

NO. 31 OF 2016

THE ACCESS TO INFORMATION ACT

SUBSIDIARY LEGISLATION

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THE ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023

[Legal Notice 57 of 2023]

PART I – PRELIMINARY

1. Citation.

These Regulations may be cited as the Access to Information (General) Regulations, 2023.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Access to Information Act (Cap. 7M);

"applicant" means a requester who has made a request for review of a decision of a public entity or private body by the Commission under these Regulations;

"Cabinet Secretary" has the meaning assigned to it under the Act;

"Chief Executive Officer" has the meaning assigned to it under the Act;

"child" has the meaning assigned to it under the Children Act (Cap. 141);

"Commission" has the meaning assigned to it under of the Act;

"disseminate" means to make known or communicate information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including making the information available for inspection at the offices of any public entity or private body;

"incapacitated person" includes any person who is impaired by reason of mental illness or physical illness or disability, chronic use of drugs or chronic intoxication to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions;

"information" has the meaning assigned to it under the Act;

"information holder" means a public entity or a private body that is the custodian of information required for disclosure or requested to be disclosed under the Act and these Regulations;

"information access officer" has the meaning assigned to it under the Act;

"personal information" has the meaning assigned to it under the Act;

"private body" has the meaning assigned to it under the Act;

"procurement records" means the records kept pursuant to section 68 of the Public Procurement and Asset Disposal Act (Cap. 412C);

"public entity" has the meaning assigned to it under the Act;

"records" has the meaning assigned to it under section 17(1) of the Act; and

"requester" means a citizen who has requested access to information from a public entity or private body under the Act and these Regulations.

"Secretary of children services" means the Secretary of children services appointed under section 37 of the Children Act (Cap. 141);

3. Guiding principles.

In the application of these Regulations, the following guiding principles shall apply—

- (a) disclosure of information required for disclosure or requested;
- (b) justifiable limitation of the right to access as provided under section 6 of the Act;

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- (c) expeditious processing of requests;
- (d) collaboration with the oversight Commission and other public entities and private bodies;
- (e) promotion of open government; and
- (f) protection of the person making disclosure.

4. Objects and purpose of the Regulations.

The objects and purpose of these Regulations is to provide for—

- (a) the procedure for proactive disclosure of information by public entities and private bodies;
- (b) the procedure for requesting access to information;
- (c) record keeping by public entities and private bodies;
- (d) the procedure for reviewing a complaint of refusal to access or correct a record; and
- (e) oversight by the Commission on compliance of the provisions of the Act.

PART II – INFORMATION ACCESS OFFICERS

5. Obligations of private bodies.

Within thirty days upon coming into force of these Regulations, every private body shall—

- (a) designate the person having principal administrative responsibility as an information access officer for the purposes of the Act and these Regulations; and
- (b) comply with the provisions of the Act and these Regulations.

6. Information access officer by public entities.

Within thirty days upon coming into force of these Regulations, every public entity shall publish on its website or otherwise make publicly available the name, designation and contact information of the information access officer designated pursuant to section 7 of the Act.

7. Delegation by information access officer.

(1) Where a public entity or private body has departments, regional offices or semi-autonomous units, the information access officer may, subject to section 7(2) of the Act, delegate the performance of his duties to an officer in those departments, offices or units.

(2) A delegation under subsection (1) shall be made in writing to a suitable officer with the requisite authority, to provide access to information in accordance with the Act and these Regulations.

(3) Despite any delegation, the overall responsibility for implementation of the Act and these Regulations shall vest in the Chief Executive Officer.

8. Duties of information access officer.

(1) The duties of an information access officer shall include—

- (a) ensuring information is proactively disclosed;
- (b) receiving and acting on requests for access to information, including –
 - (i) reducing oral requests into writing; or
 - (ii) reviewing all requests to identify the information requested and seeking clarification from the requester, where necessary;
- (c) determining –
 - (i) whether the requested information is already publicly available;
 - (ii) whether the request requires to be transferred to another information holder as provided under regulation 18;

- (iii) whether the request requires to be deferred as provided under regulation 19; or
- (iv) whether the request is to be granted or denied, and communication to the requester of the such determination;
- (d) reviewing the information requested to identify if it is subject to any of the limitations set out in section 6 of the Act, and redacting or withholding information that may be limited in accordance with that section;
- (e) where necessary, obtain consent from any person or third party;
- (f) adhering to the timelines for processing requests;
- (g) informing an aggrieved requester of their right of review of the decision by the Commission and the timelines within which a request for review may be submitted;
- (h) establishing and maintaining an access to information register, to record all requests for information received by the respective public entity or private body;
- (i) ensuring that all requests for information received by the public entity or private body, and actions taken in relation to each request are recorded in the web-based information management portal provided under regulation 31;
- (j) ensuring that any personal information held by the public entity or private body is accurate and up to date, and requests made are in compliance with the Data Protection Act (Cap. 411C);
- (k) formulating and implementing the organization's policies and procedures on access to information and sensitize the officers and employees in the implementation thereof;
- (l) submitting annual reports to the Commission as required by section 27 of the Act and regulation 34; and
- (m) perform any other duty as may be necessary to implement the provisions of the Act.

(2) An information access officer may, where necessary and subject to specified timelines, seek legal or expert opinion on whether access to information ought to be granted in accordance with the Act and these Regulations.

PART III – PROACTIVE DISCLOSURE

9. Scope of proactive disclosure.

(1) For the purposes of this Part—

"machine readable" means a structured arrangement of information that can be processed by a computer; and

"proactive disclosure" means routine and systematic dissemination of information, without the requirement of a request for that information.

(2) A public entity and private body shall proactively disclose print or electronic records—

- (a) in a machine-readable format;
- (b) in any of the official languages contemplated under Article 7 of the Constitution;
- (c) in a common local language or dialect as may be relevant in the respective local context; or
- (d) in a format that is accessible to persons living with a disability including—
 - (i) most current Web Content Accessibility Guidelines compliant format that is accessible to a person living with a disability;
 - (ii) providing text alternatives for non-text content;

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- (iii) providing captions and other alternatives for multimedia content, including adding Kenyan Sign Language interpretation as an overlay to video; and
- (iv) presenting content in ways that are or may be rendered easier to see or hear, including by magnification.

10. Obligations of public entities on proactive disclosure.

(1) Subject to section 6 of the Act, an information access officer of a public entity shall ensure that information required under section 5 (1) of the Act is disseminated on the entity's website or any other communication platform of the public entity, within thirty working days of such information being available.

(2) The information disseminated under subsection (1) shall be updated as may be necessary.

(3) Without prejudice to the generality of subsection (1), the information disseminated shall include —

- (a) a description of services offered by a public entity, including any forms required to be filled and timelines for submission of the forms;
- (b) the physical location of the office;
- (c) the public entity's policy and the relevant legislations;
- (d) financial and other reports required under the Public Finance Management Act (Cap. 512A);
- (e) procurement records including pre-qualified suppliers and awarded tenders in the manner specified under the Public Procurement and Asset Disposal Act (Cap. 412C) and in compliance with the provisions of the Data Protection Act (Cap. 411C);
- (f) information regarding Public Private Partnerships as required by section 60 of the Public Private Partnerships Act (Cap. 430);
- (g) any other report or information required to be made public in accordance with the relevant law;
- (h) the name, designation and official contact information of the information access officer; and
- (i) information on the procedure for requesting for access to information, including any costs or charges for processing requests.

11. Obligations of private bodies on proactive disclosure.

(1) A private body shall disseminate on its website or any other communication media information that it holds provided that, that information is required for the exercise or protection of any right or fundamental freedom under the Constitution.

(2) Without prejudice to the generality of subsection (1), the information to be disclosed shall include—

- (a) particulars of the private body, and the public functions that the private body engages in or public services that it provides;
- (b) information on the physical location of the private body;
- (c) the powers and duties of the private body's officers and employees;
- (d) standard operating procedures, rules, regulations, instructions, manuals and records of the private body;
- (e) particulars of public resources and benefits received and public funds utilized, including the following information in respect of any contract or agreement entered into in respect of public resources, benefits or funds—
 - (i) details of the contracted service, including any sketches, scope of service and terms of reference;
 - (ii) the contract sum;

- (iii) the name of the contracting public entity, and contact information of the person responsible for the contract on behalf of the public entity; and
- (iv) the timeline of the contract.
- (f) particulars of any contracts, natural resource agreements or other projects to explore, investigate, develop, extract or otherwise exploit in any way, natural resources, including the following information—
 - (i) details of the contracted service, agreement or project, including any sketches, scope of service and terms of reference;
 - (ii) the contract sum;
 - (iii) the timeline of the contract; and
 - (iv) all reports required under relevant environmental laws.
- (g) particulars of any licence, permit and other formal authorisation which has been granted to the private body;
- (h) all other information relating to the protection of human rights, environment or public health and safety or to exposure of corruption or illegal actions;
- (i) any other information that may assist in exercising or protecting any right;
- (j) any report or other information required to be made public in accordance with any statute or regulation, including but not limited to annual financial statements and any other statement or report required to be published or otherwise made available pursuant to the Companies Act (Cap. 486);
- (k) an information access guide to facilitate identification of the classes, location and subjects of information held by the private body and relating to the information required to be disclosed in accordance with this regulation;
- (l) information on the procedure for requesting for access to information, including any charges that may be incurred for translation and supplying copies of materials; and
- (m) information on the procedure for requesting for access to information, including any costs or charges for processing requests.

(3) The information access officer of a private body shall ensure that information required to be proactively disclosed under this Part is published on the private body's website or other communication media within thirty days of such information being available.

PART IV – REACTIVE DISCLOSURE

12. Scope of reactive disclosure.

(1) For the purposes of this Part—

"reactive disclosure" means making information available in response to a request for that information by a requester.

(2) A public entity or private body shall reactively disclose information in—

- (a) a machine-readable format;
- (b) a simple language that is understandable to a lay person, including by providing a descriptive explanation of technical information;
- (c) any of the official language specified under Article 7 of the Constitution;
- (d) any of the common local languages or dialects as may be relevant in the respective local context; or
- (e) a format that is accessible to persons with disabilities including—
 - (i) providing text alternatives for non-text content;
 - (ii) providing captions and other alternatives for multimedia content, including adding Kenyan Sign Language interpretation as an overlay to video;

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- (iii) presenting content in ways that are or may be rendered easier to see or hear, including by magnification;
- (iv) in braille or such other format that is accessible to persons with visual disability, as may be reasonably required by the requester; and
- (v) audio records which shall be transcribed for persons with hearing disability, as may be reasonably required by the requester.

(3) Records shall be translated in both English and Kiswahili, as the case may be, at no cost to a requester.

(4) A public entity or private body shall not impose any fees, costs or charges on requests made by a person living with disability.

13. Requests for information.

(1) A requester who wishes to access information held by a public entity or private body shall make a request in writing or orally to the information access officer as specified under section 8 of the Act.

(2) A request for access to information may be made in Form ATI 1 set out in the First Schedule or in any other manner, including through physical address of the office, postal address, website, official email address or an information holder's official social media account.

(3) Where a request does not contain the information required by Form ATI 1, the information access officer shall, as far as practicable, assist the requester to provide further details to facilitate access to information.

14. Requests on behalf of another person.

(1) A request may be made on behalf of another person in Form ATI 1 set out in the Schedule, provided that the person to whom the information relates provides written consent to such information being disclosed in Form ATI 3 set out in the Schedule.

(2) Despite Subsection (1), a parent or guardian of a child may, without obtaining the consent of that child, request and be granted access to personal information relating to the child, however, access shall not be granted where the information access officer determines—

- (a) that the information is of such a nature as would not ordinarily be made available to a person having parental responsibility for that child; or
- (b) after consultation with the Secretary of Children's Services appointed under section 37 of the Children Act (Cap. 141) that the granting of access to such information may not be in the best interests of the child.

(3) Despite subsection (1), a person may request and be granted access to personal information relating to an incapacitated person upon production of verification documents of the representative's authority in relation to the incapacitated person.

(4) The provision of this section shall be dealt with in accordance with the Data Protection Act (Cap. 411C).

15. Processing of request.

In processing a request for information, an information access officer shall—

- (a) ensure that an acknowledgement of a request for information is made in Form ATI 2 set out in the schedule and the date and time the request is received is indicated in the public entity's or private body's register or record;
- (b) take all steps that are reasonably necessary to preserve the records that are the subject of or reasonably related to a request, without deleting, redacting or otherwise altering any information contained therein;
- (c) ensure that personal information of any person is only disclosed with written consent of that person and in accordance with the Data Protection Act (Cap. 411C);

- (d) record actions taken in regard to the processing of a request for information, including the date each action was taken, and maintain such record in the access to information register referred to under regulation 23;
- (e) ensure that a request is processed and a decision communicated within the specified timelines and in accordance with the requirements specified in section 9 of the Act; and
- (f) communication of a decision on a request for information in accordance with section 9 (4) of the Act may be made in Form ATI 2 set out in the First Schedule.

16. Provision of access.

(1) Despite section 11(2) of the Act, an information access officer shall provide access to information concerning the life or liberty of a person in accordance with section 9(2) of the Act.

(2) Where a request for information is to be made available in another form in accordance with section 11 (3) of the Act, the information holder shall provide the converted record within sixty days of receiving payment, or notice of preferred format in the case of a request on behalf of a person with disability, unless the format or volume of the information requested reasonably renders compliance with the timeline impracticable.

(3) The information access officer shall authenticate copies of a record provided under section 11(3) of the Act including by means of an official stamp of a public entity or a declaration the converted copy of requested information is a true and accurate replica.

(4) The information access officer shall ensure that the requester has sufficient time, space and privacy to inspect the requested record, including by allowing the requester to inspect the record on more than one occasion if reasonably required to facilitate full realization of the right to access the information.

17. Information that cannot be found.

(1) Where a requested record is known to exist or to have existed but cannot be found within the timelines for disclosure under the Act, the search for that record shall continue and the information access officer shall communicate to the requester and the Commission the fact that such record exists or existed but cannot be found within the specified timelines.

(2) Despite subsection (1), where the record is subsequently found, the information access officer shall disclose the information to the requester within seven days from the date the information is found and notify the Commission of such action.

18. Transfer of a request.

(1) Prior to the transfer of a request for information as provided under section 10 (1) of the Act, the information access officer shall confirm with the concerned public entity or private body that they do hold the information requested.

(2) Where a request for information is transferred, the information access officer shall notify the requester in Form ATI 2 set out in the First Schedule.

(3) The information access officer of the public entity or private body to which the request has been transferred shall—

- (a) acknowledge the receipt of transfer of the request in Form ATI 2 set out in the First Schedule; and
- (b) act on the request in accordance with the provisions of this Part.

(4) For greater clarity, the timeline of twenty-one days for making a decision on the request shall not be extended between receipt of the request by the first public entity or private body, and transfer of the request to another public entity or private body.

(5) Where the transfer relates to a request for information under section 9(2) of the Act, such information shall be provided by the public entity or private body to which the request has been transferred within forty-eight hours of receiving the transfer.

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19. Deferral of a request.

(1) Where an information access officer identifies that a requested record is—

- (a) in the process of being actively developed;
- (b) in draft form and under active consideration; or
- (c) final but subject to official approval or publication, and may accordingly be excluded from disclosure pursuant to section 6 (1)(g) of the Act,

the information access officer may defer provision of access to the record until it is no longer exempt and shall inform the requester of the expected date upon which access may be granted by notice in Form ATI 2 set out in the First Schedule.

(2) Access to a record that has been deferred under Subsection (1) shall be granted within five days from the date the exemption ceases to apply.

20. Exemption on fees.

No fee shall be charged –

- (a) in relation to time spent searching for the information requested;
- (b) in relation to time spent determining whether a record contains exempt information or redacting exempt information from a record;
- (c) where an extension of time has been made in accordance with section 9(3) of the Act or regulation 19, in relation to that extended period of time;
- (d) for inspection of a record at the premises of the public entity or private body;
- (e) for provision of access to a record contained in electronic form to an email address or by other means of electronic transmission;
- (f) for obtaining a legal or expert opinion; or
- (g) for withdrawal of a request in accordance with regulation 21.

21. Withdrawal of a request.

(1) A request for access to information may be withdrawn by the requester in Form ATI 4 set out in the First Schedule at any time before –

- (a) access to the records has been provided; or
- (b) payment has been made for access in another format.

(2) The information access officer shall acknowledge the withdrawal in Form ATI 5 set out in the First Schedule.

22. Closure of a request.

(1) A request for access to information shall be closed where—

- (a) the request is withdrawn by the requester;
- (b) the request has been transferred to another public entity or private body;
- (c) thirty days have lapsed since the information access officer requested further particulars or consent in order to process the request, and no further information or consent has been provided;
- (d) thirty days have lapsed since notice was given in accordance with section 9(4) of the Act, and no request for review has been filed with the Commission;
- (e) thirty days have lapsed since notice was given in accordance with section 11(1) of the Act, and no fees have been paid or request for review filed with the Commission; or
- (f) thirty days have lapsed since access was provided in accordance with the Act and these Regulations, and no request for review has been filed with the Commission.

(2) The information access officer shall notify the requester of a decision to close a request in—

- (a) Form ATI 5 set out in the First Schedule, where the request is withdrawn by the requester;
- (b) Form ATI 5 set out in the Schedule, where the request has been transferred to the relevant public entity or private body; or
- (c) Form ATI 5 set out in the Schedule in all other instances not specified under sub section 2 (a) and (b).

23. Access to Information Register.

(1) Every information access officer shall establish and maintain an Access to Information Register to record request and actions taken to process requests for information, received by the concerned public entity or private body.

(2) The Access to Information Register shall include, in relation to every request for access to information–

- (a) a reference number;
- (b) the name and contact details of the requester;
- (c) the date of receipt of the request;
- (d) details of the request including a description of the information requested and the requester's preferred method of access;
- (e) whether the request is for information concerning the life or liberty of a person;
- (f) the written consent of any person or third party, where necessary;
- (g) a summary of actions taken in response to the request;
- (h) a summary of the information provided, including indication if information was redacted sufficient to identify that information in the original record, where applicable;
- (i) where the request was declined, the reasons for making that decision, including the basis for deciding that the information sought is exempt;
- (j) where a request is withdrawn, the date of withdrawal;
- (k) whether a request was made for review by the Commission and the outcome of that review, where practicable; and
- (l) the date of closure of the request.

(3) The Access to Information Register may be established in print or electronic form.

PART V – MANAGEMENT OF RECORDS

24. Public records management.

(1) Public entities shall create, maintain and manage records that are accurate, authentic, have integrity and are usable in a manner that facilitates access to information.

(2) For clarity, records are reliable, authentic, have integrity and are usable if–

- (a) their origin can be traced;
- (b) it can be confirmed that the information they contain is accurate;
- (c) their content, structure and format are preserved materially unchanged over time; and
- (d) they can be located, retrieved, presented and interpreted.

(3) To facilitate access to information, information access officers shall ensure that their respective public entity is compliant with the current Government ICT Standards on Electronic Records and Data Management issued by the Ministry in charge of Information Communication and Technology, or other public entity with such authority.

(4) Subject to section 17(3)(a) of the Act, and subject to the Government ICT Standards on Electronic Records and Data Management relating to establishment, retention and disposal of public records, every public entity shall maintain the records required to be proactively disclosed for a minimum period of ten years.

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(5) Subject to the Government ICT Standards on Electronic Records and Data Management, every public entity shall, in consultation with the Director of the Kenya National Archives and Documentation Service, prepare a records schedule that sets out, for each class of public records that they create or receive, the length of time the records will be retained and the manner of disposal of the records at the end of their retention period.

(6) Despite sub section (2), personal information shall be processed in the manner specified under the Data Protection Act, 2019 and in particular, personal information-

- (a) shall be retained only as long as necessary to fulfil the purposes for which it is collected or received; or
- (b) that is no longer required to fulfil these purposes shall be destroyed, erased or made anonymous or pseudonymized.

PART VI – REVIEW BY THE COMMISSION

25. Application for Review by the Commission.

(1) A person aggrieved by a decision of a public entity or a private body on any matter under the Act or these Regulations, may apply for review of the decision to the Commission.

(2) An application for review may be in Form ATI 6 set out in the First Schedule, or in any other form, provided that the application shall contain the information specified in Form ATI 6.

(3) Where an application does not contain the information required by Form ATI 6, the Commission shall, as far as practicable, assist the applicant to provide further details to facilitate the review.

(4) An application for review shall include, a postal address, an email address or a telephone number to which the communication from the Commission may be sent.

(5) An application for review may be submitted electronically including through a Commission's website, email address or the Commission's official social media account, or in print copy by delivery to the Commission's offices.

(6) The Commission may, if satisfied with the reasons furnished by the applicant that the circumstances so warrants, accept an application for review after the expiry of the thirty days' specified under section 14 (2) of the Act.

26. Review procedure for access to information requests.

(1) Upon receiving an application for review, the Commission shall within five days of receipt of the application for review, notify the respective public entity or private body of the application.

(2) The notice under subsection (1) shall—

- (a) detail the nature of the application for review in accordance with section 14 of the Act;
- (b) require that the public entity or private body to provide a copy of entries in the Access to Information Register relating to that request; and
- (c) require the public entity or private body to provide any further information that is relevant to the information holder's decision on the request.

(3) The public entity or private body shall provide to the Commission the content of the of the notice under subsection (2) within seven days from the date of the notice.

(4) Upon receipt of the response from the public entity or private body, the Commission shall within fourteen days undertake a preliminary assessment of the merits of the application for review based on the details provided under the application and the response from the public entity or private body,

(5) Where the public entity or private body fails to respond within the period specified under subsection (2), the Commission shall undertake a preliminary assessment of the merits of the application for review and may take action as provided under subsection (11).

(6) Where Commission is of the opinion that further information, clarification or submission is required from the applicant, the information holder or any third party including

another public entity or private body or any person to whom the information relates, the Commission may require such person, entity or body to make submissions or provide clarification on any aspect of the request or actions taken in response, within such reasonable time as may be determined by the Commission in the circumstances.

(7) Despite subsection (6), the Commission may require any public entity or private body to provide to the Commission an unredacted or unedited copy of the requested record.

(8) Where the Commission is of the opinion that the applicant's right to access the information requested has been unreasonably limited or denied, the Commission shall Order the public entity or private body to do anything that, in the Commission's opinion, is required to rectify the matter, including –

- (a) granting access to the information requested in full;
- (b) granting partial or redacted access to the information requested;
- (c) requiring the public entity or private body to refund a fee where a fee was levied contrary to the provisions of these Regulations;
- (d) granting access to the requester; or
- (e) granting access to the information in a particular format.

(9) The Commission shall specify a period of time within which the order must be complied with, which in any event shall be no longer than twenty-one days from the date the order has been made.

(10) If, after reviewing the application for review, and the response, the Commission is of the opinion that the application for review is without merit, the Commission shall issue a decision and provide reasons in writing to the applicant and the public entity or private body, and any third party where applicable.

(11) Where the Commission is of the opinion that the matter requires further consideration, the Commission may decide to hold a hearing.

(12) A person participating in a hearing may be represented by an advocate or any other person of their choice.

(13) Upon hearing the matter, the Commission shall make a decision and give reasons for the decision in writing, giving any directions it deems appropriate in the circumstances, including –

- (a) ordering the public body or private entity to pay the applicant's reasonable costs of participating in the hearing, though an applicant shall not be ordered to pay such costs to the public entity or private body;
- (b) recommend to the public entity or private body to compensate any individual who has suffered damage as a result of—
 - (i) delay beyond the timeline,
 - (ii) refusal to grant access to a full or partial record;
 - (iii) granting access but not actually granting access in accordance with the application;
 - (iv) deferring access;
 - (v) granting access to only a specified person, that the Commission determines was unreasonable in all the circumstances;
- (c) require the public entity or private body to take any administrative action that the Commission considers should be taken, and the reasons for the decision; or
- (d) any other action the Commission deems appropriate in all the circumstances.

(14) The Commission may publicize its decisions on its website, with any necessary redactions to protect the privacy of the applicant and any other person involved in the matter, and in compliance with section 6 of the Act.

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(15) The Commission may require the public entity or private body that was the subject of the application to submit a report to the Commission within a specified period on the steps, if any, taken to comply with the directions of the Commission.

27. Investigation of complaints relating to section 16 of the Act. No. 23 of 2011.

The Commission shall, within thirty days, investigate any contravention of section 16 of the Act in accordance with Part III of the Commission on Administrative Justice Act, 2011 and the Act.

PART VII – OVERSIGHT BY THE COMMISSION

28. Information management portal.

(1) The Commission shall develop a web-based Information Management Portal which is compliant with the Government ICT Standards on Electronic Records and Data Management.

(2) The Information Access Officer shall input information on all requests for information received and the action taken in the portal.

29. Duty to co-operate.

A public entity or private body shall co-operate with the Commission to promote the right to access information and compliance with the Act and these Regulations.

30. Compliance with proactive disclosure requirements.

The Commission shall from time to time monitor compliance of public entities and private bodies with the proactive disclosure requirements set out in Part III and section 5 of the Act.

31. Reporting.

(1) Every public entity and private body shall report to the Commission on an annual basis, with respect to—

- (a) the measures taken to comply with the proactive disclosure requirements of the Act and these Regulations which shall, include providing a copy of the public entity or private body's Information Access Guide; and
- (b) the measures taken to comply with the records management obligations in section 17 of the Act and regulation 27.

(2) Within fourteen days from the 30th day of June of each year, every private body shall submit to the Commission a report covering the year ending 30th June, which shall include –

- (a) the number of requests for information received by the private body and the number of requests processed;
- (b) the number of determinations made by the private body not to comply with requests for information, and the basis for such determinations;
- (c) the average number of days taken by the private body to process requests; and
- (d) any other matter that the Commission may require.

(3) If any public entity or private body fails to comply with its reporting obligations under the Act or these Regulations, the Commission may prepare and submit to –

- (a) the National Assembly or relevant County Assembly in respect of public entities; and
- (b) any regulatory agency having jurisdiction over a private body,

a report detailing the failure to comply with obligations under the Act, and the National Assembly, County Assembly or regulatory agency shall take appropriate action.

FIRST SCHEDULE

[r. 13(2)(3)]

FORMS

FORM ATI 1.

REPUBLIC OF KENYA

ACCESS TO INFORMATION ACT (Cap. 7M)

ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023

REQUEST FOR INFORMATION

Part I - to be completed by Requester (the information provided on this form will only be used for the purpose of acting on this request, and for compliance with the Access to Information Act (Cap. 7M)

1. Name of Institution of Institution

(Please state the name of the institution from which you are requesting information)

2. Name of Requester

3. Is the request being made on your own behalf

[] No

[] Yes

(If No, tick the appropriate reason below)

[] A child aged (explain relationship to the child)

[] A person who is incapacitated (not able to make the request due to mental or physical impairment)

[] A marginalized or vulnerable person or group of persons

[] Other reason (please explain)

(If the request is for a record containing personal information about a person other than the requester, please provide a consent in FORM ATI 3. If the request is for a record containing personal information about an incapacitated person, provide a copy of legal authority to act on behalf of the person, e.g. power of attorney)

4. Identification Document e.g. National ID/ Passport /Certificate of Incorporation

5. Sex of Requester [] Male [] Female [] Intersex []

(Tick where appropriate)

6. Do you have a Disability? [] No [] Yes

(a) If yes, state the nature of disability.....

(b) State the form in which the requested information should be availed e.g. braille, audio, print etc.

.....

7. Contact Information of Requester

(Please indicate the address to which correspondence related to your request should be sent)

[Subsidiary]

Email Address:

Postal address:

Town/City:

Telephone No:

Other:

8. Describe the information requested and reasons for seeking such information.

(Please state all the information available to you which will assist in processing your request)

.....
.....
.....
.....

9. I would like to: (tick where applicable)

Inspect the record []

Listen to the record []

Have a copy of the record made available to me in the following format:

[] photocopy (Please note that copying costs will apply)

number of copies required:

[] electronic

[] by email to

[] USB

[] transcript

[] translation into

[] Other (specify)

10. Does the information requested concern the life or liberty of any person?

[] No

[] Yes (please explain)

Signature of Requester: Date: 20....

For Official Purposes Only

Part II - to be completed by Information Access Officer (or designate)

1. Date Received [STAMP]

2. Action Taken

.....
.....
.....

Name of Information Access Officer:

Signature:

Date: 20....

FORM ATI 2

[r. 15 (a) & (f))(r.19(1)(c)]

REPUBLIC OF KENYA

ACCESS TO INFORMATION ACT (Cap. 7M)

ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023

ACKNOWLEDGMENT OF RECEIPT AND RESPONSE TO REQUEST FOR INFORMATION

TO:

(Name of Requester)

I, information access officer at

(name of information access officer)

..... acknowledge the request to access

(name of public entity or private body receiving request)

information received on 20..., having reference number

(date)

TAKE NOTE that –

.....
.....
.....
.....
.....
.....

(Please indicate the action taken)

You may withdraw this request in Form 11 within two (2) working days of receiving this notice.

You may request a review of this decision by the Commission on Administrative Justice within thirty (30) days of receiving this notice.

Information about how to request a review can be found at www.ombudsman.go.ke or by contacting the head office:

P.O. Box 20414 – 00200 NAIROBI

Email: info@ombudsman.go.ke/complain@ombudsman.go.ke

Signature of Information Access Officer:

Date: 20.... [STAMP]

FORM ATI 3

[r. 14]

[Subsidiary]

REPUBLIC OF KENYA
ACCESS TO INFORMATION ACT (Cap. 7M)
ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023
CONSENT TO DISCLOSURE OF A RECORD
CONTAINING PERSONAL INFORMATION

Part I - to be completed by person giving consent

TO:
(name of the public entity or private body from which access is being requested)

1. I of.....
(name of person to whom record relates)(address)
am aware of the information request made by
(name of requester)

on 20.... and the fact that the requested record(s) contains or
may
(date of request)

contain personal information relating to me.

2. I hereby give consent to disclosure of my personal information to
.....
(name of requester)

3. I acknowledge and understand that
(public entity or private body from which access is being requested)

is not liable for any use that is made of the personal information once it is disclosed in
accordance with this request, and hereby consent to disclosure of the record.

Signature: Date: 20....

Print name:

Guidance on access to information and consent to disclosure can be found at
www.ombudsman.go.ke or by contacting the Commission on Administrative Justice at:

P.O. Box 20414 – 00200 NAIROBI
Tel: +254-20- 2270000 /2303000 / 2603765 / 2441211 / 8030666
Email: info@ombudsman.go.ke / complain@ombudsman.go.ke

.....

Part II - to be completed by information access officer (or designate)

Date Received [STAMP]

Signature of Information Access Officer:

Date: 20.....

FORM ATI 4

[r. 21)(1)]

REPUBLIC OF KENYA
ACCESS TO INFORMATION ACT (Cap. 7M)
ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023
WITHDRAWAL OF REQUEST FOR INFORMATION

PART I - to be completed by Requester

TO:

(name of the public entity or private body from which access has been requested)

TAKE NOTE that –

I, having requested access to records

(name of requester)

by request dated 20...., hereby withdraw this request for access to information

(date).

Signature: Date: 20....

Guidance on withdrawing a request for information can be found at www.ombudsman.go.ke or by contacting the Commission on Administrative Justice at:

P.O. Box 20414 – 00200 NAIROBI

Tel: +254-20- 2270000 /2303000 / 2603765 / 2441211 / 8030666

Email: info@ombudsman.go.ke / complain@ombudsman.go.ke

PART II - to be completed by information access officer (or designate)

For Official Purposes

1. Date Received [STAMP]

2. I, information access officer at

(name of information access officer)

..... acknowledge withdrawal of the

(name of public entity or private body receiving request)

request to access information received on 20...., having reference number

(date)

..... This request is now closed.

Signature of Information Access Officer:

Date: 20....

FORM ATI 5

[r. 21)(2)r. 22(2)(a)(b)(c)]

REPUBLIC OF KENYA
ACCESS TO INFORMATION ACT (Cap. 7M)
ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023
NOTICE OF CLOSURE
OF REQUEST FOR INFORMATION

TO:

[Subsidiary]

(Name of Requester)

TAKE NOTE that-

the request for access to information made to on

(name of entity or body receiving request)

..... 20.... will be closed for the following reason-

(date)

- (a) the request is withdrawn by the requester;
- (b) the request has been transferred to another public entity or private body;
- (c) thirty days have lapsed since the information access officer requested further particulars or consent in order to process the request, and no further information or consent has been provided;
- (d) thirty days have lapsed since notice was given in accordance with section 9(4) of the Act, and no request for review has been filed with the Commission;
- (e) thirty days have lapsed since notice was given in accordance with section 11(1) of the Act, and no fees have been paid or request for review filed with the Commission; or
- (f) thirty days have lapsed since access was provided in accordance with the Act and these Regulations, and no request for review has been filed with the Commission.

Name of Information Access Officer:

Signature

Date: 20.... [STAMP]

You may request a review of this decision by the Commission on Administrative Justice within thirty (30) days of receiving this notice. Information about how to request a review can be found at www.ombudsman.go.ke or by contacting the head office:

P.O. Box 20414 – 00200 NAIROBI
 Tel: +254-20- 2270000 /2303000 / 2603765 / 2441211 / 8030666
 Email: info@ombudsman.go.ke / complain@ombudsman.go.ke
 FORM ATI 6

[r. 25) (2) & (3)]

REPUBLIC OF KENYA
ACCESS TO INFORMATION ACT (Cap. 7M)
ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023
REQUEST FOR REVIEW BY THE COMMISSION

Part I - to be completed by Applicant

1. Name of Applicant

2. Contact Information of Applicant

(Please indicate the email address or telephone number to which communication related to your request may be sent)

Email

Address:

Telephone

number:

Access to Information

[Subsidiary]

3. Name of Information Holder

(Please state the name of the public entity or private body from which you requested action)

4. On 20.... I requested the following action to be taken-

[] access to information (describe the record(s) requested)

.....
.....
.....
.....
.....

5. On 20.... I received the following response (please describe)-

.....
.....
.....
.....
.....

7. I hereby request that the Commission on Administrative Justice conduct a review into the response to my request.

Signature: Date:
20....

Guidance on submitting a request for review can be found at www.ombudsman.go.ke or by contacting the Commission on Administrative Justice at:

P.O. Box 20414 – 00200 NAIROBI
Tel: +254-20- 2270000 /2303000 / 2603765 / 2441211 / 8030666
Email: info@ombudsman.go.ke / complain@ombudsman.go.ke

SECOND SCHEDULE

CATEGORIES OF PRIVATE BODIES TO WHICH THE ACT APPLIES

Private Bodies Categories of Private Bodies The Act and these Regulations apply to private bodies providing the following services including –

- (a) Health Care;
(b) Transport and Infrastructure;
(c) Energy, Mining and Petroleum;
(d) Agriculture, Livestock and Fisheries;
(e) Education;
(f) Water, Environment and Sanitation;
(g) Financial services;
(h) Social or political services;

[Subsidiary]

- (i) Private bodies to which the Public Private Partnership Act (Cap. 430) applies;
 - (j) Hospitality industry firms;
 - (k) Professional services;
 - (l) Private regulatory services;
 - (m) Trade unions;
 - (n) Private pension schemes; or
 - (o) Media and communication services.
-

THE ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

1. Citation
2. Interpretation
3. Guiding principles
4. Objects of the Regulations

PART II – INFORMATION ACCESS OFFICERS

5. Information Access Officer of Private bodies
6. Publicizing details of Information Access Officer
7. Delegation by information Access Officer
8. Duties of information Access Officer

PART III – PROACTIVE DISCLOSURE

9. Scope of proactive disclosure
10. Obligations of public entities on proactive disclosure
11. Obligations of private bodies on proactive disclosure

PART IV – REACTIVE DISCLOSURE

12. Scope of reactive disclosure
13. Requests for information
14. Requests on behalf of another person
15. Processing of request
16. Provision of access
17. Information that cannot be found
18. Transfer of a request
19. Deferral of a request
20. Withdrawal of a request
21. Closure of a request
22. Access to Information Register

PART V – MANAGEMENT OF RECORDS

23. Public records management

PART VI – REVIEW BY THE COMMISSION

24. Application for Review by the Commission
25. Review procedure for access to information requests
26. Investigation of complaints
27. Appeals

PART VII – OVERSIGHT BY THE COMMISSION

28. Information management portal
29. Duty to co-operate
30. Compliance with proactive disclosure requirements
31. Reporting
32. General penalty
33. Revocation (L.N. 57 of 2023)

SCHEDULES

THE ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023

[Legal Notice 161 of 2023]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Access to Information (General) Regulations, 2023.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Access to Information Act (Cap. 7M);

"applicant" means a person who has made a request for review of a decision of a public entity or private body to the Commission under these Regulations;

"child" has the meaning assigned to it under the Children Act (Cap. 141);

"disseminate" means to make known or communicate information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including making the information available for inspection at the offices of any public entity or private body;

"incapacitated person" includes any person who is impaired by reason of mental illness or physical illness or disability, chronic use of drugs or chronic intoxication to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions;

"information holder" means a public entity or a private body that is the custodian of information required for disclosure or requested to be disclosed under the Act and these Regulations;

"machine readable" means a structured arrangement of information that can be processed by a computer;

"private body" has the meaning assigned to it under the Act and includes the private bodies specified under the Second Schedule of these Regulations;

"proactive disclosure" means routine and systematic dissemination of information, without the requirement of a request for that information;

"procurement records" means the records kept pursuant to section 68 of the Public Procurement and Asset Disposal Act, (Cap. 412C);

"reactive disclosure" means making information available in response to a request for that information by a requester;

"requester" means a person who has requested access to information from a public entity or private body under the Act and these Regulations;

"Secretary of children services" means the Secretary of children services appointed under section 37 of the Children Act (Cap. 141).

3. Guiding principles

In the application of these Regulations, the following guiding principles, shall apply—

- (a) disclosure of information required for disclosure or requested;
- (b) justifiable limitation of the right to access as provided under section 6 of the Act;
- (c) expeditious processing of requests;
- (d) collaboration with the oversight Commission, other public entities and private bodies;

[Subsidiary]

- (e) promotion of open government; and
- (f) protection of the person making disclosure.

4. Objects of the Regulations

The objects of these Regulations are to provide for—

- (a) the procedure for proactive disclosure of information by public entities and private bodies;
- (b) the procedure for requesting access to information;
- (c) record keeping by public entities and private bodies;
- (d) the procedure for reviewing a complaint of refusal to access information or to correct a record; and
- (e) oversight by the Commission on compliance of the provisions of the Act.

PART II – INFORMATION ACCESS OFFICERS

5. Information Access Officer of Private bodies

The Chief Executive Officer of a private body or the person assigned the principal administrative responsibility by whatever title shall be the Information Access Officer for the purposes of the Act and these Regulations.

6. Publicizing details of Information Access Officer

Within thirty days upon coming into force of these Regulations, every public entity or private body shall publish on its website or otherwise make publicly available the name, designation and contact information of the Information Access Officer designated pursuant to section 7 of the Act.

7. Delegation by information Access Officer

(1) Where a public entity or private body has departments, regional offices or semi-autonomous units, the Information Access Officer may, subject to section 7(2) of the Act, delegate the performance of the duties to an officer in those departments, offices or units.

(2) A delegation under paragraph (1) shall be made in writing to a suitable officer with the requisite authority to provide access to information in accordance with the Act and these Regulations.

(3) Despite any delegation, the overall responsibility for implementation of the Act and these Regulations shall vest in the Chief Executive Officer or the person assigned the principal administrative responsibility by whatever title.

8. Duties of information Access Officer

(1) The duties of an Information Access Officer shall include-

- (a) ensuring information is proactively disclosed;
- (b) receiving and acting on requests for access to information, including—
 - (i) reducing oral requests into writing; or
 - (ii) reviewing all requests to identify the information requested and seeking clarification from the requester, where necessary;
- (c) determining whether the requested information —
 - (i) is already publicly available;
 - (ii) requires to be transferred to another information holder as provided under regulation 18;
 - (iii) requires to be deferred as provided under regulation 19; or
 - (iv) is to be granted or denied, and communication made to the requester of the determination;

- (d) reviewing the information requested to identify if it is subject to any of the limitations set out in section 6 of the Act, and redacting or withholding information that may be limited in accordance with that section;
- (e) informing, an aggrieved requester of their right of review of the decision by the Commission and the timelines within which a request for review may be submitted;
- (f) establishing and maintaining an access to information register, to record all requests for information received by the respective public entity or private body;
- (g) ensuring that all requests for information received by the public entity or private body, and actions taken in relation to each request are recorded in the web-based information management portal provided under regulation 28;
- (h) ensuring that any personal information held by the public entity or private body is accurate and up to date, and requests made are in compliance with the Data Protection Act (Cap. 411C);
- (i) formulating and implementing the organization's policies and procedures on access to information and sensitize the officers and employees in the implementation thereof;
- (j) submitting annual reports to the Commission as required by section 27 of the Act and regulation 31; and
- (k) perform any other duty as may be necessary to implement the provisions of the Act.

(2) An Information Access Officer may, where necessary and subject to specified timelines, seek legal or expert opinion on whether access to information ought to be granted in accordance with the Act and these Regulations.

PART III – PROACTIVE DISCLOSURE

9. Scope of proactive disclosure

Pursuant to section 5(1) of the Act, a public entity shall proactively disclose print or electronic records—

- (a) in a machine-readable format;
- (b) in any of the official languages contemplated under Article 7 of the Constitution;
- (c) in a common local language or dialect as may be relevant in the respective local context; or
- (d) in a format that is accessible to persons living with a disability including —
 - (i) most current Web Content Accessibility Guidelines compliant format that is accessible to a person living with a disability;
 - (ii) providing text alternatives for non-text content;
 - (iii) providing captions and other alternatives for multimedia content, including adding Kenyan Sign Language interpretation as an overlay to video; and
 - (iv) presenting content in a way that is or may be rendered easier to see or hear, including by magnification.

10. Obligations of public entities on proactive disclosure

(1) Subject to section 6 of the Act, an Information Access Officer of a public entity shall ensure that information required under section 5 (1) of the Act is disseminated on the entity's website or any other communication platform of the public entity, within thirty working days of such information being available.

(2) The information disseminated under paragraph (1) shall be updated as may be necessary.

[Subsidiary]

(3) Without prejudice to the generality of paragraph (1), the information disseminated shall include —

- (a) the name, designation and official contact information of the information access officer;
- (b) information on the procedure for requesting for access to information, including any costs or charges for processing requests;
- (c) a description of services offered by a public entity, including any forms required to be filled and timelines for submission of the forms;
- (d) the physical location of the office;
- (e) the public entity's policy and the relevant legislations;
- (f) financial and other reports required under the Public Finance Management Act (Cap. 412A);
- (g) procurement records including pre-qualified suppliers and awarded tenders in the manner specified under the Public Procurement and Asset Disposal Act (Cap. 412C) and in compliance with the provisions of the Data Protection Act;
- (h) information regarding Public Private Partnerships as required by section 60 of the Public Private Partnerships Act (Cap. 430); and
- (i) any other report or information required to be made public in accordance with the relevant law.

11. Obligations of private bodies on proactive disclosure

(1) A private body shall disseminate on its website or any other communication media information that it holds provided that, that information is required for the exercise or protection of any right or fundamental freedom under the Constitution.

(2) Without prejudice to the generality of paragraph (1), the information to be disclosed shall include—

- (a) particulars of the private body, and the public functions that the private body engages in or public services that it provides;
- (b) information on the physical location of the private body;
- (c) the powers and duties of the private body's officers and employees;
- (d) standard operating procedures, rules, regulations, instructions, manuals and records of the private body;
- (e) particulars of public resources and benefits received and public funds utilized, including the following information in respect of any contract or agreement entered into in respect of public resources, benefits or funds—
 - (i) details of the contracted service, including any sketches, scope of service and terms of reference;
 - (ii) the contract sum;
 - (iii) the name of the contracting public entity, and contact information of the person responsible for the contract on behalf of the public entity; and
 - (iv) the timeline of the contract,
- (f) particulars of any contracts, natural resource agreements or other projects to explore, investigate, develop, extract or otherwise exploit in any way, natural resources, including the following information—
 - (i) details of the contracted service, agreement or project, including any sketches, scope of service and terms of reference;
 - (ii) the contract sum;
 - (iii) the timeline of the contract; and
 - (iv) all reports required under relevant environmental laws.
- (g) particulars of any licence, permit and other formal authorisation which has been granted to the private body;

- (h) all other information relating to the protection of human rights, environment or public health and safety or to exposure of corruption or illegal actions;
- (i) any other information that may assist in exercising or protecting any right;
- (j) any report or other information required to be made public in accordance with any statute or regulation, including but not limited to annual financial statements and any other statement or report required to be published or otherwise made available pursuant to the Companies Act (Cap. 486);
- (k) an information access guide to facilitate identification of the classes, location and subjects of information held by the private body and relating to the information required to be disclosed in accordance with this regulation;
- (l) information on the procedure for requesting for access to information, including any charges that may be incurred for translation and supplying copies of materials; and
- (m) information on the procedure for requesting for access to information, including any costs or charges for processing requests.

(3) The Information Access Officer of a private body shall ensure that information required to be proactively disclosed under this Part is published on the private body's website or other communication media within thirty days of such information being available.

PART IV – REACTIVE DISCLOSURE

12. Scope of reactive disclosure

- (1) A public entity or private body shall reactively disclose Scope of reactive disclosure.
- (a) a machine-readable format;
 - (b) a simple language that is understandable to a lay person, including by providing a descriptive explanation of technical information;
 - (c) any of the official language specified under Article 7 of the Constitution;
 - (d) any of the common local languages or dialects as may be relevant in the respective local context; or
 - (e) a format that is accessible to persons with disabilities including—
 - (i) providing text alternatives for non-text content;
 - (ii) providing captions and other alternatives for multimedia content, including adding Kenyan Sign Language interpretation as an overlay to video;
 - (iii) presenting content in ways that are or may be rendered easier to see or hear, including by magnification;
 - (iv) in braille or such other format that is accessible to persons with visual disability, as may be reasonably required by the requester; and
 - (v) audio records which shall be transcribed for persons with hearing disability, as may be reasonably required by the requester.

(2) Records shall be translated in both English and Kiswahili, as the case may be, at no cost to a requester.

13. Requests for information

(1) 1 A requester who wishes to access information held by a public entity or private body shall make a request in writing or orally to the Information Access Officer as specified under section 8 of the Act.

(2) A request for access to information may be made in Form ATI 1 set out in the First Schedule or in any other manner, including through physical address of the office, postal address, website, official email address or an information holder's official social media account.

[Subsidiary]

(3) Where a request does not contain the information required by Form ATI 1, the Information Access Officer shall, as far as practicable, assist the requester to provide further details to facilitate access to information .

14. Requests on behalf of another person

(1) A request may be made on behalf of another person in Form ATI 1 set out in the Schedule, provided that the person to whom the information relates provides written consent to such information being disclosed in Form ATI 3 set out in the Schedule.

(2) Despite paragraph (1), a parent or guardian of a child may, without obtaining the consent of that child, request and be granted access to personal information relating to the child, however, access shall not be granted where the Information Access Officer determines

- (a) that the information is of such a nature as would not ordinarily be made available to a person having parental responsibility for that child; or
- (b) after consultation with the Secretary of Children's Services appointed under section 37 of the Children Act, (Cap. 141) that the granting of access to such information may not be in the best interests of the child.

(3) Despite paragraph (1), a person may request and be granted access to personal information relating to an incapacitated person up on production of verification documents of the representative's authority in relation to the incapacitated person.

(4) The provision of this section shall be dealt with in accordance with the Data Protection Act (Cap. 411C).

15. Processing of request

In processing a request for information, an Information Access Officer shall—

- (a) ensure that an acknowledgement of a request for information is made in Form ATI 2 set out in the First Schedule and the date and time the request is received is indicated in the public entity's or private body's register or record;
- (b) take all steps that are reasonably necessary to preserve the records that are the subject of or reasonably related to a request, without deleting, redacting or otherwise altering any information contained therein;
- (c) ensure that personal information of any person is only disclosed with written consent of that person and in accordance with the Data Protection Act (Cap. 411C)
- (d) record actions taken in regard to the processing of a request for information, including the date each action was taken, and maintain such record in the access to information register referred to under regulation 23;
- (e) ensure that a request is processed and a decision communicated within the specified timelines and in accordance with the requirements specified in section 9 of the Act; and
- (f) communication of a decision on a request for information in accordance with section 9 (4) of the Act, may be made in Form ATI 2 set out in the First Schedule.

16. Provision of access

(1) Despite section 11(2) of the Act, an Information Access Officer shall provide access to information concerning the life or liberty of a person in accordance with section 9(2) of the Act.

(2) Where a request for information is to be made available in another form in accordance with section 11 (3) of the Act, the information holder shall provide the converted record within sixty days of receiving payment, or notice of preferred format in the case of a request on behalf of a person with disability, unless the formal or volume of the information requested reasonably renders compliance with the timeline impracticable.

(3) The Information Access Officer shall authenticate copies of a record provided under section 11(3) of the Act including by means of an official stamp of a public entity or a declaration the converted copy of requested information is a true and accurate replica.

(4) The Information Access Officer shall ensure that the requester has sufficient time, space and privacy to inspect the requested record, including by allowing the requester to inspect the record on more than one occasion if reasonably required to facilitate full realization of the right to access the information.

17. Information that cannot be found

(1) Where a requested record is known to exist or to have existed but cannot be found within the timelines for disclosure under the Act, the search for that record shall continue and the Information Access Officer shall communicate to the requester and the Commission the fact that such record exists or existed but cannot be found within the specified timelines.

(2) Despite paragraph (1), where the record is subsequently found, the Information Access Officer shall disclose the information to the requester within seven days from the date the information is found and notify the Commission of such action.

18. Transfer of a request

(1) Prior to the transfer of a request for information as provided under section 10 (1) of the Act, the Information Access Officer shall confirm with the concerned public entity or private body that they do hold the information requested.

(2) Where a request for information is transferred, the Information Access Officer shall notify the requester in Form ATI 2 set out in the First Schedule.

(3) The Information Access Officer of the public entity or private body to which the request has been transferred shall —

- (a) acknowledge the receipt of transfer of the request in Form ATI 2 set out in the First Schedule; and
- (b) act on the request in accordance with the provisions of this Part.

(4) For greater clarity, the timeline of twenty-one days for making a decision on the request shall not be extended between receipt of the request by the first public entity or private body, and transfer of the request to another public entity or private body.

(5) Where the transfer relates to a request for information under section 9(2) of the Act, such information shall be provided by the public entity or private body to which the request has been transferred within forty-eight hours of receiving the transfer.

19. Deferral of a request

(1) Where an Information Access Officer identifies that a requested record is—

- (a) in the process of being actively developed;
- (b) in draft form and under active consideration; or
- (c) final but subject to official approval or publication, and may accordingly be excluded from disclosure pursuant to section 6(1)(g) of the Act,

the Information Access Officer may defer provision of access to the record until it is no longer exempt and shall inform the requester of the expected date upon which access may be granted by notice in Form ATI 2 set out in the First Schedule.

(2) Access to a record that has been deferred under paragraph (1) shall be granted within five days from the date the exemption ceases to apply.

20. Withdrawal of a request

(1) A request for access to information may be withdrawn by the requester in Form ATI 4 set out in the First Schedule at any time before —

- (a) access to the records has been provided; or
- (b) payment has been made for access in another format.

[Subsidiary]

(2) The Information Access Officer shall acknowledge the withdrawal in Form ATI 5 set out in the First Schedule.

21. Closure of a request

(1) A request for access to information shall be closed where—

- (a) the request is withdrawn by the requester;
- (b) the request has been transferred to another public entity or private body;
- (c) thirty days have lapsed since the Information Access Officer requested further particulars or consent in order to process the request, and no further information or consent has been provided;
- (d) thirty days have lapsed since notice was given in accordance with section 9(4) of the Act, and no request for review has been filed with the Commission;
- (e) thirty days have lapsed since notice was given in accordance with section 11(1) of the Act, and there is no compliance with the notice or request for review filed with the Commission; or
- (f) thirty days have lapsed since access was provided in accordance with the Act and these Regulations, and no request for review has been filed with the Commission.

(2) The Information Access Officer shall notify the requester of a decision to close a request in—

- (a) Form ATI 5 set out in the First Schedule, where the request is withdrawn by the requester;
- (b) Form ATI 5 set out in the First Schedule, where the request has been transferred to the relevant public entity or private body; or
- (c) Form ATI 5 set out in the First Schedule in all other instances not specified under paragraph 2 (a) and (b).

22. Access to Information Register

(1) Every Information Access Officer shall establish and maintain an Access to Information Register to record any request and the action taken to process the request for information, received by the concerned public entity or private body.

(2) The Access to Information Register shall include, in relation to every request for access to information—

- (a) a reference number;
- (b) the name and contact details of the requester;
- (c) the date of receipt of the request;
- (d) details of the request including a description of the information requested and the requester's preferred method of access;
- (e) whether the request is for information concerning the life or liberty of a person;
- (f) the written consent of any person or third party, where necessary;
- (g) a summary of actions taken in response to the request;
- (h) a summary of the information disclosed, including whether the disclosure was in full or redacted and if redacted is sufficient to identify that information in the original record, where applicable;
- (i) where applicable, the reasons and basis for declining a request;
- (j) where a request is withdrawn, the date of withdrawal;
- (k) the outcome of a review where a request for review was made by the Commission; and
- (l) the date of closure of the request.

(3) The Access to Information Register may be established in print or electronic form.

PART V – MANAGEMENT OF RECORDS

23. Public records management

(1) A public entity shall create, maintain and manage accurate and authentic records that are usable in a manner that facilitates access to information.

(2) For purposes of paragraph (1), records are reliable, authentic, have integrity and are usable if—

- (a) their origin can be traced;
- (b) it can be confirmed that the information they contain is accurate;
- (c) their content, structure and format are preserved materially unchanged over time; and
- (d) they can be located, retrieved, presented and interpreted.

(3) An Information Access Officer shall, in order to facilitate access to information, ensure that the public entity is compliant with the current Government ICT Standards on Electronic Records and Data Management issued by the Ministry in charge of Information Communication and Technology, or other public entity with such authority.

(4) Subject to section 17(3)(a) of the Act, and subject to the Government ICT Standards on Electronic Records and Data Management relating to establishment, retention and disposal of public records, a public entity shall maintain the records required to be proactively disclosed for a minimum period of ten years.

(5) Subject to the Government ICT Standards on Electronic Records and Data Management, a public entity shall, in consultation with the Director of the Kenya National Archives and Documentation Service, prepare a records schedule that sets out, for each class of public records that they create or receive, the length of time the records will be retained and the manner of disposal of the records at the end of their retention period.

(6) Despite this regulation, personal information shall be processed in the manner specified under the Data Protection Act (Cap. 411C) and in particular, personal information—

- (a) shall be retained only as long as necessary to fulfil the purposes for which it is collected or received; or
- (b) that is no longer required to fulfil these purposes shall be destroyed, erased or made anonymous or pseudonymized.

PART VI – REVIEW BY THE COMMISSION

24. Application for Review by the Commission

(1) A person aggrieved by a decision of a public entity or a private body on any matter under the Act or these Regulations, may apply for review of the decision to the Commission.

(2) An application for review may be in Form ATI 6 set out in the First Schedule, or in any other form, provided that the application shall contain the information specified in Form ATI 6.

(3) Where an application does not contain the information required by Form ATI 6, the Commission shall, as far as practicable, assist the applicant to provide further details to facilitate the review.

(4) An application for review shall include, a postal address, an email address or a telephone number to which the communication from the Commission may be sent.

(5) An application for review may be submitted electronically including through the Commission's website, email address of the Commission's official social media account, or in print copy by delivery to the Commission's offices.

(6) The Commission may, if satisfied with the reasons furnished by the applicant that the circumstances so warrant, accept an application for review after the expiry of the thirty days' specified under section 14 (2) of the Act.

[Subsidiary]

25. Review procedure for access to information requests

(1) Upon receiving an application for review, the Commission shall within five days of receipt of the application for review, notify the respective public entity or private body of the application.

(2) The notice under paragraph (1) shall—

- (a) detail the nature of the application for review in accordance with section 14 of the Act;
- (b) require that the public entity or private body to provide a copy of entries in the Access to Information Register relating to that request; and
- (c) require the public entity or private body to provide any further information that is relevant to the information holder's decision on the request.

(3) The public entity or private body shall provide to the Commission the content of the of the notice under paragraph(2) within seven days from the date of the notice.

(4) Upon receipt of the response from the public entity or private body, the Commission shall within fourteen days undertake a preliminary assessment of the merits of the application for review based on the details provided under the application and the response from the public entity or private body.

(5) Where the public entity or private body fails to respond within the period specified under paragraph (2), the Commission shall undertake a preliminary assessment of the merits of the application for review and may take action as provided under paragraph (11).

(6) Where the Commission is of the opinion that further information, clarification or submission is required from the applicant, the information holder or any third party including another public entity or private body or any person to whom the information relates, the Commission may require such person, entity or body to make submissions or provide clarification on any aspect of the request actions taken in response, within such reasonable time as may be determined by the Commission in the circumstances.

(7) Despite paragraph (6), the Commission may require any public entity or private body to provide to the Commission unredacted or unedited copy of the requested record.

(8) Where the Commission is of the opinion that the applicant's right to access the information requested has been unreasonably limited or denied, the Commission shall order the public entity or private body to do anything that, in the Commission's opinion, is required to rectify the matter, including—

- (a) granting accessto the information requested in full;
- (b) granting partial or redacted access to the information requested;
- (c) granting access to the requester; or
- (d) granting accessto the information in a particular format.

(9) The Commission shall specify a period of time within twenty-one days, which the order must be complied with from the date the order has been made.

(10) If, after reviewing the application for review, and the response, the Commission is of the opinion that the application for review is without merit, the Commission shall issue a decision and provide reasons in writing to the applicant and the public entity or private body, and any third party where applicable.

(11) Where the Commission is of the opinion that the matter requires further consideration, the Commission may, within reasonable, decide to hold a hearing.

(12) An applicant or any other party in a hearing may be represented by an advocate or any other person of their choice.

(13) Upon hearing the matter, the Commission shall make a decision and give reasons for the decision in writing, giving any directions it deems appropriate in the circumstances, including—

- (a) ordering the public body or private entity to pay the applicant's costs of the hearing, though an applicant shall not be ordered to pay such costs to the public entity or private body;
- (b) recommend to the public entity or private body to compensate any individual who has suffered damage as a result of—
 - (i) delay beyond the timeline;
 - (ii) refusal to grant access to a full or partial record;
 - (iii) granting access but not actually granting access in accordance with the application;
 - (iv) deferring access;
 - (v) granting access to only a specified person, that the Commission determines was unreasonable in all the circumstances;
- (c) require the public entity or private body to take any administrative action that the Commission considers should be taken, and the reasons for the decision; or
- (d) any other action the Commission deems appropriate in all the circumstances.

(14) The Commission may publicize its decisions on its website, with any necessary redactions to protect the privacy of the applicant and any other person involved in the matter, and in compliance with section 6 of the Act.

(15) The Commission may require the public entity or private body that was the subject of the application to submit a report to the Commission within a specified period on the steps, if any, taken to comply with the directions of the Commission.

26. Investigation of complaints

The Commission shall, within thirty days, investigate any contravention of section 16 of the Act in accordance with Part III of the Commission on Administrative Justice Act, 2011 and the Act (Cap. 7J).

27. Appeals

A person dissatisfied with the decision of the Commission under these Regulations may subject to section 23(3) of the Act appeal to the High Court within twenty-one days from the date of the decision of the Commission.

PART VII – OVERSIGHT BY THE COMMISSION

28. Information management portal

(1) The Commission shall develop a web-based Information Management Portal which is compliant with the Government ICT Standards on Electronic Records and Data Management.

(2) The Information Access Officer shall input information on all requests for information received and the action taken in the portal.

29. Duty to co-operate

(1) A public entity or private body shall co-operate with the Commission to promote the right to access information and compliance with the Act and these Regulations.

(2) The Commission may, for purposes of giving effect to the objects of the Act and these Regulations—

- (a) cooperate or collaborate with public entities or private bodies as may be appropriate;
- (b) collaborate with public entities or private bodies dealing with protected disclosures as contemplated by section 16 of the Act;
- (c) collaborate with relevant public entities or private bodies, including regulatory bodies, to establish standard operating procedures or sector based

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administrative codes for handling information requests and to ensure compliance with the Act and these Regulations;

- (d) convene consultative forums for public entities or private bodies for sharing global best practices on matters provided under the Act; or
- (e) mediate on disputes emanating from the implementation of the Act and these Regulations.

30. Compliance with proactive disclosure requirements

The Commission shall from time to time monitor compliance of public entities and private bodies with the proactive disclosure requirements set out in Part III and section 5 of the Act.

31. Reporting

(1) A public entity or a private body shall report to the Commission on an annual basis, with respect to—

- (a) the measures taken to comply with the proactive disclosure requirements of the Act and these Regulations which shall, include providing a copy of the public entity or private body's Information Access Guide; and
- (b) the measures taken to comply with the records management obligations in section 17 of the Act and regulation 23.

(2) Within fourteen days from the 30th day of June of each year, a public entity or private body shall submit to the Commission a report covering the year ending 30th June, which shall include—

- (a) the number of requests for information received and the number of requests processed;
- (b) the number of determinations made not to comply with requests for information, and the basis for such determinations;
- (c) the average number of days taken to process requests; and
- (d) any other matter that the Commission may require.

(3) A Public entity or private body that fails to comply with the reporting obligations contemplated under section 23 (6) of the Act and these regulations commit an offence specified under section 28(3) of the Act.

32. General penalty

A person who commits an offence under these Regulations for which no specific penalty is provided or who otherwise contravenes these Regulations shall, on conviction, be liable to a penalty, not exceeding twenty thousand shillings or such term of imprisonment not exceeding six months, or both.

33. Revocation (L.N. 57 of 2023)

The Access to Information (General) Regulations, 2023 is hereby revoked.

FIRST SCHEDULE

FORM ATI 1

FORMS(r. 13(2)(3))

REPUBLIC OF KENYA

ACCESS TO INFORMATION ACT (CAP. 7M)

ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023

REQUEST FOR INFORMATION

Access to Information

[Subsidiary]

PART I – to be completed by Requester (the information provided on this form will only be used for the purpose of acting on this request, and for compliance with the Access to Information Act, 2016)

1. Name of Institution

(Please state the name of the institution from which you are requesting information)

2. Name of Requester

3. Is the request being made on your own behalf

No

Yes

(If No, tick the appropriate reason below)

A child aged (explain relationship to the child)

A person who is incapacitated (not able to make the request due to mental or physical impairment)

A marginalized or vulnerable person or group of persons

Other reason (please explain)

(If the request is for a record containing personal information about a person other than the requester, please provide a consent in FORM ATI 3. If the request is for a record containing personal information about an incapacitated person, provide a copy of legal authority to act on behalf of the person, e.g. power of attorney)

4. Identification Document e.g. National ID/ Passport /Certificate of Incorporation

5. Sex of Requester Male Female Intersex

(Tick where appropriate)

6. Do you have a Disability? No Yes

(a) If yes, state the nature of disability.....

(b) State the form in which the requested information should be availed e.g. braille, audio, print etc.

7. Contact Information of Requester

(Please indicate the address to which correspondence related to your request should be sent)

Email Address:

Postal address:

[Subsidiary]

Town/City:

Telephone No:

Other:

8. Describe the information requested and reasons for seeking such information.
(Please state all the information available to you which will assist in processing your request)

.....
.....
.....

9. I would like to: (tick where applicable)

Inspect the record []

Listen to the record []

Have a copy of the record made available to me in the following format:

[] photocopy (Please note that copying costs will apply)

number of copies required:

[] electronic

[] by email to

[] USB

[] transcript

[] translation into

[] Other (specify)

10. Does the information requested concern the life or liberty of any person?

[] No

[] Yes (please explain)

Signature of Requester: Date: 20...

For Official Purposes Only

PART — to be completed by Information Access Officer (or designate)

1. Date Received [STAMP]

2. Action Taken

.....
.....
.....

Name of Information Access Officer:

Signature:

Date: 20.....

FORM ATI 2 (r. 15(a)&(f), r. 19(1)(c))
REPUBLIC OF KENYA
ACCESS TO INFORMATION ACT (CAP. 7M)
ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023
ACKNOWLEDGMENT OF RECEIPT AND
RESPONSE TO REQUEST FOR INFORMATION

Access to Information

[Subsidiary]

TO:
(Name of Requester)

I Information Access Officer
at
(name of information access officer)

..... acknowledge the request to access
(name of public entity or private body receiving request)

information received on 20....., having reference number
(date)

TAKE NOTE that –

.....
.....
.....
.....
.....
(Please indicate the action taken)

You may withdraw this request in Form ATI 4 within two (2) working days of receiving this notice.

You may request a review of this decision by the Commission on Administrative Justice within thirty (30) days of receiving this notice. Information about how to request a review can be found at www.ombudsman.go.ke or by contacting the head office:

P.O. Box 20414 – 00200 NAIROBI

Email: info@ombudsman.go.ke/complain@ombudsman.go.ke

Signature of Information Access Officer:

Date: 20..... [STAMP]

FORM ATI 3 (r. 14)
REPUBLIC OF KENYA
ACCESS TO INFORMATION ACT (CAP.7M)
ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023
CONSENT TO DISCLOSURE OF A RECORD CONTAINING PERSONAL INFORMATION

[Subsidiary]

PART I – to be completed by person giving consent

TO:
(name of the public entity or private body from which access is being requested)

1. I of
(name of person to whom record relates) (address)

am aware of the information request made by
(name of requester)

on 20.... and the fact that the requested record(s) contains or may
(date of request)

contain personal information relating to me.

2. I hereby give consent to disclosure of my personal information to
(name of requester)

3. I acknowledge and understand that
(public entity or private body from which access is being requested)

is not liable for any use that is made of the personal information once it is disclosed in accordance with this request, and hereby consent to disclosure of the record.

Signature: Date: 20....

Print name:

Guidance on access to information and consent to disclosure can be found at www.ombudsman.go.ke or by contacting the Commission on Administrative Justice at:

P.O. Box 20414 – 00200 NAIROBI
Tel: +254-20- 2270000 /2303000 / 2603765 / 2441211 / 8030666
Email: info@ombudsman.go.ke / complain@ombudsman.go.ke

PART II – to be completed by Information Access Officer (or designate)

Date Received [STAMP]

Signature of Information Access Officer:

Date: 20....

FORM ATI 4 FORMS(r. 21(1))
REPUBLIC OF KENYA
ACCESS TO INFORMATION ACT (CAP. 7M)
ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023
WITHDRAWAL OF REQUEST FOR INFORMATION

TO:
(name of the public entity or private body from which access has been requested)

TAKE NOTE that –

I, having requested access to records
(name of requester)

by request dated 20..., hereby withdraw this request for access to information
(date).

Signature: Date: 20....

Guidance on withdrawing a request for information can be found at
www.ombudsman.go.ke or by contacting the Commission on
Administrative Justice at:

P.O. Box 20414 – 00200 NAIROBI

Tel: +254-20- 2270000 /2303000 / 2603765 / 2441211 / 8030666

Email: info@ombudsman.go.ke / complain@ombudsman.go.ke

PART II – to be completed by Information Access Officer (or designate)

For Official Purposes

1. Date Received [STAMP]

2. I, Information Access Officer
at

(name of information access officer)

..... acknowledge withdrawal of the
(name of public entity or private body receiving request)

request to access information received on 20..., having reference number
(date)

..... This request is now closed.

Signature of Information Access Officer:

Date: 20....

FORM ATI 5

FORMS(r. 21(2), r. 22(2)(a)(b)(c))

REPUBLIC OF KENYA

ACCESS TO INFORMATION ACT (CAP. 7M)

ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023

NOTICE OF CLOSURE OF REQUEST FOR INFORMATION

[Subsidiary]

TO:

(Name of Requester)

TAKE NOTE that:

the request for access to information made to on

(name of entity or body receiving request)

..... 20.... will be closed for the following reason:

(date)

- (a) the request is withdrawn by the requester;
- (b) the request has been transferred to another public entity or private body;
- (c) thirty days have lapsed since the Information Access Officer requested further particulars or consent in order to process the request, and no further information or consent has been provided;
- (d) thirty days have lapsed since notice was given in accordance with section 9(4) of the Act, and no request for review has been filed with the Commission;
- (e) thirty days have lapsed since notice was given in accordance with section 11(1) of the Act.; or
- (f) thirty days have lapsed since access was provided in accordance with the Act and these Regulations, and no request for review has been filed with the Commission.

Name of Information Access Officer:

Signature

Date: 20.... [STAMP]

You may request a review of this decision by the Commission on Administrative Justice within thirty (30) days of receiving this notice. Information about how to request a review can be found at www.ombudsman.go.ke or by contacting the head office:

P.O. Box 20414 – 00200 NAIROBI

Tel: +254-20- 2270000 /2303000 / 2603765 / 2441211 / 8030666

Email: info@ombudsman.go.ke / complain@ombudsman.go.ke

FORM ATI 6
 REPUBLIC OF KENYA
 ACCESS TO INFORMATION ACT (CAP. 7M)
 ACCESS TO INFORMATION (GENERAL) REGULATIONS, 2023
 REQUEST FOR REVIEW BY THE COMMISSION

REQUEST FOR REVIEW BY THE COMMISSION

PART I – to be completed by Applicant

1. Name of Applicant

2. Contact Information of Applicant
(Please indicate the email address or telephone number to which communication related to your request may be sent)
 Email Address:
 Telephone number:

3. Name of Information Holder
(Please state the name of the public entity or private body from which you requested action)

4. On 20.... I requested the following action to be taken –
 access to information *(describe the record(s) requested)*

5. On 20.... I received the following response *(please describe)* –

7. I hereby request that the Commission on Administrative Justice conduct a review into the response to my request.
 Signature: Date: 20....

Guidance on submitting a request for review can be found at www.ombudsman.go.ke or by contacting the Commission on Administrative Justice at:
 P.O. Box 20414 – 00200 NAIROBI
 Tel: +254-20- 2270000 /2303000 / 2603765 / 2441211 / 8030666
 Email: info@ombudsman.go.ke / complain@ombudsman.go.ke

SECOND SCHEDULE

CATEGORIES OF PRIVATE BODIES TO WHICH THE ACT AND REGULATIONS APPLY

The Act and these Regulations apply to private bodies providing services including -

- (a) Health care;
- (b) Transport and Infrastructure;
- (c) Energy, Mining and Petroleum;
- (d) Agriculture, Livestock and Fisheries;
- (e) Education;
- (f) Water, Environment and Sanitation;
- (g) Financial services;
- (h) Social or political services;
- (i) Private bodies to which the Public Private Partnership Act (Cap. 430) applies;
- (j) Hospitality industry firms;
- (k) Professional services;
- (l) Private regulatory services;

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(m) Trade unions;

(n) Private pension schemes; or

(o) Media and communication services.
