# ANALYSIS OF THE RIGHT OF ACCESS TO INFORMATION UNDER NIGERIAN LAW

By

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## DECLARATION

I hereby declare that the work in this thesis titled "Analysis of the Right of Access to Information under Nigerian Law," was performed by me in the course of my research at the Faculty of Law, under the supervision of Dr. Adamu K. Usman and Dr. Funmilola I. Akande.

The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this work has been presented for another degree or diploma at any institution.

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## CERTIFICATION

This thesis titled: "Analysis of the Right of Access to Information under Nigerian Law," by Cephas Caleb meets the regulations governing the award of the degree of Master of Laws (LL.M) of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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## DEDICATION

To my **mother**, with love.

## ACKNOWLEDGEMENTS

All praise and adoration be to my **God** and **Saviour**, **Jesus Christ**, from whom all blessings flow.

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All mistakes and errors that may still be found in this work are mine while due credit has been given to those whose works were consulted.

## ABSTRACT

*The Freedom of Information Act, 2011 (FoI Act) was enacted at the end of nearly two decades of public advocacy and exactly one hundred years after the Official Secrets Act was first introduced into Nigeria as a colonial Order-in-Council. This law is Nigeria's major legislative response to redress the balance of official secrecy, elitism and non-accountable government. The aim of this research is to provide an in-depth analysis of the right of access enshrined in the FoI Act in order to create the awareness needed to promote effective implementation of the Act and assist Nigerians know how to utilize the provisions of the Act. There is the problem of a veil of secrecy pervading public institutions in Nigeria. The result is that journalists and the populace are denied access to information that is critical for accurate reporting and unraveling the web of corruption in Nigeria. Similarly, a research institute or student is unable to produce quality work because of limited access to relevant publicly held information. It was in order to correct these anomalies that the FoI Act was enacted in the first place. Further, several exemptions have been inserted into the FoI Act, which ought to be understood and given limited application and specific scope of application. Furthermore, certain secrecy laws in the statute books are obsolete and in dire need of review to make them conform to the FoI Act. These laws include the Official Secrets Act, the Evidence Act, the Legislative Houses (Powers and Privileges Act), the Criminal Code, the Oaths Act and the Federal Civil Rules. There is also the problem of the territorial applicability of the Act to states. Against this background, this research has made certain recommendations including: training and creating awareness to make public institutions acknowledge the fact that they are bound by the FoI Act and its provisions underlie their daily decision making with regards to information management; the secrecy laws and all regulations in conflict with the FoI Act should be reviewed to make them conform with the provisions of the FoI Act; public institutions and the courts, which are saddled with power of judicial review under the Act, should clearly and narrowly interpret the exemptions provisions under the FoI Act and subject them to strict "harm" and "public interest" test. The effectiveness of the right to access information would be undermined if the exemptions are given excessively wide interpretation. Otherwise, the objective for the passage of the FoI Act as a means of encouraging more open and inclusive governance process may be defeated on grounds of the exemption provisions.*

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## ABBREVIATIONS

| | |
|---|---|
| ACHR | American Convention on Human Rights |
| AGF | Attorney-General of the Federation |
| CIA | Central Intelligence Agency |
| CLO | Civil Liberties Organization |
| CP | Commissioner of Police |
| CDHR | Committee for the Defense of Human Rights |
| COE | Council of Europe |
| CSR | Civil Service Rules |
| EFCC | Economic and Financial Crimes Commission |
| ECOWAS | Economic Community of West African States |
| ECHR | European Convention for the Protection of Human Rights and Fundamental Freedoms |
| ECOSOC | UN Economic and Social Council |
| FCTA | Federal Capital Territory Authority |
| FERMA | Federal Roads Maintenance Agency |
| FoI | Freedom of Information |
| FoIA | Freedom of Information Act, 2011 |
| FRN | Federal Republic of Nigeria |
| HCR | UN Human Rights Committee |
| IFJ | International Federation of Journalists |
| IGP | Inspector-General of Police |
| MISA | Media Institute of Southern Africa |
| MRA | Media Rights Agenda |
| NACRO | Nigerian Association for the Care and Resettlement of Offenders |
| NPS | Nigerian Prison Service |

| | |
|---|---|
| NSA | National Security Service |
| NACRO | Nigerian Association for the Care and Resettlement of Offenders |
| NDLEA | Nigerian Drug Law Enforcement Agency |
| NGO | Non-Governmental Organization |
| NNPC | Nigerian National Petroleum Corporation |
| NPS | Nigerian Prison Service |
| NSA | National Security Adviser |
| NUJ | Nigeria Union of Journalists |
| OAS | Organization of American States |
| OSA | Official Secrets Act |
| ICCPR | International Covenant on Civil and Political Rights |
| IFJ | International Federation of Journalists |
| IMF | International Monetary Fund |
| PPPRA | Petroleum Products Pricing Regulatory Agency |
| RTI | Right to Information |
| SSS | State Security Service |
| SERAP | Socio-Economic Rights and Accountability Project |
| UBEC | Universal Basic Education Commission |
| UNESCO | United Nations Scientific and Cultural Organization |
| UN | United Nations |
| UDHR | Universal Declaration of Human Rights |
| WAJA | West African Journalists Association |

## CHAPTER 1

## GENERAL INTRODUCTION

### 1.1 BACKGROUND OF THE STUDY

The Freedom of Information Act[1] (or the "FoI Act") is Nigeria's major legislative response to redress the balance of official secrecy, elitism and non-accountable government. It guarantees a "Right to Know" or a right of access to records and informationin the custody of public institutions in Nigeria; set standards for what the government could protect from access, and fastened a system of judicial review of denial of access to information.

In line with the requirements of the FoI Act, the Attorney-General of the Federation, who is vested with the statutory mandate to coordinate compliance with the FoI Act by public institutions,[2]has issued an advisory and a guidance note to help public institutions understand their obligations and promote good practice of the FoI Act regime. The advisory is titled the "Attorney General's Memorandum on the Reporting Requirements under S.29 of the FoI Act"[3] (the "FoI Memorandum") and requires public institutions to organise their records in a manner that makes them accessible to the public and to publish information using multimedia formats (i.e. print, electronic and online). The "Guidelines on the Implementation of the Freedom of Information Act, 2011"[4] (the "FoI Guidelines") seeks to aid clearer understanding, application and implementation of the FoI Act by public institutions.

The FoI Act was achieved at the end of nearly two decades of public advocacy and exactly one hundred years after the Official Secrets Act[5] was first introduced into Nigeria as a colonial Order-in-Council. The idea of a freedom of information law for Nigeria was conceived in 1993 by three different organisations working independently of each other. The organisations, Media Rights Agenda (MRA), Civil Liberties Organisation (CLO) and the Nigeria Union of Journalists (NUJ), subsequently agreed to work together on a campaign for the enactment of a freedom of information Act.[6] The objective of the campaign was to lay down, as a legal principle, the right of access to documents and information in the custody of the government or its officials and agencies as a necessary corollary to the guarantee of freedom of expression.

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[1]Act No. 4, 2011, signed into law on 28 May 2011 by President Goodluck Jonathan.
[2] S. 29, Id.
[3]Ref: HAGF/MDAS/FOIA/2012/1 dated 29 January 2012.
[4]Issued on 15 March 2012.
[5]Cap. O3, *Laws of the Federation of Nigeria*, 2004.
[6]See, Background to the Freedom of Information, a publication of the Freedom of Information (DOI) Coalition, available on http://www.FoIcoalition.org/publications/FoI_advocacy/background.htm(assessed 14 November 2011).

A bill[7] for a freedom of information act was first submitted to the 4th National Assembly in 1999.[8] The 1st and 2nd reading of the bill at the House of Representatives took place on 22 February and 13 March 2000 respectively. The House of Representatives Committee on Information recommended the passage of the bill and the House directed that a public hearing on the bill be held on the 3 and 4 October 2001. However, the bill could not be passed before the 4th National Assembly was dissolved in 2003.

The bill was represented to the 5th National Assembly, in June 2003 and a 9 member joint committee of the National Assembly was set up to review the bill[9]. The joint committee came up with strong recommendations and submitted its report to the National Assembly.[10] By August 2004, the House of Representatives passed the bill and subsequently forwarded same to the Senate.[11] The bill, having been stalled in the Senate for two years, was eventually passed in November, 2006 with a consensus vote.[12] The two Legislative Chambers then raised a harmonisation committee[13] to address differences in the two bills, before it was sent to the President for assent.

Part of the *raison d'etire* offered by the Senate as to why the bill was delayed, were issues relating to national security. This was notwithstanding the fact that the bill in the main provided safeguards "against unrestricted and unauthorised access to documents of institutions as it relates to national security or ongoing investigations by the Police or other law enforcement agencies".[14] Thus, information that would be injurious to national defence and conduct of foreign policy were excluded from the bill.

The bill was sent to former President Olusegun Obasanjo on 23 March 2007, for assent. However, the President refused his assent and vetoed the bill. His refusal was based on two reasons. Firstly, he was opposed to the title of the bill i.e. 'Freedom of Information' and stated that it should have been titled 'Right to Information'. He argued that the title of the bill is very important as "we can only talk of right to information and not freedom of information and

[7]Published in the Federal Gazette of 8 December 1999.
[8] See, Olukoya, S., Freedom of Information Bill Proves Elusive, http://www.ipsnews.net. Retrieved 30 November 2008
[9] See, Odemwengie, O., FOI Bill and the Media. In: *Memorandum Proposed by the FOI Coalition*, Lagos, 2003.
[10]Comprised of members drawn from the House Committee on Information, Committee on Human Rights and the Committee on Justice. See, Edataen, O., Campaigning for access to Information in Nigeria. In: *A Report for the Legislative Advocacy Programme for Enactment of an FoI Act*, 2003.
[11] Reuben, S., As the Freedom of Information Bill Continues to Tarry, http://saharareporters.com. Retrieved 10 November 2008.
[12] See, Irikpen, D., Nigeria, Senate Battles for FOI Bill, http://www.allafrica.com. Retrieved 12 December 2008.
[13]Ibid.
[14] S. 13 Draft Freedom of Information Bill, 2004.

that the idea of 'freedom of information' was simply imported from somewhere…"[15] It is hereby posited that this is a case of "distinction without a difference" because what is of importance is not the title of a law but whether the law indeed confers a positive and enforceable right.

Secondly, President Obasanjo disagreed with S.13(1) of the Bill which provides that: "The head of government or a public institution may refuse to disclose any record, the disclosure of which may be injurious to the conduct of international affairs or the defence of the Federal Republic of Nigeria." He argued that the proposed bill only excluded public access to records which may be injurious to the defence of Nigeria but did not exclude records which may be injurious to the "security" of Nigeria, as according to him, 'defence' and 'security' mean different things. Obasanjo further argued that S.13(2) of the Bill which provides 'that the courts may override the refusal by the head of the government or public institution to disclose any information of which another head of state may tell him in confidence'[16]meant that he could be compelled by the courts to disclose any information another head of state may tell him in confidence. Unfortunately, the 5th National Assembly could not garner the two-thirds majority required to override the President's veto.

On the swearing in of the 6th National Assembly in 2007, the bill was re-submitted for consideration of the National Assembly. The brouhaha triggered in the House of Representatives by the presentation of the bill was revealing. Specifically, on 28 April 2008, uproarious scenes were recorded in the House of Representatives as the bill was tabled, with most members agitatedly, denouncing the proposed law and shouting down its sponsors. The bill was listed on the order paper of the legislative day, but as was the case on six previous occasions, the legislators refused to accept it for consideration. On 29 May 2008 the bill was thrown out.[17]

Notwithstanding the opposition aforesaid, the bill was returned to both chambers of the 6th National Assembly and eventually passed on 24 May 2011. President GoodluckJonathan signed the bill into law on 28 May 2011 barely 3 days of its passage by the National Assembly.[18]

In an attempt to create awareness among its public servants, the Federal Government recently set up an inter-ministerial committee headed by the Permanent Secretary, Bureau of

[15] See, President Ignores Freedom of Information Bill amid 'Seriously Flawed' Elections in Nigeria, http://www.rap21.org/presidentignoresFoI.information. Retrieved 12 December 2008.
[16]See, President Ignores Freedom of Information Bill amid 'Seriously Flawed' Elections in Nigeria, op. cit., p. 7.
[17]Dakolo, D., Nigeria; A Touchstone Called FOI Bill, http://mediarightsagenda.org/pdf/2008/html.Retrieved 12 December 2008.
[18]The bill was passed as a result of pressure from the media and stakeholders and the fact that Jonathan's administration did not take a hard stance against the bill as was the case in the previous administration.

Public Service Reforms[19] to aid the free flow and accessibility of information in the public service. Inaugurating the committee, the Head of Service of the Federation[20]noted that all public institutions were obliged to keep records of their activities.[21]

The Head of Service who was presented by the Permanent Secretary, Establishment and Record[22] said the implementation committee would allay fears and speculations expressed that the public service is yet to put in place structures that should aid effective implementation of the FoI Act.[23]

## 1.2 STATEMENT OF THE PROBLEM

The following are the problems which this research word has identified and attempts to address:

(a) In Africa generally, perhaps, the greatest problem to development is lack of transparency, openness and accountability in governance. Over the years, dictators and sit tight presidents who do not have regard to the rule of law and human rights have occupied leadership positions. Nigeria, in particular, presents an example of a country where 29 years of military rule has enshrined the culture of official secrecy, elitism and non-accountable government. The veil of secrecy pervades public service in Nigeria, which makes it difficult to get information from a public institution. A lot of government information in Nigeria is classified as "top secret". So impenetrable is the problem that government departments sometimes withhold information from each other under the guise of official

[19] Mrs. Nkechi Ejele.
[20]Alhaji Isa Bello Sati.
[21]Senator Iroegbu, "Testing the FoI Act." In: *Thisday Newspapers*, page 99, Sunday, 13 November 2011.
[22] Mr. Charles Bonat.
[23]Senator Iroegbu, "Testing the FoI Act."Ibid.
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secrecy. The result is that journalists are denied access to information that is critical for accurate reporting, and unravelling the web of corruption and unaccountable government in Nigeria. Thus, the mass media are constrained to resort to speculations on a subject, where such information could otherwise have been readily available. Acollary is that a research institute or student is unable to produce quality work because of limited access to relevant publicly held information. It was in order to correct these anomalies that the FoI Act was enacted in the first place.

(b) Nearly two years after the passage of the FoI Act the problem seems to linger and there appears to be the problem of lack of awareness or (outright) apathy on the part of ordinary Nigerians with respect to the fundamental provisions of the FoI Act and how the right of access granted therein can be effectively utilised. This is even the case among professional journalists, legal practitioners, academics and the judiciary. The recent case of *Paradigm Initiative Nigeria v. Dr. Reuben Abati*,[24] where the Federal High Court erroneously and contrary to the express provisions of the FoI Act held that information cannot be released to an applicant who does not have a special interest in the subject, underscores the lack of understanding and awareness of the fundamentals of the FoI Act even by the judiciary. In its report, Right to Know, Nigeria[25] stated that since the FoI Act was passed, it had engaged public institutions, civil society groups, relevant

[24]Suit No: FHC/ABJ/CS/402/2013 (Unreported).
[25]Implementing Nigeria's Freedom of Information Act 2011 – The Journey So Far.A Report on the Level of Awareness Compliance and Implementation of the Freedom of Information Act, 2011, 18 Months after its Enactment.Published by Right to Know, Nigeria. www.r2knigeria.org.

committees of the National Assembly and the media in intensive sensitization trainings and workshops and one major issue that stood out in all its trainings and engagements is that a lot still needs to be done with regards to creating more awareness about the FoI Act.[26]

(c) Another problem is lack of compliance with the provisions of the FOI Act by public institutions. In this regard, there appears to be unwillingness on the part of public institutions to respond to requests made pursuant to the Freedom of Information Act. Quiet apart from refusal to respond to requests for information, public institutions appear to have also failed in complying with the record keeping, publication and reporting obligations imposed upon them by the FoI Act. It should be noted that the FoI Act is not solely concerned with responding to requests but requires all public institutions to organize their records in a manner that makes them accessible to the public as well. It also requires public institutions to publish certain information using multimedia format. Investigations have revealed that public institutions have shown reluctance to comply with the FoI Act. For example, in a report published by Daily Trust[27] in a banner headline titled "FG Snubs 'Open Govt' Law", Daily Trust revealed that the Presidency, National Assembly and even the office of the Attorney General of the Federation were among 11 public institutions which Daily Trust requested for information pursuant to the FoI Act and none of them provided the information requested.In one such extreme situation, Daily Trust reported that the Nigerian National

[26]Id., p. 2.
[27]FG Snubs 'Open Govt' Law, page 1 and 5, *Daily Trust*, Vol. 30, No. 23, Wednesday, 22 August 2012, pp. 1, 5.

Petroleum Corporation (NNPC) through its Secretary and Legal Adviser argued that NNPC was not bound by the FoI Act, as it was not a statutory corporation.[28] However, after media scrutiny and pressure, the NNPC eventually pledged its commitment to abide by the provisions of the FoI Act.[29]Further, the FOI Memorandum requires all public institutions to establish FOI units, and designate a senior official (at the level of an Assistant Director or its equivalent) who would be directly responsible for ensuring compliance with the FoI Act.[30]Unfortunately, it appears that most public institutions have not complied, because of what an anonymous public official said was lack of budgetary allocation to support setting up such units.[31] In a report by Right to Know, Nigeria (R2K)[32] a non-governmental initiative committed to advocating for public access to information, only 23 public institutions submitted compliance reports to the Attorney General of the Federation (AGF) and only 11 have staff designated to handle FOI requests.[33] The failure of public institutions to comply with the provisions of the FoI Act has grave consequences to democracy, good governance and the fight against corruption. Without transparency in government, no meaningful transformation can be realized.

[28]FG Snubs 'Open Govt' Law, page 1 and 5, *Daily Trust*, Vol. 30, No. 23, Wednesday, 22 August 2012, pp. 1, 5.
[29] See, Implementing Nigeria's Freedom of Information Act 2011 – The Journey So Far. A Report on the Level of Awareness Compliance and Implementation of the Freedom of Information Act, 2011, 18 Months after its Enactment.Published by Right to Know, Nigeria. www.r2knigeria.org.
[30] Id.
[31]*Daily Trust*, Ibid. p. 5.
[32]www.r2knigeria.org
[33]Implementing Nigeria's Freedom of Information Act 2011 – The Journey So Far.A Report on the Level of Awareness Compliance and Implementation of the Freedom of Information Act, 2011, 18 Months after its Enactment, op. cit.

(d) Another problem is with respect to the territorial scope of applicability of the FoI Act as to whether the Actapplies to states. This issue is addressed in Chapter 3 of this work.

(e) Further and most critical to the implementation of the FoI Act is the problem of the several exemptions to the right of access enshrined in the Act. The exemptions need to be critically analysed and given limited application and specific scope. Otherwise, the right conferred by the FoI Act to encourage more open and inclusive governance process may be defeated on grounds of the exemption provisions.

(f) Similarly, there is the problem of the existence of some laws in the statute books, which are inconsistent with the FoI Act e.g. the Official Secrets Act,[34] the Legislative Houses (Powers and Privileges) Act,[35] the Evidence Act,[36] the Oaths Act[37] and the Criminal Code.[38]The provisions of the FoI Act vis-à-vis these "secrecy" laws, need to be analyzed and understood so that the "secrecy" laws do not continue to form the basis upon which public officers refuse the public's access to information held by public institutions.

## 1.3 OBJECTIVE OF THE RESEARCH

This objective of this research is to provide "an in-depth" analysis of the right of access to information under the FoI Act to assist Nigerians know how to utilize the provisions of the Act as well as to highlight the

[34]Cap. O3, Laws of the Federation of Nigeria, 2004.
[35]Cap. L12, Laws of the Federation of Nigeria, 2004.
[36]Evidence Act, 2011.
[37] Cap. 01, Laws of the Federation of Nigeria, 2004.
[38] Cap. C38, Laws of the Federation of Nigeria, 2004.

publication, record keeping and reporting obligations imposed on public institutions by the FoI Act in order to make the enjoyment of the right of access to information meaningful and realizable.

The research also seeks to create the needed awareness to promote effective implementation of the Act. The researcher believes that to achieve the FoI Act's objective of a more open and transparent governance in Nigeria, the public must take proactive steps to make it work.

Several exemptions to the right of access to information have been provided by the FoI Act. This research seeks to examine the exemptions in order to aid understanding and ensure that the exemptions are given limited application and specific scope both by public institutions in considering requests and by courts of law in the exercise of their power of judicial review. Most of the exemptions are subject to the "public interest test" or "public interest override". Thus, where the public interest override applies, a public institution is still required to disclose information, unless it can demonstrate that the public interest in withholding the information outweighs the public interest in disclosing it. However, few of the exemptions are absolute, which means that the public interest test will not apply.

## 1.4 SCOPE OF THE RESEARCH

This research discusses the meaning, origins, theory and impact as well as international, regional and national standards on freedom of information. The research also examines the present legal regime of Freedom of Information law in Nigeria in the light of the enactment of the FoI Act.

Issues regarding who can exercise the right, how the right can be effectively utilised, scope of bodies covered, and the exemption provisions in the FoI Act have been discussed. The exemption provisions in the FoI Act and laws inconsistent with the FoI Act were examined.

In view of the fact that the FoI Act is a recent legislative enactment in Nigeria and there is international collaboration on the subject, the research has drawn international best practices from foreign jurisdictions to aid better understanding of the subject, where necessary.

## 1.5METHODOLOGY OF THE RESEARCH

The research methodology adopted in this thesis is doctrinal relying on primary and secondary sources of law.

The primary sources include statutes and case laws. The major statute is the Freedom of Information Act, 2011 while reference is made to relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 (As Amended),[39] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act,[40] Official Secrets Act, 1962,[41] Evidence Act, 2011, Criminal Code[42] and the Legislative Houses (Powers and Privileges) Act.[43]

Secondary sources consulted include Freedom of Information laws of foreign jurisdictions (on a comparative basis where necessary) including the FOI laws of the United States, the United Kingdom, India, South Africa, Uganda, China and Sweden. Commentaries and views of experts on the subject as expressed in books, articles of mass media, academic journals and credible research materials available in the internet are also consulted.

The most credible resource on freedom of information available in the internet is, perhaps, the publications available on www.right2INFO.org a website launched in 2007 by the Open Society Justice Initiative[44] with significant support from Access Info Europe[45]. This website brings together information on the constitutional and legal framework for the right of access to information as well as case law from more than 80 countries, organised and analysed by topic. Experts from dozens of countries have contributed materials and have indicated their willingness to correct update and comment on the material website.[46]

## 1.6 LITERATURE REVIEW

This thesis seeks to spearhead and possibly set the agenda for future academic research on the legal regime of the Freedom of Information in Nigeria. The paper notes the paucity of literature on the essentials of the Freedom of Information Act, 2011 which is a new area of study in Nigeria. Beside the legislative and advocacy debates and

[39]Cap. C38, Laws of the Federation of Nigeria, 2004
[40]Cap. A9, *Laws of the Federation of Nigeria*, 2004.
[41] Ibid
[42] Ibid
[43] Ibid
[44]The Initiative was founded to help countries build vibrant and tolerant democracies whose governments are accountable to their citizens and their activities have grown to encompass the United States and more than 70 countries in Europe, Asia, Africa and Latin America.www.opensocietyfoundations.org.
[45]Founded in 2006 in accordance with Spanish law, the organization is dedicated to promoting and protecting the right of access to information in Europe and globally.www.access-info.org.
[46]www.access-info.org.

commentaries on the FoI Act; there are few academic materials on the subject and most of the materials had preceded the enactment of the Act.

*Odinkalu, C. A.* and *Bhule, L. T.*[47] discussed the essentials of the FoI Act, its applicability to the states and the roles of various stakeholders in the implementation process of the Act. The paper proffers suggestions for the effective implementation of the FoI Act and argues that the Act applies to all the states of the Federation, whether or not the state(s) pass FOI law(s). The authors narrowed their discussions to the provisions of the Act and suggestions on the implementation process thereby leaving a gap to be filled. Issues around the exemption provisions and indeed how the rights can be effectively exercised were not addressed. Further, contrary to the opinion on the applicability of the FoI Act to states as canvassed by the authors, this thesis has taken the position that the FoI Act applies only to the Federal Government and the Federal Capital Territory, Abuja.

*Akande, I. F.*,[48] discussed what she tagged "the fundamental and legal nature of freedom of information law in Nigeria".[49]Akande stated that freedom of information is explicitly provided as part of the Freedom of Expression guaranteed by S.39 of the Constitution[50] but that the scope was not explicitly provided for, which was responsible for the failure of the application of the right under the provision of the said S.39 of the Constitution.

However, we are of the opinion that although the right to freedom of information and freedom of expression are intimately linked, the right to information goes beyond the right to freedom of expression. S.39 of the Constitution did not confer a positive right to access information but merely guarantees a right against censorship and interference with free flow of information as held in the case of *Archbishop Okogie&Ors. v. The Attorney-General of Lagos State*[51] wherein the court held that abolishing private schools in Lagos state would infringe on the applicants' right to "own, establish and operate any medium for the dissemination of information ideas and opinions"[52]. Thus, all the judicial authorities relied upon by the author, to wit: *Momoh v. Senate of the National*

[47]Odinkalu, C. A., and Bhule, L. T., Implementing the Freedom of Information (FoI) Act, 2011. A Paper Presented at the Annual General Conference of the Nigerian Bar Association, held at the Civic Centre, Port Harcourt, Rivers State, August, 2011.
[48]Akande, I. F., The Right to Democratic Governance under International Law: A Case Study of Domestic Implementation in Nigeria, Ph.D Dissertation (Unpublished), Post Graduate School, A.B.U, Zaria (2008), pp. 207 to 220.
[49] Id., pp. 212 to 218
[50]Constitution of Federal Republic of Nigeria 1999 (As Amended), Cap. C23, Laws of the Federation of Nigeria, 2004.
[51] (1981) 1 NCLR (1980), 218, p. 235.
[52]S.39 (2), Constitution 1999 (As Amended).

*Assembly & Others*[53], *Adikwu v. Federal House of Representatives*[54], *Nwankwo v. State*[55], and *Chike Obi v. DPP*[56] are merely decisions against censorship, which did not go as far to interpret the right to freedom of expression as implying a positive right on the applicants to be given access to information held by public institution.

*Orobator, O.A.,*[57]discussed the concept and general nature of Freedom of Information laws and highlights the tortuous journey of the bill from 1999 when it was first presented to the 4th National Assembly to the status of the bill as at the year 2008. Orobator was more of a legislative advocacy that argued the socio-economic and political relevance of the bill to national development. The work was prior to the enactment of the FoI Act and some of the provisions of the bill advocated by Orobator did not eventually make it to the FoI Act. Thus, the work is of limited significance for a discussion on the right of access to information under the present regime of the FoI Act.

At the international plane, Freedom of Information has generated a lot of literature as contained in articles, guidelines, reviews, workshops, research studies and policy initiatives.

*Mendel, T.,*[58] sought to demonstrate that while the right to information is undoubtedly important for the media, it plays a much wider and more significant social role.[59]He highlighted some utilitarian benefits of FOI laws and observed that the perception of the right to information as a media right may be contributing to the reluctance of African governments to adopt FOI laws including Zambia, Nigeria and Ghana. Mendel is only useful for a theoretical understanding of the benefits of FOI laws in terms of gaining access to personal information and service delivery, combatting corruption, participation in decision making and open government. The author did not discuss the practical application of FoI laws, in terms of positive provisions and obligations imposed by such laws.

*Coliver S.,*[60] detailed the expansion in coverage of the right to information in various countries to virtually all executive and administrative bodies including the intelligence and security agencies, heads of state and cabinets, judicial and legislative bodies and private entities that perform public functions or receive public funds.[61] The author

[53]Suit No: M/27/80 of 15 April 1980.
[54](1982) NCLR, 394.
[55](1985) 6 NCLR, 208.
[56](1961) NLR, 186.
[57]Orobator, O. A., The Freedom of Information Bill and National Development, LL.M Dissertation (Unpublished), Faculty of Law, University of Ibadan, Ibadan (March, 2009).
[58]Toby Mendel is Executive Director, Centre for Law and Democracy.
[59] Mendel, T., The Right to Information and Citizenship. A Background Paper Presented at the Conference on Freedom of Information in Zambia, March, 2011.
[60]Sandra Coliver is the Senior Legal Officer of Freedom of Information and Expression at the Open Society Justice Initiative.
[61]Coliver, S., The Right to Information and the Increasing Scope of Bodies Covered by National Laws since 1989, available at: http://right2info.org/about#contributors. The article is based on information supplied by contributors

proposed a standard of scope of application of FOI laws to private entities, to wit - private entities that perform public functions or receive substantial public funds.[62] This material provided a comparative analysis of the scope of application of the right to freedom of information in about 50 countries. However, this work has shown that the scope of the Nigerian FoI Act extends beyond the standard advocated by Coliver in that the FoI Act applies to private entities that receive public funds and not just private entities that receive substantial public funds.

*Ackerman, J. M.,* and*Sandoral- Ballesteros I. E.*,[63] brought together information on the subject of Freedom of Information laws. The authors expatiated the theory, practical impact and sources of FoI laws; the relationship of such laws to Freedom of Expression and citizen participation in government, as well as their impact on political, economic and bureaucratic performance.

*Ngabirano, D.,*[64]critically analysed some laws inconsistent with the Ugandan freedom of information law and sought to facilitate strategic impact litigation to challenge provisions that set out to limit the right of access to information in Uganda. This material is of limited usefulness because this work has shown that, unlike what obtains in Uganda, the FOI Act has attempted to cure the mischief of secrecy laws in Nigeria in that the principle of *disclosure takes precedence* is well enshrined under the FoI Act.

Most of the materials consulted had been published prior to the passage of the FoI Act. Consequently, it is hoped that this work will set an agenda for future research and policy making with respect to the present Freedom of Information regime that has been introduced with the enactment of the Freedom of Information Act, 2011.

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from more than 50 countries, collected and analyzed by Sandra Coliver and Helen Darbishire, Executive Director of Access Info Europe.

[62] Id., p. 25.

[63] Ackerman, J.M. and Sandoval-Ballesteros, I. E.*Administrative Law Review* (2006), Vol. 58, No. 1, Winter. This work is a joint publication of the American Bar Association Section of Administrative Law & Regulatory Practice and the Washington College of Law, American University.

[64]Ngabirano, D., An Analysis of Laws Inconsistent with the Right of Access to Information. Published under the Project; "Access to Information" implemented by Human Rights Network (HURINET–U) with the support of Foundation Open Society Institute (OSI-ZUG). www.hurinet.or.ug.

## 1.7 JUSTIFICATION OF THE RESEARCH

There is little awareness of the provisions of the FoI Act and how the Act is supposed to be effectively utilized. This is the case even among professional journalists, legal practitioners, academics and even the judiciary as shown in the case of *Paradigm Initiative Nigeria v. Dr. Reuben Abati*.[65] The FoI Act needs to be understood because it is one legislative action that gives citizens the opportunity to participate in governance, hold government accountable and enable them obtain such information that would in turn actuate the exercise of other rights like the right to healthcare, safe environment and basic education among others.

This research will create awareness of the provisions of the FoI Act and how the Act is supposed to be effectively utilized. It will assist Nigerians to participate in governance, hold government accountable and obtain such information that would in turn actuate the exercise of other rights like the right to healthcare, safe environment and basic education among others.

Also, this research will promote compliance with the provisions of the FOI Act by public institutions and create a shift in the mindset of public servants to make them acknowledge the fact that they are bound by the clear provisions of the Act, and ensure that the provisions of the Act underlie their daily decision making regarding record keeping and information management. The research will assist public institutions understand the specific duties and obligations imposed on them by the FoI Act thereby aiding the effective implementation of the Act.

Most critical to the implementation of the FoI Act is the fact that several exemptions to the right of access have been provided and these exemptions need to be critically analysed and given limited application and specific scope; and that decisions on refusal to disclose government information be reviewed independently of the

[65]Supra.

government. Otherwise, the objective for the passage of the FoI Act as a means of encouraging a more open and inclusive governance process may be defeated on grounds of the exemption provisions.

Further, this research will assist public institutions, the courts and stakeholders to understand the several exemptions to the right of access to information under the FoI Act thereby given limited application and specific scope to these exemptions.A clear analysis of some laws in the statute books, which are inconsistent with the FoI Act e.g. the Official Secrets Act,[66] the Legislative Houses (Powers and Privileges) Act,[67] the Evidence Act,[68] the Oaths Act[69] and the Criminal Code[70]is also provided, such that these laws do notcontinue to form the basis for public officers in Nigeria to refuse access to information held by public institutions.

This research is also significant in attempting to settle the issue of the scope of applicability of the FoI Act with respect to the question of whether the Act applies to the states.

Ultimately this research will benefit the general public since the right to access information is conferred on every person. Of essence, the following shall benefit directly from the research, namely: public institutions; the media; human rights activists; research students and institutions; legal practitioners; academics; legislators; judges, especially high court judges who are vested with the power of judicial review under the FoI Act.

## 1.8 ORGANISATIONAL LAYOUT

This thesis is divided into five chapters.

Chapter one introduces the topic, providing hints as to what the reader is to expect in the course of reading the thesis. Thus, the chapter contains the background, statement of the problem, objective of the research, scope of the research, methodology of the research, justification of the research, significance of the research, and the organizational layout of the thesis.

[66] Ibid
[67] Ibid
[68] Ibid
[69]Ibid
[70]Ibid

The theoretical framework onFreedom of Information law is discussed in chapter two. The origins, meaning, international standards and general features of a Freedom of Information regime were discussed. This chapter also discussed the utilitarian benefits of Right to Know with specific reference to how the right can bring about social, political and economic development to a society.

Chapter three is essentially devoted to an analysis of the Freedom of Information under Nigerian law thereby encapsulating specific provisions of the FoI Act in connection with the right of access, persons entitled to the right, how the right can be exercised, territorial scope of applicability of the FoI Act, scope of bodies covered, nature of information subject to the right, timelines, fees, offences as well as the jurisdiction of courts under the FoI Act.

In chapter four, the exemption provisions under the FoI Act are analysed. This chapter also highlight provisions of certain secrecy laws existing in the statute books that are inconsistent with the Right to Know or right of access to information under the present FoI regime.

Finally, chapter fivebrings the research to a conclusion with the summary, findings and observations as well as our recommendations and suggestions for effective implementation of the FoI Act.

## CHAPTER 2

## CONCEPTUAL CLARIFICATIONS AND THEORETICAL FRAMEWORK ON FREEDOM OF INFORMATION LAW

### 2.1 INTRODUCTION

This chapter provides a conceptual clarification of key terms used in the thesis. The theory of Freedom of Information law in terms of its meaning, origins, history and features as conceived by some authors and the researcher himself. The relationship between Freedom of Information and Freedom of Expression as well as its impact on politics, economics and public administration is examined. Finally, the chapter highlights international standards on Freedom of Information.

The right to access information held by public institution, known variously as Freedom of Information (FOI), Right to Information (RTI) or access to information has now come of age. Whereas some 20 years ago, only 13 countries had laws giving effect to this right, the number now stands at over 85 and is increasing year-by-year.[71] This impressive display of policy innovation at a global level demands explanation and understanding. What was once considered to be a governance reform – a measure to make government more accountable to the people – is now recognised as a fundamental human right in several jurisdictions.[72] This virtual revolution in recognition of the right to information has occurred for a number of reasons. At a very general level, it can be seen as part of the process of democratisation which has now touched every corner of the globe.[73]

The "third wave" of transitions to democracy[74] has been amply studied. Starting in the mid-1970s, picking up steam in the 1980s, and culminating in the 1990's, a series of democratic transitions swept throughout the world. In May 1999, Nigeria returned to civil rule after about three (3) decades of military dictatorship with little

[71]Mendel, T., Freedom of Information: A Comparative Legal Survey(UNESCO 2nd ed. 2008), p. 3, http://unesdoc.unesco.org/images/0015/001584/158450e.pdf.
[72] See, for example, *Claude Reyes and Others v. Chile, (*2006), Series C, No. 151, para. 77 (Inter-American Court of Human Rights); and *Társaság A Szabadságjogokért v. Hungary*, (2009), Application No. 37374/05 (European Court of Human Rights).
[73] Mendel, T., Ibid.
[74]This term originally come from Samuel P. Huntington, The Third Wave: Democratization in the Late Twentieth Century, 3-30 (1991), and refers to the global spread of free and fair elections during the past 30 years as the principal mechanism for deciding who holds government power.

interruption.Over the last two decades, scholars have produced hundreds of texts that compare, contrasts, and draw lessons from the world phenomenon of democratization.[75]

One of the central lessons of the more recent texts is that new democracies are plagued with problems of accountability. Despite the fact that they are democratically elected, leaders of state tend to behave like short-term dictators; they often act without informing the public, and for the most part, are not subject to sanctions for wrong doing.[76] Some scholars have gone as far as to claim that many new democracies are best termed "delegative democracies"[77] since the public is left virtually powerless between elections.

New technologies, which have transformed our relationship with information at every level, have no doubt also played a role. They have impacted on both our attitudes towards information – we now expect to be able to access information, rather than treating it as a privileged resource – and our practical ability to access it.[78]

Underlying these wider phenomena of the recognition of the right to information, however, are a number of utilitarian benefits that the right to information delivers to society. These include promoting democratic participation, exposing corruption, fostering accountability and good governance, improving service delivery and facilitating competitive businesses.

## 2.2 CONCEPTUAL CLARIFICATION OF KEY TERMS

This section discusses the concept of Freedom of Information Law to aid clearer understanding of the term. The concept of "Public Interest Test" as it relates to the exemption provisions in the FoI Act is also discussed.

### 2.2.1 Meaning of "Freedom of Information" Law

The term "Freedom of Information" Law is variously referred to as "Right to Information" or "Right to Know" or "Right of Access" to Information – these terms are used interchangeably amongst countries that have enacted Freedom of Information Laws.However, it has been argued that the term "Right to Information", which is

[75] For some of the most important examples, see Guillermo O'Donnell, Philippe C. Schmitter and Lawrence Whitehead, Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies 4 (eds. 1986); Juan Linz and Alfred Stepan, Problems of Democratic Transition and Consolidation(1996).
[76] Providing information to the public and being subject to sanctions are two minimum requirements for democratic accountability. There is a wide debate on the topic that will not be summarised here. See John M. Ackerman, Social Accountability in the Public Sector; A Conceptual Discussion 2-7 (2005), available at http://siteresources.worldbank.org/WBI/Resources/Social_Accountability_in_the_Public_Sector_with_cover.pdf.
[77] See, Guillermo, et al, op. cit.
[78]Mendel T., op. cit., p. 3.

gaining increasing currency, most aptly communicates the key element of the right,[79] while the term "Freedom of Information" has been particularly associated with the laws of Anglophone and northern European countries[80] and has been understood in some contexts to refer only to the right to seek, receive and impart information free from government interference.[81]Freedom of Information is specifically the term used in a number of legislations[82] including Nigeria.[83]

As stated in the discussions preceding the coming into effect of the FoI Act in Nigeria, the argument on the appropriate title of the law was one of the reasons former President Obasanjo vetoed the bill on Freedom of Information.However, this research frequently uses the term Freedom of Information (FOI); firstly, because it is the term used in the Nigeria law and second, because the argument is more or less academic considering the fact that what is of paramount importance is not the title of the law but whether the law substantially confers a positive and enforceable right of access to information.

Third, it can be argued that the term 'Right to Information' is a bit restrictive in the Nigerian context because, as previously discussed in chapter 1, the FoI Act is not solely concerned with the right of access to information but imposes certain publication, record keeping and reporting obligations on all public institutions as well.

"Access to" information (or to public information, information of public interest, official information, official documents or some other variation) is the term used in most laws in Europe, Latin America and Africa. "Right to information" is used in several of the most recently enacted laws and ordinances, including those of Albania (adopted 1999), Bangladesh (2008), Croatia (2003), India (2005) and Turkey (2003).[84]

Considering the fact that Freedom of Information is regarded as an important right, it might be a little surprising that its meaning is not clearly stated in the Nigerian FoI Act and several international human rights standards on the subject. However, Freedom of information law can be defined as a law that guarantees access to information in the custody or control of public institutions by establishing a "right of access" or "right to know"

[79]See for example, Mendel, T., op. cit.; and Justice Initiative, 10 Principles on the Right to Know, March 2009 (in English, French and Spanish).
[80] http://www.right2info.org/laws.
[81]*Leander v. Sweden*, (1987) 9 Eur. Ct. H.R. 433, 26.
[82] Antigua & Barbuda, Australia, Belize, Ireland, Israel, Scotland, Trinidad & Tobago, United States, United Kingdom, Armenia, Bosnia & Herzegovina, Georgia, Germany, Latvia and Switzerland
[83]Mendel, T., Ibid.
[84]Ibid.

legal process by which requests may be made for government-held information, to be received freely and without being obliged to demonstrate any legal interest of standing, subject to certain limited exemptions.[85]

The preamble to the Nigerian FoI Act sets the intents and objectives of the law as follows:

> An Act to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and for related matters.[86]

The FoI Act defines "Information" to include all records, documents and information stored in whatever form including written, electronic, visual image, sound, audio recording, etc.[87]FOI law gives citizens, other residents, and interested parties the right to access documents held by government without being obliged to demonstrate any legal interest of standing.[88]S.2 of the FoI Act provides that "an applicant under this Act needs not demonstrate any specific interest in the information being applied for."

### 2.2.1 Meaning of "Public Interest" Test

The term"Public Interest" is not defined in the FoIAct although most of the exceptions are subject to the Public Interest Test; therefore the responsibility of determining what constitutes overriding public interest vests in the courts.

However, we are of the view that when applying the test, a public institution is simply required to make an informed decision as to whether in any particular case it serves the public better to withhold or to disclose information.[89]Rather than an absolute, it is often defined relative to the concept of a private or individual interest.

The degree of "public interest" depends on the importance of the information at issue to the individual, a cross-section of society, or society as a whole. It does not mean "what the public is interested in" or curious about. The courts have made it clear that the fact that the public may be *curious* about a matter is not an indication that its disclosure is *in* the public interest.

[85]Mendel, T., op cit.
[86]See, Preamble to the Freedom of Information Act, 2011.
[87]S.31, Freedom of Information Act, 2011.
[88] See, Ackerman J. M., et al., op. cit., p. 99.
[89]See, the FoIGuidelines, Chapter 3, p. 16.

In the English case of *Lion Laboratories Ltd v Evans,* Griffith, LJ held that "There is a world of difference between what is in the public interest and what is of interest to the public."[90] Depending on the circumstances, disclosure of exempted information may be in the public interest where it involves helping to ensure that:

(a) there is informed public debate about significant decisions.[91]

(b) the public are able to participate effectively in decisions affecting them.

(c) there is adequate scrutiny of the decision-making process.

(d) public institutions are accountable for the spending of public money.[92]

(e) public institutions do their job properly.

(f) allowing individuals and companies to understand decisions made by public authorities affecting their lives and in some case to challenge those decisions.[93]

(g) the public is not deceived about the way public institutions, or bodies which they regulate, operate.

(h) the public are informed about possible dangers to health and safety or the environment and the adequacy of measures taken to prevent them.

(i) public institutions deal fairly with the public.

(j) any misconduct is exposed, and

(k) unfounded concerns about a public institution are dispelled.

Where public interest arguments of these kinds apply they would support the case for disclosure of requested information. The above categories are however not exhaustive, in Lord Hailsham's words "the categories of public interest are not closed".[94]Consequently, the decision remains subject to the interpretation of the presiding court. While the result is a subjective definition, it is best interpreted loosely but carefully. For this purpose, documents may be inspected by the court, during which inspection the court could take necessary precaution, including, receiving representations *ex parte* and conducting hearings in camera when appropriate, to avoid the undue disclosure.[95] Following inspection, the restriction may be upheld or full or partial disclosure ordered.[96]

[90][1984] 2 All ER 417 at 435.
[91]See, the FoI Guidelines, Chapter 3, p. 17.
[92]Ibid.
[93]Ibid.
[94]*Lion Laboratories Ltd v. Evans,* (Supra)
[95] S. 23 Freedom of Information Act, 2011.
[96]Odikanlu, C. A. et al, IbIbid., p. 16.

In the *Matrix Churchill*[97] case, four Ministers signed public interest immunity certificates to suppress information in a criminal case against three executives from an engineering company for illegally exporting weapons to Iraq. As a result of these certificates, innocent men were in danger of being sent to prison, because the government would not allow the defence counsel to see the documents that would exonerate their clients. The court ruled that the public interest of access to justice and a fair trial for the three accused persons prevailed against the claim of immunity by the government officials.[98]

A further indication of what may be of public interest has been shown in the case of *Ledap v. Clerk of the National Assembly of Nigeria*[99] wherein the applicant sought information in respect of salaries, allowances and emolument paid to elected members of the National Assembly. Counsel to the applicant submitted that the information sought related to public fund and not personal information as argued by counsel to the respondent; and that the disclosure of such information would encourage accountability, transparency, good governance and rule of law; ease probity and check tendency to misuse of public fund and official corruption.

The court agreed with the applicant that "the information did not relate to any of the personal information of members of the National Assemble, but simply what was paid to them while they were in service from the public fund."[100]

## 2.3 ORIGINS OF FREEDOM OF INFORMATION LAW

The first freedom of information law was enacted by Sweden in 1766,[101] largely motivated by the parliament's interest in access to information held by the King. This statute, entitled Freedom-of-Press and the Right-of-Access to Public Records Act[102]was enacted 23 years before the United States revolution and 13 years before the French Revolution. The principal sponsor of this law, clergyman and congressman Anders Chydenius, had been inspired by Chinese practice.

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[97]IbIbid.
[98]Odikanlu, C. A. et al, IbIbid., p. 16.
[99]Supra
[100]FoI GuIbidelines, Chapter 3, p. 24.
[101]Banisar, D., Freedom of Information and Access to Government Record Laws Around the World (2004), available at http://freedominfo.org/survey/global_survey2004.pdf.
[102]Tryckfrihetsforordningen [TF] [Constitution] (Swed.) available in English at http://www.presscouncils.org/library/Swedish_Press-Law.doc.

According to Chydenius, China was the "model country of the freedom of the press" and set the example for other nations to follow.[103]

This scholar-politician also admired the Chinese institution of the Imperial Censorate, which was "an institution founded in humanist Confucian philosophy whose main roles were to scrutinise the government and its officials and expose mis-governance, bureaucratic inefficiencies, and official corruption."[104] He was particularly impressed by the fact that Chinese emperors were expected to "admit their own imperfection as a proof for their love of the truth and in fear of ignorance and darkness."[105] The origins of government accountability are not in the West, but in the East at the high point of the Ch'ing Dynasty.[106]

Finland was the next to adopt freedom of information law in 1953, followed by the United States, which enacted its first law in 1966, and Norway, which passed its laws in 1970. The interest in FOI laws took a leap forward when the United States, reeling from the 1974 Watergate scandal, passed a tough FOI law in 1976, followed by passage by several western democracies of their own laws (France 1978, Netherlands 1978, Australia 1982, New Zealand 1982, Canada 1982, Columbia and Denmark 1985, Greece 1986, Austria 1987, Italy 1990). By 1990, the number of countries with RTI/FOI laws had climbed to 13.[107]

The fall of the Berlin Wall and the rapid growth of civil society groups demanding access to information – about the environment, public health impacts of accidents and government policies, draft legislation, maladministration, and corruption – gave impetus to the next wave of enactments, which peaked in the late 1990s and early 2000s. Between 1992 and 2006, 27 countries in Central and Eastern Europe and the former Soviet Union passed RTI laws, of which Hungary and Ukraine were among the first. During that same period through to the present, at least 42 countries in other regions of the world enacted Freedom of Information laws.

By February 2010, some 82 countries had national-level right to information laws or regulations in force – including the population giants of China, India, and Russia, most countries in Europe and Central Asia, more than half of the countries in Latin America, more than a dozen in Asia and the Pacific, five countries in Africa, and two in

[103]Chydenius A., Skrif-Friheten B.O.C andDanskan O.F., A Report on the Freedom of the Press in China, (1766) reprinted in Lamble S., Freedom of Information, A Finnish Clergyman's Gift to Democracy, 97 Freedom Info. Rev. 2,3 available at http://www.FoI.law.utas.edu.au/FoI_rev.html.
[104]Ibid.
[105]Chydenius A., et al., op. cit.
[106]Ibid.
[107]Ibid.

the Middle East. As of April 2010, when Indonesia's law entered into force, more than 4.5 billion people lived in countries that include in their domestic law an enforceable right, at least in theory, to obtain information from their governments.[108]Nigeria FoI Act, which came into force in May, 2011 is one of the latest.

## 2.4 LINK BETWEEN FREEDOM OF INFORMATION, FREEDOM OF EXPRESSION AND RIGHT TO PARTICIPATION

Freedom of Information is linked to, but goes beyond the Freedom of Expression. Roberto Saba cogently argued that Freedom of Expression and opinion are not only about the defence of personal autonomy or the right of the individual to communicate his or her thoughts;[109] these freedoms are also about guaranteeing that the users of information have access to the "widest possible diversity of points of view on a particular issue."[110]

ErnastoVilanueva puts this same point in a different way. For Villanueva, the overriding "Right to Information" which includes, but goes beyond Freedom of Expression and access to information consists in three elements: (1) the right to seek and receive ("atraerse") information, (2) the right to inform, and (3) the right to be informed.[111]Mark Bovens goes further. He characterizes "Information Rights" as the fourth great wave of citizens' rights, equivalent to the civil, political and social rights outlined in T. H. Marshall's classic text.[112] With the decline of the industrial era and the rise of the information society, the world needs to update its constitutional frameworks to take into account the new universal right to information.[113]

Bovens makes a distinction between transparency as a question of "public hygiene" and information rights as an issue of "citizenship," thus:

> The current rules on open government are for the most part mainly a question of public hygiene. This regulation is intended to increase the transparency of public administration, with a view to better democratic control and social accountability of government. By contrast, the information

[108]This figure was reached by adding the population figures for the 90 countries provIbided by Wikipedia. See, Wikipedia, List of Countries by Population,http://en.wikipedia.org/wiki/List_of_countries_by_population, plus Indonesia, whose law entered into force in Apr, 2010. Republicof Indonesia.Act No. 14/2008, Public Information Disclosure Act, adopted30 April 2008, Art.64 and Nigeria in 2011.
[109]Saba, R., El Derecho de la Persona a Acceder a la Informacion en PoderdelGobiermo, 3 DerechoComparado De La Informacion 45, 153 (Jan–June2004), available at http://www.jurIbidicas.unam.mx/publica.pdf. (last visited Feb. 7, 2006) (translation by Ackerman & Sandoval).
[110]Ibid., p. 153.
[111]Villanueva, E., Derecho De Acceso A La InformacionPublica En Latino Americo: EstudioIntroductoria y Compilacion 17 (2003).
[112]Bovens, M., Information Rights: Citizenship in the Information Society, 10 J. Pol. Pjil. (2002), 317, 317-41 (adding FOI to the list of ancient civil rights).
[113]Ibid., (discussing how access to information has now become a question of social justice).

> rights are most of all an element of citizenship. They concern first and foremost the social functioning of citizens, not only in relation to the public authorities, but also in their mutual relations and their relations with private legal entities. Information rights should be part of the civil rights chapter of constitutions, together with other individual rights.[114]

Thus, Boven's distinction recognises that open government without an informed populace is meaningless.

Alasdair Roberts also argues that information rights should be seen as essential parts of basic political participation rights, including but going beyond Freedom of Expression.[115]

> The task of providing critical public services that affect basic rights may be given to governmental organizations, but citizens cannot evade their own responsibility for ensuring that these agencies do their work properly ....there is an obligation to monitor the conduct of agencies, and a right of access to information could be justified as a mechanism for allowing citizens to fulfil their obligation.[116]

According to Roberts, citizen participation in holding government to account is not just a productive possibility under democracy. It is a duty and a responsibility.[117]

These perspectives invite us to conceptualise liberties of the press and of citizen participation as positive freedoms and not merely negative rights. Negative freedoms allow us to be independent from oppression and external controls. They are "freedoms from" the control of some external force.[118] Positive freedoms allow us to realise ourselves as full human beings. They are "freedoms to" achieve some particular end.[119]Once we see freedom of expression and participation as rights to be informed and not only as rights from censorship and control we would argue that we have immediately moved into the realm of the overriding right to information, which requires a right to access government information as one of its central elements.

However, we are of the view that the freedom of expression and the press guaranteed under the Nigerian Constitution do not confer a right of access to information; this in the main was what led to the campaignsfor the enactment of the FoI Act.

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[114]See, Bovens, M., op. cit., p. 327.
[115] See, Roberts, A., Structural Pluralism and the Right to Information, 51 U. *Toronto L. J*. 262,(2001) 243-71 (noting that access rights are grounded in participation rights in addition to the Freedom of Expression.)
[116]Roberts, A.Ibid, p. 264.
[117]Ibid.
[118] See generally, Berlin, I., Two Concepts of Liberty: An Inaugural Lecture Delivered before the University of Oxford (Oct. 31, 1958), reprinted in Liberty: Incorporating "Four Essays on Liberty" (Henry Hardy ed., 2002),169-78 available at http://www.hss.bond.edu.au/phil.pdf.
[119]Ibid (defining positive freedom as the ability to be one's own master).

S.39 of the Constitution[120] provides that "every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference." The right "to receive ...information without interference" is clearly expressed as a negative right (i.e. right to receive without interference) and confers no obligation on public institutions to make information available, which underscores the argument that freedom of information laws are important even when a country already has constitutional provisions that guarantee the right to information or Freedom of Expression.

Constitutional clauses are difficult to enforce directly without intermediation of legal statutes. For instance, the right to receive information under S.39 of the Constitution is a negative right and the numerous clauses guaranteeing the right to work, education, food and health that are included in the many constitutions of the world are almost always left as dead letters.[121] Only when the legislature does the work of grounding principles in statutory law do these clauses gain the status of effective rights for the population that the government is obliged to uphold.

Further, the right of access to information under the FoI Act is of the realm of civil right and not a fundamental human right until Chapter 4 of the Constitution is amended to include Freedom of Information as one of the fundamental right. The courts in Nigeria have interpreted fundamental human rights to include only the rights contained in Chapter 4 of the Constitution[122] and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[123]Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 provides that –

> any person who alleges that any of the fundamental rights provided for in the Constitution or African Charter on Human and Peoples' (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the state where the infringement occurs or is likely to occur for redress.

The position in Nigeria is similar to what obtains in the United States of America whereby the U. S. Supreme Court has been reluctant to interpret the First Amendment of the Constitution, which guarantees Freedom of Speech, as implying a right to be granted access to information. For example, in the case of *Houchins v. KQED*,

[120]Constitution of the Federal Republic of Nigeria, 1999 (As Amended).
[121]See, for example, S. 6(6)(c) of the Constitution 1999 (As Amended), which provIbides that the judicial powers of the courts shall not extent to any issue or question as to whether the provisions of Chapter II i.e. the Fundamental Objectives and Directive Principles of State Policy are observed.
[122]Constitution 1999 (As Amended).
[123]Cap. A9, Laws of the Federation of Nigeria, 2004; see also, *Fawehinmi v. Abacha&Ors*(1996)9 NWLR (Pt. 475) 710.

*Inc*[124] the US Supreme Court held that the First Amendment does not "(mandate) a right to access government information or sources of information within government's control."[125]

The European Court of Human Rights (ECHR or the Court) has also considered claims for a right to receive information from public bodies. It has at this issue in a number of cases:*Leander v. Sweden*,[126]*Gaskin v. United Kingdom*,[127]*Guerra and Ors. v. Italy*,[128]*McGinley and Egan v. United Kingdom*,[129]*Odièvre v. France*,[130]*Sîrbu and others v. Moldova*,[131] and *Roche v. United Kingdom*.[132] In cases that presented claims based on the right to freedom of expression as guaranteed by Article 10 of the ECHR,[133] the Court held that such does not include a right to access the information sought. The following interpretation of the scope of Article 10 from the *Leander's case* either features directly or is referenced to in all of these cases:

> The right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him. Article 10 does not, in circumstances such as those of the present case, confer on the individual a right of access… nor does it embody an obligation on the Government to impart… information to the individual.[134]

At the same time, there are indications that the ECHR may be changing its approach. In *SdruženiJihoĐeskéMatky v. Czech Republic*,[135] the ECHR held that a refusal to provide access to information did represent an interference with the right to freedom of expression as protected by Article 10 of the ECHR.

The decision included the quotation noted above from Leander, and also noted that it was 'difficult' to derive from the ECHR a general right to access administrative documents. However, the Court also noted that the case concerned a request to consult administrative documents in the possession of the authorities and to which access was provided for under conditions set out in article 133 of the law on construction. In those circumstances,

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[124]438 Vol. 1, (1978).
[125]Ibid, p. 15.
[126] Application No. 9248/81, 9 EHRR 433, decided 26 March 1987.
[127]Application No. 10454/83, 12 EHRR 36, decided 7 July 1989.
[128] Application No. 14967/89, decided 19 February 1998.
[129] Application Nos. 21825/93 and 23414/949, decided June, 1998.
[130]Application No. 42326/98, decided 13 February 2003.
[131]Applications Nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01 decided 15 June 2004,
[132]Application No. 32555/96 decided 19 October 2005.
[133]Neither *McGinley and Egan v. United Kingdom* (Supra)nor *Odièvre v. France* (Supra)involved Article 10 complaints. Both cases were, rather, based on other Articles, including Article 8 on right to fair hearing.
[134]*Leander v. Sweden*(Supra), para. 74.
[135]Application No. 19101/03, decision of 10th July, 2006.

the Court recognized that the refusal to grant access represented an interference with the right of the applicant to receive information.[136]

It should be noted however that leading courts in some other jurisdictions have interpreted the general guarantee of freedom of expression as encompassing a right to information. Thus as early as 1969, the Supreme Court of Japan established in two high profile cases the principle that, "shirukonri" (the "right to know") is confined by the guarantee of Freedom of Expression in Article 21 of Japan's Constitution.[137]

The Supreme Court of India has also recognised this right in the case of *S. P. Gupta v. Union of India*[138]stating that:

> Where a society has chosen to accept democracy as its creedal faith, it is elementary that its citizens ought to know what their government is doing ... no democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfil the role that democracy assigns to them and make democracy an effective participatory democracy.[139]

Similarly, the Constitution Court of South Korea had in two seminal cases decided in 1989 and 1991, held that there was a "right to know" inherent in Freedom of Expression and that in certain circumstances, the right may be violated if government officials refuse to produce requested documents.[140]

Freedom of Information laws is also a further development in the age-old struggle for the right to participate in government decision making. In the past, governments had great military and legal authority, but they did not hold the amount of information that they do today. The rise of the administrative state is a distinctly modern phenomenon, which has fully developed only in the 20th century.

For instance, in the United States in 1802 there were only 2,700 civil servants and by 1871 there were still only 50,000.[141] Not until the early 20th century did the U. S. Administrative state set itself on more solid footing.[142]

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[136]The original French judgment states: "En l'occurrence, la requérante a demandédeconsulter des documents administratifs qui étaient à la disposition des autoritésetauxquels on pouvaitaccéderdans les conditions prévuesparl'article 133 de la loisurles constructions, contestépar la requérante. Dansces conditions, la Couradmetquelerejet de laditedemande a constituéuneingérence au droit de la requérante de recevoirdes informations."

[137]Repeta, L., Local Government Disclosure Systems in Japan, National Bureau of Asian Research, Paper No. 16, 1999, page 3

[138] (1982) AIR (SC) 149.

[139]*S. P. Gupta v. Union of India* (Supra), p. 234.

[140] Sung-Nakin, Korea Country Report (English Summary), presented at the Asian Conference on Civil Society and Access to Government Held Information, Tokyo, Japan, 13 – 14 April 2001.

[141] See, Young, J. S., The Washington Community 29 (1966) (Charting the "governmental establishment" in 1802).

By 1945 that number rose to 3,800,000 civil servants, a number roughly equal to the entire population of the United States in 1787 when the framers wrote the constitution.[143]

A similar process occurred throughout the world and in both the North and the South of America. In East Asia and Latin America for instance, the rise of the "Developmental State" during the middle of the 20th century led to a significant strengthening of the bureaucratic apparatus.[144] This phenomenon has become so widespread that scholars like Ira Katznelson have called the rise of the administrative state the "second great macro-process of modernity" comparable only to the rise of capitalist market relations in the 19th century.[145]

With the rise of the administrative state, the link between Freedom of Expression, citizen participation in government, and freedom of access to government information becomes more important. Citizens can only be considered to be fully informed and able to participate as democratic citizens if they are able to access the information held about them and on their behalf by the government.

In the age of the administrative state, expression and participation become meaningless if the polity is ignorant of the internal workings of government.

## 2.5 IMPACT OF FREEDOM OF INFORMATION ON POLITICS, ECONOMICS AND PUBLIC ADMINISTRATION

In addition to their theoretical links to Freedom of Expression and the right to citizen participation, freedom of information laws can have a positive impact on at least three different spheres of society: politics, economics and public administration.

In the political realm, they contribute to the ability of citizens to become aware of and involved in the activities of government. This enables them to transform themselves from passive citizens who occasionally go to

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[142] See, Rosenbloom, D., Building a Legislative-Centered Public Administration: Congress and the Administrative State 1946-1999 at 5 (2000) (citing the New Deal and World War II as factors in the explosion of the American bureacracy)

[143] Ibid., p. 6.

[144] See generally, The Developmental State (Meredith Woo-Curnings ed., 1998) detailing the evolution of a strong administrative apparatus in developing nations.

[145] Katznelson, I. and Zuckerman, A. S., Structure and Configuration in Comparative Politics: Rationality, Culture and Structure (1997 Ed.), 81-112.

the polls into active citizens who call the government to account and participate in the design of public policies.[146] Overall, this raises the level of political debate and leads to a more productive process of policy making.[147]

In the economic realm, transparency increases efficiency by making the investment climate more reliable and allowing capital to better circulate where and when it can best be invested.[148] Indeed, markets live and die on information. Although secrecy and "insider information" is profitable for the few, the health of the market in the long term depends on a steady and reliable flow of trustworthy information.[149]

In the realm of public administration, transparency improves the decision making of public servants by making them more responsive and accountable to the public and controls corruption by making it more difficult to hide illegal agreements and actions.[150] It also improves the legitimacy and trust in government in the eyes of the people, allowing for more effective implementation of public policies.[151]

David Kaufmann and Tara Vishwanath summarise the overall benefits of transparency as follows:

> Lack of transparency can be costly both politically and economically. It is politically debilitating because it dilutes the ability of the democratic system to judge and correct government policy by cloaking the activities of special interests and because it creates rents by giving those with information something to trade. The economic costs of secrecy are staggering, affecting not only aggregate output but also the distribution of benefits and risks. The most significant cost is that of corruption, which adversely affects investment and economic growth.[152]

The authors argue that financial crises are much more likely when government and private sector financial information are not made available to the public. Nigeria, experienced major cases involving the collapse of the banking sector with 26 banks liquidated in 1997 and the recent financial scandals involving the falsification of the company financial statements in Cadbury Nigeria Plc in 2006.[153] The unprecedented financial and economic crisis in 2007-2009 impacted negatively on the Nigerian economy. The Nigerian stock market collapsed by 70% in 2008-2009 and many Nigerian banks had to be rescued by the CBN. In order to stabilize the system and return confidence

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[146] See, Bovens, op. cit., p. 322-33.
[147]Ibid., (discussing positive effects of information on politics).
[148] See, Kaufmann, D., andVishwanath, T., Toward Transparency: New Approaches and Their Application to Financial Markets, *16 World Bank Res. Observer* 41, 41-57 (2001) (linking the rise of successful financial markets to access to information).
[149]Ibid., p. 44 (discounting the arguments against governmental transparency in economics).
[150] See, Rose-Ackerman S., Corruption and Government: Causes, Consequences and Reform 162-74 (1999).
[151]Ibid., p. 174
[152] Kaufman, D., et al, op. cit., p. 44.
[153]See,Amao, O., and Amaeshi, K., Galvanising Shareholders Activism: Prerequisite for Effective Corporate Governance and Accountability in Nigeria. *Journal of Business Ethics* (2008), Vol. 82, pages 119-130;Olusa, M. Corporate Governance v. Cadbury Nigeria, http://www.guardiannewsngr.com/editorial_opinion/article03/160107. Accessed on 10 October 2008.

to the markets and investors, the CBN injected N620bn of liquidity into the banking sector and replaced the leadership at 8 Nigerian banks.

Given the low sophistication among many consumers and investors in Nigeria, inadequate disclosure by the banks was a major contributing factor to the crisis. Bank reports to the CBN and investors often were inaccurate, incomplete and late, depriving the CBN of the right information necessary to effectively supervise the industry as well as depriving investors of information required in making informed investment decisions.[154]

Without accurate information, investors made ill-advised decisions regarding bank stocks, enticed by a speculative market bubble which was allegedly partly fuelled by the banks through the practice of margin lending. Some banks even engaged in manipulating their books by colluding with other banks to artificially enhance financial positions and therefore stock prices. Practices such as converting non-performing loans into commercial papers and bank acceptances and setting up off-balance sheet special purpose vehicles to hide losses were prevalent.[155]

According to Kaufmann and Vishwanath, "theoretically, a greater and less volatile flow of information about the decisions of the central bank should be just as likely to stabilize and rationalize financial markets as it is to disrupt and corrupt them."[156] They even state that access to information about policy setting by central banks may be positive for the economy.[157]

## 2.6 INTERNATIONAL STANDARDS FOR FREEDOM OF INFORMATION LAW

Numerous international bodies with responsibility for promoting and protecting human rights have authoritatively recognised the right of access to information held by public bodies, as well as the need for effective legislation to secure respect for that right in practice. These include the United Nations, regional human rights bodies and mechanisms at the Organization of American States, the Council of Europe and the African Union, and other international bodies with human rights mandate, such as the Commonwealth.

### 2.6.1 The United Nations

*2.6.1.1 UN General Assembly*

[154]Sanusi, L. S.,The Nigerian Banking Industry: What Went Wrong and the Way Forward. A Convocation Lecture delivered to mark the Annual Convocation Ceremony of Bayero University, Kano at the Convocation Square, Bayero University, Kano, on FrIbiday, 26 February, 2010.
[155]Sanusi, L. S., op. cit.
[156] Kaufman, D., et al, op. cit.
[157]Ibid.

The notion of freedom of information was recognised early by the United Nations (UN). In 1946, during its first session, the UN General Assembly adopted Resolution 59(1), which states that: "Freedom of information is a fundamental human right and … the touchstone of all the freedoms to which the UN is consecrated."[158]

Although laws guaranteeing right to access information held by public bodies are also called freedom of information laws, it is clear from the context used in Resolution 59(1) that, the term referred in general to the free flow of information in society rather than the more specific idea of a positive right to access information held by public institutions.

*2.6.1.2 Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR)*

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948,[159] is generally considered to be the flagship statement of international human rights. Article 19, which is binding on all States as a matter of customary international law[160]guarantees the right to freedom of expression and information in the following terms: "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN General Assembly in 1966[161] and, as of July 2007, had been ratified by 160 States. The ICCPR guarantees the right to freedom of opinion and expression under Article 19, in very similar terms to the UDHR. These international human rights instruments did not specifically elaborate a right to information and their general guarantees of freedom of expression were not, at the time of adoption, understood as including a right to access information held by public bodies.

[158]See, United Nations General Assembly Resolution, December 1946.
[159]UN General Assembly Resolution 217 A (III), 10 December 1948.
[160]See McDougal, M. C.,Lasswell, H. D.,and Chen, L. C.,Human Rights and World Public Order.Yale University Press, Princeton, (1980) p. 273-74, 325-27.For judicial opinions on human rights guarantees in customary international law, see, forexample,*Belgium v. Spain* (*Barcelona Traction, Light and Power Company Limited Case*)(Second Phase), ICJ Rep. 1970 3; *Namibia Opinion*, ICJRep. 1971 16, *Separate Opinion*, Judge Ammoun (International Court of Justice); and*Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).
[161]UN General Assembly Resolution 2200 A (XXI), 16 December 1966, entered into force23 March 1976.

However, the contents and interpretation of rights are usually not static. For example, in the case of *Tyrer v. United Kingdom*[162], the European Court of Human Rights held that: "The European Convention on Human Rights is a living instrument which … must be interpreted in the light of present-day conditions."[163] Similarly, the Inter-American Court of Human Rights has held that international "human rights treaties are live instruments whose interpretation must adapt to the evolution of the times and, specifically, to current living conditions."[164]

Those responsible for drafting international human rights treaties were farsighted in their framing of the right to freedom of expression, including within its ambit the right not only to impart but also to seek and receive information and ideas. They recognised the important social role of not just freedom to express oneself – freedom to speak – but also of the more profound notion of a free flow of information and ideas in society.

They recognised the importance of protecting not only the speaker, but also the recipient of information. This recognition has contributed to the increasing wave of freedom of information laws conferring rights to request and be given access to information held by public bodies.

*2.6.1.3 UN Special Rapporteur on Freedom of Opinion and Expression/UN Human Rights Committee*

In 1993, the UN Commission on Human Rights[165] established the office of the UN Special Rapporteur on Freedom of Opinion and Expression.[166] Part of the Special Rapporteur's mandate is to clarify the precise content of the right to freedom of opinion and expression and the Special Rapporteur has addressed the issue of the right to information in most of his annual reports submitted to the Commission since 1997.

After receiving the Special Rappateurs initial statements on the subject in 1997, the Commission called on the Special Rapporteur to "develop further commentary on the right to seek and receive information and to expand

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[162]Application No. 5856/72,25 April 1978.

[163]Ibid., para. 31. See also *Christine Goodwin v. United Kingdom*, 11 June 2002, Application No. 28957/95, para. 74.

[164]*Mayagna (Sumo) AwasTingni Community v. Nicaragua*, 31August 2001, Series C, No. 79, para. 146. See also *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion of 1 October 1999, OC-16/99, Series A, No. 16 (Inter-American Court of Human Rights) and, in particular, the Concurring Opinion of Judge A.A. CancadoTrindade.

[165]The Commission was established by the UN Economic and Social Council (ECOSOC) in1946 to promote human rights and was, until 2006, when it was replaced by the Human Rights Council, the most authoritative UN human rights body. UN General Assembly Resolution 60/251, 3 April 2006, establishing the Council, is available at: http://daccessdds.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement.

[166]Resolution 1993/45, 5 March 1993.

on observations and recommendations arising from communications."[167] In his 1998 Annual Report, the Special Rapporteur stated clearly that the right to freedom of expression includes the right to access information held by the State: "The right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems. …"[168] These views were endorsed by the Commission.[169]

The UN Special Rapporteur significantly expanded the commentary on the right to information in the 2000 Annual Report to the Commission, noting its fundamental importance not only to democracy and freedom, but also to the right to participate and to realisation of the right to development.[170]The report reiterated concerns"about the tendency of Governments, and the institutions of Government, to withhold from the people information that is rightly theirs".[171] Importantly, at the same time, the Special Rapporteur elaborated in detail on the specific content of the right to information.[172]Subsequent reports by the Special Rapporteur focused more on implementation of the right to information than on further development of standards.

The other main UN body with responsibility for the right to freedom of expression is the UN Human Rights Committee (HCR), established under the ICCPR and given responsibility for oversight of its implementation.

The HRC both reviews and comments on the regular reports, which states are required to provide on the implementation of their ICCPR obligations, and hears individual complaints about human rights abuses from States which have ratified the (first) Optional Protocol to the ICCPR.

The HRC has so far declined to comment on the right to information in the context of regular State reports, although this may be partly because these are largely reactive in nature. So far, no individual case on the right to information has been decided by the HRC although it is understood that cases on this are currently pending before it.

[167]Resolution 1997/27, 11 April 1997, para.12(d).
[168]Report of the Special Rapporteur, Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc. E/CN.4/1998/40, 28 January 1998, para. 14.
[169]Resolution 1998/42, 17 April 1998, para. 2.
[170]Report of the Special Rapporteur, Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 42
[171]*Ibid.*, para. 43.
[172]*Ibid.*, para. 44.

### 2.6.2 Regional Standards

All three main regional human rights systems: the Organization of American States, the Council of Europe and the African Union have formally recognised the right to access information held by public institutions.

*2.6.2.1 The Organization of American States*

Article 13 of the American Convention on Human Rights (ACHR),[173] a legally binding treaty, guarantees freedom of expression in terms similar to, and even stronger than, the UN instruments. In 1994, the Inter-American Press Association, a regional Non-Governmental Organization, organized the Hemisphere Conference on Free Speech, which adopted the Declaration of Chapultepec; a set of principles which elaborate on the guarantee of freedom of expression found at Article 13 of the ACHR.[174] The Declaration explicitly recognizes the right to information as a fundamental right, which includes the right to access information held by public bodies:

> 2 Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.
> 3 The authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector.

Although the Declaration of Chapultepec originally had no formal legal status, as Dr Santiago Canton noted when he was OAS Special Rapporteur for Freedom of Expression, it "is receiving growing recognition among all social sectors of our hemisphere and is becoming a major point of reference in the area of freedom of expression."[175] To date, the Heads of State or Government of some 30 countries in the Americas, as well as numerous other prominent persons, have signed the Declaration.[176]

[173]Adopted at San José, Costa Rica, 22 November 1969, O.A.S. Treaty Series No. 36, entered into force 18 July 1978.
[174]Mexico City, 11 March 1994.
[175]Annual Report of the Inter-American Commission on Human Rights, 1998, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, 16 April 1999, OEA/Ser.L/V/II.102, Doc. 6 rev., Chapter III.
[176]The countries are Antigua and Barbuda, Argentina, The Bahamas, Bolivia, Belize, Brazil, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Vincent and The Grenadines, Suriname, Trinidad and Tobago, Uruguay and the United States of America. Information available at: http://www.declaraciondechapultepec.org/english/presIbidential_sign.htm.

In October 2000, in an important development, the Commission approved the Inter-American Declaration of Principles on Freedom of Expression,[177] which is the most comprehensive official document to date on Freedom of Expression in the Inter-American system. The Preamble reaffirms the aforementioned statements on the right to information: "CONVINCED that guaranteeing the right of access to information held by the State will ensure greater transparency and accountability of government activities and the strengthening of democratic institutions". The Principles unequivocally recognize the right to information:

> 4 Every person has the right to access information about himself or herself or his/her assets expeditiously and not onerously, whether it is contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
> 5 Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

The OAS General Assembly has followed up on the Principles by adopting resolutions on access to public information every year since 2003. These resolutions highlight Member States' obligation to "respect and promote respect for everyone's access to public information", which is deemed to be "a requisite for the very exercise of democracy."[178] The resolutions also call on States to "promote the adoption of any necessary legislative or other types of provisions to ensure [the right's] recognition and effective application."[179]

#### *2.6.2.2 The Council of Europe*

The Council of Europe (COE) is an intergovernmental organization, currently composed of 47 Member States, devoted to promoting human rights, education and culture. One of its foundational documents is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),[180] which guarantees freedom of expression and information as a fundamental human right under Article 10.

Article 10 differs slightly from guarantees found in Articles 19 of the UDHR and ICCPR, and Article 13 of the ACHR, in that it protects the right to "receive and impart", but not the right to "seek", information.

[177] 108th Regular Session, 19 October 2000. Available at: http://www.iachr.org/declaration.htm.
[178] Resolution 1932 (XXXIII-O/03) on Access to Public Information: Strengthening Democracy, adopted on 10 June 2003; Resolution 2057 (XXXIV-O/04) on Access to Public Information: Strengthening Democracy, adopted on 8 June 2004; Resolution2121 (XXXV-O/05) on Access to Public Information: Strengthening Democracy, adopted on 26 May 2005; Resolution 2252 (XXXVI-O/06) on Access to Public Information: Strengthening Democracy, adopted on 6 June 2006; and Resolution 2288(XXXVII-O/07) on Access to Public Information: Strengthening Democracy, adopted on 5 June 2007. See paras. 1 and 2 of the 2007 Resolution
[179] Ibid.
[180] E.T.S. No. 5, adopted 4 November 1950, entered into force 3 September 1953.

The political bodies of the Council of Europe have made important moves towards recognizing the right to information as a fundamental human right. In 1981, the Committee of Ministers, the political decision making body of the Council of Europe (composed of Member States' Ministers of Foreign Affairs) adopted Recommendation No. R(81)19 on Access to Information Held by Public Authorities, which stated that: "Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities …"[181]

In May 2005, the Committee of Ministers tasked a group of experts with "drafting a free-standing legally binding instrument establishing the principles on access to official documents."[182] The Group of Specialists on Access to Official Documents (known by the acronym DH-S-AC), presented a draft European Convention on Access to Official Documents to the Council of Europe's Steering Committee for Human Rights. The Convention, once adopted, will be a formally binding instrument recognizing an individual right of March 2008.[183]

The Charter of Fundamental Rights of the European Union,[184] adopted in 2000 by the 27-memberEuropean Union, sets out the human rights to which the Union is committed. Article 42 of the Charter grants a right of access to documents held by European Union institutions in the following terms: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents."

Originally just a 'political' document, the Charter is set to become legally binding by virtue of Article 6 of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (Reform Treaty).[185]

*2.6.2.3 The African Union*

[181]25 November 1981, p. 2.
[182]Decision No. CM/866/04052005. Availableat: https://wcd.coe.int/ViewDoc.jsp?Ibid=857569&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FDC864.
[183]Report of the 65th Meeting of the Steering Committee for Human Rights from 6-9 November 2007, CDDH(2007)023, 22 November2007.
[184]Adopted 7 December 2000, Official Journal of the European Communities, 18 December 2000, C 364/01.

Developments on the right to information at the African Union have been more modest. In October, 2002, the African Commission on Human and Peoples' Rights adopted a Declaration of Principles on Freedom of Expression in Africa.[186]

The Declaration clearly endorses the right to access information held by public bodies, stating that:

> Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law. The same Principle goes on to elaborate a number of key features of the right to information.[187]

The Declaration is an authoritative elaboration of the guarantee of Freedom of Expression found at Article 9 of the African Charter on Human and Peoples' Rights

*2.6.2.4 The Commonwealth*

The importance of the right to information was recognised by the Commonwealth nearly three decades ago. As far back as 1980, the Law Ministers of the Commonwealth, meeting in Barbados, stated that "public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information."[188]

The Commonwealth took some significant steps to elaborate on the content of that right. For instance, in March 1999, the Commonwealth Secretariat brought together a Commonwealth Expert Group to discuss the right to information. The Expert Group adopted a document setting out a number of principles and guidelines on Freedom of Information including the following:

> Freedom of Information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.[189]

[186]32nd Ordinary Session of the African Commission on Human and Peoples' Rights, 17-23 October 2002, Banjul, The Gambia.
[187]Adopted at Nairobi, Kenya, 26 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M.58 (1982), entered into force 21 October 1986. Article 9 is somewhat weaker in its formulation than its counterparts in other regional systems, but the African Commission has generally sought to provide positive interpretation of it.
[188]Quoted in,Promoting Open Government: Commonwealth Principles and Guidelines on the Right to Know. A Background Paper for the Commonwealth Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development held in London on 30-31 March 1999.
[189]Promoting Open Government: Commonwealth Principles and Guidelines on the Right to Know. A Background Paper for the Commonwealth Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development held in London on 30-31 March 1999.

These principles and guidelines were endorsed by the Commonwealth Law Ministers at their May 1999 meeting in Port of Spain, Trinidad and Tobago. At the same time, the Ministers formulated a number of key principles governing the right to information.[190] They also called on the Commonwealth Secretariat to take steps to promote these principles, including by assisting governments through technical assistance and sharing of experiences. The Law Ministers' Communiqué was considered by the Committee of the Whole on Commonwealth Functional Co-operation whose report, later approved by the Heads of Government,[191] stated:

> The Committee took note of the Commonwealth Freedom of Information Principles endorsed by Commonwealth Law Ministers and forwarded to Heads of Government. It recognized the importance of public access to official information, both in promoting transparency and accountable governance and in encouraging the full participation of citizens in the democratic process.[192]

The Commonwealth Secretariat has taken some concrete steps to promote the right to information in member countries. It has, for example, drafted model laws on the right to information and on privacy.[193]

## 2.7 INTERNATIONAL JURISPRUDENCE

### 2.7.1 Inter-American Court of Human Rights

In a 1985 Advisory Opinion, the Inter-American Court of Human Rights, interpreting Article 13,[194] referred to the dual nature of the right to freedom of expression, which protected both the right to impart, as well as to seek and to receive, information and ideas, noting:

> Article 13 … establishes that those to whom the Convention applies not only have the right and freedom to express their own thoughts but also the right and freedom to seek, receive and impart information and ideas of all kinds…. [Freedom of expression] requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.[195]

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[190]Communiqué issued at a Meeting of Commonwealth Law Ministers, held at Port of Spain on 10 May 1999.
[191]The Durban Communiqué issued at the Commonwealth Heads of Government Meeting, held at Durban, South Africa, on 15 November 1999, para. 57.
[192]Commonwealth Functional Co-operation Report of the Committee of the Whole at the Commonwealth Heads of Government Meeting, held in Durban, South Africa on 15 November 1999, para. 20.
[193]TheFreedomofInformationAct isavailable at: http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BAC090445-A8AB-490BD4B110BD2F3AB1%7D_Freedom%20of%20Information.pdf;and thePrivacy Act is available at: http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B82BDA409-2C88-4AB5-9E32-797FE623DFB8%7D_protection%20of%20privacy.pdf.
[194]American Convention on Human Rights.
[195]Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85, 13 November 1985, para. 30.

The Court also stated that: "For the average citizen it is just as important to know the opinions of others or to have access to information generally as is the very right to impart his own opinion", concluding that "a society that is not well-informed is not a society that is truly free."[196] Although the Court did not go so far, at that time, as to recognise the right to access information held by public bodies, it did provide a solid jurisprudential basis for such recognition.

In another significant development, the Inter-American Court of Human Rights, in the case of *Claude Reyes and Others v. Chile*[197]specifically held that the general guarantee of Freedom of Expression at Article 13 of the American Convention on Human Rights protects the right to access information held by public bodies. Specifically, the Court stated:

> 77. In respect of the facts of the present case, the Court considers that article 13 of the Convention, in guaranteeing expressly the rights to "seek" and "receive" "information", protects the right of every person to request access to the information under the control of the State, with the exceptions recognised under the regime of restrictions in the Convention. Consequently, the said article encompasses the right of individuals to receive the said information and the positive obligation of the State to provide it, in such form that the person can have access in order to know the information or receive a motivated answer when for a reason recognised by the Convention, the State may limit the access to it in the particular case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.[198]

Inherent in the quotation above are some key attributes of the right to information, namely that restrictions on the right of access may only be imposed consistently with Article 13 and that no reasons need to be provided to access information. The Court went on to elaborate in some length on the legitimate scope of restrictions on the right to information, stating that they should be provided by law, aim to protect a legitimate interest recognised under the ACHR and be necessary in a democratic society to protect that interest.[199]

The Court unanimously held that the respondent State, Chile, had breached the right to Freedom of Expression guaranteed by Article 13 of the ACHR. Significantly, the Court, also unanimously, required Chile not only to provide the information to and compensate the victims, and to publish the judgment, all fairly routine

[196]Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85, 13 November 1985, paras. 32 and 70.

[197]Series C No. 151, para.77 (Inter-American Court of Human Rights). Available at: http://www.corteIbidh.or.cr/docs/casos/articulos/seriec_151_ing.doc

[198]Series C No. 151, para.77; op. cit.

[199]*Claude Reyes and Others v. Chile*,paras. 88-92.

remedies, but also to adopt the necessary measures through national legislation to give effect to the right to information, and even to provide training to public officials on this right.[200]

### 2.7.2 European Court of Human Rights

The European Court of Human Rights has also considered claims for a right to receive information from public bodies. It has looked at this issue in a number of cases earlier referred to.[201]In cases that presented claims based on the right to Freedom of Expression as guaranteed by Article 10 of the ECHR,[202] the Court held that this did not include a right to access the information sought. The following interpretation of the scope of Article 10 from the *Leander v. Sweden* either features directly or is referenced in all of these cases:

> The right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him. Article 10 does not, in circumstances such as those of the present case, confer on the individual a right of access… nor does it embody an obligation on the Government to impart… information to the individual.[203]

By using the words, "in circumstances such as those of the present case", the Court has not absolutely ruled out the possibility of a right to information under Article 10. However, these cases involve a wide range of different fact patterns so that, taken together, the rejection of an Article 10 right to access information in all of them presents a high barrier to such a claim. As the Grand Chamber of the Court stated in the *Roche v. United Kingdom*[204] when rejecting the Article 10 claim of a right to access information: "It sees no reason not to apply this established jurisprudence."[205]

The Court did not, however, refuse to recognize a right of redress in these cases. Rather, it found that to deny access to the information in question was a violation of the right to private and/or family life, guaranteed by Article 8 of the Convention.[206] In most of these cases, the Court held that there was no interference with the right to respect for private and family life, but that Article 8 imposed a positive obligation on States to ensure respect for such rights:

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[200]*Ibid.*,para. 174.
[201]*Leander v. Sweden*, *Gaskin v. United Kingdom*, *Guerra and Ors. v. Italy*, *McGinley and Egan v. United Kingdom*, *Odièvre v. France*, *Sîrbu and others v. Moldova*,[201] and *Roche v. United Kingdom*
[202]Neither *McGinley and Egan v. United Kingdom*nor *Odièvre v. France*involved Article 10 complaints. Both cases were, rather, based on other articles, including Article 8.
[203]*Leander v. Sweden*, para. 74.
[204]Supra
[205]*Roche v. United Kingdom(Supra)*, para. 172.
[206]In *Sîrbu and others v. Moldova*, (Supra), there was no holding on the claim of access to information.

> Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life.[207]

Although these decisions of the European Court recognise a right of access to information, they are problematic. First, the Court has proceeded cautiously, making it clear that its rulings were restricted to the facts of each case and should not be taken as establishing a general principle.[208]

Second, and more problematic, relying on the right to respect for private and/or family life places serious limitations on the scope of the right to access information. This is clear from the *Guerra and Ors. v. Italy*[209], where it was a considerable leap to find, as the Court did, that severe environmental problems would affect the applicants' right to respect for their private and family life.

Although the Court made that leap in *Guerra*, based on overriding considerations of justice and democracy, this is hardly a satisfactory approach. Furthermore, it is fundamentally at odds with the notion of a right to information as expressed by other international actors, which is not contingent on deprivation of another right. In effect, the Court appears to have boxed itself into a corner by refusing to ground the right to information on Article 10.

At the same time, there are indications that the Court may be changing its approach. In *SdruženiJihoČeskéMatky v. Czech Republic*,[210] the Court held that a refusal to provide access to information did represent an interference with the right to freedom of expression as protected by Article 10 of the ECHR.

The decision included the quotation noted above from *Leander v. Sweden*[211]and also noted that it was 'difficult' to derive from the ECHR a general right to access administrative documents. However, the Court also noted that the case concerned a request to consult administrative documents in the possession of the authorities and to which access was provided for under conditions set out in article 133 of the law on construction i.e. the European Convention on human Rights. In those circumstances, the Court recognized that the refusal to grant access represented an interference with the right of the applicant to receive information.[212]

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[207]*Guerra and Ors v. Italy* (Supra), para. 58.
[208]See, for example, *Gaskin v. United Kingdom* (Supra), para. 37.
[209]Supra.
[210]Application No. 19101/03, decision of 10 July 2006.
[211]Supra.
[212]The original French judgment states: "En l'occurrence, la requérante a demandédeconsulter des documents administratifs qui étaient à la disposition des autoritésetauxquels on pouvaitaccéderdans les conditions

2.8 FEATURES OF A FREEDOM OF INFORMATION REGIME

A number of international standards and statements provide valuable insight into the precise content of the right to freedom of information, over and above simply affirming its existence.[213]In *The Public's Right To Know: Principles on Freedom of Information Legislation* (the ARTICLE 19 Principles), ARTICLE 19, a non-governmental organization, has developed a template that includes the basic elements that any FOI law should include setting out best practice standards on freedom of information legislation.

This template is not intended to impose a single model on all countries but is designed only to serve as inspiration for those countries seeking to pass a new FOI law or modify the law already on the books.[214]However, the template is a much superior model to both the historic Swedish law, which does not include an independent administrative body or a public interest override of exceptions, and the more recent U.S. law, which applies only to agencies of the executive branch.[215]The provisions therefore, provide a useful framework in which to discuss the features or fundamentals of access to information legislation.

We are of the view that these principles and standards have substantially found expression in the Nigerian FoI Act as well as various freedom of information laws and policies around the world. Although these vary considerably as to their content and approach, the more progressive laws do have a number of common features which reflect these international standards.

### 2.8.1 Principle 1 - Maximum Disclosure

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prévuesparl'article 133 de la loisurles constructions, contestépar la requérante. Dansces conditions, la Couradmetquelerejet de laditedemande a constituéuneingérence au droit de la requérante de recevoirdes informations".

[213]See for example, Report of the Special Rapporteur, Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 44.

[214]See, Introduction to the Article 19 Principles.

[215]See, US Freedom of Information Act, 5 U.S.C. & 552 (2000) (establishing U.S. government procedures for public access to information).

The principle of maximum disclosure holds that all information held by public bodies should presumptively be accessible, and that this presumption may be overcome only in very limited circumstances. The principle of maximum disclosure encapsulates the basic rationale of Freedom of Information legislation, and is explicitly stated as an objective in a number of national laws. An important aspect of this principle, widely reflected in national laws, is that the body seeking to deny access to information bears the burden of proving that it may legitimately be withheld.[216]

Another aspect of this principle is that the scope of the law should be very broad.[217] Everyone, not just citizens, should benefit from the right and an individual requesting access should not have to demonstrate any particular interest in the information or explain the reasons for the request in question. Information should be defined broadly to include all information held by the body in question, regardless of form, date of creation, who created it and whether or not it has been classified.

The scope of the obligation to disclose in terms of the bodies covered should also be broad. All three branches of government should be covered and no public bodies should be excluded from the ambit of the law. Public corporations should also be covered and many argue that even private bodies which are substantially publicly funded or carry out public functions should be included within the ambit of the law. In South Africa, even private bodies are required to disclose information which is needed for the protection or exercise of any right.

It is submitted that this principle of maximum disclosure is fully expressed in the Nigerian FoI Act in that all persons are entitled to request for information contained in any form from all public institutions of the Federal Government as well as private entities that receive public funds or perform public functions. This is more fully discussed in chapter 3.

### 2.8.2 Principle 2 – Obligation to Publish

Freedom of Information implies not only that public bodies should accede to requests for information, but also that they should publish and disseminate widely documents of significant public interest.[218] Otherwise, such information would be available only to those specifically requesting it, when it is of importance to everyone.

[216]Commonwealth Freedom of Information Principles, agreed by the 11th Commonwealth Law Ministers Meeting, Trinidad and Tobago, May 1999, Principle 2.
[217]See, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters(Aarhus Convention), UN Doc. ECE/CEP/43, adopted at the Fourth Ministerial Conference in the "Environment for Europe" process, 25 June 1998, entered into force 30 October 2001, Articles2(2)-(3).
[218]See, African Principles, op. cit., Principle IV(2).

Moreover, publishing information will often be more economical than responding to multiple requests for the same information. The scope of the obligation to publish proactively depends to some extent on resource limitations, but the amount of information covered should increase over time, particularly as new technologies make it easier to publish and disseminate information.

In line with this principle, the Nigerian FoI Act contains elaborate publication obligations discussed in Chapter 3.

### 2.8.3 Principle 3 – Promotion of Open Government

Informing the public of their rights and promoting a culture of openness within government are essential if the goals of Freedom of Information legislation are to be realized. In most countries, particularly those which have not yet or have just recently adopted Freedom of Information laws, there is a deep-rooted culture of secrecy within government, based on longstanding practices and attitudes. Ultimately, the success of a Freedom of Information law depends on changing this culture since it is virtually impossible to force openness, even with the most progressive legislation.[219]

The best approach to addressing this problem will vary from country to country. Some of the approaches provided for under the Nigerian FoI Act include training of public officials,[220] criminal penalties[221] and record management obligations.[222]

### 2.8.4 Principle 4 – Limited Scope of Exceptions

The regime of exceptions is one of the most difficult issues facing those drafting a Freedom of Information law and one of the most problematic parts of many existing laws. In many cases, otherwise very effective laws are undermined by an excessively broad or open regime of exemptions. It is obviously important that all legitimate secrecy interests are adequately catered to in the law, otherwise public bodies will legally be required to disclose information even though this may cause unwarranted harm.

Chapter 4 of this work is devoted to discussion of the exemption provisions provided under the Nigerian FoI Act.

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[219]See, UN Standards, op. cit.
[220]S.13, Freedom of Information Act, 2011
[221]S.10, Ibid.
[222]S.2(1) and 9, Ibid.

### 2.8.5 Principle 5 – Process to Facilitate Access

Effective access to information requires that the law stipulate clear processes for deciding upon requests by public bodies, as well as a system for independent review of their decisions.[223] Requests are normally required to be in writing, although the law should also make provision for those who are unable to meet this requirement, such as the blind or the illiterate – for example, by requiring the public body to assist them by reducing their request to writing.

The law should set out clear timelines for responding to requests, which should be reasonably short. The response to a request should take the form of a written notice stating any fee and, where access to all or part of the information is denied, reasons for that denial along with information about any right of appeal.

It is also desirable and practical for the law to allow requesters to specify what form of access they would like, for example inspection of the record, or a copy or transcript of it.[224] It is essential that the law provide for various opportunities to appeal the processes noted above. Many national laws provide for an internal appeal to a higher authority within the same public body to which the request was made. This is a useful approach, which can help address mistakes and ensure internal consistency. Finally, the law should provide for the right to appeal from the administrative body to the courts. Only courts really have the authority to set standards of disclosure in controversial areas and to ensure the possibility of a full, well-reasoned approach to difficult disclosure issues.

This principle has found expression in the Nigerian FoI Act and specific provisions have been made for assistance to illiterates and persons with disability,[225] timelines[226] and judicial review[227] of refusal(s) of access.

### 2.8.6 Principle 6 – Costs

Fees are a controversial issue in freedom of information laws. It is widely accepted that fees should not be so high as to deter requests,[228] but practically every law does allow for some charges for access.

[223]UN Standards, op. cit.,Recommendation V.
[224]Recommendation VII, Ibid.
[225]S.3(3), Freedom of Information Act, 2011.
[226]S.4, Ibid.
[227]S.20, Ibid

Different laws take different approaches to fees. Some, like the Nigerian FoI Act limits fees to standard charges for duplication and transcription where necessary.[229]While under other laws, the fees are in different categories - charging less for public interest and more for personal requests. Still, there are others, which provide a certain amount of information, for example 100 pages, for free and then charge fees after that.

Regardless of the approach, it is desirable for fee structures and schedules to be set by some central authority, rather than by each public body separately, to ensure consistency and accessibility.

### 2.8.7 Principle 7 – Open Meetings

The ARTICLE 19 Principles include the idea of open meetings, although in practice, it is extremely rare for this to be dealt with in a freedom of information law The reason it was included in the Principles is that the underlying rationale for Freedom of Information applies not only to information in documentary form, but also to meetings of public bodies.It appears that the Nigerian FoI Act does notcontain provisions for open meetings.

### 2.8.8 Principle 8 – Disclosure Takes Precedence

Most countries have a range of secrecy laws in their statute books, many of which contain provisions which are inconsistent with the right of access to information law. If the principle of maximum disclosure is to be respected, the access to information law must take precedence over these laws.[230]The principle of disclosure takes precedence is well enshrined in the FoI Act.[231]

### 2.8.9 Principle 9 – Protection for Whistle-blowers

A Freedom of Information law should protect individuals against any legal, administrative or employment-related sanctions for releasing information on wrongdoing.[232] Protection of so-called whistle-blowers provides an important information safety valve, ensuring that key information does indeed reach the public. Such protection

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[228]See CoE Recommendations, op. cit., Recommendation VIII.
[229]S.8, Freedom of Information Act, 2011.
[230]UN Standards, op. cit.
[231]S. 1(1), Freedom of Information Act, 2011.
[232]See African Principle, op. cit., Recommendation IV(2).

should apply even where disclosure would otherwise be in breach of a legal or employment requirement. In some countries, this protection is set out in a separate law rather than being included in the freedom of information law.

Protection from liability should also be provided to individuals who, reasonably and in good faith, disclose information in the exercise of any power or duty under freedom of information legislation. This effectively protects civil servants who have mistakenly, but in good faith, released information.

In the recent scandal involving purchase of armoured vehicles by the former Minister of Aviation, it was reported that the staff of the Ministry of Aviation who was suspected of leaking the contract documents to an online news media had disciplinary action taken against him.[233] We are of the view that any disciplinary action in this regard offends the principle of "protection of whistle-blowers" in a regime of Freedom of Information legislation; and indeed goes contrary to the spirit and letter of the FoI Act.

In this connection,the FoI Act provides that no civil or criminal proceedings shall lie against a public officer for disclosure, in good faith, of any information pursuant to the FoI Act.[234]

[233]See, *Vanguard*, Tuesday, March 4, 2014. www.vanguardngr.com/2013/11/oduah-gate-insIbide-story-aviation-ministers-survival-battle;*Punch*, March 4, 2014 www.punchng.com/news/oduahgate-jonathan-under-pressure-to-save-embattled-minister.
[234]See, S. 27 Freedom of Information Act, 2011.

## CHAPTER 3

## ANALYSIS OF THE LEGAL REGIME OF THEFREEDOM OF INFORMATION ACT IN NIGERIA

### 3.1 INTRODUCTION

In the previous chapter we provided a broad theoretical framework to Freedom of Information Law in terms of its meaning, origins, as well as the recognition of the right as a vehicle for political and socio-economic development.International standards and the general underlying principles governing a Freedom of Information regime were discussed.

This chapter attempts to show how the Right to Know can be effectively utilised and enforced in Nigeria in the light of the enactment of the Freedom of Information Act after two decades of legislative action. Thus, the chapter encapsulates an analysis of relevant provisions of the FoI Act under relevant heads and highlights issues around implementation of the FoI Act in Nigeria.

#### 3.1.1The Right of Access and Persons Entitled to the Right

S.1 of the Freedom of Information Act, 2011 guarantees the right of access to information in the custody or possession of any public official, agency or institution of government. The right can be exercised by any person irrespective of age, race and gender[235] and by both natural persons and corporate entities.[236] Accordingly, the FoI Act defines "person" to include a corporation sole and body of persons whether corporate or incorporate, acting individually or as a group.[237]

We are of the opinion that with respect to corporate bodies, the right of access enures on the corporate body and not on its agents or servants. This is because the right is conferred on the person and a third party may only exercise the right on behalf of the person in the case of disable or illiterate applicants.[238] Therefore, it is suggested that corporate bodies exercise the right through a resolution duly passed by its lawful corporate organs, that is, either by a resolution of the general meeting or board of directors. However, the resolution may expressly authorize an officer or agent of such corporate body to submit the application.

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[235]See, Understanding the Freedom of Information Act (FOIA), 2011 Series, 10 Salient Features of the FoI Act 2011& 10 Myths About the FoI Act, 2011, published by Right 2Know, Nigeria.
[236]S. 18, Interpretation Act, Cap. I23, *Laws of the Federation of Nigeria*, 2010, defines person to include both natural and juristic persons.
[237]S.31, Freedom of Information Act, 2011.
[238]S. 3(1), Freedom of Information Act, 2011.

The FoI Act specifically provides that an applicant does not need to demonstrate any specific interest in the information he or she is applying for, which means that he or she does not need to explain why the information is being requested.[239] Unfortunately, in the unreported case of *Paradigm Initiative Nigeria v. Dr. Reuben Abati*,[240] the Federal High Court erroneously held that the applicant was not entitled to information on the ground *inter alia* that it did not disclose any special interest it had on the information requested. We hope that this decision will be reversed on appeal as it goes contrary to the express provisions of the FoI Act and fails to recognize the clear intension of the lawmaker in enacting the law, which is to enable Nigerians access publicly held information without demonstrating any interest in the information.

Indeed, most countries with FoI laws have this basic principle incorporated in their laws to allow anyone to request information without having to demonstrate any interest in the information. In the *Claude Reyes* case,[241] the Inter-American Court of Human Rights held that every person has a right to request information while states are under a positive obligation to provide it, adding that "the information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied."[242] In this regard, legitimate restrictions refer to the exemption provisions provided under the law.

While there is still considerably widespread ignorance about the FoI Act among Nigerians and even in the bench as shown above, there has been an encouraging increase in the number of individuals and organizations demanding for information pursuant to the provisions of the Act.[243]

One of the earliest requests for information pursuant to the FoI Act was in respect of an enquiry dated 21 July 2011 from the office of the Attorney-General of the Federation (AGF), Mr. Mohammed Bello Adoke, SAN, by which the Inspector-General of Police (IGP), Mr. Hafiz Ringim, confirmed that Mrs. Farida Waziri, former Chairman of the Economic and Financial Crimes Commission (EFCC) retired as a Commissioner of Police (CP) and not an Assistant Inspector General of Police.[244]

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[239] S.1(2), Id.
[240] Suit No: FHC/ABJ/CS/278/2013 (Unreported).
[241] Supra.
[242] See, Claude Reyes case (Supra), para. 77.
[243] See, R2K, Implementing Nigeria's Freedom of Information Act, 2011 – The Journey So far, op. cit., page 3.On its website alone, Right 2 Know, Nigeria (R2K) has through media reports been able to monitor over 15 FOI requests made by individuals, media organizations and civil society organizations with many of these requests ending in lawsuits.
[244] This was based on a petition dated 15 July 2011 written by The Centre for The Rule of Law requesting for information on the rank of retirement of Mrs. Waziri from the police service commission. It was confirmed that

The very first reported lawsuit was instituted by the Committee for the Defence of Human Rights (CDHR) against the EFCC in August, 2011 seeking for an order to compel EFCC to provide information substantiating an allegation made against it.[245]

There have been several other cases, including the yet to be decided case of *Socio-Economic Rights and Accountability Project (SERAP) v. Governor of Oyo State*[246]whereby SERAP dragged Oyo State governor to court over alleged failure to release information and documents on spending on primary education in Oyo state covering the period from 2005 when the first budget was released for the Universal Basic Education Commission (UBEC) program in the state. SERAP has made similar requests to Governors of Enugu, Kaduna and Rivers state.

In another incident, SERAP has dragged the Petroleum Products Pricing Regulatory Agency (PPPRA) to the Federal High Court[247] seeking for an order of mandamus to compel PPPRA to disclose and make available to the applicant up-to-date information on government public spending relating to fuel subsidy in 2011 pursuant to the FoI Act.

Happily, in one of such cases, *Legal Defence & Assistance Project (Gte) Ltd (LEDAP) v. Clerk of the National Assembly of Nigeria*[248], the Federal High Court, Abuja, Coram B. B. Aliyu, J. issued an order to grant access to information requested by LEDAP pursuant to S.1 of the FoI Act. It is hoped that as public awareness of the FoI Act grows in Nigeria so will requests for information pursuant to the FoI Act.

### 3.1.2 Nature of Information Subject to the Right of Access

The FoI Act applies to all public records, documents and information whether or not contained in a written form having been prepared, or having been used, received, possessed or under the control of any public or private bodies relating to matters of public interest.[249] The FoI Guidelines provide that the information applicable includes the following:

(i) writing on any material.
(ii) information recorded or stored or other devices, and any material subsequently derived from information so recorded or stored.

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although Mrs. Waziri was due for promotion, she was not confirmed to the rank of AIG before her retirement in 2000 on account of the absence of the Police Service Commission (PSC) at that time.
[245]Ibid.
[246] Suit No. 1/778/2011 filed at the High Court of Oyo State.
[247]Suit No. FHC/CS/L/211/2011 in the Ikeja Judicial Division.
[248]Suit No: FHC/ABJ/CS/805/2011, delivered on 25 June 2012 (Unreported).
[249]S.31 and 1(1), Freedom of Information Act, 2011.

(iii) label marking, or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means.
(iv) book, card, form, map, plan, graph or drawing, and
(v) photograph, film, negative, microfilm, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced.[250]

The FoI Act covers files, letters, databases, loose reports, e-mails, office notebooks, videos, photographs, wall charts and maps, closed files, archival material as well as information in current use, etc;[251] and the age, format, origin or classification of the information is irrelevant.[252]

### 3.1.3 How to Request for Information

The FoI Act does not specifically require request for information to be made in writing only. The Guidelines provide that request for information under the FoI Act could be made orally or in writing but advices that requests should generally be made in writing.[253]

Thus, the FoI Act imposes an obligation on public officials to reduce an oral application into writing where such application is made by illiterates or disabled persons. In this regard, the FoI Act provides that: "an authorized official of a government or public institution to whom an applicant makes an oral application for information or record, shall reduce the application into writing … and shall provide a copy of the written application to the applicant."[254]

With respect to applications in writing, a letter, email or fax will be valid if the public institution has the necessary email and facsimile facilities. However, an oral request made by telephone or left on voicemail would not be valid as oral request ought to be addressed directly to an authorized official of the relevant public institution and the requester should be identified for such requests to be valid.

Illiterate or disabled applicants who by virtue of their illiteracy or disability are unable to make an application for access or record to information directly may make the application through a third party.[255] Public institutions should provide reasonable advice and assistance to anyone who has made or wants to make a request for

[250]See, the FoI Guidelines, Chapter 1, p. 4.
[251]Id.
[252]Id.
[253]See, the FoI Guidelines, Chapter 1, p. 5
[254]Section 3(4), Freedom of Information Act, 2011.
[255]S.3(3), Id.

information to them and should be able to render further assistance to illiterates or persons with disability where a third party is not available to assist them.

### 3.1.4Contents of Freedom of Information (FoI) Request

The law does not impose specific stipulations as to what should be contained in FOI requests. However, we have taken the liberty to provide a guide to prospective applicants in line with international best practices.[256]

#### *3.1.4.1 Description of Information*

An applicant should be specific on the information required. An institution may refuse to oblige a request which is ambiguous or too sweeping although the Guidelines states that a public institution should urgently consult with an applicant if the request is unclear.[257] The following key points are suggested for Applicants:

(b) an applicant should describe the documents he wants. For example, minutes of particular meetings, a specific report or a set of figures. Alternatively, a request may relate to correspondence or emails between the public institution and someone else about a particular issue over a given period.

(c) An applicant could also ask for information which the public institution holds about a particular topic. If so, it will be good to ensure that the topic is relatively narrowly defined. The rule should be that one should not ask for "everything you hold about" a subject, unless that is likely to involve a relatively small amount of material.

(d) An applicant can also ask questions or ask for a set of data to be extracted from a database.

(e) It is advisable for an applicant to do some research to enable him make a specific request if he doesnot know enough about the issue. Check to see if the public institution has complied with the publication responsibilities[258] about the issue. This may help identify other unpublished information which may be necessary. An applicant could also ask the institution's officers to help clarify information about the issue the institution is likely to hold.

[256]See for example, Freedom of Information Act & Privacy Act Handbook, published by the Federal Trade Commission, USA, February, 2007; Your Right to Know: An Introduction, published by Friends of the Earth, London - UK, May, 2008.
[257]FoI Guidelines, chapter 1, p. 5.
[258]S.2(3), Freedom of Information Act, 2011.

*3.1.4.2 Applicant's Identity*

An applicant should include both email and postal address and a phone number (where available) for ease of communication. As noted above, the FoI Guidelines require public institutions to consult or seek clarification from an applicant where a request is unclear;[259] therefore, a means of identity would assist the public institution to contact the applicant for further clarification(s).

*3.1.4.3 Request Made Pursuant to the Freedom of Information Act*

A request should be valid regardless of whether or not it is stated to be made pursuant to the Freedom of Information Act, 2011. In the foreword to the FoI Guidelines, the Attorney-General of Federation states that "since 1 June 2011, all requests for information received by a public institution have to be dealt with in accordance with the Freedom of Information Act."[260]

Nevertheless, it is suggested that a person making request should clearly state that his request is made *pursuant to the Freedom of Information Act, 2011,*with the hope that this would remind officials to deal with it correctly.

*3.1.4.4 Reasons for Request*

An applicant does not need to demonstrate any specific interest in the information he or she is applying for, which means that he or she does not need to explain why the information is being requested.[261]

*3.1.4.5 Specification of Preferred Form of Access*

It should be noted that when citizens seek answers using 'access to information' legislation, they are not expecting a public servant to provide that information verbally. They expect to receive the original records and the evidence of the decisions and actions.

[259]Id.
[260]See, foreword to the FOI Guidelines, p. 2.
[261]S.1(2), Freedom of Information Act, 2011.

Consequently, an applicant may state how he prefers to have access to the information requested. For example, he may request to be sent photocopies or printouts; or request that materials be sent by email or supplied on disk, or be provided the information in summary form, or by inspecting the records in person. An applicant may also request for access in more than one form. For example, inspecting the records first and then having copies.

Typically, when a journalist asks for information about the government's decision to construct a highway across a nature preserve, he wants to see the actual documents created during the decision making process, not just a summary of the decision.

When a doctor wants to see what information the hospital has about a patient's medical treatments, he wants to see the patient's actual medical records to understand previous treatments and operations, not just a description of present health status.

*3.1.4.6 Undertaking to Pay Requisite Fees*

It should be noted that access to information is free. However, the Act provides that fees shall be limited to standard charges for duplication and transcription where necessary.[262]Therefore, an applicant should undertake to pay the requisite fees on demand in line with the requirements of the FoI Act.

*3.1.4.7 Timeline*

An applicant should state that he looks forward to receiving the information requested promptly and in any case within 7 working days. The time limit for granting a request is 7 days after the receipt of the application by the public institution.[263]

*3.1.4.8. Model Freedom of Information (FoI) Request*

An applicant may use this model letter to request for information under the FoI Act .

[262]S.8, Freedom of Information Act, 2011
[263]S. 4 and 5, Id.

*Date*

*Your address*

**Chief Executive Officer of Public Institution**

*Name and address of public institution.*

*Attention:* **Freedom of Information Officer**

**Dear Sir,**

**Request for Information pursuant to the *Freedom of Information Act***

**Could you please supply me with** *(describe the information you want as specifically as possible)*.

**Please include copies of material which you hold in the form of paper and electronic records including emails** *(this is not strictly necessary as the institution should provide you with theinformation you have asked for regardless of the form in which it is held. But it may be useful toremind it to look through its electronic records and emails as well as any paper records.)*

**I would be grateful if you would supply this information in the form of** *(state your preferred format if you have one – e.g. by providing me with photocopies / by email / by allowing me to inspect the records etc. If you have no particular preferences omit this paragraph.)*

**If I can help to clarify this request please call/you can reach me on** *(your phone number)* **or contact me through email** *(your email address).*

**I look forward to hearing from you.**

**Yours faithfully,**

*(Your name)*

### 3.1.5Response to Requests

*3.1.5.1 Timeline*

The FoI Act requires that an applicant be informed whether or not access will be granted within 7 working days of the receipt of a request and that copies of the record or information requested should be provided within the same period if access is granted.[264] Where a part of information is exempted from disclosure by virtue of the provisions of the Act, a public institution shall disclose any part of the information that does not contain such exempted information.[265]

The 7-days timeline can be extended for a further period not exceeding 7 days if the application is for a large number of records and meeting the original time limit would unreasonably interfere with the operations of the public institution, or if consultations are necessary to comply with the application.[266]

Where a public institution extends the time, it is required to give notice of the extension stating that the applicant has a right to have the extension reviewed by the court.

[264]S. 4 and 5, Freedom of Information Act, 2011.
[265]S.18, Id.
[266]S. 6, Id.

*3.1.5.2 Contents of Notice of Refusal*

Where a public institution considers that a part or whole of a request should be denied, the institution is required to issue a written notice of denial to the applicant within the 7-days period of the receipt of the application. The FoI Act stipulates the following particulars for a notice of denial:

(a) indication that the information requested exists;

(b) that all or part of the information requested shall not be granted;

(c) reasons or grounds of the denial;

(d) Section of the FoI Act under which the denial is made;

(e) name(s), designation and signature of each person responsible for the denial, and

(f) a statement that the applicant has a right to challenge the decision in court by way of judicial review.[267]

Where a public institution refuses to grant an application, the notice of denial or refusal can only be issued in writing and not orally. Further, the requirement for a written notice of denial cannot be waived because it falls under the reporting obligations of public institutions.[268]

Arequest for information can only be denied or turned down if the information requested is one which is exempted from disclosure under the provisions of the FoI Act and the onus is on the public institution to show that the information is exempted.

Thus, in the case of *LEDAP v. Clerk of the National Assembly*[269], the court held that –

> Once an applicant has shown that he made a request for information under the Act, and his right to access of such information is established by S.1(1) of the Act, then the onus in this circumstance is on the denying authority to show that it is justified by the Act to deny the information requested. My position of this holding is strengthened by S.30(2) of the Act.[270]

[267]S. 4(b), 7(1)(2)(3), Freedom of Information Act, 2011.
[268]Under S.29(1) Id., public institutions are required to submit to the Attorney-General of the Federation a report which shall include the number of determinations for denial of access as well as the reasons for such determinations.
[269]Supra.
[270] See, LEDAP v. Clerk of the National Assembly.

*3.1.5.3 Fees*

Access to information is free and the FoI Act provides that fees shall be limited to standard charges for document duplication and transcription where necessary[271].

*3.1.5.4 Transfer of Application*

The FoI Act provides that where a public institution receives an application for access to record which it considers that another public institution has a greater interest in the information, the institution to which the request is made may within 3 days but not later than 7 days after the application is received, transfer the application, and if necessary, the record or information to the other public institution.[272]

The FoI Act provides that circumstances under which a public institution will be deemed to have a greater interest in information include where the information was originally produced in or for the institution, or the institution was the first public institution to receive the information.[273]

The institution transferring the request is required to issue a written notice of the transfer to the applicant and the notice should contain a statement informing the applicant that the decision to transfer the application can be reviewed by a court of law.[274]

It is suggested that public institutions apply this provision in good faith and not to use it to shy away from their responsibility or dodge FoI requests.

The experience of Daily Trust with the Nigeria Prison Service and office of the National Security Adviser illustrates this position.[275] By its letter dated 1 March 2012 to the Nigerian

[271]S.8, Freedom of Information Act, 2011.
[272]S.5(1), Freedom of Information Act, 2011.
[273]S.5(3), Id.
[274]S.5(2), Id.
[275]Daily Trust Newspapers, op. cit., p. 5.

Prison Service (NPS), Daily Trust requested for information relating to the number of condemned prisoners in Nigeria, which prisons they were held, and the number of hangmen and gallows available in Nigeria.

The NPS wrote back on 14 March 2012 saying that the request should be routed to the office of the National Security Service (NSA). Daily Trust then wrote a letter dated 27 March 2012 seeking for the same information from the NSA and referring the NSA to what the NPS told them.

However, by a letter dated 3 May 2012,[276] the NPS provided general information warning that the information "may be sensitive and injurious" to the service if used inappropriately. However, the number of gallows available or prisons where condemned inmates were held was not provided.[277]

It should be noted that besides NPS's failure to provide all the information requested, the earlier instructions to Daily Trust to request for the information from the office of the NSA was contrary to the requirements of the law, because as shown above, the FoI Act imposes the obligation for transfer on the public institution, that is, NPS and not on the applicant(s).

## 3.2 RECORD KEEPING OBLIGATIONS OF PUBLIC INSTITUTIONS

[276] Ref No: NPC/771/Vol.14/34 signed by one BabatundeOwolabi.
[277] Daily Trust Newspapers, op. cit., p. 5.

The FoI Act mandates public institutions to ensure they keep proper records and information about their activities, operations and businesses[278] and ensure the proper organization and maintenance of all information in their custody in a manner that facilitates public access to such information.[279]

Public institutions have a long way to go in complying with this section. Institutions that have not yet computerized all their operations need to do so immediately together with proper archiving and cataloguing for ease of access. A visit to the record section of an average public institution in Nigeria portrays a picture of how difficult it is to obtain basic information. Information and records in many public institutions are still paper based and tied up in bundles of stacks of files. Few public institutions have computerized all these documents.

Consequently it is routinely impossible, given this challenge of record keeping for even the most well-intentioned of institutions to meet up with the 7-day timeline for responding to requests.

Even where a requester is successful in court, a court order cannot produce a record that does not exist. In its report, Right 2Know, Nigeria[280] revealed a dangerous practice in the public service of destroying certain documents after a period of seven years.

Destruction of records ought to be authorized by law, statute, regulation, or operating procedure and should not always mean actual destruction. It can also include transfer to a historical archive, museum, or private individual. It is noteworthy that the FoI Act has set precautions and criminalizes wilful destruction or falsification of records.[281]

[278]S.2(1), Freedom of Information, Act.
[279]S.2(2), Id.
[280]See, R2K, Implementing Nigeria's Freedom of Information Act, 2011 – The Journey So Far, op. cit., page 5.
[281]S. 7(5) and 10, Freedom of Information Act, 2011

Record keeping is crucial to institutional memory and to continuity in governance as citizens can only evaluate government and its policies when records exist. The proper keeping of records goes to the heart of the FoIAct, for it is on this basis that public institutions can provide information requested of them or proactively publish information as statutorily mandated.

## 3.3 PROACTIVE DISCLOSURE OBLIGATIONS OF PUBLIC INSTITUTIONS

The FoI Act requires every public institution to cause to be published certain information which shall be 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 institution.[282]

Many public institutions have websites that do not have much information beyond two or three classes of information. R2K in its report stated that there is currently no public institution in Nigeria that has fully complied with this requirement[283] which includes publishing *not* just a description of the organization and responsibilities of the institution but also documents containing planning policies, names, salaries and titles of employees, applications for contracts, permits, grants, licenses and the title and address of the institutions FOI officer. There are about 40 classes of information under the FoI Act.[284]

The Act also requires public institutions to publish the title and address of the appropriate officer of the institution to whom an application for information under the Act shall be referred to[285]andto update and review their published information periodically and immediately changes occur.[286]

[282]S. 2(2)(3) and (4), Freedom of Information Act, 2011.
[283]See, R2k, op. cit., p. 4.
[284]See, S. 2(3), Freedom of Information Act, 2011.
[285]S.2(3)(f), Id.
[286]S.2(4)&(5), Id.

In the case of *LEDAP v Clerk of The National Assembly*[287] the National Assembly which passed the FoI law has taken a step further to challenge the Federal High Court decision that mandated them to respond to requests for information about salaries and emoluments which are actually required to be proactively disclosed.[288]

Public institutions need to realize the immense benefits of the proactive disclosure provisions as it potentially seeks to reduce the volume of requests they need to deal with. When information regarding the activities of an institution is already proactively disclosed, it boosts the confidence and trust of citizens in government and governance.

In some jurisdictions, the courts have upheld denial of information where public institutions have complied with their positive obligations. Thus, in the case of *McGinley and Egan v. United Kingdom*[289], the applicants had been exposed to radiation during nuclear testing in the Christmas Islands, and claimed a right of access to records regarding the potential health risks of this exposure.

The European Court of Human Rights held that the applicants did have a right to access the information in question under Articles 6 and 8 of the ECHR; regarding respectively, the right to a fair hearing and respect for private and family life. However, the government had complied with its proactive disclosure obligations through the establishment of a process by which access to the information could be obtained, which the applicants had failed to make use of.[290]

Although, the above case may not apply to Nigeria because the grounds for refusal are strictly limited to the exemption provisions in the FoI Act, it seems safe to assume that any public institution that fully complies with S.2 (3), (4) and (5) will hardly need to spend any time dealing with requests.

It should be stated that failure by a public institution to comply with its publication responsibilities shall not prejudicially affect the public's right of access to information in the custody of such public institution and an action can lie against a public institution which fails to publish the mandatory information specified above. Thus, the FoI

[287]Supra.
[288]See S. 2(3), Freedom of Information Act, 2011.
[289]Supra.
[290] Id., paras., 102-103.

Act confers a right to institute proceedings in court to compel any public institution to comply with its publication responsibilities provided under the Act.[291]

The Nigerian Union of Journalists have sought to test this provision by dragging the Federal Roads Maintenance Agency (FERMA) to court for its failure to publish information required under the FoI Act which enjoins the Board to 'cause the publication of its funds … to be utilized by the established State Roads Maintenance Agencies and its disbursement in the electronic and print media from time to time.'[292]

We are not aware of any outcome resulting from the above suit at the time of this research.

## 3.4 REPORTING OBLIGATIONS OF PUBLIC INSTITUTIONS

In order to appraise the level of compliance and implementation, the FoI Act provides for a reporting mechanism where public institutions are mandated to submit reports on their level of compliance with the provisions of the Act to the Attorney General on or before 1st of February every year[293] while mandating the Attorney General to 'make each reportwhich has been submitted to him, available to the public in hard copies, online and also at a single electronic access point.'[294] This is the first level of disclosure the Attorney General is mandated to make under The Act.

The FoI Act also mandates the Attorney General to make a second level of disclosure of FoI reports of public institutions to the National Assemblyon or before the 1st of April of each calendar year[295] which shall include a detailed description of the efforts taken by the Ministry of Justice to encourage all government or public institutions to comply with the Act.[296]

Right 2Know, Nigeria had between April and June 2012 requested the Attorney General for access to these annual compliance reports. The compliance reports provided by the Attorney

[291]S.2(6), Freedom of Information Act, 2011.
[292] See, SERAP v. FERMA (Supra)
[293]S.29(1), Freedom of Information Act, 2011.
[294]S. 29(3), Id.
[295]S.29(4), Freedom of Information Act, 2011.
[296]S.29(8), Id.

General of the Federation show that of all the Ministries, Departments and Agencies in Nigeria, only 23 submitted annual compliance reports.[297] Of all these public institutions, only 11 have staff designated to handle FOI requests. In all, 8 requests were reported, some reports taking as much as 20 days to respond to.[298]

This report paints a less than acceptable picture of the state of compliance by public institutions, almost 2 years after the enactment of the FoI Act. It is important that public institutions take more seriously their obligations under the FoIAct. Government is better able to deliver development to the citizens in an atmosphere of trust and confidence.

### 3.5 APPLICABILITY OF THE FREEDOM OF INFORMATION ACT TO STATES

A major point of debate concerning the Freedom of Information Act is the question of its territorial scope with particular reference to whether or not it is applicable to States.

The Ogun State government took the matter out of the realm of speculation when the Nigerian Association for the Care and Resettlement of Offenders (NACRO), wrote to the Ogun State government requesting for access to records pertaining to the concessioning of the Ogun State Government-owned Gateway Hotels.

In a response dated 12 August 2011, the Attorney-General and Commissioner for Justice of Ogun State, declined the request arguing that the Act "is not binding on public institutions in Ogun State", with the result that "no public institution in Ogun State is obliged, for now, to accede to any request for access to public records."[299]

Nigeria operates a federal system of government. The Constitution expressly provides that "Nigeria shall be a Federation consisting of States and the Federal Capital Territory."[300]The Constitution further provides that the National Assembly[301] shall, to the exclusion of the State Houses of Assembly,[302] have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the

[297]R2K, op. cit., pp. 5 – 7.
[298]Id.
[299]NACRO, Press Statement, "Ogun State Government Snubs FoI Law", 15 August 2011.
[300]S.2(2), 1999 Constitution 1999 (As Amended)
[301]S.4(1), Id.
[302]S.4(3), Id.

exclusive legislative list[303] while the States Houses of Assembly[304] shall have power to make laws for the peace, order and good government of the states with respect to any matter not listed in the exclusive legislative list and matters included in the concurrent legislative list.[305]

In line with the doctrine of covering the field, the Constitution provides that if any law enacted by a State House of Assembly conflicts with a law of the National Assembly, that other law shall, to the extent of its inconsistency be void.[306]As previously discussed, Freedom of Information is not one of the justiciable rights contained in Chapter 4 of the Constitution.

Consequently, in the absence of a constitutional amendment listing Freedom of Information as a fundamental right under chapter 4 of the Constitution, the power to enact laws on the subject is a residuary matter which falls within the legislative competence of the respective States Houses of Assembly while the National Assembly can legislate on the subject in respect of the Federal Government and the Federal Capital Territory, Abuja.

In this connection, the FoI Act being a law enacted by the National Assembly shall apply to only the Federal Government and the Federal Capital Territory, Abuja and not the States. However, each State House of Assembly is at liberty to re-enact or adopt the FoI Act as the law of the state with necessary adjustments based on the peculiar circumstances of the state.

Odinkalu[307] and Bhule[308] have argued that the applicability of the FoI Act to the states is well established under the provisions of the Nigeria Constitution and by principles of constitutional law.[309] Accordingly, the FoI Act implements two separate constitutional mandates within the exclusive preserve of the National Assembly.[310]

First, paragraph 3(c) of the 3rd Schedule to the Constitution, the National Assembly is empowered to prescribe terms and conditions for access to information about the assets declaration of public officers. Second, item 60(a) of the 2nd Schedule to the Constitution under the Exclusive Legislative List, the National Assembly is exclusively empowered to make laws for the promotion and enforcement of the Fundamental Objectives and Directive Principles of State Policy in Chapter II of the Constitution. S. 14(2)(a) of the Constitution in this chapter

[303]See, Part I, Second Schedule, Id.
[304]S.4(7), Id.
[305]See, Part II, Second Schedule, Constitution 1999 (As Amended).
[306] See, S. 4(5), Constitution 1999 (As Amended).
[307]Ph.D., of the Africa Programme, Open Society Justice Initiative & the Council of the Human Rights Institute, Nigerian Bar Association (NBA-HRI); present Chairman, National Human Rights Commission.
[308]Programme Officer, Right to Know Initiative, Nigeria (R2K).
[309]See, Implementing the Freedom of Information (FoI) Act, 2011, op. cit., p. 6.
[310]Id.

affirms that "sovereignty belongs to the people of Nigeria from whom government derives its power and authority", while S.14(2)(c) requires that "the participation by the people in their government shall be ensured…" According to the authors, the FoI Act implements these constitutional responsibilities of the National Assembly.

The authors argued that Item C. 4 of Part II in the 2nd Schedule of the Constitution containing the Concurrent Legislative List provides that "the National Assembly may make laws for the Federation or any part thereof with respect to the archives or public records of the Federation." Thus they posited that by virtue of the constitutional doctrine of Covering the Field,[311] the FoIAct is applicable in all the states of the Federation and the Federal Capital Territory, whether or not state FoI laws are passed.

The authors also stated that States are not necessarily precluded from making any laws with respect to public records but any such laws will be superseded by the Federal law if there is inconsistency capable of diminishing the rights in the federal law. States may wish to enact FOI law at state level to expand or deepen the scope of the FoIAct, or to address any lacunas in the FoIAct, incorporating more progressive provisions that will strengthen the law. In the absence of such State laws, the FoIAct applies to States.

As stated earlier, the position adopted by these authors undermine the devolution of powers between the centre and component units of a federating state which Nigeria presently operates. Paragraph 3(c) of the 3rd Schedule relied upon by the authors is specific and limited to information about the assets declaration of public officers and not to public records generally. Further, Item C. 4 of Part II in the 2nd Schedule of the Constitution also relied upon by the authors is with respect to the archives or public records of the *Federation*and not of the *States*.

The archives or public records of the Federation in this sense refer to the centre i.e. the Federal Republic of Nigeria and not of the respective federating states. In this regard the Constitution defines Federation to mean the Federal Republic of Nigeria.[312]Consequently, the argument that the Freedom of Information Act should apply to the Federal Government and all 36 States is misconceived. However, a State is bound by the provisions of the FoI Act in respect of records of the Federation held in its custody or control.

This position is similar to FoI laws formost countries with a federal system or countries that grant considerable autonomy to sub-national government entities – including Australia, Austria, Canada, Germany, Mexico, South Korea and the United States. The FoI laws of these countries applies only to the federal (central)

[311]See, *A-G. of**Bendel State v.** A-G. of the**Federation,*** (1982) 3 NCLR 1**.**
[312]S.318, Constitution 1999 (As Amended)

government, while the states in most of these countries have been allowed to adopt laws that apply to the states and local bodies.[313]

The narrowest approach, somewhat surprisingly – at least to those who think that the US has one of the strongest Freedom of Information ("FoI") laws in the world – is exemplified by the Unites States' FoI Act, which, by its terms, applies only to executive agencies of the Federal Government.[314]Germany is the main exception; of its 16 Länder (states), five have yet to pass FoI laws. A 2007 amendment to Mexico's Constitution expressly requires the state and local governments to adopt their own laws that meet certain basic transparency standards.

The few countries with federal systems that have applied their FoI laws to all levels of governmentinclude India[315]and Portugal.[316]The most expansive law is India's Right to Information Act, 2005 which applies to all public authorities at the national, regional and local level (even though India is a federal system) – except in the states of Jammu and Kashmir, which are covered by a separate law.

However, the FoI laws of unitary, non-federated countries generally apply to all levels of government: national, regional (where applicable) and local. For instance, the Council of Europe Convention on Access to Official Documents, reflecting the law of most of the Council's forty-seven member states, provides that the right to have access to official documents shall apply to government and administration at national, regional and local level.

## 3.6 INTELLIGENCE AND SECURITY AGENCIES

The preservation of national security and assurance of safety of the nation, citizens, government, and society as a whole, are the primary concerns of government everywhere. However, under a democratic dispensation, it is crucial to strike a balance between the needs of preserving the necessities of national security on one hand, and preserving human rights and promoting transparent governance on the other hand.[317]

In many countries, the intelligence and special services; military and police forces; and the offices of the head of state, head of government and cabinets are exempted in whole or in part from FoI laws. However, modern statutes increasingly apply to these bodies subject to exemptions for national security and related grounds.This is the case under the Nigerian Freedom of Information Act, 2011 wherein S. 14 provides for exemption on ground of

[313]Coliver, op. cit., p.
[314]Freedom of Information Act, 1966, as amended, 5 U.S.C. § 552(f)(1). *See also* Ackerman, et al, op. cit.
[315]India's Right to Information ActNo. 22 of 2005, Art. 2(h), available athttp://www.righttoinformation.gov.in/rti-act.pdf.
[316]Amended 1999.
[317]See, Odinkalu, C. A., et al. op cit., pp. 10 and 11.

defence. The exemption does not apply to only requests made to intelligence and security agencies but to all public institutions to which a request is made under the FoI Act.

There are several reasons why intelligence and security agencies should *not* be exempted from disclosure obligations:

a. In several countries, application of FoI laws has led to exposure of scandals or wrongdoing that might not have come to light but for such laws.

b. In practice, courts have been very deferential to executive claims of privilege on intelligence and security matters, so there is little risk that they would ever order the release of truly sensitive information.

c. Intelligence and security agencies produce a lot of documents that are invaluable to researchers, scholars and the public that do not reveal anything about confidential government actions. For instance, in the US, the Central Intelligence Agency (CIA) held extensive documents concerning Saddam Hussein's history of human rights abuses.[318] None of these CIA documents reveal anything about US policies or CIA activities, but they do reveal a great deal of information of public interest both about what Saddam Hussein did and what and when the US knew about his abuses.

In Europe, intelligence and special services are covered by the FoI laws of most countries. In common law countries, the FoI laws of Australia, Canada, and the UK completely exempt some or all of the intelligence agencies from coverage.[319] A few countries, such as India, allow intelligence and/or security services to be exempted, but only pursuant to an order of the relevant Minister.[320]

The United States has a more demanding process for allowing exemption of intelligence information: only "operational files" of intelligence agencies may be exempted from the FOIA, and only by a statute duly passed by

[318]See,Saddam's Iron Grip: Intelligence Reports on Saddam Hussein's Reign, National Security Archive ElectronicBriefingBook No. 167 (18 October 2005),http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB167/index.htm.

[319]Hubbard P. Freedom of Information and Security Intelligence: An Economic Analysis in an Australian Context. *Open Government Journal*(2005), (2005), Vol. 1, Issue 3, page 4. Australia's law exempts the Defence Imagery and Geospatial Organisation, Defence Intelligence Organisation, and DefenceSignals Directorate. Austr. FOIA 1982, Schedule 2, Div. 2.

[320] S. 24 of India's Right to Information Act, 2005 provides that the Central Government and any state governments may, by notification in the Official Gazette, add any intelligence or security organization to Schedule II, which lists exempted bodies. The Central Government had exempted 26 paramilitary forces, revenue and military intelligence organizations in this manner as of June 2007. Most states have partially exempted the intelligence wing of their police departments and other similar bodies from the Act.

both Houses.[321] For instance, a bill to exempt the operational files of the Defence Intelligence Agency was defeated in 2000 because the bill, if passed, would have shielded the activities of foreign death squads, torturers and other human rights abusers.[322]Most armed forces and defence departments in European and other democracies are covered by their country's FOI laws, except for agencies expressly exempted, such as intelligence offices.[323]

Ireland is the only state in Western Europe that completely exempts the police from the scope of its law. While many countries exempt information relating to criminal investigations by the police or judiciary, in most countries considerable information is subject to disclosure, at least in theory, including information about numbers and assignments of police, department budgets and results of disciplinary proceedings.[324]

The rule across Europe and Latin America which is hereby advocated for Nigeria as well is that restrictions on disclosure, even regarding security and criminal investigations, are better handled through exemptions based on the nature of the information rather than on the identity of the body holding the information.

With respect to Nigeria, Odinkalu and Bhule[325] have opined that as the institution responsible for determining all non-military classified matters concerning the internal security of Nigeria[326], the State Security Service (SSS) oversees the development and maintenance of the information classification system operable in Nigeria. It is, therefore, vital for the National Security Adviser (NSA), as co-ordinator of the security agencies in Nigeria, to establish a clear classification structure that clearly compasses the parameters of an effective interplay between the right to information established by the FoI Act and national security.

The authors advised that towards supporting the effective implementation of the FoI Act, it will also be necessary to publicise the new classification system, and to educate public officers and staff of public institutions, as well as the general public to mitigate its possible misunderstanding or abuse.

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[321]"Operational files" of several intelligence agencies including the Central Intelligence Agency, the National GeospatialIntelligence Agency, the National Reconnaissance Office and the National Security Agency are exempted from theFoIA. The operational files exemptions were enacted in separate laws and apply as FoIA exemptions under 5 U.S.C. § 552 (b)(3), which exempts materials "specifically exempted from disclosure by statute."

[322]The bill was defeated following strong opposition of the non-governmental National Security Archive and several other NGOs. *See* Archive Calls on CIA and Congress to Address Loophole Shielding CIA Records From the Freedom of Information Act, National Security Archive Electronic Briefing Book No.138, Proliferation of the Problem, 15 October 2004.

[323]See, Coliver, op.cit.,list of contributors. Experts in five countries Albania, Czech Republic, France, Germany, and the United Kingdom expressly confirmed that the armed forces are covered by their country's RTI laws. Experts in another 20 countries did not list the armed forces when asked to name bodies exempted under their country's RTIlaw.

[324]Id.

[325]Odinkalu, C. A., et al. op cit., p. 11.

[326]S. 2(3), National Securities Agencies Act, Cap N74, *Laws of the Federation of Nigeria*, 2004.

## 3.7 POWER OF JUDICIAL REVIEW

The right of access to information under the FoI Act remains in the realm of civil rights and not one of the fundamental rights enforceable pursuant to S.46 of the Constitution.[327]This is in view of the fact that the rights enforceable under the Fundamental Rights (Enforcement Procedure) Rules, 2009 must beeither the rights provided in chapter 4 of the Constitution or the rights guaranteed under the African Charter on Human and People's Rights (Ratification and Enforcement) Act.[328]

Thus, in the case of *Unical v. Ugochukwu,*[329] is was held that -

> in a claim of right under the Fundamental Human Rights (Enforcement Procedure) Rules, for the Rules to be applicable, the applicant's reliefs must in the main or principally contain breaches under the fundamental human rights provisions contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, …that is sections 33 to 46 inclusive…if no right guaranteed under Chapter IV is infringed there can no justiciable issues under S.46(1) of the Constitution and the court would be without jurisdiction to grant leave to enforce the right not within the said chapter.[330]

[327]See, Chapter 2 (discussing link between Freedom of Information and Freedom of Expression).
[328]Supra; see also, *Abacha v. Fawehinmi* (Supra).
[329](2007)17 NWLR (Pt. 1063) p. 225.
[330]Id., p. 244-245, paras.C-E.

Nevertheless, the FoI Act gives an applicant the right to institute proceedings in court, by way of an application for an order of judicial review, to compel any public institution to comply with the provisions of the Act.[331] The courts with jurisdiction are the High Courts of the States, High Court of the Federal Capital Territory, Abuja and the Federal High Court.[332]

S.20 of the FoI Act provides that any applicant who has been denied access to information may, within 30 days after he or she has been informed that access will not be given or when access is deemed to have been refused, apply to the court for a review of the decision refusing him or her access or the failure of the institution or agency to grant him or her access. The court may, where necessary, extend the 30 day time limit.

An application to the court shall be heard and decided summarily to prevent delays.[333]In *Ledap v. Clerk of the National Assembly of Nigeria*,[334] the applicant sought for extension of time within which to file an application for review of denial of information and the court granted the prayer for extension of time. In the substantive application, the applicant sought declaratory and mandatory orders, to wit:

> (a) a declaration that the denial of information requested by the applicant, on details of the salary emolument and allowances paid to members of the National Assembly was an infraction of the applicant's right under S.1(1) of the FoI Act, and
> (b) an order compelling the respondent to disclose the information within 14 days of the order.

Counsel to the applicant argued that by virtue of Sections 1(1), 4, 7(4) and 25(1)(a) of the FoI Act, the Federal High Court had the power to order the respondent to provide the requested information.

[331]S.1(3), Freedom of Information Act, 2011.
[332]S.31, Id., provides that "court" means a High Court or the Federal High Court.
[333]S.21, Freedom of Information Act, 2011.
[334]Supra

In opposing the application, counsel to the respondent argued that the mode of commencement of the suit was alien to the Federal High Court (Civil Procedure) Rules, 2009 (the "Rules. Counsel to the respondent argued that the originating application was brought pursuant to Order 3 of the Rules and that neither the said Order 3 nor any other Order in the Rules permits the commencement of a suit through a motion *simplicita*. Further, counsel to the respondent argued that the suit was statute barred in view of S.21 of the FoI Act, which provides that an applicant should commence an action within 30 days after the denial or deemed denial of a request. Consequently, counsel to the respondent submitted that the court lacked the jurisdiction to entertain the suit.

In resolving the suit in favour of the applicant, the court agreed with submission of counsel to the applicant that actions commenced under the FoI Act are to be heard summarily and not subject to strict rules under limitation of action.

The court held S.20 of the FoI allows for two categories of applicants. The first is an applicant who applies within the 30 days period and the second is an applicant who fails to apply within the 30 days. The latter, as in the instant case, can still apply for extension of time to apply for the court's review of the denial of the information in line with the last phrase of S.20 "or within such further time as the Court may either before or after the expiration of the 30 days fix or allow."[335]

Further, the court held that although the applicant commenced the action under Order 3 of the Rules, the intention of the legislature is to take an application for review of denial of information made pursuant to the FoI Act outside the Rules in view of S.21which provides that "an application made under S.20 shall be heard and determined summarily."[336]

[335]S.20, Freedom of Information Act, 2011.
[336]S. 21, Id.

The court held that hearing of a matter summarily means disposing of that matter as simply as possible without the usual procedure being followed. In the words of Her Ladyship, Justice B. B. Aliyu –

> Thus by providing that the application for the review of the denial of information under S.20 of the Freedom of Information Act shall be determined "summarily" the law maker intends that such applications should be heard and determined promptly and in a simple manner. This is intended that the Rules of procedure of the court regarding the application for judicial review (mandamus, certiorari, etc) where there must be leave sought and obtained from the court before an applicant can file such applications seeking judicial review will not apply…the application is therefore competent, and this court has the jurisdiction to determine it. The objection of the Respondent on this ground is thus lacking in merit and it is dismissed.[337]

The FoI Act also gives the courts power to examine any record under the control of a public institution and stipulates that no such record may be withheld from the court on any ground notwithstanding anything contained in the Evidence Act or any regulation made thereunder.[338] The presumption in favour of disclosure means that the onus should be on the public institution seeking to deny access to certain information to show that it may legitimately be withheld.

However, the court is required to take precautions to avoid the disclosure of such record or information before it decides whether access should be granted. Such precautions may include receiving representations *ex-parte*and conducting hearings in camera.[339]

Subject to such conditions as the court may impose, a court may order a public institution to disclose information denied under the following circumstances,[340]

(a) If the court determines that the public institution is not authorized to deny the request for information, or
(b) The court determines that the denial was not based on reasonable grounds, or
(c) If the court determines that the public interest is higher than the interest intended to be served by reason of the denial.

[337]*Ledap v. Clerk of the National Assembly of Nigeria* (Supra), pp. 11 and 12.
[338]S.22, Freedom of Information Act, 2011.
[339]S. 23, Id.
[340]S.25(1) and (2), Id.

Where potential conflicts between the provisions of the FoI Act and other secrecy laws inconsistent with the FoI Act cannot be resolved through interpretation, the provisions of the FoI Act should take precedence over those of conflicting secrecy laws.This proposal is not as controversial as it sounds, at least in substance in the light of the clear provisions of the FoI Act, which provides that the provisions of the FoI Act shall take precedence over the provisions of all secrecy laws in the statute books.[341]

Further, the FoI Act contains a comprehensive set of exceptions which ensure that information will not be disclosed if doing so would cause unjustifiable harm; so there should be no need for this to be extended by secrecy laws.[342]

## 3.8 OFFENCES UNDER THE FOI ACT

The FoI Act sets precaution against the destruction or falsification of information and imposes penalty for wrongful denial of access. S.7 provides that where a case of wrongful denial of access is established, the defaulting officer(s) or institution commits an offence and is liable on conviction to a fine of N500,000.[343]

Further, S.10 of the FoI Act makes it a criminal offence for any officer or the head of any government or public institution to try to willfully destroy or doctor or in any way alter any records kept in his or her custody before they are released to any person, entity or community applying for it. The law prescribes a penalty of a maximum of 3 years imprisonment on conviction.

The Attorney General of the Federation and the courts need to ensure that these provisions on offences is implemented and not left as mere dead letters of the law. The effective implementation of this provision will enhance the free flow of information in Nigeria, which was the purpose for enactment of the FoI Act in the first place.

[341]See, S. 1(1), 22, 27 and 28 of the Freedom of Information Act, 2011.
[342]The exemptions are discussed in Chapter 4 of this work.
[343]S.7(5), Freedom of Information Act, 2011.

# CHAPTER 4

# EXEMPTIONS TOFREEDOM OF INFORMATION

## 4.1 INTRODUCTION

The FoI Act contains a number of exemptions supposedly to make it a more realistic legislation. This chapter examines the exemptions with a view to promoting effective implementation of the Act. The exemptions need to be understood and given limited application and specific scope; otherwise, the objective for the passage of the FoI Act as a means of encouraging a more open and inclusive governance process may be defeated.

Further, what could be a striking challenge to the FoI Act is the existence of some laws, which are inconsistent with the FoI Act. These laws include: the Official Secrets Act,[344] the Legislative Houses (Powers and Privileges) Act,[345] the Evidence Act,[346] the Oaths Act,[347] the Criminal Code[348] and the Federal Civil Service Rules. Prior to the enactment of the FoI Act, these laws formed the basis for public officers to refuse public's access to information held by public institutions.

However, it is posited that that these laws can no longer serve as impediments to the right of access to information in the light of the principle of disclosure, which takes precedence as enshrined in the FoI Act.

## 4.2 THE PUBLIC INTEREST TEST

One of the most positive aspects of the FoI Act is that it permits most classes of exempt information to be disclosed where there is an overriding public interest in openness. Indeed, exemptions should only apply where disclosure can be shown to be potentially harmful and there is no overriding public interest in disclosure.

This principle applies to most of the FoI's sensitive exemptions, including those for international affairs, defence of the Federal Republic of Nigeria, law enforcement, administration of justice, personal privacy, trade

[344]Cap. O3, Laws of the Federation of Nigeria, 2004.
[345]Cap. L12, Laws of the Federation of Nigeria, 2004.
[346]Evidence Act, 2011.
[347] Cap. O1, Laws of the Federation of Nigeria, 2004.
[348] Cap. C38, Laws of the Federation of Nigeria, 2004.

secrets and commercial and financial information. Indeed only 2 exemptions qualify as absolute exemptions (excluded from the public interest test) i.e. professional privileges[349] and course or research materials.[350]

The position of the FoI Act closely mirrors the judgement of the Inter-American Court on Human Rights in the landmark case of *Claude Reyes et al. v. Chile*.[351] It was the first judgement of an international court to recognize and affirm the vitality of the public interest and harm tests. The court ruled that in all cases, a restriction of the right of access must not only be purposefully related to the objective of an exemption under the law, but it must also be shown that disclosure could cause substantial prejudice to this objective and that the prejudice to the objective is greater than the public interest in having the information.[352]

The European Union has also expressly recognized the public interest override in relation to commercial confidentiality.[353] Commercial confidentiality is found within the exception of third party information under S. 15 (1) of the FoI Act, subject to a public interest override.[354] Article 4(2) of Regulation (EC) No 1049/2001, provides that institutions "shall refuse access to a document where disclosure would undermine the protection of commercial interest of a natural or legal person . . . unless there is an overriding public interest in disclosure.[355]

The meaning of "Public Interest" and likely circumstances under which the "Public Interest Test" may be invoked have already been discussed in Conceptual Clarifications under Chapter two of this thesis.

### 4.3 EXEMPTIONS SUBJECT TO THE PUBLIC INTEREST TEST

Exemptions which are subject to the public interest test can be categorized in two, namely: injury based and non-injury based exemptions. The injury-based exemptions are exemptions in which disclosure "may," or "could reasonably be expected to" or "would" cause injury or harm or an interference of the specified purpose of the exemption, for example, injury to the conduct of international affairs and defence or interference with pending administrative enforcement proceedings.[356]

[349]S.16, Freedom of Information Act, 2011.
[350]S.17, Id.
[351]*Claude Reyes et al. v. Chile*, Inter-American Court of Human Rights,Judgment of Sept. 19, 2006.
[352]Id.
[353] See S.15, under which Commercial interests of a third parties are excluded from disclosure.
[354] S. 15 (4), Freedom of Information Act, 2011.
[355]Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43].
[356]See, the FoI Guidelines, Chapter 3, p.24.

The injury need not be substantial but it must be genuine and its likelihood should be decided on a case-by-case basis. Under the injury test:

(i) public institutions are expected to demonstrate that there is a causal relationship (or implied link) between the potential disclosure and the specified injury;

(ii) public institutions cannot be expected to prove exactly what would happen on disclosure and do not have to prove that injury would occur beyond any doubt. However, public institutions should not put forward an unsupported speculation or opinion,

(iii) public institutions must be able to provide some evidence as a basis for their decision on whether or not to grant a request or application.[357]

The evidential burden on public institution progresses higher depending on whether the injury "may" or "reasonably expected" or "would" be occasioned respectively.The actual test of injury depends on the fact thatin all the circumstances of the case, the public interest in disclosing the information clearly outweighs whatever injury the disclosure would cause.[358]

The non-injury based exemptions have no injury but the public interest test also applies to these exemptions. The outcome will depend on whether the public interest in confidentiality outweighs the public interest in disclosure of the requested information, for example, exemption of trade secrets, commercial and financial information and contract bids or proposals.

### 4.3.1 Exemption of International Affairs and Defense

S.11 of the FoI Act exempts information that may be injurious to the conduct of international affairs and the defense of the Federal Republic of Nigeria (FRN).[359]

#### *4.3.1.1 Information Injurious to conduct of International Affairs.*[360]

Some public institutions carryout functions that may affect the conduct of international affairs of the Federal Republic of Nigeria; for example, Federal Ministries of Foreign Affairs, Justice, Trade and Investment and the

[357]theFoI Guidelines, Chapter 3, p.24.
[358]See, S. 11(1) and (2), Freedom of Information Act, 2011.
[359]See, S. 11(1) and (2), Freedom of Information Act, 2011.
[360]Id.

Economic and Financial Crimes Commission. The functions would cover a wide range of international issues, such as –

(i) Diplomatic and consular matters between Nigeria and other countries.

(ii) Nigeria's policy and strategic positioning in relation to other states or international organizations like the United Nations, ECOWAS, etc.

(iii) International trade partnerships.

(iv) State visits by Heads of State and Foreign Ministers/Secretaries.

(v) International funding matters with the IMF, World Bank, and so on, and

(vi) Cases before international courts and tribunals.[361]

The FoIGuidelines provide that for a public institution to exempt information, it must resolve three issues:

(a) the information must relate to the conduct of international affairs.

(b) the nature of injury or harm must be considered, and

(c) the public institution must demonstrate the harm to be caused, e.g. if the government holds an unfavourable assessment of the political situation of the foreign country or disclosure could lead to attacks of Nigerians resident in the foreign country.[362]

Thereafter, the public institution should proceed to apply the public interest test on a case-by-case basis, for example, in a FoI request to the Ministry of Aviation for information regarding negotiations with the United Kingdom over airline landing rights and tax surcharges; the Ministry of Aviation may argue that premature disclosure might harm the outcome of the negotiations and damage relations between both countries. On the other hand, it might be argued that the Nigerian public has an interest in knowing whether the bilateral agreements would bring benefits to the country as claimed. The Ministry of Aviation would therefore have to weigh the harm alongside the public interest before deciding on whether or not to apply the exemption.

*4.3.1.2. Information Injurious to the Defense of the Federal Republic of Nigeria*[363]

[361] See, the FOI Guidelines, chapter 5, p. 23.
[362]The FoI Guidelines, chapter 5, p. 23.
[363]S.11(1), Freedom of Information Act, 2011.

The FoIGuidelines provide that this exemption is not for defense information but for information which disclosure may harm the defense of the Federal Republic of Nigeria, for example, information about weaponry, troop deployments, communication network and state of alert of the armed forces.[364]

Complex legal analysis is not required to see that exemptions should be limited to situations where disclosure of the information would pose a risk of harm; this is simply common sense. For example, the armed forces hold a lot of information that is tangential to their operations, for example relating to purchases of food or pens. It is clearly not legitimate to deny access to this information on the basis that it simply relates to defence spending, since disclosure would not harm a defence interest.

Another example would be sensitive military information which exposed corruption in the armed forces. Although disclosure may at first sight appear to weaken national defence, eliminating corruption in the armed forces may, over time, actually strengthen it. Thus, even information which disclosure may be injurious to the conduct of international affairs and the defense of the FRN must be disclosed if, on the balance, the public interest favours it.[365]

In the case of *Leander v. Sweden*[366]decided by the European Court of Human Rights (ECHR), the applicant was dismissed from a job with the Swedish government on national security grounds, but was refused access to information about his private life, held in a secret police register, which had provided the basis for his dismissal. The court held that the storage and use of the information, coupled with a refusal to allow the applicant an opportunity to refute it, was an interference with his right to respect for private life. The interference was, however, justified as necessary to protect Sweden's national security. It is interesting to note that it ultimately transpired that Leander was in fact fired for his political beliefs, and he was offered an apology and compensation by the Swedish government.

In *Roche v. United Kingdom*[367], which involved claims of medical problems resulting from military testing, the Court held that Article 6 of the ECHR, regarding a fair hearing, was not applicable.[368]

At the same time, there are indications that the Court may be changing its approach. In *SdruženiJihoĐeskéMatky v. Czech Republic*,[369] the ECHR held that a refusal to provide access to information did represent an interference with the right to Freedom of Expression as protected by Article 10(2) of the ECHR. In its

[364]FoIGuidelines, chapter 5, p. 24.
[365]See, S.11(1) and (2), Freedom of Information Act, 2011.
[366]Supra.
[367]Supra.
[368]Id., para. 125.
[369]Application No. 19101/03.Decision of 10 July 2006.

Article 10(2) analysis, the court referred to various factors, including national security, contractual obligations and the need to protect economic confidentiality.

### 4.3.2 Exemption of Law Enforcement and Investigation

S.12 of the Freedom of Information Act, 2011 provides that a public institution may deny an application for certain categories of information relating to investigation and law enforcement proceedings only to the extent that disclosure would –

(a) interfere with pending, actual or reasonably contemplated law enforcement or administrative proceedings;

(b) deprive a person of a fair trial or impartial hearing;

(c) unavoidably disclose the identity of a confidential source;

(d) constitute an invasion of personal privacy under S.15 of the Act;

(e) obstruct an ongoing criminal investigation, and

(f) reasonably be expected to be injurious to the security of penal institutions.

The FoIGuidelines provide an illustration in this connection.[370] An application is received by the Nigerian police to disclose information relating to a particular investigation. The police may consider that the information may interfere with an actual investigation by revealing the identity of a confidential source. However, the risk of interference with the investigation must be weight against the public interest in openness and accountability and increasing participation in public debate about matters of policing.

Another illustration is where the Nigerian Drug Law Enforcement Agency (NDLEA) considers that disclosure of technical data relating to equipments deployed by the NDLEA at the NnamdiAzikiwe International Airport or information about the operatives deployed in the airport can be reasonably expected to facilitate drug smuggling using the airport. However, the risk of assistance being given to drug smugglers must be weight against the general public interest in openness and increasing public participation in matters of public policy such as crime prevention.[371]

[370]See, the FoI Guidelines, chapter 3, p. 16.
[371]The FoI Guidelines, chapter 3, p. 16.

### 4.3.3 Exemption of Personal Information[372]

Under S.14 of the FoI Act, a public institution must deny an application that contains certain personal information except the individual to whom the information relates consents to its disclosure or the information is publicly available.[373] The FoIGuidelines recommends that the following issues should be resolved in considering the protection of the privacy of an individual against the public interest in disclosure[374] –

*4.3.3.1. Fairness to the Individual*

This relates to possible negative effect of disclosure e.g. disclosure of the home addresses and private telephone numbers of intelligence officers may put them (and their families) at risk of terrorist attacks and should therefore not be disclosed. Other reasonable considerations of fairness are:

(i) reasonable expectations of the individual e.g. where the individual provided the information on the understanding that the public institution will not disclose the information.In the case of *Odièvre v France*[375], an applicant requested for access to information about his natural mother. The European Court of Human Rights accepted that this was covered by the right to private life, as guaranteed by Article 8, but held that the refusal by the French authorities to provide the information represented an appropriate balance between the interests of the applicant and the interests of her mother, who had expressly sought to keep her identity secret.[376]Similarly, In a decision of a New Zealand Ombudsman relating to the *Marine Accident Report*,[377] the New Zealand Maritime Safety Authority was asked for a copy of an investigation report into a fatal boating accident. It consulted the victims' widows who both expressed a desire for the information not to be made public. The Ombudsman acknowledged that there was a privacy interest which should be protected. However, he formed the view that there was also a publicinterest in release of the information, in that release of the informationwould play a part in

[372]S. 14(1) - (3), Freedom of Information Act, 2011.
[373]See,S. 14, Freedom of Information Act, 2011.
[374]FoI Guidelines, chapter 7, p. 31.
[375]Supra.
[376]Paras. 44-49.
[377]Ombudsman (NZ) Quarterly Review, Volume 1, Issue 2.ISSN 1173-4736. June 1995.

the prevention of boating accidents in the future. Inthis case, the Ombudsman decided that the public interest in release wasstronger than the privacy interest in withholding.

(ii) certain information e.g. internal disciplinary matters are reasonably expected not to be released.

Also, whistleblowers who provide information on corruption within a public institution would not normally expect their identity to be revealed to the person who allegedly committed the corrupt act.

*4.3.3.2 Private v. Public Life of the Individual*

It is generally accepted that, individuals who perform public functions, hold elective office or spend public funds should have the expectation that their public actions will be subject to closer scrutiny than would be the case with their private lives.[378]

*4.3.3.3 Press Articles*

In considering whether information is publicly available, it may not be fair to disclose information in the public domain by virtue of an article in the press. Public institutions must consider whether the article is mischievous, speculative or contains substantiated information in order to make a well-informed decision on whether the information can be said to be publicly available.[379]

*4.3.3.4 Discretion*

Under S.14, there is no discretion to disclose. Therefore, a public institution must withhold the information once the information is personal and the public interest override does not apply.[380]

In the case of *Sîrbu&Ors. v. Maldova*[381] the request to access information was really secondary to the main complaint about a failure of the State to apply a domestic ruling to the effect that the applicants were entitled to certain back-pay. The domestic 'Decision' upon which the entitlement to back-pay was based had been classified as secret and the applicants were denied access to it. Notwithstanding this, a domestic court awarded each of the

[378]FoI Guidelines, chapter 7, p. 31.
[379]FoI Guidelines, chapter 7, p. 31.
[380]Id.
[381]Supra.

applicants the back-pay due to them, but the government simply refused to provide it, resulting in a fairly obvious breach of Article 6, guaranteeing the right to a fair and public hearing.

In another case, information was sought about the dismissal of the Chairman of the Victorian Gaming Commission[382], who had been criticized by the government while in opposition. The Tribunal found that the requested information was exempt on privacy grounds, but held that:

> Whilst accepting thatdetails of the financial impact on [the individual] and of his financialaffairs generally, were protected...the Tribunal also held that the public isentitled to know the amount an individual is paid from public funds uponthe termination of her/his employment or removal from office, the sourceor particular fund from which such payment is made and the terms andconditions, if any, upon which the payment is made.[383]

In *Gaskin v, the United Kingdom*,[384] the applicant, who as a child had been under the care of local authorities in the United Kingdom, had applied for but was refused access to case records about him held by the State. The European Court of Human Rights held that the applicant had a right to receive information necessary to know and understand his childhood and early development, although that had to be balanced against the confidentiality interests of the third parties who had contributed the information.

Significantly, this placed a positive obligation on the government to establish an independent authority to decide whether access should be granted if a third party contributor was not available or withheld consent for the disclosure. Since the government had not done so, the applicant's rights had been breached.[385]

In *Guerra and Ors v. Italy*[386], the applicants, who lived near a "high risk" chemical factory, complained that the local authorities in Italy had failed to provide them with information about the risks of pollution and how to proceed in event of a major accident. The European Court of Human Rights held that severe environmental problems may affect individuals' well-being and prevent them from enjoying their homes, thereby interfering with their right to private and family life. As a result, the Italian authorities had a positive obligation to provide the applicants with the information necessary to assess the risks of living in a town near a high risk chemical factory. The failure to provide the applicants with that essential information was a breach of their Article 8 rights.[387]

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[382] *Lamont v. Department of Arts, Sport and Tourism*(No 93/7380), reported in: Freedom of Information Review, No 59, page 79, October 1995.
[383] *Lamont v. Department of Arts, Sport and Tourism*(Supra).
[384] Supra.
[385] *Gaskin v, the United Kingdom* (Supra), para. 49.
[386] Supra
[387] Para. 60.

The decision was particularly significant as it appears that the State did not actually hold the information requested, so that it would actually need to go out and collect it.

### 4.3.4 Exemption of Third Party Information, Trade Secrets and Commercial and Financial Information[388]

S.15 of the FoI Act exempts third party information containing trade secret, commercial and financial information and contract bid or proposal from disclosure.

#### *4.3.4.1 Trade Secrets*

TheFoI Act does not define trade secret; however, the term has a fairly wide meaning and will cover things like (i) secret formulae recipes, (ii) names of customers and goods they buy, (iii) a company's pricing structure if not generally known and are the source of a trading advantage.[389]

TheFoI Guidelinesprovide that for trade secret to be exempted, it must have the essential elements of being proprietary, privileged and confidential.[390]

#### *4.3.4.2 Commercial and Financial Information*

Commercial and financial information is generally held for the purpose of financing, budgeting, exploiting of business opportunities, advertising and statutory or regulatory compliance covering a broad range of information such as bank statements, advertising budgets and so on.

The FoIGuidelines provide that commercial and financial information must also have the essential elements of being proprietary, privileged and confidential to be exempt.[391]

It is advisable for a public institution to consult with athird party before disclosure. In view of time constraints that may result from consultation, the public institution may invoke S.6 of the FoI Act to extend the 7 day statutory timeline. However, the FoIGuidelines provide that failure of a third party to respond to consultation

[388]S.15(1) to (4), Freedom of Information Act, 2011.
[389] FoI Guidelines, chapter 8, p. 34.
[390]Ibid.
[391]FoI Guidelines, chapter 8, p. 34.

does not remove the obligation to respond within the statutory timeline and the ultimate decision as to whether or not the exemption applies is the responsibility of the public institution.[392]

In the US case of *Teich v. Food & Drug Administration (the Cancer Test Results)* [393], A consumer group applied for animal safety studies carried out by the manufacturer of silicone gel breast implants, which indicated a possible carcinogenic effect in animals. They also asked for details of consumer complaints to the manufacturer. The US Food & Drug Administration argued that the information was exempt partly on grounds of commercial confidentiality. The court concluded that the commercial value of the information was negligible, partly because most were carried out 20 years previously and would be of limited value to a competitor now seeking approval for a rival product. The court added that -

> disclosure of the positive tests, whichdemonstrate that a product poses a danger when used in a certain manner, isunquestionably in the public interest. To argue that this type of information isconfidential suggests that, in order to protect whatever marginal commercialbenefits Dow Corning may get from having independently discovered certain risks, other manufacturers be permitted to blindly put out potentially damaging products. Certainly, Dow Corning, as a good citizen, would not risk the public health in this manner. The benefit of releasing this type of information far outstrips the negligible competitive harm that defendants allege.[394]

In the Australian case of *Thwaites and Department of Health & Community Services,*[395]certain documents relating to the contract for an inquiry into the operation of an Ambulance Service were held to be exempt under the Victoria FoI Act on grounds of commercially confidentiality.

The Tribunal which deals with appeals nevertheless ordered disclosure. According to a report of its judgment –

> there was a public interest in accountable government, and in theamount of money spent out of public funds. The Tribunal found that...due totime constraints, the contract for the consultancy was awarded without anyprocess of tendering or seeking of expressions of interest. This meant that thecontract was awarded in a manner inconsistent with the Government's owncontracting out guidelines, which increased the public interest in thedisclosure of the commercial terms of the consultancy.[396]

*4.3.4.3 Contract Bid or Proposal*

Documents which are contract bids or proposals are not difficult to determine and should not be disclosed if they are third party information (subject to the public interest test). The price submitted by a contractor is likely to

[392]Id.
[393]751 F. Supp. 243 (D.D.C. 1990) 243-255129.
[394]*Teich v. Food & Drug Administration* (Supra).
[395](No 95/025696), reported in: Freedom of Information Review, No 68, June 1997, 43-44/
[396]*Thwaites and Department of Health & Community Services* (Supra).

be more commercially sensitive during a bidding process and less sensitive when all bids have been formally opened to all bidders or after award of the contract.

In the Victorian case of *Mildenhall and Vic Roads (popularly known as Management Buy-Out of a Public Corporation),*[397] a public body in the state of Victoria providing mobile road maintenance equipment was privatized and sold to a management buy-out. Some documents relating to the sale were exempt on the grounds that they revealed tactics for future negotiations or were commercially confidential.

However, because the enterprise had been sold to a group of employees who had been coordinating the information supplied to other prospective tenderers, the Tribunal ordered disclosure. The Tribunal did not make a finding of impropriety but held that in the circumstances the public interest required access to some of the exempt documents.[398]

There are instances where contracts may have confidentiality clauses and may reveal possible injury to a contractor. It is important that these clauses are carefully evaluated and prudent to seek legal advice.[399]

### 4.3.5 Exemption of Certain Records[400]

S.19 of the FoI Act contains several exemptions which are highlighted below:

#### *4.3.5.1 Test Questions, Scoring Keys and Examination Data*

The purpose of this exemption is to ensure that the assessment of students and applicants for a license or employment is conducted in an atmosphere that guarantees fairness and impartiality.[401]

#### *4.3.5.2 Architects and Engineering Plans for Private Buildings*

It is presumed that disclosure of design plans submitted to public institutions, for example, the Development Control Department of the FCTA, would prejudice the professional integrity of architects and engineers because it would enable people to freely copy designs thereby infringing: the professional skills and ingenuity utilized; the right of architects and engineers to be adequately remunerated, and may have public safety

[397](1996) 9 VAR 362, reported in Freedom of Information Review, 67, February 1997, 9-10.
[398]Supra.
[399]*Mildenhall and Vic Roads*case (Supra).
[400]S.19(1) (2), Freedom of Information Act, 2011.
[401]S.19(1)(a), Id.

implications because while a design plan may be suitable for one area, its mindless reproduction may be dangerous if used in another area.[402]

*4.3.5.3 Architects and Engineering Plans for Public Buildings*

It is also presumed that disclosure of design plans of public buildings may have security implications as it can be utilized by terrorists, criminals and facilitate espionage by intelligence agents of foreign countries. However, disclosure should be allowed where there is no security risk.[403]

*4.3.5.4 Library Circulation and other Records*

This exemption prevents identification of library users with specific materials. The purpose is to provide an atmosphere where the public can freely satisfy their quest for knowledge with the full expectation that their choice of publication, books, reading or research material would not be used to discriminate against them or harm them in any way.

## 4.4 ABSOLUTE EXEMPTIONS – EXEMPTIONS NOT SUBJECT TO THE PUBLIC INTEREST TEST

In applications involving absolute exemptions, there will be no need for public institutions to consider if there would be injury or a stronger public interest in favour of disclosure. This is because absolute exemptions are presumed to contain an in-built prejudice test in that the public interest for information falling within the absolute exemptions is deemed to have already been established.

### 4.4.1 Exemption of Professional Privileges

S.16 of the FoI Act provides that 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 confidentiality privilege, and

[402]S.19(1)(b), Freedom of Information Act, 2011.
[403]S.19(1)(c), Id.

(d) Any other professional privilege conferred by an Act.[404]

### 4.4.2 Exemption of Course or Research Material

S.17 of the FoI Act exempts information which contains course or research materials prepared by faculty members. Course material include any academic material prepared in furtherance of a curriculum offered by an institution of higher learning while research materials connotes records produced from a systematic academic investigation to establish facts, solve new or existing problems, prove new ideas or develop new theories.[405]

The purpose of this exemption is to protect academic integrity and the pursuit of academic and professional excellence for lecturers by carving out a research space for lecturers to contribute to the knowledge base of the country.[406]

## 4.5 LAWS INCONSISTENT WITH THE FREEDOM OF INFORMATION ACT

Prior to the passage of the FoI Act, virtually all government information in Nigeria is classified as top secret. This veil of secrecy makes it difficult to get information from a state agency.The existence of some laws on the statute books, which are inconsistent with the FoI Act, for example, the Official Secrets Act, the Legislative Houses (Powers and Privileges) Act, the Evidence Act, the Oaths Act and the Criminal Code formed a basis for public officers to refuse the public's access to information.[407]

### 4.5.1 The Official Secrets Act (OSA)[408]

At the heart of every FoI regime lies records management and classification of documents. The classification system is usually designed to organise public records and documents with reference to their

[404]See. S.16(a) to (b), Freedom of Information Act, 2011.
[405]S.17, Id.
[406]FoIGuidelines, chapter 10, p. 39.
[407]See, Ngabirano, D., op. cit., for similar in respect of the laws of Uganda.
[408]Cap. O3, Laws of the Federation of Nigeria, 2010

sensitivity in relation to national security. The OSA criminalizes disclosure of information,[409] making anyone who transmits, obtains, reproduces, or retains any "classified matter" guilty of an offense.

However, the FoI Act has to a large extent dispensed with the OSA as far as it concerns access to information and provides that nothing contained in the OSA shall prejudicially affect any public officer who, without authorization, discloses to any person, information which he reasonably believes to show –

(a) a violation of any rule or regulation;
(b) mismanagement, gross waste of funds, fraud and abuse of authority, or
(c) a substantial and specific danger to public health or safety notwithstanding that such information was not disclosed pursuant to the provision of the Act.[410]

The FoI Act also provides that no civil or criminal proceeding shall lie against any person receiving the information or further disclosing it.[411]

While the FOIA dispenses with the OSA as far as it concerns access to information, the system of classification under the OSA remains operational in Nigeria's public service. The OSA defines classified matter to mean –

> any information or thing which, under any system of security classification, from time to time, in use by or by any branch of the government, is not to be disclosed to the public and of which the disclosure to public would be prejudicial to the security of Nigeria.[412]

The definition of classified matter under the OSA is unnecessarily broad and gives the government a potentially unlimited authority to classify any record or information in its possession as classified matter thereby limiting access to the information. The vague, circuitous definition is advantageous in a system that seeks to limit public access to information and participatory governance.

Further it appears that even the system of classification is itself secret and there is no objective way of determining whether a record asserted to be secret is in fact such. This allows for considerable arbitrariness and despotism in the management of access to official information. By contrast, the letter and spirit of the FOIA advocates for open and inclusive government. The current classification system is a clear hindrance to achieving this.

[409] S. 1,Id.
[410] S. 27(2), Freedom of Information Act, 2011.
[411] S. 27(3), Id.
[412] S.9, Supra.

Notwithstanding the above, it is heart-warming that the FoI Act states that the fact that any information in the custody of a public institution is kept under security classification or is classified document within the meaning of the OSA does not preclude it from disclosure except the information falls under any of the exemptions provided under the FoI Act.[413]

### 4.5.2 The Evidence Act[414]

The Evidence Act is the main source of law of evidence in Nigeria. The National Assembly has repealed the old Evidence Act[415]in the year 2011 and enacted a new Evidence Act, which applies to all judicial proceedings in or before any court established in the Federal Republic of Nigeria.[416]

In the main, the Evidence Act lays down principles underlying proof of matters of law and fact in courts of law. The courts may where necessary, resort to the common law or any relevant statute to supplement the provisions of the Evidence Act.[417]

However, some of the provisions of the Evidence Act have far-reaching consequences on the right of access to information. For example, the Evidence Acthas provided that -

> Subject to any directions of the President in any particular case, or of the Governor where the records are in the custody of a state, no one shall be permitted to produce any unpublished official records relating to affairs of state, or to give any evidence derived therefrom, except with the permission of the officer or the head of department concerned, who shall give or withhold such permission as he thinks fit.[418](Emphasis supplied)

We are of the view that this provision unjustly limits access to public by empowering the officer or head of department to give or withhold access to unpublished records under his control, as he thinks fit; and there is no requirement for him to state reasons for his refusal.

To cure this mischief, theFoI Act confers power on the courts to examine any information in the control of a public institution notwithstanding the provisions of the Evidence Act.[419]

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[413]See, S. 28(1), Freedom of Information Act, 2011.
[414]Evidence Act, 2011.
[415] Ibid.
[416]The Evidence Act, which was first passed in 1943 as the *Evidence Ordinance*, came into operation in 1945. The provisions of the Act were taken from the Digest of the Law of Evidence of Sir James FitzeGerald Stephen. Prior to 1945, the applicable law of evidence in Nigeria was the English common law of evidence
[417]See S.3, Evidence Act, 2011.
[418]S. 190, Evidence Act, 2011.
[419]See, S. 22, Freedom of Information Act, 2011.

### 4.5.3 The Legislative Houses (Powers and Privileges) Act[420]

The Legislative Privileges Act confers certain powers, privileges and immunities on members of legislative houses.[421] The major provision limiting access to information is S.23, which provides that –

> no evidence relating to certain matters by any member or officer of the house or any shorthand-writer employed to take minutes of any such evidence or proceedings or, by any person who was a witness before the committee shall be admissible in any proceedings before a court or person authorized by law to take evidence unless the court or such last-mentioned person is satisfied that permission has been given by the president or speaker, as the case may be, of the house or the chairman of the committee (as the case may require) for such evidence to be given.

The evidence referred to above relates to: debates or other proceedings of a legislative house and contents of minutes of evidence taken or any documents laid before a committee of a legislative house or any proceedings or examinations held before any such committee.[422]

S.23 of the Legislative Privileges Act therefore restricts access to contents of documents laid before legislative houses and their committees by subjecting access to such documents to the leave of the President, Speaker or Chairman of a committee of the house. Unfortunately, no specification has been made in respect of grounds for which the President, Speaker or Chairman may deny access. This power can therefore be subject to abuse, if left untamed.

The Constitutional Court of Uganda has ruled on a similar provision in *Zachary Olum& Another v. Attorney General.*[423]In this case the petitioners challenged the constitutionality of the Ugandan Referendum Act on the ground that the law was passed without the requisite quorum. The petitioners sought to adduce as evidence a *hansard*and video recordings of parliamentary proceedings but the respondents objected on the basis of S.15 of the Ugandan National Assembly (Powers and Privileges) Act, which provides that such evidence could only be adduced with leave of the Speaker of the Ugandan parliament.

The Constitutional Court held that S.15 was inconsistent with the right of access granted under the Ugandan constitution stating thataccess to information without use would be empty.Accordingly, the court held that the petitioners were entitled to adduce the *hansard* and video recordings in evidence.[424]

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[420] Cap. L12, Laws of the Federation of Nigeria, 2010
[421]See, the preamble to the Act.
[422]S. 23, Id.
[423]Constitutional Petition No.7 of 1999, Uganda
[424]See, Ngabirano, D., op. cit.

### 4.5.4 The Oaths Act[425]

The Oaths Act was enacted with the aim of consolidating the law relating to taking of oaths and affirmations in Nigeria and require persons appointed to an office set out in the second column of the Second Schedule to the Act to take the oath specified in the first column of the Schedule which shall be administered by the authority specified in the third column of the Schedule.[426]

Several oaths are provided under the Oaths Act; of importance to the right of access to information is the Oath of Secrecy which is sworn by all members of the civil service of the federation and such other persons executing official functions as the President may designate by notice in the Federal Gazette. The Oath of Secrecy is to be administered by Heads of Ministries or persons authorized by them.

The Oath of Secrecy specifically prohibits civil servants from sharing information which comes to their knowledge in the discharge of their official duties except as may be required for the discharge of their duties or as may be permitted by the President. The Oath of Secrecy is quoted below –

> I.....swear that I will not directly or indirectly communicate or reveal any matter to any person which shall be brought under my consideration or shall come to my knowledge in the discharge of my official duties except as may be required for the discharge of my official duties or as may be specially permitted by the President.
> So help me God.[427]

We are of the view that the Oath of Secrecy conflicts with the letter and spirit of the FoI Act. Where the "disclosure takes precedence" principle not enshrined in the FoI Act, it would have been very difficult for a public officer who has taken the Oath of Secrecy to allow access to information under his control.

### 4.5.5 The Criminal Code[428]

The Criminal Code provides that any person who, being employed in the public service, publishes or communicates any fact which comes to his knowledge by virtue of his office, and which is his duty to keep secret, or

[425] Cap. O1, Laws of the Federation of Nigeria, 2004.
[426] S. 2, Id.
[427] See the First Schedule to the Oaths Act.
[428] Cap. C38, Laws of the Federation, 2004.

any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound to publish or communicate it, is guilty of a misdemeanor, and is liable to imprisonment for two years.[429]

However, the FoI Act provides that nothing contained in the Criminal Code shall prejudicially affect any public officer who discloses information to any person without authorization.[430]

### 4.5.6 The Federal Civil Service Rules

By virtue of the FoI Act, the Federal Civil Service Rules and all government regulations which prohibit disclosure of publicly held information on the basis of the Official Secrets Act are now obsolete and in need of review. There is the need to review the Service Rules to excise all rules that are in conflict with the pro-disclosure mandate of the FoIAct. The Head of Service of the Federation, who is primarily responsible for developing and ensuring compliance with the service and operational doctrines of the public service and should take responsibility in this regard.

[429]S. 97(1), Criminal Code (Supra).
[430]S.27(2), Freedom of Information Act, 2011.

## CHAPTER 5

## SUMMARY AND CONCLUSION

### 5.1 SUMMARY

This work discussed the concept, meaning, origins, history and features of a Freedom of Information regime. The impact of Freedom of Information on politics, economics and public administration as well as international standards on the subject were also been examined.

An appraisal of the current Freedom of Information regime in Nigeria, which was introduced with the enactment of the Freedom of Information Act, 2011has been provided. We have shown how the right to information can be effectively utilised and enforced in Nigeria in the light of the clear provisions of the Freedom of Information Act, 2011.

Issues around implementation have been discussed in the light of the deep-rooted culture of secrecy prevailing in Nigerian government institutions due to longstanding practices and existence of some secrecy laws in the statutes books. We have stated that the success of the FoI Act will ultimately depend on changing the culture of secrecy since it is virtually impossible to force openness, even with the most progressive legislation.

In this connection, the work highlighted certain statutory obligations imposed on public institutions in order to make the right of access to information effective. These obligations include record keeping, pro-active publication and reporting obligations. Investigations[431] reveal that record keeping has long been a low priority in public institutions in Nigeria. Public officials and politicians often prefer to focus their energies on action and decisions rather than the record keeping infrastructure required to support and sustain their work. But just as a building constructed without an adequate architectural and engineering foundation may soon collapse, a government that operates without an adequate information and records management foundation may degenerate into chaos and corruption.

Certain categories of exemptionshave been inserted in the FoI Act to ensure that information is not disclosed if doing so would cause unjustifiable harm. Some of the exemptionsare subject to public interest testwhile few others are absolute exemptions. We have shown that most of the exemptions are subject to public interest

[431]See, FG Snubs 'Open Govt' Law, *Daily Trust*, Vol. 30, No. 23, Wednesday, 22 August 2012, pp. 1, 5.

override which means that information is still required to be disclosed where the public interest in disclosure overrides the individual interest or harm in non-disclosure.

Several secrecy laws existing in the statute books, such as, the Official Secrets Act,[432] the Criminal Code,[433] the Legislative Houses (Powers and Privileges) Act,[434] the Evidence Act,[435] and the Oaths Act[436] were examined in the light of the principle of "Disclosure Takes Precedence" enshrined in the FoI Act. We have shown that since the FoI Act contains a comprehensive set of exemptions, there is no longer any need for the restrictions imposed by the secrecy laws.

Finally, this work has made several recommendations that will go a long way to promote a culture of openness and transparency thereby leading to accountability and transparency in government by conferring citizens with a legally enforceable right to obtain full and accurate information about the activities and decisions of their government.

[432]Cap. O3, Laws of the Federation of Nigeria, 2004.
[433]Cap. C38, Laws of the Federation of Nigeria, 2004.
[434]Cap. L12, Laws of the Federation of Nigeria, 2004.
[435]Evidence Act, 2011.
[436]Cap. O1, Laws of the Federation of Nigeria, 2004.

## 5.2 FINDINGS AND OBSERVATIONS

The following are some of the findings and observations that this work has unearth in the course of the research:

(a) Exemptions provisions: the FoI Act contains a number of exemptions inserted into the Act supposedly to make it a more realistic legislation. However, these exemptions need to be understood and given limited application and specific scope; otherwise, the objective for the passage of the FoI Actas a means of encouraging a more open and inclusive governance process may be defeated on grounds of the exemption provisions.

(b) Secrecy Laws: there are certain secrecy laws in the statute books, which are inconsistent with the express provisions of the FoI Act. These laws include: the Official Secrets Act,[437] the Legislative Houses (Powers and Privileges) Act,[438] the Evidence Act,[439] the Oaths Act,[440] the Criminal Code[441] and the Federal Civil Service rules.These laws formed a basis for public officers to refuse the public's access to information held by public institutions. The provisions of the FoI Act need to be understood in a way that will balance the legitimate interests sought to be protected by these "secrecy" laws.

(c) Enforcement Powers: the powers of the Attorney General of the Federation to ensure compliance with the provisions of the FoI Act are weak and ambiguous. There is no general power to make regulations for enforcement except to develop reporting and performance guidelines in connection with the reporting obligations under the Act. Thus, the Attorney General of the Federation cannot compel compliance with a request as this is the prerogative of the courts.

(d) Territorial Scope of Applicability of the FoI Act: a major point of debate concerning the Freedom of Information Act is the question of its territorial scope with particular reference to whether or not it is

[437]Id.
[438]Id.
[439]Id.
[440]Id.
[441]Id.

applicable to states. Some states have taken the matter out of the realm of speculation arguing that they are not obliged to accede to any request for access to public records made pursuant to the FoI Act.

(e) Applicability to Private Entities: one of the most important open questions concerns the extent to which the FoI Act applies to private entities. The question has become more significant owing to the growth in the number and kinds of services traditionally provided by government that are now being contracted to private entities. As important as this is, the FoI Act did not clearly and properly define private entities that should comply with the Act.

(f) Compliance Issues: investigations[442]have revealed that public institutions are reluctant in complying with the express provisions of the FoI Act. Apart from refusal to respond to FoI requests, public institutions appear to be failing in complying with their record keeping, publication and reporting obligations imposed upon them by the FoI Act. One of the biggest obstacles to accessing information in Nigeria is the poor state in which records are kept. Officials often do not know what information they have or, even if they do know, cannot locate the particular record they are looking for. Public officials often prefer to focus their energies on action and decisions rather than the record keeping infrastructure required to support and sustain their work. But just as a building constructed without adequate architectural and engineering foundation will collapse, a government that operates without an adequate information and records management foundation will soon deteriorate into chaos and corruption.

(g) Awareness Problem: nearly four years after the passage of the FoI Act, there still appears to be the problem of a lack of awareness or outright apathy on the part of ordinary Nigerians with respect to the fundamental provisions of the FoI Act and how the right of access granted therein can be effectively utilized. This is even the case among professional journalists, academics, legal practitioners and judges as shown in the recent decision of the Federal High Court in Paradigm Initiative Nigeria v. Dr. Reuben Abati.[443]Right to Know, Nigeria had stated in its report that one of the mjor issue that stood out in all its trainings and

[442]See, FG Snubs 'Open Govt' Law, *Daily Trust*, Vol. 30, No. 23, Wednesday, 22 August 2012, pp. 1, 5.
[443]FHC/ABJ/CS/402/2013 (Unreported).

engagements with the Nigerian public is that a lot still needs to be done with regards to creating more awareness about the FoI Act.[444]

(h) Culture of Secrecy prevailing in Public Institutions: there is a deep-rooted culture of official secrecy, elitism and non-accountable government which was enshrined by the 29 years of military rule in Nigeria. This makes it very difficult to obtain publicly held information in Nigeria. Virtually all government information in Nigeria is classified as "top secret." So impenetrable is the problem that government departments sometimes withhold information from each other under the guise of official secrecy. The resultant effect is that journalists and the general public are denied access to information that is critical for accurate reporting, and unraveling the web of corruption in Nigeria. Thus the mass media is constrained to resort to speculations on a subject, where such information could otherwise have been readily available.

(i) The FoI Act appears to be silent in balancing commercial interests with respect to intellectual property law i.e. patents and copyrights, competition law, corporate secrecy, insider trading and monopoly laws.

5.3 RECOMMENDATIONS

The following represents our recommendations to enhance understanding and effective implementation of the FoI Act:

i. Public institutions and the courts, which are saddled with the power of judicial review under the FoI Actshould clearly and narrowly interpret the exemption provisions provided in the FoI Act and subject them to strict "harm" and "public interest" tests. This is because the effectiveness of the right to access information would be undermined if the exemptions are given excessively wide interpretation. Further, the exemptions should be interpreted in a way that makes them conform to the standards under international law. It is clear from various authoritative statements on the right to information discussed in the main work that it is not legitimate to refuse access to information simply because it relates to one of the exemptions; the harm to the aim must be greater than the public interest in having the information.

[444]Implementing Nigeria's Freedom of Information Act, 2011 – The Journey So Far, op. cit. p. 2.

ii. Overtime, a commitment should be made by the National Assembly to review the several secrecy laws in the statute books to bring them in line with the FoI Act. These secrecy laws include the Official Secrets Act, the Criminal Code, the Legislative Houses (Powers and Privileges) Act, the Evidence Act and the Oaths Act.Further, where potential conflicts between the provisions of the FoI Act and these secrecy laws cannot be resolved through interpretation, the provisions of the FoI Act should take precedence. We have shown that the "Disclosure Takes Precedence" principle is fully enshrined in the FoI Act; and the FoI Act contains a comprehensive set of exceptions which ensure that information will not be disclosed if doing so would cause unjustifiable harm and injury. Consequently, there is no need for denial of information on the ground of the provisions of the secrecy laws.

iii. Considering the time and cost of litigation in Nigeria, it is recommended that the powers of the AGF should be strengthened or a special Ombudsman should be established to review refusals by public institutions and direct or compel compliance in deserving cases. Of course, such powers should be subject to the overriding jurisdiction of courts of law. In the alternative, the statutory powers of certain government institutions like the Public Complaints Commission or the National Human Rights Commission should be expanded to enable them compel compliance with the FoI Act.

iv. The Constitution should be amended to include the right of access to information as one of the Fundamental Human Rights under Chapter 4 of the Constitution. Better still, S. 39 of the Constitution which guarantees the Right to Freedom of Expression should be amended to include a positive right of access to information containing the three elements of the overriding right to information, which are: (a) the right to seek and receive ("atraerse") information; (b) the right to inform, and (c) the right to be informed. A justification for recognition of the right to information as a constitutional right rests on its significance for the proper conduct of a democratic regime. This right represents, in effect, an initial condition for the public's participation in the democratic game. Indeed, access to information is central to the proper functioning of a democratic regime and many countries have included the right to information in their constitutions.[445]

[445]A few examples from different regions of the world include *Bulgaria* (1991 Constitution, Article 41), *Estonia* (1992 Constitution, Article 44), *Hungary* (1949 Constitution, Article 61(1)), *Lithuania* (1992 Constitution, Article

v. In line with the federal system of government practice in Nigeria, the FoI Act should apply only to public institutions of the Federal Government and the Federal Capital Territory, Abuja and not the States. However, we strongly encourage the House of Assemblies of the 36 states to urgent re-enact or adopt the FoI Act with necessary adjustments based on the peculiar circumstances of the state so that the utilitarian benefits of open government and accountability under the FoI Act can be attained not only at the Federal Government but at the level of the states.

vi. The FoI Act should be reviewed to specifically define the scope and application of the Act to private entities. This can be done for example, by prescribing a percentage limit of public funds that a private entity should receive as well as the purpose/utilization of the public funds by a private entity to make it subject to the FoI Act.

vii. Awareness is urgently required to create a shift in the mindset of public servants and institutions, to make them acknowledge the fact that they are bound by the FoI Act; and to ensure that the provisions of the Act underlie their daily decision making with regards to information management. A number of means of promoting openness within the government is hereby recommended, which are, training of public officials in respect of their obligations under the FoI Act, provision of incentives for good performers and exposing poor performers. Further Public institutions should be made to comply with their publication obligations including the publication of a simple, accessible guide on how to lodge a request for information.

viii. The FoI Act provides that an individual is not required to disclose any interest in the information requested and does not stipulate a particular form by which a public institution should comply with information. It is suggested that a public institution should comply with the preference of an applicant so long as is reasonably practicable. If it is not practical, for example, because it would involve too much work , time and volume of materials, the public institution may provide the information in some other reasonable form.

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25(5)), *Malawi* (1994 Constitution, Article 37), *Mexico* (1917 Constitution, Article 6), the *Philippines* (1987 Constitution, Article III(7)), *Poland* (1997 Constitution, Article 61), *Romania* (Constitution of 1991, Article 31), *South Africa* (1996 Constitution, S.32) and *Thailand* (2007 Constitution, S.56).

ix. The general public should also be sensitised and made aware of their rights under the FoI Act, and how to exercise the right if the goals of the FoI Act are to be realized. Public education and media campaigns are needed in this regard. Citizens want their government to be effective, honest, open and accountable. They want to access government services easily and to have full and accurate information about publicly funded activities. And, for the most part, governments want to be efficient, effective, accountable and successful. For citizens to ensure their needs are met, they must participate in the governance process, and if governments are going to achieve public success, they must meet the needs of their citizens. Neither the government nor the governed can achieve these goals without the creation, protection and dissemination of reliable information.The National Orientation Agency, Federal Ministry of Information, Federal Ministry of Justice, government and private owned print and electronic media, civil organizations, and so on, should take responsibility with regards to creating awareness on the FoI Act.

x. As a collary to the above, the National Orientation Agency should translate the FoI Act into local languages to aid understanding.

xi. One of the biggest obstacles to accessing information in Nigeria is the poor state in which records are presently kept. Officials often do not know what information they have or, even if they do know, cannot locate records they are looking for. Better record management should be observed by public institutions in line with the requirements of the FoI Act as good record management is important for an efficient Freedom of Information regime. Public institutions ought to realise that handling information is one of the key functions of modern government and doing this well is crucial to effective public management.

xii. The system of classification under the Official Secrets Act remains operational in Nigeria's public service. As the institution responsible for determining all non-military classified matters concerning the internal security of Nigeria,[446] the State Security Service (SSS) oversees the development and maintenance of the information classification system operable in Nigeria. It is, therefore, vital for the National Security

[446] See, S. 2(3), National Securities Agencies Act, Cap. N74, *Laws of the Federation of Nigeria*, 2010.

Adviser (NSA), as co-ordinator of the security agencies in Nigeria, to establish a clear classification structure that clearly compasses the parameters of an effective interplay between the right to information established by the FoI Act and national security. Towards supporting the effective implementation of the FoI Act, it will also be necessary to publicise the new classification system, and to educate public officers and staff of public institutions, as well as the general public to mitigate its possible misunderstanding or abuse.

xiii. The FoI Act limits fees to standard charges for duplication and transcription where necessary. It is suggested that a public institution may require an applicant to pay for the costs of putting information into his preferred form, if it is not already held in that way. It should tell the applicant what these costs are first and ask if the applicant would be prepared to pay. In order to ensure consistency and accessibility, it is advised that a fee structure should be set by a central authority, like, the Head of Civil Service of the Federation, rather than by each public institution separately.

xiv. The FoI Guidelines should be reviewed to clearly provide for the protection of commercial interests around issues of corporate secrecy, intellectual property, trademarks, patents and competition laws.

xv. Finally, it is recommended that the Head of Service provide the administrative framework for mainstreaming the provisions of the FoI Act into the operations of public institutions in line with the present Freedom of Information regime. The specific measures recommended under this are the following:

(a) Review of the Civil Service Rules (CSRs) and other administrative directives governing the operations and transparency of the civil service and publishing a new set of CSRs compatible with the FoIAct; including effective compliance with the provisions of S.27 and 28 of the FoIAct in respect of the protection of whistle-blowers.

(b) Develop protocols for proactive record management in keeping with the legal obligations to create, organize, and maintain records and information relating to the activities, operations, businesses, personnel and other relevant information/records of public institution as envisaged under the S. 2(1)-(2) & 9(1) & (2) respectively of the FoIAct.

(c) Issue Service-wide rules specifically targeted at ensuring compliance with the processes for dealing with request for access to information, including the timelines for responding to such requests as stipulated under S. 4 – 8 of the Act, and designation of staff members responsible for dealing with FoI requests from members of the public, in keeping with the provisions of Sections 2(f), 3(4) & 29(1) (f) of the FoI Act.

(d) Develop frameworks/guidelines for carefully applying the exemptions under the FoI Act especially as it relates to security and sensitive information in order to mitigate spill back effects that may arise from unrestricted disclosures.

(e) Budgetfor and ensure adequate training and capacity building for staff members in all Ministries, Departments and Agencies of government on the FoIAct and their obligations under it, as required under S.13 of the FoI Act, and

(f) Design a sanctions regime that seeks to ensure that staff members of MDAs do not engage in any nefarious activities inimical to the successful implementation of the FoI Act and for which a specific regime of sanctions have been clearly provided under Sections 7(5) and 10 of the Act.[447]

[447]See, Odinkalu, C. A., et al. op. cit., pages 11 – 13.

# BIBLOGRAPHY

BOOK REFERENCES


(i) Aboki, Y. *Introduction to Legal Research Methodology*.Tamaza Publishing Company Ltd, Wusasa, Zaria (2009).

(ii) *Freedom of Information Act & Privacy Act Handbook*. Published by the Federal Trade Commission, USA, (2007).

(iii) Huntington, S.P. *The Third Wave: Democratization in the Late Twentieth Century*. (1991) P. 3 - 30.

(iv) Katznelson, I., et al. *Structure and Configuration in Comparative Politics: Rationality, Culture and Structure*. (1997 Ed.)p. 81-112.

(v) Kaufmann, D., et al. *Toward Transparency: New Approaches and Their Application to Financial Markets*. 16 World Bank Res (2001).

(vi) McDougal, M. S., et al. *Human Rights and World Public Order*. Yale University Press, Princeton, (1980).

(vii) O'Donnell, G., et al. *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*. Fourth Edition, (1986).

(viii) Roberts, A. *Structural Pluralism and the Right to Information*. University of Toronto Press, Toronto, (2001).

(ix) *Understanding the Freedom of Information Act (FOIA), 2011* Series, 10 Salient Features of the FOI Act 2011& 10 Myths About the FOI Act, 2011, published by R2K, Abuja, Nigeria

(x) *Your Right to Know…An Introduction*. Published by Friends of the Earth, London - UK, May, 2008.


JOURNALS


(i) Ackerman, J. M., and Sandoral- Ballesteros I. E. The Global Explosion of Freedom of Information Laws.*Administrative Law Review*, (2006) Vol. 58, No. 1.

(ii) Amao, O., and Amaeshi, K. Galvanising Shareholders Activism: Prerequisite for Effective Corporate Governance and Accountability in Nigeria. *Journal of Business Ethics* (2008), Vol. 82, pages 119-130.

(iii) Bovens, M. Information Rights: Citizenship in the Information Society.*10 J. Pol. Pjil*. (2002)

(iv) Hubbard P. Freedom of Information and Security Intelligence: An Economic Analysis in an Australian Context. *Open Government Journal* (2005), Vol. 1, Issue 3, p. 4.

(v) Ombudsman (NZ) Quarterly Review (1995) Vol. 1, Issue 2.

ARTICLES/CONFERENCE PAPERS

(i) Implementing Nigeria's Freedom of Information Act 2011 – The Journey So Far. Published by Right to Know, Nigeria, 2012.

(ii) Mendel, T. The Right to Information and Citizenship. A Background Paper for a Conference on Freedom of Information in Zambia, March, 2011.

(iii) Odinkalu, C. A., and Bhule, L. T. Implementing the Freedom of Information (FOIA) Act, 2011. A Paper Presented at the Annual General Conference of the Nigerian Bar Association, held at the Civic Centre, Port Harcourt, Rivers State, 21 – 26 August, 2011.

(iv) Promoting Open Government: Commonwealth Principles and Guidelines on the Right to Know.A Background Paper for the Commonwealth Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development, London, March 1999.

(v) Repeta L., 'Local Government Disclosure Systems in Japan', National Bureau of Asian Research, Paper No. 16, 1999.

(vi) Sanusi, L. S. The Nigerian Banking Industry: What Went Wrong and the Way Forward. Being the Full Text of a Convocation Lecture at the Convocation Square, Bayero University, Kano, on Friday, 26 February 2010.

UNPUBLISHED MATERIALS

(i) Akande, I. F., The Right to Democratic Governance under International Law: A Case Study of Domestic Implementation in Nigeria, PH.D Dissertation (Unpublished), Post Graduate School, A.B.U, Zaria, (2008).

(ii) Orobator, O .A., The Freedom of Information Bill and National Development, LL.M Thesis (Unpublished), Faculty of Law, University of Ibadan, (2009).

REPORTS/COMMUNIQUE

(i) *Annual Report of the Inter-American Commission on Human Rights* (1998), Volume III.

(ii) Communiqué, Commonwealth Functional Co-operation Report of the Committee of the Whole Durban: Commonwealth Heads of Government Meeting, 15 November 1999.

(iii) Communiqué, Meeting of Commonwealth Law Ministers, Port of Spain, 10 May 1999.

(iv) Edataen, O. Campaigning for access to Information in Nigeria. *A Report for the Legislative Advocacy Programme for Enactment of an FOI Act* (2003).

(v) Odemwengie, O.*FOI Bill and the Media*, A Memorandum Proposed by the FOI Coalition, Lagos (2003).

(vi) *Report of the Office of the Special Rapporteur for Freedom of Expression*, 16 April 1999, OEA/Ser.L/V/II.102, Doc. 6 rev., Chapter III.

(vii) *Report of the Special Rapporteur, Promotion and Protection of the Right to Freedom of Opinion and Expression*, UN Doc. E/CN.4/1998/40, 28 January 1998.

(viii) *Report of the Special Rapporteur, Promotion and Protection of the Right to Freedom of Opinion and Expression*, UN Doc. E/CN.4/2000/63, 18 January 2000

(ix) Sung-Nakin, Korea Country Report (English Summary), presented at the Asian Conference on Civil Society and Access to Government Held Information, Tokyo, Japan, 13th – 14th April, 2001.

NEWSPAPER ARTICLES

FG Snubs 'Open Govt' Law. *Daily Trust*(Banner Headline),Vol. 30, No. 23 Page 1 and 5, Wednesday, 22 August 2012.

Senator Iroegbu, "Testing the FoI Act." In: *Thisday Newspapers*, page 99 - 100, Sunday, 13 November 2011.

ELECTRONIC/WEB CITATIONS

http://www.allafrica.com retrieved 12th December, 2008

http://www.rap21.org/presidentignoresfoi.information retrieved 12th December, 2008

http://mediarightsagenda.org/pdf/2008/html. retrieved 12th December, 2008

http://www.foicoalition.org/publications/foi_advocacy/background.htm

www.r2knigeria.org

http://www.declaraciondechapultepec.org/english/presidential_sign.htm.

http://www.iachr.org/declaration.htm.

www.right2INFO.org

www.article19.org.

www.hurinet.or.ug

www.opensocietyfoundations.org.

http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB167/index.htm.

www.access-info.org.

http://www.guardiannewsngr.com/editorial_opinion/article03/160107

http://daccessdds.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement.

http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BAC090445-A8AB-490BD4B-F110BD2F3AB1%7D_Freedom%20of%20Information.pdf

http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B82BDA409-2C88-4AB5-9E32-797FE623DFB8%7D_protection%20of%20privacy.pdf

http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc

**Error! Hyperlink reference not valid.**http://en.wikipedia.org/wiki/List_of_countries_by_population,

https://wcd.coe.int/ViewDoc.jsp?id=857569&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FDC864.

http://siteresources.worldbank.org/WBI/Resources/Social_Accountability_in_the_Public_Sector_with_cover.pdf

http://unesdoc.unesco.org/images/0015/001584/158450e.pdf;

http://freedominfo.org/survey/global_survey2004.pdf.

http://www.presscouncils.org/library/Swedish_Press-Law.doc.

http://www.foi.law.utas.edu.au/foi_rev.html.

www.ivir.nl/publications/hins/EuConst_Hins_Voorhoof.pdf.

http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc

http://www.juridicas.unam.mx/publica.pdf.

http://www.hss.bond.edu.au/phil.pdf.

http://www.declaraciondechapultepec.org/english/presidential_sign.htm.

http://www.iachr.org/declaration.htretrieved 30 November, 2008

http://saharareporters.com retrieved 10 November 2008

http://siteresources.worldbank.org/WBI/Resources/Social_Accountability_in_the_Public_Sector_with_cover.pdf

http://unesdoc.unesco.org/images/0015/001584/158450e.pdf;

http://freedominfo.org/survey/global_survey2004.pdf.

http:www.vanguardngr.com/2013/11/oduah-gate-inside-story-aviation-ministers-survival-battle;
http:www.punchng.com/news/oduahgate-jonathan-under-pressure-to-save-embattled-minister.