



PRESS STATEMENT ON THE PROCEDURES OF ACCESSING INFORMATION: ACCESS TO INFORMATION ACT 2017 AND ACCESS TO INFORMATION REGULATIONS

The Malawi Human Rights Commission (the Commission) would like to clarify some of the issues which are circulating in media as regards to denial or refusal of accessing information from different sectors, whereby, the general public is accusing the Commission that it is failing to perform its functions as an oversight institution of the Act.

The Commission on Section 7 of the Access To Information Act (ATIA) (No.13 of 2017) was designated to oversee the implementation of the Act. Some of its powers according to Section 8 (c) and (i) stipulate that the Commission have the power to:

(c) review, on application, decisions of information holders with regard to requests for information and make recommendations to the relevant information holder resulting from application made;

(i) review decisions of information holders with regard to denial of disclosure of information or grant of access to information;

Suffice to that, in compliance to the Act obligations, Section 12 (1) [a] and (5) ordered every information holder to designate or appoint one or more of its officers as information officers. Failure to do that, the head of the institution shall serve as the Information Officer. The Commission would like to commend Ministry of Information for ensuring that all government institutions should designate or appoint the Information Officers which many institutions have obliged to that. The Commission is also aware that other institutions have not designated or appointed the Information Officers and it is therefore, the responsibility of the head of those institutions to be serving as Information Officers.

PROCEDURES OF ACCESSING INFORMATION

The Commission would like to notify Malawians that in order for the Act to be fully utilized, there are procedures to be followed in accessing the information which are found in Part V of the Act. Below are some of the procedures to be followed by both the information seeker and the information holder before the matter comes to the Commission for external review.

- ✓ According to Section 18(1) it stipulates that a request for information from an Information Holder by an information seeker should be made orally or in writing and should be addressed to an Information Officer.
- ✓ On processing the information after the request of information has been made, the Act on Section 19 (1) states that the Information Officer should process the request within fifteen (15) working days by: (a) giving a written notice to the applicant as to whether the information exists and, where it does, whether an information holder shall access the entire information requested or part thereof will be given and (b) where access shall be granted, promptly give the applicant the information.
- ✓ Where the information holder requires further information in order to identify or locate the information requested, the information holder should notify the applicant of the need to do so within seven (7) working days from the time when the request was received [ATIA Section 19 (2)]
- ✓ Furthermore, Section 19 (3) of the Act states that where a request relates to information which reasonably appears to be necessary to safeguard the life or liberty of the information seeker, the information holder should within forty-eight (48) hours after the request is submitted; [a] determine whether it shall grant the request or not; [b] notify the applicant of the decision in writing; and [c] where the request is granted, give the applicant access to the information.

Further, the Commission informs the general public that according to section 27 (1 and 2) of the ATIA, the information holder should be deemed to have denied to grant access to the information to the applicant within the time limits which are set in the Act. Therefore, any refusal by an information holder to disclose information requested by an applicant should be reviewed internally by the information holder.

However, after exhausting internal review mechanism regarding his or her request, a person may seek review of the decision made from the Commission [ATIA s44 (1)]. It is therefore, **at this stage that the Commission comes in to conduct an investigation and examine any record that is under the custody or control of the information holder (Section 45). The Commission should within thirty (30) working days from the date it made a determination, inform the applicant and any third party of whether the information holder has complied to the determinations of the Commission (Section 47).**

The information holder has a right to apply to court for a review of the decision of the Commission after the proceedings of the review have been concluded (ATIA s49).

Furthermore, the Commission would like to remind the information holders that prevention of disclosure of information, providing false information and wrongful denial of disclosure of information are a crime which are punishable by law. The Commission is also reminding the information seekers that misuse of disclosed information for unlawful purposes; for reasons other than those for which a request for information was made without any authorization of the information holder is also a crime in accordance to sections 51 to 54 of the ATIA.

For more information, please contact The Executive Secretary, Malawi Human Rights Commission, P/Bag 378, Lilongwe 3. Telephone: 01 750 900.