



Access to Information Handling Procedure

1. Introduction

The Kenya Industrial Property Institute (the Institute) was established in 2001 as a body corporate and mandated to administer and promote industrial property rights in Kenya. The Institute implements two Acts of Parliament; The Industrial Property Act 2001 and the Trade Marks Act, Cap 506 of the laws of Kenya. The functions of the Institute are to grant patents; register trade and service marks, industrial designs, utility models and technovations; to promote innovative and inventive activities, to disseminate industrial property information to the public, to screen technology transfer agreements and licenses and to offer training in industrial property rights.

2. Background

The Institute appreciates the importance of the right of access to information in promoting public participation, transparency and accountability. To this end, the Institute has developed the Access to Information Procedure to provide for a framework for processing requests for information by citizens. This is in accordance with Article 35 of the Constitution of Kenya and Access to Information Act, No. 31 of 2016.

3. Definitions

“Act” means Access to Information Act, No. 31 of 2016;

“Commission” means the Commission on Administrative Justice established under Section 3 of the Commission on Administrative Justice Act, No. 23 of 2011;

“Citizen” means any individual who has Kenyan citizenship, any private entity that is controlled by one or more Kenyan citizens;

“Information” includes all records held by the Institute, regardless of the form in which the information is stored, its source or date of production;

“Information Access Officer” means any Officer of the Institute designated as such for purposes of this Procedure;

“Personal Information” means information about an identifiable individual including race, gender, ethnic origin, education, religion, employment, pregnancy, disability, medical or financial history, conscience, belief, language, culture, national identity number, fingerprints, blood type, contacts, opinions or views about another person, private and confidential written communication such as a letter, endorsements or reference; and

“Requester” means a person who seeks information or requests for correction of personal information from the Institute.

4. Scope

This Procedure applies to all information held by the Institute in all formats upon request by the citizens of Kenya.

5. Legal and Policy Framework

The Institute will implement this Procedure to complement the following:-

- (a) Constitution of Kenya, 2010;
- (b) Access to Information Act, No. 31 of 2016;
- (c) Industrial Property Act, No. 3 of 2001;
- (d) Trade Marks Act, Cap. 506;
- (e) All relevant laws incidental to or related to access to information;
and
- (f) The Institute’s policies, procedures and practices.

6. Guiding Principles

In implementing this Procedure, the Institute shall be guided by the following principles:

- a) Maximum disclosure-The Institute is committed to availing full information pro-actively and upon request by citizens within the stipulated timelines in the Act;
- b) Transparency-The Institute shall exercise transparency in publishing information proactively or processing requests for information;

- c) Confidentiality- The Institute shall apply clear and well-defined exemptions and reasons thereof to in considering whether to provide or withhold information upon request;
- d) Responsiveness-The Institute shall process requests for information within the stipulated timelines; and
- e) Record management -The Institute shall maintain credible and authentic records and ensure their integrity.

7. Proactive Disclosure

The Institute shall routinely and systematically disclose information held by the Institute to the public in line with the Act. This shall include:

- a) Functions and structure of the Institute;
- b) Decision-making process;
- c) How the Institute raises and spends its resources (Strategic Plan, Budget, Procurement Plan, Annual Reports);
- d) Salaries of Officers by grade;
- e) Public Procurement information (contracts entered into, terms of reference, name of the contractor, cost and timeline); and
- f) A catalogue of information held by the Institute.

8. Exemptions

The Institute shall withhold certain types of information in line with section 6 of the Act, being any information whose disclosure is likely to;

- a) Substantially prejudice the commercial interest, including intellectual property rights of the Institute or third party from whom information was obtained;
- b) Undermine the national security of Kenya;
- c) Affect due process of the law;
- d) Put in danger the safety, health or life of a person;
- e) Lead to unlawful invasion of privacy;
- f) Cause substantial harm to the ability of the Government to manage the economy of Kenya;
- g) Damage the Institute's position in any actual or contemplated legal proceedings;
- h) Significantly undermine the Institute's ability to give adequate and judicious consideration to a matter concerning which no final decision has not been taken and which remains the subject of active consideration; and

- i) Infringe professional confidentiality as recognised in law or by the rules of a registered association of a profession.

9. Duties and Responsibilities

a) Managing Director

The Managing Director (MD) is the Information Access Officer (IAO). He may delegate the performance of his duties as IAO to any other officer within the Institute. The MD shall:

- i. Implement the Act;
- ii. Designate IAOs; and
- iii. Provide resources.

b) IAO

The IAO shall perform the duties delegated to him by the MD. These may include:

- i. Maintaining the Access to Information Register;
- ii. Coordinating all matters related to access to information;
- iii. Receiving, registering and processing requests for access to information;
- iv. Conducting interviews to determine completeness or admissibility of a request;
- v. Assisting applicants who are unable to independently lodge requests (illiterate and persons with disabilities);
- vi. Transferring requests to relevant agencies;
- vii. Monitoring inspections of records;
- viii. Keeping the requester informed on the status of their requests;
- ix. Publishing and publicising information under proactive disclosure; and
- x. Preparing and submitting quarterly reports to CAJ.

10. Processing requests for Access to Information

a) Lodging a request

A request shall be lodged at the Institute in the KIPi ATI Form 1 in English or Swahili. A request may be lodged by the requester or any other person acting on behalf of the requester, upon production of written authorisation from the requester unless the requester is a minor or a person of unsound mind. Where the requester is unable to make a written request, the IAO shall provide assistance to the requester. A request shall not be deemed inadmissible where it is not lodged in the prescribed format.

The request shall contain the following:

- i. Name, nationality and contacts of the requester;

- ii. Information requested;
- iii. Reasons for the request; and
- iv. Mode of access.

b) Receipt, record and acknowledgement

Once a request is received, it shall be recorded and acknowledged appropriately within three days by IAO. A record of a request shall include the reference number, particulars of the requester and full details of the request. The IAO may seek further information or clarification from the requester where the request is not clear or incomplete.

c) Assessment

The IAO shall assess the request to determine admissibility and appropriate action to be taken. Appropriate action may include forwarding the request to the relevant Office within the Institute for action. Notwithstanding the foregoing, the IAO may determine the admissibility of the request at the point of receipt and take appropriate action.

d) Provision of Information

The IAO shall consider the request and communicate the decision within 21 days of receipt of the request. Where the request relates to the life or liberty of a person, the IAO shall communicate the decision within 48 hours of receipt of the request or not later than 14 days where the information sought requires consultations or relates to a large volume of documents.

e) Correction of personal information

A person may request the Institute to correct personal information, which is outdated, inaccurate or incomplete upon completion of KIPI ATI Form 2. The Institute shall process the request within 21 days from the date of receipt. The procedure for processing request for access to information shall apply, with necessary modifications, to request for correction of personal information.

f) Transfer of requests

Where the information sought is held by another institution, the IAO shall transfer the request to that institution within five (5) days of receipt and inform the requester about the transfer within two (2) days from the date of the transfer.

g) Decision

In considering the request, the Institute may make any of the following decisions:

- i. Grant full access;
- ii. Grant partial access (edited information);
- iii. Deny access;
- iv. Transfer the request;
- v. Correct the personal information; and
- vi. Refuse to correct personal information;

h) Access

Where the Institute grants access to the information requested, it shall send a written response to the requester within 3 days advising on the:

- i. Mode of access including inspection, electronic transmission, hand delivery and post office;
- ii. Details of any fees to be paid and mode of payment; and
- iii. Right of appeal.

i) Closure

Upon communication of the decision made with respect to the request, the IAO shall ensure all relevant documents and correspondences are properly filed and proceed to close the case.

j) Appeal

Where a requester is aggrieved by the decision of the Institute, he may appeal to CAJ within 30 days from the date of the decision.

11. Reporting

The IAO shall prepare quarterly reports on the requests received and submit to CAJ in the prescribed template.

12. Record management

The Institute shall create and maintain credible and authentic record of all requests received.

13. Procedure Review

This Procedure shall be reviewed from time to time as may be necessary.

All requests shall be addressed to the:

**MANAGING DIRECTOR
KENYA INDUSTRIAL PROPERTY INSTITUTE
KIPI CENTRE, OFF WAIYAKI WAY, LAVINGTON
P.O. BOX 51648 - 00200
TEL: +254 020 6002210/1, NAIROBI FAX: +254 020 6006312
MOBILE: 0702002020, 0736002020**

OR

**THE COMMISSION SECRETARY
COMMISSIONER, COMMISSION OF ADMINISTRATIVE
2ND FLOOR, WEST END TOWERS
OPPOSITE AGA KHAN HIGH SCHOOL OFF WAIYAKI WAY -
WESTLANDS
P.O. BOX 20414 - 00200
NAIROBI.**