

**Ref: IIC-D001-07-2013**

## **DECISION**

**DATE:** JULY 23, 2013

**PUBLIC AUTHORITY:** Liberia Anti-Corruption Commission (LACC)

**COMPLAINANT:** Center for Media Studies and Peace Building (CEMESP)

### **Summary**

The Center for Media Studies and Peace Building (CEMESP) wrote the Liberia Anti-Corruption Commission (LACC) requesting for copies of asset declaration forms filed by Cabinet ministers and their deputies. LACC first wrote CEMESP indicating that CEMESP should pay for the cost of reproduction since the volume of the materials sought was large. As CEMESP was about to pay the cost of reproducing the requested forms, LACC again wrote CEMESP, denying the request on grounds that the information sought by CEMESP is exempted from public disclosure.

The Independent Information Commissioner's decision is that the information sought should be disclosed; and therefore orders LACC to so do in the larger public interest.

### **Background**

1. On November 13, 2012, the Center for Media Studies and Peace Building (CEMESP) wrote the Liberia Anti-Corruption Commission (LACC) requesting for copies of asset declaration forms submitted by Cabinet ministers and their deputies.

2. On November 21, 2012, LACC wrote CEMESP acknowledging receipt of the request and asking CEMESP to pay for the cost of reproducing the asset declaration forms.
3. On November 22, 2012, CEMESP wrote LACC acknowledging LACC's letter of November 21 and requesting LACC to furnish it with the total number of pages and the associated cost of reproducing the documents requested.
4. On December 19, 2012, LACC wrote CEMESP saying that although it had earlier agreed to give the requested information to CEMESP, a careful scrutiny of the Liberia Freedom of Information Act, particularly Chapter 4.0 captioned Exemptions, forced LACC to change its position, now denying CEMESP's request.
5. On January 7, 2013, CEMESP wrote a complaint to the Independent Information Commissioner about LACC's denial of its request, and seeking the Commissioner's intervention to review LACC's action and grant it access to the documents requested.
6. The Commissioner evaluated and validated the application/complaint and found that indeed CEMESP had complied with provisions of the Liberia Freedom of Information Act.
7. The Commissioner, however, could not hear the case at that time and within the period prescribed by the FOI Act because the Commission had no office and other facilities essential to expeditious, effective and fair hearing. So in June, about a month ago we undertook the appropriate legal steps that have led us to where we are now.

### **Investigation/Hearing**

8. On June 13, 2013, the Commissioner held a hearing during which Complainant CEMESP and Respondent LACC appeared and made their respective submissions which are later considered in the Commissioner's analysis and findings.
9. During that hearing LACC argued that the document or record of asset declarations of officials is information of their personal possessions and other

matters private to them and therefore exempted from disclosure. LACC relied on Section 4.5 of the Liberia Freedom of Information Act which provides: “A document or record is exempted from the general right of access if its disclosure would constitute an unreasonable disclosure of personal information.”

10. LACC further argued that the information sought by CEMESP was confidential information and LACC would be in breach of its duty under Section 10.3 of Executive Order No.38 should it disclose the information requested. Section 10.3 reads thus: “The LACC shall treat each declaration as classified information and as such only authorized personnel of the commission (LACC) shall have access to the contents of the declaration. Nonetheless, authorized agencies other than the LACC may have access to specific contents of the declaration, provided a formal request is made to the LACC which shall then determine the justification of the request prior to giving access to the requesting agency.”

11. LACC also contended that the information sought by CEMESP is constitutionally privileged from disclosure in the absence of a court order, relying on Article 16 of the 1986 Constitution of Liberia which provides: “No person shall be subjected to interference with his privacy or person, family, home or correspondence except by order of a court of competent jurisdiction.”

12. CEMESP, for its part, said although the information requested was personal and fell under the personal information exemption of the FOI Act (Section 4.5), the LACC was under duty to prove that the harm, if any, to be caused by disclosing the asset declaration forms was greater than the public interest in having the information disclosed.

13. CEMESP also argued that Section 10.3 of Executive Order No.38, quoted above in paragraph 10, which restricts access of the declaration forms to the LACC and other authorized agencies, is inconsistent with the Freedom of Information Act and should therefore not stand. CEMESP relied on Section 1.7 of the Liberia Freedom of Information Act which states: “Save for the Constitution, this Act is and shall be the primary law governing the right of access to information, including all matters related to request for and provision

of information in Liberia. No administrative action, order or regulation contrary to, inconsistent with, or in derogation of this Act shall issue or be effective in Liberia, and this Act shall prevail over any and all subsequent statutes, except a subsequent statute that specifically amends or repeal it.”

### **Commissioner’s Analysis and Findings**

14. LACC’s argument is that the document or record of asset declarations of officials is information of their personal possessions and other matters private to them and therefore exempted from disclosure, relying on Section 4.5 of the Liberia Freedom of Information Act which provides: “A document or record is exempted from the general right of access if its disclosure would constitute an unreasonable disclosure of personal information.” The commissioner agrees with the LACC that the asset declaration forms contain personal information about the cabinet ministers and their deputies, but disagrees with LACC that the exemption should be engaged, especially where it failed to clearly justify or prove that “the harm to be caused by the disclosure is greater than the public interest in having the information disclosed” in keeping with Section 4.8 c of the FOI Act.

15. The Commissioner notes further, from LACC’s argument, that the information sought by CEMESP was confidential and that the LACC would be in breach of its duty under Section 10.3 of Executive Order No.38 should it disclose the information requested. Section 10.3. reads thus: “The LACC shall treat each declaration as classified information and as such only authorized personnel of the commission (LACC) shall have access to the contents of the declaration. Nonetheless, authorized agencies other than the LACC may have access to specific contents of the declaration, provided a formal request is made to the LACC which shall then determine the justification of the request prior to giving access to the requesting agency.”

16. Section 10.3 is inconsistent with the Liberia Freedom of Information Act to the extent that it imposes limitation on access to asset declaration forms; and requires that justification be made to the LACC prior to giving access to the requesting agency or any requester for that matter. Here, the Commissioner’s view is that where provisions of any statute clash with the Liberia Freedom of

Information Act, those provisions must, to the extent of the inconsistencies, bow to the FOI Act. The Commissioner relies on Section 1.7 of the Act, also quoted by CEMESP during the hearing, which states: “Save for the Constitution, this Act is and shall be the primary law governing the right of access to information, including all matters related to request for and provision of information in Liberia. No administrative action, order or regulation contrary to, inconsistent with, or in derogation of this Act shall issue or be effective in Liberia, and this Act shall prevail over any and all subsequent statutes, except a subsequent statute that specifically amends or repeal it.”

17. Another argument put forth by the LACC is that the information sought by CEMESP is constitutionally privileged from disclosure in the absence of a court order, relying on Article 16 of the 1986 Constitution of Liberia which provides: “No person shall be subjected to interference with his privacy or person, family, home or correspondence except by order of a court of competent jurisdiction.” Here, the commissioner does not adopt such a position. Disclosure of the information requested by CEMESP would not constitute an unwarranted intrusion or disturbance of the privacy of those subject to the asset declaration; it would rather strengthen the fight against corruption in Liberia.

### **Decision**

18. Overall, the Commissioner is satisfied that the exemption(s) relied upon by the LACC to deny CEMESP’s request will not hold. The Commissioner’s application of the public interest test shows that the harm to be occasioned by disclosure of the asset declaration forms is outweighed by the public interest in having the information disclosed. The asset declarations are part of efforts to fight corruption in Liberia. And this objective cannot be achieved if we fail or refuse to disclose the contents of asset declaration forms. In this regard, the Commissioner’s decision is that the information sought should be disclosed; and therefore orders LACC to so do in the larger public interest.

**Right of Appeal**

19. Either party has the right to appeal against this decision to the Civil Law Court in Montserrado County, Republic of Liberia

Signed:\_\_\_\_\_

Mark Bedor-Wla Freeman  
Counsellor-At-Law  
COMMISSIONER  
Independent Information Commission