org Access on 3 August, 2013.
- [11] IRMT.(2011). Managing Records as Reliable Evidence for E-government, ICT, Freedom of Information: An East African Regional Situation Analysis. <http://irmt.org/portfolio>. Accessed on 20 August, 2013.
- [12] Mezeba, P. & Sebina, M. (2003). Freedom of Information, Records Management and Good Governance. Any symbolic relationship? A paper presented at the XVII BIENNIAL Eastern and Southern Africa Regional Branch of the International

<http://www.cisjournal.org>

- Council on Archives (ESARBICA) General Conference on Archives, Society and Good Governance. Mozambique, Maputo, JULY 22-26, 2003
- [13] U.K Freedom of Information Act 2000.
- [14] Decman, M. (2010). Long term preservation in e-government: A case of Slovenia. University of Ljubliana, faculty of administration
- [15] Lyman, P., & Varian, H. R. (2003). How much information? www.ischool.berkeley.edu/file. (Accessed 27 January 2012)
- [16] Read, J.&Ginn, R. (2007). Records Management South- Western Cengage Learning: U.S.A
- [17] Hedstrom, M. (1998). Digital Preservation: A Time Bomb for Digital Libraries. *Computers and the Humanities*. 31(1):189–20.
- [18] The Daily Graphic, Friday, November 25, 2011.
- [19] The Public Records and Archives Administration, Act 535, 1997.
- [20] InterPARES Project. (2001). The long term preservation of authentic electronic records. Findings of the Inter PARES Project <http://www.interpares.org/book> (Accessed 10 June, 2012).
- [21] Ngulube, P. 2009. The preservation and Access to Public Records and Archives in south Africa. Lambert Academic Publishing AG& Co. KG Saarbrucken, Germany
- [22] The 1992 Constitution of the Republic of Ghana. Republic of Ghana

The Author is currently undertaking a PhD student at the University of South Africa.