

## GUIDE TO THE DEVELOPMENT OF COUNTY ACCESS TO INFORMATION LAW

*THE Commission for Administrative Justice, with the support of the GIZ, has developed a draft model law on County Access to Information. It is envisaged that the model law will inform the drafting and enactment of the various county level access to information legislation in order to enhance/promote and ensure access by citizens to information held by county governments and their entities.*

*The national government has since enacted the national Access to Information Act as required under Article 35 of the Constitution. The national legislation makes provisions for the following matters, among others—*

- *Disclosure of information by public entities*
- *Designation of information access officer*
- *Application for access*
- *Providing access to information*
- *Fees*
- *Review of decisions by the Commission on Administrative Justice*
- *Review of decisions by the Commission on Administrative Justice*
- *Notice to interested party*
- *Protection of person making disclosure*
- *Management of records*
- *Offences of alteration, defacement, blocking, erasure, etc*
- *Defamatory matter in information released*
- *Oversight and enforcement functions and powers*
- *Conferment on the Commission on Administrative Justice*
- *Inquiry into complaints*
- *Reports by public entities*
- *Offences and penalties.*

*Section 96 of the county Governments Act provides that “subject to national legislation governing access to information, a county government shall enact legislation to ensure access to information in order to give further effect to Article 35 of the Constitution.”*

*In order to assist in the crafting of the appropriate model legislation that will serve to enhance and ensure a proper environment for access to information, your general and specific comments on the attached draft Bill would greatly assist the CAJ to come up with a proper guide to the county based legislation.*

*Please see the attached draft law and give your comments and suggestions that would in your view lead to a robust and effective legislation to enhance access to information at the county level*

Name of Organization .....

Name and designation of Officer responding

## **GUIDE TO THE DEVELOPMENT OF COUNTY ACCESS TO INFORMATION LAW**

### **INTRODUCTION**

THE Commission for Administrative Justice, with the support of GIZ, has developed a guide and a draft model county law on Access to Information. It is envisaged that the model law will inform the drafting and enactment of the various county level access to information legislation in order to enhance/promote and ensure access by citizens to information held by county governments and their entities.

The national government has since enacted the national Access to Information Act as required under Article 35 of the Constitution. The national legislation makes provisions for the following matters, among others—

- Disclosure of information by public entities
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Section 96 of the County Governments Act provides that “subject to national legislation governing access to information, a county government shall enact legislation to ensure access to information in order to give further effect to Article 35 of the Constitution.”

This Guide to the development of county access to information law and the suggested model law are necessitated by the widely acknowledged need to have an enabling county legislation that gives further effect to Article 35 of the Constitution on the right to access to information by citizens at the county level. Access to information law is an imperative under the County Government Act.

The Guide comprises a Model Bill and an Explanatory Memorandum describing the approach to, and basis of, the respective proposed clauses of the model legislation.

The Guide is intended to assist counties which have not yet developed their legislation in coming up with such legislation. For those that have already developed their legislation on the subject, the provisions suggested in this model legislation may be useful in benchmarking and reviewing the existent legislation. In this regard, the Explanatory Memorandum may be useful in drawing attention to the justification for the approaches proposed in this model law. It is nonetheless open to counties to retain those legislative provisions which ensure more accountability and efficiency in the delivery of the right to access to information in their respective jurisdictions.

### **CONSTITUTIONAL AND NATIONAL LEGAL FRAMEWORK**

The Constitution provides for devolution of government functions from the national level to counties. This means that the subject of access to information has significant relevance at the county level in the same manner as at the national government level.

Indeed, because the county government is the primary level of interaction of the state with the citizen, the right to access to information is quite significant. As state organs, county governments have a responsibly/duty to ensure implementation of rights and fundamental freedoms.

Indeed, Article 21 of the constitution provides thus—

*It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.*

The Access to Information Act, 2016 was enacted to give effect to Article 35 of the Constitution and to confer on the Commission on Administrative Justice the oversight and enforcement functions and powers. The Act is the primary legislation for the implementation and facilitation of the right to access to information as guaranteed in Article 35 of the Constitution.

Specifically, the object and purpose of the national Act is to—

- (a) give effect to the right of access to information by citizens as provided in Article 35 of the Constitution;
- (b) provide a framework for public entities and private bodies to proactively disclose information that they hold and to provide information on request in line with the constitutional principles;
- (c) provide a framework to facilitate access to information held by private bodies in compliance with any right protected by the Constitution and any other law;
- (d) promote routine and systematic information disclosure by public entities and private bodies on constitutional principles relating to accountability, transparency and public participation and access to information;
- (e) provide for the protection of persons who disclose information of public interest in good faith; and
- (f) provide a framework to facilitate public education on the right to access information under the Act.

*Specimen/Suggested Law for Counties on Access to Information-3rd February, 2020*

The County Government Act, 2012, provides the primary basis for county legislation to enable more effective implementation and facilitation of the right of access to information. The Act, at section 96, provides as follows—

- (1) Every Kenyan citizen shall on request have access to information held by any county government or any unit or department thereof or any other State organ in accordance with Article 35 of the Constitution.*
- (2) Every county government and its agencies shall designate an office for purposes of ensuring access to information as required by subsection (1).*
- (3) Subject to national legislation governing access to information, a county government shall enact legislation to ensure access to information.*
- (4) A county legislation enacted pursuant to subsection (3), may impose reasonable fees or charges for accessing information held by the county government, its departments or agencies.*

It is acknowledged that a number of counties have developed legislation to provide for access to information. However such legislation would need to be bench-marked against some national yardstick so as to enable effective implementation of the right to access information for all citizens and across the nation. This Guide is intended to help counties in that regard.

The constitutional autonomy of the counties and their governments is a fundamental tenet of our constitution. This Guide takes cognizance of that and does not purport to prescribe legislation for the counties. Rather, the purpose of the Guide is to draw the attention of the county governments to the pertinent matters that may be useful in crafting an effective and constitutionally compliant legislation on access to information.

The Commission for Administrative Justice is ready to assist the counties in building their own capacity in the enactment and implementation of the resultant legislation.

**ANNEX: SPECIMEN/SUGGESTED ACCESS TO INFORMATION BILL**

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- 1—Citation.
- 2—Interpretation.
- 3—Objects of the Act.
- 4—Relationship with the national Access to Information Act, 2016

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- 5—Right of access to information.
- 6— Principles of right of access to information.
- 7—Disclosure of information by county public entities
- 8—Limitation of right of access to information

**PART III — ACCESS TO INFORMATION HELD BY THE COUNTY GOVERNMENT AND ITS ENTITIES**

- 9—Designation of information access officer
- 10—Application for access
- 11—Processing of application
- 12—Transfer of application
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**(NAME OF COUNTY) ACCESS TO INFORMATION BILL, (year of publication)**

**A Bill for**

AN ACT of the County Assembly of *(Name of County)* to give effect to the constitutional right of access to any information held by the county government and its entities and any information that is held by another person that is required for the exercise or protection of any rights; and in particular to give effect to Article 35 of the Constitution and section 96 of the County Governments Act by providing for the facilitation of the right of access to information and its implementation within and in the context of the *(Name of County)*, and for connected purposes

*Preamble*

*Recognizing that—*

*Explanatory  
Notes to  
Provisions of*

*The long title is intended to provide a summarized description of the purpose or scope of the Act.*

*The preamble may be referred to for assistance in explaining the*

Before the promulgation of the Constitution of Kenya, 2010, government business was conducted in a secretive and unresponsive culture which often led to abuse of power and human rights violations;

*scope and object of the Act.*

Article 35 (1) (a) of the Constitution provides that everyone has the right of access to any information held by the State;

*Generally, the preamble does not contain legal norms and does not have immediate legal significance.*

Article 35 (1) (b) of the Constitution provides for the application of the right of access to information held by another person where that information is required for the exercise or protection of any right or fundamental freedom;

*However, it can be significant to the interpretation of the Act.*

And whereas the national government has enacted national legislation namely the Access to Information Act to give effect to this right in section 35 of the Constitution;

*And bearing in mind that—*

The county government, being an organ of the State must respect, protect, promote and fulfil, at least, all the rights in the Bill of Rights which is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies;

The right of access to any information held by a public or private entity may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in Article 24 of the Constitution;

*And in order to—*

Forster a culture of transparency and accountability in county public and private entities by giving effect to the right of access to information;

Actively promote a society in which the people of *(Name of County)* and any other Kenyan have effective access to information to enable them to more fully exercise and protect all of their rights,

*Noting that—*

Under the Fourth Schedule to the Constitution, the county governments have a responsibility to ensure and coordinate the participation of communities and locations in governance at the local level and assist communities and locations to develop administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level,

IT IS ENACTED by the County Assembly of *(Name of County)* as follows—

## PART I—PRELIMINARY

Citation. 1. This Act may be cited as the *(Name of County)* Access to Information Act, (insert year of enactment).

Interpretation. 2. In this Act, unless the context otherwise requires—

*"chief executive officer"* of a county entity means the county secretary in the case of the county executive, the clerk of the county assembly or the person assigned the principal administrative responsibility in any county public entity by whatever title;

*"citizen"* means any individual who has Kenyan citizenship, *and any private entity* that is controlled by one or more Kenyan citizens;

*"Commission"* means the Commission on Administrative Justice established by section 3 of the Commission on Administrative Justice Act, No. 23 of 2011;

*"county government"* means the *(name of county)* government;

*"county public entity"* means the county executive, the county assembly or any agency or other body in the service of the county government;

*"county public record"* means any record in written or any other form containing information relating to the conduct of the county public entity's business, prepared, owned, used or retained by a county public entity regardless of physical form or characteristics, including but not limited to—

- (a) memos or circulars;
- (b) documents relating to contracts involving the county government or any entity of the county government;
- (c) opinions, reports, papers or models;

*This provision provides for the definition of the terms as used in the context of the law.*

- (d) records relating to procurement by the county government or its entity;
- (e) ownership documents including logbooks and title deeds;
- (f) emails and any correspondence records;
- (g) press releases;
- (h) any information mentioned in section 6;
- (i) any data material held in electronic form or otherwise;

*"edited copy"* in relation to a document, means a copy of a document from which exempt information has been deleted;

*"electronic record"* means a record generated in digital form by an information system, which can be transmitted within an information system or from one information system to another and stored in an information system or other medium;

*"exempt information"* means information that may be withheld by the county government and county agencies in accordance with section 6;

*"information"* includes all records held by the county government and county agencies regardless of the form in which the information is stored, its source or the date of production;

*" information access officer"* means the county secretary or an officer of a county public entity designated as such or delegated under section 9;

*"national legislation"* means the national Access to Information Act, 2016 and as amended from time to time and any applicable regulations or other subsidiary legislation made thereunder;

*"national security"* has the same meaning assigned to it by Article

238(1) of the Constitution;

*"person"* has the meaning assigned to it in Article 260 of the Constitution;

*"personal information"* means information about an identifiable individual, including, but not limited to—

- (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, age, physical, psychological or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the fingerprints, blood type, address, telephone or other contact details of the individual;
- (e) a person's opinion or views over another person;
- (f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- (g) any information given in support or in relation to an award or grant proposed to be given to another person;
- (h) contact details of an individual;

"public officer" has the same meaning assigned to it by Article 260 of the Constitution and in the service of the county government;

"State" has the meaning assigned to it in Article 260 of the Constitution.

Objects of the Act. 3. The object and purpose of this Act is to—

*This section, explains the context and overall scope, and intended effect of this legislation.*

- (a) give effect to the right of access to information by citizens as provided under Article 35 of the Constitution by public entities in the *(name of county)*;
- (b) provide a framework for public entities in the *(name of county)* to proactively disclose information that they hold and to provide information on request in line with the constitutional principles;
- (c) provide a framework to facilitate access to information held by public bodies in the *(name of county)* in compliance with any right protected by the Constitution and any other law;
- (d) promote routine and systematic information disclosure by public entities in the *(name of county)* on constitutional principles relating to accountability, transparency and public participation and access to information;
- (e) provide for the protection of persons who disclose information of public interest in good faith; and
- (f) provide a framework to facilitate public education on the right to access information under this Act.

Application of the Act and

4. (1) This Act shall apply to the county government executive, the county assembly, all other public entities of the county government, all public officers in the service of the county government and all county public entities and to information held by such persons and

*This provision provides for the application of the*

relationships with the national Access to Information Act, 2016

entities.

(2) Any person applying the provisions of this Act shall always have regard to the national Access to Information Act, 2016 and any regulations made thereunder.

(3) In the event of any conflict between any provision of this Act and that of the national legislation, the provisions of the national legislation shall supersede.

*Act to public entities within the county government, their officials and to information held by the county government and its entities.*

*It also seeks to confirm/reiterate that in the event of conflict between this legislation and the national legislation, the national will override.*

**PART II — RIGHT TO INFORMATION**

Right to information

5. Subject to this Act, the national Access to Information Act, 2016 and any other written national law, every citizen has the right of access to information held by the *(name of county)* government.

(2) Subject to this Act and *the national Access to Information Act, 2016*, every citizen's right to access information is not affected by—

- (a) any reason the person gives for seeking access; or
- (b) the county public entity's belief as to what are the person's reasons for seeking access.

(3) Access to information held by a county public entity shall be provided expeditiously and at a reasonable cost.

(4) This Act shall be interpreted and applied on the basis of a duty to disclose and non-disclosure shall be permitted only in circumstances exempted under section 8.

(5) Nothing in this Act shall limit the requirement imposed under the national legislation, this Act or any other written law on a

*This section restates the right of access to information as set out in the constitution and in the national legislation.*

county public entity to disclose information.

Principles in application of freedom of information.

6. In the application of this Act, the following principles of access to information shall be taken into account—

- (a) there shall be maximum disclosure by public authorities on all matters concerning public affairs;
- (b) public authorities shall proactively publish key information in their possession;
- (c) public authorities shall promote open government;
- (d) public authorities shall apply exceptions to disclosure using clearly and narrowly drawn criteria subject to strict “harm” and “public interest” tests;
- (e) requests for information should be processed rapidly and fairly and an independent review of any refusals should be available;
- (f) individuals should not be deterred from making requests for information by excessive costs;
- (g) meetings of public public authorities should be open to the public;
- (h) disclosure shall take precedence where there is a question as to whether to disclose or not;
- (i) individuals who volunteer information shall be protected against victimization on account of such disclosure.

*This section sets out the fundamental principles in application of right to access to information*

Disclosure of information by county public entities

7. (1) A county public entity shall—

- (a) facilitate access to information held by such entity and which information may include—
  - (i) the particulars of its organization, functions and duties;
  - (ii) the powers and duties of its officers and employees;
  - (iii) the procedure followed in the decision making process, including channels of

*This section provides for the duty to facilitate access to information to those who require it.*

- supervision and accountability;
  - (iv) salary scales of its officers by grade;
  - (v) the norms set by it for the discharge of its functions;
  - (iv) guidelines used by the entity in its dealings with the public or with corporate bodies, including the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; and
  - (v) a guide sufficient to enable any person wishing to apply for information under this Act to identify the classes of information held by it, the subjects to which they relate, the location of any indexes to be inspected by any person;
- (b) during the year commencing on first January next following the first publication of information under paragraph (a), and during each succeeding year, cause to be published statements updating the information contained in the previous statement or statements published under that paragraph;
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect the public, and before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of

democratic principles;

(d) provide to any person the reasons for any decision taken by it in relation to that person;

(e) upon signing any contract, publish on its website or through other suitable media the following particulars in respect of the contract entered into—

i. the public works, goods acquired or rented, and the contracted service, including any sketches, scopes of service and terms of reference;

ii. the contract sum;

iii. the name of the service provider, contractor or individual to whom the contract has been granted; and

iv. the periods within which the contract shall be completed.

(2) Information shall be disseminated taking into consideration the need to reach persons with disabilities, the cost, local language, the most effective method of communication in that local area, and the information shall be easily accessible and available free or at cost taking into account the medium used.

(3) Without prejudice to sub-section (2) the information under this section may, as appropriate be availed taking into account its nature and volume, in notice boards, publicly available circulars, billboards, websites, press releases, posters or handbills.

(4) At a minimum, the material referred to in subsection (1) shall be made available—

(a) for inspection by any person without charge;

(b) by supplying a copy to any person on request for which a reasonable charge to cover the costs of

copying and supplying them may be made; and

- (c) on the internet, provided that the materials are held by the county public entity in electronic form.

Limitation  
of right of  
access to  
informatio  
n.

8. (1) Pursuant to Article 24 of the Constitution, the right of access to information under Article 35 of the Constitution shall be limited in respect of information whose disclosure is likely to—

- (a) undermine the national security of Kenya;
- (b) impede the due process of law;
- (c) endanger the safety, health or life of any person;
- (d) involve the unwarranted invasion of the privacy of an individual, other than the applicant or the person on whose behalf an application has, with proper authority, been made;
- (e) substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained;
- (f) cause substantial harm to the ability of the Government to manage the economy of Kenya;
- (g) significantly undermine a county public entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration;
- (h) damage a county public entity's position in any actual or contemplated legal proceedings; or
- (i) infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession.

*This section reiterates the limitations as set out in the national legislation and as permitted under Article 24 of the Constitution of Kenya.*

(2) For purposes of subsection (1)(a), information relating to national security relates to matters as set out in section 6(2) of the national legislation.

(3) Subsection (1)(d) and (e) shall not apply if a request for information relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

(4) Despite anything contained in subsections (1) and (2), a county public entity may be required to disclose information where the public interest in disclosure outweighs the harm to protected interests as shall be determined by a Court.

(5) A county public entity is not obliged to supply information to a requester if that information is reasonably accessible by other means.

(6) In considering the public interest referred in subsection (4), particular regard shall be had to the constitutional principles on the need to—

- (a) promote accountability of public entities to the public;
- (b) ensure that the expenditure of public funds is subject to effective oversight;
- (c) promote informed debate on issues of public interest;
- (d) keep the public adequately informed about the existence of any danger to public health or safety or to the environment; and
- (e) ensure that any county public entity with regulatory responsibilities is adequately discharging its functions.

(7) Unless the contrary is proved by the county public entity, information is presumed not to be exempt if the information has been held for a period exceeding thirty years.

**PART III — ACCESS TO INFORMATION HELD BY THE  
COUNTY GOVERNMENT AND ITS ENTITIES**

Designation of information access officer.

9. (1) The chief executive officer of a county public entity shall be an information access officer for purposes of this Act.

(2) The chief executive officer of a county entity may delegate the performance of his or her duties as an information access officer under this Act to any officer of the county government or county public entity respectively, as the case may be.

*This section provides for the designation of the county officers both in the main county government and at its entities for the provision of access to information and the general administration of the Act.*

Application for access.

10. (1) Any person may make either a formal or informal application for information under this Act to the appropriate county government entity,

(2) A formal application to access information shall be made in writing in English or Kiswahili and the applicant shall provide details and sufficient particulars for the public officer or any other county public entity official to understand what information is being requested.

(3) Where an applicant is unable to make a written request for access to information in accordance with subsection (1) because of illiteracy or disability, the county information officer shall take the necessary steps to ensure that the applicant makes a request in manner that meets their needs.

(4) The county information officer shall reduce to writing, in a prescribed form then request made under subsection (2) and the county information officer shall then furnish the applicant with a copy of the written request.

(5) A person making an application to access information, shall do so in Form 1 set out in the Schedule but no application may be

*This section provides for the application requirements and it is provides that this may be in the language accessible to the applicant.*

rejected on the ground only that the applicant has not used the prescribed form.

Processing  
of  
application

11. (1) A county public officer shall make a decision on an application as soon as possible, but in any event, within twenty one days of receipt of the application.

*This section provides for the processing of applications including timelines applicable.*

(2) Where the information sought concerns the life or liberty of a person, the information officer shall provide the information within forty-eight hours of the receipt of the application.

(3) The information officer to whom a request is made under subsection (2) may extend the period for response on a single occasion for a period of not more than fourteen days if—

(a) the request is for a large amount of information or requires a search through a large amount of information and meeting the stipulated time would unreasonably interfere with the activities of the information holder; or

(b) consultations are necessary so as to comply with the request and the consultations cannot be reasonably completed within the stipulated time.

(4) As soon as the information access officer has made a decision as to whether to provide access to information, he or she shall immediately communicate the decision to the requester, indicating—

(a) whether or not the county public entity holds the information sought;

(b) whether the request for information is approved:

(c) if the request is declined the reasons for making that decision, including the basis for deciding that the information sought is exempt, unless the reasons themselves would be exempt information; and;

(d) if the request is declined, a statement about how the requester may appeal to the Commission";

(5) A public officer referred to in subsection (1) may seek the assistance of any other public officer as the first mentioned public officer considers necessary for the proper discharge of his or her duties and such other public officer shall render the required assistance.

(6) Where the applicant does not receive a response to an application within the period stated in subsection (1), the application shall be deemed to have been rejected.

Transfer of application

12. (1) An information access officer may, not later than five days from the date of receipt of an application, transfer the application or any relevant part of it, to another public entity, including to any national institution, if the information requested is held by that other public entity.

*This section provides where the information is not available in the county office where the application is lodged, the request shall be transferred to the relevant department where the information is available, including to any national institution, if the case.*

(2) Where an application is transferred under subsection (1), the county information access officer concerned shall inform the applicant immediately but in any event not later than seven days from the date of receipt of the application, about such transfer.

(3) A county public entity to which an application is referred by an information access officer under subsection (1) shall make a decision on the application within twenty-one days from the date that the application was first made.

Informal application

13. An applicant may opt to make an informal application for information and the information access officer shall determine whether by the nature of the information sought, such information may be availed to the application immediately to the applicant or may request the applicant to make a formal application.

*This section makes provision for informal applications for easily accessible information.*

Providing access to information

14. (1) Where a decision is taken to provide the information applied for, a county information access officer shall send to the applicant a written response within fifteen working days of receipt of the application, advising—

*This section makes provision for the steps and*

understands, including vernacular, where necessary.

Fees

16. (1) No fee may be levied in relation to the submission of an application.

(2) A county public entity from which an application for access to information has been made may charge a prescribed fee for the provision of the information and the fee shall not exceed the actual costs of making copies of such information and, if applicable, supplying them to the applicant.

(3) Regulations made by the Cabinet Secretary under the national Access to Information Act prescribing the fees payable for expenses incurred in providing information to an applicant shall apply to the payment of fees under this section.

*This section retains the basic principles of fees payable as these are set out in the national legislation. It is also provided that any regulation made regarding fees payment under the national legislation by the CS shall apply provided that such fees shall be payable to the county government or county government entity, as the case may be.*

Correction of personal information.

17. (1) At the request of the applicant, a county public entity shall within reasonable time, at its own expense, correct, update or annotate any personal information held by it relating to the applicant, which is out of date, inaccurate or incomplete.

(2) A request under this section shall be made in writing to the county public entity responsible for the maintenance of the record system containing the out of date, inaccurate or incomplete information and shall—

- (a) state that it is a request to amend certain personal information relating to the applicant;
- (b) specify the personal information that is to be amended indicating how such information is out of date, inaccurate or incomplete; and

*This section makes provision for the correction of personal information at the request of the applicant, a county public entity shall within reasonable time, at its own expense, correct such erroneous information.*

- (a) that the application has been granted;
- (b) that the information will be contained in an edited copy, where applicable;
- (c) the details of any fees or further fees to be paid for access, together with the calculations made to arrive at the amount of the fee;
- (d) the method of payment of such fees, if any;
- (e) the proposed process of accessing the information once the payment if any is made; and
- (f) that an appeal may be made to the Commission in respect of the amount of fees required or the form of access proposed to be provided.

*other requisites in the provisions of the information to an applicant.*

(2) Subject to subsection (3), upon receipt of the fee payable, an information access officer shall provide the information to the applicant or permit the relevant inspection immediately but in any event not later than two working days from the date of receipt of the payment.

(3) Any information to be made accessible to an applicant shall be produced forthwith at the place where it is kept, for inspection in the form in which it is held unless the applicant requests that it be made available in another form and, if it is practicable to do so, such information may be copied, reproduced or used for conversion to a sound transmission at the expense of the applicant.

Provision of information in most understood language, etc.

15. Where an Applicant, due to any reason, is unable to understand the language in which the information is provided, the officer providing such information shall ensure that the information is explained to the applicant in a language that the applicant understands.

(2) Proactive disclosure shall include communication of the information in a language that the targeted audience best

*This section seeks to require the provision of information in most understood language with regard to the targeted audience.*

(c) specify the remedy sought by the applicant.

**PART IV — FUNCTIONS AND POWERS OF THE  
COMMISSION ON OVERSIGHT, ENFORCEMENT AND  
REVIEW OF DECISIONS**

Powers of  
the  
Commission  
on  
Administra  
tive  
Justice.

**18.** The powers and functions of the Commission set out in Part V of the national Access to Information Act shall apply, without modification, to the administration of the provisions of this Act within the county.

Review of  
decisions  
by the  
Commission.

**19. (1)** Subject to subsection (2), an applicant may apply in writing to the Commission requesting a review of any of the following decisions of a county public entity in relation to a request for access to information—

- (a) a decision refusing to grant access to the information applied for;
- (b) a decision granting access to information in edited form;
- (c) a decision purporting to grant access, but not actually granting the access in accordance with an application;
- (d) a decision to defer providing the access to information;
- (e) a decision relating to imposition of a fee or the amount of the fee;
- (f) a decision relating to the remission of a prescribed application fee;
- (g) a decision to grant access to information only to a specified person; or

*This section retains the power and role of the Commission as the overall authority in the implementation of the right of access to information.*

(h) a decision refusing to correct, update or annotate a record of personal information in accordance with an application made under section 17.

(2) An application under subsection (1) shall be made within thirty days, or such further period as the Commission may allow, from the day on which the decision is notified to the applicant.

(3) The Commission may, on its own initiative or upon request by any person, review a decision by a county public entity refusing to publish information that it is required to publish under this Act.

(4) The procedure for submitting a request for a review by the Commission shall be the same as the procedure for lodging complaints with the Commission stipulated under section 22 of the national Access to Information Act or as prescribed by the Commission.

Application of provisions on review of decisions by Commission.

20. The provisions of the national Access to Information Act regarding the review of the decisions of public officers on applications for access to information shall apply.

*This section cross-refers to the national legislation and thereby retains the powers of the Commission as set out in the national legislation.*

#### PART V — MISCELLANEOUS PROVISIONS

Protection of person making disclosure

21. (1) A person shall not be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of an office or in any other way, as a result of having made or proposed to make a disclosure of information which the person obtained in confidence in the course of that activity, if the disclosure is of public interest.

*This section provides for the protection of person making disclosure*

(2) For purposes of subsection (1), a disclosure which is made to a law enforcement agency or to an appropriate public entity shall be deemed to be made in the public interest.

(3) A person shall make a disclosure under subsection (1) or (2) where such person has reasonable belief in the veracity of the information.

(4) Any person who provides false information maliciously intended to injure another person commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(5) Disclosure of information under subsection (1) and (2) includes information on—

- (a) violations of the law, including human rights violations;
- (b) mismanagement of funds;
- (c) conflict of interest;
- (d) corruption;
- (e) abuse of public office; and
- (f) dangers of public health, safety and the environment.

(6) For the purpose of this section, a person is penalized if the person is dismissed, discriminated against, made the subject of reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided or any other personnel action provided under the law relating to whistle blower, and the imposition of any such penalty in contravention of this section shall be actionable as a tort.

(7) Any term of any settlement arising from a claim under this section, insofar as it purports to impose an obligation of confidentiality on any party to the settlement in respect of information which is accurate and which was or was proposed to be disclosed, shall be unenforceable.

(8) In any proceedings for an offence for contravention of any statutory prohibition or restriction on the disclosure of information, it shall be a defence to show that—

- (a) in the circumstances, the disclosure was in the public interest; and
- (b) where the offence is alleged to have been committed by a public officer or Government contractor and involves the disclosure of information obtained by the person in the person's position as such, the defendant had, before making the disclosure, complied with the provisions of subsection (3).

Managem  
ent of  
records.

22. (1) In this section, "records" means documents or other sources of information compiled, recorded or stored in written form or in any other manner and includes electronic records.

*This section provides for the manner of the management of records*

(2) Every county public entity shall keep and maintain—

- (a) records that are accurate, authentic, have integrity and useable; and
- (b) its records in a manner which facilitates the right of access to information as provided for in this Act.

(3) At a minimum, to qualify to have complied with the duty to keep and maintain records under subsection (2), every county public entity shall—

- (a) create and preserve such records as are necessary to document adequately its policies, decisions, procedures, transactions and other activities it undertakes pertinent to the implementation of its mandate;
- (b) ensure that records in its custody, including those held in electronic form, are maintained in good order and condition;

(c) digitisatize its physical records; and

(d) computerize its records and information management systems in order to facilitate more efficient access to information.

Offence of alteration, defacement, blocking, erasure, etc

23. (1) Where an application to access information has been made to a county public entity under section 9 and the applicant would have been entitled, subject to payment of any fee, to provision of any information in accordance with that section, any person to whom this section applies commits an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the county public entity, with the intention of preventing the disclosure by that entity of all, or any part, of the information provision of which the applicant would have been entitled.

*This section provides for offence of alteration, defacement, blocking, erasure, etc*

(2) Subsection (1) applies to the county public entity and to any person who, is employed by, is an officer of, or is subject to the direction of, the county public entity.

(3) A person convicted of an offence under subsection (1) shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

Defamatory matter in information released

24. Where any information provided by a county public entity to an applicant under section 9 was supplied to the county public entity by a third person, the publication to the applicant of any defamatory matter contained in the information shall be privileged unless the publication is shown to have been made with malice.

*This section provides for situations where there exists defamatory matter in information released, in such case that information is deemed privileged.*

Reports by county public entities

25. (1) On or before the 30<sup>th</sup> day of June of each year, each chief executive officer of a county public entity shall submit to the Commission a report covering the preceding year, which shall include—

*This section requires the making of annual reports to the*

*Commission on  
Administrative  
Justice by county  
public entities*

- (a) the number of requests for information received by the entity and the number of requests processed;
- (b) the number of determinations made by the authority not to comply with the requests for information under section 9, and the main grounds for such determinations;
- (c) the average number of days taken by the entity to process different types of requests;
- (d) the total amount of fees collected by the county while processing requests; and
- (e) the number of full-time staff of the county government and county agencies devoted to processing requests for information and the total amount expended by the entity for processing such requests.

(2) The county secretary submitting a report under this section shall include in that report a list of all county public entities from which the Commission is to receive a separate report.

Offence of unauthorized disclosure.

26. Any person who knowingly discloses exempt information in contravention of this Act commits an offence and is liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or both.

*This section provides for the offence of unauthorized disclosure.*

Application of the provisions of the national Access to Information Act.

27. (1) The provisions of the national Access to Information Act shall apply to any matter regarding access to information in any case of conflict between this Act and the national legislation.

*National legislation and guidelines provide for the various aspects of access to information. This provision draws attention to that and ensures the national legislation*

prevails in case of  
conflict.

**SCHEDULE**

**Form I— Access to Information Request Form**

<i>For official use only</i>	
<i>County Government Entity</i>	
<i>Provide details regarding the information being sought (e.g. subject matter, date range, type of records):</i>	
<i>Method of access preferred (Please choose one)</i>	<i>Receive paper copies of the documents</i>  <i>Receive electronic copies of the documents</i>  <i>Examine the documents in government offices</i>
<i>Name of applicant</i>	
<i>Street</i>	
<i>Town</i>	
<i>Postal Address and Telephone number:</i>	
<i>Please note that the county public entity may contact you to verify your identity.</i>	
<i>Date:</i>	
<i>Instructions:</i>  <i>Step 1</i>  <i>If you wish to make an informal request, contact the county entity's Access to Information Officer.</i>	

<i>Step 2</i>
<i>To request information under the Access to Information Act, complete this form or submit a written request. If you require assistance, contact the county entity concerned.</i>
<i>Step 3</i>
<i>Forward this form or your written request to the county entity's Access to Information officer of the entity holding the information.</i>
<i>Step 4</i>
<i>Should you have any questions about the response to your request, please contact the county entity's Access to Information Officer. You have the right to complain to the Commission for Administrative Justice if you believe that you have been denied any of your rights under the Act.</i>

#### MEMORANDUM OF OBJECTS AND REASONS

Article 35 of the Constitution guarantees the right of access to information held by the government and also to information held by private entities if it is for the purpose of the furtherance of a fundamental right or freedom of a person.

The County Governments Act, 2012 requires all counties enact legislation making provision for the implementation of the right to access to information.

The parliament has since enacted the national Access to Information Act that makes general provisions applicable to counties and county governments as well. The proposed legislation makes provision for access to information at the county level. It is subject to the national Access to Information Act and where necessary, makes reference to that national legislation. The proposed law must be read together with its national counterpart.

**Clause 1** provides for the citation of the proposed legislation.

**Clause 2** provides for the definition of the terms as used in the context of the proposed law.

**Clause 3** explains the context and overall scope, and intended effect of this legislation.

**Clause 4** provides for the application of the proposed law to public entities within the county government, their officials and to information held by the county government and its entities.

It also seeks to confirm that in the event of conflict between this legislation and the national legislation, the national legislation shall prevail.

**Clause 5** restates the right of access to information as set out in the constitution and in the national legislation.

**Clause 6** sets out the fundamental principles applicable to the right of access to information and which shall be taken into account in interpreting and implementing the provisions of the proposed legislation.

**Clause 7** provides for the duty to facilitate access to information to those who require it.

**Clause 8** reiterates the limitations to the right to access information. This is as set out in the national legislation and as permitted under Article 24 of the Constitution of Kenya.

**Clause 9** provides for the designation of the county officers both in the main county government and at its entities for the provision of access to information and the general administration of the Act.

**Clause 10** provides for the application requirements for those seeking information from a public entity and it is provided that this may be in the language accessible to the applicant.

**Clause 11** provides for the processing of applications including timelines applicable.

**Clause 12** provides for situations where the information is not available in the county office where the application is lodged. This clause provides that the request shall be transferred to the relevant department where the information is available, including to any national institution, if the case.

**Clause 13** makes provision for informal applications for easily accessible information

**Clause 14** makes provision for the steps and other requisites in the provisions of the information to an applicant.

**Clause 15** requires the provision of information in most understood language with regard to the targeted audience.

**Clause 16** retains the basic principles of fees payable as these are set out in the national legislation. It also provides that any regulation made regarding fees payment under the national legislation by the CS shall apply provided that such fees shall be payable to the county government or county government entity as the case may be.

**Clause 17** makes provision for the correction of personal information at the request of the applicant, a county public entity shall within reasonable time, at its own expense, correct such erroneous information.

**Clause 18** retains the power and role of the Commission as the overall authority in the implementation of the right of access to information. It provides for the overarching powers of the Commission for Administrative Justice to oversight and monitor the implementation of the proposed law.

*Specimen/Suggested Law for Counties on Access to Informatio-3rd February, 2020*

**Clause 19** provides for the powers of the Commission to review the decisions of a county public entity in relation to a request for access to information.

**Clause 20** provides for the review of the decisions of public officers on applications for access to information.

**Clause 21** provides for the protection of person making disclosure

**Clause 22** provides for the manner of the management of records

**Clause 23** provision provides for offence of alteration, defacement, blocking, erasure, etc

**Clause 24** provides for situations where there exists defamatory matter in information released, in such case that information is deemed privileged.

**Clause 25** requires the making of annual reports to the Commission on Administrative Justice by county public entities.

**Clause 26** provides for the offence of unauthorized disclosure.

**Clause 27** recognizes that the national legislation and guidelines provide for the various aspects of access to information. This provision draws attention to that and ensures the national legislation prevails in case of conflict.

**The Form in the SCHEDULE** sets out the Access to Information Request Form.