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THE ACCESS TO INFORMATION ACT, 2016

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NOTICE

This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dar es Salaam,
18th May, 2016

JOHN W. H. KIJAZI
Secretary to the Cabinet

A BILL

for

An Act to provide for access to information; to define the scope of information which the public has the right to access; to promote transparency and accountability of information holders; and to provide for other related matters.

ENACTED by Parliament of the United of Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and
Commencement

1. This Act may be cited as the Access to Information Act, 2016 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Application

2.-(1) This Act shall apply to Mainland Tanzania.
(2) Without prejudice to the provisions of subsection (1), this Act shall apply to:
(a) public authorities;
(b) private bodies registered under any written law which:
(i) utilize public funds; or
(ii) are in possession of information which is of significant public interest.

Interpretation	<p>3. In this Act, unless the context requires otherwise:</p>
Cap.2	<p>“Constitution” means the Constitution of the United Republic, 1977;</p> <p>“exempt information” means any information, or document containing information, withheld by the information holder in accordance with section 6;</p> <p>“information” means any material which communicates facts, opinions, data or any other matter relating to the management, administration, operations or decisions of the information holder, regardless of its form or characteristics;</p> <p>“information holder” means a public authority or a private body referred to under section 2 (2);</p> <p>“information officer” means an officer of the information holder appointed as such under section 7;</p> <p>“Minister” means the Minister responsible for legal affairs;</p> <p>“personal information” means information relating to an individual who is directly or indirectly identifiable by name, identification document or through any physical or other characteristics or attributes, but does not include information having a bearing on the public functions of an employee of a public authority or any other person performing a function of a public authority;</p> <p>“public authority” means any authority that is established by or under the Constitution, an Act of Parliament, recognized under any written law as a public office or forms part of any level of the Government.</p> <p>“records” include any recorded information regardless of form or medium created, received and maintained by any information holder in the pursuance of its legal obligations or in the transaction of its business and providing evidence of the performance of those obligations or that business.</p>
Objectives of this Act	<p>4. The objectives of this Act are to:</p> <p>(a) give effect to the right of access to information by citizens as provided for by the Constitution;</p> <p>(b) require information holders to proactively</p>

- (c) disclose information and provide to the public information that they hold subject to the provisions of this Act;
- (d) create a framework to facilitate access to information held by information holders in compliance with any right protected by the Constitution and any other written law;
- (e) promote routine and systematic information disclosure by information holders in compliance with the principles of accountability, transparency and public participation; and
- (f) provide for the protection of persons who release information of public interest in good faith.

**PART II
RIGHT OF ACCESS TO INFORMATION**

Right to
information

5.-(1) Every person shall have the right of access to information which is under the control of information holders.

(2) Subject to the provisions of subsection (1), an information holder shall make available to the public or, upon request, to any person information which is under its control.

(3) Nothing in this Act shall limit or otherwise restrict any other legislative requirement for a public authority to disclose information.

(4) For purposes of this section, “person” means a citizen of the United Republic

Exempt
information

6.-(1) Information requested under this Act shall be deemed to be exempt from disclosure if the information holder who has control of the information-

- (a) claims an exemption under subsection (2) for all or for any part of the information; and
- (b) determines, in accordance with this Act, that the disclosure is not justified in the public interest.

(2) Exempt information may be withheld if the disclosure of such information is likely to-

- (a) undermine the national security of the United Republic;
 - (b) impede due process of law or endanger safety of life of any person;
 - (c) undermine lawful investigations being conducted by a law enforcement agent;
 - (d) facilitate or encourage the commission of an offence;
 - (e) involve unwarranted invasion of the privacy of an individual, other than an applicant or a person on whose behalf an application has been made;
 - (f) infringe commercial interests, including intellectual property rights of that information holder or a third party from whom information was obtained;
 - (g) hinder or cause substantial harm to the Government to manage the economy;
 - (h) significantly undermine the information holder's ability to give adequate and judicious consideration to a matter of which no final decision has been taken and which remains the subject of active consideration; or
 - (i) damage the information holder's position in any actual or contemplated legal proceedings, or infringe professional privilege.
- (3) For purposes of paragraph (a) of subsection (2), information relating to national security includes-
- (a) military strategy, doctrine, capability, capacity or deployment;
 - (b) foreign government information with implications on national security;
 - (c) intelligence operations or activities, sources or information capabilities, methods or cryptology;
 - (d) foreign relations or foreign activities;
 - (e) scientific, technology or economic matters relating to national security; or
 - (f) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to national security.

(4) Paragraphs (f) and (g) of subsection (2) shall not apply if a request for information relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

(5) Unless the contrary is proved by the information holder, information shall be presumed not to be exempt if the information has been held for a period exceeding thirty years.

(6) Any person who discloses exempt information withheld by the public authority in contravention of this Act, commits an offence and shall, on conviction, be liable to imprisonment for a term not less than fifteen years but not exceeding twenty years.

**PART III
ACCESS TO INFORMATION**

(a) Obligation to provide information

Appointment of
information
officers

7.-(1) Every information holder shall appoint one or more officers as information officers.

(2) An information officer shall deal with requests for information and render assistance to a person seeking such information.

Obligation to
keep information

8.-(1) Every information holder shall maintain record of information that is under the control of such information holder.

(2) For the purpose of subsection (1), the information holder shall maintain every record for a period of not less than thirty years after a date on which the information is generated or a date on which such information came under the control of the information holder.

Obligation to
publish certain
information

9.-(1) Every information holder shall, not later than thirty six months after the commencement of this Act, and upon request issue a notice to the public in the *Gazette*, website or news paper of wide circulation containing the following-

(a) a description of its structure, functions, and responsibilities including those of any of its

- (b) statutory officers or advisory committees;
 - (c) a general description of categories of information held by such information holder; and
 - (d) a description of all manuals and similar types of documents in or under this Act.
- (2) The notice shall include particulars of the officer to whom requests for official information or particular classes of information shall be sent.
- (3) In complying with the provisions of this section, the information holder shall not provide exempt information under this Act.
- (4) Failure by the information holder to provide information under subsection (1) shall not prejudicially affect the right of access to information under the control of such information holder.
- (5) The information holder-
- (a) shall, from time to time, inform the public on any substantial changes to the information required to be published under subsection (1); and
 - (b) may, at any time, inform the public on any other information, in addition to information required to be published under subsection (1), relating to its functions.

(b) Procedure for access to information

Application for
access to
information

- 10.**-(1) A request for access to information shall be made in writing and addressed to the information holder.
- (2) The request for information shall provide sufficient details to enable the information holder to identify the information and shall include name and address of the person requesting the information.
- (3) For purposes of subsection (1), a request shall be treated as made in writing where the text of the request-
- (a) is delivered by hand, postal or transmitted by electronic means;
 - (b) is received in legible form in the manner prescribed in the regulations; and
 - (c) is capable of being used for subsequent

(d) reference.

(4) A person who, because of illiteracy or disability, is unable to make a written application for access to information, may make a request orally, and the officer to whom the request is made shall reduce the request into writing in the prescribed form and provide a copy of the written request to the person requesting.

Notice where
access to
information is
requested

11.-(1) Where access to information is requested, the information holder to which the request is made shall, within thirty days after the request is received-

(a) give written notice to the person who made the request as to whether the information exists and, if it does, whether access to the information or a part thereof shall be given; and

(b) if access is to be given, promptly give the person requesting access to the information or a part thereof in the manner prescribed under this Act.

(2) Where the information holder requires further information in order to identify and locate the information requested, it shall, within fourteen days of receiving the request for information, notify the person requesting of the need for such further information and in that case, the period of fourteen days shall be reckoned from the date on which such further information is received.

(3) Where the information holder is satisfied that the information requested-

(a) does not exist; or

(b) has already been published and it is in public domain,

the information holder shall inform the person who made the request to that effect.

Access to
documents other
than under this
Act

12. Nothing in this Act shall prevent the information holder from publishing or giving access to documents, otherwise than as required by this Act, where it has the discretion to do so or such information holder is required by law to do so.

Transfer of request

13.-(1) Where the information holder to which a request for information is made considers that another information holder is the appropriate holder of the information requested, the information holder to which the request was initially made may, within seven days after the request is received, transfer the request to such other information holder and give a written notice of the transfer to the person who made the request.

(2) For the purpose of subsection (1), the period specified in section 11 shall apply to the information holder to which the request is transferred with effect from the date on which the request is transferred.

Refusal of request

14. Where the information holder refuses to give access to information requested, either in whole or in part, such information holder shall, in writing, notify the person requesting the information of the refusal and shall, in the notification:

- (a) set out reasons for the refusal and all material issues relating to the decision, including the specific provision of this Act and the factors taken into consideration in relation to public interest;
- (b) inform the person who made the request of the availability of a review in accordance to section 19 within which an application for review may be made;
- (c) where the decision is to the effect that the information does not exist, state that a thorough and diligent search was made to locate the information.

Notice to third parties

15.-(1) An information holder dealing with a request for access to information shall take all reasonable steps to notify any third party to whom or which any record containing the information requested relates.

(2) The information holder acting under subsection (1) shall, within eight days after the request is received, notify the third party.

(3) Notification under subsection (2) shall:

- (a) state that the information holder is in receipt of the request for access to information;

- (b) describe the content of the request;
- (c) furnish the particulars of the person requesting information to the satisfaction of the information holder; and
- (d) inform the third party of the obligation to provide information.

(4) The provisions of this Act relating to the request for access to information shall apply *mutatis mutandis* to the third party who received the notice under subsection (1).

Deferral of access

16.-(1) The information holder may defer the provision of access to information until the happening of a particular event, including the taking of some action required by law or some administrative action, or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Where the provision of access to information is deferred, the information holder shall, in writing, inform the person requesting information the reasons for such decision and the period for which the deferment shall operate.

Means of accessing information

17.-(1) Access to information may be provided to a person in any of the following forms:

- (a) provision of a copy of the information;
- (b) delivery of a copy of the information in electronic form;
- (c) in the case of an information that is an article or another thing from which sounds or visual images are capable of being reproduced, by making arrangements for the person to hear or view sounds or visual images;
- (d) in the case of an information by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in shorthand writing or codified, by provision of a written transcript of the words recorded or contained in the information;

(e) in the case of a person with a sensory disability, by provision of a record in a format that allows the person to read or listen to the record of the information.

(2) Where a person who made the request has requested access in a particular form, the information holder may issue the information in a form he deems proper.

(3) Where the form of access requested:

(a) contravenes the provisions of the National Security Act;

(b) interferes unreasonably with the operations of the information holder;

(c) is detrimental to the preservation of the information or having regard to the physical nature of the information it is not appropriate; or

(d) would involve an infringement of a copyright other than a copyright owned by the Government subsisting in the information, access in that form may be refused and given in another form.

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Use of the information

18.-(1) Subject to the provisions of section 6, a person who receives the information from the information holder shall not distort such information.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and shall, upon conviction, be liable to imprisonment for a term not less than five years.

(c) Review of decision by information holders

Review of decision

19.-(1) A person who, having made a request for information, is aggrieved by a decision of the information holder in relation to the request, may apply to the head of institution for review of the decision in respect of any of the following:

(a) refusal of access by the information holder to the information requested;

(b) payment of fees or charges which the person considers unreasonable;

(c) failure of the information holder to comply with time limits set out under this Act;

(d) any other matter relating to a request for or access to information made under this Act.

(2) The head of institution shall, within thirty days after receiving an application made under subsection (1), determine such application in accordance with its own laid down procedures.

(3) Any person aggrieved by the decision of the head of institution made under subsection (2) may, within thirty days from the date of receiving such decision, appeal to the Minister whose decision shall be final.

PART IV GENERAL PROVISIONS

Regulations

20. The Minister shall make regulations for the better carrying out of the provisions of this Act.

Fees

21. The information holder from which a request for access to information has been made may charge a prescribed fee for the provision of the information.

Offence of alteration, defacement, blocking, erasure.

22. A person who alters, defaces, blocks, erases, destroys or conceals any information held by the information holder, with the intention of preventing the disclosure by such information holder, commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding twelve months or both.

Protection of a person who makes disclosure

23.-(1) A person in the service or employment of any information holder shall not be subject to any legal, administrative or employment related sanctions for releasing information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment, as long as that person acted in good faith and in the reasonable belief that the information was substantially true.

(2) For purposes of subsection (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice,

corruption or dishonesty, or maladministration regarding the information holder.

Protection of officers

24. Officers in the service or employment of any information holder shall not be subject to any civil or criminal liability for any act done or omitted to be done in good faith in the exercise or performance of any power or duty under this Act.

OBJECTS AND REASONS

This Bill proposes for enactment of the Access to Information Act, 2016 with a view to enhancing access to information and promoting transparency and accountability of public authorities and private bodies that are in possession of information which is of significant public interest. Recognizing that access to information is a right bestowed on the citizens of the United Republic of Tanzania, the Bill intends to promote proactive publication, dissemination and access to information by the public in furtherance of that right.

The Bill is divided into Four Parts:

Part I of the Bill contains preliminary provisions which provides for a short title, application and interpretation of words used in the Bill.

Part II of the Bill contains provisions on the right of access to information. Clause 5 requires information holders to provide information to the person requesting such information while Clause 6 makes restrictions for disclosure of certain of information with the intention, among other things, of protecting safety of life of any person or promoting national security of the United Republic.

Part III contains provisions on the access to information. Clause 7 provides for appointment of information officers who shall be liaison officers for information holders on matters relating to dissemination of information. Apart from that, Clause 8 requires information holders to maintain and keep record of information for a period of not less than thirty years from the date on which such information was recorded. Clause 9 intends to impose obligation to every information holder to

publish information to the public for easy access of such information by the public.

Moreover, Clause 13 provides for the transfer of an application for information from one information holder to another when it becomes apparent that the information requested for is not in the domain of the information holder to which the application was initially made but is in the possession of another authority. Also, Clause 14 provides for procedure for information holder to refuse to give access to information requested either in whole or in part and inform the applicant the reasons for such refusal. Furthermore, Clause 19 provides for review of decision in respect of refusal of access to information when a person is aggrieved with the decision of an information holder in relation to request made to that information holder.

Part IV provides for general provisions that include powers of the Minister to make regulations for the better carrying out the provisions of the Bill and offences that may be committed under the proposed legislation. Besides, this Part provides for the fees that will be charged by information holders upon submission of the request for information.

Dar es Salaam,
10th May, 2016

HARRISON MWAKYEMBE
*Minister for Constitutional
and Legal Affairs*

SHERIA YA HAKI YA KUPATA TAARIFA, 2016

MPANGILIO WA VIFUNGU

Kifungu *Jina*

SEHEMU YA KWANZA
MASHARTI YA AWALI

1. Jina na tarehe ya kuanza kutumika
2. Matumizi
3. Tafsiri
4. Madhumuni ya Sheria

SEHEMU YA PILI
HAKI YA KUPEWA TAARIFA

5. Haki ya taarifa
6. Taarfa zilizozuiliwa

SEHEMU YA TATU
UPATIKANAJI WA TAARIFA

(a) Wajibu wa kutoa taarifa

7. Uteuzi wa maafisa habari
8. Wajibu wa kuweka kumbukumbu
9. Wajibu wa kutangaza taarifa fulani

(b) Utaratibu wa kupata taarifa

10. Maombi ya kupata taarifa
11. Indhari pale ombi la kupewa taarifa linapowasilishwa
12. Kupata nyaraka nje ya utaratibu wa Sheria hii
13. Kuhamisha maombi
14. Kukataa ombi
15. Taarifa kwa mtu wa tatu
16. Kuahirisha utoaji wa taarifa

17. Namna ya kupata taarifa

18. Matumizi ya taarifa

(c) *Upitiaji wa maamuzi kwa mmiliki wa taarifa*

19. Upitiaji wa maamuzi kwa wamiliki wa taarifa

SEHEMU YA NNE
MASHARTI YA JUMLA

20. Kanuni

21. Ada

22. Kosa la kubadilisha, kuharibu, kuzuia au kufuta taarifa

23. Kinga kwa mtoa taarifa

24. Kinga kwa maafisa

TAARIFA

Muswada huu utakaowasilishwa Bungeni umechapishwa pamoja na madhumuni na sababu zake kwa ajili ya kutoa taarifa kwa umma.

Dar es Salaam,
18 Mei, 2016

JOHN W. H. KIJAZI
Katibu wa Baraza la Mawaziri

MUSWADA

wa

Sheria ya haki ya kupata taarifa, kuainisha wigo wa taarifa ambazo umma unayo haki ya kupewa; kukuza uwazi na uwajibikaji wa wamiliki wa taarifa; na kuweka masharti mengine yanayohusiana nayo.

IMETUNGWA na Bunge ya Jamhuri la Muungano wa Tanzania.

**SEHEMU YA KWANZA
MASHARTI YA AWALI**

Jina na tarehe ya
kuanza kutumika

1. Sheria hii itaitwa Sheria ya Haki ya Kupata Taarifa, 2016 na itanza kutumika tarehe ambayo Waziri, kupitia Gazeti la Serikali, atatangaza.

Matumizi

2.-(1) Sheria hii itatumika Tanzania Bara.
(2) Bila ya kuathiri masharti ya kifungu kidogo cha (1), Sheria hii itatumika kwa:
(a) taasisi za umma;
(b) taasisi binafsi zilizosajiliwa chini ya sheria yoyote ya Bunge ambazo:
(i) zinatamia fedha za umma; au
(ii) zina taarifa muhimu kwa maslahi ya umma.
(iii)

Tafsiri

- 3.** Katika Sheria hii, isipokuwa kama muktadha unahitaji vinginevyo:
- “Katiba” maana yake ni Katiba ya Jamhuri ya Muungano, 1977;
- “taarifa zilizozuiliwa” maana yake ni taarifa au nyaraka yenye taarifa iliyozuiliwa na mmiliki wa taarifa kwa mujibu wa kifungu cha 6;
- “taarifa” maana yake kitu chochote kinachowasilisha taarifa dhahiri, maoni, data au jambo jingine lolote kuhusu usimamizi, utawala, utendaji au uamuzi wa mmiliki wa taarifa, bila kujali aina au sifa zake;
- “mmiliki wa taarifa” maana yake ni mamlaka ya umma au mamlaka binafsi inayorejewa katika kifungu cha 2(2);
- “afisa taarifa” maana yake ni afisa wa mmiliki wa taarifa aliyeteuliwa katika nafasi hiyo chini ya kifungu cha 7;
- “Waziri” maana yake ni Waziri mwenye dhamana na masuala ya sheria;
- “taarifa binafsi” maana yake ni taarifa zinazomhusu mtu ambaye moja kwa moja au vinginevyo anatambuliwa kwa jina, kitambulisho, au kupitia utambuzi wa kuonekana au wa aina yoyote ile lakini haitajumuisha taarifa inayohusu kazi za umma za mwajiriwa wa mamlaka ya umma au mtu mwingine yeyote anayefanya kazi ya mamlaka ya umma;
- “mamlaka ya umma” maana yake ni mamlaka yoyote iliyoanzishwa chini ya Katiba, Sheria ya Bunge, inayotambuliwa chini ya sheria yoyote ya Bunge kama ofisi ya umma au inakuwa ni sehemu ya ngazi yoyote ya Serikali;
- “kumbukumbu” inajumuisha taarifa yoyote iliyorekodiwa bila kujali aina yake au namna ilivyotengenezwa, pokewa na kutunzwa na mmiliki wa taarifa katika kutekeleza wajibu wake kisheria au katika kutekeleza kazi zake na kutoa ushahidi wa utekelezaji wa wajibu huo au kazi hizo.

Madhumuni ya Sheria

- 4. Madhumuni ya Sheria hii ni-**
- (a) kuwezesha utekelezaji wa haki ya kupata taarifa kwa raia kama ilivyoainishwa na Katiba;
 - (b) kuwataka wamiliki wa taarifa kutoa taarifa zozote zilizopo katika milki yao na kuupatia umma taarifa wanazomiliki kwa umma kwa mujibu wa Sheria hii;
 - (c) kutengeneza mfumo utakaosaidia upatikanaji wa taarifa zilizopo chini ya wamiliki wa taarifa kwa kuzingatia haki nyingine zinazolindwa na Katiba au sheria nyingine yoyote;
 - (d) kuhamasisha utaratibu wa utoaji wa taarifa wa mara kwa mara wa wamiliki wa taarifa kwa kuzingatia misingi ya uwajibikaji, uwazi na ushirikishwaji wa umma; na
 - (e) kuweka kinga kwa watu wanaotoa kwa nia njema taarifa zenye maslahi kwa umma.

**SEHEMU YA PILI
HAKI YA KUPATA TAARIFA**

Haki ya kupata taarifa

5.-(1) Kila mtu atakuwa na haki ya kupata taarifa zilizopo chini ya mamlaka ya wamiliki wa taarifa.

(2) Kwa kuzingatia masharti ya kifungu kidogo cha (1), kila mmiliki wa taarifa atatoa kwa umma, au atakapoombwa, kwa mtu yeyote taarifa iliyo chini ya mamlaka yake.

(3) Kwa madhumuni ya kifungu hiki, “mtu” maana yake ni raia wa Jamhuri ya Muungano.

(4) Hakuna kitu chochote katika Sheria hii kitakachozuia au kwa namna nyingine yoyote kuwekea kikwazo hatua yoyote ya kutunga sheria itakayoitaka mamlaka ya umma kutoa taarifa.

Taarifa zilizoziuliwa

6.-(1) Taarifa iliyoombwa chini ya Sheria hii, itachukuliwa kuwa imezuiwa kutolewa, ikiwa mamlaka ya umma ambayo inasimamia taarifa hiyo-

- (a) inadai kuzuiwa kwa taarifa yote au sehemu

- yoyote ya taarifa hiyo chini ya kifungu kidogo cha (2); na
- (b) kuamua kwa mujibu wa Sheria hii, kwamba kutolewa kwake si stahiki kwa maslahi ya umma.
- (2) Taarifa iliyozuiwa inaweza kuzuiliwa kama utolewaji wa taarifa hiyo unaweza kupelekea-
- (a) kudhoofisha usalama wa Jamhuri ya Muungano;
 - (b) kukwamisha taratibu za sheria au unahatarisha usalama wa maisha ya mtu yeyote;
 - (c) kuingilia upelelezi unaofanywa na vyombo vya uchunguzi;
 - (d) kuwezesha au kuhamasisha kufanya kosa;
 - (e) kuingilia faragha ya mtu bila idhini, mbali na muombaji au mtu ambaye kwa niaba yake ombi limefanywa;
 - (f) kutishia maslahi ya kibiashara, ikijumuisha haki miliki ya mmiliki wa taarifa au mtu wa tatu ambaye taarifa zimepatikana kutoka kwake;
 - (g) kuzuia au kusababisha madhara makubwa kwa Serikali katika kusimamia uchumi;
 - (h) kudhoofisha kwa kiasi kikubwa uwezo wa mmiliki wa taarifa kutoa angalizo stahiki kwa tatizo ambalo hakuna maamuzi ya mwisho ambayo yamechukuliwa na ambayo bado linahitaji kuzingatiwa kwa kutolewa uamuzi; au
 - (i) inaathiri nafasi ya mmiliki wa taarifa katika hali halisi au inayoweza kutokea katika taratibu za kisheria au kuathiri hadhi ya taaluma.
- (3) Kwa madhumuni ya aya (a) ya kifungu kidogo cha (2), taarifa inayohusiana na usalama wa taifa inajumuisha-
- (a) mikakati ya kijeshi, mafundisho, uwezo, nafasi au usambazaji;
 - (b) taarifa ya serikali ya kigeni inayohusisha usalama wa taifa;

- (c) kazi za kijasusi, vyanzo, uwezo, utaratibu au usiri;
- (d) uhusiano wa mambo ya nje au shughuli za mambo ya nje;
- (e) masuala ya kisayansi, kiteknologia au kiuchumi yanayohusiana na usalama wa taifa;
- (f) udhaifu au uwezo wa mifumo, miundombinu, miradi, mipango au kulinda huduma zinazohusiana na usalama wa taifa.

(4) Aya za (f) na (g) ya kifungu kidogo cha (2), hazitatumika iwapo ombi la taarifa linahusu matokeo yoyote ya bidhaa au jaribio la kimazingira, na taarifa husika inabainisha hatari kubwa ya usalama kwa umma au mazingira.

(5) Isipokuwa imethibitishwa vinginevyo na mmiliki wa taarifa, taarifa itachukuliwa kuwa haijazuiliwa iwapo taarifa hiyo imeshikiliwa kwa kipindi kinachozidi miaka thelathini.

(6) Mtu yeyote anayetoa taarifa iliyozuiliwa kinyume cha mamlaka ya umma kinyume cha Sheria hii, anatenda kosa, na endapo atatiwa hatiani atatumikia kifungo kisichopungua miaka kumi na mitano na kisichozidi miaka ishirini.

SEHEMU YA TATU UPATIKANAJI WA TAARIFA

(a) Wajibu wa kutoa taarifa

Uteuzi wa
maafisa taarifa

7.-(1) Kila mmiliki wa taarifa atateua afisa mmoja au zaidi kama maafisa habari.

(2) Afisa habari atahusika na maombi ya taarifa na kutoa msaada kwa mtu anayeomba taarifa hiyo.

Wajibu wa
kuweka
kumbukumbu

8.-(1) Kila mmiliki wa taarifa atatumia kumbukumbu za taarifa zilizokamilika ambazo ziko chini ya miliki yake.

(2) Kwa madhumuni ya kifungu kidogo (1), mmiliki wa taarifa atatumia kila kumbukumbu kwa muda usiopungua miaka thelathini baada ya tarehe ambapo taarifa ilipatikana au tarehe ambayo taarifa

ilikuja chini ya usimamizi wa mmiliki wa taarifa.

Wajibu wa
kutangaza taarifa
fulani

9.-(1) Kila mmiliki wa taarifa, si zaidi ya miezi thelathini na sita baada ya kuanza kutumika kwa sheria hii, baada ya kuombwa, atatoa kwenye Gazeti, tovuti au gazeti linalopatikana kwa wingi likiwa na-

- (a) maelezo juu ya aina, kazi na majukumu ikijumuisha majukumu yoyote ya kisheria ya maafisa au kamati za ushauri;
- (b) maelezo ya jumla ya aina za taarifa zinazopatikana kwa mmiliki wa taarifa huyo;
- (c) maelezo ya vijarida vyote na aina nyingine za nyaraka chini ya Sheria hii.

(2) Kwa kuzingatia masharti ya kifungu kidogo cha (1), maelezo hayo yatajumuisha taarifa za afisa ambaye taarifa rasmi au aina maalum za taarifa zinazoombwa zitapelekwa.

(3) Katika kutekeleza masharti ya kifungu hiki, mmiliki wa taarifa hatatoa taarifa zilizozuliwa chini ya Sheria hii.

(4) Kushindwa kwa mwamiliki wa taarifa kutoa taarifa chini ya kifungu kidogo cha (1) haitaathiri haki ya mtu kupata taarifa ambazo zipo chini ya mamlaka ya mmiliki wa taarifa huyo.

(5) Mmiliki wa taarifa atatangaza mara kwa mara mabadiliko yoyote ya msingi ya taarifa yanayotakiwa kutangazwa chini ya kifungu kidogo cha (1).

(b) Utaratibu wa kupata taarifa

Maombi ya
kupata taarifa

10.-(1) Ombi la kupata taarifa litafanywa kimaandishi na kupelekwa kwa mmiliki wa taarifa.

(2) Ombi la taarifa litatoa maelezo ya kutosha kumwezesha mmiliki wa taarifa kuitambua taarifa inayoombwa na itajumuisha jina na anwani ya mtu anayeomba taarifa.

(3) Kwa madhumuni ya kifungu kidogo cha (1), ombi litachukuliwa kuwa limefanywa kimaandishi, iwapo karatasi ya ombi-

- (a) imepokelewa kwa mkono, kwa njia ya

posta au kuwasilishwa kwa njia ya elektroniki;

(b) imepokelewa kwenye muundo unaosomeka kwa namna maalumu kwa utaratibu ulivyoainishwa katika kanuni; na

(c) inaweza kutumika kama rejea zinazofuata.

(4) Mtu anayehitaji taarifa ambaye, kwa sababu ya kutokujua kusoma au ulemavu anashindwa kutuma maombi ya kupata taarifa, anaweza kufanya maombi kwa mdomo na afisa ambaye ombi limefanywa kwake, ataliweka ombi hilo katika maandishi katika fomu maalum na kutoa nakala ya maandishi kwa muombaji.

Notisi pale ombi la kupewa taarifa linapowasilishwa

11.-(1) Endapo mtu anaomba kupata taarifa, mmiliki wa taarifa ambaye ombi limefanywa kwake atatakiwa, ndani ya siku thelathini baada ya kupokea ombi-

(a) kutoa taarifa ya kimaandishi kwa mtu aliyetuma ombi, iwapo kama taarifa ipo, na kama ipo, iwapo anaweza kuipata taarifa au sehemu ya taarifa hiyo; na

(b) iwapo upatikanaji wa taarifa utaruhusiwa, mara moja kumpatia mtu aliyeomba, taarifa au sehemu ya taarifa kwa namna ambavyo imeainishwa chini ya Sheria hii.

(2) Endapo mmiliki wa taarifa anahitaji taarifa ya ziada kwa ajili ya kutambua na kubaini taarifa iliyoombwa, atamtaarifu muombaji juu ya hitaji hilo la taarifa ziada ndani ya siku kumi na nne za kupokea ombi la taarifa na, kwa jinsi hiyo kipindi cha siku kumi na nne kitachukuliwa kuwa kimeanza siku ambayo taarifa ya ziada imepokelewa.

(3) Pale ambapo mmiliki wa taarifa ataridhika kwamba taarifa inayohitajika:

(a) haipo;

(b) imeshachapishwa na umeshatolewa kwa umma, mmiliki huyo wa taarifa atamtaarifu mtu aliyefanya maombi hayo.

Kupata nyaraka
nje ya utaratibu
wa Sheria hii

12. Hakuna katika Sheria hii kitakachozuia mmiliki wa taarifa kuchapisha au kuruhusu nyaraka kupatikana vinginevyo zaidi ya inavyohitajiwa na Sheria hii, iwapo ana hiyari ya kufanya hivyo au mmiliki huyo wa taarifa anatakiwa na sheria kufanya hivyo.

Kuhamisha
maombi

13.-(1) Endapo mmiliki wa taarifa ambaye ombi la taarifa limepelekwa kwake anaona kuwa mmiliki wa taarifa mwingine ana maslahi makubwa kwenye taarifa iliyoombwa, mmiliki wa taarifa ambaye ombi lilifanywa kwake mwanzo, anaweza, ndani ya siku saba baada ya ombi kupokelewa, kuhamisha ombi kwa mmiliki mwingine wa taarifa na kutoa taarifa ya kimaandishi ya kuhamisha ombi kwa mtu aliyefanya ombi.

(2) Kwa madhumuni ya kifungu kidogo cha (1), muda uliotajwa katika kifungu cha 11 utatumika kwa mmiliki wa taarifa ambaye ombi limehamishwa kwake kuanzia tarehe ambayo ombi limehamishiwa.

Kukataa ombi

14. Endapo mmiliki wa taarifa anakataa kutoa taarifa iliyoombwa, iwe ni taarifa yote au sehemu ya taarifa, mmiliki wa taarifa huyo kimaandishi atamtaarifu mtu aliyeyomba taarifa juu ya kukataa na katika taarifa hiyo-

(a) ataoa sababu ya kukataa na masuala yote yanayohusu uamuzi, ikiwemo masharti husika ya Sheria hii na sababu zilizozingatiwa katika kulinda maslahi ya umma;

(b) atamtaarifu mtu aliyetuma maombi juu ya uwezekano wa kufanya mapitio kwa mujibu wa kifungu cha 19 ambapo ombi la kupitia upya linaweza kufanywa.

Taarifa kwa mtu
wa tatu

15.-(1) Katika kushughulikia ombi la kupata taarifa, mmiliki wa taarifa atachukua hatua zote za msingi za kumuarifu mtu wa tatu ambaye kumbukumbu yoyote ya taarifa iliyoombwa inamhusu.

(2) Mmiliki wa taarifa anayehusika katika

kifungu kidogo cha (1), atamtaarifu mtu wa tatu haraka iwezekanavyo na, katika hali yoyote ile atafanya hivyo ndani ya siku nane baada ya ombi kupokelewa.

(3) Taarifa katika kifungu kidogo cha (2)-

- (a) itaelezea kwamba mmiliki wa taarifa amepokea ombi hilo;
- (b) ataelezea kilichomo katika ombi hilo;
- (c) atatoa taarifa za mtu aliyeomba taarifa baada ya mtoa taarifa kuridhisha; na
- (d) kumtaarifu mtu wa tatu wajibu wake wa kutoa taarifa.

Kuahirisha utoaji wa taarifa

16.-(1) Mmiliki wa taarifa ambaye amepata ombi anaweza kuahirisha kutoa taarifa husika mpaka linapotokea tukio maalum likiwemo kuchukua hatua za kisheria au kiutawala, au mpaka kuisha kwa muda uliyowekwa, iwapo ni muhimu kufanya hivyo kwa maslahi ya umma au kwa kuzingatia taratibu za kawaida na sahihi za kiutawala.

(2) Endapo masharti ya upatikanaji wa taarifa yameahirishwa, mmiliki wa taarifa, atamtaarifu mwombaji sababu ya uamuzi huo na muda ambao uhairishaji huo umefanywa.

Namna ya kupata taarifa

17.-(1) Upatikanaji wa taarifa unaweza kufanywa kwa mtu kupitia moja ya njia zifuatazo:

- (a) utoaji wa nakala ya taarifa;
- (b) utoaji wa nakala ya taarifa kwa njia ya kieletroniki;
- (c) iwapo taarifa ni kifaa au kitu kingine ambacho ni sauti au muonekano wenye uwezo wa kuoneshwa, kuweka utaratibu kwa mtu husika kusikia au kusikiliza sauti au kuona taarifa hiyo; au
- (d) kama ni taarifa ambayo maneno yanarekodiwa kwa namna ambayo inaweza kutolewa kwa namna ya sauti au ambapo yako katika hati mkato au katika mpangilio wa namba, kwa kutoa maneno yaliyorekodiwa au yaliyomo katika taarifa hiyo;

(e) kwa mtu mwenye ulemavu wa kuona au kiziwi, kwa kutoa taarifa hiyo katika mfumo au utaratibu utakaoruhusu mtu huyo kuweza kusoma au kusikiliza rekodi ya taarifa hiyo.

(2) Pale ambapo mtu aliyeomba taarifa ameomba taarifa kwa namna maalum, mmiliki wa taarifa atatoa taarifa hiyo kwa namna anatakayoona inafaa.

(3) Endapo aina ya kupata taarifa inayoombwa:

Sura ya 475

(a) inakiuka masharti ya Sheria ya Usalama wa Taifa;

(b) inaingilia bila sababu za msingi shughuli za mmiliki wa taarifa;

(c) inaharibu utunzaji wa taarifa au kwa kuzingatia hali halisi ya taarifa, sio sahihi;

(d) inaweza ikaathiri hakimiliki mbali ya haki miliki inayomilikiwa na Serikali iliyomo katika taarifa,

upatikanaji wa taarifa katika aina hiyo unaweza kukataliwa na kutolewa katika aina nyingine.

Matumizi ya taarifa

18.-(1) Bila bila ya kujali masharti ya kifungu cha 6, mtu aliyepewa taarifa kutoka kwa mmiliki taarifa hatatakiwa kuipotosha taarifa hiyo.

(2) Mtu yeyote anayekiuka masharti ya kifungu kidogo cha (2) anatenda kosa na akitiwa hatiani atatumikia kifungu kwa kipindi kisichopungua miaka mitano.

(c) Upitiaji wa maamuzi kwa mmiliki wa taarifa

Upitiaji wa maamuzi kwa wamiliki wa taarifa

19.-(1) Mtu ambaye amefanya ombi kwa ajili ya kupata taarifa anaweza, iwapo hajaridhishwa na uamuzi wa mmiliki wa taarifa kuhusu ombi lake, kutuma maombi ya mapitio kwa mkuu wa taasisi kwa ajili ya kurejea uamuzi unaotokana na chochote kati ya vifuatavyo-

(a) kukataa kwa mmiliki wa taarifa kupata taarifa iliyooombwa;

(b) malipo ya ada au tozo ambazo mtu huyo anaona si za msingi;

(c) kushindwa kwa mmiliki wa taarifa kufuata muda uliowekwa chini ya Sheria hii;

(d) suala jingine lolote lialohusu ombi la au kupata taarifa chini ya Sheria hii.

(2) Mkuu wa taasisi, ndani ya siku thelathini baada ya kupokea maombi yaliyofanywa chini ya kifungu kidogo cha (1), ataamua maombi kwa mujibu wa taratibu walizojiwekea.

(3) Mtu yeyote ambaye hajaridhishwa na uamuzi wa mkuu wa taasisi uliofanywa chini ya kifungu kidogo cha (2) anaweza, ndani ya siku thelathini tangu siku ya tarehe ya kupitisha uamuzi huo, kukata rufaa kwa Waziri ambaye uamuzi wake utakuwa ni wa mwisho.

**SEHEMU YA NNE
MASHARTI YA JUMLA**

Kanuni

20. Waziri anaweza kutengeneza kanuni kwa ajili ya utekelezaji bora wa masharti ya Sheria hii.

Ada

21. Mmiliki wa taarifa ambaye maombi ya kupata taarifa yatatumwa kwake anaweza kutoza ada iliyowekwa kwa ajili ya kutoa taarifa hiyo.

Kosa la kubadilisha, kuharibu, kuzuia au kufuta taarifa

22. Mtu yeyote ambaye anabadili, anafuta maandishi yasisomeke, anazuia, anafuta, anaharibu au anaficha kumbukumbu zozote zinazoshikiliwa na mmiliki wa taarifa kwa dhamira ya kuzuia upatikanaji wa taarifa kutoka kwa mmiliki huyo wa taarifa, anatenda kosa na akitiwa hatiani atatozwa faini isiyozidi shilingi milioni tano au kifungo kisichozi miezi kumi na mbili au vyote kwa pamoja.

Kinga kwa mtoa taarifa

23.-(1) Mtu aliye katika huduma au ajira ya mmiliki wa taarifa yeyote hatachukuliwa hatua ya kisheria, utawala au inayohusiana na ajira kwa kutoa taarifa inayohusu utendaji wa makosa au taarifa itakayoweka bayana tishio la hatari kwa afya, usalama

au mazingira, iwapo tu mtu huyo amefanya hiivyo kwa nia njema na kuamini kwa dhati kuwa taarifa hiyo ilikuwa ni ya kweli.

(2) Kwa madhumuni ya kifungu kidogo cha (2), “utendaji wa makosa” inajumuisha utendaji wa kosa la jinai, kushindwa kutekeleza wajibu uliyowekwa kisheria, uvunjaji wa sheria, rushwa, udanganyifu, usimamizi au utawala mbaya wa mmiliki wa taarifa.

Kinga kwa maafisa

24. Maafisa waliopo katika huduma au ajira ya mmiliki wa taarifa hawatawajibika kwa jinai au madai kwa kitendo chochote kilichofanywa au kutofanywa kwa nia njema katika kutekeleza mamlaka au, jukumu lolote chini ya Sheria hii.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kutungwa Sheria ya Upatikanaji wa Habari, 2016, kwa lengo la kuwezesha upatikanaji wa taarifa zilizopo chini ya himaya Wizara za Serikali na baadhi ya taasisi ambazo zinatekeleza majukumu yake kwa manufaa ya umma. Muswada huu unatambua haki ya Kikatiba ya Watanzania kupata taarifa, hivyo unapendekeza masharti yanayolenga kuhamasisha Wizara, taasisi na mamlaka mbalimbali kutoa na kusambaza taarifa kwa wananchi wote. Kwa kutambua umuhimu wa haki hii ya kikatiba, Muswada unapendekeza utaratibu wa wananchi kupata taarifa pia unaondoa vizuizi vyovyote katika upatikanaji wa taarifa. Msingi wa mapendekezo haya ni kurahisisha upatikanaji wa taarifa kwa wananchi ambao ndiyo msingi mkuu wa demokrasia na utawala bora.

Muswada huu umegawanyika katika sehemu Kuu Nne.

Sehemu ya Kwanza inahusu masuala ya utangulizi yanayojumuisha jina la Sheria inayopendekezwa, matumizi na tafsiri ya maneno na misamiati yaliyotumika katika Muswada.

Sehemu ya Pili ya Muswada inahusu haki ya kupata habari. Ibara ya 5 inaainisha masharti yanayowataka wamiliki wa taarifa kutoa

taarifa kwa mtu anayeomba taarifa hiyo ambapo kifungu cha 6 kinazuia utoaji wa baadhi ya taarifa kwa dhamira ya pamoja na mambo mengine, kulinda usalama wa maisha ya mtu au kuendeleza usalama wa Jamhuri ya Muungano.

Sehemu ya Tatu inaainisha masharti ya upatikanaji wa taarifa. Ibara ya 7 inapendekeza masharti juu ya uteuzi wa maafisa habari wa Wizara na taasisi nyingine za umma na wananchi ambao watakuwa maafisa uhusiano wa wamiliki wa taarifa katika masuala ya utoaji taarifa. Mbali ya hayo, ibara ya 8 inaainisha masharti juu ya wajibu wa Wizara na taasisi nyingine kutunza kumbukumbu kwa kipindi kisichopungua miaka thelathini tangu siku kumbukumbu hiyo ilipoanza kutunzwa. Ibara ya 9 inakusudia kutoa jukumu kwa kila mmiliki wa taarifa kusambaza taarifa hizo kwa umma.

Vile vile, Ibara ya 13 inaainisha masharti yanayohusu uhamishaji wa maombi ya taarifa toka kwa mmiliki wa taarifa mmoja kwenda kwa mwingine itakapoonekana kuwa taarifa iliyoombwa haiko katika himaya ya mmiliki wa taarifa aliyeombwa awali. Ibara ya 14 inaweka utaratibu wa mmiliki wa taarifa kukataa kutoa taarifa ama yote au sehemu yake na kumfahamisha mtu aliyeomba sababu za kufanya hivyo. Ibara ya 19 inaweka masharti yanayohusu mapitio ya maamuzi ya kukataa kutoa taarifa iwapo aliyeomba hataridhishwa na uamuzi wa mmiliki wa taarifa kuhusiana na maombi yaliyofanywa.

Sehemu ya Nne inahusu masharti ya jumla ikijumuisha mamlaka ya Waziri kutengeneza kanuni kwa ajili ya utekelezaji wa masharti ya Sheria inayopendekezwa pamoja na makosa yanayoweza kutendwa chini ya Sheria inayopendekezwa. Ibara ya 21 inahusu gharama za upatikanaji wa habari wakati wa kuwasilisha maombi. Vile vile, Sehemu hii ina masharti yanayohusu ada itakayotozwa na mmiliki wa taarifa atakapotoa taarifa iliyoombwa.

Dar es Salaam,
10 Mei, 2016

HARRISON G. MWAKYEMBE
Waziri wa Katiba na Sheria