

**REPUBLIC OF KENYA
COMMISSION ON ADMINISTRATIVE JUSTICE
(OFFICE OF THE OMBUDSMAN)**

ATI REVIEW APPLICATION NO. CAJ//MSA/ATI/M.EDU/013/25-EM

SADDAM AMATONYO.....APPLICANT

VERSUS

STATE DEPARTMENT FOR BASIC EDUCATION..... RESPONDENT

RULING

BACKGROUND

1. The Commission on Administrative Justice (Office of the Ombudsman) (herein after referred as *the Commission*) is established under Article 59(4) of the Constitution, and its constitutive Act; Commission on Administrative Justice Act, 2011 (hereinafter referred to as *the CAJ Act*). The Commission is charged with the twin mandate of enforcing administrative justice in the public sector by addressing all forms of maladministration and a second mandate of oversight and enforcement of the right of access to information as guaranteed by Article 35 of the Constitution, through the Access to Information Act, 2016 (hereinafter referred to as the *ATI Act*).
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. Article 35 of the Constitution guarantees the right of every citizen to access: -

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.

The importance of access to information to a country's citizenry is premised on the fact that all sovereign power belongs to the people and all State information is held by public entities in trust for the people. Article 1 of the Constitution expressly provides that all sovereign power belongs to the people and should only be exercised in accordance with the Constitution. It further provides that the power may be exercised directly by the people or through their democratically elected representatives. Access to information equips citizens with requisite knowledge about government policies, procedures and decisions thereby enabling them to have meaningful participation. In addition, informed citizens are able to scrutinize the actions and decisions of duty bearers thereby promoting the principles of good governance. This ultimately engenders open government, efficient delivery of services and rule of law. It further strengthens public trust in institutions thereby building back strong institutions for the public good and sustainable development.

Facts of the Review Application

4. The Commission received an application for review under Section 14(1) (a), ATI Act, 2016 dated 29th October 2025 from the Applicant, Saddam Amatonyo. The Applicant avers that on 10th September 2025, he made a request for Information to the Respondent, Principal Secretary, State Department for Basic Education, Ministry of Education, to be supplied with detailed information and data regarding capitation funds, disbursed to

schools across the Republic of Kenya for the years 2020-2025. Specifically, he requested that the data includes the name of the school, location (County, Sub County and Ward) and amount of capitation funds sent to each school. The Applicant's request for information dated 10th September 2025 was duly transmitted to the Respondent through G4S courier services and was successfully delivered to the Respondent's physical address. The Applicant furnished the Commission with a copy of the Securicor delivery record, which clearly identifies the physical location of the Respondent's offices.

5. The Respondent did not respond to the Applicant's request dated 10th September 2025 and on 29th October 2025, the Applicant made an Application to the Commission for review against the Respondent. The Commission forwarded the request for information to the Respondent vide a letter dated 12th November 2025 notifying them of the request and requiring them to give an institutional report or further information which may be relevant to the request for Information within seven (7) days pursuant to section 22(3)(a) of the ATI Act and Regulation 25(1) of ATI General Regulations, 2023. Upon the filing of the Applicant's review application, the Commission physically dispatched a letter dated 12th November 2025,
6. The Respondent failed to respond to the Commission's letter dated 12th November 2025 and the Commission proceeded to summon the Respondent to appear before the Commission on 3rd December 2025, pursuant to Article 35(1) and 252(3) of the Constitution, as read with sections 21 and 23(1) of the Access to Information Act, 2016. The Commission's summons was served upon the Respondent and were duly stamped as received by the Director Administration, State Department for Basic Education on 27th November 2025. The Respondent neither showed up for the Summons nor did he tender an apology for non-attendance.
7. Section 23(3)(a) of ATI Act, 2016 gives the Commission the power to call for information or report regarding a complaint lodged with it from a public entity or private body. Further, section 23(3)(a)(i) provides that

“if the information or report called for is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information”.

8. In the absence of a response from the Respondent, the Commission will proceed as guided by section 23(3)(a)(i) of ATI, 2016.

ISSUES FOR DETERMINATION AND ANALYSIS OF FACTS

9. After a careful analysis of the request for information by the Applicant, the Commission outlines the following as the issues for determination:

- I. **Whether the Commission has jurisdiction to review the Respondent's decision/action under the ATI Act,2016;**
- II. **Whether the information requested is held by the Respondent;**
- III. **Whether the Applicant/requester is entitled to the information sought;**
- I. **Whether the Commission has jurisdiction to review the Respondent's decision/action under the ATI Act,2016**

10. The Commission in line with **Section 14(1) (a), ATI Act, 2016** received an application for review dated 29th October 2025 from the Applicant. Section 14(1)(a) of the Access to Information Act expressly empowers the Commission to review decisions of a public entity or private body refusing to grant access to requested information. Further, under Sections 20, 21 (f), 21(2) and 21 (3) of the Act, the Commission is conferred with oversight and enforcement powers to hear and determine complaints arising from violations of the right of access to information, which decisions shall be binding on the national and county governments.

11. It is quite clear that the ATI Act 2016 applies to all public entities based on the understanding that the State is the duty bearer of the right of access to information and exercises its functions through public entities. Section 2 of the ATI Act, 2016 defines a public entity as, any public office, as defined in Article 260 of the Constitution; or any entity performing a

function within a Commission, office, agency or other body established under the Constitution.

12. The Respondent, being a state Department is one of such public entities described by section 2 of the ATI Act, 2016. Thus, the Commission makes a finding that it has jurisdiction to review the decision, action or inaction by the Respondent.

II. Whether the information requested is held by the Respondent

13. The second issue to determine in this application for review is whether the Respondent has in its custody the requested information. This is based on the provision in section 4 (1) of the ATI Act which stipulates 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 present with the Respondent.

14. The Applicant through his request for information sought for:

- i) Detailed information and data regarding capitation funds, disbursed to schools across the Republic of Kenya for the years 2020-2025.
- ii) Specifically, he requested that the data includes the name of the school, location (County, Sub County and Ward) and amount of capitation funds sent to each school.

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

freedom. It also requires that the State shall publish and publicize important information affecting the nation.

16. The Respondent is the government department mandated to implement basic education policy, including the financing of public basic education. Capitation grants to public schools are a core part of that mandate as it is responsible for, planning and budgeting for capitation funds; requesting and receiving funds appropriated by Parliament; authorizing and processing disbursement of capitation to schools; and overseeing utilization and accountability of those funds.

17. Section 4 of the Basic Education Act states that the provision of basic education shall be guided by values including, transparency and cost-effective use of educational resources and sustainable implementation of educational services. This means that financial transparency is an expressed value in the Basic Education Act, requiring responsible use of public education funds and openness in how resources are managed.

18. Capitation funds disbursement, which is money sent to schools, is public information as it concerns public spending and the right to basic education. Any citizen can therefore request for this information from the State Department for Basic Education.

19. Under section 68(2)(g) of the Public Finance Management Act, 2012, accounting officers are required to maintain records of all financial transactions, while section 81 of the same Act mandates proper record-keeping to enable audit by the Auditor-General. In addition, the Basic Education Act obligates Boards of Management of public schools to keep and submit financial records, including records relating to capitation funds, to the Ministry of Education. This statutory reporting obligation on schools necessarily imposes a corresponding duty on the State Department for Basic Education to receive, retain, and manage such records. Consequently, information on capitation funds is not optional or incidental but must exist as official financial records held by, or under the control of, the State Department for Basic Education.

20. Thus, the Commission makes a finding that the Respondent holds the requested information.

III. Whether the Applicant/requester is entitled to the information sought;

21. Article 35 of the Constitution guarantees the right of every citizen to access:

c. Information held by the State; and

d. Information held by another person and required for the exercise or protection of any right or fundamental freedom.

22. The Applicant's request is for data regarding capitation funds, disbursed to schools across the Republic of Kenya for the years 2020-2025. Specifically, he requested that the data includes the name of school, location (County, Sub County and Ward) and amount of capitation funds sent to each school. The applicant is a citizen of Kenya duly authorized to request for information pursuant to Article 35 of the Constitution and section 4 of the Access to Information Act, 2016.

23. Section 6 of the Act restricts disclosure only 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 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 proceedings; or

(i) infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession.

24. The Commission has carefully examined the requested sets of information and is of the considered view that the information sought is not exempt from disclosure under section 6 of the Access to Information Act.

25. Further, upon an assessment of the nature of the information sought, the Commission is of the view that the requested information falls within the ambit of proactive disclosure as contemplated under section 5 of the Access to Information Act, read together with Regulation 10 of the Access to Information (General) Regulations, 2023, thereby imposing a statutory obligation upon the Respondent to disclose the information without the necessity of a formal request. Thus, the Commission makes a finding that the Applicant is entitled to access the requested information.

Final Orders

Having made a careful analysis of all the facts and information provided in this review application, the Commission, pursuant to the powers granted by sections 22(3)(a)(i) and 23(2)(a) of the Access to Information Act and Regulations 25(8) and 25(9) of the Access to Information (General) Regulations, 2023 **ORDERS:**

1. THAT the Principal Secretary, State Department for Basic Education facilitates access to information and records held relating to the request for information made by Saddam Amatonyo Indimuli through the letter dated 10th September 2025 being detailed information and data on capitation funds disbursed to schools in Kenya for years 2020 to 2025 including: -

a. The name and location (County, Sub-County and Ward) of each school; and

b. The amount of capitation funds allocated to each school.

2. THAT compliance with the above order be within **twenty-one (21) days** from the date hereof.

3. THAT in the event of non-compliance with the orders above, the Commission shall recommend criminal prosecution against the Principal Secretary, State Department for Basic Education in line with Section 28 of the Access to Information Act, 2016.

Dated, Signed and **Delivered** at **Nairobi** this...**5th** . day of.....**JANUARY**....2026

