



**REPUBLIC OF KENYA**

**DRAFT  
THE KENYA FREEDOM OF  
INFORMATION BILL 2007**

**MINISTRY OF INFORMATION &  
COMMUNICATIONS**

**APRIL 2007**

# THE KENYA FREEDOM OF INFORMATION BILL 2007

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## BILLS 2007

### A Bill for

**An Act of Parliament to provide for the establishment of the Kenya Freedom of Information Commission; to enable the public to access information in the possession of public authorities; to establish systems and processes to promote proactive publication and dissemination of information; and for connected purposes**

### PART I— PRELIMINARY

1. Short title and commencement

1. This Act may be cited as the Kenya Freedom of Information Act, 2007 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions.

2. Interpretation

2.(1) In this Act, unless the context otherwise requires –

“Commission” means the Information Commission of Kenya established under section 3;

“Commissioner” means a commissioner appointed under section 4;

“Edited copy” in relation to a document, means a copy of the document from which deletions have been made under section yy.

“Committee” means the Parliamentary departmental committee responsible for legal and constitutional affairs;

“information” includes any material regardless of its physical form or characteristics, and any sample, work, model or copy thereof, any record, correspondence, memorandum, book, plan, map, drawing, film, microfiche, diagram, pictorial or graphic work, data, photograph, recording, audio or video-tape, machine readable material and any other information held in electronic form whether on computer disk or tape or in the memory of a computer or other device, anything that contains information, letters, reports, studies, records, minutes, statistics, directives, instructions, circulars, memoranda, practice notes, opinions, decisions in writing whether in form of sound, visual recordings or computerized data, any material recorded or stored by any means including tape, computer, or other device and any material subsequently derived from information so recorded or stored whether manually, mechanically or electronically

and anything that is part or a copy, in any form, of any of the foregoing or is a combination of two or more of the foregoing;

"historical record" refers to a record which becomes available at the end of the period of thirty years beginning with the year following that in which it was created.

“Minister” means Minister for the time being responsible for matters relating to information;

“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, sexual orientation, age, physical 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 address, fingerprints or blood type of the individual;

(e) the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;

(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) the views or opinions of another individual about the individual; and

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual.

“public authority” includes-

- (a) the National Assembly, including members of Parliament and staff of the National Assembly;
- (b) the Judiciary;
- (c) all Government ministries, departments or agencies at all levels of Government;
- (d) any body which -
  - (i) is established by virtue of the President’s powers or by or under an Act of Parliament or an Order made under an Act of Parliament or which is established in any other way by a Minister of the government or by a government department or public authority;
  - (ii) receives any part of its revenues directly from money provided by Parliament or from a levy authorized by an enactment or fee or charge of any other description so authorized;
- (e) any body or authority subject to examination by the Controller and Auditor General;
- (f) a statutory corporation;
- (g) a commission of inquiry
- (h) all local authorities established under the Local Government Act;
- (i) any body carrying out a statutory or public function, provided that the body is a public authority only to the extent of its statutory or public function; or
- (j) any other body or authority designated by the Minister as a public authority for purposes of this Act.

"Public record" includes any writing containing information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

“public servant” means a person employed in the public service, that is to say, any person holding or performing with authority, the duties of any of the following offices (whether as a principal or as a deputy and whether such service is permanent or temporary, paid or unpaid):-

(a) any office the holder of which is appointed or removed by the President or by any service commission;

(b) any office the holder of which is appointed, elected or otherwise selected in pursuance of any written law;

(c) any office the holder of which is appointed by any person or persons holding or performing, with authority, the duties of an office of one of the kinds specified in paragraph (a) or (b) and without prejudice to the generality of the foregoing, includes:-

(i) an arbitrator or umpire in any proceedings or matter submitted to arbitration by order or with the sanction of any court or in pursuance of any written law;

(ii) every member of a commission of inquiry or of a tribunal appointed or selected in pursuance of any written law;

(iii) any person in the service of the disciplined forces;

(iv) any person in the employment of the Government or any local authority;

(v) any person acting in a religious capacity, in respect of the exercise by him of any functions relating to marriage, birth, baptism, death or burial, but not in any other respect.

“service commission” means the Public Service Commission or the Judicial Service Commission;

“Whistle blowing” refers to confidential raising of problems or concerns within an organisation or with an independent review structure associated with that organisation.

## **PART II – ESTABLISHMENT, POWERS AND FUNCTIONS OF THE INFORMATION COMMISSION OF KENYA**

3. Establishment  
of Commission.

**3.(1)** There is hereby established a Commission to be known as the Kenya Freedom of Information Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all such other things or acts for the proper performance of its functions under, and for furtherance of the provisions of, this Act which may be lawfully done or performed by a body corporate.

4. Headquarters.

**4.** The headquarters of the Commission shall be in Nairobi.

5. Functions of  
the Commission

**5.(1)** The functions of the Commission shall be—

- (a) to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of the provisions of this Act;
- (b) to inspect public authorities with a view to assessing and evaluating the collection, processing and dissemination of information to the public and making appropriate recommendations thereon;
- (c) to inform and educate the public as to their rights under this Act by means of a continuing programme of research, publication, lectures and symposia and by such other means as the Commission may deem fit;
- (d) to recommend to all public authorities effective measures to

promote access to information;

- (e) to act as the chief agent of the Government in ensuring that all public authorities comply with its obligations under international treaties and conventions on access to information;
- (f) to approve information dissemination procedures including publication schemes for proactive disclosure of information by all public authorities;
- (g) to perform such other functions as the Commission may consider necessary for the promotion of access to information.

(2) The Commission shall have all the powers necessary for the performance of its functions under this Act.

(3) The Commission may enter into association with such other bodies or organizations within and outside Kenya as the Commission may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established.

6. Independence of the Commission.

6. Except as provided under this Act or any other law, the Commission shall exercise its functions independent of any person or body.

7. Membership of Commission

7.(1) The Commission shall consist of-

- (a) A chairperson who shall be appointed by the President in accordance with Section 9.
- (b) Eight commissioners appointed by the President in accordance with Section 9.

8. Qualifications of Commissioners.

8. A person shall be qualified for appointment as a Commissioner if such person —

- (a) is a citizen of Kenya;
- (b) is a person of high moral character and proven integrity and has knowledge and

experience in matters relating to freedom of information; and

- (c) in the case of the chairperson, is qualified to hold office as a Judge of the High Court of Kenya.

9. Procedure for appointment of commissioners

9.(1) The National Assembly shall, within fourteen days of the commencement of this Act, by advertisement in the Gazette and in at least three daily newspapers of national circulation, invite applications from persons qualified under this Act for nomination as commissioners.

(2) An application under subsection (1) shall be forwarded to the National Assembly within twenty-one days of the advertisement and may be made –

- (a) by any qualified person; or
- (b) by any person, organization or group of persons proposing the nomination of any qualified person.

(3) The National Assembly shall, within seven days of the expiry of the period prescribed under subsection (2), cause the committee to consider all the applications received under subsection (2).

(4) The committee shall, within thirty days, consider all applications received under subsection (2) and shall recommend to the National Assembly therefrom, twelve persons for nomination as commissioners.

(5) In the performance of its functions under this section, the committee may co-opt any person who in its opinion possesses the relevant expertise in the field of information to assist it in its work.

(6) The National Assembly shall, upon receipt of the recommendations of the committee under subsection (4), nominate twelve persons for appointment as commissioners and shall submit the list of nominees to the Minister for onward transmission to the President.

(7) The Minister shall forthwith forward the names of the persons nominated under subsection (6) to the President who shall, by notice

in the Gazette, appoint therefrom the Chairperson and eight commissioners.

(8) In nominating or appointing persons as commissioners, the National Assembly and the President shall have regard to-

(a) Kenya's ethnic, geographical, cultural, political, social and economic diversity; and

(b) the principle of gender equity.

(9) The chairperson and the commissioners shall, upon appointment, hold office on a full time basis and shall enjoy —

(a) in the case of the chairperson, the status of a judge of the Court of Appeal; and

(b) in the case of a commissioner, the status of a judge of the High Court.

10. Secretary to the Commission

**10.** (1) There shall be a Secretary to the Commission who shall be appointed by the Commission upon such terms and conditions of service as the Commission may determine.

(2) Subject to the general control of the Commission, the Secretary shall –

(a) be responsible for the carrying out of the policy decisions of the Commission and the day-to-day administration and management of the affairs of the Commission and the control of the other staff of the Commission; and

(b) perform such other function as may be assigned by the Commission.

(3) The Secretary shall, unless in any particular case the Commission otherwise directs in writing, attend all meetings of the Commission but shall have no vote on any matter falling to be decided by the Commission at any such meeting.

11. Terms and Conditions of Service of the Commissioners

**11.**(1) The salaries and allowances payable to, and other terms and conditions of service of the chairperson and the Commissioners shall be such as may be determined by the Committee in consultation with the Treasury.

(2) The salaries and allowances provided for under subsection (1) shall be a charge on the Consolidated Fund.

12. Staff of the Commission.

**12.** The Commission may appoint such officers or servants as are necessary for the proper discharge of the functions of the Commission under this Act or any other written law, upon such terms and conditions of service as the Commission may determine.

13. Commission to have powers of a court

**13.** (1) In the performance of its functions under this Act, the Commission shall have the powers of a court 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;
- (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 unlawfully withheld information;
- (b) the payment of compensation; or
- (c) any other lawful remedy or redress.

(3) A person or authority dissatisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days of such order.

(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) A person who -

- (a) fails to attend before the Commission in accordance with any summons or order issued under subsection (1)(a); or
- (b) having attended before the Commission, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse, to answer any question or to produce any information; or
- (c) knowingly gives any false or misleading information to the commission; or
- (d) causes an obstruction or disturbance in the course of any proceedings before the Commission,

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

14. Powers  
Relating to  
Investigation

**14.** (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilise the services of any public servant or investigation agency of the Government and where a public servant is so utilised under this subsection, the Commission shall pay such public servant or agency for the service rendered.

(2) For the purpose of investigating into any matter pertaining to an inquiry, a public servant or agency whose services are utilised 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; and
- (c) subject to the provisions of this Act, requisition any public records or copy thereof from any public servant.

(3) The provisions of section 16 shall apply in relation to any statement made by a person before any public servant or agency whose services are utilised 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 servant or agency whose services are utilised 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 or persons who conducts or assists in the investigation) as it deems fit.

15. Annual  
Reports to  
Parliament

**15.** (1) The Commission shall submit an annual report to the National Assembly through the Minister and may at any time submit special reports to the Minister on any matter related to the 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 Minister shall lay the annual report of the Commission before the National Assembly within two months of receipt thereof, with any comments thereon which the Minister considers necessary.

16. Inquiry into  
complaints

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

(2) A complaint 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 authority or any other body within such reasonable time as may be specified by the Commission:

Provided that -

- (i) if the information or report is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information or report;
- (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 authority, the Commission shall, in writing, inform the complainant accordingly and take no further action;

(b) without prejudice to paragraph (a), initiate such inquiry as it considers necessary, having regard to the nature of the complaint.

17. Guiding  
Objects and  
principles

**17.** In the performance of its functions under this Act, the Commission shall-

- (a) accommodate the diversity of the Kenyan people;
- (b) observe the principle of impartiality and gender equity;
- (c) have regard to all applicable international information management and dissemination standards; and
- (d) ensure that public authorities provide adequate safeguards for personal information.

18. Funds of the  
Commission

**18.(1)** The funds of the Commission shall be derived from such sums as may, from time to time, be appropriated by Parliament for that purpose.

(2) The Commission may receive grants and donations from any other source provided that such grants and donations shall not be made or received for purposes of influencing the decision or ability of the Commission in any way and shall be disclosed in the annual report of the Commission.

19. Financial  
year.

**19.** The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.

20. Annual estimates.

**20.(1)** At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Commission for the financial year concerned, and in particular shall provide –

- (a) for the payment of the salaries, allowances and other charges in respect of the staff of the Commission and the Commissioners;
- (b) for the payment of the pensions, gratuities and other charges in respect of retirement benefits to staff of the Commission;
- (c) for the proper maintenance of the buildings and grounds of the Commission;
- (d) for the proper maintenance, repair and replacement of the equipment and other movable property of the Commission;

(3) The annual estimates shall be submitted to the Minister for approval before the commencement of the financial year to which they relate:

Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Minister.

(4) No expenditure shall be incurred for the purposes of the Commission except in accordance with the annual estimates approved under sub-section (3).

21. Accounts and audit.

**21.(1)** The Commission shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Commission.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor- General or to an auditor appointed under sub-section (3), the accounts of the Commission together with –

- (a) a statement of income and expenditure during that year; and

(b) a statement of the assets and liabilities of the Commission on the last day of the financial year.

(3) The accounts of the Commission shall be audited by the Auditor-General or by an auditor appointed by the Commission with the written approval of the Auditor-General.

(4) Nothing in this Act shall be construed to prohibit the Auditor-General from carrying out an inspection of the Commission's accounts or records whenever it appears to him desirable and the Auditor-General shall carry out such an inspection at least once every six months.

(5) Notwithstanding anything in this Act, the Auditor General may transmit to the Minister a special report on any matters incidental to his powers under this Act, and section 19 (3) and (4) of the Exchequer and Audit Act shall, *mutatis mutandis*, apply to any report made under this section.

(6) The Minister shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him under this section.

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22. Bank Accounts

**22.(1)** The Commission may open and maintain such bank accounts as are necessary for the performance of its functions.

23. Annual Financial report.

**23.(1)** The Commission shall, within three months after the end of each financial year, prepare and submit to the Minister a report of the operations of the Commission for the immediately preceding year.

(2) The Minister shall lay the annual report before the National Assembly within three months of the day the Assembly next sits after the report is presented to him.

24. The common seal of the Commission

**24. (1)** The common seal of the Commission shall be kept in such custody as the Commission may direct and shall not be used except on the order of the Commission.

(2) The Common seal of the Commission when affixed to a document and duly authenticated shall be judicially noticed and unless and until the contrary is proved, any necessary order or authorization by the Commission under this section shall be presumed to have been duly given.

### III. RIGHT TO INFORMATION

25. Right to Information

**25.** (1) Every citizen has a legally enforceable right to obtain access to information held or under the control of a public authority in accordance with this Act.

(2) Subject to this Act, every citizen has the right to access information held or under the control of a private body where that information is necessary for the enforcement or protection of any right.

(4) Subject to this Act, a person's right of access is not affected by:

(a) any reasons the person gives for seeking access; or

(b) the public authority's belief as to what are his or her reasons for seeking access.

26. Exempt Information

**26.** (1) Despite section 4, information, hereinafter in this Act referred to as "exempt information" may be withheld by a public authority where the public authority concerned is satisfied that disclosure of such information is reasonably likely to –

(a) cause serious prejudice to the national security of Kenya;

(b) impede the due process of law or to endanger the safety or life of any person or the safety of a rare or endangered species;

(c) 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;

(d) cause serious prejudice to the legitimate commercial or financial interests of that authority or third party from whom information was obtained;

(e) cause serious prejudice to the ability of the Government to manage the economy of Kenya;

(f) significantly undermine a public authority'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; or

(g) damage a public authority's position in any actual or contemplated legal proceedings by revealing the legal advice which it received in anticipation of or connection with such proceedings.

(2) For the purposes of paragraph 1(a)

(a) "national security" shall be reckoned in accordance with applicable international standards; and

(b) the Minister in consultation with the Commission may, having regard to applicable international standards, develop guidelines for determining when information is reasonably likely to cause serious prejudice to the national security of Kenya.

(3) Sub-sections (d) and (e) do 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) Notwithstanding anything in sub-section (1), a public authority shall disclose information where the public interest in disclosure outweighs the harm to protected interests.

(5) For the purposes of sub-section (4), in considering the public and democratic interest, particular regard shall be had to the need to-

(a) promote accountability of public authorities 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 relevant to this Act;

(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.

(6) Unless the contrary is proved by the public authority, information is presumed not to be exempt if the information is more than thirty years old.

**27. (1)**A public authority shall:-

(a) as soon as practicable after the commencement of this section but not later than 12 months after that commencement, in a form approved by the Commission publish:-

(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) the norms set by it for the discharge of its functions;

(v) any guidance used by the authority in relation to 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

(vi) 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 consulted by any person;

(b) during the year commencing on 1 January next following the publication, in respect of the statement under subsection (1) (a) that is the first statement published under that subparagraph, and during each succeeding year, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that subsection.

(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) unless there are good reasons to the contrary, allow members of the public to attend its meetings at which decisions affecting them are made and shall give adequate notice of such meetings;

(f) upon signing, public authorities shall publish all contracts entered into including:-

(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 provider, contractor or individual to whom the contract has been granted; and

(iv) the periods within which the contract shall be completed.

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

(3) At a minimum, the material referred to in sub-section (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.

#### **IV. APPLICATIONS TO ACCESS INFORMATION**

28. Submission of applications

28. (1) An application to access information shall be made in English or Kiswahili by email, fax, post, telephone or by any other medium provided that the applicant provides-

(a) contact details; and

(b) sufficient particulars for the public servant or any other

official to understand what information is being requested.

(2) A public servant who receives an oral request shall, subject to section 30, reduce the request to writing, including the officer's name and designation, and shall give a copy thereof to the applicant.

(3) Notwithstanding sub-section (1), an application may, if the applicant is unable to communicate in English or Kiswahili, be made in any other local language in use in Kenya, and in such event the public servant to whom the application is made shall arrange for a translation of the application to English or Kiswahili.

(4) Where a request for information does not comply with sub-section (1), the public servant who receives the request shall, subject to section 30, render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with that sub-section.

(5) A request referred to in sub-section (4), shall not be deemed to have been rejected while assistance is being rendered.

(6) A public Authority may not inquire into a person's identity on account of a request for access to any information, or inquire as to the purpose of the person's request.

(7) A public authority may prescribe a form for requests for information, but any such form must 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.

(8) A public authority which receives a request for information shall provide the applicant with a receipt documenting the request.

29. Providing  
access to  
information

**29.** (1) Subject to section 30, a public servant shall make a decision on an application as soon as possible, but in any event, within fifteen working days of receipt of the application.

Provided that where the information sought concerns the life or liberty of a person, the information shall be provided within forty-eight hours of receipt of the request:

Provided further that where an application is especially complex or relates to a large volume of information, the public servant may request the Information Commissioner for an extension of time of no more than fifteen working days.

(2) The public servant may seek the assistance of any other public servant as the officer considers necessary for the proper discharge of the officer's duties and such other officer shall render the required assistance.

30. Transfer of Application

**30.** (1) A public servant 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 authority, if the information requested is held by that other public authority.

(2) Where an application is transferred under sub-section (1), the public servant shall inform the applicant immediately but in any event no later than five days from the date of receipt of the application, about such transfer.

(3) A public authority to which an application is referred under sub-section (1), shall make a decision on the application within fifteen days from the date that the application was first made, failing which the request shall be deemed to have been rejected.

31. Advice to applicant

**31.** (1) Where a decision is taken to provide the information requested, a public servant shall send the applicant a written notice within fifteen working days of receipt of the application, advising-

(a) that the application has been granted;

(b) 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;

(c) the method of payment of such fees;

(d) the proposed process for accessing the information once the payment is made; and

(e) that an appeal may be made to the Information Commission in respect of the amount of fees required or the form of access proposed to be provided.

(2) Subject to section 14, upon receipt of the requisite fee, the public servant shall provide the information to the applicant or permit the relevant inspection immediately but in any event no later than two working days from the date of receipt of such payment.

(3) Any information which may be made accessible to an applicant

shall be produced forthwith, at the place where it is kept, for inspection, to any person who desires to have access to it in such a manner that it can be read, listened to, or otherwise comprehended, or in the form in which it is held unless the applicant requests that it be made available in another form and it is practicable to do so, and such information may also be copied, reproduced, or used for conversion to a sound transmission.

(4) Where information is to be provided under this section, and the applicant requests that access be given in either English or Kiswahili, the information shall be given to the applicant in that language –

(a) forthwith, if the information already exists in that language;  
or

(b) within a reasonable time if the information does not exist in the language in which access has been requested.

32. Rejected  
Applications

**32.** (1) Where a request is rejected or partially rejected on the basis of section 26, the public servant concerned shall send the applicant a written notice within fifteen working days of receipt of the application, specifying -

(a) the name and designation of the person making the decision;

(b) the reasons for the decision, including the relevant provisions of the Act relied upon, findings on any material questions of fact and the material on which those findings were based;

(c) the applicant's rights with respect to review of the decision, including the particulars of the Freedom of Information Commission, time limits and the procedure.

(2) Where any requested information has not been provided within the specified period under this Act, the request shall be deemed to have been refused.

33. Fees

**33.** (1) No fee may be charged in relation to the submission of an application.

(2) A public authority from which an application for information has been made, shall make no charge to the applicant for the provision of the information other than a reasonable charge for access which shall not exceed the actual costs of making any copies of such information and if applicable, supplying them to the applicant.

(3) Any fees imposed should not be so high as to defeat the objectives of this Act.

(4) A public servant may waive any fee where payment of the fee may cause financial hardship to the applicant or where the disclosure of the information is in the public interest.

(5) Notwithstanding anything in this section, the person making the request for information shall be provided with the information free of charge where a public authority fails to comply with the time limits in this Part.

(6) The fee regime for all public authorities shall be prescribed in Regulations made by the Minister.

34. Applications  
to Correct  
Personal  
Information

**34.** (1) At the request of the applicant a public authority shall, at its own expense correct any personal information held by it relating to the applicant which is inaccurate, incomplete or irrelevant.

(2) A request under this section shall be made in writing to the public authority responsible for the maintenance of the record system containing the inaccurate, incomplete or irrelevant 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 inaccurate, incomplete or irrelevant, and how it is adverse to the applicant's interests; and

(c) specify the remedy sought by the applicant.

## V. INTERNAL REVIEW OF DECISIONS

35. Right to  
Internal Appeal

**35.** (1) Subject to subsection (2) , where a decision has been made, in relation to a request to a public authority, being:

- (a) a decision refusing to grant access to a information in accordance with a request; or
- (b) a decision granting access to information but not granting access to all information to which the request relates; or
- (c) a decision purporting to grant, in accordance with a request, access to all information to which the request relates, but not actually granting that access; or
- (d) a decision to defer the provision of access to a information; or
- (e) a decision relating to imposition of a charge or the amount of a charge; or
- (f) a decision relating to remission of an application fee; or
- (g) a decision to grant access to information only to a qualified person; or
- (h) a decision refusing to amend a record of personal information in accordance with an application made under section 35; or
- (i) a decision refusing to annotate a record of personal information in accordance with an application made under section 35;

the applicant may, by application in writing to the public authority, request a review of the decision

(2) The application must be made within 30 days, or such further period as the public authority allows, after the day on which the decision is notified to the applicant;

36. Manner of  
Internal Appeals

**36.** An internal appeal:-

- (a) must be lodged in a prescribed form within 30 days after the notice is given to the appellant against or if notice to the appellant is not required, after the decision is taken.

(b) must be delivered or sent to the information officer of the public authority concerned at his address, fax number or electronic e-mail address.

(c) must identify the subject of appeal and give reasons for the appeal and may include any other information known to the appellant.

37. Notice to and representation by other interested persons

**37.** If a public authority is considering an internal appeal against the refusal of a request of access to information contemplated in section **30**, the authority must inform the third party to whom or which the information relates, unless all the necessary steps to locate the third party have been unsuccessful.

38. Decisions on internal appeal

**38.** (1) The relevant public authority must immediately after the decision on internal appeal has been made give notice of the decision to the appellant and every third party involved.

(2) The notice must:-

(a) state adequate reasons for the decision including the provisions of this Act relied upon.

(b) state that the appellant, third party, or requester, as the case may be, may lodge an application to the Commission against the decision of the on appeal within 30 days.

## V. MISCELLANEOUS

39. Annual  
Reports by Public  
Authorities

**39.** (1) On or before 1<sup>st</sup> February of each year, each public authority shall submit to the Commission a report which shall cover the preceding year and which shall include-

(a) the number of requests for information received by the authority and the number of requests processed;

(b) the number of determinations made by the authority not to comply with requests for records under Section 32 and the reasons for each such determination;

(c) the number of appeals made by persons under Section 35 the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(d) the average number of days taken by the authority to process different types of requests;

(e) the total amount of fees collected by the public authority while processing requests;

(f) the number of full-time staff of the public authority devoted to processing requests for information and the total amount expended by the authority for processing such requests.

(3) The Commission shall make each report which has been received from public authorities available at a single electronic access point. The Commission shall notify the Chairman of the Committee in writing, that such reports are available before the 1st March of each year.

40. Whistle  
Blower Protection

**40.** (1) No person shall be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of any 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 one which is in the public interest.

(2) Subject to sub-section (3), the provisions of sub-section (1) shall only apply where the person believes on reasonable grounds that the information is accurate.

(3) For the purposes of sub-section (2), a disclosure which is made to the police or to an appropriate public authority shall be deemed to

be made in the public interest.

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

(5) 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 not inaccurate and which was or was proposed to be disclosed, shall be unenforceable.

(6) 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 in the circumstances the disclosure was in the public interest, and where the offence is alleged to have been committed by a public servant or Government contractor and involves the disclosure of information obtained by the person in the person's position as such, that the defendant had before making the disclosure complied with the provisions of sub-section (2).

41. Records  
Management

**41.** (1) Every public authority shall keep and maintain its records in a manner which facilitates the right of access to information as provided for in this Act.

(2) At a minimum, to qualify to have complied with the duty to keep and maintain records under sub-section (1), every public authority 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) within no more than three years from the date that this Act begins to apply to it, computerize its records and information management systems in order to facilitate more efficient access to information.

(3) A public authority which fails to comply with sub-section (2)

commits an offence.

42. Regulations

**42.** (1) The Commission, with the approval of the Minister, may by Regulations prescribing anything which under this Act may be prescribed including-

(a) the designation of any private body or authority or class of bodies or authorities, to be a public authority or public authorities for the purposes of this Act;

(b) the manner in which applications under this Act are to be made;

(c) the form in which information requested under this Act is to be supplied;

(d) the making of applications for personal information by representatives of the individual to whom the information relates;

(e) the measures which public authorities shall take in order to assist persons in exercising their rights under this Act;

(f) the measures which public authorities shall take to ensure that adequate records are created and maintained by public authorities;

(g) the procedures that should be followed by a complainant in asking authority to review any decision or failure to act before a complaint may be made to the Commission;

(h) a public authority to consult with a third party before giving access to information obtained by it from that party;

(i) procedures requiring a public authority to ensure that personal information is accurate;

(j) 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 authority;

(k) the records that public authorities shall be required to keep.

43. Repeal of Cap  
187.

**43. The Official Secrets Act is repealed.**

### **SCHEDULE 1 (s3)**

#### **PROVISIONS AS TO THE CONDUCT OF BUSINESS OF THE COMMISSION**

Term of office of  
chairperson and  
commissioners

**1.** Unless the appointment of the chairperson or commissioner is terminated earlier under this Act, a person appointed as the chairperson or as a commissioner shall hold office for a term of five years from the date of appointment and shall be eligible for appointment for one further term of a period not exceeding five years.

Provided that in the case of the initial commissioners, the Commission shall, at its first meeting elect:-

(a) four Commissioners whose terms of office shall expire at the end of three years; and

(b) four other commissioners whose term shall expire at the end of four years.

from the date of appointment.

Vacation of  
Office

**2. (1)** The office of a person appointed as the Chairperson, vice-chairperson or as a commissioner shall become vacant if the person:-

(a) dies; or

(b) resigns from office by writing under his hand addressed to the Minister; or

(c) is convicted of an offence and sentenced to imprisonment for a term of three months or more without option of a fine; or

(d) is unable to discharge the functions of his office by reason of physical or mental infirmity as certified by two registered medical practitioners; or

(e) is absent from three consecutive meetings of the Commission without good cause; or

(f) is declared bankrupt by a court of competent jurisdiction.

- Meetings
- 3.** (1) The Commission shall meet at such times and places as the Commission may deem appropriate but shall meet at least once in every month.
- (2) Subject to this Act, the Commission may regulate its own procedure and formulate its own rules.
- (3) The quorum for any meeting of the Commission shall be five Commissioners.
- (4) All orders and decisions of the Commission shall be authenticated by the Chairperson or any other Commissioner authorized in writing by the chairperson in that behalf.
- Minutes
- 4.** The Commission shall cause minutes of all proceedings of meetings to be entered in books kept for that purpose.
- Majority decisions
- The decisions of the Commission shall be that of the majority and shall be signed by the members thereof agreeing thereto.