

THE ACCESS TO INFORMATION ACT, 2016

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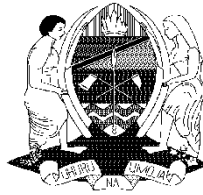
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THE UNITED REPUBLIC OF TANZANIA



NO. 6 OF 2016

I ASSENT,

.....

President

[.....]

An Act to provide for access to information; to define the scope of information which the public has the right to access; to promote transparency and accountability of information holders; and to provide for other related matters.

ENACTED by Parliament of the United of Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and Commencement

1. This Act may be cited as the Access to Information Act, 2016 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Application

2.-(1) This Act shall apply to Mainland Tanzania.
(2) Without prejudice to the provisions of subsection (1), this Act shall apply to:
(a) public authorities;
(b) private bodies registered under any written law which:
(i) utilize public funds; or
(ii) are in possession of information which is of significant public interest.

Interpretation

3. In this Act, unless the context requires otherwise:

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“Constitution” means the Constitution of the United Republic, 1977;

“exempt information” means any information, or document containing information, withheld by the information holder in accordance with section 6;

“information” means any material which communicates facts, opinions, data or any other matter relating to the management, administration, operations or decisions of the information holder, regardless of its form or characteristics;

“information holder” means a public authority or a private body referred to under section 2 (2);

“information officer” means an officer of the information holder appointed as such under section 7;

“Minister” means the Minister responsible for legal affairs;

“personal information” means information relating to an individual who is directly or indirectly identifiable by name, identification document or through any physical or other characteristics or attributes, but does not include information having a bearing on the public functions of an employee of a public authority or any other person performing a function of a public authority;

“public authority” means any authority that is established by or under the Constitution, an Act of Parliament, recognized under any written law as a public office or forms part of any level of the Government;

“records” include any recorded information regardless of form or medium created, received and maintained by any information holder in the pursuance of its legal obligations or in the transaction of its business and providing evidence of the performance of those obligations or that business.

Objectives
of this Act

4. The objectives of this Act are to:
- (a) give effect to the right of access to information by citizens as provided for by the Constitution;
 - (b) require information holder to proactively disclose information and provide to the public information that they hold subject to the provisions of this Act;
 - (c) create a framework to facilitate access to information held by information holders in compliance with any right protected by the Constitution and any other written law;
 - (d) promote routine and systematic information disclosure by information holders in compliance with the principles of accountability, transparency and public participation; and
 - (e) provide for the protection of persons who release information of public interest in good faith.

PART II RIGHT OF ACCESS TO INFORMATION

Right to
information

5.-(1) Every person shall have the right of access to information which is under the control of information holders.

(2) The information holder shall, subject to the provisions of section 6 and any other written laws, make available to the public or, on request, to any person, information which is under his control.

(3) Nothing in this Act shall limit or otherwise restrict any other legislative requirement for a public authority to disclose information.

(4) For purposes of this section, “person” means a citizen of the United Republic.

Exempt
information

6.-(1) Notwithstanding the provision of section 5, the information holder may withhold the information where he-

- (a) is satisfied that all the information or part of the information is exempted under subsection (2);
 - (b) determines, in accordance with this Act, that the disclosure is not justified in the public interest.
- (2) Exempt information may be withheld if the disclosure of such information is likely to-
- (a) undermine the defence, national security and international relations of the United Republic;
 - (b) impede due process of law or endanger safety of life of any person;
 - (c) undermine lawful investigations being conducted by a law enforcement agent;
 - (d) facilitate or encourage the commission of an offence;
 - (e) involve unwarranted invasion of the privacy of an individual, other than an applicant or a person on whose behalf an application has been made;
 - (f) infringe lawful commercial interests, including intellectual property rights of that information holder or a third party from whom information was obtained;
 - (g) hinder or cause substantial harm to the Government to manage the economy;
 - (h) significantly undermine the information holder's ability to give adequate and judicious consideration to a matter of which no final decision has been taken and which remains the subject of active consideration;
 - (i) damage the information holder's position in any actual or contemplated legal proceedings, or infringe professional privilege;
 - (j) undermine Cabinet records and those of its committee; or
 - (k) distort or dramatise record or data of court proceedings before the conclusion of the case.

(3) For purposes of paragraph (a) of subsection (2), information relating to national security includes-

- (a) military strategy, doctrine, capability, capacity or deployment;
- (b) foreign government information with implications on national security;
- (c) intelligence operations or activities, sources or information capabilities, methods or cryptology;
- (d) foreign relations or foreign activities;
- (e) scientific, technology or economic matters relating to national security; or
- (f) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to national security.

(4) Paragraphs (f) and (g) of subsection (2) 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.

(5) Unless the contrary is proved by the information holder, information shall be presumed not to be exempt if the information has been held for a period exceeding thirty years.

(6) Any person who-

- (a) disclose exempt information, other than information relating to national security, commits an offence and shall, on conviction be liable to imprisonment for a term not less than three years and not exceeding five years;
- (b) discloses exempt information relating to national security, commits offence and the provisions of the National Security Act shall apply.

PART III
ACCESS TO INFORMATION

(a) Obligation to provide information

Appointment of
information
officers

7.-(1) Every information holder shall appoint one or more officers as information officers.

(2) An information officer shall deal with requests for information and render assistance to a person seeking such information.

(3) Where an information holder fails to appoint an information officer, the head of such institution shall be the information officer for the purpose of this Act.

Obligation to
keep information

8.-(1) Every information holder shall maintain record of information that is under the control of such information holder.

(2) For the purpose of subsection (1), the information holder shall maintain every record for a period of not less than thirty years after a date on which the information is generated or a date on which such information came under the control of the information holder.

Obligation to
publish certain
information

9.-(1) Every information holder shall, not later than thirty six months after the commencement of this Act, issue a notice to the public in the *Gazette*, website or news paper of wide circulation containing the following-

- (a) a description of its structure, functions and responsibilities including those of any of its statutory officers or advisory committee;
- (b) statutory officers or advisory committees; and
- (c) a general description of categories of information held by such information holder.

(2) The notice shall include particulars of the officer to whom requests for official information or particular classes of information shall be sent.

(3) In complying with the provisions of this section, the information holder shall not provide exempt information under this Act.

(4) Failure by the information holder to provide information under subsection (1) shall not prejudicially affect the right of access to information under the control of such information holder.

(5) The information holder-

(a) shall, from time to time, inform the public on any substantial changes to the information required to be published under subsection (1); and

(b) may, at any time, inform the public on any other information, in addition to information required to be published under subsection (1), relating to its functions.

(b) Procedure for access to information

Application for
access to
information

10.-(1) A request for access to information shall be made in a prescribed form and addressed to the information holder.

(2) The request for information shall provide sufficient details to enable the information holder to identify the information and shall include name and address of the person requesting the information.

(3) For purposes of subsection (1), a request shall be treated as made in writing where the text of the request-

(a) is delivered by hand, post or transmitted by electronic means;

(b) is received in legible form in the manner prescribed in the regulations; and

(c) is capable of being used for subsequent reference.

(4) A person who, because of illiteracy or disability, is unable to make a written application for access to information, may make a request orally, and the

officer to whom the request is made shall reduce the request into writing in the prescribed form and provide a copy of the written request to the person requesting.

Notice where
access to
information is
requested

11.-(1) Where access to information is requested, the information holder to which the request is made shall, as soon as practicable but not exceeding thirty days after the request is received-

- (a) give written notice to the person who made the request as to whether the information exists and, if it does, whether access to the information or a part thereof shall be given; and
- (b) if access is to be given, promptly give the person requesting access to the information or a part thereof in the manner prescribed under this Act.

(2) Where the information holder requires further information in order to identify and locate the information requested, it shall, within fourteen days of receiving the of request for information, notify the person requesting of the need for such further information and in that case, the period of fourteen days shall be reckoned from the date on which such further information is received.

(3) Where the information holder is satisfied that the information requested-

- (a) does not exist; or
- (b) has already been published and it is in public domain,

the information holder shall inform the person who made the request to that effect.

Access to
documents
other than
under this Act

12. Nothing in this Act shall prevent the information holder from publishing or giving access to documents, otherwise than as required by this Act, where it has the discretion to do so or such information holder is required by law to do so.

Transfer of
request

13.-(1) Where the information holder to which a request for information is made considers that another information holder is the appropriate holder of the information requested, the information holder to which the request was initially made may, as soon as practicable but not exceeding seven days after the request is received, transfer the request to such other information holder and give a written notice of the transfer to the person who made the request.

(2) For the purpose of subsection (1), the period specified in section 11 shall apply to the information holder to which the request is transferred with effect from the date on which the request is transferred.

Refusal of
request

14. Where the information holder refuses to give access to information requested, either in whole or in part, such information holder shall, in writing, notify the person requesting the information of the refusal and shall, in the notification:

- (a) set out reasons for the refusal and all material issues relating to the decision, including the specific provision of this Act and the factors taken into consideration in relation to public interest;
- (b) inform the person who made the request of the availability of a review in accordance to section 19 within which an application for review may be made;
- (c) where the decision is to the effect that the information does not exist, state that a thorough and diligent search was made to locate the information.

Notice to
third parties

15.-(1) An information holder dealing with a request for access to information shall take all reasonable steps to notify any third party to whom or which any record containing the information requested relates.

(2) The information holder acting under subsection (1) shall, within three days after the request is received, notify the third party.

(3) Notification under subsection (2) shall:

- (a) state that the information holder is in receipt of the request for access to information;
- (b) describe the content of the request;
- (c) furnish the particulars of the person requesting information to the satisfaction of the information holder; and
- (d) inform the third party of the obligation to provide information.

(4) The provisions of this Act relating to the request for access to information shall apply *mutatis mutandis* to the third party who received the notice under subsection (1).

Deferral of access

16.-(1) The information holder may defer the provision of access to information until the happening of a particular event, including the taking of some action required by law or some administrative action, or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Where the provision of access to information is deferred, the information holder shall, in writing, inform the person requesting information the reasons for such decision and the period of which the deferment shall operate.

Means of accessing information

17.-(1) Access to information may be provided to a person in any of the following forms:

- (a) provision of a copy of the information;
- (b) delivery of a copy of the information in electronic form;
- (c) in the case of an information that is an article or another thing from which sounds or visual images are capable of being reproduced, by making arrangements for the person to hear or view sounds or visual images;

- (d) in the case of an information by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in shorthand writing or codified, by provision of a written transcript of the words recorded or contained in the information;
- (e) in the case of a person with a sensory disability, by provision of a record in a format that allows the person to read or listen to the record of the information.

(2) Where a person who made the request has requested access in a particular form, the information holder may issue the information in a form he deems proper.

(3) Where the form of access requested:

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- (a) contravenes the provisions of the National Security Act;
- (b) interferes unreasonably with the operations of the information holder;
- (c) is detrimental to the preservation of the information or having regard to the physical nature of the information it is not appropriate;
- (d) would involve inordinate huge cost or time to the information holder; or
- (e) would involve an infringement of a copyright other than a copyright owned by the Government subsisting in the information, access in that form may be refused and given in another form.

Use of the
information

18.-(1) Subject to the provisions of section 6, a person who receives the information from the information holder shall not distort such information.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and shall, upon conviction, be liable to imprisonment for a term not less than two years but not exceeding five years.

(c) *Review of decision by information holders*

Review of
decision

19.-(1) A person who, having made a request for information, is aggrieved by a decision of the information holder in relation to the request, may apply to the head of institution for review of the decision in respect of any of the following:

- (a) refusal of access by the information holder to the information requested;
- (b) payment of fees or charges which the person considers unreasonable;
- (c) failure of the information holder to comply with time limits set out under this Act;
- (d) any other matter relating to a request for or access to information made under this Act.

(2) The head of institution shall, within thirty days after receiving an application made under subsection (1), determine such application in accordance with its own laid down procedures.

(3) Any person aggrieved by the decision of the head of institution made under subsection (2) may, within thirty days from the date of receiving such decision, appeal to the Minister whose decision shall be final.

(4) Notwithstanding subsection (3), where the requested information is within the authority of an information holder who is under the Minister, the Minister shall cease to be the appellate body and any aggrieved person may apply to the High Court for review.

PART IV
GENERAL PROVISIONS

Regulations

20. The Minister shall make regulations for the better carrying out of the provisions of this Act.

Fees

21. The information holder to which a request for access to information has been made may charge fees necessary for covering actual costs for production of the requested information.

Offence of alteration, defacement, blocking, erasure.

22. A person who alters, defaces, blocks, erases, destroys or conceals any information held by the information holder, with the intention of preventing the disclosure by such information holder, commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding twelve months or both.

Protection of a person who makes disclosure

23.-(1) A person in the service or employment of any information holder shall not be subject to any legal, administrative or employment related sanctions for releasing information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment, as long as that person acted in good faith and in the reasonable belief that the information was substantially true.

(2) For purposes of subsection (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or maladministration regarding the information holder.

Protection of officers

24. Officers in the service or employment of any information holder shall not be subject to any civil or criminal liability for any act done or omitted to be done in good faith in the exercise or performance of any power or duty under this Act.

Passed by the National Assembly on the 7th September, 2016.

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Clerk of the National Assembly