

THE COMMISSION ON ADMINISTRATIVE JUSTICE
(Office of the Ombudsman)



Hata Mnyonge ana Haki

REPUBLIC OF KENYA
COMMISSION ON ADMINISTRATIVE JUSTICE
(OFFICE OF THE OMBUDSMAN)
ATI REVIEW APPLICATION NO. CAJ/ATI/KWS/010/5/25-MW

PATRICK MUSILU.....APPLICANT

VERSUS

KENYA WILDLIFE SERVICE.....RESPONDENT

RULING

Background

1. The Commission on Administrative Justice (Office of the Ombudsman) (herein after referred as CAJ or the Commission) is established under Article 59(4) of the Constitution, and its constitutive Act; Commission on Administrative Justice Act, 2011 (CAJ Act, 2011) with the mandate to address complaints of improper conduct in public administration, with authority to conduct investigations, issue summons to public officers and compel the production of documents. It also serves as the oversight institution on the implementation of the right to access to information under the Access to Information Act, 2016.
2. The Commission's work is guided by the following laws: -
 - i) The Constitution;
 - ii) The Commission on Administrative Justice Act, 2011 and its Regulations of 2013;
 - iii) Access to Information Act, 2016;

- iv) The Fair Administrative Action Act, 2015;
 - v) The Public Service (Values & Principles) Act, 2015.
3. Section 14(1) of the Access to Information Act, 2016 grants any requester of information the right to apply to the Commission for review of a decision by a public entity or private body. The review can be premised on a decision...
- a. Refusing to grant access to the information applied for;**
 - b. Granting access to information in edited form;**
 - c. Purporting to grant access, but not actually granting the access in accordance with an application;**
 - d. Deferring providing the access to information;**
 - e. Relating to imposition of a fee or the amount of the fee;**
 - f. Relating to the remission of a prescribed application fee;**
 - g. Granting access to information only to a specified person; or**
 - h. Refusing to correct, update or annotate a record of personal information in accordance with an application made under section 13.**

Facts of the Review Application

4. The Commission received an application for review dated 2nd September 2025 from the Applicant pursuant to Section 14(1)(a) of the ATI Act. The Applicant sought to review the decision by the Respondent declining to provide information requested through a letter dated 9th August 2025.
5. In the letter dated 9th August 2025 addressed to the Director General, Kenya Wildlife Service, the Applicant requested for a statistical summary of all snake-bite related deaths recorded from January 2022 to-date. Notably, the Applicant indicated that the information was required to support his Petition to the Senate concerning public health and administrative accountability.

Commission's Review Procedure

6. Section 22(3)(a) of ATI Act, 2016 empowers the Commission to call for information or report regarding a complaint lodged with it from a public entity or private body.
7. Upon receipt of the Applicant's request for review email dated 2nd September 2025, the Commission wrote a letter Ref: CAJ/ATI/KWS/010/5/25-MW dated 5th September 2025 to the Respondent requesting the Respondent furnish its Institutional Report to enable the Commission make an appropriate decision on the application.
8. The Respondent responded through a letter dated 23rd September 2025, referenced; KWS/3005. In its response, the Respondent indicated that it had communicated with the Applicant through its letter referenced; KWS/DG/223/1 dated 4th September 2025 which the Applicant acknowledged via email dated 7th September 2025.
9. Upon reviewing the Respondent's letter dated 4th September 2025, the Commission noted that the response addressed a separate matter relating to the Applicant's letter dated 5th August 2025 on his intention to procure snake venom from licensed producers for dose titration and development of the Supervalent antivenom. The response did not address the Applicant's request for statistical information on snake-bite related deaths.
10. Consequently, through a letter dated 11th November 2025, the Commission notified the Respondent that the information sought by the Applicant relating to statistical summary of all snake-bite related deaths recorded from January 2022 to-date was outstanding and requested the

Respondent's final remarks to facilitate a decision on the matter. The Respondent did not provide any response.

11. The Commission will therefore determine the Application as guided by Sections 22(3)(a)(i) and 23(2)(a) of ATI Act, 2016 and Regulation 25(8) of the Access to Information (General) Regulations, 2023.

Issues for Determination

12. After careful analysis of the request for information by the Applicant dated 9th August 2025, the request for review dated 2nd September 2025 and the Respondent's response dated 23rd September 2025, the Commission frames the following as the issues for determination in this review:

- i. Whether the Commission has jurisdiction to review the decision by the Respondent;**
- ii. Whether the Respondent holds the information requested by the Applicant;**
- iii. Whether the requested information ought to be disclosed by the Respondent; and**
- iv. What Orders should issue.**

- i. Whether the Commission has jurisdiction to review the decision by the Respondent;**

13. The Supreme Court in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others (2012) eKLR*, held that jurisdiction must be derived from the Constitution or legislation or both.

14. Section 14 of the ATI Act, 2016 confers on the Commission review jurisdiction over decisions of public entities or select private bodies on requests for information. Additionally, Section 21 of the ATI Act, mandates

the Commission to investigate violations of the right of access to information and to review decisions relating to such requests.

15. The courts have also affirmed the primary jurisdiction vested on the Commission under the Access to Information Act. In *Lempaa Suyianka and the African Center for Peace and Human Rights v Ministry of Foreign and Diaspora Affairs & Others, Petition E681 of 2024*, the High Court emphasized that disputes concerning denial of access to information should first be addressed through the statutory mechanism established under the Access to Information Act.

16. Section 2 of the ATI Act, 2016 defines public entity as...

“Public entity’ means -

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

or

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

17. The Respondent herein, is a State Corporation established under Section 6 of the Wildlife Conservation and Management Act, 2013 (hereinafter referred as WCM Act, 2013). Section 7 thereof mandates the Respondent to *inter-alia*; conserve and manage national parks, wildlife conservation areas and sanctuaries, set up a county wildlife conservation committee in respect of each County and to prepare and implement the national park management plans.

18. From the foregoing legal framework, the Commission finds that the Respondent is a public entity within the meaning of Section 2 of the ATI Act, 2016 and that it has jurisdiction to review the Respondent's decision and conduct relating to the Applicant's Request for information.

ii. Whether the Respondent Holds the information Requested by the Applicant;

19. Section 4 (1) of the ATI Act provides that “...every citizen has the right of access to information **held** by –...”. Similarly, Article 35 of the Constitution which guarantees the right of access to information utilizes the word ‘**held**’. According to Oxford Advanced Learners Dictionary (9th Edition), the word ‘**held**’ is the past tense, past participle of the word ‘**hold**’. Black’s Law Dictionary (11th Edition) defines the word ‘**hold**’ as ... **‘to possess by a lawful title’** [also] **‘to keep in custody or under an obligation’**. Thus, the use of the word ‘**held**’ in both the Constitution and the ATI Act connotes that the information sought by the requester must be in the custody or control of the Respondent.

20. Section 17 of the Access to Information Act, 2016 obligates public entities to keep and maintain records that are accurate, authentic, have integrity, are useable and in a manner that facilitates the right of access to information. Additionally, the Public Archives and Documentation Service Act, CAP 19 which is the overarching legislation on public records management, places an obligation on all public entities to create and preserve records.

21. The Respondent, being a public entity to which the foregoing legal framework applies is therefore under a mandatory obligation to create and preserve records pertaining to its operations.

22. The long title of the WCM Act, 2013 provides that it is...

“An Act of Parliament to provide for the protection, conservation, sustainable use and management of wildlife in Kenya and for connected purposes”.

23. Additionally, Section 3 of the WCM Act, 2013 defines wildlife as...

“any wild and indigenous animal, plant or microorganism or parts thereof within its constituent habitat or ecosystem on land or in water, as well as species that have been introduced into or established in Kenya”.

24. Additionally, the third, sixth and tenth schedules of the WCM Act, 2013 lists snakes as some of the wildlife in Kenya. The request for information by the Applicant relates to *snake-bite related deaths*. Their conservation and management therefore falls within the Respondent's statutory mandate.

25. From the foregoing framework, the Respondent is mandated to conserve and manage wildlife in Kenya, which includes snakes. Further, under Sections 18 and 25 of the WCM Act, 2013, County Wildlife Conservation and Compensation Committees are mandated to process claims arising from injury or death caused by wildlife species listed under the Third Schedule.

26. These Committees include representatives of the Respondent and operate within a statutory framework overseen by the Respondent. Consequently, records relating to wildlife-related deaths, including snake-bite related deaths reported for compensation purposes, fall within the institutional framework of the Respondent.

27. From the foregoing analysis, the Commission finds that the Respondent holds the requested information relating to *'statistical summary of all snake-bite related deaths'*.

iii. Whether the Requested Information ought to be Disclosed by the Respondent;

28. Article 35 of the Constitution guarantees the right of every citizen to access Information held by the State and Information held by another person and required for the exercise or protection of any right or fundamental freedom.

29. The right of access to information is however not absolute. Article 24 of the Constitution, 2010 provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law.

30. Section 6 (1) of the ATI Act restricts disclosure of information in respect of specific categories of information whose release is likely to: -

- (a) Undermine the national security of Kenya;**
- (b) Impede the due process of the law;**
- (c) Endanger the safety, health or life of any person;**
- (d) Involve the unwarranted invasion of the privacy of an individual other than the applicant or the person on whose behalf an application has, with proper authority, been made;**
- (e) Substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained;**
- (f) Cause substantial harm to the ability of the Government to manage the economy of Kenya;**
- (g) Significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration;**
- (h) Damage a public entity's position in any actual or contemplated legal proceeding; or**
- (i) Infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession."**

31. In the present case, the Respondent has not demonstrated that the requested information falls within any of the statutory exemptions.

32. The Commission further observes that the Applicant deliberately framed the request in statistical form, thereby avoiding the disclosure of personal or sensitive information that could raise privacy concerns.
33. The facts of the review clearly show that the Respondent's response to the Applicant's request for a statistical summary of snake-bite related deaths addressed a different matter – relating to the Applicant's intention to procure snake venom for research, and did not provide the requested statistical information. As a result, the Commission concludes that the Respondent's response was irrelevant and failed to address the Applicant's request.
34. Nevertheless, the Commission has carefully evaluated the nature of the requested information - *'statistical summary of all snake-bite related death'* and has not established any lawful exemption which applies to the requested set of information.
35. The Commission therefore holds that the requested information- *'statistical summary of all snake-bite related deaths'* is public information which should be disclosed by the Respondent to the Applicant as requested.
36. Additionally, in light of the Respondent's mandate under Section 7 and 25 of the WMCA 2013 as well as its obligations on proactive disclosure of information under Section 5(1) of the ATI Act, 2016 the Commission holds that *'statistical summary of all snake-bite related deaths'* including reports on compensations thereof should be proactively disclosed by the Respondent on its website or through other suitable media.

iv. What Orders Should Issue;

37. Having made a careful analysis of all the facts and information provided in this Review Application, the Commission, pursuant to the powers granted under Section 23(2)(a) of the Access to Information Act 2016, and

Regulation 25(8) of the Access to Information (General) Regulations, 2023,

ORDERS:

1. **THAT** the Respondent through its Director General facilitates access to information and records relating to the request for information made by Patrick Musilu contained in the letter dated 9th August 2025, on the statistical summary of all snake-bite related deaths from January 2022 to the date of this order.
2. **THAT** the Respondent proactively discloses statistical information of all snake-bite related deaths including reports on compensations on its Institutional website or through other suitable media.
3. **THAT** compliance with the above Orders be within **twenty-one (21) days** from the date hereof.
4. **THAT** in the event of non-compliance with the orders above, the Commission shall recommend criminal prosecution against the Director General in line with Section 28 of the Access to Information Act, 2016.

Dated, Signed and **Issued** at **Nairobi** this...**30th** day of ...**MARCH**.....2026



DOROTHY JEMATOR
ACCESS TO INFORMATION COMMISSIONER

TAKE NOTICE THAT

Section 23(3) of the Access to Information Act, 2016 provides that ***“A person who is not satisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made.”***

Section 23 (5) of the Access to Information Act, 2016 provides that ***“If no appeal is filed under subsection (3), the party in favour of whom the order is made by the Commission may apply ex-parte by summons for leave to enforce such order as a decree, and the order may be executed in the same manner as an order of the High Court to the like effect.”***