

**THE COMMISSION ON ADMINISTRATIVE JUSTICE**  
(Office of the Ombudsman)



*Hata Mnyonge ana Haki*

**REPUBLIC OF KENYA**  
**THE COMMISSION ON ADMINISTRATIVE JUSTICE**  
**(OFFICE OF THE OMBUDSMAN)**  
**ATI REVIEW APPLICATION NO. CAJ/KSM/ATI/NGCDF/000/03/26-AO**

**JIM OGUTA.....APPLICANT**

**VERSUS**

**NATIONAL GOVERNMENT CONSTITUENCY  
DEVELOPMENT FUND, URIRI CONSTITUENCY.....RESPONDENT**

**RULING**

**A. BACKGROUND**

1. The Commission on Administrative Justice (Office of the Ombudsman) (hereinafter referred 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 the "*ATI Act, 2016*").
2. *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.***

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 Applicant in a request for information letter dated 31<sup>st</sup> March 2026, sought from the Respondent the following:
  1. The names of contractors and companies awarded tenders between 1<sup>st</sup> January to 31<sup>st</sup> March 2026;
  2. Confirmation of payment status to the contractors and companies;
  3. Confirmation of whether the Judgement Debtor, Mr. xxxxx was a duly registered contractor; and
  4. Any other related documentation.

The Applicant stated that the information was required to facilitate the execution of a court decree against the Judgment Debtor, a Mr. xxxxx.

5. The Applicant subsequently lodged the application for review with the Commission on 13<sup>th</sup> May 2026 alleging that the Respondent had failed to provide the requested information within the timelines prescribed under the *ATI Act, 2016*.
6. The Commission issued an Access to Information Notice dated 3<sup>rd</sup> June 2026 to the Respondent requesting for an Institutional Report and any relevant documentation to facilitate appropriate determination of the application.
7. In its response dated 24<sup>th</sup> June 2026, the Respondent stated that the matter had been discussed with the Applicant and that it had declined to disclose that information based on *Section 6(d)* of the *ATI Act, 2016*, contending that disclosure would amount to an invasion of privacy of the contractors and companies.

8. The Applicant subsequently filed a rejoinder disputing the Respondent's position and maintained that the information sought concerns expenditure of public funds and public procurement and should thus be availed.

### **C. ISSUES FOR DETERMINATION**

9. After a careful analysis of the request for information by the Applicant dated 31<sup>st</sup> March 2026, the request for review dated 26<sup>th</sup> May 2026, the Respondent's response dated 24<sup>th</sup> June 2026 and the Applicant's rejoinder, the Commission frames the following as 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 subject information requested is held by the Respondent;
- iii. Whether the Applicant is entitled to the subject information.

### **D. ANALYSIS OF FACTS, ISSUES AND FINDINGS**

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

10. 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.”***

11. The Respondent, being an office established under the *National Government Constituencies Development Fund Act, Cap. 414A, (NG-CDF Act)* to administer and manage public funds allocated to the Uiri National Government Constituencies Development Fund pursuant to Article 206(2)(c) of the Constitution

and the provisions of Sections 4, 5, 6, 12 and 43 of the NG-CDF Act is a public entity within the meaning of Section 2 of the ATI Act, 2016.

12. From the foregoing, consequently, the Respondent is subject to the obligations imposed under the Act, including the duty to facilitate access to information held in its custody or control, save where such information falls within the exemptions expressly provided under the Act

13. From the foregoing, the Commission finds that the Respondent is a public entity within the meaning of Section 2 of the ATI Act, 2016 and is therefore subject to the obligations imposed by the Act. Accordingly, the Commission is satisfied that it has jurisdiction to review the Respondent's decision and conduct relating to the Applicant's Request for information.

#### **ii. Whether the subject information, is held by the Respondent**

14. Section 4(1) of the ATI Act, 2016 provides for citizens' right of access to information held by public entities by providing that ***"every citizen has the right of access to information held by the State and another person where that information is required for the exercise or protection of any right or fundamental freedom."***

15. 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 (9<sup>th</sup> Edition), the word 'held' is the past tense and past participle of the word 'hold'. Black's Law Dictionary (11<sup>th</sup> Edition) defines the word 'hold' as .... ***'to possess by a lawful title' [also] 'to keep in custody or under an obligation'.***

16. 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.

17. *Section 43* of the *NG-CDF Act* establishes the National Government Constituency Development Fund Committee for each constituency with specific functions relating to administration and management of the Fund at the Constituency level. *Section 43(9)* thereof states that the Fund account manager shall be the custodian of all records and equipment of the constituency during the term of Parliament and during transitions occasioned by general elections or a by-election.

18. The information requested by the Applicant relates to records on procurement awards and documentation, names of contractors and payment status. These are records generated during the discharge of statutory functions and in the ordinary course of procurement and financial administration of public funds allocated and disbursed to the Respondent under the law.

19. It is further noted that the Respondent, in its letter dated 24<sup>th</sup> June 2026 did not deny being in possession of the requested information. Instead, it raised objection on disclosure based on a privacy limitation, thereby implicitly acknowledging that the information exists and is within its custody.

20. Consequently, the Commission finds and holds that the Respondent holds the information/records requested by the Applicant.

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

21. *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.**

22. 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.

23. Indeed, Section 5(1)(e) of the ATI Act, 2016 requires public entities to proactively publish, upon signing contracts under the public procurement process:

- 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.***

24. Similarly, the Access to Information (General) Regulations, 2023 require procurement records and awarded tenders to be made available in accordance with procurement law.

25. 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.”***

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

27. 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."**

28. In the present case, the Respondent in its letter dated 24<sup>th</sup> June 2026 stated that it could not disclose the requested information without consent from the information owners as doing so may lead to infringement of their privacy which is protected by section 6(1)(d) of the ATI Act, 2016.

29. In **Kenya Human Rights Commission vs Communication Authority of Kenya & 4 Others [2018] eKLR** at paragraph 72, the court held that ...

***“A limitation of a constitutional right will be constitutionally permissible if (i) it is designated for a proper purpose; (ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose; (iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally (iv) there needs to be a proper relation (“proportionality stricto sensu” or “balancing”) between the importance of achieving the proper purpose and the special importance of preventing the limitation on the constitutional right.”***

30. The Commission, having observed hereinbefore that the information requested is very critical in the realization of National Values and Principles of Governance under Article 10 of the Constitution finds that the Respondent in this case has an obligation of demonstrating why such information could not be disclosed as opposed to merely stating the lack of consent from information owners.

31. Nevertheless, the Commission carefully examined the nature of the information sought as well as the manner and format in which it is requested. The Commission noted that the request is not for access to original records but for data summaries containing names of contractors and companies awarded tenders between 1<sup>st</sup> January to 31<sup>st</sup> March 2026, payments status thereof, a confirmation of whether Mr. Peter Odhiambo was a duly registered contractor and any other related documents.

32. The Commission notes that disclosure of original documents containing the requested information could potentially implicate privacy interests and other protected information. However, the Applicant has framed the request in a manner that permits disclosure of the information sought without necessitating the release of original documents or personal data. The Commission finds that this

approach facilitates compliance with the right of access to information while simultaneously safeguarding information exempt from disclosure under the *ATI Act, 2016*.

33. Having carefully considered the nature, scope, and format of the information sought, the Commission finds that the Respondent has not demonstrated that the requested information falls within the exemption under *Section 6(1)(d)* of the *ATI Act, 2016*, or any other exemption provided under *Section 6(1)* of the *ATI Act, 2016*. The Commission is therefore satisfied that the Respondent has failed to establish any lawful basis for withholding the requested information.

#### **E. FINAL ORDERS**

34. 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 Fund Account Manager, provides the Applicant with access to the information requested in his letter dated 31<sup>st</sup> March 2026, namely:
  - a. The names of contractors and companies awarded tenders between 1<sup>st</sup> January to 31<sup>st</sup> March 2026;
  - b. Confirmation of payment status to the contractors and companies;
  - c. Confirmation on whether the Judgement Debtor, Mr. xxxx, was a duly registered contractor; and
  - d. Any other related documentation.
2. **THAT** compliance with these orders 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 Fund Account manager, in line with Section 28 of the ATI Act, 2016.

**Dated, Signed** and **Issued** at **Nairobi** this....7<sup>th</sup> ..... day of .....**AUGUST**.....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."***