

THE UNITED REPUBLIC OF TANZANIA

BILL SUPPLEMENT

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THE ACCESS TO INFORMATION ACT, 2015

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NOTICE

This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dar es Salaam,
3rd February, 2015

OMBENI Y. SEFUE
Secretary to the Cabinet

A BILL

for

An Act to provide for access to information; to define the scope of information 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, 2015 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 due to its relation to the protection of human rights, environment, public

health and safety, exposure of corruption or illegal actions.

Interpretation

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

“Constitution” means the Constitution of the United Republic;

“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 8;

“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 holders 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) Subject to the provisions of subsection (1), an information holder shall:
- (a) make available to the public or, on request, to any person information which is under its control; and
 - (b) make available to the public or, on request, to any person access to public meetings or to places where information may be obtained.
- (3) For purposes of this section, “person” means a citizen of the United Republic.
- (4) Nothing in this Act shall limit or otherwise restrict any other legislative requirement for a public authority to disclose information.

Exempt
information

- 6.**-(1) Information requested under this Act shall be deemed to be exempt from disclosure if the information holder who control of the information-
- (a) claims an exemption under subsection (2) for all or for any part of the information; and
 - (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 national security 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 enforcements;
 - (d) facilitate or encourage the Commision 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 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; or
- (j) significantly undermine the operations of Tanzania Broadcasting Corporation.

(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 (d) and (e) 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 discloses exempt information withheld by the public authority in contravention of this Act, commits an offence and

shall, on conviction, be liable to imprisonment for a term not less than fifteen years.

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.

Obligation to
keep information

8.-(1) Every information holder shall maintain complete records of information that are 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, provide to the public the following -

- (a) a description of its structure, functions, and responsibilities including those of any of its statutory officers or advisory committees;
- (b) a general description of categories of information held by such information holder; and
- (c) a description of all manuals, and similar types of documents in or under this Act.

(2) Subject to the provisions of subsection (1), the statement 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 writing 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, postal, or transmitted by electronic means;
- (b) is received in legible form; and
- (c) is capable of being used for subsequent reference.

(4) A person requesting 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, within 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 notify the person requesting of the need for such further information within fourteen days of receiving the request for 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 does not exist, such 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 has a greater interest in the information requested, the information holder to which the request was initially made may, within 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.-(1) 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 the public interest;
- (b) inform the person who made the request of the availability of a review by the Commission for Human Rights and Good Governance and the period 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.

(2) Where the information holder, without reasonable cause, fails to give access to information requested within time limits set out in this Act, the information holder shall be deemed to have refused to give access to the information.

Notice to third parties

15.-(1) The information holder in 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 notify the third party as soon as reasonably possible and, in any event, within eight days after the request is received.

(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 the person requesting information; 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 for 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) inspection of the information;
- (b) provision of a copy of the information;
- (c) delivery of a copy of the information in electronic form;
- (d) 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;
- (e) 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;

(f) 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 makes a request has requested access in a particular form, access shall be given in that form.

(3) Where the form of access requested:

(a) contravenes the provisions of the National Security Act;

(b) interferes unreasonably with the operations of the information holder; or

(c) is detrimental to the preservation of the information or having regard to the physical nature of the information it is not appropriate; or

(d) 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.

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Use of the
information

18.-(1) Information obtained by a person requesting from the information holder shall not be for public use.

(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 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 Commission for Human Rights and Good Governance 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 Commission for Human Rights and Good Governance shall, within thirty days of receiving an application made under subsection (1), determine such application for review in accordance with its own laid down procedures.

(3) Any party aggrieved by the decision of the Commission under subsection (2) may, within thirty days from the date of such decision, apply for judicial 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 from which a request for access to information has been made may charge a prescribed fee for the provision of the 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 to 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.

OBJECTS AND REASONS

This Bill proposes for enactment of the Access to Information Act, 2015 with a view to enhancing access to information and promoting transparency and accountability of public authorities and private bodies that are in possession of information which is of significant public interest. Recognizing that access to information is a right bestowed on the citizens of the United Republic of Tanzania, the Bill intends to promote proactive publication, dissemination and access to information by the public in furtherance of that right.

The Bill is divided into Four Parts:

Part I of the Bill contains preliminary provisions which provides for a short title, application and interpretation of words used in the Bill.

Part II of the Bill contains provisions on the right of access to information. Clause 5 requires information holders to provide information to the person requesting such information while Clause 6 makes restrictions for disclosure of certain of information with the intention, among other things, of protecting safety of life of any person or promoting national security of the United Republic.

Part III contains provisions on the access to information. Clause 7 provides for appointment of information officers who shall be liaison officers for information holders on matters relating to dissemination of information. Apart from that, Clause 8 requires information holders to maintain and keep record of information for a period of not less than thirty years from the date on which such information was recorded. Clause 9 intends to impose obligation to every information holder to publish information to the public for easy access of such information by the public.

Moreover, Clause 13 provides for the transfer of an application for information from one information holder to another when it becomes apparent that the information requested for is not in the domain of the information holder to which the application was initially made but is in the possession of another

authority. Also, Clause 14 provides for procedure for information holder to refuse to give access to information requested either in whole or in part and inform the applicant the reasons for such refusal. Furthermore, Clause 19 provides for review of decision in respect of refusal of access to information when a person is aggrieved with the decision of an information holder in relation to request made to that information holder.

Part IV provides for general provisions that include powers of the Minister to make regulations for the better carrying out the provisions of the Bill and offences that may be committed under the proposed legislation. Besides, this Part provides for the fees that will be charged by information holders upon submission of the request for information.

Dar es Salaam,
2nd February, 2015

ASHA-ROSE M. MIGIRO
Minister for Constitutional and Legal Affairs

SHERIA YA UPATIKANAJI WA HABARI, 2015

MPANGILIO WA VIFUNGU

Kifungu *Jina*

SEHEMU YA KWANZA
MASHARTI YA AWALI

1. Jina na tarehe ya kuanza kutumika
2. Matumizi
3. Tafsiri
4. Madhumuni ya Sheria

SEHEMU YA PILI
HAKI YA KUPEWA TAARIFA

5. Haki ya taarifa
6. Taarifa zilizozuiliwa

SEHEMU YA TATU
UPATIKANAJI WA TAARIFA

(a) Wajibu wa kutoa taarifa

7. Uteuzi wa maafisa habari
8. Wajibu wa kuweka kumbukumbu
9. Wajibu wa kutangaza taarifa fulani

(b) Utaratibu wa kupata taarifa

10. Maombi ya kupata taarifa
11. Indhari pale ombi la kupewa taarifa linapowasilishwa
12. Kupata nyaraka nje ya utaratibu wa Sheria hii
13. Kuhamisha maombi
14. Kukataa ombi
15. Taarifa kwa mtu wa tatu

16. Kuahirisha utoaji wa taarifa
17. Namna ya kupata taarifa
18. Matumizi ya taarifa

(c) Upitiaji wa maamuzi kwa mwenye taarifa

19. Upitiaji wa maamuzi kwa wenye taarifa

SEHEMU YA NNE
MASHARTI YA JUMLA

20. Kanuni
21. Ada
22. Kosa la kubadilisha, kuharibu, kuzuia au kufuta taarifa
23. Kinga kwa mtoa taarifa
24. Kinga kwa maafisa

TAARIFA

Muswada huu utakaowasilishwa Bungeni umechapishwa pamoja na madhumuni na sababu zake kwa ajili ya kutoa taarifa kwa umma.

Dar es Salaam,
3 Februari, 2015

OMBENI Y. SEFUE
Katibu wa Baraza la Mawaziri

MUSWADA

wa

Sheria ya haki ya kupata habari, kuainisha wigo wa taarifa ambazo umma unayo haki ya kupewa; kuhamasisha uwazi na uwajibikaji wa wenye taarifa; na kuweka masharti mengine yanayohusiana nayo.

IMETUNGWA na Bunge la Jamhuri la Muungano wa Tanzania.

**SEHEMU YA KWANZA
MASHARTI YA AWALI**

Jina na tarehe ya
kuanza kutumika

1. Sheria hii itaitwa Sheria ya Upatikanaji wa Habari, 2015 na itaanza kutumika tarehe ambayo Waziri, kupitia Gazeti la Serikali, atatangaza.

Matumizi

2.-(1) Sheria hii itatumika Tanzania Bara.
(2) Bila ya kuathiri masharti ya kifungu kidogo cha (1), Sheria hii itatumika kwa:
(a) taasisi za umma;
(b) taasisi binafsi zilizosajiliwa chini ya sheria yoyote ya Bunge ambayo:
(i) inatumia fedha za umma; au
(ii) zina taarifa ambazo ni muhimu kwa maslahi ya umma kutokana na uhusiano wake katika

kulinda haki za binadamu, mazingira, afya kwa umma na usalama, uibuaji wa masuala ya rushwa au vitendo ambavyo ni kinyume na sheria.

Tafsiri

3. Katika Sheria hii, isipokuwa kama muktadha unahitaji vinginevyo:

“Katiba” maana yake Katiba ya Jamhuri ya Muungano;

“sahihisha” kuhusiana na taarifa binafsi maana yake kubadilisha taarifa kwa kusahihisha, kufuta au kuongeza;

“taarifa zilizozuiliwa” maana yake ni taarifa au nyaraka yenye taarifa iliyozuiliwa na mamlaka ya umma kwa mujibu wa kifungu cha 6;

“taarifa” maana yake kitu chochote kinachowasilisha taarifa dhahiri, maoni, data au jambo jingine lolote kuhusu usimamizi, utawala, utendaji au uamuzi wa mamlaka au mtu mwenye taarifa bila kujali aina, hadhi au sifa zake;

“afisa habari” maana yake ni afisa wa mwenye taarifa aliyeteuliwa katika nafasi hiyo chini ya kifungu cha 7;

“mwenye taarifa” maana yake ni mamlaka ya umma au mamlaka binafsi inayorejewa katika kifungu cha 7;

“Waziri” maana yake ni Waziri mwenye dhamana na masuala ya sheria;

“taarifa binafsi” maana yake ni taarifa kuhusu mtu, utambuzi wa mtu ama wa moja kwa moja au vinginevyo kwa jina, nyaraka ya utambulisho au kupitia anwani ya makazi au kwa sifa au tabia yake nyingine lakini haitajumuisha taarifa inayohusu kazi za umma za mwajiriwa wa mamlaka ya umma au mtu mwingine yeyote anayefanya kazi ya mamlaka ya umma;

“mamlaka ya umma” maana yake ni mamlaka yoyote iliyoanzishwa chini ya Katiba, Sheria ya Bunge, inayotambuliwa chini ya sheria yoyote ya Bunge kama ofisi ya umma au inakuwa ni sehemu ya ngazi yoyote ya Serikali;

“kumbukumbu” inajumuisha taarifa yoyote iliyorekodiwa bila kujali aina yake au namna ilivyotengenezwa, pokewa na kutunzwa na mtu yeyote mwenye taarifa katika kutekeleza wajibu wake kisheria au katika kutekeleza

kazi zake na kutoa ushahidi wa utekelezaji wa wajibu huo au kazi hizo.

Madhumuni ya Sheria

- 4. Madhumuni ya Sheria hii ni-**
- (a) kuwezesha utekelezaji wa haki ya kupata taarifa kwa raia kama ilivyoainishwa na Katiba;
 - (b) kuwataka wenye taarifa kutoa taarifa zozote zilizopo katika kwa himaya yao kwa umma kwa mujibu wa Sheria hii;
 - (c) kutengeneza mfumo utakaosaidia upatikanaji wa taarifa zilizopo chini ya himaya ya wenye taarifa kwa kuzingatia haki nyingine zinazolindwa na Katiba au sheria nyingine yoyote ya Bunge;
 - (d) kuhamasisha utaratibu wa utoaji wa taarifa wa mara kwa mara kwa wenye taarifa kwa kuzingatia misingi ya uwajibikaji, uwazi na ushirikishwaji wa umma; na
 - (e) kuweka kinga kwa watu wanaotoa kwa nia njema taarifa zenye maslahi kwa umma.

**SEHEMU YA PILI
HAKI YA KUPEWA TAARIFA**

Haki ya taarifa

- 5.-(1)** Kila mtu atakuwa na haki ya kupata taarifa zilizopo chini ya mamlaka ya wenye taarifa.
- (2) Kwa kuzingatia masharti ya kifungu kidogo cha (1), kila mwenye taarifa:
- (a) atatoa kwa umma, au atakapoombwa, kwa mtu yeyote taarifa ambayo iko chini ya mamlaka yake; na
 - (b) ataruhusu umma au, atakapoombwa, mtu yeyote kuingia katika mkutano wa umma au katika maeneo ambayo taarifa inaweza kupatikana.
- (3) Kwa madhumuni ya kifungu hizi, “mtu” maana yake ni raia wa Jamhuri ya Muungano.
- (4) Hakuna kitu chochote katika Sheria hii kitakachozuia au kwa namna nyingine yoyote kuwekea kikwazo hatua yoyote ya kutunga sheria itakayoitaka mamlaka ya umma kutoa taarifa.

Taarifa
zilizoziuliwa

- 6.-(1)** Taarifa iliyoombwa chini ya Sheria hii, itachukuliwa kuwa imezuiwa kutolewa, ikiwa mamlaka ya umma ambayo inasimamia taarifa hiyo-
- (a) inadai kuzuiwa kwa taarifa yote au sehemu yoyote ya taarifa hiyo chini ya kifungu kidogo cha (2);
 - (b) kuamua kwa mujibu wa Sheria hii, kwamba kutolewa kwake si stahiki kwa maslahi ya umma.
- (2) Taarifa iliyoziuliwa inaweza kuzuiwa kama utolewaji wa taarifa hiyo unaweza kupelekea-
- (a) kudhoofisha usalama wa Jamhuri ya Muungano;
 - (b) kukwamisha mchakato wa sheria au unahatarisha usalama wa maisha ya mtu yeyote;
 - (c) kuingilia upelelezi unaofanywa na vyombo vya uchunguzi;
 - (d) kuwezesha au kuhamasisha kufanya kosa;
 - (e) kuingilia faragha ya mtu bila idhini, mbali na muombaji au mtu ambaye kwa niaba yake ombi limefanywa;
 - (f) kutishia maslahi ya kibiashara, ikijumuisha haki miliki ya mtu huyo mwenye taarifa au mtu wa tatu ambaye taarifa zimepatikana kutoka kwake;
 - (g) kuzuia au kusababisha madhara makubwa kwa Serikali katika kusimamia uchumi;
 - (h) kwa uzito mkubwa kudhoofisha uwezo wa mwenye taarifa wa kutoa angalizo stahiki kwa tatizo ambalo hakuna maamuzi ya mwisho ambayo yamechukuliwa na ambalo bado linahitaji kuzingatiwa kwa kutolewa uamuzi; au
 - (i) inaathiri nafasi ya mwenye taarifa katika hali halisi au inayoweza kutokea katika taratibu za kisheria au kuathiri hadhi ya taaluma.
- (3) Kwa madhumuni ya aya (a) ya kifungu kidogo cha (2), taarifa inayohusiana na usalama wa taifa inajumuisha-
- (a) mikakati ya kijeshi, mafundisho, uwezo, nafasi au usambazaji;
 - (b) taarifa ya serikali ya kigeni inayohusisha usalama wa taifa;
 - (c) kazi za kijasusi, vyanzo, uwezo, utaratibu au usiri;
 - (d) uhusiano wa mambo ya nje au shughuli za mambo ya nje;

(e) masuala ya kisayansi, kiteknologia au kiuchumi yanayohusiana na usalama wa taifa;

(f) udhaifu au uwezo wa mifumo, miundombinu, miradi, mipango au kulinda huduma zinazohusiana na usalama wa taifa.

(4) Aya za (d) na (e) ya kifungu kidogo cha (2), hazitatumika iwapo ombi la taarifa linahusu matokeo yoyote ya bidhaa au jaribio la kimazingira, na taarifa husika inabainisha hatari kubwa ya usalama kwa umma au mazingira.

(5) Isipokuwa vinginevyo imethibitishwa na mwenye taarifa, taarifa itachukuliwa kwamba haijazuiliwa iwapo taarifa hiyo imeshikiliwa kwa kipindi kinachozidi miaka thelathini.

(6) Mtu yeyote anayetoa taarifa iliyozuiliwa chini ya mamlaka ya umma kwa kukiuka Sheria hii, anatenda kosa, na endapo atatiwa hatiani atatumikia kifungo kisichopungua miaka kumi na mitano.

SEHEMU YA TATU UPATIKANAJI WA TAARIFA

(a) Wajibu wa kutoa taarifa

Uteuzi wa maafisa habari

7.-(1) Kila mwenye taarifa atateua afisa mmoja au zaidi kama maafisa habari.

(2) Afisa habari atahusika na maombi ya taarifa na kutoa msaada kwa mtu anayeomba taarifa hiyo.

Wajibu wa kuweka kumbukumbu

8.-(1) Kila mwenye taarifa atatumiza kumbukumbu za taarifa zilizokamilika ambazo ziko chini ya usimamizi wa mwenye taarifa hiyo.

(2) Kwa madhumuni ya kifungu kidogo (1), mwenye taarifa atatumiza kila kumbukumbu kwa muda usiopungua miaka thelathini baada ya tarehe ambapo taarifa ilipatikana au tarehe ambayo taarifa ilikuja chini ya usimamizi wa mwenye taarifa.

Wajibu wa kutangaza taarifa fulani

9.-(1) Kila mwenye taarifa, si zaidi ya miezi thelathini na sita baada ya kuanza kutumika kwa sheria hii, atatoa kwa umma-

(a) maelezo juu ya aina, kazi na majukumu ikijumuisha majukumu yoyote ya kisheria ya maafisa au kamati

- za ushauri;
- (b) maelezo ya jumla ya aina za taarifa zinazopatikana kwa mwenye taarifa huyo;
- (c) maelezo ya vijarida vyote na aina nyingine za nyaraka chini ya Sheria hii.
- (2) Kwa kuzingatia masharti ya kifungu kidogo cha (1), maelezo hayo yatajumuisha taarifa za afisa ambaye taarifa rasmi au aina maalum za taarifa zinazoombwa zitapelekwa.
- (3) Katika kutekeleza masharti ya kifungu hiki, mwenye taarifa hatatoa taarifa zilizozuiliwa chini ya Sheria hii.
- (4) Kushindwa kwa mwenye taarifa kutoa taarifa chini ya kifungu kidogo cha (1) haitaathiri haki ya mtu kupata taarifa ambazo zipo chini ya mamlaka ya mwenye taarifa huyo.
- (5) Mwenye taarifa-
 - (a) atatangaza mara kwa mara mabadiliko yoyote ya msingi ya taarifa yanayotakiwa kutangazwa chini ya kifungu kidogo cha (1); na
 - (b) anaweza, wakati wowote, kuutaarifu umma kwa taarifa yoyote, mbali ya taarifa inayotakiwa kutangazwa chini ya kifungu kidogo cha (1), kuhusiana na kazi zake.

(b) Utaratibu wa kupata taarifa

Maombi ya kupata taarifa

- 10.**-(1) Ombi la kupata taarifa litafanywa kimaandishi na kupelekwa kwa mwenye taarifa.
- (2) Ombi la taarifa litatoa maelezo ya kutosha kumwezesha mwenye taarifa kuitambua taarifa inayoombwa na itajumuisha jina na anwani ya mtu anayeomba taarifa.
 - (3) Kwa madhumuni ya kifungu kidogo cha (1), ombi litachukuliwa kuwa limefanywa kimaandishi, iwapo karatasi ya ombi-
 - (a) imepokelewa kwa mkono, kwa njia ya posta au kuwasilishwa kwa njia ya elektroniki;
 - (b) imepokelewa katika utaratibu maalum; na
 - (c) inaweza kutumika kama rejea zinazofuata.
 - (4) Mtu anayehitaji taarifa ambaye, kwa sababu ya kutokujua kusoma au ulemavu anashindwa kutuma maombi ya kupata taarifa, anaweza kufanya maombi kwa mdomo na afisa ambaye ombi limefanywa kwake, ataliweka ombi hilo katika

maandishi katika fomu maalum na kutoa nakala ya maandishi kwa muombaji.

Indhari pale ombi la kupewa taarifa linapowasilishwa

11.-(1) Endapo mtu anaomba kupata taarifa, mwenye taarifa ambaye ombi limefanywa kwake atatakiwa, ndani ya siku thelathini baada ya kupokea ombi-

(a) kutoa taarifa ya kimaandishi kwa mtu aliyetuma ombi, iwapo kama taarifa ipo, na kama ipo, iwapo anaweza kuipata taarifa au sehemu ya taarifa hiyo; na

(b) iwapo upatikanaji wa taarifa utaruhusiwa, mara moja kumpatia mtu aliyetuma ombi, taarifa au sehemu ya taarifa kwa namna ambavyo imeainishwa chini ya Sheria hii.

(2) Endapo mwenye taarifa anahitaji taarifa nyingine kwa ajili ya kutambua na kuelekeza taarifa iliyoombwa, atamtaarifu muombaji juu ya hitaji hilo la taarifa nyingine ndani ya siku kumi na nne za kupokea ombi la taarifa na, kwa jinsi hiyo kipindi cha siku kumi na nne kitachukuliwa kuwa kimeanza siku ambayo taarifa nyingine imepokelewa.

(3) Endapo mwenye taarifa ataridhika kwamba taarifa inayohitajiwa haipo, mwenye taarifa huyo atamtaarifu mtu huyo ambaye amefanya maombi hayo kuwa taarifa hiyo haipo.

Kupata nyaraka nje ya utaratibu wa Sheria hii

12. Hakuna katika Sheria hii kitakachozuia mwenye taarifa kuchapisha au kuruhusu nyaraka kupatikana vinginevyo ya inavyohitajiwa na Sheria hii, iwapo ina hiyari ya kufanya hivyo au mwenye taarifa huyo anatakiwa kufanya hivyo na sheria.

Kuhamisha maombi

13.-(1) Endapo mwenye taarifa ambaye ombi la taarifa limepelekwa kwake anaona kuwa mwenye taarifa mwingine ana maslahi makubwa kwenye taarifa iliyoombwa, mwenye taarifa ambaye ombi lilifanywa mwanzo, anaweza, ndani ya siku saba baada ya ombi kupokelewa, kuhamisha ombi kwa mwenye taarifa mwingine na kutoa taarifa ya kimaandishi ya kuhamisha ombi kwa mtu aliyefanya ombi.

(2) Kwa madhumuni ya kifungu kidogo cha (1), muda uliotajwa katika kifungu cha 11 utatumika kwa mwenye taarifa ambaye ombi limehamishwa kwake kuanzia tarehe ambayo

ombi limehamishiwa.

Kukataa ombi

14.-(1) Endapo mwenye taarifa anakataa kutoa taarifa iliyoombwa, iwe ni taarifa yote au sehemu ya taarifa, mwenye taarifa huyo kimaandishi atamtaarifu mtu aliyeomba taarifa juu ya kukataa na katika taarifa hiyo-

- (a) atatoa sababu ya kukataa na masuala yote yanayohusu uamuzi, ikiwemo masharti husika ya Sheria hii na sababu zilizozingatiwa katika kulinda maslahi ya umma;
- (b) atamtaarifu mtu aliyetuma maombi juu ya uwezekano wa kufanya mapitio kwenye Tume ya Haki za Binadamu na Utawala Bora na kipindi ambacho ombi la kupitia upya linaweza kufanywa.

(2) Endapo mwenye taarifa bila ya sababu za msingi, anashindwa kutoa taarifa iliyoombwa ndani ya muda uliowekwa na Sheria hii, mwenye taarifa huyo atachukuliwa kuwa amekataa kutoa taarifa hiyo.

Taarifa kwa mtu wa tatu

15.-(1) Katika kushughulikia ombi la kupata taarifa, mwenye taarifa atachukua hatua zote za msingi za kumuarifu mtu wa tatu ambaye kumbukumbu yoyote ya taarifa iliyoombwa inamhusu.

(2) Mwenye taarifa anayehusika katika kifungu kidogo cha (1), atamtaarifu mtu wa tatu haraka iwezekanavyo na, katika hali yoyote ile atafanya hivyo ndani ya siku nane baada ya ombi kupokelewa.

(3) Taarifa katika kifungu kidogo cha (2)-

- (a) itaelezea kwamba mwenye taarifa amepokea ombi hilo;
- (b) ataelekeza kilichomo katika ombi hilo;
- (c) atatoa taarifa za mtu aliyeleta ombi; na
- (d) kumtaarifu mtu wa tatu wajibu wake wa kutoa taarifa.

Kuahirisha utoaji wa taarifa

16.-(1) Mwenye taarifa ambaye amepata ombi anaweza kuahirisha kutoa taarifa husika mpaka linapotokea tukio maalum likiwemo kuchukua hatua za kisheria au kiutawala, au mpaka kuisha kwa muda uliyowekwa, iwapo ni muhimu kufanya hivyo kwa maslahi ya umma au kwa kuzingatia

taratibu za kawaida na sahihi za kiutawala.

(2) Endapo masharti ya upatikanaji wa taarifa yameahirishwa, mwenye taarifa, atamtaarifu mwombaji sababu ya uamuzi huo na muda ambao uhairishwaji huo umefanywa.

Namna ya kupata taarifa

17.-(1) Upatikanaji wa taarifa unaweza kufanywa kwa mtu katika moja ya njia zifuatazo:

- (a) fursa ya kukagua taarifa;
- (b) utoaji wa nakala ya taarifa;
- (c) utoaji wa nakala ya taarifa kwa njia ya eletroniki;
- (d) iwapo taarifa ni kifaa au kitu kingine ambacho ni sauti au muonekano wenye uwezo wa kuonyeshwa, kuweka utaratibu kwa mtu husika kusikia au kusikiliza sauti au kuona taarifa hiyo; au
- (e) kama ni taarifa ambayo maneno yanarekodiwa kwa namna ambayo inaweza kutolewa kwa namna ya sauti au ambapo yako katika hati mkato au katika mpangilio wa namba, kwa kutoa maneno yaliyorekodiwa au yaliyomo katika taarifa hiyo;
- (f) kwa mtu mwenye ulemavu wa kuona au kiziwi, kwa kutoa taarifa hiyo katika mfumo au utaratibu utakaoruhusu mtu huyo kuweza kusoma au kusikiliza rekodi ya taarifa hiyo.

(2) Endapo mtu ambaye amefanya ombi anataka taarifa katika namna maalum, upatikanaji wa taarifa utatolewa kwa namna hiyo.

(3) Endapo aina ya kupata taarifa inayoombwa:

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- (a) inakiuka masharti ya Sheria ya Usalama wa Taifa;
- (b) inaingilia bila sababu za msingi shughuli za mwenye taarifa;
- (c) inaharibu utunzaji wa taarifa au kwa kuzingatia hali halisi ya taarifa, sio sahihi;
- (d) inaweza ikaathiri hakimiliki mbali ya hakimiliki inayomilikiwa na Serikali iliyomo katika taarifa, upatikanaji wa taarifa katika aina hiyo unaweza kukataliwa na kutolewa katika aina nyingine.

Matumizi ya taarifa

18.-(1) Taarifa iliyotolewa kwa mtu aliyeiomba kutoka kwa mwenye taarifa haitatolewa kwa umma.

(2) Mtu yeyote anayekiuka masharti ya kifungu kidogo

cha (2) anatenda kosa na akitiwa hatiani atatumikia kifungo kwa kipindi kisichopungua miaka mitano.

(c) Upitiaji wa maamuzi kwa mwenye taarifa

Upitiaji wa
maamuzi kwa
mwenye taarifa

19.-(1) Mtu ambaye amefanya ombi kwa ajili ya kupata taarifa anaweza, iwapo hajaridhishwa na uamuzi wa mwenye taarifa kuhusu ombi lake, kutuma maombi ya mapitio kwenye Tume ya Haki za Binadamu na Utawala Bora kuhusiana na chochote kati ya vifuatavyo-

- (a) kukataa kwa mwenye taarifa kupata taarifa iliyoombwa;
- (b) malipo ya ada au tozo ambazo mtu huyo anaona si za msingi;
- (c) kushindwa kwa mwenye taarifa kufuata muda uliowekwa chini ya Sheria hii;
- (d) suala jingine lolote lialohusu ombi la au kupata taarifa chini ya Sheria hii.

(2) Tume ya Haki za Binadamu na Utawala Bora, ndani ya siku thelathini za kupokea maombi yaliyofanywa chini ya kifungu kidogo cha (1), itaamua maombi hayo ya mapitio kwa kuzingatia taratibu ilizojiwekea.

(3) Upande wowote ambao hautaridhishwa na uamuzi wa Tume, chini ya kifungu kidogo cha (2) unaweza, ndani ya siku thelathini tangu siku ya kupitisha uamuzi huo, kuomba mapitio ya mahakama.

SEHEMU YA NNE
MASHARTI YA JUMLA

Kanuni

20. Waziri anaweza kutengeneza kanuni kwa ajili ya utekelezaji bora wa masharti ya Sheria hii.

Ada

21. Mwenye taarifa ambaye maombi ya kupata taarifa yatatumwa kwake anaweza kutoza ada iliyowekwa kwa ajili ya kutoa taarifa hiyo.

Kosa la
kubadilisha,
kuharibu, kuzuia
au kufuta taarifa

22. Mtu yeyote ambaye anabadili, anafuta maandishi yasisomeke, anazuia, anafuta, anaharibu au anaficha kumbukumbu zozote zinazoshikiliwa na mwenye taarifa kwa

dhamira ya kuzuia upatikanaji wa taarifa kwa mwenye taarifa huyo, anatenda kosa na akitiwa hatiani atatozwa faini isiyozidi shilingi milioni tano au kifungo kisichozidi miezi kumi na mbili au vyote kwa pamoja.

Kinga kwa mtoa taarifa

23.-(1) Mtu aliye katika huduma au ajira ya mwenye taarifa yeyote hatachukuliwa hatua ya kisheria, utawala au inayohusiana na ajira kwa kutoa taarifa inayohusu utendaji wa makosa au taarifa itakayoweka bayana tishio la hatari kwa afya, usalama au mazingira, iwapo tu mtu huyo amefanya hii vyote kwa nia njema na kuamini kwa dhali kuwa taarifa hiyo ilikuwa ni ya kweli.

(2) Kwa madhumuni ya kifungu kidogo cha (2), “utendaji wa makosa” inajumuisha utendaji wa kosa la jinai, kushindwa kutekeleza wajibu uliyowekwa kisheria, uvunjaji wa sheria, rushwa, udanganyifu, usimamizi au utawala mbaya wa mwenye taarifa.

Kinga kwa maafisa

24. Maafisa waliyo katika huduma au ajira ya mwenye taarifa hawatawajibika kwa jinai au madai kwa kitendo chochote kilichofanywa au kutofanywa kwa nia njema katika kutekeleza mamlaka au, jukumu lolote chini ya Sheria hii.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kutungwa Sheria ya Upatikanaji wa Habari, 2015, kwa lengo la kuwezesha upatikanaji wa taarifa zilizopo chini ya himaya Wizara za Serikali na baadhi ya taasisi ambazo zinatekeleza majukumu yake kwa manufaa ya umma. Muswada huu unatambua haki ya Kikatiba ya Watanzania kupata taarifa, hivyo unapendekeza masharti yanayolenga kuhamasisha Wizara, taasisi na mamlaka mbalimbali kutoa na kusambaza taarifa kwa wananchi wote. Kwa kutambua umuhimu wa haki hii ya kikatiba, Muswada unapendekeza utaratibu wa wananchi kupata taarifa pia unaondoa viziwi vyovyote katika upatikanaji wa taarifa. Msingi wa mapendekezo haya ni kurahisisha upatikanaji wa taarifa kwa wananchi ambao ndiyo msingi mkuu wa demokrasia na utawala bora.

Muswada huu umegawanyika katika sehemu Kuu Nne.

Sehemu ya Kwanza inahusu masuala ya awali yanayojumuisha jina la Sheria inayopendekezwa, matumizi na tafsiri ya maneno yaliyotumika katika Muswada.

Sehemu ya Pili ya Muswada inahusu haki ya kupata habari. Ibara ya 5 inaainisha masharti yanayowataka wenye taarifa kutoa taarifa kwa mtu anayeomba taarifa hiyo ambapo kifungu cha 6 kinazuia utoaji wa taarifa fulani kwa dhamira ya pamoja na mambo mengine, kulinda usalama wa maisha ya mtu au kuendeleza usalama wa Jamhuri ya Muungano.

Sehemu ya Tatu inaainisha masharti ya upatikanaji wa taarifa. Ibara ya 7 inapendekeza masharti juu ya uteuzi wa maafisa habari wa Wizara na taasisi nyingine za umma na wananchi ambao watakuwa maafisa uhusiano wa wenye taarifa katika masuala ya utoaji taarifa. Mbali ya hayo, ibara ya 8 inaainisha masharti juu ya wajibu wa Wizara na taasisi nyingine kutunza kumbukumbu kwa kipindi kisichopungua miaka thelathini tangu siku kumbukumbu hiyo ilipoanza kutunzwa. Ibara ya 9 inakusudia kutoa jukumu kwa kila mwenye taarifa kusambaza taarifa hizo kwa umma.

Vile vile, Ibara ya 13 inaainisha masharti yanayohusu uhamishaji wa maombi ya taarifa toka kwa mwenye taarifa mmoja kwenda kwa mwingine itakapoonekana kuwa taarifa iliyoombwa haiko katika himaya ya mwenye taarifa aliyeombwa awali. Ibara ya 14 inaweka utaratibu wa mwenye taarifa kukataa kutoa taarifa ama yote au sehemu yake na kumfahamisha mtu aliyeomba sababu za kufanya hivyo. Ibara ya 19 inaweka masharti yanayohusu mapitio ya maamuzi ya kukataa kutoa taarifa iwapo aliyeomba hataridhishwa na uamuzi wa mwenye taarifa kuhusiana na maombi yaliyofanywa.

Sehemu ya Nne inahusu masharti ya jumla ikijumuisha mamlaka ya Waziri kutengeneza kanuni kwa ajili ya utekelezaji wa masharti ya Sheria inayopendekezwa pamoja na makosa yanayoweza kutendwa chini ya Sheria inayopendekezwa. Ibara ya 21 inahusu gharama za upatikanaji wa habari wakati wa kuwasilisha maombi. Vile vile, Sehemu hii ina masharti yanayohusu ada itakayotozwa na mwenye taarifa atakapotoa taarifa iliyoombwa.

Dar es Salaam,
2 Februari, 2015

ASHA-ROSE M. MIGIRO
Waziri wa Katiba na Sheria