

THE COMMISSION ON
ADMINISTRATIVE JUSTICE



THE RIGHT TO **ACCESS INFORMATION**

SIMPLIFIED VERSION OF THE ACCESS TO INFORMATION ACT



Foreword

The Commission on Administrative Justice (Office of the Ombudsman) is pleased to present the Access to Information booklet – a simplified version of the Access to Information Act.

The Access to Information Act provides a framework for the government and certain private bodies to make available information in their custody, for the public to access that information, and for the Commission to oversee and enforce implementation of the Act. Private bodies envisaged under the Act are those that receive public resources and benefits, utilise public funds, engage in public functions, provide public services, have exclusive contracts to exploit natural resources, or are in possession of information which is of significant public interest due to its relation to the protection of human rights, the environment, or public health and safety, or to exposure of corruption or illegal actions, or protection of any right.

This booklet presents - in a simple and accessible manner - the significance of the access to information law, and the roles and obligations of the seekers and custodians of information. It is designed to stimulate discussion and awareness on the right of access to information, and consequently, promote transparency and effective public participation in governance.

Overall, the Commission hopes that the booklet will catalyse public participation in policies and decisions taken by government, and improve citizen oversight.

It is important to note that this booklet is not a substantive statute – it is not a replacement of the Act. Rather, it is an aid to appreciating the access to information law.

The Commission is indebted to the generous contribution of the United States Agency for International Development (USAID) through its Agile and Harmonized Assistance for Devolved Institutions (AHADI) Program for supporting the development of this booklet.

Leonard Ngaluma, MBS

Commission Secretary/CEO

the meaning of some of the words used in the Access to Information Act and in this booklet

Access To be able to reach or get something or somewhere

Accountability To be able to answer, report or explain a thing; to accept responsibility of a thing

Act of Parliament A law passed or enacted by Parliament

Applicant A person who applies for information

Braille Written language for visually impaired (blind) people. It is in the form of patterns of raised dots that are felt (read) with the fingertips.

Cabinet Secretary In this law Cabinet Secretary means the cabinet minister in charge of issues or matters concerning information

Citizen A person who has Kenyan citizenship or a private institution like a company that is controlled by one or more Kenyans

- Disclosure** To make a thing that was secret publicly known or to reveal, report or provide information
- Duty** An obligation or responsibility of a person, something that an officer is employed to do
- Edit** To delete, remove, correct or leave out information
- Electronic Record** Information kept or stored in a digital way or format e.g. information kept in a computer
- Enact** Pass a bill into law, create or to make a law
- Entity** A body, institution, company or organisation
- Exempt** Not part of, removed, taken out, does not apply; in this law exempt information means information that a public entity or private body does not have to give out or provide
- Information** All records kept by a public or government institution or by a private institution like a company. These include all records kept by the public body or private institution no matter the source, date of production or the way the information is stored or kept

**the meaning
of some of the words used in the Access to Information Act
and in this booklet**

- Information Access Officer** The people in charge of information in an institution
- Offence** A thing that is prohibited or forbidden and is punishable by law
- Right** An entitlement, something that is a must in a person's life
- Inquiry** Process or steps taken in asking for information or about something
- Personal Information** Information about a person's attributes or characteristics such as race, gender and ethnic origin, educational, medical, employment and financial history, ID number, fingerprints, blood type, contacts, opinions or views about another person, private and confidential written communication such as a letter, endorsement or reference
- Public Institution** A public or government office (national and county). It also means any institution created by the constitution such as a commission or office e.g. the National Police Service
- Public Officer** A person who works in the public service or government

**the meaning
of some of the words used in the Access to Information Act
and in this booklet**

Public Record Information that is available to the public. It includes any information prepared, owned, used or kept by a public institution about its work

Private Body Any institution that is not part of government but receives public resources, benefits and funds. It also means any institution that is not a government institution but provides public services or has been contracted to exploit natural resources. A private institution can also mean any private institution which has information that is of public interest because of its connection to the protection of human rights, the environment or public health or information that can help in exposing corruption or illegal activities

Requester A person who requests or asks for information from an institution

Transparency Being open, readily provide information

Wananchi Members of the public

What is the Access to Information Act?

This is a law that was passed by the Parliament of Kenya in September 2016, to make it easier for *wananchi* to **access** (get, receive, reach) information.

Information is Power! - According to **Article 35** of the Constitution, it is a **right** for all citizens to be able to receive any information that makes it possible for them to enjoy or protect their rights.



Why did Parliament pass this Law?

Parliament passed the Access to Information Act for the following purposes:

- To **facilitate** (make it easier) for Kenyans to enjoy the right to access to information that is provided by the Constitution
- To create a way for public (government) and private institutions to provide information when requested
- To make it easier for people to get information from private institutions especially where that information will assist in the protection or enjoyment of rights
- To encourage public and private institutions to regularly provide information about their work
- To protect people who provide information in public interest (whistleblowers)
- To create a way for educating *wananchi* about the right to information
- To give the Commission on Administrative Justice powers to ensure this law is followed



What does this law say?

The Access to Information Act covers the following:

- Information that can be accessed
- Process for applying for information
- Places or institutions where a person can apply for information
- Institution responsible for making sure that this law is followed, that is the Office of the Ombudsman
- Penalties (punishments) for violating the right to information.



Why is the right to information important?

The right to information is important because:

- It helps in the enjoyment and protection of rights and freedoms
- It makes institutions more **transparent** (open) and **accountable** (responsible)
- It improves service delivery
- It promotes (encourages) public participation



THIS IS A CONSTITUTIONAL RIGHT
NI HAKI YANGU YA KIKATIBA!



Who Should Provide Information?

The Constitution and the Access to Information Act say that the state (government) must provide information to citizens.

The Constitution and the Access to Information Act also say that a citizen has the right to access information held by another person or institution and is needed for the enjoyment or protection of rights and freedoms.

NATIONAL AND COUNTY GOVERNMENT INCLUDING: MINISTRIES, PARASTATALS, INDEPENDENT COMMISSIONS, PARLIAMENT, JUDICIARY, NATIONAL POLICE SERVICES, COUNTY ASSEMBLIES, COUNTY EXECUTIVE COMMITTEES



STATE
(GOVERNMENT)

THIS INCLUDES AN INDIVIDUAL, AN ORGANISATION OR A COMPANY

ANOTHER
PERSON



Provision of information is a DUTY!

It is a **duty** (responsibility) for the Government to provide all information. The Government is however not supposed to provide information that should not be disclosed (exempt information).

The information should be provided as quickly as possible and at a reasonable or fair cost.



Proactive disclosure

WHAT INFORMATION SHOULD BE PROVIDED READILY?

- ⓐ A public institution should readily provide certain information. This information may include:
- Details about the institution, how it is organised and its work
 - The process or steps that the institution follows when making decisions
 - The system and process of supervision and accountability
 - The salaries of its staff based on rank
 - The norms (rules, standards, customs, procedures) followed by the institution
 - The guidelines for dealing with public institutions
 - A guide on how to access information kept by the institution

The information above should be updated every year.

REPORT ON

01.

ABOUT THE INSTITUTION

03.

PUBLIC WORKS CONTRACTS

02.

PUBLIC POLICY FACTS

04.

REASON FOR DECISIONS



- b** Publish (make available to the public) information used in making policies, laws and decisions
- c** Give the public information about contracts including amount of money and the people or companies involved.
- d** Provide reasons for a decision made by the institution affecting a person or people.

How should information be provided?



- Information must be provided in a way that *wananchi* can easily understand. It should be provided in ways that persons with disabilities can access.
- Information may also be provided in local languages. It may also be given using local ways of communicating where those work better.
- Information should also be provided on the **internet** where possible.
- It should also be available for inspection free of charge. If the information has to be printed, the person requesting for the information may pay for the printing.

What is exempt Information?

Must all information be provided?

The Access to Information Act says that some information may not be provided. This information is exempt.



ACCESS DENIED

information that is at times said to be sensitive because it may affect operations of government institutions.



Which information is exempt?

This is information that may:

- Affect national security
 - Affect the due process of the law
 - Put in danger the safety, health or life of a person
 - Lead to unlawful invasion of privacy
 - Interfere with commercial interests and intellectual property rights (such as copyrights for music)
 - Make it difficult for the government to manage the economy
Affect the ability of an institution to make a fair and just decision
Affect legal proceedings
 - Affect professional confidentiality or the requirement to keep information held by a professional confidential or secret e.g. medical or health information with a doctor about a patient
-

Public Interest



Exempt information may at times be provided. This may happen when a court decides that the information should be provided in public interest.

When is it in public interest?

When considering if exempt information should be released in public interest or not, a court should be guided by the need to encourage the following:

- Accountability
- Oversight of public funds
- Informed public debate
- Public health and environmental safety
- The proper performance of state or public institutions whose work is to ensure that rules and standards are followed e.g. the Kenya Bureau of Standards (KEBS)

How long can information be exempt?

Exempt information remains withheld for thirty (30) years. A public institution may reveal or make public such information after this period.

[30]
years
INFORMATION STORAGE



REQUESTING FOR INFORMATION

How does a person request for information?

A person makes a request with the Chief Executive Officer (CEO) of an institution. The CEO is the Information Access Officer (IAO) of an institution. This is according to the Access to Information Act.

The request must be clearly written in either English or Kiswahili.

If a person is unable to make a written request because the person cannot read and write or is disabled, the IAO must assist the person make the request.

What is the Work of an IAO?

An IAO is the person in charge of all issues relating to access to information in an institution. The CEO may delegate or give the duties of an IAO to another person in the institution.



EXAMPLES OF IAOS

Ministry - Principal Secretary

County Executive - County Secretary

County Assembly - County Assembly Clerk

Parastatal/State Corporation - Chief Executive Officer (CEO)

Private Institution (e.g. company) - CEO

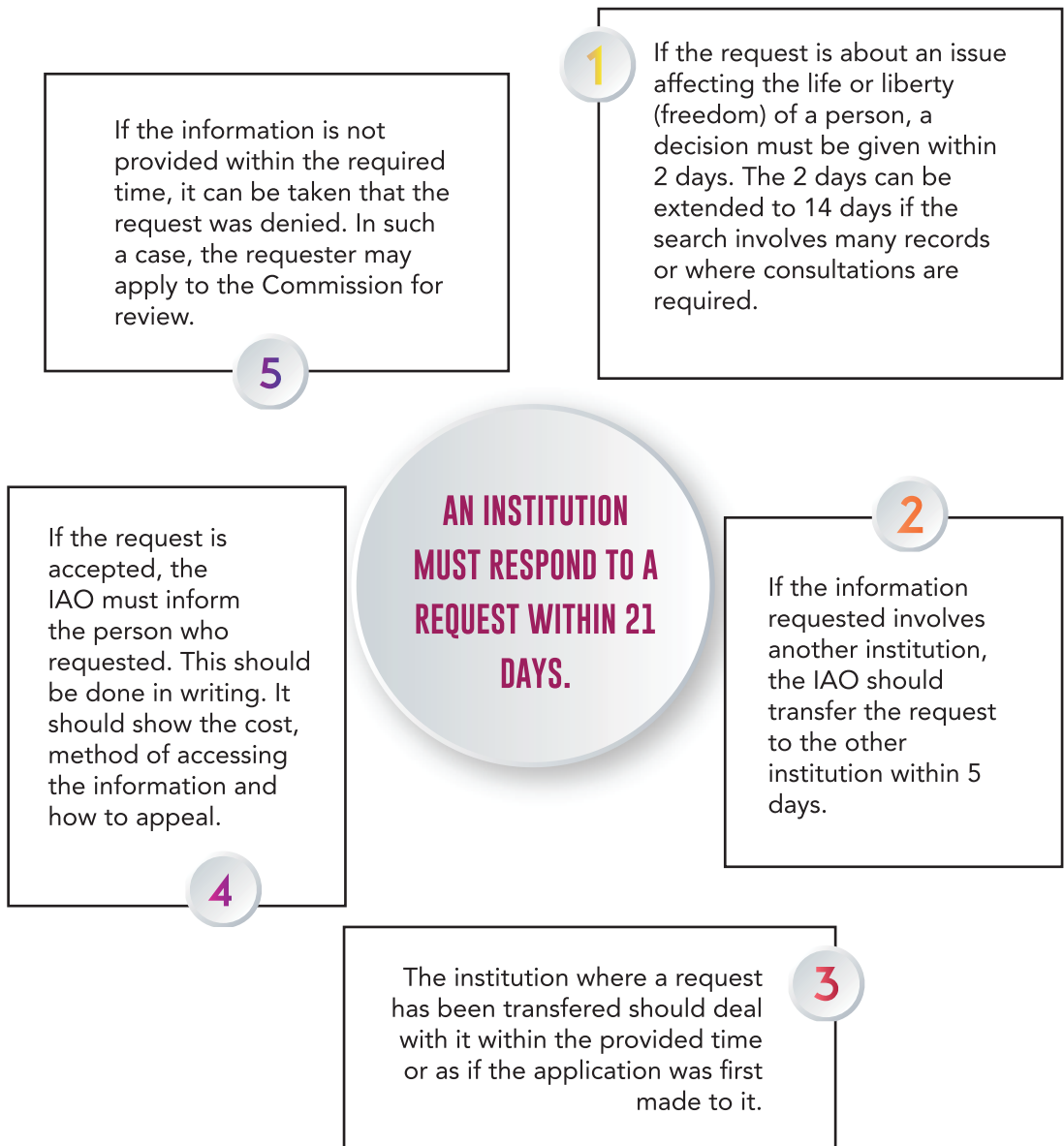
Constitutional Commission - Commission Secretary

Judiciary - Chief Registrar

Senate - Clerk to the Senate

National Assembly - Clerk to the National Assembly

How is a request for information handled?



Correction of personal information



Can personal information be corrected?

Yes. A person may request an institution to correct personal information which is out of date, inaccurate or incomplete.

The request for correction must be written and should show:

- That it is for change of personal information about the requester
- The information that should be corrected
- The correction requested

The correction should be done within a reasonable time

Review of decisions of institutions

Can a person appeal against a decision of an institution?

Yes. A person can appeal to the Commission against a decision concerning a request for information made by an institution.

The appeal may be done within 30 days from the time the decision was formally communicated to the person. The Commission may allow a longer period.

The appeal can be done on decisions concerning the following:

- A refusal to provide requested information
- Edited information (some information has been removed)
- Access given is not in line with the requested information
- Access that is deferred or postponed
- Charges
- Remission (cancelling or reducing) of fees
- Access that has been given to specific people
Refusal to correct, update and annotate (give or add details) information.

The Commission can also review a decision by an institution on its own initiative or without an appeal from a person.

Protection of whistleblowers

Does this law protect a person who discloses information in public interest?

Yes. A person shall not be penalised (made to suffer or punished) because of giving out information in public interest.

For it to be taken to be in public interest the disclosure should be made to a law enforcement agency like the police or relevant institutions.

REPORT ON

- **CORRUPTION**
- **RESOURCE MANAGEMENT**
- **HUMAN RIGHTS ABUSE**



Managing records and access to information

Why is it important to manage records?

It is important to manage records because this makes it possible for information to be accessed.

Institutions are supposed to keep records that are:

- Accurate
- Authentic
- Accessible
- Usable, and of
- Integrity

According to this law institutions should computerise their records within 3 years from the time this law officially started to be used. This means within 3 years from the 21st of September 2016.

Implementation of the Access to Information Act

How is this law to be implemented?

All institutions are required to implement or follow this law. This ensures that the right of access to information is protected and enjoyed.

This law gives the Commission on Administrative justice powers to ensure that this law is followed and administered. To ensure this, the Commission is required to assign a Commissioner the duty of making sure that it performs this responsibility properly.



ATI Act Functions

- Review of decisions on access to information
- Monitor compliance (whether it is followed) with ATI Act
- Public education on access to information
- Ensure protection of personal data (information)
- Monitor Kenya's compliance with international obligations (how Kenya is implementing international laws and rules on access to information)
- Report to Parliament annually

CAJ Act Functions

- Handling public complaints
- Public awareness and education
- Provide proposals on improvement of public administration
- Promote Alternative Dispute Resolution
- Promote the values and principles of the Constitution
- Report to Parliament annually

Handling of applications

What is the process of handling an application for review?

The process of handling an application for review is as follows:



01.

Applicant submits (takes) application to Commission



02.

Commission determines admissibility (whether the application is proper or not)



03.

Commission inquires into or investigates the allegations (issues that the applicant wants the Commission to review)



04.

Commission makes a determination (decision)



05.

Commission communicates its decision to the applicant and institution

Dealing with complaints

1

The Commission Receives (accepts) a complaint

2

After accepting a complaint, the commission asks for information or a report about the complaint from the public entity or any other body. Such information should be given within a reasonable time

3

If the information or report is not given within the time required by the commission, the commission can still go ahead with investigations

After receiving and going through the report or information the commission may:

- a Inform the complainant (person who complained) that no further action needs to be taken regarding the complaint if the commission is satisfied with the report or information provided by the entity or actions already taken by the entity regarding the issue complained about
- b Go ahead and investigate the complaint

What orders can the Commission give?

The Commission may:

- Order an institution to release information
- Make the same decision as that of the institution
- Recommend compensation or payment to the applicant
- Provide any other way of correcting the situation

NOTE

The decisions of the Commission must be followed and can be enforced in the same way as decisions of the High Court

What may happen after the Commission makes a decision or gives an order?

Three things are likely to happen. These are:

- Both applicant and institution agree with the decision of the Commission
- Either applicant or institution disagrees with the decision of the Commission and appeals the High Court.
- The applicant or the institution goes to court for enforcement of orders where there is a delay in carrying out the orders

The Commission is allowed to take any proper action in order to monitor or make sure that this law is being followed. These actions may include requiring an institution to report or report a matter to Parliament.

Powers relating to Investigations

What powers does the Commission have?

While investigating, the Commission has powers to:

- Summon or order a person to appear or come to the Commission
- Require the discovery and production of any material
- Requisition (apply, ask or order for) a public officer for any public records or copies of the records
- Record statements under oath (kiapo).

The Commission is also allowed to use the services of any public officer or government investigation officer like the police.

Regulations and guidelines

- General Regulations to implement the Act. These can be made by the Cabinet Secretary in consultation with the Commission.
- Regulations on enforcement of decisions made by the Commission. These can be made by the Commission in consultation with the Chief Justice.
- Guidelines on reporting by institutions. These are to be developed by the Commission in consultation with wananchi



Reports

What are the Reports required by this law?

There are three types of reports that should be made. These are:

01. Reports by Public Institutions to the Commission

These are reports that should be made to the Commission on or before the 30th of June each year. The report should include:

- The number of requests for information received and processed by the institution
- The average number of days taken to deal with different types of requests.
- The amount of fees or money collected by the institution for processing requests

The number of full time staff in the public institution whose work is processing requests for information

The amount of money that the public institution has used to deal with the requests.

Reports

02. Annual Reports

The Commission is annually (in each year) required to give Parliament a report. This report should provide information on how the Government performed during each year in regard to access to information.

The Cabinet Secretary is supposed to **lay** (take to, present or table) before Parliament the Annual Report from the CAJ within two months from the time he or she received the report. When taking the Annual Report to Parliament, the Cabinet Secretary may include his or her comments about the Report.

Every year, the Cabinet Secretary shall be required to inform Parliament the measures that the Government has taken to implement the recommendations made by the CAJ in its reports.

03. Special Reports

Additionally the CAJ may at any time give the Cabinet Secretary special reports on any matter or issue about its functions

OFFENCES

An Information Access Officer refusing to assist a requester, who cannot write, fails to respond to a request for information or for correction of personal information or fails to correct, destroy or delete information that is out dated, incomplete or incorrect, fails to comply with the duty to provide information in a way that is suitable to a person with disability commits a crime.

Alteration, defacement, blocking, erasure of information

Over-charging of fees more than the cost of making copies, fails to respond to a request for information for the enjoyment or protection of a right, fails to respond to a request to correct information or fails to correct, destroy or delete information that is out dated, incomplete or incorrect commits an offence.

A relevant private body failing to make public the name and contact details of its Information Access Officer.

Altering, misrepresenting or concealing part of information disclosed under this Act to a person with a purpose to deceive is an offence.

PENALTIES

a fine not exceeding **500,000 shillings** or imprisonment for a term not exceeding **6 months** or to both.

A fine of not more than **500,000 shillings** or sent to prison for not more than two years or both fine and prison

A fine not exceeding **100,000 shillings** or imprisonment for a period of not more than **6 months** or to both.

A fine not exceeding **500,000 shillings**

A fine of not more than **200,000 shillings** or imprisonment for not more than one year or both.

OFFENCES

Any relevant private body or an officer found guilty of committing an offence in this law or if not found guilty is found to have been in serious breach of this law may after a fair hearing be barred (stopped, prohibited, forbidden) from entering into any future contract with government under the laws that deal with procurement (buying, purchasing, acquiring, getting) and disposal (getting rid of).

A person who fails to respond to summons from the Commission, intentionally gives false or misleading information to the Commission, causes disruption or obstruction in any proceedings done by the Commission.

Disclosure of exempt information (apart from when this is done in public interest).

PENALTIES

Barred (stopped) from entering into future contracts with the government under the laws that deal with procurement (buying, purchasing, acquiring, getting) and disposal (getting rid of).

A fine of not more than **300,000 shillings** or imprisonment for not more than 6 months or both.

A fine of not more than **1 million shillings** or imprisonment for not more than **3 years** or both fine and imprisonment.

A person shall not be held criminally liable for providing information if this is done in good faith and according to this law.



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