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Freedom of Information NEWSLETTER

Volume 1, No. 6, November 2014

FREEDOM OF INFORMATION NEWS

R2K Introduces 'Understanding the FOI Act' Video Series

The Right to Know (R2K) Nigeria has released its video series on Freedom of Information in Nigeria. This comes as an advancement in its advocacy for access to information in Nigeria.

The release came a few days after the celebration of the Right to Know Day on September 28, 2014 and was produced as part of R2K's advocating strides. It aims to be a renewed call for Nigerians to take full advantage of the right to access information.

The video series has eight episodes of carefully selected sections of the FOI Act introducing the Act in what has been described as an engaging, simple and educative style. The first episode in the series titled 'Access to Information is a Right' introduces the series with an approach of exterminating the ignorance of the viewers of their fundamental human right to access information. Other episodes in the series discuss "What is a Public



Mrs. Ene Enonche-Nwankpa of R2K

Institution?", "The ways of accessing information", "Who can apply for information?", "How to apply for information" and many more. The videos incorporate bite-size exposition of the FOI Act and ancillary processes and also highlights salient features of the Act which were broken down, and presented in a topical, concise, easily comprehensible and digestible format.

The aim of the videos includes ensuring proper public education and enlightenment on the FOI Act for a broad audience irrespective of class, gender, profession or age, particularly targeting the demographic of ICT users.

With support from the Open Society Initiative for West Africa (OSIWA), Right to Know Nigeria (R2K) uses this video

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PPDC Launches Animated Online Series on Public Accountability



Ms Seember Nyager of PPDC

The Public and Private Development Centre (PPDC) has launched an online animated series on public accountability titled "The National Cake" with a two-minute episode centered on a Freedom of Information (FOI) request for procurement plans from an important national corporation. The episode titled "Procurement Plan Sir" is "the first of several episodes that would link the due process mechanism to public service delivery which is the result of executed contracts," according to the PPDC.

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FREEDOM OF INFORMATION NEWS

R2K Introduces 'Understanding the FOI Act' Video Series *Continued from page 1*

series to support its unrelenting efforts to increase public awareness and public participation on the implementation of the Freedom of Information Act (FOI) 2011.

Ene Nwankpa, National Coordinator of R2K stated that "Nigerians continually agitate for transformation in governance, and now, for the past 3 years, since the signing into law of the FOI Act, most successful initiatives for change using the law – such as the removal of the illegal, and now defunct Abuja Park and Pay Scheme – have been largely at the instance of civil society organizations". Ene Nwankpa called on members of the public to move beyond the rhetoric, and to actively participate in using the FOI Act to entrench accountable and transparent processes in the business of governance in Nigeria. Nwankpa also affirmed that all people have the right to access information and hoped that members of the public would be equipped with requisite information learnt from this video on how to make best use of the Freedom of information Act to empower them as citizens.

Mfonabasi Udoh of Isu Media Limited, the production partners for the video series described the series as novel and states that it will revolutionize democracy and open up more opportunities for the media and communications sector in the country.

The videos can be found on R2K website at www.r2knigeria.org, or <https://www.youtube.com>

In its press release announcing the release of the videos, R2K states that it remains committed to promoting open and democratic governance in Nigeria through advocacy for full implementation of the FOI Act. ■

PPDC Launches Animated Online Series on Public Accountability *Continued from page 1*

PPDC said the overall aim is that the animations would contribute towards a shift from a culture of secrecy in the public service towards disclosure of public records that is in the public interest.

PPDC's Chief Executive Officer, Ms Seember Nyager, explained that "This series seeks to present a chance to see things from two sides - the side of the procurement monitor requesting for procurement records and that of the public official in whose custody these records lie. This would play an important role in helping both sides understand how their actions come across to others. It would also help both sides better understand each other as most times, we are unable to see how our actions come across to others until we step outside of ourselves and watch our lives being played out before our very eyes."

According to her, "For years, assessment reports have been written and comments have been made about the role procurement monitors have played in ensuring a better value-driven public finance system in Nigeria. The National Cake series presents a chance to see things from both sides of the fence."

The project is supported by the Global Partnership for Social Accountability and Frame Factory Consulting.

The two- minute episode is available at: <https://www.youtube.com/watch?v=0ndrNAJDqS8> ■

FREEDOM OF INFORMATION NEWS

Toby Mendel Emerges FOIANet Chair

Following elections in October, members of the Steering Committee of the Freedom of Information Advocates Network (FOIANet) have been announced with Toby Mendel emerging as Chair, having got the most votes.

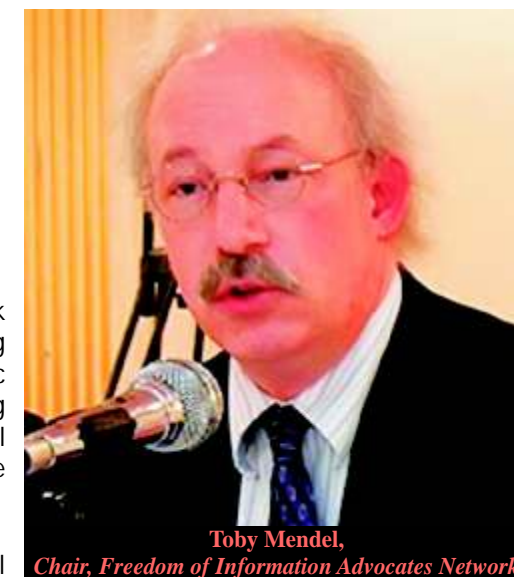
Member organizations of the Network voted in the new seven-member Steering Committee through an electronic platform during the one week voting period. The new Steering Committee will run the affairs of the Network over the next four years.

Having got the most votes, Toby Mendel becomes the Chair of the Committee with 29 votes and this would be the second term. The Chair is the primary spokesperson for the network who also plays a more active liaison role with the FOIANet secretariat.

Other members of the Committee are Carole Excell who came close to the Chair with 28 votes, Toby McIntosh, Taranath Dahal, Ádám Földes, Gilbert Sendugwa, Alexander Kashumov and Ginger McCall.

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



Toby Mendel,
Chair, Freedom of Information Advocates Network

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 Steering Committee is a key part of the FOIANet governing structure and its main functions include bringing expertise and ideas to the FOIANet from a diverse range of communities and regions; Overseeing 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 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.

The first meeting of the new Steering Committee is to hold this month. ■

MRA Concludes Training of TMG Members for FOI and Elections Project

Media Rights Agenda (MRA) and the Transition Monitoring Group (TMG) have concluded a series of workshops aimed at training TMG member organizations to use the Freedom of Information (FOI) Act to engage preparations for the 2015 General Elections.

The last of the series of six zonal workshops was held in Bauchi on October 7 to 9, 2014 for TMG member organisations in the North East geo-political zone of the country.

About 190 member organizations of the TMG across the country were trained under the project which seeks to equip them with the knowledge and skills to use the FOI Act to determine the level of preparedness of relevant public

institutions for the 2015 elections. The project is being implemented with support from the Democratic Governance for Development (DGD) II Project of the United Nations Development Programme (UNDP). The DGD II Project is a joint donor-funded project managed by UNDP aimed at 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), and the UNDP.

The workshops were a part of a series of activities implemented under a pilot project on the "Freedom of Information and Elections", leading up to the 2015 elections

Under the project, the TMG and MRA are collaborating to use the FOI Act to obtain information and assess the preparedness of the Independent National Electoral Commission (INEC) and other relevant government agencies for the 2015 elections.

Prior to the Bauchi workshop, MRA and TMG held five other workshops which took place in Ibadan for the South-West Zone of the Country on August 12 to 14; Kaduna, North-West on August 18 to 20; Abuja for the North-Central on August 18 to 20; Enugu, for the South-East on September 16 to 18; and Calabar, for the South-South on September 16 to 18. ■

Mosunmola Oladapo: A Young Lawyer with a Passion for Success

Although only three years at the Bar, Ms Mosunmola Theresa Oladapo exhibits the confidence of someone who has practiced Law for many years, unafraid to express her views on any legal subject and quite ready to take on anyone.

Mr. Ayodeji Acquah, a lawyer her senior by more than two decades, who has worked with her on a number of freedom of information cases, says of Ms Oladapo: "She is very sharp and has a great ability to think on her feet in court."

A graduate of Law from the then University of Ado-Ekiti, Ms Oladapo obtained her LLB in 2010 and was called to the Bar after she obtained her BL from the Abuja Campus of the Nigerian Law School in 2011. She is presently working towards qualifying as an Associate of the Institute of Chattered Secretaries and Administrators of Nigeria (ICSAN).

During her one-year National Youth Service Corps programme, Ms Oladapo served in the Ministry of Justice of Delta State, working closely with the State Attorney General and Commissioner for Justice, Mr. Charles Ajuyah (SAN).

Post NYSC, she worked briefly with the Law firm of Obusom, Obusom and Co., also in Delta State, before moving to Lagos where she initially worked with Victor Opara & Co, a law firm based in Lagos which provided her the opportunity to appear before both inferior courts and superior courts of record.

Ms Oladapo describes herself as an open-minded individual with an undying passion for success in all pursuits. She first became familiar with the issue of Freedom of Information, having read about the campaigns by civil society organizations to get the Freedom of



Information Bill passed into Law prior to 2011, according to her, "when the Freedom of Information Act was nothing but a collector's item in the hands of our Legislators".

She became fully and more actively engaged with Freedom of Information after joining Media Rights Agenda initially as one of its Legal Officers and subsequently, also as the Coordinator of the Freedom of Information Coalition.

At Media Rights Agenda, Ms Oladapo became fully immersed in litigating FOI cases as well as being involved with FOI training for a range of actors, particularly civil society activists and journalists, alongside other FOI related activities.

Ms Oladapo describes the present status of Freedom of Information in Nigeria as still developing. She explains this perspective saying that stakeholders still have a lot to do and keep doing towards the advancement and success of FOI in Nigeria.

According to her, "There is no doubt as to the positive status the Freedom of Information Act has garnered these past three years in Nigeria, but I strongly believe that such a status can be heightened via continuous usage of

the Freedom of Information Act by citizens, conscious implementation of the Act by civil organizations, dutiful approach to the Act by public institutions and astute understanding of the details of the Act by the Judiciary thereby launching Nigeria into the developed world of Freedom of Information."

She highlights one of the challenges faced in the fight for freedom of information to include the level of ignorance exhibited by some of judges with respect to the provisions of the Freedom of information Act, stating that "it is disheartening to listen to or read decisions of some judges on issues as to whether the Freedom of Information Act is applicable to both Federal and State Governments; issues of locus standi and pre-action notice, most importantly where the Act has already answered the questions in its provisions."

She notes that Section 21 of the Freedom of Information Act provides for hearing of FOI matters summarily, meaning that such cases should be heard speedily and to be given precedence over other cases, yet no court that she has appeared before has accorded FOI cases such privilege. She also states that another challenge is in situations where after putting in the best in a case it turns out that justice has already been bargained for.

Ms Oladapo believes a continuous process of sensitization mostly at the grassroots is paramount to all around effectiveness of the Freedom of Information in Nigeria. She also holds the strong belief that in five years' time, FOI would have permeated the opacity in governance to a reasonable extent thereby reducing corruption.

She speaks of Mr Edet Ojo, Executive Director of Media Rights Agenda, as the sole motivator for her in the area of freedom of information. She says

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Federal High Court Strikes Out Suit Seeking Information on Procurement of BMW Cars

A Federal High Court sitting in Lagos presided over by Justice Ibrahim Buba on October 27, 2014 struck out a suit filed by Media Rights Agenda (MRA) and Public and Private Development Centre (PPDC) to compel the Nigerian Civil Aviation Authority (NCAA) to disclose information on the procurement of the controversial BMW cars bought by former aviation minister, Mrs. Stella Oduah.



Mrs. Stella Oduah, Former Aviation Minister

They joined the Attorney-General of the Federation, Mr. Mohammed Bello Adoke, whom they asked the court to compel to prosecute NCAA for wrongful denial of information.

Justice Buba struck out the application on two grounds: he held that MRA and PPDC did not oppose or counter NCAA's submission that by provision of Section 12 of the FOI Act, the information requested by the groups were exempted.

The Judge also held that the MRA and PPDC failed to seek court permission for an extension of the time within which to bring the application for judicial review.

Justice Buba had on October 20, 2014 fixed judgment on the matter for October 27 after hearing final arguments from Miss Mosun Oladapo, lawyer to MRA and PPDC, and Mr. Emeka Okpoko, counsel to the NCAA.

MRA and PPDC filed a motion exparte at the court on December 6, 2013 over the refusal of the NCAA to make some documents available to them. They obtained leave of the court on March 27, 2014 to apply for the reliefs they sought.

NCAA's Counsel, Mr. Okpoko, had filed a notice of preliminary objection, contending that MRA and PPDC did not serve the NCAA with a pre-action notice before filing the suit in court, as provided in Section 24(2) of the Nigerian Civil Aviation Act, 2006. The judge



Ms. Mosunmola Oladapo, Legal Officer at Media Rights Agenda

directed that the objection and the substantive suit be heard together. Mr. Okpoko argued that the failure to issue the pre-action notice makes the suit defective. Besides, he said, MRA and PPDC addressed their letters of October 21, 2013 to the Director-General of the NCAA, arguing that in effect, it was not a request made to the NCAA.

He contended that the refusal by the NCAA to give the documents to the two organizations did not amount to a denial of access to information in the light of Section 12(1)(a)(i)(ii)(vi) of the FOI Act as 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, which renders the information exempt from disclosure by the Act.

Responding on behalf of MRA and PPDC to the issues raised by Mr. Okpoko, Miss Oladapo argued that giving the NCAA 30 days' pre-action notice, as argued, would result in the organizations losing their statutory and constitutional rights of access to court as the FOI Act gives them 30 days from the date of refusal of access, to go to court.

She agreed with Mr. Okpoko that the court had the power to extend the time but argued that relying on the court's power to extend the time would amount to giving up their statutory right of access to court and submitting it to the discretion of the court.

On the claim that the requests for information were made to the Director-General and not the NCAA, Miss Oladapo noted that the FOI Act allows an applicant to make a request to a public official who has custody of the required information.

Besides, she said, it was clear from the official stamp of

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Court Rules that FOI Act Does not Apply to States in Nigeria

On October, 31, 2014, precisely a year after an Ibadan High Court ruled that the Freedom of Information (FOI) Act is not only applicable to federal government agencies but also to all the 36 states of the federation, Justice Okon Abang of the Federal High Court in Lagos ruled otherwise.

Legal Defence and Assistance Project (LEDAP) sued Lagos, Imo, Rivers, Abia, Akwa Ibom and Delta states for failure to provide information it requested under the FOI Act.

LEDAP specifically requested for details of the amount raised and received by the states from the Nigerian Capital Market through public offer or private placement between 2007 and 2011. It also requested for details of stockholders including individuals, companies or public entities that bought or acquired interest in the states' bond or stock at the Capital Market of the respective states.

In addition, LEDAP requested details of how the amounts received were disbursed as well as utilized, including date of disbursement and their beneficiaries.

All the states refused to provide the information and for this reason LEDAP went to Court by first seeking the leave



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

of the court to bring an application for an order of mandamus to compel the states to provide the requested information pursuant to Section 2 of the FOI Act.

Out of the six states sued, only Lagos and Akwa Ibom opposed the suit, and canvassed arguments on the point that the FOI Act could not be binding on them, as it was a federal enactment.

Justice Abang ruled that it is not the intent of the Legislators to make the Freedom of Information Act applicable and binding throughout the federation, that if it is, the Houses of Assembly of each of the 36 states of the federation should have been carried along in the process of the enactment of the law, adding also that the state assemblies were empowered by the 1999 Constitution to make laws for their respective states, and not the other way round.

He concluded by agreeing with the issues raised in the counter-affidavits of Lagos and Akwa Ibom States that the court lacks jurisdiction to entertain the matter in issue, that the Suit lacks merit, being an abuse of court process; null and void and unconstitutional, he then struck out the suit and awarded the Cost of ₦10, 000 in favour of each of the states. ■

Court Orders Delta State to Release Documents Requested under FOI Act

Justice Godwin Briki-Okolofi of a Delta State High Court sitting in Warri ordered on October 30, 2014 the Delta State government to release to Mr. Ben Mene-Ejegi documents and records of a landed property at the Warri Kingdom Royal Cemetery which the state demolished. This was sequel to the failure of Delta State to file its response or enter appearance throughout the hearing of the matter even after being duly served with all the court processes.

Mene-Ejegi had made a Freedom of Information (FOI) request for information pertaining to the said land, which he said is his property, to the Delta State Ministry of Lands, Survey and Urban Development, Asaba which failed to respond to his request.

He subsequently went to court at the Warri Judicial Division where he prayed the Court for an order compelling the Commissioner of the Ministry of Lands, Survey and Urban to release the requested information. The Delta State government failed to file its response or send a counsel. The court heard Mr. Mene-Ejegi's application on October



Gov. Emmanuel Uduaghan of Delta State

21 and adjourned to October 30 when it ruled that Delta State should accede to his request.

Justice Briki-Okolofi ordered Delta State government to produce the instrument with which it acquired the land.

The Delta State government had on June 4 allegedly demolished all the buildings on the said property claiming they were illegal. Following the demolition, Mene-Ejegi made an

FOI request for, among other things, publication of Notice of Government's interest for the acquisition; Edict/Gazette (if any) relating to such acquisition; Survey Plan showing the extent of land affected by such acquisition; Survey Plan showing the extent of the land comprising the royal cemetery at Ugbo-Ijala/Ifiekporo and Notices issued to supposed trespassers into the mentioned land area of any impending demolition exercise.

The Delta State government did not respond to his request prompting him to go to court to seek redress ■

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Federal High Court Strikes Out Suit Seeking Information on Procurement of BMW Cars

the NCAA on the acknowledgement on the two letters of request sent by MRA and PPDC that the requests were received on behalf of the NCAA.

Miss Oladapo also argued that contrary to the NCAA's claim, the requested information is not exempted from disclosure by the FOI Act as it was not compiled by the NCAA for any administrative enforcement proceedings or by any law enforcement or correctional agencies for law enforcement purposes. Instead, she said, it was done or ought to have been prepared in the normal course of business of the NCAA.

She said it therefore followed that the disclosure of the information compiled in the ordinary course of business of the NCAA could not in any way interfere with any investigation whatsoever or with any pending criminal investigation.

Miss Oladapo accused the NCAA of merely seeking to hide under the exemption clause in the FOI Act to defeat the ends of justice.

Besides, she said, it is not sufficient for the NCAA to merely state that it is denying the organizations access to the information requested just because it is relying on section 12 of the Act as the onus is on it to clearly state how the exemption under Section 12 of the FOI Act applies to the circumstances.

Miss Oladapo contended that for the NCAA to validly rely on the exemption, it must show the detrimental effects of disclosing the information requested or demonstrate how such disclosure will adversely affect it.

She argued that in any event, the public interest in disclosing the information sought by MRA and PPDC outweighs whatever injury the NCAA might suffer as a result of any disclosure.

Although served with all the court processes, the Attorney-General of the Federation never made any appearance throughout the proceedings.

MRA and PPDC have however said they were going to appeal the judgment. ■

FOI Lawyer's Profile

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Mosunmola Oladapo: A Young Lawer with a Passion for Success

having had countless but useful discussions and interactions with him on the subject, she is now resolute in her belief that freedom of information, if pursued and thoroughly engaged, will achieve its aim in Nigeria. He has also influenced her desire to work on FOI cases and other related activities and make her mark in this field.

Ms Oladapo describes her most challenging and inspiring case as a matter at the Court of Appeal, Lagos division in which she was informed two hours before Court's sitting that she would be appearing in Court to handle the matter. She had less than an hour to prepare for the case before three eminent justices, led by Justice C.C. Nweze, then a Justice of the Court of Appeal. However, she says, she was lucky to have a good boss in Mr. Victor Opara, who pushed her to challenge obstacles and with adequate guidance on how to present the case.

Ms Oladapo recalls that after a successful outing in the case where she won a ruling over the opposing counsel who was well over 15 years at the Bar, "the presiding Justice asked a question and made a comment that has remained with me

ever since and has formed one of the sources of inspiration for me thus 'how old are you at the Bar? Very soon you will be sitting in front here...' (pointing at the Inner Bar, reserved for SANs)".

This experience, she says, has stayed with her and motivated her as she progressed in her career.

Ms Oladapo urges her professional colleagues to engage the Freedom of Information Act "which is a powerful tool towards effectively enjoying our stakes in this nation." She is also encouraging lawyers to take advantage of the Act as they can use it to ask questions from public institutions that will help their cases.

She insists that "it is high time we became conscious of our right to information just the way we are of our right to life, property and privacy, among others."

Ms Oladapo is also urging lawyers take up pro-bono cases to further enhance the course of Freedom of Information in Nigeria.

The Mode of Challenging Denial of Access to Information under the FOI Act is by Application for Judicial Review, Says Court

In the High Court of Justice, Oyo State of Nigeria
In the Ibadan Judicial Division
Holden at Ibadan
Monday, the 28th of May, 2012
Before the Honourable Justice P. O. Ige, Court 11

Suit No. 1/778/2011

Between:

The Registered Trustees of the
Socio-Economic Rights and
Accountability Project (SERAP)
– PLAINTIFF

And

1. The Governor of Oyo State
2. The Attorney-General of Oyo
State – DEFENDANTS

The Plaintiff in the action, the Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP), by its Originating Summons taken out on September 1, 2011, against the Defendants, sought for the determination of the following question: “Whether by the provision of section 4(a) of the Freedom of Information Act 2011, the defendant is under a legally binding obligation to provide the information requested by the Plaintiff.

The Plaintiff claimed against the Defendants as follows:

1. A declaration that the provisions of the Freedom of Information Act, 2011 are binding on the 1st Defendant and the Oyo State Government.
2. A declaration that by virtue of the provisions of Section 4(a) of the Freedom of Information Act, 2011, the 1st Defendant is under a binding legal obligation to provide the Plaintiff with up to date information on government/ relating to primary education in Oyo State including:
 - a. Detailed information on the total amount of the Universal Basic Education Commission (UBEC) intervention funds that have been accessed by Oyo State through the State Universal Basic Education Commission of Oyo State:
 - b. The total amount of the counterpart fund Oyo

State Government has provided in Oyo State since 2005 and a detailed and up to date information on the spending of the fund, and

- c. Details of projects on which the UBEC intervention and Counterpart Funds were spent and the exact amount of money expended on each of such projects since 2005 in Oyo State.

3. AN ORDER directing the 1st Defendant to provide the Plaintiff with up to date information on government/public spending relating to primary education in Oyo State including:

- a. Detailed information on the total amount of the Universal Basic Education Commission (UBEC) intervention funds that have been accessed by Oyo State through the State Universal Basic Education Commission

of Oyo State

- b. The total amount of the counterpart fund provided by Oyo State Government to the state Universal Basic Education Commission program in Oyo State since 2005 and details and up to date information on the spending of the fund, and
- c. Details of projects on which the UBEC intervention and counterpart Funds were spent and the exact amount of money expended on each of such projects since 2005 in Oyo State.

The Originating Summons was accompanied by a 5-paragraph Affidavit.

Conditional Appearance was entered on behalf of the Defendants by O. A. Ladapo, Esq., Senior Legal Officer, on October 10, 2011. On the same date, the Defendants through the Learned Senior Legal Officer, filed Notice of Preliminary Objection pursuant to Section 6(6)(a) of the 1999 Constitution of the Federal Republic of Nigeria as amended. The said Notice of Preliminary Objection was accompanied with 4 paragraphs Affidavit in Support.

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Senator Abiola Ajumobi, Oyo State Governor

The Mode of Challenging Denial of Access to Information under the FOI Act is by Application for Judicial Review, Says Court

They also filed what they titled “Affidavit in response to Originating Summons” It consists of 4 paragraphs.

O. A. Ladapo, State Legal Officer for the Defendants/Applicants, also filed a written address in support of the preliminary objection of the Defendants. It is dated and filed on October 18, 2011.

The Claimant, through its Executive Director, on November 11, 2011, filed a counter-affidavit in opposition to the Notice of Preliminary Objection filed by Defendants. It has 11 paragraphs. On January 6, 2012 the Claimant's Learned Counsel filed a written address in opposition to the Notice of Preliminary Objection.

A. O. Ladapo Esq., Senior Legal Officer, filed Reply on Points of Law to the Written Address of the claimant on February 23, 2012.

The Notice of Preliminary Objection filed by the defendants was heard on March 26, 2012 and counsel to the parties adopted their written addresses.

In the Notice of Preliminary Objection, counsel for all the Defendants objected to the hearing and determination of the suit on the ground that the court lacks the jurisdiction to entertain and determine the cause of the Claimant as constituted. The particulars are that the suit of the claimant was not commenced by the proper originating process as provided for by Section 20 of the Freedom of Information Act, 2011. The Defendant therefore prayed the Court for an order striking out the suit for the incompetence of its originating processes which robs the Court of its jurisdiction to hear and determine the Claimants cause.’

The Learned Senior Legal Officer for the Defendants formulated two issues for determination, namely:

1. Whether the claimant can successfully commence its action against an alleged breach of the Freedom of Information Act, 2011 by way of originating summons, when Section 20 of the freedom of Information Act specifically mandates that all actions pursuant to the Act shall be commenced

by way of Judicial Review.

2. What is the consequence an action by way other than the originating process prescribed by law?

In his reply, the Learned Counsel to the Claimant, Solomon Edoh Esq., opposed the Preliminary Objection raised by the Defendants and raised an issue for determination namely: Whether on a proper construction of Section 20 of the Freedom of Information Act, 2011, the Claimant's action as constituted is improperly commenced.

Solomon Edoh Esq. is of the view that Section 20 of the Freedom Information Act, 2011 does not stipulate a particular mode or procedure for commencing an action by a person who has been denied access to information by a public

institution. According to Learned Counsel to the Claimant, under Section 20, an aggrieved Applicant who has been denied access to information 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 Applicant access to the information sought.

His Lordship, Justice P.O. Ige noted that the kernel of the 1st and 2nd Defendants/Applicants application is that he has no jurisdiction to entertain or adjudicate on the Claimant's suit in that the Claimant, according to them, did not commence the action by the relevant originating process as prescribed by Section 20 of the Freedom of Information Act. He said “Jurisdiction is the life wire and is vital element in adjudicatory process of the court in administering justice to parties in litigation before it” adding that “It has also been stated that jurisdiction is the body and soul of every judicial proceeding and deliberation and without jurisdiction anything done in a matter will be null and void.”

He referred to the case of Alhaji M. Maigari Dingyadi & Anor. vs. INEC & Ors (2011) 4 SCM 87 at 114 per Adekeye, JSC who held thus: “Jurisdiction is the authority which a court has to decide matters that are litigated before it or



Adetokunbo Mumuni, Executive Director, SERAP

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The Mode of Challenging Denial of Access to Information under the FOI Act is by Application for Judicial Review, Says Court

to take cognizance of the matters presented in a formal way for its decision. Such authority of the court is controlled or circumscribed by the statute creating the court itself or it may even be circumscribed by a condition precedent created by legislation which must be fulfilled before the court can entertain the suit. All of the above touch on the legal authority of the court to adjudicate in the matter. Jurisdiction is fundamental and it is the centre pin the entire litigation hinges on. *Madukolu vs. Nkemdilim* (1972) 2 SCNLR Pg. 341/ *Rossek vs. ACB Ltd.* (1993) 8 NWLR (Pt 312) Pg. 382."

His lordship said thus whereas in this case a Defendant conceives that he has a preliminary point of law capable of terminating in limine the life of a suit, such a Defendant is entitled to file a Notice of Preliminary Objection in that behalf.

He said further that the Court in turn is under an obligation to examine and decide the Preliminary Objection, especially where it challenges the jurisdiction of the Court at the earliest opportunity.

His lordship again observed that "jurisdiction is the pillar of adjudication" and referred to *Chief Yakubu Busani vs Okene Local Government & Anor* (2008) 12 NWLR (PART 1102) at 699 H to 700 A- C per Niki Tobi J.S.C. who said: "A Preliminary Objection is raised where party fails to comply with the enabling law and or the rules of court. See *Mohammed vs. Olawumi* (1993) 4 NWLR (PART 288) 384; *Oloriode vs Oyebi* (1984) 1 SCNLR 390. The proper stage at which a defendant should raise a preliminary objection to the Plaintiff's suit should be either at the inception or early stage of the proceedings. See *Carlen (Nig.) Limited vs. University of Jos* (1994) 1 NWLR (PART 323) 631. There are instances where it is permissible to raise a preliminary objection that can terminate a case at the threshold, the incompetence of which is where the competence of an action is called into question. In a case where the competence of the action is in issue, the court not only has the authority but also the duty to determine the action in limine, as in this appeal, where lack of competence is established. This is because the incompetence of an action robs on the jurisdiction of the court to hear it within t h e

classification of the elements that make jurisdiction as expounded in Madukolu vs. Nkemdilim (1962) 2 SCNLR 341."

He said further that the imperativeness and the need to deal instantaneously with matters concerning jurisdiction was copiously reiterated by Niki Tobi JSC in the case of *Attorney-General of the Federation & Ors vs. Usman Abubakar & Ors.* (2008) 16 NWLR (PART 1112) 135 at 158 A- E.



Mohammed Bello Adoke,
Minister of Justice and Attorney General of the Federation

His lordship said the sole issue for consideration on the Defendants/Applicants' application is whether the action was on September 15, 2011 initiated or commenced in accordance with due process of law.

The entire submission and/or arguments of Learned Counsel to the Defendants/Applicants and Claimant/Respondent revolve around Section 20 of the Freedom of Information Act, 2011 which provides as follows: "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 of the thirty days fix or allow."

He said it has long been settled that the Constitution or a statute must be construed literally giving the word in such Constitution or statute their ordinary grammatical meanings, adding that it is also the law that in ascertaining the true meanings of the provisions of the Constitution and statute, the Constitution or the statute being interpreted or construed must be read and construed as a whole. He referred to *Action Congress (AC) & Anor vs. INEC* (2007) 12 NWLR (PART 1048) 222 at 259 B- D.

His lordship also referred to *R.T. Hon. Rotimi Chibuike Amaechi vs. INEC & Ors.* (2008) 5 NWLR (PART 1080) 227 at 314 H.

He said he had carefully gone through all the sections of

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the Freedom of Information Act 2011 and was of the solemn view that the words "may apply to the court for a review of the matter" could only mean that if the Applicant, that is the person who had applied for an information from a public officer or institution and was denied the necessary information, he can apply to the court vide an application for a Judicial Review of the decision of the public officer or public institution concerned for an order of mandamus to compel the public officer or public institution to provide the Applicant the information required if the Court considers it appropriate that the Applicant for the information is entitled to it.

He held that the Applicant must approach the Court under Order 40 Rule 3 of the High Court (Civil Procedure) Rules 2010 of Oyo State to seek the leave of Court to bring an application for an appropriate order against the recalcitrant public institution or public officer refusing to give the Applicant the information he requires.

He said the purpose of an application for leave is to enable the court assess whether the Applicant has sufficient interest, legal or equitable, in the information he seeks from the public officer or institution concerned so as to ward off meddlesome interlopers and busybodies. He referred to Order 40 Rules 1- 5(1) & (2) of the High Court Civil Procedure Rules 2010 which provide as follows:

APPLICATION FOR JUDICIAL REVIEW

- (1)1. An application for:
 - a) an order of mandamus, prohibition or certiorari; or
 - b) an injunction restraining a person from acting in any office in which he is not entitled to act shall be made by way of an application for judicial review in accordance with the provision of this order.
- (2) An application for a declaration or an injunction (not being an injunction in Rule (1) (b) of this Rule) may be made by way of an application for judicial review and the court may grant the declaration or injunction if it deems it just and

convenient to grant it by way of judicial review, having regard to:

- a) The nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;
- b) The nature of the persons and bodies against whom relief may be granted by way of such an order;
- c) All the circumstances of the case.

2. On an application for judicial review any relief mentioned in Rule 1 may be claimed as an alternative or in addition to any other relief so mentioned if it arise out of, relates to or is connected with the same matter.

3. (1) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with this rule.

(2) An application for leave shall be made ex-parte to the judge and shall be supported by:

- a) A statement setting out the name and description of the application, the reliefs sought and the grounds on which they are sought;
- b) an affidavit verifying the facts relied on; and
- c) a written address in support of application for leave.

(3) The judge hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise on such terms if any, as he deems fit.

(4) The judge shall not grant leave unless he considers that the applicant has a sufficient interest in the matter to which the applicant relates.

(5) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order,



Justice Aloma Mariam Mukhtar, Chief Justice of Nigeria

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conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(6) Where leave to apply for judicial review is granted then

- i. if the relief sought is an order of prohibition of certiorari and the Judge so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the judge otherwise orders;
- ii. if any other relief is sought, the judge may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ;
- iii. the judge may impose such terms as to cost and as to giving security as he deems fit.

4. An application for judicial review shall be brought within 3 months of the date of occurrence of the subject of the application.

5. (1) When leave has been granted the application shall be made by motion or by originating summons.
- (2) The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings before a judge and the object of the application is either to compel the judge or an offer of the court to do any act in relation to the proceedings, or to quash them or any order made therein the notice or summons shall also be served on the clerk or Registrar of the Court and where any objection to the conduct of the judge is to be made, on the Judge".

His lordship said in addition, the opening word "Any Applicant" and "may apply to the court for a review of the matter within thirty days" brings any matter concerning denial to access information within the penumbra of procedure in Judicial Review.

He said further that Section 21 of the Act also makes it clear that the action must be through Judicial Review because it says an application under Section 20 shall be heard and determined summarily.

According to him, Section 25 of the Act also enables the Court to make an order against any institution failing to disclose the information or part thereof to the Applicant where the Applicant is able to show or establish his entitlement to the information requested.

His lordship said that is the whole essence or import of Section 272(1) & (2) of the 1999 Constitution (as amended), which provides:

272(1) Subject to the provisions of Section 251 and other provisions of this Constitution, the High Court of a State

shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power duty, liability privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High court of a State and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction."

He also called in aid Section 6(6) (b) of the 1999 Constitution in support of the proposition that a cause of action is the question as to civil rights and obligations of the Plaintiffs founding the action to be determined by the Court in favour of one party against the other.

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Senator Abiola Ajumobi, Oyo State Governor

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On the import of Section 272 (2) of 1999 Constitution, his lordship said he would call in aid the decision of the Supreme Court in the case of Hon. Ehioze Egharevba vs. Hon. Croby O. Eribo (2010) 9 SCM 121 at 13 C- E Per Adekeye, JSC who said: "Ordinarily, our laws by virtue of Section 272(2) of the 1999 Constitution, our High Courts have the power to review administrative determinations of inferior tribunals in that High Court has an inherent jurisdiction to control all inferior tribunals not in appellant capacity, but in a supervisory capacity. That control extends not only to seeing that it observes the law, but also that the inferior tribunal keeps within its jurisdiction. The control is exercised by means of a power to quash any determination by the tribunal which on the face of it offends against the law. This power is exercised in respect of administrative decisions of any inferior tribunals on the ground of illegality or procedural impropriety or irrationality. Okeahialani vs Nwamava (2003) NWLR (PART 835) Page 597."

Therefore, his lordship said, on the position of the Constitution and authorities if an Applicant for application of prerogative writs can establish that all or any of the above facts and the provisions of the Constitution are breached or proved to have been violated upon the materials placed before the Court, the Court would exercise its discretion to quash the impugned proceedings and or decision.

But he said he was of "the firm view that the method or mode prescribed for challenging the refusal of a public institution or public office to supply information requested under the Freedom of Information Act 2011 is by application for Judicial Review."

His lordship said further that it is trite law that where any proceedings are begun other than as provided by the rules such proceedings are incompetent and that a court is only competent when a case comes before it by due process of law and upon fulfillment of condition precedent to the exercise of jurisdiction.

He referred to Agip (Nigeria) Ltd vs. Agip Petrol

International & Ors. (2010) 2 SCM 1 at 56 B- F, per Adekeye, J. S. C. who had this to say: "The cross-appellant wrongly argued that the provisions of the Companies Proceedings Rule, particularly Rule 2(1) is merely directory and not mandatory. I disagreed with this view because of the word SHALL in the provision. The word shall in the ordinary meaning is a word of command which is normally given a compulsory meaning because it is intended to denote obligation. When the word shall is used in a statute it is not permissive, it is mandatory, it imports that a thing must be done. Nigerian LNG Ltd vs. African Development Insurance Co. Ltd. (1005) 8 NWLR PT. 416 pg. 677; Col. Kalie (Rtd.) vs. Alhaji Aliero (1999) 4 NWLR PT. 597 139.

His lordship said more important is that where a statute or Rule of court provides for a procedure for the commencement of an action, failure to follow that procedure renders any suit commenced otherwise incompetent.

He noted that in the case of Obasanjo vs. Yusuf (2004) 9 NWLR PT. 877 pg 144 at page 221; (2004) 5 SCM, 152, the court decided that: "It is elementary law that a plaintiff in the commencement of an action must comply strictly with the provision of the enabling law. He cannot go outside the enabling law for redress. In effect, to commence a suit by a writ of summons instead of Originating Summons as enacted in a status cannot be overlooked as a mere "irregularity by virtue of Rule 18 of the Companies Procedure Rules 1992 as argued by the cross-appellant."

His lordship therefore held that the action herein ought to have been commenced or initiated via Application for Judicial Review and not by Originating Summons as was done in the matter.

Consequently, he ruled that the action shall be struck out and accordingly struck it out for want of jurisdiction on the part of the Court to entertain or adjudicate over the action as it is incompetent.

He made no order as costs. ■



Adetokunbo Mumuni of SERAP

UK Local Councils Complain of Strange FOI Requests

In the United Kingdom, the Local Government Association, which represents local councils in the country, recently published a list of strange requests received by Councils under the Freedom of Information Act, 2000, arguing that resources are being diverted from vital services to deal with such requests.

The association also complained that companies were exploiting the system by trying to obtain information on existing suppliers to help them bid for public contracts.

Mr. Peter Fleming, chairman of the LGA's Improvement Board, noted that: "While the majority of requests to councils are for details of council policy and expenditure, some of the FOI requests received do not relate very closely to the services they are focused on providing every day of the year."

According to him, "Councils are working very hard to keep local communities running as efficiently as possible during these challenging financial times and anything which distracts from that can affect the value for money that taxpayers receive."

Under the Act, which came into force on January 1, 2005, public institutions are allowed to refuse an FOI request if they consider it to be vexatious, or if it would cost too much to comply with, or if the information is exempted from disclosure under the Act.

The Local Government Association listed the following 10 FOI requests as among the strangest received by various councils around the country.

- 1) What plans are in place to protect the town from a dragon attack? (FOI request made to Wigan Council)
- 2) Please list all the types of animals you have frozen since March 2012, including the type and quantity of each animal? (FOI request made to Cambridge City Council)
- 3) How many times has the council paid for the services of an exorcist, psychic or religious healer? Were the services performed on an adult, child, pet or building? (FOI request made to Rossendale Council)



David Cameron Prime Minister of United Kingdom

- 4) Please can you let me know how many roundabouts are located within your council boundaries? (FOI request made to Leicestershire County Council)
- 5) What precautions, preparations, planning and costings have been undertaken in case an asteroid crashes into Worthing, a meteorite lands in Worthing or solar activity disrupts electromagnetic fields? (FOI request to Worthing Borough Council)
- 6) How many holes in privacy walls between cubicles have been found in public toilets and within council buildings in the last 10 years? (FOI request made to Rossendale Council)
- 7) How many bodies are there in mortuaries that have been unclaimed for 10 years? How long have these bodies been in the mortuary? How old were they when they died? Is it possible to have the names of these people? (FOI request made to Richmond Council)
- 8) How many people in the town have a licence to keep a tiger, lion, leopard, lynx or panther as a pet? (FOI request made to Scarborough Council)
- 9) How many requests were made to council-run historic public-access buildings (e.g. museums) requesting to bring a team of "ghost investigators" into the building? (FOI request made to Birmingham Council)
- 10) How many children in the care of the council have been micro-chipped? (FOI request made to Southend Council) ■

US: NGO Wins Legal Fees Reimbursement in FOI Battle

The United State Justice Department's non-response to an information request about US Representative Don Young will cost the government \$86,000 in legal fees.

US District Judge Gladys Kessler ordered the Department of Justice (DOJ) to pay the legal fees of Citizens for Responsibility and Ethics in Washington (CREW), a non-profit public interest organization which sued to force disclosure of investigative files on Young.



Judge Gladys Kessler

CREW's major victory will help maintain what the ruling refers to as the "comprehensive scheme" in the Freedom of Information Act (FOIA) that "encourages prompt request-processing and agency accountability."

At contest was the issue of the meaning of the requirement in the FOIA that agencies make a "determination" within 20 days. The FEC and Department of Justice (DOJ) argued that all an agency was required to do under this provision is inform the requester that the agency intends to respond at some future date by producing non-exempt documents and claiming exemptions. The FEC claimed it had met its responsibility under the FOIA to make a determination on a request within 20 business days by letting the requester know that the agency intends to comply with the request at some point.

The United States Court of Appeals for the District of Columbia Circuit, a current federal appellate court, disagreed and ruled as CREW had argued that the FOIA requires agencies within 20 days to review responsive documents and tell requesters what they are producing, what they are withholding, and why. If the FEC's arguments had prevailed, the result would have left FOIA requesters in limbo for months or years with no access to judicial review.

CREW explains that the US Congress very purposefully required agencies to process requests within tight deadlines, first 10 days then later amended to 20 days, recognizing that delay in access often equals denial. They pointed out that "if the government's distorted view of the statute prevailed, requesters would have been at the mercy of agencies, unable to go into court for months or possibly years while they waited to be told what the agency was withholding and why."

The case has thrown up the question of why the Justice Department took such a radical position on the meaning of the FOIA. This position is said to be at odds with the department's own internal guidance and the view that has prevailed since time limits were added to the statute, and would deny requesters timely access to courts when agencies refuse to comply with their obligations.

CREW brought the lawsuit after the department in 2011 denied its Freedom of Information Act request for documents related to investigations of Young.

CREW said the DOJ denial violated federal law. CREW initially filed its Freedom of Information Act request in January 2011 and got a partial victory in court in 2012 - the release of some documents and a massive index showing the wide-ranging extent of the FBI investigation of Young. Young, a Republican from Alaska, was never charged with a crime, but independent of the CREW lawsuit, DOJ turned over some of its files to the House Ethics Committee, which rebuked Young in June over his misuse of campaign contributions for personal benefit.

"The requested documents would shed light on the conduct of the (Justice Department) and the FBI in conducting the investigation of Rep. Young and the (department's) decision to close the investigation without bringing charges against him," CREW said in its 2011 letter. "In addition, while DOJ decided not to prosecute Rep. Young, his activities still may have been illegal or violations of the rules of the House, and the requested records would shed light on them."

DOJ rejected the request, in part by asserting that releasing the documents would violate Young's right of privacy. CREW responded that as an elected official, Young's privacy rights were limited. In balancing Young's privacy rights with the public's right to know, Kessler ruled in 2012 that the public's interest in the material "is very strong" and ordered DOJ to at least produce an index. In seeking legal fees, CREW said that its lawsuit led to news stories in Alaska and the national media about Young and the DOJ investigation which in turn led to a better-informed public about Young's conduct and the FBI investigation of him.

Judge Kessler gave the DOJ 60 days to turn over \$86,076 to CREW to reimburse its expenses in the case. ■

U.S. Court Issues Arrest Warrant for Arkansas Housing Chief for Alleged Violation of FOI Law

A District Court judge in Little Rock, Arkansas, in the United States issued an arrest warrant for a housing agency's executive director on October 31 over claims that he did not provide documents requested by an Arkansas newspaper under the State's Freedom of Information Act.

District Judge Alice Lightle signed the warrant for the arrest of Rodney Forte, the executive director of the Metropolitan Housing Alliance, following an arrest affidavit filed by the Pulaski County prosecuting attorney's office which stated that Forte failed to comply with the Freedom of Information Act.

The charge arose from a Freedom of Information request made by Chelsea Boozer, a reporter for the Arkansas Democrat Gazette, on August 14, 2014 to the Metropolitan Housing Alliance, asking for a "list of who has been fired, laid off or who resigned in the past three years", including the names, titles, start and end dates and whether it was termination, resignation or layoff.

On August 19, 2014, the agency partially complied with a list titled "Termination List" which Ms Boozer said contained none of the "clarifying information requested regarding in what manner the employee left."

On September 16, 2014, the newspaper made another request for the detailed end of employment information. The newspaper followed up on the request by email on



Chelsea Boozer

September 17, 2014.

On September 22, 2014, the agency provided the documents showing the termination status of 11 of the 36 employees previously provided in the "Termination List".

The newspaper immediately complained by email about the incomplete response and requested the same information on the omitted 25 employees. Despite follow ups by Chelsea Boozer and her editor, Daniel Shameer, they were refused any additional information.

On October 20, 2014, Ms Boozer made another FOI request for additional documents, including work orders and tenant complaints during the period January 2012 to October 2014.

She was subsequently given a cost estimate for the provision of the requested information of \$16,231 for "additional manpower" and \$147 for "additional supplies", totaling \$16,378, to be paid prior to the provision of the documents in the October 20, 2014 request.

The newspaper filed a complaint with the Office of the Prosecuting Attorney on October 22, 2014, leading to the filing of a warrant for the arrest of Mr. Forte by the Prosecuting Attorney on October 30, 2014, which was issued by the court later the same day. ■

Trucks Conveying Nuclear Materials 'should have been retired in 2003'

In the United Kingdom, information obtained through a freedom of information request showed that aging trucks used in transporting nuclear materials, including warheads, through Scotland have suffered a series of breakdowns and faults since 2010.

The freedom of information request made by a monitoring body, Nukewatch, uncovered a number of incidents when convoys have been delayed or forced to turn back because of faults, including fuel leaks,



mechanical breakdowns and flat batteries.

The information also showed that the aging vehicles used to transport warheads and other nuclear material to RNAD Coulport in Argyll were originally supposed to have been taken

out of service in 2003, with a Ministry of Defence assessment stating that they would become "increasingly unsupportable" by 2009. ■

Africa Freedom of Information Centre

The Africa Freedom of Information Centre (AFIC) is a pan-African NGO and resource centre that promotes the right of access to information through comparative research, coordinating regional advocacy, facilitating information-sharing and capacity building.

The Centre was established in 2006 following a meeting convened by Media Rights Agenda (MRA) and the Open Society Justice Initiative (OSJI) in Lagos on September 22 and 23, 2006 and attended by representatives of 30 civil society organisations from 16 countries in Africa and partners from Albania, Bulgaria and the United States.

The meeting was held 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 Centre was established specifically to provide a platform for cooperation and collaborative activities among civil society organizations in Africa. It also aims to provide a forum 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. AFIC conducts research studies to strengthen Africa-



Mr. Gilbert Sendugwa, AFIC's Executive Director

based knowledge on access to information and enhance the quality of right to information policies, laws and programmes. It also promotes the ratification, domestication and effective implementation by African States of regional instruments as a strategy to advance the right to information on the continent.

AFIC is also providing technical support to a multi-stakeholder contracts monitoring coalition in Uganda as well as similar platforms in the region.

AFIC seeks to bring about improvements in the legal and policy environments for African citizens' enjoyment of their fundamental right of access to information and therefore, in countries where laws are yet to be adopted, it supports national access to information coalitions to create public awareness and strengthen their campaigns while also supporting platforms to monitor the status of implementation and compliance in countries with freedom of information laws.

It also provides technical assistance and capacity strengthening to its members and other civil society partners in a variety of access to information related activities and projects.

AFIC's Executive Director, Mr. Gilbert Sendugwa, can be reached at: gilbert@africafoicentre.org ■

Centre for Freedom of Information

The Centre for Freedom of Information was established as a joint venture between the School of Law, at the University of Dundee and the Scottish Information Commissioner to focus on the implementation, interpretation and enforcement of laws which provide the right to information globally.

The current main project of the Centre is to carry out research and activities related to the work of Information Commissioners and equivalent appellate bodies worldwide.

The project, assisted by funding from the Open Societies Foundations, aims to establish and support an International Information Commissioners Exchange Network.

The key aims of Centre's Freedom of Information International Commissioners Exchange Network are to:

- § Proactively gather and share information on the exercise by Commissioners of their responsibilities, serving as an international repository of current practice.
- § Widely disseminate research outcomes on specific themes to generate discussion about the efficacy of the statutory appellate and enforcement powers in practice.
- § Canvass views and generate exchange within the Commissioner community on developments in freedom of information law and practice.

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Upcoming FOI Events

December 1, 2014: Learning Forum: Transparency and Human Rights in the Digital Age

Time: 12:30 PM to 5:00 PM (PST)

Venue: Geneva Internet Platform, World Meteorological Organization Building (2nd Floor) 7bis, Avenue de la Paix, Geneva 1211, Geneva, Switzerland

During this event, members of the ICT industry, human rights organizations, policy experts, investors, and governments will offer perspectives and invite reflections on the following questions:

- What do we mean by transparency? Why does transparency matter for protecting and respecting rights online?
- What is the state of transparency reporting by companies and governments, and what's missing?
- How do companies communicate with users in response to live events?

December 11 2014: FOI Training on Information Commissioner & Tribunal Decisions: What do they mean in practice?

A half-day course in Euston, Central London now in its 9th year is aimed at experienced FOI practitioners and others with a good working knowledge of the legislation. It highlights the latest developments in the way the exemptions, public interest test and the legislation's procedural requirements are being interpreted. The course will cover the most significant decisions issued since the last course in June 2014. The content will therefore depend on the cases that have been decided in the period, but typically addresses issues such as: "Fair" & "unfair" disclosures of personal data, the Freedom of Information 2000/Environmental Information Regulations 2004 border, the application of specific exemptions including those for breach of confidence, commercial interests & legal professional privilege, where the public interest line is being drawn, vexatious requests, the cost limit, aggregating requests, invalid requests, advice & assistance and other administrative provisions.

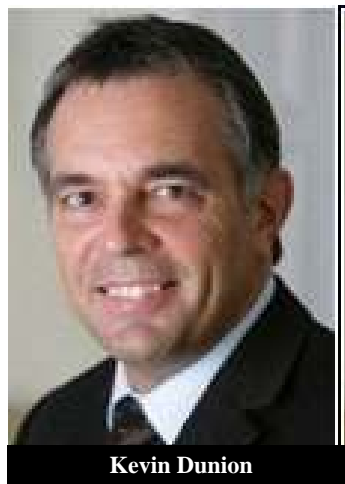
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FOI Resources

Centre for Freedom of Information

- § Proactively engage with new Commissioners.
- § Provide a point of contact and advice to those in government seeking to implement or review Freedom of Information regimes and introduce them to Commissioners and Ombudsmen who could assist.
- § Assist those in civil society seeking information about the functions and practice of Commissioners and the methods by which appeals are dealt with and Freedom of Information laws are enforced.
- § Provide a central support unit to assist with the organisation of international and regional events.

At the European level, the Centre is particularly interested in the impact of the Aarhus Convention and the European Commission Directive on Access to Environmental Information.



Kevin Dunion

In Scotland the Centre reflects on the current experience of freedom of information, aiming to explore potential future developments, by stimulating discussion of a Transparency Agenda for Scotland.

The Centre facilitates exchange between Freedom of Information practitioners within public authorities, the legal and academic community and civil society.

Its successful seminar series has included international contributors from the United States, Canada, Ireland, Slovenia, South Africa and Sweden.

The work of the centre is overseen by a Management Board, and is informed by an International Advisory Board consisting largely of current and former Information Commissioners worldwide.

The Executive Director of the Centre, Professor Kevin Dunion, can be contacted at: k.dunion@dundee.ac.uk

REGIONAL / INTERNATIONAL DEVELOPMENTS

Nurses Association Uses FOI in Fight Against Medical Tourism

The Registered Nurses Association of Ontario (RNAO), Toronto issued a news release last month launching their Freedom of Information Request aimed at determining where else medical tourism is occurring, and how much the Ontario government is behind this attack on Medicare.

The organization that represents registered nurses, nurse practitioners and nursing students in Ontario issued a formal request to the provincial government for information related to medical tourism seeking all general records from 2009 to the present regarding the treatment of international patients (also known as medical tourists) not covered by the Ontario Health Insurance Plan (OHIP) in the province's hospitals. The request includes all letters, reports, briefings, agreements, hand-written notes, electronic documents and emails from the Ministry of Health and Long-Term Care, Treasury Board, Finance, Cabinet Office and the Office of the Premier.

"Hospitals that are part of Toronto's University Health Network, and Sunnybrook Health Sciences Centre have made no secret that they are open for business when it comes to treating patients from abroad for a fee," says RNAO's Chief Executive Officer Doris Grinspun, adding that the CEO of Windsor Regional Hospital is also pursuing a partnership with Henry Ford Hospital in Detroit to formalize a 'medical free-trade zone' that he says will become the 'envy of the health-care world.'

Medical tourism is the practice of soliciting international patients for medical treatment within Canada's health system in order to turn a profit. "It will erode the viability of our health system, a cherished part of our social safety net, and shift it from one that understands its mission to treat all according to need, to an Americanized version where health-care services are for sale to those with money and power," says Grinspun.

RNAO hopes the request for information will reveal where else medical tourism is occurring and to what



Doris Grinspun, RN, MSN, PhD, LLD (hon), O. Ont. Chief Executive Officer, RNAO

extent the Ontario government is behind this attack on Medicare as representatives of the Association say the government is fully aware that several hospitals are engaging in medical tourism and is allowing it to continue unabated. It explains that hospitals that offer preferential medical treatment for a fee to international patients compromise Ontario's health system.

"Allowing hospitals to go shopping for patients to increase their revenue redirects precious resources away from the people who need care the most - patients in Ontario," says RNAO President, Vanessa Burkoski,

adding that hospitals that engage in medical tourism are inviting lawsuits from people willing to pay a fee to get ahead of the line.

"What particularly alarms nurses is the lack of transparency on the part of the Ontario government when it comes to disclosing this ugly trend to the public," stresses Burkoski. Despite letters to both Premier Kathleen Wynne and Health Minister Eric Hoskins calling for a ban on medical tourism, the practice continues. "We hear that the government is investigating but in our view, there is nothing to investigate when there is clear evidence that hospitals are engaging in medical tourism," adding that even one is one too many.

Insisting that "Health care is a public good - not a business venture", the fight for the ban of medical tourism expresses the belief that if some Toronto hospitals have provided care on a for-profit basis to people from outside Canada and can treat patients from other countries in exchange for money, Ontarians could also demand the same priority service for a fee. They expressed support for humanitarian health care as opposed to preferential health services.

Since 1925, RNAO has advocated for healthy public policy, promoted excellence in nursing practice, increased nurses' contribution to shaping the health-care system, and influenced decisions that affect nurses and the public they serve.

RTI Implementation: An Overview of Findings from 12 Countries

The major aim of a Right to Information system is to increase the transparency of government by giving the public access to regular and reliable information and facilitating appropriate and relevant use of that information. Beyond establishing the RTI framework, implementation is a major concern.

In the last two decades, the adoption of laws establishing the right and access to information has been extremely active, with about 53 such laws having been enacted in the previous fifteen years and over half of the laws adopted since 1996. Implementation of these laws has however been a considerable obstacle and challenge in the successful institutionalization of government openness and access to information. Monitoring the practices of a right to information system can identify whether problems with implementation are rooted in a lack of political will, or the result of flawed internal

arrangements and processes that are supporting a right to information system.

The RTI Implementation: An Overview of Findings from Twelve Countries is a compilation of 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. It also discusses the nature and strength of national monitoring and oversight systems, and the role of the enabling environment in supporting RTI implementation. It also looks to present a preliminary set of indicators that can be used for rapid assessment of the functions and supporting practices that impact upon RTI performance. ■

FOI Tidbits

US: Homeland Security Records Backlog of 50,000 FOI Requests

A recent report released in October 2014 by the Department of Homeland Security Privacy Office recorded that the agency has now recorded a backlog of more than 50,000 Freedom of Information Act (FOIA) requests with most of those related to immigration records.

The Privacy Office is required to report annually to Congress and the report for the 2013 fiscal year showed that the department has historically received more requests than any other agency. It stated that requests went up a record-setting 18 percent, hitting a total of 231,534.

The Homeland Security Department's backlog of Freedom of Information Act requests from July 2013 to June 2014 nearly doubled rising to 51,761 due to requests for immigration-related records. This increase is a notable reversal from fiscal 2012 when DHS's backlog decreased by 33 percent. The department noted that about 95 percent of the requests were immigration related, connected with agencies like the Immigration and Custom Enforcement, Citizenship and Immigration Services, the National Protection and Programs Directorate, Customs and Border Protection and Immigration Services.

The report explained that the Office plans to rely on using contractors to help process FOIA requests as well as staff directed at the largest backlogs in response to the department's growing backlog. They are also in

consultation with various FOIA agency officials about finding technology, training and staff solutions to improve day-to-day case management. Promoting its latest developments, the department noted in the report that it has set up new ways for requests to be filed online by members of the media and public. The office is also at work on mobile apps as well as a privacy policy geared at protecting sensitive data requested through those.

Despite the rise in the overall backlog, the DHS said it met its goal of closing the 10 oldest requests and appeals that were pending in 2013. The report said it was able to do this, in part, because the chief FOIA Officer and general counsel formally adopted a policy that reassigned certain complex appeals to U.S. Coast Guard administrative law judges, who would process them on a reimbursement basis. However, those seeking documents from the Department of Homeland Security will likely have to wait a while for their requests to be filled.

DHS Chief Privacy Officer Karen Neuman highlighted the department's accomplishments over the past year, saying that both DHS's privacy impact assessment guidance and operational use of social media have set the standard for other agencies to emulate. She added that DHS officials are assessing new systems and programs to develop stronger privacy protections as well as increasingly interacting with the privacy community. While Neuman didn't mention goals around FOIA, in particular, she said that she remains focused on "setting and raising the bar for transparency." ■

Democracy and Transparency in the Indian State: The Making of the Right to Information Act By Prashant Sharma

The national Right to Information Act was passed by the Parliament of India on June 15, 2005 "to provide for setting out the practical regime of right to information for citizens" and came fully into force on October 12, 2005.

Under the provisions of the Act, any citizen may request information from a public authority and the public authority is required to respond to the request expeditiously or within 30 days.

The enactment of the Act in 2005 has been celebrated as an important event of democratic deepening in India both in terms of the process that led to its enactment, having arisen from a grassroots movement, and its outcome in fundamentally altering the citizen—state relationship.

The 238-page book, *Democracy and Transparency in the Indian State: The Making of the Right to Information Act*, published in hardback on October 10, 2014, proposes that the explanatory factors underlying the event may be more complex than imagined thus far.

The book was written by Prashant Sharma, a Global Fellow at Open Society Foundations; Visiting Research Fellow at United Nations



Research Institute for Social Development (UNRISD) and a Research Associate at Institut des hautes études en administration publique (IDHEAP), which is the Swiss Graduate School of Public Administration.

The book discusses how the leadership of the grassroots movement was embedded within the ruling elite and possessed the necessary resources as well as unparalleled access to spaces of power for the movement to be successful.

It attempts to demonstrate how the democratisation of the higher bureaucracy along with the launch of the economic liberalisation project meant that the urban, educated, high-caste, upper-middle class elite that provided critical support to the demand for a Right to Information Act was no longer vested in the state and had moved to the private sector.

Mirroring this shift, the framing of the Right to Information Act during the 1990s saw its ambit reduced to the government, even as there was a concomitant push to privatise public goods and services.

The book goes on to investigate the Indian Right to Information Act within the global explosion of freedom of information laws over the last two decades, and shows how international pressures had a direct and causal impact both on its content and the timing of its enactment.

Taking the production of the Right to Information Act as a lens, the book argues that while there is much to celebrate in the consolidation of procedural democracy in India over the last six decades, existing social and political structures may limit the extent and forms of democratic deepening occurring in the near future.

"FOI Quote"

"Finally, it is also an important right in a free society to be freely allowed to contribute to society's well-being. However, if that is to occur, it must be possible for society's state of affairs to become known to everyone, and it must be possible for everyone to speak his mind freely about it. Where this is lacking, liberty is not worth its name. Matters of war and some foreign negotiations need to be concealed for some time and not become known by many, but not on account of proper citizens however, but because of the enemies. Much less should peacetime matters and that which concerns domestic wellbeing be withheld from inhabitants' eyes.

Otherwise, it might easily happen that only foreigners who wish harm find out all secrets through envoys and money, but the people of the country itself, who ideally would give useful advice, are ignorant of most things. On the other hand, when the whole country is known, at least the observant do see what benefits or harms, and disclose it to everybody, where there is freedom of the written word. Only then, can public deliberations be steered by truth and love for the fatherland, on whose commonweal each and everyone depends."

- Peter Forsskål, 1759. Paragraph 21 of a pamphlet called *Thoughts on Civil Liberty*. ■

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
Say No Campaign	The comprehensive list of the electoral offenders.	The Independent National Electoral Commission, INEC	June 9, 2014	The Commission responded in a letter dated July 14, 2014 and signed by the Secretary to the Commission, Augusta Ogakwu. The response reported that the Commission had fired at least 30 of its staff accused of aiding electoral malpractices across the country during the 2011 general election. 16 of the dismissed staff were punished for their alleged involvement in election-related offences in Anambra state. It also reported that other states whose elections led to the dismissal of INEC officials, are Imo (3), Edo (1), Zamfara (1), FCT (1), Delta(1), Oyo (2), Rivers (1), Lagos (1), and Osun (2). 1 official based at the INEC Headquarters in Abuja was also shown the door for allegedly colluding with politicians to perpetrate electoral fraud. INEC announced that it's also prosecuting nine out of its 12 staff apprehended for committing various forms of electoral offences during the governorship elections in six states in Nigeria. It was gathered that two out of the 12 electoral offenders have been discharged and acquitted while one was convicted.	Successful access to information
Adetokunbo Mumuni, Executive Director, The	Appropriate records and information about the persons involved in alleged money	Mr Godwin Emeziele, Governor of the Central	15 September 2014	CBN did not respond to the request and has therefore failed, refused and/or neglected to	SERAP has sued the Central Bank of Nigeria CBN to court

Continued on page 23

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
Socio-Economic Rights and Accountability Project, (SERAP)	laundering through the Central Bank of Nigeria to fund the activities of the Boko Haram, which have contributed to the unlawful killings of innocent Nigerians and destruction of property.	Central Bank of Nigeria		provide details of the information requested.	over "failure to expose the persons involved in alleged money laundering through the CBN to fund the activities of Boko Haram which have contributed to the unlawful killings of innocent Nigerians and destruction of property."
Media Rights Agenda	Reports and documents about the procurement of the two bulletproof BMW cars by Nigerian Civil Aviation Authority (NCAA) through Coscharis Motors Limited including a copy of the Import Duty Exemption Certificate issued by the Nigerian Customs Service, the report presented to the House of Representative Committee on Aviation during the proceedings on October 30, 2013, among others.	The Comptroller-General of Customs, The Nigerian Customs Service	15 September, 2014	The letter was initially ignored. After being served with a pre action notice on September 30, 2014, informing them that MRA would be seeking judicial redress, they provided records in their possession.	Successful access to information.
Community Action for Popular Participation (CAPP)	Information on the involvement of the FRSC in the upcoming 2015 elections. It looks to find out the plan and role of the FRSC as regards the elections.	The Sector Commandant, Federal Road Safety Corp (FRSC), Minna, Niger.	20 October, 2014	In a letter dated October 10, 2014, the FRSC responded briefly addressing the questions.	Successful access to information
Paul Belabo Foundation	Information relating to the upcoming elections and the involvement of the Police in the election process. The letter sought information that would further provide enlightenment on the security to be provided by the Command.	The Commissioner of Police, Benue State Command, Makurdi, Benue State.	27 October 2014	In a letter dated November 7, 2014, the police command provided a detailed response answering the questions raised.	Successful access to information