

Freedom of Information Act, 2011

Frequently Asked Questions

“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) of the Freedom of Information Act, 2011

Introduction

The Freedom of Information (FOI) Act, 2011 which became law in May 2011 is an essential legislation to aid the quest for transparency, accountability, good governance and democratic participation in Nigeria. It may have taken a long time in getting passed into law but finally it is here and ready for use.

The enactment of the law was only the first phase in the process of ensuring that the requirement for transparency and accountability in governance in Nigeria is codified and that a new culture of openness is instituted in the country. The next phase of the process is ensuring that a broad section of the citizens have a good understanding of the content, general and fundamental principles of the law and are able to use it effectively.

The effective use of this important piece of legislation can be greatly hampered if ordinary citizens in Nigeria are not aware of the Law or do not know how to use it.

The “Frequently Asked Questions (FAQ) About the Freedom of Information Act” is an attempt to de-mystify the FOI Act and provide essential information about it and how to use it for everyone. It is written in a language that promotes an understanding of the key provisions of the Act.

It would be unrealistic to expect all Nigerians to thoroughly understand the Act which, like most laws, is written in somewhat legal language. Although the language of the Freedom of Information Act is not too legalistic, the prospect of reading a piece of law nonetheless poses a lot of challenges for many ordinary citizens who are not lawyers. The goal therefore is to provide a handy, easy to read and understand version of the Act which is not necessarily arranged according to sections of the Act, but poses questions about the key issues in the Act and answers the questions in very simple and brief responses.

In addition to providing straightforward answers about the Act, the handbook also sometimes offer explanations that helps the reader to appreciate what the law is all about, how it can assist the reader in engaging the public institution in all tiers and levels of government as well help to improve the level of understanding of other Nigerians who may ask questions about the Act.

It is expected that the Handbook will help empower those who will spend time to read it by deepening their understanding of the Act.

Additional information may be obtained by writing to foi@mediarightsagenda.net

What is the Freedom of Information Act about?

The Freedom of Information Act, 2011 (FOI Act) gives every person a legally enforceable right of access to records, documents and information held by the government or government institutions and agencies as well as private bodies performing public functions, providing public services or utilizing public funds, subject to certain exemptions.

When did the FOI Act become law in Nigeria?

President Goodluck Jonathan signed the Freedom of Information Bill into law on May 28, 2011 but presidential assent was announced to the public on May 31, 2011 by the Deputy Director of Information in the office of the Special Adviser to President Jonathan on Media, Mr. Justus Abuah. The FOI Act became a Law in Nigeria and immediately came into force upon the signing of the Bill by the President.

Are non-Nigerians also entitled to the right of access to information and records?

The FOI Act gives every person the right to request information and records. It makes no distinction between Nigerian citizens and non-citizens.

What rights does the Act give?

The FOI Act gives every person the right to apply for information and records held by government, government institutions and agencies as well as private bodies performing public functions, providing public services or utilizing public funds, subject to certain exemptions. This broad right of persons to apply for and have access to records and information is new in Nigeria. Before now, some existing Laws and Regulations made it an offence for civil servants and public officials to give information to members of the public without specific authorization by senior government officials. The provisions of the FOI Act now override such Laws and Regulations and promote openness in Government.

Do applicants have to give reasons why they are applying for information?

Section 1(2) of the 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 or satisfy any condition on why he/she is applying for the information or records.

How does an applicant make a request for information?

An applicant is expected, under Section 3 (1) of the Act, to apply for access to information or record or document in writing.

Can an applicant make an oral or informal request for information?

The Act does not provide for oral application except in cases of illiteracy or disability. Section 3(3) of the FOI Act, says illiterate or disabled persons, who by reason of their illiteracy or disability cannot apply in writing may apply through a third party. Section 3(4) places an obligation on the authorized official of a government or public institution to whom an oral application for information or record is made, to reduce the application into writing and give a copy of the written application to the applicant.

How does an applicant know if the information he or she requires exists and who has custody of it?

Section 2 of the FOI Act requires every government institution, department or agency, to record and keep information about all its activities, operations and businesses; to properly organize and maintain all information in its custody in a manner that facilitates access to them; and proactively publish several types of information about its activities. The publication is to be widely disseminated and made readily available to the public. Public institutions are also expected to regularly update these publications as well as whenever changes occur. This is intended to give members of the public information about the records and information available in these institutions so that they know where to apply for the records or documents they are interested in.

From which institutions can an applicant apply for information?

Interested persons can apply for records and information from government institutions and private bodies or companies that are performing public functions, providing public services or utilizing public funds. a

The Act defines a public institution as any legislative, executive, judicial, administrative or advisory body of the Government, including boards, bureaux, committees or commissions of the State and any subsidiary body, including their committees and sub-committees, which are supported wholly or partly by public funds or which expend public funds. It also applies to other government bodies, including any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of the government, including the Executive Office of the President, or any other arm of government, independent or regulatory government agency or public institution.

Any information, record or document, in any form whatsoever, can be accessed from any public institution covered by the FOI Act or any private entity to which the FOI Act applies, if the information, record or document was prepared or created by the institution or entity; if the information, record or document is being used or has been used by the institution or entity; if the information, record or document has been received by the institution or entity; or if the information, record or document is in the possession or custody or under the control of the institution or entity.

Are there any Government or public institutions that are exempted from the application of the FOI Act?

The FOI Act applies to all government or public institutions without exemption.

Who should a requester address his or her application to in a government institution?

The Act requires every public institution to designate an officer to be in charge of public requests. In addition, Section 2(3)(f) mandates each institution to publish the title and address of the officer designated by it to receive and process applications for information/records. The Act says the failure to publish this information will not negatively affect the public's right to access information in its custody.

What sort of information can an applicant request?

An applicant can apply for all records or information in the custody of any government institution, department or agency, as well as private bodies or

companies performing public functions, providing public services or utilizing public funds subject only to those categories of records and documents that are exempted from general public access. The types of information covered by the Act include all records, documents and information stored in whatever form, including written, electronic, visual images, sound, audio recording, etc.

In effect, information that can be accessed include 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.

It also covers 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. as well as audio recordings contained in, recorded or stored in any tape, CD, DVD, computer, external drive, disk, voicemail, or any other device.

It covers audio-visual records, including films and similar materials contained in, recorded or stored in any tape, video, DVD, CD, computer, disk, external drive, server, or any other device as well as 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.

Is there any record or information that the FOI Act does not cover?

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 materials placed in the National Library, the National Museum or the non-public section of the National Archives on behalf of any person or organization that is not a government or public institution

Can an applicant be denied access to any record or information?

It is expected that applicants should not be denied access to any record or

information which does not fall under one of the categories of exempted materials. These exemptions are listed in Sections 11, 12, 14, 15, 16, 17 and 19 of the Act and they include information which if disclosed will be injurious to the conduct of Nigeria's international affairs and defence; information which may interfere with law enforcement investigations or be injurious to the security of penal institutions; information which may undermine a person's right to fair trial or fair hearing in actual or reasonably contemplated proceedings before a court; personal information; information pertaining to test questions, scoring keys and other examination data used to administer an academic examination; trade secrets and commercial information obtained from a person or business that are proprietary, privileged or confidential; information that is subject to Solicitor-Client privilege; Doctor-Patient privilege; Journalism confidentiality privileges; and other professional privileges conferred by any Law, among others. However, even if the information is exempted, where there is an overriding public interest in disclosing it and the benefits of disclosing the information clearly outweighs the injury or harm that disclosure will cause, the Act says such information should be disclosed.

How will an applicant know if he or she will be given access or if access is denied?

Section 4 of the FOI Act makes it obligatory for a public institution to which an application is made to, within 7 days of the application, make the information available to the applicant or where it will not grant the application, give the applicant a written notice informing him or her that he or she will not be given the information or record requested. The notice is to state reasons for the denial, and the section(s) of the FOI Act under which the denial is made.

If an applicant is denied access to information, is there any means of seeking redress? What can an applicant do if he or she is not satisfied with the way a public institution responds to his or her request?

Section 20 of the FOI Act gives an applicant the right to apply to a court for judicial review where he or she is denied access. The applicant is expected to, 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 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 this time limit. An application to the court must be heard and decided summarily so as to prevent delays. In addition, public institutions, in notifying applicants that they will be denied access to information, are also to add that the applicant can have the decision denying him or her access to information and record reviewed by a court.

How can a court determine if the record, document or information that an applicant has been denied access to is genuinely exempted under the Law?

The FOI Act gives the court the power to examine any information or record under the control of a government or public institution even if the information and records are exempted and stipulates that no such record may be withheld from the court on any ground. However, in examining the information and records, the court is required to take precautions to avoid the disclosure of such record or information before it decides whether access should be granted or not.

What happens if the information an applicant requests is not held by the institution or agency to which he/she makes the application?

Section 5 of the FOI Act provides that where a government or public institution receives an application for access to a record in which it considers that another government or public institution has a greater interest, the institution to which the application is made may within three days but not later than seven days, transfer the application, and if necessary, the record to the other government or public institution. The institution transferring the application is also required to give 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.

Will applicants have to pay for the information or records if they are granted access?

Yes, Section 8 of the Act provides that the fees that can be charged for access to records and documents should be limited to standard charges for the duplication of documents and for transcription, where it is necessary to transcribe the information.

Can an applicant choose the format in which he or she wants information or record to be provided? In what form can an applicant access the records or information requested?

An applicant can access the records and information in one or more of several ways, provided that the form in which he or she wants the information would not interfere unreasonably with the operation of the institution; would not be detrimental to the preservation of that record; and will not infringe on the copyright of the owners of the record or document, where this is not the Government. Records and information can be accessed by an applicant through physical inspection or duplication, and in the case of records from which sound or visual images can be produced, arrangement to hear or view them. Records may also be transcribed.

How long does an applicant have to wait to receive the information applied for?

Under Section 4 of the FOI Act, an applicant should be given the information or record requested within 7 days after submitting his or her application. If the information or record will not be given, the institution must notify the applicant within 7 days of the receipt of the application, citing the relevant Sections of the Act which exempt the information or records from disclosure. The institution must also inform the applicant of his or her right to seek redress in the court. Section 7 (4) of the Act says if after 7 days an applicant is not given the information or record requested, it shall be deemed that the institution has refused to grant the applicant access to the requested information or record.

Are there circumstances under which the 7-day timeframe for receiving requested information can be extended?

There are only two circumstances under which the 7-day period stipulated in the Act for responding to requests for information may be extended. Even where the period is to be extended, the extension can only be for not more than an additional 7 days. The circumstances under which the period may be extended are: (a) 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; and if consultations necessary to comply with the application cannot be reasonably completed within the original time

limit. Under such circumstances, the institution must notify the applicant of the extension and give him or her the reason(s). (S. 6(a) & (b)).

Can a person apply for another person's personal information held by the government?

Personal information are exempted from the general right of access. These include: 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 federal agencies, government or public institutions; files about employees, appointees or elected officials of any government or public institution or applicants for such positions; and files about any applicant licensed by any government or public institution cooperating with or engaged in professional or occupational registration, licensing or discipline.

Personal information can only be disclosed where the individual whom the information is about agrees to its disclosure; where the information is already publicly available, or where the disclosure of the information is in the public interest and the public interest in disclosing the information clearly outweighs whatever harm or injury would be done to the privacy of the individual whom the information is about.

How does the FOI Act guarantee the integrity of records and documents?

Section 10 of the FOI Act makes it a criminal offence for any officer or the head of any government or public institution 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 minimum of one year imprisonment on conviction for this offence.

If an applicant has a disability can he or she get a record in a special format, e.g. braille?

The FOI Act provides that record and information should be given to the applicant in the format that he or she wants it, either in audio, visual, or transcribed formats. An applicant can therefore get the record in a special format if it would not interfere unreasonably with the operations of the institution or is not detrimental to the preservation of the record.

What offences and penalties are provided for under the FOI Act?

The FOI Act creates two offences. It is an offence for anyone having custody of a record or information to willfully destroy, doctor or alter it or to attempt to do any of these acts. The Act makes such action a criminal offence which is punishable on conviction with a minimum term of one year imprisonment without any option of a fine. Secondly, it is an offence for a public institution or official to wrongfully deny an applicant access to information. This offence carries a penalty of N500,000 fine.

Where a provision of the FOI Act is in conflict with that of the Official Secrets Act, the Penal Code, the Criminal Code and other laws, which takes precedence?

Where there is a conflict between the Freedom of Information Act and any other Law, including the Official Secrets Act, the Penal Code, the Criminal Code and other laws, except the Constitution, the Freedom of Information Act will take precedence. This is clear from Section 1(1) of the FOI Act, which provides that: “Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established.” Similar provisions are contained in Sections 27 and 28 of the Act.

Is there any Government agency responsible for monitoring compliance with the FOI Act?

The Act gives the Attorney-General of the Federation broad oversight function over all public institutions in the implementation of the Act. The Act requires every institution affected by the Act to submit an annual report of how it dealt with requests to the Attorney-General of the Federation, who will submit an annual report, covering the reports from the affected institutions, to the National Assembly. Section 29(6) of the Act provides that in the exercise of his oversight responsibility under the Act, the Attorney-General of the Federation must ensure that all institutions to which the Act applies comply with its provisions. Section 29(5) of the Act empowers the Attorney-General of the Federation to develop reporting and performance guidelines to all public institutions for their reports.

What is the the Attorney-General of the Federation expected to do with the reports he or she gets from the affected institutions?

Section 29(3) obligates the Attorney-General of the Federation to make the reports submitted to him available to the public by different means, including hard copies, online and at a single electronic access point.

Section 29(7) of the Act stipulates that the Attorney-General of the Federation must submit to the National Assembly an annual report on or before April 1 of each year. The report should include for the previous 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 report should also include detailed description of the efforts made by the Ministry of Justice to encourage all government or public institutions to comply with the Act.

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