



MEDIA

COUNCIL OF KENYA

Access To Information (ATI) Staff Fact Sheet

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Background

Article 35 of the Kenya Constitution 2010 and the Access to Information Act, 2016 obligates public bodies and certain private institutions to facilitate Access to Information held by them. The Act provides a framework for proactive disclosure of information and provision of information upon request. In public parastatals like the Media Council of Kenya, the Chief Executive Officer (CEO) is the Information Access Officer (IAO). The Act also allows the CEO to appoint an IAO for purposes of receiving ,acknowledging and coordinating management of requested information.

Obligations by public entities

Proactive disclosure: Under the ATI Act, 2016, public institutions have the obligations to proactively facilitate access and disclose the following information:

- i. Particulars of its organisational functions, powers and duties of its officials and employees
- ii. Powers and duties of its officers and employees
- iii. Salary scales of officers by grade
- iv. Procedure of decision making
- v. Guide of information held
- vi. Contact details (e.g. sum, scope, service provider and timelines-as per Executive Order no.2 of 2018)
- vii. Update information contained in earlier statements published by them
- viii. Disseminate information to all persons including persons with disability and in local languages
- ix. Avail information for inspection without charge of supply a copy on requests are reasonable cost
- x. Access to Information on Request: Public agencies have an obligation to:
- xi. Publish name and contacts of the IAO-CEO automatically assumes the role but may delegate
- xii. Provision of information upon request
- xiii. Required standards in managing requests- Expeditious and reasonable cost, assisting illiterate and the illiterate to apply, process requests within set timelines

(21 days or 48 hours if urgent, or transfer within 7 days)

14. Responses should be written advising inter alia the applicable fees, mode of payment and process

Role of an Information Access Officer

- i. Coordinating the institutional implementation of the Act.
- ii. Coordinating publication of information under proactive disclosure.
- iii. Receiving and acknowledging application for access to information.
- iv. Conducting initial review of the requests to determine accessibility and location of documents.
- v. Assisting applicants to locate information (disabled and illiterate).
- vi. Conducting interview for any clarification on the information required.
- vii. Keeping applicants fully informed about the status of their applications.
- viii. Monitoring inspection of records.
- ix. Transferring applicants to relevant bodies for access in line with the Act.
- x. Maintaining records of all activities, including applications for access and action taken thereon.

Limitations

The ATI Act makes provisions on information which is limited including that which :

- i. Undermines national security of Kenya e.g., information on purchase of military equipment;
- ii. Endangers the safety or life of a person;
- iii. Involves unwarranted invasion of privacy of an individual e.g. personal information;
- iv. Infringe commercial interests of an entity or third party e.g. intellectual property rights;
- v. Causes substantial harm to ability of government to manage the economy of Kenya;
- vi. Interferes with entity's ability to consider an ongoing matter;
- vii. Impedes the due process of law e.g. criminal investigations, ongoing court case etc;

- viii. Damages an entity's position in actual or contemplated legal proceedings; and
- ix. Infringes professional privilege/ confidentiality e.g. Advocate-client relations, doctor-patient confidentiality.

Exemptions may not apply in circumstances where:

- i. Limitations to access information do not give a blank cheque for non-disclosure of information.
- ii. Where the matter overrides public interest.
- iii. Information reveals a serious public safety or environmental risk.

Timelines for processing ATI requests

- i. General requests be processed within 21 days.
- ii. Urgent requests (life/liberty) be processed within 48 hours.
- iii. Transfer of ATI request- within 5 days of receipt of request.
- iv. Requester informed of transfer within 7 days from date of request.

Once an institution receives a request for information it can undertake the following:

- i. Make a decision whether or not the entity holds the information or not.
- ii. Decide whether the request for information is approved.
- iii. If request is declined, the reasons for it and a statement (on) how the requester may appeal to CAJ (to be provided) - Sounds incomplete.
- iv. Where the applicant does not receive any response within the stipulated time the application is deemed rejected.

Providing Information

After a decision to provide information is made, the IAO shall send the applicant a response advising;

- 1. That the application is granted.
- 2. Whether it will be availed in edited copy.

3. Details of fees, and the calculations on the fee.
4. Method of payment of the fee.
5. Proposed process of accessing information once payment is made.

Costs

1. No fee may be levied in relation to submission for application.
2. A public entity or private body may charge a prescribed fee but this should not exceed actual cost of making copies.
3. The Cabinet Secretary shall make regulations prescribing fees payable for providing information to an applicant.

Offences and Penalties

Section 18 of the Act outlines the offences and penalties under the Act. The offences include alteration, defacement, blocking and erasure.

Person/Entity	Offence	Sentence upon conviction	
		Fine (in KShs)	Term of imprisonment
Information Access officer	<ul style="list-style-type: none">• Refuse to put oral applications into writing.• Refuse to accept an information request.• Failure to respond to information request within the stipulated time.• Failure to provide information that is capable of being read, heard or viewed by an applicant with disability	50,000	3 Months

Person	<ul style="list-style-type: none"> Charging a fee exceeding the actual cost of making copies. Failing to respond to information required for protection of a right. Failing to respond to a request to correct personal information or to correct, delete, destroy or annotate information within a reasonable time. 	100,000	6 Months
Person	Knowingly disclosing information under the exemption clause (unless in public interest).	1,000,000	3 Years
Person	Altering, defacing, concealing or erasing records with intent to prevent disclosure of information.	500,000	2 years
Private body	Failure to make publicly available the name and contact of the information access officer.	500,000	-
Person	Providing false information intended to injure another person.	500,000	3 years
Person	<ul style="list-style-type: none"> Failing to attend proceedings before the Commission in line with summons issued. Causing obstruction or disturbance during proceedings before the Commission. 	300,000	3 Months
Person to whom information is disclosed	Conveying to others altered information, concealing some information, misrepresenting information with intent to deceive.	200,000	1 Year

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