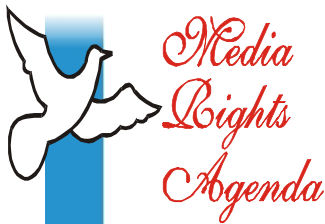


A Citizen's Guide

To The

Freedom of Information Act, 2011



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to the
Freedom of Information Act, 2011

A publication of



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Preface

A major challenge for many countries with Freedom of Information Laws is how to get ordinary citizens to effectively use the Law. In many countries, including Nigeria, average citizens do not read laws. The prospect of having to read a piece of legislation themselves is one which holds brings a lot of fear and anxiety to most people, even if they are otherwise educated. There is also a widely held belief that unless you are a lawyer or you have some legal training, you are unlikely to properly understand the text of a Law.

This has implications for laws such as the Freedom of Information Act, which ought to be engaged and used by the most well-educated in society as well as the least educated. Being a legal instrument, the Act appears to suffer from the same challenges that many other Laws in the statute books face; it is not being read by ordinary citizens in significant numbers.

If most people do not actually get to read the Act, the likelihood that they will have a clear understanding of the provisions of Act, its objectives, how to use it and what to do under certain circumstances will be virtually non-existent. This in turn is bound to affect the level of usage of the Act, which is likely to be quite low and may defeat its purpose.

A major first step, therefore, in trying to achieve effective implementation of the Act appears to be devising ways to make people actually read the text of the law or alternatively, finding various mechanisms which will enable people to have an in-depth understanding of the provisions of the Act even without reading the original text.

Moreover, even if significant numbers of people are reading the Act, many ordinary citizens may still have genuine difficulty understanding the text of the Act since it is essentially a legal document, despite having been written in legal language that is quite simple.

A Citizen's Guide to the Freedom of Information Act, 2011 is a response to this challenge. It is a simple, easy to understand guide for citizens on the Freedom of Information Act, which also seeks to put the issues into proper context. The Guide explains the key provisions of the Act and how to use it in basic language to enable ordinary citizens with even only basic education to

read and understand its provisions and how to use it.

It also provides sufficient information about the Act, the processes and procedures specified in it and other ancillary matters to enable people who may not have read the Act to nonetheless be able to make use of it to request information from public institutions as well as private entities covered by the Act, and to monitor the implementation of various aspects of the Law.

We hope that this will impact positively on the levels of understanding and usage of the Freedom of Information Act by Nigerians.

Edetaen Ojo
Executive Director, Media Rights Agenda
29 December 2011

Introduction

After more than 12 years of campaigning, the Freedom of Information Act, 2011 was signed into Law by President Goodluck Jonathan on May 28, 2011 and came into force that same day.

The purpose and objectives of the Act, as stated in its preamble, are:

- To make public records and information more freely available;
- To provide for public access to public records and information;
- To protect public records and information to the extent consistent with the public interest and the protection of personal privacy;
- To protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization; and
- To establish procedures for the achievement of these purposes and for other related matters.

The passage of the Freedom of Information Act fills a huge gap which hitherto existed in the legal framework for citizen's access to information held by public officers, authorities and institutions in Nigeria.

One of such gaps was in the area of the citizen's constitutional right of access to the declaration of properties, assets and liabilities made by public officials to the Code of Conduct Bureau in accordance with the Code of Conduct for Public Officers as contained in Paragraph 12(1) of Part 1 of the Fifth Schedule to the 1999 Constitution, as amended.

This constitutional right of citizens has remained ineffective for 12 years owing to the failure of the National Assembly to make regulations to give effective to the relevant constitutional provision.

Paragraph 3(a) of Part 1 to the Third Schedule to the 1999 Constitution, as amended, provides that the Code of Conduct Bureau shall have powers to receive declarations by public officers made under Paragraph 12 of Part 1 of the Fifth Schedule to the Constitution while Paragraph 3(c) of the same Schedule empowers the Bureau to “retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe.”

Since 1999, the Code of Conduct Bureau has declined all requests for access to asset declarations by public officers on the ground that the National Assembly had not issued any instrument prescribing the terms and conditions upon citizens may have access to the information.

The enactment of the Freedom of Information Act has now obviously filled this gap. It has similarly filled gaps in many of other laws across the country which provide a right of access for citizens to various types of information, records or documents but contain my mechanisms for giving effect to this right.

What is Freedom of Information?

Freedom of Information refers to the right, which the public in any society has to access information held by government officials and institutions. It is a fundamental human right established under international Law and all citizens of any country and indeed all members of the public are entitled to enjoy this right

The underlying philosophy of Freedom of Information is aptly captured by the Declaration of Principles on Freedom of Expression in Africa which states 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.” (Article IV(I) of the Declaration of Principles on Freedom of Expression in Africa)

The right to information recognizes the fact that some information still need to be kept secret and therefore imposes some limitations. Examples of these types of information are national security information, information about the private lives of people, sensitive commercial information, etc.

However, there is a duty on governments and public institutions to justify any refusal to disclose any information to the public.

Why is Freedom of Information Important?

Information is very important in human life. It is central to human existence and critical for decision-making, whether as individuals or as organizations.

Information is important for making all sorts of decisions, including:

- Personal decisions
- Professional decisions
- Business decisions
- Political decisions, etc.

The quality of decisions that human beings make often depends on the quality of the information that they have. If people have no information and they attempt to make decisions in their ignorance, the quality of the decisions they make would probably be very poor and if they have bad information, then they would most likely make bad decisions! This cuts across every aspect of life.

A freedom of information Law therefore enhances the dignity of human beings because of its ability to enable more effective individual decision-making, whether on personal, professional, business or political issues.

Information facilitates effective business decisions and good practices as commercial users can access information on economic matters held by public institutions and make better business decisions.

A freedom of information Law is also a major tool for fighting corruption as journalists, civil society organizations and ordinary citizens can use the Law to expose corruption and wrongdoing both in public institutions and very often, also in the private sector.

Freedom of Information enhances democratic accountability and good governance because it enables the public to scrutinize the actions and decisions of leaders and assess their performance.

It also facilitates democratic participation as it enables citizens to participate effectively in decision-making on issues that affect them.

It promotes respect for human rights because human rights violations, like corruption, flourish in a climate of secrecy. A freedom of information Law can facilitate access to reports of investigations into allegations of human rights violations.

A freedom of information Law also enhances a greater sense of belonging and ownership of development initiatives by citizens. It enables community members to know what budgetary allocations are made for maintenance or provision of facilities in their communities. Indeed, it can enable citizens to make inputs into what development projects are ear-marked for their communities. These will also serve to give them a sense of belonging and ownership of the projects.

It improves infrastructure and facilities as monies voted for them are more likely to be spent for such projects while leakages are minimized.

It also helps to build trust and confidence in government policies and decisions as citizens get up-to-date information about the affairs of government and know what is really going on.

It helps to improve record-keeping in public institutions as it ensures that government records are properly kept and it reasonably guarantees the integrity of such records and documents.

The quality of decisions made by government will most likely improve as citizens will be able to make informed contributions in the decision-making process.

It ensures that government institutions work better and more efficiently as public institutions become aware that their decisions could be made public and subject to public scrutiny. They will therefore strive to ensure that their decisions are based on justifiable reasons.

Right of Access to Information under the Freedom of Information Act

The Freedom of Information Act, 2011 establishes in very clear terms the right of access to information for every person. It states that:

“Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established.”
(Section 1(1))

In effect, therefore, ***every person*** has a legally enforceable right of access to records, documents and information held by public institutions, subject to certain exemptions stated in the Act.

This right applies to legal and natural persons, Nigerian citizens and non-citizens as well as Nigerian residents and non-residents alike.

Applicants for information under the Act are expected to apply for information or records in writing, but are not required to give any reason or explanation for seeking information. Indeed, the Act provides that:

“An applicant under this Act needs not demonstrate any specific interest in the information being applied for.” (Section 1(2))

Obligation of Public Institutions to Maintain Records

The Act makes it mandatory for public institutions to record and keep information about all their activities, personnel, operations, businesses and other relevant or related information or records. (Section 2(1) & Section 9(1))

Public institutions are also required to ensure proper organization and maintenance of all information and records in their custody in a manner that facilitates public access to the information or record under the Act. (Section 2(2) & Section 9(2))

Definition of Public Institutions

Public institutions are defined twice in the Act. The first definition states that:

“Public institutions are all authorities whether executive, legislative or judicial agencies, ministries, and extra-ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions.” (Section 2(7))

The second definition states that:

“'Public Institution' means any legislative, executive, judicial, administrative or advisory body of the Government, including boards, bureau, committees or commissions of the State, and any subsidiary body of those bodies, including but not limited to committees and sub-committees which are supported in whole or in part by public funds or which expend public funds and

private bodies providing public services, performing public functions or utilizing public funds.” (See definition of “Public Institutions” under the definition section, Section 31 of the Act.)

Information and Materials Excluded from Scope of Application of the Act

The Act does not apply to:

- Published material or material available for purchase by the public;
- Library or museum material made or acquired and preserved solely for public reference or exhibition purposes; or
- Material placed in the National Library, the National Museum or the non-public section of the National Archives on behalf of any person or organization other than a government or public institution.
(Section 26)

Modes of Accessing Information under the Act

There are two ways by which the public can access information held by public bodies. The right of members of the public to submit requests and receive the information is the most well-known feature of freedom of information laws. This is because the primary function of such laws is to provide and regulate the procedures and processes by which members of the public can request information from public institutions.

However, there is a second major way by which the public can access public information, which is when the information is made available to the public on the initiative of the public institutions themselves, without anyone submitting a request for the information. This practice is known as proactive disclosure.

Many Freedom of Information laws around the world place an obligation on public authorities and institutions to publish, on an automatic or proactive

basis, different types of information that are of public importance. Many modern freedom of information laws now contain very extensive provisions imposing proactive publication obligations on public institutions with guidelines for their implementation

Best Practice in Proactive Disclosure

Some of the international best practice features of the regime of proactive disclosure include:

- Ensuring that information that is of great public interest is published.
- Updating the information regularly to ensure that it is always accurate and reliable at any point in time.
- Ensuring that the information reaches those who may need it. For example, if a project affects people in a local community, it might not be enough to simply publish the information proactively on the Internet. Such information should also be posted on notice boards in such a community or published through other similar means to ensure it reaches those for whom it is most relevant.
- Ensuring that the information is understandable for people in a local community. For example, financial, scientific or other technical information should not be presented in excessively technical terms but should rather be published in simple and easy-to-understand language.
- Progressively increasing the scope of information that are subject to proactive disclosure over time.

Proactive Publication of Information

All public institutions are required by the Act to proactively publish certain types of information. These categories of information are to be published and widely disseminated and made available to the public through print, electronic and online means as well as at the offices of the public institutions. The proactive publications are also to be reviewed and updated periodically or whenever there are changes in the information. (Section 2(3), (4), & (5))

Every member of the public is empowered by the Act to institute proceedings before a court to compel any public institution to comply with these requirements, if it is in default. (Section 2(6))

The types of information which every public institution is required to publish proactively are the following:

- A description of the organization and its responsibilities, including details of the programmes and functions of each division, branch and department;
- A list of all classes of records under the control of the institution in sufficient detail to facilitate the exercise of the right to information.
- A list of all manuals used by the institution's employees in administering or carrying out any of its programmes or activities;
- A description of documents containing final opinions including concurring and dissenting opinions as well as orders made in the adjudication of cases;
- Documents containing its substantive rules;
- Documents containing statements and interpretations of policy which the institution has adopted.
- Documents containing final planning policies, recommendations and decisions;
- Documents containing factual reports, inspection reports and studies, whether prepared by or for the institution;
- Documents containing information relating to the receipt or expenditure of public or other funds by the institution;
- Documents containing the names, salaries and titles and dates of employment of all employees and officers of the institution;
- Documents containing the rights of the state, public institutions, or of any private person(s);

- Documents containing the name of every official and the final records of voting in all proceedings of the institution;
- A list of files containing applications for any contract, permit, grants, licenses or agreement;
- A list of reports, documents, studies, or publications prepared by independent contractors for the institution;
- A list of materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization; and
- The title and address of the appropriate officer of the institution to whom an application for information under the Act should be sent.

Benefits of Proactive Disclosure

There are many benefits of proactive disclosure, both for public institutions which take the initiative to publish the information they hold and for members of the public.

From a public policy perspective, which is aimed at ensuring better governance, the benefits of proactive disclosure for governments and public institutions include:

- Proactive disclosure ensures that members of the public are appropriately informed about laws, policies and decisions that affect them.
- The proactive disclosure of data, policy documents and other types of information ensures that members of the public have the information they need to participate in policy and decision-making.
- The proactive dissemination of information by public institutions about how they operate and what they do helps the public access government services.
- Proactive disclosure encourages better information management within public institutions as it improves the institution's internal information flows, and thereby contributes to increased efficiency.

- Proactive disclosure ensures more accountable use of public funds and helps to promote integrity in government and win the trust of the citizenry in the government.
- Proactive disclosure also reduces the burden on public institutions of having to process numerous individual requests for information filed by members of the public under the freedom of information law.

From the point of view of members of the public, the benefits of proactive disclosure also include:

- The automatic availability of information ensures that the public has timely access to information.
- Proactive disclosure also helps to ensure that there is equal access for all members of the public without the need for anyone to file requests.
- Proactive disclosure helps to ensure that all citizens can access at least a minimum amount of information about public institutions, including the vast majority of citizens who may never submit an FOI request.
- Where a proactive disclosure regime is functioning properly and relevant information are automatically disclosed in real-time, it will be difficult for public officials to later deny the existence of any particular information or to manipulate information.
- Proactive disclosure enhances security for members of the public seeking information relating to specific issues, institutions or groups, as it makes it possible for people to access sensitive information anonymously. It will therefore be impossible for public officials and other powerful interests in society to identify or track members of the public who are requesting specific information.

Ensuring Compliance by Public Institutions with Proactive Publications Obligations

For a proactive disclosure regime to be effective, there should be mechanisms by which compliance is monitored and enforced while non-compliance is sanctioned. The Nigerian Freedom of Information Act has no specific mechanism for monitoring compliance with the proactive disclosure requirements of the Act. The Act also contains no sanctions for non-compliance with the proactive disclosure requirements.

However, Section 2(6) of the Act gives every person entitled to the right of access to information under the Act the right to institute proceedings in the court to compel any public institution to comply with its proactive publication obligations.

The Act is therefore relying on the public to monitor compliance with the proactive publications obligations of public institutions and to use the courts to enforce compliance.

Citizens therefore need to take up this challenge of ensuring effective implementation of the Act by monitoring compliance with the proactive disclosure obligations of public institutions, alongside their other obligations and where necessary, enforce compliance, using the courts.

Citizens can monitor whether:

- The proactive publications requirements are being complied with by public institutions and in particular, whether the categories of information stipulated in the Act are being proactively published.
- The proactive publications are being widely disseminated and made available to public through various means, including print, electronic and online channels as well as at the offices of the public institutions.
- The public institutions which have carried out their proactive publications are also reviewing and updating the information periodically and whenever changes occur; and

- All the types of information that each public institution is required to publish proactively are actually being published.

Citizens can carry out these monitoring activities through:

- Systematic surveys of some public institutions across the country;
- Interviews with relevant officials of some public institutions across the country;
- Periodic reviews of the websites of the public institutions; and
- Various other ways such as partnerships with other stakeholders.

Information Provided on Application or Request

Most of the other sections of the Act deal with the provision of information on request. The Act sets out procedures for making requests for information, including how public institutions should deal with requests for information. It also sets out grounds upon which requests for information may be refused and the timeframes for responses.

An application for access to a record or information should be made in writing. Where an applicant makes an oral application for information or record, an authorized official of the government or public institution to whom the oral application for information or record is made, must reduce the application into writing in the manner prescribed under Section 3(1) of the Act and provide a copy of the written application to the applicant. (Section 3(4))

Illiterate applicants or applicants with disabilities who by virtue of their illiteracy or disability are unable to make an application for access to information or record in accordance with the provisions of the Act may make that application through a third party. (Section 3(3))

Any information or record applied for under the Act that does not exist in print but can by regulation be produced from a machine normally used by the government or public institution should be deemed to be record under the control of the government or public institution. (Section 3(2))

Where information is applied for under the Act, the public institution to which the application is made, subject to the institution's right to extend the time for responding, must within seven days after the application is received:

- Make the information available to the applicant; or
- Where the public institution considers that the application should be denied, the institution must give a written notice to the applicant that access to all or part of the information will not be granted, stating reasons for the denial, and the section of the Act under which the denial is made. (Section 4(a) & (b))

Where a public institution receives an application for access to information, and the institution believes that another public institution has greater interest in the information, the institution to which the application is made may within three days but not later than seven days after the application is received, transfer the application, and if necessary, the information, to the other public institution. In such a case, the institution transferring the application must give a written notice of the transfer to the applicant. The notice should contain a statement informing the applicant that its decision to transfer the application can be reviewed by the Court.

Where an application is transferred as indicated above, the application will be deemed to have been made to the public institution to which it was transferred on the day that the institution to which it was transferred received it.

A public institution is deemed to have “a greater interest” in the information if:

- The information was originally produced in or for the institution; or
- In the case of information not originally produced in or for the institution, the institution was the first public institution to receive the information.

Types of Information Covered by the Act

The types of information covered by the Act and which can be accessed under the Act include all records, documents and information stored in whatever form, including written, electronic, visual images, sound, audio recording, etc. They are all potentially accessible to the public, unless the information is specifically exempted by the Act.

An applicant seeking to use the Act to obtain information may therefore apply for the following types of information:

- Paper records in the form of any written material such as books, files, letters, papers, diaries, forms, post-it notes, labels, cards, markings, personal notes scribbled in a note book or sheet of paper or other substance, computer print-outs, or any other writing that identifies or describes anything of which it is a part of or to which it is attached by any means.
- Electronic records, including information contained in or recorded or stored in any computer, disk, external drive, server, database, or any other device. These include emails, text messages, etc.
- Audio recordings contained in, recorded or stored in any tape, CD, DVD, computer, external drive, disk, voicemail, or any other device.
- Audio-visual records, including films, documentaries and similar materials contained in, recorded or stored in any tape, video, DVD, CD, computer, disk, external drive, server, or any other device.
- Photographs and graphics, including maps, plans, drawings, x-rays, microfiche, microfilm, negatives, charts, graphs, images, pictures, artworks, sketches, or other visual images that can with or without the aid of some other equipment be produced or reproduced.

Information Exempted from General Access under the Act

The Act is founded on the principle of maximum disclosure, which establishes a presumption that all information held by public institutions should be subject to disclosure and that this presumption may only be set aside in very limited circumstances.

These limited circumstances are the exemptions from the general right of access to information under the Act. The exemptions are based on the recognition that some types of information held by public institutions may be sensitive in nature for a variety of reasons. The Act therefore exempts some categories of information from the general right of access which the Law grants to the public.

However, in most of the cases, the exemptions are not absolute. Where an overriding public interest is involved or can be established, even exempted information may be disclosed. Even in cases where it is recognized that the disclosure of the information would cause some harm, such information may nonetheless be disclosed where the public interest in disclosing the information outweighs whatever harm the disclosure would cause.

There are two broad categories of information that are exempted from the general right of access to information under the Act. The first category consists of exemptions which are somewhat absolute in that there is no public interest override applicable and as such, there are no circumstances under which such information may be disclosed. The second category consists of exemptions to which the public interest test may be applied and such information may be disclosed where there is a public interest in disclosing such information and/or where the public interest in disclosing the information outweighs whatever harm may be caused by the disclosure.

Exemptions Without Public Interest Override

- **Information subject to professional privilege is exempted:**
Information that is subject to the following privileges:
 - Legal Practitioner-client privilege;
 - Health Workers-client privilege;

- Journalism confidentiality privileges; and
- Any other professional privileges conferred by an Act. (Section 16)

This exemption does not contain any public interest override.

- **Information containing research materials by an academic institution:** Information containing course or research materials prepared by faculty members. (Section 17)

This exemption is not subject to any public interest override.

Exemptions With Public Interest Override

- **Information which may be injurious to the conduct of international affairs or the defence of Nigeria is exempted:** Information whose disclosure may be injurious to the conduct of international affairs and the defence of Nigeria is exempted. (Section 11(1)). But such information must be disclosed where the public interest in disclosing the information outweighs whatever injury disclosure would cause. (Section 11(2))
- **Information which may jeopardize law enforcement activities or investigations or the right to a fair trial is exempted:** Information compiled by any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public institution, whose disclosure would or could:
 - Interfere with pending, actual or reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency. However, this exemption only applies in the context of an investigation that pertains to the administration or enforcement of any Act, Law or Regulation or that is authorized by or carried out in accordance with any Act, Law or Regulation;

- Interfere with pending administrative enforcement proceedings conducted by any public institution;
- Deprive a person of a fair trial;
- Disclose the identity of a confidential source;
- Constitute an invasion of personal privacy under the Act. However, this exemption to disclosure will not apply where the interest of the public would be better served by having such record being made available;
- Obstruct an ongoing criminal investigation;
- Reasonably be expected to be injurious to the security of penal institutions;
- Reasonably be expected to facilitate the commission of an offence.
(Section 12(1))

However, any information applied for which falls within any of these exemptions must nonetheless not be denied where the public interest in disclosing the information outweighs whatever injury the disclosure would cause. (Section 12(2))

- **Personal Information is exempted:** Materials that contain personal information, including:
 - Files and personal information about clients, patients, residents, students, or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from the public institutions;
 - Personnel files and information about employees, appointees or elected officials of any public institution or applicants for such positions;
 - Files and personal information maintained about any applicant, registrant or licensee by any public institution cooperating with or engaged in

professional or occupational registration, or discipline;

- Information required of any tax payer for the assessment or collection of any tax unless disclosure is otherwise required by Law; and
- Information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies on the commission of any crime. (Section 14(1))

However, a public institution must disclose any material containing personal information if:

- The individual to whom the information relates consents to the disclosure; or
- The information is already publicly available. (Section 14(2))
- Where the disclosure of personal information would be of public interest and if the public interest in the disclosure clearly outweighs the protection of the privacy of the individual, the public institution to which a request for disclosure is made must disclose the information. (Section 14(3))

- **Information containing trade secrets, commercial or financial information that are proprietary, privileged or confidential is exempted:** Information that contains trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of the information may cause harm to the interests of the third party. However, the third party may consent to the disclosure, in which case the information must be disclosed.

Also exempted is information whose disclosure could reasonably be expected to interfere with the contractual or

other negotiations of a third party; or proposal and bids for any contract, grants, or agreement, including information which if it were disclosed would frustrate a procurement or give an advantage to any person. (Section 15(1))

However, a public institution must, regardless of subsection (1), refuse to disclose any part of a record if that part contains the result or product of environmental testing carried out by or on behalf of a public institution. (Section 15(2))

Where a public institution discloses information, or a part of it that contains the results of a product or environmental testing, the institution must at the same time when the information or a part of it is disclosed, provide the applicant with a written explanation of the methods used in conducting the test. (Section 15(3))

A public institution must also disclose any information described in Section 15(1) if that disclosure is in the public interest relating to public health, public safety or the protection of the environment and, if the public interest in disclosing the information clearly outweighs in importance any prejudice, financial loss or gain to the competitive position of or any interference with the contractual or other negotiation of a third party. (Section 15(4))

- **Information containing examination data, architectural plans and library circulation:** Materials that contain information on test questions, scoring keys and other examination data used to administer an academic examination or determine the qualifications of an application for a license or employment;

Also exempted are architects' and engineers' plans for buildings not constructed in whole or in part with public funds and for buildings constructed with public funds where the disclosure would compromise security; and library circulation and other records identifying library users with specific materials. (Section 19(1))

However, even where the information requested falls within any of these categories, the application must not be denied if the public interest in disclosing the information outweighs whatever injury that disclosure would cause. (Section 19(2))

Institutions that can be Approached for Information

Any information, record or document, in any form, can be accessed from any particular public institution covered by the Act or any private entity to which the Act applies, if:

- The information, record or document was prepared or created by the institution or entity.
- The information, record or document has been used by the institution or entity.
- The information, record or document is being used by the institution or entity
- The information, record or document has been received by the institution or entity.
- The information, record or document is in the possession or custody of the institution or entity.
- The information, record or document is under the control of the institution or entity.

Timeframe for Responses to Requests for Information

A public institution must respond to an applicant for information, including possibly providing the information or record requested within seven days. (Section 4)

There are only two circumstances under which this period may be extended. Even so, the extension can only be for not more than an additional seven days. The circumstances under which the period may be extended are:

- If the application is for a large number of records and meeting the original time limit would unreasonably interfere with the operations of the institution; (Section 6(a))
- If consultations necessary to comply with the application cannot be reasonably completed within the original time limit. (Section 6(b))

Under such circumstances, the institution must notify the applicant of the extension and state whether the reason for the extension falls under one of these circumstances and must also state in the notice that the applicant has a right to have the decision to extend the time reviewed by the court. (Section 6(a)).

Fees and Cost of Access

Access to records and documents under the Act is not free and fees may be charged. However, the Act provides that the fees that can be charged are limited to standard charges for the duplication of documents and for transcription, where necessary. (Section 8)

Training of Public Officials

The Act requires every government or public institution to ensure the provision of appropriate training for its officials in two areas, namely:

- On the public's right to access information or records held by government or public institutions, as provided for in the Act, which is an obligation of the public institution to sensitize its officials; and
- For the effective implementation of the Act, which is a requirement for the public institution to train its officials on how to implement the Act.

Judicial Review

An applicant who is refused access to information may apply to a court to review the refusal within 30 days after he or she is refused access to the

information or is deemed to have been refused. The court has the power to extend the period of 30 days before or after its expiration and there is no limit on the period by which the court may extend it.

The court has the power to examine any record under the control of a public institution to which an applicant has been denied access to determine if it falls within one or more of the exemptions in the Act. If the court decides that the information is not exempted, it can order the public institution to disclose the information to the applicant.

Even if the information falls within one or more of the exemptions, in certain cases, the court may nonetheless order that the information be disclosed where it considers that the public interest in disclosing the information outweighs whatever injury the disclosure would cause.

Courts are required to deal with cases arising under the Act using summary procedures to avoid delays.

In any court proceedings, the burden of proving that an application for information was rightly denied rests on the institution concerned.

The Courts have a wide discretion to impose any conditions they deem appropriate when making an order for the disclosure of information that was denied.

Offences and Sanctions

The Act creates two offences, each of which attracts a different sanction.

- The first offence is wrongful denial of access to information. It carries a N500,000 fine, on conviction.
- The second offence is the wilful destruction or falsification by any officer of a public institution of any record before releasing it to any person applying for it. This offence carries minimum term of one year imprisonment without any option of a fine.

The Role of the Attorney-General of the Federation

The Attorney-General of the Federation has broad oversight responsibility over all public institutions under the Act. He or she must also ensure that all institutions to which the Act applies comply with the provisions of the Act.

The Attorney-General is required to submit annual reports to the National Assembly on how the Law is being implemented and complied with. The Attorney-General is required to submit his or her annual report to the National Assembly on or before April 1 of each calendar year.

The Attorney-General's report must include for the previous calendar year a listing of the number of cases arising under the Act, the exemption involved in each case, the disposition of such cases, and the cost, fees, and penalties assessed.

The Attorney-General's report must also 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.

The Attorney-General is required to develop reporting and performance guidelines for all public institutions for their own reports on the implementation of the Law as required by the Act.

Reporting by Public Institutions

All public institutions are required to submit annual reports to the Attorney-General of the Federation. The annual reports must be submitted on or before February 1 of each year.

Each public institution is also required to make its report publicly available by different means, including by telecommunications, computer and other electronic means.

Each public institution's report must include:

- The number of decisions made by the institution not to accede to applications for information made to such institution and the reasons for such decisions;
- The number of appeals made by persons under the Act and the

reason for the action on each appeal that resulted in a denial of information;

- Whether a court has upheld the decision of the institution to withhold information and a concise description of the scope of any information withheld;
- The number of applications for information pending before the institution as at October 31 of the previous year and the average number of days that such application had been pending before the institution as at that date;
- The number of applications for information received by the institution and the number of applications which the institution processed;
- The average number of days taken by the institution to process different types of applications for information;
- The total amount of fees collected by the institution to process such applications; and
- The number of full-time staff of the institution devoted to processing applications for information, and the total amount expended by the institution for processing such applications.

Supremacy of the Act

The Freedom of Information Act supersedes the provisions of all other Acts, Laws or Regulations, except the Constitution and those Laws with constitutional flavour. In particular, it supersedes the Official Secrets Act, the Evidence Act, the Criminal Code, the Penal Code and the Federal Public Service Rules. These instruments cannot be used to limit its scope or application.

Indeed, the Act specifically provides that no provision of the Criminal Code or the Official Secrets Act should be used against any public officer who, without authorization, discloses to any person, any information which he

reasonably believes to show:

- A violation of any law, rule or regulation;
- Mismanagement, gross waste of funds, fraud, and abuse of authority; or
- A substantial and specific danger to public health or safety,

notwithstanding that such information was not disclosed pursuant to the provisions of the Act.

The Act also prohibits any civil or criminal proceedings against any person for receiving such information or for further disclosing it.

The Act does not limit in any way access to official information that have normally been available to the general public.

Indeed, the Act makes it clear that it “*is intended to complement and not replace existing procedures for access to public records and information and is not intended to limit in any way access to those types of official information that have been normally available to the general public.*” (Section 30(1))

However, the Act provides that where the question whether any public record or information should be made available arises under the Act, the question must be decided on the basis of the Act, unless that information or record is otherwise exempted by the Act. (Section 30(2)).

Making a Request for Information

The Act does not specify what details should be contained in an application for information. No Guidelines or Templates have also been issued by the Attorney-General of the Federation or by the various public institutions for members of the public to guide applicants requesting information.

*However, the Federal Ministry of Justice has issued “**Operational Guidelines for Public Authorities on the Implementation of the Freedom of Information Act, 2011**”, to assist public institutions in their implementation of the Law.*

The Guidelines provide very liberal and expansive procedures for applying for information, records and documents.

Paragraph 10(1) of the Guidelines stipulate that:

“Under the Act, any written request for recorded information under section 1 of the Act which is not routine business should be considered a freedom of information request.”

The Guidelines, however, provide further in Paragraph 10(3) that:

“Requests for information or records under the Act must be in writing, stating the name, address and signature of the Applicant; date of the application, a good description of information or record requested; the form the requested information may be transmitted; and any other information as may be considered appropriate from time to time.”

The Guidelines also provide in Paragraph 10(4), consistent with the provisions of the Act, that:

“Oral application may be made to an authorized official of a public institution who shall in turn reduce the request in writing and shall provide a copy of the application to the applicant.”

In addition, the Guidelines state in Paragraph 10(5) that:

“Illiterate or disabled applicants may make applications under the Act through a third party.”

In requesting any information, record or document, state clearly in your application that you are applying under the FOI Act. Your application remains a valid request for information regardless of whether you state in your application that it is made under the FOI Act. However, by stating clearly that you are applying for information pursuant to the FOI Act, you remove any room for doubt in the event of any dispute later on. This is important for a number of reasons, including the following:

- Section 30(2) of the FOI Act provides that: “Where the question whether any public record or information is to be made available, where that question arises under this Act, the question shall be determined in accordance with the provision stated herein, unless otherwise exempted by this Act.” By making it clear that you are applying for information under the FOI Act, any dispute over your right of access to information will have to be resolved in accordance with the provisions of the FOI Act.
- There are other laws such as the Public Procurement Act, 2007; the Nigerian Extractive Industries Transparency Initiative (NEITI) Act, 2007, etc. also have clauses on the disclosure of information but their procedures and enforcement mechanism are not as clear and as strong as those provided in the FOI Act. The FOI Act gives you a stronger right of access to information than these other laws that you may also use to apply for some types of information. By stating that you are applying under the FOI Act, you can take advantage of the strong enforcement mechanism and sanctions for wrongful denial of access under the FOI Act.
- The FOI Act is explicitly made superior to secrecy laws such as the Official Secrets Act, the Criminal Code, the Penal Code, the Federal Public Service Rules, etc. These other laws cannot be used to withhold information from you when it is made under the FOI Act. By mentioning that you are applying under the FOI Act, the public officials dealing with your requests are reminded that they have to take this fact into account and deal with your application much more seriously.

Your application for information, records or documents should therefore include your name, address and other contact details as you would include in any normal official correspondence.

It is advisable that in making a request, your application should contain sufficient detail to enable the public institution identify the record, document or information that you are seeking and provide you with the information.

Your request should be simple and straightforward. Describe the information, record or document that you are applying for as clearly and as precisely as possible. The more specific you are in your description, the easier it will be for the public institution to find it and the more difficult it will be for the public institution to evade your request.

Include in your application any information you have that may make the document, record or information that you are requesting easier to locate. For instance, you should include any, some or all of the following, if you have the information:

- The title of the document or record.
- The date on which the document or record was issued or made.
- The reference number of the document.
- The name of the author of the document.
- The file number of the record.

Examples of ways in which you could describe the document, record or information that you want could include any of the following:

“I request a copy of the minutes of the meetings of the Procurement Planning Committee of the Ministry of Global Affairs, held on May 28, 2011, at which a the decision was taken to purchase 250 laptop computers for senior officers of the Ministry.”

“I request copies of all correspondence, including emails, between officials of the Ministry of Information and Blue Skies International, from January 1, 2011 and June 30, 2011, leading to the signing of the Memorandum of Understanding dated July 1, 2011.”

“I request a list of all the applications for building plan approvals granted by the Ministry of Urban Planning between May 29, 2007 and May 28, 2011. The list should indicate the name of the applicant, the date of the application, the date the application was

granted, the type of building approved and the amount paid in fees and charges by each applicant.”

You should ensure that the information you are requesting is as specific as possible and avoid making requests such as “I request all the information, records and documents you have on waste disposal in Lagos State.”

You should indicate in your application the form in which you would like to be given access to the information, record or document that you are requesting. You can indicate whether you would like to be given access in the form of photocopies or printouts or electronic format sent to you by email or given to you on a disk. You may simply want to inspect the records or documents without taking copies or by first inspecting the records or documents before taking copies.

The public institution should comply with your preference as long as it is reasonable and will not damage the original record, document or information.

Indicate in your application that you expect to receive the information, record or document promptly, but in any case no later than the 7 days, as provided by Law.

A sample application letter for access to information, records or documents is annexed to this Guide to assist you in using the FOI Act to apply for information.

Enquiries and Legal Assistance

If you need any clarification or further information, or should you require legal assistance to enforce your right of access to information under the Freedom of Information Act, 2011, please contact:

Media Rights Agenda
House 11, Dideolu Court
Dideolu Estate
Off Ijaiye Road
Ogba, Lagos
Telephone: +234 1 761 6803
Cell: +234 816 369 3880
E-mail: foi@mediarightsagenda.net

Sample Application for Access to Information

Your Name
Your Address
Your Telephone Number
Your E-mail Address

Date

The Freedom of Information Officer

(You may also choose to address the letter to the head of the institution, namely: the Permanent Secretary, in the case of a Ministry; the Director-General, in the case of an Agency; or the Managing Director, in the case of a public corporation)

Name of Public Institution

Address of Public Institution

Dear Freedom of Information Officer,

Application for Information/Records/Documents Under the Freedom of Information Act

In accordance with the Freedom of Information Act, 2011, I hereby apply for copies of the following documents:

1. A copy of the minutes of the meetings of the Procurement Planning Committee of the Ministry of Global Affairs, held on May 28, 2011, at which a the decision was taken to purchase 250 laptop computers for senior officers of the Ministry.
2. Copies of all correspondence, including emails, between officials of the Ministry of Information and Blue Skies International, from January 1, 2011 and June 30, 2011, leading to the signing of the Memorandum of Understanding dated July 1, 2011.
3. A list of all the applications for building plan approvals and permits granted by the Ministry of Urban Planning between May 29, 2007 and May 28, 2011. The list should indicate the name of the applicant, the date of the application, the date the application was granted, the type of building approved and the amount paid in fees and charges by each applicant

I would be grateful if you could supply me with photocopies of these documents.

Should you require any clarification regarding this application, please do not hesitate to contact me either by phone (your phone number) or by email (your email address).

I look forward to receiving these documents promptly and, in any event, within 7 days of this application as required by the Freedom of Information Act, 2011.

Yours sincerely,

Signature
Your Name

Produced by



Funded by Foreign &
Commonwealth
Office

through the British High Commission in Abuja