

MALAWI HUMAN RIGHTS COMMISSION



ACCESS TO INFORMATION (ATI) UNIT

PROCEDURE FOR REVIEWING DECISIONS OF INFORMATION HOLDERS

2022 FIRST EDITION

1. BACKGROUND

The Malawi Human Rights Commission (the Commission) is an independent National Human Rights Institution (NHRI) established by the Constitutional of the Republic of Malawi under Section 129, with the primary function of protecting and investigating violations of the rights accorded by the Constitution or any other Law. The Commission derives its duties from the Human Rights Commission Act (HRCA). Section 12 of the HRCA stipulates that the Commission shall be competent in every respect to promote and protect Human Rights in Malawi in the broadest sense possible.

The Commission has been assigned additional responsibilities under the Access to Information Act. It now has oversight mandate over the implementation of the Access to Information Act. Under Section 8 [c] of the ATIA, the Commission has powers to *“review, on application decisions of information holders with regard to requests for information and make recommendations to the relevant information holder resulting from applications made.”* In view of this mandate the Commission has developed this Manual to guide the Commission’s processes in reviewing Access to Information (ATI) complaints.

2. ENTRY POINT

- 2.1 There shall be an ATI Unit which shall comprise the Head of the Unit, Desk Officer and at least one other officer within the Commission.
- 2.2 The ATI Desk Officer shall be responsible for registering complaints for review of denial of access to information at the Commission.
- 2.3 The aggrieved person can present their complaint either orally or in writing by using Form number 6.
- 2.4 For a request to be accepted by the Commission, it must be submitted within two years from the date from which a request for information was received by an information holder.
- 2.5 The Commission shall have a separate record book for registering ATI complaints.
- 2.6 After registering the complaint, the ATI Unit shall send the complaint to the ATI Thematic Committee who shall examine the complaint through an investigation or an inquiry and come up with a report.

3. PROCEDURE FOR DEALING WITH COMPLAINTS

3.1 The complaint presented to the Commission shall contain the following details:

Particulars of the Information Holder

- (a) Name of the institution
 - (b) Postal Address
 - (c) Physical Address
 - (d) Email Address
 - (e) Contact numbers
- 1) Particulars of the complainant.
- (a) Full name
 - (b) Date of birth
 - (c) Sex
 - (d) National ID
 - (e) Postal address
 - (f) Village
 - (g) Traditional Authority
 - (h) District
 - (i) Contact numbers
 - (j) Email
- 2) Exhaustion of internal review mechanism
- Steps taken to resolve the matter with information holder and the final decision made by the information holder.
- 3) Nature of the complaint

Whether the complaint relates to-

- (a) Refusal of access to information by the information holder
 - (b) Unreasonable fees payable
 - (c) Failure to comply with set time limits by the information holder
 - (d) Any other matter relating to a request for information (to be specified)
- 4) Summary of request
 - 5) Type of assistance sought from the Commission
- 3.2 The Commission shall acknowledge the receipt of the complaint through the ATI Desk Officer within 48 hours.
- 3.3 Upon the Commission's receipt of a complaint requesting a review of decisions made by information holders, it shall engage concerned parties through the following:
- 1) Inquiries
 - 2) Investigations
 - 3) Examinations of any record in question
 - 4) Representations made by the parties
 - 5) Hearings

4. DETERMINATION OF THE REVIEW

- 4.1 There shall be a Review of Decisions of Information Holders Panel (RDIHP) which shall comprise the ATI Thematic Committee and or other Commissioners who will be incorporated on a case-by-case basis.
- 4.2 The RDIHP Panel shall deliberate upon the report from the ATI Thematic Committee and make a determination.
- 4.3 The reviewing panel shall meet at least once in a month to review the decisions by Information Holders. In case of an emergency, the RDIHP shall hold an extra ordinary meeting.
- 4.4 Meetings of the reviewing panel can be conducted physically or virtually.

5. COMMUNICATION OF DETERMINATION

- 5.1. The Commission shall within seven working days of making its determination through the RDIHP, communicate its decision, in writing, to the aggrieved person, any third party

likely to be affected by the decision and the information holder. This determination shall be made within 30 days upon receipt of the complaint.

- 5.2. The determination shall be signed by the Chairperson of the Commission.
- 5.3. The Executive Secretary of the Commission shall be responsible for communicating the determination to the concerned parties.
- 5.4. The Commission shall update the aggrieved person and any third party of whether the information holder has taken action to comply with the determination made by the Commission. The update shall be done within thirty working days, from the time which the determination was communicated to the information holder.
- 5.5. The Executive Secretary shall be responsible for following up with the information holder on compliance with the Commission's determination within the specified time frame.
- 5.6. The Commission shall notify the complainant of the actions undertaken by the information holder in compliance with the determination. The communication shall be made within thirty working days from the date the determination is made.



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CHAIRPERSON

25th May, 2022

(DD/MM/YY)

APPENDIX: STANDARD FORMS/LETTERS

HRC FORM 6: REQUEST FOR EXTERNAL REVIEW OF DECISION OF
INFORMATION HOLDER

FORM 6 (reg. 25)

REQUEST FOR EXTERNAL REVIEW OF DECISION OF INFORMATION HOLDER

PART A__PARTICULARS OF THE INSTITUTION WHOSE DECISION IS SUBJECT OF THIS REQUEST

Name of the institution.....

Address of the institution.....

Location (District/Town/City/TA/Village.....

Email Address.....

Telephone Number.....

PART B__PARTICULARS OF THE COMPLAINANT

Full Name.....

Date of birth..... Sex.....

National ID Number

Postal address.....

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Physical address.....

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Telephone number.....

Email address.....

PART C__PARTICULARS OF PERSON ON WHOSE BEHALF THE REQUEST IS MADE

(To be completed when a complaint is submitted on behalf of another person)

Full Name.....

Date of birth..... Sex.....

National ID Number.....

Postal address.....
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Physical address.....
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Telephone number.....

Email address.....

Capacity in which the request is made:
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PART D__EXHAUSTION OF INTERNAL REVIEW MECHANISM

(Please state the steps taken to resolve the matter with the information holder and the final decision made by the information holder)

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PART E__NATURE OF THE COMPLAINT (PLEASE CIRCLE OR TICK WHICHEVER IS APPLICABLE)

The complaint relates to__

- 1. Refusal of access to information by the information holder
- 2. Unreasonable fees payable
- 3. Failure to comply with set time limits by the information holder
- 4. Any other matter relating to a request for information (Please specify)

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PART F__SUMMARY OF REQUEST

(Provide a summary of your complaint and describe the action or events that prompted you to complain. Please indicate, where possible, name of the file or document and dates relevant to the complaint including date when the information was requested and date when the response was received)

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PART G__TYPE OF ASSISTANCE REQUESTED

(Describe the type of assistance sought from the Commission)

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Signed on thisday of..... year

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Signature of complainant