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REPUBLIC OF KENYA

***EMBU COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2015

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THE EMBU COUNTY ACCESS TO INFORMATION BILL, 2015**A Bill for**

AN ACT, of the County Assembly of Embu to give effect to Article 35 of the Constitution; to confer on the commission of Administrative Justice the oversight and enforcement functions and powers and for connected purposes

ENACTED by the County Assembly of Embu as follows—

PART I—PRELIMINARY**Short title and commencement**

1. This Act may be cited as the Embu County Access to information Act, 2015 and shall come into operation upon publication in the gazette.

Interpretation

2. In this Act unless the context otherwise requires—

“county” means Embu County—

“county public entity” means—

- (a) any county public office as defined under Article 2 of the Constitution; or
- (b) any county entity performing a function within a commission, office, agency or other body established under the Constitution;

“edited copy” in relation to a document, means a copy of a document from which exempt information has been deleted;

“exempt information” means a record generated in digital form by an information system, which can be transmitted within an information system or from one information system to another and stored in any information system or other medium;

“executive member” means Executive Committee Member for the time being responsible for administration;

“information” includes all records held by a county public entity, regardless of the form in which the information is stored, its source or the date of production;

“information officer” means any officer of a county public entity designated under section 7 as such for purposes of this Act;

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

"national security" has the meaning assigned to it under Article 238(1) of the Constitution;

"person" has the meaning assigned to it under Article 260 of the Constitution;

"personal information" means information about an identifiable individual, including but not limited to-

- (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, age, physical, psychological or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular identity assigned to the individual;
- (d) the fingerprints, blood type, address, telephone or other contact details of the individual;
- (e) a person's opinion or views over another person;
- (f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature and further correspondence that would reveal the contents of the original correspondence;
- (g) any information given in support or in relation to an award or grant proposed to be given to another person;

"prescribed" means prescribed by the rules made under this Act;

"private body" means any private entity or non-state actor that—

- (a) receives public resources and benefits, utilizes public funds, engages in public functions, provides public services, has exclusive contracts to exploit natural resources (with regard to said funds, functions, services or resources); or
- (b) is in possession of information which is of significant public interest due to its relation to the protection of human rights, the environment or public health and safety, or to exposure of

corruption or illegal actions or where the release of the information may assist in exercising or protecting any right.

“public officer” has the same meaning assigned to it under Article 260 of the Constitution;

“public record” includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a county public entity regardless of physical form or characteristics;

Objects of the Act

3. The objects of this Act are to—
 - (a) Give effect to the right of access to information by citizens as provided for under Article 35 of the Constitution;
 - (b) require public entities and private bodies to proactively disclose information that they hold and to provide information on request in line with the constitutional principles;
 - (c) create a framework to facilitate access to information held by private bodies in compliance with any right protected by the Constitution and any other law;
 - (d) promote routine and systematic information disclosure by public service and private service on constitutional principles relating to accountability, transparency and public participation and access to information;
 - (e) provide for the protection of persons who release information of public interest in good faith; and
 - (f) Provide a framework to facilitate public education on the right to access information under this Act.

PART II—RIGHT TO INFORMATION

Right to information

4. (1) Subject to this Act and any other law, every citizen has the right of access to information held by—
 - (a) the County Government; and
 - (b) Any other person and where that information is required for the exercise or protection of any right or fundamental freedom.
- (2) Subject to this Act, every citizen's right to access information is not affected by—

- (a) Any reason the person gives for seeking access; or
- (b) The county public entity's belief as to what are the reasons for seeking access.

(3) Access to information held by a county public entity or private body shall be provided expeditiously.

(4) This Act shall be interpreted and applied on the basis of a duty to disclose and non-disclosure shall be permitted only in circumstances exempted under section 6.

(5) Nothing in this Act shall limit or otherwise restrict any other legislative requirement for a county public entity, or a private body, to disclose information.

Proactive disclosure

5. (1) A county public entity shall—
- (a) facilitate access to information, and the information may include—
 - (i) the particulars of its organization, functions and duties;
 - (ii) the powers and duties of its officers and employees;
 - (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
 - (iv) salary scales of its officers by grade;
 - (v) the norms set by it for the discharge of its functions;
 - (vi) any guidance used by it in relation to its dealings with the public or with corporate bodies, including the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; and
 - (vii) a guide sufficient to enable any person wishing to apply for information under this Act to identify the classes of information held by it, the subjects to which they relate, the location of any indexes to be consulted by any person;
 - (b) during the year commencing on first January next following the first publication of information under paragraph (a), and during each succeeding year, cause to be published statements updating the information contained in the previous statement or statements published under that paragraph;

- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect the public, and before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles;
 - (d) provide to any person the reasons for any decision taken by it in relation to that person;
 - (e) upon signing any contract, publish on its website or through other suitable means the following particulars in respect of the contract entered into—
 - (i) the public works, goods acquired or rented, and the contracted service, including any sketches, scopes of service and terms of reference;
 - (ii) the contract sum;
 - (iii) the name of the provider, contractor or individual to whom the contract has been granted; and
 - (iv) The periods within which the contract shall be completed.
- (2) Information shall be disseminated taking into consideration the need to reach persons with disabilities, cost, local language, the most effective method of communication in that local area, and the information shall be easily accessible and available for free or at a cost taking into account the medium used.
- (3) At a minimum, the material referred to in subsection (1) shall be made available—
- (a) For inspection by any person without charge;
 - (b) by supplying a copy to any person on request for which a reasonable charge to cover the costs of copying and supplying them may be made; and
 - (c) On the internet, provided that the materials are held by the Authority in electronic form.
- (4) Subsection (1) (a) shall come into operation twelve months after the commencement of this Act.

Exempt information

6. (1) Despite sections 4(1) and 5, exempt information may be withheld by a county public entity or private body where it is satisfied that disclosure of such information is likely to—

- (a) undermine the national security of Kenya;
- (b) impede the due process of law or endanger the safety or life of any person;
- (c) involve the unwarranted invasion of the privacy of an individual, other than the applicant or the person on whose behalf an application has, with the proper Authority, been made;
- (d) infringe on the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained;
- (e) cause substantial harm to the ability of the Government to manage the economy of the county;
- (f) significantly undermine a county public entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration;
- (g) damage a county public entity's position in any actual or contemplated legal proceedings; or
- (h) infringe legal professional privilege.

(2) For purposes of subsection (1) (a), information relating to national security includes—

- (a) military strategy, doctrine, capability, capacity or deployment;
- (b) foreign Government information with implications on national security;
- (c) intelligence activities, sources, capabilities, methods or cryptology;
- (d) foreign relations or foreign activities;
- (e) scientific, technology or economic matters relating to national security;
- (f) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to national security.

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

(4) Despite anything contained in subsections (1) and (2), a county public entity or private body may be required to disclose information where the public interest in disclosure outweighs the harm to protected interests.

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

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

(6) Unless the contrary is proved by the county public entity or private body, information is presumed not to be exempt if the information has been held for a period exceeding thirty (30) years.

(7) Any person who discloses exempt information in contravention of this Act commits an offence and is liable, on conviction, to a term not exceeding three (3) years:

Provided that it shall not be an offence if the exempt information disclosed is in public domain.

PART III—ACCESS TO INFORMATION

Designation of information office

7. (1) A Chief Executive Officer of a county public entity shall be the information officer for purposes of this Act.

(2) A Chief Executive Officer of a county public entity may delegate the performance of their duties as an information officer under this Act to any officer of the county public entity.

Application to access information

8. (1) An application to access information shall be made in English or Kiswahili and the applicant shall provide details and sufficient particulars for the public officer or any other official to understand what information is being requested.

(2) Despite subsection (1), an applicant who, because of illiteracy or disability, is unable to make a written request for access to information in accordance with subsection (1) may make that request orally and the public officer concerned shall reduce the oral request to writing in the prescribed form and provide a copy to the requesting individual.

(3) A county public entity may prescribe a form for making an application to access information, but any such form shall not be such as to unreasonably delay requests or place an undue burden upon applicants and no application may be rejected on the ground only that the applicant has not used the prescribed form.

Processing of application

9. (1) Subject to section 10, a public officer shall make a decision on an application as soon as possible, but in any event, within twenty one days of receipt of the application.

Provided that where the information sought concerns the life or liberty of a person, the information shall be provided within forty-eight hours of receipt of the application or not later than fifteen working days where the application is complex or relates to a large volume of information.

(2) A public officer referred to in subsection (1) may seek the assistance of any other public officer as the first mentioned public officer considers necessary for the proper discharge of his or her duties and such other public officer shall render the required assistance.

(3) Where the applicant does not receive a response to an application within the period stated in subsection (1), the application shall be deemed to have been rejected.

(4) An information officer who fails to respond to a request for information within the prescribed time commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand shillings or imprisonment for three months, or to both.

Transfer of application

10. (1) An information officer may, not later than five days from the date of receipt of an application, transfer the application or any relevant part of it, to another county public entity, if the information requested is held by that other county public entity.

(2) Where an application is transferred under subsection (1) an information officer shall inform the applicant immediately but in any event not later than seven days from the date of receipt of the application, about such transfer.

(3) A county public entity to which an application is referred by an information officer under subsection (1) shall make a decision on the application within fifteen days from the date that the application was first made.

(4) An information officer who fails to respond to a request for information within the prescribed time commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand shillings or imprisonment for three months, or both.

(5) Where a request for information is to a private body, subsections (4) shall apply with necessary changes made.

Providing access to information

11. (1) a decision is taken to provide the information applied for, an information officer shall send to the applicant a written response within fifteen working days of receipt of the application, advising—

- (a) that the application be granted;
- (b) that the information will be contained in an edited copy, where applicable;
- (c) the details of any fees or further fees to be paid for access, together with the calculations made to arrive at the amount of the fee;
- (d) the method of payment of such fees, if any;
- (e) the proposed process of accessing the information once payment is made; and
- (f) That an appeal may be made to the commission in respect of the amount of fees required or the form of access proposed to be provided.

(2) Subject to subsection (3), upon receipt of the fee payable, an information officer shall provide the information to the applicant or permit

the relevant inspection immediately but in any event not later than two working days from the date of receipt of the payment.

(3) Any information to be made accessible to an applicant shall be produced forthwith at the place where it is kept, for inspection in the form in which it is held unless the applicant requests that it be made available in another form and, if it is practicable to do so, such information may be copied, reproduced or used for conversion to a sound transmission at the expense of the applicant.

(4) Where a request for information is made to a private body, subsections (1), (2) and (3) shall apply with necessary modifications.

Fees

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

(2) A county public entity or private body from which an application for access to information has been made may charge a prescribed fee for the provision of the information and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the applicant.

(3) Subject to subsection (2), the Executive Committee Member shall make regulations prescribing the fees payable for expenses incurred in providing information to an applicant.

Correction of information

13. (1) At the request of the applicant, a county public entity or private body shall within reasonable time, at its own expense, correct, update or annotate any personal information held by it relating to the applicant, which is out of date, inaccurate or incomplete.

(2) A request under this section shall be made in writing to the county public entity responsible for the maintenance of the record system containing the out of date, inaccurate or incomplete information and shall—

- (a) state that it is a request to amend certain personal information relating to the applicant;
- (b) specify the personal information that is to be amended indicating how such information is out of date, inaccurate or incomplete; and
- (c) specify the remedy sought by the applicant.

**PART IV—REVIEW OF DECISIONS BY THE COUNTY
EXECUTIVE OFFICER**

Review of decisions

14. (1) Subject to subsection (2), an applicant may apply in writing to the Executive Committee Member requesting a review of any of the following decisions of a county public entity or private body in relation to a request for access to information—

A decision refusing to grant access to the information applied for—

- (a) a decision granting access to information in a restrictive manner;
- (b) a decision purporting to grant access, but not actually granting the access in accordance with an application;
- (c) a decision to defer providing the access to information;
- (d) a decision relating to imposition of a fee or the amount of the fee;
- (e) a decision relating to remission of application prescribed fee;
- (f) a decision to grant access to information only to a qualified person; or
- (g) a decision refusing to correct, update or annotate a record of personal information in accordance with an application made under section 13.

(2) An application under subsection (1) shall be made within thirty days, or such further period as the Executive Committee Member may allow, from the day on which the decision is notified to the applicant.

(3) The Executive Committee Member may, review a decision by a county public entity refusing to publish information that it is required to publish under this Act.

(4) A person aggrieved by the decision of the Executive Committee Member may appeal to the commission on Administrative Justice.

Notice to interested persons

15. (1) In reviewing a decision in terms of this Act, the Executive Committee Member may, where necessary, give notice to any third party to whom the information relates unless the necessary steps to locate the third party have been unsuccessful.

Protection of persons making disclosure

16. (1) A person shall not be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of an office or in any other way, as a result of having made or proposed to make a disclosure of information which the person obtained in confidence in the course of that activity, if the disclosure is of public interest.

(2) For purposes of subsection (1), a disclosure which is made to a law enforcement agency or to an appropriate county public entity shall be deemed to be made in the public interest.

(3) A person shall make a disclosure under subsection (1) or (2) where he or she has reasonable belief in the veracity of the information.

(4) Any person who provides false information maliciously intended to injure the other person commits an offence and is liable, on conviction, to a term not exceeding three years imprisonment.

(5) Disclosure of information under subsection (1) and (2) includes information on—

- (a) Violations of the law, including human rights violations;
- (b) mismanagement of funds;
- (c) conflict of interest;
- (d) corruption;
- (e) abuse of public office; and
- (f) Dangers of public health, safety and the environment.

(6) For the purpose of this section, a person is penalized if the person is dismissed, discriminated against, made the subject of reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided or any other personnel action provided under the law relating to whistle blower, and the imposition of any such penalty in contravention of this section shall be actionable as a tort.

(7) Any term of any settlement arising from a claim under this section, insofar as it purports to impose an obligation of confidentiality on any party to the settlement in respect of information which is accurate and which was or was proposed to be disclosed, shall be unenforceable.

(8) In any proceedings for an offence for contravention of any statutory prohibition or restriction on the disclosure of information, it shall be a defence to show that—

- (a) in the circumstances, the disclosure was in the public interest; and
- (b) Where the offence is alleged to have been committed by a public officer or Government contractor and involves the disclosure of information obtained by the person in the person's position as such, the defendant had, before making the disclosure, complied with the provisions of subsection (3).

Management of records

17. (1) In this section, "records" means documents or other sources of information compiled, recorded or stored in written form or in any other manner and includes electronic records.

(2) Every county Public entity shall keep and maintain—

- (a) records that are accurate, authentic, have integrity and are useable; and
- (b) its records in a manner which facilitates the right of access to information as provided for in this Act.

(3) At a minimum, to qualify to have complied with the duty to keep and maintain records under subsection (2), every county public entity shall—

- (a) create and preserve such records as are necessary to document adequately its policies, decisions, procedures, transactions and other activities it undertakes pertinent to the implementation of its mandate;
- (b) ensure that records in its custody, including those held in electronic form, are maintained in good order and condition; and
- (c) Not later than three years from the date from which this Act begins to apply to it, computerize its records and information management systems in order to facilitate more efficient access to information.

Offence of alteration, defacement, blocking, erasure, etc

18. (1) Where an application to access information has been made to a county public entity under section 7 and the applicant would have been entitled, subject to payment of any fee, to provision of any information in accordance with that section, any person to whom this section applies commits an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the county public entity, with the intention of

preventing the disclosure by that entity of all, or any part, of the information provision of which the applicant would have been entitled.

(2) Subsection (1) applies to the county public entity and to any person who, is employed by, is an officer of, or is subject to the direction of, the county public entity.

(3) A person convicted of an offence under subsection (1) shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

Defamatory matter in information released

19. Where any information provided by a county public entity or private body to an applicant under section 11 was supplied to the county public entity or private body by a third person, the publication to the applicant of any defamatory matter contained in the information shall be privileged unless the publication is shown to have been made with malice.

PART V—OVERSIGHT AND ENFORCEMENT

Role of commission of Administrative Justice

20. (1) The commission on Administrative Justice is granted the powers of oversight and enforcement of this Act.

(2) In the performance of its functions under this Act, the commission shall be guided by the national values and principles of the Constitution.

Functions of the commission

Powers of the commission

21. (1) The functions of the commission shall be to—

- (a) Investigate, on its initiative or upon complaint made by any person or group of persons, violation of the provisions of this Act;
- (b) request for and receive reports from public entities with respect to the implementation of this Act and of the Act relating to data protection and to assess and act on those reports with a view to assessing and evaluating the use and disclosure of information and the protection of personal data;
- (c) develop and facilitate public education awareness and develop programmes on right to access to information and right to protection of personal data;

- (d) work with public entities to promote the right to access to information and work with other regulatory bodies on promotion and compliance with data protection measures in terms of legislation;
- (e) monitor state compliance with international treaty obligations relating to freedom of and right of access to information and protection of personal data;
- (f) hear and determine complaints and review decisions arising from violations of the right to access to information;
- (g) promote protection of data as provided for under this Act or the Constitution; and
- (h) Perform such other functions as the commission may consider necessary for the promotion of access to information and promotion of data protection.

(2) The commission shall have all the powers as are provided for under this Act, its constitutive Act and the Constitution as are necessary for the performance of its functions under this Act.

22. In the performance of its functions under this Act, the commission shall have the power to—

- (a) Issue summonses or other orders requiring the attendance of any person before the commission and the production of any document or record relevant to any investigation by the commission.
- (b) question any person in respect of any subject matter under investigation before the commission; and
- (c) Require any person to disclose any information within such person's knowledge relevant to any investigation by the commission.

(2) The commission may, if satisfied that there has been an infringement of the provisions of this Act, order—

- (a) The release of any information withheld unlawfully;
- (b) a recommendation for the payment of compensation; or
- (c) Any other lawful remedy or redress.

(3) A person who is not satisfied with an order made by the commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made.

- (4) A person who—
- (a) fails to attend before the commission in accordance with any summons or order issued under subsection (1) (a); or
 - (b) knowingly gives any false or misleading statement or information to the commission; or
 - (c) Causes an obstruction or disturbance in the course of any proceedings before the commission, commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding six months or to both.

(5) County public entities and relevant private bodies shall provide to the commission such reports as required by the relevant national legislation.

PART VI—MISCELLANEOUS PROVISIONS

Reports by public entities

23. On or before the 30th day of June of each year, every county public entity shall submit to the Executive Committee Member a report covering the preceding year, which shall include-

- (a) the number of requests for information received by the entity and the number of requests processed;
- (b) the number of determinations made by the entity not to comply with the requests for information under section 7, and the main grounds for such determinations;
- (c) the average number of days taken by the entity to process different types of requests;
- (d) the total amount of fees collected by the county public entity while processing requests; and
- (e) the number of full-time staff of the county public entity devoted to processing requests for information and the total amount expended by the entity for processing such requests.

24. (1) The Executive Committee Member may make Regulations, prescribing anything required by this Act to be prescribed or generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection

(1) the Regulations may provide for—

- (a) the manner in which applications under this Act are to be made;
- (b) the form in which information requested under this Act is to be supplied;
- (c) the making of applications for personal information by representatives of the individual to whom the information relates;
- (d) the measures which county public entities shall take in order to assist persons in exercising their rights under this Act;
- (e) the measures which county public entities shall take to ensure that adequate records are created and maintained by public entities;
- (f) the procedures that should be followed by a complainant in asking the commission to review any decision of a County Public entity relating to access to information;
- (g) the procedure to be followed by a county public entity in consulting with a third party before giving access to information obtained by it from that party;
- (h) the procedures requiring a county public entity to ensure that personal information is accurate;
- (i) compensation to be sought by an individual who has suffered damage as a result of the holding of inaccurate information about the individual's personal affairs by a county public Entity;
- (j) the records that county public entities shall be required to keep; or
- (k) such matters as are contemplated by or are necessary for giving full effect to this Act and for its due administration.

MEMORANDUM OF OBJECTS AND REASONS

The Bill gives effect to Article 35 of the Constitution by providing for the right to access to information without undue hindrance from the County and other state agencies unless such information is exempt information as stated under section 6.

The enactment of this Bill into law does not occasion additional expenditure of public funds.

Part I provides for preliminaries namely; the short title, commencement and interpretation.

Part II provides for the substantive provisions connected to the right to information, proactive disclosure and exempt information.

Part III deals with access to information, it provides for designation of information officers, the manner of applying for access to information and how such applications shall be processed, the fees charged and correction of information.

Part IV provides for Review of the decisions not to grant access to information as well as Notice to interested persons making disclosure and the protection of persons making disclosure. It also creates offences of alteration, defacement, blocking, erasure, etc.

Part V provides for the oversight and enforcement mechanism of the Act. It outlines the Role of commission on Administrative Justice, as well as its functions and powers.

Part VI provides for miscellaneous provisions such as the power of the Executive Member to make rules and issue guidelines under the Act for purposes of giving full effect to certain provisions of the Act.

Dated on the 29th April, 2015.

MARTIN MWANGI,
Chairperson, Committee on Administration.