

**THE COMMISSION ON
ADMINISTRATIVE JUSTICE**



"Hata mnyonge ana haki"

**REPORTING FRAMEWORK
ON RESOLUTION OF PUBLIC
COMPLAINTS INDICATOR AND
ACCESS TO INFORMATION**

8TH EDITION

FINANCIAL YEAR: 2018/2019

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1. PREFACE

1.1 ESTABLISHMENT OF THE COMMISSION ON ADMINISTRATIVE JUSTICE

The Commission on Administrative Justice (CAJ) was established as a successor Commission to the Kenya National Human Rights and Equality Commission and the Public Complaints Standing Committee pursuant to Article 59(4) of the Constitution of Kenya through the Commission on Administrative Justice Act, 2011 (Cap 102A of the Laws of Kenya).

The Commission is mandated to enforce administrative justice in the public sector by addressing maladministration through effective complaints handling and alternative dispute resolution; promoting good governance and efficient public service delivery by enforcing the right to fair administrative action; and by investigating abuse of power, manifest injustice and unlawful, oppressive, unfair or unresponsive official conduct. In addition, the Commission has a constitutional mandate to safeguard public interest by promoting constitutionalism, securing the observance of democratic values and principles, and protecting the sovereignty of the people of Kenya. Additionally, the Commission is powered to oversee and enforce the right to access to information under Article 35 of the Constitution and Access to Information Act, 2016

Based on the foregoing, the Commission performs an oversight role across the public sector acting as a check on policies, processes, systems and procedures involved in service-delivery. It plays a critical role in the process of implementing performance contract in the public service. It does this by monitoring an indicator, '*Resolution of Public Complaints*,' and receives quarterly performance reports from all government agencies. In turn, the Commission issues certificates to public institutions that have complied fully with its requirements.

1.2 FUNCTIONS

The functions of the Commission as provided for in Section 8 of the CAJ Act, 2011 include:

- i) Investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice;
- ii) Investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public

sector;

- iii) Report to the National Assembly bi-annually on the complaints investigated under paragraphs (a) and (b), and the remedial action taken thereon;
- iv) Inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service;
- v) Facilitate the setting up of, and build complaint handling capacity in the sector of public service, public offices and state organs;
- vi) Work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration;
- vii) Recommend compensation or other appropriate remedies against persons or bodies to which this Act applies;
- viii) Provide advisory opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures; and
- ix) Promote public awareness of policies and administrative procedures on matters relating to administrative justice.

In addition, the Commission has the following functions under Access to Information Act;

- i) to investigate violations of the provisions of the provisions of the Act;
- ii) to receive reports from public entities with respect to implementation of the Act and evaluating the use and disclosure of information;
- iii) to facilitate public awareness and develop programs on the right to access information and the right to protection of personal data;
- iv) to promote right of access to information in public entities;
- v) to monitor state compliance with international obligations related to the right to access information and protection of personal data;
- vi) to hear and determine complaints and review decisions arising from violations of the right to access information;

vii) to promote protection of data; and

viii) to perform such other function as the Commission may consider necessary for the promotion of access to information and promotion of data protection.

2. PURPOSE

This Framework is meant to guide the implementation of resolution of public complaints indicator and compliance with access to information obligations by public institutions.

3. SCOPE

This Framework applies to all public institutions at both national and county governments.

4. DEFINITIONS

i) Access to information register: A register kept by a public institution where entries of requests and determinations (decisions) on access to information are kept.

ii) Action taken: The intervention measure(s) taken by an institution to resolve a complaint, process a request for access to information and implement the decision and recommendation of the Commission.

iii) Applicant/ Requester: Person who has requested for access to information from a public institution.

iv) Audit/Spot check: The systematic and independent examination of data, statements, records, operations and performance of a public institution for purposes of compliance with the Indicator.

v) Citation register: A legal reference document kept by the Commission for purposes of naming and shaming unresponsive and malfeasant public officers and institutions.

vi) Complainant: A person, group of persons, organisation or institution making a complaint within the meaning of this Framework.

vii) Complaint channel: A medium through which a complaint is transmitted to its intended audience or organization

viii) Complaint issue: The subject issue of the complaint e.g., delay, inefficiency, abuse of power among others.

ix) Complaint: An expression of dissatisfaction by a person, group, institution or

organisation about an unsatisfactory or unacceptable situation, including an act or omission or about the standard of service, whether the action was taken or the service was provided by the person(s), the institution itself or body acting on behalf of the public institution.

- x) **Complaints handling procedures:** The steps a complaint goes through in an institution from receipt to the day it is actually resolved.
- xi) **Corrective action:** The improvement to an organisation's processes or system taken to eliminate causes of complaints or other undesirable situations. Further proactive actions may be taken to determine potential risks before they could occur and to ensure that they do not happen.
- xii) **Information access officer:** Any officer of a public institution designated under Section Seven as such for implementation of the Access to Information Act in that public institution.
- xiii) **Information:** Includes all records held by a public institution regardless of the form in which it is stored, its source or the date of production.
- xiv) **New:** A situation whereby a complaint has been received less than 30 days to the reporting period and no action has been initiated on it.
- xv) **On-going:** A situation whereby a complaint resolution or a request for access to information process has commenced but has not been finalised.
- xvi) **Proactive disclosure:** The voluntary publication or release of information held by a public institution to the public.
- xvii) **Public institution:** Any institution of the National or County Government, Constitutional or statutory commission, tribunal, bodies or committee, a parastatal or state corporation, or any other institution which is funded directly from the consolidated fund or receives money by Parliament.
- xviii) **Public Record:** includes any record in written or any other form containing information relating to the conduct of the public institution's business, prepared, owned, used or retained by a public entity regardless of physical form or characteristics.
- xix) **Request:** An application seeking access to information held by a public institution.
- xx) **Resolved:** A situation whereby an institution has provided sufficient information, a remedy or solution to the satisfaction of the complainant, or

where the complainant remains dissatisfied, the public institution has taken the complainant through due process and made a just decision to the satisfaction of the Commission.

xxi) Root cause: Refers to the primary cause(s) of the complaint.

xxii) Sanctions: Penalties or deterrent measures taken against a public institution to enforce adherence to this Framework.

5. MONITORING AND REPORTING

5.1 Submission of quarterly reports: Every public institution is required to submit a quarterly report to the Commission within fourteen (14) days following the end of a quarter on the number of complaints received, nature and action taken, and implementation status of access to information as per the templates provided in the annexures.

5.2 Mode of reporting: Reports shall be submitted via e-mail in PDF format or through the Commission's system. The dedicated e-mail address for submission is certificationpc@ombudsman.go.ke

5.3 Delayed submission of reports: A report submitted beyond the due date shall attract a penalty of up to **15%** of the total quarterly score. However, this is restricted to fifteen calendar days after the deadline, beyond which the report will not be admissible.

5.4 Reporting format: All reports must be submitted in the Commission's provided templates in this Framework. Any report submitted other than in the format provided will be deemed non-compliant.

5.5 Feedback: The Commission shall provide feedback on the reports submitted not later than one month following the end of a quarter.

5.6 Nil Return: In the event a public institution submits a report with nil returns, the Commission will rely on other parameters and/or conduct an audit to verify the correctness of the contents of the report and make a determination.

5.7 Compliance certificate: The Commission shall issue compliance certificates at the end of the financial year to public institutions that have fully complied with the requirements in this Framework.

5.8 Duration to resolve complaints: A complaint should be resolved within thirty

(30) days from the date of receipt. Review and appeal cases should be finalized within thirty (30) days from the date of request for review or appeal.

5.9 Duration for processing request for access to information: An application for access to information shall be processed within 21 days from the date of receipt or 48 hours if it concerns the life or liberty of a person. Where the application refers to information held by another public institution, it shall be transferred to that public institution within five (5) days from the date of receipt and information of the referral communicated to the Applicant/Requester.

6. EVALUATION CRITERIA

Evaluation Criteria: Public institutions will be evaluated on the basis of submission of all required information in the format provided in this Framework within the stipulated timeframe. The evaluation criteria are as follows: -

- i) Establishment of complaints management and access to information infrastructure;
- ii) Report on capacity development on effective complaints management and access to information for top management and access to information officer(s);
- iii) Report on awareness creation initiatives of the institution's complaints handling mechanisms and citizen service delivery charters as well as access to information;
- iv) Resolution of all complaints received.
- v) Processing of requests for access to information received
- vi) Implementation of decisions and recommendations of the Commission

6.1 Computation of scores: Public institutions will be scored as follows;

SCORING QUARTER ONE (1)		
S/N	ITEM	SCORE
1.	Establishment of complaints management and access to information infrastructure (See annexed Table I).	10%
2.	Submission of an approved annual implementation plan (2018/2019) on initiatives of the institution's complaints handling mechanisms and citizen service delivery charters as well as	10%
3.	A report on resolution of complaints received and processed (See annexed Table II).	60%
4.	A report on requests for access to information processed (See annexed Table II)	15%
5.	A report on implementation of CAJ recommendations	5%
TOTAL		100%

SCORING QUARTERS TWO (2) AND THREE (3)		
S/No	ITEM	SCORE
1.	A report on awareness creation initiatives of the institution's complaints handling mechanisms and citizen service delivery charters as well as access to information	10%
2.	A report on resolution of complaints received and processed (See annexed Table II).	70%
3.	A report on requests for access to information processed (See annexed Table II)	15%
4.	A report on implementation of CAJ recommendations	5%
TOTAL		100%

SCORING QUARTER FOUR (4)		
S/N	ITEM	SCORE
1.	A report on awareness creation initiatives of the institution's complaints handling mechanisms and citizen service delivery charters as well as access to information	10%
2.	A report on resolution of complaints received and processed (<i>See annexed Table II</i>).	60%
3.	A report on requests for access to information processed (<i>See</i>	15%
4.	A report on implementation of CAJ recommendations	5%
5.	A report on capacity development on effective complaints management and access to information	10
TOTAL		100%

Notes:

- The Commission may organise regional trainings for public institutions on complaints management and access to information. The Commission may, upon request, facilitate training of public institutions, provided that such requests shall be made at least two weeks in advance. It is worthwhile to note that the Commission shall not recognise trainings conducted by other agencies.
- Public institutions are expected to provide reasons/explanations for complaints/requests reported as on-going.

7. SANCTIONS AND PENALTIES

The Commission shall mete out sanctions against public institutions in the following instances: -

- i) Late submission of quarterly reports.
- ii) Submission of false/misleading quarterly reports.
- iii) Failure to submit the required reports as per this Framework.
- iv) Failure to respond to CAJ inquiries.
- v) Failure to honour summons or notice to show cause from CAJ.
- vi) Failure to implement CAJ decisions, or recommendations.
- vii) Victimization of staff who make reports to the institution, CAJ or any other lawful agency.

viii) Failure to perform duties and responsibilities under the Access to Information Act.

7.1 Penalties

In any of the above instances, the Commission may decide to: -

- (a) Deduct up to a maximum of fifteen (15) percent of a quarterly score on a pro-rata basis for late submission of reports.
- (b) Deduct twenty-five (25) percent of the total score.
- (c) Not issue a compliance certificate at the end of the financial year.
- (d) Invoke sections 42 and/or 44 of CAJ Act and section 26 of the Access to Information Act by reporting the non-compliant institution/officer to Parliament and the President.
- (e) Recommend prosecution under section 52 of the CAJ Act and sections 18 and 28 of the Access to Information Act.
- (f) Initiate the removal of the Chief Executive Officer or any other officer in question from public office.

ANNEXES:

Table I: COMPLAINTS MANAGEMENT AND ACCESS TO INFORMATION INFRASTRUCTURE

Name of Institution	
Financial Year	

NO	INDICATORS	DETAILS OF IMPLEMENTATION	MARKS
Part A. MANAGEMENT INFRASTRUCTURE			
A1	<u>Physical location</u> : Provide the postal address and physical location (building name, office/ room number and street)	Include details for all regional offices	5%
A2	I. Provide names, contact details (Official telephone & e-mail address) and position of at least three officers preferably at senior level who are in-charge of complaints. II. Provide names, contact details and position of the information access officer(s)	Include details for all regional offices	10%
A3	<u>Communication channels</u> : Provide: Complaint desk e-mail/s e.g. complaints@ministry.go.ke	Include details for all regional offices	5%
	Dedicated telephone line(s)	Include details for all regional offices	5%
	Official e-mail address(es) of the institution		5%
	Institution's website (Links/portals to access to information and Complaints information)		5%
	Official e-mail address of the Accounting Officer		5%
	Sub-Total		40%
Part B. SERVICE STANDARD MEASURES			

NO	INDICATORS	DETAILS OF IMPLEMENTATION	MARKS
B1	Updated institution's resolved service delivery charter that includes grievance redress mechanism (CAJ address) and access to information provisions (Submit separately)	Include details for regional offices	20%
B2	I. Complaints Register II. Access to Information Register	For internal purposes only, (Not for submission to the Commission).	
	Sub-Total		20%
Part C. POLICY & PROCEDURES			
C1	Institution's complaints handling policy and procedures (Submit separately)		20%
C2	Institution's access to information procedures (Submit separately)		(Bonus score)
C3	I. Complaints handling committee members - appointment letters & minutes of meetings held. II. Notification letter of the access to information officer(s)		20%
	Sub-Total		40%

Table II

QUARTERLY COMPLAINTS REPORTING TEMPLATE

Name of Institution:

Quarter Ending:

Complaints received from the Commission on Administrative Justice										
S/No.	Date Received	Complaint Channel	Name of Complainant	Complaint Issue	Action Taken	Root Cause	Corrective Action	Status		
								Resolved	On-going	New
							Total			

Complaints lodged directly with the institution												
S/No.	Date Received	Complaint Channel	Name of Complainant	Complaint Issue	Action Taken	Root Cause	Corrective Action	Status			Pending from previous quarter	
								Resolved	On-going	New	Resolved	On-going
							Total					

NOTE: Provide a brief narrative on any action taken for all on-going complaints



Access to information quarterly reporting template								
S/No.	Date Received	Requisition Channel	Name of Applicant	Type of Information Requested	Date of Communicating the Decision	Fees Imposed(if any)	* Decision	Remarks on the Decision

NB: * **Decision** may be based on the following criteria:

- I. **Disclosed:** To reveal or expose information that is being held by a public institution (*Refer to the Access to Information Act 2016*).
- II. **Transferred:** Where the application refers to information held by another public institution, it shall be transferred to that public institution within five (5) days from the date of receipt.
- III. **Declined:** Where the request is dropped on basis that the information sought is exempt or the reason(s) themselves would be exempt information.
Note: In all instances, a statement about how the requester may appeal to the Commission should be availed.
- IV. **On-going.** This is a situation whereby the processing of a request for access to information has commenced, but has not been finalised.
- V. **Abandoned:** 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.


NOTE:

The Reports should be accompanied by a brief narrative on emerging issues, challenges and lessons learnt

DETAILS		
REPORT COMPILED BY	Name	
	Designation	
	Signature	
	Date	
DETAILS		
PUBLIC INSTITUTION'S	Name	
	Email address	
	Telephone number	
	Postal address	

OUR CONTACTS

DETAILS		
POSTAL ADDRESS	COMMISSION ON ADMINISTRATIVE JUSTICE WEST END TOWERS, 2ND FLOOR, WAIYAKI WAY WESTLANDS, PO BOX 20414 - 00200 NAIROBI.	
DETAILS		
OTHER COMMUNICATION CHANNELS	Telephone number	+254020 2274046
	Email address	certificationpc@ombudsman.go.ke
	Toll free Number	0800221349
	SMS Short-Code Number	15700
WEBSITE	www.ombudsman.go.ke	

	<p>Approved By: Leonard Ngaluma, MBS Commission Secretary/CEO</p> <p>Signature.....</p> <p>Date of Issue.....19/06/2018</p>	
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