



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON MEDIA, INFORMATION AND COMMUNICATION
TECHNOLOGIES**

ON THE

ACCESS TO INFORMATION BILL, N.A.B. NO. 24 OF 2023

FOR THE

THIRD SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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FOREWORD

Honourable Madam Speaker, the Committee on Media, Information and Communication Technologies has the honour to present its Report on the Access to Information Bill, N.A.B. No. 24 of 2023, for the Third Session of the Thirteenth National Assembly. The functions of the Committee are set out under Standing Orders 197(b) and 198(j) of the National Assembly of Zambia Standing Orders, 2021.

The Committee held eleven meetings to consider the Bill. In order to gain insight into the ramifications of the Bill, the Committee sought both written and oral submissions from various stakeholders. The list of the stakeholders is at Appendix II of the Report.

The Report is in three Parts. Part I contains the salient provisions of the Bill; Part II highlights concerns raised by stakeholders; and Part III contains the Committee's observations and recommendations.

The Committee wishes to pay tribute to all stakeholders who appeared before it and tendered both oral and written submissions. It further wishes to thank you, Madam Speaker, for affording it an opportunity to study the Access to Information Bill, N.A.B. No. 24 of 2023. The Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly during its deliberations.



Eng. Raphael S Mabenga, MP
CHAIRPERSON

December, 2023
LUSAKA

TABLE OF CONTENTS

Membership of the Committee.....	1
Background	1
Objects of the Bill.....	1
Salient Provisions of the Bill	1
Concerns Raised by Stakeholders.....	8
Committee’s Observations and Recommendations	8
Conclusion.....	11
Appendix I.....	12
Appendix II.....	13

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Eng. Raphael S Mabenga, MP (Chairperson); Ms Melesiana Phiri, MP (Vice Chairperson); Mr Sydney Mushanga, MP; Mr Andrew Lubusha, MP; Mr Romeo Kangombe, MP; Mr Andrew Tayengwa, MP; Mr Walusa Mulaliki, MP; Mr Oliver Amutike, MP; Mr Chanda A B Katotobwe, MP; and Mr Elias Daka, MP.

2.0 BACKGROUND

Zambia's quest for the access to information legislation could be traced back to the recommendations made by the Media Reform Committee of the National Assembly in the 1990s. The recommendations came against the backdrop that journalists believed that the enactment of the law would enhance transparency and bring about good governance.

In 2002, the Freedom of Information Bill was introduced to the National Assembly by the then minister responsible for information and broadcasting. However, the Bill was withdrawn at Second Reading Stage to allow for further consultations.

On 10th November, 2023, the the Access to Information Bill, N.A.B No. 24 of 2023 was presented to the National Assembly.

3.0 OBJECTS OF THE BILL

The objects of the Access to Information Bill, N.A.B. No. 24 of 2023 were to:

- (a) designate the Human Rights Commission as an oversight institution on matters relating to access to information;
- (b) provide for the right to access information and its limitations;
- (c) provide for procedures for processing requests for information;
- (d) give effect to the right to access information as guaranteed in the United Nations Convention against Corruption and the African Charter on Human and Peoples' Rights; and
- (e) provide for matters connected with, or incidental to, the foregoing.

PART I

4.0 PROVISIONS OF THE BILL

The provisions of the Bill were as set out hereunder.

Clause 1 - Short Title and Commencement

Clause 1 provided for the short title and commencement date of the Act. It provided that the Bill, once enacted, should come into operation on the date appointed by the Minister via Statutory Instrument.

Clause 2 - Interpretation

The clause provided for the definitions of keywords and phrases used in the Bill.

Clause 3 - General Principles Governing the Right to Access Information

The Clause set out the general principles that would govern the right to access information, including a person's right to access information expeditiously and inexpensively and a person's right to access information of a private body that might have assisted in the exercise or protection of any right.

Clause 4 - Oversight of Access to Information

Clause 4 sought to designate the Human Rights Commission, established under Article 230 of the Constitution, as the institution responsible for providing oversight on matters relating to access to information. The clause further gave the Commission the powers and privileges as conferred by the Constitution, the *Human Rights Commission Act, Chapter 48 of the Laws of Zambia* and any other written law. Furthermore, the clause mandated the ministry responsible for information to monitor and report to the Commission on compliance by information holders concerning their obligations under the Act.

Clause 5 - Functions of Commission

The clause set out the functions of the Commission which, among others, were to hear and determine appeals against decisions of information holders relating to access to information; advise information holders on matters relating to the coordination and management of information held by, or under the control of, the information holders; and make recommendations to the minister responsible for information on matters relating to access to information.

Clause 6 – Right to Access Information

The clause gave a citizen or a residence permit holder the right to access information held by, or under the control of, an information holder, subject to the Act and any other written law. The clause further provided that regardless of the reason given for seeking information or the information holder's belief as to the reason for seeking to access information, an information holder was mandated to provide the information sought.

Clause 7 - Duty to Keep Information

Clause 7 placed a duty on an information holder to keep, organise and maintain information in a manner which facilitated the right to access information.

Clause 8 - Publication of Certain Information

Clause 8 provided for the type of information that an information holder was mandated to publish in the *Gazette* and in a daily newspaper, of wide circulation, in the Republic or any other electronic media platform that the information holder might determine.

Clause 9 - Appointment or Designation of Information Officer

The clause mandated an information holder to appoint or designate at least one officer, as an information officer, to be responsible for processing requests for information and rendering assistance to a requester. Further, the clause provided that where an information holder did not appoint an information officer, the head of that information holder was the information officer.

Clause 10 - Request to Access Information

Clause 10 provided for the manner in which a requester could request for access to information and permitted a requester who was unable to make a request in the prescribed manner and form to make a request orally. The clause further mandated an information officer, where a request

was made orally, to reduce the request to writing and provide a copy of the request to the requester.

Clause 11 - Transfer of Request

The clause empowered an information holder, within five days of receiving the request, to transfer the request for access to information to another information holder, if the information required could have been or was held by that other information holder. It further mandated an information holder to inform the requester of the transfer of request within seven days from the date of request.

Clause 12 - Grant or Refusal of Request

The clause mandated an information holder that received a request to make a decision, either granting the request in writing and specifying the form in which the information should have been accessed along with the applicable fees, or stating the reasons for refusal, referencing the provisions of the Act or any written law.

Clause 13 - Extension of Time

Clause 13 granted powers to the information holder to extend the time in which to respond to a request for a period not exceeding fourteen days, on the grounds set out under the clause. Clause 13(2) compelled the information holder to inform the requester, in writing, of the reasons for extending the time within seven days of receiving the request.

Clause 14 - Deemed Refusal of Request

The clause provided for the circumstances under which the request for information would be deemed to have been refused, which included:

- (a) where an information holder did not inform the requester of the decision within the period specified in clause 11(2) or 12(1); or
- (b) where the period specified in clause 12(1) had been extended in accordance with clause 13, within the extended period.

Clause 15 - Deferral of Access

Clause 15 empowered an information holder to defer access to information where the request related to information which was required to be published or was in respect of judicial proceedings pending before a court or tribunal.

Clause 16 - Unavailable Information

The clause placed a duty on an information holder to inform the requester where the information requested could not be found or did not exist and an information holder had taken reasonable steps to find that information.

Clause 17 - Preservation of Information

The clause mandated an information holder that received a request to take reasonable steps to preserve the information requested until the request was processed.

Clause 18 - Forms of Access

The clause provided for the form in which information should have been provided to requesters. The information could have been provided in written or electronic form, among others.

Clause 19 - Language and Format of Access

Clause 19 permitted an information holder to grant access to the information in a language or format that the information existed, where the information requested did not exist in a language requested.

Clause 20 - Notification of Third Parties

The clause compelled information holders who received a request relating to a third party, to inform the third party within seven days of receipt of the request. Further, an information holder was required to inform the requester that the request had not been granted, where a third party objected to the disclosure of information or did not respond to the notification within seven days.

Clause 21 - General Limitation on Right to Access Information

The clause prohibited an information holder from publishing information if they were satisfied that the information, or a part of it, was exempted from disclosure under Part IV or if, in accordance with the Act, they determined that non-disclosure of the information was justified in the public interest.

Clause 22 - Disclosure of Information in Public Interest

Clause 22 permitted an information holder to disclose information where the public interest in the disclosure of the information outweighed the harm to the interest protected under the relevant limitation of the right to access information. The clause further outlined what amounted to public interest.

Clause 23 - Personal Information

The clause prohibited an information holder from granting access to or disclosing information if the disclosure of the information would have involved the disclosure of confidential personal data of a third party, including a deceased person. It further outlined the circumstances under which a request for confidential personal data of a third party could have been granted or information disclosed.

Clause 24 - Commercial Information of Information Holder or Third Party

Clause 24 provided for the limitation on access to commercial information of an information holder or a third party. It restricted the disclosure of information relating to trade secrets.

Clause 25 - Information that Endangers Life or Safety of Individuals or Property

The clause prohibited an information holder from granting a request if the disclosure of the information requested for could reasonably have been expected to endanger the life or safety of an individual, or was likely to have prejudiced or impaired the security of property, the methods, systems, plans, or procedures for the protection of property, or the safety of the public or a section of the public.

Clause 26 - Information Relating to Law Enforcement or Other Legal Proceedings

The clause provided for information relating to law enforcement or other legal proceedings. It gave information holders the discretion to decide whether or not to disclose certain information that might prejudice investigations, prosecution of an alleged offender, and ongoing court matters, among others.

Clause 27 - Privileged Information

The clause exempted privileged information from information that could be accessed unless the person entitled to the privilege consented to the disclosure or waived the privilege.

Clause 28 - Information Relating to National Security

Clause 28 prohibited the disclosure of information that was likely to prejudice the defence or security of the Republic. The clause further outlined the categories of such information.

Clause 29 - Information Relating to National Economy and Ongoing Negotiations

The clause prohibited the disclosure of information which would materially jeopardise the national economic interests or financial welfare or the ability of the Government to manage the national economy effectively in the best interest of the Republic, or where such information related to an ongoing negotiation to which a State institution was a party.

Clause 30 - Information Prejudicial to Policy Formulation

The clause gave information holders the discretion to decide whether or not to provide information prejudicial to policy formulation. The provision prevented information holders from disclosing information that might be prejudicial to policy formulation.

Clause 31 - Frivolous and Vexatious Request

Clause 31 prohibited the information holder from disclosing information where the request was manifestly frivolous or vexatious or the work involved in processing the request would substantially and unreasonably divert the resources of the entity.

Clause 32 - Severability

The clause permitted an information holder to remove the exempted information from the record and grant access to the remaining information, where a record contained information that was exempt and that which was accessible, before granting the request.

Clause 33 - Appeal

The clause provided for the appeal process where a person was aggrieved by the decision of an information holder.

Clause 34 - Reports by Information Holder

The clause mandated an information holder to submit annual reports to the Commission on a list of specified requirements in the Act.

Clause 35 - Administration Penalty

Clause 35 permitted the Commission to impose an administrative penalty for a failure to comply with a provision of the Bill which was not an offence. The fee would not exceed the amount prescribed and would be paid within the prescribed period. The clause further mandated the Commission to institute civil proceedings against a person who failed to pay an administrative penalty for recovery of the amount due.

Clause 36 - Offences

The clause sought to create offences. It further sought to create sanctions on a person convicted of any of the offences outlined under it.

Clause 37 - Immunity

The clause provided for the immunity of an information officer or an information holder for actions taken or omitted to be done in good faith in the exercise or performance of their duty.

Clause 38 - Guidelines

The clause provided for guidelines to be developed by the Commission, in consultation with the ministry responsible for information. The guidelines were to include, among others, methods and means of making requests and the rights of persons under the Bill and the assistance available from the Commission to persons.

Clause 39 - Rules

Clause 39 empowered the Chief Justice, by Statutory Instrument, to make rules relating to, among others, the manner and form for lodging of appeals to the Commission, the mode of summoning before the Commission and the form and manner of service of summons requiring the attendance of witnesses and the production of any book, record, document or other information.

Clause 40 - Regulations

The clause empowered the minister responsible for information, by Statutory Instrument, to make regulations for the better carrying out of the provisions of the Bill.

Clause 41 - Savings and Transitional Provisions

This clause provided for the savings and transitional provisions.

PART II**5.0 STAKEHOLDERS SUBMISSIONS AND CONCERNS**

Most stakeholders who appeared before the Committee supported the Bill. However, in doing so, they raised concerns as outlined below.

Clause 1 - Commencement of the Law

Stakeholders informed the Committee that while the Bill provided that, once enacted, it would come into operation on the date appointed by the minister via Statutory Instrument, it did not give a specific timeframe. The stakeholders recommended that the law should come into force on the date of assent by the President or within thirty days of the Bill being signed, to avoid unreasonable delays.

Clause 4(1) and 4(3) - Oversight of the Access to Information

Stakeholders informed the Committee that clause 4 of the Bill designated the Human Rights Commission as the oversight institution responsible for ensuring access to information. However, they were doubtful that the Commission had the operational and functional capacity to effectively take up this added role. It was noted that the Commission was not adequately staffed and funded; was overwhelmed with its workload; and did not have established systems in place to effectively take on additional functions.

Further, stakeholders submitted that clause 4(3) of the Bill gave the ministry responsible for information the responsibility to monitor and to report to the Commission on compliance by information holders, while clause 5(f) mandated the Commission to make recommendations to

the minister on matters relating to access to information. It was submitted that the two provisions were in conflict with each other as they required the ministry, which was obligated to monitor and report to the Commission, to receive recommendations from the Commission.

Clause 6 (1) - Rights to Access to Information

Stakeholders submitted that clause 6 (1) only entitled a citizen and a residence permit holder to access information from an information holder. It limited access to information and discriminated against non-citizens and non-resident permit holders, who were equally entitled to access information under the established minimum human rights standards and the Constitution. It was submitted that the clause further violated the fundamental right of access to information, which was recognised under Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights.

Section 12(b) (ii) - Refusal of Access

The Committee noted that the Bill provided that where a request was not granted, an information holder that received a request should have stated the reasons for not granting access to the information. The request ought to have contained a reference to specific provisions of this Act or any other written law on which the decision was based. However, consistent with the Model Law on Access to Information for African Union member states, stakeholders submitted that refusal of access should be based solely on specific clauses in the Access to Information Act once enacted.

Clause 16 - Unavailable Information

Stakeholders submitted that clause 16 did not state what amounted to “reasonable steps” to find the information that had been requested. Further, concerns were raised that the clause could be abused, especially when the requests concerned significant breaches or corruption. The Committee noted that information holders should be obliged to explain to the requester why the information was not available to them.

Clause 29 - Information Relating to National Economy and Ongoing Negotiations

Stakeholders informed the Committee that clause 29 limited a citizen's ability to hold the Government accountable for ongoing activities before harm was done. It was further submitted that clauses 29 and 30 both limited access to information during policy formulation and economic negotiations. Stakeholders were of the view that clause 29 was not in the interest of the public and went against one of the central reasons that citizens had been demanding access to information legislation.

Clause 30 - Information Prejudicial to Policy Formulation

Stakeholders submitted that clause 30(2) cross-referenced sub-section (4), which was not in the Bill. It was, therefore, recommended that the clause be amended to refer to subsection (3), which was in the Bill.

Clause 31(a) and Clause 31(b) - Frivolous and Vexatious Request

Stakeholders submitted that some parts of the Bill negated others. One example was clause 31(a) which allowed an information holder to deny an information request on the grounds that it was frivolous and vexatious. This negated clause 6(2)(b) which read:

“Subject to this Act, a citizen or residence permit holder’s right to access information is not affected by— an information holder’s belief as to the citizen or residence permit holder’s reason for seeking access to information.”

Stakeholders further submitted that clause 31(b) also negated clause 6 by suggesting that a request for information could be denied if, “the work involved in processing the request would substantially and unreasonably divert the resources of the entity.”

Considering that the Bill stipulated in clause 9 that each information holder was to appoint a dedicated information officer, the intent of the law was to ensure that providing information would not become overly burdensome for an information holder. However, stakeholders noted that such provisions might lead to unjustifiable denials of information, contradicting the spirit of the law.

GENERAL CONCERNS

Memorandum of the Bill

Stakeholders pointed out a typographical error in part (d) of the memorandum where an apostrophe was omitted after "s" in the word "peoples". As a result, the name was written as "African Charter on Human and Peoples Rights" instead of "African Charter on Human and Peoples’ Rights." It was recommended that this typographical error should be corrected for accuracy.

Scope of Application

The Committee heard that the Bill did not provide for the scope of application. Stakeholders submitted that the omission may create a conflict of laws or abrogate the right to access to information because the Bill did not define and reference its interaction with other pieces of legislation, such as the *State Security Act, Chapter 111 of the Laws of Zambia*, and the *Protected Places and Areas Act, Chapter 125 of the Laws of Zambia*, among others that provided restrictions to access certain information. It was recommended that the Bill should provide for the scope of application to avoid conflict of laws.

Pro-activity of Provision of Information to the Public

Stakeholders submitted that the Bill did not prioritise pro-activity on the provision of information to the public. This was despite the fact that pro-activity of access to information was a major principle which needed to be adhered to in order to limit the number of requests an information holder could receive. It was recommended that the Bill should make it mandatory for public institutions to proactively provide information to the public without being requested.

PART III

6.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

The Committee notes that most of the witnesses who appeared before it were in support of the Bill. The Committee also supports the Bill and, in supporting the Bill, makes the following observations and recommendations:

(i) Clause 2 - Definition of Request

The Committee observes with concern that the definition of the word “request” in clause 2 of the Bill is limiting and discriminatory as it only recognises requests from citizens and residence permit holders, even though access to information is a universal right. The Committee further notes that the absence of the rationale within the Bill for excluding other individuals lawfully residing in Zambia from making information requests goes against established minimum standards that ensure the right to access to information for every person without discrimination.

The Committee, therefore, recommends that the definition of the word “request” should not be limited to citizens and residence permit holders as this will contravene international human rights law and standards.

(ii) Clause 4 - Capacity of the Human Rights Commission

The Committee observes that clause 4 mandates the Human Rights Commission to be the oversight body for the implementation of the Bill and determination of appeals. This is in spite of the fact that currently, the Commission is barely able to discharge its mandate owing to a lean workforce, inadequate and unsuitable infrastructure as well as inadequate funding, which have led to its effectiveness, functionality and operational independence often being called into question.

While the Committee is not against this mandate lying with the Commission, it recommends that the Government should progressively provide the Commission with adequate financial and human resources for the effective performance of its oversight role under this Act. The Committee further recommends that the Government should set up a specialised unit within the Commission to deal with matters relating to access to information given that access to information is a specialised field that requires adequate capacity and training.

(iii) Clause 4 - Powers of the Human Rights Commission

The Committee observes that clause 4 of the Bill outlines the powers of the Human Rights Commission which, in principle, will be giving instructions to information holders who may be Government officers. However, there is no specific provision in the Bill making the instructions of the Commission, in so far as they relate to access to information, binding on the Government. This leaves the Commission vulnerable to the non-compliance of Government officers.

In this regard, the Committee recommends that there should be an express provision in the Bill that stipulates that the decisions of the Commission, in so far as they relate to access to information, are binding on the Government. The Committee further recommends that as the law establishing the Human Rights Commission is being reviewed, it must confer on the Commission powers to act upon its recommendations.

(iv) Clause 12 - Time Period for the Provision of Information

The Committee observes that clause 12 of the Bill outlines the process for the granting of a request for information. While this clause stipulates the time period for the information holder to make a decision on whether or not to grant a request for information, it does not stipulate the time period for that information holder to make available the information to the requester upon a successful application. In principle, this means that an affirmative decision can be made by an information holder to grant the request, but the information provision itself can be delayed indefinitely by the information holder.

The Committee, therefore, recommends that a time period should be stipulated for the provision of information to the requester upon a successful application.

(v) Clause 21 - Non-Disclosure of Information in the Public Interest

The Committee observes that clause 21 of the Bill stipulates that the information holder has a right not to disclose information where the information holder is of the view that such disclosure will not be in the public interest. However, there are no objective terms as to what public interest will mean for the information holder. This clause may allow the information holder to withhold information, even if that information is required to be disclosed under clause 8, or by the Commission.

In this regard, the Committee recommends that whatever exclusions to access to information that need to be listed in the Bill should be expressly listed under the exclusions section.

(vi) Clause 33 - Time of Appeal

The Committee observes that clause 33 of the Bill outlines the process for appealing the decision of an information holder. This clause allows thirty days for a person who is aggrieved by a decision of an information holder to lodge an appeal with the Commission. However, the clause does not provide a specified timeframe within which the Commission must reach the decision. Therefore, in principle, the Commission may consider the appeal indefinitely, and the aggrieved party will not have any way to take the Commission to the High Court as is envisaged by clause 33(2) of the Bill.

In this regard, the Committee recommends that where there is a refusal to provide information by the information holder, the Bill should specify a prescribed period within which the appeal should be made.

7.0 GENERAL RECOMMENDATIONS

(i) Lack of Whistleblower Protection

The Committee observes that the Bill does not have adequate protection for whistleblowers and does not make reference to the *Public Interest Disclosure (Protection of Whistleblowers) Act, No. 4 of 2010*. In this regard, the Committee recommends that a Clause, which gives sufficient protection to whistleblowers or makes reference to the *Public Interest Disclosure (Protection of Whistleblowers) Act*, should be provided for in the Bill.

(ii) Rights of Vulnerable Groups

The Committee observes that the Bill has no provisions expressly recognising or guaranteeing the right of vulnerable groups, such as persons with disabilities, children and women to access to information. This may in practice result in discrimination against such groups. Therefore, the Committee recommends that provisions be introduced in the Bill to expressly recognise and guarantee the rights of vulnerable groups to access information from information holders.

(iii) Declassification of Information

The Committee observes that there is no process that an individual can follow to request for the declassification of information. The Committee, therefore, recommends that the Government should consider providing a procedure for the declassification of information in the Bill.

Government should consider providing a procedure for the declassification of information in the Bill.

8.0 CONCLUSION

The Committee supports the Access to Information Bill, No. 24 of 2023 as it will ensure that the right to information for Zambians is actualised while ensuring that sensitive Government information remains safe from disclosure. The Committee is hopeful that input gathered from its interactions with stakeholders will be taken into consideration in order to refine the Bill. The Committee is of the view that the introduction of the Bill to the House, after twenty-one years, signifies Zambia's commitment to democratic progress. The Committee observes that the enactment of the Bill will be a leap forward towards fortifying the human rights enshrined in the Constitution of Zambia.

We have the honour to be, Madam Speaker, the Committee on Media, Information and Communication Technologies, mandated to consider the Access to Information Bill No. 24 of 2023.



Eng. Raphael S Mabenga, MP
CHAIRPERSON

December, 2023
LUSAKA

APPENDIX I

LIST OF NATIONAL ASSEMBLY OFFICIALS

Mrs Doreen N C Mukwanka, Acting Director, Social Committees

Mrs Chitalu K Mumba, Deputy Director, Social Committees;

Ms Betty P Zulu, Acting Senior Committee Clerk (SC2);

Mr Leon J N Haangala, Committee Clerk;

Mr Issac Chisi, Intern

Ms Rachael Kanyumbu, Administrative Assistant;

Mr Daniel Lupiya, Committee Assistant;

Mr Muyembi Kantumoya, Parliamentary Messenger;

APPENDIX II

LIST OF WITNESSES

Alliance for Community Action
Bloggers of Zambia
Chapter One Foundation
Christian Churches Monitoring Group
Civil Society for Poverty Reduction
Copperbelt University
Daily Nation Zambia
Diamond TV
Electoral Commission of Zambia
Human Rights Commission
Independent Broadcasting Authority
Media Liaison Committee
Ministry of Information and Media
Ministry of Justice
MISA Zambia
National Assembly of Zambia Legal Department
Operation Young Vote
Panos Institute Southern Africa – Zambia
Radio Phoenix
University of Zambia
USAID Open Spaces Zambia Project
Zambia Law Development Commission
ZAMCOM