

RESEARCH REPORT

Between Principle and Practice

An Analysis of Kenya's
Commission on
Administrative Justice Rulings
on Access to Information

October 2022 – March 2026



DPGSK

Data Privacy
and Governance
Society of Kenya

About DPGSK

The Data Privacy and Governance Society of Kenya (DPGSK) is a professional organisation that brings together data privacy, law, and tech experts to promote ethical standards and legal compliance.



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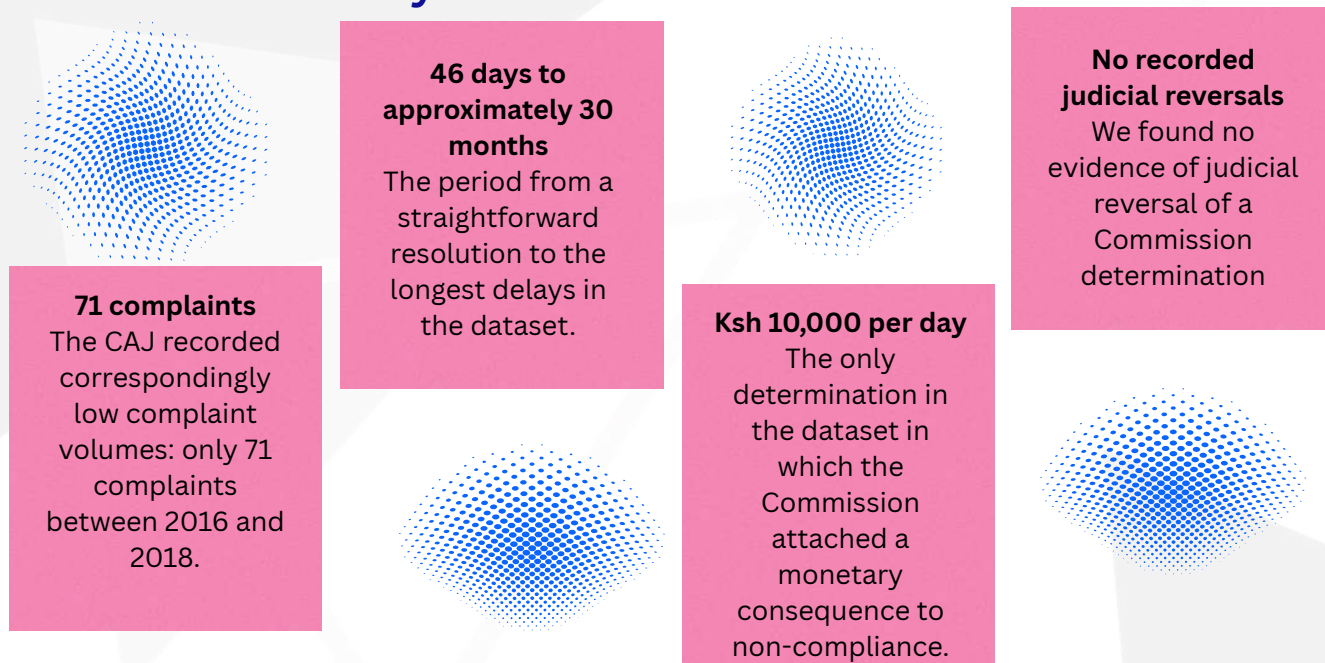


Contents

Executive Summary.....	5
1. Introduction	8
2. Summary of Cases.....	10
3. Substantive Legal Trends.....	11
3.1 The “Held Test” and the Problem of Format	12
3.2 “Holding” Information or “Creating” It.....	14
3.3 The Doctrine of Proportionality in Rights-Balancing.....	16
3.4 Scope of “Public Body” and “Relevant Private Body”.....	17
3.5 Institutional Accountability Over Individual Secrecy.....	18
4. Institutional and Factual Issues	19
4.1 Systemic Non-Responsiveness and Delay.....	19
4.2 Deficient Record-Keeping and Institutional Systems	21
4.3 Third-Party Information and Commercial Confidentiality	22
4.4 Confidentiality in Alternative Dispute Resolution.....	23
5. Emerging Questions	24
5.1 Remedies and Enforcement Deficiency.....	24
5.2 Proactive Disclosure and the “Held Test”	24
5.3 “Information Request” or “Decision-Review” ?.....	25
6. Conclusion	26
7. Policy Recommendations	28
7.1 Legislative clarification of format obligations.	28
7.2 Binding minimum standards for institutional record-keeping.....	28
7.3 Codification and standardisation of compensation.....	29
7.4 A concrete proactive-disclosure hierarchy under Section 5.....	29
7.5 Commission-issued redaction and proportionality guidelines.....	30
7.6 A public compliance-tracking mechanism.....	30



Executive Summary



Article 35 of the 2010 Constitution guarantees the right of access to information held by the state, but Parliament did not enact enabling legislation until 2016. The Access to Information Act confers oversight and enforcement powers on the Commission on Administrative Justice (CAJ), and draft Access to Information Regulations, intended to give procedural texture to the Act's obligations, followed in 2018.

Implementation was slow. A 2021 ARTICLE 19 review of the Act's first five years found Kenya still struggling to give it effect, and the CAJ recorded correspondingly low complaint volumes: only 71 complaints between 2016 and 2018, a figure that reflects limited public awareness and thin duty-bearer capacity rather than an absence of underlying disputes.

The Open Government Partnership's assessment of Kenya's commitments over the same period concluded that it was "too early to assess results" against most implementation milestones, and reporting on the protracted Apollo Mboya dispute with Kenya Power over billing records observed that Kenya's characteristic weakness lay not in drafting frameworks but in implementing them (Business Daily, 2020). Because no operative implementing regulations settled the Act's definitional questions administratively, the Commission's determinations have become the primary site where those provisions are worked out. The CAJ's shift toward written, reasoned rulings is therefore a welcome one: it resolves disputes while supplying the interpretive infrastructure that regulations never provided, and it makes the Commission's own workings transparent to the public.

Against that background, the doctrinal trends of the 2022–2026 period show institutional maturation. The Commission has clarified when an agency is answerable for information presumed to be in its custody. Under what it treats as a "held test," it distinguishes a mandatory duty to disclose information in the form in which it is held from a discretionary duty to convert format, following UK and Indian precedent (*Fred Apima v Deputy Registrar*). That ruling may, however, reward institutional inertia, because it treats verbatim and typed transcripts as functionally equivalent despite their differing evidentiary value in adversarial settings.



The Data Protection Act, 2019 offers a useful point of comparison: Section 26 already entitles a data subject to receive personal data in a structured, machine-readable format, recognising that format is inseparable from a disclosure's usability. The ATI Act contains no equivalent provision, and the undefined "practicability" threshold in Section 11(3) leaves the Commission to improvise a standard that data protection law has already codified for a cognate right.

The held test recurs, and is extended, in *Wycliffe Asalwa Salano v Kenya Railways* (2026), where the Commission inferred the existence of specific engineering records (Level Crossing Registers) from a general statutory duty to maintain operational records, rather than from any admission that the records existed. That ruling also records the High Court's position, in *Lempaa Suyianka and the African Center for Peace and Human Rights v Ministry of Foreign and Diaspora Affairs* (Petition E681 of 2024), that access disputes should first be pursued through the Commission's statutory mechanism consistent with the absence of any recorded judicial reversal of a Commission determination across this dataset.

The Commission has also expanded what counts as "held" information, treating a public body's statutory funding or oversight authority over a domain as sufficient to establish that it holds records of that domain even where no aggregated dataset exists (*Saddam Amatonyo v State Department for Basic Education*; *Patrick Musilu v KWS*). This forecloses a common evasion tactic, though it leaves unaddressed the case in which records are absent through institutional negligence.

A three-prong constitutional proportionality test suitability, necessity, and proportionality *stricto sensu* has been imported to resolve conflicts between the Section 6 exemptions and the right of access, favouring redaction over categorical refusal (*Millicent Anyango v NCBA*; *Kennedy Riungu v CMA*). Here the Commission defers heavily to respondent institutions on the scope of redaction, and guidelines on what may properly be withheld are needed.

The Commission has likewise read the definition of "relevant private body" expansively, bringing banks, public-benefit organisations, and, in *Fred Apima v KUPPET Kisii Branch* (2025), trade unions within the Act's scope on functional rather than strictly statutory grounds. The KUPPET ruling is notable for a further reason: it is the only determination in the dataset in which the Commission attached a monetary consequence to non-compliance, ordering payment of Ksh 10,000 per day under Section 23(2)(b). That this power exists and has been used once, while being withheld entirely in a comparably delayed case such as *Kennedy Riungu v CMA*, points to inconsistent application of an existing remedy rather than the absence of one.

A common thread across the institutional findings is that this doctrinal sophistication coexists with and is partly undermined by the same systemic non-responsiveness civil society was documenting as early as 2020. Delays of sixteen months to two and a half years recur in the dataset (*Steve Mandela v WASREB*; *Kennedy Riungu v CMA*), stemming from poor file-numbering systems, undigitised paper records, and the absence of trained information access officers. This echoes the capacity deficits ARTICLE 19 and the CAJ identified through their joint sensitisation programmes.

Not every case fits the pattern: *Clauder Musi v National Syndemic Disease Control* (2026) was resolved in forty-six days where records were already organised, confirming that the delays documented elsewhere reflect identifiable capacity failures rather than any structural unworkability in the Act's timelines. Enforcement under Section 28 is threatened routinely, but remedies for inaction remain largely prospective, and the dataset offers no way to verify whether respondent institutions comply with orders once issued or whether prosecution recommendations are ever acted on.



A final recurring theme is the treatment of third-party and commercially confidential information.

The held test recurs, and is extended, in *Wycliffe Asalwa Salano v Kenya Railways* (2026), where the Commission inferred the existence of specific engineering records (Level Crossing Registers) from a general statutory duty to maintain operational records, rather than from any admission that the records existed. That ruling also records the High Court's position, in *Lempaa Suyianka* and the *African Center for Peace and Human Rights v Ministry of Foreign and Diaspora Affairs* (Petition E681 of 2024), that access disputes should first be pursued through the Commission's statutory mechanism consistent with the absence of any recorded judicial reversal of a Commission determination across this dataset.

The Commission has moved from categorical exclusion (*Redds Pharma v AMREF*) toward proportionality-based redaction (*Kennedy Riungu*) without settling whether redaction satisfies, or simply bypasses, the written-consent requirement in Section 15. Its handling of mediation confidentiality (*Aloice Anyango v KHRG*) is innovative in separating outcome from process, but it does not resolve who determines when disclosure is triggered.

The analysis identifies six areas for statutory reform:

- a defined, resource-proportionate standard for “practicability” under Section 11(3), informed by the structured-format standard the Data Protection Act already applies to a comparable right;
- a binding minimum standard for institutional record digitisation, the need for which the 2018 regulation-drafting process itself signalled a decade ago;
- codified, standardised criteria for compensation under Section 23(2)(b) so that outcomes such as KUPPET's daily-rate award do not remain the exception against a norm of no compensation alongside a tiered enforcement schedule;
- a concrete proactive-disclosure hierarchy under Section 5;
- Commission-issued guidelines for weighting interests in proportionality analysis; and
- a public compliance-tracking mechanism, so that the status of Commission orders and Section 28 prosecution recommendations can be verified rather than assumed.



1. Introduction

Article 35 of the 2010 Constitution guarantees every Kenyan the right of access to information yet giving that right practical effect was delayed. The Access to Information Act was not enacted until 2016, with oversight and enforcement conferred on the Commission on Administrative Justice; draft Access to Information Regulations followed in 2018.

The early implementation period bears out how slow that progress was. The 2021 ARTICLE 19 review found Kenya still struggling to implement the Act, and the CAJ's low complaint volumes 71 complaints between 2016 and 2018, pointed to gaps in public awareness and duty-bearer capacity rather than to an absence of disputes. The Open Government Partnership judged it "too early to assess results" against most milestones, and reporting on the Apollo Mboya dispute with Kenya Power concluded that Kenya's weakness lay in implementation, not drafting (Business Daily, 2020). With no operative implementing regulations to settle definitional questions administratively, the Commission's determinations became the primary site where the Act's provisions are worked out. Its move toward written rulings that explain their reasoning is a welcome development: it resolves disputes while building the interpretive infrastructure regulations never fully supplied, and it opens the Commission's reasoning to public scrutiny.

This report examines CAJ rulings from October 2022 to March 2026, the period in which the Commission began issuing reasoned written determinations. The Commission carries two mandates addressing maladministration and adjudicating access to information and this report is confined to the latter.

A common thread across the rulings is a purposive jurisprudence grounded in constitutional values and comparative precedent, within which four substantive trends recur:

- the "held test", governing whether a public body should supply information in the specific format requested (Fred Apima v Deputy Registrar);
- an expansive reading of what a body is deemed to "hold", extending to records it has a statutory duty to maintain even where no organised dataset yet exists (Saddam Amatonyo v State Department for Basic Education; Patrick Musilu v KWS);
- a constitutional proportionality test imported to resolve conflicts between statutory exemptions and access rights, favouring redaction over categorical refusal (Millicent Anyango v NCBA; Kennedy Riungu v CMA); and
- an expansive, functional reading of "relevant private body" that brings banks and public-benefit organisations within the Act's reach (Aloice Anyango v KHRC; Millicent Anyango v NCBA).

Running beneath this doctrinal development is a set of institutional and structural findings that qualify how far it has transformed practice. Delays of sixteen months to two and a half years recur (Steve Mandela v WASREB; Kennedy Riungu v CMA), stemming from poor file-numbering systems, undigitised records, and the absence of trained information access officers the same capacity deficits civil society organisations were documenting in the Act's first years. Enforcement under Section 28 is threatened routinely, yet the dataset shows no resulting prosecutions, and remedies remain prospective only, leaving applicants without redress for the burden of institutional non-responsiveness. The report also takes up a set of unresolved questions: the boundary between proactive-disclosure obligations and the held test, and the Commission's uncertain line between reviewing the denial of existing information and reviewing an entity's substantive compliance with the obligations that access rights are meant to expose. We found no evidence of judicial reversal of a Commission determination.



The analysis proceeds in three parts. It first traces the substantive legal trends emerging from the rulings, then turns to the institutional and factual patterns that recur across the dataset and closes by identifying emerging questions and setting out policy recommendations legislative clarification of the held test, binding minimum standards for record-keeping, and a tiered enforcement mechanism among them each addressed to the gap between doctrinal principle and institutional capacity that this history helps explain.



2. Summary of Cases

Case	Theme	Holding	Duration
Fred Apima v Deputy Registrar (2026)	Format / held test	Verbatim transcript refused; typed certified copies held sufficient. The right of access does not compel creation of records not held.	Under 1 month
Saddam Amatonyo v State Dept for Basic Education (2026)	Holding vs creating	Capitation-fund data by school deemed held via the statutory reporting chain; disclosure ordered and proactive disclosure invoked.	2 months, 6 days
Patrick Musilu v KWS (2026)	Holding vs creating	Snake-bite death statistics deemed held through the statutory compensation framework; disclosure and proactive publication ordered.	7 months
Kennedy Riungu v CMA (2023)	Proportionality	Sanlam investigation report withheld on confidentiality grounds; redacted or abridged version ordered instead of full refusal.	Filed 2020; determined 16 March 2023
Millicent Anyango v NCBA (2023)	Proportionality	Bank's forensic investigation report withheld on security grounds; redacted or abridged disclosure ordered within 21 days.	4 months, 20 days
Clauder Musi v National Syndemic Disease Control (2026)	Straightforward compliance	Gratuity and P9 records supplied on request; applicant satisfied and matter closed without contested issues.	46 days
FCPG v Kilimo Hakika Ltd (2025)	Held test / scope	EIA and permit information not yet held; application dismissed. Whether construction was ongoing held outside the Commission's mandate.	5 months
Steve Mandela v WASREB (2025)	Systemic delay	Sixteen-month non-response to a complaint; disclosure ordered alongside institutional digitisation and staff-training measures.	10 months, 10 days
Redds Pharma v AMREF (2025)	Third-party information	Successful bidder's product brochure withheld absent written consent and on commercial-confidentiality grounds under s. 6(1)(e).	7 months, 22 days
Aloice Anyango v KHRC (2023)	Private-body scope	KHRC held a relevant private body as a public-benefit organisation; mediation outcome ordered disclosed, process detail protected.	2 months, 17 days
Fred Apima v KUPPET Kisii Branch (2025)	Private-body scope	Trade union held a relevant private body; disclosure of welfare-fund records ordered, backed by daily compensation for non-compliance.	9 months, 16 days
Wycliffe Asalwa Salano v Kenya Railways (2026)	Held test	Level crossing registers held to exist by statutory record-keeping duty though undisclosed; access ordered, prosecution threatened.	11 months, 16 days

3. Substantive Legal Trends

Across these determinations the Commission developed principles on several recurring issues. It elaborated a held test governing whether a public body should supply information in the specific format requested, distinguishing a mandatory duty to disclose in the form held from a discretionary duty to convert format only where practicable. It read the concept of “holding” expansively, treating statutory funding or oversight authority over a domain as sufficient to establish that records of that domain exist even where no organised dataset has yet been compiled. It imported a constitutional proportionality test to resolve conflicts between the statutory exemptions and the right of access, favouring redaction or abridgement over categorical refusal. And it extended the definition of “relevant private body” on functional rather than strictly statutory grounds, bringing banks, public-benefit organisations, and trade unions within the Act’s reach. Together these developments widen the Act’s interpretive scope but, as the analysis below shows, they also leave unresolved questions the Commission has not yet been required to confront directly.

3.1 The “Held Test” and the Problem of Format

A tension running through several determinations of this period is whether a public body should provide information in the form the applicant requested, or whether the constitutional obligation is discharged once information is supplied in whatever format the body currently holds it. The question exposes a fundamental ambiguity in the Act’s design and asks what “access” means where format and content interact substantively. The contrast with the Data Protection Act, 2019 is instructive: Section 26 entitles a data subject to receive their personal data in a structured, commonly used, machine-readable format, treating format as integral to the right. The ATI Act contains no equivalent, and the discretionary, practicability-conditioned approach in Section 11(3) leaves the Commission to improvise a standard that data protection law has already codified for a cognate right.

The issue arises most directly in *Fred Apima v Deputy Registrar* (2026). The applicant sought certified, true, complete, and verbatim transcripts of proceedings in an employment dispute before the Employment and Labour Relations Court in Kisumu. Rather than producing verbatim recordings, the respondent offered only typed, certified copies of the proceedings, and the Commission upheld that position.

It relied chiefly on *Nairobi Law Monthly Company Limited v Kenya Electricity Generating Company* [2013] and the Indian Supreme Court decision in *Central Board of Secondary Education v Aditya Bandopadhyay* (2011) 8 SCC 497, both of which establish that the right of access does not extend to requiring a public body to create information it does not possess. Reading Section 11(3), the Commission drew a distinction between a mandatory duty (“shall”) to provide information in the form in which it is held and a discretionary duty (“may”) to convert it into another format where the applicant requests it and conversion is practicable.

The held test recurs, with a further doctrinal wrinkle, in *Wycliffe Asalwa Salano v Kenya Railways*. Salano sought the level crossing registers for a specific crossing near Kitale town. Kenya Railways neither confirmed nor denied that the registers existed, instead supplying information about a different crossing. Rather than reading that silence as evidence the registers were not held, the Commission inferred their existence from statutory obligation.



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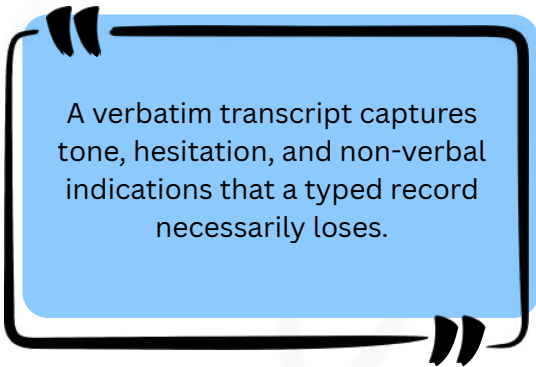
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Section 17 of the ATI Act and the Public Archives and Documentation Service Act, Cap 19, require public entities to create and preserve operational records, and the East African Railways and Harbours Engineering Manual specifically contemplates a Register of Level Crossings as part of the respondent's own operational infrastructure. This extends the reasoning of *Amatonyo and Musilu* from funding and compensation frameworks to a technical engineering register, and it suggests the Commission is prepared to infer the existence of quite granular categories of record from general record-keeping duties, however obscure the underlying document. The ruling is also notable for its treatment of the Commission's own jurisdictional standing: it cited the High Court's holding in *Lempaa Suyianka and the African Center for Peace and Human Rights v Ministry of Foreign and Diaspora Affairs & Others* (Petition E681 of 2024) that access disputes should first be channelled through the Act's statutory mechanism before resort to the courts.

The *Fred Apima* interpretation nonetheless creates substantial cover for institutional inertia and sidesteps what is actually at stake in a dispute over format. The Commission's reliance on comparative precedent is sound, but its reasoning glides past the qualitative difference between a verbatim transcript and a typed record.



A verbatim transcript captures tone, hesitation, and non-verbal indications that a typed record necessarily loses.

That difference bears directly on the document's evidentiary value, and therefore on the practicability of the information as accessed. A verbatim transcript captures tone, hesitation, and non-verbal indications that a typed record necessarily loses, elements that are often legally and factually significant in contexts such as employment disputes, where the parties' demeanour and language may be central to establishing contested events. Yet the Commission treated the two formats as functionally equivalent, holding that the applicant's right was "sufficiently met" by access to typed, certified proceedings.

In declining to impose affirmative duties on public bodies to create, reformat, or enhance information, the Commission has taken a cautious line that aligns with comparative jurisprudence, particularly the Indian principle that access rights do not trigger creation obligations. But that conservatism may underestimate the value of transparency in adversarial context, employment disputes, administrative hearings, regulatory investigations where the fidelity of the record directly affects a disputant's capacity to challenge a decision and hold the decision-maker accountable. The ruling effectively allows an institution to choose the less informative format and treat that choice as dispositive, provided it actually maintains that format. It leaves open whether the ATI framework should adopt something like the data-portability principle, under which the purpose for which information is sought informs the form in which it should be supplied.



3.2 The Distinction Between “Holding” Information and “Creating” It

A second development concerns the boundary between information a public body “holds” and should therefore disclose and information it does not hold and so has no obligation to create or organise for public access. The Commission maintained this distinction across several rulings while interpreting “holding” in ways that significantly expand what a body is deemed to possess.

In *Saddam Amatonyo v State Department for Basic Education* (2026), the applicant sought detailed data on capitation funds disbursed to schools across Kenya from 2020 to 2025 the name, location, and amount for each school. The Principal Secretary failed to respond within the statutory timelines, prompting the complaint, and the Department’s eventual defence was, in essence, that it did not “hold” the information in aggregated or readily accessible form. The Commission rejected that defence for three reasons. First, the Department unquestionably holds the information in a legal sense: it receives parliamentary allocations designated for capitation grants, authorises disbursements to schools, and oversees the utilisation and accountability of those funds. Second, Sections 68(2)(g) and 81 of the Public Finance Management Act, 2012 require accounting officers to maintain records of all financial transactions and to preserve them in a manner that permits audit by the Auditor-General. Third, the Basic Education Act obliges Boards of Management of public schools to keep and submit financial records to the Ministry of Education, creating a statutory reporting chain that ends at the State Department. Information on capitation disbursements is thus neither optional nor incidental to the Department’s mandate; it should exist as official financial records held by or under the control of the Department. Similar reasoning appears in *Patrick Musilu v KWS* (2026), where the applicant sought a statistical summary of snake-bite-related deaths recorded from January 2022 to March 2026 to support a petition to the Senate on public health and administrative accountability.

The Kenya Wildlife Service initially declined, apparently on the ground that it kept no centralised database of such incidents. The Commission held that KWS necessarily holds the information through the framework of the Wildlife Conservation and Management Act, 2013: the third, sixth, and tenth schedules list snakes as protected wildlife, and Sections 18 and 25 establish County Wildlife Conservation and Compensation Committees which include KWS representatives and operate under its oversight to process claims arising from injury or death caused by wildlife. Records of wildlife-related deaths reported for compensation therefore fall within the KWS institutional framework and should be “held” by it, even if not yet compiled into aggregate statistics.

These rulings are constitutionally significant. In the spirit of Article 159’s preference for substantive justice over procedural technicality, the Commission read “holding” not narrowly as “currently organised and accessible in the form requested” but expansively as “falling within the entity’s statutory mandate and therefore generating records the entity is legally obliged to maintain.” The virtue of this reading is that it prevents a public body from escaping accountability by pleading that it has not yet organised information into the requested format a tactic that would hollow out the right of access entirely. Where a body is statutorily tasked with delivering a service or managing a resource, records documenting that service or resource are presumptively held, even if not currently digitised, aggregated, or ready for disclosure.

A significant weakness nonetheless persists unaddressed: the Commission has not articulated what remedy applies where a statutory duty to maintain records exist in law but the records are demonstrably absent in fact. In both *Amatonyo* and *Musilu*, the respondents could in principle have claimed the records were destroyed, lost, corrupted, or never digitised. What is the applicant’s remedy then, and can an institution escape disclosure by proving negligent or even deliberate destruction? The rulings order disclosure within twenty-one days but say nothing about the scenario in which disclosure has become impossible through failures of record-keeping a gap that is troubling because such failures are pervasive across the public sector.



3.3 The Doctrine of Proportionality in Rights-Balancing

Section 6 of the ATI Act establishes categories of information that may be withheld, and the question the Commission has repeatedly faced is how those exemptions should operate. Rather than treating them as categorical bars so that once information falls within an exempted category access is refused altogether the Commission has increasingly applied a proportionality test drawn from constitutional jurisprudence, under which even exempt information may be disclosed in modified form (redacted, abridged, or substantially abridged) where the analysis favours partial disclosure.

Two cases exemplify the approach. In *Millicent Anyango v NCBA* (2023), the respondent bank refused to disclose a forensic investigation report concerning fraudulent activity on the applicant's account, citing "security reasons." Rather than accept that categorical refusal, the Commission ordered a redacted or abridged version within twenty-one days, relying on the High Court's decision in *Legal Advice Centre v Cabinet Secretary, Ministry of Education* (the Garissa University attack case) and on *Kenya Human Rights Commission v Communication Authority* [2018]. In *Kennedy Riungu v CMA* (2023), where the Capital Markets Authority withheld investigation reports on grounds of commercial confidentiality affecting a third party (Sanlam Life Insurance), the Commission again mandated partial disclosure through redaction or abridgement rather than accepting a blanket refusal.

The three-prong test the Commission articulated is drawn from constitutional jurisprudence

- First, the limiting measure withholding the information should be suitable to achieve a legitimate purpose, such as protecting security interests or commercial confidentiality.
- Second, it should be necessary, in that no less restrictive alternative could achieve the same protective purpose.
- Third, there should be proportionality *stricto sensu* between the importance of that purpose and the limitation imposed on the right of access.

As the Commission put it, invoking *Kenya Human Rights Commission v Communication Authority*, a limitation is permissible only where "the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation."

This is doctrinal maturation in several respects. The Commission has moved beyond mechanical rule-application toward a principled balancing of competing constitutional values, recognising that transparency and security (or commercial confidentiality) need not be zero-sum and that partial disclosure through redaction can often serve both. That matters, because the exemptions do serve legitimate purposes; the real question is whether those purposes require absolute secrecy or merely the protection of sensitive elements.

The reasoning nonetheless leaves tensions unresolved.

First, the Commission defers substantially to the respondent's own judgment about what can safely be redacted and what should remain confidential. In *Kennedy Riungu*, the CMA retained considerable discretion over the scope of the abridgement, with little guidance from the Commission on what the redacted version should contain and without guidelines or independent verification, the risk is over-redaction that hollows out the disclosure. Second, "practicability" remains vague: the rulings do not say whether cost, technical difficulty, or capacity constraints can justify refusing a redacted version where redaction is technically feasible, or whether an underfunded body may plead that redaction is not "practicable" because it would divert scarce staff.



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Third, and most fundamentally, the Commission assumes that a redacted report serves substantially the same informational purpose as a full one. For an applicant trying to contest administrative findings or demonstrate wrongdoing, that assumption may be false, a redacted version can conceal the information most central to showing that a decision was procedurally or substantively flawed.



3.4 Scope of “Public Body” and “Relevant Private Body”

A further development concerns the range of entities subject to the Act’s obligations. The statute distinguishes “public entities,” which are plainly bound by access obligations, from “relevant private bodies,” a category the Act extends to certain private institutions. The definition of “relevant private body” in Section 2 reaches privately owned bodies that are publicly funded, as well as private bodies holding information relevant to the protection of human rights and the Commission has read it expansively to give effect to the right of access.

In *Aloice Anyango v KHRC* (2023), the Commission ruled on the Kenya Human Rights Commission, a civil-society organisation engaged in human-rights work that also acts as a mediator in labour disputes. When the applicant sought mediation records held by KHRC, the organisation challenged the Commission’s jurisdiction, arguing it was neither a public entity nor a relevant private body. The Commission observed that KHRC is a Public Benefit Organisation within Section 5(1)(b) of the Public Benefit Organizations Act, 2013, which categorises a body as such where it “engages in public benefit activities” activities carried on for the “benefit of the public at large.” Because KHRC’s human-rights protection and dispute-resolution work serves the public benefit, it qualifies as a relevant private body under the Act.

A similar move appears in *Millicent Anyango v NCBA* (2023), where the bank’s initial defence was that it was a purely private, profit-making entity outside the Act’s reach. The Commission rejected this, reasoning beyond the statutory text: “the legal definition of a Bank coupled with its unique role in the society places banks within the definition of relevant private bodies for purposes of the ATI Act, 2016.” A bank’s role, it held, is not “simply an ordinary business of ‘trading’ or ‘profit making’” but one of “enhancing a country’s citizenry’s experience in social-economic growth and development,” akin to “an investment meant to serve the ‘public good.’” The reading extends access obligations to institutions that exercise considerable power over citizens’ lives and hold information relevant to accountability.

activities carried on for the “benefit of the public at large” amount to relevant body under the Act

A third instance is *Fred Apima v KUPPET Kisii Branch*, in which the Commission extended relevant-private-body status to a trade union. Apima, a paid-up member of the Kenya Union of Post Primary Education Teachers, sought access to the Kisii Branch’s Burial Benevolent Fund books of account, and the Branch Treasurer refused inspection. First, the Commission defers substantially to the respondent’s own judgment about what can safely be redacted and what should remain confidential. In *Kennedy Riungu*, the CMA retained considerable discretion over the scope of the abridgement, with little guidance from the Commission on what the redacted version should contain and without guidelines or independent verification, the risk is over-redaction that hollows out the disclosure. Second, “practicability” remains vague: the rulings do not say whether cost, technical difficulty, or capacity constraints can justify refusing a redacted version where redaction is technically feasible, or whether an underfunded body may plead that redaction is not “practicable” because it would divert scarce staff. Third, and most fundamentally, the Commission assumes that a redacted report serves substantially the same informational purpose as a full one. For an applicant trying to contest administrative findings or demonstrate wrongdoing, that assumption may be false, a redacted version can conceal the information most central to showing that a decision was procedurally or substantively flawed.

The Commission held that KUPPET, though constituted by its paid-up members rather than deriving authority from statute or public funding, performs public functions by virtue of its own governing objectives, and that its National Governing Council Welfare Guidelines 2023 impose record-keeping duties on the Fund’s treasurer sufficient to establish that the requested records were held. The ruling is also the only determination in the dataset to attach a monetary consequence to non-compliance: it ordered KUPPET to pay the applicant Ksh 10,000 per day under Section 23(2)(b) until the documents were produced. That the Commission both possesses and has exercised this power while withholding it entirely in a case of comparably severe delay such as *Kennedy Riungu v CMA* indicates that the remedial gap identified later in this report is one of inconsistent application rather than absent authority.



3.5 Institutional Accountability Over Individual Secrecy

The determinations generally prioritise institutional transparency over the personal privacy of individual officials. In *Steve Mandela v WASREB*, the Commission ordered disclosure of the names and designations of the officers handling the applicant's complaint, which WASREB had resisted on the ground that disclosure could "lead to invasion of individual privacy or impede due process in an ongoing matter." The Commission disagreed, reasoning that "the principles of effective complaint resolution emphasize ... communication to the complainant at every stage," including "appropriate disclosure of information at all stages unless the specific set of information is precluded from disclosure by the law." Naming the responsible officers is essential to accountability and responsiveness; the privacy interest of the individual official is subordinate.

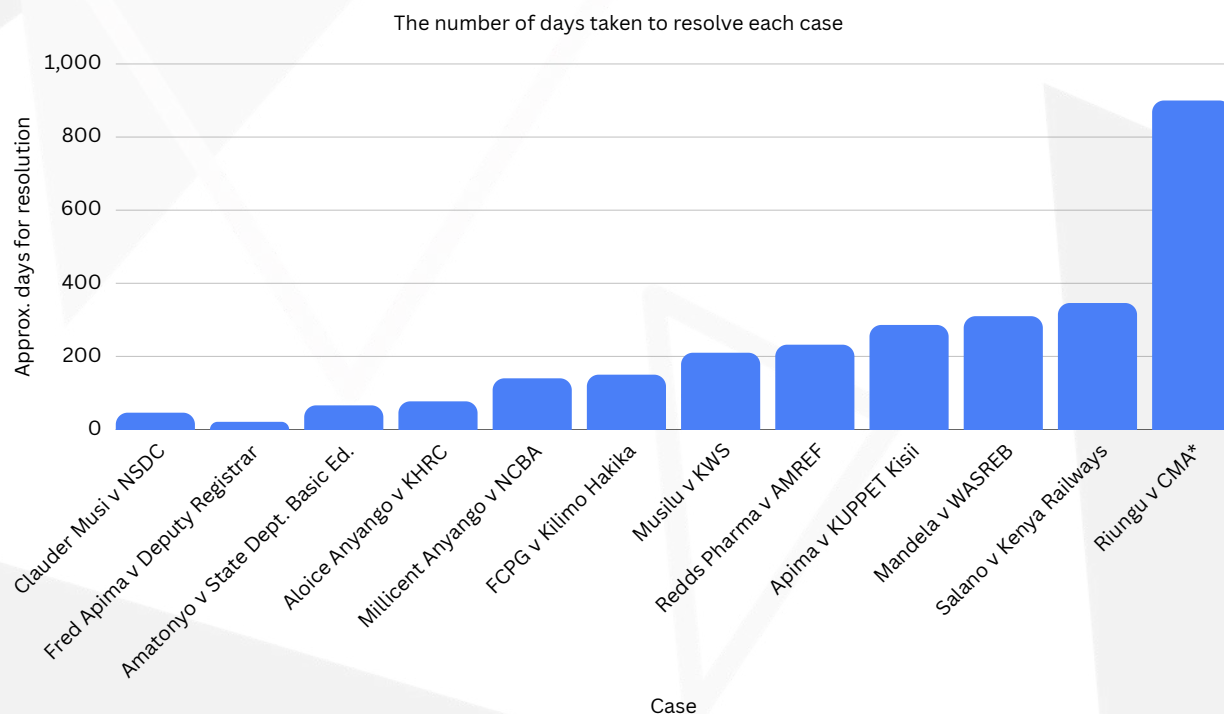
The same orientation appears elsewhere. In *Amatonyo*, ordering disclosure of capitation-fund data created transparency about how public education money flows through the system and reaches or fails to reach schools, favouring financial accountability over any privacy interest of the officials involved in disbursement. In *Musilu*, ordering disclosure of compensation data necessarily touched information about private individuals injured by wildlife, yet the public interest in accountable wildlife management was held to supersede those individual interests.

The pattern suggests the Commission treats transparency about institutional operations and the deployment of public resources as a core democratic value, one that generally outweighs the privacy interests of individual officials or private parties unless a specific statutory exemption or competing constitutional principle applies. The approach is comparable to jurisdictions such as India, which build individual culpability and officer-level sanctions into their access regimes. It is a progressive stance, though other regimes strike the balance differently, particularly where they place greater weight on civil-servant privacy or commercial interests.



4. Institutional and Factual Issues

The rulings also reveal a persistent gap between the aspiration of the law and the institutional capacity needed to realise it. Non-responsiveness recurs across the cases, with delays stretching from months to years before an applicant obtains even a substantive reply and often only after the Commission itself intervenes. Beneath the delays lie capacity deficiencies: many public bodies lack the record-keeping systems, file-numbering protocols, and trained personnel needed to locate and produce information at all, a gap the Commission has begun to address through corrective orders but cannot resolve through adjudication alone. A further set of issues concerns the boundaries of the Act's application which private entities fall within its reach, how third-party commercial and mediation confidentiality interact with disclosure, and how enforcement operates once the Commission has ruled. The sections that follow examine these patterns in turn.



4.1. Systemic Non-Responsiveness and Delay

A troubling pattern is the systemic failure of public bodies to respond within the statutory timelines. Section 9(4) requires an information access officer to tell a requester whether access is granted or denied within twenty-one days of receipt. Across the cases reviewed, public bodies repeatedly breached this obligation without consequence.

In *Steve Mandela v WASREB* (2025), the applicant lodged a complaint with the Water Services Regulatory Board on 15 December 2023 concerning systemic non-compliance by the Malindi Water and Sewerage Company with billing practices. He followed up with an appeal on 27 June 2024 and a further submission on 4 February 2025. For nearly sixteen months WASREB failed even to acknowledge receipt of the June 2024 appeal or the February 2025 submission, despite repeated follow-ups. Only after the Commission intervened issuing a summons and requiring an institutional report did WASREB provide substantive responses, on 3 September 2025. An applicant whose complaint had first been filed well over a year earlier thus had to resort to formal Commission proceedings to obtain what should have been routine institutional replies.



Kennedy Riungu v CMA (2023) presents an even longer timeline. The applicant first requested information about Sanlam Life Insurance and Sanlam Investment from the Capital Markets Authority on 11 August 2020. Nearly two years later, in August 2022, the respondent claimed the information had already been released, but offered no substantiating detail. The Commission had to intervene on 21 October 2022, reiterating the request and demanding a prompt response, and even then the CMA's formal reply did not arrive until 20 February 2023 – nearly two and a half years after the original request.

Delay features in almost every case analysed. In Aloice Anyango v KHRC (2023), KHRC did not respond within the statutory timelines, which is what prompted the complaint. At the Commission level, the fastest resolution (Fred Apima) took twenty-one days and the slowest (Kennedy Riungu, at the Commission stage alone) five months – and that five months was a procedural review of a violation that had already persisted for two and a half years. Counting the prior delays, the total elapsed time from initial request to final determination regularly exceeds a year, and in some cases two and a half. For an applicant who needs information to decide or challenge an administrative action within a reasonable window, such delays amount in practice to a denial of the right of access.

Not every case follows this pattern. Clauder Musi v National Syndemic Disease Control concerned a straightforward request for gratuity payment records, a computation schedule, and a P9 tax form. The respondent supplied all three within the Commission's process, and the applicant confirmed satisfaction, closing the matter in forty-six days. Brief as it is, the case shows that where a body's records are already organised and the request is specific and administratively routine, the Act can work as intended without protracted intervention. That throws the institutional deficiencies into sharper relief: the delays in WASREB, Kennedy Riungu, and Aloice Anyango are attributable to identifiable capacity failures, not to any structural unworkability in the Act's twenty-one-day timeline.

Several root causes emerge from the rulings. First, poor record management plagues many public bodies; the WASREB determination found no clear file-numbering system, officer-assignment protocol, or systematic tracking of investigation timelines, and such records as existed were paper-based and undigitised, so that a request required a manual search through physical files that a low-capacity institution readily deprioritises.

where a body's records are already organised and the request is specific and administratively routine, the Act can work as intended without protracted intervention.

Second, capacity deficits are endemic, the same determination noted that staff lacked training on ATI compliance, and without protocols, designated officers, or regular training, bodies treat access requests as collateral to their core mandate. Third, procedural ambiguity contributes: in FCPG v Kilimo Hakika Ltd (2025), the respondent cited confusion about the scope of the request to explain its inadequate response, and uncertainty about what is being sought gives little incentive to respond promptly. Fourth, and most fundamentally, the incentives for responsiveness are absent: the rulings record no disciplinary action against individual officers, no reputational consequence for institutions, and no financial penalty or sanction beyond the threat of criminal prosecution.



4.2 Deficient Record-Keeping and Institutional Systems

Underlying these delays is a deeper institutional weakness: many public bodies lack the systems to locate, retrieve, or organise information about their own operations. The Act's entire framework assumes that public entities maintain systematic records that can be compelled, yet several rulings show that assumption to be false.

Steve Mandela v WASREB (2025) illustrates the problem. In ordering WASREB to overhaul its complaints-handling procedures, the Commission found the institution's framework fundamentally inadequate: it lacked clear file-numbering to track complaints through their lifecycle, to record which officers were assigned to a matter, or to document the status of investigations. Records existed in fragmented form some in physical files, some perhaps in email, some undocumented altogether with no record-management infrastructure tying them together. The Commission ordered WASREB to "initiate relevant measures towards enhancing effectiveness of its complaint handling and access to information frameworks including appropriate revision and amendment to its policies, automation of its information management systems and digitization of its records."

Kennedy Riungu v CMA (2023) reveals a similar deficiency. The applicant's request, filed in August 2020, concerned Sanlam Life Insurance investigation materials; the respondent claimed in August 2022 that these had been released, but the claim was vague and apparently untrue. The Commission's eventual order required redacted or abridged versions of the reports, a remedy that assumes the CMA could locate and organise the materials. The two-year gap between request and intervention suggests it initially could not retrieve files relating to a two-year-old investigation, a concerning finding for a financial regulator whose function depends on systematic documentation.

Even where records exist, the choice of format can reflect an unwillingness to modernise. In *Fred Apima v Deputy Registrar* (2026), the Employment and Labour Relations Court maintains only typed records, not verbatim recordings, and the Commission accepted this as a matter of institutional choice rather than a constraint on access rights. Beyond the immediate outcome, the case shows how information-governance design shapes rights in practice: the absence of verbatim records meant the applicant's right of access could not be fully actualised.

The Commission's
eventual order required
redacted or abridged
versions of the reports

The Commission has begun, in a limited way, to address these deficiencies through conditional orders requiring institutions to revise policies, automate systems, and digitise records alongside disclosing specific information. But such responses are necessarily reactive and case-specific: the Commission can identify a deficiency when it surfaces in a dispute, but it cannot audit or compel reform across the public sector. The deeper implication is that the Act's framework rests on assumptions about institutional capacity and systematicity that do not hold for many Kenyan public bodies. Closing that gap requires not just Commission enforcement but systemic capacity-building mandated standards for records management, digitisation timelines, and staff training.



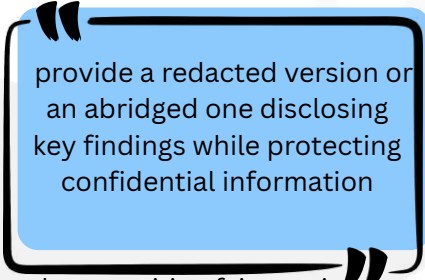
4.3 Third-Party Information and Commercial Confidentiality

A secondary but significant concern arises where a public body holds information that originates from or concerns a private third party most often information generated through regulatory or procurement processes, such as bidders' tender documents, investigation files involving private firms, or complaint materials naming private businesses. These situations pit the requester's right of access against the third party's interest in commercial confidentiality or proprietary information.

Redds Pharma v AMREF (2025) shows the pattern. Having lost a tender to supply medical products to AMREF, the applicant sought information about the evaluation: the successful bidder's product brochure, the minutes of the documents-evaluation stage, and the minutes of the product-evaluation stage. AMREF supplied the minutes but refused the brochure, citing data-protection and confidentiality concerns. The Commission held the brochure to be "third-party information" governed by Section 15, which requires an information officer to obtain written consent before disclosing information originating from a third-party consent AMREF had not obtained. It further found the brochure within the Section 6(1)(e) exemption for information that would be likely to "prejudice the legitimate commercial interests" of a business, inhibit fair competition, or involve "intellectual property." Given these overlapping protections, the Commission upheld the refusal.

Kennedy Riungu v CMA (2023) reasons more finely. The CMA had investigated Sanlam Life Insurance, and the applicant sought the report and related materials; the CMA declined, citing Sanlam's confidential business information and investigative privilege.

The Commission accepted that the report contained protected third-party information, but rather than endorse categorical non-disclosure it applied a proportionality analysis, recognising "a delicate balancing act where there is a legitimate reason for limiting access to the information, and a competing right to access information for the purposes of putting up a defence." It identified an intermediate solution: the CMA could provide a redacted version or an abridged one disclosing the Commission's key findings while protecting Sanlam's confidential information allowing some disclosure without abandoning third-party protection and acknowledging the CMA's regulatory relationship and public-interest mandate.



provide a redacted version or
an abridged one disclosing
key findings while protecting
confidential information

The tension between access and competitive fairness in procurement is real. An unsuccessful bidder often cannot effectively challenge the fairness of an evaluation without seeing the competing bids, yet those bids contain information competitors have commercial reasons to keep secret. Redds Pharma prioritises the competitor's intellectual-property interest over the unsuccessful bidder's procedural-fairness interest; the Commission acknowledged that unsuccessful bidders faced "unfair treatment," but held that intellectual-property protection should prevail.

That is a defensible position, but not the only one. Some regimes grant unsuccessful bidders limited access to redacted bids to enable a challenge to the evaluation methodology. In SKG Africa (Pty) Ltd v SALGA (2023), the Eastern Cape court ordered disclosure of bid evaluation and adjudication committee reports, minutes, and risk-analysis results to an unsuccessful bidder, on the basis that this was necessary to enable it "to exercise or protect their right to fair administrative action" and to decide whether to seek review. In Transnet Ltd v SA Metal Machinery Co (SCA), the Supreme Court of Appeal went further on redaction itself, holding that a party resisting disclosure on confidentiality or trade-secret grounds should show the resulting harm is "not simply possible, but probable" a higher threshold than the one applied in Redds Pharma.



4.4 The Confidentiality Problem in Alternative Dispute Resolution

How far do access rights reach into alternative dispute resolution? In *Aloice Anyango v KHRC*, the applicant had engaged the Kenya Human Rights Commission to mediate a labour dispute with SonySugar Company over alleged salary arrears. After the mediation, he sought the minutes of the mediation meetings. KHRC, as mediator, refused, asserting that confidentiality is an absolute bar to disclosure because parties will not negotiate candidly if they fear their statements will later be revealed.

The Commission's resolution is sophisticated. It first accepted that confidentiality in mediation is a legitimate principle and a public policy value and did not suggest that it be eliminated or set aside. But it identified a scenario in which confidentiality cannot reasonably hold where the parties take conflicting positions on the outcome of the mediation itself. If one insists a resolution was reached and the other insists none was, the mediator cannot stay silent without enabling one party to claim the opposite at will. As the Commission put it, "where one party insists that a resolution was reached and the other party insists that no agreement was reached, then, the mediator thereof should disclose the official record of the meeting to allow certainty on the matter."

Crucially, the Commission held that this necessary disclosure need not breach confidentiality wholesale. The mediator could, for instance, provide a signed letter confirming the outcome while redacting the substance of the discussions, since "the outcome of a mediation can be separated as a distinct set of information from other information or documents shared in the mediation proceedings," preserving "the delicate balance between disclosure and protection of confidential information."

The reasoning is compelling in recognising that access and process-confidentiality need not be absolute opposites: the Commission embraced neither an absolute right to mediation records nor an absolute confidentiality privilege, but a proportional approach that compels disclosure only where it is needed to stop the parties contradicting each other on basic facts, and only to the extent necessary. Questions remain, however. Should one party actively deny the other's account, or does mere silence suffice? Does the duty arise only once the parties litigate on contradictory premises, or does it operate prospectively on the mediator's judgment of emerging disagreement?

The ruling also assumes that outcome can be cleanly separated from process, whereas in practice the reasoning behind an agreement is often inseparable from the agreement itself a bare statement that the parties agreed may be unintelligible without explaining why they moved from their opening positions. And, as KHRC argued, even limited disclosure may chill candour if participants fear their statements could later surface when a party disputes the outcome. The ruling does not fully address whether its approach adequately protects the public-policy interest in encouraging settlement through mediation.



5. Emerging Questions

A further set of questions runs through the rulings that the Commission has raised without yet resolving. They concern the proper limits of its own interpretive reach in particular:

- whether the proactive-disclosure obligation shades into an affirmative duty to organise and curate records rather than merely retrieve them;
- whether the Commission's insistence on reviewing only the denial of existing, specifically requested documents, rather than an entity's underlying compliance with the obligations those documents evidence, unduly narrows the accountability function access rights are meant to serve; and,
- more structurally, whether the Commission's enforcement powers should rest almost entirely on recommending criminal prosecution under Section 28, or whether it should be mandated to award redress to citizens whose rights have been infringed.

5.1 Remedies and Enforcement Deficiency

The Commission's authority to order disclosure and to recommend criminal prosecution under Section 28 confers substantial formal power, but the available evidence suggests enforcement is weak and underused and that compliance with the Commission's orders cannot be tracked at all. In *Steve Mandela v WASREB* (March 2025), for example, the Commission issued a detailed order requiring WASREB to disclose the applicant's complaint file number, indicate investigation timelines, produce its correspondence with the water company, and supply its complaint-handling policies. But nothing allows anyone to confirm whether that order was obeyed. Comprehensive tracking of Commission orders would let policymakers and the public understand both the progress and the shortfalls of the access regime.

More fundamentally, the Commission's remedial toolkit appears confined to the prospective relief of ordering future disclosure. It declined to award compensation in *Kennedy Riungu v CMA*, where the applicant had waited nearly two and a half years, on the ground that pending court litigation between the parties on related issues might be prejudiced by an award within the Commission's proceedings. That reasoning is legally sound, but it left the applicant with no redress for the time lost and the burden imposed by institutional non-responsiveness.

The remedies question invites several lines of reform. First, should the Act establish a compensation or damages scheme for violations, on the model of some international regimes? India's Right to Information Act, for instance, ties compensation to the harm suffered and separately provides for personal sanctions against officers found culpable schemes that create direct financial incentives for responsiveness. Second, should there be automatic escalation, so that non-compliance with an initial order within the prescribed time is referred, without further application, to law enforcement or a dedicated enforcement unit? At present the Commission should take additional steps to pursue non-compliance; nothing happens automatically. Third, does the Commission have the capacity to track compliance across all its determinations, or does it depend on applicants to report continued non-compliance? The dataset does not answer this.



5.2 Proactive Disclosure and the “Held Test”

An emerging tension appears in the Commission’s treatment of the proactive-disclosure obligation under Section 5. The held test confines direct access obligations to information already in a body’s possession, yet the Commission has begun to invoke Section 5 to suggest that certain information should be proactively accessible even where it is not currently organised or readily available. In *Amatonyo*, the Commission stated that capitation-fund data “falls within the ambit of proactive disclosure as contemplated under section 5 of the ATI Act” language that pushes beyond retrieval toward a more affirmative duty.

Is the Commission thereby creating an obligation to create, organise, or curate summary data for public access, in tension with the principle that the held test limits obligations to information already in existence? Pursued consistently, such an approach could significantly expand affirmative duties, potentially requiring bodies to generate annual financial summaries, statistical analyses of their operations, or organised datasets suitable for public use. That is a more expansive reading than the held test alone would permit, because it treats the statutory duty to maintain records as a duty to organise and present them in accessible form for proactive disclosure.

5.3 The Distinction Between “Information Request” and “Decision-Review” Disputes

A structural question concerns the scope of the Commission’s jurisdiction and its relationship to administrative review. In *FCPG v Kilimo Hakika Ltd*, the applicant sought information about an allegedly ongoing construction of a fish-production facility in Rongo town its nature and purpose, change-of-use documentation, compliance and licensing permits, public-participation records, and environmental and social impact assessment reports the underlying concern being whether the construction was proceeding lawfully.

The Commission held that it could review only the denial of existing information. Kilimo Hakika asserted that some information did not yet exist, because the environmental assessments awaited completion of an ongoing public-participation process, and the Commission held that it could not order disclosure of non-existent information. When the applicant sought to ask whether construction was in fact under way a factual question distinct from the original request for documents the Commission held this fell outside its mandate, since it had not formed part of the original request.

Yet the applicant’s real interest was in holding Kilimo Hakika accountable for compliance with environmental and social standards, with the ATI request serving as the transparency mechanism for pursuing that objective. By insisting on strict scope-limitation and declining to entertain the construction-status question, the Commission may have inadvertently shielded a private entity from the very scrutiny access rights are meant to enable. The broader question follows: should the Commission’s jurisdiction be limited to the processing of existing documents, or should it extend to an entity’s compliance with the substantive obligations those documents are meant to illuminate?

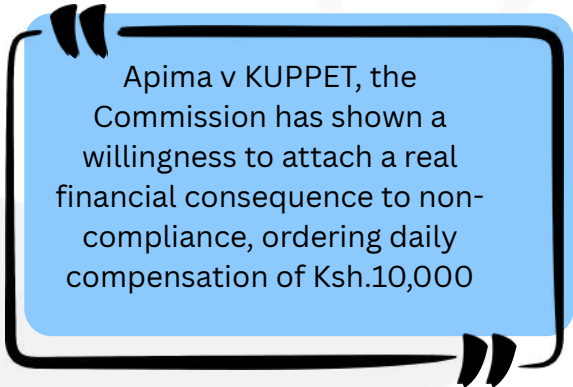


6. Conclusion

Kenya's access-to-information jurisprudence is at an inflection point. Over the period from October 2022 to March 2026, the Commission developed a purposive, principles-based jurisprudence grounded in constitutional values and informed by comparative precedent a mark of institutional maturation and of the recognition that access rights should be read to achieve their underlying purpose of enabling democratic participation, accountability, and transparency. Read against the decade-long gap between Article 35's guarantee in 2010 and the arrival even of draft regulations in 2018, this maturation matters more, because the Commission's written determinations have had to do the interpretive work that regulations never fully did.'

The substantive achievements are notable. The Commission has clarified and applied the held test in ways that recognise a public body's implicit obligation to maintain records of its own operations, extending the reasoning from funding and compensation frameworks (*Amatonyo, Musilu*) to technical operational registers (*Wycliffe Asalwa Salano v Kenya Railways*). It has imported proportionality doctrine into access disputes, enabling context-sensitive balancing rather than the mechanical exemption of entire categories of information.

It has widened the range of covered entities to include private bodies serving important public functions, from public-benefit organisations and banks to trade unions (*Fred Apima v KUPPET Kisii Branch*), recognising that access rights serve accountability whether or not an entity is formally state-owned. And it has developed the understanding that partial disclosure, through redaction and abridgement, can often satisfy both transparency and legitimate protective interests, obviating categorical refusal.



Apima v KUPPET, the Commission has shown a willingness to attach a real financial consequence to non-compliance, ordering daily compensation of Ksh.10,000

In at least one instance *Apima v KUPPET* it has shown a willingness to attach a real financial consequence to non-compliance, ordering daily compensation under Section 23(2)(b) rather than relying on the threat of prosecution alone. These developments are accompanied by vulnerabilities that oversight and enforcement have not overcome. Non-responsive public bodies still ignore access requests for months or years; while the Commission's own intervention has proven capable of forcing a response, as in *Steve Mandela v WASREB* and *Kennedy Riungu v CMA*, there is no systematic way to verify compliance once an order is issued or to confirm whether Section 28 recommendations are ever pursued. Record-keeping deficiencies remain systemic many institutions lack basic digitised systems, file-numbering protocols, or trained personnel though *Clauder Musi v National Syndemic Disease Control* confirms that where records are organised, the Act's timelines can work as intended.



The remedial framework remains inconsistent: in *Apima v KUPPET* the Commission both could and did award compensation yet withheld the same relief in *Kennedy Riungu* despite a comparably severe delay. Conflicts between access and third-party confidentiality continue to obstruct procedural fairness in procurement and investigation contexts, where the Commission's deference to respondents on the scope of redaction remains largely unguided. Proactive-disclosure obligations need further definition if applicants are not to remain dependent on individual requests rather than on presumptively accessible information. And the Act still offers no equivalent to the structured, machine-readable disclosure standard already codified for a cognate right under the Data Protection Act.

The path forward lies in the reforms this report recommends: a defined, resource-proportionate practicability standard for format conversion; binding minimum standards for institutional record-keeping; codified, standardised criteria for compensation under Section 23(2)(b), so that KUPPET becomes the norm rather than the exception; a concrete proactive-disclosure hierarchy; Commission-issued proportionality guidelines; and a public compliance-tracking mechanism. Such reform would not diminish the Commission's interpretive role but amplify it, supplying a statutory framework that sets minimum institutional standards, clarifies the Commission's power to enforce compliance, standardises remedies beyond ad hoc prospective disclosure, and removes the ambiguities that invite challenge and undermine certainty. With it, the Commission could evolve from an interpreter of access rights into the enforcer of a transformative transparency regime one capable of reshaping how public institutions and private bodies alike exercise power over information and public resources.



7. Policy Recommendations

The gaps and recurring patterns identified across these rulings call for legislative and institutional reform.

Legislative clarification of format obligations

i

- The undefined “practicability” threshold in Section 11(3) should be replaced with an objective standard, and the Data Protection Act, 2019 offers a template: Section 26 already entitles a data subject to receive personal data in a structured, machine-readable format, recognising that format is inseparable from usability.
- Section 11(3) could adopt a comparable structured-format default, calibrated to a resource-proportionality test, rather than leaving the Commission to improvise case by case as it did in *Fred Apima*, where typed and verbatim records were treated as functionally equivalent despite their differing evidentiary value.

Binding minimum standards for institutional record-keeping

ii

- The digitisation, file-numbering, and staff-training measures the Commission ordered in *Steve Mandela v WASREB* should not depend on an individual applicant bringing a complaint.
- The Act should establish generally applicable, binding minimum standards for information management, with defined implementation timelines, so that the failures documented in *WASREB*, *Kennedy Riungu v CMA*, and *Fred Apima v Deputy Registrar* become the exception rather than the norm this report finds them to be.



iii

Codification and standardisation of compensation

- The dataset shows the Commission already has, and has once used, a compensation power: in *Fred Apima v KUPPET Kisii Branch* it ordered Ksh 10,000 per day under Section 23(2)(b) for non-compliance.
- Yet *Kennedy Riungu v CMA*, involving a comparably severe two-and-a-half-year delay, drew no compensation at all.
- That inconsistency is the problem the Act should address.
- India's Right to Information Act offers a workable model: Section 19(8) (b) ties compensation to demonstrated loss or detriment, while Section 20 separately allows a personal penalty against the culpable officer, recoverable from salary.
- The ATI Act should adopt a similarly structured, two-track approach, with clear criteria for when Section 23(2)(b) compensation applies, so that outcomes no longer turn on which panel of commissioners hears the case.

iv

A concrete proactive-disclosure hierarchy under Section 5

- The *Amatonyo* ruling's invocation of Section 5 gestures at an affirmative disclosure duty without defining its scope or the categories it covers.
- The Act should specify categories of information budgets, licences and permits issued, complaint statistics, and comparable operational data that public and relevant private bodies should publish proactively, rather than leaving the boundary between the held test and proactive disclosure to be worked out ruling by ruling.



Commission-issued redaction and proportionality guidelines



- The proportionality reasoning in *Millicent Anyango v NCBA* and *Kennedy Riungu v CMA* is sound in principle but under-specified in application, leaving respondents with considerable discretion over what is redacted.
- South Africa's PAIA jurisprudence offers a benchmark: in *Transnet Ltd v SA Metal Machinery Co*, the Supreme Court of Appeal held that a party resisting disclosure on confidentiality grounds should show the resulting harm is "not simply possible, but probable" a higher threshold than the Commission currently applies.
- Commission guidelines adopting a comparable standard, together with a mechanism for independent verification of redactions, would reduce the risk of the over-redaction this report identifies.

A public compliance-tracking mechanism



- The report cannot determine, from the available rulings, whether respondent institutions comply with Commission orders or whether Section 28 prosecution recommendations are ever acted on.
- The Commission should publish a compliance register recording the status of each order, allowing applicants and policymakers alike to judge whether the enforcement threats recorded across this dataset are more than nominal.





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