

Council of Ministers

Law No. (12) of the year 2020

Regarding the Right to Access Information

- Having reviewed the Constitution; and;
- The Law No. (16) of 1960, Issuing and the Criminal Law and Amending Laws thereof, and;
- The Law No. (17) of 1960, Issuing the Code of Procedures and Criminal Prosecution and Amending Laws thereof,
- The National Assembly has approved the following law, which we have endorsed and enacted.

Chapter I

Definitions

Article (1)

In application of the provisions of this Law, the following terms shall have the meanings set out for each term hereunder:

- The Entity / Entities : ministries, authorities and public institutions and other public legal persons and Kuwaiti companies to which the state or one of the aforementioned Entities contributes more than 50% of their capital and private companies and institutions which maintain information and documents on behalf of these Entities.
- The Competent Employee: the employee designated by the Entity to receive, consider and respond to requests for information.
- Information: statement, testification, knowledge or the content that is related to a topic. The information is either written, drawn, readable, audible, visible, or any other means.
- The Person: any natural or legal person who has interest in obtaining information from an Entity.

Chapter II

Access to Information

Article (2)

Every Person has the right to access and obtain information held by public Entities, in a manner consistent with this Law and legislations in place. In addition, the Person has the right to access administrative decisions that affect his rights and to know information contained in any document relates to him.

Article (3)

The Entities shall facilitate people's access to information and ensure its disclosure in the time and the manner stipulated in this Law. They shall designate one or more competent employees to consider requests for information, who must have sufficient experience and know-how, and grant him the necessary authority to search and have access to the requested information and provide it to whom it is requested by.

Article (4)

Each Entity shall organize, categorize and index information at its disposal according to the established professional and technical principles and classify what must be considered confidential and protected according to the law, within two years from the effective date of this Law.

Chapter III

Disclosure of the Entity

Article (5)

The Entities shall be committed to publish on their website within three years from the effective date of this Law, a manual that contains lists of the information available for disclosure, in particular the following:

1. Laws, systems, regulations and decisions under which they operate, and public policies that affect individuals, and the established procedure in decision-making, including channels of supervision and accountability.
2. The organizational structure, terms of reference, functions and duties, as well as policies and organizational documents.

3. A manual for the names of heads of Entities and holders of leadership positions and the like, their powers, duties and the mechanism for communication with them.
4. Information about programs, projects, works of the Entity, and procedures by which individuals can identify them, including performance and quality indicators, procurement and tenders.
5. Introduce a feature on the website for the participation of individuals with their opinions and complaints in relation to the works of the Entity and the response mechanism.
6. A simplified manual about the submission of requests for information and any data related to the employees responsible for information.
7. Services and rights to use provided to the public, any general support programs and the list of users and accessibility requirements.
8. Announcing public jobs vacancies, terms and conditions of appointment, names and results of tests and personal interviews for those accepted.
9. Locations of used radioactive toxic materials, hazardous waste, its nature, elements, quantity of emissions from manufacturing and actions taken to minimize the resulting damages, if any.
10. To determine the locations of mines left from wars and indicating instructions, if any.

Any other information the Entity believes to be essential for dissemination.

This manual shall be updated whenever the need arises .

Chapter IV

Request for Information

Article (6)

Request for information is submitted in writing to the Entity that holds the information by filling in the appropriate form, accompanied by data and documents as specified by the executive bylaws.

Article (7)

The Competent Employee shall, upon receiving the request, give the applicant a note indicating the number of the request, date of submission, category of requested information and the required time for response,

Article (8)

The Competent Employee shall, upon presentation to the head of the Entity or whoever he authorizes, respond to the applicant within ten working days from the date of receiving the request. This period of time may be extended for a similar period or longer if the request includes a lot of information, or the access to the information requires consultation with another Entity, and notify the requesting Person of that. The total extension periods shall not, in any case, exceed three months.

Article (9)

The Competent Employee shall, upon approval of the request, enable the concerned Person to access his own information and give him a copy of the relevant documents upon request after payment of the fees specified by the executive bylaws.

Article (10)

If the request contains more than one piece of information, and some of it falls within the scope of the privacy protection specified in this Law, the Entity shall segmentalize the request whenever possible, otherwise it shall be rejected.

Article (11)

The Competent Employee shall, notify the concerned Person of the rejection of his request, and reasons for rejection.

Chapter V

Protection of Information

Article (12)

The Entity is prohibited from disclosing the information in the following cases:

1. If the disclosure affects the national security or the public security, or the defense capabilities, and includes:
 - Weapons, tactics, strategies, forces and military operations.
 - The intelligence information related to the turning down of acts of aggression and crimes against internal and external state security.
 - International telecommunications and correspondence related to the defense affairs, military alliances and strategic interests of the country.
2. If confidentiality was established as per the constitution, law, or a decision by the council of ministers- upon the presentation of the concerned minister - considering its papers confidential and for the period specified by the council of ministers.
3. If that results in influencing the course of justice or causes damage to others.
4. If information is related to a private or a medical life, personal status, accounts and bank transfers, unless the person of capacity agrees to the disclosure.
5. If the information includes a commercial secret and its dissemination weakens a commercial or financial interest of the concerned persons.
6. If the information has reached the state through another state or an international organization and its dissemination would harm relations with that state or organization.
7. If the disclosure of the information poses a serious and grave danger and affects the state economy, the public confidence, the currency, the public health, or the environment.
8. If the disclosure causes a risk to an individual's life, health, or safety.
9. If confidentiality is established by a decision of the competent court, public prosecution, or the general directorate of investigation.
10. Information on family disputes, juvenile cases and ongoing investigations in criminal cases.

Article (13)

In all cases of rejection of requests, or not responding, the requesting Person has the right to file a complaint with the Entity, which has to respond within sixty days. The rejection of the complaint shall be made through a letter stating the reasons for the rejection. Failure to respond shall be considered a rejection of the complaint. The executive bylaws regulates complaints procedures and decides upon it. No litigation procedures shall be taken before a complaint is decided.

Chapter VI Penalties Article (14)

The penalty shall be imprisonment for a term not exceeding two years and a fine not exceeding three thousand Dinars or by one of these two penalties:

1. Any Competent Employee who failed to provide information to the applicant without any legal justification.
2. Any Competent Employee who gave incorrect information to the applicant.
3. Whoever intentionally damaged papers or documents of information.
4. Whoever infringed the confidentiality of the information established by this Law or any other law.

Article (15)

The public prosecution is the sole competent authority to investigate, process and prosecute all of the crimes set forth in this Law.

Chapter VII Final Provisions Article (16)

The executive bylaws of this Law is issued by a decision of the Minister of Justice within six months of its date of publication.

Article (17)

The Prime Minister and the ministers shall, each within his jurisdiction, implement this Law and act upon it, six months after its date of publication in the Official Gazette.

Deputy Amir of Kuwait
Nawaf Al-Ahmad Al Jaber Al-Sabah

**Issued at Al- Seif Palace on the 12th of Muharram 1442 H,
corresponding to the 31st of August 2020.**

Explanatory Note
Law No. (12) of the year 2020
Regarding the Right to Access Information

In the light of the international treaties signed by the State of Kuwait, which entered into force and became a part of its legislation, including the United Nations Convention against Corruption, and after the promulgation of law No. 2 of 2016 establishing the Anti-corruption Authority and the provisions for the disclosure of assets and liabilities and in view of the importance of free circulation of information and the right to access and obtain information in various fields, establishing the principle of transparency and integrity in economic and administrative transactions to ensure the rational management and optimal use of State funds, resources and property in order to achieve the primary objective of the Anti-Corruption Authority, it was suggested to work on the promulgation of a law that regulates this right.

The bill consists of seven chapters, in 17 articles. Chapter I dealt with a full legal definition of the terms contained therein. Chapter II established the right of everyone to access information held by public entities and bound those entities to facilitate access to information at the time and the manner specified by the Law. It required also each Entity to appoint one or more Competent Employees to consider requests for information with the necessary powers to enable them to access it, and organize, categorize and index information and documents according to professional and technical principles and classify what must be considered confidential within two years from the effective date of this Law. Chapter III regulates the disclosure of the Entity by publishing a manual on its website within (3) years from the effective date of this Law, containing lists of information available as prescribed by the law, including laws, systems, regulations and decisions under which they operate, and public policies that affect individuals, and how to make decisions, supervision channels and accountability, its organizational structure, including terms of reference and duties, a manual for the names of leaders and how to communicate with them, services and access rights provided to the public, and a list of users of their programs, and information related to projects and works of the Entity.

Chapter IV clarified the procedures for the submission of requests for information and referred the determination of the application form to the executive bylaws, the required data and documents and specified the dates for the response, and the procedures to be followed when approving the request for information. It permitted sharing a copy of the relevant documents to the applicant upon having paid the due fees specified by the executive bylaws. Upon the rejection of the application, the Competent Employee shall notify, in writing, the applicant of the reasons for the rejection. Chapter V then set out the provisions for the protection of information that shall not be disclosed due to public interest considerations, including security considerations, interference with private life, or compromising justice. The bill guaranteed to the Person the right to appeal the decision rejecting his request for information in accordance with the procedures established by the executive bylaws. Chapter VI defined crimes and penalties, and the Entity responsible for investigation, processing and prosecution, namely the Public Prosecutor's Office. Chapter VII dealt with the issuance of the executive bylaws within six months from the date of the promulgation of the law, which shall enter into force six months from the date of publication in the Official Gazette to allow for the completion of the necessary procedures before the Law takes effect.