

Guidelines for Using the Freedom of Information Act

**For Civil Society Organisations Working in
the Environment Sector**



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**March 2014
Media Rights Agenda**

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Foreword

The Freedom of Information Act 2011 is a very important tool for civil society organizations of all description, regardless of the sector in which they work or the nature of the organization. It can significantly improve any organization's effectiveness within its mandate area.

For this reason, Media Rights Agenda (MRA) has consistently advocated since the enactment of the Act that all civil society organizations should endeavour to mainstream the Freedom of Information Act into all aspects of their organizations' work and make it part of their standard operating tools.

MRA believes that even organizations that are service delivery organizations can use the Law to obtain information about stocks that are available either to governments or other actors, their distribution plans, and other data, all of which will be useful information for the organization in carrying out its work.

Similarly, policy advocacy organizations can also use the Law to get information about figures, statistics, costs, budgetary allocations and the basis of such allocations, as well as other data, which will also provide the organization with invaluable information that will make its advocacy more credible and much more effective.

These Guidelines are aimed at helping civil society organizations actualize this process as part of a pilot scheme to demonstrate the applicability and relevance of the FOI Act in specific sectors.

The Guidelines identify the likely public institutions that organizations working in the relevant sector will need to engage with in seeking information, based on the needs of that specific sector. The Guidelines also identify the likely types of information, records and documents that will be relevant to the organizations and which the relevant public institutions are likely to hold.

The Guidelines contain a step-by-step guidance on using the FOI Act to request information, including template request letters, template follow-up letters and other forms of communication as may be necessary for civil society organizations.

It is the hope of Media Rights Agenda that this sector-specific FOI Guidelines will provide a hands-on manual and reference material for organizations working in the relevant sectors.

Edetaen Ojo
Executive Director, Media Rights Agenda
March 2014

Introduction

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 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.

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.

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

According to the Attorney-General of the Federation and Minister of Justice, Mr. Mohammed Bello Adoke (SAN), in the Guidelines on the Implementation of the Freedom of Information Act 2011, Revised Edition 2013, issued on February 27, 2013, “The right of access to information creates corresponding obligations on the part of Public Institutions. Apart from the obligation to release a record or information in its custody, there are obligations that are not contingent on any request for information. These relate to the organization and maintenance of records and the obligation to publish certain categories of information proactively.”

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 in the Act, which also defines “Government” in the context in which it is used in the Act. The first definition of “public institution” 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 of “public institution” 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.)

Section 29(9)(a) of the Act states that “*government*” includes “*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.*”

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.

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.

Ensuring Compliance by Public Institutions with Proactive Publications Obligations

The 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.

Your organization and its staff or members 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.

You 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.

You 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

Other ways such as partnerships with other stakeholders.

Monitoring and Ensuring Compliance with Other Aspects of the FOI Act

As indicated earlier, public institutions have many duties and obligations under the FOI Act. The Act outlines these duties and obligations with the

intention of ensuring that public institutions meet up with them, which will help to ensure that the Act is effective and achieves its objectives.

It is therefore imperative that the level of compliance with these requirements is monitored as compliance is critical to the effectiveness of the Act.

It will be very difficult for any one organization to try monitoring public institutions all over the country. However, an organization, depending on its capacity and resources, may decide to limit the scope of the monitoring exercise it wants to conduct in order to ensure that its efforts are realistic.

The public institutions to be monitored by an organization may therefore be limited to:

Public institutions in the geo-political zone or the State where the organization is based.

Public institutions in the local government area where the organization is based.

Public institutions within a specific sector of interest, e.g. Health, education, etc.

In the case of public institutions within a sector, this may also be done at different levels – Federal, State or Local Government.

Public institutions selected based on other criteria of the organization's choosing.

So long as the organization is clear and transparent about the scope of its monitoring exercise, this is a perfectly acceptable approach to conducting monitoring of compliance by public institutions.

However, organizations working in partnership or within a coalition or network may also organize themselves to broaden the scope of their joint monitoring efforts to cover more public institutions in general or within a specific sector or within a specific area.

Things to monitor may include the following:

1. The obligation of public institutions to record and keep information about all their activities, personnel, operations, businesses and other relevant or related information or record as required by Sections 2(1) and 9(1) of the Act.

Are the public institutions you are interested in complying with this requirement?

2. Ensuring the proper organization and maintenance of all information in their custody in a manner that facilitates public access to such information as required by Sections 2(2) and 9(2) of the Act;

How are the public institutions you are interested in maintaining their records and information?

Can their information storage and management systems and practices enhance public access to their information?

3. Designation of an officer to be in charge of public requests for information.

Which of the public institutions you are interested in have designated such officers and how available and accessible are such officials in practice to members of the public seeking information?

How easy is it for members of the public to submit requests for information to public institutions through these officers?

Are there challenges which requesters face such as not being able to get past security men at the gate or the receptionist in the public institutions.

What is the seniority level of such officers designated to be in charge of the FOI Act?

Are some categories of requesters finding it more difficult to submit requests for information than others?

Have the public institutions you are interested in published the titles and addresses of the appropriate officer as required by the Act?

Are the public institutions providing appropriate training for their officials on the public's right of

access to information or records held by government or public institutions?

Are they also training their officials to ensure the effective implementation of the Act?

Are the training programmes appropriate or suitable?

Do the officials know what to do when they receive requests for information under the FOI Act?

4. One measure that can ensure efficiency is if public institutions establish some basic rules and procedures to guide the submission of requests for information and for responses to facilitate the smooth operation of the Act. Such rules may include, as indicated by the Attorney-General of the Federation and Minister of Justice in his Implementation Guidelines, a requirement that the responsible officer registers every application for information and issues acknowledgment receipts and tracking numbers to every applicant.

Are public institutions maintaining proper registers and issuing appropriate receipts or acknowledgments to applicants who request information as stated in the Attorney-General's Implementation Guidelines?

5. The Act provides in Section 1(2) that an applicant should not be required to state any reason for requesting any information.

Do public institutions ask applicants why they need the information or what their interests are?

6. The Act provides in Section 3(4) as well as in Section 1.8 of the Attorney-General's Implementation Guidelines that an official to whom an oral application is made should reduce the application into writing and give a copy to the applicant.

Are officials assisting those who cannot write either by reason of illiteracy or of physical disability, to reduce their applications into writing?

7. The Act stipulates that public institutions must respond to

applications for information within seven days. Is this timeframe being respected?

Which public institutions are complying with this timeframe and which are not?

8. The Act provides in Section 4(b) that where a public institution decides to deny an application for information, a written notice must be given to the applicant with reasons for the denial and the section of the Act that the public institution relied upon to deny access.

Is this being done?

9. The Act recognizes that some information held by public institutions may be sensitive and therefore exempts some types of information from the general right of access which the Law grants to members of the public. These exemptions are contained in Sections 11, 12, 14, 15, 16, 17 and 19. However, the Act permits that where there is an overriding public interest involved or under certain other circumstances, even exempted information should be disclosed.

Are public institutions respecting these principles and requirements?

How are the exemptions specified in the Act being interpreted and applied by public institutions?

Is the public interest test being applied before information that may be said to be exempted is denied an applicant?

10. The Act outlines two circumstances under which the timeframe for response provided in the Law may be extended by a further period of no more than seven more days. These are in Section 6(a) and (b).

Are the timeframes being extended by the public institutions in accordance with these provisions?

How often and what reasons, if any, are given for the extensions?

11. The Act provides in Section 7(5) that where a case of wrongful denial of access is established, the defaulting officer

or institution shall on conviction be liable to a fine of N500,000.

Is this provision being enforced?

Are denials of access challenged in court?

What has been the attitude of the courts where wrongful denial has been established?

12. The Act provides that any applicant who is denied access to information can apply to the Court for a review of the matter. Such matters are to be heard and determined summarily by the Court.

Are summary procedures being adopted by the courts in these sort of cases such that will speed up the proceedings?

How long it takes the courts to decide cases of denial of access to information?

13. Section 8 of the Act provides that the fees that can be charged for access to records and documents are limited to standard charges for the duplication of documents and for transcription, where necessary

How are public institutions charging requesters for the information they provide?

Are the charges consistent with the principles outlined in the Act?

Are applicants being systematically denied access to information through exorbitant fees which they cannot pay?

14. Section 27 of the Act provides that regardless of any provision in the Criminal Code, Penal Code, the Official Secrets Act, or any other enactment, no civil or criminal proceedings should be instituted against an officer of any public institution, or against any person acting on behalf of a public institution for disclosing in good faith any information under the Act.

Are public officials are being sued for disclosing information, or being charged under the Criminal Code, Penal Code or Official Secrets Act for unauthorized disclosure of information?

Are citizens, including journalists, being sued or charged for receiving or further disclosing information whose disclosure to them was not authorized?

15. Under Section 29, each public institution is required to submit to the Attorney-General of the Federation on or before February 1 of each year, a report for the previous year with specific information about how it is implementing the Act. Each public institution is also required to make the report available to the public by different means, including by computer and telecommunications, or if computer and telecommunications means have not been established by the institution, by other electronic means. In addition, the Attorney-General is required to make each report, which has been submitted to him, available to the public in hard copies, online and also at a single electronic access point.

Are public institutions submitting the reports with the required information to the Attorney-General of the Federation?

If so, are the submissions being made within the timeframe specified in the Act?

Are the reports being made available to the public by the public institutions and the Attorney-General of the Federation in the various ways prescribed in the Act?

16. Section 29(7) 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.

Is the Attorney-General of the Federation submitting the required annual reports to the National Assembly?

If so, do the reports contain the specific information required under the Act?

Do the reports also contain detailed descriptions of the efforts made by the Ministry of Justice to encourage all government or public institutions to comply with the Act?

Are the reports are being submitted within the timeframe stipulated in the Act?

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;

Personal 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)).

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

Who Can Apply for Information?

Under the FOI Act, “*every person*” has a right of access to records, documents and information held by public institutions. This right applies to legal (corporate bodies) and natural persons. In other words, both organizations and individuals can also apply for information.

What Type of Information Can be Applied for?

The types of information which can be accessed under the Act include all records, documents information stored in whatever form, including written, electronic, visual images, sound, audio recording, etc. They can all be accessed, unless the information is specifically exempted by the Act. An applicant 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, labels, cards, a notebook, computer print-outs, or any other writing.

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, negatives, charts, graphs, images, pictures, artworks, sketches, or other visual images.

Which Public Institution 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.

The record has been used by the institution.

The record is being used by the institution.

The record has been received by the institution.

The record is in the possession or custody of the institution.

The record is under the control of the institution.

The important consideration is that the institution has ***custody*** of the information.

How to Make a Request for Information

The FOI Act does not specify the details that an applicant should supply in an application for information. No Guidelines or Templates or application forms have been issued by the AGF or by public institutions for members of the public to guide applicants requesting information.

In general, the application for information should be addressed and sent to the FOI Officer of the public institution, who is the person designated by the public institution under the Act to receive such requests from the public.

Indeed, the Attorney-General of the Federation and Minister of Justice has directed in his Implementation Guidelines that the “effective implementation of the Act requires each Public Institution to designate a senior official (of at

least Assistant Director level or its equivalent) as the head of a FOIA Unit.” The Unit should be responsible for making decisions on freedom of information requests and generally ensuring compliance through the adoption of institutional best practices.

However, even if the institution has not designated an FOI Officer, this does not affect the applicant's right of access to information.

When requesting any information, record or document, it is important for the applicant to state clearly in the application that he or she is applying under the FOI Act. An application is still valid request even if this is not stated in the application.

But by stating clearly that he or she is applying under the FOI Act, the applicant removes 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 the information is being applied for under the FOI Act, any dispute over the applicant's 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 an applicant a stronger right of access to information than these other laws that an applicant may also use to apply for some types of information. By stating that the information is being applied for under the FOI Act, the applicant 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 can therefore not be used to withhold information from an applicant when it is made under the FOI Act. By mentioning that the information is being applied for under the FOI Act, the public officials dealing with the applicant's requests are reminded that they have to take this fact into account and deal with the application much more seriously.

An application for information, records or documents should include the name, address and other contact details of the applicant as would be included in any normal official correspondence.

It is advisable that when making a request, the application should contain sufficient detail to enable the public institution identify the record, document or information being applied for.

This will increase the likelihood of the applicant being able to get the information, record or document requested.

The request for information should be simple and straightforward. The applicant should describe the information, record or document that he or she is applying for as clearly and as precisely as possible.

The more specific the applicant is 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 the request.

The applicant should include in the application any information he or she has that may make the document, record or information that he or she is requesting easier to locate.

The applicant should include any, some or all of the following, if he or she has the information and where applicable:

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, if any.

The name of the author of the document, if any.

The file number of the record, if any.

The applicant should ensure that the information being requested is as specific as possible. He or she should avoid making requests that are too broad or general such as “*I request all the information, records and documents you have on waste disposal in the State.*”

The applicant should indicate in the application the form in which he or she would like to be given access to the information, record or document requested. The applicant can indicate whether he or she wants to be given photocopies or printouts or electronic copies by email or in a disk.

It is advisable that the applicant also indicates in the application that he or she expects to receive the information, record or document promptly, but in any case no later than the 7 days provided by Law.

Reasons for the Request

The applicant should always remember that he or she does not have to give any reason or explanation for requesting any information, record or document. The applicant does not have to show that the document, record or information affects him or her or concerns him or her or is in any way connected to him or her.

The applicant has a right to apply for any information at all that is not exempted under the FOI Act without having to demonstrate an interest in the information.

Timeframe for Responses

A public institution is required to respond to an applicant for information, including possibly providing the information or record requested within seven days.

Where this is not possible, the applicant ought to be notified and given the

reason for the delay. The reason should be consistent with the circumstances outlined in the FOIA Act.

Tracking and Following-Up

The applicant should follow-up on his or her request for information by tracking the status of the request. The Attorney-General of the Federation and Minister of Justice has directed each public institution to assign a tracking number to each request and give the tracking number to the person making the request. The applicant should therefore ensure that he or she asks for and obtains a tracking number for the application to enable follow-up.

The Attorney-General of the Federation has also directed that each public institution should establish a telephone line or Internet service that persons requesting information under the Act may use to inquire about the status of their requests.

The applicant should therefore make sure that he or she asks for and obtains the telephone number or internet or email address through which he or she can enquire about the status of the request.

Fees for Access to Information

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. No other form of fees can be charged under the FOIA Act.

According to the Implementation Guidelines issued by the Attorney-General of the Federation, the FOI Act “does not authorize the imposition of an administrative fee to cover the manpower costs of researching and collating requested information.”

An applicant who is charged fees should ensure that they are consistent with the fee schedule stipulated by the Attorney-General of the Federation.

Indeed, in order to standardize fees across all public institutions, the Attorney-General of the Federation has established a fee schedule for

accessing information under the FOI Act. The fees are contained in the revised Guidelines on the Implementation of the FOI Act issued by the Attorney-General.

The fee schedule is titled: “*Range of Fees Chargeable for Duplication of Records under the FOIA 2011*”. Under the schedule, the Attorney-General of the Federation indicates the following charges:

The cost of photocopying records or documents is a maximum of N10 per page.

The cost of scanning and printing documents is a maximum of N10 per page.

There is no charge for simply scanning a record and saving it to a file in a storage device, if the applicant is not asking for hard copies.

The cost of copying information to a compact Disc, where the CD is provided by the public institution is a maximum of N100 per CD.

The cost of copying information to USB drives, where the USB drive is provided by the public institution, is N1,500 for a USB of 1GB or less.

The cost of copying information to USB drives of between 1GB and 2.5 GB is N2,500, where the drive is provided by the public institution.

The charge for copying information to USB drives of more than 2.5GB capacity is N5,000 per USB drive provided by the public institution.

The Guidelines state that where the cost of copying or transcription is negligible, the information may be provided to the applicant free.

It also stipulates that where it will cost the same or more to collect the fees than the amount being collected, the information may be given to the applicant free.

Types of Responses

An applicant should expect to receive one of several different types of

responses from a public institution to which he or she has applied for information. The institution may decide to give the applicant the information requested, in which case it should ordinarily do so within seven days.

However, the institution may decide to deny the application. In such a case, the institution should give the applicant a written notice that access to the information or part of it will not be granted.

The notice should contain the reasons for the denial and the section or sections of the Act which the institution is relying on to deny the applicant the information.

Where the application is refused, the notice should state that the applicant has a right to challenge the refusal in Court.

The notice should contain the names, designation and signature of every person responsible for the refusal. The institution must also indicate in the notice whether the information or record applied for actually exists.

Where the institution fails to give the applicant the information applied for within the time limit set in the Act or simply ignores the applicant, the institution is deemed to have refused to give the applicant access.

List of Relevant Public Institutions for the Environment Sector

Civil society organizations working in the environment sector can monitor and/or make requests for information to the following federal government ministries, departments and agencies (MDAs), which hold information or records that may be useful to them or of interest to them as well as to their state counterparts, where they exist or are applicable.

1. The Presidency, including:
 - The Office of the President
 - The Office of the Vice President
 - Bureau of Public Enterprise
 - National Emergency Management Agency
 - Nigeria Extractive Industries Transparency Initiative

2. Office of the Secretary to the Government of the Federation
3. Ministry of Agriculture and Water Resources, including:
 - Nigerian Hydrological Services Agency
 - Anambra to Imo River Basin Development Authority
 - Benin/Owena River Basin Development Authority
 - Chad River Basin Development Authority
 - Cross River River Basin Development Authority
 - Hadeji Jama'are River Basin Development Authority
 - Lower Benue River Basin Development Authority
 - Lower Niger River Basin Development Authority
 - Niger Delta Basin Development Authority, Port Harcourt
 - Ogun-Osun River Basin Development Authority
 - Sokoto-Rima River Basin Development agency of Nigeria
 - Upper Niger River Basin Development Authority
 - Upper Benue River Basin Development Authority
 - National Water resources Institute, Kaduna
 - National Integrated Water Resources Management Commission
 - Gurara Water Management Authority
4. Office of the Head of Service of the Federation
5. Ministry of Justice
 - Legal Aid Council
6. National Human Rights Commission
7. Ministry Of Power, including:
 - Transmission Company of Nigeria.
 - Abuja Electricity Distribution Plc.
 - Eko Electricity Distribution Plc
 - Enugu Electricity Distribution Plc
 - Kaduna Electricity Distribution Plc
 - Kano Electricity Distribution Plc.
 - Port Harcourt Electricity Distribution Plc
 - National Rural Electrification Agency

Energy Commission Of Nigeria
 For Energy Research - Sokoto
 Center For Energy Research And Development,
 Nsukka
 National Centre For Energy Research And
 Development, University Of Ilorin
 National Centre For Energy Research And
 Development, Abubakar Tafawa Balewa University,
 Bauchi
 National Centre For Renewable Energy Efficiency
 And Conservation, University Of Lagos
 National Centre For Energy Research And
 Environment, University Of Benin
 Mambilla Hydro Electric Power Project

8. Ministry Of Mines And Steel Development, including:
 - Council Of Nigerian Mining Engineers And Geosciences
 - Nigerian Geological Survey Agency.
 - National Steel Raw Materials Exploration Agency, Kaduna
 - National Metallurgical Development Centre, Jos
 - Metallurgical Training Institute, Onitsha
9. National Planning Commission, including:
 - Nigerian Institute of Social And Economic Research
 - Centre for Management Development
 - National Bureau of Statistics
10. Ministry of Petroleum Resources, including:
 - Department of Petroleum Resources
 - Petroleum Training Institute, Effurun
 - Nigeria Nuclear Regulatory Authority
 - Petroleum Equalization Fund(management) Board
11. Nigerian Meteorological Association under the Ministry of Aviation
12. Ministry of Niger Delta
13. National Population Commission

14. Public Complaints Commission
15. Revenue Mobilisation Fiscal and Allocation Commission
16. Federal Civil Service Commission
17. Federal Character Commission
18. Ministry of Finance, including:
 - Debt Management Office
 - Budget Office of the Federation and its state counterpart offices where it exists
 - Investment and Securities Tribunal
 - National Board for Community Banks
 - National Insurance Commission
19. National Assembly, including:
 - The Senate
 - The House Of Representatives
 - National Assembly Service Commission
 - Relevant Senate Committees
 - Relevant House of Representative Committees
 - General Service Office

Types of Information which may be Sought from Public Institutions

Examples of information that can be sought from public institutions include the following:

- Financial reports
- Annual reports
- Finance strategy and diversity plan
- Risk assessment reports
- Financial reporting and accounting policies or manuals
- Performance reports
- Cash management system for FOI request
- Grants received

Finance policies
Operational/implementation plans for projects and activities
Audit reports
Contract documents
Evaluation or review reports
Consultancy agreements or contracts
Expense reports
Policy statements
Data on public servants
Procurement policies and reports
Administrative staff manuals and instructions
Job description for public officers or staff
Rules and regulations
Court processes and legal opinions
List of contractors
Minutes of meetings
Licensing process
Approvals for permits and licenses
Landed property and asset management reports
Lists of properties (moveable and immovable) owned
Land registry data
Parliamentary services reporting
Memoranda and Circulars
Inspection reports and manuals
Pre-market approval reports
Statistics and data from surveys and research
Activities and operations
Environmental Impact Assessment reports
Research reports
Information about privatized government institutions/firms
Budgets and budgetary allocations
Salaries/salary grades and emoluments
White papers and recommendations
Strategic plans
Information about branches/out stations
Programmes /projects implementation documents
Information about sections of the population
Population statistics
Information about sections of registered voters

Voter statistics
Information about preparedness for emergencies
Committees' reports/decisions
Judgments of courts in favour or against the institution
Judgments, interim and other decisions or opinions by
adjudicatory bodies
Information pertaining to income and expenditure
Local and international financial assistance
Records of technical and other non-financial assistance
received
Products and services
Channels of reaching the public
Registers
Operational guidelines
Enrollment statistics
Employment figures and statistics

TEMPLATE LETTERS

(SAMPLE APPLICATION LETTER)

Name
Address
Phone Number
E-mail Address

Date
Title of Official
Public Institution
Address

Dear Sir/Madam,

Application for Information under the Freedom of Information Act 2011

I hereby apply for the following information or record under the Freedom of Information Act 2011.

- (a) On what date the Ministry of Science and Technology approved the....*
- (b) who within the Ministry gave the approval...*
- (c) Please provide me with a copy of the minutes of the meeting in which it was agreed that...*
- (d) Please provide me with copies of all written and electronic communication between the Ministry and the company ahead of the decision being taken on whether or not the Ministry should approve...*
- (e) Please provide me with details of all advice and guidance, both written and electronic; given to the Honourable Minister before the decision was taken..*

I understand that under the Act, I am entitled to a response within seven (7) days of your receipt of this application

I would prefer to receive this information electronically, by email at: john@yahoo.com.

If you need any clarification, please contact me by phone on: 0800 0000 000 or by email at: john@yahoo.com

I would appreciate it if you could acknowledge receipt of this application.

I look forward to hearing from you in the near future.

Yours faithfully,

Your signature

Your Full Name

Following Up

There may be the need to follow-up on FOI application made to public institutions, particularly, in a case where the 7-days timeframe allowed in the Act has elapsed and no response or request for extension of time has been made.

Applicants requesting for information should ensure they have acknowledged copies of the request submitted. This will make reference to such application easy in case of any discrepancy or denial. Such acknowledgements should be in form of a stamped and or signed but dated copy of the original letter.

(SAMPLE FOLLOW-UP LETTER)

Name
Address
Phone Number
E-mail Address

Date
Title of Official
Public Institution
Address
Dear Sir/Madam,

Follow-up on Information Requested Under the FOI Act 2011

I hereby write to follow-up on my application dated, requesting for the following information:

- (a)*
- (b)*
- (c)*

The 7 days timeframe provided in the Act within which I should get the information requested has elapsed.

I will appreciate a prompt response on the status of my application.

As indicated in my earlier letter, I would prefer to receive this information electronically, by email at: john@yahoo.com.

Please contact me by phone on: 0800 0000 000 or by email at: john@yahoo.com

Yours faithfully,
Your signature
Your Full Name

For more information, contact
Media Rights Agenda
14A, Fagba Crescent
Off Acme Road
Agidingbi, Ikeja
P. O. Box 52113, Ikoyi
Lagos, Nigeria
Tel: +234-1-7616803
E-mail: mra@mediarightsagenda.net
 [@MRA_Nigeria](https://twitter.com/MRA_Nigeria)
 www.facebook.com/pages/Media-Rights-Agenda/
Website: www.mediarightsagenda.net

**Supported by the United Nations Development Programme
(UNDP) Democratic Governance for Development (DGD) II Project**



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