

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/ATI/M.EDU/013/168/25-MW

TABITHA NDUKU MUTAVI..... APPLICANT

VERSUS

STATE DEPARTMENT FOR BASIC EDUCATION..... 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 13th February 2026, received an application under *Section 14(1) (a) of the ATI Act, 2016* from the Applicant to review the Respondent's decision declining to provide information requested.
- 5. The Applicant, vide an email dated 17th December 2025, to the Respondent's sought for certified copies of documents submitted to the Ministry of Education in support of the registration of the private educational school known as '*Precious Palms Academy*' operating on the property described as Machakos Muthini Block xxx(formerly Plot xxx in Machakos County.
- 6. Specifically, the Applicant sought for: -
 - 1. The title deed (freehold or leasehold) under which the subject property was presented for purposes of registration or where applicable, the registered lease agreement relied upon by the school at the time of registration;
 - 2. Any and all documentation relating to property ownership, leasehold interest or consent submitted to the Ministry in

support of the school's registration as a private educational institution; and

3. When the school was registered, the registration number and year of registration.
7. Upon receipt of the application, the Commission sent an Access to Information Notice (ATI Notice) Ref: CAJ/ATI/M.EDU/013/168/25-MW dated 20th February 2026 to the Respondent requesting for an Institutional Report and any relevant documentation to facilitate appropriate decision on the application.
8. The Respondent did not respond to the Commission's ATI Notice, prompting issuance of summons dated 7th April 2026 to the Principal Secretary; State Department for Basic Education to attend the Commission on 15th April 2026 under *Article 252(3) of the Constitution* and *Section 23(1)(a), ATI Act, 2016*.
9. Consequently, the Commission on 14th April 2026 received a letter referenced; *MOE.CONF/G9/24/1 VOL XV (113)* of even date from the Respondent requesting for an adjournment of the Summons hearing date from 15th April 2026 to a date in May 2026, to enable adequate time to review the matter and compile a comprehensive response.
10. Accordingly, the Commission noted with concern that the Respondent has not been responding to Access to Information notices and therefore issued a Mediation Notice dated 21st April 2026, for purposes of understanding the challenges experienced by the Respondent. The Mediation Notice required all the parties to attend the Commission on 12th May 2026. However, the meeting did not materialize as the Respondent's failed to attend to the said meeting.

11. 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”.

12. In the absence of a substantive 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

13. After careful analysis of the request for information by the Applicant dated 17th December 2025, the request for review 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 for, 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

14. 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.”

15. The Respondent herein is a State Department within the Ministry of Education as codified by Executive Orders Nos. 1 of 2025 and 1 of 2023. According to the information available on the Ministry of Education website <https://www.education.go.ke>, the Respondent's primary functions are *inter-alia*; basic education policy management, registration of basic education and training institutions, primary and secondary education management, curriculum development and management of education standards.

16. 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 holds that it has jurisdiction to review the Respondent's decision and conduct relating to the Applicant's Request for Information.

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

17. Section 4(1) of the *ATI Act, 2016* provides for citizen's the 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...."

18. 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'.***

19. 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.

20. Section 17 of the *ATI Act, 2016* requires public entities to keep and maintain records that are accurate, authentic, have integrity, are useable and in a manner that facilitates the right of access to information. Additionally, Sections 3(2) and 4(1) of the *Public Archives and Documentation Service Act CAP 19* which is the overarching legislation on public records management, place an obligation on all public entities to create and preserve records.

21. The Respondent, being a public entity to which the foregoing legal framework applies, is therefore under a mandatory obligation to create and preserve records pertaining to its functions.

22. The *Basic Education Act, CAP 211* and *Basic Education Regulations No. 39 of 2015* provide for an elaborate framework for the registration and accreditation procedure of institutions of basic education. Regulations 3 and 4 provides that...

“3. No person, body or organization shall establish or admit learners to a private or public institution without first obtaining written authority from the Cabinet Secretary.

4. All institutions referred to in regulation 3 shall be registered in a manner and form prescribed through guidelines issued by the Cabinet Secretary.”

23. Section 17 of the *Basic Education Act* establishes the County Education Board (CEB) to perform functions such as to register and maintain a data bank of all education and training institutions within the county, initiate proposals for policy reforms, prepare and submit a comprehensive school termly annual report to the Cabinet Secretary on all areas of its mandate.

24. The information sought by the Applicant relates to documents submitted to the Ministry of Education in support of the registration of the private educational institution known as ‘*Precious Palms Academy*’ operating on the property described as Machakos Muthini Block xxx(formerly Plot xxx), Machakos County.

25. Accordingly, it is quite clear the Respondent is in possession of the requested information based on the statutory requirements under the aforesaid legal framework.

26. Additionally, a public entity in receipt of a request for information has a statutory obligation to respond to the request and indicate whether it holds the requested information. This position is reinforced by *Section 9(4)(a) of the ATI Act, 2016*, which requires a public entity to issue a decision to a requester specifying whether or not it holds the information sought. This requirement is fundamental, as it forms the basis for processing a request and facilitating the realization of the right of access to information.

27. In its response letter dated 14th April 2026, the Respondent did not state that it is not in possession of the requested records. Instead, the Respondent requested for an adjournment of the Summons to attend the Commission to enable adequate time to review the matter and compile a comprehensive response.

28. Consequently, and based on the foregoing analysis, the Commission finds and holds that the requested information and records are held or are under the control of the Respondent.

iii. Whether the Applicant is Entitled to the Information Sought

29. 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.**

30. The Commission takes judicial notice that the Applicant, *Tabitha Nduku Mutavi* is a citizen of Kenya satisfying 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*.

31. 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.”

32. In the instant case, the Respondent did not place before the Commission any evidence or submissions to demonstrate that the requested information falls within any of the statutory exemptions listed in section 6(1) of the ATI Act, 2016.

33. Nevertheless, the Commission carefully analyzed the nature of the information sought under items (a) and (b) relating to a certified copy of title deed or registered lease agreement, all documentation relating to property ownership or consent for the property submitted to the Ministry of Education for the registration of ‘Precious Palms Academy’ with a view of determining disclosure status.

34. The Applicant did not indicate to the Commission the details of the ownership of land parcel, *Machakos Muthini Block xxx formerly Plot xxx*. Similarly, the request for information to the Respondent dated 17th December 2025 did not give an elaboration on the ownership details. The Commission is at a loss to establish whether the said land belongs to the Applicant or to a third party.

35. Section 6(1)(d) of the ATI Act, 2016 exempts information whose disclosure is likely to...

‘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.’

36. Hence, the land ownership details become very critical as they enable a determination on whether the requested information or records can be legally accessed by the Applicant. This is based on the fact that a title document or a land registration document normally contains personal information.

37. The Commission observes that personal information has its regime of access and disclosure as indicated in section 6(1) (d) of the ATI Act, 2016 which includes:

- i. Access by the owner of the personal information if such access is not exempted by other provisions of the law;
- ii. Access by a third party if the third party has proper authority to access such personal information;
- iii. The personal information is withheld from access if the requestor is not the owner of the information or does not have proper authority.

38. For the Applicant to succeed in the instant application relating to records containing third party information should demonstrate that either she is the owner of the title document requested or if the title document relates to a third party, that she had obtained a proper authority. The Commission is of the view that proper authority required in section 6(1)(d) constitutes either a written consent from the owners of the personal information requested specifically authorizing the requestor to access such information or a court order expressly authorizing access of such personal information by the requestor.

39. The Commission noted that the Applicant did not place any information, facts or record before the Commission to demonstrate that land parcel, *Machakos Muthini Block xxxx formerly Plot xxx* belongs to her or her proprietary interest on land said land. Further, the Applicant did not

produce to the Commission or to the Respondent the required proper authority allowing her to access personal information assuming that the land parcel in issue belongs to a third party.

40. The other question which arises is the nexus of privity of contract and access to information by third parties. The general rule is that a contract including a lease agreement confers rights and obligations only on the parties who execute it. Simply put, a third party has no automatic right to access a lease agreement that they are not party to.

41. This position was affirmed by the Court of Appeal in ***Kim Jong Kyu v Housing Finance Company Limited & 2 Others (2015) KECA (274KLR)*** where the doctrine of privity of contract was applied in the disclosure of information from a bank by the appellant regarding a fixed deposit account opened in the names for the parties to which the appellant was not a signatory. The Court held that there was no privity of contract between the appellant and the bank since the joint account was created by way of contract between the bank and third parties.

42. Accordingly, the Commission finds that the part of this review relating to the Applicant request for information on certified copy of title deed or registered lease agreement and all documentation relating to property ownership or consent for the property submitted to the Ministry of Education for the registration of Precious Palms Academy cannot succeed.

43. The Commission considered the information requested in number 3 of the Applicant request being registration number and year of registration of Precious Palms Academy. Section 79(1) of the *Basic Education Act* requires the Respondent through the County education board to establish and maintain a databank of all registered, accredited,

licensed and incorporated institutions of education, training and or research in the County. *Further, section 79 (2) provides that...*

“(2) The register established and maintained under subsection (1) shall be open to the public for inspection during normal working hours.”

44. The Commission is thus convinced that the Respondent's legal framework allows access of schools' registration information by the public either on inspection or upon request.

45. Additionally, upon careful examination on the nature of the requested information being registration number and year of registration of Precious Palms Academy, the Commission is of the considered view that there is nothing in the two sets of information which falls within the exemption clauses provided in *section 6(1) of the ATI Act, 2016*.

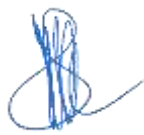
46. From the foregoing analysis, the Commission finds and holds that the requested information in number 3 of the Applicant's request for information dated 17th December 2025 is public information which should be disclosed and accessed by the Applicant.

E. FINAL ORDERS

47. 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 Principal Secretary, State Department for Basic Education provides information requested by Tabitha Nduku Mutavi through an email dated 17th December 2025 in number 3 being registration number and year of registration of Precious Palms Academy.
2. **THAT** the part of this review relating to the Applicant request for information on certified copy of title deed or registered lease agreement and all documentation relating to property ownership or consent for the property submitted to the Ministry of Education for the registration of Precious Palms Academy is dismissed.
3. **THAT** compliance with the above Order No. 1 be within **twenty-one (21)** days from the date hereof.
4. **THAT** in the event of non-compliance with the foregoing orders, the Commission shall recommend criminal prosecution against the Principal Secretary, State Department for Education in line with Section 28 of the ATI Act, 2016.

Dated, Signed and **Issued** at **Nairobi** this.....7th ... day of**SEPTEMBER**....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."***