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**THE ACCESS TO INFORMATION ACT**

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**ACCESS TO INFORMATION ACT**

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**NO. 31 OF 2016**

**ACCESS TO INFORMATION ACT**

[Date of assent: 31st August, 2016.]

[Date of commencement: 21st September, 2016.]

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

[Act No. 31 of 2016.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Access to Information Act, 2016.

**2. Interpretation**

In this Act, unless the context otherwise requires—

**"Cabinet Secretary"** means the Cabinet Secretary for the time being responsible for matters relating to information;

**"chief executive officer"** of a public body or private body means the Principal Secretary in the case of a Government Ministry or Department, managing director in the case of a corporate body, or the person assigned the principal administrative responsibility in any body by whatever title; and

**"citizen"** means any individual who has Kenyan citizenship, and any private entity that is controlled by one or more Kenyan citizens.

**"Commission"** means the Commission on Administrative Justice established by section 3 of the Commission on Administrative Justice Act, (No. 23. of 2011);

**"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 commission, 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;

**"secretary"** has the meaning assigned to it by section 2 of the Commission on Administrative Justice Act, 2011;

**"State"** has the meaning assigned to it under Article 260 of the Constitution".

**3. Object and purpose of the Act**

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****4. Right to information**

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

- (a) the State; 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.

**5. Disclosure of information by public entities**

(1) Subject to section 6, a 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) Subsection (1)(a) shall come into operation twelve months after the commencement of this Act.

## **6. Limitation of right of access to information**

(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 the national security of Kenya;
- (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 Kenya;
- (g) significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration;
- (h) damage a public entity's position in any actual or contemplated legal 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 deliberations and records;
- (j) information that should be provided to a State organ, independent office or a constitutional commission when conducting investigations, examinations, audits or reviews in the performance of its functions;

- (k) information that is referred to as classified information in the Kenya Defence Forces Act; 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.

(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 had 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

#### **7. Designation of information access officer**

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

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

#### **8. Application for access**

(1) An application to access information shall be made in writing in English or Kiswahili 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.

### **9. Processing of application**

(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 Commission;

(5) A public officer referred to in subsection (1) may seek the assistance of any other 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.

### **10. Transfer of application**

(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 public entity, if the information requested is held by that other 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.

#### **11. Providing access to information**

(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 Commission 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 changes made.

#### **12. Fees**

(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 Cabinet Secretary shall make regulations prescribing the fees payable for expenses incurred in providing information to an applicant.

#### **13. Correction of information**

(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 COMMISSION

#### **14. Review of decisions by the Commission**

(1) Subject to subsection (2), an applicant may apply in writing to the

Commission 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 Commission may allow, from the day on which the decision is notified to the applicant.

(3) The Commission 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 Commission shall be the same as the procedure for lodging complaints with the Commission stipulated under section 22 of this Act or as prescribed by the Commission.

#### **15. Notice to interested party**

In reviewing a decision in terms of this Act, the Commission 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.

#### **16. Protection of person making disclosure**

(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, insofar 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).

## **17. Management of records**

(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 to it, computerize its records and information management systems in order to facilitate more efficient access to information.

#### **18. Offence of alteration, defacement, blocking, erasure, etc**

(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.

#### **19. Defamatory matter in information released**

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 COMMISSION OF OVERSIGHT AND ENFORCEMENT FUNCTIONS AND POWERS

#### **20. Role of the Commission**

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

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

(3) The Commission shall designate one of the Commissioners as "Access to Information Commissioner" with specific responsibility of performing the functions assigned to the Commission under this Act.

#### **21. Functions of the Commission**

(1) The functions of the Commission shall be to—

- (a) investigate, on its initiative or upon complaint made by any person or group of persons, violation of the provisions of this Act;
- (b) request for and receive reports from public entities with respect to the implementation of this Act and of the Act relating to data protection and to assess and act on those reports with a view to assessing and evaluating the use and disclosure of information and the protection of personal data;

- (c) develop and facilitate public education awareness and develop programmes on right to access to information and right to protection of personal data;
- (d) work with public entities to promote the right to access to information and work with other regulatory bodies on promotion and compliance with data protection measures in terms of legislation;
- (e) monitor state compliance with international treaty obligations relating to freedom of and right of access to information and protection of personal data;
- (f) hear and determine complaints and review decisions arising from violations of the right to access to information;
- (g) promote protection of data as provided for under this Act or the Constitution; and
- (h) perform such other functions as the Commission may consider necessary for the promotion of access to information and promotion of data protection.

(2) The Commission shall have all the powers as are provided for under this Act, its constitutive Act and the Constitution as are necessary for the performance of its functions under this Act.

(3) The decisions of the Commission shall be binding on the national and county governments.

## **22. Inquiry into complaints**

(1) A person wishing to lodge a complaint under this Act shall do so orally or in writing to the secretary or such other person as may be duly authorized by the Commission for that purpose.

(2) A complaint lodged under subsection (1) shall be in such form and contain such particulars as the Commission may, from time to time, prescribe.

(3) Upon receipt of a complaint under subsection (1), the Commission may—

- (a) call for information or a report regarding such complaint from the public entity or any other body within such reasonable time as may be specified by the Commission and—
  - (i) if the information or report called for is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information or report; and
  - (ii) if on receipt of the information or report the Commission is satisfied either that no further action is required or that the required action has been initiated by the public entity, the Commission shall, in writing, inform the complainant accordingly and take no further action; or
- (b) without prejudice to paragraph (a), initiate such inquiry as it considers necessary, having regard to the nature of the complaint.

## **23. Powers of the Commission**

(1) In the performance of its functions under this Act, the Commission shall have the power to—

- (a) issue summonses or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;
- (b) question any person in respect of any subject matter under investigation before the Commission; and
- (c) require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.

(2) The Commission may, if satisfied that there has been an infringement of the provisions of this Act, order—

- (a) the release of any information withheld unlawfully;
- (b) a recommendation for the payment of compensation; or
- (c) any other lawful remedy or redress.

(3) A person who is not satisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made.

(4) An order of the Commission under subsection (2) may be filed in the High Court by any party thereto in such manner as the Commission may, in regulations made in consultation with the Chief Justice, prescribe and such party shall give written notice of the filing of the order to all other parties within thirty days of the date of the filing of the order.

(5) If no appeal is filed under subsection (3), the party in favour of whom the order is made by the Commission may apply ex-parte by summons for leave to enforce such order as a decree, and the order may be executed in the same manner as an order of the High Court to the like effect.

(6) Public entities and relevant private bodies shall provide to the Commission such reports as required by the Act.

(7) The Commission shall, in consultation with the public, develop and publicize guidelines detailing the reporting requirements including the manner, means and timeframes that apply to public entities and relevant private bodies.

(8) The Commission may request any further information from the public entity or the relevant private body to facilitate and enhance monitoring at any time and may issue an order compelling the provision of such further information.

#### **24. Powers relating to investigation**

(1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilize the services of any public officer or investigation agency of the Government and where a public officer is so utilized under this subsection, the Commission shall pay such expenses as may be incurred by the public officer or agency for the service rendered.

(2) For the purpose of investigating any matter pertaining to an inquiry, a public servant or agency whose services are utilized under subsection (1) may, subject to the direction and control of the Commission—

- (a) summon and enforce the attendance of any person for examination;
- (b) require the discovery and production of any information;
- (c) subject to the provisions of this Act, requisition any public records or copy thereof from any public officer; and

(d) take a statement under oath in relation to any investigation it is undertaking.

(3) The provisions of section 23 shall apply in relation to any statement made by a person before any public officer or agency whose services are utilized under subsection (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The public officer or agency whose services are utilized under subsection (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission in that behalf.

(5) The Commission shall satisfy itself on the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under subsection (4) and for that purpose, the Commission may make such inquiry, including the examination of any person who conducts or assists in the investigation, as it considers necessary.

#### PART VI – PROVISIONS ON DELEGATED POWERS

### 25. Regulations

(1) The Cabinet Secretary may, in consultation with the Commission, make regulations, prescribing anything required by this Act to be prescribed or generally for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

- (a) the manner in which applications under this Act shall be made;
- (b) the form in which information requested under this Act shall be supplied;
- (c) the making of an application for personal information by representatives of the person to whom the information relates;
- (d) the measures to be taken by public entities to facilitate the exercise by persons of their rights under this Act;
- (e) the measures to be taken by public entities to ensure that adequate records are created and maintained by the entities;
- (f) the procedures for the making of an application by a complainant for the review by the Commission, of a decision made by a public entity relating to access to information;
- (g) the procedure to be followed by a public entity in consulting with a third party before giving access to information obtained by it from that party;
- (h) the procedures requiring a public entity to ensure that personal information is accurate;
- (i) compensation to be sought by an individual who has suffered damage as a result of the holding of inaccurate information about the individual's personal affairs by a public entity;
- (j) the records that public entities shall be required to keep; or
- (k) such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(3) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the delegated power referred to under this section are those found in—
  - (i) the Statutory Instruments Act, 2013 (No. 23 of 2013);
  - (ii) the Interpretation and General Provisions Act (Cap. 2);
  - (iii) the general rules of international law as specified under Article 2 (5) of the Constitution; and
  - (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

#### PART VII – MISCELLANEOUS PROVISIONS

##### **26. Annual reports**

(1) The Commission shall submit an annual report to Parliament and may, at any time, submit special reports to the Cabinet Secretary on any matter relating to any of its functions.

(2) The annual report submitted by the Commission under subsection (1) shall include an overall assessment by the Commission of the performance of the Government with regard to access to information during the period under review.

(3) The Cabinet Secretary shall lay the annual report of the Commission before Parliament within two months of receipt thereof, with any comments thereon which the Cabinet Secretary considers necessary.

(4) The Cabinet Secretary shall be required, in every year, to report to Parliament the steps which the Government has taken in implementing recommendations made in the Commission's reports.

##### **27. Reports by public entities**

On or before the 30<sup>th</sup> day of June of each year, every public entity shall submit to the Commission a report covering the preceding year, which shall include—

- (a) the number of requests for information received by the entity and the number of requests processed;
- (b) the number of determinations made by the authority not to comply with the requests for information under section 8, and the main grounds for such determinations;
- (c) the average number of days taken by the entity to process different types of requests;
- (d) the total amount of fees collected by the public entity while processing requests; and
- (e) the number of full-time staff of the public entity devoted to processing requests for information and the total amount expended by the entity for processing such requests.

**28. Offences and penalties**

(1) Any person who knowingly discloses exempt information in contravention of this Act commits an offence and is liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or both.

(2) It shall be a defence to a charge under subsection (1) that the exempt information disclosed was already in the public domain at the time of disclosure.

(3) An information access officer who—

- (a) refuses to assist a requester who is unable to write to reduce the oral request to writing in the prescribed form and provide a copy to the applicant in accordance with section 8(2);
- (b) refuses to accept a request for information;
- (c) fails to respond to a request for information within the prescribed time; or
- (d) fails to comply with the duty to take reasonable steps to make information available in a form that is capable of being read, viewed or heard by a requester with disability in accordance with section 11 (3), commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or both.

(4) Any person who—

- (a) charges a fee exceeding the actual costs of making copies of such information and supplying them to the applicant;
- (b) fails to respond to a request for information required for the exercise or protection of a right in accordance with the requirements of this Act;
- (c) fails to respond to a request to correct personal information; or
- (d) it having been ascertained that information held is out of date,

inaccurate or incomplete, fails within the prescribed time, or within a reasonable time if no time is prescribed, to correct, destroy or delete the information, or to attach a statement to the information in accordance with section 13, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding six months, or both.

(5) Any person who is convicted of an offence under section 18(3) after a request has been made for disclosure of the information in question, with the intention of preventing the disclosure of that information in response to that request is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

(6) Any relevant private body that fails to make publicly available the name and contact details of its information access officer or officers commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings.

(7) Any relevant private body that is convicted, or any officer of which is convicted of an offence under this Act, or which, although not convicted is in serious breach of this Act may, after a fair hearing, be debarred from entering into any future contract with government under the laws relating to matters of procurement and disposal.

(8) A person who—

- (a) fails to attend before the Commission in accordance with any summons or order issued under subsection 23(1)(a);

- (b) knowingly gives any false or misleading statement of information to the Commission; or
- (c) causes an obstruction or disturbance in the course of any proceedings before the Commission,

commits an offence and shall be liable, on conviction, to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

(9) A person shall not be criminally liable for the disclosure or authorisation of the disclosure made in good faith in reliance on this Act.

(10) A person to whom information is disclosed under this Act, conveys that information to others but who alters the information, or conceals part of the information or misrepresents the information, with intent to deceive, commits an offence, and is liable on conviction to fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

## 29. Consequential amendments

The written laws identified in the Schedule are amended in the manner identified therein.

### Schedule

#### CONSEQUENTIAL AMENDMENTS

[Section 29.]

#### **Records Disposal Act**

- 1.(1) This paragraph amends the Records Disposal Act (Cap. 14).
- (2) Section 2 of the Act is amended by deleting the words "Chief Archivist" wherever they appear and substituting therefor the expression "Kenya National Archives and Documentation Service and the Commission on Administrative Justice".

#### **Public Archives and Documentation Service Act**

- 2.(1) This paragraph amends the Public Archives and Documentation Service Act (Cap. 19).
- (2) Section 5A of the Act is amended by inserting the following new proviso immediately after the word "public" appearing in the last line of subsection (1)—

"Provided that the restriction from circulation shall only related to exempt information provided for in section 6".

- (3) The Act is amended in section 6 by deleting subsections (2) and (3).
- (4) Section 7 of the Act is amended by inserting the expression "in consultation with the Commission on Administrative Justice and" immediately before the words "with the approval of the Minister".

#### **Public Officer Ethics Act, 2003**

- 3.(1) This paragraph amends the Public Officer Ethics Act, 2003 (No. 4 of 2003).
- (2) Section 41 of the Act is amended by inserting the following proviso immediately after the word "both" appearing in the last line—

"Provided that the provision of this section as to divulging of information without lawful excuse shall only apply to exempt information provided for in section 6."

**Official Secrets Act**

- 4.(1) This paragraph amends the Official Secrets Act (Cap. 187).
- (2) Section 3 of the Official Secrets Act is amended by inserting the following new subsection immediately after subsection (7)—
- (8) The provisions of this section shall apply subject to Article 35 of the Constitution and the law relating to access to information.

**Statistics Act, 2006**

- 5.(1) This paragraph amends the Statistics Act, 2006 (No. 4 of 2006).
- (2) Section 11 of the Act be amended by inserting the following new proviso immediately after the word "Act" appearing in the last line—

"Provided that the provision of this section as to secrecy shall only apply to exempt information provided for in section 6 of the Freedom of Information Act, 2012."

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