

Freedom of Information News

MRA, TMG Launch 'FOI and Elections Project' Ahead of 2015 Election

Media Rights Agenda (MRA) and the Transition Monitoring Group (TMG) have launched a Freedom of Information and Elections Project through which they plan to ensure transparency, accountability and the effectiveness of the arrangements put in place for the 2015 General Elections by the Independent National Electoral Commission (INEC) and other public institutions involved in the electoral process.

According to the organizations, the project is aimed at empowering the civil society organizations that make up the TMG to use the Freedom of Information Act, 2011 to ensure that INEC and other public institutions involved with the elections live up to their responsibilities and remain



Ms. Jennifer Onyejekwe,
Deputy Executive Director of Media Rights Agenda

accountable for the action.

MRA's Deputy Executive Director, Ms Jennifer Onyejekwe, explains that: "As the 2015 general elections draw nearer, public institutions led by INEC are reported to be putting

plans and structures in place to ensure the smooth conduct of the elections. It is of critical importance that civil society organisations are able to apply the principles of the FOI Act to ensure transparency, accountability and the effectiveness of the arrangements put in place for the electoral process."

MRA is partnering with the TMG to assess the preparedness of INEC and other agencies involved in the conduct of elections in Nigeria under a monitoring exercise being carried out in all the states of the federation.

Ms Onyejekwe said: "The Freedom of Information and Elections Project

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Appeal Court Judge Identifies Challenges to Effective Implementation of FOI Act

In an insightful analysis of the Freedom of Information (FOI) Act last month, Court of Appeal Justice Chima Centus Nweze identified possible challenges to the effective implementation of the Act in public institutions

Justice Nweze of the Calabar Division of the Court of Appeal spoke in Lagos at a day seminar on "The Role of Lawyers and Judges in the Implementation of the Freedom of Information Act", organized by the Socio-Economic Rights and Accountability Project (SERAP), where he explained the key elements of the FOI Act.

The seminar was sponsored by the MacArthur Foundation and chaired by Mr. Edetaen Ojo, Executive Director of Media Rights Agenda (MRA).

Justice Nweze said given the existing context of secrecy in the public service, there are likely to be several challenges that could militate against the effective implementation of the FOI Act in such institutions.

According to him, one of such challenges is the restrictions contained in the National Securities Agencies Act in so far as they relate

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MRA, TMG Launch 'FOI and Elections Project'

essentially brings together the competences of these two partners to advance a common goal. It seeks to leverage the knowledge and expertise of Media Rights Agenda as a specialist organization on matters relating to the FOI Act and the knowledge and expertise of the TMG and its members in the areas of elections and electoral processes, with over 15 years experience of monitoring elections under their belt."

The TMG is the premier coalition of non-governmental and civil society organisations working to promote credible elections in Nigeria. It is made up of over 400 member organisations in all the 36 states of Nigeria and Abuja with the

mandate to ensure the highest standards in the administration of elections in Nigeria, which includes free and fair elections. TMG also conducts civic and voter education to enlighten Nigerians about their civic and voting rights and responsibilities.

The project is taking advantage of the TMG's extensive network of civil society organisations to determine, through request for information from all INEC offices in the 36 states and the headquarters in Abuja, the plans and structures that INEC has put in place to ensure a smooth, free and fair election in 2015. The monitoring will also extend to other government agencies working on

the elections.

According to Ms Onyejekwe, "In order

to achieve this objective, MRA will liaise with TMG and build the capacity of TMG member organisations on understanding the FOI Act and using it to demand for records and information which show the level of preparedness of INEC and other governmental agencies working on election for the forthcoming 2015 elections."



Comrade Ibrahim Zikirullah,
Chair, Transition Monitoring Group

As part of the capacity-building effort, representatives of about 180 TMG member organizations from all the 36 states in the country and the Federal Capital Territory, Abuja as well as national staff at the TMG headquarters in Abuja are being trained in six zonal

workshops across the six geopolitical zones on using and understanding the FOI Act.

The workshops will take place in Bauchi, Bauchi State (for members in the North East zone), Kaduna, Kaduna State (for members in the North West zone), Abuja (for members in the North Central zone), Calabar, Cross River State (for members in the South South zone), Enugu, Enugu State (for members in the South East zone) and Ibadan, Oyo State (for members in the South West zone). Each workshop will be an intensive three-day training on understanding and using the FOI Act, with a minimum of 30 participants.

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MRA, TMG Launch 'FOI and Elections Project'

The requests for information to be submitted by TMG member organizations and staff will cover all conceivable aspects of the preparations for elections.

The information received from the monitoring exercise will be collated, analysed and narrative reports of findings published periodically during the period leading up to the elections and the post-election period covering the election-dispute resolution phase.

Through the reports, the TMG will highlight the inadequacy or otherwise of preparations for the 2015 elections, covering issues such as the printing of sensitive election materials, including ballot papers, result sheets, etc.; the procurement of other election materials; the logistics plans for movement of election materials, especially in difficult terrains; plans for the recruitment and training of election personnel, particularly ad hoc staff; plans for the deployment of election personnel; plans for the deployment of security personnel; the collation of election results; among other issues.

The Freedom of Information and Elections Project is supported by the United Nations Development Programme's (UNDP) Democratic Governance for Development (DGD) Project, a joint donor-funded project managed by UNDP in support of deepening democracy in Nigeria and is funded with contributions from the European Union, the UK Department for International Development (DFID), the Canadian International Development Agency (CIDA), the Korea International Cooperation Agency and the UNDP.

Freedom of Information News

Activist Groups use FOI Act to Query News Agency of Nigeria Procurement Process

Three non-governmental organisations (NGOs) on July 18, 2014 made a request for information to the News Agency of Nigeria (NAN) on details of the consultancy contract awarded to LEVICK Strategic Communications LLC, a Washington DC based, public relations firm.

Citing the Freedom of Information (FOI) Act 2011, the three NGOs: Public and Private Development Centre (PPDC), Budget Information Technology Network (BudGIT) and Follow the Money Nigeria, requested for information on the budgetary appropriation where the contract was included as a line item, copies of procurement plans including needs assessment documents, evidence of advertisements, copies of standard bidding documents issued to all bidders, a list of all bids tendered from the period of the advertisement till the closure of the bid advertisement, letter of notification of contract award, final contract documents and documentation showing schedule of payment.

The organisations requested for documents to be made available within seven days of application, in accordance with the FOI Act.

The FOI request by the three organisations was prompted by

information making the rounds on social media networks of a contract between LEVICK and the News Agency of Nigeria (NAN) for a contract for the sum of One Million Two Hundred Thousand Dollars (USD 1,200,000) to assist with a range of government affairs and public relations matters of the

Federal Government of Nigeria. The contract was allegedly signed and assented to by Mr. Ima Niboro, the Managing Director of NAN on June 13, 2014.

The group requested for the following information: Copy of the



Mr. Seun Onigbide, Executive Director of BudGIT

Budgetary appropriation where the contract was included as a line item; Copies of Procurement plans and information, including needs assessment and evaluation; Evidence of advertisements of invitation for bids published in at least two national dailies apart from the Federal Tenders journal and a relevant internationally recognized publication; a copy of the standard bidding documents that were issued to all bidders; a list of all bids tendered on this project from when advertised till the closure of bid advertisement; letter of notification of contract award; signed final contract document; and documentations showing schedule of payments.

The groups said they were prepared to file a pre-action notice if NAN does not respond within seven days.

Appeal Court Judge Identifies Challenges to Effective Implementation of FOI Act

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to the protection and preservation of classified matters.

Noting that this legislation is saved under Section 315 of the 1999 Constitution, he said it cannot be amended except as provided under the Constitution.

The jurist and professor of law also identified “the inadequacy of the record creation, record keeping, organization and maintenance protocols and processes currently existing in the public service” as inimical to the effective implementation of the FOI Act.”

He contended that there is an “extant culture of secrecy that exists in the public service which is premised on what had been the primacy of such existing laws as the Official Secrets Act, Section 97 of the Criminal Code, the Civil service rules and regulations, amongst others.”

Justice Nweze also referenced as a problem, “the budgetary implications of ensuring the much needed, continuous capacity building and reorientation of public service officials on the foundational principles, objectives, goals and benefits of the open government regime that the FOI Act seeks to entrench in the public service.”

He said the law was likely to face a challenge in the investment and budgetary provision that needs to be made in both human, material resources and capital projects, to ensure the effective implementation of the FOI Act, including establishing robust information retention and management systems.

Other challenges which he identified include:

- “ The lack of effective coordination and information sharing both within and between various public institutions that could hinder the speedy identification

and tracking of information being requested by members of the public within the time frame stipulated under the Act.

- “ The challenges of hierarchy and bureaucracy in the public service and its implications for vesting



Justice Chima Centus Nweze

middle level FOI compliance officers in such public institutions with the requisite authority and mandate for dealing with FOI requests from members of the public, particularly where such institutions such as the Judiciary have offices in various parts of the country.

- “ Changing the negative perception that exists within government circles and public institutions, that those requesting for information on the activities of such institutions and their functionaries are doing so with ill-motives.

- “ The absence of system-wide incentive mechanism in the public service for facilitating compliance with the provisions of the FOI Act.

- “ Turf battles between senior officials in various public institutions, whose area of operation and sphere of

influence or authority is key to the effective realisation of the central objectives of the FOI Act.

- “ The slow pace of ensuring the requisite institutional changes needed in the public service that would facilitate the effective implementation of the FOI Act, including creating FOI Units that would be manned with adequate human and material resources.

Stressing the importance of the FOI Act, Justice Nweze restated the United Nations General Assembly Resolution 59(1), adopted on December 14, 1946, wherein it stated that “Freedom of Information is a fundamental human right and the touch stone of all freedoms to which the United Nations is consecrated.”

He noted that this was further substantiated by Mr. Abid Hussain, then UN Special Rapporteur on Freedom of Opinion and Expression in his 1995 report to the UN Commission on Human Rights wherein he stated that “Freedom would be bereft of all effectiveness, if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.” In concluding, Justice Nweze commended to participants “the immortal words of President Goodluck Ebele Jonathan which he is credited to have uttered” while assenting to the FOI Act on May 28, 2011, when he said: “The government should not keep information confidential merely because public officials might be embarrassed by disclosure or because errors and failures might be revealed or because of speculative abstract fears.”

FOI Hall of Fame

NOA: A Public Institution in the Vanguard of Promoting the FOI Act

Established in 1993 by the then Decree No. 100 of 1993, the key mandate of the National Orientation Agency (NOA) is to publicise government policies, programmes and activities; mobilise public support for such policies, programmes and activities; and provide feedback to government on people's reactions to its policies, programmes and activities. The NOA is also mandated to promote national values and reorientate attitudes, among others.

The NOA believes that its statutory responsibility to communicate government policies, programmes and activities, includes statutes enacted by government, one of which is the Freedom of Information Act.

When, soon after the passage of the Freedom of Information Act, the NOA voluntarily took on the task of promoting the Law across the country, its motivation was to ensure that there is public participation in governance; the business of governance is open to public scrutiny; laid down procedures in the conduct of public affairs are adhered to; transparency and accountability in governance are institutionalized; corruption is significantly stemmed; and scarce resources are judiciously deployed for the well-being of citizens.

The NOA's stated objectives were:

- “ To improve citizens' awareness and understanding of the provisions of the FOI Act;
- “ To sensitise citizens to exercise their rights under the FOI Act to seek information from public institutions at the Local Government level;
- “ To stimulate proactive disclosure by public institutions as required by the FOI Act;
- “ To ensure public institutions provide access to information applied for under the FOI Act;

and

- “ To ensure that the NOA spearheads the public sensitization of the FOI Act.

Having taken the decision to be in the vanguard of publicizing the FOI Act, the NOA quickly realized that for its efforts to be credible, it needed to be in



Mr. Mike Omeri,
Director-General, National Orientation Agency

compliance with the provisions of the FOI Act as a public institution. Accordingly, the Agency has constituted an FOI Committee as directed by the Inter-Ministerial Committee on the Implementation of the Act and has posted contact details of the committee members on the Agency's website.

The NOA has also diligently submitted its annual statutory reports under Section 29 of the FOI Act to the Office of the Attorney-General of the Federation for 2011, 2012 and 2013, making it one of the very

few agencies to have fully complied with this requirement.

The Agency has also made efforts to comply with its proactive disclosure obligations by posting much of the required information on the Agency's website as required by the Act.

In addition, it claims to have responded to all the requests for information that it has so far received under the FOI Act.

Although not specifically given the role of promoting the FOI Act by the Law itself, the NOA drew inspiration and authority from its enabling law in taking on this task and went about it professionally. In this way, the NOA has sought to fill a huge gap in the FOI Act which did not specifically charge any individual, institution or agency with the task of promoting the law and creating public awareness about it.

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NOA: A Public Institution in the Vanguard of Promoting of the FOI Act

The NOA conducted a pre-programme baseline survey in 12 pilot states across the six geo-political zones, namely Gombe, Sokoto, Kebbi, Kaduna, Lagos, Oyo, Enugu, Ebonyi, Plateau, Benue, Rivers, Delta, and the Federal Capital Territory, Abuja.

It carried out “Train-the-Trainers” sessions at national, state and local government levels and held “Theatre for Development and Community Dialogue” Sessions in six different communities in the 146 Local Government Areas in seven pilot states and the Federal Capital Territory.

In the course of its work, the NOA realized that given the linguistic and ethnic complexity of Nigeria, there was a need to translate the FOI Act into indigenous Nigerian languages, including Arabic for the Northern and Muslim readers as it had also found out in the course of the programme that more people in the north, especially Muslims, are more likely to read Arabic than Hausa.

In response to this need, the Agency set about translating the FOI Act into 21 indigenous languages.

From its training activities at the National, State and Local Government levels, a total of 2,406 people have been trained to drive the grassroots sensitization on the FOI Act in 146 Local Government Areas in the seven pilot States and the Federal Capital Territory.

These include NOA State Directors, Heads of Programmes, Chief Orientation and Mobilization Officers (**COMOs**), Local Government Field Officers and Citizens' Responsibility Volunteers (CRVs), some of whom are businessmen, students, community leaders, applicants, teachers, serving

and retired senior civil servants, clerics, youth and women leaders.

In all, a total of 876 grassroots public sensitization activities (438 TFDs and 438 CDs) took place in 876 communities across the seven pilot states and the Federal Capital Territory during the period that the programme lasted.

The NOA has also produced and distributed in the seven pilot states and the Federal Capital Territory a total of 360,000 copies of the FOI Act in English and three indigenous languages, namely Hausa, Igbo and Yoruba.

The NOA's Director-General, Mr. Mike Omeri, says owing to the work so far done by the Agency, the Nigerian Bar Association (NBA) and

the National Human Rights Commission (NHRC) have sought collaboration with it on how to effectively publicise the FOI Act.

According to Mr. Omeri, the Nigeria Police Force has also established FOI Units in their National, State and Local Government Commands and requested 1,000 copies of the publications from NOA for their personnel, copies of which have been delivered to the office of the Inspector General of Police.

He said the Security Administrators' Meeting, which is presided over by the Special Services Office located in the Office of the Secretary to the Government of the Federation, has also requested the NOA to provide its members with copies of the FOI Act.

The Security Administrators' Meeting consists of representatives of the 36 State Governors and the FCT, all security organizations and relevant government departments and agencies.



Mr. Bonat Tagwai,
Director, Planning, Research & Statistics, National Orientation Agency

FOI Hall of Fame

As a further contribution to the project, the NOA blasted Bulk SMS to randomly selected GSM numbers weekly, conveying messages relevant to the FOI Act and also maintained a weekly e-polling slot on the Nigeria Television Authority (NTA) which provided a corridor for Nigerians to express their opinions on issues related to the FOI Act sensitization project.

The NOA aggregated, analysed and factored the feedback into the process of its grassroots sensitization.

The NOA is convinced that the grassroots sensitization on the FOI Act added impetus to the Agency's advocacy and campaign for transparency and accountability in governance.

According to Mr. Omeri, "Understanding and taking advantage of the provisions of the Act, expands the space for citizens' participation in governance, guarantees responsive and responsible governance, guarantees judicious deployment of public funds and invariably, deepens democratic practice, which are cardinal to NOA's mandate."

The NOA plans to do more, subject to availability of resources. It wants to scale up the sensitisation effort to more states and communities. In addition, it hopes to conduct a post-programme impact assessment in the seven pilot states and the Federal Capital Territory. It also wants to carry out a pre-programme survey in seven additional states.

The Agency sees a need for the translation and production of the Act and its benefits into 21 indigenous languages.

Most of the NOA's efforts have been supported by

the United Nations Development Programme's (UNDP) Democratic Governance for Development (DGD) Project, a joint donor-funded project managed by UNDP in support of deepening democracy in Nigeria and is funded with contributions from the European Union, the UK Department for International Development (DFID), the Canadian International Development

Agency (CIDA), the Korea International Cooperation Agency and the UNDP.

Of this, Mr. Omeri says "The partnership between NOA and DGD and her partners (CIDA, EU and the UKAID) has been quite productive and highly beneficial to the Agency, but most importantly, to the Nigerian people."

His reflection is that "Going by the conduct of the sessions, particularly, the participation of the public, the exercise can be

said to be a huge success, so far. Much as the issue of the FOI Act, 2011 sounded new to most participants, they welcomed the legislation which they believe will greatly improve governance and deepen democracy by enhancing citizens participation in shaping their affairs."



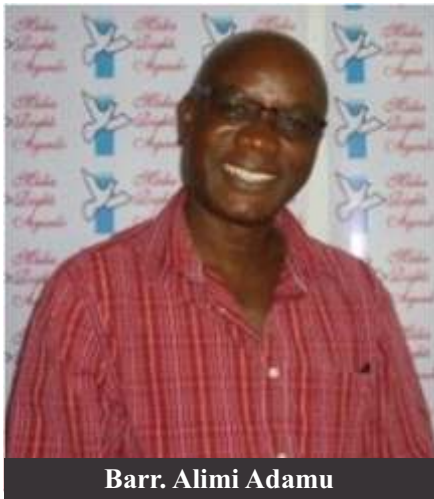
Hon Jibril Umar Buba Chairman,
House Committee on Information and National Orientation Agency



FOI Lawyer's Profile

Alimi Adamu: Bringing Multi-Jurisdictional Experience to Bear on FOI Work in Nigeria

Called to the Nigerian Bar in 1984, Alimi Adamu has practiced law in several jurisdictions, including Nigeria, Fiji Islands, Republic of the Marshall Islands and the



Barr. Alimi Adamu

California State Bar in the United States.

He therefore brings an impressive wide-ranging experience to the role of coordinating Media Rights Agenda's Network of Lawyers providing pro bono legal and litigation assistance to freedom of information requesters who are denied access to information.

Mr. Adamu has worked as Assistant Attorney General in the Marshall Islands, an island country located in the northern Pacific Ocean; as a Legal Officer in the Attorney General's Office in Fiji Islands; and as a Dealing Clerk at Forthright Securities and Investments Limited. He interned at Howarth and Smith Lawyers (International) in Los Angeles, California before serving as Principal Partner at

Alimi Adamu & Co. a law firm based in Los Angeles; and as an associate at A. O. Egbase & Associates, also in Los Angeles.

Currently Managing Partner in Momoh, Momoh, Adamu & Co. a law firm with offices in Lagos, he is also a stockbroker with a Clerkship License from the Nigerian Stock Exchange in Lagos and a chartered secretary, as a member of the Institute of Chartered Secretaries and Administrators in London.

In addition to his Freedom of Information work on behalf of MRA, Mr. Adamu is also involved in Internet rights policy advocacy at national and continental levels, being heavily involved in ongoing efforts to develop an African Declaration on Internet Rights and Freedoms.

He obtained his law degree from Obafemi Awolowo University, then known as University of Ife, Ile-Ife in 1983, after which he proceeded to the Nigerian Law School, Lagos where he obtained his Barrister at Law (BL) professional certificate in 1984.

Mr. Adamu has contributed articles, papers and sections to several local and international journals and publication and has also made seminar presentations.

He has managed government contracts legal documentation; standardized contracts, including construction contract documents, and has monitored

public obligations in Fiji and Marshall Islands.

Mr. Adamu has also coordinated International arbitrations, appointed and instructed consultants and provided legal research and support.

He has traded on the Nigerian Stock Exchange; prepared client database, market analysis, product portfolio; share registration and coordinated capital market activities and departmental management.

Mr. Adamu supervises MRA's Legal Department as an External Solicitor and coordinates the Network of Lawyers established by MRA to provide legal and litigation support to individuals and organizations whose rights of access to information have been violated.

He provides research support and legal advice to MRA's staff lawyers, members of the Network of Lawyers and other lawyers involved in FOI litigation or research.

Mr. Adamu has conducted freedom of information training for civil society organizations, media professional bodies, media practitioners as well as public institutions and government officials at Federal and state levels and has consulted in this regard for the Office of the Attorney-General of the Federation and other entities in this regard.

FOI Litigation

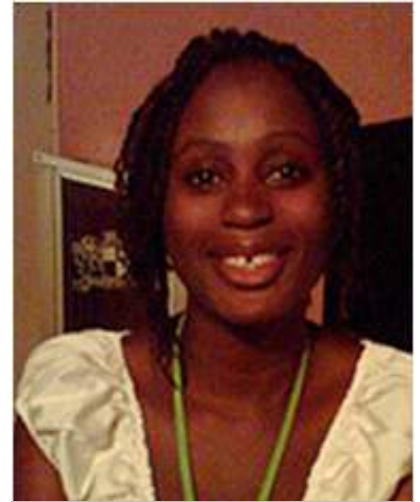
Federal High Court Grants MRA, PPDC Leave to Apply for Order of Mandamus Against NCAA

Federal High Court sitting in Lagos presided over by Justice Ibrahim Buba granted leave to Media Rights Agenda (MRA) and the of Public and Private Development Centre (PPDC), to apply for an Order of Mandamus to compel the Nigerian Civil Aviation Authority (NCAA), to make available to them information relating to the purchase of the two bullet proof BMW 760 LI HSS vehicles by the NCAA.

MRA and PPDC asked the Court in a motion ex parte for leave to apply for the order compelling the NCAA to disclose and make the following information available to them;



Mr. Edetaen Ojo,
Executive Director of Media Rights Agenda



Ms. Seember Nyager,
Executive Director of PPDC

The Annual budget and the public procurement plans of the Nigerian Civil Aviation Authority (NCAA) for the years 2012 and 2013 and

1. Evidence of budgetary allocation for the procurement of the vehicles.
2. The procurement plan for the procurement of the vehicles.
3. Evidence of advertisement in various newspapers as well as in the NCAA website, the procurement journal, international publication etc, soliciting for bids or inviting prospective bidders to submit bids for the procurement.
4. A list of all bids tendered for the procurement from when it was advertised till the closure of the bid advertisement
5. Minutes of the bid opening meeting.
6. Attendance list of all individuals and the organizations they represent at the bid opening session
7. The Needs assessment document, if it is in a separate document from the procurement plan.
8. Standard bidding documents that were issued to all the bidders.

9. Documentation on the design and specification requirement, if this is not contained in the standard bidding document.
10. Documentation on the scope of the

procurement processes.

11. Copies of the minutes of bid evaluation meeting, records of bid evaluation, recommendation of bid evaluation committee, and minutes of the meeting to the Tenders Board awarding the contract to the successful companies.
12. A copy of the certificate of no objection from the Bureau of Public Procurement (BPP).
13. Signed copies of letters of award and final contract award documents for the award of the contract and any subsequent amendment or modification, if applicable.
14. Pro forma invoice of both documents.
15. Documents showing delivery of the procured vehicles

On March 27, 2014 the Court granted the order sought by MRA and PPDC. MRA and PPDC thereafter filed their application for Judicial review, seeking among other reliefs, an Order of Mandamus compelling NCAA to disclose and make available the Information requested as well as compelling the Attorney General of

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FOI Litigation

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Federal High Court Grants MRA, PPDC Leave to Apply for Order of Mandamus Against NCAA

Federation to prosecute NCAA for wrongful denial of the information requested.

NCAA filed an Objection arguing that MRA and PPDC did not serve it with a Pre-action Notice before commencing the suit and that failure to issue the Pre-action Notice as provided in Section 24(2) of the Civil Aviation Act 2006 makes the suit defective.

MRA and PPDC in response to NCAA's



Stella Oduah, Former Minister of Aviation

Objection argued that MRA and PPDC will be subjecting their statutory and constitutional rights to the discretion of the Court if they issue the NCAA with a pre-action notice, because the 30 days provided by the FOI Act, 2011 for an applicant to approach the Court for Judicial Review would have elapsed at the expiration of the pre-action notice. NCAA in its reply on Points of Law argued that MRA and PPDC ought to have given NCAA the Pre-action notice since the Court can still enlarge the time.

The proceedings followed the request for the information made by MRA and PPDC in letters dated October 21, 2013 and the subsequent refusal by the NCAA, via its letter dated November 11, 2013, to grant the request on the ground that there are various legislative, administrative enforcement proceedings and criminal investigations into the purchase of the two BMW Bulletproof vehicles by the House of Representatives Committee on Aviation, relying on Section 12(1)(a)(i)(ii)(vi) FOI Act. In addition, NCAA stated that the budgetary allocation for the procurement process is contained in the 2013 Budget of the NCAA published as part of the 2013 Budget of the Federal Government of Nigeria and that by the provisions of Section 26(a) of the FOI Act, adding that FOI Act does not apply to published materials and those available for purchase by the Public.

The case was adjourned to the September 25, 2014.

Upcoming FOI Events

11 August – 19 September 2014: MRA and TMG FOI and Elections Training Workshops

Media Rights Agenda (MRA) holds Six zonal workshops across Nigeria for member organisations of the Transition Monitoring Group (TMG) under its FOI and Elections Project as follows:

- 11-15 Aug:** Training Workshop for TMG members in the South West Zone in Ibadan, Oyo State
- 17-21 Aug:** Training Workshop for TMG members in the North Central Zone in Abuja, the Federal Capital Territory
- 17-21 Aug:** Training Workshop for TMG members in the North West Zone in Kaduna, Kaduna State.
- 8-12 Sept:** Training Workshop for TMG members in the the North East Zone in Bauchi, Bauchi State
- 15-19 Sept:** Training Workshop for TMG members in the South South Zone in Calabar, Cross Rivers State
- 15-19 Sept:** Training Workshop for TMG members in the South East Zone in Enugu, Enugu State.

16 - 25 August 2014: 80th Annual IFLA General Conference and Assembly, Lyon, France.

The City of Lyon, France will host the 2014 International Federation of Library Associations (IFLA) World Library and Information Congress (WLIC) themed "Libraries, Citizens, Societies: Confluence for Knowledge". It aims to promote the role of librarians as worldwide champions of values such as: anti-discrimination, access to knowledge, freedom of information, and lifelong learning. For more information, please visit: <http://conference.ifla.org/node/87>

FOI Law Report

A Public Institution Cannot Validly Rely on Other Grounds Outside the Reasons Stated in a Denial Notice to an Applicant for Information

In the Federal High Court of Nigeria

In the Abuja Judicial Division

Holden in Abuja

On Monday, the 25th Day of June, 2012

Before the Hon. Justice Balkisu Bello Aliyu (Judge)

Suit No: FHC/ABJ./CS/805/2011

In the Matter of Judicial Review under the Freedom of Information Act, 2011.

Between:

Legal Defence & Assistant Project (Gte)
LTD.

Applicant

And

Clerk of the National Assembly of
Nigeria
Respondent

The Ruling is in respect of a motion on notice dated November 28, 2011. In the motion on notice, the Applicant, Legal Defence & Assistant Project (Gte) sought extension of time within which it will file an application for the review of the denial of information it requested from the Respondent, Clerk of the National Assembly of Nigeria.

In the court's ruling delivered on March 8, 2012, time was extended within which the Applicant may file its originating motion.

The originating motion already filed on September 20, 2011 was deemed duly filed, pursuant to section 20 of the Freedom of Information Act, 2011.

In the originating motion, the Applicant sought for two orders against the Respondent, the clerk of the National Assembly of Nigeria, namely:

- “A DECLARATION that the Respondent's deemed denial of the information requested by the Applicant in its letter dated July 6, 2011 to the Respondent, on details of the salaries, emoluments and allowances paid to all Honorables Members and Distinguished Senators, both of the 6th Assembly, from June 2007 to May 2011 is an infraction of Section 1(1) of the Freedom of Information Act, 2011 and of the Applicant's rights to such information under the said section.
- An order of court compelling the Respondent



Mr. Chino Obiagwu,
Director of the Legal Defence and Assistance Programme

to disclose to the Applicant within 14 days of the order the detailed information as requested by the Applicant in its letter of July 6, 2011 to the Respondent.

The counsel to the Applicant, Mr. Chino Edmund Obiagwu, relied on the following grounds for seeking the above reliefs:

- “ The Applicant has the right to the information it requested from the Respondent in its letter of July 6, 2011 (attached to the affidavit in support of the Motion as Exhibit B) by virtue of section 1(1) of the Freedom of Information Act, 2011
- “ The Respondent is deemed to have denied the application for information, having failed to respond to the Applicant's request after the number of days stipulated under section 4 of the Act.
- “ The information sought by the Applicant from the Respondent does not fall within any of the exemptions provided under the Act
- “ The Honourable Court has the jurisdiction to order the Respondent to disclose the requested information under section 25 of the Act.

The application was supported by affidavit and a written address of counsel to the Applicant. In support of the motion was a 10-paragraph affidavit sworn to by Chigozie Eburuo, the litigation officer in the law firm of Obiagwu & Obiagwu, the law firm representing the Applicant in the suit.

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In the affidavit, the deponent said the Applicant is a registered non-governmental, non-profit organisation with over 15,000 registered members. The objectives of the Applicant include good governance, public accountability and the rule of law in Nigeria.

As a part of its work, the Applicant made an application to the Respondent dated July 6, 2011 by which it requested information on details of salary, emolument, and allowances paid to the Honourable Members of Representatives and Distinguished Senators, both of the 6th Assembly, from June 2007 to May, 2011.

The respondent did not respond to this request even though it was delivered by courier on July 6, 2011.

The counsel to the Applicant, Mr. Chino Edmond Obiagwu, filed an address which he adopted as his arguments and submissions in support of the application. In that address, he submitted two issues for determination as follows:

- “ Whether the Respondent's deemed denial of the information requested by the Applicant in its letter of July 6, 2011 to the Respondent is authorized under the Freedom of Information Act, 2011;
- “ If issues (1) above is decided in favor of the Plaintiff, whether having refused to provide the requested information, this Honourable Court can order the Respondent to do so.

The counsel to the Clerk of the National Assembly, Mr. J. J. Usman, entered a conditional appearance and filed a counter affidavit in opposition to the originating motion. The respondent's counsel gave notice of his intention to raise a preliminary objection to the competence of the application at its hearing, saying that the suit is “incurably incompetent” on four grounds, namely that:

- “ The mode of commencement of the suit is

alien to the Federal High Court (Civil Procedure) Rules, 2009.

- “ The suit is statute barred,
- “ The Honourable Court lacks the Jurisdiction to hear and entertain the suit, and
- “ The suit ought to be dismissed or struck out.



Senator David Mark, Senate President

In his address in support of the grounds of objection, Mr. Usman, counsel for the respondent formulated two issues for determination as follows:

- “ Whether the suit as constituted is competent.
- “ Whether the suit is statute barred.

He placed reliance on several cases including **C.C.B (Nig.) Vs. A.G. Anambra State (1992)10 SCNJ 137 at 163; and Okparanta Vs. Elechi (2007)**

All FWLR (pt. 358) to support his submissions.

In arguing issue two which he formulated for determination, Mr. Usman said that the suit is statute barred in view of section 21 of the Freedom of Information Act, 2011. The section provides that where an applicant for information has been denied access to that information by a public institution, he may apply to the court for the review of that refusal within 30 days after the denial or deemed denial. He submitted that the suit was filed by the applicant outside the 30 days of the denial or deemed denial of the information it requested from the respondent. He argued that this was a contravention of the provisions of section 21 of the Freedom of Information Act, 2011 aforesaid. Mr Usman said the complaint of the respondent is that the applicant has failed to seek for and obtain leave of court before filing this application for judicial review, which is in contravention of Order 34 of this court's Rules of Civil Procedure.

The applicant's reply to the objection raised by the Respondent as stated above was filed on January 31,

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2012. In his reply to the objection and argument of the respondent's mode of commencement of this suit, Mr. Chino Edmund Obiagwu quoted the provisions of **Order 3 Rule 1 of the Federal High Court (Civil Procedures) Rules, 2009**, and submitted that the mode of commencement of this action is not alien to the Rules of this court. He also relied on section 20 of the Freedom of Information Act, 2011, pursuant to which the suit was brought, and argued that the section 20 does not specify the mode for commencement of an action under the Act. He submitted that an action for judicial review is usually commenced by way of originating motion.

In responding to the ground of objection that this suit is statute barred, Mr. Obiagwu submitted that actions commenced under the Freedom of Information Act, 2011 such as this one, are not subject to rules under the limitation of action. So the cases cited by the Respondent are not applicable to this suit, because section 20 of the Act has provided for extension of time to an applicant who failed to apply to the Court within the 30 days mentioned.

He argued that the word “or” used in section 20 of the Act is disjunctive in order to accommodate an applicant who failed to apply within the 30 days of the denial of the information requested. Mr. Obiagwu also responded to submissions of Mr. Usman on the issue of leave for judicial review, and submitted that the suit was not filed pursuant to the rules of the court and that the Order is therefore not applicable.

Justice Aliyu started off by determining the objection of the Respondent to the competence of the suit, and whether or not the objection of the Respondent has any merit.

In examining the originating motion filed by the Applicant, he noted that the suit was “brought Pursuant to sections 1(1) & (3), 2 (6), 7(4), 20 and 25(1)

of the Freedom of Information Act, 2011; Order 3 of the Federal High Court (Civil Procedure) Rules, and inherent Jurisdiction of this Honourable Court.”

Justice Aliyu pointed out that the counsel to the applicant cannot claim in his address that the application was not brought under the Rules of Procedure of the court, saying that this is particularly so when the counsel in his preliminary objection stated that, “**Apart from the fact that the above section of**

the law does not specifically provide for the mode of commencement of action under the Freedom of Information Act, supra, we submit that the action for judicial review are usually commence(sic) by way of originating motion, which is a conventional mode of commencement of action in our courts.”



Hon. Aminu Bello Tambuwal, Speaker, House of Representatives

The judge said the application was also brought pursuant to section 20 of the Freedom of Information Act, quoting the provisions of the Act, “**Any applicant who has been denied access to information, or a part thereof, may apply to the court for a review of the matter within 30 days after the public institution denies or is deemed to have denied the application, or within such further time as the court may either before or after the expiration date fix or allow.”**

Justice Aliyu agreed with the interpretation of Mr. Obiagwu in his address where he said that this section allows two categories of applicants. The first one is he who applied within the 30 day of the denial or deemed denial of the information and the second category, is the Applicant who failed to apply within the 30 days.

Justice Aliyu said the last phrase “**or within such further time as the court may either before or after expiration of the thirty days fix or allow,”** to his mind is intended by the law makers to exclude the rules of procedure of the court

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regarding ordinary procedure for judicial review, which is the general rule.

He said “this is in accordance with the principle of interpretation that where a special provision is made to govern a particular subject matter, it is excluded from the operation of any general provision,” adding that this is represented in the Latin maxim, “*generalia specialibus non derogant*.” The judge cited the cases of *A.G. Fed. Vs Abubakar* (2007) 10 NWLR (pt. 1040) 1 at 148 paragraph H; and *Ehuwa vs. Ondo State INEC* (2007) All FWLR (pt. 351) 1415 at 1430 to 1431 G-B.

He therefore ruled that although the Applicant brought the motion pursuant to Order 3 of the Federal High Court Rules, those rules are not applicable.

The judge said further that the intention of the legislature to take the application for the review of the denial of information made pursuant to the Act outside the Rules of court is manifested in section 21 of the Act which provides that: **“An application made under section 20 shall be heard and determined summarily.”**

Quoting Black's Law Dictionary, Ninth Edition at page 1324, he said summary proceedings are defined as “A nonjury proceedings that settles a controversy or disposes of a case in a relatively prompt and simple manner.”

He said further that the authors of the Dictionary quoted A. H. Manchester's “Modern Legal History of England and Wales, 1750 – 1950” who said “Summary proceedings are such as directed by Act of Parliament, there was no jury, and the person accused was acquitted or sentenced only by such person as statute had appointed for his judge...”

The judge therefore held that hearing of a matter summarily means disposing of that matter as simply as possible without the usual procedure being

followed.

Thus, he said, by providing that the application for the review of the denial of information under section 20 of the Freedom of Information Act shall be determined “**summarily**” the law maker intends that such applications should be heard and determined promptly and in a simple manner.

The judge said: “*the mode adopted by the Applicant in this case by filing an originating motion on notice is the procedure contemplated by the section 21 of the Freedom of Information Act quoted above and I so hold. The application is therefore competent and this court has the Jurisdiction to determine it. The objection of the Respondent on this ground is thus lacking in merit and it is dismissed*”.

Regarding the objection to the competence of the application on the grounds that it is statute

barred, Justice Aliyu pointed out that the court had already extended time within which the Applicant may file the motion in the ruling delivered on March 8, 2012 and that the ruling was on a motion filed by the Applicant seeking extension of time to apply for the review of the denial of information pursuant to section 20 of the Act under consideration. The judge therefore also dismissed the ground of objection.

The judge therefore proceeded to determine the merit of the application.

He noted that in his response to the Application, the Respondent filed a counter affidavit dated November 2, 2011, deposed to by Alih M. Hassan, the Principal Legal Assistant in the Department of Legal Services of the Respondent.

The deponent stated that on receipt of the Applicant's letter of request, he had promptly replied and informed



Mohammed Bello Adokie,
Attorney General of the Federation

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the applicant that the information he requested is now a subject of two suits filed by the Nigerian Bar Association and Mr. Femi Falana.

The judge said: "There is a subpoena issued to the Respondent by this court to produce the details of all salary, emolument and allowances paid to all members of the Respondent's 6th Assembly from 2007-2010. The Respondent had not complied because his counsel filed a notice of objection to the jurisdiction of this court to hear those suits. The second reason for the denial of the requested information by the Respondent is that the information sought by the Applicant is the type of information that the Respondent is not permitted to disclose by the Freedom of Information Act. The Respondent stated that the information requested by the Applicant is the type exempted by the Act.

He noted that attached to the counter affidavit were documents marked as Exhibits A, B, C and D. Exhibit A, he said, is the reply of the Respondent to the Applicant's letter of request, adding that by the reply, dated July 11, 2011, the Respondent denied the information requested by the Applicant on two grounds, namely: that the requested information is subject to litigation in court, and that the information is among the information exempted by section 14 of the Act.

The judge said Exhibit "B" are the copies of the originating summons, affidavit in support and address filed in Suit No. FHC/ABJ/CS/599/10, between the Incorporated Trustees of the Nigerian Bar Association as the Plaintiffs, and the President of the Senate, the Speaker of the House of Representatives, the National Assembly and the Hon. Attorney-General of the Federation as the Defendants.

According to the judge, by the suit, the Incorporated Trustees of the Nigerian Bar Association, as the Plaintiff, sought for the determination of three legal

questions regarding the alteration of the 1999 Constitution of Nigeria by the Defendants under Sections 9 and 58 of the same Constitution. Upon the determination of the three questions, the plaintiff sought for five declarations on the legality of the constitutional alteration by the 1st to 4th Defendants without the assent of the President.



Justice Aloma Mariam Muktar, Chief Justice of Nigeria

The judge said Exhibit "C" is the subpoena issued to the Clerk of the National Assembly to produce before the Court "details of quarterly constituency allowances, including bank payments advice, pay slips and other documents in respect of such allowances paid to all the members of the National Assembly since 2007 till date."

He said further than Exhibit "D" attached to the counter affidavit of the Respondent in the case is the notice of

objection filed by it and the National Assembly to the suit No. 599/10 challenging the locus standi of the Plaintiff to institute that suit.

The judge noted that in a further affidavit dated January 24, 2012, sworn to by Adah Phillips, a lawyer in the law firm representing the Respondent in the instant case, another originating summons filed in the court was attached as Exhibit "FOI1" and that this is to replace Exhibit "B" attached to the counter affidavit of Alih M. Hassan.

The judge said the attached Exhibit "FOI1" is predicated on the salaries and allowances of the members of Nigeria's Senate and House of Representatives and that it was on this suit that the subpoena (Exhibit "D") was issued. He said further that the originating summons (Exhibit "FOI1") challenges the legality/constitutionality of the "constituency allowances of N45million to members of the senate and N27.5million for each member of the House of Representatives."

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The judge noted that in his alternative submissions in the event that his preliminary objection failed, Mr. Usman submitted a single issue for determination, namely: "Whether from the facts of this case and the relevant law, the applicant is entitled to the reliefs sought in the originating motion."

The judge observed that while conceding that the Applicant has the right under sections 1 and 2 of the Act to request for information from the Respondent, he contended that the right is not a blanket one.

According to the counsel to the Respondent, the right of information is limited by sections 12 and 14 of the same Act.

The judge said the Applicant filed a reply to the counter affidavit of the Respondent and that the reply affidavit, dated January 31, 2012, was sworn to by Okorie Godswill, a legal practitioner in the law firm of the counsel to the Applicant. The deponent said the Applicant did not receive the notification of refusal to its request, Exhibit "A" which the Respondent attached to his counter affidavit, adding that the information the Applicant requested is not the same with the subject matter of the suit in Exhibits "B" and "C", attached to the Respondent's counter affidavit. The deponent also stated that the information sought by the Applicant is not exempted by the Act and its disclosure is in line with the public interest.

The judge said: "In his final reply on points of law, filed on 31st January, 2012, counsel to the Applicant, Mr. Obiagwu submitted rightly in my view that the Respondent having stated the reasons for the denial of information to the Applicant in their Exhibit "A", cannot validly rely on other grounds outside that stated in his reply."

The judge said he had reviewed the affidavit evidence and the counsel's addresses for and against

the application for the review of the denial of information requested by the Applicant from the Respondent, and noted that "the Freedom of Information Act, 2011 is a new law enacted by the National Assembly and it came into force barely a year ago, i.e. on 28th May, 2011."

He said "But the cases under the Act appeared simple, in the sense that a request is made to the public institution and when denied then the courts

will examine the grounds of denial to find if they are justified. Once the Applicant has shown that he made a request for information under the Act, and his right to access such information is established in section (1) of the Act, then the onus in this circumstance is on

the denying authority to show that it is justified by the Act to deny the information requested."

The judge said his position in so holding is strengthened by section 30(2) of the Act.

He noted that the issue for him to determine is whether the grounds relied upon for the denial of the Applicant's request for the details of the salary, emolument and allowances paid to all Honourable Members of the House of Representatives and Distinguished Senators, both of the 6th Assembly, from June 2007 to May 2011, are justified under the Act.

Observing that the Respondent relied on two grounds for denying the applicant access to the information requested, the first ground being that the two cases are pending in respect of these records, and it will be "**prejudicial**" to these cases if the Applicant's request is granted, Justice Aliyu asked: "what interest of the Respondent will be prejudiced by the release of the



National Assembly Complex, Abuja

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information and how is that relevant to these proceedings?”

Stating that the answers to these two questions must be found in the affidavit of the Respondent in support of his grounds for denial of the information that the Applicant requested, he said “The respondent did not state the relevance. We cannot speculate,” adding that what is relevant to the application is that the objection of the Respondent to this suit on the ground of jurisdiction has been heard and dismissed earlier in his ruling.

He said: “It is important to note that information from public institutions on records is to be issued by way of certification by officer who has custody of them. Public records are for the public and cannot be issued in their original form. This is to compliment the provisions of the Evidence Act regarding issuance of public documents upon application.”

He referred to Section 30(1) of the Freedom of Information Act where it is stated that the Act is intended to compliment procedures for issuance of public records and information, saying “So it is not the original record by copies of same that is required to be issued on request.”

The judge said he had not seen the relevance of the two cases quoted by the Respondent as the ground for denying the Applicant the certified copies of the information requested and declared that the ground was not justified by the Act.

On the issue that the information requested by the Applicant is personal information, which is exempted under section 14 of the Act, the judge noted that the information requested by the Applicant relates to salaries, allowances and emoluments paid to the elected members of the 6th National Assembly, and that the Applicant did not request personal information relating to the Honourable Members, but simply asked what was paid them while they were in service from public funds.

He ruled that the information requested is not among those exempted in section 14(1) of the Act, noting that even personal information protected by the subsection can still be disclosed in the circumstance

stated in section 14(2) as follows:

(2) “A public institution shall disclose any information that contains personal information if-

- a) The individual to whom it relates consents to the disclosure; or
- b) The information is publicly available.”

Quoting section 14(3) of the Act, which states that “Where disclosure of any information referred to in this section would be in the public interest, and if the public interest of such information clearly outweighs the protection of the privacy of the individual to whom such information relates, the public institution to whom the request for disclosure is made shall disclose such information subject to section 14(2) of the Act,”. Justice

Aliyu then said the “provisions are as clear as the colour purple and hardly needs a n y interpretation.”



He said: “The Act clearly places the public interest above all else including the personal interest of the individuals. Where the interest of the public is in conflict with the individual interest, in deserving cases, the collective interest must be held paramount.”

He stated the information requested by the Applicant in the suit is not exempted under the Act and that the Respondent is not justified by the Act to deny it to the Applicant.

The judge granted both reliefs sought by the Applicant and ordered the Respondent to disclose to the Applicant within 14 days from the date of the ruling detailed information on the salary, emolument and allowances paid to all Honourable Members of House of Representatives and Distinguished Senators of the 6th Assembly, from June 2007 to May 2011.

Appearances:

C. Obiagwu Esq., With C.N. Obani Esq., for the Applicant.

J.J Usman Esq ., With A.O.Phillips Esq., for the Respondent

One Woman's Epic FOI Battle that Shook the UK House of Commons

Heather Brooke's epic battle in her investigation into the expense accounts of United Kingdom's Members of Parliament (MPs), using the UK's Freedom of Information Act led, in 2009, to one of the biggest political scandals in British history and forced the resignation of the Speaker of the UK House of Commons.

In 2004, Heather Brooke initiated a request for details of the expenses of all 646 Members of the UK Parliament through the House of Commons FOI Officer, Bob Castle. However, Parliament claimed that the information was bulky and could not be broken down to individual MPs.

On January 1, 2005, the UK FOI Act, which was passed in 2000, came into force. Brooke re-submitted and reduced her request to the MP's travel expenses but was again refused access to the information.

She again re-submitted and reduced her request to the names and salaries of MPs' staff which was blocked by the Speaker of the House of Commons, Michael Martin. She then asked for information on details of the second homes of all MPs, but this was again refused.

In 2006, Brooke reduced her request to 10 MPs, namely the leaders of the parties and a few ministers, which was again refused. Brooke then appealed to the UK Information Commissioner, Richard Thomas, who has oversight responsibility on the FOI Act.

Her appeal was considered for a year, along with two other similar appeals which had been made to the Information Commissioner in 2005. On June 15, 2007, the Information Commissioner ordered the release of some of the information requested but the authorities in the House of Commons objected to the ruling.

Meanwhile, the MPs attempted to push through an FOI Amendment Bill, which sought to exempt the MPs from the application of the FOI Act, 2000. However, this was eventually withdrawn before the

Second Reading in the House of Lords in the face of public outcry and because peers were unwilling to support the Bill.

The matter was referred to an Information Tribunal and in February 2008, the Information Tribunal ruled that the House of Commons had to release the requested information on 14 MPs.

The Speaker of the House of Commons appealed the decision on behalf of the House. The Speaker opposed the publication of the expenses of 11 then serving MPs

including: Gordon Brown, David Cameron, John Prescott, Menzies Campbell, Margaret Beckett, George Osborne, William Hague, Mark Oaten, George Galloway, Barbara Follett and Ann Keen; as well as three former MPs: Tony Blair, Peter Mandelson and John Wilkinson.

The appeal was heard at the High Court, which ruled on May 16, 2008 in favour of releasing the information.



Heather Brooke,
A journalist and avid user of the FOI Act in the United Kingdom

In January 2009, the Leader of the House of Commons, Harriet Harman, tabled a motion to exempt MPs' expenses from being disclosed under an FOI request. Opposition parties threatened to vote against the proposals and widespread public opposition caused the proposals to be dropped on January 21, 2009.

On June 1, 2009, the Commons announced that full disclosure of all MPs' expenses would be made.

The Daily Telegraph thereafter published the unedited details of all MPs' expenses. The disclosures revealed numerous financial improprieties and even fraudulent claims.

The disclosures led to several MP's resignations and a national scandal that shook one of Britain's most prominent democratic institutions to its foundations.

The disclosures also resulted in several reform measures regarding MP's expenses and allowances.

FOI Resources

FOIA Nigeria Website

The Freedom of Information Act (FOIA) Nigeria Website was launched by the Federal Ministry of Justice in Abuja in July 2013 to give the public easy access to information from Ministries, Departments and Agencies (MDAs) of government.



across board.”

Reports available on the website provide data on MDA's FOI activities and it also has charts and graphs illustrating FOI activities across the fiscal years 2011 to 2013.

It has mechanisms to

Launched by Prof. Deji Adekunle, then Senior Special Assistant to the Attorney-General of the Federation, Mohammed Adoke (SAN) and also Chairman of the Committee on the Implementation of FOI Act at the Federal Ministry of Justice, the website is also intended to provide information about the FOI Act and its implementation efforts by various actors.

The website has 10 gigabyte memory, which is expandable and a bandwidth of 20 gigabyte, which is also expandable.

It features various sections, including Resources, Reports, News and Events. On the Home Page, an explanation “About FOIA” is available which is aimed at providing an understanding of the FOI Act.

Among other resources to be found on the website are the full text of the FOI Act, which is available for download in PDF format, Guidelines on the Implementation of the Act, sections on “What is FOIA”, “How to Make FOIA Requests”, “Where to Make FOIA Requests”, “Frequently Asked Questions”, among others.

Significant documents can also be found in the “Downloads” section of the website, including the Nigerian Constitution, speeches and presentations on the FOI Act at different events, Proactive Disclosure Requirements under the FOI Act, etc.

The website also contains annual submissions by the Attorney-General of the Federation to the National Assembly as well as the annual reports of Ministries, Departments and Agencies that have submitted such reports to the Attorney-General of the Federation.

According to Prof. Adekunle, in addition to being a researcher's delight, this is particularly useful for public institutions as well as “MDAs can also build their reports by comparing reports from several agencies

enable any user check for some basic information, including the number of FOI applications submitted to any public institution or group of public institutions for any particular year or across a number of years, the number of days it takes the institution to process the application, the fees charged, the number of staff involved, the number of refusals by the institution, the number of requests granted, the number of appeals against the institution's decision and the number of unresolved requests for information.

The website also has the facility to enable users compare performance across public institutions, although the reports so far submitted by public institutions are too few for these mechanisms to achieve their full potential.

The website was developed with the support of the United Nations Development Programme's (UNDP) Democratic Governance for Development (DGD) Project, a joint donor-funded project managed by UNDP in support of deepening democracy in Nigeria and is funded with contributions from the European Union, the UK Department for International Development (DFID), the Canadian International Development Agency (CIDA), the Korea International Cooperation Agency and the UNDP.

Another weakness of the website is that some of the sections are yet to be populated while it does not appear to be updated very regularly. But it has a mechanism for “Feedback” which users can take advantage of to complain about these and other issues that they may observe as well as to make suggestions for improving its utility.

The website can be accessed at: www.foia.justice.gov.ng

FOI Tracker

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
Ayode Longe Programme Manager, Media Rights Agenda	Information and records relating to the advertised 2012 FGN Capital Budget Invitation to Tender	Ikeja Electricity Distribution Company	December 20, 2012	Information requested was refused on the basis that the said public servant "cannot disclose the information until asked to do so"	Information Denied
Human Rights Lawyer, Festus Keyamo	Certified True Copy, CTC of the academic certificates of Senator Hope Uzodinma.	West African Examination Council, WAEC	14th May, 2013	The request was ignored and/or refused as information was not produced.	Festus Keyamo instituted a case in court against the West African Examinations Council, WAEC for failing to release the information.
Civil Society Network Against Corruption (CSNAC)	<p>CSNAC had approached the governor, under Sec 2, 3, and 4 of the Freedom of Information (FOI) Act, for the following;</p> <p>Evidence(s) of progress report and status of payment for the construction of the new Nassarawa State House of Assembly complex to date.</p> <p>The total budgetary allocation released to Members of Nassarawa State House of Assembly for Constituency Projects and Monthly allowances in the last 2 years.</p> <p>Certificate of completion issued to legislators for projects under the quarterly constituency Project allocations.</p> <p>Contracts awarded under the Millennium Development Goal and contractors in the projects.</p>	Governor of Nassarawa State	September 9 2013	In a commendable action on the part of the State government in support of the quest for promotion of accountable governance and transparency through the FOI, a letter dated October 29, the government responded to CSNAC's demand for information on alleged legislative recklessness and fund mis-application currently pervading the State. The response confirmed and validated information at the Network's disposal, the government	Positive response granting access to information under the Act.

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FOI Tracker

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
				responded after 21 days with documents relevant to demands in (1) and (2) above and advised the network to seek relevant documents and information concerning (3) and (4) from the Assembly Clerk.	
Iphilip Inyang, Programme Manager, Media Initiative against Injustice, Violence and Corruption (MIIVOC), a Coalition of Non-Governmental Organisations	Information that centered on the controversies surrounding the Commission's financial state, alleged dominance of the Commission by the Police and other credibility issues. Information requested includes: Details of all Police officers posted to EFCC, their qualifications, ranks, and duties as well as dates of secondment to EFCC; Details of police officers that are in charge of operations, sections and units of EFCC; Details of senior officers of EFCC occupying Directorate positions and the number that are supposed to be in Directorate positions if not for the police officers; The volume and value of EFCC funds (INCLUDING NON-APPROPRIATED FUNDS) that go to the Police, Ministry of Trade and Investment Special Control Unit Department, Training of staff, number of officials of EFCC trained (and other officials who are not EFCC officials) and how much was saved from EFCC budget in 2013 given all the international funding and support it obtained in 2012/2013." Other requests are: Details of support and funding from the international community in 2013, especially, funds from: GIABA/ECOWAS and World Bank; Details of EFCC officials trained by international agencies in 2013 and how much was saved in the budget of EFCC because of this support and the actual financial statement of the Commission, as at December 31, 2013.	Economic and Financial Crimes Commission (EFCC)	January 27, 2014	Information was denied	Action was taken between the Incorporated Trustees of Media Initiative against Injustice, Violence and Corruption as plaintiff and the Chairman of the EFCC, Ibrahim Lamorde, as defendant filed in the Federal High Court, Abuja, with Suit number: FHC/ABJ/CS/265/13 praying the court to compel the defendant to make available the information sought by the plaintiff in accordance with Section 4 of the Freedom of Information Act, 2011

FOI Literature Review

Enforcement Models: Content and Context

Laura Neuman, Access to Information Working Paper Series, World Bank, March 2009

As important as Access to information laws and rights are, implementation/enforcement of the rights and laws are as significant. Implementation of ATI laws has proven to be a great challenge in the fight for access to information and needs to be addressed as it is critical to access to information in reality.

This text looks at three distinct models for the enforcement of ATI legislation, the considerations applied in designing and selecting the models, and some of the key factors related to the success and proper functioning of the system, through the use of illustrative country case studies.

This paper considered three different enforcement models which are:



Laura Neuman of the Carter Center

- (1) Judicial Proceedings which involves appeals against information request denials directly to the judiciary. The main benefits of this is that courts have the power to order the release of information if inappropriately denied, possess wide-ranging powers of investigation and have clearly established mechanisms for punishing agency noncompliance, and may determine the procedural and substantive matters de novo. The paper notably states that this model is used in countries such as South Africa, Bulgaria, and the United States at the federal level and also that this system can be costly and lacking in accessibility.
- (2) Information Commission(er) or Tribunal: Order-Making Powers which involves an information commission(er) or appeals tribunal with the power to issue rulings and binding orders after external appeals are first made to it. This model is notably present in a host of jurisdictions, including Mexico, Scotland, and India, and often is considered the best of the three

models. This model was stated to offer the advantage of being relatively affordable and accessible, and able to create a body of precedent through written rulings. Potential disadvantages however included cost for the state and detailed (and therefore slow) formal procedures.

- (3) Information Commissioner or Ombudsman: Recommendation Power which similarly to (2) above involves an information commissioner or ombudsman however with the power to make recommendations which can be seen as limiting as they have lesser powers. This design can be found at the federal level in Canada, Hungary, Sweden, and New Zealand. The model emphasises negotiation and is less adversarial, which can lead to greater compliance. It is also less formal (having more limited powers) and is the fastest and most accessible option for complainants. However, recommendations may carry less weight, and there may be no ability to initiate enquiries into systematic abuses.

The text then goes on to look into considerations in selecting the enforcement model, stating that determination of which model will work best should be based on and sufficiently reflect specific legal, political and bureaucratic contexts in which the system must function. The paper looked at 5 country case studies which are South Africa employing Model 1, Mexico using Model 2, Scotland using Model Two, India also using Model 2 and Hungary using Model Three.

Lastly, Neuman noted key factors influencing the effectiveness of any model to be its real and perceived independence, and the extent of political will to ensure compliance. It was stated that for any model to meet its objectives it must be considered sufficiently sovereign to

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make the difficult decisions surrounding the release of information.

Clearly explained was that a series of factors determine the overall independence and legitimacy of the entity including the manner of selecting the commission(er)s (by executive order or by parliament), their term limit and procedures for dismissal, the branch of government from which they receive their powers and to whom they report, and autonomy in budgeting/budget sovereignty. A selection viewed as partisan will erode public trust. Notable considerations for continuing independence are: commissioners' term limits and potential for dismissal, the branch of government to which they report and autonomy in budgeting. This work also explained that in deciding who should be appointed as commissioner, factors to consider include the person's character, how they view their mandate, their reputation and their seniority.

"Political will within a democratic framework and managerial effectiveness within a bureaucracy both require clear incentives for action and disincentives for inaction." Nowhere is this more relevant than for the enforcement body. This explains that to ensure compliance, there should be strong sanctions for noncompliance and commissioners should possess a commanding tool to ensure conformity with their decision. The commissioner should also be able to forge partnerships with civil society and the media may help protect the office's independence. Positive working relationships with civil servants may promote compliance, but risk diminishing perceptions of independence. Resources (salaries and staffing) must also be sufficient for effective performance so as to avoid delays.

The paper concludes noting that while there is no 'one size fits all' system, principles of independence, accessibility, affordability, timeliness and specialisation are paramount. It encourages that there should be primary standards against which any enforcement model would be tested and each system must cultivate an enforcement model that will cope best with the political and institutional demands of the particular country or context.



The Declaration of Principles on Freedom of Expression in Africa (2002)

The Declaration of Principles on Freedom of Expression in Africa was adopted by Resolution ACHPR /Res.62(XXXII)02 by the African Commission on Human and Peoples' Rights (ACHPR) at its 32nd Ordinary Session held on October 17 to 23, 2002 in Banjul, The Gambia. It represents an important milestone and landmark for the advancement of freedom of expression and access to information on the continent.

The relevant portion of the Declaration provides as follows:

IV: Freedom of Information

1. 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.
2. The right to information shall be guaranteed by law in accordance with the following principles:
 - “ everyone has the right to access information held by public bodies;
 - “ everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
 - “ any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
 - “ public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
 - “ no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
 - “ secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

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