

LEGAL NOTICE NO. 182

THE PUBLIC OFFICER ETHICS ACT

(No. 4 of 2003)

THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
PROCEDURES FOR ADMINISTRATION OF PART IV OF THE
ACT

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THE PUBLIC OFFICER ETHICS ACT

(No. 4 of 2003)

IN EXERCISE of the powers conferred by section 33(1) of the Public Officer Ethics Act, 2003, the Kenya National Commission on Human Rights establishes the following Administrative Procedures—

THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
PROCEDURES FOR ADMINISTRATION OF PART IV OF THE
ACT

PART I — PRELIMINARY PROVISIONS

1. (1) These Procedures may be cited as the Kenya National Commission on Human Rights Procedures for Administration of Part IV of the Public Officers and Ethics Act, 2003. Citation.
- (2) These procedures shall come into force upon publication in the *Gazette*.
2. In these Procedures, unless the context otherwise requires— Interpretation.
- “Act” means the Public Officer Ethics Act, 2003; No. 4 of 2003.
- “Committee” means the Oversight Committee established under paragraph 5;
- “Commission” means the Kenya National Commission on Human Rights established under Section 3 of the Kenya National Commission on Human Rights Act, 2011; No. 14 of 2011.
- “declarant” means a person who has made a declaration pursuant to section 26 of the Act;
- “declaration” means the declaration of income, assets and liabilities made in accordance with section 26 of the Act;
- “declaration form” means the form on declaration on income, assets and liabilities submitted in accordance with section 26 of the Act;
- “declaration year” means the year when the two-year declaration under the Act is due;
- “final declaration” means a declaration made in accordance with section 27(5) of the Act;
- “initial declaration” means the declaration made in accordance with section 27(3) of the Act;
- “public officer” has the meaning assigned to it under section 2 of the Act;
- “Secretary” means the Secretary to the Commission appointed pursuant to section 21 of the Kenya National Commission on Human Rights Act, 2011; and No. 14 of 2011.
- “two-year declaration” means the declaration made in accordance with section 26(1) of the Act.

3. These Procedures shall apply to the administration of Part IV of the Act with respect to public officers who the Commission is the responsible Commission for the purposes of the Act.

Application.

4. The Secretary shall be responsible for the administration of these Procedures on behalf of the Commission.

Administration of the Procedures.

(2) The Secretary may designate in writing public officers to assist him or her for the purpose of the application of these procedures.

PART II – PROCEDURE IN RELATION TO DECLARATIONS

5. (1) Pursuant to regulation 10 of the Public Officer Ethics Act (Management, Verification and Access to Financial Declarations) Regulations, 2011, the Secretary shall, within thirty days of commencement of these procedures, establish a Committee to oversee the management, verification and access to declarations.

Establishment of Committee.

L.N. No. 179 of 2011.

(2) The Committee under sub-paragraph (1) shall consist of public officers drawn from various directorates, departments or units.

(3) The membership and size shall be determined by the Secretary.

(4) The Committee may co-opt additional members to support its operations.

(5) The Secretary shall determine the term of the Committee.

(6) In the discharge of its functions, the Committee shall be responsible to the Secretary pursuant to regulation 10 of the Public Officer Ethics (Management, Verification and Access to Financial Declarations) Regulations, 2011.

L.N. No. 179 of 2011.

(7) In administering these procedures, the Committee established under this Part may designate sub-committees from its membership to undertake specific functions.

(8) Nothing in this Part shall be construed as prohibiting the Commission from designating an officer who is not a member of the Committee to undertake specified tasks in relation to any function under these Procedures provided that in the performance such tasks, the officer so designated shall be responsible to the Committee.

6. Declarations to be submitted to the Commission under Part IV of the Act shall be submitted to the Secretary or the public officer designated by him or her for that purpose in writing.

To whom declarations are to be submitted.

7. (1) The Secretary or a public officer designated by him or her for that purpose shall issue all public officers with a declaration form if that public officer is required to file a declaration in accordance with the Act.

Declaration forms.

(2) Where a public officer is required to make a two-year declaration, the Secretary or a public officer designated by him or her for that purpose shall provide the public officer with a declaration form before the 1st of November of the year in which the two-year declaration is to be made.

(3) Where a public officer is required to make an initial declaration or a final declaration, as the case may be, the Secretary or a public officer designated by him or her for that purpose in writing shall issue that public officer with the declaration form at least thirty days before that officer is to make the declaration.

8. (1) A public officer shall submit a declaration to the Secretary in the form set out in the Schedule to the Act.

Procedure in submitting declarations.

(2) The Commission may use such measures as may be appropriate to facilitate a public officer to acquire the declaration form.

(3) The Commission may publish the declaration form in a format that permits the declaration form-

- (a) to be rendered in digital format; or
- (b) to be downloaded from a website and printed out in paper format.

(4) Where a public officer is required to make an initial declaration, a two-year declaration or a final declaration, the Secretary may issue a notification to the public officer not less than thirty days before the due date for the officer to make the declaration.

(5) Failure to provide a declaration form or to issue a notification under this paragraph shall not be construed as a waiver of the responsibility of the public officer to submit a declaration under the Act.

9. (1) A public officer shall complete and return his or her declaration form to the Secretary or the public officer designated by him or her for that purpose in writing and that designated public officer shall retain that declaration in safe custody.

Completion return and confidentiality of declaration.

(2) The Secretary or the public officer designated by him or her for that purpose in writing shall not disclose, access, acquire or publish the information in the declaration as may be provided in the Act and these Procedures.

10. (1) The Commission shall maintain a register containing details of each public officer who is required to make a declaration under the Act including-

Register of declarations.

- (a) the name, personal number, designation, directorate, department or unit;
- (b) the date the public officer submitted the declaration form;
- (c) the type of declaration (initial, two-year or final);
- (d) the total number of public officers who have submitted declarations as at the due date;
- (e) the total number of public officers required to submit declarations; and
- (f) the name and signature of officer receiving the declarations; and

(g) any other remark relating to the declarations.

(2) The Secretary shall acknowledge each declaration or submissions.

(3) The register under this Part may be maintained in different documents and formats and the Secretary or a public officer designated by him or her for that purpose may maintain separate registers in respect of initial, two-year and final declarations.

PART III—PROCEDURE IN RELATION TO VERIFICATION AND CLARIFICATION

11. (1) A request for a clarification shall be made by the Secretary or the public officer designated by him or her for that purpose in writing only after an analysis of the declaration has been made.

Verifications of declarations.

(2) The Secretary shall analyse, evaluate, inspect and verify each declaration to ascertain if any of the following conditions exist –

- (a) on the face of the declaration, or in light of any other information the Commission may have, there is reason to suspect the declaration is false or incomplete;
- (b) the assets of the declarant appear disproportionate to their known income; or
- (c) the income, assets or liabilities of the declarant raise concerns of impropriety or conflict of interest.

12. (1) Where the Commission determines that any of the conditions under paragraph 11 exist, the Commission may allow the declarant to provide any clarification in accordance with section 28(1) of the Act.

Requests for clarification.

(2) A request for clarification shall be made in the form prescribed in the Regulations.

(3) The Commission shall, in the register of access to declarations, detail the particulars of the clarification sought, the mode of communication, the time given to respond, the date and particulars of response, if any.

(4) Where no explanation is given or after considering any explanation provided, the Commission is of the opinion that the conditions in paragraph 11(b) still exist, the Commission may, in addition to any other action including criminal and civil proceedings, take disciplinary or other appropriate action against the public officer in accordance with the relevant law, regulations and the Code of Conduct.

PART IV—PROCEDURE FOR THE ACCESS, ACQUISITION AND DISCLOSURE OR PUBLICATION OF INFORMATION IN A DECLARATION

13. (1) A person seeking to access or to publish information relating to a declaration or clarification shall-

Access and publication of information in a declaration.

- (a) apply to the Commission in the form set out in Schedule;

- (b) specify whether they intend to disclose or publish the information so required;
- (c) demonstrate to the Commission that the he has a legitimate interest in the information; and
- (d) demonstrate to the Commission that the access to or publication of that information shall be for a good cause and in furtherance of the objectives of the Act.

(2) Upon receipt of the application under sub-paragraph (1), the Commission shall—

- (a) issue the applicant with an acknowledgement in the form set out in Schedule hereto;
- (b) inform the concerned declarant of the application in writing;
- (c) give the declarant an opportunity to make a representation in writing in relation to the application within fourteen days; and
- (d) consider the representation by the declarant when determining the application.

(3) The Commission shall determine an application under this paragraph and communicate its decision in writing to the applicant within thirty days of receipt of the application.

(4) The Commission or any other person shall not disclose, access, acquire or publish the information in the declaration form except as may be provided in the Act, these Procedures, or any other written law.

(5) The Commission shall not release or part with the original declaration made by any declarant in satisfying the requirements of this paragraph, unless required under any written law:

Provided that where an original declaration is released, the Commission shall always retain a certified copy of the declaration.

(6) The Commission shall maintain a register of applications for access to declarations and decisions made under this Part setting out—

- (a) the name of each applicant;
- (b) the date each application was received;
- (c) the name and personal number of the declarant subject of the application;
- (d) the department or other unit to which the declarant belongs;
- (e) a brief description of the information applied for;
- (f) whether the declarant accepts or opposes access to the information applied for;
- (g) a brief description of the decision made in relation to the application including reasons for denial where applicable; and

(h) the date when decision was communicated to the applicant.

14. (1) The provisions of paragraph 13 shall not apply where the declarant makes an application to access their own declaration. Access by a declarant.

(2) An application by a declarant to access their declaration shall be made to the Secretary.

(3) Upon receipt of an application under this paragraph, the Secretary shall avail a certified copy to the declarant within thirty days.

(4) The Commission shall not give the declarant access to their declaration unless;

(a) the declarant proves their identity; or

(b) in the case of a representative of the declarant, that representative provides proof of their authority to act as such.

15. The Commission shall make a decision on an application for access in accordance with the Act, Regulations and these Procedures, which decision shall be communicated, in writing, to the applicant. Decisions of the commission on access.

16. (1) Information shall not be disclosed pursuant section 30(2) of the Act to any law enforcement agency unless a written request is provided to the Commission. Condition for disclosure.

(2) The Secretary may decline to make a disclosure under sub-paragraph (1) if he or she is of the opinion that such disclosure would be a violation of any written law.

17. (1) The applicant may request for a review of the decision in paragraph 14. Review.

(2) Upon receipt of the request to review its decision, the Commission shall consider the request and make a determination within thirty days.

18. Any person dissatisfied with the decision of the Commission may appeal in accordance with the procedure set out in the Regulations. Appeal.

PART V — PROCEDURE IN RELATION TO STORAGE, RETENTION AND RETRIEVAL OF DECLARATIONS

19. (1) The Commission shall ensure that appropriate mechanisms are put in place for the safe and secure storage, retention and easy retrieval of the declarations and clarifications. Mechanisms for storage, retention and retrieval

(2) The mechanisms established under sub-paragraph (1) may include manual, electronic, microfilm or any other form as the Commission may consider appropriate.

20. (1) Where the period for retaining information obtained in accordance with Part IV of the Act has lapsed, the Commission shall determine the action to be taken in relation to that information. Cessation of retention of information.

(2) The Secretary may make a written proposal to the Commission in relation to the action to be taken in accordance with sub-paragraph (1).

21. (1) Pursuant to sections 4 (2) and 6 (3) of the Leadership and Integrity Act, 2012 the Commission shall submit to the Ethics and Anti-Corruption Commission, by the 31st of July following the submission of two-year declarations, the following information—

Returns to Ethics and Anti-Corruption Commission

- (a) the number of public officers in the payroll as at 31st October of the declaration year;
- (b) the total number of public officers who have submitted declarations within the prescribed time;
- (c) the total number of public officers who have failed to submit declarations within the prescribed time;
- (d) any action taken by the Commission in relation to any public officer who has failed to comply with the Act or these Procedures;
- (e) number of declarations verified;
- (f) findings in respect to the verification of declarations;
- (g) any action taken pursuant to the verification of the declaration;
- (h) any relevant remarks relating to the returns.

(2) In the case of initial and final declarations, the Commission shall, by 31st of July each year, submit to the EACC the information required in subparagraph (1) in respect to the financial year ending on 30th June of the preceding year.

(3) The report under this Part shall be in the form set in the Schedule.

PART VI - GENERAL PROVISIONS

22. The Commission may subject to the Act, Regulations and these Procedures, issue guidelines in writing in relation to any matter that has not been provided for in these procedures.

Matters not covered by these procedures

23. The Commission may consider representations from any person on any matter to which these Procedures apply.

Representations to the Commission.

24. The Commission may from time to time review or amend these Procedures as may be necessary.

Review and amendment of these procedures.

SCHEDULE

REQUEST TO ACCESS A DECLARATION OR CLARIFICATION

Note: A separate form to be completed in respect of a request for information for each declarant.

Part I: Information on Applicant

- 1. Name
- 2. National Identity Card/Passport Number
- 3. Postal Address.....
- 4. Physical Address.....
- 5. E-mail Address
- 6. Occupation

Part II: Particulars of Information Applied for

a) Nature of Information (please tick)

- 1. Declaration ()
- 2. Clarification ()
- 3 Declaration and Clarification ()

b) Declaration period

Part III: Information on the Person whose declaration is sought to be obtained:

- (a) Name.....
- (b) Directorate/Department (if known)
- (c) Work Station
- (d) Reason for requiring the information: -
 - (i) Official
 - (ii) Other reason
- (e) State precisely the purpose for which the declaration sought will be used
 -
 -
 -

Part IV: Additional Information

Give any other information you may consider relevant and useful to your request

Part V: Declaration by Applicant

.....

.....
.....
.....
.....

I,, solemnly declare that the information I have given above is true, complete and correct to the best of my knowledge.

Date:

Signature of Applicant.....

ACKNOWLEDGEMENT OF REQUEST FOR ACCESS TO A DECLARATION OR CLARIFICATION

Name of Applicant

National Identity Card/Passport Number

Name of Organization (where applicable)

Postal Address

Date of Application

Delivered by

Signature

A response on this request will be communicated within thirty (30) days from the date of this acknowledgement.

Name of Receiving Officer:

Signature

Date

Stamp:

REPORTING TEMPLATE ON THE SUBMISSION OF DECLARATION OF
INCOME, ASSETS AND LIABILITIES

(NB: use separate forms for public officers and for state officers)

NAME OF ENTITY:

DATE OF SUBMISSION:

DECLARATION YEAR:

NUMBER OF OFFICERS WITHIN JURISDICTION (*differentiate for both State and Public Officers*):

NUMBER OF OFFICERS WHO SUBMITTED RETURNS:

NUMBER OF OFFICERS WHO DID NOT SUBMIT RETURNS:

LIST OF OFFICERS WHO DID NOT SUBMIT DECLARATION OF INCOME,
ASSETS AND LIABILITIES (DIALS)

No	Full name	Designation/Position	Staff/File No	National Identity Card or Passport Number	Action taken/Remarks
1					
2					
3					
4					
5					

Compiled by:

Designation:

Date:

Authorized by:

Date:

.....

Accounting officer/CEO

Official Rubber stamp

(Completed form to be submitted to EACC)

**REPORTING TEMPLATE ON THE VERIFICATION OF DECLARATION OF
INCOME, ASSETS AND LIABILITIES**

(NB: use separate forms for public officers and for state officers)

NAME OF ENTITY:

DECLARATION YEAR:

NUMBER OF DECLARATIONS VERIFIED *(differentiate for both State and Public Officers)*:
.....

NUMBER OF DECLARATIONS NOT VERIFIED:

**RETURNS OF VERIFICATION OF DECLARATION OF INCOME, ASSETS AND
LIABILITIES (DIALS) THAT ARE INCOMPLETE, INCONSISTENT AND
FALSIFIED**

<i>No</i>	<i>Full name</i>	<i>Designation /Position</i>	<i>Staff/ File No</i>	<i>National Identity Card or Passport Number</i>	<i>Status of Declaration</i>	<i>Action taken/Remarks</i>
1						
2						
3						
4						
5						

Compiled by:

Designation:.....Date:.....

Authorized by:..... Date:.....

Accounting officer/CEO

Official Rubber stamp

(Completed form to be submitted to EACC)

KAGWIRIA MBOGORI,
Chairperson,
Kenya National Commission on Human Rights.