

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/WSRB/009/25/2025-SC

STEVE MANDELA.....APPLICANT

VERSUS

WATER SERVICE REGULATORY BOARD.....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 and its Regulations of 2023;
 - 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. Access to information equips citizens with requisite knowledge about government policies, procedures and decisions thereby enabling them to become active stakeholders in the governance and development of their Country. In addition, informed citizens are able to scrutinize the actions and decisions of duty bearers thereby promoting national values and 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 a strong Government for the public good and sustainable development.

Facts of the Review Application

4. The Applicant lodged a request for Information with the Respondent, Water Services Regulatory Board (WASREB) through an email dated 28th April 2025, to be supplied with information relating to his multiple complaints lodged with the Respondent against Malindi Water and Sewerage Company Limited (MAWASCO). The Applicant stated that the complaints against MAWASCO related to systemic non-compliance with billing practices by MAWASCO. Specifically, the Applicant's request for information related to how the Respondent had handled his complaints and subsequent appeal lodged with it. The Applicant's request for information dated 28th April 2025 was duly transmitted to the Respondent vide the email address info@wasreb.go.ke of even date and which email address the Commission confirmed was the Respondent's official email address.
5. It is noteworthy that when the Applicant initiated his request for information, he also sent a copy of his request for information to the Commission. The Commission wrote back to him vide a letter dated 2nd May 2025 and advised him that the Commission's jurisdiction had not crystalized but he was at liberty to lodge a review application in the event that his request was not responded to or the response thereof was unsatisfactory. The commission copied that letter to the Respondent and advised it to respond to the Applicant as guided by section 9 of the ATI Act, 2016.
6. The Respondent did not respond to the Applicant's request within the statutory timelines prompting the Applicant to lodge an Application to the Commission for review against the Respondent through an email dated 21st May 2025. The Commission wrote to the Respondent on 1st July 2025 and forwarding the request for information notifying it of the requested information and requiring an institutional report or further

information which may be relevant to the request for Information within seven days pursuant to section 22(3)(a) of the ATI Act and Regulation 25(1) of ATI General Regulations, 2023.

7. The Respondent failed to respond to the letter dated 1st July 2025 and the Commission proceeded to issue summons dated 6th August 2025 for the Respondent to appear before the Commission on 20th August 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 Respondent on 7th August 2025.
8. The Respondent attended the summons as scheduled whereby discussions on the application took place. In the said summons hearing meeting, the Respondent was directed by the Commission to respond to the Applicant's request for information within fourteen days by supplying information held by it which was not subject to exemptions as provided by the law. Further, the Respondent was advised to consider and ensure appropriate capacity building of its officers on access to information implementation.
9. Consequently, the Respondent through its letter *Ref: WASREB/CCR/568 VOL XII (58)* dated 3rd September 2025 wrote to the Applicant responding to his request for information. Upon receipt of the said response, the Applicant wrote a rejoinder to the Commission through an email dated 5th September 2025 expressing dissatisfaction with the response and requested the Commission to issue a decision on the review application.

ISSUES FOR DETERMINATION

10. After a careful analysis of the request for information by the Applicant dated 28th April 2025, the response given by the Respondent dated 3rd September 2025 and the Applicant's rejoinder dated 5th September 2025, 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 is entitled to the information sought in his request for information;**
- iv. The orders which the Applicant is entitled to.**

ANALYSIS OF FACTS, ISSUES AND FINDINGS

- i. Whether the Commission has jurisdiction to review the Respondent's decision/action under the ATI Act, 2016**

11. Section 14(1)(a) of the Access to Information Act expressly empowers the Commission to review decisions of a public entity or private body that declines 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, and issue decisions under the Act which are binding on public entities as well as relevant private bodies.

12. 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...

**“(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.”**

The Respondent is a regulatory State Corporation established by the Water Act, 2016 with the main objective of protecting interests and rights of consumers in the provision of water services while ensuring that other stake-holders' interests are safeguarded. From the foregoing description, it is clear that the Respondent falls under such public entities as described in 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 under the ATI Act, 2016.

ii. Whether the Information Requested is Held by the Respondent

13. The second issue for determination is whether the Respondent has in its custody the requested information. This is based on the provision under 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’**.

14. 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. Thus, the obligation to provide such information

cannot be invoked if the Respondent demonstrates that it is not in possession of such information. This is why section 10 of the ATI Act provides an elaborate mechanism through which a request for information should be processed and transferred to another entity where the recipient of a request for information is not in actual possession of the information sought but has knowledge of the entity with actual possession of such information. As such, it would be sufficient and lawful response to a request for information for a public entity to indicate that a particular set of information requested is not within its possession but such a response should be based on a correct and truthful account by the entity.

15. The Applicant through his request for information dated 28th April 2025 to the Respondent requested to be supplied with information relating to his multiple complaints lodged with the Respondent against Malindi Water and Sewerage Company Limited (MAWASCO). The Applicant alleged that the complaints related to systemic non-compliance with regulatory framework and billing practices by MAWASCO. Specifically, the Applicant's request for information related to how WASREB had handled his complaints and subsequent appeal lodged with the Respondent including:

1. Confirmation of receipt and the official reference/file assigned to his initial complaint submitted on or about 15th December 2023, appeal submitted on 27th June 2024 and further submission dated 4th February 2025;
2. The current official status of each of the above submissions (e.g pending allocation, under review, under investigations, awaiting information from MAWASCO, pending decision, closed etc);

3. The names and designations of the specific WASREB Officers assigned responsibility for handling and processing each of the submissions;
4. Details of any or allocations taken by WASREB to date in relation to each of the submission including dates and copies of any correspondences between WASREB and MAWASCO regarding the specific complaints/appeal; dates and summaries of any internal reviews, assessments or investigations conducted by WASREB; minutes of any meetings or decisions made concerning these matters;
5. If any of the complaints or appeal had been closed or otherwise determined by WASREB, provide the date of closure/determination and a copy of the official written decision including the findings and detailed reasons for the outcome as required by Article 47(2) of the Constitution and Fair Administrative Actions Act;
6. A clear and official explanation from WASREB for the failure to acknowledge receipt of the June 2024 appeal and the February 2025 submission and the failure to provide substantive status updates for over 16 months despite multiple follow-ups;
7. A copy of the official WASREB complaints and appeals handling procedure/policy/charter including standards timelines for acknowledgment, investigations and resolution.

16. Section 17 of the ATI Act requires all public entities to keep and maintain records of their transactions as a mandatory obligation in order to ensure access to information. Specially, section 17(2) provides that...

“Every public entity shall keep and maintain—

(a) records that are accurate, authentic, have integrity and useable; and
(b) its records in a manner which facilitates the right of access to information as provided for in this Act.”

The obligation on records management in the ATI Act is read alongside various obligations established and required of all public entities obtaining in the Public Archives and Documentation Services Act Cap. 19 Laws of Kenya which is the substantive law on records management as well as other sectoral laws and policies on records management.

17. The Commission has carefully analyzed the sets of information requested by the Applicant through his request for information dated 28th April 2025 and is of the considered view that the sets in numbers 1 to 7 of his request relates to information ordinarily obtaining in an institutional complaint handling and resolution framework. Indeed, this position is confirmed fully by the Respondent's letter dated 3rd September 2025 whereof the Respondent does not deny the existence of the requested information. In fact, the Respondent in paragraph 3 explains in great detail the requirements of an internal complaints resolution infrastructure as established by Section 72 of the Water Act 2016, the Water Services Regulations 2025 and the Respondent's internal policies. Hence, having carefully analyzed the Respondent's obligation on records management as contained in various laws as well as the applicable policy directions on institutional complaints handling, the Commission makes a finding that the Respondent holds the information requested by the Applicant.

iii. Whether the Applicant is Entitled to the Information Sought in his Request for Information;

18. 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 Applicant's request is for information relating to his multiple complaints lodged with the Respondent against Malindi Water and Sewerage Company Limited (MAWASCO). There is no doubt that 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. Nevertheless, the right of access to information is not absolute as the same is subject to exemptions as obtaining in the law. 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 national security of Kenya;
- b. Impede due process of law;
- c. Endanger safety, health or life of any person;
- d. Involve 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 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.

19. The Respondent through its letter dated 3rd September 2025 disclosed some sets of information but withheld disclosure of some on the allegation that other sets of information were subjected to the limitation provisions under Section 6 of the ATI Act. This response did not satisfy the Applicant and thus in his rejoinder email dated 5th September 2025 substantiated his dissatisfaction and he requested for a decision by the Commission on the application.

20. The Commission's role in reviewing such a decision where the Respondent invokes a limitation is to confirm whether such limitation applies to the particular set of information concerned and if so, whether such limitation applies partly or wholly to the requested information. This is in recognition of the letter and spirit of the Act as provided in section 4 of the Act specifically section 4 (4) which provides that...

“This Act shall be interpreted and applied on the basis of a duty to disclose and any non-disclosure shall be permitted only in circumstances exempted under section 6.”

Further, the Commission's role on this issue is informed by the fact that the ATI Act in section 6 subsections (2) and (3) gives specificity on certain sets of information which may not necessarily fall within the exemption clause even though the same may be expressly listed in section 6(1) of the Act.

21. Thus, the Commission analyzes the Respondent's response contained in its letter of 3rd September 2025 as follows;

Request No. 1

Confirmation of receipt and the official reference/file assigned to his initial complaint submitted on or about 15th December 2023, appeal submitted on 27th June 2024 and further submission dated 4th February 2025:

The Respondent in its response letter at paragraph 4 confirms receipt of the Applicant's initial complaint, the appeal and follow-up submission. The Commission is satisfied that this response to the Applicant's request for confirmation of receipt of the complaint, the appeal and submission sufficiently addresses the requested set of information.

Nevertheless, on the second part of the request in No. 1 on official reference/file numbers, the Respondent indicated in the same paragraph 4 that ***“these reference numbers have not been included in this response for confidentiality and data protection reasons.”*** The Commission notes that the Respondent did not indicate the sections of the law relied upon to arrive at such a decision or how they are applicable to the requested information.

22. The Commission is of the view that where a public entity or a private body relies on the limitation clause in response to a request for information, the entity or body has a statutory obligation to state clearly the exact section of the law relied upon, the particular set or sets of information applicable and further explain on how such limitation applies to such information. This is in accordance with the holding in **Legal Advice Centre t/a Kituo cha Sheria & 33 Others vs Cabinet Secretary Ministry of Education & & Others, Nairobi Petition No 104 of 2019 [2021] eKLR**, at paragraph 54 that...

“The burden on justifying the limitation on the right to access of information rested on the person resisting disclosure, as provided for in article 24(3) of the Constitution which stated that the State or a person seeking to justify a particular limitation should demonstrate to the court, tribunal or other authority that the requirements of the article had been satisfied.”

Further, In ***Mercy Nyawade vs. Banking Fraud Investigations Unit [2017]*** eKLR, the Honourable court at paragraph 45 held that...

“It is apparent from this comparative analysis of the standards applied by courts in other jurisdictions with legislation comparable to ours that the state may discharge its evidentiary burden only when it has shown that the record withheld falls within the exemptions claimed. Exemptions are construed narrowly, and neither the mere ipse dixit of the information officer nor his or her recitation of the words of the statute is sufficient to discharge the burden borne by the state.”

23. The Respondent has not explained or demonstrated in any way how the requested reference/files numbers are confidential or will lead to breach of data protection provisions. Without such explanation, the Commission is at a loss to understand how complaints or file reference numbers are confidential or are protected under the data protection regime. Further, the Commission notes that this was a specific request by the Applicant on information relating to his complaints handled by the Respondent and as such the Commission is at a loss to understand how such information which relates to his complaints should not be accessed by him.

24. The Applicant in his rejoinder contested the Respondent's assertion that complaint reference number is confidential and affirmed that such is necessary to enable confirmation of receipt of the complaint, track progress and ensure centralized communication. The Commission agrees with the Applicant averment on the relevance of a complaint reference number. This is based on the understanding of a reference number as a number assigned to a file or document to enable its identification and enhance effectiveness in records management.

25. It is worth noting that the requested file reference number relates to a complaint file held by the Respondent. The Commission being the oversight institution on public service complaints resolution is well versed with the nature of the requested information and is convinced that there is nothing confidential with the reference number or nothing in it is subject to protection under the data protection regime.

26. A distinction is hereby drawn on access to the complaint reference number and access to the complaint file as the Respondent seems to be under a misguided belief that granting access to the file number is similar to granting access to the whole complaint file, which is not the case. From the foregoing, the Commission holds that there is nothing confidential or subject to protection in the complaint file number and its access is an important aspect for enhancing transparency and accountability especially to the Applicant who is the complainant in that case. Based on the foregoing, the Commission makes a finding that the limitation relied upon by the Respondent does not apply to the requested complaints reference/file numbers and thus the information requested on complaint file reference/number should be provided forthwith.

Request No. 2

The current official status of each of the above submissions (e.g pending allocation, under review, under investigations, awaiting information from MAWASCO, pending decision, closed etc):

27. In relation to the request in No. 2, the Respondent in paragraph 5 of its response stated that the initial complaint, the appeal and the subsequent submission were consolidated and were being handled as one case. The Respondent indicated that the case was active and its status was '*under investigations/pending determination*'. The Commission is of the considered view that while this response addressed the request in no. 2 to a great extent, the response did not give an indication on the timeline or reasonable period under which resolution was to be expected by the Applicant. This is based on the fact that the Respondent has a legal obligation on effective and efficient service delivery which includes expeditious administrative action as guaranteed by Article 47 of the Constitution, Section 8 of the Commission on Administrative Actions Act, 2011 and section 4(1) of the Fair Administrative Actions Act, 2015. It has to be noted that the initial complaint was lodged with the Respondent in December 2023 and it is not acceptable that in September 2025, a period in-excess of twenty-one months, the Respondent had not resolved such complaint or could not state a reasonable timeline for resolution. Thus, the Commission holds that the Respondent should give an indication as to when such investigations would be concluded in which case the period thereof should not exceed ninety (90) days from the date of this ruling.

Request No: 3

The names and designations of the specific WASREB Officers currently assigned responsibility for handling and processing each of these submissions:

28. In relation to the request in No. 3, the Response in paragraph 6 indicated that the Applicant complaint was being handled by the WASREB Consumer Protection and Complaints Committee under the oversight of the Office of Corporate Communications. Further, the response indicated that the names and designation of officers handling the complaint could not be provided based on the limitation obtaining in section 6(1) of the ATI Act to wit such disclosure could lead to invasion of individual privacy or impede due process in an ongoing matter.

29. The Commission is in agreement with the above explanation and application of the exemption to disclosure of the requested names and designation of officers handling the Applicant's complaint. The Commission agrees that disclosure of names of officers handling the complaint together with their designations may lead to invasion of personal privacy of these officers and may also interfere with the due process of investigations especially where such officers would feel they are working under some form of pressure when their specific details are being required in relation to a complaint they are handling or investigating. In any event, such disclosure may also subject such officers to safety concerns. The Commission notes that the Respondent supplied information on the Committee handling the complaint and the proper channel or office under which any concerns could be raised. This disclosure offers a perfect balance between limiting information on the officers' details vis-a-vis transparency and accountability channels existing within the complaint's resolution process. Hence, the Commission finds that the Respondent has applied correctly the

limitation on disclosure of requested information in No. 3 and holds that such requested information cannot be disclosed.

Request No. 4:

Details of any or allocations taken by WASREB to date in relation to each of the submission including dates and copies of any correspondences between WASREB and MAWASCO regarding the specific complaints/appeal; dates and summaries of any internal reviews, assessments or investigations conducted by WASREB; minutes of any meetings or decisions made concerning these matters:

30. In relation to the request in No. 4, the response in paragraph 7 and 8 indicated that preliminary assessment of the complaint was done as well as review of facts and evidence conducted. Subsequently the Respondent engaged MAWASCO on the complaint and sought its response regarding billing irregularities and non-compliance issues. This was done through written communication to MAWASCO requiring its explanation proposed remedial action. However, the Respondent indicates that such correspondence cannot be shared with the Applicant as they form part of the investigations process and sharing such would compromise due process as per section 6(1) ATI Act.

31. The above response partially responds to the request for information in No.4 where the steps taken by the Respondent in resolution of the complaint have been stated. Nevertheless, the same lacks details on the dates when those steps were taken by the Respondent. The response does not meet the thresholds of transparency and accountability required of the Respondent which entails disclosing specific details on action taken including the nature of the decisions taken, the dates taken

as well as any other measures initiated to ensure the expected results. The Respondent cannot stop at stating that it wrote to MAWASCO without giving specific details on the dates and the outcome of such communication. At a minimum, the Respondent should have indicated specific details of the actions taken such as the dates of the letters written and their reference numbers, the contents of the said letters, the responses received if any, the action taken in the event that there was no response, the next steps and so on. Without specific details on the letter written by the Respondent, the Commission holds that the Respondent's response to the request is not sufficient.

32. Surprisingly, the Respondent did not supply a copy of any letter written to MAWASCO to the Applicant upon writing such a letter or even upon request. The Respondent indicated that such correspondence cannot be shared with the Applicant as they form part of the investigations process and sharing such would compromise due process as per section 6(1) ATI Act. The Commission notes that Respondent's response indicates in paragraph 8 that ... **"WASREB formally engaged MAWASCO by communicating your complaint and seeking a response regarding the billing irregularities and non-compliance issues raised."** The response in this part is very clear as to the content of the letter by the Respondent to MAWASCO and the Respondent cannot be heard to argue that it forms part of the investigations process since such a letter can be separated as a singular document from the other information which may be deemed exempt and disclosed without the other information in the investigation file. The Commission is of the view that the content of the Respondent's letter (if at all it exists) amounts to information as contained in the Applicant complaint against MAWASCO and thus nothing can be said to be out of the ordinary or more than what the Applicant had or is entitled to. As such, the Commission holds that the Respondent misapplied the exemption clause to the requested information since the

letter could have been separated from the investigation file and disclosed to the Applicant as a singular document.

33. Further, the Commission reiterates that the principles of effective complaint resolution emphasize on communication to the complainant at every stage of the complaint resolution. This includes appropriate disclosure of information at all stages unless the specific set of information is precluded from disclosure by the law. In this instance, the Commission holds that the Applicant was and is entitled to access the letter or letters exchanged by the Respondent and MAWASCO in resolution of the complaint lodged. Specifically, the Commission holds that the Applicant is entitled to access the letter written by the Respondent to MAWASCO and referred to in its response at paragraph 8 thereof.

Request No. 5:

If any of the complaints or appeal have been closed or otherwise determined by WASREB provide the date of closure/determination and a copy of the official written decision including the findings and detailed reasons for the outcome as required by Article 47(2) of the Constitution and Fair Administrative Actions Act:

34. The Commission has already made analysis of this issue when making its analysis and findings relating to request No. 2 in paragraph 26 herein above. As such, the findings relating to Request No. 2 applies to the request No.5 as well.

Request No. 6:

A clear and official explanation from WASREB for the failure to receipt of the June 2024 appeal and the February 2025 submission and the failure to provide substantive status updates overs the past 16 months despite multiple follow-ups:

35. The Respondent through its letter dated 3rd September 2025 stated in paragraph 13 that the delay in acknowledging receipt of the Applicant's complaints was due to administrative oversights during a period of unusually high workloads and internal transitions. Whereas the Respondent gave a response of the delays, the given reasons do not justify such an inordinate delay in acknowledging the complaints as such is a simple administration action which does not require investigations or going deeper into the substance of the complaint. The delay by the Respondent in acknowledging the Applicant's complaints or updating him on the status of their resolution was in all circumstances inordinate delay which goes contrary to the tenets of good governance as provided in the Constitution and the law.

36. Again, when the Applicant wrote his request for information dated 28th April, 2025 but no response was given by the Respondent. Infact, the Commission notes with concern that it wrote two letters Ref: CAJ/ATI/WSRB/009/35/25-SC dated 2nd May 2025 and 1st July 2025 but none of these letters elicited a response prompting issuance of summons to the Respondent's Chief Executive Officer. The Commission holds that the Respondent's conduct is not in line with the expected standards in public service and does not inspire confidence in the Respondent as a public institution. The Commission has already restated the position on communication and disclosure of information to complainants in institutional complaints resolution in paragraph 32 herein above. This obligation equally applies on all communication with institutional stakeholders and other public institutions. The Commission advises the

Respondent to automate key institutional processes especially focal services issues such as complaints management processes. Further, the Commission advises the respondent to automate its information management systems as required by section 17(3) of the ATI Act, 2016 as such would enhance service delivery and responsiveness to citizens and stockholders. Key to these is digitization of Respondent's institutional records as required by section 17(3)(c) of the ATI Act. Thus, the Commission holds that the Respondent should relook into its complaint handling framework and institutional service delivery infrastructure with a view of making appropriate adjustments, revisions or amendments where necessary to enable institutional responsiveness and enhanced service delivery.

Request No. 7:

A copy of the official WASREB complaints and appeals handling procedure/policy/charter including standards timelines for acknowledgment, investigations and resolution:

37. The Respondent in its letter dated 3rd September 2025 in paragraphs 14 to 18 elaborated its complaints handling framework, policies and procedures. The Commission is of the view that this responds to the requested information to some extent. Nevertheless, the request thereof related to access of a copy of the official Respondent complaints handling policy and applicable procedures thereof. The Commission notes that the Respondent has gone to great depths to explain the procedures and processes on complaints handling which is quite good but that does not suffice as response to a request for a copy or copies of institutional approved and adopted complaints resolution policy and procedures. The Commission notes that the Respondent indicated that such policy is available at the Respondent's website without giving a direct link at which the Applicant can use to access such a copy.

38. The Commission guides that where provision of access to information is through an online document, the public institution has an added requirement of not only indicating that the document is available online, but also providing specific and active link or links where such document can be accessed or in the alternative provide a soft-copy to the Applicant especially where the Applicant has provided means for such provision such as an email address. The Commission also notes that the Respondent indicated that such policy is available on the website or upon request which makes the Commission wonder on whether the Respondent was aware that it was responding to a request for a copy of the policy in its letter.

39. The Commission conducted an information audit on the Respondent's website <https://wasreb.go.ke/> to ascertain presence of the requested complaints handling policy and found an article on WASREB complaints handling mechanisms under the tab 'Consumers'. Again, under the tab 'Access to Information', the Commission found the link on Complaints Handling Mechanisms. In these two access points, the Commission was able to see an explanation of the Respondents Complaints Handling Mechanism and a link to lodge a complaint. However, the Commission was not able to access a copy of the approved Complaints Handling Policy which was the main document requested by the Applicant. In the foregoing, the Commission finds that the Respondent did not respond to the issue of access to a copy of institutional complaints handling policy and holds that the Respondent should facilitate access to a copy of the approved Complaints Handling Policy.

Final Orders

40. 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) and 23(2) 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 Chief Executive Officer facilitates access to information and records held relating to the request for information made by Steve Mandela through the request for information email dated 28th April 2025 being: -
 - a. The Applicant's complaint file number/reference number;
 - b. Indication as to when the Applicant's complaints investigations process would be concluded whereof such period should not exceed ninety (90) days from the date of this ruling.
 - c. A copy of the letter written by the Respondent to MAWASCO referred to in the Respondent's response dated 3rd September 2025 at paragraph 8;
 - d. Copies of all other correspondence exchanged between the Respondent and MAWASCO relating to the Applicant's complaints in strict compliance with the law.
 - e. A copy of the Respondent's approved Complaints Handling Policy.

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

3. **THAT** the Respondent should with immediate effect:
 - i. Initiate relevant measures towards enhancing effectiveness of its complaint handling and access to information frameworks including appropriate revision and amendment to its policies, automation of its information management systems and digitization of its records;
 - ii. Ensure that its service delivery policies and procedures including complaints handling and access to information

policies are proactively disclosed through the institutional website and other suitable media; and

- iii. Ensure capacity building of its staff on complaints handling and access to information implementation.

4. **THAT** in the event of non-compliance with the orders above, the Commission shall recommend criminal prosecution against the Chief Executive Officer, Water Services Regulatory Board in line with Section 28 of the Access to Information Act, 2016.

Dated, Signed and **Delivered** at **Nairobi** this...**26th** ...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.”