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# Freedom of Information NEWSLETTER

Volume 1, No. 8, January 2015

## FREEDOM OF INFORMATION NEWS

### MRA, Carter Center to Assess FOI Implementation in Nigeria

Media Rights Agenda (MRA) in partnership with the Carter Center in Atlanta, Georgia, will carry out an assessment of the implementation of the Freedom of Information Act in Nigeria in 2015, using the Center's Access to Information (ATI) Legislation Implementation Assessment Tool (IAT).

The project, scheduled to begin in March 2015, follows the completion of the pilot phase in the deployment of the tool by the Carter Center's Global Access to Information Initiative and the finalization of the methodology and indicators.

The project will be implemented



Laura Neuman, Director, Global ATI Initiative, Carter Center

with funding from Making All Voices Count (MAVC) and will involve the application of the IAT in selected Federal Government ministries and agencies in Nigeria for the first time.

Under the project, MRA will collect implementation assessment indicator data from the selected government agencies, which will be inputted into an "Indaba platform".

It will subsequently convene and organize a focal group meeting of experts to discuss the preliminary IAT findings; and produce narrative reports which outline the country

*Continued on page 2*

### MRA Publishes Manual on FOI and Elections

Media Rights Agenda (MRA) has published a manual to assist individuals and civil society organizations to monitor preparations for the 2015 General Elections and subsequent elections in Nigeria and thereby ensure more effective engagement of the electoral process by citizens.

Titled "*Manual on Freedom of Information and Elections*", the publication, according the MRA's Executive Director, Mr. Edetaen Ojo, is aimed at creating increased awareness by individuals and civil society organizations of the FOI Act and how to use it in the context of elections.

Mr. Ojo said: "The 2015 General Elections represents the first

opportunity for the Freedom of Information Act to be tested in the context of elections in the country since its enactment in 2011. We are convinced that if deliberate steps are not taken to bring the Act sharply into the focus of civil society organizations involved in election observation and monitoring, this opportunity may be lost and civil society may remain considerably weakened in their ability to hold the election management body and other actors in the electoral process accountable, not only in the conduct of the elections but more particularly in their preparations."

He explained that the Manual was therefore designed to meet this need and "is aimed at encouraging and

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## MRA, Carter Center to Assess FOI Implementation in Nigeria

context, the focal group findings and summary findings from the exercise.

The final phase of the project will involve a review of the final country report by key stakeholders at a review meeting which will be held in Abuja and coordinated by MRA.

The IAT is a set of indicators developed by the Carter Center that assesses the extent and in some cases the quality of public administrations' implementation of access to information laws.

The tool employs a robust methodology that includes multiple reviews by the Center, a blind peer reviewer, in-country focal groups, and accompanying narratives.

To perfect the methodology and indicators, The Carter Center tested and refined the IAT in three pilot phases in six to seven agencies each in 11 countries, including Bangladesh, Chile, Georgia, Guatemala and Indonesia.

Other countries where the tool was tested are Jordan, Mexico, Scotland, South Africa, Uganda, and the United States of America.

Following each pilot phase, the Carter Center convened the researchers and experts to consider the indicators,



Mr. Ayode Longe, Programme Manager at Media Rights Agenda

methodology, and any necessary changes.

In April 2014, the Center conducted its final review of the IAT and held a meeting to share the tool with the community of practice.

The Carter Center plans to launch select country reports from the pilot phase III of the tool on its website in the coming month. ■

## FOI Quotes

- \* "The liberties of people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them." - **Patrick Henry**, American colonial revolutionary, June 5, 1788.
- \* "As a general rule, the most successful man in life is the man who has the best information." - **Benjamin Disraeli**, 1880, British Prime Minister.
- \* "The very word 'secrecy' is repugnant in a free and open society; and we are as a people inherently and historically opposed to secret societies, to secret oaths and to secret proceedings," - **John F. Kennedy**, 1961. US President.

## MRA Publishes Manual on FOI and Elections

empowering civil society organizations to apply the principles of the FOI Act towards preparations for the 2015 Elections and mobilizing election monitoring groups across the country to deploy the Act to obtain as many types of information as may be required to hold the key actors in the electoral process accountable."

Mr. Ojo noted that the Manual will guide and assist individuals and civil society organizations to conduct more effective monitoring of preparations towards the forthcoming elections as well as subsequent elections, and enable them assess the adequacy or otherwise of such preparations, including financial accountability, procurement process, value for money of the elections, disbursement of approved funds, suitability of the technology being deployed for the elections, and the accountability mechanisms put in place, among other issues

The Manual was published at the end of 2014 following a series of training workshops organized by Media Rights Agenda in partnership with the Transition Monitoring Group (TMG) for TMG member organizations in all the States of the Federation to equip them with the knowledge and skills to monitor preparations for the 2015 General Elections by the Independent National Electoral Commission (INEC) and other relevant public institutions across the country.

It was published with support from the United Nations Development Programme's (UNDP) Democratic Governance for Development (DGD) II Project, which also sponsored the training workshops. The UNDP-DGD II Project is a joint donor-funded



Mr. Edetaen Ojo, Executive Director, Media Rights Agenda

project managed by UNDP in support of deepening democracy in Nigeria and is funded with contributions from the European Union, the UK Department for International Development (DFID), Canada Department of Foreign Affairs, Trade and Development (DFATD), and the UNDP.

The Manual explains what Freedom of Information is and the right of access to information granted under the FOI Act as well as details the duties and obligations of public institutions under the Act, how public institutions are defined by the Act, the categories of information and materials that are excluded from the scope of the Act, modes of accessing information under the Law and the requirement for the proactive publication of information by public institutions.

It also contains guidelines for ensuring compliance by public institutions with their proactive publications obligations; as well as how to monitor and ensure compliance by public institutions and various actors with other aspects of

the Act.

The Manual details the processes and procedures for requesting information under the Act; explanations about the types of information covered by the Act; who can apply for information; when specific institutions may be approached for information and which public institutions can be approached; what types of information can be applied for; how requesters can track and follow-up on their requests for information; the timeframes given to public institutions to respond to requests for information; the types of

responses that requesters may expect as well as the schedule of fees that can be charged by public institutions providing information in response to requests.

It explains the supremacy of the FOI Act over other Acts, Laws or Regulations; the judicial review process where access to information is denied a requester; the offences created by the Act and the applicable sanctions; the requirement for all public institutions to submit annual reports; and the role of the Attorney-General of the Federation, including his obligation to submit annual reports to the National Assembly.

The Manual also contains a list of relevant public institutions in the electoral process and to which requests for information can be made in the context of elections; a list of domestic, regional and international instruments governing the conduct of elections and hundreds of sample questions aimed at relevant public institutions at Federal and State levels ahead of the 2015 General Elections. ■





## YIAGA: Nurturing a Young Generation of FOI Users

The Youth Initiative for Advocacy, Growth and Advancement (YIAGA), a youth-based non-governmental organization that promotes democratic governance, human rights and youth political participation through its focus on in-depth research, capacity development and public policy advocacy, has incorporated the use of the Freedom of Information Act 2011 towards getting useful information targeted at achieving specific goals within the organisation.

YIAGA aims to provide critical analysis of key democratic and governance issues, crafting practical solutions, training and situating youth leaders in strategic points of engagements within their community. YIAGA has implemented several innovative programs aimed at stimulating active citizenship, protecting human rights and deepening democratic governance.

The organisation has used the FOI Act in these critical areas to assist in achieving set goals. YIAGA has so far used the FOIA in advocacy, training and monitoring. The organisation has made 14 written requests; 6 of which have been answered, 6 requests ignored and 2 others pending. Requests made by YIAGA are:

- \* Request to the Federal Ministry of Works for the Name(s) of the Ministry officials and contractors involved in an N11 billion fraudulent act, the Name(s) of the contractors company, document(s) showing the disciplinary action taken against the officials of the Ministry of Works and documents highlighting the status of the



Mr. Samsom Itodo, Head of Research, Policy & Advocacy at the Youth Initiative for Advocacy, Growth & Advancement (YIAGA)

saved N11 billion.

- \* FOI request to the Ministry of Health requesting how much money Nigeria received from GAVI, the Vaccine Alliance, when the money was received, when the project for which the money was provided was scheduled to end and what the money was meant for. The request asked that the ministry provide a copy of the detailed budget agreed between the Government of Nigeria and GAVI for the use of the funds and asked if the Nigerian Government had made a report to GAVI on its expenditure of the funds, requesting a copy of the report including narrative and financial reports.
- \* FOI request to National Youth Service Corps (NYSC) requesting the list of companies that went through the public procurement process and how SDIMACH Technology Nigeria emerged as winner.
- \* FOI request to Nigerian Civil Aviation Authority (NCAA) requesting for a copy of registration page indicating title and interest in Eagle Air as registered, a copy of the class or

type of license issued to Eagle Air and terms and conditions therein.

- \* FOI request to Senate Committee on Interior requesting for a copy of the report of the Senate Committee on Interior on investigation into the Nigerian Immigration Service (NIS) Recruitment Examination Stampede that occurred on 15<sup>th</sup> March, 2014.
- \* FOI request to National Hospital requesting for a copy of the list of victims of the NIS Recruitment exercise stampede who were given medical care or treatment at the National Hospital Abuja and a copy of the names of victims of the Nigerian Immigration Service exercise stampede given referrals or transferred from the National hospital to other hospitals for medical treatment.
- \* FOI request to National Bureau of Statistics requesting for a copy of the data presented by the Statistician-General on Production, Dissemination and Release of Job Creation Survey for the third and fourth quarters of 2013
- \* FOI Request to Independent National Electoral Commission (INEC) requesting for the names and/or register of staff of INEC

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## YIAGA: Nurturing a Young Generation of FOI Users

who has/have been disciplined for dereliction of duty during the 2011 general elections and the last Kogi, Edo, Sokoto, Ondo and Anambra Gubernatorial elections. Names and/or register of staff of INEC who have been prosecuted for engaging in electoral malfeasance and/or offence during the 2011 general elections and the last Kogi, Edo, Sokoto, Ondo and Anambra Gubernatorial elections.



Ms. Cynthia Mbamalu, Programs Manager at YIAGA

- \* FOI request to the National Assembly (Senate) requesting document(s) showing the approved budget in the 2013 Appropriation Act for the ongoing Constitution Review, document(s) showing the actual budgetary allocation in 2013 to the Senate Committee on Constitution Review, document(s) showing the financial statement of expenditure made so far from the budget on Constitution Review, document(s) showing the voting records of constitutional amendments by the distinguished Senator and document(s) showing the minutes and proceedings of the Senate Committee On Constitution Review.
- \* FOI request to the National Assembly (House of Representatives) requesting for the actual budgetary appropriation for the ongoing constitution review, the actual budgetary allocation to the House Committee on Constitutional Review, a financial statement of expenditure made so far from

the budget on constitutional review and the voting record of constitutional amendments by the Honourable members.

- \* FOI request to NYSC requesting the status report on the payment of compensation to the family members of the deceased NYSC members killed during the 2011 electoral violence in Bauchi
- \* FOI request to the Nigerian Police Force requesting for a report on the state of prosecution of the suspects arrested for killing ten (10) NYSC members who were deployed by INEC to serve as electoral officers in Bauchi state during the April 2011 Elections.
- \* FOI request to the INEC requesting for a report on the state of prosecution of the suspects arrested for killing ten (10) NYSC members who were deployed by INEC to serve as electoral officers in Bauchi state, a report on the

state of compensation to the family members of the deceased NYSC members

- \* FOI request to the Office of the Secretary to the Government of the Federation requesting for the status report on the state of the payment of compensation to the family members of the deceased NYSC members killed during the 2011 electoral violence in Bauchi state

YIAGA instituted a case in court to challenge the denial of its FOI request to the Senate for the documents related to the Constitution Review. However, due to procedural challenges, the case had to be withdrawn and is yet to be filed again because of the judicial strike.

YIAGA states that from its experience using the FOI Act, it is **"a veritable tool in our engagement with State actors on policy issues, research, citizens' engagement and also in mobilizing citizens action to demand accountability."** YIAGA also notes certain challenges experienced including delay in compliance which necessitated issuing followup and warning letters to public institutions before compliance, lack of compliance by some Institutions and lack of funds for litigation.

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 Twitter: @YIAGA  
 Facebook: [www.facebook.com/yiaga.org](http://www.facebook.com/yiaga.org)



# FOI Lawyer's Profile

## Kingsley Nnajiaka: A Fearless, Dogged and Relentless FOI Litigator

**M**r Kingsley Nnajiaka is a fearless, dogged and relentless litigator in the social justice arena, with a particular passion for freedom of information cases.

In April 2014, he filed a notice of consequences of disobedience of order of court, otherwise known as Form 48, against the Minister of Finance, Ngozi Okonjo-Iweala, thereby initiating charges of contempt of court against the former Managing Director of the World Bank and Coordinating Minister for the Economy, for disobeying an order issued by Justice Abdul-Kafarati of the Federal High Court in Abuja on February 25, 2014, directing her to disclose details of all statutory transfers in the 2013 Appropriation Act.

Justice Abdul-Kafarati's order arose from a suit filed by Mr. Nnajiaka on behalf of the Centre for Social Justice in which he sought an order of mandamus to compel Mrs. Okonjo-Iweala in her capacity as the Minister of Finance to grant the organization access to the details of the statutory transfers contained in the 2013 budget.

At issue in the request made pursuant to the FOI Act are the details of the funds released by the Federal Government to the National Judicial Council (NJC); the Niger-Delta Development Commission (NDDC); the Universal Basic Education (UBE); the National Assembly; the Independent National Electoral Commission (INEC); and the National Human Rights Commission (NHRC).

Although those charges are still pending, Mr. Nnajiaka is relentless in his determination to prosecute the case to its logical conclusion, as he is with several other freedom of information cases that he is litigating both in courts of first instance and at



**Mr. Kingsley Nnajiaka,**  
*Legal Officer at the Centre for Social Justice*

the Court of Appeal. He does not shy away from handling FOI cases against high-profile or senior public officers, as evidenced by his contempt charge against the Finance Minister.

Given Mr. Nnajiaka's position as Legal Officer at the Centre for Social Justice (CSJ) in Abuja, his attitude and approach may not be very surprising as the organization is a fierce advocate for rule of law, constitutionalism and prudent public finance management.

CSJ, a company Limited by Guarantee, is a Nigerian civil society organization with a vision of a Nigeria where social justice informs public decision making as an essential ingredient for the enthronement of a peaceful society. The mission of the organization is to mainstream peace, social justice and fairness in all facets of public life. It seeks to achieve this by promoting transparency and popular participation in public life.

The CSJ has found the Freedom of Information Act, 2011 to be a powerful tool which it regularly deploys in order to achieve its goal. Most of its FOI requests and litigation are handled by Mr.

Nnajiaka.

Mr Nnajiaka grew up in Imo State in what he describes as a God fearing and Christian home. He attended Community Primary School and Comprehensive Secondary School. He was admitted to the Ambrose Alli University, Ekpoma in Edo State in 2001 and graduated from Faculty of Law in 2006. He proceeded to the Nigerian Law School in 2007 and was called to the Nigerian Bar in May, 2008.

Mr. Nnajiaka went for the mandatory one year National Youth Service Corps (NYSC) programme in Cross River State where he served at the Legal Unit of the Akamkpa Local Government Council secretariat. He started pupillage with Chudiobieze Chambers in Onitsha, Anambra State, during which he appeared before several superior courts, including the Supreme Court.

He joined the Centre for Social Justice in August, 2011 where he handles numerous public interest litigations and conducts legal research and analysis.

Mr Nnajiaka first got involved with FOI through his work in public finance management at the CSJ, while making Freedom of Information requests to Ministries, Departments and Agencies (MDAs) of the Federal Government in an effort to secure information required for assessing a variety of public finance management situations either specifically in those agencies or across Government as a whole.

But he cites the Centre for Social Justice, Media Rights Agenda and the Stop Impunity Nigeria campaign as the greatest influences on him that aroused his desire to work on FOI cases. He however notes that FOI in Nigeria is still at the developing stage and in order to enhance the

*Continued on page 11*

# FOI Litigation

## HDI's FOI Suits Against 3 LGAs in Delta State Fixed for February 18

**H**earing comes up on February 18, 2015 at the Federal High Court in Asaba, Delta State, in three suits filed by Human Development Initiatives (HDI) against three local government councils in the State over their refusal to disclose their budgets and approved projects as requested by the Lagos-based non-government organization.

Following a series of adjournments in the suits, Justice Mojisola Olatoregun-Isola is expected to take arguments on February 18 from Mr. Andy Isioma Ogbolu, HDI's lawyer, who is asking the court to issue an order of mandamus against each of the local government councils to compel them to disclose the information sought by HDI.

By three separate letters dated February 24, 2014, HDI requested from Oshimili South Local Government Council, Ika South Local Government Council and Oshimili North Local Government Council the following information:

- The Councils' budgets for the years 2012, 2013 and 2014; and
- Documents detailing all projects duly approved for implementation in 2013, including the locations of the projects and the actual cost of each of the project approved and/or implemented in 2013

The three councils failed to provide HDI with the information within the time stipulated by the Freedom of Information Act, 2011.

Mr. Ogbolu, a member of Media Rights Agenda's Network of FOI Lawyers, subsequently took up the issue and filed three separate suits on behalf of HDI at the Federal High Court in Asaba by motion ex parte



**Prof. Bolaji Owasanoye,**  
*HDI's Executive Director*

dated May 15, 2014.

The motion ex parte sought an extension of the time within which HDI could apply for a judicial review of the actions of the Councils as well as an order granting HDI leave to apply for judicial review against the three local government councils.

Upon hearing arguments by Mr. Ogbolu on the motions on May 21, 2014, Justice Mojisola Olatoregun-Isola granted HDI leave to apply for:

- A declaration that the failure and/or refusal by the Councils to disclose and make available to HDI the information sought in its letters of request dated February 24, 2014 amounts to a violation of HDI's right of access to information as guaranteed by section 1(1) and section 4(a) of the Freedom of information Act, 2011.
- A declaration that the failure and/or refusal by the Councils to give HDI a written notice that access to all or part of the information requested

would not be granted and stating reasons for the denial and the section of the Freedom of information Act upon which the Councils relied to deny HDI access to the information requested in its letters dated February 24, 2014 amounts to a flagrant violation of section 4(b), 7(1), (2) and (3) of the Act and is therefore wrongful.

An order of mandamus compelling the Councils to disclose and make available to HDI as requested in its letters of February 24, 2014 the Councils' budgets for the years 2012, 2013 and 2014; documents detailing all projects duly approved for implementation in 2013; the locations of the projects; and the actual cost of each of the projects approved and/or implemented by the Councils in 2013.

Following the service of the motion on notice and the order of court granting HDI leave on the three local government councils, Oshimili North Local Government filed a Notice of Preliminary Objection dated June 18, 2014 to which Mr. Ogbolu filed a reply on behalf of HDI.

The cases were thereafter fixed for October 8, 2014 for hearing but the Court did not sit on that date, resulting in a further adjournment of the cases to October 15, 2014.

The Court again did not sit on October 15 and the cases were yet again adjourned to November 17, 2014. The cases were finally adjourned to February 18, 2015 for definite hearing as the court was again unable to take them on November 17. ■



## The FOI Act Is A Legislation That Should Be The Envy Of Any Democratic Setting, Says Judge

## The FOI Act Is A Legislation That Should Be The Envy Of Any Democratic Setting, Says Judge

In the High Court of Justice of Benue State of Nigeria  
In the Benue State Judicial Division  
Holden at Makurdi  
July 15, 2013  
Before his Lordship, Honourable Justice A. O. Onum,  
Judge

and the exact amounts thereto.

- An order directing the 1<sup>st</sup> Respondent to provide the Applicant with the records showing the persons monies were paid to and the amounts paid to them and other relevant details.
- Any further order or orders as the Court may deem fit to make in the circumstances of the application.

- ii. That the letter was delivered to them on 28/3/2013, and up till now there has being no response from the 1<sup>st</sup> Respondent.
- iii. That the period of seven days has lapsed”.

As against these facts, including the supporting affidavit evidence, paragraph 4 (a) – (e) of the counter-affidavit deposed to by one Agbo Ella, the Principal Litigation Registrar in Benue State Ministry of Justice, on behalf of the Respondents reads as follows:



Mr. Alex Ter Adum, Attorney-General and Commissioner for Justice, Benue State

he demands the information.”

The judge said he used the word “generally” in conscious recognition of the fact that there are exemptions to the general rule and that “Section 2 of the Act particularly imposes a duty on every public institution to keep account of its stewardship and so to ensure that the records of all its activities, operations and businesses are properly available for purposes of meeting prospective demands of those who may seek for such information.”

Noting that the Act is indeed a piece of legislation that should be the envy of any

democratic setting, the judge said the provisions however clearly anticipate that only such information as are real and available to either the person from whom they are required or to some other person within his knowledge to whom he could re-direct the request of the person who seeks for the information.

He said “in exercising jurisdiction to enforce the right to information the Court is therefore entitled to ensure that it does not just draw conclusions from unverified accounts, even if rumours of such accounts abound in the public domain.”

The judge stressed that the request for information must be based on concrete facts so that any order compelling the Respondent to supply same is not directed into a vacuum, with the concomitant result of bringing such order to ridicule.

He said that this is more importantly so because the Freedom of Information Act cannot be intended to provide an avenue for chasing shadows or be used as an instrument for witch-hunting.

The judge noted that in the instant process, it is quite clear from the affidavit evidence filed and exchanged between the parties that while the parties may not have made any issue of the occurrence of the flood disaster in Benue State, leaving victims in its wake, the statement of facts and the affidavit in verification of the facts are merely built around the figment of the Applicant's imagination that certain amounts of money were donated to the 1<sup>st</sup> Respondent by Government and other donors towards the management of the disaster.

Suit No. MHC/137/2013  
Between:

Rommy Mom – PLAINTIFF

And

1. The Executive Secretary  
Benue State Emergency Management Agency

– DEFENDANTS

2. The Attorney-General & Commissioner  
for Justice, Benue State

The process was filed on April 18, 2013 at the instance of Rommy Mom (“the Applicant”) against the Executive Secretary of the Benue State Emergency Management Agency and the Attorney General of Benue State.

The process is essentially for an order compelling the Executive Secretary to release information under his custody to the Applicant pursuant to the provisions of the Freedom of Information Act, 2011.

It also sees a determination of the question whether or not the Executive Secretary, being a public servant, is entitled to deny the Applicant access to the information that he has requested.

The reliefs sought are couched in the following terms:

- An order compelling the Respondents to provide the Applicant with information/records of the total monies collected by the 1<sup>st</sup> Respondent from the Federal Government, State Government, Local Government, private organizations, donor agencies as aid to flood victims as a result of last year's flooding that affected Benue State.
- An order directing the 1<sup>st</sup> Respondent to disclose how the monies collected have been or are being allocated, clearly showing the expenditure heads

The grounds upon which the reliefs were sought are stated as follows:

- On the March 27, 2013 the Applicant wrote a letter to the 1<sup>st</sup> Respondent demanding for information and records from the Respondents on how much monies they got and how they spent these monies on the flood victims, and records of such expenditures.
- Since that date, the 1<sup>st</sup> Respondent has refused or neglected to provide the Applicant with the said information.
- The Applicant has therefore resorted to Court to compel the 1<sup>st</sup> Respondent to provide him with this information, under the Freedom of Information Act, 2011.

The Supporting Affidavit of one Benedict Asan Gabin, the Litigation Secretary in the Law Chambers of the Applicant, is as follows in its relevant part:

“3. That I was informed by the Applicant at our office at No. 71 Ankpa Quarters Road Makurdi,

during his interview with his Lawyer T. K. Agba Injo of Counsel on the 16/4/2013 at about 2:30pm and I verily believe him as follows:

- i. That on the 27/3/2013 he wrote a letter to the 1<sup>st</sup> Respondent asking for the information/records of the total monies that the State Emergency Management Agency had collected from the Federal Government, State Government, Local Government, private organisations, and donor agencies as aid to flood victims as a result of last year's flooding. That the letter is attached and marked Exhibit T.K. 1.

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Mr. Rommy Mom,  
President of Lawyers Alert



## The FOI Act Is A Legislation That Should Be The Envy Of Any Democratic Setting, Says Judge

He noted further that it has been alleged in the counter-affidavit that no monies were received by the 1<sup>st</sup> Respondent on account of the flood, which denial raises the important point of whether or not the information required is available within the domain of the 1<sup>st</sup> Respondent or to any other person within his knowledge to whom he could re-direct the request for information.

He held that the law is clear on the point that a Court is not expected to be speculative in deciding conflicts in affidavit evidence either way, and, generally, that such conflicts can only be resolved by recourse to oral evidence or some other facts in evidence that render either side more credible as against the other.

He cited the case of *F.S.B. International Bank Limited v. Imano Nigeria Limited* (2000) NWLR (Pt. 19) 392 at 408 paras. F – G where Achike, JSC said as follows on the need to resolve conflicts in affidavits evidence before a decision can be based thereon: “Conflicts in affidavits on fundamental issues to the matter in controversy must be attended to and not just glossed over. A Court of law, be it trial or appellate, is not imbued with divine or magical powers in the sense that it can divinely or magically resolve conflicts in factual matters which may only be done, in certain circumstances, by dispassionate and painstaking evaluation of the facts or evidence placed before it.”

Justice Onum said the known exceptions to this general rule include instances where:

- Some documentary evidence attached to either of the affidavits makes it more probable that the case of either side to the conflict is more authentic. He cited *Okere v. Nlem* (1992) 4 NWLR (Pt. 234) 132.
- The conflict only touches on some flimsy or immaterial aspects of the substantive matter in controversy between the parties, in which case the conflict may be ignored. He referred to *First Bank of Nigeria Plc v. May Medicine Clinics and Diagnostic Centre Limited* (2001) 4 SCNJ 1 at 12.
- The facts in conflict are inadmissible in evidence. He referred to *Yusuf v. Cooperative Bank Ltd.* (1989) 6



Mr. Gabriel Suswam, Benue State Governor

SCNJ (Pt. I) 108.

- One of the parties has filed affidavits that are self-contradictory, in which case the Court may consider that the contradiction has weakened such a party's case to the advantage of the other's case. He cited *Arjay Limited v. Airline Management Support Limited* (2003) FWLR (Pt. 156) 943 at 969 paras. F – H.
- Where the issue before the Court is interlocutory and the conflict touches on some point of importance on the main case, in which case the Court must exercise its discretion in a manner that will avoid a pre-judgment on the conflict. He referred to the cases of *Anyaegebunam v. Attorney-General of Anambra State* (1995) 9 NWLR (Pt. 417) 97 at 108 para. B; and *Obeya Memorial Specialist Hospital Limited v. Attorney-General of the Federation* (1987) 3 NWLR (Pt. 60) 325.

His lordship said he had assiduously perused the processes filed and exchanged in the instant process and I did not see the Applicant's case to come within any of these known exceptions.

He noted that the Applicant is, of course, also entitled, by dint of the some relevant provisions of this same Freedom of Information Act, to demand information from some relevant officers of the Federal, State or Local Government on the important question whether or not either tier of government made any funds available to the 1<sup>st</sup> Respondent following the flood disaster that is in the focus of the instant process.

He noted further that if the Applicant had been provided with any such information before filing the suit, he has not equipped the Court with such information to enable the Court exercise its judicial powers in line with the substantive prayer in the suit.

The judge held that in the same light the question posed whether or not the 1<sup>st</sup> Respondent could deny the Applicant the information he seeks is only hypothetical.

He held further that after considering the processes filed and exchanged, he saw no substance in the suit and accordingly dismissed it. ■

## Documents Obtained under FOIA Reveal High Price of Riots in Oldham, England

Documents obtained through the Freedom of Information Act reveal the staggering cost of violence which shook the community of Oldham, a town in Greater Manchester, England, in May 2001 to its core.

The 2001 Oldham riots were a short but intense period of violent rioting which have also been shown to have been costly. The Manchester Evening News (M.E.N.), an ardent Freedom of Information Act user, sought to explain and breakdown the £2.2m taxpayer bill that arose for policing the riots alone.



Mr. David Cameron, British Prime Minister

A detailed breakdown of the costs show the vast bulk of the cost amounting to £1.9m went to paying police overtime. Hundreds of officers from every part of the region were drafted in to help deal with the violence and high visibility patrols continued for months afterwards.

£51,000 was spent on catering for officers in the car park of Oldham Civic Centre which was transformed into a makeshift headquarters. A further £218,000 was spent on replacing police vehicles, ten of which were badly damaged or written off and £7,000 on replacing shattered or burnt riot shields.

Other costs included £2,000 to replace 150 fire extinguishers used to douse the flames, and £4,500 on

borrowing a force helicopter from Lancashire police.

The Greater Manchester Police which received £1.4m from the Home Office towards the extraordinary costs, also eventually issued new 'riot underwear', after cops found that the long hours on the frontline in heavy fireproof suits brought on a heat rash.

Between May 25 to 29, 2001, a total of 10 pubs, 30 vehicles, 70 homes and business were damaged. Police received 28 compensation claims under the Riot Act for damages to property totalling £242,000 though only a small percentage of these were paid out.

Documents obtained through Freedom of Information also reveal how sensitively the authorities dealt with such claims, fearing any reports of pay-outs to victims could inflame the situation further.

In a letter to the Home Secretary written in September, the Greater Manchester Police Authority still referred to the situation in the town as 'volatile'. John Willis, clerk to the authority, wrote: “The situation is such that we believe our actions in dealing with these claims could serve to make matters worse, and may even precipitate renewed public disturbance.” ■

## FOI Lawyer's Profile Continued from page 6

### Kingsley Nnajiaka: A Fearless, Dogged and Relentless FOI Litigator

effectiveness of the FOI Act in Nigeria, there needs to be more media coverage for FOI cases.

Speaking on the challenges faced as regards Freedom of Information, he states the challenge posed by the bureaucratic nature of civil servants in responding to FOI requests and prolonged court cases due to adjournments. He expressed the hope that FOI develops through awareness being spread as well as there being more judicial decisions delivered in favour of FOI to serve as precedents. He also added that more judges can be appointed to decongest cases in court and judicial officers being trained on the use of FOI.

Mr. Nnajiaka cites the cases of *Centre for Social Justice v. Secretary to the Government of Federation* and *Centre for Social Justice v. Hon Minister of Finance* as his most challenging till date. He mentions specifically that the case against the Minister was given wide coverage and the Minister still faces contempt charges.

During his free time, Mr Nnajiaka maintains an active social media presence and can be reached via his twitter handle @kingfad2k2.

He advises colleagues in the FOI field and young lawyers in general to work hard and not be discouraged when judgment is not in their favour. ■



## Upcoming FOI Events

### February 5, 2015: The Right to Information: Designing Laws to Support Effective Implementation

Toby Mendel, Director of the Centre for Law and Democracy, will be discussing the link between good RTI laws and effective implementation in a World Bank webinar on February 5, 2015. The webinar looks at the legal frameworks of right to information and accompanying implementation efforts in the public sector undertaken by the World Bank and the Public Sector Management unit. The target audiences of the webinar include RTI Oversight Bodies in Client Countries; Country Practice Managers and NGOs. Toby Mendel, Executive Director of Centre for Law and Democracy will be speaking at the webinar.

To access additional information about this web series as well as video recordings and presentation materials after the session, please visit [einstiute.worldbank.org/ei/webinar](http://einstiute.worldbank.org/ei/webinar).

To participate in the webinar, visit the einstiute website to register.

### February 15, 2015: Deadline for Proposal Submission for The Global Conference on Transparency Research Call for Papers

Submissions of Papers on transparency and openness issues are welcome for The Global Conference on Transparency Research to be held in Lugano, Switzerland in June 2015.

Papers within the scope of the following issues: Transparency: concept and determinants; Transparency and technology; Roots of transparency and critics; Transparency and accountability; Transparency and corruption; Transparency, democracy and politics; Transparency in developing countries; Transparency and FOI legislation; Transparency reform and governance; Transparency and (national) security; Transparency and NGOs/IOs; Open data; Transparency and participation; Transparency and regulatory compliance; Transparency and privacy; Transparency in the EU and Transparency and trust are welcome. Contributions regarding the realities and limits of transparency in the security and military sector are especially encouraged.

The working language for the conference is English so all presentations are accordingly expected to be in English. However, abstracts and papers can also be submitted in French, German and Italian. The Deadline for submission of abstracts is February 15, 2015. Individual abstracts should be 400 words long. Final papers will be a maximum of 7,000

8,000 words long and in a form appropriate to submit to an academic journal.

For more information, please visit the conference website: [www.transparency.usi.ch](http://www.transparency.usi.ch).

### March 27 – 29, 2015: High-Level Conference on Data Revolution in Africa, Addis Ababa, Ethiopia

A High-Level Conference (HLC) on Data Revolution in Africa will be held in Addis Ababa, Ethiopia, on March 29, 2015. The technical programme for experts and data communities is scheduled for 27-28 March 2015. The theme is 'Setting the scene for a sustainable development agenda powered by Data Revolution in Africa'.

The HLC is expected to be a one-day face-to-face meeting of policy makers and leaders of thought whose results will be tabled before ministers for endorsement and adoption featuring a few keynotes and prepared reports to inform the decisions of the HLC.

A technical programme of two days will precede the HLC, featuring focused discussions in breakout sessions and working groups. Participants for the technical component will be drawn from data stakeholders identified through a survey of data communities across Africa. The organisers shall propose a substantial and consolidated conference programme in due course.

For more details, visit the HLC website on <http://www.uneca.org/datarevolution>.

### May 27-29, 2015: 3rd International Open Data Conference 2015

The International Development Research Centre (IDRC), the World Bank and the Government of Canada have announced the 3<sup>rd</sup> International Open Data Conference, to be held from May 27 to 29, 2015, in Ottawa, Canada.

The theme of the Conference is "Enabling the Data Revolution". With the belief that it is time for the open data movement to live up to its clear potential by delivering tangible benefits to all world citizens, the Conference hopes to bring together sector and open data experts, senior government officials, industry leaders, and civil society champions and prove to be a catalyst on this path.

The conference is an opportunity to broaden dialogue and include the voices of experts in sectors that want to use open data and assess how to scale-up innovative

*Continued on page 13*

*Continued from page 12*

## Upcoming FOI Events

approaches proven to work. It's also a chance to strengthen coordination among open data initiatives across various levels of government, topics, regions, and sectors.

### July 12 - 15, 2015: 9th International Multi-Conference on Society, Cybernetics, and Informatics (IMSCI 2015)

The 9th International Multi-Conference on Society, Cybernetics, and Informatics (IMSCI 2015) is scheduled to be held in Orlando, Florida, USA. This Conference is being organized jointly with The 13th International Conference on Education and Information Systems, Technologies and Applications: EISTA 2015.

In light of the fact that Informatics and Cybernetics (communication and control) are having an increasing impact on societies and in the globalization process that is integrating them, there is need for societies to regulate this impact, and adapt it to their respective cultural infrastructures. Synergic relationships would emerge in this co-adaptation process through positive and negative feedback loops, as well as feedforward ones.

The academic, private, and public sectors are integrating their activities; multi-disciplinary groups and inter-disciplinary teams are being formed, and collaborative research and development projects are being organized in order to facilitate and adequately orient the design and implementation of the feedback and the feedforward loops, so the synergic relationships are socially positive and personally human.

The Conference therefore seeks to bring together academics, professionals, and managers from the private and the public sectors to share ideas, results of research, and innovative services or products, in a multi-disciplinary and multi-sector forum.

In order to promote inter-disciplinary communication participants in any of these events will be able to attend any of the collocated events which are mainly the following:

- Politics and Information Systems, Technologies and Applications: PISTA 2015
- Social and Organizational Informatics and Cybernetics: SOIC 2015
- The 19th World Multi-Conference on Systemics, Cybernetics and Informatics: WMSCI 2015 ■

## FOI Resources

### The Freedom of Information Center

The Freedom of Information Center is a reference and research library in the Donald W. Reynolds Journalism Institute at the Missouri School of Journalism



Ms. Barbara A. Petersen,  
President of the Freedom of Information Center

on the campus of the University of Missouri in Columbia in the United States.

Established in 1958, the FOI Center and its founders were central to the effort to enact a national Freedom of Information Act in the United States.

The Center is reputed to have the oldest and most

comprehensive Freedom of Information library in the world, with a collection of more than one million articles and documents about access to information at the state, federal and local levels.

The Center specializes in open government research and education and in promoting the public's right to government accountability.

The Center maintains a File Index, which is a roadmap to the content of research files that have been compiled since the Center was opened in 1958.

The Center opened with a plaque on a desk occupied by the University's linotype Professor, Paul Fisher. Prof Fisher asked the journalism librarian for help in setting up an index to organize the clippings and teacher's notes he used for teaching a two-semester graduate class called "Controls of Information."

The Index begins by examining controls imposed by the government at every level. The effect of privatization of government functions and subsequent restrictions on formerly public information, as well as economic and social controls as well as some by professional groups, are also contained in the list.

The FOI Center organizes its materials hierarchically, under the major areas of interest that follow. It has done some linking, and it plans to be adding to the list as time progresses.

The Freedom of Information Center's Historical File Index contains links to individual cases involving press freedoms, including landmark Supreme Court rulings. ■



## FOI Tidbits

### Freedom of Information Act Street Party Held in Nassau, Bahamas



Participants at the FOI Street Party in Nassau, Bahamas

In December 2014, the fast-growing social and environmental advocacy group Save The Bays (STB) in collaboration with community partners, organized a Freedom of Information Act Street Party aimed at creating an urgent call for transparency in government transactions.

The Street Party held in Nassau, Bahamas and included live entertainment, food and beverages all aimed at gaining momentum and demanding that the Freedom of Information legislation be enacted towards transparency and accountability in public life.

The party was free as vendors donated food and drink and its proceeds were directed at supporting the next Freedom of Information event. STB promises to hold more FOIA events until there is a working FOI Act in The Bahamas. STB also called for support asking that members of the public join and support where possible as well as help spread the word.

The Bahamian superstar and FOIA warrior Kirkland 'KB' Bodie and his Rhythm Band headlined the entertainment, while speakers included the newly-elected chairman of the opposition Free National Movement (FNM) Michael Pintard, outspoken activist and church leader Rev. CB Moss and STB education director Joseph Darville. The Street Party was the second successful event of its kind as there was a rally in Rawson Square in July 2014 which drew more than 20 groups representing 60,000 members.

Lindsey McCoy, CEO of Save The Bays said "You always hear about a cause for celebration, this is a

celebration for a cause," McCoy also said STB and its ever-expanding coalition of partners are already planning the next event to be held in early 2015.

Founded just over a year ago, Save The Bays has been a force to reckon with in The Bahamas. It began as a grassroots environmental awareness campaign and quickly expanded to cover a variety of civic and social justice concerns and grievances as other advocacy groups flocked to STB's banner. Numerous organisations are joining the march for what has been called the basic tenet of any democracy – the public's right to information, also known as transparency in government.

The movement now has more than 500 registered members, the largest Facebook audience of any Bahamian NGO with 17,000 followers and more than 6,000 signatures on its petition calling for an FOIA, an Environmental Protection Act and an end to unregulated development in The Bahamas.

Shortly before it left office in 2012, the Ingraham administration passed an FOIA however there was no enforcement date and the legislation was not enacted. The Christie administration has said the current legislation needs to be overhauled. In September, minister responsible for the legislation Jerome Fitzgerald said the revised Act will not be presented to Parliament before spring 2016.

There is an ongoing petition signing on <http://www.chn.ge/15O68LY> to drive the signing of a Freedom of Information Act passed in The Bahamas. ■

## FOI Regional and International Developments

### WORLD LEADERS ADOPT NEW DATA STANDARD

Public contracting has been identified as one of the many government activities prone to mismanagement, inefficiency, and corruption. For this reason, it is therefore a laudable move by governments around the world who took the bold step, in November 2014, towards adopting and implementing the new Open Contracting Data Standard.

The Open Contracting Partnership in collaboration with the World Wide Web Foundation developed the Open Contracting Data Standard (OCDS) with support from Omidyar Network and the World Bank.

The aim of this Standard is to look into public finance – how public funds are spent, make public procurement more robust, transparent and accountable, help fight corruption, improve service delivery and enhance market efficiency. The standard will also help ensure that stakeholders have access to information on how public funds are spent and what they are spent on. Incoming Executive Director of the Open Contracting Partnership, Gavin Hayman stated that **"It is time to end secret deals between companies and governments to make sure public resources are spent openly, effectively and efficiently."**

The standard will make contracting information available for public scrutiny and this will ensure that citizens around the world will be empowered to hold their governments accountable for the trillions they spend each year on public contracts.

According to Anne Jellema, CEO of the World Wide Web Foundation: **"corruption adds an estimated \$2.3 trillion to the cost of government contracts every year. This new standard is a big step forward in the fight to eliminate fraud and waste in public procurement, enabling contracts to be published online in a transparent, consistent and user-friendly format so that anyone can monitor them."**

The OCDS will also be of benefit to non-governmental organizations and data business as the new data standard will enable them review details of public contracting processes to ensure that citizens are getting the best outcomes. It will also be beneficial to business because it will help contractors to be able to analyze the market and they can bid for contracts, with the same opportunities and chances as other contractors.

The Version 1.0 of the OCDS was said to have been developed through a year long process, making use of



Mr. Gavin Hayman,  
Executive Director of the Open Contracting Partnership

collated data from over 15 countries while a disparate set of contracting information users were engaged in the process. The standard encompasses every contracting process; from planning and budgeting to tender, award, implementation and even to completion.

Although the initial version of the standard schema is designed around contracts awarded through classic procurement processes, the standard is quite adaptable and through specific extensions can be used for other kinds of contracts, such as contracts relating to land and extractive industries.

The four primary use cases of the OCDS have been identified as: achievement of value for money in procurement, detection of fraud and corruption, competition for public contracts and monitoring of service delivery.

Furthermore, the standard involves basic, intermediate and advanced levels that publishers should seek to collect, manage and publish as part of their publishing process. The open data approach also suggests a number of guidelines that guarantee transparency and improve the usability of data. These guidelines include the upload of basic open contracting information to the web which might include uploading all documents relating to a contracting process in one place and updating them from time to time. The standard provides for the use of best practices on the web and suggests protocols to ensure discovery and reuse of data. The OCDS also supports the provision of some joined up data, fostering a connection among standardized data.

With its resolve to have the most open and transparent government in the world, the UK has joined countries such as Costa Rica, Paraguay and Columbia in making a commitment to adopt Version 1.0 of the Open Contracting Data Standard. Ian Makgill, the Managing Director of Spend Network, which analyses the UK government data, said an open standard for contracting was vital to developing open procurement data across the world. "The standard will allow firms like ours to confidently process and interpret procurement data from all over the globe," he said. "We are working to adopt the standard in all our work, and look forward to being able to publish a set of UK contract data in the New Year."

The OCDS is truly a promising innovation that seeks to align investment deals with public interests; however, the Open Contracting Partnership is expected to face many technical, community and capacity-building challenges. ■



## FOI Tracker

Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
Major General India Garba (Rtd)	Details of revenue allocation to Vandeikya Area Council from January 2010 to July 30th 2012	Special Adviser to the Governor of Benue State on Local Government and Chieftaincy Affairs	July 30, 2012	Request for Information was denied	Major General Garba instituted a case in the Makurdi High Court against the Special Adviser for Local Government and Chieftaincy, Benue State. On Thursday, October 9, 2014, a Makurdi High Court sitting in Makurdi, Benue State, presided over by Hon. Justice S.O. Itodo gave the Special Adviser to the Governor of Benue State on Local Government and Chieftaincy Affairs 14 days from the 9th October, 2014 to furnish the Plaintiff - Major General India Garba (rtd) with the requested information. Justice Itodo, declared that the refusal, failure and or neglect by the Defendant to release the information requested by the Plaintiff concerning the allocation of revenue to the Vandeikya Local Government Area Council of Benue State of Nigeria from the Federation Accounts and expenditure of the same amounts, to a violation of Sections 4 (a) and 7 (1) of the Freedom of Information Act, 2011.
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 Comptroller-General of Customs, The Nigerian Customs Service	September 15, 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.

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## FOI Tracker

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Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
	the Nigerian Customs Service, the report presented to the House of Representative Committee on Aviation during the proceedings on October 30, 2013, among others.				
Civil Liberties Organisation (CLO), North East Zone	Details of plans to build the capacity of NTA journalists on conflict sensitive reporting before, during and after the 2015 elections; measures taken to ensure objectivity, impartiality and neutrality in coverage of election related issues and activities; mechanisms in place to guarantee safety and security of personnel in view of the possible volatility of elections and electioneering reportage; station policy towards providing equitable airtime or media space to all political parties contesting in the 2015 elections.	Nigerian Television Authority (NTA) Network Zonal Centre, Maiduguri	November 20, 2014	In a timely and detailed 3-page response on November 24, 2014, the NTA Office of the Zonal Director, Maiduguri Network Centre, responded to the request for information answering the questions raised. The answers included the information that NTA Maiduguri has been sponsoring reporters to workshops on Conflict Resolution and Security Issues in different towns. The letter also states that while NTA is known for its policy on ensuring impartiality, objectivity and neutrality at all times, more measures have been put in place.	Successful access to information.
Women Development Project Centre	Information on the amount received by the National Orientation Agency (NOA) Office in Anambra from the Agency's Headquarters in Abuja for sensitization	The State Director, National Orientation Agency (NOA), Amaenyi-Awka,	December 6, 2014	In a letter dated December 15, 2014, the State Director of NOA in Anambra State responded providing the information requested for. The	Successful access to information.

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Requester	Information Requested	Public Institution	Date	Outcome of Request	Current Status
	and creation of awareness to avoid voter apathy among others in the coming elections, details of other forms of support including grants and donations received from international organisations, the state government, corporate organisations or individuals, detailed report of activities carried out indicating communities covered with dates, venues and number of people reached disaggregated by gender and local government areas, four copies of each publication used in conducting sensitization and awareness creation.	Anambra State		letter stated that the Anambra State office received One million naira for sensitization of voters and received no additional support from individuals or other bodies. It also included a breakdown of sensitization exercises including dates across local government areas in the state. The letter also informed the requester that the voter education exercises were conducted orally and through demonstrations with no manual. Lastly, the letter stated that the exercises were aired on electronic media and published by print media	
Justice, Development and Peace Commission (JDPC)	Salaries, emoluments and allowances paid to Honourable members of the Ogun State House of Assembly between June 2011 and May 2014 and the lists and names of bills passed by the House within this period.	Ogun State House of Assembly	August 11, 2014	In a letter dated September 4, 2014, The Ogun State House of Assembly responded stating that the House takes care of law making only and JDPC should reach out to the Office of the Accountant General of the State for information on the salaries and allowances of the Honourable members of the House. However, a list of the bills passed, their numbers, titles, sponsors, date of reading, date moved and passed and date assented to was attached.	Successful access to information.

STANDARDS AND PRINCIPLES

Freedom of Information Professional Standards  
Issued by the Attorney General of Victoria in Australia

The Attorney-General Robert Clark has issued Freedom of Information Professional Standards, a new benchmark for agencies in administering their responsibilities under the Freedom of Information Act 1982 (FOI Act). The Freedom of Information Professional Standards have been developed following consultation with the Freedom of Information Commissioner and Victorian public sector agencies. The professional standards set overarching principles to steer agencies' conduct in their handling of freedom of information matters, with a view to making their actions of the highest standard.



Mr. Robert Clark,  
Attorney-General of Victoria in Australia

reviewed in regard to their effectiveness, compliance with legislation, case law and any guidance from the FOI Commissioner

e. ensure their agency's decisions comply with the requirements of the FOI Act and these

Principle 1: Access to Public Sector Information

The community has a right to access information.

- Agencies must maximise and facilitate agency information being made available through an appropriate proactive release framework.

Standard A: Right of Access

- The FOI Act must be interpreted to maximise the release of public sector information unless specific exemptions apply.
- Persons have a right to access information in a timely and accurate manner.
- All actions and decisions under the FOI Act should be without bias.

Standard B: Responsibilities of Agencies

- Principal Officers have a responsibility to:
  - promote an appropriate pro-release culture to ensure the transparency of public sector information
  - ensure FOI decision makers are aware of the requirements of the FOI Act and these professional standards, and how they apply to decisions and actions in the course of processing FOI requests
  - ensure relevant staff are provided with adequate information, guidance, training and support in applying these professional standards and the requirements and objects of the FOI Act
  - ensure internal FOI procedures are regularly

professional standards  
provide an appropriate level of resources to ensure the timely processing of requests, and

- keep the FOI Commissioner informed of changes to their agency's Principal Officer and FOI contact details.

Principle 2: Assessing and Determining Applications

- Agencies must assist applicants in making a FOI request.
- FOI decisions must be fair, clear and aligned with the spirit of openness and transparency.

Standard C: Assistance to Applicants

- Agencies must provide reasonable assistance to applicants to enable the lodgement of FOI requests, including through online transaction capability, wherever practicable, and advise of rights concerning reviews, appeals and complaints about the administration of their FOI requests.

Standard D: Requirements for a Valid Request

- Agencies must assist an applicant to make a valid request in accordance with section 17 of the FOI Act.

Standard E: Identification of Relevant Documents

- Agencies must ensure that thorough and diligent searches are undertaken when identifying and locating documents relevant to FOI requests.

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## Freedom of Information Professional Standards

### Standard F: Timely Decision-Making

1. Agencies are to ensure internal practices and procedures facilitate the making of timely decisions in accordance with the time lines specified in the FOI Act.

### Standard G: Decisions

1. In properly exercising their statutory decision-making power under the FOI Act, an authorised FOI Officer cannot be directed to make a particular decision under the Act.
2. FOI Officers, and Principal Officers where relevant, must undertake any necessary consultation within and across agencies to gain a knowledge of the documents sufficient to be able to determine the subject matter, context and what, if any, basis exists to support an exemption under the FOI Act.



Mr. Tony Abbott, Australian Prime Minister

3. Before making a decision, FOI Officers must consult third parties in relation to commercial information in accordance with section 34(1) of the FOI Act, in accordance with section 34(3) of the Act.
4. In accordance with section 27 of the FOI Act, agency decisions must at a minimum:
  - a. be in writing
  - b. include the name of the person making the decision
  - c. attempt to inform applicants of efforts made to identify and locate documents
  - d. indicate where exempt or irrelevant matter has been deleted from a document
  - e. clearly state the exemptions applied and the specific reasons for applying the exemption to the document
  - f. advise applicants and third parties of any right of review and/or complaint to the

FOI Commissioner or appeal right to the Victorian Civil and Administrative Tribunal (VCAT) and the right to apply to the Health Services Commissioner for conciliation in accordance with section 49Q of the FOI Act, and

g. in the case of a no document exists decision, advise applicants of their right to complain to the FOI Commissioner.

5. In addition, agencies must ensure that their decisions on access are in line with the exemption provisions under the FOI Act.
6. Decision-making processes are to be fair, clear and applied consistently.
7. Decisions and actions are to be objective, free of bias and begin from the position that the public is entitled to access information held by the public sector.

### Principle 3: Reviews and Appeals

- Agency advice and decisions must inform the applicant and third parties of their review and appeal rights in an accurate and timely manner.
- The FOI Commissioner must perform functions and exercise powers under the FOI Act in relation to reviews with as little formality and technicality as possible.
- Agencies must provide assistance to the FOI Commissioner in relation to requests for the review of agency decisions in accordance with the FOI Act.

### Standard H: Applicants' Right of Review

1. Agencies must inform applicants of any review and appeal rights to enable them to exercise their rights within the time limits imposed under the FOI Act.
2. The FOI Commissioner may make preliminary inquiries in order to determine material facts and issues and/or whether a matter can be resolved by agreement between the parties.
3. In accordance with the FOI Act and guidelines issued by the FOI Commissioner, Principal Officers and agencies must provide timely assistance to the FOI Commissioner in the course of the Commissioner responding to requests for the review of agency decisions.

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## Freedom of Information Professional Standards

### Standard I: Agency Requirements

1. Principal Officers and their agencies must be alert to any guidelines issued by the FOI Commissioner and requirements of VCAT.

### Principle 4: Complaints

- Agencies must provide timely and accurate advice and assistance to the FOI Commissioner to enable the exercise of the functions of the Commissioner relating to complaints made about agencies' administration of the FOI Act.

### Standard J: Assistance to the FOI Commissioner

1. The FOI Commissioner may make preliminary inquiries in order to determine material facts and issues and/or whether a matter can be resolved informally.
2. In accordance with the FOI Act and guidelines issued by the FOI Commissioner, Principal Officers and their agencies must provide timely assistance to, and co-operate with, the FOI Commissioner in regard to complaints about the administration of FOI requests.

### Standard K: Timely Responses

1. Agencies must communicate in a timely manner with the FOI Commissioner and with applicants in relation to complaints.

### Principle 5: File Management and Reporting

- Agencies must provide data to the FOI Commissioner to enable annual reporting to Parliament on the administration of the FOI Act in Victoria.
- Agencies must ensure record keeping practices enable the prompt and efficient identification of agency documents.
- Agency annual reports and websites are to provide sufficient information to enable the public to determine the broad categories of records it holds.

### Standard L: Records Management

1. Principal Officers must ensure that agency



Mr. Robert Clark

records management systems and practices, inclusive of archiving practices, facilitate the timely and accurate processing of FOI requests.

### Standard M: Annual Reporting

1. Principal Officers must ensure accurate and timely reporting of information as required under the FOI Act and relevant guidance from the FOI Commissioner.

### Standard N: Part II Information Statements

1. Agencies must comply with the publication requirements of Part II statements, making information available on-line where this is practicable.
2. Part II statements must be published in a manner easily accessible to the public.

### Principle 6: Education

- Principal Officers are to ensure that agency staff and FOI Officers receive the necessary training, education and support in relation to the administration of the FOI Act.

### Standard O: Responsibilities of Principal Officers

1. Principal Officers must:
  - a. support their FOI Officers and relevant staff through the provision of training and professional development opportunities, including online or face-to-face training
  - b. ensure that agency FOI Officers and relevant staff receive training that focuses on both the technical application of the FOI Act and its objectives, as well as the importance of complying with the spirit of the Act and achieving outcomes sought by the legislation
  - c. ensure all agency staff are reminded of the need to cooperate promptly and assist their FOI Officers in dealing with requests, reviews, appeals or complaints
  - d. make available any guidance materials issued by the FOI Commissioner, and
  - e. ensure that their agency's obligations under the FOI Act are met, cognisant of relevant guidance from the FOI Commissioner. ■



## Perceptual Influence of Freedom of Information Act on Journalism Practice in Nigeria

by Genevieve Oluchukwu Abone and Jude Terna Kur

The “Perceptual Influence of Freedom of Information Act on Journalism Practice in Nigeria is a recent survey study on the Freedom of Information Act written by the duo of Genevieve Oluchukwu Abone and Jude Terna Kur published in the Arabian Journal of Business and Management Review (OMAN Chapter) Vol. 3, No.7; Feb. 2014.

A survey was conducted to find out the perception of Nigerian journalists on the influence of Freedom of Information Act on journalism practice in Nigeria. The objectives of the survey were to determine the level of awareness of the provisions of the Freedom of Information Act among journalists in Nigeria; ascertain the journalists' perception of the strengths and weaknesses of the Act in journalism practice; and evaluate the journalists' perception of the direction of influence (positive or negative) of the Act on journalism practice.

According to the authors, the study adopted the survey research method using Anambra State as the area of study. A sample of 165 respondents were drawn from a population of 289 registered journalists in Anambra State with a 15-item questionnaire used to obtain data for the study.

The population of study, according to the authors, consisted of registered journalists working for the print media, broadcast media and government information agencies within Anambra State. They said it finds expression in the libertarian theory of a free press which “prescribes that an individual or organization including the press should be free to publish and express information freely.”

The study traced the history of the FOI Act from 1993 when the late ruler, General Sani Abacha was Head of State and the tortuous journey through the legislative process till it was signed on May 28, 2011 by President Goodluck Jonathan. It noted the high level of suppression of the press and journalists during the Abacha regime which made it necessary to seize the opportunity for such freedoms when democratic governance later presented

itself. The study quotes Ogbuokiri, K's observation in “The limit of information act in Freedom of Information Act 2011 and the fight against corruption and corporate fraud in governance,” that it was Media Rights Agenda (MRA), Civil Liberties Organization (CLO), and the Nigerian Union of Journalists (NUJ) Lagos State Chapter that introduced the idea of the Freedom of Information law by drafting a manuscript of the Freedom of Information Bill (FIB)



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The study listed some of the features of the Act to include the guarantee of the right of access to information; requirement for all institutions to proactively disclose basic information about their structure and processes; provision for the protection of whistleblowers; adequate provision for the information needs of the illiterate and disabled applicants; recognition of a range of legitimate exemptions and limitations to the

public's right to know; and creation of reporting obligations in compliance with the law for all institutions affected by it; as well as requirement for the Attorney-General of the Federation to oversee the effective implementation of the Act and report on execution of this duty to parliament annually.

The survey showed that an overwhelming 134 or 83.8% of the respondents surveyed said they were aware of the provisions of Nigeria's FOI Act. Only 22 or 13.7% respondents said they were not aware, while four or 2.5% were undecided. Seventy six (56.7%) of the 134 respondents who said they were aware of the provisions of the Freedom of Information Act, 76 (56.7%) said their awareness of the Act was high, 46 or 34.3% said their awareness of the Act was moderate, and 10 or 7.5% said they had a low awareness of the Act. Two (1.5%) respondents were not sure on this count.

A total of 104 or 77.6% of the respondents believe the FOI Act will enhance the practice of journalism in Nigeria. Only 26 or 19.4% respondents felt otherwise, and four or 3% were not sure.

On factors that constitute the strength of the Act in

## Perceptual Influence of Freedom of Information Act on Journalism Practice in Nigeria

by Genevieve Oluchukwu Abone and Jude Terna Kur

enhancing journalism practice, 64 (26.2%) of the respondents identified that the provisions of the Act guarantee free availability of information to all including journalists. It should however be noted that the FOI Act does not guarantee availability of information and records for free as the Act says information made available by public institutions may be paid for but not more than the cost of reproducing the information or record.



Mr. Femi Adesina,  
President of the Nigerian Guild of Editors

interpretations should be reviewed,” and that journalists should make maximum use of the Act to enjoy the benefits derivable from it.

Good as the study was, it was built on some wrong and ignorant perceptions of the Act and administered to journalists of whom majority neither knew the provisions of the Act nor the principles of access to information laws.

For 52 (21.3%) respondents the strength of the Act in enhancing journalism practice was in the provision of access to public records and information; 30 (12.3%) respondents identified proactive disclosure provisions of the Act; 28 or 11.5% respondents identified whistleblower protection; 24 or 9.8% cited the protection of public information and records consistent with public interest; and 18 or 7.4% identified the exemption of journalists' confidential sources from disclosure.

However, 78 or 58.2% of 134 respondents believe that the FOI Act could pose a challenge to journalism practice stating provisions of the Act which they believe could pose a challenge to the practice of journalism.

Respondents listed the following as possible challenges to journalism practice: denial of information for security purposes, 48 or 23.3%; the 'nebulous' term “national security”, 40 or 19.4%; the culture of defiance of rule of law, 39 or 18.9%; cost and time taken for litigation, 23 or 11.2%; continued existence of other challenging laws such as Official Secrets Act, Penal Code, Criminal Code, etc., 18 or 8.7% respondents; lack of supervisory body, 10 or 4.8%; and challenges to implementation of the Act, 16 or 7.8%.

In ignorance of the provisions of the Act, 10 or 4.8% respondents claim there is no supervisory body for the FOI Act whereas the law gives the supervisory role to the Attorney General of the Federation.

The survey found that journalists have a high awareness of the FOI Act and that they believe it has a positive influence on journalism practice in Nigeria. It then recommended that “aspects of the Act that contain nebulous and slimy concepts that are open to differing

On the part of the authors, it would appear the survey was carried out using a wrong copy of the Act. Four sections of the FOI Act were cited wrongly and in some cases, the text were also not the same as that in the authentic FOI Act. According to them, Section 2(1) of the FOI Act gives the guarantee of the right of access to information whereas it is actually Section 1(1) of the Act. In addition, their quotation of the text of the Act is different from what is in the FOI Act.

Again, the authors erroneously claim that “Section 4 mandates individuals seeking information to make written requests given(sic) sufficient details to the government institution”, whereas section 4 of the Act deals with time-frame for responses. The Act also does not specify the mode of application.

Another error that shows the authors got hold of a wrong copy of the FOI Act is their claim that Section 10 which forbids government officials from tampering with official information, prescribes a term of 'three years' imprisonment on conviction of offenders whereas the term prescribed is a minimum of one year imprisonment.

Section 4 of the FOI Act deals with time for granting or refusing access but the authors say it is Section 5 that does. Whereas the law puts the initial time within which a public institution should respond at seven days, the authors say it is “14 working days”. Section 5 of the Act deals with transfer of requests from one institution to another.

While the effort put into the study is commendable, some findings of the study shows that there is still a lot to do to sensitise Nigerians and especially journalists on the FOI Act and its benefits. ■

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