

A GUIDE TO THE  
MODEL LAW ON  
ACCESS TO INFORMATION  
FOR AFRICA



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# **A GUIDE TO THE MODEL LAW ON ACCESS TO INFORMATION FOR AFRICA**

## **1 What is a Model Law?**

A Model Law is a set of provisions on a specific subject matter developed for the purpose of assisting States in the adoption of domestic legislation. A Model Law is different from a treaty. While a treaty is binding on States that have formally accepted ('ratified') it, a Model Law cannot be ratified, and is not binding on States. Because it plays a persuasive role, a Model Law allows States the flexibility to adapt its content as they see fit, based on the peculiarities of their domestic legal systems.

## **2 What is the Model Law on Access to Information for Africa (ATI)?**

The Model Law on Access to information for Africa is a document highlighting regionally and internationally recognised standards on the right of Access to Information (ATI). Its roots lie in article 9 of the African Charter on Human and Peoples' Rights (African Charter), which guarantees the right of

'every individual' to 'receive information'. All African States have accepted the African Charter as binding.

The Model Law seeks to guide States in adopting new, or reviewing existing ATI laws. It was developed by the African Commission on Human and Peoples' Rights (African Commission), under the leadership of the Special Rapporteur on Freedom of Expression and Access to Information, Commissioner Pansy Tlakula. The African Commission adopted the Model Law on 23 February 2013, and officially launched it on 12 April 2013, during its 53<sup>rd</sup> Ordinary Session.

### **3 Why was the Model Law adopted?**

By the time the development of the Model Law started in November 2013, only five African States had adopted ATI laws, each with varying degrees of compliance with regional and international ATI standards. The development of a Model Law on ATI was thus seen as an opportunity to encourage the adoption and review of ATI laws which address the peculiarities of the African continent, while at the same time drawing on international best practices on ATI. In addition, the Model Law is intended as an advocacy tool to stimulate debate on the importance of ATI.

Another reason for the development of the Model Law is the increasing recognition within the African human rights system of the important role the adoption of ATI laws could play with regard to contemporary issues such as democracy, elections, governance, service delivery and anti-corruption. Recently adopted AU treaties such as the African Charter on Democracy, Elections and Governance; the African Convention on Preventing and Combatting Corruption and the African Charter on the Values and Principles of Public Service and Administration place emphasis on this. Other treaties such as the African Youth Charter and the African Charter on Statistics also recognise the importance of ATI on the continent.

### **4 Why is a Model Law on Access to Information important?**

Properly implemented ATI legislation has the potential to encourage good governance by enhancing transparency, accountability and greater participation of the population in public affairs. By exposing corruption and mismanagement of public funds, increased transparency and accountability is likely to lead to better management of public funds and general improvement in the enjoyment of human rights, especially socio-economic rights.

#### *Content of the Model Law*

The Model Law provides for a system whereby information held by the State, and in some instances private bodies, can be accessed by individuals. It also outlines the narrow instances in which the State may refuse to provide access

to information and a process for the review of such a decision internally by the relevant body, by an oversight mechanism and ultimately by the courts. However, this is a 'Model' process that can be adopted in whole or in part or adapted by each State based on its domestic realities.

## **5 From whom can I access information?**

According to the Model Law, you can access information from any public body, private body and relevant private body, who under the Model Law are called information holders.

A private body is defined as a natural person, juristic person or any former or existing juristic person that carries or has carried on any trade, business, profession or activity.

A public body is a body that is established under the Constitution; established by statute or which forms part of any level of government.

A 'relevant private body' is a body that is owned, controlled or financed directly or indirectly by public funds or carrying out a statutory or public function.

Information holders should have people in charge of receiving requests and giving out information. These people are called information officers and are assisted by deputy information officers.

## **6 What is 'information' under the Model Law?**

Information is defined under the Model Law to include any original or copy of document such as letter memorandum, data, statistic, book, drawing, plan, map, diagram, picture, videos, audio or visual record, and any other materials in the possession or under the control of the information holder to whom a request has been made. This list is not exhaustive. States can add other categories to it.

## **7 Who can access information?**

Every person, whether or not a citizen, has the right to access information from an information holder.

## **8 How does one access information?**

Anybody who wishes to obtain information from an information holder should either submit a request in writing or ask an information officer for the relevant information. Information officers must note down oral requests for information. A person who requests information is under no obligation to provide reasons for making the request or to show how the information will be used.

## **9 What are the details of a request?**

A request for information should be clear enough for the information officer to know the exact information requested. If the person requesting information believes that the information is necessary to safeguard the life or liberty of a person, then it should be stated in the request. Where the request is made to a private body, the person seeking information should provide explanation of how the requested information will assist in protecting any right.

A request should also say in what form and language the requester prefers to access the information. Where the information requested is on behalf of someone else, the request should include a note of approval from the person who needs the information.

## **10 What is 'proactive disclosure' of information?**

An information holder must publish certain kinds of information without anyone requesting it. The Model Law has two timeframes for proactive disclosure of information, 30 days disclosure and annual disclosure.

## **11 What information is supposed to be proactively published by the information holder within 30 days?**

Some of the types of information that must be disclosed within 30 days of being created are:

- manuals, policies or procedures showing how employees discharge their functions or make decisions
- names, designations and other particulars of the information officers and their deputy information officer
- detailed information on subsidy programmes implemented with public funds
- all contracts, licences, permits, authorisations and public-private partnerships granted.

## **12 What information should be published annually?**

Some of the types of information that must be disclosed annually are:

- particulars of the organisation, its functions and duties
- interpretation of Acts administered by the body
- details of the processes for creating and organising information
- a list of the categories of information held
- directory of employees and details of their remuneration
- the detailed budget, revenue, expenditure and indebtedness
- annual reports submitted to the oversight mechanism.

### **13 What if the information officer is absent?**

There must be a deputy information officer that you can talk to when the information officer is absent, to assist you in making a request.

### **14 What if the information is required urgently?**

If the person requesting for information believes that the information is necessary to safeguard the life or liberty of a person, then it should be stated in the request. In such a case, the information officer must provide the information within 48 hours.

### **15 How do I know the outcome of my request?**

The information officer should respond to your request in writing as soon as possible, but at least within 21 days. If the information officer refuses a request, reasons must be given for the refusal.

### **16 Do I have the right to access information in any language I prefer?**

You can only access information requested in any official language of the State. Where the language of your choice is not one of the official languages, the information will be translated at your own cost.

### **17 Can information officers extend time to respond to request?**

Yes. However, an information officer can extend the time to respond information only once, and for no more than 14 days. This extension can only happen if the information being requested is too voluminous or more time is required for searching for the information.

### **18 What if the information officer does not respond to a request for information?**

Where an information officer fails to give a decision on the release of information within 21 days and also fails to give a decision after an extension of 14 days, the information is deemed to be refused.

### **19 When can an information officer rightfully refuse to give out information?**

The information officer may refuse to give information only if it is exempted according to the criteria set out in law. Such exempted information may include:

- information about a third party who does not give consent to the information being released

- commercial and confidential information of an information holder or a third party
- information that could put in danger the life, health or safety of a person
- information that would seriously hurt the economic interests of the country
- information that would harm enforcement of the law
- information that qualifies as ‘privileged communication’ and is required by law to be kept secret
- information that would seriously harm the national security and defence of the country
- information that would seriously hurt the relationship between the relevant country and other countries
- information that would negatively affect an examination or recruitment process.

Even where the requested information falls within one of the above categories, the information officer must give the information if it will be in the interest of the public for that information to be released.

## **20 What can I do if my request has been refused and the information officer’s explanation is not satisfactory?**

You can apply for what is called an *internal review*. This means that the decision of the information officer will be looked into by the head of the body from which the information was requested.

## **21 How do I apply for internal review?**

You can apply orally or in writing for internal review through the information officer within 60 days after the refusal was given by the information officer.

## **22 What happens if the information is still not released after the internal review?**

Where a request is denied after internal review, a requester can apply to the oversight mechanism for another review.

## **23 What other roles should the oversight mechanism have?**

The oversight mechanism is to monitor, promote and protect the right to access information. It is also to conduct research and propose law reform on access to information.

**24 How is the oversight mechanism expected to receive information and work?**

Information officers are required to publish information within the first quarter of each year and submit it to the oversight mechanism. Private and public bodies are also required to give a report on proactive disclosure. The oversight mechanism can also review how well public and private bodies comply with the law.

**25 How can the oversight mechanism be approached when one seeks to review the decision of information holders?**

The oversight mechanism can be approached by the requesters or a third party through an oral or written application. If it is approached orally, it is the responsibility of the oversight mechanism to reduce the oral application into writing.

**26 What should be contained in the recommendations, findings and orders of the oversight mechanisms?**

The findings, orders and recommendations should contain a statement of facts, findings and reasons for the decision on matters before it.

**27 Are the parties entitled to the decisions of the oversight mechanism?**

A copy of the orders, statement or recommendation should be provided to all parties free of charge.

**28 What happens if the information holder does not respect the decision of the oversight mechanism?**

The requester can bring the issue before a court for redress.

**29 What happens if one is not satisfied with the decision of the oversight mechanism?**

The requester can make an application to the appropriate court to review a decision of the oversight mechanism.

**30 Does the law apply to information that existed before it was passed?**

Yes. The law applies to information regardless of whether or not the information came into existence before the law was made.

### **31 Is there any protection offered against an official of an information holder who discloses information without authorisation?**

Yes. If an official who is not required to disclose information gives out information showing wrongdoing, that official should not be punished.

### **32 What offences are punishable under the Model Law?**

If a person with the intention to deny access to information, damages or alters; hides; falsifies; prevents the information officer from performing duties; interferes with the work of the oversight mechanism, that person will be punished. Punishment can be payment of a fine, prison sentence or both.

Also, where a person without good reason refuses to receive a request; does not respond to a request within the stipulated time, wrongly denies a request, knowingly gives incorrect information, the oversight mechanism or appropriate court may impose a fine.

Since the adoption of the Model law in February 2013, Rwanda and Sierra Leone have adopted ATI laws and several others are at more advanced stages of passing ATI laws. In most of these instances, the Model Law has, as intended, served as a guide to these States in their process of adopting these laws.

This guide was compiled with the assistance of students of the Freedom of Expression and Access to Information (2013) Clinical Group of the LLM/MPhil (Human Rights and Democratisation in Africa) programme at the Centre for Human Rights, University of Pretoria, South Africa.