

**THE FREEDOM OF INFORMATION BILL, 2008**

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*Clause*

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**A Bill for**

**AN ACT of Parliament to provide for the establishment of the Kenya Freedom of Information Commission; to provide for access to information in the possession of public authorities; to provide for proactive publication and dissemination of information; and for connected purposes**

**ENACTED** by the Parliament of Kenya as follows -

**PART I—PRELIMINARY**

Short title and  
commencement.

- 1.** (1) This Act may be cited as the Freedom of Information Act, 2008, 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

Interpretation.

- 2.** In this Act unless the context otherwise requires;

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

“commissioner” means a member of the Commission appointed under section 10;

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

“exempt information” means information withheld by a public authority in accordance with section 21;

“Committee means the Parliamentary Departmental Committee responsible for information and communications;

“information” includes any documentary material regardless of its physical form or characteristics, and any 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;

“information officer” means any officer of a public authority designated as such for purposes of this Act who in the first instance is the chief executive of the public authority, and any delegated officer in any other instance;

“Minister” means the 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 person 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;

Cap 446

- (e) any body or authority subject to examination and audit by the Controller and Auditor - General;

Cap 102

- (f) a statutory corporation within the meaning of the State Corporations Act;

Cap 265

- (g) a commission of inquiry issued under the Commissions of Inquiry Act;
- (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 officer” 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 or 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;

“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; and

“service commission” means the Public Service Commission, the Parliamentary Service Commission or the Judicial Service Commission.

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

### **Establishment of Commission**

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

(2) The Commission is 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.

(3) The headquarters of the Commission shall be in Nairobi.

### **Conduct of business of Commission**

**4.** The business and affairs of the Commission shall be conducted in accordance with the First Schedule.

### **Functions of the Commission**

**5.** (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, the violation of the provisions of this Act;



- (b) inspect public authority with a view to assessing and evaluating the collection, processing and dissemination of information to the public and making appropriate recommendations therein;
- (c) 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) recommend to all public authorities effective measures to promote access to information;
- (e) 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) hear and determine complaints and appeals;
- (g) approve information dissemination procedures including publication schemes for proactive disclosure of information by all public authorities;
- (h) 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.

Guiding objects and principles.

**6.** 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 safeguard for personal information.

Independence of the  
Commission

7. Except as provided under this Act or any other law, the Commission shall exercise its functions without any political bias or interference and shall be wholly independent and separate from the Government, any political party, nominating authority or any person or body.

Membership of  
Commission

**8.** (1) The Commission shall consists of -

- (a) a chairperson who shall be appointed by the President in accordance with section 10; and
- (b) eight commissioners appointed by the President in accordance with Section 10

(2) The commissioners shall, at their first meeting, elect a vice-chairperson from amongst the commissioners appointed under subsection (1) (b)

Qualifications of  
Commissioners

**9.** 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.

Procedure for  
appointment of  
commissioners

**10.** (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 persons; or
- (b) by any person, organization or group of persons proposing the nomination by 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 Commission may co-opt any person who in its opinion possesses the relevant expertise in the field of information to assist in its work.

(6) The National Assembly shall, upon receipt of the recommendations of the Commission 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

Powers for removal of  
commissioners

**11.** (1) A person holding the office of commissioner may be removed from office before expiry of his term only for inability to exercise the functions of the office, whether arising from infirmity of body or mind or any other cause, or for misbehavior.

(2) A commissioner shall be removed from the office by the President if the question of the commissioner's removal has been referred to a tribunal appointed under this section and the tribunal has so recommended.

(3) The President shall appoint a tribunal consisting of a chairperson and four other members from among persons who hold or have held the office of judge of the High Court or Court of Appeal, or who are qualified to be appointed as judges of the High Court to inquire into the removal from office of a commissioner in accordance with subsection (2).

Terms and conditions of  
service of the  
commissioners

**12.** (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 Commission in consultation with the Treasury.

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

Secretary to the  
Commission.

**13.** (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.

Oath of office.

**14.** The chairperson, the commissioners and the Secretary shall each make and subscribe before the Chief Justice the oath of affirmation set out in Second Schedule.

Staff of the commission

**15.** 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 law, upon such terms and conditions of service as the Commission may determine.

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 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 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.

Commission to have powers of a court

- (b) without prejudice to paragraph (a), initiate such inquiry as it considers necessary, having regard to the nature of the complaint.
- 17.** (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 information withheld unlawfully;
  - (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 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) 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 statement or 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 a term not exceeding six months, or to both.

Powers relating to investigation.

**18.** (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 the a public officer is so utilized under this subsection, the Commission shall pay such 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; 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 17 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 or persons who conducts or assists in the investigation) as it deems fit.

The common seal of the Commission

**19.** (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 shall, when affixed to a document and duly authenticated 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.

(3) The affixing of the common seal of the Commission shall be authenticated by the signature of the chairperson of the Commission and the Secretary:

Provided that the Commission shall, in the absence of either the chairperson or the Secretary, in any particular matter, nominate one commissioner to authenticate the seal of the Commission on behalf of either the chairperson or the Secretary.

### **PART III – RIGHT TO INFORMATION**

Right to Information

**20.** (1) Every citizen has a legally enforceable right to access information held by, 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 by, or under the control of a private body where that information is necessary for the enforcement or protection of any right.

(3) Subject to this Act, a person's right to access information is not affected by -

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

Submission of applications.

**21.** (1) Notwithstanding section 20(1) information, hereinafter 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 like to -

- (a) cause serious prejudice to the national security of Kenya;
- (b) impede the due process of law or endanger the safety of 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 on 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 subsection (1) (a) –

- (a) “national security” shall be reckoned in accordance with applicable international standards; and
- (b) the Minister may, in consultation with the Commission and 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) Subsections (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) Notwithstanding anything contained in subsection (1), a public authority shall disclose information where the public interest in disclosure outweighs the harm to protected interests.

(5) For the purposes of subsection (4), in considering the public 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.

Proactive disclosure

**22. (1)** A public authority shall –

(a) as soon as practicable after the commencement of this Act but not later than twelve months after the commencement thereof, and 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 it in the 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 first January next following the publication, in respect of the statement under paragraph (a), that is, the first statement published under that paragraph, 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 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) 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 contacts entered into include –
    - (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) 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 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.

#### **PART IV – ACCESS TO INFORMATION**

##### **Application for access**

**23.** (1) An application to access information shall be made in English or Kiswahili by email, fax, post, telephone or by any other medium, and the applicant shall provide –

(a) contains details; and

(b) sufficient particulars for the public officers or any other official to understand what information is being requested.

(2) A public officer who receives an oral application shall, subject to section 25, reduce the application to writing, including the officer's name and designation, and shall give a copy thereof to the applicant.

(3) Notwithstanding subsection (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 officer to whom the application is made shall arrange for a translation of the application to English or Kiswahili.

(4) Where an application to access information does not comply with subsection (1), the public officer who receives the application shall, subject to section 25, render such reasonable assistance, free of charge, as may be necessary to enable the application to comply with that subsection.

(5) An application referred to in subsection (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 an application to access any information, or inquire as to the purpose of the person's application.

(7) A public authority 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.

(8) A public authority which receives an application to access information shall provide the applicant with a receipt documenting the application.

Processing of application.

**24.** (1) Subject to section 25, a public officer 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 application:

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

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

Transfer of applications.

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

(2) Where an application is transferred under subsection (1), a public information officer 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 by a public information officer under subsection (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.

Providing access to

**26.** (1) Where a decision is taken to provide the information applied

information.

for, a public officer 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) that the application has been granted from the provision of an edited copy
  - (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;
  - (e) the proposed process of accessing the information once the payment 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 section 28, upon receipt of the requisite fee, a public officer 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; and in such a manner as it can be read, listened to, or otherwise comprehended, 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 applied for.
- Rejection of application
- 27.** (1) Where an application is fully or partially rejected on the basis that the information requested is exempt information, the public officer 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 Commission, time limits and the procedure.
- (2) Where any information applied for has not been provided within the specified period under this Act, the application therefor shall be deemed to have been refused.
- Fees
- 28.** (1) No fee may be levied in relation to the submission of an application.
- (2) A public authority from which an application for information has been made shall not levy any fee on an applicant for the provision of the information other than a reasonable fee 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 information officer 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 an

application 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.

Correction of information.

**29.** (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.

## **PART V – INTERNAL REVIEW OF DECISIONS**

Terms and conditions of service of the commissioners

**30.** (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 information in accordance with an application;

(b) a decision granting access to information but not granting access to all information to which the application relates;

(c) a decision purporting to grant, in accordance with an application relates, but not actually granting that access;

(d) a decision to defer the provision of access to information;

(e) a decision relating to imposition of a charge or the amount

of a charge;

(f) a decision relating to remission of an application fee;

(g) a decision to grant access to information only to a qualified person;

(h) a decision refusing to amend a record of personal information in accordance with an application made under section 29; or

(i) a decision refusing to annotate a record of personal information in accordance with an application made under section 29,

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

(2) An application under subsection (1) shall be made within thirty day, or such further period as the public authority allows, after the day on which the decision is notified to the applicant.

Application for review.

**31.** An application for internal review shall –

- a) be made in a prescribed form within thirty days after the notice is given to the applicant, or, if notice to the applicant is not required, after the decision is taken;
- b) be delivered or sent to the information officer of the public authority concerned on his address, fax number or electronic e-mail address;
- c) identify the subject of review and give reasons for the review, and may include any other information known to the applicant.

Notice to interested party

**32.** If a public authority is considering an internal review against the refusal of an application to access information as contemplated in section 30, the public authority shall inform the third party to whom or which the information relates, unless the necessary steps to locate the third party have been unsuccessful.

Decisions on review.

**33.** (1) The relevant public authority shall, immediately after a decision on internal review has been made, give notice of the

decision to the applicant and every third party involved.

(2) The notice shall state -

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

(b) that the applicant, third party, or requester, as the case may be, may lodge an appeal with the Commission against the outcome of the internal review within thirty days of such outcome.

#### **PART VI - FINANCIAL PROVISION**

Funds of the  
Commission

**34.** (1) The funds of the Commission shall comprise of such sums as may be appropriated by Parliament from time to time 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.

Financial year.

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

Annual estimates

**36.** (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 that financial year.

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

- (a) 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 payable to the members of staff of the Commission;
- (c) the maintenance of the buildings and grounds of

the Commission;

- (d) the maintenance, repair and replacement of the equipment and other 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, and 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)

Accounts and audit.

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

(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), its accounts in respect of that year together with –

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

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

No. 12 of 2003

(3) The accounts of the Commission shall be audited and reported upon by the Controller and Auditor-General, or by an auditor appointed by the Commission with the written approval of the Controller and Auditor-General in accordance with the provisions of the Public Audit Act, 2003.

Bank Account

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

## **PART VII – MISCELLANEOUS**

Annual reports

**39.** (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 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 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.

Reports by public  
authorities.

- 40.** (1) On or before the first day of February of each year, every public authority shall submit to the Commission a report covering the proceeding year, 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 the requests for information under section 27, and the reasons for each such determination;
  - (c) the number of applications for review made by persons under section 30, the result of such applications, and the reason for the action upon each application 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.

Protection of person making disclosure.

**41.** (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 one which is in the public interest.

(2) Subject to subsection (3), the provisions subsection (1) shall not apply where the person believes on reasonable grounds that the information is accurate.

(3) For purposes of subsection (1), 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 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 accurate 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 officer 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 subsection (2)

Management of records.

**42.** (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 subsection (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.

Offence of alteration, defacement, blocking, erasure etc

**43.** (1) Where an application to access information has been made to a public authority under section 23 of this Act 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 authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information provision of which the applicant would have been entitled.

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

(3) A person convicted of an offence under this section shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or both.

Defamatory matter in information released.

**44.** Where any information provided by a public authority to an applicant under section 23 was supplied to the public authority 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.

Regulations.

**45.** (1) The Minister may, by regulations, and upon consultations with the Commission, prescribe anything which may be prescribed under this Act 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.

(2) The Minister may, upon consultation with the Commission, make regulations generally for the better carrying into effect the provisions of this Act.

Consequential  
amendments.

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

**FIRST SCHEDULE**

**(S.4)**

**PROVISIONS AS TO THE CONDUCT OF AFFAIRS AND BUSINESS OF THE  
COMMISSION**

**Tenure of office**

- 1.** Unless the appointment of the chairperson or commissioner is termed 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 a further and final term of five years:

Provided that in the case of the initial commissioners, the commissioners shall, at the first meeting of the Commission, elect from amongst their number –

- (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 five years from the date of appointment.

**Vacancy**

- 2.** The office of a person appointed as a chairperson or commissioner shall become vacant if the person –
  - (a) dies;
  - (b) resigns from office by writing under his hand addressed to the President through the Minister;
  - (c) is convicted of an offence and sentenced to imprisonment for a term of three months or more without the option of a fine;
  - (d) is unable to discharge the function of his office by reason of physical or mental infirmity as certified by two registered medical practitioners
  - (e) is absent from three consecutive meetings of the Commission without good cause; or
  - (f) if declared bankrupt by a court of competent jurisdiction.

**Meetings**

- 3.** The Commission shall meet at such times and places as the

Commission shall 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 commissioner.

(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 its meetings to be entered in books kept for that purpose.

Majority decision

5. The decisions of the Commission shall be that of the majority and shall be signed by the members thereof agreeing thereto.

**SECOND SCHEDULE**

**(s.14)**

**OATH/AFFIRMATION OF THE OFFICE OF A  
COMMISSIONER/SECRETARY**

I ..... having been appointed  
(a commissioner/the Secretary to) the Kenya Freedom of  
Information Commission under the Freedom of Information  
Act 2008, do solemnly (swear/ declare and affirm) that I will  
faithfully and fully, impartially and to the best of my ability,  
discharge the trust and perform the functions and exercise the  
powers devolving upon me by virtue of this appointment  
without fear, favour, bias, affection, ill-will or prejudice. (SO  
HELP ME GOD).

Sworn/Declared by the said.....

before me this ..... Day of.....

.....  
Chief Justice.

**SECOND SCHEDULE**

**(s.46)**

**CONSEQUENTIAL AMENDMENTS**

***Records Disposal Act***

Cap 14

**1.** (1) This paragraph amends the Records Disposal Act.

(2) Section 2 of the Act is amended by deleting the words  
“Chief Archivist” wherever they appear and substituting  
therefor the expression “Kenya Archives and Documentation  
Service and the Kenya Freedom of Information Commission”.

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

Cap. 19

**2.** (1) This paragraph amends the Public Archives and  
Documentation Service Act.

(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 relate to exempt information provided for in section 21 of the Freedom of Information Act 2008.”

(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 Kenya Freedom of Information Commission and” immediately before the words “with the approval of the Minister”.

Cap 187

***Official Secrets Acts***

**3.** (1) This paragraph amends the Official Secrets Act.

(2) Section 3 of the Act is amended by deleting subsections (3), (4), (5), (6) and (7).

No. 4 of 2003

***Public Officer Ethics Act 2003***

**4.** (1) This paragraph amends the Public Officer Ethics Act, 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 21 of the Freedom of Information Act, 2008.”

No. 4 of 2006

***Statistics Act 2006***

**5.** (1) This paragraph amends the Statistics Act, 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 21 of the Freedom of Information Act 2008.”

## **MEMORANDUM OF OBJECTS AND REASONS**

The Ministry of Information and Communications has formulated the Bill herein with a view to enhancing access to information held by Government Ministries and other public authorities. The Bill recognizes access to information as a right bestowed on the Kenyan people, and seeks to promote proactive publication, dissemination and access to information by the Kenyan public in the furtherance of this right. It also spells out the mechanisms for ensuring public access to information, as well as the factors that may hinder the right to this access. The Bill is borne of the realization that access to information held by the Government and public institutions is crucial for the promotion of democracy and good governance.

**Part I** of the Bill contains preliminary provisions.

**Part II** contains provisions on the establishment, powers and function of the Kenya Freedom of Information Commission, which shall enjoy the status of a body corporate with all the attributes pertaining thereto. Membership of the Commission is provided for in **clause 8**. **Clause 5** thereof lays down the functions of the Commission while the objects and principles guiding the Commission in the discharge of its functions are set out in **clause 6**. **Clause 7** confers the Commission with independence from the Government and other entities, and requires the Commission to carry out its mandate without any political bias or interference. **Clause 10** lays down the elaborate procedures for appointment of commissioners while **clause 13** provides for the appointment of Secretary to the Commission.

**Part III** contains provisions on the right of access to information. **Clause 20** accords every person the right to access information in the domain of a public authority while **clause 21** contains provisions on information which is exempted from disclosure to the public. **Clause 22** obliges a public authority to publish in the public interest information in its possession (proactive disclosure).

**Part IV** contains provisions on access to information. **Clauses 23 and 24** details the manner in which an application for information is to be made and the manner in which such an application is to be processed. **Clause 25** provides for the transfer of an application for information from one public authority to another when it becomes apparent that the information applied for is not in the domain of the public authority to which the application is initially made but is in the possession of another authority.

**Clause 27** provides for rejection of an application for information. **Clause 28** provides that no fee will be levied in respect of information applied for as a general rule, but a public authority is allowed to levy some fee to cater for incidental cost of availing the information applied for, for example, cost of making and supplying copies to an applicant. Under **clause 29**, it is provided that a person can make an application to a



public authority to correct inaccurate personal information in its possession regarding such person .

**Part V** contains provisions on internal review of decisions made by a public authority with **clause 30** thereof providing for instances in which an application for such review can be made. The manner of making such application is laid down in **clause 31** and communication of a decision thereon is to be made in the manner detailed in **clause 33**

**Part VI** contains financial provisions with **clause 34** thereof setting out the sources of funds of the Commission. **Clause 36** provides for the preparation of the annual estimates of the Commission and the details to be contained in the estimates while **clause 37** provides for the auditing of the accounts of the Commission by the Controller and Auditor General or an auditor appointed thereunder.

**Part VII** contains miscellaneous provisions and **clause 39** thereof imposes an obligation on the Commission to prepare annual reports on its functions for the laying before the National Assembly. Similarly, public authorities are obliged, under **clause 40** to prepare and submit to the Commission reports on various aspects of access to information. **Clause 41** accords protection to a person making disclosure of information in the public interest while **clause 42** obliges public authorities to keep their records in a manner that facilitates the right of access to information. **Clause 43** provides for various offences and penalties while **clause 45** empowers the Minister to make regulation, in consultation with the Commission, for the better carrying into effect the provisions of the Bill once enacted into law.

The enactment of this Bill will occasion additional expenditure of public funds to be provided through the estimates.

Dated the..... 5<sup>TH</sup> AUGUST....., 2008.

SAMUEL POGISHO,  
Minister for Information and Communications