



## INFORMATION ACCESS POLICY

### 1. Preamble

NETFUND Access to Information Policy was developed in compliance with the Commission on Administrative Justice (CAJ) or 'Ombudsman' guidelines for State-owned and private institutions, to set up mechanisms to facilitate access to information held by State and private Institutions is necessary for the exercise of fundamental rights and freedoms. This is to comply with the provisions of the Access to Information Act, No. 31 of 2016.

### 2. SCOPE AND APPLICABILITY

This policy establishes the principles governing access to and dissemination of information created, collected, maintained and managed by NETFUND in order to provide the public and staff with access to information.

The audience for this Policy includes NETFUND staff and Board of Trustees, as well as contractors and grantees operating on behalf of NETFUND or using NETFUND funding.

### 3. DEFINITIONS

**"Citizen"** means any individual who has Kenyan citizenship, and any private entity that is controlled by one or more Kenyan citizens.

**"Electronic record"** means a record generated in digital form by an information system, which can be transmitted within an information system or from one information system to another and stored in an information system or other medium.

**"Exempt information"** means information that may be withheld by a NETFUND in accordance with sub-section 5.2.

**"Information"** includes all records held by a NETFUND, regardless of the form in which the information is stored, its source or the date of production.

**"Information access officer"** means any NETFUND officer designated under the Act to handle requests for information.

**"Interested party"** means a person who has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;

**"National security"** has the same meaning assigned to it by Article 238(1) of the Constitution;

**"Person"** has the meaning assigned to it in Article 260 of the Constitution;

**"Personal information"** means information about an identifiable individual, including, but not limited to—

(a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, age, physical, psychological or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;

(b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) any identifying number, symbol or other particular assigned to the individual;

(d) the fingerprints, blood type, address, telephone or other contact details of the individual;

(e) a person's opinion or views over another person;

(f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

(g) any information given in support or in relation to an award or grant proposed to be given to another person;

(h) contact details of an individual.

**"Public entity"** means—

(a) any public office, as defined in Article 260 of the Constitution; or

(b) any entity performing a function within a commission, office, agency or other body established under the Constitution;

**"Public officer"** has the same meaning assigned to it by Article 260 of the Constitution;

**"Public record"** includes any record in written or any other form containing information relating to the conduct of the NETFUND's business, prepared, owned, used or retained by a NETFUND regardless of physical form or characteristics;

**"State"** has the meaning assigned to it under Article 260 of the Constitution".

#### **4. POLICY STATEMENT**

NETFUND shall avail to Kenyan citizens access to information held by itself as prescribed in the Access to Information Act.

#### **5. POLICY**

Access to information held by State and private Institutions is necessary for the citizen's enjoyment of the Right to Information.

##### **5.1 Citizens' right to information held by NETFUND**

Kenyan citizens have a right to information held by NETFUND, a public entity, as defined in subsection 5.2 and within the limits set in 5.3, for the exercise or protection of any right or fundamental freedom.

The Citizen's right to access information is not affected by:

- a) any reason the person gives for seeking access; or
- b) NETFUND's belief as to what are the person's reasons for seeking access.

Access to information held by NETFUND shall be provided expeditiously at a reasonable cost.

##### **5.2 Disclosure of information**

1. NETFUND shall:

(a) Facilitate access to information held by itself relating to the following:

- I. the particulars of its organization, functions and duties;
- II. the powers and duties of its officers and employees;
- III. the procedure followed in the decision making process, including channels of supervision and accountability;
- IV. salary scales of its officers by grade;
- V. the norms set by it for the discharge of its functions;
- VI. guidelines used by the entity in its dealings with the public or with corporate bodies, including the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; and
- VII. a guide sufficient to enable any person wishing to apply for information under this Act to identify the classes of information held by it, the subjects to which they relate, the location of any indexes to be inspected by any person;

(b) During the year commencing on first January next following the first publication of information under paragraph (a), and during each succeeding year, cause to be published statements updating the information

contained in the previous statement or statements published under that paragraph.

(c) Publish all relevant facts while formulating important policies or announcing the decisions which affect the public, and before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to the best interests of natural justice and promotion of democratic principles;

(d) provide to any person the reasons for any decision taken by it in relation to that person;

(e) upon signing any contract, publish on its website or through other suitable media the following particulars in respect of the contract entered into:

- i. the public works, goods acquired or rented, and the contracted
- ii. service, including any sketches, scopes of service and terms
- iii. of reference;
- iv. (ii) the contract sum;
- v. (iii) the name of the service provider, contractor or individual to
- vi. whom the contract has been granted; and
- vii. (iv) the periods within which the contract shall be completed.

2. NETFUND's Information shall be disseminated taking into consideration the need to reach persons with disabilities, the cost, local language, the most effective method of communication in that local area, and the information shall be easily accessible and available free or at cost taking into account the medium used.

3. At a minimum, the material referred to in subsection (1) shall be made available:

- a) for inspection by any person without charge;
- b) by supplying a copy to any person on request for which a reasonable charge to cover the costs of copying and supplying them may be made; and
- c) on the internet, provided that the materials are held by NETFUND in electronic form.

### **5.3 Access to information limitations**

NETFUND's provision of access to information shall be limited with respect of information whose disclosure is likely to:

- a) undermine the national security of Kenya;
- b) impede the due process of law;
- c) endanger the safety, health or life of any person;

- d) involve the unwarranted invasion of the privacy of an individual, other than the applicant or the person on whose behalf an application has, with proper authority, been made;
- e) substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained;
- f) cause substantial harm to the ability of the Government to manage the economy of Kenya;
- g) significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration;
- h) damage NETFUND's position in any actual or contemplated legal proceedings; or
- i) infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession.

(2) For purposes of subsection (1)(a), information relating to national security Includes:

- a) military strategy, covert operations, doctrine, capability, capacity or deployment;
- b) foreign government information with implications on national security;
- c) intelligence activities, sources, capabilities, methods or cryptology;
- d) foreign relations;
- e) scientific, technology or economic matters relating to national security;
- f) vulnerabilities or capabilities of systems, installations, infrastructures,
- g) projects, plans or protection services relating to national security;
- h) information obtained or prepared by any government institution that is an investigative body in the course of lawful investigations relating to the detection, prevention or suppression of crime, enforcement of any law and activities suspected of constituting threats to national security;
- i) information between the national and county governments deemed to be injurious to the conduct of affairs of the two levels of government; cabinet deliberations and records;
- j) Information that should be provided to a State organ, independent office or a constitutional commission when conducting investigations, examinations, audits or reviews in the performance of its functions;
- k) information that is referred to as classified information in the Kenya Defence Forces Act; and
- l) any other information whose unauthorized disclosure would prejudice national security.

(3) Subsection (1)(d) and (e) shall not apply if a request for information relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

(4) Despite anything contained in subsections (1) and (2), NETFUND may be required to disclose information where the public interest in disclosure outweighs the harm to protected interests as shall be determined by a Court.

(5) NETFUND is not obliged to supply information to a requester if that information is reasonably accessible by other means.

(6) In considering the public interest referred in subsection (4), particular regard shall be had to the constitutional principles on the need to:

- a) promote accountability of NETFUND to the public;
- b) ensure that the expenditure of public funds is subject to effective oversight;
- c) promote informed debate on issues of public interest;
- d) keep the public adequately informed about the existence of any danger to public health or safety or to the environment; and
- e) ensure that any statutory authority with regulatory responsibilities is adequately discharging its functions.

(7) Unless the contrary is proved by NETFUND, information is presumed not to be exempt if the information has been held for a period exceeding thirty years.

## **6. APPLICATION FOR ACCESS**

(1) An application to access information shall be made in writing in English or Kiswahili. The applicant shall provide details and sufficient particulars for the NETFUND Information Access Officer to understand what information is being requested.

(2) Where an applicant is unable to make a written request for access to information in accordance with subsection (1) because of illiteracy or disability, the officer shall take the necessary steps to ensure that the applicant makes a request in manner that meets their needs.

(3) The officer shall reduce to writing, in a prescribed form the request made under subsection (2) and then furnish the applicant with a copy of the written request.

(4) NETFUND shall prescribe a form for making an application to access information. However, this form shall not be such as to unreasonably delay requests or place an undue burden upon applicants. No application may be rejected on the ground only that the applicant has not used the prescribed form.

## **7. Processing of application**

(1) Once a request for information has been made, the Information Access Officer shall make a decision on an application as soon as possible, but in any event, within twenty one days of receipt of the application.

(2) Where the information sought concerns the life or liberty of a person, the information officer shall provide the information within forty-eight hours of the receipt of the application.

(3) The information officer to whom a request is made may extend the period for response on a single occasion for a period of not more than fourteen days if—

(a) the request is for a large amount of information or requires a search through a large amount of information and meeting the stipulated time would unreasonably interfere with the activities of the information holder; or

(b) Consultations are necessary so as to comply with the request and the consultations cannot be reasonably completed within the stipulated time.

(4) The Officer processing the request for information shall consult and get written authorization from the Head of Department (HOD) to share the information available in the prescribed form and format. If the requested information is not available or cannot be shared because of non-disclosure limitations prescribed in 5.3, the decision shall also be made in writing by the HOD.

(4) As soon as the decision on whether or not to provide access to information, the Information Access Officer shall immediately communicate the decision to the requester, indicating—

(a) Whether or not the public entity or private body holds the information sought;

(b) Whether the request for information is approved.

(c) if the request is declined the reasons for making that decision, including the basis for deciding that the information sought is exempt, unless the reasons themselves would be exempt information; and

(d) if the request is declined, a statement about how the requester may appeal to the Commission on Administrative Justice.

(5) The Information Access Officer handling a request for information may seek the assistance of any other public officer as necessary for the proper discharge of his or her duties in order to provide the required assistance to the person requesting for information.

(6) Where the applicant does not receive a response to an application within the period stated the application shall be deemed to have been rejected.

## **8. Fees**

(1) No fee may be levied in relation to the submission of an application.

(2) NETFUND may charge a prescribed fee for the provision of the information and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the applicant.

## **9. Correction of information**

- (1) At the request of the applicant, NETFUND shall within reasonable time, at its own expense, correct, update or annotate any personal information held by it relating to the applicant, which is out of date, inaccurate or incomplete.
- (2) The person requesting for information shall make a formal request under this section shall be made in writing. The application should:
  - a) state that it is a request to amend certain personal information relating to the applicant;
  - b) specify the personal information that is to be amended indicating how such information is out of date, inaccurate or incomplete; and
  - c) specify the remedy sought by the applicant.

## **10. Protection of person making disclosure**

- (1) A NETFUND Information Officer or other officer charged with such responsibility of disclosing information in a manner prescribed in this policy shall not be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of an office or in any other way, as a result of having made or proposed to make a disclosure of information which the person obtained in confidence in the course of that activity, if the disclosure is of public interest.
- (2) For purposes of subsection (1) above, a disclosure which is made to a law enforcement agency or to an appropriate public entity shall be deemed to be made in the public interest.
- (3) The Officer shall make a disclosure under subsection (1) or (2) where such person has reasonable belief in the veracity of the information.
- (4) An Officer who provides false information maliciously intended to injure another person commits an offence and is liable for legal action and conviction.
- (5) Disclosure of information under subsection (1) and (2) includes information On:
  - (a) violations of the law, including human rights violations;
  - (b) mismanagement of funds;
  - (c) conflict of interest;
  - (d) corruption;
  - (e) abuse of public office; and
  - (f) dangers of public health, safety and the environment.
- (6) For the purpose of this section, an Officer is penalized if the person is dismissed, discriminated against, made the subject of reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided or any other personnel action provided under the law relating to whistle blower, and the imposition of any such penalty in contravention of this section shall be actionable as a tort.

## **17. Management of records**

- (1) NETFUND shall keep and maintain—
  - (a) records that are accurate, authentic, have integrity and useable; and

(b) its records in a manner which facilitates the right of access to information as provided for in this Act.

(3) NETFUND shall therefore—

(a) create and preserve such records as are necessary to document adequately its policies, decisions, procedures, transactions and other activities it undertakes pertinent to the implementation of its mandate;

(b) ensure that records in its custody, including those held in electronic form, are maintained in good order and condition; and

(c) not later than 2019, NETFUND shall computerize its records and information management systems in order to facilitate more efficient access to information.

### **18. Offence of alteration, defacement, blocking, erasure, etc**

(1) Where an application to access information has been made to NETFUND and the applicant would have been entitled, subject to payment of any fee, to provision of any information in accordance with that section, a NETFUND officer commits an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by NETFUND, with the intention of preventing the disclosure by that entity of all, or any part, of the information provision of which the applicant would have been entitled.

## **7. ROLES AND RESPONSIBILITIES**

NETFUND chief executive officer is the Information Access Officer for the organisation.

The CEO may delegate the performance of his or her duties as an Information Access Officer under this Act to any senior officer.

Two other Information Access Officers, in senior positions, shall be appointed by the CEO to assist in the execution of duties. The total number of information access officers shall therefore be no less than 3 for purposes of departmental representation.

**A.** The **Information Access Officer** through the appointed officers is responsible for receiving and processing requests for information relating to NETFUND.

**B.** The **Communications Office** shall act as the main coordinating office for the implementation, monitoring and reporting for the Information Access Policy.

### **9. Review of Policy**

The Information Access Policy and Procedures shall be reviewed at least once every two years or as need arises to ensure that it remains relevant to effectively address customer requests for information.