



## POLICY ON ACCESS TO INFORMATION

### A. BACKGROUND

Access to Information Act, 2016 is anchored on Article 35 of the Constitution of Kenya, 2010. The Act of Parliament conferred the Commission on Administrative Justice (CAJ) with the oversight and enforcement functions and powers and for connected purposes. The Authority is aware that Kenyan citizen has a right to access information and therefore recognizes that any information held by it, as an agent of the government, should be made available subject to the provisions of the Competition Act. It's on this basis that this Access to Information Policy has been developed.

This Policy shall be read together with:

- i. The Constitution, 2010
- ii. Access to Information Act, 2016
- iii. Competition Act No. 12 of 2010

### B. PURPOSE

The purpose of this Policy is to:

- a) Give effect to the right of access to information by citizens as provided under Article 35 of the Constitution;
- b) Provide information on request in line with the constitutional principles;
- c) Provide a framework to proactively facilitate access to information held by the Authority in compliance with any right protected by the Constitution and any other law;

- d) Promote routine and systematic information disclosure by the Authority relating to accountability, transparency and public participation;
- e) Provide for the protection of persons who disclose information of public interest in good faith.

## C. SCOPE

The Access to Information Policy applies to all CAK employees. However, the responsibility of response lies with the Director General or an officer delegated with this task.

## D. DEFINITION OF TERMS

**Chief Executive Officer** - means the Director-General of the Authority or the person assigned the principal administrative responsibility.

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

**Commission** - means the Commission on Administrative Justice.

**Information** - includes all records held by the Authority, regardless of the form in which the information is stored, its source or the date of production.

**Exempt information** - means information that may be withheld by a public entity or private body in accordance with section 6

**Information access officer** - means any officer of the Authority designated under section 7 of the Access to Information Act.

**Edited copy** - in relation to a document, means a copy of a document from which exempt information has been deleted;

**Public entity** - means

- (a) any public office, as defined in Article 260 of the Constitution; or

- (b) any entity performing a function within a commission, office, agency or other body established under the Constitution;

## E. UNDERLYING PRINCIPLE

Every citizen's right to access information should not be affected by-

- a. Any reason the person gives for seeking access; or
- b. The Authority's belief as to what are the person's reasons for seeking access are.

The Authority will ensure that access to information it holds shall be provided expeditiously at a reasonable cost.

The Authority shall apply the provisions of the Access to Information Act on the basis of a duty to disclose. Non-disclosure shall be permitted only in circumstances exempted under Section 6 of the Access to Information Act and provisions of the Competition Act.

## F. DECISIONS

Based on its assessment of the information request at hand, the Authority's decision may be based on the following criteria:

- i. **Disclose:** reveal or expose information it holds (*Refer to the Access to Information Act 2016*).
- ii. **Transfer:** Where the application refers to information held by another public institution, the Authority shall transfer the request to that public institution within five (5) days of its receipt.
- iii. **Decline:** Where the request is dropped on the basis that the information sought is exempt under Section 6 of the Access to Information Act, 2016 and provisions of the Competition Act No. 12 of 2010.

**Note:** In all instances, a statement about how the requester may appeal to the Commission should be availed.

- iv. **On-going:** Indicate that processing of a request for access to information has commenced but has not been finalized.
- v. **Abandon:** This is a situation where the processing of a request for access to information has been discontinued on account of the Applicant/Requester failing to meet their obligations under the Act.

## G.DISCLOSURE OF INFORMATION

The Authority shall, as guided by Section 6 of the Access to Information Act, 2016, facilitate access to information which may include:

- i. Particulars of its organization, functions and duties;
- ii. Powers and duties of its officers and employees;
- iii. Procedures followed in the decision-making process, including channels of supervision and accountability;
- iv. Remuneration and benefits paid to its officers by grade;
- v. Guidelines used in its dealings with the public or with corporate bodies, including the rules, regulations, instructions, manuals and records, it holds or used by its employees in discharging its functions.

## H. RESPONSIBILITIES

### a) Board

- i) Approve the policy.
- ii) Approve the requisite budget for implementation of Access to Information Act, 2016.

### b) Director-General

The Director General shall be the Information Access Officer of the Authority, or may delegate this function to another officer.

**c) CAK staff**

Ensure adherence to the provisions of this policy.

**I. ACCESS TO INFORMATION APPLICATION PROCESS**

- i) Any request on to access information to the Authority should be made in writing and in a language that can be understood (preferably in English or Kiswahili)
- ii) The applicant shall provide details and sufficient particulars for the access to information request to the Director-General.
- iii) Should the applicant be unable to make a written request due to illiteracy or disability, the Authority's information access officer shall take the necessary steps to ensure that the applicant makes the request in a manner that meets his/her needs. The officer shall, on their behalf, fill in the details in the prescribed form (Appendix I) and then furnish the applicant with a copy of the written request.

**J. PROCESSING OF APPLICATION AND RESPONSE TIMELINES**

- i) The Authority's information access officer or a designate shall make a decision on an application as soon as possible, but in any event, within twenty one (21) days of receipt of the application.
- ii) Where the information sought concerns the life or liberty of a person, the information access officer shall provide the information within forty-eight (48) hours of the receipt of the application.
- iii) The information access officer to whom a request is made under subsection (2) may extend the period for response on a single occasion for a period of not more than fourteen (14) days if:

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

As soon as the information access officer makes a decision as to whether to provide access to information, he or she shall immediately communicate the decision to the requester, indicating:

- i. whether or not the Authority holds the information sought;
- ii. whether the request for information is approved:

#### **K. TRANSFER OF APPLICATION**

- i. The Authority's information access officer or a designate may, not later than five days from the date of receipt of an application, transfer the application, or any relevant part of it, to another public entity, if the information requested is held by that other public entity.
- ii. When an application has been transferred, the information access officer shall inform the applicant immediately but, in any event, not later than seven days from the date of receipt of the application about such transfer.

#### **L. PROVIDING ACCESS TO INFORMATION**

Where a decision is taken to provide the information applied for, the Authority's information access officer shall send to the applicant a written response within fifteen working days of receipt of the application, advising:

- i. that the application has been granted;
- ii. that the information will be contained in an edited copy, where applicable;

- iii. 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;
- iv. the method of payment of such fees, if any;
- v. the proposed process of accessing the information once the payment if any is made; and
- vi. 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.

Upon receipt of the fee payable, the Authority's information access officer shall provide the information to the applicant or permit the relevant inspection immediately, but in any event not later than two working days from the date of receipt of the payment.

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

## **M. FEES**

The Authority may charge a reasonable costs incurred in making copies of such information and, if applicable, supplying them to the applicant. The fee shall not exceed the actual cost of making the copies of such information and, if applicable, supplying them to the applicant.

## **N. CORRECTION OF INFORMATION**

The Authority shall within reasonable time, at its own expense, correct, update or annotate any personal information held by it relating to the applicant, which is out of date, inaccurate or incomplete.

A request under this section shall be made in writing to the Authority for the maintenance of the record system containing the out of date, inaccurate or incomplete information and shall:

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

## **O.MANAGEMENT OF RECORDS**

The Authority shall keep and maintain:

- i. records that are accurate, authentic, have integrity and useable;
- ii. records in a manner which facilitates the right of access to information.

In order to comply with the duty to keep and maintain records, the Authority shall:

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

## **P. REVIEW**

This policy will be reviewed from time to time to reflect changing circumstances.

## Appendix I: Access to Information Form



## Access To Information Request Form

Ref No.

### STEP 1

Decide if you need to make an informal request or a formal request under the Access to information Act 2016. If it's an informal request, send your request to [info@cak.go.ke](mailto:info@cak.go.ke)

### STEP 2

If you need to make a formal request under the Access to information Act 2016, complete this form or a written request mentioning the Act. Describe the information being sought and provide relevant details to assist CAK find it.

### STEP 3

Forward the access request to the CAK Information Access Officer (DG). The Address is listed as: [info@cak.go.ke](mailto:info@cak.go.ke) You may be asked for charges depending on the nature or amount of information being sought.

### STEP 4

When you receive an answer to your request, review the information to determine whether you wish to make any further request under the Act 2016. You also have the right to complain to the CAJ should you believe that you have been denied any of your rights under the Act 2016 or the provisions of the Competition Act

Government Institution: \_\_\_\_\_

Summary of the information being sought and purpose: \_\_\_\_\_

Method of access preferred: \_\_\_\_\_

Receive copies of originals

Examine original in the Authority

Name of the Applicant: \_\_\_\_\_

Postal Address \_\_\_\_\_ City/County

Physical Address \_\_\_\_\_ Telephone No.

Signature:

Date:

