

### 1. What is access to information?

The right of access to information is provided for under Article 35 of the Constitution of Kenya, 2010.

The Article states that:

- (1) Every citizen has the right of access to -
  - (a) Information held by the State; and
  - (b) Information held by another person and required for the exercise or protection of any right or fundamental freedom.
- (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
- (3) The State shall publish and publicise any important information affecting the nation.

The right to information has three elements as follows:

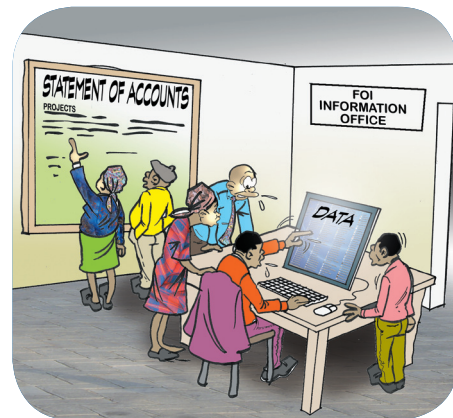
- **The right to access information** – a citizen has the right to request for information and get it. The citizen can request for information held by the State, or by a private entity, as long as he/ she requires to realise another right.
- **The right to correction or deletion of untrue or misleading information that affects them** – a citizen who finds information about them that is not true, or which is misleading, has a right to have it

removed from the place where it is published.

- **Mandatory duty on the State** – according to the Constitution, the government must publish and publicise any important information affecting the nation. This means that in some cases, the citizen does not have to look for the information, because the government is expected to make it public without being asked to do so.

### 2. Who can exercise the right to access to information?

Access to information is a right enjoyed by every



citizen of the Republic of Kenya. This means that everyone who is a Kenyan citizen has the right to enjoy access to information as explained above, and that foreign citizens cannot enjoy this right in Kenya. Additionally, the Courts have ruled that this right can only be exercised by individuals, and not by companies, institutions or corporations.

### 3. Can I request for information from a private body?

Yes. You have the right to access information from both government and private entities. However, information sought from private entities must be necessary for the exercise or protection of another right or fundamental freedom.

### 4. Is there a specific office that deals with access to information?

Presently, there is no specific body that deals with access to information but all public and private bodies are required to observe the spirit of Article 35 of the Constitution and enhance access to information to the citizens.

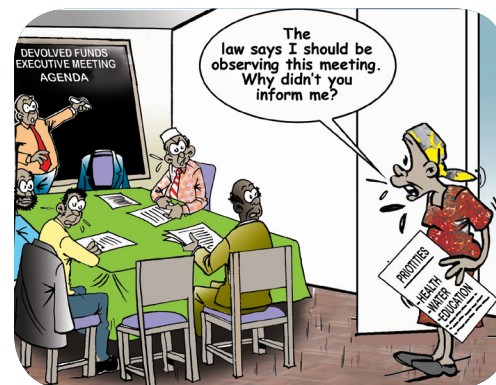
The proposed law on Access to Information gives the Commission on Administrative Justice (Office of the Ombudsman) the responsibility of enforcing access to information principles but this remains a proposal until the bill is passed into law.

### 5. What is the law governing access to information?

Apart from the Constitution, no law has been enacted so far concerning access to information. However, there is a draft access to information Bill has been developed. If it is passed by The National Assembly and assented to by the President, then it will be possible to implement and enforce the right to information.

There are other Acts of Parliament that govern how public information should be handled. These Acts do not give frameworks for the enjoyment of the right, and some restrict access to information. They include:

- Disposal of Records Act of 1962;
- Public Archives and Documentation Service Act of 1966; and
- The Official Secrets Act of 1970



### 6. Is the right of access to information exercised differently at county level and at national level?

The right to access to information is meant to be enjoyed by all Kenyans; therefore every county government must ensure residents of the county have freedom of information. However, in recognition of different circumstances in different counties, each county can make its own legislation on how access to information will be implemented provided they meet the basic principles of the right to information.

### 7. Why is access to information included in the Constitution?

It has been included in the Constitution in line with the national values and principles of governance as outlined under Article 10. They include: democracy, participation of the people, good governance, integrity, transparency and accountability. If the people do not have access to information, then the national values and principles of governance will be difficult to realise. Citizens require the information to hold their duty bearers accountable.

### 8. Why is access to information important?

Knowledge is power. Ensuring disclosure of – and access to – information can empower people and institutions to prevent and fight corruption. It is also important to have all the information necessary to exercise your other rights. For example, by having information on how resources allocated to key services such as education, health and water have been used by the government, you will be able to monitor how much money has been disbursed, ascertain that the funds benefit the general public rather than vested interests, and demand action against public officials who have misused such resources.

### 9. What kind of information can I ask for under the right to information?

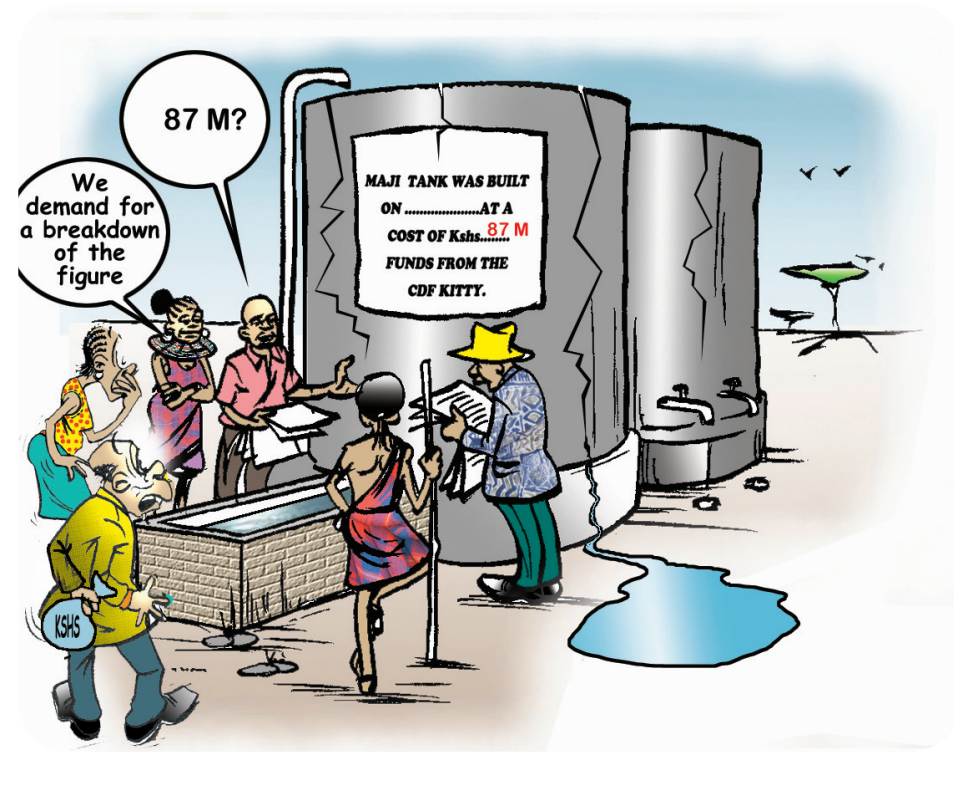
Article 35 of the Constitution says that every citizen has the right to access information 'required for the exercise or protection of any right or fundamental freedom'. So you have the right to access any information that affects you directly, and information that you need to exercise another right. For example, you have the right to conduct a search at the lands office concerning a piece of land that you want to buy.

### 10. What are some of the limitations to the right to information?

A person cannot exercise this right if it involves private information about another person that would in essence deny the fulfilment of his/her other rights. For example, the medical records of another person. Also, the State can withhold information on national security which if disclosed could cause harm to the public.

### 11. How can I exercise my right to access to information?

You can request for information from the particular body which holds the information that you need. For example, if you need to get the details for a particular



piece of land, you can conduct a search at your nearest lands office. Also, if you need to get your examination results, you can ask the institution where you sat the exam.

Each institution should have procedures that you can follow to acquire the information you need.

#### 12. What should happen when I request for information?

Once you lodge a request, the institution will consider your request and follow its rules of procedure, either to give you the information requested, or to deny it. If you are denied information, the institution or individual representing it should give you reasons why that information cannot be granted.

#### 13. Is there a time limit for an access to information request to be responded to?

There is no general time limit, but different offices have different time limits depending on their guidelines. Also, within specific offices, there can be different time limits for different types of information.

#### 14. When can an access to information requested be denied?

You can be denied access to information for the following reasons:

- If it touches on matters of national security;
- If it is the private or personal information of another person;
- If the information is not required for the protection of another right.

#### 15. Is it right for a public institution to charge a fee for accessing information?

Public institutions are allowed to charge fees for certain types of information to cover any printing or reproduction costs incurred. However, the fee charged should be reasonable and not inhibit access to information.

#### 16. Can I appeal against a decision denying access to information?

Yes. If you are not satisfied by the decision of a public or private institution to refuse to provide information, then you can appeal to the institution or file a

constitutional case in court for violation of your right to access to information.

#### 17. What can I do if my right of access to information is violated?

Because it is a constitutional right, a person whose right to information is violated can go to the Constitutional Division of the High Court for the enforcement of the right.

One can also file a complaint with the Commission on Administrative Justice (CAJ) which reviews decisions by public institutions and decides whether the decision reached was fair and lawful. You can also complain to the Kenya National Commission on Human Rights (KNCHR), which works for the protection of human rights.



Every effort has been made to verify the accuracy of the information contained in this brochure. All information was believed to be correct as of October 2014. Transparency International Kenya does not accept responsibility for the consequences of the use of the report's contents for other purposes or in other contexts.

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FAQs

## on the right to access information

