



REPUBLIC OF KENYA

DRAFT

**FREEDOM OF INFORMATION
POLICY**

BY

**MINISTRY OF INFORMATION &
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MISSION STATEMENT

To provide a framework for the implementation of the Freedom of Information Bill and review of existing laws, regulations and procedures.

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1. INTRODUCTION

- 1.1 The ability of individuals to access information held by public institutions and about their government is central to democracy. Only a well-informed public can carry out its obligation to shape policy and effectively participate in nation building. When government operates in secret, these goals are undermined.
- 1.2 In modern democracies, public access to information held by public institutions is assured in two ways. First, limits are placed on the ability of the government to censor those who would report on its activities. Second, legal measures are put in place to enable individuals to obtain government records of various types. In neither case is the individual's freedom absolute. However, there is a strong presumption that government action should not be shielded from public view.
- 1.3 The aim of this policy paper to put in place mechanisms for ensuring access to information held by public institutions as well as the prevailing factors that may limit rights to this access as indeed, it is widely understood and accepted that the public does not have a right of access to all information in the hands of public institutions. .
- 1.4 As part of implementing this policy, the government will publish the Freedom of Information Bill to provide a detailed road map of how citizens can gain access to information held by public institutions and to precisely those instances in which access can be denied. Under the Act public institutions will be required to produce any record on the request of any person, unless the institution can show a specific statutory exemption.
- 1.5 The institutions to be subject to the act include Ministries, Government departments, state corporations, independent commissions, the executive branch of the government and private bodies that carry out statutory functions.
- 1.6 The Minister may designate any organisation to be a public institution for the purposes of this policy

- 1.7 The government recognizes the difficulties that may be encountered, in separating legitimate from illegitimate claims to access to information held by public bodies. In this regard the policy gives a framework that will be put in place to adjudicate the validity of a controversial claim concerning access to information.
- 1.8 If an agency declines to provide a record, the individual making the request may make an appeal to the organization and if this fails they can go to the Information Commissioner for review of the decision by the public body. In the subsequent proceeding, the burden shall be on the agency to sustain its action in withholding the record.
- 1.9 All of the exemptions to the access to information law will be designed to balance the goal of open government against competing societal values. Performing the balancing in each case is a difficult and important task. But it shall not obscure the basic result of the Act, i.e maximum release to the public of information held by public bodies.
- 1.10 Statutory rights of access are of little use if reliable records are not created in the first place, if they cannot be found when needed, or if the arrangements for their eventual archiving or destruction are inadequate. The policy therefore requires a comprehensive administrative reform in the management of public records.
- 1.11 Taken together, the legislative changes in the public domain status and access to information, as well as a comprehensive administrative Information Policy Framework, will result in the adoption of policies, procedures and programmes that actively promote the open, easy, and low-cost access to public information for the benefit of the entire nation.

2. EXISTING FRAMEWORK FOR MANAGING INFORMATION HELD BY PUBLIC ORGANIZATIONS

2.0 Introduction

2.0.1 Like all other governments, the Government of Kenya puts emphasis on the management of public records due to the following reasons:

- (a) to provide evidence and information;
- (b) to protect the rights of citizens and organizations;
- (c) as a means to measure the quality of government efficiency;
- (d) to insure fiscal and operational accountability of government;
and
- (e) as a cultural and historic resource.

2.0.2 Financing government production of information often involves the use of tax revenues. Generally, a shilling raised by taxation is more costly (from a social viewpoint) than a shilling spent by a private firm, since this tends to discourage other economic activities. There are, however, cases where government agencies have natural cost advantages in producing information. This occurs when the government is reporting on its own activities, or when valuable information is a by-product of government activities. Examples of information falling in this category include financial information, legislation, court decisions and findings by research institutions.

2.0.3 This chapter highlights the existing government policy on information collection and processing. Emphasis is placed on areas which will be affected by the implementation of this policy.

2.1 Statutory Collection of Information from the Public

- 2.1.2 In many cases, information held by public organizations in Kenya is collected based on the provisions of the law. Forms for capturing the required information are either annexed to the main law or to the subsidiary legislation. This ensures that only relevant and complete records required by the law are collected.
- 2.1.3 The responsible minister is usually given powers under the law to make rules for the purpose of regulating any matter or thing to be done under the law including prescribing of forms and of fees.

2.1. Access to Official Records under the National Archives & Documentation Act

- 2.1.1 Under the Public Archives and Documentation Act (cap 19 Laws of Kenya), Permanent Secretaries, Chief Executives of state corporations, heads of government departments, the Government Printer, and the Director of the Central Bureau of Statistics are required to give two copies of any published or generally circulated document or report to the Kenya National Archives.
- 2.1.2 The National Archive Service is required to publish and circulate to all major libraries in the country and link centres in the public services an accession list of all reports and documents every six months.
- 2.1.3 According to the provisions of the Act, public archives which have been in existence for a period of not less than thirty years may be made available for inspection by the public upon payment of a prescribed fee. However, the office creating the document may alter the period for which the document shall remain restricted from circulation to other public offices or members of the public.

2.2 Access to Statutory Registers

- 2.1.4 Most laws that establish registries also allow the public, on application on a prescribed form, to inspect the registers. The Registered Land Act, for instance, allows any person to inspect during official working hours of business any land register, registry map, instrument or plan.

- 2.1.5 Most regulatory bodies that maintain registers of licensees, e.g. the Communication Commission of Kenya, are required by law to allow the public to inspect such registers upon payment of a prescribed fee.

2.3 Standards for the Management of Public Records

- 2.3.1 Standards relating to the care, preservation, custody and control of public records are set by the Kenya National Archives and Documentation Department and implemented by each individual government department or public organization.
- 2.3.2 The Public Archives Advisory Council advises the government on matters relating to location, preservation and use of public archive, access by members of the public, and export under licence of public archives, public records or historical records.

2.4 Dissemination of Statistical Information

- 2.4.1 In accordance with the provisions of the Statistics Act 2006, the Director General of the Kenya National Bureau of Statistics may with the approval of the Board cause statistical data collected by the Bureau to be disseminated to the public after ascertaining its accuracy and safeguarding the confidentiality with respect to the information.
- 2.4.2 Reports and special information of the Kenya National Bureau of Statistics may be obtained from the Director General upon payment of such fee as may be prescribed by the Board provided that such information shall be used for research purposes only and that the release of such information to third parties is carried out with the consent of the Director-General.

2.5 Printed Documents

- 2.5.1 The Government Code of Regulations (Revision 1992) gives guidelines on the publication and printing of documents. Under

the section, all reports and statements required for printing should be sent to the Government Printer.

2.5.2 Documents and reports may be printed by private printers with the approval by the Government printer.

2.5.3 Printed publications are made available to the public by Government Printer upon payment of prescribed fees. Bulletins, pamphlets and printed circulars having limited circulation are usually distributed by the issuing ministry or department.

2.6 Publication for Diplomatic and Other Representatives Abroad

2.6.1 All annual, statistical and other reports of general interest prepared by government ministries and departments are sent in duplicate to the government's diplomatic and other representatives abroad in accordance with the provisions of Section D.33 of the Government Code.

2.6.2 Publications and other reports from overseas missions are disseminated to the relevant government departments through the Ministry of Foreign Affairs.

2.7 Security of Official Documents

2.7.1 The existing government regulations emphasize that official documents must be protected if harm is likely to result from disclosure to unauthorized persons. The degree of protection of official documents from unauthorized disclosure varies and is implemented through various security classifications. The following classifications are used in public offices.

Open: used for unclassified records. Access to such files is limited to action officers within the public office that created them.

Confidential: Used for files that contain information which if disclosed to an authorized person can cause extreme embarrassment to the organization.

Secret: used for records that contains content that if disclosed to unauthorized persons can cause serious damage to the interest of the organization.

Top Secret: used for records that contain information which if disclosed to unauthorized persons can cause exceptional damage to the organization. Such records are usually maintained by the head of the organization.

2.7.2 Under the existing government regulations, it is recommended that material classified as top secret and secret are stored in combination lock cabinet or strong room while confidential documents should be stored in security cupboards or secret cabinets fitted with a locking bar.

2.8 Electronic Records

2.8.1 Nearly all public offices nowadays use information and communication technologies to store, process and retrieve information. While electronic records management has many advantages ranging from faster access to information to flexibility in information retrieval, it also creates many challenges which include management of databases, information security and archiving of records.

2.8.2 The manual on records management issued to all government departments by the Kenya National Archive Service gives guidelines on electronic records management ranging from management of electronic mail to digitizing paper records and archiving of such records.

2.8.3 The e-government strategy has been in force since March 2004. A key component of the strategy is the electronic dissemination of information to the public. As a result, all ministries are in the processing of enhancing their intranets and extranets to meet this challenge.

2.9 Disposal of Public Records

2.9.1 Regular authorized disposal of value-less non-current records is an important component of sound records management. Such

disposal minimizes the requirements for filing equipment and storage space while enhancing the quality of records held by public offices and the national archives. This section presents a summary of the current practice in the disposal of records in the public service.

- 2.9.2 The Records Disposal Act empowers the Chief Justice and the Attorney General to make rules to provide for the disposal by destruction or otherwise of such records, books and papers, belonging to or being in the custody of the High Court or of courts of civil or other criminal jurisdictions, and those belonging to or being in the custody of the Registrar-General, respectively, subject to the provisions of the Public Archives and Document Service Act.
- 2.9.3 The Government Financial Regulations provide procedures for the management of accounts documents. Under the regulations, the Accounting Officer may give permission for the destruction of accounting books and records provided such records have been audited and do not have archival value. In addition, there should be no outstanding audit queries on the specific records in question. The Director of the Kenya National Archives and Documentation Service may be requested to examine the records before the decision to destroy them is made.
- 2.9.4 The disposal of personnel records in the public sector is governed by circulars issued by the Directorate of Personnel Management.
- 2.9.5 All public offices are encouraged to develop and maintain a records retention schedule containing all types of records of the organization, the retention period and the prescribed disposal actions to be taken according to the schedule provided by the Director of the Kenya National Archive Service. For records of the High Court, the Records and Disposal Act (see Annex) contains a schedule with a list of various records and the period after which they may be destroyed.
- 2.9.6 According to the provisions of the Registered Land Act (cap 300), land records are retained by the Registrar for as long as they support a current entry in the register and for six years thereafter.

2.10 Official Secrets Act and Access to Information

- 2.10.1 The Official Secrets Act (see Annex) provides for the preservation of state secrets and state security. Generally it provides offences for acts prejudicial to the Republic; unauthorized use of uniforms and passes; interference with police officers or armed forces; production of telegrams in public interest; harbouring of a person who is about to commit or has committed an offence under the Act; attempts to commit an offence or incite others to commit an offence under the act; and for acts committed outside Kenya.
- 2.10.2 With regard to official documents, the Act makes it an offence to use, for any purpose prejudicial to the safety or interests of the Republic of Kenya, any code, word, plan, article, document or information has been entrusted in confidence to a person holding office under the Government.
- 2.10.3 No other section of the Official Secrets Act prohibits disclosure of information to the public. This is contrary to the widely held belief that the provisions of the Act bar public officers from availing information to the public.

2.11 Restrictions on the Disclosure of Information

- 2.11.1 Some laws provide for protection from disclosure of certain information. The Statistics Act 2006 (section 22), for instance, prohibits anybody from publishing, or showing to any other person not employed in the execution of a duty under the Act any of the following information without prior written consent of the person making the return, or giving the answer, or, in the case of an undertaking, the owner, for the time being, of the undertaking
- - (a) an individual return or part thereof made for the purposes of the Act;
 - (b) an answer given to any question put for the purposes of the Act; or
 - (c) a report, abstract or other document containing particulars comprised in any such return or answer so arranged as to identify such particulars with any person or undertaking.

2.12 Oath/Affirmation of Office and Secrecy and Dismissal from Service

- 2.12.1 Secret files in the public service are usually handled by officers who have taken the Oath of Office and Secrecy. The oath binds the officer not to reveal any information acquired by virtue of duties relating to the office or the relevant law until that information is made public or to indirectly use the information for personal gain. Some laws, e.g. the Statistics Act 2006 (see annex) have the oath/affirmation form annexed to it as a schedule.
- 2.12.2 The terms and conditions of service of public servants list disclosure of information regarding the affairs of a public body or government without authorization as a ground for summary dismissal.

2.13 Offences Relating to Information

(a) Obstruction from Access

- 2.13.1 Under the Public Archives and Documentation Service Act, it is the duty of everybody having custody of any public records to afford the Director of the Kenya National Archives and Documentation Service or officer of the service access to such records and it is an offence to obstruct or hinder the Director from having access..
- 2.13.2 Under the statistics Act 2006, the Director General is granted powers to access any public record or documents from which information is sought in furtherance of the purposes of the Act. Any person who obstructs the Director-General or any authorized officer commits an offence.

(b) Failure to Give Information

- 2.13.3 In addition to providing access to public records and documents, the Director of the Kenya National Bureau of Statistics may require any person to supply him with such particulars as may be prescribed or required in relation to taking census or the collection of information. Any person who fails to give any information or particulars as required commits an offence.

(c) Destruction of Documents

- 2.13.4 The Penal Code under Section 133 makes it an offence to destroy statutory documents which include licences, identification cards or any record establishing status, identity, qualification, service, authorisation, eligibility or entitlement made or granted under any written law.
- 2.13.5 The Public Archives and Documentation Service Act under subsection 8(2) makes it an offence to willfully destroy or otherwise dispose of any public records without written consent of the Director of Kenya National Archives.

(d) Export of Documents

- 2.13.6 The Public Archives and Documentation Service Act under subsection 8(3) makes it an offence to export any public archives or public records, except with, and in accordance with the terms and conditions of, the written consent of the Director of Kenya National Archives.

3. THE ACCESS TO INFORMATION POLICY

3.1 Introduction

- 3.1.1 Experience from countries that have implemented freedom of information laws shows that citizens greatly benefit from the statutory provision of public sector information. This facilitates their communication with the public bodies and increases their participation in the democratic process and nation building. Public sector information is a key resource for economic activity and proper functioning of the economy.
- 3.1.2 The aim of this policy is to increase openness and transparency, better records management, improved accountability and improved government relationship with the public

3.2 Right of Access

- 3.2.1 In principle, all documents of public sector institutions shall be accessible to the public. However, certain interests shall be protected by way of exceptions. Public institutions shall be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions shall ensure adequate protection of personal data, in all areas of their activities. All rules concerning access to documents of public institutions shall be in conformity with this policy.
- 3.2.2 In order to ensure that the right of access is fully respected, a two-stage administrative review procedure shall apply, with the additional possibility of court proceedings
- 3.2.3 Each institution shall take the measures necessary to inform the public of the new provisions in force and to train its staff to assist citizens exercising their rights under this policy. In order to make it easier for citizens to exercise their rights, each institution shall publish and provide access to the register of documents.

3.3 Manner of Access

- 3.3.1 Public bodies will comply with all requests for information in accordance with the appropriate statutory requirements and will endeavour to assist the public in exercising their 'right to know'.
- 3.3.2 Public organizations will normally make information available in the format specified by the applicant. The applicant may request information to be supplied in any of the following ways:-
- (a) Hard copy
 - (b) Electronic copy
 - (c) Viewing in situ
 - (d) Summary information
- 3.3.3 Where the public organization deems it unreasonable to supply information in the format specified by the applicant as a result of practical or cost considerations then it will inform the applicant of the reasons for its decision. The Public organization will, however, still supply the information requested by any means that it considers reasonable in the circumstances.

3.4 Accountability of Public Officers

- 3.4.1 The head of the organization, i.e the Permanent Secretary, Head of Department or Chief Executive shall have the ultimate responsibility for ensuring compliance with the Freedom of Information Act or any other applicable law. In terms of the proper, secure management of information, this will entail striking a balance between the rights of individuals to privacy and family life and the requirements to be open and accountable in respect of the services the organization provides and the decisions it takes.
- 3.4.2 The Head of the organization may enlist other staff available to her or him for the purpose of ensuring that all information held by the organisation is managed and disseminated in accordance with the law and internally adopted standards, policies and procedures.

3.5 Management of Information

3.5.1 All public bodies will be required to develop their own comprehensive Information Policy Framework in accordance with the provisions of the Public Archives and Documentation Act and the personal data protection policy and the Freedom of Information Act.

3.5.2 The policy framework should encompass information in both paper and digital formats, and should at the minimum:-

1. Ensure that their records management programmes provide adequate and proper documentation;
2. Ensure the ability to access records, regardless of their form or medium;
3. Establish appropriate selection and retention criteria and accession schedules; and
4. Provide training and guidance as appropriate to employees and contractors regarding their records management responsibilities.

3.6 Handling Applications

3.3.1 An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within a set period of time from registration of the application, the institution shall either grant access to the document requested and provide access within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application asking the institution to reconsider its position.

3.7 Transfer of requests

3.7.1 Where a request is made to a public institution for access to a document and the document is not in the possession of that institution but is, to the knowledge of that institution, in the

possession of another institution; or the subject-matter of the document is more closely connected with the functions of another institution than with those of the institution to which the request is made; the institution to which the request is made may, with the agreement of the other institution, transfer the request to the other institution

3.8 Third Party Notifications

3.9.1 Where the information requested is held for, or was provided by, a third party under an explicit or implicit understanding that it would not be further disclosed, but a public officer considers that the public interest may require disclosure, he or she will so advise the third party and invite him or her to give consent to, or make representations against disclosure. The third party will be asked to respond within a reasonable time as they may be granted on request.

3.10 Application to Private Organizations

3.10.1 This policy will apply to private bodies that carry statutory functions and those that are contractors to public organizations.

3.11 Reuse of Public Information

3.10.1 Public sector information has an enormous economic potential for the digital content industry as a raw material for new value added services. The Minister may issues regulations regarding access to public information for purposes of commercial exploitation.

3.12 Proactive Disclosure

3.12.1 Public institutions will be expected to routinely and proactively disseminate information of general relevance to citizens, including updates about their structure, norms and functioning, the documents they hold, their finances, activities, and any opportunities for consultations.

3.12.2 The Information Commissioner will approve publication schemes of public organizations covered under the freedom of information law.

3.13 Disposal of Records

3.13.1 Regular authorized disposal of value-less non-current records will be maintained as an important component of the records management system in order to minimize the requirements for filing equipment and storage space while enhancing the quality of public records.

3.13.2 All public offices shall, with advice from the Director of the Kenya National Archive Service, develop and maintain a records retention schedule containing all types of records of the organization, the retention period and the prescribed disposal actions to be taken according to the schedule provided by

3.13.3 Disposal of records belonging to or being in the custody of the High Court or of courts of civil or criminal jurisdiction subordinate thereto shall be carried out according to the provisions of the Records and Disposal Act (Cap 14 Laws of Kenya).

3.13.4 Disposal of records belonging to or being in the custody of the Registrar General shall be carried out according to the provisions of the Records and Disposal Act (Cap 14 Laws of Kenya).

3.13.5 The destruction or other disposal of the following materials do not require specific authorization:

(a) Public records which are duplicates by reason of their having been photocopied;

(b) Inquiries and requests from the public and answers thereto not required by law to be preserved or not required as evidence of a public or private legal right or liability;

- (c) Letters of transmittal and acknowledgment, advertisements, announcements and notes pertaining to reservations of accommodation or scheduling of personal visits or appearances.

3.14 Exceptions/Protected Information

(a) National Security, Defense and International Relations

- 3.14.1 The Freedom Information Act shall seek to protect information whose disclosure could damage national and international interests. This includes information whose disclosure can substantively harm law enforcement, tax collection or other financial obligations owed to the state.
- 3.14.2 Information received in confidence from foreign governments, foreign courts and international organizations will be protected from disclosure.
- 3.14.3 The Freedom Information Act shall protect information whose disclosure can undermine investigations, prosecution or prevention of crime or conduct of civil proceedings.

(b) Privacy of Personal Information

- 3.14.4 The Freedom Information Act shall uphold the right of personal privacy as a fundamental human right in accordance with the personal data protection policy outlined in chapter 5.

(c) Commercial Confidentiality

- 3.14.5 Information given in confidence including intellectual property and trade secrets which enjoy protection through various regulatory statutes like the Capital Markets Authority Act, the Kenya Communications Act, etc shall protected under the proposed Freedom Information Act.
- 3.14.6 The provisions of this section shall apply to the commercial interests of public bodies with significant commercial interests.

(d) Safety of Individuals and the Public

3.14.7 The Freedom Information Act shall seek to protect information whose disclosure can pose significant threats to the health or safety of individuals or the public.

(e) Information Supplied in Confidence

3.14.8 The Freedom Information Act shall seek to protect information supplied in circumstances where confidentiality is implied such as citations for honours award or recommendations for appointment.

(f) Decision Making and Advice

3.14.9 Experience from countries that have enacted the Freedom Information Act indicate that essential functions of government such as high-level planning, and determining options on which to base policy decisions while maintaining collective responsibility can be seriously undermined by premature discussions.

3.14.10 The Freedom Information Act will therefore seek to protect high-level decision making and advice. This will include cabinet confidences and related advisory services.

4. POLICY ON PROTECTION OF PERSONAL DATA

4.0 Introduction

4.3.1 Although the Government is committed to ensuring that members of the public have access to information held by public organizations, it also recognizes the need to protect personal data in order to guard against misuse and to eliminate the unwarranted invasion of privacy (a fundamental human right under the UN Convention on Human and Political Rights) that may be caused by a third party's application under the access to information law. The Freedom of Information Act will therefore take into account the government's policy on the protection of personal information.

4.3.2 This Data Protection Policy applies to all personal information collected, used or disclosed by private sector and public sector organizations in the course of commercial or government related activity. The following provisions form key elements of the data protection regulations:

1. organizations will employ fairness during the acquisition and processing of personal information;
2. Organizations shall document the purposes for which personal information is collected and notify the same to the Information Commissioner;
3. Organizations shall ensure that personal information is accurate, complete and up-to-date as is necessary for the purpose for which it is used;
4. individuals shall have access personal information about themselves held by an organization and have it corrected, where necessary;
5. Organisations shall make specific information about its policies and practices relating to the management of personal information; and

6. Organizations shall protect personal information with appropriate security safeguards.

4.1 Acquisition and Processing of Personal Data

- 4.1.1 All public bodies will ensure that the processing of personal information under their control is fair and lawful. They shall be responsible for personal information under their control and shall designate an individual or individuals who are accountable for the organization's compliance with the requirements of the personal data policy.
- 4.1.2 A public body shall be responsible for personal information that has been transferred to a third party for processing. The organization shall use contractual or other means to provide a comparable level of protection while the information is being processed by a third party.

4.2 Documentation and Notification

- 4.2.1 Public organizations shall document and notify the purposes for which personal information is collected to the Information Commissioner where not provided for by law. Public bodies will not use or process personal information in any way that contravenes the notified purpose.
- 4.2.2 Any amendments or new purposes for which information is collected shall require the approval of the Information Commissioner.

4.3 Information Quality and Integrity

- 4.3.1 All public bodies will endeavour to process personal information, which is accurate, current and is of good quality.
- 4.3.2 Personal Information will be adequate and not excessive for the purpose for which it is processed.

4.3.3 Personal information will be not be kept by public bodies for no longer than is necessary for the purpose for which it was obtained.

4.4 Access to Personal Information

4.3.1 Public bodies will only disclose personal information to third parties where it is permitted by law to do so or with the consent of the subject.

4.3.2 An organization should generally seek express consent from the subject when the information is likely to be considered sensitive such as medical records and tribe. Implied consent would generally be appropriate when the information is less sensitive. Consent can also be given by an authorized representative (such as a legal guardian or a person having power of attorney).

4.3.3 Individuals may give consent in many ways, including:

- (a) while completing and signing the data collection form;
- (b) a checkoff box that allows individuals to request that their names and addresses not be given to other organizations;
- (c) orally when information is collected over the telephone; or
- (d) when using a product or service.

4.3.4 An individual may withdraw consent at any time, subject to legal or contractual restrictions and reasonable notice. The organization shall inform the individual of the implications of such withdrawal.

4.3.5 Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information.

4.5 Security of Personal Information

- 4.5.1 All bodies will put in place appropriate security measures for processing personal information.
- 4.5.2 Employees who use personal information systems will be properly trained. In addition record management personnel will be kept fully informed about overall information security procedures and the importance of their role within these procedures.
- 4.5.3 Manual filing systems are held in secure locations and only authorised Staff accesses them.

5. REVIEW AND APPEALS

5.1 Introduction

- 5.1.1 Experience from countries which have enacted freedom of information laws indicate that cases of disclosure of information are often complex and sometimes require specialist judgement to be made on whether the public interest in disclosing information should prevail over competing interests to withhold the information. In addition, it has been found that the public's right to know under the freedom of information law can only be effectively guaranteed and enforced through the right of appeal.
- 5.1.2 Internationally independent review and appeal is recognized through the provision of such mechanisms as an ombudsman, tribunal or a designated commissioner.
- 5.1.3 The Government recognizes the need to have independent review and an appeal system that is readily and freely available under the freedom of information act using both internal and external review processes.
- 5.1.4 In order to ensure quick access, the review process will follow a two-stage review process. First, the complainant will ask the government department to carry out an internal review of its decision not to disclose information. If the department withholds the decision not to disclose and the complainant is still dissatisfied, then he or she will appeal to the Information Commissioner ; a new office to be created under the act

5.2 Internal Review Process

- 5.2.1 Internal reviews will be the first step in the access to information appeals process and will be carried out by an officer who was not involved in the initial decision and be completed within a specified period.

5.2.2 The internal review process will generally be a precondition for making a complaint to the Information Commissioner with the following exceptions.

- a) Where there is unreasonable delay in dealing with initial request for information; or
- b) Where the organization concerned is too small to have its own review process.

5.3 Establishment, Function and powers of the Information Commissioner

4.3.1 The Access to Information Law will set up a new office known as the Information Commissioner.

4.3.2 The function of the information commissioner will include promoting, interpreting and enforcing the Access to Information Act. Specifically, the commissioner will:

- a) approve publications schemes drawn up by public organizations affected by the law;
- b) investigate complaints that a public body has failed to comply with the requirements of the Act;
- c) publish annual reports and special reports, where necessary, to Parliament on the operation of the Act;
- d) Publish reports on the outcomes of investigations; and
- e) Promote public awareness and understanding of the Act.
- f) Draw up a Code of Conduct for Public Institutions

4.3.3 The information commissioner will *inter alia*, have the following powers:

- a) The right of access to records relevant to investigations within the scope of the Act;

- b) The power to order disclosure of records and information which are subject to the Act;
 - c) The power to adjust individual or class charging systems or to waive charges if disclosure is in his opinion considered to be of wider public interest;
 - d) Power to report to court any failure by a public body to comply with a disclosure order.
- 4.3.4 Given the wide coverage of the Access to Information Act which includes central government departments, local authorities, school and private organizations some of which are not directly accountable to Parliament, and the need for the external review institution to be independent and free from any form of political interference the Information Commissioner will not be accountable to a government ministry or Parliament. The Information Commissioner will therefore be answerable to the courts of his or her decisions.

5.4 Right to Appeal to Court

- 5.4.1 Individuals will not be allowed to appeal against the decisions of the Information Commissioner in court. However, such decisions shall be subject to judicial review.

6. GLOSSARY OF TERMS

"Public record" includes any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

"Archival Records" records which warrant permanent retention because of their value in preserving evidence of individual rights, government actions, and/or cultural and historical events.

"information" includes any material regardless of its physical form or characteristics, and any sample, work, model or copy thereof, any record, correspondence, memorandum, book, plan, map, drawing, film, microfiche, diagram, pictorial or graphic work, data, photograph, recording, audio or videotape, machine readable material and any other information held in electronic form whether on computer disk or tape or in the memory of a computer.

ANNEX I – EXEMPTIONS IN OTHER JURISDICTIONS

Exemption Item	UK	AUST RALI A	NEW ZEALAND	IRELAN D	NETHER LANDS	USA	FRANCE	CANADA
Defence, Security, and international Relations	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Internal Discussion and Advice	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Law Enforcement and Legal Proceedings	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Effective management of the economy and collection of taxes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
Unreasonable Vexatious and Voluminous requests	Yes	Yes		Yes				
Privacy of Individuals	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3 rd Party's commercial confidences	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Information given in confidence	Yes	Yes	Yes	Yes	Yes	Yes		Yes
Statutory and other restrictions	Yes	Yes		Yes		Yes	Yes	Yes

ANNEX II - THE OFFICIAL SECRETS ACT

An Act of Parliament to provide for the preservation of State secrets and State security

PART I—PRELIMINARY

1. Short Title

1. This Act may be cited as the Official Secrets Act.

2. Interpretation

2. (1) In this Act, except where the context otherwise requires—

“agent of a foreign power” includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act whether within or outside Kenya prejudicial to the safety or interests of the Republic of Kenya, or who has or is reasonably suspected of having within or outside Kenya committed or attempted to commit such an act in the interests of foreign power;

“code word” means an official secret or classified code, code word, pass word or cipher, including any group of letters or figures or both constituting part of a code;

“court” means a subordinate court of the first class;

“disaffected person” includes any person carrying on a subversive activity;

“munitions of war” means arms, ammunition, implements or munitions of war, or stores of the armed forces or the police, or any articles deemed capable of being converted into any of those things or made useful in the production thereof;

“office under the Government” means any office or employment in or under the Government or in or under any Ministry, department or branch of the Government, and any office or employment in, on or under any board, commission, corporation or other body that is an agent, or emanation of the Government, whether the office or employment is within or outside Kenya;

“official document” includes a passport, naval, army, air force, police or official pass, permit, certificate or licence, or other document of a similar character;

“plan” includes sketch, model, design, pattern and specimen;

“prohibited place” means—

- (a) any place belonging to or occupied or used by or on behalf of the Government which is used for or in connexion with the maintenance of public security, including arsenals, establishments or stations of the armed forces or the police, factories, dockyards, mines, minefields, camps, ships, aircraft, telegraph, telephone, wireless or signal stations or offices, and places used for the purpose of building, repairing, making or storing any munitions of war or any plans or documents relating thereto, or for the purposes of getting any metals, oil or minerals for use in time of war or emergency; or
- (b) any place not belonging to the Government where any munitions of war or any plans or documents relating thereto are being made, repaired, received or stored under contract with, or with any person acting on behalf of, the Government; or
- (c) any place that is for the time being declared by the Minister, by order, to be a prohibited place on the ground that information with respect thereto or damage thereto would be prejudicial to the safety and interests of the Republic;

“sketch” includes photograph and any other mode of representing any place or thing;

“subversive” has the same meaning as in section 77 (3) of the Penal Code;

“telegram” means any communication or visual image transmitted or intended for transmission by telegraph apparatus;

“telegraph apparatus” has the same meaning as in the East African Posts and Telecommunications Act of the Community.

(2) In this Act—

(a) expressions referring to communicating or receiving include any communicating or receiving whether in whole or in part and whether the plan, article, document or information itself or only the substance, effect or description thereof is communicated or received;

(h) expressions referring to obtaining or retaining any plan, article or document include copying or causing to be copied the whole or any part of any plan, article or document; and

(c) expressions referring to the communication of any plan, article or document include the transfer or transmission of the plan, article or document.

PART II—PROTECTION OF THE SAFETY AND INTERESTS OF THE REPUBLIC

3. Acts Prejudicial to Republic

3. (1) Any person who, for any purpose prejudicial to the safety or interests of the Republic—

- (a) approaches, inspects, passes over, is in the neighbour hood of or enters a prohibited place; or
- (a) (h) makes any plan that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or disaffected person; or
- (b) obtains, collects, records, publishes or communicates in whatever manner to any other person any code word, plan, article, document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or disaffected person

shall be guilty of an offence.

(2) Any person who takes a photograph of a prohibited place or who takes a photograph in a prohibited place, without having first obtained the authority of the officer in charge of the prohibited place, shall be guilty of an offence.

(3) Any person who has in his possession or under his control any code word, plan, article, document or information which-

- (a) relates to or is used in a prohibited place or anything in a prohibited place; or
- (b) has been made or obtained in contravention of this Act; or
- (c) has been entrusted in confidence to him by any person holding office under the Government; or
- (d) has been entrusted in confidence to him owing to his position as a person who holds or has held a contract made on behalf of the Government or a contract the performance of which in whole or in part is carried out in a prohibited place, or as a person who is or has been employed under a person who holds or has held such an office or contract,
 - (i) and who for any purpose or in any manner prejudicial to the safety or interests of the Republic –
 - (i) uses the code word, plan, article, document or information; or
 - (ii) retains the plan, article or document in his possession or under his control when he has no right so to retain it or when it is contrary to

his duty so to retain it, or fails to comply with all directions issued by lawful authority with regard to its return or disposal, shall be guilty of an offence.

(4) Any person who, having in his possession or under his control any plan, article, document or information that relates to munitions of war, communicates it directly or indirectly to any foreign power, or to any other person for any purpose or in any manner prejudicial to the safety or interests of the Republic, shall be guilty of an offence.

(5) Any person who receives any code word, plan, article, document or information, knowing or having reasonable grounds for believing at the time when he receives it, that the code word, plan, article, document or information is communicated to him in contravention of this Act, shall be guilty of an offence, unless he proves that the communication to him of the code word, plan, article, document or information was contrary to his wishes.

(6) Any person who has in his possession or under his control any code word, plan, article, document or information of a kind or in the circumstances mentioned in paragraphs (a) to (d) inclusive of subsection (3) of this section, and who –

(a) communicates the code word, plan, article, document or information to any person, other than a person to whom he is authorized to communicate it or to whom it is his duty to communicate it; or

(b) retains the plan, article or document in his possession or under his control when he has no right so to retain it or when it is contrary to his duty so to retain it, or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(c) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the code word, plan, article, document or information, shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

(7) Any person who-

(a) allows any other person to have possession of any official document issued for his use alone, or communicates to any other person any code word so issued; or

(b) without lawful authority or excuse, has in his possession any official document or code word issued for the use alone of some person other than himself; or

(c) on obtaining possession of any official document by finding or otherwise neglects or fails to restore it to the person or authority by whom or for whose use it was issued or to a police officer,

shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

4. Unauthorized use of uniforms, passes, etc.

4. Any person who, for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, or for any other purpose or in any manner prejudicial to the safety or interests of the Republic –

- (a) uses or wears, without lawful authority, any uniform of the armed forces, any police uniform or any other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or
- (b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or
- (c) forges, alters or tampers with any passport or any naval, army, air force, police or official pass, permit, certificate, licence or other document of a similar character, or uses or has in his possession any such forged, altered or irregular official document; or
- (d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding office under the Government, or to be or not to be a person to whom an official document or code word has been duly issued or communicated, or with intent to obtain an official document or code word, whether for himself or any other person, knowingly makes any false statement; or
- (e) uses, or has in his possession or under his control, without the authority of the Government department or authority concerned, any die, seal or stamp of or belonging to or used, made or provided by any Government department, or by any diplomatic, military, air force or naval authority appointed by or acting under the authority of the Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession or under his control, any such counterfeited die, seal or stamp,

shall be guilty of an offence.

5. Attempts, incitements, etc.

5. Any person who in the vicinity of any prohibited place obstructs, knowingly misleads or otherwise interferes with or impedes any police officer, or any member of the armed forces who is engaged on guard, sentry patrol or other similar duty in relation to the prohibited place, shall be guilty of an offence.

6. Production of telegrams

6. (1) Where it appears to the Minister that it is expedient in the public interest to do so, he may, by warrant under his hand, require any person who owns or controls any telegraph apparatus used for the sending or receipt of telegrams to or from any place outside Kenya. to produce to him, or to any person named in the warrant, the originals and transcripts of all telegrams or of telegrams of any specified class or description or of telegrams sent from or addressed to any specified person or place, sent to or received from any place outside Kenya by means of any such telegraph apparatus and all other papers relating to any such telegram as aforesaid.

(2) Any person who, having been required under subsection (1) of this section to produce the originals and transcripts of telegrams, refuses or neglects to comply with such requirement, shall be guilty of an offence and liable to imprisonment for a term not exceeding one year.

7. Harboursing

7. Any person who—

(a) knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act; or

(b) knowingly permits to meet or assemble in any premises in his occupation or under his control any persons whom he knows, or has reasonable grounds for supposing, to be persons who are about to commit or who have committed an offence under this Act; or

(c) having harboured any person as aforesaid or permitted any persons to meet or assemble as aforesaid, wilfully omits or refuses to disclose to a police officer of or above the rank of Inspector any information that it is in his power to give in relation to any such person, shall be guilty of an offence.

8. Attempts, incitements, etc.

8. Any person who attempts to commit an offence under this Act, or solicits or incites or endeavours to persuade another person to commit any such offence, or aids or abets or does any act preparatory to the commission of such an offence under this Act, shall be guilty of an offence, whether or not the solicitation, incitement or endeavour succeeds in its purpose, and liable to the same punishment as if he had committed that offence.

9. Acts committed outside Kenya

9. An act, omission or thing that would, by reason of this Act, be punishable as an offence if committed in Kenya shall, if committed outside Kenya, be an offence under this Act, triable and punishable in Kenya, in the following cases, namely—

(a) where the offender at the time of the commission was a citizen of Kenya;

(b) where any code word, plan, article, document, information or other thing whatsoever in respect of which an offender is charged was obtained by him, or depends upon information obtained by him, while owing allegiance to the Republic.

PART III-PROCEEDINGS OF OFFENCES

10. Consent to prosecute

10. (1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General.

(2) A person charged with an offence under this Act may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

11. Place of Offence

11. For the purposes of the trial of a person for an offence under this Act, the offence shall be deemed to have been committed either at the place in which it was actually committed or at any place in Kenya in which the offender may be found.

12. Exclusion of public from trial

12. In addition and without prejudice to any powers that a court may possess to order the exclusion of the public from any proceedings, if in the course of proceedings before the court against any person for an offence under this Act or of the proceedings on appeal, application is made by the prosecution, on the grounds that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the interests of the Republic, that all or any portion of the public shall be excluded during the whole or any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

13. Presumption concerning communication with agent of foreign power

13. (1) On a prosecution for an offence under section 3 of this Act, the fact that the accused person has been in communication with, or has attempted to communicate with, an agent of a foreign power, whether within or outside Kenya, shall be evidence that he has, for a purpose prejudicial to the safety or interests of the Republic, obtained or attempted to obtain information which is calculated to be or might be or intended to be directly or indirectly useful to a foreign power.

(2) For the purposes of subsection (1) of this section, but without prejudice to the generality of that subsection, a person

shall, unless he proves the contrary, be deemed to have been in communication with an agent of a foreign power if—

- (a) he has, either within or outside Kenya, visited the address of an agent of a foreign power or consorted or associated with such an agent; or
- (b) either within or outside Kenya, the name or address of, or any other information regarding, such an agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person.

(3) Any address, whether within or outside Kenya, reasonably suspected of being an address used for the receipt of communications intended for an agent of a foreign power, or any address at which such an agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of an agent of a foreign power, and communications addressed to that address to be communications with the agent.

14. Presumption as to purpose prejudicial to safety of Republic

14. Where, on a prosecution of a person for an offence under this Act, it is alleged that he did some act for a purpose prejudicial to the safety or interests of the Republic, it shall not be necessary to show that he committed the act for that purpose if, from the circumstances of the case, or from his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the Republic.

15. Presumption as to communication of information concerning prohibited place

15. Where any code word, plan, article, document or information relating to or used in any prohibited place, or anything in such a place, is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the Republic, unless the contrary is proved.

16. Proof of lawful authority or excuse

16. For the avoidance of doubt, it is hereby declared that the burden of proving lawful authority or excuse shall be upon the person alleging it, and accordingly in any proceedings for prosecution for an offence under this Act it shall not be incumbent on the prosecution to prove the lack of any such authority or excuse.

PART IV-SUPPLEMENTARY

17. Arrest without warrant

17. (1) Any person who is found committing an offence under this Act, or who is reasonably suspected of having committed, or of having attempted to commit, or of being about to commit, an offence under this Act, may be arrested by a police officer without a warrant.

(2) Any person arrested under subsection(1) of this section shall be brought before a court within twenty-four hours whether or not the police inquiries are completed.

18. Search warrant

18. (1) If a court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, it may issue a search warrant authorizing any police officer named therein to enter at any time any premises or place named in the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize any plan, article, or document, or anything that is evidence of an offence under this Act having been or being about to be committed, that he may find on the premises or place or on any such person, and with regard to or in connexion with which he has reasonable grounds for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police officer of or above the rank of Assistant Superintendent that the case is one of great urgency and that in the interests of the Republic immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by a warrant of a court under this section.

19. Duty to give information as commission of certain offences

19. (1) Where the Attorney is satisfied that there is reasonable ground for suspecting that an offence under this act has been, or is about to be, committed and for believing that some person is able to furnish information with regard thereto, he may authorize a gazetted police officer to require that person to give any information in his power relating to the offence or suspected offence and, if so required and on tender of his reasonable expenses, attend at such reasonable time and place as may be specified by the gazetted police officer.

(2) Any person who, having been required in pursuance of an authorization given under subsection (1) of this section to give information or to attend at a specified time and place, fails to comply with the requirement, or knowingly gives false information, shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand shillings, or to both such imprisonment and such fine.

20. General Penalty

20. Any person who is guilty of an offence under this Act for which no penalty is specifically provided shall be liable to imprisonment for a term not exceeding fourteen years.

21. Repeal Cap 187.1&2 Geo. 5, c.23 10&11 Geo 5, c.75. 2&3 Geo 6, C.121

21. (1) The Official Secrets Act is repealed.

(2) The Official Secrets Act 1911, the Official Secrets Act 1920 and the Official Secrets Act 1939 of the United Kingdom are repealed in their application to Kenya.

(3) Notwithstanding subsections (1) and (2) of this section, a person may after the commencement of this Act be prosecuted under the Acts repealed by this section for an offence committed under the repealed Acts as though this Act had not come into operation.

ANNEX III - THE PUBLIC ARCHIVES AND DOCUMENTATION SERVICE ACT

Commencement: 25th January, 1966

An Act of Parliament to establish the Kenya National Archives and Documentation Service and to provide for the preservation of public archives and public records and for Purposes

1. Short Title

1. This Act may be cited as the Public Archives and Documentation Service Act.

2. Interpretation

2. In this Act, unless the context otherwise requires-

“Director” means the person appointed to that office under section 3;

“national archives” means the place or places wherein are housed or preserved such public records as have been, or are required to be, transferred to the national archives, and such other records as the Director may have acquired or received to form part of the public archives;

“public archives” means all public records and other records which are housed or preserved in the national archives or which are deemed to be part of the public archives;

“public records” means the records specified in the Schedule; Provided that the Minister may, by order in the Gazette, amend the Schedule;

“records” includes not only written records, but records conveying information by any means whatsoever;

“Service” means the Kenya National Archives and Documentation Service established by section 3.

3. Establishment of the Kenya National Archives and documentation Service

3. (1) There shall be established, constituted and maintained a public department to be known as the Kenya National Archives and Documentation Service for which there shall be appointed a Director and such other staff as may be necessary for the purposes of this Act.

(2) The Director shall be responsible for, and shall have charge of, the Service and of the public archives, and shall take all practicable steps for the proper housing, control and preservation of all public archives and public records.

4. Powers of Director

4. (1) Subject to this Act and any subsidiary legislation made thereunder and to any special or general directions which may be given by the Minister, the Director and any officer of the Service authorized by shall have power to do an such 'things as may be necessary or expedient for the exercise of his duties and performance of his functions under this Act or any subsidiary legislation made thereunder, and without prejudice to the generality of the foregoing he may—

- (a) examine any public records, and advise on the care, preservation, custody and control thereof;
- (b) require the transfer to his custody of any public records which he considers should be housed in the national archives;
- (c) compile, make available and publish indexes and guides to, and calendars and texts of all public archives;
- (d) prepare publications concerning the activities of and the facilities provided by the Service;
- (e) regulate the conditions under which members of the public may inspect the public archives or use the facilities provided by the Service;
- (f) provide for the making of, and authentication of. copies of and extracts from the public archives, for use as evidence in legal proceedings or for any other purpose;
- (g) make arrangements for the separate housing of films and other records which require to be kept under special conditions;
- (h) acquire, or accept gifts or testamentary bequests or loans of, any document, book, record, or other material of any description of historical or other value, or any copy or replica thereof which he considers should be added to the public archives;
- (i) take such steps as may be necessary to acquire and have returned to Kenya any public records or records of historical value to Kenya which may have been exported before the commencement of this Act;
- (j) lend, on such conditions as he considers necessary, any public archives for display at commemorative exhibitions or for other special purposes;
- (k) approve any institution, whether private or otherwise, as a place wherein may be deposited, housed or preserved either permanently or temporarily any public archives, records or records which have been declared historical records under section 9.

(2) It shall be the duty of every person responsible for, or having the custody of any public records to afford to the Director or any officer of the Service authorized by him reasonable access to such public records and appropriate facilities for the examination and selection thereof, and to comply without any undue delay with any lawful directions given by the Director or such officer concerning the assemblage, safe keeping and preservation of such public records or of the transfer of any such public records to the national archives to form part of the public archives.

(3) Any public records required by 'the Director, or any officer of the Service authorized by him, to form part of the public archives may, with the consent of, and subject to such conditions as to their care, control, and preservation as may be imposed by the Director, be retained by their office of origin, or may be temporarily returned thereto if required for administrative or special purposes, but for the purposes of this Act such public records shall be deemed to be and remain part of the public archives.

5. Directors power

5. (1) Notwithstanding anything contained in this Act or any subsidiary legislation made thereunder, the Director or any officer of the Service authorized by him, shall not have power to examine any public records, access to which is restricted by any written law or otherwise to a person or category of persons which does not include the Director or such officer.

(2) Where there are transferred to the national archives any public records containing information obtained from members of the public or from other sources the disclosure of which is by or under any written law prohibited or restricted to certain purposes, the Director and all officers of the Service having access to such public records shall take such oath or make such declaration relating to secrecy (with such modifications as the circumstances require) as is required by or under that written law to be taken or made by persons having access to such records, before their transfer, and every person who takes such oath or makes such declaration shall, for the purposes of any provision of such written law making punishable any disclosure in contravention of the written law, be deemed to be a person employed in carrying out the provisions of that written law.

5A National Documentation and Information Retrieval

5A. (1) Every Permanent Secretary or head of Government department or chief executive of a state corporation or local authority shall supply to the Director two copies of any published or generally circulated document or report produced by that office whether in hard copy or micro-film; and the creating office may prescribe the period for which the document shall remain restricted from circulation to other public offices or members of the public.

(2) The Government Printer or his authorized agent shall supply to the Service two, copies of every publication produced by him.

(3) The Director of the Central Bureau of Statistics shall supply to the Service two copies of every publication produced by him.

(4) The Service shall, every six months, publish and circulate to all the major libraries in the country and in the link centres in the public services an accession list of reports and documents acquired.

(5) Where documentation link centres do not exist in Government ministries, departments and parastatal organizations, the Service shall initiate appropriate measures for the establishment and development of such centres.

(6) The Service shall, through the documentation link centres, coordinate the acquisition and preservation of reports and other generally circulated documents in the public service.

6. Public Access to public archives

6. (1) Subject to any written law prohibiting or restricting the disclosure of information obtained from members of the public and to the provisions of this section, public archives which have been in existence for a period of not less than thirty years may be made available for public inspection, and it shall be the duty of the Director to provide reasonable facilities at such times, and on the payment of the prescribed fees, for members of the public to inspect or obtain copies of or extracts from, such public archives.

(2) The Director may, in respect of any public archives or any category thereof which the person by whom, or in charge of the office from which, the records concerned were transferred to the national archives has certified to be of a kind which ought to be made available for public inspection, order that the public archives or category thereof shall be made available for public inspection notwithstanding that they have not been in existence for thirty years.

(3) Notwithstanding subsection (1), the Director may, in respect of any public archives or any category thereof which the person by whom, or in charge of the office from which, the records concerned were transferred to the national archives has certified to be of a kind which ought not to be made available for public inspection, order that the public archives or category thereof shall not be available for public inspection notwithstanding that they have been in existence for more than thirty years, or shall not be available for public inspection until the expiry of such further period as may be specified in that or any subsequent order.

(4) Nothing in this section shall-

- (a) limit any right of inspection of any public archives or any category thereof to which members of the public had access before their transfer to the national archives; or

- (b) preclude the Director from permitting any person authorized by him in writing to have access to any public archives or any category thereof which are specified in such written authorization; save to the extent provided by any such written law as is referred to in subsection (1) and, in the case of public archives obtained otherwise than by transfer under section 5, subject to the terms and conditions on which such public archives were obtained.

7. Destruction of Public Archives

7. Where the Director is of the opinion that any public archives or records are duplicated, or that for some other special reason any public archives or records should not be preserved, he may, with the approval of the Minister and of such other person as the Minister considers to be primarily concerned with public archives or records of the category in question, authorize the destruction or other disposal of such public archives or records.

Provided that nothing in this section shall empower the Director to authorize the destruction or other disposal of any public archives or records obtained otherwise than by transfer under section 5, contrary to the terms or conditions on which they were obtained, or, if they were obtained by gift, during the lifetime of the donor without his consent.

8. Offences

8. (1) Subject to section 7, any person who wilfully destroys or otherwise disposes of, defaces, mutilates or damages any public archives shall be guilty of an offence.

(2) Any person who wilfully destroys or otherwise disposes of any public records, except with, and in accordance with the terms and conditions of, the written consent of the Director shall be guilty of an offence.

(3) Any person who exports any public archives or public records except under and in accordance with the terms and conditions of a licence issued by the Director shall be guilty of an offence.

(4) Any person who removes from its place of custody any public archives except with, and in accordance with the terms and conditions of, the written consent of the Director shall be guilty of an offence.

(5) Any person who wilfully obstructs or hinders the Director or any officer of the Service authorized by him in the exercise of their duties or the performance of their functions under this Act or any subsidiary legislation made there under, or who wilfully disobeys or contravenes any lawful order or direction of the Director or such officer given in accordance with this Act or any subsidiary legislation made thereunder, shall be guilty of an offence.

(6) A licence or written consent issued under this section shall specify each record to which it relates, and may contain such terms and conditions as the Director thinks necessary or desirable.

(7) Any person who is guilty of an offence under this section shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand shillings or to both.

9. Export of Historical Records

9. (1) If the Director is satisfied that any record which is in, or was made in, Kenya is of historical value to Kenya, he may, by notice in the Gazette, or by writing under his hand served on the person having the custody of such record, declare such record to be an historical record, and prohibit the export thereof except under and in accordance with the terms and conditions of a licence issued by the Director.

(2) A licence issued for the export of an historical record declared as such under this section shall contain a description of the record sufficient to identify it, and may contain such terms and conditions as to the custody, use, preservation and return of the record as the Director thinks fit.

(3) Any person aggrieved by the declaration of any record as an historical record, or by the refusal of the Director to issue a licence for the export of such record, or by any terms and conditions contained in a licence issued by the Director under this section, may appeal to the Minister, whose decision thereon shall be final and shall not be questioned in any court.

(4) Any person who—

- (a) knowing any record to be declared an historical record under this section, exports or attempts to export it without a licence by the Director or
- (b) contravenes or fails to comply with the terms and conditions of any licence issued to him under this section; or
- (c) knowing any record to be declared an historical record under this section, wilfully destroys or otherwise disposes of, defaces, mutilates or damages such record or, if he has custody of such record, fails to take all reasonable steps to preserve and protect it, shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand shillings or to both.

10. Legal Validity of Public Archives

10. When it is a requirement of the validity of any public record that it be kept in or produced from legal custody, the validity of such record shall not be affected by the fact of its transfer to the national archives.

11. Certified copies of public archives admissible as evidence

11. A copy of or extract from any public archives purporting to be duly certified as a true and authentic copy or extract by the Director, or by an officer of the Service authorized by him in that behalf, and authenticated with the official seal of the Service, shall be admissible in evidence in any proceedings, without further proof, if the original record would have been admissible in evidence in such proceedings.

12. Official Seal of Service

12. (1) There shall be an official seal of the Service of a design approved by the Minister, which seal shall be judicially noted.

(2) The seal of the Service shall be kept in the custody of the Director and may be used by him or by an officer of the Service authorized by him in that behalf for the purposes of the Service.

13. Copyright

13. Where any work in which copyright subsists, or a reproduction of such work, is comprised in any public archives which are open to public inspection under this Act, the copyright in such work shall not be deemed to have been infringed by the making or the supplying to any person of any reproduction of the work by or under the direction of the Director.

Provided that, in its application to any public archives obtained otherwise than under section 5, this section shall have effect subject to any express terms or conditions under which the same was obtained.

14. Public Archives Advisory Council

14. (1) The Minister may make regulations establishing and constituting a Council, to be known as the Public Archives Advisory Council, and, subject to this Act, providing for matters incidental to and connected with the establishment and constitution of such Council, and the functions thereof.

(2) The functions of the Public Archives Advisory Council shall be to advise the Minister on all matters relating to the location, preservation and use of public archives, access by members of the public to the public archives, and the export under licence of any public archives, public records or historical records.

15. Regulations

15. The Minister may make regulations generally for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing may make regulations providing for—

- (a) the admission of the public to the national archives and the inspection by the public of the public archives;
- (b) the transfer of any public records to the national archives;
- (c) the responsibilities of persons having the custody of public records;
- (d) the examination, disposal or destruction of public archives; and public records;
- (e) the conditions under which public archives may be reproduced, or published or extracts made therefrom;
- (f) the issuing of licences for the exportation from Kenya of public archives, public records or historical records, or the terms and conditions which may be attached to such licences; and
- (g) the fees to be paid for access to the national archives or the use of the public archives or the facilities or services provided by the Service.

SCHEDULE (s. 2) - PUBLIC RECORDS

1. The records of any Ministry or Government Department, and of any commission, office, board or other body or establishment under the Government or established by or under an Act of Parliament;

Provided that nothing referred to in this paragraph shall include the records of the Public Trustee or the Registrar-General relating to individual trusts or estates.

2. The records of the High Court and of any other court or tribunal.
3. The records of Parliament and of the Electoral Commission.
4. The records of any local authority or other authority established for local government purposes.

ANNEX IV - THE RECORDS DISPOSAL ACT

Commencement: 12th June, 1962

An Act of Parliament to provide for the disposal of records in the custody of the High Court or of the Registrar- General.

1. Short title

1. This Act may be cited as the Records Disposal Act.

2. Power to make rules for the disposal of records

2. (1) The Chief Justice after consultation with the Chief Archivist, and subject to the Public Archives Act, may from time to time make rules to provide for the disposal by destruction or otherwise of such records, books and papers, belonging to or being in the custody of the High Court or of courts of civil or criminal jurisdiction subordinate thereto, as he may consider to be of no further use or unworthy of being permanently preserved.

(2) The Attorney-General may, after consultation with the Chief Archivist, and subject to the provisions of the Public Archives Act, from time to time make rules to provide for the disposal by destruction or otherwise of such records, books and papers, belonging to or being in the custody of the Registrar-General, as he may consider to be of no further use or unworthy of being permanently preserved.

(3) For the purposes of this section, "Registrar-General" includes the officers specified in the Schedule to this Act.

3. Saving

3. Nothing herein contained shall be deemed to authorize the destruction of any document which under the provisions of any law for the time being in force is required to be kept or maintained.

4. No suit to lie on account of destruction

4. No suit or other proceeding shall be instituted against any person in respect of the disposal by destruction or other wise of any records, books or papers in accordance with any rules made under this Act.

SCHEDULE (s. 2 (3))

OFFICERS INCLUDED IN THE DEFINITION OF “REGISTRAR-GENERAL

OFFICER	ACT UNDER WHICH APPOINTED
Official Receiver	Bankruptcy Act (Cap. 53)-section 74.
Registrar of Societies	Societies Act (Cap. 108)-section 8.
Registrar of Books and New papers.	Books and Newspapers Act (Cap. 111) section 3.
Registrar-General of Births and Deaths	Births and Deaths Registration Act (Cap. 149)—section 3.
Registrar-General of Marriages.	Marriage Act (Cap. 1 50)-section 2.
Public Trustee.	Public Trustee Act (Cap. 168)-section 3.
Registrar of Trade Unions.	Trade Unions Act (Cap. 233)-section 5.
Registrar of Companies.	Companies Act (Cap. 486)-section382.
Registrar of Insurance Companies.-	Insurance Companies Act (Cap. 487)—section 3.
Registrar of Building Societies.	Building Societies Act (Cap. 489)-section 3.
Registrar, of Business Names.	Registration of Business Names Act (Cap. 499)-section 3.
Registrar of TradeMarks.	Trade Marks Act (Cap. 506) section 3.
Registrar of Patents.	Patents Registration Act (Cap. 508) -section 2.
Assistant Estate Duty Commissioner	Estate Duty Act (Cap. 483)— section 3.

SUBSIDIARY LEGISLATION
THE RECORDS DISPOSAL (COURT RULES)

1. These Rules may be cited as the Records Disposal (Courts) Rules.
2. Any record, book or paper belonging to or being in the custody of the High Court or any court of civil or criminal jurisdiction subordinate thereto, being a record, book or paper described in the first column of the First Schedule to these Rules, may be destroyed by the court or officer having the custody thereof after the lapse of such period (if any) as is specified in relation thereto in the second column of the said Schedule:

Provided that—

- (i) no record, book or paper which may be required for the trial of an offender still at large, or for the identification of stolen property shall be destroyed; and
 - (ii) no court record shall be destroyed unless the appropriate court register contains a sufficient summary in civil cases of the names of the parties, the nature of the claim and the result of the trial, and in criminal cases of the name of the accused, the nature of the charge and the sentence or order.
3. Before destroying any record, book or paper, the court or officer desiring to destroy the same shall—
 - (a) give at least three months' notice in the Gazette, in the form No. 1 in the Second Schedule to these Rules, of his intention to apply to the Chief Justice for leave to destroy the same, together with a summarized description in the notice of the record, book or paper in question; and
 - (b) not earlier than three months after the giving of such notice obtain leave in writing from the Chief Justice to destroy the record, book or paper.
 4. Any exhibit attached to any record of which notice of intended destruction has been given under rule 3 of these Rules shall, if the same is not claimed by the owner thereof before the destruction of the record, be deemed to be part of the record for the purpose of destruction.
 5. At any time after the expiration of three months from the giving of a notice in the Gazette under rule 3 of these Rules, the Chief Justice may grant leave to destroy any record, book or paper in respect of which such notice was given.
 6. All records, books and papers to be destroyed under these Rules shall be burnt in the presence of a magistrate or a deputy registrar of the High Court, or

any other officer authorized by either a magistrate or a deputy registrar who shall—

- (a) make an entry in the appropriate court register in red ink of the letter “D” and the date of destruction against the particulars therein of the case to which each such record, book or paper relates; and
- (b) in respect of records, books or papers destroyed by leave of the Chief Justice under rule 5 of these Rules, submit a certificate to the Chief Justice in the form No. 2 in the Second Schedule to these Rules, giving particulars of the records destroyed.

7. There shall be kept by the Judicial Department a register in which shall be entered particulars of each record, book or paper destroyed by leave of the Chief Justice granted under rule 5 of these Rules, together with the date of destruction and reference to the certificate submitted under rule 6 (b) of these Rules respecting the same.

FIRST SCHEDULE

DESCRIPTION OF RECORDS. BOOKS AND PAPERS THAT MAY BE DESTROYED	PERIOD AFTER WHICH THE SAME MAY BE DESTROYED
1. All records, books and papers rendered illegible or useless by climate, insects, vermin, fire or water.	At once
2. All records, books and papers relating to civil court proceedings where the cause of action was other than— (a) title to immovable property; (b) administration of the estate of an infant, a lunatic or a deceased person; (c) right of heirship; (d) status of an individual class or tribe; (e) right of way, right to water, air or light or other easement; (f) custom of tribe, community or locality.	12 years from the date of the final judgement or order
3. All records, books and papers relating to criminal proceedings in which acquittals or discharges have been ordered, or fines only imposed, or orders for security made, or sentences of imprisonment not exceeding one year passed, or in which an	3 years from the date of judgement or final order

accused person has been committed for trial; and complaints dismissed by a magistrate.	
4. Police report of deaths and records of inquests.	3 years from date
5. Miscellaneous police reports	3 years from date
6. Reports of railway accidents	3 years from date
7. Judicial returns from subordinate courts	3 years from date
8. Books of account lodged in connexion with bankruptcy proceedings where a discharge has been granted to the bankrupt.	3 years from the date of discharge
9. Miscellaneous correspondence regarding dates of trial, service of summonses and notices, execution of warrants, transfer of proceedings, attendance of witnesses, records and returns called for, preparation of annual lists and summoning of jurors and assessors, requisitions for forms, and documents ejusdem generis with the foregoing.	3 years from date
10. Books of account and miscellaneous papers, other than official records relating to estate of deceased persons which have been distributed and of which the accounts have been audited.	3 years from date of audit
11. copy letter books	10 years from date
12. Books of account lodged in connexion with bankruptcy proceedings.	12 years from date of adjudication

ANNEX VI - STATISTICS ACT 2006

An Act of Parliament to provide for the establishment of the Kenya National Bureau of Statistics for the collection, compilation, analysis, publication and dissemination of statistical information, and the co-ordination of the national statistical system, and for connected purposes
ENACTED by the Parliament of Kenya, as follows —

PART I – PRELIMINARY

1. This Act may be cited as the Statistics Act, 2006 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

2. Interpretation

2. In this Act, unless the context otherwise requires —

“authorized officer” means a person appointed as such under section 10;

“Bureau” means the Kenya National Bureau of Statistics established under section 3;

“Board” means the Board of directors of the Bureau established under section 5;

“census” means a statistical operation in which all units of the population of interest are enumerated;

“chairman” means the Chairman of the Board of Directors;

“Director-General” means the Director-General appointed under section 8;

“Minister” means the Minister for the time being responsible for matters relating to statistics;

“national statistical system” includes producers and users of statistics working under the supervision and co-ordination of the Bureau;

“Population and Housing Census” means a population and Housing Census conducted by the Board under section 17;

“statistical information” means information collected by the Bureau, for purposes of this Act, on the matters set out in the First Schedule.

“Statistics” means any quantity collected as summary of data;

PART II- ESTABLISHMENT, OBJECTIVES AND FUNCTIONS OF THE KENYA NATIONAL BUREAU OF STATISTICS

3. Establishment of the Bureau

3. (1) There is established a Bureau to be known as the Kenya National Bureau of Statistics,

(2) The Bureau shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

4. Objectives and Functions of the Bureau

4.(1) The Bureau shall be the principal agency of the Government for collecting, analysing and disseminating statistical data in Kenya and shall be the custodian of official statistical information.

(2) Without prejudice to the generality of subsection (1), the Bureau shall be responsible for -

- (a) planning, authorizing, co-ordinating and supervising all official statistical programmes undertaken within the national statistical system;
- (b) establishing standards and promoting the use of best practices and methods in the production and dissemination of statistical information across the national statistical system;
- (c) collecting, compiling, analyzing, abstracting and disseminating statistical information on the matters specified in the First Schedule;
- (d) conducting the Population and Housing Census every ten years, and such other censuses and surveys as the Board may determine; and
- (e) maintaining a comprehensive and reliable national socio-economic database.

5.(1) The management of the Bureau shall vest in a Board of Directors which shall consist of

- (a) a chairman appointed by President;
- (b) the Permanent Secretary in the Ministry for the time being responsible for statistics;
- (c) the Permanent Secretary Ministry responsible for finance; and
- (d) five other members appointed by the Minister to represent the bodies for the time being recognized by the Government as representing —
 - (i) the private sector;
 - (ii) the non-Governmental Organizations;
 - (iii) research institutions;
 - (iv) the public universities; and
 - (v) the National Co-ordinating Agency for Population and Development.

(2) Every appointment to the Board under section 6(1) shall be by name and by notice in the Gazette and shall be for a renewable period of three years.

(3) A person shall be qualified to be appointed under this subsection (1)(d) if such person has a university degree in –

- (a) statistics;
- (b) information technology;
- (c) economics;
- (d) social sciences, or
- (e) mathematics.

in addition to knowledge and experience in the matters to which the functions of the Board relate.

6. Function of the Board

6.(1) The functions of the Board shall be to –

- (a) formulate and monitor the implementation of policies pertaining to the Bureau;
- (b) determine from, time to time, the structure and staffing levels of the Bureau;
- (c) recruit suitable staff for the Bureau upon such terms and conditions as it may determine;

- (d) promote professionalism and discipline among the staff of the Bureau by facilitating professional training;
- (e) approve the Bureau's corporate plan, annual work programmes and annual budgets; and
- (f) submit to the Minister a quarterly report on the activities of the Bureau.

(2) The Board may collaborate with such other bodies within or outside Kenya as it may consider desirable or appropriate in furtherance of the purpose for which the Bureau is established.

7. Conduct of the Business and Affairs of the Board

7. The provisions of the Second Schedule shall apply with respect to conduct of the business and affairs of the Board.

8. Director-General

8. (1) There shall be a Director-General of the Bureau who shall, subject to this section, be appointed by the Board, on such terms and conditions of service as the Board may determine.

(2) A person shall not be qualified for appointment as the Director-General unless such person has an advanced degree in a relevant field as specified in section 5(3) and at least ten years experience in the management of public or private institutions.

(3) The Director-General shall be the chief executive officer of the Bureau and the secretary to the Board and the committees.

(4) In the exercise of his functions under this Act, the Director-General shall, subject to the direction of the Board –

- (a) be responsible for the day-to-day management of the Bureau;
- (b) manage the funds and property of the Bureau;
- (c) be responsible for the management of the staff of the Bureau;
- (d) cause to be prepared for the approval of the Board –
 - (i) the annual work programmes of the Bureau,
 - (ii) the annual budget, and audited accounts of the Bureau.

9. Staff of the Bureau

9. The Board may appoint such officers and staff as may be necessary for the proper and efficient discharge of the functions of the Bureau, on such terms and conditions of service as it may determine.

10. Authorised Officers

10. The Director-General may, in writing, appoint any person as an authorized officer for the purposes of the carrying out of the provisions of this Act.

14 Every person employed by the Board under the provisions of this Act shall take the oath of secrecy prescribed in the Third Schedule, before a Magistrate, Commissioner for Oaths, or the Director-General, before commencing the duties relating to the provisions of this Act.

12. The funds of the Bureau shall consist of—

(a) such sums as the Minister may, with the consent of the Treasury, make available for the purposes of this Act out of monies provided by Parliament;

(b) any sums which may be donated or granted or lent to the Bureau:

Provided that the Board shall not accept any donations to which are attached conditions of which it does not approve.

(c) any sums which may become payable to the Bureau in respect of the sale of publications, provision of approved services or from any matter incidental to the carrying out of its functions under this Act.

13. Annual Estimates

13. The Board shall, not less than four months before the commencement of any financial year, prepare and submit to the Minister for approval in concurrence with the Treasury, estimates of the Bureau's revenue and expenditure for that financial year, and once such approval has been given no expenditure shall be made for which provision has not been made in such estimates.

14. Annual Reports

14.(1) The Board shall, within four months after the end of each financial year, make a report to the Minister on the activities of the Bureau for that year, consisting of —

(a) a report on the operations of the Bureau; and

(b) such other information as the Board may deem necessary to include.

(2) The Board shall bring the contents of the report prepared in accordance with subsection (1) report to the attention of the national statistical system in such manner as it may deem appropriate.

(3) The Minister shall, upon receipt of the annual report under this section, place it before the National Assembly within a period of fourteen days of the day the National Assembly next meets after such receipt.

15. Accounts and Audit

15.(1) The Board shall keep or cause to be kept proper books of account of the Bureau.

(2) The accounts of the Bureau shall be audited and reported upon in accordance with the Public Audit Act.

PART III - STATISTICAL INFORMATION

16. Collection of Information

16. The Bureau shall collect any statistical information estimates or returns concerning any matter set out in the First Schedule to this Act.

17. Power to order Census

17. The Minister may, on the advice of the Board, by order published in the Gazette direct that a Population and Housing Census be taken for Kenya or for any part thereof or in respect of any class of inhabitants thereof, and any such directions may specify —

- (a) the date or dates on or between which the census is to be taken;
- (b) the persons by whom the returns for the purpose of the census are to be made; and
- (c) the information to be obtained in the census.

18. Other Census or surveys

18.(1) Any agency other than the Bureau, wishing to conduct a census or survey at national, or local level shall seek the approval of the Board.

(2) The agency referred to in subsection (1) shall submit its plans to the Board three months before the intended survey, and the Board may approve or decline to approve such plans.

(3) An agency which obtains approval under subsection (2) shall upon completion of the survey, submit copies of its report to the Board.

19. Supply of Information

19. (1) Where any census is being taken or any statistical information is being collected under this Act, an authorized officer may, in the manner specified in

this section, require any person to supply him with such particulars as may be prescribed or such particulars as may be required in relation to the taking of the census or the collection of the information.

(2) A person required to provide information under subsection (1) shall, to the best of his knowledge, information and belief, complete such forms, make such returns, answer such questions and give such information in such manner and within such time as may be specified by the authorized officer.

(3) An authorized officer may require any person or establishment to supply him with particulars either by interviewing the person or by leaving at or posting to his last known address a form having thereon a notice requiring the form to be completed and returned in such manner and within such time as shall be specified in the notice.

(4) Where any particulars are, by any document issued by an authorized person, required to be supplied by any person, it shall be presumed until the contrary is proved that the particulars may lawfully be required from that person in accordance with this Act.

20. Power to Access Information

20. Any person or establishment having the custody of, or being in charge of, any public records or documents of any local authority from which information sought in furtherance of the purposes of this Act can, in the opinion of the Director-General, be obtained, or which would aid in the completion or correction of information already obtained, shall grant the Director-General access to such records or documents for the purposes of obtaining therefrom the required information.

21. Power of entry

21. An authorized officer may at all reasonable times without warrant, but upon production, if required, of the letter of authorization, for any purpose connected with —

- (a) the collection of statistical information, enter and inspect any land, building, vehicle or vessel where persons are employed, other than a dwelling-house;
- (b) the taking of a census, enter any land or building, vehicle or vessel where persons are employed,

and in either case may make such inquiries for the collection of information, or the taking of the census, as the case may be.

22. Restriction on Disclosure of Information

22.(1) No person shall publish or show to any other person not employed in the execution of a duty under this Act any of the following —

(d) an individual return or part thereof made for the purposes of this Act;

(e) an answer given to any question put for the purposes of this Act; or

(f) a report, abstract or other document containing particulars comprised in any such return or answer so arranged as to identify such particulars with any person or undertaking,

except with the prior written consent of the person making the return, or giving the answer, or, in the case of an undertaking, the owner, for the time being, of the undertaking.

(2) The provisions of this Act shall not affect any law relating to the disclosure of any official secret or confidential information or trade secret,

23. Director-General may give information

23.(1) The Director-General may at the request of any person or agency and upon payment of such fee, if any, as may be prescribed by the Board, provide to that person or agency, any special information or report concerning, or carry out for that person or agency any special investigation into, any of the matters specified in the First Schedule:

Provided that the person requesting for information shall undertake in writing, to the satisfaction of the Director-General —

(a) to use the information so obtained only for research purposes; and

(b) not to release such information to any other person except with the prior written consent of the Director-General

(2) The Director-General may, with the approval of the Board, cause statistical data collected by the Bureau to be disseminated to the public after ascertaining its accuracy and safeguarding the confidentiality with respect to the information.

24. Obstruction

24.(1) Any person who hinders or obstructs the Director-General or any authorized officer in the execution of any powers conferred under this Act, commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

(2) Any person who wilfully fails to give any information or particular as required under this Act commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

25. Special Reports and Investigations

25.(1) Nothing contained in this Act shall prevent or restrict the publication of any report, abstract or other document which would make identification of any undertaking possible merely by reason of the fact that the particulars relate to an undertaking which is the only undertaking within its particular sphere of activities, if the report abstract or other document is so arranged as to disclose, in respect of such undertaking, only the following information —

- (a) the quantity and the value of any description of the goods manufactured, produced, exported or sold;
- (b) the economic and social characteristics of employees;
- (c) the amount and extent of any investment; or
- (d) any other information which is furnished or supplied under this Act,

with respect to the publication of which no objection has been made in writing to the person furnishing the information prior to the publication of the report, abstract or other document.

(2) Nothing contained in this section shall be construed as requiring the disclosure of any information obtained under this Act to a Ministry, department or authority for the purpose of taxation.

Offences

26. Any person who —

- (a) makes a statement which he knows to be false or has no reason to believe to be true in any returns or estimates in response to a reasonable request for information for the purposes of this Act;
- (b) being employed in the execution of any duty under this Act, without lawful authority, publishes or communicates to any person, other than in the ordinary course of such employment, any information obtained by him in the course of his employment;
- (c) being in possession of information which might influence or affect the market value of any share or other security, interest, product or article by virtue of his employment, uses it for personal gain before it is made public;
- (d) knowingly compiles for issue any false statistics or statistical information;

- (e) possessing any information which, to his knowledge, has been disclosed in contravention of this Act, publishes or communicates such information to any person;
- (f) in the execution of any duty under this Act, fails to comply with or contravenes any terms or conditions of his oath or affirmation taken under this Act;
- (g) without lawful authority destroys, defaces or mutilates any schedule, form or other document containing particulars obtained under this Act; or
- (h) contravenes any provision of this Act in respect of which no penalty has been prescribed,

commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

PART IV – MISCELLANEOUS

28. Protection from Personal Liability

27.(1) Subject to subsection (2), no matter or thing done by a member of the Board or any other officer, employee or agent of the Bureau shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Bureau under this Act, render the member, officer, employee or agent of the Board personally liable to any action, claim or demand whatsoever.

(2) The provisions subsection (1) shall not relieve the Bureau of the liability to pay compensation or damages to any person for the injury to him or damage to his property or any of his interests caused by the exercise of any powers conferred by this Act or any other written law, or any failure, whether wholly or partially of any works.

28. Exemption from stamp duty

28. No stamp duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Bureau which, but for this section, the Bureau would be liable to pay.

29. Regulations

29. The Board may with the approval of the Minister make regulations for the better carrying into effect of the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may-

- (a) prescribe the particulars to be furnished in relation to any matter in respect of which statistical information may be collected under this Act;

(b) prescribe the manner and form in which the times and places at which and the person by whom particulars shall be furnished.

30. Supercession.

30. Where any conflict arises .between the provisions of this and any other Act with respect to the collection, analysis and dissemination of official statistics, the provisions of this Act shall prevail.