IN THE HIGH COURT OF JUSTICE (HUMAN RIGHTS DIVISION 2) HELD AT ACCRA ON THE 13TH DAY OF APRIL 2016 BEFORE HIS LORDSHIP ANTHONY K. YEBOAH (JUDGE)

SUIT NO. HR/0027/2015

1. **LOLAN KOW SAGOE-MOSES** - **PLAINTIFFS**
2. **KATHLEEN ADDY**
3. **FRANCIS KENNEDY OCLOO**
4. **EVANS AMEGASHIE**
5. **YAW BAFFOUR ANKOMAH**
6. **KWAME BARKERS ANSAH**
7. **MICHAEL ANNOR**

VERSUS

1. **THE HONOURABLE MINISTER** - **DEFENDANTS**
2. **THE ATTORNEY-GENERAL**

JUDGMENT

COUNSEL: Nana Akwasi Awuah, Esq. led by Kofi Bentil, Esq. for Applicants
Yvonne Aboagywaa Awoonor-Williams (Mrs), Senior State Attorney for Respondents

Introduction

All the seven Applicants are citizens of the Republic of Ghana; and, as their names suggest, the 1st and 2nd Respondents are respectively the Minister for Transport and the Attorney-General of the Republic of Ghana. The Applicants claim that they bring the present application "in the

spirit of probity and accountability and pursuant to [their] civic responsibility under Article 41 (f) of the Constitution, 1992."

Factual background

By their application brought under Order 67 of the High Court (Civil Procedure) Rules, 2004, C.I. 47 for the enforcement of their fundamental human rights and freedoms and filed on 22-12-2015, the Applicants claim the following reliefs:

"a. An order directed at the Honourable Minister of Transport to furnish the Applicants with copies of the contract for the branding of the 116 Bus Rapid Transit (BRT) buses.

b. A further order directed at the Honorable Minister of Transport to furnish the Applicants with copies of all the documents relating to the contract for the branding of the 116 Bus Rapid Transit (BRT) buses.

c. An order directed at the Honourable Minister of Transport to make full disclosure on the contract for the branding of the 116 Bus Rapid Transit (BRT) buses.

d. Any further or consequential order(s) as this honourable court may deem fit."

The grounds for the application are that on or about 16-12-2015 the news reports that emerged from the Parliament of Ghana revealed that the Government of Ghana, acting through the Ministry of Transport spent GH¢ 3.6 million on the branding of 116 Bus Rapid Transit (BRT) buses at the cost of approximately GH¢31,000 per bus. However, in some interviews granted by the artist, who was engaged by the Ministry of Transport to undertake the bus branding, the artist claimed that he charged GH¢1,600 per bus.

According to the Applicants, in the performance of their civic duty under Article 41(f) of the Constitution, 1992 "to protect and preserve public property and expose and combat misuse and waste of public funds and property", they bring the present application for the reliefs set out above. In effect, they seek to ensure probity and accountability in the use and application of public funds. And, in doing so, the Applicants assert, in

this application, their fundamental human right to information connected with the bus branding contract.

In their defence, the Respondents raise three main issues, namely: firstly, that the Applicants have not demonstrated that there has been a breach of any fundamental human right in relation to them as is required by Article 33(1) of the Constitution, 1992; secondly, that the applicants have not made any request for the information they claim to have a right to; and, thirdly, that the right to information is not absolute, but subject to such qualifications and laws as are necessary in a democracy. The Respondents raised the first (jurisdictional) issue as a preliminary legal objection.

Preliminary legal objection

I have before me the affidavits of the parties and the written legal submissions of both counsels.

I decided to incorporate the reasons for my decision on the preliminary legal objection into this ruling and I now proceed to do so.

Article 33(1) of the Constitution, 1992 provides in part as follows: "Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened *in relation to* him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress." Relying on the authorities of *FEDYAG v. Public Universities of Ghana & ors.* [2010] SCGLR 265 and *Awuni v. WAEC* [2003/4] SCGLR 471, the learned Senior State Attorney for the Respondents submits that, if there was any breach of fundamental human rights at all, the Applicants have failed to demonstrate that the breach was *in relation to* them in which case they may be entitled to redress under Article 33(1).

Countering this submission, learned Counsel for the Applicants submits that all the reliefs sought in this application are *in relation to* the Applicants *personally*.

The issue is procedural in the sense that the Applicants may only apply to the court for redress of breaches of fundamental human rights where the breaches are *in relation to* them *personally*. I have carefully examined all the reliefs set out above and I am convinced that they all address issues that are personal to the Applicants. They are personally entitled to the right under Article 21(f) of the Constitution, 1992 and they are personally in court to vindicate just such right on their own behalf. The Applicants have not brought the application in the public interest, but *in relation to* themselves. The public may benefit from the release or disclosure of the requested information collaterally or incidentally, but such collateral or incidental benefit does not, for that matter, make their application any less an application that is covered by Article 33(1). Accordingly, the preliminary legal objection is overruled.

Prior demand

As indicated above, the Applicants as well as all other citizens are enjoined by the Constitution "to protect and preserve public property and expose and combat misuse and waste of public funds and property." To effectively perform this civic duty, the citizen is entitled to seek assistance from Article 21 of the Constitution by relying on the right to information. Article 21(a) & (f) of the Constitution, 1992 provides as follows: "(1) All persons shall have the right to - (a) freedom of speech and expression, which shall include freedom of the press and other media; (f) information, subject to such qualifications and laws as are necessary in a democratic society;..." The Applicants contend in this application that they need the requested information to enable them perform their duty to protect the public purse, so to speak.

On the contrary, the defence is that the Applicants did not request for the information before proceeding to Court and that their right to information is subject to qualifications and laws that are necessary in a democracy.

As regards the prior request, I am aware of the Common Law rule that, for an order of mandamus to be properly made, there must be a prior demand. In the case of *In Re Botwe & Mensah* [1959] GLR 457, Ollennu J

(as he then was) applied this procedural rule citing as authority Halsbury's Laws of England, 3rd edition, volume II, page 106, paragraph 198, under the heading "Demand for performance must precede the application." There, the principle is stated thus: "As a general rule the order will not be granted unless the party complained of has known what it is he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the Mandamus desired to enforce, and that that demand was met by a refusal."

In response to the submission as to prior request, I need only remind the Respondents that the present application has been brought not under Order 55 of the High Court (Civil Procedure) Rules, 2004, C.I. 47, but under Order 67 of C.I. 47. The present application is not a judicial review application, but a human rights application. The fact that the court is empowered to make orders in the nature of mandamus does not necessarily import all the rules or principles governing judicial review, as they relate to mandamus, into the consideration of human right applications or issues.

In human rights matters substance prevails over formalities and technicalities. In my view, the purpose of prior demand must be to give ample opportunity to the relevant authority to address the request and avoid multifarious litigations. And, if the Respondents would have favourably responded to the prior request of the Applicants, they would certainly have done so upon due service on them of the present application, and there would not have been the defence that the present application is frivolous. To put premium on prior request in the circumstances of the present application is to indulge in procedural rituals in disregard of substance, that is, fundamental human rights and freedoms.

The Defence of 'subject to'

An important leg of the defence is that the right to information is not absolute, but subject to qualifications and necessary laws in a democracy. In this regard, it is instructive to note Article 21(1) of the Constitution, 1992 carefully. It says simply what it means: "All persons shall

have the right to - ... (f) information, subject to such qualifications and laws as are necessary in a democratic society."[1] Every person in Ghana has the inalienable right to information including official information.

It is a right that is primarily inherent in the person as a human being and secondarily constitutional. The right is virtually boundless unless the State takes steps to limit, through legislation, its scope, reach or mode of application. It is not the legislation that vests the right in the individual; the individual has the right to information as both a human right and a constitutional right. The individual does not need a Freedom of Information Act to enjoy the right to information in Ghana. The Act is mainly necessary to sanitize the flood of requests or applications for official information and to recover the costs of answering such requests or applications. Additionally, the Act may be for the purpose of designating the authority to release the information as well as to circumscribe information that, in the public interest, ought to be off-limits. In other words, the legislation may be passed to set out the mode of application for the information sought, the officer responsible for handling the application, the time frame for responding to the application, what information is off-limits and the financial implications of the requisition for the information.

Accordingly, it is not the law that in the absence of a freedom of information legislation, a person in Ghana is bereft of the right to

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[1] "Human Rights Committee 102nd session, Geneva, 11-29 July 2011, General comment No. 34 Article 19: Freedoms of opinion and expression. General remarks on Right of to information.

18. Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this general comment. The designation of such bodies may also include other entities when such entities are carrying out public functions. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs 33 and the right of the general public to receive media output.34 Elements of the right of access to information are also addressed elsewhere in the Covenant. As the Committee observed in its general comment No. 16, regarding article 17 of the Covenant, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified. Pursuant to article 10 of the Covenant, a prisoner does not. 29 See communication No. 633/95, Gauthier v. Canada. 30 See the Committee's general comment No. 25 (1996) on article 25 (Participation in public affairs and the right to vote), para. 25, Official Records of the General Assembly, Fifty-first Session, Supplement No. 40, vol. I (A/51/40 (Vol. I)), annex V.

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19. To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.39 The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests."

information. In Ghana, every person, including journalists, is entitled to a human and constitutional right to information even in the absence of further legislation. The phrase *'subject to'* simply indicates that a law may be passed to which this right to information may be subservient.

To argue that Article 21(1)(f) takes its constitutional life from a freedom of information legislation without which the right cannot avail a person is to turn the language of the constitutional provision on its head. The provision speaks for itself and there is no warrant for its interpretation. Article 21(1)(f) is enforceable as a human right without more. If it were otherwise, it could legitimately be argued that not passing a freedom of information bill may constitute an act of reverse interference with the right to information as enshrined in the Constitution, 1992. Rule of law abhors such reverse interference. "Without rule of law, rights remain lifeless paper promises rather than the reality for many throughout the world. Rule of law may also be indirectly related to better rights protection in that rule of law is associated with economic development, democracy and political stability, which are key determinants in rights performance."[2] Rule of law enjoins the State to make the right to receive official information a reality.

No one benefits from his own wrong; the State ought not to be allowed to benefit from the failure to pass a Freedom of Information Act by using the non-existence of such Act as a ground for refusing to disclose the requested information. Systemic failures or difficulties cannot justify breaches of fundamental human rights or dereliction of human rights obligations.

Article 10 of ECHR & TASZ v Hungary

In Ghana, the right to information is guaranteed under Article 21(1)(f) of the Constitution, 1992. In the European Union, Article 10 of the European Convention on Human Rights (ECHR) provides for the freedom of expression and the right to receive information. Article 10 of the ECHR on the right to information fell for consideration by the

[2] *Human Rights and Rule of Law: What's the Relationship?* by Randall Peerenboom, University of California, Los Angeles, School of Law Public Law & Legal Theory Research Paper Series, Research Paper No. 05-31; http://ssrn.com/abstract=8160241

European Court of Human Rights (ECtHR) in the important case of *Tarsasag a Szabadsagjogokert (TASZ) v Hungary*, Application no. 37374/05 of 14th April 2009. Article 10 of the ECHR, as has been interpreted and applied by the ECtHR, is in pari materia with Article 21(1)(f) of the Constitution, 1992.

In the *Tarsasag* case, the Hungarian Civil Liberties Union (Társaság a Szabadságjogokért, TASZ) lodged the application against the Republic of Hungary with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The applicant in that case alleged that the decisions of the Hungarian courts denying it access to the details of a parliamentarian's complaint pending before the Constitutional Court amounted to a breach of its right to have access to information of public interest.

In the judgment, the ECtHR noted, among others, as follows:

"23. … [The] States have positive obligations under Article 10 of the Convention. Since, in the present case, the Hungarian authorities had not needed to collect the impugned information, because it had been ready and available, their only obligation would have been not to bar access to it. The disclosure of public information on request in fact falls within the notion of the right "to receive", as understood by Article 10 § 1. This provision protects not only those who wish to inform others but also those who seek to receive such information. To hold otherwise would mean that freedom of expression is no more than the absence of censorship, which would be incompatible with the above-mentioned positive obligations."

The ECtHR accordingly held that the Republic of Hungary was in breach of Article 10 of the European Convention on Human Rights, the relevant part of which reads as follows: "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. … 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by

law and are necessary in a democratic society, ... for the protection of the reputation or rights of others, [or] for preventing the disclosure of information received in confidence, ..."

In other words, the ECtHR recognized the citizens' right of access to official documents. The ECtHR made it abundantly clear that the refusal to provide the requested information or document is a violation of Article 10 of the Convention. The ECtHR referred to the refusal of such information as the 'censorial power of an information monopoly'.

The Court, however, held that the request may legitimately be refused where the request requires that the Government may have to embark on a collection of data or where the information requested relates to 'administrative data and documents' including, I would add, personal data on citizens other than the applicants.

Article 10 of ECHR & Guja v Moldova

Again, in the case of *Guja v Moldova*, of 12th of February 2008[3], the Court held that "the interest which the public may have in particular information can be so strong as to override even a legally imposed duty of confidence." In the *Guja* case, the complainant was dismissed from the Prosecutor General's Office for divulging, without authority and in breach of the press department's internal regulations, two letters to a newspaper that allegedly disclosed political interference in pending criminal proceedings brought against a number of police officers. The letters had been written by the deputy speaker of Parliament and a deputy minister.

The issue was whether his dismissal was an interference of his freedom of expression that was necessary in a democratic society. The ECtHR held that "the public interest in having the information about undue pressure and wrongdoing within the office was so important in a democratic society that it outweighed the interest in maintaining public confidence in the office."

[3] *Guja v Moldova*, Reference Application no. 14277/04, Court European Court of Human Rights; Date of Judgment 12 Feb 2008

Director of Public Prosecutions v Smith

Also, in the Australian case of *Director of Public Prosecutions v Smith* [1991] VicRp 6 [1991] 1 VR 63 (13 December 1989) (Supreme Court of Victoria Appeal Division), the Court ordered the disclosure of documents to the appellant. This was a case where the appellant was concerned that the circumstances leading to the entry of nolle prosequi and the decision of the Prosecution not to lead evidence in the second trial of McArdle, thus stultifying his prosecution, was not above board. He argued, and the Court agreed with him, that it was in the interest of the administration of criminal justice that the public had access to the relevant information, because confidence in the justice system is in the public interest.

Speaking of the trial court, the Supreme Court of Victoria remarked that: "In the present case the learned judge recognised the existence of the public interest in the proper and due administration of criminal justice. It seems he considered that to give effect to the interest it was necessary for the exempt documents to be made available for public scrutiny." It was again noted in this case that "...the existence of a petition concerning the prosecution signed by 500 persons was material on which the learned judge might have found the existence of public concern about a matter affecting the public interest." The Court considered the signed petition as evidence of the interest of the public in the administration of criminal justice, which is in the public interest. For effective and productive discourse or debate on this public interest issue, there certainly was the need for disclosure of the requested information.

Still on what constitutes public interest warranting the disclosure of public information, the Court explained that: "[t]here are many areas of national and community activities which may be the subject of the public interest. The statute does not contain any definition of the public interest. Nevertheless, used in the context of this statute it does not mean that which gratifies curiosity or merely provides information or amusement: cf. R v Inhabitants of the County of Bedfordshire (1855) 24 LJQB 81, at p. 84, per Lord Campbell LJ. Similarly it is necessary to distinguish between "what is in the public interest and what is of interest to know": Lion Laboratories Ltd. v Evans [1985] QB 526, at p. 553, per Griffiths LJ."

The Court pointed out that the request for disclosure should not be to merely entertain or satisfy the curiosity of the person requesting the information; it must be in the public interest that the disclosure be made or that the request receives a favourable response. An issue may be of public interest without being in the public interest; the two are different. It may be of public interest for being sensational without being in the public interest understood in terms of national interest, national economy, public order, national security and public morality. Accordingly, in the context of the case of *Director of Public Prosecutions v Smith,* the Court held that securing the public confidence in the administration of justice is in the public interest thus warranting the disclosure of the information.

The Court finally concluded that "the contents of the document are relatively unrevealing and innocuous; therefore disclosure of the information therein would not be detrimental to the good order of the State or society."

However, the Court stated that a disclosure may not be made where it may amount to unreasonable disclosure of personal affairs. "... [T]he protection is limited to documents, the disclosure of the contents of which would involve unreasonable disclosure of the personal affairs of a person. To be exempt under this section, two conditions relating to the document must be satisfied: first, that the disclosure of the document would involve disclosure of information relating to the personal affairs of any person, and secondly, that the disclosure would involve unreasonable disclosure of those affairs."

The freedom of expression and the right to information are so inextricably intertwined that the one can be said to worthless without the other. Without information, expression is meaningless and vice versa. To participate in the public marketplace of ideas, the citizens need the right to receive information and the freedom to express themselves without illegitimate interference including censorship and exclusion of public information from the reach of citizens.

Held

For the above reasons, I am convinced that under Article 21(1)(f) of the Constitution, 1992, persons including the Applicants are entitled to access public information that is in the custody or possession of the Government upon a request, and, where appropriate and lawful, the Government is bound to release the requested information or document to the persons requesting. The factors that may be considered in deciding to answer the request favorably may include other human rights and freedom to which the right to information is subject, the national interest, public order, national security and public morality. Also, to be considered is whether the information is already available or yet to be collected. The list of factors to consider is not exhaustive. But, of overriding importance is the fact that, in a democracy, the free and unrestricted marketplace for the free exchange of ideas and public debate is the heartbeat of democracy as well as the assurance of probity and accountability.

The cost of the bus branding contract is a matter of public debate and discussions[4]. It is a matter of public interest and the purpose of the request for information on and about the bus branding contract is in the public interest by virtue of Article 41 of the Constitution, 1992. It is legitimate for the Applicants to request for the necessary information, if only in their view such information will enable them fully participate in the public debate or even for their private research. It matters little whether the purpose of the request is to even enable a journalist to report it.

In the present application it has not been demonstrated that it is not in the public interest that the information be released or that its release is offensive to the national interest, public order, national security or public morality. It has also not been demonstrated that the release is offensive to the human rights of other citizens. I do not see the release to be against the human rights of any other citizens or a danger to national interest, public order, security or morality. In the result I am of the considered view that the application should succeed and I grant same accordingly

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[4] See section 9 of Evidence Act, 1975, NRCD 323

Orders

Relief (a):

Relief (a) as couched poses no problem. Accordingly, I hereby grant it as prayed. It is hereby ordered that the Respondents do make available to Counsel for the Applicants a photocopy of the contract[5] for the branding of the 116 Bus Rapid Transit (BRT) buses.

Relief (b):

Relief (b) requests that the Respondents furnish the Applicants with copies of all the documents relating to the contract for the branding of the 116 Bus rapid Transit (BRT) buses. In deciding whether to grant this relief or not, I need to keep in mind what freedom of information legislation usually does. It enables the public to gain access to public or official records; and, it requires that the government, as a matter of course, should make certain specified types of official records public, available and accessible.

Beyond the records that are routinely available to the public, the public is empowered by law to receive upon express request copies of official records that are not exempted by law or prudence. Official records are exempt where their disclosure would cause a specific harm. Official

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[5] See Part IV of the FREEDOM OF INFORMATION ACT & PRIVACY ACT HANDBOOK FEBRUARY 2007 to confirm that information relative to official contracts may be made available upon request.
"IV. TYPES OF FTC RECORDS REQUESTED
The most frequently requested categories of FTC information are (A) consumer complaints, (B) material relating to investigations, and (C) administrative records. .....
C. Administrative Records
The FTC maintains various administrative records, such as contract proposals, budgets, and personnel records. Requests for these records should be made through the FOIA office. However, some administrative records are public documents. These records include administrative manuals, statements of the Commission's general procedures and policies, and rules of practice, and are available online or by writing directly to: ...."

records may also be exempted[6] under the following heads of exemption[7]: national defense and foreign relations information; internal agency rules and practices; information that is prohibited from disclosure by another law; trade secrets and other confidential business information; inter-agency or intra-agency communications protected by legal privileges; information involving matters of personal privacy; certain types of information compiled for law enforcement purposes; information relating to the supervision of financial institutions; and, geological information on wells.

Even in the absence of a freedom of information legislation, it is my considered view that prudence demands that we learn from existing freedom of information legislation in other jurisdictions and use them as a guide to help us decide whether it is prudent to give in to the demand of

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[6] See Part V of the FREEDOM OF INFORMATION ACT & PRIVACY ACT HANDBOOK FEBRUARY 2007:
"V. EXEMPTIONS TO THE FOIA
A. The Nine Exemptions
While the focus of the FOIA is on making government information available to the public, the statute recognizes that disclosure of certain kinds of information would be harmful. For this reason, the FOIA exempts nine categories of information from the general mandatory disclosure rule, and excludes certain records from coverage under the FOIA.
Exemption 1: Classified national defense and foreign relations information
Exemption 2: Internal agency rules and practices
Exemption 3: Information that is prohibited from disclosure by another federal law
Exemption 4: Trade secrets and other confidential business information
Exemption 5: Inter-agency or intra-agency communications protected by legal privileges
Exemption 6: Information involving matters of personal privacy
Exemption 7: Certain types of information compiled for law enforcement purposes
Exemption 8: Information relating to the supervision of financial institutions
Exemption 9: Geological information on wells FTC records that most frequently fall into one of these exempted categories include internal personnel rules and practices (Exemption 2), material we have obtained from businesses (Exemption 4, in conjunction with Exemption 3), certain internal communications that are protected by a privilege (Exemption 5), personal information (Exemption 6), and law enforcement records (Exemption 7).

The following sections clarify specific exemptions related to FTC functions.
....
Exemptions 3 & 4: Information Prohibited from Disclosure By Other Federal Laws, and Trade Secrets and Other Confidential Business Information
In the course of its law enforcement activities, the FTC obtains a great deal of sensitive or confidential information from businesses. Disclosure of this information often could cause competitive harm to the businesses that provided it. Moreover, businesses are more willing to cooperate with FTC investigations if they know that the government will protect their sensitive information. Accordingly, the law recognizes the importance of protecting much of this information from disclosure. FOIA Exemptions 3 and 4, together with other statutory provisions, require the agency to withhold trade secrets and other confidential commercial or financial information.... The FTC has the authority to require businesses or individuals to submit information needed for investigations. This authority is known as compulsory process. Sections 21(b) and 21(f) of the FTC Act prohibit the release of information obtained through compulsory process, or submitted to the FTC voluntarily by a party when compulsory process might otherwise have been used.... Disclosing such information to the public would harm the distributor's competitive position and make it and others in the industry less likely to cooperate with the government for fear of losing competitive advantage.... Deliberative process: This privilege allows the FTC to withhold information that is predecisional (i.e., prepared in advance of an agency decision in a particular matter) and deliberative (i.e., prepared to aid in the decision-making process). The FOIA allows the agency to withhold records of this type to facilitate open and candid discussion of issues among government employees as part of agency decision-making.....
Example: In a law enforcement investigation that is likely to go to trial, the FTC's Office of the General Counsel staff may prepare memoranda analyzing whether the FTC has jurisdiction and outlining the arguments the FTC's attorneys could use to defend its jurisdiction in court. The FTC may use all three of these privileges to withhold such memoranda."

[7] Freedom of Information Act 2000; http://www.cfoi.org.uk/foiact2000.html

the Applicants where they request that 'all' information relative to the contract be disclosed.

The danger attending an order that the Respondents disclose trade secrets and other confidential business information is real and there is the need to be prudent in this regard. In the absence of specificity with respect to this relief, I shall tailor my order to take account of the above heads of exemption. Accordingly, I hereby grant relief (b) in terms as follows.

It is hereby ordered that the Respondents make available to the Applicants copies of all the documents relating to the contract for the branding of the 116 Bus rapid Transit (BRT) buses, unless the following factors counsel otherwise: national defense and foreign relations information; information that is prohibited from disclosure by another law; trade secrets and other confidential business information; inter-agency or intra-agency communications protected by legal privileges; information involving matters of personal privacy; certain types of information compiled for law enforcement purposes.

It is further hereby ordered that the refusal to disclose must be justified by the Respondents in writing and made available to the Applicants and the Court within 14 days upon receipt of the order herein made. For the avoidance of doubt, the order made in respect of relief (b) does not under any circumstances whatsoever affect the order made in respect of relief (a) which is absolute and categorical.

Relief (c):

Before I proceed to make the necessary and consequential orders in respect of relief (c), I need to make the following remarks.

At the hearing of the application, Counsel for the Applicants referred me to paragraph 13 of the their affidavit in support when I drew his attention to the risk of relief (c) being over-broad. I shall accordingly take this paragraph into account in dealing with relief (c). The paragraph reads as follows: "That in exercise of this constitutional right to information, we wish to ascertain, through this honourable court, and from the 1st

Respondent, answers to certain pertinent questions concerning the award of the contract for the branding of the 116 BRT buses, including but not limited to the following:

a. Whether or not the award of the contract was done in adherence to the Public Procurement Act.

b. Whether or not the contract procurement was competitive or sole sourced.

c. Whether or not there were other alternatives to this contract."

What I observed with respect to specificity and the countervailing factors that counsel against disclosure of official information in the case of relief (b) is applicable to relief (c). However, in the case of relief (c), the Applicants have helped matters by clarifying the relief with reference to paragraph 13 of the affidavit in support quoted above.

Accordingly, it is hereby ordered that the Respondents answer the following questions in writing and furnish the Applicants with copies of the answers:

a. Whether or not the award of the contract was done in adherence to the Public Procurement Act, 2003, Act 663.

b. Whether or not the contract procurement was competitive or sole sourced.

c. Whether or not there were other alternatives to this contract.

Consequential orders

Mindful that the processing of the information requested and delivery of same to the Applicants involve financial expenses, and that a freedom of information legislation would require that processing fees be paid by the requisitors, I shall order that fees be paid by the Applicants to the State through the revenue account of the Judicial Service in respect of the requisition.

It is hereby ordered that upon the service on the Respondents of the notice of entry of judgment, with a photocopy of the receipt for the payment of the processing fee attached, the Respondents shall make

available to the Applicants the information herein ordered within fourteen (14) days.

It is further hereby ordered that the Applicants pay to the Government of Ghana through the revenue account of the Judicial Service as processing fees the amount of GH¢1000.00.

The application succeeds. Upon the above terms, final judgement is hereby entered for the Applicants.

(SGN)
ANTHONY K. YEBOAH, J.
HIGH COURT JUDGE

CERTIFIED TRUE COPY
.....REGISTRAR
HIGH COURT
HUMAN RIGHT DIVISION
LLC-ACCRA