

THE COMMISSION ON ADMINISTRATIVE JUSTICE
(Office of the Ombudsman)



Hata Mnyonge ana Haki

REPUBLIC OF KENYA
COMMISSION ON ADMINISTRATIVE JUSTICE
(OFFICE OF THE OMBUDSMAN)

ATI REVIEW APPLICATION NO. CAJ/MSA/ATI/SHA/012/3/26 – EG

SADDAM AMATONYO.....APPLICANT

VERSUS

SOCIAL HEALTH AUTHORITY..... RESPONDENT

RULING

A. BACKGROUND

1. The Commission on Administrative Justice (Office of the Ombudsman) (hereinafter referred to as "the Commission") is established under *Article 59(4) of the Constitution of Kenya, 2010* and the *Commission on Administrative Justice Act, 2011*. The Commission is mandated to address maladministration in the public sector and promote administrative justice, transparency, and accountability in public administration. In addition, the Commission serves as the oversight and enforcement body for the right of access to information under *Article 35 of the Constitution*, as operationalized through the *Access to Information Act, 2016* (hereinafter referred to as *ATI Act, 2016*).
2. *Article 35 of the Constitution* guarantees every citizen the right to access:
 - a. Information held by the State; and

- b. Information held by another person and required for the exercise or protection of any right or fundamental freedom.
- 3. Access to information is the cornerstone of democratic governance and accountability. Public entities hold information in trust for the people of Kenya, and disclosure of such information enhances transparency in public administration, promotes responsible management of public resources, and enables citizens to meaningfully participate in governance.

B. FACTS OF THE REVIEW APPLICATION

- 4. The Commission on 5th January 2026, received an application for review under *Section 14(1) (a)* of the *ATI Act, 2016* from the Applicant herein to review the Respondent's decision declining to provide the information requested.
- 5. The Applicant, vide a letter dated 19th November 2025 addressed to the Chief Executive Officer, Social Health Authority, sought access to the following information:
 - a. National Hospital Insurance Fund (NHIF) payments made to all hospitals in Kenya for the years 2018 to 2024 and
 - b. Social Health Authority/Social Health Insurance Fund (SHA/SHIF) payments made to hospitals in Kenya from 2025 to date.
- 6. The Applicant required the information requested to include the names of hospitals, counties and sub-counties where available; amounts paid under NHIF and SHA/SHIF categorized by month or applicable payment cycle; together with any supplementary metadata available including service categories, types of claims, coverage periods, and batch or payment cycle identifiers.

7. The Applicant lodged an application for review to the Commission vide email dated 5th January 2026. The Commission sent a letter Ref: CAJ/MSA/ATI/SHA/012/3/2026-SAK dated 19th January 2026 to the Respondent requesting for an Institutional Report and any relevant documentation to facilitate appropriate decision on the application.
8. The Respondent wrote a letter dated 11th February 2026 Ref: SHA/HQ/ADM/5/010/3/VOL 1/113 to the Commission seeking an extension of thirty (30) days to compile and file its report in response to the Commission's notice. The Commission, by a letter dated 6th March 2026, granted the Respondent the requested extension of thirty (30) days within which to compile and file its report with the Commission. Despite the granted extension, the Respondent did not file its report nor provide any response to the Commission.
9. Section 23(3)(a) of ATI Act, 2016 gives the Commission the power to call for information or report regarding a complaint lodged with it from a public entity or private body. Further, section 23(3)(a)(i) of the Act provides that ...

“If the information or report called for is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information”.

10. In the absence of a response from the Respondent, the Commission proceeds to determine this matter pursuant to section 23(3)(a)(i) of ATI Act, 2016, which permits the Commission to determine an application where the requested information or report is not received within the stipulated time.

C. ISSUES FOR DETERMINATION.

11. After a careful analysis of the request for information by the Applicant dated 19th November 2025, the request for review dated 5th January 2026 and the Respondent's response dated 11th February 2026, the Commission frames the following as the issues for determination in this review application:

- i. Whether the Commission has jurisdiction to review the Respondent's decision under the ATI Act, 2016;**
- ii. Whether the information requested, is held by the Respondent;**
- iii. Whether the Applicant is entitled to the information sought.**

D. ANALYSIS OF FACTS, ISSUES AND FINDINGS.

- i. Whether the Commission has jurisdiction to review the Respondent's decision under the ATI Act, 2016**

12. The *ATI Act, 2016* applies to all public entities based on the understanding that the State is the duty bearer of the right of access to information and exercises its functions through public entities. Section 2 of the *ATI Act, 2016*, defines a public entity as...

***“(a) any public office, as defined in Article 260 of the Constitution;
or***

(b) any entity performing a function within a commission, office, agency or other body established under the Constitution.”

13. The Respondent herein, is a State Corporation established under Section 4 of the *Social Health Insurance Act, 2023*. Section 5 thereof mandates the Respondent, *inter-alia*, administer Social Health Insurance Fund and undertake functions related to management and financing of healthcare services in Kenya.

14. From the foregoing legal framework, the Commission finds that the Respondent is a public entity within the meaning of Section 2 of the *ATI Act, 2016* and that it has jurisdiction to review the Respondent's decision relating to the Applicant's Request for information.

ii. Whether the information requested, is held by the Respondent.

15. Section 4(1) of the *ATI Act, 2016* ensures citizens right of access to information held by public entities by providing that “...every citizen has the right of access to information **held** by

- a. the State; and
- b. another person where that information is required for the exercise or protection of any right or fundamental freedom....”

16. Similarly, Article 35 of the Constitution which guarantees the right of access to information utilizes the word ‘**held**’. According to the Oxford Advanced Learners Dictionary (9th Edition), the word ‘held’ is the past tense and past participle of the word ‘hold’. Black's Law Dictionary (11th Edition) defines the word ‘hold’ as ‘**to possess by a lawful title**’ [also] ‘**to keep in custody or under an obligation**’.

17. The use of the word ‘held’ in both the *Constitution* and the *ATI Act, 2016*, connotes that the Respondent must be in possession of the information sought by the requester. Thus, the obligation to provide such information cannot be invoked if the Respondent demonstrates that it does not have such information.

18. The long title of the *Social Health Insurance Act 2023* stipulates that it is an Act of Parliament to establish a framework for the management of social health insurance; to provide for the establishment of Social Health

Authority; to give effect to *Article 43(1)(a)* of the Constitution and for connected purposes.

19. Social Health Authority is the Successor entity to the National Hospital Insurance Fund (NHIF) following the enactment of the *Social Health Insurance Act, 2023* which repealed the National Health Insurance Fund Act vide *section 54* and the First Schedule of the Act.

20. Specifically, Paragraph 5 of the First Schedule to the *Social Health Insurance Act, 2023* provides that all property, assets, rights, liabilities, obligations, agreements and arrangements which immediately before the commencement of the Act were vested in, imposed on, or enforceable by or against NHIF shall vest in, be imposed on, or be enforceable by or against the Social Health Authority.

21. The Respondent is mandated to manage and administer Social Health Insurance Funds and by operation of law, the records, assets, liabilities and obligations inherited from the defunct National Hospital Insurance Fund.

22. It is further noted that the Respondent, in its letter dated 11th February 2026, did not deny being in possession of the requested information. Instead, it sought additional time to compile and file its report, thereby implicitly acknowledging that the requested information exists and is within its custody.

23. From the foregoing analysis, the Commission finds that the Respondent holds the requested information relating to NHIF payments records made to hospitals in Kenya for the period 2018 to 2024 and SHA/SHIF payments made to hospitals from 2025 to date as sought by the Applicant.

iii. **Whether the Applicant is entitled to the information sought.**

24. *Article 35* of the Constitution guarantees the right of every citizen to access: -

a. Information held by the State; and

b. Information held by another person and required for the exercise or protection of any right or fundamental freedom.

25. It is noted that the Respondent did not raise an objection to the request lodged with it on the basis of the Applicant's citizenship. That notwithstanding, the Commission takes judicial notice that the Applicant, Saddam Amatonyo is a citizen of Kenya with National Identity Card number 3*****16 meeting the citizenship criteria under *Article 35* and *section 4* of the *ATI Act*. Accordingly, the Commission finds and holds that the Applicant is entitled to invoke and enjoy the right of access to information as guaranteed under the Constitution and the *ATI Act, 2016*.

26. The Commission observes that the information sought by the Applicant relates to expenditure of public resources by the Respondent. *Article 10(2)(c)* of the Constitution provides for national values and principles of governance including good governance, integrity, transparency and accountability.

27. The High Court in ***Trusted Society of Human Rights Alliance v Cabinet Secretary Devolution & Planning & 3 Others [2017] KEHC 8755 (KLR)***, underscored the importance of transparency in governance by observing that...

“Access to information is a foundational element of accountability and good governance. It enables citizens to scrutinize public expenditure and the decisions made by those entrusted with public power.”

28. Accordingly, the Commission is of the considered view that the requested information ought to be disclosed in furtherance of good governance, integrity, transparency and accountability.

29. The right of access to information is however not absolute. Section 6 (1) of the ATI Act, 2016 restricts disclosure of information in respect of specific categories of information whose release is likely to: -

- (a) Undermine the national security of Kenya;***
- (b) Impede the due process of the 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 public or private 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 public entity's position in any actual or contemplated legal proceeding; or***
- (i) Infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession."***

30. In the present case, the Commission notes that the Respondent did not expressly decline disclosure on the basis of the exemptions provided under Section 6(1) of the *ATI Act, 2016*. Rather, the Respondent indicated that the requested information spans multiple financial years and sought an extension of time to enable it to compile and file a comprehensive and verified institutional report together with the requisite documentation.

31. Further, the Commission has carefully examined the nature of the information sought as well as the manner and format in which it is requested. The Commission notes that the request is not for access to original payment records or copies of such records but for data summaries on payments made by the Respondent. Disclosure of original payment records or copies thereof without necessary redactions may lead to infringement of protected information. The Applicant through his request for data summaries on payment made chose a conscious approach which enables compliance with right of access to information demands while at the same time protecting exempt information.

32. Thus, the Commission is convinced that the information sought does not fall within any of the exemptions contemplated under Section 6(1) of the *ATI Act, 2016* bearing in mind the format of the request. Hence, the Commission finds and holds that the requested information should be disclosed to the Applicant in the manner and the format sought.

E. FINAL ORDERS

33. Having made a careful analysis of all the facts and information provided in this review application, the Commission, pursuant to the powers granted by Sections 22(3)(a) and 23(2) of the ATI Act, 2016 and Regulation 25(8) of the Access to Information (General) Regulations, 2023, **ORDERS:**

1. **THAT** the Respondent through the Chief Executive Officer provides disaggregated information/data summaries as requested by Saddam Amatonyo in his letter dated 19th November 2025 on:
 - a. National Hospital Insurance Fund (NHIF) payments made to all hospitals in Kenya for the years 2018 to 2024 and
 - b. Social Health Authority/Social Health Insurance Fund (SHA/SHIF) payments made to hospitals in Kenya from 2025 to the date of these Orders.
2. **THAT** compliance with these orders shall be **within Twenty-One (21) days** from the date hereof.
3. **THAT** in the event of non-compliance with the orders above, the Commission shall recommend criminal prosecution against the Respondent's Chief Executive Officer, in line with Section 28 of the ATI Act, 2016.

Dated, Signed and **Issued** at **Nairobi** this...**3rd** day of**JULY**.....2026



DOROTHY JEMATOR

ACCESS TO INFORMATION COMMISSIONER

[TAKE NOTICE THAT section 23(3) of the Access to Information Act, 2016 provides that ***“A person who is not satisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made.”***]

Section 23 (5) of the ATI Act, 2016 provides that “If no appeal is filed under subsection (3), the party in favour of whom the order is made by the Commission may apply ex-parte by summons for leave to enforce such order as a decree, and the order may be executed in the same manner as an order of the High Court to the like effect.”