

Hon Speaker
Approved for
26/8/24

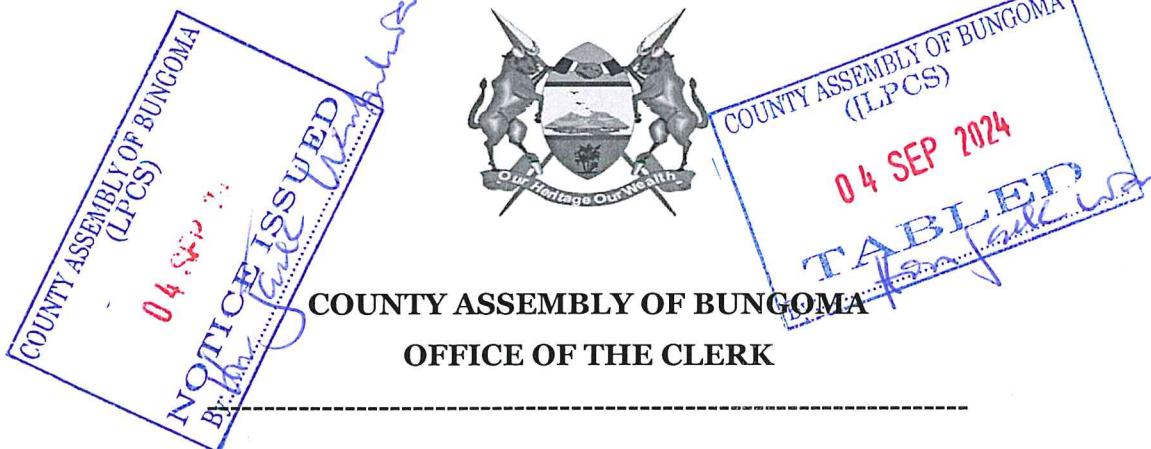


COUNTY GOVERNMENT OF BUNGOMA



COUNTY ASSEMBLY OF BUNGOMA

OFFICE OF THE CLERK



THIRD ASSEMBLY

THIRD SESSION

SECTORAL COMMITTEE ON PUBLIC ADMINISTRATION AND ICT

REPORT ON CONSIDERATION OF THE BUNGOMA COUNTY ACCESS TO
INFORMATION BILL, 2024

Clerks Chambers
County Assembly Buildings
P.O BOX 1886 - 50200
BUNGOMA, KENYA

JULY, 2024

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EXECUTIVE SUMMARY

Mr. Speaker,

This report contains proceedings of the Sectoral Committee on Public Administration and ICT on its consideration of the Access to Information Bill (Bungoma County Bill No. 3 of 2024, published on 3rd May 2024. The Bill went through the First Reading on 15th May 2024 and was thereafter committed to the Sectoral Committee on Public Administration and ICT for consideration and reporting to the House under the provision of Standing Order 140. The Bill has twenty eight (28) clauses and seeks to give effect to the right of Access to information by citizens as provided under Article 35 of the constitution.

Following the placement of advert in the print media on 22nd May 2024 requesting comments on the Bill from members of the public and relevant stakeholders under Article 118(1) (b) of the Constitution and Standing Order 140 (2), the Committee received written memoranda from one stakeholder, The Kenya Worker's Right and Harmonization Program (KWRHP). The Committee, in line with the requirements of Article 118(1) (b) of the Constitution and Standing Order 140 (2) of the County Assembly of Bungoma held 4 meetings to consider the Bill and memoranda from the public.

Thereafter, the Committee proceeded for a report writing retreat which provided the opportunity to consider the submissions of the public and stakeholders and to further draft, consider and approve its Report.

In its consideration of the Bill, the Committee was guided by the benefits of access to information and participation, such as improved governance, enhanced citizen engagement, and prevention of corruption and to ensure the bill aligns with national laws and regulations on access to information.

On behalf of the Sectoral Committee on Public Administration and ICT and under the provisions of the Standing Order 140 (1), it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Access to Information Bill, 2024.

CHAPTER ONE

1.1 COMMITTEE MANDATE

Mr. Speaker,

The Public Administration & ICT committee was established on 26th October; 2022 in accordance with the Standing Order No.179.

The mandate of the Committee is derived from the Standing Order 217 (5) and assigned under the Second Schedule which shall be exercised within the limits contemplated under Part 2 of the Fourth Schedule of the Constitution of Kenya, 2010.

1. The functions of a Sectoral Committee shall be to;

- (a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- (b) Consider quarterly reports of the assigned departments and report to the house within twenty one sitting days upon being laid
- (c) Study the programme and policy objectives of departments and the effectiveness of the implementation;
- (d) Study and review all county legislation referred to it;
- (e) Study, access and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;
- (f) Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;
- (g) To vet and report on all appointments where the constitution or any law requires the County Assembly to approve, except those under Standing Order 208 (Committee on Appointments); and
- (h) Make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.

2. In accordance with the Second schedule of the Bungoma County Assembly Standing Orders, the committee is mandated to deal with all matters related to:

- Public Administration including County, Sub-County, Ward and Village Administration, public service; broadcasting of the proceedings of the House; public participation; provision of library, publications and research services in the County Assembly, including improvement of the library and research services; utilization of the facilities provided by the library and research services, including use of information and communication technology; and all matters related to Office of the County Attorney.

1.2. COMMITTEE MEMBERSHIP

Mr. Speaker,

The following is the committee membership as currently constituted;

1. Hon. Tony Barasa	Chairperson
2. Hon. Caleb Wanjala	Vice chair
3. Hon. Joseph Nyongesa	Member
4. Hon. Jackson Wambulwa	Member
5. Hon. Busolo Sudi	Member
6. Hon. Francis Chemion	Member
7. Hon. Simotwo Franklin	Member
8. Hon. Grace Sundukwa	Member
9. Hon. Job Mukoyandali	Member
10. Hon. Johnston Ipara	Member
11. Hon. Cornelius Makhanu	Member
12. Hon. Timothy Chikati	Member
13. Hon. Stephen Kaiser	Member
14. Hon. Jeremiah Kuloba	Member
15. Hon. Brigid Katasi	Member

1.4. ACKNOWLEDGEMENT

Mr. Speaker,

The Committee extends its sincere gratitude to the Office of the Speaker of the County Assembly and the Clerk of the County Assembly for their invaluable logistical and technical support throughout its sittings. Their assistance facilitated the Committee's deliberations and ensured the smooth progress of its work.

The Committee in a special way, acknowledges and appreciates the participation of all Stake-holders who diligently submitted their comments on the Bill. Their insights and contributions have enriched the Committee's understanding of the various perspectives on the proposed measures.

Further, the Committee wishes to express its heartfelt appreciation to the Honorable Members of the Committee and the dedicated Committee Secretariat whose commitment, expertise and collaborative efforts were instrumental in preparing and producing this report.

On behalf of the Sectoral Committee on Public Administration and ICT and pursuant to Standing Order 140 (1), it is both a privilege and an honor to present to the House, the Report of the Committee on Consideration of the Access to Information Bill No. 3 of 2024).

Signed:

**HON. TONY KHAOYA BARASA; MCA – LWANDANYI WARD
CHAIRPERSON: SECTORAL COMMITTEE ON PUBLIC ADMINISTRATION
AND ICT.**

DATE..... 22/02/2024, SIGNATURE..... 

CHAPTER TWO

2.0. BACKGROUND INFORMATION

Introduction

Mr. Speaker,

The Bungoma County Access to Information Bill, 2024 is a legislative framework designed to ensure transparency, accountability, and public participation by providing citizens access to information held by public entities and certain private bodies. This Bill operationalizes Article 35 of the Kenyan Constitution, which grants citizens the right to access information.

Overview of the Bill

Part I: Preliminary; this part establishes the Bill's official title and defines key terms used throughout the document, such as "county executive committee member," "information access officer," and "public entity."

The Bill aims to:

- a) Enforce the right of access to information for citizens.
- b) Create a framework for public and private entities to disclose information proactively.
- c) Promote transparency, accountability, and public participation.
- d) Protect individuals who disclose information in good faith.

2. Part II: Right to Information

The Bill affirms every citizen's right to access information held by the state, county, or other persons where such information is needed to exercise or protect a right.

It stipulates that disclosure must be prompt and at a reasonable cost.

The Bill favors disclosure, with non-disclosure permitted only under specific exemptions.

Disclosure of Information by Public Entities

The Bill mandates public entities to facilitate access to information and outlines specific categories of information that must be disclosed, including organizational details, decision-making processes, and particulars of contracts.

Limitation of Right of Access to Information

The Bill defines conditions under which access to information can be restricted, including concerns about national security, privacy, commercial interests, and the management of public resources.

3. Part III: Access to Information

Designation of Information Access Officer

The Bill requires each public entity to appoint an officer responsible for handling information requests.

Application for Access

It also outlines the process for requesting information, including provisions for individuals with disabilities or those unable to submit written requests.

Processing of Application

It sets timelines for responding to information requests, with expedited procedures for urgent requests related to the life or liberty of a person.

Transfer of Applications

The Bill allows for the transfer of information requests to the appropriate public entity if the requested information is not held by the initial recipient.

Providing Access to Information

It also details the procedures for granting access to information, including the provision of edited copies and the calculation of fees.

Fees

The Bill further specifies that fees should not be charged for submitting requests, but may be levied for the provision of information to cover actual costs.

Part IV: Review of Decisions by the Committee

The Bill establishes a mechanism for reviewing decisions related to information requests, including notifying interested parties and protecting whistleblowers.

Part V: Oversight and Enforcement Functions and Powers

The Bill confers oversight and enforcement responsibilities on the Committee on Administrative Justice, empowering it to conduct inquiries and investigations related to access to information.

Part VI: Provisions on Delegated Powers

The Bill grants delegated authority to the CECM to issue regulations necessary to implement the Act.

Part VII: Miscellaneous Provisions

Annual Reports

The Bill requires the committee to submit an annual report to the CECM. It further stipulates what the report should entail. It further requires the CECM to submit the annual report to the County Assembly within two months of receipt in compliance with the Act.

Offences and Penalties

The Bill establishes penalties for non-compliance, such as altering or defacing information, and addresses defamatory content in released information.

2.1. COMPLIANCE OF THE BILL WITH THE CONSTITUTION OF KENYA, OTHER LAWS, AND INTERNATIONAL CONVENTIONS

Compliance with the Constitution of Kenya, 2010

1. Article 35 of the Constitution of Kenya

Article 35 of the Constitution guarantees the right to access information held by the state and information held by another person required for the exercise or protection of any right or fundamental freedom.

The Bungoma County Access to Information Bill, 2024, directly aligns with this constitutional provision by ensuring the right of access to information for all citizens. The Bill outlines procedures for requesting information, ensuring that public entities respond within a stipulated timeframe, thus operationalizing the constitutional right.

2. Article 10 - National Values and Principles of Governance

Article 10 mandates that national values and principles of governance, including transparency, accountability, and participation of the people, bind all state organs, state officers, public officers, and all persons whenever any of them applies or interprets the Constitution.

The Bill promotes transparency and accountability by requiring public entities to proactively disclose information and establishing a clear framework for accessing information. This enables public participation and oversight, in line with the principles outlined in Article 10.

3. Article 232 - Values and Principles of Public Service

Article 232 emphasizes the need for transparency and provision to the public of timely, accurate information. By mandating public entities to provide timely and accurate information, the Bill upholds the values and principles of public service, ensuring that citizens are informed and can hold public officers accountable.

Compliance with Other Laws

1. Access to Information Act, 2016

The national Access to Information Act establishes the framework for access to information held by public entities and private bodies in Kenya.

The Bungoma County Access to Information Bill aligns with the national Act by adopting similar provisions for the right to information, proactive disclosure, and the designation of information officers. The Bill complements the national legislation by addressing local specifics and ensuring that county-level public entities adhere to the same standards.

2. The Public Archives and Documentation Service Act

This Act governs the management and preservation of public records and archives.

The Bill's provisions for proactive disclosure and the management of information requests support the principles of effective records management and preservation as outlined in the Public Archives and Documentation Service Act.

Compliance with International Conventions

1. Universal Declaration of Human Rights (UDHR)

Article 19 of the UDHR states that everyone has the right to freedom of opinion and expression, including the freedom to seek, receive, and impart information and ideas through any media.

The Bill supports the right to seek and receive information, thus aligning with the UDHR's principles of freedom of information and expression.

2. International Covenant on Civil and Political Rights (ICCPR)

Article 19 of the ICCPR guarantees the right to freedom of expression, including the freedom to seek, receive, and impart information. By providing a legal framework for accessing information, the Bill upholds the rights enshrined in the ICCPR, facilitating the exercise of freedom of expression and access to information.

3. African Charter on Human and Peoples' Rights (ACHPR)

Article 9 of the ACHPR states that every individual shall have the right to receive information and the right to express and disseminate opinions within the law. The Bill ensures that individuals in Bungoma County can exercise their right to receive information, thus complying with the ACHPR's provisions.

4. Open Government Partnership (OGP)

The OGP promotes transparency, empowers citizens, fights corruption, and harnesses new technologies to strengthen governance. The Bill's focus on proactive disclosure, transparency, and accountability aligns with the goals of the OGP, demonstrating Bungoma County's commitment to open governance principles.

The Bungoma County Access to Information Bill, 2024, demonstrates compliance with the Constitution of Kenya, particularly Articles 35, 10, and 232, which emphasize the right to information, transparency, accountability, and public participation. The Bill is also in harmony with other national laws, such as the Access to Information Act, 2016, and the Public Archives and Documentation Service Act, ensuring a coherent legal framework for information access at the county level.

Furthermore, the Bill aligns with international conventions and principles on access to information and freedom of expression, such as the UDHR, ICCPR, ACHPR, and the principles promoted by the OGP. This comprehensive compliance ensures that the Bill not only fulfills constitutional and legal requirements but also adheres to global standards and best practices in promoting transparency and accountability in governance.

CHAPTER THREE

3.o. PUBLIC PARTICIPATION

Mr. Speaker,

The requirement of the Committee to conduct public participation on the bill is a constitutional imperative flowing from Article 196 of the Constitution of Kenya,2010 which provides that the County Assembly shall.

- a) *Conduct its business in an open manner and hold its sittings and those of its Committees', in public; and*
- b) *Facilitate public participation and involvement in the legislative and other business of the assembly and its committees.*

The Committee is required pursuant to Standing order no.140 (2) to facilitate public participation on the Bill through appropriate mechanism including.

- a) Inviting submission of memoranda
- b) holding public hearings
- c) consulting relevant stakeholders in the sector
- d) consulting experts on technical subjects

3.1. SUMMARY OF THE VIEWS FROM THE PUBLIC

Following the call for submission of memoranda from the public as contained in the advert in the Daily Nation on 9th May, 2024. The Committee received memoranda from one entity. The proposals were deliberated on and considered by the Committee. Below are the views from The Kenya Workers Rights and harmonization Program and recommendations of the Committee.

- a) The Bill should make provisions for public education and dissemination of information regarding the right to have access to information.
- b) Public Institutions have obligation to disclose information and every member of the public has corresponding right to receive information regardless of the form in which it is stored.

- c) The Bill should provide a number of mechanisms to address the problem of a culture of secrecy within government.
- d) The Bill should provide strict time limits for the processing of requests for information and require that refusals be accompanied by substantive written reasons for refusal.
- e) The Bill should establish a presumption that all meetings of government bodies are open to the public.
- f) Individuals should be protected from any legal, administrative and employment-related sanctions for releasing information.

In conclusion, the Organization submitted that access to Information should be guaranteed as a legal and enforceable right permitting every individual to obtain information held by the executive, legislature judiciary as well as any government owned cooperation and any other body carrying out public functions.

Committee Recommendations

The committee observed that the issues raised are captured in the Bill and are provided for in the relevant laws.

CHAPTER FIVE

5.0 COMMITTEES OBSERVATIONS.

THAT the committee thoroughly reviewed the Bill and is pleased to report that it meets the standards of legislative drafting. The Committee found no need for amendments, as the Bill already addresses all relevant issues comprehensively and effectively. This level of quality reflects careful consideration and diligence in the drafting process, ensuring that the legislation will serve its intended purpose without ambiguity.

5.1 COMMITTEES RECOMMENDATION.

Mr. Speaker,

The Committee commends the drafters for their exceptional work and recommend the Bill's passage without modification.

Thank you

5.3 ADOPTION SCHEDULE

We the undersigned members of the Public Adminstration &ICT Committee append our signatures adopting this report with the contents therein.

NAME	DESIGNATION	SIGNATURE
1. Hon. Tony Barasa	Chairperson	
2. Hon. Caleb Wanjala	Vice chair	
3. Hon. Joseph Nyongesa	Member	
4. Hon. Jackson Wambulwa	Member	
5. Hon. Busolo Sudi	Member	
6. Hon. Francis Chemion	Member	
7. Hon. Simotwo Franklin	Member	
8. Hon. Grace Sundukwa	Member	
9. Hon. Johnston Ipara	Member	
10. Hon. Cornelius Makhanu	Member	
11. Hon. Timothy Chikati	Member	
12. Hon. Stephen Kaiser	Member	
13. Hon. Jeremiah Kuloba	Member	
14. Hon. Job Mukoyandali	Member	
15. Hon. Brigid Katasi	Member	

ANNEXURES

1. The Bungoma County Access to Information Bill, 2024.
2. The advert for public participation.
3. The memoranda from stakeholders.

SPECIAL ISSUE

Kenya Gazette Supplement No. 4 (Bungoma County Bills No. 3)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

BUNGOMA COUNTY BILLS, 2024

NAIROBI, 3rd May, 2024

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**THE BUNGOMA COUNTY ACCESS TO INFORMATION BILL,
2024**

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**THE BUNGOMA COUNTY ACCESS TO INFORMATION BILL,
2024**

A Bill for

**AN ACT of County Assembly to give effect to Article 35 of the
Constitution; to confer on the Committee on Administrative
Justice the oversight and enforcement functions and powers and
for connected purposes**

ENACTED by the County Assembly of Bungoma, as follows—

PART I — PRELIMINARY

Short title

1. This Act may be cited as the Bungoma County Access to Information Act, 2024.

Interpretation

2. In this Act, unless the context otherwise requires—

“county executive committee member” means the County Executive Committee Member for the time being responsible for matters relating to information;

“chief executive officer” of a public body or private body means the Chief Officer in the case of a Government Department, Clerk of the County Assembly, Managing Director in the case of a corporate body, or the person assigned the principal administrative responsibility in any body by whatever title;

“citizen” means any individual who resides in Bungoma County;

“committee” means the Committee on Administrative Justice;

“edited copy” in relation to a document, means a copy of a document from which exempt information has been deleted;

“electronic record” means a record generated in digital form by an information system, which can be transmitted within an information system or from one information system to another and stored in an information system or other medium;

“exempt information” means information that may be withheld by a public entity or private body in accordance with section 6;

“information” includes all records held by a public entity or a private body, regardless of the form in which the information is stored, its source or the date of production;

“information access officer” means any officer of a public entity or private body designated under section 7 as such for purposes of this Act;

“interested party” means a person who has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;

“national security” has the same meaning assigned to it by Article 238(1) of the Constitution;

“person” has the meaning assigned to it in Article 260 of the Constitution;

“personal information” means information about an identifiable individual, including, but not limited to—

- (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, age, physical, psychological or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the fingerprints, blood type, address, telephone or other contact details of the individual;
- (e) a person's opinion or views over another person;
- (f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- (g) any information given in support or in relation to an award or grant proposed to be given to another person; (h) contact details of an individual.

“private body” means any private entity or non-state actor that—

- (a) receives public resources and benefits, utilizes public funds, engages in public functions, provides public services, has exclusive contracts to exploit natural resources (with regard to said funds, functions, services or resources); or
- (b) is in possession of information which is of significant public interest due to its relation to the protection of human rights, the environment or public health and safety, or to exposure of

corruption or illegal actions or where the release of the information may assist in exercising or protecting any right;

“public entity” means—

- (a) any public office, as defined in Article 260 of the Constitution; or
- (b) any entity performing a function within a committee, office, agency or other body established under the Constitution;

“public officer” has the same meaning assigned to it by Article 260 of the Constitution;

“public record” includes any record in written or any other form containing information relating to the conduct of the public entity's business, prepared, owned, used or retained by a public entity regardless of physical form or characteristics;

“state” has the meaning assigned to it under Article 260 of the Constitution.

Object and purpose of the Act

3. The object and purpose of this Act is to—

- (a) give effect to the right of access to information by citizens as provided under Article 35 of the Constitution;
- (b) provide a framework for public entities and private bodies to proactively disclose information that they hold and to provide information on request in line with the constitutional principles;
- (c) provide a framework to facilitate access to information held by private bodies in compliance with any right protected by the Constitution and any other law;
- (d) promote routine and systematic information disclosure by public entities and private bodies on constitutional principles relating to accountability, transparency and public participation and access to information;
- (e) provide for the protection of persons who disclose information of public interest in good faith; and
- (f) provide a framework to facilitate public education on the right to access information under this Act.

PART II — RIGHT TO INFORMATION

Right to information

4. (1) Subject to this Act and any other written law, every citizen has the right of access to information held by—

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

(2) Subject to this Act, every citizen's right to access information is not affected by—

- (a) any reason the person gives for seeking access; or
- (b) the public entity's belief as to what are the person's reasons for seeking access.

(3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.

(4) This Act shall be interpreted and applied on the basis of a duty to disclose and non-disclosure shall be permitted only in circumstances exempted under section 6.

(5) Nothing in this Act shall limit the requirement imposed under this Act or any other written law on a public entity or a private body to disclose information.

Disclosure of information by public entities

5. (1) Subject to section 6, a County public entity shall—

- (a) Facilitate access to information held by such entity and which information may include—
 - (i) the particulars of its organization, functions and duties;
 - (ii) the powers and duties of its officers and employees;
 - (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
 - (iv) salary scales of its officers by grade;
 - (v) the norms set by it for the discharge of its functions;
 - (vi) guidelines used by the entity in its dealings with the public or with corporate bodies, including the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; and
 - (vii) a guide sufficient to enable any person wishing to apply for information under this Act to identify the classes of information held by it, the subjects to which they relate, the location of any indexes to be inspected by any person;

- (b) during the year commencing on first January next following the first publication of information under paragraph (a), and during each succeeding year, cause to be published statements updating the information contained in the previous statement or statements published under that paragraph;
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect the public, and before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles;
- (d) provide to any person the reasons for any decision taken by it in relation to that person;
- (e) upon signing any contract, publish on its website or through other suitable media the following particulars in respect of the contract entered into—
 - (i) the public works, goods acquired or rented, and the contracted service, including any sketches, scopes of service and terms of reference;
 - (ii) the contract sum;
 - (iii) the name of the service provider, contractor or individual to whom the contract has been granted; and
 - (iv) the periods within which the contract shall be completed.

(2) Information shall be disseminated taking into consideration the need to reach persons with disabilities, the cost, local language, the most effective method of communication in that local area, and the information shall be easily accessible and available free or at cost taking into account the medium used.

(3) At a minimum, the material referred to in subsection (1) shall be made available—

- (a) for inspection by any person without charge;
- (b) by supplying a copy to any person on request for which a reasonable charge to cover the costs of copying and supplying them may be made; and
- (c) on the internet, provided that the materials are held by the authority in electronic form.

(4) sub-section (1) (a) shall come into operation twelve months after the commencement of this Act.

Limitation of right of access to information

6. (1) Pursuant to Article 24 of the Constitution, the right of access to information under Article 35 of the Constitution shall be limited in respect of information whose disclosure is likely to—

- (a) undermine national security;
- (b) impede the due process of law;
- (c) endanger the safety, health or life of any person;
- (d) involve the unwarranted invasion of the privacy of an individual, other than the applicant or the person on whose behalf an application has, with proper authority, been made;
- (e) substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained;
- (f) cause substantial harm to the ability of the Government to manage the economy of Bungoma County;
- (g) significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration;
- (h) damage a public entity's position in any actual or contemplated legal proceedings; or
- (i) infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession.

(2) For purposes of subsection (1)(a), information relating to national security includes—

- (a) military strategy, covert operations, doctrine, capability, capacity or deployment;
- (b) foreign government information with implications on national security;
- (c) intelligence activities, sources, capabilities, methods or cryptology;
- (d) foreign relations;
- (e) scientific, technology or economic matters relating to national security;

- (f) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to national security;
- (g) information obtained or prepared by any government institution that is an investigative body in the course of lawful investigations relating to the detection, prevention or suppression of crime, enforcement of any law and activities suspected of constituting threats to national security;
- (h) information between the national and county governments deemed to be injurious to the conduct of affairs of the two levels of government;
- (i) cabinet and County Executive Committee deliberations and records;
- (j) information that should be provided to a State organ, independent office or a constitutional committee when conducting investigations, examinations, audits or reviews in the performance of its functions;
- (k) information that is referred to as classified information; and
- (l) any other information whose unauthorized disclosure would prejudice national security.

(3) Subsection (1)(d) and (e) shall not apply if a request for information relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

(4) Despite anything contained in subsections (1) and (2), a public entity or private body may be required to disclose information where the public interest in disclosure outweighs the harm to protected interests as shall be determined by a Court of law.

(5) A public entity is not obliged to supply information to a requester if that information is reasonably accessible by other means.

(6) In considering the public interest referred in subsection (4), particular regard shall be to the constitutional principles on the need to—

- (a) promote accountability of public entities to the public;
- (b) ensure that the expenditure of public funds is subject to effective oversight;
- (c) promote informed debate on issues of public interest ;
- (d) keep the public adequately informed about the existence of any danger to public health or safety or to the environment; and

(e) ensure that any statutory authority with regulatory responsibilities is adequately discharging its functions.

(7) Unless the contrary is proved by the public entity or private body, information is presumed not to be exempt if the information has been held for a period exceeding thirty years.

PART III — ACCESS TO INFORMATION

Designation of Information Access Officer

7. (1) A chief executive officer of a County public entity shall be the information access officer for purposes of this Act.

(2) A chief executive officer of a County public entity may delegate the performance of his or her duties as an information access officer under this Act to any officer of the County public entity.

Application for access

8. (1) An application to access information shall be made in writing in English, Kiswahili or Braille and the applicant shall provide details and sufficient particulars for the public officer or any other official to understand what information is being requested.

(2) Where an applicant is unable to make a written request for access to information in accordance with subsection (1) because of illiteracy or disability, the information officer shall take the necessary steps to ensure that the applicant makes a request in manner that meets their needs.

(3) The information officer shall reduce to writing, in a prescribed form the request made under subsection (2) and the information officer shall then furnish the applicant with a copy of the written request.

(4) A public entity may prescribe a form for making an application to access information, but any such form shall not be such as to unreasonably delay requests or place an undue burden upon applicants and no application may be rejected on the ground only that the applicant has not used the prescribed form.

Processing of application

9. (1) Subject to section 10, a public officer shall make a decision on an application as soon as possible, but in any event, within twenty one days of receipt of the application.

(2) Where the information sought concerns the life or liberty of a person, the information officer shall provide the information within forty-eight hours of the receipt of the application.

(3) The information officer to whom a request is made under subsection (2) may extend the period for response on a single occasion for a period of not more than fourteen days if—

- (a) the request is for a large amount of information or requires a search through a large amount of information and meeting the stipulated time would unreasonably interfere with the activities of the information holder; or
- (b) consultations are necessary so as to comply with the request and the consultations cannot be reasonably completed within the stipulated time.

(4) As soon as the information access officer has made a decision as to whether to provide access to information, he or she shall immediately communicate the decision to the requester, indicating—

- (a) whether or not the public entity or private body holds the information sought;
- (b) whether the request for information is approved;
- (c) if the request is declined the reasons for making that decision, including the basis for deciding that the information sought is exempt, unless the reasons themselves would be exempt information; and
- (d) if the request is declined, a statement about how the requester may appeal to the Committee.

(5) A public officer referred to in subsection (1) may seek the assistance of any other County public officer as the first mentioned public officer considers necessary for the proper discharge of his or her duties and such other public officer shall render the required assistance.

(6) Where the applicant does not receive a response to an application within the period stated in subsection (1), the application shall be deemed to have been rejected.

Transfer of application

10. (1) An information access officer may, not later than five days from the date of receipt of an application, transfer the application or any relevant part of it, to another County public entity, if the information requested is held by that other County public entity.

(2) Where an application is transferred under subsection (1), an information access officer shall inform the applicant immediately but in any event not later than seven days from the date of receipt of the application, about such transfer.

(3) A public entity to which an application is referred by an information access officer under subsection (1) shall make a decision on the application within twenty one days from the date that the application was first made.

(4) The provisions of this section shall apply with the necessary modification to an application for access to information that is made to a private body to which this Act applies.

Providing access to information

11. (1) Where a decision is taken to provide the information applied for, an information access officer shall send to the applicant a written response within fifteen working days of receipt of the application, advising—

- (a) that the application has been granted;
- (b) that the information will be contained in an edited copy, where applicable;
- (c) the details of any fees or further fees to be paid for access, together with the calculations made to arrive at the amount of the fee;
- (d) the method of payment of such fees, if any;
- (e) the proposed process of accessing the information once the payment if any is made; and
- (f) that an appeal may be made to the Committee in respect of the amount of fees required or the form of access proposed to be provided.

(2) Subject to subsection (3), upon receipt of the fee payable, an information access officer shall provide the information to the applicant or permit the relevant inspection immediately but in any event not later than two working days from the date of receipt of the payment.

(3) Any information to be made accessible to an applicant shall be produced forthwith at the place where it is kept, for inspection in the form in which it is held unless the applicant requests that it be made available in another form and, if it is practicable to do so, such information may be copied, reproduced or used for conversion to a sound transmission at the expense of the applicant.

(4) Where a request for information is to a private body, subsections (1), (2), and (3) shall apply with necessary modifications.

Fees

12. (1) No fee may be levied in relation to the submission of an application.

(2) A public entity or private body from which an application for access to information has been made may charge a prescribed fee for the provision of the information and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the applicant.

(3) Subject to subsection (2), the County Executive Committee Member shall make regulations prescribing the fees payable for expenses incurred in providing information to an applicant.

Correction of information

13. (1) At the request of the applicant, a public entity or private body shall within reasonable time, at its own expense, correct, update or annotate any personal information held by it relating to the applicant, which is out of date, inaccurate or incomplete.

(2) A request under this section shall be made in writing to the public entity responsible for the maintenance of the record system containing the out of date, inaccurate or incomplete information and shall—

- (a) state that it is a request to amend certain personal information relating to the applicant;
- (b) specify the personal information that is to be amended indicating how such information is out of date, inaccurate or incomplete; and
- (c) specify the remedy sought by the applicant.

PART IV — REVIEW OF DECISIONS BY THE COMMITTEE

Review of decisions by the Committee

14. (1) Subject to subsection (2), an applicant may apply in writing to the Committee requesting a review of any of the following decisions of a public entity or private body in relation to a request for access to information—

- (a) a decision refusing to grant access to the information applied for;
- (b) a decision granting access to information in edited form;
- (c) a decision purporting to grant access, but not actually granting the access in accordance with an application;
- (d) a decision to defer providing the access to information;
- (e) a decision relating to imposition of a fee or the amount of the fee;
- (f) a decision relating to the remission of a prescribed application fee;
- (g) a decision to grant access to information only to a specified person; or

(h) a decision refusing to correct, update or annotate a record of personal information in accordance with an application made under section 13.

(2) An application under subsection (1) shall be made within thirty days, or such further period as the Committee may allow, from the day on which the decision is notified to the applicant.

(3) The Committee may, on its own initiative or upon request by any person, review a decision by a public entity refusing to publish information that it is required to publish under this Act.

(4) The procedure for submitting a request for a review by the Committee shall be the same as the procedure for lodging complaints with the Committee stipulated under section 22 of this Act or as prescribed by the Committee.

Notice to interested party

15. In reviewing a decision in terms of this Act, the Committee may, where necessary, give notice to any third party to whom the information relates unless the necessary steps to locate the third party have been unsuccessful.

Protection of person making disclosure

16. (1) A person shall not be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of an office or in any other way, as a result of having made or proposed to make a disclosure of information which the person obtained in confidence in the course of that activity, if the disclosure is of public interest.

(2) For purposes of subsection (1), a disclosure which is made to a law enforcement agency or to an appropriate public entity shall be deemed to be made in the public interest.

(3) A person shall make a disclosure under subsection (1) or (2) where such person has reasonable belief in the veracity of the information.

(4) Any person who provides false information maliciously intended to injure another person commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(5) Disclosure of information under subsection (1) and (2) includes information on—

- (a) violations of the law, including human rights violations;
- (b) mismanagement of funds;

- (c) conflict of interest;
- (d) corruption;
- (e) abuse of public office; and
- (f) dangers of public health, safety and the environment.

(6) For the purpose of this section, a person is penalized if the person is dismissed, discriminated against, made the subject of reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided or any other personnel action provided under the law relating to whistle blower, and the imposition of any such penalty in contravention of this section shall be actionable as a tort.

(7) Any term of any settlement arising from a claim under this section, in so far as it purports to impose an obligation of confidentiality on any party to the settlement in respect of information which is accurate and which was or was proposed to be disclosed, shall be unenforceable.

(8) In any proceedings for an offence for contravention of any statutory prohibition or restriction on the disclosure of information, it shall be a defence to show that—

- (a) in the circumstances, the disclosure was in the public interest; and
- (b) where the offence is alleged to have been committed by a public officer or Government contractor and involves the disclosure of information obtained by the person in the person's position as such, the defendant had, before making the disclosure, complied with the provisions of subsection (3).

Management of records

17. (1) In this section, "records" means documents or other sources of information compiled, recorded or stored in written form or in any other manner and includes electronic records.

(2) Every public entity shall keep and maintain—

- (a) records that are accurate, authentic, have integrity and useable; and
- (b) its records in a manner which facilitates the right of access to information as provided for in this Act.

(3) At a minimum, to qualify to have complied with the duty to keep and maintain records under subsection (2), every public entity shall—

- (a) create and preserve such records as are necessary to document adequately its policies, decisions, procedures, transactions and other

activities it undertakes pertinent to the implementation of its mandate;

- (b) ensure that records in its custody, including those held in electronic form, are maintained in good order and condition; and
- (c) not later than three years from the date from which this Act begins to apply, computerize its records and information management systems in order to facilitate more efficient access to information.

Offence of alteration, defacement, blocking, erasure, etc

18. (1) Where an application to access information has been made to a public entity under section 8 and the applicant would have been entitled, subject to payment of any fee, to provision of any information in accordance with that section, any person to whom this section applies commits an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public entity, with the intention of preventing the disclosure by that entity of all, or any part, of the information provision of which the applicant would have been entitled.

(2) Subsection (1) applies to the public entity and to any person who, is employed by, is an officer of, or is subject to the direction of, the public entity.

(3) A person convicted of an offence under subsection (1) shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

Defamatory matter in information released

19. Where any information provided by a public entity or private body to an applicant under section 11 was supplied to the public entity or private body by a third person, the publication to the applicant of any defamatory matter contained in the information shall be privileged unless the publication is shown to have been made with malice.

PART V — CONFERMENT ON THE COMMITTEE OF OVERSIGHT AND ENFORCEMENT FUNCTIONS AND POWERS

Role of the Committee

20. (1) The Committee is hereby granted the powers of oversight and enforcement of this Act.

(2) In the performance of its functions under this Act, the Committee shall be guided by the national values and principles of the Constitution.

(3) The Committee shall designate one of the Committee members as “Access to Information member” with specific responsibility of performing the functions assigned to the Committee under this Act.



COUNTY ASSEMBLY OF BUNGOMA OFFICE OF THE CLERK

P.O. BOX 1886-50200 , BUNGOMA, Kenya | Telephone: 020 2651905 or 0208000663 | Email: info@bungomaassembly.go.ke

PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

PUBLIC PARTICIPATION ON THE BUNGOMA COUNTY ANNUAL BUDGET ESTIMATE FY 2024/2025

Pursuant to Article 196 (1) of the Constitution of Kenya, Section 87 of the County Government Act, 2012 and Section 131 (2) of the Public Finance Management Act, 2012, the Budget and Appropriations Committee of the County Assembly invites the general public, Civil Society Organizations and other stakeholders to the public participation and submission of memorandums on the Bungoma County Annual Budget Estimate FY 2024/2025 on 3rd and 4th June, 2024 as indicated below;

No.	Venue	Date and Time
1	Participants across the 45 wards	County Assembly of Bungoma ; Paskari Nabwana Hall 3 rd June, 2024 at 9.00am
2	Stakeholders	County Assembly of Bungoma ; Paskari Nabwana Hall 4 th June, 2024, at 9.00am

The Bungoma County Annual Budget Estimates for FY 2024/2025 is available at the County Assembly website: www.bungomaassembly.go.ke
Members of the public can make their submissions at the venue indicated on the schedule or submit written memoranda to:

Clerk of the County Assembly
P.O Box 1886-50200
BUNGOMA

Written memoranda may be submitted via email; info@bungomaassembly.go.ke or hand-delivered to the Office of the Clerk, County Assembly Building, Bungoma on or before **4th June, 2024**.

PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA ON BUNGOMA PUBLIC PARTICIPATION AND CIVIC BILL, BUNGOMA COUNTY VALUATION AND RATING BILL,2024 AND THE BUNGOMA ACCESS TO INFORMATION BILL,2024

The committees on Public Administration and ICT and Lands, Urban, Physical Planning and Housing are processing the Bungoma public participation and civic Bill, Bungoma County valuation and rating Bill, 2024 and the Bungoma access to information Bill, 2024 respectively. Pursuant to Article 196(b) of the constitution of Kenya, read together with 87 of the County Governments Act, the committee invites members of the public to submit memoranda on the following:

- 1) Bungoma Public participation and Civic Education Bill
- 2) Bungoma County Valuation and Rating Bill,2024
- 3) Bungoma Access to Information Bill,2024

Written memoranda can be hand delivered to the Office of the County Assembly Clerk, County Assembly Building, Bungoma, or emailed to info@bungomaassembly.go.ke; to be received on or before **Monday 3rd of June, 2024 at 4.30 p.m.**

Members of the public can also submit written memoranda via mail to:

Clerk of the County Assembly
P.O Box 1886-50200
BUNGOMA

Copies of the BILLS are available at the County Assembly website: www.bungomaassembly.go.ke

**CHARLES W. WAFULA
CLERK OF THE COUNTY ASSEMBLY
COUNTY GOVERNMENT OF BUNGOMA**



Kenya Workers Rights and Harmonization Program

Co - Public Act
46/24
Date: 04/06/2024

Ref. No:

Date: 04/06/2024

THE BUNGOMA COUNTY ACCESS TO INFORMATION BILL 2024

KWRHP welcomes this initiative as a positive step to advance Access to information in Bungoma County. KWRHP avers that access to information is clearly a core element of the broader rights to freedom of expression. Access to information is a fundamental Human Right as per the UN Convention and the touch stone of all freedoms in the world.

RECOMMENDATIONS

KWRHP provides extensive commentary of the right to information as follows;

1. The Bill should make provisions and the public education and the dissemination of information regarding the right to have access to information.
2. Public Institutions have an obligation to disclose information and every member of the public has a corresponding right to receive information regardless of the form in which its stored.
3. The bill should provide for a number of mechanisms to address the problem of a culture of secrecy within government.
4. The bill should provide for strict time limits for the processing of requests for information and require that refusals be accompanied by substantive written reasons for refusal
5. The bill should establish a presumption that all meetings of government bodies are open to the public.
6. Individuals should be protected from any legal, administrative, and employment related sanctions for releasing information.

Economic Empowerment

Labor Justice



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info@kworkersr.org

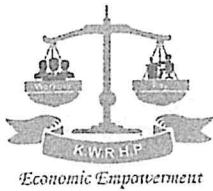
P.O. Box 2269, Bungoma – 50200 (Kenya)
Mukapo Street, Bungoma

KENYA WORKERS RIGHT AND
IN HARMONIZATION PROGRAM <https://www.kworkersr.org>

04 JUN 2024

info@kworkersr.org
www.kworkersr.org





Kenya Workers Rights and Harmonization Program

Ref. No:

Date: 04/06/2024

CONCLUSION

KWRHP submits that Access to information should be guaranteed as a legal and enforceable right permitting every individual to obtain information held by the Executive, The Legislature, the Judiciary as well as any government owned cooperation and any other body carrying out public functions.

KWRHP submits that tendency of many public institutions to withhold information from the people at large should be strongly checked.

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Kenya Workers Rights and Harmonization Program

Ref. No:

Date: 04/06/2024

NAME	ID NO	TEL	SIGN
1. Grace Wunba	31934979	0705028701	
2. Simiyu Simon	39476248	0708726268	
3. Sandra Selina	40091960	0714909262	
4. Faith Wefumwiri	36410378	0718530561	
5. Adelight Juma	29931015	0705489205	
6. Daniel Makhana	29237795	0704520848	
7. Ben RASHI	10718580	071855975	
8. JANGI N WAFULA	21676120	0412127812	
9. JOSCAH N WILLIAMS	8044644	0743803289	
10. JACKSON MWITA	9034758	0724998148	
11. ROBERT MARENJI	24902688	0726013607	
12. DENIS WEKESA	38426169	0768223318	
13. Ronald Makokha	30766461	0728402455	
14. Rachel Chebet	4549030	0724965538	
15. Catherine Nyongesa	30271590	0703234880	
16. GERRY MAKECHIO	89135296	0795335078	
17. Kimtar Konzo	30298153	0711599761	

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