



## **Illuminating the Nigeria's Freedom of Information Act's Quest for Good Governance: The Inhibitions and Benefits**

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### **Abstract**

Because Nigeria is a country with high untapped potentials, lack of access to information created hindrances to international co-operations, national and regional development as well as adverse corollaries within the Nigerian society. This is compounded by the challenges emanating from corruption, conflicts as well as other societal ills. The perceived or actual lack of access to information for the citizenry has several implications, which, amongst others, led to outcomes like human rights violations, political instability, poverty, and unemployment. This paper is aimed at examining the Freedom of Information Act, 2011 in Nigeria; the benefits and why Nigeria's FoI Act failed to actualize its set objectives of giving citizens access to public information. The main argument of the paper is that FoI Act could serve as a framework for the empowerment of Nigerians by institutionalizing transparency and accountability as pillars of governance in Nigeria. To achieve this objective, the paper adopted the doctrinal research method. In drawing its conclusion, the paper argued that although the FoI Act has the potentials to strengthen the country's democracy, there are still formidable challenges to the full implementation of the legislation on the right to information. These challenges including the absence of a supervisory agency of government, were identified and discussed in order to provide the required direction for the implementation of the Act. The study posits that it is only when these challenges are addressed or surmounted, that the FoI Act could be said to possess the potency to deepen democratic governance in Nigeria.

*Keywords: illuminating, Freedom of Information Act, good governance, inhibitions, benefits.*

### **1.0 Introduction**

On Saturday, May 31, 2011, Nigeria's leader, President Goodluck Jonathan, signed into law, the Freedom of Information Act as passed by the National Assembly. For many people in many countries, the idea of a democratic practice that holds the state accountable by actively keeping the citizenry well informed is intuitively attractive. Indeed, it is sometimes argued that the presence of functional FoI mechanisms is fundamental to freedom and democracy, and that FoI promotes and stimulates popular participation in the political process. This may be true to some degree in some places. However, it is important to recognize that in countries with relatively short democratic traditions, FoI is at least as important for the safeguards it provides in 'discouraging arbitrary state action and protecting the basic rights to due process and equal protection of the law'.<sup>1</sup> It is also vitally important as one weapon in the armory of civil society in fighting corruption, promoting transparency, and resisting the politics of patronage. Right to freedom of information has come to be accepted globally as a right that is closely related but distinct from freedom of expression.<sup>2</sup>

Freedom of Information legislation comprises laws that guarantee access to data held by the State. It establishes a "right to know" legal process by which requests may be made for government-held information, to be received freely or at minimal cost barring standard exceptions. In many countries, there are constitutional guarantees for the right to access to information, but usually, these guarantees, as in the case of Nigeria, are not with the required provisions to engender unfettered access to information. A basic principle behind most freedom of information legislation is that the "Burden of proof" falls on the body that asked for it. Freedom of Information guarantees the right of an unhindered access to public

information including information held by all Federal Government branches and agencies, as well as private institutions in which any Federal, State or Local government has controlling interest and those private institutions performing public functions.<sup>3</sup>

## **2.0 Summary of the Freedom of Information Act 2011**

Section 1 of the FoI Act stipulates that by virtue of the law, every citizen of Nigeria is entitled to have access to any records under the “custody” of the government or public institution, provided that the person applies to have access to the information. The section goes further to indicate that the citizen requesting the information does not need to indicate any specific interest to the information being applied for. It also provides that a person who is entitled to access information according to the law but is denied such information has the legal right to institute legal proceedings in order to have the Court compel the public institution holding the information to comply with the provisions of the Act regarding access to records.<sup>4</sup>

Request for access to records falls under section 3 of the FoI Act. It stipulates that any application for access to records shall preferably be made in writing by the person who seeks to have access to records. However, person(s) who, due to one reason or the other, cannot put their request in writing are permitted to make oral applications. According to Section 3 (4), it is the duty of an authorized official of the public institution concerned to put such oral application into writing. Also, the FoIA provides that within seven (7) working days after an applicant meets the required criteria of application, the public institution concerned is expected to forward the required information to the applicant.<sup>5</sup>

In section 10, the FoI Act states that it amounts to a criminal offence which is “punishable on conviction by the court with a minimum of 1 year imprisonment for any officer or the head of any government or public institution who intentionally destroys, alters or doctors any records kept in his/her custody before they are released to any person or group of people applying for it”. Section 11 is dedicated to the issue of the *grounds* on which an application for information may be denied by a government institution, for the so called very important issues of international affairs and defence.

In section 12 (1), the Act delineates some of the important records that government agencies or any public institutions may refuse to disclose, which includes information that will: interfere with the work of a law enforcement agency and its investigations; interfere with ongoing administrative proceedings of a government or public institution including criminal investigation; contribute to the possibility of depriving a person of fair trial; if compliance will amount to the disclosure of a confidential source. Section 20 empowers an applicant who was denied access to information to apply for a Court review of the matter.

Section 29 (1) of the FoI Act requires that each public institution in Nigeria submit an annual report of the numbers of applications denied, appeals made, Court decisions on such denials, number of “applications for information pending before the institution as of October 31 of the preceding year”, number of applications received and proceeded, the median number of days it took to process such request/application, the total amount of fees collected within the time under review and the number of staff the public institution assigned to the processing of the application to the Attorney-General of the Federation on or before February 1 of each year. This section explicitly empowers the Attorney-General of Nigeria to ensure the full implementation of the law. The Attorney General is also empowered to take certain actions that will promote freedom of information in the federation.

## **2.1 Benefits of the Freedom of Information Act, 2011**

The benefits of the freedom of information law in Nigeria are highlighted under the following headings:

### ***2.1.1 Democracy and Good Governance***

The Freedom of Information Act of 2011 is crucial to the consolidation of democracy and good administration in Nigeria, as information is critical to the operation of a healthy democracy and citizens must be updated or abreast with information pertaining to government’s business. The existence of an

informed people capable of intelligently choosing and holding accountable its representatives is an underlying pillar of a democratic state. Scholars agree that a country that allows access to government-held information, will have a more solid democracy, because the Freedom of Information Act promotes the creation of a diverse society in which diversity in philosophy, belief, and orientation are valued as vital components of democracy. Citizens would be encouraged to make educated contributions on how they are governed and how their common wealth of resources may be shared equitably, if they had access to government information. This is expected to help eliminate the perennial friction and mutual suspicion, as well as, the ongoing cries of marginalization by various sections of the country, by providing everyone with a sense of belonging and ensuring that government facilities, programs, and assets belong to everyone and are better protected and appreciated. In order to remove the clog against access to information, which scholars believe hampers good governance and democracy, section 1<sup>6</sup> provides that:

*“notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established”.*

Given the above position of law and the fact that the section endows to the Nigerian citizens the right to access to information, which includes government-held information, scholars believe that the FoI Act would encourage accountability and good governance, obliterate secrecy, which has been taunted to be the enabler and the basis of corruption, power abuse, financial maladministration and malfeasance in government. It also would help expose corrupt officials and prevent them from manipulating figures already known to everyone.

A good example of the above can be deduced or found from the General Ibrahim Babangida military administration annulment of the June 1993 Presidential elections; deemed to be the fairest and most credible election in the country, ostensibly on ‘faulty’ intelligence report (flimsy excuses) bandied about by the then President, General Ibrahim Babangida, which Nigerians could not have access to. The Freedom of Information Act would act as a deterrent to such an incidence occurring again in the country.<sup>7</sup> Thus, a well-implemented FoI Act, has the potential to make Nigerian elections more legitimate, and fair, with political opponents respecting the preferences and decisions of the electorates. The FoI Act could play this critical role by ensuring that citizens are better informed about the people they are electing and their activities, while Nigerian voters will rely less on lies and falsehood by politicians, political deception by governments, and may be less inclined to vote based on primordial sentiments and affiliations, which is a prevalent political culture in Nigeria. In other words, a successful FoI law will make Nigerian elections more relevant and vital as a tool for democratic consolidation. The democratic tradition is built on the concept of an informed constituency that can thoughtfully pick its representatives based on the strength of their antecedents and records, and that can hold the Nigerian government accountable for the policies and choices it promulgates.

It is pertinent to buttress that the fundamental essence of democracy entails accountability and openness, free press presence and other democratic controls. It is now well known that Nigerian media has effectively exposed corruption at top levels and remained resolute despite several attacks, intimidation, blackmail, and ill-feelings in some quarters. This dexterity shown by the media has earned the media the trust of Nigerians, who now are more comfortable with information from the media than information from the opposition politicians, whose information is typically one-sided, and aimed at helping them to advance narration capable of misleading citizens and the authorities. Given the above and the fact that scholars agree that unrestricted access to information by the media is in the best interests of Nigerians; it will make the media stronger and armed it with the requisite impetus to muckrake information bothering on corrupt practices in Nigeria, and by extension, strengthen and amplify the use of investigative journalism, which is believed to have the potency to instill fear, discourage corruption, and limit disproportionate tendencies of institutions and officials to vices.

The Freedom of Information Act has provided the media with the latitude and leverage to access information hitherto held, ostensibly, under the Official Secret Act. The FoI Act provides in Section 28<sup>8</sup> that the fact that any information in the custody of a public institution is kept by that institution under security classification or is classified document within the meaning of the Official Secrets Act does not preclude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this Act, but in every case the public institution to which the application is made shall decide whether such information is of a type referred to in Sections 11,12,14,15,16,17,19,20 or 21 of this Act.

This is aside the fact that Section 2<sup>9</sup> has endowed it with the requisite right to access to information. For emphasis, the section is hereby replicated seriatim: Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established.

### **2.1.2 Economic Prosperity**

Many Nigerian companies are inextricably linked to the acts of the government. The Nigerian private sector is still strongly reliant on public-sector transactions to a considerable extent. Restrictions on access to government information on inflation rates, GDP growth, and other statistical financial data will almost certainly lead to large-scale miscalculation and mis-investment by entrepreneurs. As a result, the Freedom of Information Act would level the playing field for both industries. It would contribute significantly to boosting economic confidence and drawing increasing inflows of direct foreign and domestic investments into the country.<sup>10</sup>

Where the information about crude oil production, transport costs and true state of refineries in Nigeria are known only by oil companies, NNPC and other high government officials, a citizen without such information cannot calculate correctly the actual price of one liter of refined petrol. In the lack of real information, when faced with decision making difficulties, it is at best possible to make false and expensive assumptions. For example, it does not appear to be feasible and helpful to a businessman, if the right and relevant demographic data needed for proper business-planning are buried within government records. Importantly too, where data indicating the number of adolescents or youths' patronisation or reactions to government's policy directed at that age brackets is fettered. Scholars argued to the effect that a Freedom of Information Act regime would have been able expose and muckrake intrincating information on the US\$16 billion power projects contract awarded by the regime of President Olusegun Obasanjo; and that Nigerians would have leveraged on Section 1 of the Act <sup>11</sup>, which provides thus: "Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established". And Section 2 (2)<sup>12</sup> which amplified the right to public held information in the following words:

*"A public institution shall ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information".*

### **2.1.3 Freedom of the Press**

The press is commonly known as the fourth estate of the realm, with the three arms of government - Executive, Legislature, and Judiciary, as the first to the third realm. Section 22 of the Constitution<sup>13</sup> provides that the mass media (press) shall hold government accountable to the people. This extends to the press the right to serve as the watchdog of the Nigerian society -A function the press cannot perform creditably without leveraging on the provisions of the Freedom of Information Act, particularly, Sections 1, 2, and 28<sup>14</sup> which provide thus: Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established. Section 2 provides that (1) "A public institution shall ensure that it records and keeps

information about all its activities, operations and businesses”. (2) A public institution shall ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information. (3) A public institution shall cause to be published in accordance with subsection (4) of this Section, the following information.

Section 28 provides thus: “The fact that any information in the custody of a public institution is kept by that institution under security classification or is classified document within the meaning of the Official Secrets Act does not preclude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this Act, but in every case the public institution to which the application is made shall decide whether such information is of a type referred to in sections 11,12,14,15,16,17,19,20 or 21 of the FoI Act.

It should be noted, and as asserted by several scholars that the Freedom of Information Act would engender robust idea-contribution to the affairs and issues that promote good governance and openness in governmental activities, stem down and obliterate public officials’ use and reliance, though ostensibly, on the Official Secrets Act, as a defence, for their refusal to disclose or release information to the press and the citizens. And will energize and arm the press and Nigerian citizens with the requisite locus to institute an action in court compelling the officials concerned to disclose the information sought.

Section 2 (1) and (3) of the FoI Act<sup>15</sup> captured below is instructive: (1) Notwithstanding anything contained in any Act, Law or Regulation, the right to any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is hereby established. (3) Any person entitled to the right to information under this Act shall have the right to institute proceedings in a court to compel any public institution to comply with the provision of this Act. Interestingly, also, the above section strengthened the sources of information and allayed the fear of refusal previously entrenched by the old regime, and further, in section 30 (1) of the Act<sup>16</sup>, provides *inter-alia* that: “This Act is intended to compliment and not replace the existing procedures for access to public records”.

Furthermore, by this, Investigative journalism, a beautiful aspect of journalism, will be greatly enhanced and have the much needed impetus to be at play now, in contrast to what was obtainable in the past, where the media houses have been proscribed and journalists imprisoned for disseminating information. The Newswatch magazine and the Guardian newspaper’s cases are instructive in this regard, as well as, the case of Nduka Irabor and Tunde Thompson, both of the Guardian newspaper, and Gbenga Aruleba of AIT, and Rotimi Durojaiye of Daily Independent, charged with sedition as consequence for disseminating information.

#### **2.1.4 Gender Empowerment**

For national development to be enthroned, gender empowerment is necessary given the importance and contributions of women to the Nigerian society. The Freedom of Information Act would allow all, including the civil society and foreign funders, to understand what the government has done, especially, for women in rural areas and the less-privileged members of the Nigerian society. The FoI Act listed information or records that must be made available upon request through the Freedom of Information Act. Section 2 (3) (1) (e) (i-iii) provides thus: (i) files containing applications for any contract, permit, grants, licenses or agreements, (ii) reports, documents, studies, or publications prepared by independent contractors for the institution, and (iii) materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization. Further, section 2 (4) provides thus: A public institution shall ensure that information referred to in this section is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions.

The above section makes it mandatory for public institutions to, amongst other things, publish and make available to the people information, such as the ones needed to advance gender equality and other incendiaries pertaining to welfare of the women. Similarly, section 2 (7) notes the following in respect to what constitute public institution: Public institutions are all authorities whether executive, legislative or judicial agencies, ministries, and extra-ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions.

The Freedom of Information, also, would help, through availability of information, to identify and ensure that the offenders are held accountable for human rights breaches against women as a vulnerable and endangered species of the society. Aside the above, the FoI Act also has a significant potential to strengthen women's rights and liberation in Africa, as information would be available on resources designed to promote women's health.<sup>17</sup>

### **3. Challenges to the Implementation of the Freedom of Information Act**

#### ***3.1 Entrenched Culture of Secrecy and Civil Service Rules and Procedure in Nigeria***

As previously described in the brief history of Nigeria Freedom of Information Act, the country's colonial origin, and following long years of military administration left the country with a culture of secrecy. As a result, the nation's civil service and government parastatals have become used to conducting official business under secret. They withhold even the most banal information from citizens, and practically all government material is classed as top secret, despite a clause in the CFRN that, albeit restricted, guarantees access to information. Governments have also used the culture of secrecy to operate a non-transparent system and avoid accountability. The usual practice of conducting a non-transparent system in Nigeria is so intense that other government officers are also denied information, reports by investigative commissions set up to investigate corruption are never publicised, as well as the President's declaration of assets form, which governments, ostensibly, hinged on the grounds that no law requiring such publication is in place.<sup>18</sup> The culture of secrecy of government information has been ingrained among both public officials and the population in Nigeria. Thus, a fundamental obstacle that is confronting the implementation of the FoI Act is the difficulty in socially engineering a fast move from a culture of secrecy to openness and accountability in government institutions. Many nations, particularly, those colonized by Britain, like Nigeria, have official secrets rules that have regulated the activities of public workers for years, and as a result, public workers have become accustomed to not being asked questions pertaining to access and release of government-held information. Given the above, it is consequently an important task to implement and apply the Freedom of Information Act, in order to change public officials and even private sector managers' attitudes from the culture of secrecy to transparency.<sup>19</sup>

#### ***3.2 Records, Record-Creation, Safe-Custody and Maintenance***

The significance of appropriate record generation and administration cannot be over emphasized, as it is critical for the public sector to be transparent and responsible; assuring effective work production and expanding services to residents. The new rule on access to information requires public institutions to preserve records and information on all of their actions. The legislation also mandates that such information be well-organized so that it is easily accessible, and that they proactively disclose information about them in print, online, and electronic formats.<sup>20</sup> These are really commendable measures, but the problem is figuring out how to put them into action given Nigeria's long history of poor record production, record-keeping, and upkeep in civil service and public agencies.

The legislation on access to information is based on the concept that appropriate record generation and administration aids government in achieving openness, transparency, trust, and accountability in the public sector. Governance requires, among other things, holding individuals in positions of public trust responsible to the people through being open and providing access to information. Freedom of information as a weapon for accountability is only viable if records are adequately preserved, so that not only the public may access them, but there is reliable evidence to depend on if there is a perceived breach

of accountability or corruption.<sup>21</sup> As a result, if the FoI Act is to be properly implemented, the first step is to keep adequate records. This necessitates re-orientation and training on the need of effective record keeping, as well as training public officials on proper understanding of access to information legislation, which, scholars believe, is often one of the first steps to be taken once an access to information legislation is enacted and implemented across states that previously operated under a regime of secrecy.

The challenge of record-keeping has continued to plague governments all over the globe. This is predicated on the fact that government, oftentimes, concentrate its efforts on taking actions and making decisions, ostensibly, on the development of the society, without exacting same on record-keeping. However, it has been said that for successful application of access to information legislation, responsible and effective record keeping is required, as well as oversight actions that will ensure that appropriate record keeping system is in place. In keeping up with the above, scholars agree that the Attorney General of the Federation, must consider not only the short-term issues of meeting the public's frequent request for information, but also the long-term purpose of keeping records by writing down all evidence of the decision-making process and actions of public authorities.<sup>22</sup>

### ***3.3 Poor Record-keeping Practice and Infrastructure***

Another barrier to full execution of the FoI Act is insufficient or non-existent record generation, record keeping, document organization, and infrastructure. The majority of Nigerian MDAs still preserve manual records. The requirements of the FoI Act enabling access to information would be ineffective if excellent quality records were not generated, access to them was onerous, and records disposal processes were missing. The FoI Act requires public institutions to respond to information requests within seven days.<sup>23</sup> Many MDAs in Nigeria, however, are unable to fulfill this aim since information and data in many public institutions are still kept on paper. Many public institutions are not linked to the internet, or their servers are always down.<sup>24</sup> As a result, some of the information sought by the public may not be readily available within the seven-day period specified in the FoI Act. Furthermore, the demand for 'proactive public disclosure' is commendable.<sup>25</sup> However, very few public organizations have functional, regularly updated websites: there are relatively few defined portals or venues where the public may get information. As a result, inadequate record keeping and a lack of current technology impede FoI Act implementation. The poor record keeping and maintenance in Nigeria was described thus: at present, there is hardly any systematic approach to keeping records and statistics. The population of the country itself is a matter of projection or guess work. Some junior government officials survive on the income they get from being encouraged to find files that are otherwise lost. As one commentator observed, one has to engage in virtual-espionage to secure even the most basic information<sup>26</sup>

### ***3.4 Inherent Bottleneck in the Application to Court for Release of Information***

Several scholars quip that delays currently experienced or witnessed in the administration of justice, particularly, the Court process, may, likely, affect the Court's speedy decision or dispensation of justice on the release of information. Section 2 (6) of the Act<sup>27</sup> provides that: A person entitled to the right of access conferred by this Act shall have the right to institute proceedings in the Court to compel any public institution to comply with the provisions of this section.

This provision allows an applicant to apply to the court to compel disclosure of information improperly denied by a public institution. However, this process may prove both costly and slow thereby affecting information flow and management by those seeking it. Coker<sup>28</sup> in support, notes that the provision by the Act for an establishment to independently and administratively look into such matters in order to promote compliance with the Act makes the process accessible and affordable, than the Court. Section 20<sup>29</sup> provides that 'any applicant who has been denied access to information, or a part thereof, may apply to the Court for a review of the matter within 30 days after the public institution denies or is deemed to have denied the application, or within such further time as the Court may either before or after the expiration of the 30 days fix or allow'.

Further, section 21,<sup>30</sup> stipulates that an application made under Section 20 shall be heard and determined summarily. In spite of the above, delays in Nigerian Courts process still persist. The study asserts that

the delays in the court process in Nigeria will hamper the effectiveness of the intendment of the Freedom of Information Act 2011. Which, further, and asides the above, is expressed in the following sections:<sup>31</sup>

22. *Notwithstanding anything contrary contained in the Evidence Act, or any regulation made under it, the Court may, in the course of any proceeding before it arising from an application under Section 20 of this Act, examine any information to which this Act applies, that is under the control of a public institution, and no such information may be withheld from the Court on any ground.*
23. *In any proceeding before the Court arising from an application under Section 20, the Court shall take precaution, including when appropriate, receiving representations ex parte and conducting hearings in camera to avoid the disclosure by the Court or any person of any information or other materials on a basis of which any public institution will be authorized to disclose the information applied for.*
24. *In any proceeding before the Court arising from an application under Section 20, the burden of establishing that the public institution is authorized to deny an application for information or part thereof shall be on the public institution concerned.*

### ***3.5 Denial of Information Subject to Professional Privileges***

The FoI Act provides for denial of information subject to the privileges contained in Section 16:<sup>32</sup> A public institution may deny an application for information that is subject to the following privileges – (a) Legal practitioner-client privilege (b) Health workers- client privilege; (c) Journalism confidently privilege; (d) Any other professional privileges confidently by an Act.

The implication of the above is that access to information can be hampered or refused leveraging on the above provisions. Public institutions, as well as custodians of information, ostensibly, could refuse or deny information, even when such information did not fall within the exemptions contained in the FoI Act. These provisions may be utilized to negatively impact the potency of the Freedom of Information Act. It is hereby posited that these exemptions confer broad discretion on public institutions to deny information, and as such, may lead to abuse. Despite the fact that the Act provides for judicial review, and the requirement that an application for information should not be denied, where the public interest in the disclosure outweighs any injury that such disclosure may cause. In agreement, section 12 (2)<sup>33</sup> provides thus ‘Notwithstanding anything contained in this section, an application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would cause’.

### ***3.6 Absence of Provision for Federal Information Commissioner***

Another recognized difficulty in the Nigeria Freedom of Information Act is the absence of a provision for an Information Access Commissioner, who would act as an Ombudsman to guarantee that persons who file complaints obtain all of the access and other rights to which they are entitled under the legislation. The duty of the information access commissioner includes, among other things, investigating and resolving complaints filed by applicants whose requests for information were rejected. Section 20 of the Nigerian Freedom of Information Act 2011 bestows this obligation on the Court. The statute requires anybody who has been denied access to information to file a complaint at the High Court or the Federal High Court, respectively. The Court procedure in Nigeria is expensive, time-consuming, and out of reach for the majority of people, and Courts also have other tasks and obligations to fulfill, so they may not be well-suited to carry out this task.

### ***3.7 Lack of Definition of what Constitute Public Interest***

The Freedom of Information Act did not define the concept of public interest. In the application of the public interest test, public institutions are required to make informed decision on whether, in any particular case, it serves the interests of the public better to withhold or to disclose information. Under the FoI Act, an application for information shall not be denied, where the public interest in disclosing the information outweighs the injury or harm stated in the exemptions (section 19(2)).

However, the risk is somehow mitigated by the provision for judicial review and the requirement that an application for information should not be denied, where the public interest in disclosure outweighs any injury that such disclosure may cause. As a means of overriding the exemption, the Act makes provisions, and preserves access to information until there is a public interest test under which information cannot be withheld, particularly, where the public interest disclosure outweighs the interest in denying access to such information.

### ***3.8 Multifaceted Exemptions that whittles unfettered access to Information***

The Act contains more exemption sections and clauses than sections that grant access to information. This can be leveraged by some mischievous public officers for unjust and mischievous purposes. For instance, only Sections 1 and 3 of the Act<sup>34</sup> grant access to information; but as many as ten sections (Sections 7, 11, 12, 14, 15, 16, 17, 18, 19 and 26) are meant to deny the public access to information. Scholars argue that the exemptions contained in the Act are enormous, with some having no limitation, and that this has the propensity to hamstring unfettered access to information and the aim upon which the Act<sup>35</sup> is predicated.

### ***3.9 Lack of Compliance to the FoI Act 2011 by Federal Agencies***

The celebration that greeted the enactment of the Freedom of Information Act in Nigeria gave way to the real business of implementing the legislation that is expected to bring about openness, transparency and accountability in governance, amongst others. There is little credible evidence that the agencies of the Federal Government, which the law clearly binds, are complying with its dictates<sup>36</sup>. More so, the people to whom the law gives access to information right, have not been proactive in the usage of the law to demand for information. Although there have been sporadic Freedom of Information requests, filed by a number of advocacy groups as indicated by available data, there is little yet to celebrate about the law.

### ***3.10 Lack of Supervisory Body***

Lack of a supervisory body to coordinate the implementation of the legislation. Unlike other pieces of legislation such as the anti-corruption law that established the Economic and Financial Crimes Commission (EFCC), the Freedom of Information Act did not make provision for the establishment of a coordinating body. The implication of this is that civil society has to remain vigilant and active in ensuring that the law remains effective.

### ***3.11 Cost of Litigation***

The Nigerian Freedom of Information Act, from the gamut of its provisions provides for application to the Court, once information requested is denied. Several legal scholars, as well as the proponents of the Act applaud the above provisions, and quip in support, that employing or drafting-in the Court as the arbiter is a welcomed development. It should be noted that applying to the court for release of information or for a judicial review requires the applicant to brief a legal practitioner (Lawyer), who by law is permitted to file certain legal documents in Court. Asides this, the applicant is expected to pay for the cost of filing the legal documents, asides from other sundry expenses to be borne by him. All these cost moneys; and may add to the cost of obtaining information from the custodians of government-held information. Oyebode,<sup>37</sup> considering the effect of the above on the citizens, asserts that there is the “need for litigation-support for Nigerians” if the Act is to be fully utilized. Further, he argued that many Nigerians will simply walk away if their information requests are turned down rather than call a lawyer due to the cost.

### ***3.12 Literacy Level of Nigerians and the Freedom of Information Act 2011***

Several proponents of the Freedom of Information Act have argued that the Act is elitist in nature, despite the input made in other to ensure that the contents of the Act cater and accommodate the interest of diverse range of Nigerians. Oyebode,<sup>38</sup> who played active role in the emergence of the Act, absolves the Act of the blame in this regard, but, rather, on the nature of Nigeria and the fact that the country has more illiterates and poor people, whose concern and interest may not be, entirely, on the need for and the efficacy of the Freedom of Information Act. It is also possible that so many of these people may be unaware of the existence of the FoI Act. These group of people are with little formal education and meagre means

of livelihood, and need to be helped to see the importance of the freedom of information to his/her struggles and concerns. More so, given the fact that more Nigerian adults are literate in all languages (71.6%) than are literate in English language (57.9%),<sup>39</sup> it is therefore important to translate the Act into as many Nigerian languages as have orthography.<sup>40</sup> It should be noted that the Act originally written in English, has been translated into three languages - Hausa, Igbo and Yoruba by the National Orientation Agency (NOA).<sup>41</sup> Despite the above, scholars agree that more translations in more Nigerian languages are needed, in other to create the desired awareness for the FoI Act.

#### 4. Conclusion

It is evidently clear from the foregoing that it is one thing for a political system to enact a law, but herculean to implement that law. Laws such as the FoI Act do not enforce itself; it can only come into force through the efforts of government agencies and stakeholders in the Civil Society. For Nigeria to properly implement its FoI legislation, like some of the older democracies that have succeeded in entrenching robust FoI, Nigeria must develop new strategies and follow same diligently. This paper has provided some of the workable strategies in form of policy and practice recommendations, which if adopted, will help improve the deficiency in the implementation of the legislation (FoI Act).

#### 5. Recommendations

There is a need for the Nigerian Government to put in place measures that will ensure that processes of treating requests are comprehensive, efficient and easily accessible to groups and individuals. In particular, there is a need to introduce internal review mechanism in Nigeria. These processes will help ensure that access to information is facilitated at all levels.

There should be programs in the form of training and retraining courses for judges and other judicial workers in Nigeria and indeed in other African countries that have enacted FoI laws on the technical peculiarities of these laws in each country and as well as the universal standard that the judiciary is expected to maintain. Some African countries have taken up this initiative with positive outcomes. Therefore, others like Nigeria need to emulate this noble initiative.

The Nigerian FoI Act requires amendment in the areas of the scope it covers as information held by private bodies that are of public interest need to be open and accessible to the public. The FoI Act also needs to provide procedure for a more comprehensive internal appeal process in the event of denial of request. The National Human Rights Commission should be recognized and given responsibilities in the implementation of the FoI Act. As a federating nation, states in Nigeria that are yet to commence the full implementation of the Act or domesticate it should do so without further delays, so as to extend to Nigerians resident in such states, more leverages to access to information held by public bodies within the jurisdiction of the state.

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