

**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/CG/BGM/112/01/25-AO**

**BEN KASISI T/A VOICE OF BUNGOMA CSO NETWORK .....APPLICANT**

**VERSUS**

**BUNGOMA COUNTY GOVERNMENT .....RESPONDENT**

**RULING**

**A. BACKGROUND**

1. The Commission on Administrative Justice (Office of the Ombudsman) (hereinafter referred to as "the Commission") is established under Article 59(4) of the Constitution of Kenya, 2010 and the Commission on Administrative Justice Act, 2011. The Commission is mandated to address maladministration in the public sector and promote administrative justice, transparency, and accountability in public administration. In addition, the Commission serves as the oversight and enforcement body for the right of access to information under Article 35 of the Constitution, as operationalized through the *Access to Information Act, 2016* (hereinafter referred to as *ATI Act, 2016*).
2. *Article 35* of the Constitution guarantees every citizen the right to access:
  - i. Information held by the State; and
  - ii. Information held by another person and required for the exercise or protection of any right or fundamental freedom.

3. Access to information is the cornerstone of democratic governance and accountability. Public entities hold information in trust for the people of Kenya, and disclosure of such information enhances transparency in public administration, promotes responsible management of public resources, and enables citizens to meaningfully participate in governance.

## **B. FACTS OF THE REVIEW APPLICATION**

4. The Commission received an application for review under *Section 14 (1) ATI Act, 2016* by Ben Kasisi T/A Voice of Bungoma CSO Network indicating that he submitted a request for information to the County Secretary, Bungoma County Government dated 15<sup>th</sup> June 2025. The Applicant requested for information relating to the 1<sup>st</sup> Quarter of 2024/2025 Financial year status and Project Implementation Reports for roads in Maraka and Sitikho Wards, including details of the contractors awarded the said projects.
5. The Applicant stated that their request for information dated 15<sup>th</sup> June 2025 was physically delivered to the Respondent Office. Previously, the Applicant had made similar requests dated 2<sup>nd</sup> June 2025 to the Chief Officer, Finance and Economic Planning and Chief Officer, Roads and Public works. These requests were duly received and stamped by the respective offices on 3<sup>rd</sup> June 2025.
6. The Applicant received no response to the request dated 15<sup>th</sup> June 2025 as well as those dated 2<sup>nd</sup> June 2025. On 10<sup>th</sup> September 2025, he made an Application to the Commission to review the Respondent's failure to respond to the requests for information.
7. The Commission wrote a letter dated 18<sup>th</sup> September 2025 notifying the Respondent of the requests and requiring an institutional report or further information within seven (7) days pursuant to *Section 22(3)(a) of the ATI Act and Regulation 25(1) of ATI General Regulations, 2023*. The Respondent did

not reply to the Commission's letter dated 18<sup>th</sup> September 2025 or provide the information sought by the Applicant.

8. *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”.***

9. In the absence of a response from the Respondent, the Commission proceeds to determine this matter pursuant to *Section 23(3)(a)(i) of ATI, 2016*, which permits the Commission to determine an application where the requested information or report is not received within the stipulated time.

### **C. ISSUES FOR DETERMINATION**

10. Having carefully reviewed and analyzed this matter, the Commission has identified the following three issues for determination as follows:
  - I. Whether the Commission has jurisdiction to review the Respondent's decision under the *ATI Act, 2016*;
  - II. Whether the information requested for, is held by the Respondent;
  - III. Whether the Applicant is entitled to the information sought.

### **D. ANALYSIS OF FACTS, ISSUES AND FINDINGS**

#### **I. Whether the Commission has Jurisdiction to Review the Respondent's Decision under the *ATI Act, 2016***

11. *Section 14(1)(a) of the ATI Act, 2016*, empowers the Commission to review decisions of public entities refusing or failing to grant access to information requested by citizens. 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.”**

12. The Respondent in this matter is the County Government of Bungoma, established under *Article 176* of the Constitution, and therefore a duty bearer under *Article 35* and is obligated to facilitate access to information held by it. 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*. Accordingly, the Commission finds and holds that it has jurisdiction to review the Respondent's decision, action or inaction 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. *Section 4(1)* of the *ATI Act, 2016* guarantees citizens the right to access information held by public entities by providing that “...every citizen has the right of access to information **held** by

a. the State; and

b. another person where that information is required for the exercise or protection of any right or fundamental freedom....”

14. Similarly, *Article 35* of the Constitution, which guarantees the right of access to information utilizes the word **‘held’**. According to Oxford Advanced Learners Dictionary (9<sup>th</sup> Edition), the word ‘held’ is the past tense, past participle of the word ‘hold’. Black’s Law Dictionary (11<sup>th</sup> Edition) defines the word ‘hold’ as ... **‘to possess by a lawful title’ [also] ‘to keep in custody or under an obligation’**.

15. The use of the word 'held' in both the Constitution and the *ATI Act, 2016*, 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 does not have such information.

16. As such, it would be a 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. The Commission further notes that the obligation to provide information extends to records under the control of the Respondent, including those originating from other public bodies where such records are relied upon in its decision-making and implementation functions.

17. The Applicant, through his request for information sought for the following from the Respondent: -

- I. The project status and implementation report for roads numbers 75,76,77,78,79,80 ,81 and 82 Maraka Ward, Bungoma County;
- II. The project status and implementation report for roads numbers 130,131,132,133,134,135,136,137,138 and 139 Sitikho Ward, Bungoma County; and
- III. The contractors who were awarded the contracts for the aforementioned roads in Maraka and Sitikho Wards in Bungoma County.

18. The Commission is of the view that such requested records would ordinarily exist within the official records of the County Government, including County Executive Committee decisions, County Assembly approvals, financial agreements and contracts and Project implementation and progress reports.

19. The *ATI Act* at Section 17 speaks to management of records. Specifically, at Section 17(2) it provides ...

***“Every public entity shall keep and maintain—***

***(a) records that are accurate, authentic, have integrity and are usable;***

***(b) its records in a manner which facilitates the right of access to information as provided for in the Act.”***

20. Additionally, public entities have an obligation to maintain proper records relating to procurement, contracts and financial obligations and liabilities.

21. Section 44 (d) of the *Public Procurement and Asset Disposal Act* (PPADA) mandates the accounting officer of a public entity to ***“ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act”***. Accordingly, and based on the foregoing analysis, the Commission finds and holds that the requested information and records are held or are under the control of the Respondent.

### **III. Whether the Applicant is Entitled to Access the Information Sought.**

22. Article 35 of the Constitution guarantees every citizen the right of access to information held by the State. Section 4(1) of the *ATI Act, 2016*, operationalizes this right by providing that every citizen has the right to access information held by public entities. The term “citizen” is defined under Section 2 of the *ATI Act, 2016*, to mean ***“any individual who has Kenyan citizenship, and any private entity that is controlled by one or more Kenyan citizens.”***

23. The Applicant in this review is Ben Kasisi T/A Voice of Bungoma CSO’s Network, a consortium of civil society organizations working within Bungoma County. As Non-Governmental Organizations operating within the Republic

of Kenya, Voice of Bungoma CSO Network qualifies as a juristic person controlled as they are managed by Kenyan citizens. The Applicant therefore falls within the definition of a 'citizen' for purposes of the Act. This position was affirmed by the High Court in ***Katiba Institute V President's Delivery Unit (Constitutional Petition 468 of 2017) [2017] KEHC 2183 (KLR)***, where the Court held that a juristic person whose directors are Kenyan citizens qualifies as a 'citizen' and is therefore entitled to exercise the right of access to information under *Article 35* of the Constitution and *Section 4* of the *ATI, Act 2016*.

24. Additionally, the Commission takes judicial notice that Ben Kasisi who is the coordinator of Voice of Bungoma CSO Network is a citizen of Kenya meeting the citizenship criteria under *Article 35* and *Section 4* of the *ATI Act, 2016*. Accordingly, the Commission finds and holds that the Applicant is entitled to invoke and enjoy the right of access to information as guaranteed under the Constitution and the *ATI Act, 2016*.

25. 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. *Section 6 (1)* of the *ATI Act, 2016* 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."**

26. The information sought by the Applicant relates to the project status and implementation report for road numbers 75,76,77,78,79,80 ,81 and 82 Maraka Ward, Bungoma County; The project status and implementation report for roads numbers 130,131,132,133,134,135,136,137,138 and 139 Sitikho Ward, Bungoma County; and the contractors who were awarded the contracts for the foretasted roads in Maraka and Sitikho Wards in Bungoma County.

27. The Commission observes that information sought by the Applicant relates to procurement and financial aspects of road infrastructural development projects by the Respondent funded by tax-payers as ascertained from the Respondent's 'Programme Based Budget for the Financial Year 2024/2025' at pages 325 and 329-330. Article 10(2)(c) of the Constitution provides for national values and principles of governance including good governance, integrity, transparency and accountability. Transparency in public expenditure and public decision-making is a fundamental Constitutional

principle. The High Court in ***Trusted Society of Human Rights Alliance v Cabinet Secretary Devolution & Planning & 3 Others [2017] KEHC 8755 (KLR)***, underscored the importance of transparency in governance by observing that...

***“Access to information is a foundational element of accountability and good governance. It enables citizens to scrutinize public expenditure and the decisions made by those entrusted with public power.”***

28. Accordingly, the Commission is of the considered view that the requested information is subject to disclosure in furtherance of good governance, integrity, transparency and accountability. Further, the Commission notes that much of the requested information falls within the scope of proactive disclosure under *Section 5 of the ATI Act, 2016 and Regulation 10 of the Access to Information (General) Regulations, 2023.*

29. Additionally, after a careful examination of the nature of the requested information, the Commission finds that none of the requested sets of information falls within any of the exemptions contemplated under *Section 6(1) of the Act*. Thus, the Commission finds and holds that the requested information should be disclosed to the Applicant.

30. Before finalizing this ruling, the Commission emphasizes that all public entities have a Constitutional and statutory obligation to facilitate access to information in a timely and transparent manner as provided by the *ATI Act, 2016*. This obligation includes the duty to provide reasoned decisions where access is limited, as required under the *ATI Act, 2016*.

31. Further, *Section 4 of the Fair Administrative Action Act 2015* guarantees every person the right to administrative action that is expeditious, efficient, lawful and reasonable. Public entities, including the Respondent herein, are expected to comply strictly with statutory timelines unless sufficient

justification is provided within the framework of the law. Failure by public officers to respond to lawful requests for information undermines transparency, accountability and public confidence in governance.

#### **E. FINAL ORDERS**

32. 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 *ATI Act, 2016* and Regulation 25(8) of the *Access to Information (General) Regulations, 2023* **ORDERS:**

1. **THAT** the County Secretary, County Government of Bungoma, shall facilitate access to the requested information to the Applicant being:
  - i. The project status and implementation report for roads numbers 75,76,77,78,79,80 ,81 and 82 Maraka Ward, Bungoma County;
  - ii. The project status and implementation report for roads numbers 130,131,132,133,134,135,136,137,138 and 139 Sitikho Ward, Bungoma County; and
  - iii. The contractors who were awarded the contracts for the foretasted roads in Maraka and Sitikho Wards in Bungoma County.
2. **THAT** compliance with these orders shall 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 County Secretary, County Government of Bungoma, in line with *Section 28* of the *ATI Act, 2016*.

**Dated, Signed** and **Issued** at **Nairobi** this...**22<sup>nd</sup>** ... day of .....**MAY**.....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 ATI 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.”***