

USER GUIDE ON

ACCESS TO INFORMATION ACT (ATIA 13 OF 2017)



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GUIDELINES

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1.0 ABOUT THE GUIDELINES

These guidelines have been published to help the public in using and understanding the Access to Information Act (ATIA), provide more details on the law and procedures that people seeking information must follow. They contain a summary of rights, obligations, procedures, offences and penalties on access to information. ATIA has designated Malawi Human Rights Commission (herein referred to as the Commission) as an oversight body of its implementation. The same Act mandates the Commission to produce Information Guides.

2.0 WHEN WAS ATIA ENACTED?

ATIA was passed in Parliament on 14th December, 2016. On the 10th February 2017, the President assented to the ATIA. It was published in a gazette on 17th Feb 2017 and became operational on 30th September, 2020. The regulations for the implementation of the ATIA were published on 14th January, 2021.

3.0 OBJECTIVES OF THE ATIA

- i. To provide access to information that is held by information holders.
- ii. To ensure information holders disclose information they hold.
- iii. To provide a framework to facilitate access to information held by information holders.
- iv. To promote routine and systemic information disclosures by information holders.
- v. To provide for the protection of persons who release information of public interest.
- vi. To facilitate civic education on the right to access to information.

4.0 TO WHOM IS THE ATIA APPLICABLE?

The ATIA applies to the following institutions:

- i. Office of the President and Cabinet
- ii. Government ministries, departments and parastatals
- iii. Parliament
- iv. Judiciary (Courts)
- v. Commissions and institutions established by the Constitution or Act of Parliament
- vi. Private bodies (Companies) contracted by government
- vii. Non-Governmental Organizations (NGOs) established for public benefit.



5.0 WHO IS ELIGIBLE TO ACCESS INFORMATION?

Under the ATIA, every person is entitled to access information provided that the information sought will be used in the exercise of his or her rights.

6.0 WHAT ARE THE RIGHTS OF AN INFORMATION SEEKER?

- i. Right to seek information.
- ii. Right to make an application for information for free.
- iii. Right to apply for an internal review within an information holder (institution) when the request for information has been denied.
- iv. Right to apply for an external review to the Commission when the internal review has not been successful.
- v. Right to be heard during internal and external review processes.
- vi. Right to apply to the courts if the request for external review is not successful.

7.0 INTERNAL REVIEW MECHANISM

- i. An information seeker has a right to apply for an internal review through the information officer verbally or in writing within 60 days after receiving the notice of the decision.
- ii. The application should state the request and the decision made by the information holder.
- iii. The applicant shall be notified of the review decision within five days after lodging the request. The decision should be made by the head of the institution personally and the function cannot be delegated
- iv. When the disclosure of information is denied, the notice to the applicant shall (a) state reasons for the refusal with reference to specific provisions of the Act and (b) inform the applicant that he/she may lodge an appeal against the decision to the Commission.

8.0 EXTERNAL REVIEW MECHANISM

- i. When internal review mechanism has failed, an information seeker can request the Commission to review the decision by way of appeal.
- ii. The request for review shall be made when:
 - a. Access to information has been refused
 - b. When fees charged is unreasonable
 - c. When the information holder has not complied with timelines (delays in responding).

- iii. The appeal shall be made in writing or orally as approved by the Commission.
- iv. The appeal should be made in writing within 2 years when the request was received by the information holder
- v. The Commission has a maximum of 30 working days to make a determination on the appeal

9.0 WHAT IS AN INFORMATION HOLDER EXPECTED TO DO?

- i. Appoint or designate information officer (s).
- ii. Notify the ministry responsible the name and details of the information officer (s).
- iii. Establish step by step procedures for accessing information.
- iv. Keep information records of an institution for a period of seven years, thereafter, transfer it to the National Archives.
- v. Have an active website and digitize all its records.
- vi. Train its staff on access to information.
- vii. Proactively disclose information as stated in the ATIA.
- viii. If the requested information concerns the third party, an information holder should inform the third party before granting a request of access to the information.
Depending on the response from the third party, an information holder shall
decide to grant access to information or not.
- ix. Notify the information seeker in writing of the decision whether to grant or deny access to information in their custody.
- x. Grant a copy of an information record to the information seeker in the requested format.
- xi. Prepare information manuals for information held by the institution which can be disclosed.
- xii. Submit the information manuals to the Commission.
- xiii. Allocate resources within its annual budget to promote access to information.
- xiv. Submit annual report to the ministry responsible on performance of the institution according to the ATIA.

10.0 WHAT KIND OF INFORMATION CAN BE ACCESSED?

Information held by a public body or relevant private body to whom the ATIA applies.

9.0 INFORMATION WHICH CANNOT BE DISCLOSED

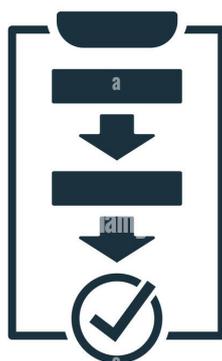


CONFIDENTIALITY



CONFIDENTIAL INFORMATION

- i. Information which can damage the national security or defense of the State.
- ii. Information which can endanger life, health and safety of a person.
- iii. Confidential information between medical practitioner and patient; lawyer and client; journalist and informant. However, the information seeker can have access to confidential information with consent from the parties concerned or a court order.
- iv. Information which can affect the integrity of the process like academic or professional examinations, recruitment, investigations and evaluation process of contracts.
- v. Information which can reveal trade secrets.
- vi. Information which can prejudice Malawi's international relations.
- vii. Information sought not in good faith or which can damage someone's reputation.
- viii. Information about cabinet records and those of its committees except after the expiry of 30 years.
- ix. Information about court records prior to conclusion of the matter.
- x. An information seeker may apply for judicial review against the determination of the Commission.



PROCEDURE

11.0 PROCEDURE OF ACCESSING INFORMATION

- i. Submit a request to an information officer orally or in writing.
- ii. An information seeker may use the prescribed application forms for requesting information however a request can be submitted without using a form.
- iii. A third party can request information on somebody's behalf if that person lacks capacity to request on their own (minors, people with disabilities and other challenges.)
- iv. Information seekers should give an information officer sufficient details to identify them.
- v. An information seeker may request a copy of information on a format different from the information record provided s/he is able to meet cost for the production.
- vi. An information seeker should wait for a maximum of 15 working days for a response.
- vii. An information holder may transfer the request for information to an other information holder who is deemed to have custody of that information but shall notify an information seeker of the same.
- viii. When access to information is denied, an information seeker can apply for an internal review to the head of the institution within 60 working days.
- ix. The information seeker is at liberty to seek for an external review within two years at the Commission when s/he is not satisfied with the outcome of an internal review.



12.0 OFFENCES AND PENALTIES

ATIA has provided for penalties on violation as follows.

OFFENCE	PENALTY
Willful concealing, destroying, mutilating, falsifying or altering a document or record containing requested information with the intention of preventing disclosure.	Three Million Malawi Kwacha (MK3,000,000) and imprisonment for a term not exceeding three years
Providing false information with the intention of injuring another person	Five Hundred Thousand Malawi Kwacha (500,000) and imprisonment for a term not exceeding two years
Wrongful denial of disclosure of information through negligence, recklessness or otherwise.	Three Million Kwacha (MK3,000,000)
Misuse or abuse of information by Information Seeker.	Three Million Malawi Kwacha (MK3,000,000) and imprisonment for three years.

13.0 MANDATE OF THE RESPONSIBLE MINISTRY

- i. Make regulations for the better implementation of the law.
- ii. Receive names of information officers appointed or designated by information holders.
- iii. Publish names of information officers in the newspapers.
- iv. Advise information holders on publication of information.
- v. Receive annual reports of compliance from information holders.
- vi. Prescribe uniform applicable fees for processing information applications.
- vii. Publish regulations for ATIA.

14.0 WHAT ARE THE POWERS OF THE COMMISSION UNDER ATIA?

The Commission has the mandate to oversee the implementation of the ATIA and its powers are as follows:

- i. Raise awareness of the right of access to information.
- ii. Review decisions of information holders in response to the applications.
- iii. Make recommendations on fees for processing request of information.
- iv. Provide advice and direction to information holders regarding their performance of duties and responsibilities under the ATIA.
- v. Develop information guidelines to enable users access the information they require.
- vi. Recommend declassification of information which is exempt from disclosure.
- vii. Recommend legal reforms to legislation relating to access to information
- viii. Promote and protect the right to access to information and investigate violation of the right to access to information.
- ix. Make determinations and follow ups with the concerned parties.

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Chairperson

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Signature



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