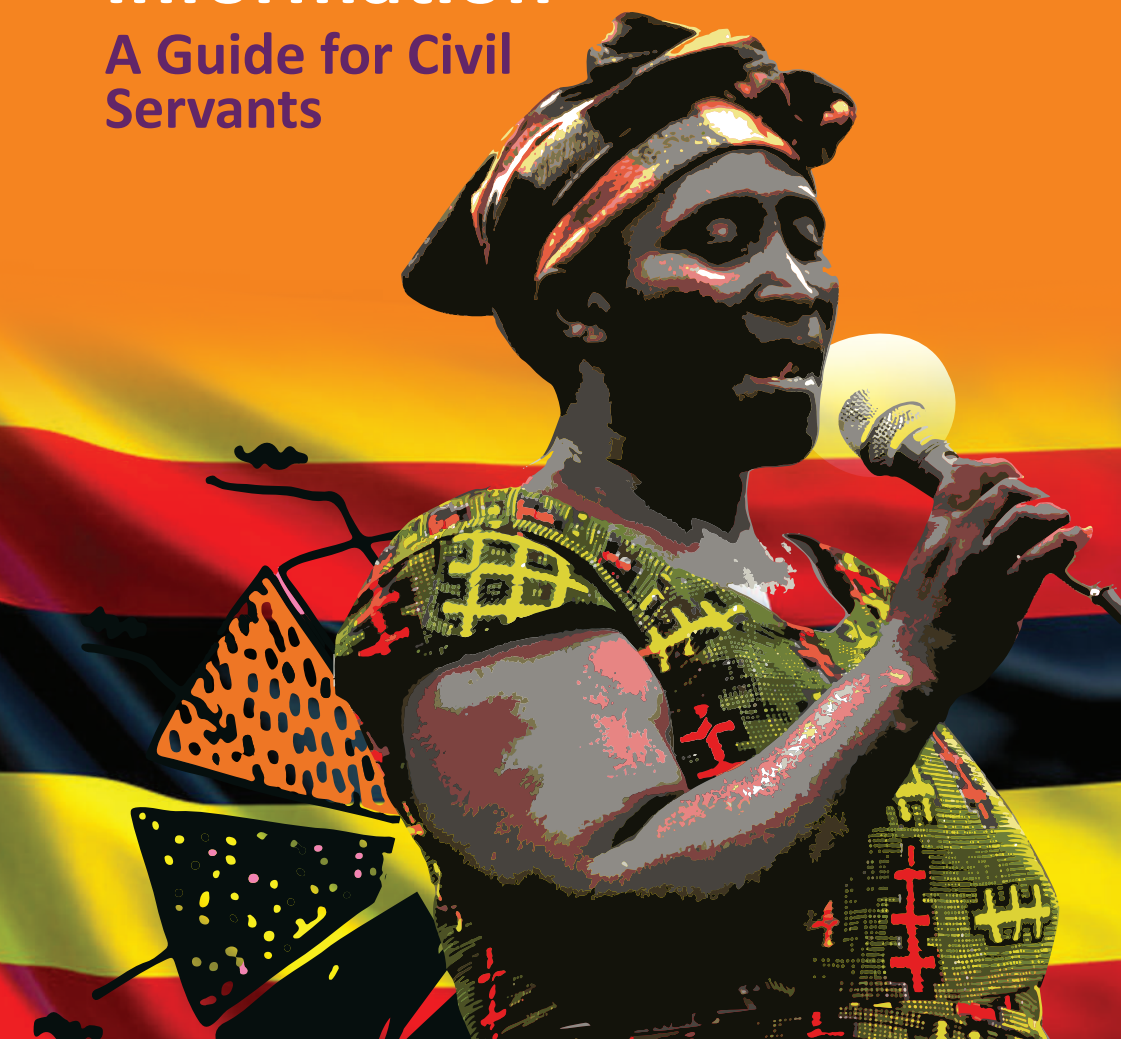


Access to Information

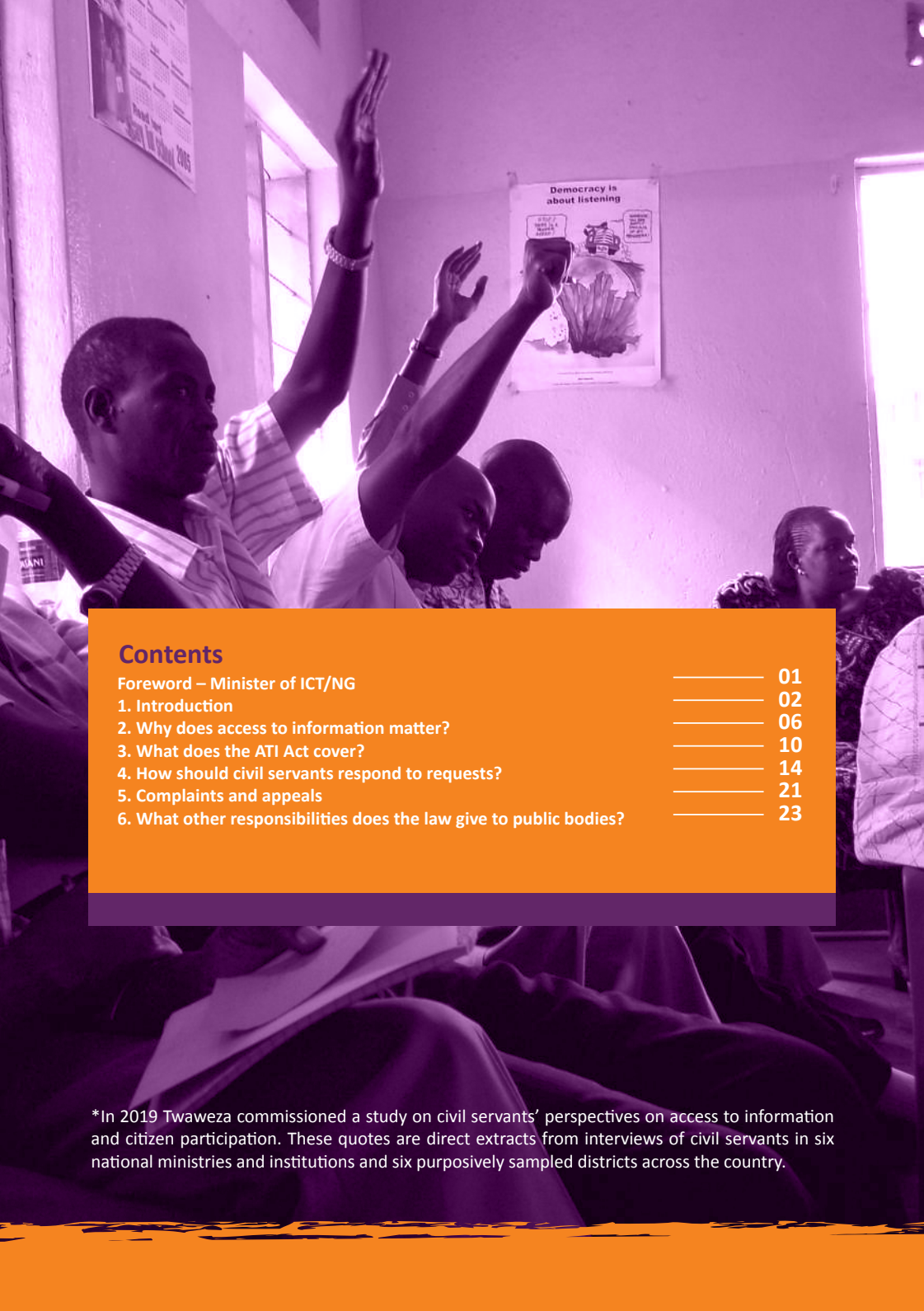
A Guide for Civil Servants



THE REPUBLIC OF UGANDA

MINISTRY OF ICT & NATIONAL GUIDANCE





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*In 2019 Twaweza commissioned a study on civil servants’ perspectives on access to information and citizen participation. These quotes are direct extracts from interviews of civil servants in six national ministries and institutions and six purposively sampled districts across the country.



Foreword

Article 41 of the Constitution of the Republic of Uganda 1995 gives every citizen the right to access information held by the government. The same article mandates parliament to make laws prescribing procedures for obtaining access to that information. To this effect the Access to Information Act was passed into law in 2005, followed by Regulations in 2011. This means that every Ugandan has a legal and constitutional right to get access to information held by any institution of government.

Further, access to information by citizens helps to promote an efficient, effective, transparent and accountable government. It also empowers the public to effectively scrutinise and participate in government decisions that affect their lives.

As such, access to information is both a constitutional right and a means to increase participation, transparency and accountable governance.

However, surveys of public opinion and interviews of civil servants conducted by Twaweza and others have found significant challenges in the practice of access to information in Uganda.

This includes:


- While civil servants agreed that in principle, citizens have the right to access government-held information, most have limited knowledge of the ATI Act, most report that they have received no training or guidance on the matter, and most don't know they are legally obliged to release information.
- The ATI Act has had minimal impact on civil servants' processes of disclosing information to citizens.
- Ugandan citizens profess to be interested in government-held information, particularly on expenditures on local services, though most say it is "not easy" to access information on government budgets, laws, and projects.
- In 2018, 84% of citizens sought information from a public institution, mainly by physically visiting the institution's offices, although these requests mostly concerned information about services.
- Citizens strongly support the right of access to information, though very few are aware of the Act and its Regulations.

In this context, Twaweza, the Africa Freedom of Information Centre (AFIC) in partnership with the Ministry of Information, Communications Technology and National Guidance (MoICT/NG), has compiled guidelines whose objective is to explain what these laws mean in practical terms for civil servants.

The Ministry, AFIC and Twaweza have a great hope that if these guidelines are followed, they will create the necessary and timely awareness to both citizens and civil servants, to bridge the information gap, and hence to promote better service delivery by the Government of the Republic of Uganda.

Hon. Judith Nabakooba, MP
Minister of ICT and National Guidance
May 2021

1. Introduction



“Every citizen has a right of access to information in the possession of the state or any other organ of the state except where the release of the information is likely to interfere with the security of the state or the right to the privacy of any other person”.

Constitution of Uganda, Article 41

The Constitution of Uganda gives citizens the right of access to information held by the government. This means that citizens should be able to request almost any information held by almost any government body, and that civil servants working for that government body have a duty to provide the information that has been requested.

Access to Information is included in the Constitution in recognition of its important role in protecting democracy and accountability. It ensures that everyone can know what the government is doing in their name, not just the powerful. The government serves the people, not the other way around. This is why we use the terms public servant or civil servant, rather than master: working for government means serving the people.


The Access to Information Act (2005) and Regulations (2011) provide more detail on how Ugandan citizens' constitutional right of access to information should work in practice. These laws lay out the types of information that citizens can request (and information that is exempt) and explain how government bodies and civil servants should respond to requests.

The Act itself describes its purposes as follows:

- To promote efficient, effective, transparent and accountable government.
- To give effect to article 41 of the Constitution
- To protect those disclosing evidence of wrongdoing in government.
- To provide the public with timely, accessible and accurate information.
- To empower the public to effectively scrutinise and participate in Government decisions that affect them.

(ATI Act, Section 3)

This guide aims to explain what this law means in practical terms for civil servants.

A close-up, profile shot of a man with a mustache, wearing a striped turban and a light-colored shirt. He is holding a microphone in his right hand and gesturing with his left hand. The background is blurred, showing other people. The entire image has a warm, orange-brown color cast.

"We work on behalf of citizens. The citizens should, therefore, know what we do, whether we serve as civil servants or politicians"

*(Interviews with civil servants, January 2019)**



Implementation of the ATI Act since 2011

Since the ATI Act was passed into law in 2005, and the Regulations in 2011, implementation has faced challenges. Some steps have been taken, including establishing the Ministry of Information and Communications Technology and National Guidance (MoICT/NG), adopting a Communications Strategy that promotes well-coordinated efforts across platforms ranging from government websites and weekly public education programmes to community barazas, and opening numerous platforms for information disclosure including public noticeboards, newsletters and standard information request forms. Further, civil society organisations including the Africa Freedom of Information Centre (AFIC) have established online platforms where citizens can make info requests and civil servants can respond – with the Ministry giving its backing to such initiatives.

Nevertheless, studies have found that few requests are being made for information, and more significantly, the majority of requests are unsuccessful. In a report in 2019, AFIC found that out of 4,059 known information requests, less than one out of ten (9%) were even partially successful. Most (81%) were awaiting a response, well past the official 21-day time limit for state bodies to respond. The report also found other important aspects of the law were not being adhered to. Most particularly, no government body had met the requirement (in Section 43 of the ATI Act) to submit an annual report to parliament detailing ATI requests received and responses given.

Civil servants' opinions and awareness of access to information

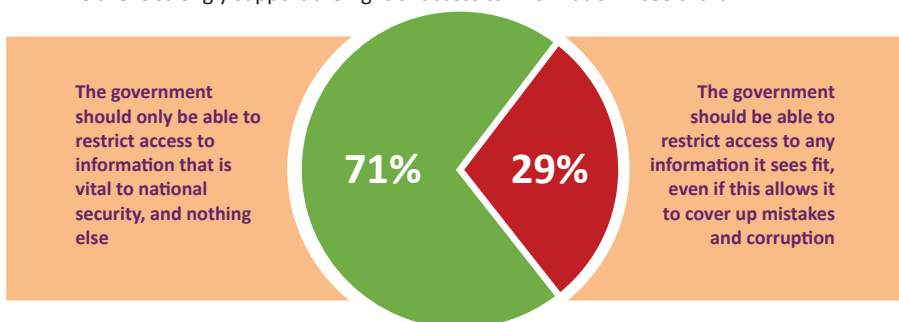
Twaweza explored Ugandan civil servants' understanding of ATI law, through interviews with public servants at different levels in 2019, which found that:

- All civil servants in the study agreed that in principle, citizens have the right to access government-held information.
- Most public servants – both elected leaders and appointed officials – have limited knowledge of the ATI Act.
- Civil servants reported that they have not been given any training or guidance on access to information.
- Most public officials don't know they are legally obliged to release information.
- The ATI Act has (thus far) had minimal impact on civil servants' processes of disclosing information to citizens.

Public opinion and awareness of access to information in Uganda

Twaweza conducted several surveys to explore public understanding of access to information in Uganda. Key findings of these surveys include the following:

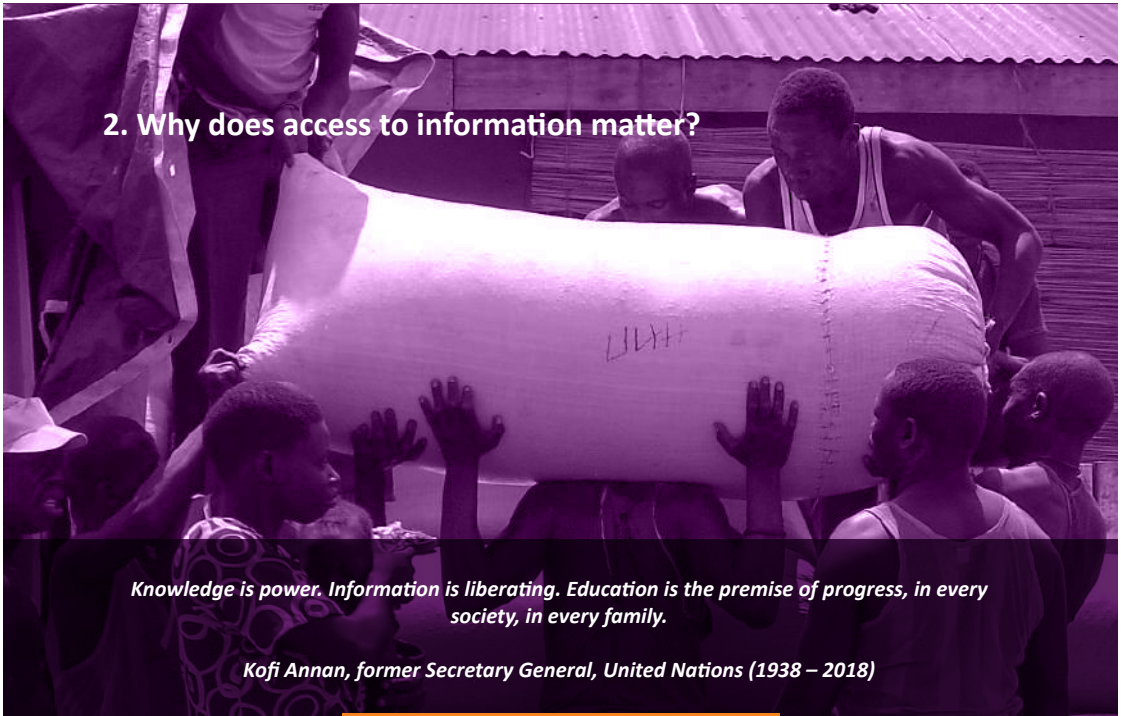
- Ugandan citizens profess to be interested in government-held information, particularly on expenditures on local services
- Seven out of ten citizens (70%) say it is “not easy” to access information on government budgets, laws, and projects
- In 2018, 84% of citizens sought information from a public institution, mainly by physically visiting the institution's offices, although these requests mostly concerned information about services.
- Very few citizens (1%) are aware of the ATI Act and its Regulations
- Citizens strongly support the right of access to information – see chart



This guide unpacks the legal language in the ATI Act and Regulations and explains what these laws mean in practical terms for civil servants. It is designed to be easy to use, with step-by-step guidance on what civil servants should do in particular situations. How should you respond to a request for information? How should you determine whether information is included within the scope of the Act, or exempt? In what form should you provide information? What happens if a citizen is not satisfied with your response? And what other responsibilities does the law give to civil servants?

The relevant sections of the ATI Act and Regulations are listed throughout the guide, so you can refer to these if needed. In cases where extra precision is needed the exact wording of the law is given.

2. Why does access to information matter?



Knowledge is power. Information is liberating. Education is the premise of progress, in every society, in every family.

Kofi Annan, former Secretary General, United Nations (1938 – 2018)

Access to information is important to all citizens as it promotes inclusivity, transparency, accountability and good governance.

We should not forget that government information is public information. When a citizen asks to access government records, he or she is asking to see information that belongs to them as a citizen. They have the right to obtain that information.

International recognition for Access to Information

“Information is a basic human right, and the fundamental foundation for the formation of democratic institutions”

Nelson Mandela

Access to information has been described by the Carter Centre as “the engine for democracy, essential for openness, accountability and good governance.” This is based on the fundamental premise that a government is supposed to serve the people.

Access to Information is an integral part of the fundamental right of freedom of expression, as recognised by Article 19 of the Universal Declaration of Human Rights (1948), which states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions with-out interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”

At regional level, citizens’ right to access information is enshrined in Article 9 of the African Charter on Human and People’s Rights (ACHPR). It states: “Every individual shall have the right to receive information and the right to express and disseminate his/her opinions within the law”.

Why does ATI matter in practice?

Beyond these broad statements recognising the importance of access to information, why does it matter in practice? What difference can it make to government effectiveness and to citizens lives?

The African Commission on Human and Peoples' Rights, on behalf of the African Union, has argued as follows:

"Properly implemented access to information legislation holds the promise of fostering good governance by improving information management, and by enhancing transparency, accountability and greater participation of the populace in public affairs. By exposing corruption, maladministration and mismanagement of resources, increased transparency and accountability is likely to lead to better management of public resources, improvements in the enjoyment of socio-economic rights and to contribute to the eradication of under-development on the continent."

ACHPR (in Preface to Model ATI Act)

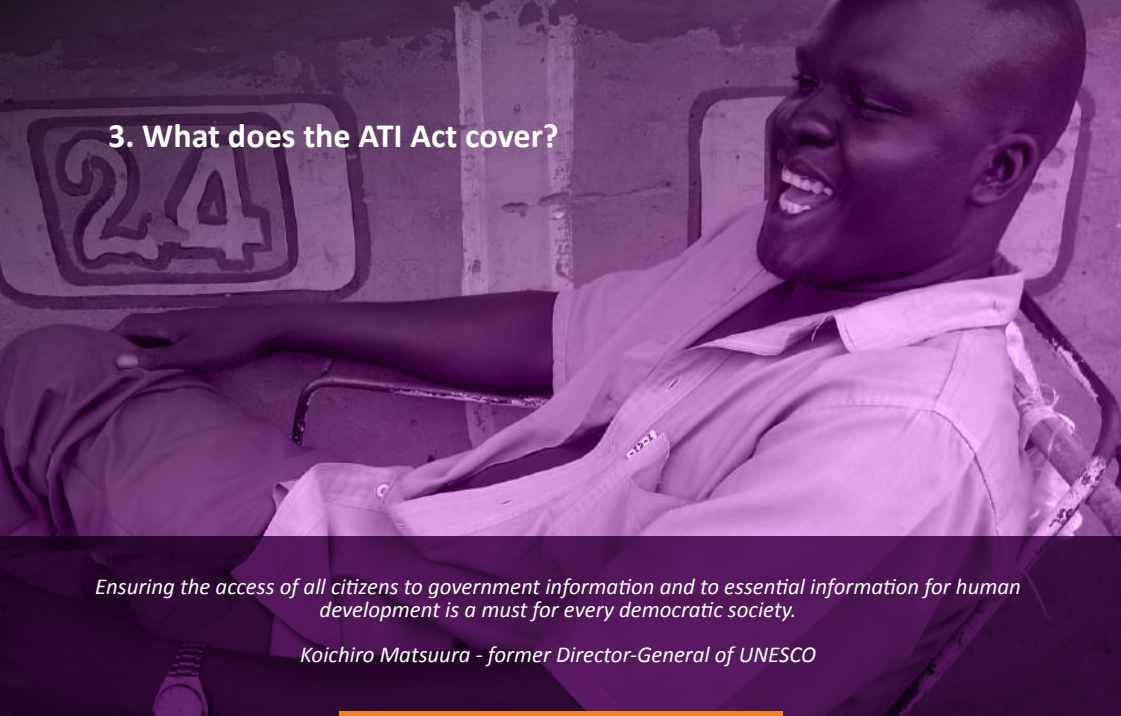


In other words, access to information can deliver some or all of the following:





*“There is the Access to Information Act. Ministries and agencies have no option but to give information to citizens. The Ministry of Information and National Guidance has made it clear through cabinet meetings that each Ministry must come up with a communication strategy”
(Interviews with civil servants, January 2019)**



3. What does the ATI Act cover?

Ensuring the access of all citizens to government information and to essential information for human development is a must for every democratic society.

Koichiro Matsuura - former Director-General of UNESCO

This section explains who is covered by the ATI Act and Regulations – who can request information, and which institutions they can request it from. It also explains what types of information are included – and what is excluded – from the scope of the law. And it explains how users should make their requests and what response they should – according to the law – receive.

Who can request information?

“Every citizen has a right of access to information and records in the possession of the State or any public body”

(ATI Act, Section 5(1))

The Act is very clear that all citizens have the right of access to information held by government bodies. It adds that this right of access is “not affected by (a) any reason the person gives for requesting access, or (b) the information officer’s belief as to what the person’s reasons are for requesting access” (Section 6). In other words, it does not matter why the person requesting information, they have a right to access that information without giving their reasons.

In legal terms, “citizen” includes corporate bodies registered in the country, including companies and NGOs.

Who can they request information from?

Again, the Act is very clear on this question. The same section quoted above (Section 5(1)) says that requests can be made for information held by **any public body**. The Act also states specifically (Section 4) that this includes all government ministries and departments, state-owned companies and local government authorities, as well as other types of government institution.

Within a public body, the primary responsibility for responding to information requests lies with the designated Information Officer, which the Act specifies should be the institution's Chief Executive Officer (Sections 4 and 11). They may delegate the task to other officers, but the final responsibility lies with the CEO.

Some types of information are exempt (see below), but the ATI Act does not give any government institution a blanket exemption.

What information can be requested, and what is exempt?

The Act states that "all information and records" held by public bodies are covered by the Act (Section 2), with certain specified exemptions (see below). It states that this includes information in visual or aural form (photographs, diagrams, videos and audio recordings, etc.) and information in electronic form, as well as written information on paper (Section 4).

However, certain information is exempt from the Act, and should not be given out. This includes :

- **Private information** containing personal details of individual people (Section 26), including individual health records (Section 21). This applies even to somebody who is dead, unless that information is being requested by their next of kin. It does not apply to individuals who work as officials for a public body, and the Act specifically states that information about public officials should be released, including information on job classifications, responsibilities and salary scales (Section 26 (3)(e)).
- **Commercial information** on third parties, including "information relating to any manufacturing process, trade secret, trademark, copyright, patent or formula protected by law" (Section 4), or information supplied in confidence where release of the information would constitute breach of a contractual duty of confidence (Section 28) or would put the third party at a commercial disadvantage (Section 27). However, if the information relates to an environmental or other investigation and its disclosure would reveal a serious public risk, this information should be released (Section 27).
- **Protection of safety** – if disclosure would endanger the life or physical safety of a person or property or would put public safety measures at risk, this information should not be released (Section 29)
- **Information on law enforcement and legal proceedings** should not be released if doing so would deprive someone of their right to a fair trial or would harm a forthcoming prosecution of an alleged offender, or if it contains methods for prevention, investigation or prosecution of crimes (Section 30). Information should not be released if disclosure would prejudice a criminal investigation, reveal a confidential source, or lead to possible intimidation of a witness. (Section 30). And information should not be released if it is protected by attorney-client confidentiality (Section 31).
- **Minutes of cabinet meetings** and cabinet committee meetings (Section 25).
- **Information on defence, security and international relations** should not be released. This includes information supplied in confidence by another State or international organisation, information on military strategy, force capacity or weapons' capability. It also includes diplomatic correspondence with other States or international organisations, or with Uganda's diplomatic missions (Section 32).
- **Information on the operations of public bodies** should not be disclosed if it contains opinions or deliberations on a decision required by law, or if its release would inhibit the decision-making process. This does not apply to records that are more than ten years old (Section 33).

Information that is covered by any of these exemptions should not be released. However, there is a general exception to this: Information must be released if it reveals evidence of lawbreaking or an imminent or serious risk to the public, even if that information is included in the exemptions listed above (Section 34 (a)). Similarly, in a case where the public interest in disclosing the information outweighs the potential harm done by disclosure, that information should be disclosed (Section 34 (b)).

For example, if releasing information would reveal corruption, then it does not matter whether that information is on the exempt list. According to the ATI Act, such information must be released. The same applies to information that would reveal serious mismanagement of public resources, environmental damage, or any other form of serious public risk.

The table below give examples of the types of information that could be requested, whether that information should be released, and why.

Example	Release?	Why?
List of employees in a department	Yes	Not covered by the exemption on privacy of individuals
Annual departmental budget	Yes	Not covered by any exemptions
Tender documents submitted by unsuccessful bidders	No	Covered by exemption on information from third parties
Details of a police investigation on a murder case	No	Covered by exemption on law enforcement proceedings
A report showing pollution caused by a mining company	Yes	Covered by the exception for release in the public interest
Financial statements showing evidence of mismanagement	Yes	Covered by the exception for release in the public interest

How should information be requested

The Regulations include a specific form (Form 1, in Schedule 2) to be used by citizens requesting information. It can be submitted either in paper form or electronically.

This form includes space for all the details required by the Act and Regulations, including:

- The name and address of the person making the request
- Details of the institution from which they are requesting information
- Details of the information they are requesting (the name / type of document, a file number, and/or a description of the contents of the document)
- How they would like to receive the information – to inspect it, photocopy, soft copy, etc.

Using this specific form is not compulsory. If the person requesting information has a good reason to make their request in oral form (such as disability or illiteracy), the regulations specify that the Information Officer has a duty to assist them by putting the request into writing on their behalf. Further, the regulations also state that failure to use the provided form is not sufficient reason to decline a request – provided the details listed above are included in a request, the request should be processed, whether or not the specified form has been used.



"I am a firm believer in a demand-driven approach. That involves citizens actively demanding for information and pushing duty-bearers to be responsive. When I respond to an information request, I feel satisfied that I have helped someone to address their need"

*(Interviews with civil servants, January 2019)**

There are also online tools to simplify the process of making an information request under Uganda's ATI law. The website Ask Your Gov , run in a partnership between civil society and the Ministry of ICT/NG, allows citizens to request information online, and automatically sends those requests by email to the relevant civil servant.

What response should they expect?

The Act specifies that Information Officers must first acknowledge receipt of the request by signing a copy of the request. Then, **within 21 days of receiving a request for information**, they should determine whether or not to grant the request, and inform the person requesting information of their decision.

The next section of this guide explains how the Information Officer should make this decision, and what steps they should take in different circumstances.

4. How should civil servants respond to information requests?

America is the most inventive country in the world because everybody has access to information.

Tom Clancy - American novelist

Responding to requests under the ATI Act is essentially a simple idea: public bodies have 21 days to respond to requests for information – either to decline the request or to provide the information. The Act also recognises, however, that different circumstances require different responses, and lays out how civil servants should respond in each case. This section of the guide explains how civil servants should respond to requests for information in a range of possible situations – if the requested information is exempt, if it is held by a different institution, if it exists in a different form, etc. At the end of the section is a step-by-step diagram summarising the various steps and decisions involved.

Who should respond?

The person ultimately responsible for responding to information requests is the institution's Information Officer – defined by the Act as the Chief Executive Officer of the institution. In practice, they may delegate this responsibility to a different civil servant, either to respond to a specific case or to handle all requests on behalf of the institution.

What should be considered when preparing a response?

Several factors should be considered when responding to ATI requests, including:

- Does this institution hold the information requested? If not, is it likely to be held by a different institution?
- Is the information covered by the terms of the Act, or is it exempt? Or is some of the information included and some exempt?
- If the information is classed as exempt, would it be in the public interest to disclose it anyway?
- Is the information easily accessible, or would it involve a large amount of work to find and compile it?

- Does the information include commercially sensitive information on third parties? This might include contractors or partners in a joint project.
- Are there significant costs involved in retrieving or copying the information?

What if we don't have the information, or we are the wrong institution?

If someone requests information that your institution does not hold, it is clearly impossible for you to disclose that information. There are two possible scenarios here

- **The request has been sent to the wrong institution.** If your institution does not hold the requested information, but another public body will have it, the request should be transferred to them. In such cases, you should inform the person requesting the information (using Form 5, in Schedule 2 of the Regulations), and transfer the request to the correct institution. The Information Officer of the new institution should then acknowledge the transferred request (using Form 6, in Schedule 2), and respond within 21 days. Transferred requests cannot be transferred a second time.
- **No public body holds the information.** If it is clear that no public body holds the information being requested, you should decline the request. The Regulations include a form (Form 7, in Schedule 2) for this purpose.

What if the information is exempt? Or part of it is exempt?

If the information being requested is on the list of exemptions (see pages 5-6), the information should not be disclosed. In such a case the Regulations provide a format for responding to the person requesting the information to inform them that you will not be disclosing the information, and to explain why.

However, there are two situations where slightly different responses are needed:

- **Severability:** If some of the information requested is exempt but other parts are not exempt, the Act states that every part of the information requested that does not contain exempt information should be disclosed (Section 19).
- **Mandatory disclosure in the public interest:** If the information is on the exemptions list, but it contains evidence of lawbreaking or an imminent or serious risk to the public, that information should be disclosed, even if it is on the list of exemptions. Specifically, any information that contains evidence of either “a substantial contravention of, or failure to comply with the law” or “an imminent or serious public safety, public health or environmental risk” must be disclosed (Section 34). For example, the information might contain evidence of corruption or environmental damage – this should be disclosed.

What if we can't compile the information as it has been requested? Or if it is hard to find?

The Act (in Section 17) recognises that finding and compiling information as requested is not always a simple task. It may be that the information is held across a large number of different files, for example, or in a different location altogether. In such cases, the Act allows Information Officers to extend the 21-day response period by an additional 21 days, to give civil servants more time to find and compile the information.

Specifically, the Act mentions two circumstances under which this extension is permitted:

- the request is for a large number of records or requires a search through a large number of records and compliance with the original 21-day period would unreasonably interfere with the activities of the public body, or
- the request requires a search for records in, or collection of the records from, an office of the public body not situated in the same city, town or location as the office of the information officer that cannot reasonably be completed within the original period

In either case, the response is the same: a 21-day extension. You should inform the requester of the extension and explain why it is necessary (using Form 11, in Schedule 2 of the Regulations), and the request should be processed within the extended period. A further extension beyond 42 days from the date of the original requested is not permitted.

What if there are third parties involved?

The Act (in Sections 27 and 35) explains what to do in cases where the information requested includes commercially sensitive information on third parties like contractors or other businesses. In particular, this includes information that, if disclosed, would put a third-party at a commercial disadvantage.

First, it is possible that this information falls under the list of exemptions. If so, there is no need to contact the third party, and the information need not be disclosed.

However, the Act states that even exempt information should be disclosed if it contains evidence of lawbreaking or evidence of serious or imminent public harm (Section 34, Disclosure in the Public Interest). In such cases, you should notify the third party of your intention to release the information and give them 21 days to make representations (using Form 12, Schedule 2 of the Regulations). If they consent to the disclosure, or if they do not respond within 21 days, you should go ahead with the disclosure.

If, on the other hand, they do not consent to the disclosure, they should make their representations (using Form 14, in Schedule 2). It is then up to the Information Officer to decide whether the public interest rule applies – does the information contain evidence of lawbreaking or an imminent or serious risk to the public? If so, the information should be disclosed, even if the third party objects. If not, the information should not be disclosed. Either way, the third party should be notified accordingly (using Form 15, in Schedule 2), and the requester should be notified of the decision to disclose (using Form 9) or not to disclose (using Form 10).





Interviews with civil servants* in January 2019, found that:
Almost all interviewed civil servants agree that citizen participation enhances accountable governance.
The majority of interviewed civil servants disagree that decision-making should be left to government alone.
Almost all interviewed civil servants agree that annual district budgets and plans should be available online



Should we charge fees or costs for an information request?

The Act and Regulations mention two types of payment that can apply to information requests in certain circumstances – fees and costs.

- **Fees:** No fees should apply for information requests where the information is likely to benefit large sections of the public (Regulations, Section 7(3)). On the other hand, if the information being requested relates to a single individual (such as a copy of official records of their own land holdings), a fee of UGX 20,000 should be charged for the request. In such cases, the fee should be paid at the time of submitting the request, and is non-refundable. An acknowledgement slip (Form 2, in Schedule 2) should be given to the requester, to confirm receipt of the fee.
- **Costs:** Where retrieving and copying information involves costs, these should be paid by the person requesting the information (Regulations, Section 10). Specifically, this includes a charge of UGX 100 per A4 page for photocopying costs (and larger amounts for copying Braille or large sizes of paper – see Schedule 3 of the Regulations for specific amounts). At the time of notifying a requester that you intend to disclose the information, you should inform them of any costs that will be charged.

When and how should I provide the information?

In most cases, information should be disclosed to the person who requested it within 21 days of a request being received. If the information is hard to access, or involves a third party, this period can be extended to 42 days.

If this time passes without disclosing the information to the person who requested it, under the Act this is deemed to be a refusal (Section 18). In such a case, the person who made the request can make an appeal to the Chief Magistrate (see Section 4 of this guide).

Once a decision to disclose the information has been reached, and the person who requested it has been notified, the information should be disclosed to them as soon as possible. If any fees or costs are to be charged, the information should be disclosed as soon as they have paid the required amount (ATI Act, Section 20(1)).

Information should be disclosed in the format specified by the person who made the request, so far as this is possible. For example, if they requested a soft copy of a report on a USB stick, this is the format in which it should be provided. Or, if they requested a photocopy of a particular document, this request should be complied with. But if the requested format is impossible or impractical to provide, the information should be disclosed in whatever format is most practical. (Section 20 of the Act, Sections 6 and 11 of the Regulations).



Step-by-step guide for responding to ATI requests:

1. Acknowledge the request

- Sign a copy of the request and give it to the requester
- The 21-day limit for responding starts on the day the request is received

2. Is the request clear about what information is being requested?

- If yes, proceed to step 3
- If no, contact the requester and ask that they provide further details

3. Does our institution hold the information being requested?

- If yes, proceed to step 4
- If no, but some other public body is likely to hold the information, transfer the request to them (Form 5) and inform the requester
- If no other body is likely to hold it, decline the request (Form 10)

4. Is the information being requested exempt from the Act? (See pages 5-6)

- If no, proceed to step 5
- If some, but not all the information is exempt, proceed to step 5 for the part of the information that is not exempt
- For any information that is exempt, if it would be in the public interest to disclose the information, proceed to step 5
- For any information that is exempt and where it is not in the public interest to disclose the information, decline the request (Form 10)

5. Is the information hard to access or compile?

- If no, proceed to step 6
- If yes, extend the response period by a further 21 days, and inform the person requesting the information (Form 11)

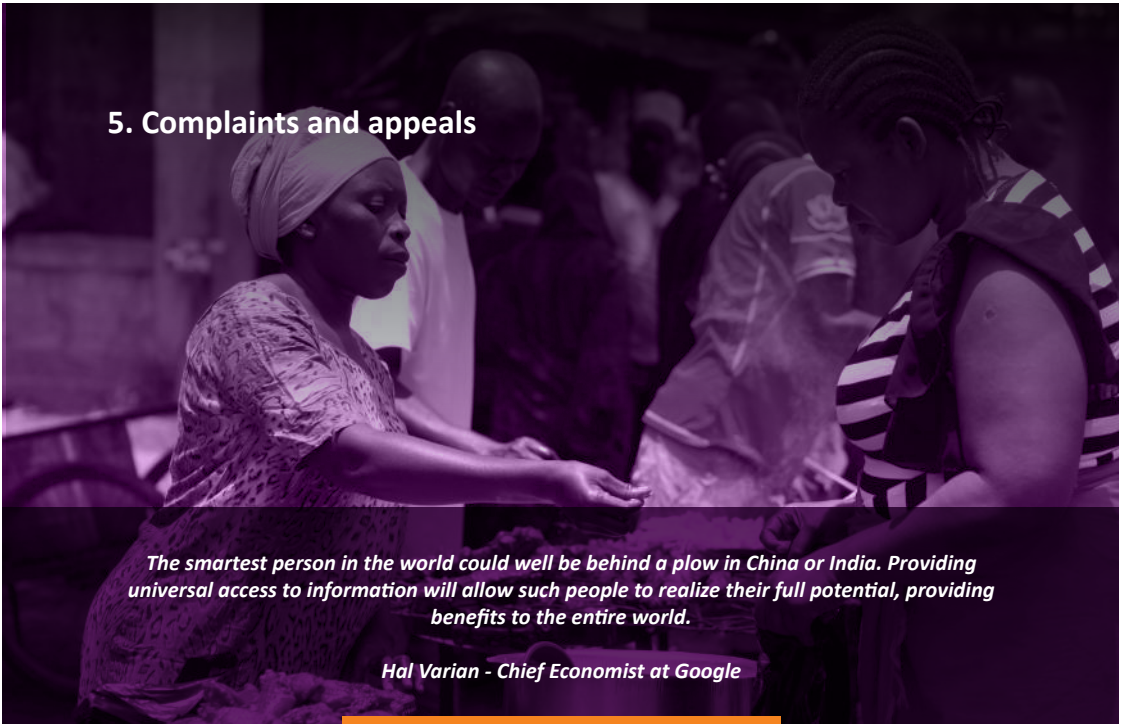
6. Does the request include commercially sensitive information on a third party?

- If no, proceed to step 7
- If yes, issue a notice to that third party informing them of your intention to disclose the information (Form 12), extend the response period by 21 days and inform the person requesting (Form 11)
- If they consent (or do not respond within 21 days) proceed to step 7
- If the third party argues against disclosure, consider whether the case falls within the public interest rule – if not, proceed to step 7

7. Release the information

- Inform the requester of your decision (Form 9) and any costs (see above)
- Gather the requested information in the format requested
- RELEASE THE INFORMATION!

5. Complaints and appeals



The smartest person in the world could well be behind a plow in China or India. Providing universal access to information will allow such people to realize their full potential, providing benefits to the entire world.

Hal Varian - Chief Economist at Google

If an Information Officer makes a decision that the person requesting information does not agree with, that person can appeal the decision. This section of the guide explains how these processes are laid down in the ATI Act (Section 16 (2) (c) and Sections 37-42).

Two appeal routes

There are two options for an appeal: an internal appeal to the public body itself, and a court appeal. When informing someone who requested information of a decision not to disclose the information, an Information Officer should inform them of these options. The person who made the request can decide to take either route.

Internal appeals

If a person requesting information is not satisfied with the response of the Information Officer, they can request an internal review of the decision by the public body in question (Section 16 (2) (c)).

The Act does not specify how such internal appeals should be handled by public bodies, but good practice would be for a different senior officer to hear representations from both the person requesting information and from the Information Officer. They should also take legal advice on whether the information should be disclosed, before making a decision.

What decisions can be appealed to the court?

Three types of decisions made by Information Officers can be appealed under the Act:

- A decision not to disclose the information requested, or a failure to disclose information within the 21-day time limit
- A decision to extend the response period from 21 to 42 days
- A decision to provide the information in a format other than the format specified by the person requesting information

How can these decisions be appealed

Any person can appeal against a decision by an Information Officer by lodging a complaint with the Chief Magistrate. The Court will then hold a hearing. The hearings are considered civil proceedings, and normal rules of evidence for such proceedings apply. The burden of proof lies with the Information Officer, who must establish that their decision complies with the ATI Act. The court may hold hearings in camera (in private) and/or ex parte (without the presence of the parties involved), and may prevent publication of information relating to the case. It may also examine any publicly-held information that relates to the information request, but may not disclose that information to anyone.

At the end of the hearing, the court may reach a decision to require disclosure of the information requested, or to prevent disclosure, and may specify the time period in which this instruction should be implemented. The court may also make orders for compensation and costs.

Can the decision of the Chief Magistrate be appealed?

The decision of the Chief Magistrate can be appealed by either party if they are not satisfied with the decision, by appeal to the High Court within 21 days of the Magistrate's decision. For example, if the Magistrate directs that information should not be disclosed, the person who requested it can appeal. Similarly, a decision in favour of disclosure can be appealed.



6. What other responsibilities does the law give to public bodies?

People must have access to information for informed debate. Government institutions must treat citizens fairly, and with dignity, while responding to their needs.

Atifete Jahjaga - Former President of Kosovo

Besides responding to ATI requests, the ATI Act gives public bodies a number of other responsibilities. These relate to record keeping, annual reports, and protection for whistle-blowers, among other things. This section of the guide outlines these additional responsibilities

Manual of functions and records

The Act (Section 7) requires that every public body must compile a manual of functions and records. This should be updated and published at least once in every two years, and must include the following information:

- A description of the public body and its functions
- The postal and street address, phone and fax number and email address of the Information Officer and of every Deputy Information Officer
- The address of the established office of the public body at which the public may make requests and obtain information
- Details of procedures for making a request for access to information
- Details of the information held by the body, including categories of records
- A description of the services available to members of the public from the body and how to gain access to those services

Automatic availability of certain records

publish a description of the categories of information held by the public body that are automatically available without a person having to request access under this Act (ATI Act, Section 8). For example, a procurement authority may automatically publish details of tenders announced and awarded, or a Ministry may publish annual data on its performance.

This publication should include details of how to access this information.

The Act does not specify that this requirement should be fulfilled by publishing the categories of automatically-available information in the Manual of Function and Records (see above), but it would be good practice to do so.



"The Government Communication Forum (GCOF) in the Ministry of ICT brings together all MDAs on how to disseminate government information. Under the law, the Permanent Secretary of ICT is the Chief Government Communications Officer. The Uganda Media Centre, which is under the Ministry ICT, also plays an important role in communicating government-related information to the citizenry".

*(Interviews with civil servants, January 2019)**

Record keeping

The requirements to disclose some information proactively and to respond to information requests promptly both demand a high standard of record keeping from public bodies. Information that is well organised and accessible to staff will be much easier to find and disclose in line with the requirements of the Act.

This may mean public bodies need to upgrade their record keeping equipment and practices. They may also need to train record management staff on the obligations under the ATI Act.

Protecting requested information

The ATI Act makes certain provisions about the preservation of records. In particular, Information Officers must ensure that any information that has been requested is safely preserved until either the request has been met or it has been declined and all possible appeals processes are concluded (Section 22).

The Act makes it a criminal offence to destroy, damage, alter, conceal or falsify a record with intent to deny a right of access under the Act (Section 46). This offence is punishable by a fine of up to UGX 4.8 million or imprisonment for up to three years.



Protections for civil servants

The Act provides two important protections for civil servants:

- **Protection for whistle-blowers:** Nobody can be penalised through the law, administrative or employment-related measures for releasing information on wrongdoing or information on a serious threat to health, safety or the environment. This includes information on corruption, criminal offences, failure to comply with legal obligations, and maladministration. This protection applies so long as the whistle-blower believes the information is true and contains evidence of wrongdoing or a serious threat to the public (Section 44).
- **Acting in good faith:** No Information Officer or other public officer can face criminal or civil charges for anything they do (or do not do) in carrying out their duties under the ATI Act, so long as they have acted fairly and honestly (“in good faith”) (Section 45).

Annual report to parliament

The Act requires each Minister to submit an annual report to Parliament on requests for access to information made to public bodies under his or her ministry in the previous year. This should indicate whether access was given or not, and if access was not given it should explain why. The Act specifies that this annual report can be included as part of the annual policy statement of the Ministry (Section 43).

A template for the structure and contents of this annual report has been developed by the African Freedom of Information Centre (AFIC) and the Ministry of ICT and National Guidance, and is included as an annex to this guide.

Where a Ministry supervises other government agencies, such agencies should themselves compile an annual report on information requests. This will ensure the Ministry has all the information it needs in order to prepare its report to Parliament.

The obligation to prepare these annual reports implies that public bodies must compile accurate statistics on information requests.





Annex 1 – Template for Annual Report

Annual Report to Parliament – ATI Act 2005

Entity:

Financial Year:

1. Introduction

- 1.1. Mandate of the Entity
- 1.2. Access to information legal framework
- 1.3. Delegation Orders

2. Statistical report for requests during the reporting period

- 2.1. Requests under the Access to Information Act
 - 2.1.1. Number of requests received
 - 2.1.2. Sources of requests
 - 2.1.3. Informal requests (AskYourGov, Email, Social media)
- 2.2. Action taken in response to requests
 - 2.2.1. Request released
 - 2.2.2. Exemptions
 - 2.2.3. Refusals
 - 2.2.4. Transferred
 - 2.2.5. Disposition and completion time
- 2.3. Extensions
 - 2.3.1. Reasons for extensions and disposition of requests
 - 2.3.2. Lengths of extensions
- 2.4. Complaints and appeals
 - 2.4.1. Number of complaints received
 - 2.4.2. Number of appeals filed in court
 - 2.4.3. Court action

3. Miscellaneous

- 3.1. Overview of access to information performance
- 3.2. Education and training for Information Officers
- 3.3. Significant changes impacting the access to information implementation

4. Conclusion

