

FREEDOM OF INFORMATION NEWS

UNESCO's 'Bali Roadmap' Says Right to Receive Information is an Enabler of Development

The right of people to seek and receive information is a fundamental right as well as an enabler of development, according to the "Bali Roadmap", an outcome document adopted last month in Indonesia at the end of a UNESCO-convened Global Media Forum.

Accordingly, the Roadmap calls on governments around the world "to systematically collect and make accessible to the public, including by digital means, information which is related to development issues, while protecting



Mrs. Irina Bokova, Director-General of UNESCO

privacy."

The objective of the "Global Media Forum: The Role of Media in realizing the Future We Want For All", held in Bali on August 25 to 28, 2014, was to contribute to the ongoing international debate about the importance of media and information and communication technologies for peace and sustainable development and to work for the inclusion

of a goal acknowledging this in the post-2015 Sustainable Development Goals.

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Network of FOI Advocates Worldwide Elects New Steering Committee in October

Elections into the Steering Committee of the Freedom of Information Advocates Network (FOIANet) will take place from October 21 to 27, 2014, according to an election schedule announced by the Secretariat.

Member organizations of the Network will vote to elect a new seven-member Steering Committee through an electronic platform during the one week voting period and the new Steering Committee will be announced on Wednesday, October 27 to run the affairs of the Network over the next four years.

FOIANet is an international information-sharing network of organizations and individuals working to promote the right of

access to information. Members of FOIANet are civil society organizations with active programmes to promote the right to know.

FOIANet also runs a discussion list for news and debate on the right of access to information, which currently has over 600 people on the list, including CSO representatives and lawyers, academics, information commissioners and others with a specialised interest in the right to information.

The network launched and promotes International Right to Know Day which takes place on September 28 of every year.

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FREEDOM OF INFORMATION

NEWS

NIALS to hold FOI training for Legal Practitioners

The Nigerian Institute of Advanced Legal Studies (NIALS) is organizing the intensive Training Course on Freedom of Information Act and its Application for Legal Practitioners and set for the 13th –15th October, 2014.

The training aims to offer a comprehensive understanding of the Freedom of Information Act amid the challenges affecting its optimal application in Nigeria today. This training is targeted at all Legal Practitioners in the public and private sectors, Lawyers and Non-Lawyers in public and private institutions, Government Parastatals, Ministries, local governments; Non-Governmental Organizations; Media Practitioners; Lecturers and Academic Researchers; Librarians; and interested members of the general public.

Participants in this training would emerge better equipped to overcome the challenges hampering the enforcement of the Act through discussions on public interest test, judicial protection and obtaining information under the Act. This course is designed to meet the needs of the parties and sharpen the skills of state parties who are involved in negotiating, drafting and executing such BITS.

The training course which centres its discussions on addressing issues which hamper the optimal functionality of the Freedom of Information Act in different sectors: Judiciary, Journalism, Legal Practice, Activism, and Research etc. is a step towards solving the practical challenge of implementation which impedes the functionality and promotion of the Act. This in turn contributes to achieving one of the goals of the Act which is fighting for transparency and accountability in governance by equipping people to



Prof. Deji Adekunle, Director-General, NIALS

engage the Act effectively.

Topics to be discussed include: Litigating FOI Issues, Proactive Disclosures: Creative Methods, Responding to FOI Requests: Practical Steps, Balancing the Public Interest to Disclose or Not, Exemptions Scheme under the FOI Act, Whistle Blower Protection and the FOI, FOI and Good governance, Official Secrets and Classification of official records, Institutional and Reporting Requirements and Freedom of Information Act-An effective tool against corruption in Nigeria?

The course fee is N100 000 (one hundred thousand naira only covering course materials, tea and lunch) to be paid in favour of the Institute with the following bank details

Bank: UBA

Account Name: Nigerian Institute of Advanced Legal Studies

Account Number: 1003-968-979

Sort Code: 033-150-150

Payment could also be made by certified bank draft or cash to the Institute.

For more information, contact: **Juliet Ogochukwu** on 08099890050 or julietogochukwu@yahoo.com; **Gloria Nwamu** on 07066827135 and **Damilola Awolalu** on 07039656970 or damyoy2@yahoo.com ■

UNESCO's 'Bali Roadmap' Says Right to Receive Information Enables Development

Organized by UNESCO – the United Nations Educational, Scientific and Cultural Organization - in co-operation with the Government of Indonesia, the Forum brought together media practitioners, associations, government representatives, academics, civil society organizations and youths from around the world to discuss the role that media could play in shaping and implementing the Post-2015 Development Agenda.

The “**Bali Road Map: The Roles of the Media in Realizing the Future We Want for All**” was adopted as the final statement of the Forum with a range of actions for consideration by different stakeholder groups.

The roadmap affirmed that peace and sustainable development increasingly depend on the participation of informed people which requires the free flow of information and knowledge, and that this in turn depends on freedom of expression on all media platforms.

It acknowledged that the ability of media actors to fulfil their potentials in development also depends on public access to Information and Communication Technologies (ICTs), information and knowledge.

The roadmap emphasized the importance of including a goal on freedom of expression and independent media in the post-2015 Sustainable Development Goals, and of including this recognition in development practice more broadly.

It therefore called on governments to respect freedom of expression, including press freedom and the right to seek and receive information, as fundamental rights as well as enablers of the post-2015 development agenda goals and to review legal restrictions, including criminal defamation laws and other restrictions on media content or structures, in order to promote the free flow of information.

The roadmap also urged governments to “promote programmes for media and information literacy competencies among all citizens, not least children and youth, so they are equipped to find, evaluate and use information, and create and express their own information and opinion, including that pertaining to development debates.”

It called on media outlets, media professionals and social media users to reflect a diversity of views so as to satisfy the public's right to a broad range of information and ideas.

It also asked them to strive for appropriate time and resources to be allocated for investigative reporting, with a view to ensuring that such journalism can play its part in holding powerful actors, both public and private, to account.

The roadmap urged UNESCO and the international community to endorse the inclusion in the Sustainable Development Goals of freedom of expression, including press freedom and the right to seek and receive information, given that

these are not only essential rights but also enablers in the Sustainable Development Goals and the wider development agenda.

It called on them to ensure that aid programmes take into account the importance of freedom of expression issues in all development efforts, and that they promote press freedom, the right to seek and receive information, and the safety of journalists.

The document also stressed the need for UNESCO and the international community to follow up on the Bali Road Map for Media and Development, and make the document available to Member States, the Secretary-General of the United Nations and the Open Working Group, and to other international and regional organisations. ■



Professor Guy Berger,
Director, Freedom of Expression and Media Development at UNESCO

Network of FOI Advocates Worldwide Elects New Steering Committee in October

The Steering Committee is a key part of the FOIANet governing structure and its main functions are to:

- » Bring expertise and ideas to the FOIANet from a diverse range of communities and regions;
- » Oversee approval of membership of new organizations;
- » Oversee funding of the FOIANet, contributing ideas and helping the Coordinator with fundraising proposals;
- » Work with the Coordinator and the network itself to promote Right to Know Day on 28 September each year;
- » On occasions, representing FOIANet at events;
- » Liaising with the FOIANet Coordinator on when and how to organize new elections; and
- » Promoting the Right to Know and FOIANet.

The Steering Committee is made up of seven members, elected for four-year terms, one of whom is the Chair. The Chair is the nominee who receives most votes in the elections and becomes the primary spokesperson for the network while also playing a more active liaison role with the FOIANet secretariat.

The election of a new Steering Committee is a core democratic process within FOIANet which ensures accountability to members. It also allows interested organisations working on the right to know to get involved in strengthening the network and ensuring that it meets the needs of its members.



Mr Toby Mendel, Current Chair of FOIANet Steering Committee

Nominations for the Steering Committee elections will open on Monday October 6, until Monday, October 20 while voting will open on Tuesday, October 21 until Monday, October 27.

The first meeting of the new Steering Committee, which will be announced on October 29, will be convened early in November.

Anyone working for a member organization of FOIANet is eligible to stand for elections to the Steering Committee and may nominate themselves for membership of the steering committee.

The registered contact person for each member organisation in the Network's database is entitled to vote for up to seven candidates from the list of nominees through a direct link to electronic voting platform which will be emailed to every member's contact person.

The seven candidates with the highest scores will become the new members of the Steering Committee; the candidate with the highest number of votes will become Chair, provided that the person accepts the role. If the person with the highest number of votes declines the role, the Chair's position will be offered to the candidate with the next highest number of votes. ■

Up Coming **FOI** Events

October 20-26, 2014:
International Open Access Week

International Open Access Week encourages the use of Open access and Open Educational Resources instead of copyright material for research, teaching and study purposes, where possible, to avoid having to apply for permission or pay high copyright fees.

The Open Access Movement hopes to free knowledge, share knowledge and experience knowledge without restrictions or barriers as well as break down barriers that prevent access to information and development as sharing knowledge encourages creativity, innovation and leads to social upliftment, economic development and a better world in general.

For more information, visit <https://www.eff.org/deeplinks/2014/10/celebrating-open-access-week-research-should-be-free-available-and-open>.

November 17, 2014: RTI Implementation: An Overview of Findings from 12 Countries

Time: 10:00AM EST

Themes: Implementing the Right to Information

Speaker: Stephanie Trapnell, Consultant, Governance Practice, GGOGA

The webinar will discuss the findings of an in-depth comparative case study analysis of 12 countries that identifies key drivers of effectiveness in RTI system implementation. The analysis focuses on the formalization of agency practices for RTI implementation, including

- (1) staffing, training, resources,
- (2) information request processing,
- (3) records management,
- (4) proactive disclosure, and
- (5) performance monitoring. ■



Mohammed Bello Adoke (SAN): Fanatical About the FOI Act?

Less than two months after the signing into Law of the Freedom of Information Bill in 2011, Mr. Mohammed Bello Adoke (SAN), Attorney-General of the Federation and Minister of Justice, was quoted as describing himself as a “fanatically enthusiastic” supporter of the new Freedom of Information Act.

Mr. Adoke is quoted as having said in an interview he granted *Mena FN.com* on July 25, 2011 that: “I am ... fanatically enthusiastic about the Freedom of Information law and I'm very happy that that Bill has been signed into law. It was facilitated and came into existence in my time as (Attorney General of the Federation of Nigeria) and I'm going to ensure its implementation because it gives room for transparency and it lessens tension in the polity and allows free access to information so that there would be no distortion. I found out that a lot of public officers have been maligned, criminalised, humiliated because of lack of information that gave room to various speculation.”

MenaFN.com is a Middle East and North Africa financial news network which provides online and wireless financial content to consumers around the Arab world.

While many may question Mr. Adoke's motivation as indicated in his statement, no one can say truthfully that as Attorney-General of the Federation, he has been negligent in his oversight functions of the FOI Act, as conferred on him by Section 29.

Section 29(6) of the Act provides that “The Attorney General shall in his oversight responsibility under this Act ensure that all institutions to which this Act applies comply with the provisions of the Act” while he is also mandated by Section 29(5) to develop reporting and performance guidelines for the annual reports which public institutions are required to submit and establish additional requirements for such reports as he determines to be useful.”

In a keynote address to the National Summit on the Freedom of Information Act in June 2012, a year after the passage of the Law, Mr. Adoke stated that: “the implementation of the Freedom of Information Act is one of the cardinal strategies of my office that are being

pursued under the aegis of the Panel on the implementation of Justice Reforms (PIJR) chaired by Justice Ishaq Bello. The sixth platform of my reform plan outlines as priorities the development of FOIA guidance manuals for all government agencies, training programs for all the government agencies and the facilitation of desk officers for the management of FOI information and privacy issues.”

He went on to say: “My office has through several initiatives encouraged compliance by public institutions. Towards this end the Attorney-General of the Federation organized on 20th October last year (2011) a sensitization workshop on the Freedom of Information Act for legal advisers of MDAs and officers of the Federal Ministry of Justice.”



Mr. Mohammed Bello Adoke (SAN)
Attorney-General of the Federation and Minister of Justice

On his other efforts to encourage compliance, Mr. Adoke noted that “in a recent advisory memorandum, I advised that the effective implementation of the Act's reporting regime requires each public institution to take active steps to re-organise its information and records dissemination process for purposes of compliance with the Act. There is also need for public institutions to use

modern technology to inform citizens of what is known and done by government. Accordingly, agencies should readily and systematically post information online in advance of any public request. Providing more information online reduces the need for individualized requests and may help reduce existing backlogs.”

He stressed that “Public institutions are required to answer requests for information promptly. They are also to practice good records management to ensure information is identified and retrieved. The kinds of record covered by the Act are all recorded information held by, or on behalf of a public institution. The legislation applies regardless of the age, format, origin or classification of information.”

Also speaking last month, August, at the 2014 Nigerian Bar Association (NBA) conference in Owerri, Imo State, Mr. Adoke restated his belief that “The Freedom of Information Act remains a potent tool in the hands of those seeking information from public institutions” and urged lawyers in the country to take advantage of it.

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Mohammed Bello Adoke (SAN): Fanatical About the FOI Act?

He noted that “The initial misgivings that pervaded the public service and the difficulty in coming to terms with the new ethos of open government and transparency which the Act encouraged were overcome by my issuance of a Compliance Advisory to all Ministries, Departments and Agencies (MDAs) on 29th January 2012 pursuant to the powers vested in me by Section 29 of the FOIA, 2011.”



Mr. Mohammed Bello Adoke (SAN)
Attorney-General of the Federation and Minister of Justice

On January 29, 2012, Mr. Adoke had issued a Circular with Reference No. HAGF/MDAS/FOIA/2012/I to all public institutions on how to ensure their compliance with some duties and obligations of public institutions under the Act, particularly their reporting obligations.

With the subject “*Implementation of the Freedom of Information Act 2011 and the Reporting Requirements under Section 29 Thereof*” the Circular asks all public institutions to “consider designating a senior official (at the Assistant Director level or its equivalent) or establishing an FOI Unit with direct responsibility for determinations and compliance with the Act.”

In addition, the Attorney-General suggested a number of other measures to facilitate the receipt and processing of requests for information as follows:

- “ That public institutions should assign a tracking number to each request and provide the tracking number to the person making the request.
- “ That public institutions must establish a telephone line or Internet service that persons requesting information under the Act may use to inquire about the status of their requests

He also reminded all public institutions that under the FOI Act, the submission of a report to the Attorney-General does not absolve the institution from proactively disclosing electronically or through other means information and records relating to its administrative machinery and general operations to the public as outlined under Section 2 of the Act.

Besides, he said, the “obligation to submit a report to the

Attorney-General of the Federation is additional to the obligation to make such report directly available to the public electronically; for example by publishing the report on its website.”

Prior to the Attorney-General's Circular, he had previously issued a guidance document for the implementation of the FOI Act, titled “*Operational Guidelines for*

Public Authorities on the Implementation of the Freedom of Information Act, 2011.” Only 9 pages long, it was issued in November 2011, a few months after the passage of the FOI Act, to assist public institutions in their implementation of the Law.

This was followed by the issuance of a more comprehensive 44-page document on March 15, 2012 titled: “*Guidelines on the Implementation of the Freedom of Information Act, 2011.*”

Less than two years into the life of the FOI Act, the Attorney-General issued the third implementation guideline, titled: “*Guidelines on the Implementation of the Freedom of Information Act, 2011 – Revised Edition 2013.*” The new 53-page edition was published in February 2013 “to further elucidate on the provisions of the FOIA.”

The issuance of the 2013 edition of the Guidelines on the Implementation of the Act was preceded by a series of consultative meetings convened by the Federal Ministry of Justice, during which feedback was received from various stakeholder groups, particularly representatives of public institutions from across the country.

The publication of the Guidelines was also followed by zonal sensitization workshops organized by the Office of the Attorney-General of the Federation in different parts of the country, to familiarize public institutions with the provisions of the FOI Act and the Guidelines.

The Office of the Attorney-General of the Federation has also diligently filed annual reports to the National Assembly on April 1 each year on the extent of compliance by public institutions with the FOI Act and has so far submitted reports for the years 2011, 2012 and 2013.

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FOI Tidbits

U.S. Immigration Services Processes
600 FOI Requests Daily

Mohammed Bello Adoke (SAN): Fanatical About the FOI Act?

Mr. Adoke has repeatedly called on public institutions to comply with the provisions of the Act. His office has organized various activities to guide compliance with the Act and has collaborated with both the Office of the Head of the Civil Service of the Federation and the Inter-Ministerial Committee on the FOI Act to organize other training and sensitization programmes.

Where he has fallen short is in his inability or unwillingness to take stern measures to enforce compliance with the provisions of the FOI Act, particularly the reporting obligations of public institutions under Section 29 of the Act, with the result that only a handful of public institutions have filed their annual reports over the last three years, almost making a mockery of the reporting requirements stipulated by the Act.

Some argue that the Attorney-General of the Federation has lived up to the responsibility given to him by Section 29(6) of the FOI Act to “ensure that all institutions to which this Act applies comply with the provisions of the Act” and that he has not taken adequate advantage of the authority implied given to him under the Section.

His critics contend that the provisions allow him to impose administrative sanctions on public institutions that are refusing to comply with the Act and that, at the very least, he could publish the names of public institutions that are not in compliance every year and submit the list to the National Assembly as well as publicizing the list to put pressure on the institutions to comply.

Lawyers have also complained that in many cases where the Attorney-General of the Federation has been sued alongside a public institution which has refused to provide requested information, the Attorney-General has frequently failed to turn up in court or sent a lawyer to represent him.

Some say where the Attorney-General has been represented, his lawyers have tended to uncritically support the public institution which wrongfully withheld information, even to the extent that they have sometimes opposed the requester's case on ridiculous grounds.

However, while it may be difficult for an objective observer to characterize the Attorney-General of the Federation as fanatical about the FOI Act, it is indisputable that he has made significant contributions to the elucidation of the provisions of the Act and the progress of its implementation so far. ■

The United States Immigration and Citizenship Services (USICS) processed 138,523 Freedom of Information requests during the year ending September 30, 2013.



Barack Obama, U.S. President

The number works out at more than 11,000 requests a month and nearly 600 requests per day!

This is no fluke. As at the end of August 2014, the agency was again on track to receive about 140,000 FOI requests for the year ending September 30, 2014.

The USICS held a “FOIA Requester Stakeholder Meeting” in Washington, D.C. on August 20, 2014, during which top USICS officials, including Acting Deputy Chief of FOIA Roger Andoh, and Miriam Nisbet, Director of the Office of Government Information Services (OGIS), met with requesters and FOI professionals from other agencies.

They offered tips to requesters on how to secure access to records and advice to other agencies for handling up to 600 requests per day. USICS officials also heard suggestions for improving their FOIA request handling process.

OGIS Director Miriam Nisbet, who moderated the stakeholder meeting, noted that bringing requesters and agencies together better the FOIA process for all.

“We have an opportunity here to resolve disputes and indeed prevent disputes, which is what this meeting is all about,” she said. ■

FOI Lawyer's Profile

Andy Isioma Ogbolu Esq.: New Entrant into FOI Litigation with a Passion for the FOI Act

Although Mr. Andy Ogbolu is a relatively new entrant into freedom of information litigation, he enters the arena with a passionate belief in the infinite possibilities that the Freedom of Information Act, 2011 holds in enabling citizens to hold their leaders accountable.

Driven by this passion, Mr. Ogbolu is undaunted by the challenges of litigating FOI cases and says defiantly, "My advice to colleagues handling FOI cases is to be resolute and withstand intimidation from FOI Respondents."

Although based in Lagos, he is handling FOI cases on a pro bono basis in courts as far away from Lagos as Delta State and has not missed a single court hearing in any of the three cases he is handling there.

Mr. Ogbolu grew up in the former Bendel State. He is intellectually inclined, serious minded and a deeply spiritual person.

He attended the famous Saint Patricks College in Asaba (now the Delta State capital) and proceeded to the University of Ife, Ile-Ife (now Obafemi Awolowo University) in 1979 and obtained his Bachelors of Law degree in 1983, before going to the Nigerian Law School in Lagos where he qualified as a Barrister at Law and was called to the Nigerian Bar in 1984.

Mr. Ogbolu has 30 years post call to Bar practice experience, spanning his years as corps member in the National Youth Service Corps (NYSC) working in the law firm of Shettima Liberty and company; full time employment with Debo Akande, Okonjo and Company in the Benin City office from 1985 to 1987 and K.O. Longe and Company from 1987 to 1992. In 1993, he set up his own law firm of Andy Isioma Ogbolu and Company, where he has worked to date.

He notes that the situation when he started practice was that judges were more experienced and courageous in their decisions as the appointment process for judges threw up the best materials.

Mr. Ogbolu recalls that he first got involved with FOI in August 2013. On how he got involved in FOI litigation, he says: "Alimi Adamu Esq and Edet Ojo have been

motivational in my interest in FOI cases."

According to him, "The development of FOI in Nigeria is still at its rudimentary stages. The major challenges are that our court system is too slow to encourage the citizens to take advantage of holding their leaders accountable. The government official against whom an FOI request is targeted, have access to greater financial resources to deploy in frustrating an FOI request."

Mr. Ogbolu suggests that "judges should be encouraged to be more proactive in cutting out delay antics usually employed by defence counsel. FOI cases should and can be concluded within three months of filing. The law on FOI is straightforward: FOI request was made; defendant did not comply within stipulated time or give any reason for failure to do so; order of court to comply."

He believes that "once the courts take the bold step of making compliance orders, the citizens would be encouraged to make their

leaders more accountable. Failure to treat with dispatch applications before the courts, will negatively affect applicants making requests. The attitude of the courts would determine how FOI would fare in the next five years."

Mr. Ogbolu is concerned that the ordinary citizens would be disillusioned if they have to bear the financial burden and risk of making FOI requests without an assurance that they would not be frustrated in court. Besides, he said, the Applicant's lawyers who are called upon to handle briefs on pro bono basis on behalf of those denied access to information would also be discouraged by delays in court.

He says he is challenged by situations in handling cases "where you put in your best in terms of research not knowing that justice has already been compromised. I am also inspired when a judge responds to a well researched presentation with a brilliant judgment."

Mr. Ogbolu's advice to young lawyers is for them to "concentrate on learning skills from their seniors" as he recalls that "I was able to pick basic skills from my principals which have been helpful till today." ■



Barr. Andy Ogbolu

Court Grants Kano State Government Leave to Seek Information on Deductions for Petroleum Support Fund

Justice Evoh Chukwu of Federal High Court in Abuja has granted the Kano State Government leave to apply for a judicial review of the decisions of the Federal Ministry of Finance and the Petroleum Products Pricing Regulatory Agency (PPPRA) refusing to disclose to the Government the total amount of deductions made from allocations accruing to the State and its 44 Local Governments Councils between 2005 and 2014 towards the Petroleum Support Fund (PSF).

The Court issued the order granting leave upon a motion *ex parte* filed by the State Government through its lawyer, Mrs V. Awomolo (SAN).

The State Government said it had made a request to the PPPRA under the Freedom of Information Act, 2011, through its lawyer requesting the PPPRA to disclose the amount so far deducted from its statutory allocations since 2005 towards the PSF.

It noted that since the inception of PSF in 2005, PSF has been financed by the three tiers of government in Nigeria through direct deduction of funds from source but it contended that no account has been rendered to it in respect of the monies deducted from its statutory allocations as well as those of the 44 Local Governments in the State since the creation of PSF.

The government further explained that although PSF is the exclusive responsibility of the Federal Government, all tiers of governments in Nigeria still



Rabi'u Musa Kwankwaso, Governor of Kano State

contribute to it.

It described the PSF as a pool of funds from the national budget applied for the stabilization of domestic prices of petroleum products so that volatility in international crude oil and product prices would not altogether translate to wild fluctuation of

prices at the pumps.

The Government complained that rather than granting its request, the PPPRA replied in a letter signed by Esuruose Oluwayemisi on behalf of the Executive Secretary, stating that it carries out the computation of products imported under the PSF scheme, processes claims and forwards to the Federal Ministry of Finance and the Debt Management Office.

It said the Agency also denied having any information on the contribution of Kano State and its 44 local government areas to the PSF and directed the Kano State Government to approach the Federal Ministry of Finance for the information.

The Kano State Government said it thereafter wrote the Federal Ministry of Finance requesting the information but did not receive any response from the Ministry, which is deemed to be a denial of access to the information under the FOI Act, hence it filed the suit. ■

Applicant Sues University Over Non-Publication of Employment Exam Results

An unemployed graduate, Mr. Emmanuel Omoyibo, has filed a suit at the Federal High Court in Warri, Delta State, against the Federal University of Petroleum Resource, Effurun (FUPRE), seeking to compel the institution to publish the results of the written examinations conducted by the University into various vacant positions on November 21, 2013.

In a motion *ex parte* filed on his behalf by his counsel, Mr. K. C. Wisdom, Omoyibo sought leave of the court to apply for:

An order compelling the University to publish the results of applicants "who participated in the written examinations into various vacant positions" that were

advertised by the institution;

An order that the comprehensive list of current staff of the University, including indigenous staff of Delta State, from January 1, 2014 to date should be produced; and

An order to the University to produce the criteria and comprehensive guidelines for determining eligibility for employment in the University, being a Federal Government-owned institution.

Omoyibo said he was seeking the reliefs pursuant to the Freedom of Information Act, 2011 and the Federal Character Act.

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Failure of Respondent to Furnish Applicant with Information Sought Amounts to a Wrongful Denial of Information

In the High Court of Justice
Federal Capital Territory of Nigeria
Holden at Abuja

Before His Lordship: Honourable Justice Olukayode
A. Adeniji, Judge
Sitting at Court No. 26 Apo-Abuja
On Tuesday, 9th July, 2013

Motion No. M/3059/13

Between:

Public & Private Development Centre
L T D / G T (P P D C)
– PLAINTIFF

And

Integrated Parking Services Ltd
– RESPONDENT

Facts of the Case

Upon being granted leave of court on April 17, 2013, the Applicant filed a Motion on Notice, dated April 23, 2013, praying the court for:

- A Declaration that the failure of the Respondent to furnish Applicant with the documents/information sought vide Applicant's letter of December 13, 2012 amounts to a wrongful denial of information under the Freedom of Information Act, 2011.
- Order of the Honourable Court compelling the Respondent to forthwith furnish Applicant with the information and copies of the documents set out in the Schedule to the Application.
- And for such other order or orders as the Honourable Court may deem fit to make in the circumstances.

In the Schedule to the Application, the following documents/information were listed:

- a. How much has the Respondent realized from inception of engagement of her services by the FCTA till date?

- b. How much has the Respondent remitted to the FCTA till date and by what means was the money remitted?
- c. What are the terms of the Respondent's engagement by the Federal Capital Territory Administration and how much accrues to the Respondent from this engagement?

- d. Certified copy accounts of the Respondent showing all moneys realized in the course of her services to the Federal Capital Territory Administration.

- e. Certified copy of the Respondent's contract of engagement with the Federal Capital Territory Administration.



Ms Seember Nyager, Chief Executive Officer of PPDC

Applicant also filed a Statement pursuant to Order 42 Rule 3(2) of the Federal High Court Rules, an Affidavit in support of the motion for mandamus in which it exhibited Applicant's letter to the Respondent, dated December 13, 2012; and also filed a written address in support of the motion for mandamus.

Ruling

His Lordship said he had carefully considered the application and also carefully examined the totality of the processes filed to support the application, including learned counsel's written submissions of arguments in support thereof.

He noted that pursuant to the ex-parte application of the Applicant, the court granted leave on April 17, 2013 to bring the application.

His Lordship said it is also to be noted as it is borne by the records of the Court that the Respondent has not responded one way or the other to the application, the implication being that she is not contesting the application and the affidavit deposited to in support of the same.

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Failure of Respondent to Furnish Applicant with Information Sought Amounts to a Wrongful Denial of Information

According to him, it is not in dispute that pursuant to the provisions of Section 1 of the Freedom of Information Act, the Applicant is not only competent to bring the application; but is also entitled to have access to the information sought by the application.

His Lordship said he was satisfied, by virtue of the provision of Section 2 (7) and Section 31 of the Freedom of Information Act, that the Respondent is under lawful obligation to disclose to the Applicant the information sought by the applicant.

He said further that upon proper examination of the affidavit filed to support the application and especially the documents attached thereto, being letter of December 13, 2012 by which the Applicant formally requested from the Respondent, the information as set out in the schedule to the application; which letter the Respondent failed to respond as requested, he is therefore satisfied that it is appropriate in the circumstances to grant the application as prayed.

His Lordship accordingly declared that the failure of the Respondent to furnish the Applicant with the information sought, vide her letter of December 13, 2012, amounted to a wrongful denial of information and in violation of the provisions of Section 1 of the Freedom of Information Act, 2011.

He consequently issued an order of mandamus compelling



Ms Seember Nyager, CEO of PPDC

the Respondent to furnish on the Applicant forthwith, information required as set out in the Schedule to the application; namely:

- f. How much has the Respondent realized from inception of engagement of her services by the Federal Capital Territory Administration up to date?
- g. How much has the Respondent remitted to the Federal Capital Territory Administration till date and by what means was the sum remitted?
- h. What are the terms of the Respondent's engagement by the Federal Capital Territory Administration and how much accrues to the Respondent from this engagement?
- i. Certified copy of accounts of the Respondent showing all moneys realized in the course of her services to the Federal Capital Territory Administration.
- j. Certified copy of the Respondent's contract of engagement with the Federal Capital Territory Administration.

His Lordship directed that the order be served on the Respondent forthwith.

G.N. Chigbu, Esq. – for the plaintiff/Applicant ■



FOI Litigation

Continued from page 9

Court Grants Kano State Government Leave to Seek Information on Deductions for Petroleum Support Fund

In his affidavit in support of the application, Omoyibo said it was expedient that the university publishes the examination results, having published the vacant positions in some national newspapers on May 21, 2013, noting the inconvenience, he and other applicants who come from across Nigeria had to go through to participate in the examinations that held on November 21, 2013.

He said “the institution has refused to release the examination results “despite repeated demands” and urged the Court to issue an order that the results be published and made available to him within seven days of the receipt of the court’s order.

No date has been fixed for the hearing. ■

Continued on page 12

Three Year FOI Battle for Information on Nuclear Safety in the UK

In the United Kingdom, an environmental journalist, Rob Edwards, received information and published details of lapses in nuclear weapons safety in 2009 after a three-year battle, using the country's Freedom of Information Act, 2000.

The UK's Ministry of Defence finally released the information to Edwards, who freelances for the Glasgow-based **Sunday Herald**, on the eve of a hearing by the Information Tribunal.

Edwards first approached the Ministry of Defence in December 2006 to ask for six reports by its internal nuclear safety regulators, to find out about their work in ensuring that there are no accidents involving Britain's nuclear warheads.

The Ministry of Defence only gave him censored versions of the reports. But he appealed to the Information Commissioner, Christopher Graham, who is the oversight authority under the UK's FOI Act.



David Cameron, British Prime Minister

The Information Commissioner denied Edwards access to the information, ruling that it was in the public interest for safety regulators to make criticisms “free from the ‘chilling effect’ of having these discussions made public.”

Edwards then appealed to the Information Tribunal, which oversees the Information Commissioner. To ensure he had a watertight case, he sought and obtained the services of three

experts to help him, offering to pay them nothing. The experts were Fred Dawson, a former senior Ministry of Defence official; John Large, an independent nuclear consultant; and John Ainslie, the coordinator of the Scottish Campaign for Nuclear Disarmament.

The team submitted 100 pages of evidence on why the information sought by Edwards should be released, leading to the reports being given to him just before the tribunal's hearing could start. ■

Using Access to Information Law to Check Environmental Disasters

In August 2013, an 11-year-old boy reportedly drowned after falling into an abandoned mining pit in Kutai Kartanegara, a district in Indonesia's East Kalimantan province. It was not the first time such a tragedy happened in the area. On December 24, 2011, two children were found dead in a mining pit near Samarinda, the capital of East Kalimantan.

Since 2011, at least 11 more deaths in the mining pits have been reported. There are reportedly at least 500 mining pits in the province. Some of these are near residential communities, schools, and paddy fields. In the past decade, mining concessions have caused water, land and air pollution, flooding, landslides and disruption to the normal lives of residents in the area.

These issues prompted civil society organizations and residents around the mining sites to form in 2012 a movement called the Gerakan Samarinda Menggugat (GSM).

After gathering all the complaints, GSM filed a case in

June 2013 against Samarinda authorities “for negligence and for violating existing environmental laws.” To support the case, the group asked the help of JATAM, a mining advocacy network, to request, under Indonesia's Freedom of Information (FOI) Act, for environmental impact assessments (EIA) from more than 60 coal mining companies in the province.

According to Rappler, a social news network, the EIAs, which included information about the contaminants the mining companies produce and their effects in the environment, were assessed and used as evidence supporting the case.

By July 2014, after more than a year, the court ruled in favor of GSM. The court ordered Samarinda authorities to revise mining policies, evaluate all coal mining permits that have been allocated, monitor reclamation and post mining efforts, make environmental improvements, and strengthen strategic efforts to protect community farming and fishing areas from contamination from coal mining activities. ■

FOI Resources

Use of Personal Email Accounts for Public Business

The guidelines below for the use of personal email accounts for public business were issued by the Office of the Information and Privacy Commissioner of British Columbia pursuant to its Freedom of Information and Protection of Privacy Act. No similar guidelines have been issued under the Nigerian Freedom of Information Act, 2011. However, some of the principles outlined and the reasoning in the guidelines would equally apply to the use of personal email accounts for official business by public officials in Nigeria, a practice which is widespread.

INTRODUCTION

This document explains the implications under the Freedom of Information and Protection of Privacy Act ("FIPPA") for use of personal email accounts for work purposes by employees of public bodies. It conveys two key messages. First, FIPPA applies to the use of personal email accounts for work purposes. Second, public bodies should not, for FIPPA purposes, allow the use of personal email accounts for work.



Danladi Kifasi, Head of Service of the Federation

email are under the control of a public body. As a general rule, any email that an employee sends or receives as part of her or his employment duties will be a record under the public body's control, even if a personal account is used.

ADEQUATE SEARCH (S. 6(1) OF FIPPA)

FIPPA requires public bodies to make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely. This includes a duty

to perform an adequate search for records that respond to an access request. A public body must be able to prove that its search efforts have been thorough and comprehensive and that it has explored all reasonable avenues to locate records.⁴ The Information and Privacy Commissioner has the authority to compel the production of records in the custody or under the control of a person⁴, including those in personal email accounts.

The use of personal email accounts does not relieve public bodies of their duty to comprehensively search for requested records and to produce them. While nothing in FIPPA directly prohibits public body employees from using personal email accounts, doing so may make it more difficult for their employer to search for records. Employees may be unwilling to produce records from their personal account or to allow access to their accounts for that purpose.

To address this risk, public bodies should create policy on the use of personal email accounts for work purposes. A preferred solution is for public bodies to require the use of its email system for work purposes. If that is truly not practicable, the policy should be that employees must copy their work email account on any work-related email

APPLICATION OF FIPPA TO PERSONAL EMAIL ACCOUNTS

FIPPA applies to all records in the custody or under the control of a public body. Email are records under FIPPA.¹ Records are in the custody of a public body if it has "charge and control" of the records, "including some legal responsibility for their safekeeping, care, protection or preservation."² While the public body would have custody of email residing on its server, it would not have custody for personal email residing elsewhere. The issue in such cases would be whether personal email is under the control of a public body.

The Supreme Court of Canada has said that where a record is not in the physical possession of a government institution, it will still be under its control if these two questions are answered in the affirmative:

- (1) Do the contents of the document relate to a departmental matter?
- (2) Could the government institution reasonably expect to obtain a copy of the document upon request?³

The facts of each case will determine whether personal

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Use of Personal Email Accounts for Public Business

they send from a personal account. This policy should be part of each employee's conditions of employment.

REASONABLE SECURITY MEASURES (S. 30 OF FIPPA)

Another risk relates to security of personal information. FIPPA requires public bodies to take reasonable security measures to guard against unauthorized access, collection, use, disclosure or disposal of personal information. A personal email account, which is often web-based, is much less likely to comply with this requirement than a public body's email system. First, the terms of service for personal accounts may allow thirdparty access to content in a way that is in contravention of FIPPA. Second, security features for webmail services may not be adequate for FIPPA purposes. Any public body that allows use of personal email accounts to send or receive personal information is therefore risking non-compliance with FIPPA.

Storage and Access must be in Canada (s. 30.1 of FIPPA)

Although there are exceptions, including consent by affected individuals,⁶ FIPPA requires public bodies to store and access personal information only in Canada. Public bodies have to assume that webmail resides on servers outside Canada, at least some of the time. This presents a serious risk of non-compliance for public bodies that allow use of personal email that contains personal information.

Disclosure Outside of Canada (s. 33.1 of FIPPA)

FIPPA prohibits the disclosure of personal information outside of Canada unless authorised by s. 33.1. The use of a webmail service that has servers outside of Canada will almost certainly result in public bodies disclosing personal information outside of Canada. Unless s. 33.1 authorizes the disclosure, use of webmail to send or receive personal information would violate FIPPA.

RESPONSIBLE INFORMATION MANAGEMENT

The citizens of British Columbia expect accountability from public bodies in their actions as well as their information practices. One important way for public bodies to demonstrate this accountability is to create an accurate record of actions in a manner that preserves records of enduring value. When employees of public bodies conduct business through their personal email accounts, accountability is easily lost.



Senator Amyim Pius Anyim,
Secretary to the Government of the Federation

CONCLUSION

FIPPA applies to work-related email sent to or received from the personal email accounts of public body employees. This document shows how use of personal email accounts for work purposes presents several challenges for public bodies under FIPPA. As indicated above, for FIPPA purposes, public bodies should not allow

use of personal email accounts to conduct public business. They should ensure that clear policy is in place in this area and that all employees agree to comply with the policy.

If you have any questions about this document, please contact us at:

Office of the Information and Privacy Commissioner for BC

Tel: (250) 387-5629 (in Vancouver call (604) 660-2421)

Elsewhere in BC call 1-800-663-7867

Email: info@oipbc.ca

ⁱ See s. 3(1) of FIPPA.

ⁱⁱ See para. 23 of Order 02-30, [2002] B.C.I.P.C.D. No. 30 and p. 9 of Order No. 308-1999, [1999] B.C.I.P.C.D. No. 21.

ⁱⁱⁱ See *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25. See, for example, Order F07-12, [2007] B.C.I.P.C.D. No. 17, Order 00-32, [2000] B.C.I.P.C.D. No. 35 and Order 00-26, [2000] B.C.I.P.C.D. No. 29.

^{iv} See s. 44(1)(b) of FIPPA.

^v This policy should also apply where there is a ban on use of personal email accounts for work purposes, to deal with cases where an employee failed to comply with the policy and possesses personal email that might be responsive to an access to information request.

^{vi} See s. 11(2)(b) of the Freedom of Information and Protection of Privacy Regulation. The rules for obtaining consent mean that public bodies will rarely be authorized to use personal email accounts. ■

What is it About September and Freedom of Information?

More by coincidence than by design, September seems to have taken on a special significance in the field of Freedom of Information in Nigeria, even internationally.

Over the last 12 years, freedom of information organizations and advocates around the world have celebrated September 28 of every year as international Right to Know Day. The celebration of the Day arose from a meeting of freedom of information organizations from around the world, held on September 28, 2002, in Sofia, Bulgaria, which also led to the birth of the Freedom of Information Advocates Network, an international information-sharing network of organizations and individuals working to promote the right of access to information.

Since then, every year, organizations and advocates across the globe generate countless activities and initiatives aimed at raising awareness about the importance of the right of access to information throughout the world.

In Africa, freedom of information organizations and advocates have not only celebrated the day, they have mounted an aggressive campaign since 2011 for official recognition for the Day by the African Union (AU) to designate it as the African Right to Information Day and for the United Nations to recognize it as the International Rights to Information Day.

The campaign gained traction in 2012 when the African Commission on Human and Peoples' Rights passed Resolution 222 on May 2, at its 50th Ordinary Session held in Banjul, The Gambia, calling on the "AU to consider proclaiming 28 September as International Right to Information Day in Africa"

In Nigeria, shortly after the campaign for the passage of the Freedom of



Mr. Edetaen Ojo,
Executive Director of Media Rights Agenda

Information Bill began, MRA organized the first Freedom of Information

advocacy training seminar for representatives of civil society organizations from September 10 to 12, 2000, with support from the then International Human Rights Law Group, which later became known as Global Rights: Partners for Justice.

A few days later, from September 13 to 15, 2000, MRA again, supported by the Law Group, convened the first Freedom of Information Stakeholders Conference in Abuja. Declared open by the then Minister of Information, Professor Jerry Gana, the conference resolved to form a Freedom of Information Coalition and accordingly, the Nigerian Freedom of Information Coalition was born in September 2000.

September has continued to feature regularly in the calendar of freedom of information-related activities in Nigeria and around the world since then.

In 2001, MRA with support from the London-based ARTICLE 19 and in partnership with the Institute for Democracy in South Africa (IDASA), convened the first African Regional Workshop on Access to Information, which took place at the Rockview Hotel in Abuja on September 19 to 21. It brought together a wide range of NGOs active in human rights, development and the media sector in sub-Saharan Africa as well as from North America, Europe and Asia.

The Workshop produced and endorsed a Statement and Plan of Action to promote the right to information as a fundamental human right, to work towards the adoption of legislation on freedom of information throughout Africa, and to contribute to a global campaign for this right.

Five years later, this time in collaboration with the Open Society Justice Initiative (OSJI), MRA again organized another

Regional Workshop on Freedom of Information in Africa, which was held in Ajah, Lagos, on September 22 and 23, 2006, and led to the "Lagos Declaration on the Right of Access to Information", which proposed the establishment of the Africa Freedom of Information Centre (AFIC) and appointed the first Steering Committee for the Centre, thus leading to the birth of the Centre in September 2006.

Other significant September events have included the convening in 2011 of the Pan African Conference on Access to Information (PACAI), held in Cape Town, South Africa, from September 17 to 19, culminating in the adoption on September 19, 2011 of the African Platform on Access to Information (APAI) Declaration, which has recommended the adoption of September 28 of every year as International Right to Information Day in Africa and globally.

More recently, in September 2013, MRA organized a Freedom of Information Implementers Strategy Meeting in Abuja as part of efforts to revamp the Freedom of Information Coalition. The meeting also explored mechanisms for ensuring greater coordination, collaboration, as well as information, experience and skills sharing and exchange among implementers in FOI implementation activities.

It is September again. What will the rest of the month hold for Freedom of Information? Many freedom of

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UNEP's Access to Information Policy Sparks Criticisms

The United Nations Environment Programme's (UNEP) Executive Director, Achim Steiner issued its pilot Access to Information Policy on June 16, 2014. This is something that access to information/environmental organizations and activists all around the world have been pushing for. However, the policy has been described as falling short of true transparency and has been the subject of strong criticism.

It is a one year interim policy subject to a one-year period of use and evaluation before a permanent policy is finalized. Civil society, among others, are calling for its reform and radical improvement within the year but however urge UNEP to remain ahead of other international and multilateral institutions in this regard.

UNEP describes itself as “the voice for the environment within the United Nations system ... acting as a catalyst, advocate, educator and facilitator to promote the wise use and sustainable development of the global environment.”

An access to information policy therefore falls squarely within UNEP's own mission and could serve as a powerful tool to help the vast number of stakeholders who rely on the organization, critics say.

The policy is regarded as lagging behind other access to information policies, contrary to the statement made by UNEP's Executive Director in the foreword of the 2010 Bali Guidelines on Principle 10: **“Improving access to environment information, public participation in decision-making and access to justice on environmental matters will be among the litmus tests of a strong and forward-looking outcome at Rio+20 in June 2012.”**

The post Rio+20 UNEP was expected to have a strong new access to information policy setting an example for transparency and openness for multilateral and international institutions which explains the disappointment the policy has garnered, having fallen short of those expectations.

The new policy is explained to include language that casts exceptions to the right to information in such broad language that refusal of any document and information under it can be justified.

“Grounds of refusal” are typically narrowly defined, only

applying to very specific types of information. Most ATI policies include exemptions recognizing that some information may cause serious harm if released—such as information that could prejudice or jeopardize national security. The policy however includes very broad provisions that allow it to deny information requests, essentially defeating the purpose of the policy. Again, this

goes against the UNEPs own 2010 Bali Guidelines making it clear that **“States should clearly define in their law the specific grounds on which a request for environmental information can be refused. The grounds for refusal are to be interpreted narrowly, taking into account the public interest served by disclosure.”**

The policy has also been criticized for not engendering any confidence in the impartial application of the rules as global citizens who apply for information from UNEP have no guarantee that their requests will be evaluated and addressed by an impartial and

independent body.

Clause 21 of the UNEP Access to Information Policy establishes the UNEP Access to Information Panel consisting of only seven of UNEP's own staff members appointed by the organization's executive director. This appeal mechanism for reviewing, considering and deciding on the denial of information has no non-UNEP members to ensure independence or impartial application of the policy.

With no independent non-UNEP members the panel is unlikely to act independently from UNEPs management positions, against Clause 15 of UNEP's own Bali Guidelines of 2010 which states that **“States should ensure that any...person who considers that his or her request for environmental information has been unreasonably refused...has access to a review procedure before ...independent and impartial body to challenge such a decision, act or omission.”**

An additional concern is that the new policy undermines accountability as Clause 23 with regard to appeals states that **“The outcome of the review will be communicated to the requestor and there will be no requirement for providing a detailed explanation of the outcome of the review.”** Therefore, reasons need not be given to the information requester as to why his/her appeal has been rejected. The policy does not even cast an obligation on the officer



Achim Steiner, Executive Director of UNEP

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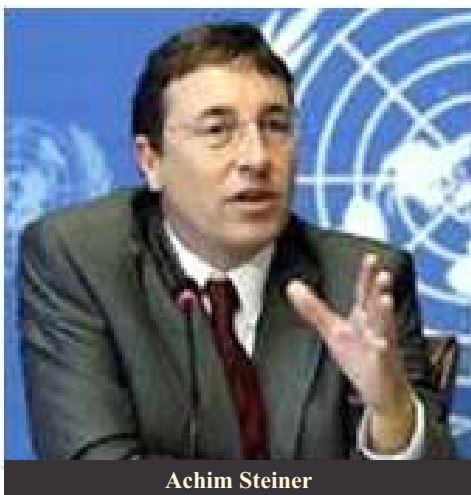
UNEP's Access to Information Policy Sparks Criticisms

who makes the first decision to give reasons for the refusal. Information requests can then be denied by UNEP without reasons and none of the decisions made under the policy are required to be made public. Future requestors will have no guidance on how the organization makes its decisions or if decisions are made fairly by competent individuals considering all relevant facts.

The 2010 Bali Guidelines say **"States should ensure that decisions relating to the environment taken by ... independent and impartial or administrative body, are publicly available ..."**

In sharp contrast, The World Bank and the Asian Development Bank make their access to information decisions public on their websites and provide reasons for the refusal of information requests, both at the initial and appeal decision stages. The new policy undermines the philosophy behind UNEP's new technology innovation - UNEP LIVE which seeks to proactively disseminate environmental information to the global citizenry. While the policy outlines some documents that will be released proactively rather than by individual requests, it includes no obligation on UNEP to collect and disseminate information via its most publicly accessible platform UNEP Live.

It has been proposed that it should be possible to place on UNEP Live every document that UNEP decides to release on an information request so that the whole world not just the requester could have access to it. It has also been suggested that UNEP automate the



Achim Steiner

access to information policy via UNEP Live so that global citizens do not have to follow an outmoded bureaucratic application and appeal process under the policy. UNEP is being urged to use this opportunity to act as an outstanding leader in proactively providing relevant, timely, and accurate environmental information and data to the public. This opportunity pushes UNEP to be innovative in its policy, recognizing the potential of open data and the need to release

information in new forms which is presently not reflected in the current draft.

UNEP is at a pivotal time in its history. It is currently expanding Governmental membership from 58 member countries to "universal membership" involving participation of all 193 UN member states.

This move will widen the organization's scope and reach, making transparency more important. The policy is a preliminary step but it needs to be strengthened.

UNEP has been urged to consult broadly with civil society, and make space for innovation and work towards a policy that reflects the scale of information needed to overcome the great environmental challenges we face in this decade.

Potential users are encouraged to make requests under the policy within the year to help in the test run and finalizing the policy. It is hoped that the concerns raised on the policy will be adequately addressed in reaching the final version to be produced by the end of June 2015. ■

What is it About September and Freedom of Information?

information organizations and activists around the world are preparing to celebrate the 12th annual international Right to Know Day with innovative activities on September 28.

Already, early in the month, on September 4, 2014, MRA in partnership with several other organizations from around the

continent and beyond launched in Istanbul, Turkey, the African Declaration on Internet Rights and Freedoms, a Pan African initiative to promote human rights online, which also reaffirmed the right of everyone to information. The launch was the culmination of a year-long process of developing the Declaration, which began in Nairobi, Kenya, on September 24, 2013 with a planning

by a small group of human and internet rights organisations, chaired by MRA's Executive Director, Mr. Edetaen Ojo.

There are so many more freedom of information related events that have happened during the month of September over the years. Coincidence? Perhaps just the magic of September. ■

FOI Tracker

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
<i>Paradigm Initiative Nigeria (PIN)</i>	<i>Relevant records, documents and information on the alleged \$40M Internet surveillance contract supported by the 2013 budget and awarded to an Israeli company by the Federal Government.</i>	<i>Office of the President's Special Adviser on Media & Publicity</i>	<i>Monday, May 6, 2013</i>	<i>The information was not provided.</i>	<i>A matter was instituted in court to compel disclosure</i>
<i>Media Rights Agenda (MRA) and the Public and Private Development Centre (PPDC)</i>	<i>Annual budget and the Public Procurement plans of the Nigerian Civil Aviation Authority (NCAA) for the years 2012 and 2013</i>	<i>Nigerian Civil Aviation Authority</i>	<i>21 October 2013</i>	<i>A four-page reply dated November 11, 2013 and signed on behalf of the Director-General by NCAA's Legal Adviser, Mr. E.D. Chukwuma refusing to disclose the records on claims that it was withholding the information based on the exemptions in Sections 12 and 26 of the FOI Act</i>	<i>Instituted a suit at the Federal High Court in Lagos asking the court to compel the Nigerian Civil Aviation Authority (NCAA) to release to them the procurement records and asking the court to compel the Attorney-General of the Federation to initiate criminal proceedings against the NCAA for the offence of "wrongful denial of access to information" under Section 7(5) of the FOI Act</i>
<i>Spaces for Change, a youth development and advocacy group.</i>	<i>Information to verify the number of jobs the government said it had created between 2011 and 2013 following the tragic Nigerian Immigration Service (NIS) Stampede which unmasked the grave unemployment situation in Nigeria. The request demanded to see the breakdown and methodology used in</i>	<i>Office of the Coordinating Minister of the Economy, Statistician-General of the Federation, Office of the National Bureau for Statistics, Office of the</i>	<i>March 2014</i>	<i>The National Bureau of Statistics responded providing the summary of the job creation statistics detailing of national statistical surveys covering Quarter 4 2012, Q3 2012 - Q1 2013</i>	<i>Successful access to information</i>

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FOI Tracker

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
	generating the official data of 1.6 Million jobs created between 2011 and 2013.	Chief Economic Adviser to the President.		and Q2, Q3 & Q4 2013	
Socio-Economic Rights and Accountability Project (SERAP)	“Up-to-date information and documents on the spending relating to primary education in the state, covering the period from 2005 when the first budget was released for the Universal Basic Education Commission (UBEC) program in the state.”	Oyo State governor, Abiola Ajimobi Also sent to the Governors of Enugu, Kaduna and Rivers states.	June 2014	Refusal to provide information	Suit instituted against the Oyo State government
The Borderless, a non-profit advocacy group.	“Request for Information, Operation Compliance – Nigerian Content Act” requests to enlighten the public on the level of compliance by the IOCs after over four years of its implementation. Information requested includes the results of performance, monitoring and evaluation exercises of the board accessing the extent of compliance for the year 2013 regarding Shell Companies in Nigeria, Total Upstream, Nigerian Agip Oil Company (NAOC), Addax Petroleum and Chevron Nigeria Limited.	The Nigerian Content Monitoring and Development Board (NCMDB)	September 1, 2014	Requests were ignored and therefore denied.	Denial of Access to Information

Lagos Declaration on the Right of Access to Information

Eight years ago this month, Media Rights Agenda (MRA) convened a Regional Workshop on Freedom of Information in Africa in collaboration with the Open Society Justice Initiative (OSJI). The workshop, held in Ajah, on the outskirts of Lagos, produced an important document, the “Lagos Declaration on the Right of Access to Information”, which proposed and led to the establishment of the now-thriving Africa Freedom of Information Centre (AFIC). The observations and principles outlined in the Declaration remain as relevant today as they were eight years ago:

Introduction

On 22-23 September 2006, representatives of 30 civil society organisations from 16 countries in Africa met in Lagos to discuss ways to promote the right of access to information held by public authorities and, in particular, to share experiences regarding strategies for advancing the adoption of laws that fully protect this right.

The Regional Workshop on Freedom of Information in Africa was organized by Media Rights Agenda (MRA) in collaboration with the Open Society Justice Initiative (OSJI) and received expert presentations from Freedom of Information advocates from Albania, Bulgaria, and the United States.

Observations and Resolutions

The participating organizations expressed concern that Africa is lagging behind in the global movement towards the adoption of Freedom of Information Laws.

The organisations hereby:

- * recall African instruments such as the African Union Convention on Preventing and Combating Corruption, which requires States Parties to adopt measures that guarantee access to information; the Treaty of ECOWAS, which encourages the free flow of information within national borders as well as regional cooperation in the area of information; and the Declaration of Principles on Freedom of Expression in Africa, issued by the African Commission on Human and Peoples' Rights, which affirms that “public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information”;
- * call on governments to guarantee and respect the right of access to information consistent with African and international law and best practice;
- * note with concern the increasing tendency to view access to information as a threat to public safety and security;
- * affirm that access to information is essential for the protection of other human rights and contributes to accountability, social stability, security and economic development;



Edetaen Ojo, Executive Director, Media Rights Agenda

- * note the value of access to information in the fight against corruption, as recognised by international treaties;
- * in particular, urge all countries in Africa to sign and ratify instruments such as the African Union Convention on Preventing and Combating Corruption and the UN Convention Against Corruption, which require State Parties to adopt measures that guarantee access to information.

Principles

In light of the foregoing, we call on governments in Africa to work with civil society organisations to draft bills and adopt laws that respect, at a minimum, the following principles:

1. **Access to information is a right of everyone.**
Anyone may request information. There should be no citizenship requirements and no need to justify why the information is being sought.
2. **Access is the rule – secrecy is the exception.**
Information held by government bodies is public in principle. Information can be withheld only for a narrow set of legitimate reasons set forth in international law and also codified in national law.
3. **The right applies to all public bodies and private**

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Lagos Declaration on the Right of Access to Information

bodies performing public functions. The public has a right to receive information in the possession of any institution funded by the public and private bodies performing public functions, such as water and electricity providers.

4. **Making requests should be simple, speedy, and free.** Making a request should be simple. The only requirements should be to supply a name, address and description of the information sought. Requestors should be able to file requests in writing or orally. Information should be provided immediately or within a short timeframe. The cost should not be greater than the reproduction of documents and mailing, where applicable.
5. **Officials have a duty to assist requestors.** Public officials should assist requestors in making their requests. If a request is submitted to the wrong public body, officials should transfer the request to the appropriate body.
6. **Refusals must be justified.** Governments may only withhold information from public access if disclosure would cause demonstrable harm to legitimate interests, such as national security or privacy. These exceptions must be clearly and specifically defined by law. Any refusal must clearly state the reasons for withholding the information.
7. **The public interest takes precedence over secrecy.** Information must be released when the public interest outweighs any harm in releasing it. There is a strong presumption that information about threats to the environment, health, or human rights, and information revealing corruption, should be released, given the high public interest in such information.
8. **Everyone has the right to apply for a review of an adverse decision.** All requestors have the right to a prompt and effective judicial review of a public body's refusal or failure to disclose information.



Dr. Chidi Anselm Odinkalu, Senior Legal Officer of OSJI

9. **Public bodies must maintain and manage records, and should proactively publish core information.** Every public body should make readily available information about its functions and responsibilities, including a list of the types of documents and information that it holds, without need for a request. This information should be current, clear, and in plain language.
10. **The right should be guaranteed by an independent body.** An independent agency, such as an ombudsperson or commissioner, should be established to review refusals, promote awareness, and advance the right to access information.

Regional Freedom of Information Centre

In order to provide a platform for cooperation and collaborative activities among civil society organizations in the region, the participants agree to establish a regional Freedom of Information Centre in Africa, where experiences garnered in the different countries can be pooled and shared among civil society activists and which will provide technical assistance to organizations involved in any stage of Freedom of Information advocacy or implementation.

Adopted in Ajah, Lagos, 23 September 2006.

Windows For Transparency - Nigeria

Windows for Transparency is a 2010 research publication of Media Rights Agenda (MRA). The Windows for Transparency series covered 4 countries in Anglophone West Africa as a report on the “Monitoring Access to Information in West Africa” project.

The series covered Nigeria, Liberia, Sierra Leone and Ghana which were the countries in which the project was implemented. This literature review focuses on the research report for Nigeria which looked at Nigerian Laws with existing Access to Information provisions.

Since the research publication was prior to the enactment of the Nigerian Freedom of Information Act, 2011, the primary aim of the research at the time was to identify clauses in existing laws and regulations in the country which gave citizens or members of the public access to information held by the Nigerian government. It also identified laws and regulations which specifically prohibit or constrain access to information and analysed the rationale behind these restrictions.

The publication explained that the right of access to information is a *sine qua non* (an indispensable and essential action, condition, or ingredient) for a democratic state pursuing the values of accountability, transparency, openness and responsiveness in the affairs of government institutions. It went further to elucidate that the then Government of President Umaru Musa Yaradua cannot progress in its campaign against corruption because it does not espouse the principles of Freedom of Information.

The research focused on every provision in extant

Laws of Nigeria that allowed access to information. It identified two laws that directly provide for access to information. The first provision can be found in Section 22 of the 1999 Constitution of the Federal Republic of Nigeria which empowered the mass media to watch over the Government and ensure that it upholds its objectives. However this provision

is limited by Section 39(3) which made the powers granted to the mass media under Section 22 subject to the provisions of laws that provide for secrecy.

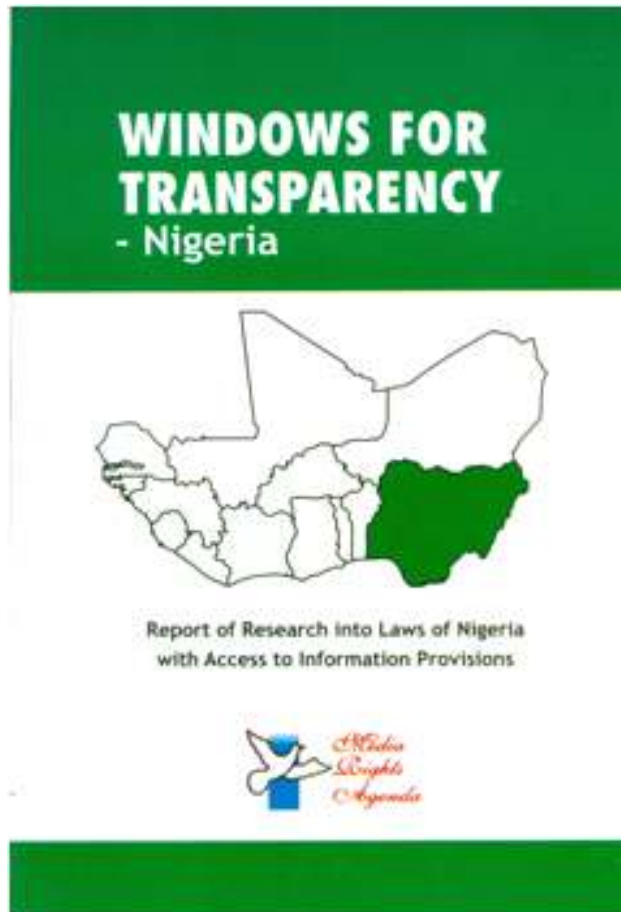
The second is to be found in the African Charter on Human and People's Rights (Ratification and Enforcement) Act which states under Article 9 (1) that every individual shall have the right to receive information; and every individual shall have the right to express and disseminate his opinions within the law under article 9 (2). This is an international treaty that was incorporated into Nigerian Law by virtue of the African Charter on Human and People's Rights (Ratification and Enforcement) Act.

The research revealed and analysed eighty eight (88) other laws which though not expressly providing for freedom of information nevertheless have provisions which makes information accessible to the public.

Some of the identified provisions of the Nigerian Law that advances right to access to information/freedom of information are:

- “ Advanced Fee Fraud and Other Fraud Related Offences Act Of 2006: Section 13 under the duties of telecommunication and internet service providers and internet cafes.
- “ Banks and Other Financial Institution Act Of 1991:

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Section 23 (Display of Interest Rate), Section 25 (Returns by Banks), Section 26 (Publication of consolidated statements), Section 27 (Publication of *Annual Accounts of Banks), and Section 30 (Appointment and power of Director of Banking Supervision and other Examiners).

- “ Births, Deaths, Etc (Compulsory Registration) Act of 1991: Section 41 - Search of Entries Kept by Registrar-General.
- “ Central Bank of Nigeria Act of 2007: Section 28 (Power to require certain Information), Section 35 (Publication of Monetary Policy), Section 57 (Power to License and Regulate Credit Bureau).
- “ Civil Aviation Act of 2006: Section 19 (Power to request for information).
- “ Community Banks Act of 1990: Section 18 (Power to require information).
- “ Corrupt Practices And Other Related Offences Act Of 2003: Section 48 (Protection of informers and Information) and etc

The research identified 30 laws with provisions that hinder access to information. Some of them are:

- “ Section 20 of the Civil Aviation Act
- “ Chapter 7 of the Criminal Code Act
- “ Section 310 of Criminal Procedure Act
- “ Section 7 of the Customs And Excise Management Act Of 2003
- “ Section 24 of the Legislative Houses Powers and Privileges
- “ The Official Secrets Act and etc

The research states that though there are numerous provisions that seem to promote access to information and some others where restrictions seem justified, but when critically analysed, it was obvious that the few provisions/clauses that hinder access to information far outweigh the former in terms of the implication of the clause. It was therefore wise to conclude that it is important to have a law that would guarantee right to information in clear terms. ■

- * “The more that government becomes secret, the less it remains free.” - **James Russell Wiggins**, 1956. US newspaper editor.
- * “The best weapon of a dictatorship is secrecy, but the best weapon of a democracy should be the weapon of openness.” - **Niels Bohr**. Danish physicist (1885-1962).
- * “A nation that is afraid to let its people judge the truth and falsehood in an open market is afraid of its people.” **John F. Kennedy**, 1962.
- * “We seek a free flow of information... we are not afraid to entrust the American people with unpleasant facts, foreign ideas, alien philosophies, and competitive values.” - **John F. Kennedy**, February 1962.
- * “Nothing so diminishes democracy as secrecy.” - **Ramsey Clark**, 1967. U.S. Attorney General.
- * “Unfortunately, secrecy, once accepted, becomes an addiction – it is difficult to kick the habit.” - **Edward Teller**, 1973. Nuclear scientist in commentary article.
- * “Governments that try to control information are fighting a losing battle and if they bother trying, will face exorbitant costs.” - **Thomas Freidman**, 1999 New York Times International Affairs Correspondent.
- * “We must never forget that the free flow of information is essential to a democratic society.” - **Bill Clinton**, 2000. US President in veto message on Intelligence Re-Authorization Bill.
- * “Democracy dies behind closed doors.” - **Damon Keith**, Aug. 26, 2002. US appeals court judge in *Detroit Free Press v. Ashcroft*, 303 F.3d 681.
- * “Official information that enhances people's capacity to exercise their rights belongs in the public domain. This information must be accessible and understandable.” - **United Nations Development Programme**, 2004. Access Position paper.
- * “There's something about official life that makes people want to have power. And secrecy is power.” - **Anthony Lewis**, 2006. U.S. journalist. Interview.
- * “Power corrupts, and there is nothing more corrupting than power exercised in secret.” - **Daniel Schorr**. U.S. journalist. ■

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