

## REPUBLIC OF GUINEA

### ORGANIC LAW L 2010/004/CNT/ OF 24 NOVEMBER 2010 ON THE RIGHT OF ACCESS TO PUBLIC INFORMATION

Mindful of the Constitution, notably articles 7,156,157 and 158;

The National Transitional Council, having deliberated, has adopted;

The President of the Republic promulgates the law whose content follows;

#### **Chapter I: General Provisions**

Article 1: The right of access to public information is guaranteed in accordance with the provisions of article 7 of the Constitution.

Access to information is a fundamental right of everyone bringing together freedom of information and the right to information. Every person, irrespective of nationality or profession, can request and obtain information wherever without having to justify the purpose of the information.

The public body, or any considered as such, has a responsibility to assist requesters in their search for information.

Article 2: The present Organic Law has as objective:

1. To promote transparency and citizen participation in the decision-making process
  - By recognizing their general right to information held by public bodies or any considered as such.
  - By granting them a right of access to documents containing their personal information in the possession of public bodies
2. To lay down rules to exercise the right of access to information

3. To encourage the establishment of a strong national capacity on public information matters

Article 3: According to the present organic law and its regulations, a

- Document: all information recorded in any form, however its nature, its subject or origin;
- Public body: all structures created by the state or its decentralized bodies
- Organ similar to a public body: all structures that are part of a public body, all bodies controlled, or receiving majority of its funding from the state, or all private bodies to which the state or its decentralized structures have assigned a mission.

Article 4: The provisions of this organic law apply to public bodies and affiliated structures as defined in article 3 above and to all users without discrimination on the basis of origin, race, sex, religion, ethnicity, political conviction or other considerations.

## **Chapter II: General Right of Access to Information**

Article 5: Subject to the exceptions listed in chapter IV of the present organic law, and without justifying the reason for the request, every person has the right to obtain information held by public bodies or affiliated structures.

The following documents are accessible: legislative and regulatory texts, documents, reports, studies, reviews, minutes, statistics, directives, instructions, circulars, manuals of administrative procedures, opinions, decisions, vacancy announcements, and call for tenders.

Article 6: The right of access to information implies consulting a document produced or preserved by a public body or an affiliated structure and to make notes, obtain copies or photocopies and to obtain on electronic format.

### **Chapter III: Procedures to exercise the right of access to information**

Article 7: Every public body or affiliated structure, depending on its size, should set up either a service, or an office in charge of disclosing information, inquires or documents requested.

The office should be accessible and indicated to users.

Article 8: Every public body or affiliated structure should appoint a civil servant or an employee in charge of information and ensure that the public has easy access to information about this civil servant or employee; especially his name, his role and his contact details.

This civil servant or employee in charge of information, should, in addition to obligations assigned to him by the present law, have the following duties:

- Receive requests for information;
- Assist requestors;
- And ensure proper archiving of documents in view of making them available to requestors.

The rules of organization and functioning of services or offices in charge of access to information are established by decree or decision of the head of the public body or affiliated structure.

Article 9: Each public body or affiliated structure must ensure that its civil servants or employees receive appropriate training on the right to information and the effective implementation of this law.

Article 10: Every person who desires to obtain a document should make a request to the public body or affiliated structure that is in possession of it.

This request can be written or oral. The written request should contain the full particulars of the requestor, a clear and precise indication of the document and the form in which it is required.

The requestor must sign the request.

An oral request is recorded with the same indications in a register and endorsed by the requestor.

Article 11: The head of the access to information service of the public body or affiliated structure to whom a request is referred is obliged to provide assistance to the requestor and to respond in a maximum of 20 working days in clear, precise and complete language.

Where a request concerns information that can save the life or liberty of a person, the deadline to respond is reduced to 48 hours maximum.

Where the respect of the deadline mentioned in paragraph 1 of the present article will seriously hamper operations because of difficulties associated with finding this information, the public body or affiliated body concerned, can send a written notification of extension before the expiration of the deadline. This extension should not go beyond 30 working days.

Where an administration or service does not possess the information requested, it is required to assist the requestor to identify the administration or service that holds the information.

Article 12: The head of a public body and/or assimilated structure who provides a favourable response to a request for access to information, must state the modalities of providing it and any fees due as the case may be.

He can notably provide for consultation of all or in part of the document within the premises of the service having the information, provide a copy or photocopy of the document requested, or a compilation or resume of the information requested on paper or electronic form.

Article 13: Any denial of access to information or a document that is available must be justified by provisions of this law.

Subject only to the exceptions listed in articles 16 and 17 of this organic law; all authorities to whom a request for information is sent should provide a response.

Silence on the part of any authority of a public body or affiliated structure who has received a request for information constitutes a breach of duty punishable by sanctions provided in articles 156 and 157 of the penal code.

Article 14: Access to documents and information in the possession of public bodies and/or affiliated structures is free.

However, considering the nature and size of the document, the requestor may be asked to pay an amount that does not exceed the actual cost of the copies or photocopies of the document. A decree of the minister of finance will set fees and payment procedures.

Article 15: All public bodies and affiliated structures must in the general interest, publish and widely disseminate key information in the following non-exhaustive domains, in an easily accessible manner at least once a year:

- The description of the organization, its functions, its obligations and funding;
- Detailed information about the services it offers to the public;
- All specific procedures available to citizens to make requests or complaints about the actions of the organization or its failure to meet its obligations, as well as a resume of all requests, complaints, and other direct actions brought by citizens and responses provided by the organization or affiliated structure;
- A guide with necessary information on how the organization preserves data, the types and form of information it holds, categories of information it publishes and procedures to follow to make a request for information;
- A description of the powers and duties of top officials and decision-making process;
- All the provisions, policy guidelines, rules, guides or manuals on how the organization carries out its functions;
- The contents of all its decisions and or policy guidelines adopted which have effects on citizens, as well as the reasons for these choices and all authorized interpretations of these decisions and all information related to their context;

- All mechanisms or procedures through which citizens can make observations or in one way or another influence the formulation of these policy guidelines or the exercise of the powers of the organization.

#### **Chapter IV- Exceptions to the disclosure obligations of public bodies and affiliated structures**

Article 16: The Information Officer of an administration to whom request is made is not required to disclose:

- Information already made public by posting or press release;
- Information confidentially received from a third party;
- Information concerning state security institutions or that which is held by them;
- Information regarding on-going judiciary proceedings;
- Information whose disclosure will cause serious prejudice to secrets protected by law;
- Information likely to endanger the life, health or security of persons or their property;
- Information whose disclosure is likely to cause the commission of an offense;
- Information whose disclosure could be prejudicial to relations with a state or an international organization;
- Information on an uncompleted inspection, monitoring or investigation mission;

- Personal information likely violate privacy and dignity of a person;

Also, an organization can refuse to disclose commercial and confidential information if:

- a- The information was obtained through a third party and if their disclosure can constitute a release of confidential information which is subject to prosecution;
- b- The information was confidentially received from a third party and if it contains commercial or industrial secrets or if its disclosure will seriously prejudice the commercial or financial interests of a third party;
- c- The information was confidentially obtained from a state or an international organization and if their disclosure can prejudice relations with that state or international organization.

Article 17: A public body or assimilated structure is not obliged to respond to requests for information that are manifestly imprecise, a nuisance or which have been recently responded to following a request from the same person.

A request is considered imprecise if it does not specify the information requested or contains very unspecific description of the information.

A request is considered a nuisance if related to information that has been previously provided to the requestor or deemed to be known by him/her by virtue of his/her function or profession

## **Chapter V: Protection of the right of access to information**

Article 18: Following a denial of access and an unsuccessful appeal through hierarchy, the aggrieved requestor can make an informal appeal to the Ombudsman in accordance with the provisions of article 127 and following of the Constitution. This appeal procedure can be exercised within two months following denial of access.

Article 19: An aggrieved requestor whose internal appeal fails can also lodge an appeal to the President of the Court of First Instance or the Magistrates Court in the jurisdiction of the accused organization.

Article 20: Any person who believes that his/her personal information has been unduly disclosed can appeal to the Court of First Instance or the Magistrate's Court in the jurisdiction of the accused institution to stop their disclosure.

If the president of the jurisdiction considers that the official of the accused institution was right to authorize disclosure, he can reject the appeal.

Article 21: The National Independent Human Rights Institution is equally competent, within the framework of its mandate, to ensure the exercise and enjoyment of the right to information.

## **Chapter VI: Criminal Provisions**

Article 22: Any civil servant who intentionally subtracts, deletes or steals acts and titles in his possession or those given to him by virtue of his functions will be sanctioned in accordance with article 185 of the Penal Code.

Article 23: Penalties of article 163 of the Penal Code will be applied to any one who unduly gets access to information using false personal information as declarations, names or personality.

The same penalty applies to anyone who makes use of documents obtained in the conditions described above or established a name other than his own

Any civil servant or employee who willfully provides documents or causes to be provided to someone he/she knows should not have right to access shall be sanctioned by article 163 of the Penal Code

Article 24: The civil servant or employee, who without justification, delays or refuses to respond to information request or intentionally provides false information as defined in article 155 of the Penal Code to any user, will be sanctioned in accordance with articles 156 and 157 of the same code.

Article 25: Anyone who demands for compensation or remuneration to provide a document of information shall be sanctioned as prescribed in articles 186 and 187 of the Penal Code



Article 26: In addition to applying sanctions stipulated in articles 22, 23, 24 and 25 above, the court can ban the offender from exercising public functions related to access to information and publicise this decision.

Article 27: Without prejudice to the prerogatives of the public prosecutor, the authority to initiate proceedings in matter of access to information equally lies with the National Independent Human Rights Institution and any person whose right has been trampled can constitute a civil party

### **Chapter VII: Final provisions**

Article 28: The present Organic Law will be registered and published in the Official Journal of the Republic of Guinea.

General Sékouba Konaté,

Transition President

Interim President of the Republic

Minister of National Defense