



GUIDELINES ON ACCESS TO INFORMATION REQUESTS

INTRODUCTION

The Communications Authority of Kenya (CA) in carrying out its mandate gathers a wide range of information. This includes information about its staff, its processes, policies, licensee data, and financial status, among others. This information is known as official information.

Definition

The Access to Information Act, 2016 defines “information” to include 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. This includes information held in any format, such as:

- Written documents, reports, memos, letters, notes, emails and draft documents;
- Non-written documentary information, such as material stored on or generated by computers and databases, video and tape recordings, maps and photographs; and
- Information which is known to an agency but which has not yet been recorded in writing or otherwise.

The Access to Information Act 2016 requires Government agencies to make official information more freely available, to provide for proper access by each person to official information relating to that person, to protect *official information* to the extent consistent with the public interest.

Access to information

The Access to Information Act, 2016 provides people with access to information that the Authority holds. The following guidelines provide staff with guidance on how to deal with information requests.

Legislation

The basic principle of the Access to Information Act, 2016 is that all information held by Government agencies shall be made available to the public, unless reasons exist for withholding it. The Act specifies the reasons that are appropriate for an agency to withhold requested information.

Once a request for information is received, it is the Authority's responsibility to establish:

- Whether the information exists and if so,
- Whether it can be released to the person making the request

The Access to Information Act, 2016 sets out various rules that govern the handling of requests for the release of official information. This material (guidelines, fact sheets and standard letters) should provide CA staff with sufficient advice to respond to requests under the Act.

Processing a request

Requests for official information are processed under the Access to Information Act, 2016. Requests for personal information about an individual from organizations or another individual are also processed under the Act.

Assistance

Section 9 of the Access to Information Act, 2016 imposes a duty on the Authority to assist a person with their request.

It is therefore preferable that the request be made in writing, so that the Authority can ensure the request is properly answered. However, the Act does not require a request be made in writing, and consequently, the Authority must accept oral requests for information. In the event a request is made orally, the Authority may ask the person placing the request to do so in writing but cannot refuse the request if they do not. In those circumstances, it is important to clarify the information request and record the request straight away, and if possible, read it back to the person requesting and ask them to confirm that it has been recorded correctly.

Requests made over the telephone ought to be treated in the same manner as written requests. They must be logged and any response provided must be signed off.

Due Particularity

Section 8 of the Access to Information Act, 2016 requires that a request be specified with 'due particularity.' It requires that anyone making a request for information shall provide details and sufficient particulars to the public officer or any other official to understand what information is being requested. Ideally, the request should:

- Identify what information is being sought.
- Indicate how the requester wants the information provided
- Provide any reasons for urgency (should it be requested)
- Provide a name, address and contact phone number.

In some instances, the Authority may receive requests that are not very clear and assessment may be necessary to determine whether a request can be actioned. If it is not possible to establish what the requester wants, or their request, is so wide that is impossible to answer or identify the information sought, the Authority should write back asking the requester to provide further clarification.

Who can make a Request?

Section 4 of the Access to Information Act, 2016 that it is every citizen of Kenya who can make a request for information.

Anonymous Requests

A requester must provide their name and address so that the Authority may determine whether the Access to Information Act, 2016 applies to the request.

Requests from other government agencies

Other Government agencies may require certain information from the Authority for purposes of discharging their mandate.

Such requests should be made in writing indicating the purpose for which the information is being sought.

Time frames

Section 9 of the Access to Information Act, 2016 states that a decision should be made and provided to the requester 'as soon as reasonably practicable' but in any event within twenty (20) days of receipt of the application.

The Authority may notify the requester of an extension of time to enable the response to be provided. Extensions are permitted where:

- a) Large quantities of information are involved
- b) Searching through large quantities of information would unreasonably interfere with the Authority's operations.
- c) Consultations are required to make the decision.

Should the Authority decide to notify an extension of time, a formal notification must be made before the expiry of the 201 working days time limit, and must include the following:

- Period of extension
- Reasons of extension

- Advice the requester has the right to make complaint about the extension to make a complaint about the extension to the Commission on Administrative Justice.

It is important that the further period of time requested by the Authority is realistic and reasonable in circumstances. Further extensions may be notified and only if they are notified before the twenty (20) working day period expires.

How to count time

Time limits are expressed in ‘working days’ –any day that is not a Saturday, A Sunday, a public holiday.

To count working days, day 1 is the first working day after the day on which the request is received.

If a request has been made orally, then later confirmed in writing, one must count the working days from the date of the oral request, not from the receipt of the written confirmation.

Transferring a request

In cases where the Authority does not hold official information, but knows of another government agency that does, the Authority can transfer the request to the other agency (under section 10 of the Access to Information Act, 2016). The transfer must be done promptly, and no later than five working days from the date of the receipt of the receipt.

One ought to telephone the agency the request is being transferred to, and advise them that the request is being transferred. A copy of the request should be transferred to the agency.

Charging for information

Section 12 of the Access to Information Act, 2016, provides that no fee may be levied in relation to the submission of an application.

Withholding Information

The Access to Information Act, 2016 obligates the Authority to release official information when it is requested, unless there are good reasons not to. The grounds for withholding information as spelt out in Section 6 of the Act. Information may be withheld if its 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

Other important considerations before release of information

Care must be taken, before information is released, to check that such information is not subject a suppression order before a court of law. Information released by the Authority to third parties and has been suppressed by the court; the Authority may be cited for contempt.

In some instances, it is possible to disclose information that is subject to suppression order of the person it is disclosed to is a '*genuinely interested party*' and the disclosure does not amount to a '*publication*.'

If the information is requested for ongoing court proceedings, the information may be provided directly to the court for consideration without breaching the suppression. The requester should be advised to make an application to the relevant court to have the suppression order varied or lifted to obtain access to the information.

Staff must always obtain legal advice before releasing information that is subject to a court order.

Media requests

Requests from the media are Access to information Act 2016 request and as such, should be processed in the same way as any other request for information. Sometimes the media may ask for the information to be provided in a short time frame to meet publishing deadline. The Authority will try to assist the requester if possible but not to the extent that internal processes are not followed.

Audit trail

The audit trail is a mandatory part of the AIA request process. The Access to Information Officer is responsible for ensuring that the proposed response to a request is moved through the audit trail process in a timely fashion and that the statutory time lines are adhered to.

When a response has been prepared, it must be review by Legal Services to ensure that it conforms to the aspirations of the AIA. The Access to Information Officer is ultimately responsible for the final draft of the response that is sent.

Complaints to the Office of the Ombudsman

If a requester complains about a delay in receiving a response to their AIA request, the Commission on Administrative Justice (Ombudsman) will contact the Authority and ask for an explanation for the delay. The Access to Information Officer is responsible for providing a response to the Ombudsman in the timeframe it specifies.

If a requester makes a complaint to the Ombudsman the Access to information officer will be advised of the complaint and asked to prepare a report on the decision to refuse the request. The AIO will provide the report and a copy of the withheld information to the Legal Services team who will prepare a report to the Ombudsman.

The report must be prepared by someone other than the person who signed out the response to the response to the request (i.e a 'one-up' policy to the investigation of complaints).

Office of the Ombudsman

Complaints about responses to requests under the Access to Information Act 2016 are handled by the Commission on Administrative Justice (Ombudsman).

The contact address for the office is:

The Commission on Administrative Justice (CAJ)

2nd Floor, West End Towers

Opposite Aga Khan High School off Waiyaki Way – Westlands

P.O. Box 20414 – 00200

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